

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JUDICIAL WATCH INC.,
Plaintiff

v.

FANI WILLIS, in her official capacity as
District Attorney of the Atlanta Judicial Circuit,
Defendant

CIVIL ACTION 24CV002805

ORDER GRANTING PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT

On 22 August 2023, Plaintiff Judicial Watch Inc. submitted an open records request to Defendant District Attorney Fani Willis seeking “[a]ll documents and communications sent to, received from, or relating to Special Counsel Jack Smith” and “[a]ll documents and communication sent to or received from the United States House January 6th Committee.”¹ Plaintiff received a response the next day from Kaye Burwell, Open Records Custodian in the Office of the County Attorney, stating that Defendant did “not have the responsive records.” (Complaint, Ex. 3). Plaintiff subsequently brought this action on 5 March 2024 alleging that Defendant violated the Open Records Act (ORA), O.C.G.A. § 50-18-70 *et seq.*, because Defendant in fact does have responsive records that should have been produced. Plaintiff seeks the requested records and attorney’s fees.

It is undisputed that Defendant was properly and sufficiently served on 11 March 2024.² Plaintiff filed the return of service two days later on 13 March 2024. For reasons unknown to the Court, the return did not appear on the Court’s electronic docket when it was filed and processed

¹ Plaintiff’s request also extended to employees of Smith and the Committee.

² Fulton County was originally named as a Defendant in this case and was served on 8 March 2024. Plaintiff later dismissed the County from its ORA litigation.

and so on 15 April 2024 the Court, believing that Defendant had not yet been served, entered an Order directing Plaintiff to serve Defendant. Plaintiff responded to the Court's directive the same day by re-filing the return showing Defendant was served on 11 March 2024.

Plaintiff moved for default judgment on 30 April 2024. Defendant made her first appearance in the case on 15 May 2024 with an answer and response opposing Plaintiff's motion. Defendant concedes that she was served on 11 March 2024 but reasonably claims that she was unaware Plaintiff had filed the affidavit of service on 13 March 2024 (since it did not appear in the public docket for this case). Defendant argues that she relied on the Court's 15 April 2024 Order directing Plaintiff to serve her and so did not immediately file an answer because of her "understanding that service had not been perfected." (Def's Resp. at 2). Defendant further argues that (i) the Court's 15 April 2024 order required Plaintiff to serve her a second time, (ii) Plaintiff has not done so, and therefore (iii) she is not yet required to answer (despite having done so). Alternatively, Defendant contends that even if Plaintiff's second filing of the return on 15 April 2024 sufficiently complied with Court's order, her 15 May 2024 answer was timely pursuant to O.C.G.A. 9-11-4(h) since it was filed within thirty days of Plaintiff's (second) filing of the return.³

Plaintiff replied and moved to strike Defendant's answer. Plaintiff insists that Defendant's answer was due on 10 April 2024 pursuant to O.C.G.A. 9-11-12(a) because Defendant acknowledges she was properly served on 11 March 2024.⁴ Plaintiff further argues that to the extent Defendant relied on the Court's 15 April 2024 Order or her monitoring of the electronic

³ O.C.G.A. § 9-11-4(h) provides that "[i]f the proof of service is not filed within five business days, the time for the party served to answer the process shall not begin to run until such proof of service is filed."

⁴ O.C.G.A. § 9-11-12(a) provides "[a] defendant shall serve his answer within 30 days after the service of the summons and complaint upon him, unless otherwise provided by statute."

docket, she did so at her own peril. Plaintiff also points out that Defendant has never moved to open default or paid costs.

The Court finds Defendant *is* in default and has been since 11 April 2024. As already mentioned, it is undisputed that Defendant was served on 11 March 2024 and that Plaintiff filed the return of service on 13 March 2024. While it is true that that return did not immediately appear on the Court's electronic docket, this delay does not change the fact that Plaintiff filed it -- and that it was stamped as received by the Clerk -- on 13 March 2024.⁵ Because the return was filed within five days of service, Defendant was required to answer within thirty days of service, which would have been 10 April 2024. O.C.G.A. § 9-11-12(a). Nothing in the Court's 15 April 2024 Order changes that analysis. In its Order, the Court, laboring under the mistaken impression that service had not yet been effected, simply directed Plaintiff to serve Defendant. But Plaintiff already had done so and provided proof of that fact (to include the return). There was no requirement for Plaintiff to re-serve Defendant and the Court's Order cannot be read as such.

