2021 IL App (3d) 210048

Order filed March 4, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2021

ANTHONY DRABIK,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Petitioner-Appellant,	)	Will County, Illinois.
	)	
v.	)	
	)	
HOMER TOWNSHIP OFFICERS	)	
ELECTORAL BOARD, and its members,	)	
THOMAS E. COWGILL, DANIEL J.	)	Appeal No. 3-21-0048
KALLAN, and JAMES P. STEVENSON;	)	Circuit No. 21-MR-202
LAUREN STALEY FERRY, in her	)	
official capacity as Will County Clerk; and	)	
PAM MEYERS, KATHLEEN KRUCZEK,	)	
KAREN SZYNKOWSKI, JOHN ASH,	)	
ED KALAS, TOM FIJAN, KEN MARCIN,	)	
SHARON SWEAS, and QUINN POLASKI,	)	
Candidates;	)	Honorable
	)	John C. Anderson,
Respondents-Appellees.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Daugherity and Wright concurred in the judgment.

ORDER

¶ 1   *Held*:   Decision of electoral board overruling objector's challenge and allowing township candidates to remain on the ballot is affirmed; removal is not the proper remedy for independent candidates filing joint nomination papers under section 10-3 of the Election Code.

¶ 2   Petitioner Anthony Drabik appeals from an order of the circuit court affirming the decision of the Homer Township Officers Electoral Board (Board) to allow nine candidates to appear on the ballot for offices in Homer Township for the April 6, 2021, consolidated election. We affirm the Board's decision allowing the candidates to remain on the ballot.

¶ 3   I. BACKGROUND

¶ 4   On December 21, 2020, candidates Pam Meyers, Kathleen Kruczek, Karen Szynkowski, John Ash, Ed Kalas, Tom Fijan, Ken Marcin, Sharon Sweas, and Quinn Polaski (Candidates) filed joint nomination papers as independent candidates for the April 6, 2021, election for Homer Township. The nomination papers, entitled "Independent Candiidate [*sic*] Petition," contained a joint heading that listed Meyers as the candidate for township supervisor; Kruczek as the candidate for township clerk; Szynkowski as the candidate for township assessor; Ash as the candidate for highway commissioner; Kalas, Fijan, Marcin, and Sweas as the candidates for township trustees; and Polaski as the candidate for township collector. The following statement was included above the list of candidates:

> "We, the undersigned, qualified voters in the Township of Homer in the County of Will and State of Illinois, do hereby petition that the following named persons shall be an Independent Candidates [sic] for election to the office hereinafter specified to be voted for at the consolidated Election to be held on April 6, 2021."

The Candidates jointly filed 41 nomination papers that consisted of 272 valid signatures. The minimum number of signatures required is 204, or 5% of the number of ballots cast at the preceding township election.[1]

---

[1] As cited and agreed to by the parties, the total number of ballots cast at the preceding consolidated election was 4,036.

¶ 5   Petitioner Drabik filed an objection with the Board, arguing that the nominating petition was invalid under section 10-3 of the Election Code (10 ILCS 5/10-3 (West 2018)) because it grouped all of the Candidates' names on the same nomination papers. He maintained that the Candidates' violation of section 10-3 required the Board to remove their names from the April 2021 ballot.

¶ 6   The Board, comprised of Thomas E. Cowgill, Daniel J. Kallan, and James P. Stevenson, conducted a hearing and overruled Drabik's objection by a 2-to-1 vote. The majority dismissed his argument that the Candidates should be removed from the ballot because they filed a joint petition and decided to allow the Candidates' names to remain on the ballot. In its decision, the Board relied on *McNamara v. Oak Lawn Municipal Officers Electoral Board*, 356 Ill. App. 3d 961 (2005), which held that two independent candidates' failure to file individual nomination papers as provided in section 10-3 did not require removal of their names from the ballot. The Board specifically rejected the argument that *McNamara* was overruled by our supreme court's decision in *Jackson-Hicks v. East St. Louis Board of Election Commissioners*, 2015 IL 118929, in which the court held that the violation of minimum signature requirements of the Election Code required that the candidate's name be removed. In dissent, Chairman Cowgill found that the language in *Jackson-Hicks* undermined the *McNamara* analysis and held that Drabik's position should prevail.

¶ 7   Drabik sought judicial review of the Board's decision in circuit court. The parties waived oral argument, and the trial court entered an order agreeing with the Board's finding and affirming its decision.

¶ 8   Drabik appealed. We granted an expedited briefing schedule on agreed motion, giving both parties notice of the accelerated schedule and acknowledging Drabik's waiver of his right to file a reply brief. We also advised the parties that, in light of the expedited nature of this appeal and

because no express request for oral argument had been made, the issue would be decided on the briefs.

