

Winston-Salem Confederate Monument



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What's Past is Prologue



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History

1905: United Daughters of the Confederacy, James B. Gordon Chapter, raises money to pay for and erect a monument to Confederate soldiers. The Forsyth County Board of Commissioners grants permission for the monument to be placed on County property at the Courthouse Square outside the Forsyth County Courthouse.

1975: Forsyth County opens a new Courthouse one block to the South. The Old Courthouse becomes the offices of the Forsyth County Tax Assessor/Collector.

2014: Forsyth County sells the Old Courthouse property to a private developer who renovates the property into 50 West Fourth apartments.

2015: NC General Assembly enacts NCGS 100-2.1, which regulates the removal of “an object of remembrance located on public property.”

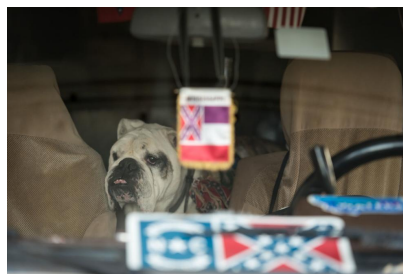
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Recent History

2017-18: Protests occur throughout North Carolina relating to Confederate monuments. Protesters rally for and against the Winston-Salem monument. The Mayor of Winston-Salem declares the Confederate Monument a public nuisance and orders its removal.

January 2019: UDC files suit, seeking a TRO to prohibit removal of the Monument, which is denied.

March 2019: With the consent of the Apartment Owner, the Monument is removed by the City of Winston-Salem and put in storage.



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UDC v. Winston-Salem, Forsyth County, Winston Courthouse, LLC

Plaintiffs are the local and state chapter of the UDC. They sought a declaratory judgment that the Monument must remain/ be restored to its Old Courthouse site. They alleged:

- The County granted **permission** to place the Monument on County property in 1905;
- In the 2014, sale of the Old Courthouse to the Apartment Owner, the County excluded all public monuments located on the property, and provided that the parties would execute an easement for the County to maintain such monuments;
- Exclusion of the monuments from the sale meant that the County “deemed” itself the owner of the Confederate Monument;
- **The City** violated the Plaintiffs’ 1st, 4th, 5th, and 14th Amendment rights by demanding the removal of the property.

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Motions to Dismiss

Standing:

- Plaintiffs don’t claim ownership of the Monument which is on private property;
- Plaintiffs claimed no injury in fact.

Failure to State a Claim for Relief:

- Because County only granted permission for placement of the Monument, that permission could be revoked by the current property owner;
- The 2014 deed clearly showed that the parties considered the Monument to be personal property that could be removed;
- As of the date of enactment of the 2015 monument removal statute, the Confederate Monument was on private property, such that the statute didn’t apply.

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Superior Court Theatrics

- The local chapter of the UDC took a voluntary dismissal without prejudice during the hearing, leaving only the State UDC as Plaintiff;
- Plaintiffs alleged that they had standing because they filed the declaratory judgement action. Saying he “did not ask to be brought into this fight,” Plaintiffs’ Counsel raised his fists as if to start a boxing match. (No fisticuffs ensued.)

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Superior Court Order

- UDC alleged no contractual relationship with Defendants regarding the Monument, no agreement that the Monument remain at any location
- There was a claim that the Monument was “dedicated”, but no claim that the County accepted ownership of the Monument or any restrictions as to its use
- Winston Courthouse, LLC, owns the property upon which the Monument once stood
- The UDC did not claim ownership of the Monument

- The Court found no injury in fact that was concrete and particularized to the UDC. Simply filing suit does not convey standing. The Court dismissed the matter pursuant to Rules 12(b)(1) and 12(b)(6) with prejudice

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Appeal Issues

Was Dismissal Proper for Lack of Standing/Subject Matter Jurisdiction?

Should Dismissal have been With Prejudice?

Rule 12(b)(1) (dismissal without prejudice)

v.

Rule 12(b)(6) (dismissal with prejudice)

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NC Court of Appeals

- Dismissal with prejudice was proper because the matter was dismissed pursuant to Rule 12(b)(6), as well as 12(b)(1).
- Standing requires (1) injury in fact, the Concrete & Actual Invasion of Legally Protected Interest; (2) Traceability of Plaintiff's Injury to Defendant's actions; and (3) the Injury can be Redressed.
- Because Plaintiff alleged no ownership or legal interest in the Statue, there was no standing.

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Dissent

The 18-Page Dissent argues facts and laws that were never raised by Plaintiffs. The Dissent states:

- “Forsyth County alleges it owns the Memorial.” This is false.
- “Defendants are bound by their allegations.” The court ruled on a motion to dismiss.
- Invokes NCGS 100-2.1 as forbidding removal, but never mentions that the Statue was on private property, so that the statute is inapplicable.

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The UDC has Appealed to the NC Supreme Court;
the Local Chapter has filed a 2nd Action in
Superior Court



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Thanks!

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