2017 IL App (1st) 170303

THIRD DIVISION
February 24, 2017

No. 1-17-0303

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

KEVIN PEPPARD and ROBERT MILSTEIN,	)	Appeal from the
	)	Circuit Court of
Petitioners-Appellants,	)	Cook County
	)	
v.	)	No. 2017 COEL 0012
	)	
VILLAGE OF OAK PARK MUNICIPAL OFFICERS ELECTORAL BOARD DULY CONSTITUTED TO HEAR AND PASS UPON OBJECTIONS TO THE NOMINATION PAPERS OF CANDIDATES FOR THE OFFICES OF VILLAGE CLERK AND VILLAGE TRUSTEES FOR THE APRIL 4, 2017 CONSOLIDATED ELECTION, AND ITS MEMBERS, ANAN ABU-TALED, COLETTE LUECK, TERESA POWELL, and PETER BARBER, GLENN BREWER, and LOREEN "LORI" MALINSKI, CANDIDATES, AND DAVID ORR, IN HIS OFFICIAL CAPACITY AS COOK COUNTY CLERK,	)	The Honorable Margarita Kulys Hoffman, Judge Presiding.
Respondents-Appellees.		

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Pierce and Cobbs concurred in the judgment.

ORDER

¶ 1 Held: Decision of the Electoral Board is affirmed where removal from ballot is not the proper remedy for independent candidates in municipal election filing joint nomination petitions.

¶ 2 Petitioners-appellants Kevin Peppard and Robert Milstein (the Petitioner Objectors) appeared before this court upon a motion for expedited briefing schedule and decision, related to the upcoming April 4, 2017 Village of Oak Park consolidated municipal election.[1] This court granted the motion on February 9, 2017. Upon review of this cause, we issue the instant decision affirming the decision of respondents-appellees Village of Oak Park Municipal Officers Electoral Board.

¶ 3 I. BACKGROUND

¶ 4 The facts of this case are not in dispute. Respondent Candidates Peter Barber, Glenn Brewer, and Loreen "Lori" Malinski (the Respondent Candidates) jointly filed nomination papers to become independent candidates in said election. These nomination papers, titled "Independent Candidate Petition" contained a joint heading that listed Peter Barber and Glenn Brewer as Oak Park Village Trustee, and Loreen "Lori" Malinski as Oak Park Village Clerk, followed by their addresses. Each page contained the following statement:

> "We, the undersigned, qualified voters in the Village of Oak Park in the County of Cook and State of Illinois, do hereby petition that the following named persons shall be Independent Candidates for election to the offices hereinafter specified to be voted for at the Consolidated Election to be held on April 4, 2017."

The Respondent Candidates filed 55 sequentially numbered petition sheets that consisted of 735 distinct signatures. 251 valid signatures are required to be on the ballot in this particular election.

[1] Early voting for this election starts March 20, 2017.

¶ 5 Petitioner Objectors Peppard and Milstein each objected to the petitions on the basis that independent candidate petitions that group three candidate names on the same petition violate Section 10-3 of the Illinois Election Code (Election Code) (10 ILCS 5/10-3 (West 2014)), which mandates independent candidates for public office submit a petition signed "in the aggregate for each candidate by qualified voters" "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 2014). Specifically, they asserted that, by jointly filing their nomination petition as independent candidates and submitting 735 signatures, the respondent candidates violated provision in Section 10-3 of the Election Code. They argued that, because each candidate was required to submit a minimum of 251 signatures by petition, a petition bearing the names of three candidates necessarily has to contain 753 valid signatures rather than the 735 signatures contained on Respondent Candidates' petition sheets.[2] According to the Objectors, the remedy for this error is to remove the respondent candidates from the ballot.[3]

¶ 6 The Board, comprised of Anan Abu-Taled, Colette Lueck, and Teresa Powell, held a hearing, at the end of which it overruled the objections by a 2-to-1 vote, and ordered that the Respondent Candidates' names be printed on the ballot. In the Board's memorandum Findings and Decision, the Board relied on *McNamara v. Oak Lawn Municipal Officers Electoral Board, et al.*, 356 Ill. App. 3d 961 (2005), in which this court upheld ballot access for independent candidates that filed joint nomination papers, to determine that the Respondent Candidate's "joint nomination petition shall stand." The Board also specified that the case of *Jackson-Hicks v. East*

[2] The parties agree that 251 signatures are needed to properly be on the ballot for this election.
[3] The two cases, *Peppard v. Barber, Brewer, and Malinski*, and *Milstein v. Barber, Brewer, and Malinski*, were consolidated below.

St. Louis Board of Election Com'rs, 2015 IL 118929, on which the Objectors relied, was inapposite to the case.

¶ 7 Petitioner Objectors sought judicial review of the Board's decision in the circuit court. The circuit court heard the cause, agreed with the Board's finding, and affirmed its decision.

¶ 8 Petitioner Objectors appeal.

