



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HELENE GLADNEY,)	
)	C.A. No. 5717-VCP
Plaintiff,)	
v.)	
)	
THE CITY OF WILMINGTON,)	
)	
Defendant.)	

MEMORANDUM OPINION

Submitted: August 10, 2011
Decided: November 30, 2011

Leroy A. Tice, Esq., LAW OFFICES OF LEROY A. TICE, ESQUIRE, PA, Wilmington, Delaware; *Attorney for Plaintiff.*

Daniel F. McAllister, Esq., Assistant City Solicitor, CITY OF WILMINGTON, Wilmington, Delaware; *Attorney for Defendant City of Wilmington.*

PARSONS, Vice Chancellor.

This action involves a challenge to the termination of the plaintiff's employment with the City of Wilmington. The plaintiff claims that the City wrongfully terminated her employment based on her alleged failure to comply with the City's residency requirement. According to the plaintiff, she was not required to comply with the City's residency requirements because she qualified as an employee with over five years of service to the City under a Delaware statute that limits the amount of time a municipality can subject its employees to a residency requirement. In opposition, the City first contends that this Court lacks subject matter jurisdiction over the plaintiff's claims. Alternatively, it contends that the plaintiff misreads the statute under which she is claiming protection, that she properly was terminated, and that, in any event, her claims are barred by laches and the doctrines of unclean hands, impracticality, and impossibility.

For the reasons stated in this Memorandum Opinion, I find that the relief sought by the plaintiff falls outside the limited jurisdiction of this Court. Therefore, I dismiss the plaintiff's claims for lack of subject matter jurisdiction pursuant to Court of Chancery Rule 12(b)(1).

I. BACKGROUND

A. The Parties

Plaintiff, Helene Gladney, is a Delaware resident. Gladney worked for the City of Wilmington in multiple capacities from 1998 until 2009, when the City terminated her employment.

Defendant, the City of Wilmington, is a political subdivision of the State of Delaware.

B. Facts¹

On November 23, 1998, the City hired Gladney as a full-time legislative assistant. As a condition of her employment, Gladney was required to reside in Wilmington for a period of at least five years pursuant to 1 *Wilm. C.* § 3-304.² From the time she was hired until approximately March 2000, Gladney lived in Wilmington.

On June 30, 2000, Gladney resigned from her full-time employment as a legislative assistant and was rehired the next day as a public health consultant (“Consultant”) for the City. In contrast to her position as a legislative assistant, as a Consultant, Gladney was classified as an independent contractor for the City.³ Before the change in her employment status, Gladney had moved out of Wilmington and, according

¹ Most of the facts recited herein are undisputed and are drawn from the Verified Complaint, the City’s Answer, and the evidence cited in the parties’ respective submissions regarding their motions for summary judgment. Thus, citations to the record are provided only as to facts that appear to be controverted.

² 1 *Wilm. C.* § 3-304 requires that “[a]ll officers, regular employees, and probationary employees of the city shall be residents of the city at the time of their election, appointment, or employment and remain such during their tenure” This residency restriction, however, is subject to 1 *Wilm. C.* § 40-3(b), which provides that no “employee . . . who has an aggregate of 15 years of service for the city, shall be required to become or remain a resident of the city during his/her employment.” Moreover, a state statute, 22 *Del. C.* § 841, limits this residency requirement even further, prohibiting any “municipal corporation with a population exceeding 50,000 [from] requir[ing] that, as a condition of continued employment, an employee with at least 5 years of service for the municipality be, become or remain a resident of the municipality during their employment.” It is undisputed that Wilmington has a population exceeding 50,000.

³ See Def.’s Exs. H, Z.

to Gladney, “the purpose for designating her [as] a contractor was so that the City would not have to compensate for overtime, and because she was interested in moving outside the City limits.”⁴ Gladney worked as a Consultant until 2006, signing a series of annual contracts with the City.