¶ 9   II. JURISDICTION

¶ 10   Respondents initially argue that we lack jurisdiction based on Drabik's failure to name and serve necessary parties. They maintain that Drabik failed to serve Kruczek in her official capacity as the clerk of Homer Township and that such failure deprives this court of jurisdiction under section 10-10.1 of the Election Code (10 ILCS 5/10-10.1 (West 2018)).

¶ 11   Illinois courts may exercise jurisdiction over election cases only as provided by statute. *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 14. Section 10-10.1(a) of the Election Code sets forth the four explicit jurisdictional requirements. 10 ILCS 5/10-10.1(a) (West 2018)). Under that section, the petitioner must: (1) file the challenging petition with the clerk of the court within five days after the Board's service of its decision; (2) serve copies of the petition on the Board and the other parties to the proceeding by registered or certified mail within five days after the Board's service of its decision; (3) state in that petition why the Board's decision should be reversed; and (4) file proof of service with the clerk of the court. *Id.* Duplicate service is not necessary to comply with section 10-10.1(a) of the Election Code. *Bettis*, 2014 IL 117050, ¶ 25; *Carlasare v. Will County Officers Electoral Board*, 2012 IL App (3d) 120699, ¶ 17. The procedure for invoking judicial review of an electoral board's decision in circuit court does not require the petitioner to name and serve other parties to the proceeding where the party has already been named and served in another capacity. See *Bettis*, 2014 IL 117050, ¶ 25 (section 10-10.1(a) does not require redundant service; service of petition on each individual board member adequately complied with statutory requirement that petition be served on electoral board).

4

¶ 12 Respondents claim that Drabik failed to fulfill the jurisdictional requirement of serving a copy of the petition on "other parties to the proceeding" because he failed to serve Kruczek in her official capacity as township clerk. However, Drabik named and served Kruczek individually, as one of nine candidates that filed nominating papers. The statute does not require the petitioner to serve the same person twice. Thus, respondents' claim does not raise a jurisdictional bar under section 10-10.1(a) of the Election Code. See *Bettis*, 2014 IL 117050, ¶ 32; *McNamara*, 356 Ill. App. 3d at 964.

¶ 13 <center>III. ANALYSIS</center>

¶ 14 On appeal, Drabik contends that the Board erred in allowing the Candidates to remain on the ballot because section 10-3 of the Election Code requires each of the nine candidates to file an individual candidate petition with 204 signatures. He claims that the Candidates' joint independent petition violates the mandatory aspects of section 10-3 and that the appropriate remedy is to remove the Candidates' names from the ballot under section 10-4.

¶ 15 Judicial review of an electoral board's decision is in the nature of administrative review. *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶ 46. On appeal, we review the election board's decision rather than the trial court's decision. *Id.*

¶ 16 Section 10-3 of the Election Code provides:

> "Nominations of independent candidates for public office within any district or political subdivision less than the State, may be made by nomination papers signed in the aggregate for each candidate by qualified voters of such district, or political subdivision, equaling not less than 5%, nor more than 8% *** of the number of persons, who voted at the next preceding regular election in such district or political subdivision ***." 10 ILCS 5/10–3 (West 2018).

¶ 17   The primary rule of statutory construction requires courts to give effect to the intent of the legislature. *Boaden v. Department of Law Enforcement*, 171 Ill.2d 230, 237 (1996). The best indication of the legislature's intent is the language used in the statute itself. *Stroger v. Regional Transportation Authority*, 201 Ill.2d 508, 524 (2002). Courts must give clear and unambiguous terms in a statute their plain and ordinary meaning. *Id*. Where statutory language is clear and unambiguous, we must apply the terms without the use of extrinsic aids. *McNamara*, 356 Ill. App. 3d at 964. Courts may not read into the statute exceptions, conditions, or limitations that the legislature did not expressly provide. *Bettis*, 2014 IL 117050, ¶ 13.

