2021 IL App (4th) 210094-U

NO. 4-21-0094

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 25, 2021
Carla Bender
4th District Appellate
Court, IL

TYSON MANKER,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Morgan County
THE ELECTORAL BOARD OF THE VILLAGE OF SOUTH JACKSONVILLE, HARRY JENNINGS, PAULA STEWART, MEGAN MOORE, and RICHARD "DICK" SAMPLES,	)	No. 21MR5
	)	Honorable
	)	Christopher E. Reif,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The Electoral Board's decision to deny Tyson Manker's motion to strike and dismiss Richard "Dick" Samples's objection was not clearly erroneous.

¶ 2 On February 17, 2021, the circuit court affirmed the decision of the Electoral Board (Board) of the Village of South Jacksonville, denying Tyson Manker's motion to strike and dismiss Richard "Dick" Samples's objection to Manker's nominating petition. Manker appeals, arguing the Board erred by denying his motion. Manker asks this court to reverse the decision of the Board. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 18, 2020, Manker filed paperwork to run for village president in South Jacksonville. On December 30, 2020, Samples, who was running against Manker for village president, filed an objection to Manker's nominating petition, raising three issues: (1) Manker's

petitions were not stapled or fastened as instructed, (2) a page of Manker's petition did not contain a circulator's signature; and (3) Manker had not filed his statement of economic interest with the Morgan County Clerk's Office. On January 6, 2021, Manker filed a motion to strike and dismiss Samples's objection, arguing the objection did not include information required by section 10-8 of the Illinois Election Code (Election Code) (10 ILCS 5/10-8 (West 2020)), including the interest of the objector and the relief requested from the Board.

¶ 5 On January 20, 2021, the Board met and heard arguments on Manker's motion, which it denied. As for Samples's objection, the Board granted Samples's objection because Manker failed to file his statement of economic interest with the Morgan County Clerk. As a result, the Board ordered Manker's name removed from the ballot for the April 6, 2021, election.

¶ 6 On January 26, 2021, Manker filed a petition for judicial review of the Board's decision in the circuit court pursuant to section 10-10.1 of the Election Code (10 ILCS 5/10-10.1 (West 2020)). Manker's petition alleged the electoral board committed clear error when it denied his motion to strike and dismiss the objection filed by Samples. Manker asked the circuit court to grant his motion to strike and dismiss Samples's objection and order the electoral board to take all necessary steps to certify Manker's candidacy so his name would appear on the ballot as a candidate for village president in the April 6, 2021, election.

¶ 7 On February 16, 2021, the Board and its members responded to Manker's petition for judicial review. That same day, Manker filed a reply to the Electoral Board's response. On February 17, 2021, the circuit court issued an order affirming the decision of the Board and denying Manker's petition. The court found the issue to be resolved, as outlined by Manker's petition, was whether the Board erred in denying Manker's motion to strike the objection because Samples failed to strictly comply with section 10-8 of the Election Code (10 ILCS 5/10-8 (West 2020)).

Specifically, Manker argued the objection did not state the interest of the objector or the relief requested. The circuit court noted it believed Samples's interest and the relief he sought was well known to all involved. The court held it could not say the Board's decision to deny Manker's motion was clearly erroneous.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. Standard of Review

¶ 11 Our supreme court views electoral boards as administrative agencies. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 209, 886 N.E.2d 1011, 1017 (2008). We review the decision of the electoral board, not the circuit court. *Cinkus*, 228 Ill. 2d at 212, 886 N.E.2d at 1019.

¶ 12 In *Cinkus*, our supreme court noted the applicable provision in section 10-10.1 of the Election Code (10 ILCS 5/10-10.1 (West 2006)) did not expressly adopt the procedure provided by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2006)) for judicial review of an electoral board's decision. However, the court indicated the procedure is substantially the same. *Cinkus*, 228 Ill. 2d at 209-10, 886 N.E.2d at 1017-18. The supreme court then noted a reviewing court may encounter three types of questions: "questions of fact, questions of law, and mixed questions of fact and law." *Cinkus*, 228 Ill. 2d at 210, 886 N.E.2d at 1018. The standard of review depends on the question before the court. *Cinkus*, 228 Ill. 2d at 210, 886 N.E.2d at 1018.

