

2018 IL App (2d) 180089-U
No. 2-18-0089
Order filed February 21, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

JOSEPH AMODEO,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellant,)	
)	
v.)	No. 18-MR-5
)	
DU PAGE COUNTY ELECTORAL BOARD)	
and its members Cathy Terrill, Chairperson,)	
James Lowe, Member, and Edward Charles)	
Maher, Public Member; DU PAGE COUNTY)	
ELECTION COMMISSION and its members)	
Cathy Terrill, Chairperson, James Lowe,)	
Member, Art Ludwig, Member; and DANIEL)	
HEBREARD,)	Honorable
)	Paul M. Fullerton,
Respondents-Appellees.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the decision of the Du Page County Electoral Board, rejecting the petitioner's objection to the candidate's nominating papers.

¶ 2 The petitioner, Joseph Amodeo, appeals from the January 26, 2018, judgment of the circuit court of Du Page County that affirmed the decision of the Du Page County Electoral Board (the Electoral Board) rejecting Amodeo's objection to the respondent's, Daniel

Hebreard's, nominating papers filed for the Democratic nomination to the office of President of the Forest Preserve District of Du Page County, to be voted upon in the March 20, 2018, general primary election.

¶ 3

I. BACKGROUND

¶ 4 On November 30, 2017, Hebreard filed nominating papers to be a Democratic candidate for the position of President of the Forest Preserve District of Du Page County, to be voted upon in the general primary election on March 20, 2018. The nominating papers included both a statement of candidacy and petitions for nomination that were signed by voters. On the statement of candidacy and on the nominating petitions, the office sought was listed as "Forest Preserve President" and the unit of government/district was listed as "Du Page County." Additionally, the statement at the top of each nominating petition, which contained voter signatures, was a statement that the signers were "qualified primary electors *** in Du Page County."

¶ 5 On December 11, 2017, Amodeo filed an objection to Hebreard's nominating papers on the basis that the nomination petitions failed to comply with the requirements of section 7-10 of the Election Code (10 ILCS 5/7-10 (West 2016)). Amodeo asserted that, in violation of section 7-10, none of the petitions indicated the office that Hebreard was seeking. On his nominating petitions, Hebreard indicated he was seeking the office of "Forest Preserve President" in the district/unit of government of "Du Page County." Amodeo argued that the correct title of the office sought was "President of the Forest Preserve District of Du Page County." Additionally, Amodeo noted that the statement at the top of the nominating petitions referred to the signors as qualified primary electors from "Du Page County" rather than from the "Forest Preserve District of Du Page County."

¶ 6 On December 18, 2017, Hebreard filed a motion to dismiss the objection, arguing that there was no confusion over the office that he was seeking. On December 20, 2017, Amodeo filed a response to the motion to dismiss, which included affidavits from three people that had signed Hebreard's nominating petitions. In those affidavits, all three affiants indicated that they would not have signed the nominating papers had they known that Hebreard was running for President of the Forest Preserve District and not for a Du Page County office.

¶ 7 On December 21, 2017, Hebreard filed a reply in support of his motion, with five affidavits attached. In those affidavits, the affiants stated that they had signed Hebreard's nominating petition and they were not confused as to the office sought. They understood that Hebreard was running for the office of President of the Forest Preserve District of Du Page County. Amodeo moved to strike the affidavits because they were not timely disclosed under the Electoral Board's adopted rules of procedure.

¶ 8 On December 22, 2017, the Electoral Board convened for a hearing on Amodeo's objection. At the outset, the Electoral Board denied Hebreard's motion to dismiss the objection and granted Amodeo's motion to strike the affidavits attached to Hebreard's reply in support of his motion to dismiss because they were not timely disclosed. The five individuals that had signed the affidavits submitted by Hebreard were present at the hearing, but did not testify. The parties stipulated that, if called to testify, the five affiants would testify to the information set forth in their affidavits.

¶ 9 Hebreard testified that he was employed as a ranger for the Du Page Forest Preserve for 12 years. He acquired his nominating petitions from the Du Page County website. He printed out the nominating petition that said "Forest Preserve President." Hebreard also identified an exhibit, which was a page from the Du Page County website that listed the offices open for

nominations in the March 20, 2018, general primary election. One of the offices listed was “Forest Preserve President.” Hebreard testified that many of the billboards and postcards for the person running as the candidate for the Republican party stated that the office was “Forest Preserve President.” An election summary for the 2014 general election on the Du Page County website listed the position as “Forest Preserve President.” After closing arguments, the Electoral Board continued the matter until December 27, 2017.