¶ 18   Public policy favors ballot access and the voter's right to endorse and nominate the candidate of their choice. *Lucas v Lakin*, 175 Ill. 2d 166, 175-76 (1997). "Where a statute provides that an election shall be rendered void by failure of those involved in the election process to perform certain duties, the courts are bound to enforce it as mandatory." *People ex rel. Meyer v. Kerner*, 35 Ill. 2d 33, 39 (1966). However, if a statute does not expressly state that its election provisions are mandatory or compliance is essential, "the failure to strictly comply, in the absence of fraud or a showing that the merits of the election were affected thereby, is not fatal." *Id.*

¶ 19   In *McNamara*, the court determined that, under the plain language of section 10-3 of the Election Code, each independent candidate is required to file separate nominating papers. *McNamara*, 356 Ill. App. 3d at 965. The court interpreted the term "signed in the aggregate for each candidate" to mean that the signed nomination papers could be combined and viewed as a set to establish the required number of signatures for a particular candidate, not that multiple candidates could be listed on a single set of nomination papers. *Id.* The court therefore concluded that two candidates who submitted joint nomination papers for the upcoming village election were not in compliance with section 10-3. *Id.*

¶ 20   Having found that joint nominating petition did not comply with section 10-3, the

McNamara court then considered the appropriate remedy:

"So what is the consequence for a failure to abide by the procedures set forth in section

10–3 absent a showing of fraud or that the merits of the election would be affected? We do

not know, not because the statute is ambiguous but because it is silent. While it seems clear

to us that the statute anticipates that independent candidates for various offices in an

election will file separate nomination petitions, it may be that the legislature simply did not

anticipate what happened in this case. We will not read a remedy into a statute that fails to

provide for one, particularly a drastic remedy that deprives a citizen of the right to run for

office. [Citation.]" *Id.* at 967.

The court acknowledged the policy favoring the rights of citizens to endorse and nominate the

candidate of their choice and cited several cases that declined to penalize election law violations.

Id. at 965 (citing *Lucas*, 175 Ill. 2d at 176; *Welch v Johnson*, 147 Ill. 2d 40, 56-57 (1992); and

Anderson v. Schneider, 67 Ill. 2d 165 (1977)). Because section 10-3 did not specifically address a

penalty for failing to file individual nomination papers, the *McNamara* court refused to impose

one. *Id.* at 966. The court concluded that, absent fraud or a showing that the merits of the election

were affected, the failure to strictly comply with the nomination requirement was not fatal and

directed the electoral board to place the candidates' names on the ballot. *Id.* at 965-66 (citing

People ex rel. Meyer v. Kerner, 35 Ill. 2d 33, 39 (1966)).

¶ 21   We agree with the holding in *McNamara*. The plain language of section 10-3 contemplates

that each independent candidate will file individual nomination papers. The next question is

whether the Candidates noncompliance with section 10-3 requires removing their names from the

ballot. Again, we adopt the rationale in *McNamara*. Section 10-3 does not expressly state that the

election will be invalid if a candidate fails to submit an individual nominating petition. Moreover, nothing in the statute indicates that individual nomination papers are an essential requirement. We decline to read into the election statute limitations or conditions that the legislature did not express. We are particularly mindful to exercise restraint where, as here, the proposed remedy adversely affects voters' rights to participate in an election. See *Lucas*, 175 Ill. 2d at 176.

¶ 22   In this case, the Candidates filed a joint nomination petition for independent candidates that included the names of all nine candidates. This was error. See *McNamara*, 356 Ill. App. 3d at 965. But the error was not fatal. Drabik does not allege fraud or that the merits of the election would be affected by failure to file individual petitions. Both parties agree that the Candidates' joint petition contained 272 valid signatures, well above the 204 signatures needed to be placed on the ballot, and it is clear from the statement above the list of candidates that the voters intended their signatures stand for each of the nine candidates. Thus, the Candidates met the threshold requirements to be on the ballot.

¶ 23   Drabik's reliance on *Jackson-Hicks* is unavailing. In *Jackson-Hicks*, a mayoral candidate filed a nominating petition with 123 valid signatures, but he needed 136 signatures to be placed on the ballot. *Jackson-Hicks*, 2015 IL 118929, ¶¶ 6-7. Our supreme court determined that the number of signatures required on the nomination papers was mandatory. *Id.* ¶ 42. The court found that by failing to meet the minimum signature requirement, the mayoral candidate "failed to meet a threshold requirement completely." *Id.* ¶ 37. The court explained:

> "[T]he clear and unambiguous standard adopted by the General Assembly requires compliance with a specific numerical threshold determined according to a specific mathematical formula. A candidate either meets that minimum threshold or does not. There is no close enough" *Id.*

¶ 24   This issue in this case is different. Here, we have been asked to consider whether independent candidates can file a joint nominating petition using a single set of nomination papers. Unlike the candidate in *Jackson-Hicks*, the Candidates filed joint nomination papers that met the specific numerical threshold of required signatures. The failure to submit individual nominating petitions, while error, does not violate a threshold requirement that would disqualify them.

¶ 25   IV. CONCLUSION

¶ 26   The decision of the Electoral Board of Homer Township allowing the Candidates' names to appear on the ballot for the April 6, 2021, consolidated election is affirmed.

¶ 27   Affirmed.