¶ 13 The factual findings of an administrative agency are deemed *prima facie* true and correct. *Cinkus*, 228 Ill. 2d at 210, 886 N.E.2d at 1018. In reviewing those factual findings, "a reviewing court is limited to ascertaining whether such findings of fact are against the manifest weight of the evidence. An administrative agency's factual determinations are against the manifest

weight of the evidence if the opposite conclusion is clearly evident." *Cinkus*, 228 Ill. 2d at 210, 886 N.E.2d at 1018. As for questions of law, an agency's decision is not binding on a reviewing court. On pure questions of law, reviewing courts apply an "independent and not deferential" standard of review. *Cinkus*, 228 Ill. 2d at 210, 886 N.E.2d at 1018. As for mixed questions of law and fact, reviewing courts will only disturb an administrative decision if it is clearly erroneous. "[A]n administrative agency's decision is deemed clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Cinkus*, 228 Ill. 2d at 211, 886 N.E.2d at 1018.

¶ 14 B. Forfeiture

¶ 15 In his initial brief, Manker argued the Board erred by (1) denying the candidate's motion to strike Samples's objection, (2) sustaining the objection that did not state any interest or request any relief from the Board, (3) granting Samples relief he did not request in his objection, and (4) sustaining the objection. The Board argues Manker forfeited all of these issues other than his complaint the Board erred by denying Manker's motion to strike and dismiss Samples's objection—the only issue Manker raised in the circuit court.

¶ 16 Manker responded the Board's forfeiture argument is misguided because this court reviews the record of the Board and not the circuit court. While this is true, the issues Manker did not pursue in the circuit court are still subject to forfeiture in the appellate court. See *Hammer v. City of Peoria Board of Fire and Police Commissioners*, 196 Ill. App. 3d 306, 308, 553 N.E.2d 744, 745 (1990) ("issues not raised and preserved in the lower court are deemed waived on appeal"); see also *Alexander v. Director, Department of Agriculture*, 111 Ill. App. 3d 927, 935, 444 N.E.2d 811, 817 (1983) ("As this issue was not presented to the trial court, and an appellate court will only consider such questions as were raised and preserved in the lower court [citation],

we find the issue has been [forfeited]"). We agree with the Board that issues Manker did not raise in the circuit court are forfeited for purposes of this appeal.

¶ 17 C. Samples's Objection

¶ 18 We next address whether the Board erred in denying Manker's motion to strike and dismiss Samples's objection because it did not strictly comply with section 10-8 of the Election Code (10 ILCS 5/10-8 (West 2020)). In Manker's petition for judicial review filed in the circuit court, Manker summarized his legal argument as follows:

> "*The objection filed by Richard Samples is legally invalid because it fails to comply with mandatory provisions of Section 10-8 of the Election Code as required by Illinois law. Because Samples did not file a valid objection, he did not have standing before the Electoral Board. In addition to Samples'[s] lack of standing, by providing relief that was not requested, the Electoral Board, through its members, violated Illinois law and the legal rights of Tyson Manker. This Honorable Court can now reverse this injustice by reversing the decision of the Electoral Board to deny Manker's motion to strike and dismiss the objection of Samples.*" (Emphasis in original.)

Manker did not make an alternative argument that, even if the Board could consider the merits of the objection, the objection should have been denied.

¶ 19 Section 10-8 of the Election Code (10 ILCS 5/10-8 (West 2020)) states in relevant part:

> "The objector's petition shall give the objector's name and residence address, and shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question, and shall state the interest

of the objector and shall state what relief is requested of the electoral board."

According to Manker, Samples's objection did not comply with section 10-8 because Samples stated neither his interest nor what relief he was requesting. Because Samples's objection failed to comply with the statutory requirements, Manker argues it was invalid.

¶ 20 In his brief, Manker recognizes not every instance of non-compliance will invalidate an objection. However, he goes on to argue "the petition filed by objector Samples stated no interest and requested no relief, and because the board cannot 'fill-in' those blanks, it was therefore invalid and subject to dismissal by the board."