¶ 9 II. ANALYSIS

¶ 10 On appeal, Petitioner Objectors contend the Board erred in allowing the Respondent Candidates to remain on the ballot because independent candidate petitions that group together candidate names on the same petition violate Election Code Section 10-3. Petitioner Objectors seek to have the Respondent Candidates' names stricken from the ballot. Respondent Candidates respond that there is no express statutory prohibition on candidates filing jointly, and they assert that their petitions substantially comply with the necessary statutory elements. The Respondent Candidates rely on *McNamara*, 356 Ill. App. 3d 961, in which this court upheld ballot access for independent candidates that filed joint nomination papers. Petitioner Objectors, for their part, rely on *Jackson-Hicks*, 2015 IL 118929, which they contend requires the Respondent Candidates to be stricken from the ballot.

¶ 11 Judicial review of an electoral board's decision is considered to be administrative review. *Jackson v. Board of Election Com'rs*, 2012 IL 111928, ¶ 46. On appeal, we review the Board's, rather than the trial court's decision. See *Samuelson v. Cook County Officers Electoral Bd.*, 2012 IL App (1st) 120581, ¶ 11. The substantive issue for our determination here is whether, under Section 10-3 of the Code, independent candidates for local election may file joint nomination papers. This is an issue of statutory construction. *Atkinson v. Schelling*, 2013 IL App (2d) 130140, ¶¶ 10-11 (case in which facts are not in dispute but there is a dispute regarding whether

the governing legal provisions were interpreted correctly by the administrative body presents a question of law, to be reviewed under a *de novo* standard). "The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. [Citation.] The best indication of legislative intent is the plain and ordinary meaning of the statutory language. [Citation.] Where the language is clear and unambiguous, we must apply the statute without resort to other aids of statutory construction. [Citation.] The construction of a statute is a question of law that is reviewed *de novo*. [Citation.]" *McNamara*, 356 Ill. App. 3d at 998-99.

¶ 12 Section 10-3 of the Election Code provides, in pertinent part:

> "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 in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area * * *." 10 ILCS 5/10-3 (West 2014).

¶ 13 This court has previously decided this precise issue, that is, "whether, under section 10-3 of the Code, independent candidates for local election may file joint nomination papers." *McNamara*, 356 Ill. App. 3d at 964. In *McNamara*, we determined that the language of the Election Code is clear that each independent candidate is required to file separate, individual nomination papers. *McNamara*, 356 Ill. App. 3d at 965. However, because no penalty attached for violations of Section 10-3, the legislature did not intend for that Section to be mandatory.

McNamara, 356 Ill. App. 3d at 966. We ordered that the candidates' names be placed on the ballot. *McNamara*, 356 Ill. App. 3d at 966.

¶ 14 Specifically, in *McNamara*, we addressed similar facts to the case at bar. Two candidates running for the offices of village president and village clerk filed a joint nominating petition which listed the candidates' names in the heading of each petition sheet. The electoral board and the circuit court found that Section 10-3 of the Election Code required independent candidates to file individual nomination papers. *McNamara*, 356 Ill. App. 3d at 965 ("The statue requires that each independent candidate file separate, individual nomination papers signed in the aggregate by a specified percentage of qualified voters. 'Nomination papers signed in the aggregate,' the language relied on by petitioners, refers to the *compilation* of signature sheets viewed as a set. It does not refer to the number of candidates that may be listed on a set of nomination papers."). Therefore, reasoned the court, the petitioner candidates were not in compliance with Section10-3 of the Election Code. *McNamara*, 356 Ill. App. 3d at 965.

¶ 15 Nonetheless, the court continued its analysis, acknowledging that "[t]he policy favors ballot access and guards the right of voters to endorse and nominate the candidate of their choice." *McNamara*, 356 Ill. App. 3d at 965 (citing *Lucas v. Lakin*, 175 Ill. 2d 166, 176 (1997); *Welch v. Johnson*, 147 Ill. 2d 40, 56-57 (1992); *Anderson v. Schneider*, 67 Ill. 2d 165 (1977). In deciding whether the petitioners' noncompliance with Section 10-3 was fatal to their nomination, we relied on *People ex rel. Meyer v. Kerner*, 35 Ill. 2d 33, 39 (1966). In *Kerner*, our supreme court held:

> " '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. [Citations.] But, where the statute does not expressly declare its provisions to be mandatory or compliance therewith to be essential to its validity, 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.' " *McNamara*, 356 Ill. App. 3d at 966 (quoting *Kerner*, 35 Ill. 2d at 39).

¶ 16 We then held that the language of Section 10-3 is not mandatory and does not provide that "compliance is essential to effect a valid nomination." *McNamara*, 356 Ill. App. 3d at 966. Also finding that Section 10-3 "does not provide that an election will be rendered void by failure of those involved in the election process to perform according to its terms," we determined: "even if were to find section 10-3 mandatory rather than directory, compliance therewith is not essential to the validity of a nomination." *McNamara*, 356 Ill. App. 3d at 966 (citing *Ballentine v. Bardwell*, 132 Ill. App. 3d 1033, 1039 (1985)).