On January 7, 2007, the City hired Gladney as a public health advocate with the Department of Parks and Recreation. As a public health advocate, Gladney’s employment status with the City again changed; she ceased to be an independent contractor and became a full-time employee. As a result of her change in status, the City informed Gladney that she was required to reside in the City pursuant to § 3-304. The City also requested that Gladney provide proof of residency in Wilmington within six months of her hire date. The City further informed Gladney that it would apply her approximately two years of residency in Wilmington while working as a legislative assistant toward satisfaction of her residency requirement, but that it would not consider any of the time she spent working as a Consultant for that purpose.⁵

After she was hired as a public health advocate, Gladney continued to reside outside of Wilmington. To facilitate her transition back to Wilmington, the City granted Gladney an extension to satisfy the residency requirement until October 8, 2007.

⁴ Pl.’s Opening Br. 5. Section 3-304 only regulates “officers, regular employees, and probationary employees.” Therefore, as an independent contractor, Gladney was not subject to the residency requirement applied to employees.

⁵ Gladney did not live in Wilmington while she worked as a Consultant. In fact, Gladney had moved out of Wilmington in March 2000, a few months before her role as a legislative assistant ended.

Gladney failed, however, to move to Wilmington by that time. Instead, on October 5, 2007, she requested another extension.

By March 2008, more than a year after her hire date, Gladney still had not moved to Wilmington. As a result, on March 14, 2008, Monica Gonzales-Gillespie, the City's Director of Personnel, filed a complaint with the City's Officer and Employee Residency Review Board (the "Board") alleging that Gladney was not in compliance with § 3-304. The City Auditor, Eugene Bradley, notified Gladney of Gonzales-Gillespie's complaint on September 11, 2008, and a hearing was scheduled for October 23, 2008.

At the hearing, Gladney represented herself *pro se*. By way of defense, Gladney provided proof that she was currently a Wilmington resident. Gladney also explained that she had failed to establish residency within the period required by § 3-304 because she had problems selling her home and because she had been caring for her sick mother. After considering Gladney's evidence and arguments, the Board found that she had failed to comply with § 3-304 and directed Gonzales-Gillespie to terminate Gladney's employment.

Gladney then sought reconsideration of the Board's decision. She asserted that she had over ten years of "service" to the City, and, therefore, under 22 *Del. C.* § 841 she could not be terminated on the basis of her residency. The City opposed reconsideration, arguing that Gladney's work as an independent contractor did not count toward qualifying for the protections of § 841. On January 12, 2009, the Board denied Gladney's motion for reconsideration and her termination became final.

C. Procedural History

Gladney filed her Complaint in this action on August 13, 2010. The City answered on September 10, 2010, and moved for summary judgment on April 1, 2011. In response, Gladney filed a cross-motion for summary judgment on June 1. After briefing, the Court heard oral argument on August 10, 2011.

D. Parties' Contentions

Gladney's Complaint contains three counts, which seek a declaratory judgment, permanent injunctive relief, and compensatory damages.⁶ Gladney seeks a declaratory judgment that her service as an independent contractor counts for purposes of determining whether she is an "employee with at least 5 years of service for the municipality" under 22 *Del. C.* § 841. She also seeks a permanent injunction enjoining the City from denying her employment with the City because of her failure to comply with the residency requirement. In that regard, Gladney contends that the City violated § 841 by terminating her employment on the basis of her failure to meet the City's residency requirement. Specifically, she argues that she was an "employee" of the City with over ten years of service for purposes of § 841 and, therefore, qualified for protection under § 841.

The City challenges Gladney's claims on both substantive and jurisdictional grounds. As an initial matter, the City contends that this Court lacks subject matter

⁶ The Complaint also seeks attorney's fees and expenses, as well as any other relief the Court may deem proper. Because these additional requests for relief are immaterial to the resolution of the pending motions, I do not discuss them further.

jurisdiction to hear this case because the relief Gladney seeks would require the issuance of a writ of mandamus. According to the City, exclusive jurisdiction to issue such a writ lies with the Superior Court. Hence, the City seeks the dismissal of Gladney's Complaint under Rule 12(b)(1).

On the merits, the City argues that it did not violate § 841 because Gladney had less than five years of employment with the City when she was terminated. Unlike Gladney, the City equates "service" under § 841 with "employment" and denies that Gladney was an "employee" for purposes of § 841 when she worked as a Consultant to Mayor Baker. Therefore, the City contends that Gladney does not qualify for protection under that statute.

Finally, the City argues that Gladney's claims are barred by the equitable doctrines of laches, unclean hands, impracticality, and impossibility.