¶ 21 In *Morton v. State Officers Electoral Board*, 311 Ill. App. 3d 982, 983-84, 726 N.E.2d 201, 202-03 (2000), an opinion authored by Justice Garman, a candidate relying on section 10-8 of the Election Code (10 ILCS 5/10-8 (West 1998)) and *Pochie v. Cook County Officers Electoral Board*, 289 Ill. App. 3d 585, 588, 682 N.E.2d 258, 260 (1997), argued the objection filed was void because the objector did not include the suffix "Jr." with his name on the objection. The candidate contended the omission of "Jr." prevented the candidate from knowing or readily ascertaining whether the objector, Perry Smith, was a different person than Perry Smith Jr., who was the only person registered to vote at the address given on the objection. *Morton*, 311 Ill. App. 3d at 984-85, 726 N.E.2d at 202-04. This court found the candidate's reliance on *Pochie* misplaced because the address of the objector in *Pochie* could not be determined from the face of the objection in that case. *Morton*, 311 Ill. App. 3d at 986, 726 N.E.2d at 204.

¶ 22 In analyzing the plain language of section 10-8 with regard to objections, this court noted the statute required the inclusion of certain information. *Morton*, 311 Ill. App. 3d at 985, 726 N.E.2d at 203. However, this court also recognized the Election Code did not include a penalty if an objector did not comply with this requirement. *Morton*, 311 Ill. App. 3d at 985, 726 N.E.2d

at 203.

> "While section 10-8 requires the inclusion of 'the objector's name and residence address' (10 ILCS 5/10-8 (West 1998)), the [Election] Code does not include a penalty provision for an objector's lack of strict compliance with this requirement. [Citation.] Although objectors are obligated to comply with all provisions of the [Election] Code, it does not follow that every noncompliance will invalidate an objection. [Citation.] 'Where the effect of failure to comply with a particular statutory requirement is not specified, however, courts must consider the nature and object of the statutory provision and the consequences which would result from construing it one way or another.' " *Morton*, 311 Ill. App. 3d at 985, 726 N.E.2d at 203 (quoting *Pullen v. Mulligan*, 138 Ill. 2d 21, 78, 561 N.E.2d 585, 610 (1990)).

¶ 23 Based on this court's ruling in *Morton* that not "every noncompliance will invalidate an objection," we "must consider the nature and object of the statutory provision and the consequences which would result from construing it one way or another." *Morton*, 311 Ill. App. 3d at 985, 726 N.E.2d at 203. When one candidate for an office files an objection regarding the nominating petitions of another candidate for the same office as happened in this case, we do not see any negative consequences if the objector does not include a description of his interest in the matter or the relief he seeks by filing the objection. Both his interest and relief sought is readily apparent. In this case, Manker was well aware of Samples's interest in the matter and the relief Samples sought. The fact Samples did not include this information in his objection did not affect Manker's ability to respond to his objection.

¶ 24 The situation here is distinguishable from *Pochie*, upon which Manker relies. In *Pochie*, the First District noted that "when the name of the street where an objector resides in an

Illinois General Assembly legislative district is not given in the objector's petition, a candidate whose nominating petitions are being challenged cannot readily determine that the objector resides in the district." *Pochie*, 289 Ill. App. 3d at 587, 682 N.E.2d at 260. In determining the "residence address" requirement was mandatory instead of directory, the First District noted the consequence of making this particular requirement directory instead of mandatory would place an undue burden on candidates. According to the First District's reasoning, a candidate would need to determine whether an objector resided in the relevant political subdivision before the candidate could include the issue in an affirmative defense. If the issue was not raised in an affirmative defense, it would be considered waived by the candidate. *Pochie*, 289 Ill. App. 3d at 588, 682 N.E.2d at 260.

¶ 25 In this case, Samples's objection included his name, address, and his specific objections, enabling Manker to respond to those objections. Based on the facts in this case, Manker was not unduly burdened by Samples's failure to state his interest or the relief he was seeking. Manker was able to respond to Samples's specific objections. As a result, we do not find the Board's decision to deny Manker's motion to strike and dismiss Samples's objection was clearly erroneous.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the Board's decision denying Manker's motion to strike and dismiss Samples's objection.

¶ 28 Affirmed.