¶ 17 Additionally, in *McNamara*, this court acknowledged that the respondents "did not allege petitioners engaged in fraud or that the merits of the election would be affected by petitioners' failure to file individual nomination papers." *McNamara*, 356 Ill. App. 3d at 966. Instead, the petitioners received more than the statutory minimum number of signatures required for nomination (in that case, the petitioner candidates obtained signatures from just under 8% of the qualified voters for the village). The *McNamara* court found this sufficient for the petitioner candidates to remain on the ballot.

¶ 18 Ultimately, in *McNamara*, we considered what consequence should rightly apply to candidates who were in noncompliance with Section 10-3:

"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. See *In re Marriage of Mitchell*, 319 Ill. App. 3d 17, 22-23 *** (2001) (refusal to read into statute remedy the legislature did not specifically authorize); *Ballentine*, 132 Ill. App. 3d at 1038 *** (appellate court cannot restrict or enlarge the plain meaning of an unambiguous statute)." *McNamara*, 356 Ill. App. 3d at 967.

The *McNamara* decision, authored by Justice Robert Cahill, is sound and well reasoned, and we see no reason to depart from it here.

¶ 19 In the case at bar, like in *McNamara*, the Respondent Candidates filed a joint nominating petition for independent candidates. This was error. See *McNamara*, 356 Ill. App. 3d at 965 ("The statute requires that each independent candidate file separate, individual nomination papers ***.") Also like *McNamara*, there is no allegation of fraud here. *McNamara*, 356 Ill. App. 3d at 965-66. Additionally, like in *McNamara*, there is no indication that the merits of the election would be affected by Respondent Candidates' failure to file individual nomination papers. *McNamara*, 356 Ill. App. 3d at 966. Rather, both parties agree that, to properly be listed on the ballot in the subject election, candidates need 251 valid signatures. The parties also agree that these candidates filed 735 valid signatures. The signed petitions state:

"We, the undersigned, qualified voters in the Village of Oak Park in the County of Cook and State of Illinois, do hereby petition that the following named persons shall be

Independent Candidates for election to the offices hereinafter specified to be voted for at the Consolidated Election to be held on April 4, 2017."

It is clear from this language that the voters intended that their signatures stand for each of the candidates. While combining the independent Respondent Candidates' names into one petition was technically deficient, like in *McNamara*, the 735 signatures on the petitions are signatures for each of the candidates, and these signatures meet the threshold requirements to be on the ballot.

¶ 20 Petitioner Objectors' reliance on *Jackson-Hicks* does not persuade us differently. Petitioner Objectors contend that *McNamara* is not dispositive of this issue in light of our supreme court's decision in *Jackson-Hicks.* We disagree. In *Jackson-Hicks*, the Court considered whether a single candidate for municipal office could have his name placed on the ballot if the candidate's petitions did not contain the minimum number of valid signatures required by statute. *Jackson-Hicks*, 2015 IL 118929, ¶ 1. The Court considered the legislative intent behind that portion of the Election Code, and held that the minimum signature requirement is mandatory.[4] *Jackson-Hicks*, 2015 IL 118929, ¶ 42. This is inapposite to the issue of whether independent candidates can file a joint nominating petition. In addition, the *Jackson-Hicks* court recognized that "in certain circumstances, substantial compliance can satisfy even a mandatory provision of the Election Code." *Jackson-Hicks*, 2015 IL 118929, ¶ 36. It then distinguished cases where the candidate "met the basic requirements of the Election Code, but did so in a technically deficient manner." *Jackson-Hicks*, 2015 IL 118929, ¶ 37. It found that the mayoral candidate at issue who had submitted only 123 valid signatures where 136 signatures were required had "failed to meet a threshold requirement completely." *Jackson-Hicks*, 2015 IL 118929, ¶ 37. The Court stated:

[4] We note here that, although Petitioner Objectors essentially argue that the *Jackson-Hicks* decision abrogates the *McNamara* decision, *Jackson-Hicks* does not discuss *McNamara* in any way, nor even mention *McNamara.*

> "While the signature requirement may have been aimed at showing candidate initiative and minimum voter appeal, showing candidate initiative and minimum voter appeal is not, itself, the standard. As we have explained, the 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." *Jackson-Hicks*, 2015 IL 118929, ¶ 37.

Here, the Respondent Candidates did not fail to meet a minimum threshold. Quite the opposite: they obtained 735 signatures where 251 signatures were needed.

¶ 21 III. CONCLUSION

¶ 22 Accordingly, for all of the foregoing reasons, we affirm the decision of the Board allowing the Respondent Candidates' names be printed on the ballot for the April 4, 2017 election.

¶ 23 Affirmed.