II. ANALYSIS

A. Subject Matter Jurisdiction

This Court is one of limited jurisdiction.⁷ The Court of Chancery can acquire subject matter jurisdiction over a case in three ways: (1) the invocation of an equitable right;⁸ (2) a request for an equitable remedy when there is no adequate remedy at

⁷ The issue of subject matter jurisdiction is so crucial that it may be raised at any time before final judgment. *See Appoquinimink Educ. Ass'n v. Appoquinimink Sch. Dist.*, 2003 WL 1794963, at *3 n.24 (Del. Ch. Mar. 31, 2003).

⁸ *See* 10 Del. C. § 341 ("The Court of Chancery shall have jurisdiction to hear and determine all matters and causes in equity."); *Christiana Town Ctr., LLC v. New Castle Cty.*, 2003 WL 21314499, at *3 (Del. Ch. June 6, 2003) ("Equitable rights are rights that have traditionally not been recognized at common law. The most

law;⁹ or (3) a statutory delegation of subject matter jurisdiction.¹⁰ This Court, however, will not “exercise subject matter jurisdiction where a complete remedy otherwise exists but where plaintiff has prayed for some type of traditional equitable relief as a kind of formulaic ‘open sesame’ to the Court of Chancery.”¹¹

As a result of this “limited and focused jurisdictional mandate,” the plaintiff seeking the equitable jurisdiction of this Court “bears the burden of demonstrating that equitable subject matter jurisdiction exists.”¹² As then-Vice Chancellor, now Chancellor Strine noted in *Savage v. Savage*, “[t]his jurisdictional inquiry is a serious one involving a close examination of the plaintiff’s claims and desired relief, not a perfunctory verification of the plaintiff’s ‘incantation of magic words’ sounding in equity.”¹³

common example of equitable rights in this court are fiduciary rights and duties that arise in the context of trusts, corporations, other forms of business organizations, guardianships, and the administration of estates.”); *Azurix Corp. v. Synagro Techs., Inc.*, 2000 WL 193117, at *2 (Del. Ch. Feb. 3, 2000).

⁹ 10 *Del. C.* § 342 (“The Court of Chancery shall not have jurisdiction to determine any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction of this State.”); *Christiana Town Ctr.*, 2003 WL 21314499, at *3 (“Equitable remedies . . . may be applied even where the right sued on is essentially legal in nature, but with respect to which the available remedy at law is not fully sufficient to protect or redress the resulting injury under the circumstances.”) (internal quotation marks omitted).

¹⁰ *See Candlewood Timber Gp., LLC v. Pan Am. Energy, LLC*, 859 A.2d 989, 997 (Del. 2004).

¹¹ *Christiana Town Ctr.*, 2003 WL 21314499, at *3 (quoting *IBM Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 (Del. Ch. 1991) (internal quotation marks omitted)).

¹² *Savage v. Savage*, 920 A.2d 403, 408 (Del. Ch. 2006) (footnotes omitted).

¹³ *Id.*

Here, Gladney purports to invoke the equitable jurisdiction of this Court by requesting relief in the form of an injunction.¹⁴ While a request for injunctive relief generally supplies a basis for jurisdiction in this Court, Defendant asserts that the substance of Plaintiff's requested injunctive relief is "to require the City, a public entity, to comply with a statute which does not permit discretion in the sense that it must be complied with."¹⁵ On that basis, Defendant claims that what Plaintiff really is seeking from this Court is a writ of mandamus.¹⁶ Such writs, however, are subject to the exclusive jurisdiction of the Superior Court.¹⁷ Therefore, Defendant contends that this Court lacks subject matter jurisdiction to grant the relief Gladney requests.

¹⁴ Compl. Req. for Relief ¶ b; *see Clark v. Teveen Hldg. Co.*, 625 A.2d 869, 875 (Del. Ch. 1992) ("[T]his Court exercises jurisdiction over matters where an injunction is sought.").

¹⁵ Def.'s Ans. Br. 2; *see also Lynch v. City of Rehoboth*, 2004 WL 1152270, at *2 (Del. Ch. May 17, 2004) ("The plaintiffs point out that they seek injunctive relief, a form of relief limited to equity. If an injunction is the real aim of the complaint, this Court has jurisdiction; but if the injunction request is simply a substitute for a complete remedy at law, the mere recitation of the request for an injunction fails to confer equitable jurisdiction.").

