

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR WISE COUNTY

DAVID GENT, JR.

PLAINTIFF

v. Case No: GV20-1202

JESSICA ADAMS

DEFENDANT

FINAL ORDER: MOTION TO DISMISS & MOTION FOR ATTORNEY'S FEES

This day came the Plaintiff, appearing *pro se*, and Counsel for the Defendant.

The Court reviewed the Motion to Dismiss and Motion for Attorney's Fees filed by the Defendant, the written Response to the Motion to Dismiss filed by the Plaintiff and the written Reply by the Defendant, heard evidence and heard argument on the Motions.

The Court makes the following FINDINGS and ORDERS:

1. §2.2-3707 (C) required that the Town of Pound provide "Notice" to the public for its Administrative Committee meeting held on September 9, 2020;
2. Gent has alleged two separate violations of §2.2-3707 (C) in his sworn Petition. In particular, Gent alleges that Adams, acting as the Town Clerk and FOIA Officer, did not comply with §2.2-3707 (C) (1) when she did not post the Notice on the "town's website", and Gent alleges that Adams did not comply with §2.2-3707 (C) (2) when she did not post the Notice "in the local newspaper".
3. In pertinent part, 2.2-3707 (C) reads as follows:

C. Every public body shall give notice of the date, time, and location of its meetings by:

1. Posting such notice on its "official public government website", if any;

2. Placing such notice in a prominent public location at which notices are regularly

posted;

WISE COUNTY/NORTON GENERAL DISTRICT COURT
I, the undersigned clerk or deputy clerk of the above-named court, authenticate pursuant to VA Code §8.01-391(C) on this date that the document to which this authentication is affixed is a true copy of a record in the above-named court, made in the performance of my official duties.

10-15-2020

DATE

CLERK

DEPUTY CLERK

3. Gent has not alleged that the Town failed to post the notice on its "official government website", only that the Notice was not posted on the "town's website". Accordingly, the Motion by the Defendant to Dismiss as to this allegation is GRANTED for that reason and that allegation is DISMISSED WITH PREJUDICE.
4. It is admitted that the Town of Pound has a ".com" website. The Court FINDS that this website is not an "official government website" as that phrase is used in §2.2-3707 (C) (1). In order to obtain an "official government website", the Town of Pound must apply for one through the United States GSA at <https://home.dotgov.gov>. *See attached Exhibit to the Motion to Dismiss*. Only in this manner, can a local municipality have an "official government website." Further, the Plaintiff's written Response confirms this fact. In one of the exhibits to the Plaintiff's Response, the Plaintiff has attached a 12 page internet article entitled "Everything You Need to Know About .gov Domains". On page 3 of the article submitted by the Plaintiff, the article states the following: "By using a .Gov name, your municipality will have the prestige of a unique and government only TLD. Although, it is a bit pricier, it will brand your municipal website as official." Both the Plaintiff and the Defendant have submitted separate authorities for the Court to consider, and both clearly establish that the Town of Pound's .com website is not an official government website. Accordingly, the Motion by the Defendant to Dismiss as to this allegation is GRANTED for this additional reason and that allegation is DISMISSED WITH PREJUDICE for this additional reason.
5. The plain reading of §2.2-3707(C) (2) does not require newspaper advertisement, and is further clarified by the Virginia FOIA Advisory Council written opinion in 2007.

Accordingly, the Motion by the Defendant to Dismiss as to this allegation is GRANTED and that allegation is DISMISSED WITH PREJUDICE.

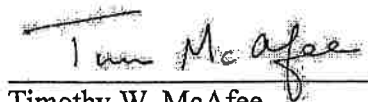
6. The only remedy that the Plaintiff seeks is a Writ of Mandamus that relates to an event that has already occurred. Even assuming *arguendo* that the Defendant failed to perform some ministerial act in September, 2020, a Writ of Mandamus cannot lie since such a writ requires a ministerial act "to be" performed. See *Moreau v Fuller*, 276 Va. 127, 661 S.E. 2d 841 (2008). Accordingly, the Motion by the Defendant to Dismiss as to this allegation is GRANTED for this additional reason and that allegation is DISMISSED WITH PREJUDICE for this additional reason.
7. The Motion by the Defendant for attorney's fees is DENIED

ENTER: October 8, 2020.


WISE COUNTY GENERAL DISTRICT COURT JUDGE

David Gent, Jr. v. Jessica Adams, Town Clerk
Final Order: Defendant's Motion to Dismiss & Motion for Attorney's Fees

SEEN:



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