

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2021 IL App (3d) 210071-U

Order filed March 25, 2021

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2021

JOHN R. HENSON,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Petitioner-Appellant,)	Will County, Illinois,
)	
v.)	
)	
MUNICIPAL OFFICERS ELECTORAL)	
BOARD, VILLAGE OF MONEE, WILL)	Appeal No. 3-21-0071
COUNTY, ILLINOIS; JAMES POPP)	Circuit No. 21-MR-292
(Chairman); JAMES P. STEVENSON)	
(Member); DANIEL J. KALLAN (Member);)	
and CAROLYN SCOTT (Objector),)	
)	
Respondents-Appellees,)	Honorable
)	John C. Anderson,
(Lauren Staley Ferry, Intervenor).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McDade and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed where the record failed to support that the petitioner preserved the argument he raised on appeal.

¶ 2 The petitioner, John R. Henson, filed nomination papers seeking the office of trustee of the Village of Monee. An objector brought suit to bar Henson from appearing on the April 6, 2021,

ballot because she believed his nomination papers were photocopies instead of originals (10 ILCS 5/10-4 (West 2020)). The Village of Monee Municipal Officers Electoral Board (Board) sustained the objection and removed Henson from the ballot. On judicial review, the circuit court of Will County affirmed the Board's decision. Henson appeals.

¶ 3

I. BACKGROUND

¶ 4

Henson submitted nomination papers for the office of village trustee. Carolyn Scott objected to Henson's nomination papers on the basis that they were photocopies. Henson filed a motion to strike and dismiss the objection, or in the alternative, for summary judgment. He argued that the objection was invalid because it failed to (1) state the time or hour it was filed and (2) include any evidence to support the objection. 10 ILCS 5/10-8 (West 2020). He also argued that the clerk's acceptance of the nomination papers was an acknowledgement of apparent conformity. The Board denied his motion and proceeded to a hearing on the objection.

¶ 5

Henson testified that he filled out the nomination papers for the position of trustee. He personally circulated the petition, and the pen on his clipboard had black ink. He could not recall if anyone used any different colored ink to sign his papers. His wife went to the village hall to file his nomination papers with the village clerk. Henson stated that he put his original nomination papers in a folder and handed them to her before he left for work that morning. He provided that, although he made photocopies of his nomination papers, he stored them in a briefcase and his wife was unaware of the copies. Henson stated that his wife provided him with a receipt indicating that his nomination papers were filed, which was signed by the village clerk.

¶ 6

Michelle Powell testified that she was employed by the village as deputy clerk. She recalled receiving Henson's nomination papers from Henson's wife. Powell filled out a receipt and provided a copied receipt to Henson's wife. She then brought the nomination papers into the office

and placed them in a pile with the rest of the papers received. Powell testified that she believed Henson's nomination papers were photocopies. She came to this determination moments after Henson's wife handed her the papers. Powell stated that the papers did not have any different colors, bold markings, or indentations. She testified that the next time she handled Henson's nomination papers was when she received a phone call from a person identified as Therese Bogs who requested a copy. She sent a copy to Bogs via email.

¶ 7 Doneshia Smith-Codjoe testified that she was employed as the village clerk. She was accepting another candidate's nomination papers when Powell was speaking with Henson's wife. Smith-Codjoe stated that she came into contact with Henson's nomination papers once they were in a pile with other nomination papers. She had to go through the papers to ensure that everything was completed before they were filed. Smith-Codjoe stated that, when she observed Henson's nomination papers, she noticed that they were all gray. In her experience of handling around 20 nomination papers, she was used to seeing black or blue ink. Smith-Codjoe stated that none of the past nomination papers she had handled were all black. She also noted that the notary stamps were gray. Smith-Codjoe stated that the nomination papers were then locked in the file room until the hearings. She also provided that only she and Powell had access to the nomination papers.

¶ 8 Last, Scott testified that she objected to Henson's nomination papers. She stated that she did not request Henson's nomination papers from the village clerk, and the village did not provide her with the nomination papers to which she was objecting.

¶ 9 Henson contended that he filed original nomination papers and that Scott's objection was invalid for the previously argued reasons. Additionally, he argued that Scott's objection was insufficient as a matter of law because she testified that she did not request or receive the nomination papers. Thereafter, the Board sustained the objection, holding that the Election Code

(10 ILCS 5/10-4 (West 2020)) required the filing of original nomination papers, and, after physically reviewing Henson’s nomination papers, they were not original documents but were photocopies. Thus, the Board determined that Henson’s nomination papers were invalid and his name was not to be printed on the ballot for the April 6, 2021, consolidated election.

¶ 10 Henson sought judicial review of the Board’s determination before the circuit court of Will County. In Henson’s petition, he merely argued that the Board’s determination was against the manifest weight of the evidence because he “file[d] original papers.” Following a hearing, the court affirmed the Board’s determination. The court issued a detailed five-page written decision rejecting Henson’s argument that he filed original nomination papers. The court provided that it physically examined the papers and the pen marks varied in width (suggesting different pens were used), the ink was a uniform gray color, there was no ink bleed-through, and the papers had no indentation from the pressure of the pen. The court stated that the papers were “quite obviously photocopied” and the Election Code required the papers to be originals. See 10 ILCS 5/7-10, 8-8, and 10-4 (West 2020). The court also rejected other arguments pertaining to the objection lacking a time stamp and the doctrine of apparent conformity. Henson appeals.

¶ 11 II. ANALYSIS

¶ 12 Henson’s sole argument on appeal is that Scott’s objection was invalid because she testified under oath that she neither requested, saw, nor had any contact with the nomination papers in question, which violated the Election Code. 10 ILCS 5/10-8, 10-10 (West 2020). However, the record fails to support that this issue was properly preserved for our review.

¶ 13 It is well settled that issues not raised in the circuit court are deemed forfeited and may not be raised for the first time on appeal. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996). Although we review the propriety of the Board’s decision in administrative review proceedings

and not the circuit court's determination (*Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 337 (2009)), parties are still required to preserve their arguments for review and cannot present different theories before the circuit court and this court. See *Shannon v. Boise Cascade Corp.*, 208 Ill. 2d 517, 527 (2004) (parties to an appeal must adhere to the theory presented to the circuit court and that theory is treated as the law of the case on appeal).

¶ 14 The record from the circuit court mainly consists of two documents: (1) Henson's petition for review and (2) the court's order. Neither of these documents demonstrate that Henson preserved the argument that he now presents on appeal, specifically, that Scott never testified that she had contact with the nomination papers yet objected as to their originality. For instance, his petition for review merely states his contention that his nomination papers were originals and not photocopies. As to the court's written order, it addressed whether: (1) the nomination papers were originals, (2) a lack of a time stamp on the objection rendered it invalid, and (3) the clerk's acceptance of the papers was an acknowledgement of apparent conformity. Although it is possible that Henson raised the argument he presents on appeal orally during the hearing on his petition, the record on appeal is devoid of a transcript from the proceedings, a bystander's report, or a statement of facts. See Ill. S. Ct. R. 323 (eff. July 1, 2017). As the appellant, he has the burden to present a sufficiently complete record to support a claim of error and any doubts that may arise from the incompleteness of the record will be construed against him. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Thus, we find that he did not properly preserve this argument.

¶ 15 We affirm the circuit court's judgment, which affirmed the Board's decision.

¶ 16 III. CONCLUSION

¶ 17 The judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.