¹⁶ As the Superior Court stated in *State ex rel. Lyons v. McDowell*, 57 A.2d 94, 97 (Del. Super. 1947) ("The writ of mandamus is a command in the name of the State or Sovereign, issued by a court of law having competent jurisdiction, to an inferior or lower court, to a tribunal or board, or to a corporation or person, requiring the performance of some duty named therein, said duty being attached to the official position of the party to whom writ is directed, or resulting from operation of law.").

¹⁷ *See* 10 Del. C. § 564 ("Proceedings in mandamus shall be begun by the filing of a complaint in the Superior Court."); *see also Darby v. New Castle Gunning Bedford Educ. Ass'n*, 336 A.2d 209, 210 (Del. 1975) ("Mandamus . . . is . . . a prerogative writ, in the supervisory sense, issuable exclusively by our superior court, not of course, but only in the exercise of a sound judicial discretion.")

Having carefully considered the allegations made and relief requested in the Complaint, I disagree with the City’s assertion that the true nature of the relief Gladney is seeking is a writ of mandamus. I do agree, however, that this Court lacks subject matter jurisdiction over her claims. I base that conclusion on two alternative grounds: (1) that Gladney has failed to state a colorable claim for equitable relief; and (2) that the true substance of the relief she seeks is a writ of certiorari, which is both an adequate remedy at law and a remedy reserved to the exclusive jurisdiction of the Superior Court.¹⁸ Therefore, I dismiss Gladney’s claims for lack of subject matter jurisdiction, subject to her ability under 10 *Del. C.* § 1902 to transfer this action to an appropriate court.

1. Gladney’s Complaint fails to state a colorable claim for equitable relief

It is the practice of this Court “in determining [its] jurisdiction, [to] go behind the ‘facade of prayers’ to determine the ‘true reason’ for which the plaintiff has brought suit.”¹⁹ In her Complaint, Gladney requests a declaratory judgment that her “service to [the City] as an ‘independent contractor’ counts toward the years of service required to satisfy the City residency requirement, and therefore, [she] has over 10 years of service to

(quoting *McCoy v. State*, 36 A. 81, 83 (Del. 1897)); *Schagrin Gas Co. v. Evans*, 418 A.2d 997, 998 (Del. 1980) (“The Superior Court . . . possess[es] the jurisdiction to issue, upon application, the writ of mandamus to lower tribunals, boards and agencies . . . to compel performance of their official duties.”).

¹⁸ See *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204, 1212 (Del. 2008) (“[T]he Superior Court has original and exclusive jurisdiction among trial courts under the Delaware Constitution to issue common law writs of *certiorari* to inferior tribunals.”).

¹⁹ *IBM Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 (Del. Ch. 1991).

[the City] in satisfaction of 22 *Del. C.* § 841.”²⁰ In addition, Gladney seeks a permanent injunction “enjoining [the City] from denying . . . her employment with the City because she failed to comply with the residency requirement of 22 *Del. C.* § 841,” as well as compensatory damages.²¹

The sole basis Gladney advanced in her Complaint for this Court’s jurisdiction over her claims is her request for injunctive relief.²² As that request for relief is structured, however, it seeks only to enjoin the City from denying Gladney employment on the ground that she failed to comply with the City’s residency requirement. If granted, the injunction would not require the City to reinstate Gladney in her prior position. Indeed, it would not require the City to hire Gladney at all.²³ The City, in its discretion,

²⁰ Compl. Req. for Relief ¶ a.

²¹ *Id.* ¶¶ b, c.

²² It is immaterial that the Complaint seeks other forms of relief, as well. *See Clark v. Teeven Hldg. Co.*, 625 A.2d 869, 881 (Del. Ch. 1992) (“It is [] well-established that if a controversy contains any equitable feature that would provide this Court with subject-matter jurisdiction over any part of a controversy, the Court may, in its discretion, take jurisdiction over the entire controversy. In so doing, this Court may award a money judgment. Therefore, this Court has the discretion to take jurisdiction over and to decide law claims in the course of resolving any equitable features of a controversy.”); *see also Diebold Computer Leasing, Inc. v. Commercial Credit Corp.*, 267 A.2d 586, 591 (Del. 1970) ([T]he Chancery Court has jurisdiction in a declaratory judgment action if there is any underlying basis for equity jurisdiction measured by traditional standards.”); *Tull v. Turek*, 147 A.2d 658, 664 (Del. 1958) (“[A] Court of Equity has no jurisdiction to entertain a suit brought purely for compensatory damages, those being awarded at law, it may nevertheless award compensatory damages as a part of the final relief in a cause over which it admittedly had jurisdiction.”).

