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2012 IL. App (3d) 120577-U

Order filed September 13, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

KATRINA DEUTSCHE,)	Appeal from the Circuit Court
an individual,)	of the 14 th Judicial Circuit
)	Will County, Illinois
Plaintiff-Appellant,)	
)	Appeal No. 3-12-0577
v.)	Circuit No. 12-MR-1165
)	
WILL COUNTY CLERK’S OFFICE,)	Honorable
)	Susan T. O’Leary,
Defendant-Appellee.)	Judge Presiding

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The order of the circuit court of Will County denying plaintiff’s petition for mandamus is affirmed because plaintiff has failed to show she has a clear right to the relief sought.

¶ 2 Plaintiff, Katrina Deutsche, appeals from the order of the circuit court of Will County denying her petition for a “writ” of mandamus to compel the Will County Clerk to “accept her filing for nomination to the office of Will County Board Dist 1.” We affirm.

¶ 3 **FACTS**

¶ 4 On November 28, 2011, Deutsche filed nominating petitions to be listed as a democratic candidate for county board, district 1, on the ballot for the March 2012 primary election. On December 14, 2011, she withdrew from the primary, and her name did not appear on the March 20, 2012, primary ballot.

¶ 5 Petitions for the general election to be held November 6, 2012, became available on March 27, 2012, and Deutsche, having decided to file for the county board seat as an independent candidate, obtained petitions and began circulating them.

¶ 6 Three days later, on March 30, 2012, the general assembly amended section 5/7-43 of the Election Code (10 ILCS 5/7-43O (West 2012)) by the insertion of the following provision:

“A person (i) who filed a statement of candidacy for a partisan office as a qualified primary voter of an established political party or (ii) who voted the ballot of an established political party at a general primary election may not file a statement of candidacy as a candidate of a different established political party or as an independent candidate for a partisan office to be filled at the general election immediately following the general primary for which the person filed the statement or voted the ballot.” P.A. 97-681 (eff. March 30, 2012).

¶ 7 Deutsche learned of this amendment through a press release on April 5, 2012, and she continued putting together her documents to file as an independent candidate in the general election in November. The deadline for filing petitions was June 25, 2012. On the last day for filing, Deutsche attempted to file her papers with the county clerk. The clerk, in express reliance

on the amended statute, refused to file them.

¶ 8 On that same day, Deutsche filed a motion “to make the county clerk accept my petitions to appear on the ballot since it is my constitutional right, “ and noticed it, on an emergency basis, to be heard the following morning, June 26, 2012, at 9 a.m. In an appended untitled, hand-written document, Deutsche

“petition[ed] the court to issue a writ of mandamus ordering the Will County Clerk’s office to accept my filing for nomination to the office of Will County Board Dist 1. Under law they are required to accept my filing. If the board or another party wishes to challenge my nomination, they may do so only through the objection process or the board’s power of apparent conformity. Regardless they must accept the filing today regardless of what happens to my nomination in the upcoming months because it is my constitutional right to ballot access.”

¶ 9 This motion was heard on June 26, 2012, by Judge Susan O’Leary. Deutsche was represented by private counsel and the clerk’s office by the Will County State’s Attorney. No summons had issued or been served on the county clerk, but service was waived in open court on the clerk's behalf by the assistant state’s attorney. After listening to arguments and asking questions to be sure, in the absence of any briefing, that she was clear on facts and legal contentions, the trial court concluded that the language of the statute that a person in Deutsche’s position cannot file papers of candidacy was unambiguous and confirmed that Deutsche had not raised a constitutional challenge.

¶ 10 The trial court denied the petition for mandamus, saying:

“I think that there is not a clear right for her to file. In fact, to the contrary, I think that there is not given the change in the law effected by the legislature effective March 30th, 2012. *** What is before me on a mandamus is whether she has a clear right to relief as a matter of law and I don’t think that’s the case.*** And it’s frankly, I think, pretty clear.”

A written order¹ was entered on June 26, 2012, reciting that the court found no clear right to mandamus and found no reason to delay any right to appeal. Armed with this final order, plaintiff filed her notice of appeal and motion for expedited handling on July 10, 2012. The motion was granted and briefing was completed by August 27, 2012. A minute order affirming the trial court's denial of the petition for mandamus issued on September 5, 2012, with a formal decision to follow.

¶ 11 ANALYSIS

¶ 12 The primary issue raised in this case is whether the circuit court erred in denying a writ of mandamus that would have required the county clerk to file Deutsche's nomination papers. Resolution of this issue requires a determination of whether Deutsche has shown a clear right to the requested relief and involves the proper construction of a statute. We review statutory construction issues *de novo*. *Prince v. Philip Morris, Inc.*, 219 Ill. 2d 182 (2005). Where also, as

¹Common law writs, including the writ of mandamus, were abolished effective January 1, 1979. Mandamus relief thereafter is granted by way of a written order of the court, certified by the clerk. 735 ILCS 5/2-1501 (West 2012).

here, the facts of the case are undisputed and the issue is the application of the law to those facts, our review is *de novo*. *Id.*; *Advincula v. United Blood Services*, 176 Ill. 2d 1, 12 (1996).

¶ 13 An action for mandamus seeks to compel a public official to act in a way that the official has previously failed or refused to act. The supreme court has stated:

"*Mandamus* is an extraordinary remedy to enforce, as a matter of right, 'the performance of official duties by a public officer where no exercise of discretion on his part is involved.' [Citations.] To be entitled to a writ of *mandamus*, a party must establish a clear right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ. [Citation.]" *Roland Burris v. Jesse White, Secretary of State*, 232 Ill. 2d 1, 7 (2009).

