

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

FILED
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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CvS 4822


TODD EDWARD ROTRUCK,

Plaintiff,

v.

TOWN OF SUMMERFIELD,

Defendant.

GUILFORD CO., N.C.
BY 

**COMPLAINT
AND MOTION FOR
TEMPORARY AND PRELIMINARY
INJUNCTIVE RELIEF**

Plaintiff Todd E. Rotruck, through counsel and pursuant to Rules 7 and 8 of the North Carolina Rules of Civil Procedure, complains of Defendant Town of Summerfield as follows:

SUBSTANCE OF THE ACTION

1. Plaintiff Todd E. Rotruck ("Rotruck") brings this civil action seeking mandamus, declaratory relief, and injunctive relief in response to the actions of Defendant Town of Summerfield's employee Scott Whitaker in his capacity as Town Manager to summarily and unilaterally exclude Rotruck from participating as a duly elected member of Town of Summerfield's Town Council, and prevent Rotruck from fulfilling his responsibilities as an officer of Town of Summerfield elected by the people, thereby violating Rotruck's constitutional rights and the laws of the State of North Carolina.

PARTIES AND JURISDICTION

- 2. Rotruck is an individual resident in Guilford County, North Carolina.
- 3. Town of Summerfield ("Summerfield") is a body politic, incorporated and operated by virtue of the laws of the State of North Carolina within corporate boundaries situated within Guilford County, and thereby possessing all powers, rights, duties, rights, privileges, and immunities conferred and imposed on towns and cities by the general law of the State

4. Summerfield maintains primary offices for the conduct of its business as a municipal corporation at its “Town Hall” located at 4117 Oak Ridge Road in Summerfield, North Carolina.

5. This Court has proper personal jurisdiction, and jurisdiction over the subject matter under the judicial power vested in the General Court of Justice, Superior Court Division by N.C. Gen Stat. §§ 7A-240 and 7A-245, and Plaintiff has met all conditions precedent to initiating and maintaining this civil action.

6. Venue for this civil action is proper in Guilford County, North Carolina pursuant to N.C. Gen Stat. § 1-82.

FACTUAL BACKGROUND

7. As one of two candidates receiving the most votes, Rotruck was elected to Summerfield’s Town Council (the “Council”) by the people of Summerfield (eligible registered voters residing in Summerfield who cast ballots in the November 7, 2017 general election), receiving 1,089 votes in record voter turnout conditions.

8. Rotruck was officially and properly sworn into office as a member of Council on December 12, 2017, and he had attended and participated actively in every meeting of the Council since, until April 23, 2018, when he was precluded from participating in a special meeting of the Council, against his will. Notably, as part of his participation as a member of Council elected by the people, Rotruck joined other members of the Council in openly questioning whether or not the Council should renew the employment contract of Summerfield’s Town Manager, Scott Whitaker.

9. On February 16, 2018, Janelle Robinson, an individual resident of Summerfield, filed a residency challenge with the Guilford County Board of Elections, claiming that Rotruck had ceased residing in Summerfield (the “Challenge”).

10. On February 26, 2018, Summerfield's Town Manager, Scott Whitaker, was quoted in local media about the Challenge, stating that it could be "something that the town as a whole is going to have to deal with swiftly."

11. On March 8, 2018, Janelle Robinson met privately with Summerfield's Town Manager, Scott Whitaker, and Reece Walker (a member of the Council), in Whitaker's office in Summerfield's Town Hall, but for unknown reasons the standard video and audio recordings routinely made of activity transpiring in Summerfield's Town Hall are incomplete for March 8, 2018 such that there is no audio or video available documenting the presence of Janelle Robinson and Reece Walker at Town Hall for the meeting with Scott Whitaker on that date.

12. Rotruck has maintained at all times that he established legal residence in Summerfield during 2016, and that he continues to legally reside there to this day.

13. On April 17, 2018, the Guilford County Board of Elections conducted a quasi-judicial hearing with respect to the Challenge (the "Hearing") and, at the conclusion of the Hearing, voted to sustain the Challenge, finding that Rotruck's current residence was in the City of Greensboro, not Summerfield, and that Rotruck accordingly was not eligible to vote in Summerfield for purposes of the May 8, 2018 primary election.

14. The Guilford County Board of Elections did not issue a formal written decision or order, or any minutes, at the conclusion of the Hearing on April 17, 2018 to memorialize its official findings and determination regarding the Challenge, but a representative of the Board of Elections (Charles Collicut) indicated that a written decision or order would be forthcoming in approximately one week. (N.C.G.S. § 163A-767 requires the Board of Elections to "keep minutes recording all proceedings and findings at each of its meetings.")

15. The day after the Hearing, Rotruck submitted a public records request to the Board of Elections, but as of yet Rotruck has not been furnished with the requested records.