²³ In fact, Gladney has not requested reinstatement to her former position, nor has she submitted any evidence that she has applied for a new position with the City.

could decide not to hire Gladney for a variety of reasons unrelated to the issues regarding her residency, including the fact that Gladney's former position has been eliminated due to budget cuts.²⁴

Moreover, to the extent the requested injunction merely would require the City to follow the law in the manner urged in Gladney's declaratory judgment claim, such preemptive relief is unwarranted. The Courts of this State understandably *presume* that governmental agencies and actors will follow the law.²⁵ As this Court held in *Christiana Town Ctr., LLC v. New Castle County*:

It would be anathema to our form of government to believe, as a baseline principle, that after a court renders a declaratory judgment another governmental agency would not follow that decision. It may actually be the case that a particular agency does not follow such a judgment, but a party should only seek injunctive relief if that agency *actually* refuses to comply with the judicial declaration.²⁶

In this case, Gladney has not alleged any facts that would support a reasonable inference that, if this Court rejects the City's construction of § 841, the City will refuse to comply with that judicial declaration. Therefore, an injunction is unwarranted. Furthermore, Gladney's request for declaratory relief provides no basis for Chancery jurisdiction,

²⁴ See Def.'s Opening Br. 5.

²⁵ See *Christiana Town Ctr., LLC v. New Castle Cty.*, 2003 WL 21314499, at *4 n.19 (Del. Ch. June 6, 2003), *aff'd*, 841 A.2d 307 (Del. 2004).

²⁶ *Id.*

because a declaratory judgment is as available from the Superior Court as it is from this Court.²⁷

2. Gladney has an adequate remedy at law in the form of a writ of certiorari

In addition to finding that Gladney has not pled a colorable claim for equitable relief, I also hold that this Court lacks jurisdiction to afford the true substance of the relief she seeks. The gravamen of Gladney's claims is that the City wrongfully terminated her employment based on what she contends was an erroneous construction of § 841 by the Board.²⁸ Specifically, Gladney seeks a declaration that the legal conclusions reached by the Board in assessing the facts of her case and construing § 841 were in error. Because I already have determined that Gladney has failed to state a claim for injunctive relief, she is left with claims for a declaratory judgment reversing the decision of the Board and for compensatory damages for harms flowing from the Board's decision. From these remaining claims, I conclude that what Gladney seeks to pursue in this Court effectively amounts to an appeal of the Board's decision or, alternatively, a wrongful termination claim for damages against the City.²⁹ This Court, however, is not the appropriate forum for seeking either of those types of relief.³⁰

²⁷ See *id.* at *4 (finding that an adequate remedy at law existed where the relief being sought was “a declaratory judgment as to the meaning and scope of the [relevant statute]”).

²⁸ Compl. ¶¶ 1, 30-33.

²⁹ Although the City argues that Gladney is seeking a writ of mandamus, this is not a case where such a writ would be appropriate. A writ of mandamus is a court order requiring a governmental actor to perform a non-discretionary, ministerial task. See *supra* note 16. I agree with the City that adherence to the law presumably

Instead, to the extent Gladney seeks to reverse the interpretation of § 841 adopted by the Board, she could pursue such relief through an appeal of the Board’s decision. The appropriate avenue for appealing the decision of an administrative board’s decision, however, is not by an action in this Court, but rather by petitioning for a writ of certiorari. The writ of certiorari is a writ of error that lies from the Superior Court to an inferior tribunal to review errors of law.³¹ It is available where an “aggrieved part[y] ha[s] no

would be a non-discretionary act. As discussed *supra*, however, this Court presumes that governmental actors will follow the law and, therefore, that no additional coercive relief is necessary. See *Christiana Town Ctr., LLC*, 2003 WL 21314499, at *4 (“[Plaintiff] suggests that even if a court of law were to issue a declaratory judgment in its favor, the County would disregard such a judgment and continue to act with hostility towards Christiana. Thus, the argument goes, a coercive remedy in the form of an injunction will be required to enforce any declaratory judgment. This argument cannot succeed, as the court must presume that the County will respect any decision rendered by any competent court of this State.”).