See also this court's decision in *Ratliff-El v. Kenneth R. Briley*, 338 Ill. App. 3d 2070 (2003) (*Mandamus* is an extraordinary remedy that may be used only to compel a public official to perform a nondiscretionary ministerial duty).

¶ 14 In the instant case, Katrina Deutsche seeks to compel the Will County Clerk to “accept her filing” for the county board seat for which she wants to compete in the November general election. She has advanced two arguments in support of her claim of entitlement to that relief: (1) that the amendment and, indeed, the election code as a whole is silent on the authority of the clerk’s office to refuse to accept nominations for filing, and (2) that the statute and the new amendment provide the clerk’s office with no authority to deny Deutsche ballot access other than by public objection or failure of apparent conformity.

¶ 15 In arguing the first issue, Deutsche does not dispute that the statutory language prohibits the filing of papers if certain actions have previously been taken. In fact, she expressly concedes that the statute as amended:

“operates to advise a candidate by directly stating that a candidate ‘*may not file* a statement of candidacy’ if the candidate had filed a statement of candidacy for the primary election immediately preceding the general election.” (Emphasis added.)

In her statement of facts, Deutsche describes pursuing the statutorily-prohibited course of (1) filing for a partisan office as a candidate of the democratic party in the primary in March 2012 and (2) attempting to refile as an independent candidate for a partisan position in the general election in November 2012. She contends, however, that although the candidate may not file, the statute gives no corresponding power to the clerk’s office to refuse to accept her nominating documents for filing.

¶ 16 For purposes of her petition for mandamus, Deutsche’s concession that the statute advises a potential candidate that under circumstances that admittedly occurred in her case, the candidate “may not file” defeats any showing that she has a clear right to file her nominating papers. If she has no clear right to file her papers, the clerk’s office has no clear duty and cannot be compelled through an action in mandamus to file them.

¶ 17 In her argument in the circuit court and the argument advanced in her appellate briefs, Deutsche repeatedly asserts that she has viable constitutional challenges to the application of the statute to her based on the timing of the statute’s enactment and the impropriety of its use to bar her candidacy. However, she has not advanced those arguments and, in the absence of some

showing that the statute's plain language barring the filing of her candidacy as an independent in the general election cannot be properly applied to her, Deutsche has failed to demonstrate that she has a clear right to the requested mandamus relief.

¶ 18 In her second issue, Deutsche contends the clerk's office "improperly exercised its limited power of apparent conformity because it looked beyond the face of her nomination papers to determine whether her documents appeared to conform to the requirements." The clerk did not evaluate the sufficiency of Deutsche's papers. Rather, the clerk determined that under the plain language of section 5/7-43, Katrina Deutsche was a candidate who "may not file."

¶ 19 Deutsche's argument appears to conflate certification and filing. Section 10-8 of the Election Code (10 ILCS 5/10-8 (West 2012)) provides in pertinent part:

"Certificates of nomination and nomination papers, and petitions to submit public questions for a referendum, being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is duly made in writing within 5 business days after the last day for filing the certificate of nomination or nomination papers or petition for a public question, with the following [inapplicable] exceptions: * * *

"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.”

Thus, candidates entitled to have their names certified to appear on the ballot must meet three requirements – they must file their documents in compliance with the Code, those documents must be in apparent conformity with the provisions of this Act, and they must survive any timely objection to their sufficiency.

¶ 20 Here, section 5/7-43 of the Code expressly prohibits the filing of a statement of candidacy as an independent candidate or as a candidate of one established political party by a person who has previously filed a statement of candidacy as a member of a different established political party for a partisan office to be filled in the same election cycle – that is, in the general election immediately following the general primary for which the original statement was filed. By the plain language of that section, Deutsche was not an eligible candidate and was barred from filing. The two bases for challenging her filing will never arise because her documents were never filed. The question of whether the *documents* are sufficient for certification of the candidate to appear on the general election ballot is rendered moot by the ineligibility of the putative candidate to file for the position.

¶ 21 If we were to reverse the trial court’s decision and the process suggested by Deutsche were to be followed; her papers would be filed, they would show no obvious flaws within their four corners, and if no viable objections were filed, they would be deemed valid and her name would necessarily appear on the ballot. The clear intent of the legislature to bar the described party-switching would be thwarted.

¶ 22 Deutsche argues, on the other hand, that affirming the decision of the circuit court results in absurdity because the clerk would have to engage in an extensive investigation to determine

whether the person tendering the documents had filed in the primary in the same general election cycle. We do not agree. Without speculating on what obligation there may be on clerks or other election officials, we simply note that in the instant case, the clerk's office was aware that Deutsche had filed as a candidate in the primary using a different political affiliation than that she was using for the current filing for the general election and refused that filing. No investigation was necessary.

¶ 23 Finally, we note, as we did with Deutsche's first issue, that she has failed to advance any argument either in the circuit court or in this court that challenges the constitutionality of the amendment or the propriety of applying it to her in light of the timing of its enactment. In the absence of such a showing, we have no choice but to find that, pursuant to the plain language of the statute, Deutsche has not shown that she has a clear right to have her documents filed or that the clerk's office has a clear duty or is clearly authorized to file them.

¶ 24 CONCLUSION

¶ 25 Accordingly, mandamus cannot issue to compel the Will County clerk to file the papers and the denial of the petition by the circuit court is affirmed.

¶ 26 Affirmed.