¶ 10 On December 27, 2017, the Electoral Board issued its decision. The Electoral Board found that Hebreard’s nominating papers did not strictly comply with requirements of the Election Code. The office at issue was the “Office of President of the Forest Preserve District of Du Page County.” However, the nominating papers indicated that the office sought was “Forest Preserve President,” and did not include the word “District” in the description of the office. Further, the qualified primary electors’ statement at the top of the nominating petitions stated that the electors were from “Du Page County,” but should have stated they were from the “Forest Preserve District.”

¶ 11 Nonetheless, the Electoral Board found that the description of the office sought in Hebreard’s nominating papers was in substantial compliance with the Election Code because the nominating papers did not create a reasonable basis for confusion as to the office sought by the candidate. There was only one office of “Forest Preserve President” in Du Page County and that was within the Forest Preserve District. There was no county “Forest Preserve President.” The Electoral Board acknowledged the affidavits submitted by Amodeo, indicating that the affiants experienced confusion regarding the office that Hebreard sought. However, the Electoral Board noted that Hebreard had also submitted affidavits, indicating that the affiants were not confused by the nominating petitions. Given that there was no county office of Forest Preserve President,

the Electoral Board concluded that there was no objective reasonable basis for confusion that the office sought was that of the President of the Forest Preserve District of Du Page County. Additionally, the Electoral Board found that the statement at the top of the nominating petitions, referring to the voters as qualified primary electors of Du Page County, substantially complied with the requirements of section 7-10 of the Election Code. The Electoral Board noted that because the Forest Preserve District was coterminous with the territorial boundaries of Du Page County, the exact same qualified primary electors were implicated. Accordingly, the Electoral Board overruled Amodeo's objection to Hebreard's nominating papers.

¶ 12 On January 26, 2018, the circuit court of Du Page County affirmed the Electoral Board's decision. Amodeo filed a timely notice of appeal. This court granted accelerated review of this case under Supreme Court Rule 311(b) (eff. Feb. 26, 2010).

¶ 13 II. ANALYSIS

¶ 14 On appeal, Amodeo argues that the Electoral Board erred in finding that Hebreard's nominating papers substantially complied with section 7-10 of the Election Code. Amodeo asserts that even though the boundaries of the Forest Preserve District and Du Page County are coterminous, that does not mean those terms can be used interchangeably. Amodeo argues that the nominating papers were not clear as to the office that Hebreard was seeking and that the voters who signed the petitions were likely confused as to whether Hebreard was seeking a district or county office.

¶ 15 Judicial review of an electoral board's decision is considered to be administrative review. *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶ 46. On appeal in such a case, we review the decision of the electoral board, not the determination of the trial court. See *id.* Access to a place on the ballot is a substantial right which should not lightly be denied. *Nolan v.*

Cook County Officers Electoral Board, 329 Ill. App. 3d 52, 55 (2002). A minor error in a candidate's nominating papers should not result in a candidate's removal from the ballot. *Sullivan v. County Officers Electoral Board*, 225 Ill. App. 3d 691, 693 (1992). In the present case, the facts are undisputed and at issue is the legal effect of those facts. An examination of the legal effect of a given state of facts involves a mixed question of fact and law with a standard of review of "clearly erroneous." *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211 (2008). The Electoral Board's decision is deemed clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been committed. *Id.*

¶ 16 The question presented to us is whether Hebreard's nominating papers meet the requirements of section 7-10 of the Election Code (10 ILCS 5/7-10 (West 2016)). Section 7-10 governs the form and content of nominating petitions. Section 7-10 states, "[e]ach sheet of the petition other than the statement of candidacy and candidate's statement shall be of uniform size and shall contain above the space for signatures an appropriate heading giving the information as to name of candidate or candidates, in whose behalf such petition is signed; the office, the political party represented and place of residence; and the heading of each sheet shall be the same." 10 ILCS 5/7-10 (West 2016). The requirements of section 7-10 of the Election Code are met as long as the candidate substantially complies with its provisions. *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581, ¶ 29. In determining whether a candidate has substantially complied with section 7-10, there are two requirements. *Lewis v. Dunne*, 63 Ill. 2d 48, 52 (1976). First, the nominating papers as a whole must not create a basis for confusion as to the office sought. Second, the purpose of the nominating paper that contains the incorrect office must not have been frustrated because of the error. *Id.* at 52-53.