³⁰ See *IBM Corp. v. Comdisco, Inc.*, 602 A.2d 74, 80 (Del. Ch. 1991) (“A litigant’s mere statement that he would like an injunction in addition to damages is not enough to confer jurisdiction in this Court for *either* portion of a claim, however, or 10 Del. C. § 342 would be a nullity.”); see also *McMahon v. New Castle Assoc.*, 532 A.2d 601, 603 (Del. Ch. 1987) (“Chancery jurisdiction is not conferred by the incantation of magic words. Neither the artful use nor the wholesale invocation of familiar chancery terms in a complaint will itself excuse the court, upon a proper motion, from a realistic assessment of the nature of the wrong alleged and the remedy available in order to determine whether a legal remedy is available and fully adequate. If a realistic evaluation leads to the conclusion that an adequate legal remedy is available this court, in conformity with the command of section 342 of title 10 of the Delaware Code will not accept jurisdiction over the matter.”).

³¹ See *Cave v. New Castle Cty. Council*, 850 A.2d 1128, 1132 (Del. Super.), *aff’d*, 854 A.2d 1158 (Del. 2004) (“The writ of certiorari is a writ of error. It lies from the Superior Court to inferior tribunals . . . to review errors of law.”).

right of appeal from an adverse decision of an administrative body.”³² Exclusive jurisdiction to issue the writ is reserved to the Superior Court.³³

To the extent Gladney is seeking damages as recompense for her alleged wrongful termination, that claim in itself is not sufficient to support the exercise of this Court’s jurisdiction. Nor does this case provide a basis for invocation of the Court of Chancery’s jurisdiction under the clean-up doctrine,³⁴ because I have determined that none of Gladney’s other allegations support a colorable equitable claim. Thus, her claim for damages must be pursued in Superior Court. In any case, either a petition for a writ of certiorari or a legal claim for damages, or both, would provide Gladney with an adequate remedy at law. Therefore, this Court lacks subject matter jurisdiction over her Complaint in this action.³⁵

³² *Reise v. Bd. of Bldg. Appeals*, 746 A.2d 271, 272 (Del. 2000) (“This appeal concerns an attempt to use the common law writ of certiorari to review a municipal agency decision. Where, as here, aggrieved parties have no right of appeal from an adverse decision of an administrative body, the Superior Court has jurisdiction to issue a writ of certiorari.”).

³³ *See supra* note 18 and accompanying text.

³⁴ *See Getty Ref. & Mktg. Co. v. Park Oil, Inc.*, 385 A.2d 147, 149 (Del. Ch. 1978) *aff’d*, 407 A.2d 533 (Del. 1979) (“[I]f a controversy is vested with ‘equitable features’ which would support Chancery jurisdiction of at least a part of the controversy, then the Chancellor has discretion to resolve the remaining portions of the controversy as well.”); *supra* note 22.

³⁵ *See Christiana Town Ctr., LLC v. New Castle Cty.*, 2003 WL 21314499, at *3 (Del. Ch. June 6, 2003), *aff’d*, 841 A.2d 307 (Del. 2004) (“If the court is asked to exercise its equitable jurisdiction to remedy a legal wrong, the critical jurisdictional question is whether an adequate remedy at law exists. If a litigant can seek a remedy in a law court, or other adequate venue, that would provide full,

III. CONCLUSION

For the reasons stated in this Memorandum Opinion, I dismiss Gladney's Complaint under Court of Chancery Rule 12(b)(1) for lack of subject matter jurisdiction and do not reach the other issues presented in the parties' cross-motions for summary judgment. Thus, this case will be dismissed automatically unless Gladney elects to transfer it in a timely manner to the Superior Court pursuant to 10 *Del. C.* § 1902.

IT IS SO ORDERED.

fair, and practical relief, the Court of Chancery is without subject matter jurisdiction to hear the matter.") (footnotes omitted).