Lest any of this appear unfair to Defendant -- who arguably was without notice that Plaintiff had filed the return of service on 13 March 2024 until 15 April 2024 when Plaintiff again filed it and the Clerk caused the original 13 March filing to appear in the docket -- Defendant could have opened her default as a matter of right on 15 April 2024 or soon thereafter, as she remained well within the fifteen-day grace period established by O.C.G.A. § 9-11-55(a). Moreover, even had she delayed and filed her motion to open default outside the fifteen-day statutory grace period, Defendant would have had a compelling case for opening her default on any of the three statutory grounds: providential cause (*i.e.*, the Clerk's Office's inexplicable failure to timely post the filed return of service in the official docket), excusable neglect (*i.e.*, Defendant had a "reasonable

⁵ That return is attached to this Order as Exhibit A.

excuse” for not answering within the initial 30-day window because there was no proof of service in the docket), or proper case (*i.e.*, the injustice of denying Defendant the ability to open her default when the cause appeared to have been a technical document processing error on the Clerk’s behalf). *See Bowen v. Savoy*, 308 Ga. 204, 205-08 (2020).

But Defendant did *none* of that: she never moved to open default on any basis (not even during the period when she could have opened default as a matter of right), she never paid costs, and she never offered up a meritorious defense. Plaintiff is thus entitled to judgment by default as if every item and paragraph of the complaint were supported by proper and sufficient evidence. O.C.G.A. § 9-11-55(a). Here, this means Plaintiff has established that Defendant violated the ORA by failing to either turn over responsive records or else notify Plaintiff of her decision to withhold some or all such records.

In its complaint, Plaintiff sought the following relief:


- 1) a declaration that Defendant has violated the ORA;
- 2) an order for Defendant to search for all records responsive to Plaintiff’s request without further delay;
- 3) an injunction ordering Defendant to cease withholding non-exempt public records responsive to the request;
- 4) an award of attorney’s fees and costs pursuant to O.C.G.A. § 50-18-73(b);
- 5) a writ of mandamus, ordering Defendant to provide the requested records; and
- 6) any other relief the Court deems proper.

By finding Defendant in default, the Court has in effect declared that she has violated the ORA. The Court also hereby ORDERS Defendant to conduct a diligent search of her records for responsive materials **within five business days** of the entry of this Order. Within that same five-day period, Defendant is ORDERED to provide Plaintiff with copies of all responsive records that

are not legally exempted or excepted from disclosure. If Defendant is required or decides to withhold all or part of a requested record, she should follow the procedures set forth in the ORA (see O.C.G.A. § 50-18-71(d)). If the records are stored electronically, they may be produced electronically in a commonly used format such as PDF. The Court expects that such production will include the correspondence identified by Plaintiff in its complaint. If it does not, Defendant is further ORDERED to provide an explanation why such correspondence does not exist in Defendant's records (or why it is being withheld). Beyond that, no other relief, injunctive or otherwise, is necessary at this time (to include striking Defendant's answer, which is of no effect based on the Court's finding of default).⁶

A hearing on Plaintiff's request for attorney's fees and costs is set for 20 December 2024 at 10:00am in Courtroom 8-D. If the parties want the matter taken down, they must retain a court reporter; the Court does not provide a court reporter for civil proceedings.

SO ORDERED this 2nd day of December 2024.


Judge Robert C.I. McBurney
Superior Court of Fulton County
Atlanta Judicial Circuit

Filed and served electronically via eFileGA

⁶ Plaintiff's motion to strike Defendant's answer is denied as moot.

EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY STATE OF GEORGIA

FILED IN OFFICE
CLERK OF SUPERIOR COURT
FULTON COUNTY, GEORGIA
24CV002805

MAR 13, 2024 04:55 PM

Ché Alexander, Clerk
Fulton County Superior Court

Judicial Watch, Inc.,

Plaintiff(s),

Case No.: 24CV002805

vs.

**Fani Willis, in her official capacity As District
Attorney of the Atlanta Judicial Circuit and Fulton
County, Georgia,**

Defendant(s).

AFFIDAVIT OF SERVICE

Personally appeared before me the undersigned officer duly authorized to administer oaths, Danny Davidson, who, after being duly sworn, deposes and states the following:

1.

Affiant states that he/she is appointed by this Court to serve process. The statements made are true and correct and are based upon my personal knowledge.

2.

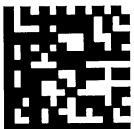
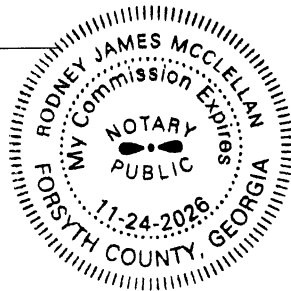
I served Fani Willis with a Summons, Complaint, and Exhibits 1 - 4 by leaving the documents with Tia Green, Department Executive Assistant of Fani Willis at said person's place of employment/place of business located at 136 Pryor Street, 3rd Floor, Atlanta, GA 30303 on March 11, 2024 at 1:12 PM.

Description of person process was left with:

Sex: Female - Ethnicity: African American - Hair: Black - Age: 30-40 - Height: 5ft 07in - Weight: 140 lbs

Signed and sworn to before me on
this 12 day of MARCH, 2024
by an affiant who is personally known to me
or produced identification.

Danny Davidson
Express Legal Services LLC
860 Johnson Ferry Rd.
Atlanta, GA 30342
(678) 648-6330

Notary Public

5158712