¶ 17 In the present case, we are not left with a definite and firm conviction that the Electoral Board was mistaken in finding that the errors in Hebreard's nominating papers did not create a basis for confusion. See *Lewis*, 63 Ill. 2d at 52-53. As pointed out by the Board, while Amodeo submitted affidavits of voters that indicated they were confused as to the office sought, Hebreard submitted affidavits of voters that indicated the nominating petitions did not cause any confusion. There is only one position of "President" of the "Forest Preserve District of Du Page County." There is no separate office of "Forest Preserve President" of "Du Page County." Additionally, the office Hebreard sought was referred to as "Forest Preserve President" on the Du Page County website and in the Du Page County election summary. As such, there was no other office which could be confused with "Forest Preserve President." See *Pascente v. County Officers Electoral Board of County of Cook*, 373 Ill. App. 3d 871, 874 (2007) (no basis for confusion where the office listed was "Member of the Regional Board of School Trustees" but actual name of office was "township trustee of schools" because the former office did not exist). Further, as the boundaries of the Forest Preserve District and Du Page County are coterminous, there was no confusion that the electors who signed the nominating petitions were primary electors of the Forest Preserve District of Du Page County.

¶ 18 In addition, the purpose of the nominating papers was not frustrated because of the errors. See *id.* The purpose of nominating petitions is "to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters." *Heabler v. Municipal Officers Electoral Board of the Village of Lakemoor*, 338 Ill. App. 3d 1059, 1062 (2003). The purpose of the statement of candidacy is to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election for the office he seeks. *Lewis*, 63 Ill.

2d at 53. These purposes were not frustrated because there was no confusion over the office sought or that the electors who signed the petitions were primary electors of the Forest Preserve District of Du Page County. Accordingly, the Electoral Board's determination that Hebreard's nominating papers substantially complied with the requirements of the Election Code was not clearly erroneous.

¶ 19 Amodeo relies on *Salgado v. Marquez*, 356 Ill. App. 3d 1072 (2005), in arguing that Hebreard's nominating petitions did not substantially comply with the requirements of the Election Code. In *Salgado*, the respondent, David Marquez, sought to run for the office of alderman for the second ward of the City of Aurora. *Id.* at 1073. Although Marquez's statement of candidacy properly listed the office he was seeking, the place on his nominating petitions where the office was supposed to be listed was blank. *Id.* at 1074. In other words, the nominating petitions stated no office at all. Under these circumstances, this court reversed the decision of the Electoral Board of the City of Aurora, which had denied the petitioner's objection to Marquez's nominating papers. *Id.* at 1080.

¶ 20 This court held that in the absence of any office listed on the nominating petitions, the purpose of the petitions was frustrated. *Id.* at 1079. This court noted that, in addition to the office of alderman for the second ward, other offices were open for election, including that of mayor and alderman at large. *Id.* Because the nominating petitions did not list the office for which Marquez was running, we held that the purpose of the petitions was frustrated because the petitions did not reveal whether Marquez demonstrated a minimal appeal to the eligible voters as alderman. *Id.*

¶ 21 *Salgado* is easily distinguished from the present case. In *Salgado*, there was no office listed on the nominating petitions and this led to confusion because there were multiple offices

open for election. In this case, unlike *Salgado*, there was an office listed on the nominating petitions, “Forest Preserve President.” Further, there were no other offices that could be confused with “Forest Preserve President” as there was no Forest Preserve President of Du Page County. The only forest preserve president was the President of the Forest Preserve District of Du Page County.

¶ 22 We note that courts have generally found no basis for confusion where the office specified in the nominating papers can only refer to one possible vacancy. *Lyons MVP Party v. Lyons, Illinois, Municipal Officers Electoral Board*, 407 Ill. App. 3d 1004, 1007-08 (citing *Pascente*, 373 Ill. App. 3d at 874-75; *Bryant v. Cook County Electoral Board*, 195 Ill. App. 3d 556, 557-59 (1990); and *Stevenson v. County Officers Electoral Board*, 58 Ill. App. 3d 24, 27 (1978)). “However, where the office specified can refer to more than one vacancy, there is a basis for confusion.” *Lyons MVP Party*, 407 Ill. App. 3d at 1008 (citing *Salgado*, 356 Ill. App. 3d at 1078; *Heabler*, 338 Ill. App. 3d at 1063; and *Zapolsky v. Cook County Officers Electoral Board*, 296 Ill. App. 3d 731, 735 (1998)). *Amodeo* also cites to *Zapolsky*, arguing that the office sought should be clearly set out in the nominating petitions. However, that case is distinguishable because it was uncontroverted that the office listed on the nominating petitions could have referred to numerous vacancies up for election. *Zapolsky*, 296 Ill. App. 3d at 734-35. In the present case, there was no confusion because “Forest Preserve President” could only have been referring to one possible vacancy, that of the President of the Forest Preserve District of Du Page County.

¶ 23

III. CONCLUSION

¶ 24 For the above reasons, the judgment of the circuit court of Du Page County upholding the Electoral Board’s decision is affirmed.

¶ 25 Affirmed.