2016 IL App (1st) 160217-U

THIRD DIVISION
February 17, 2016

No. 1-16-0217

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAN KOWALSKI, Petitioner-Appellant, v. COOK COUNTY OFFICERS ELECTORAL BOARD; ANITA ALVAREZ; DOROTHY BROWN; and DAVID ORR, Chairman; DAVID ORR, in His Official Capacity as Cook County Clerk; and AUDREY JAYCOX, Objector, Respondents-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 16 COEL 1 The Honorable Margarita Kulys-Hoffman, Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

HELD: Decision of Board declaring that petitioner's nomination papers were invalid and ordering that her name not be printed on the ballot for the primary election

was proper where petitioner did not submit the sufficient number of valid signatures as required by statute.

¶ 1 Petitioner-appellant Jan Kowalski (petitioner) appeared before this court upon a motion for expedited briefing schedule and decision, related to the Democratic primary election for Cook County Recorder of Deeds to be held on March 15, 2016. This court granted her motion on January 29, 2016. Upon review of this cause, we issue the instant decision affirming the decision of respondent-appellee Cook County Officers Electoral Board (Board).

¶ 2 BACKGROUND

¶ 3 Petitioner filed nomination papers to become a candidate in said election. Her nomination papers, as submitted, contained 13,414 signatures. Respondent-appellee objector Audrey Jaycox (respondent) objected to the validity of petitioner's candidacy, asserting that she had not obtained the requisite number of valid signatures, in violation of section 7-10 of the Illinois Election Code (Code) (10 ILCS 5/7-10) (West 2014)), which mandates a candidate for county office submit a petition signed by at least "0.5% of the qualified electors of his or her party who cast votes at the last preceding general election in his or her county." As conceded by all parties to this appeal, the statutory minimum number of valid signatures petitioner was required to submit pursuant to section 7-10 in order to qualify as a candidate was 5,365. Respondent essentially alleged that not all of the signatures petitioner obtained were valid and, thus, that petitioner did not meet the statutory requirement and was not qualified to be a candidate.

¶ 4 Upon respondent's objection, the Board conducted an examination of the voter registration records in relation to petitioner's nomination papers, as per Rule 6 of its rules of

procedure. See Cook County, IL Off. Elect. Bd. R. 6 (adopted Dec. 2015). The records examination concluded with the Board issuing a final "Petition Summary Report" late in the afternoon on December 22, 2015, noting both petitioner's and respondent's objections during the examination, demonstrating that all objections had been ruled on, and concluding that petitioner had submitted only 4,811 valid voter signatures, or 554 short of the statutory minimum. Therefore, the Board determined that petitioner was not a qualified candidate and refused to place her name on the ballot for the election. Based on this time frame, the parties were required to file motions to review the records examination objections pursuant to Rule 8 of the Board's rules of procedure within 24 hours after the completion of the examination. See Cook County, IL Off. Elect. Bd. R. 8 (adopted Dec. 2015). Respondent timely filed a Rule 8 motion on December 23, 2015. Petitioner, however, did not; instead, on December 23, 2015, she filed an emergency motion to file a Rule 8 motion late. A hearing officer denied her emergency motion for the failure to allege a legal or factual basis for the relief requested.

¶ 5 On the evening of the next day, December 24, 2015, petitioner filed both a motion to reconsider the denial of her emergency motion, as well as a proposed Rule 8 motion. A hearing officer denied her motion to reconsider. Then, after accepting into evidence the results of the records examination and after finding petitioner had waived the ability to challenge the results because she had failed to timely file her Rule 8 motion, the hearing officer recommended to the Board that it sustain respondent's objection and declare petitioner's nomination papers invalid.

¶ 6 Following a subsequent hearing, the Board accepted and adopted the hearing officer's recommendation, sustained respondent's objection to petitioner's candidacy based on her failure

to have a sufficient number of valid signatures and declared petitioner's nomination papers invalid, ordering that her name not be printed on the ballot for the election. The Board signed its decision accordingly: "David Orr, Chairman by Daniel P. Madden, Anita Alvarez, Member by Donald J. Pechous, and Dorothy Brown, Member by Gloria Legette."

¶ 7 Petitioner filed a petition for administrative review, presenting counts for judicial review of the Board's decision, as well as for civil rights violations, mandamus and injunctive relief; she later amended her petition to include three more counts asserting violations of the Open Meetings Act, the Voting Rights Act of 1965 and the Racketeer Influenced and Corrupt Organizations Act (RICO). Respondent filed a response and the Board filed a motion to dismiss. Following argument, the court denied petitioner's count for judicial review of the Board's decision; struck with the right to replead her counts regarding civil rights, voting rights and RICO violations (which petitioner later voluntarily dismissed); and dismissed with prejudice her counts for mandamus and injunctive relief.[1]

¶ 8 ANALYSIS

¶ 9 On appeal, we review the Board's, rather than the trial court's, decision here. See *Samuelson v. Cook County Officers Electoral Bd.*, 2012 IL App (1st) 120581, ¶ 11. While the Board's findings of law are not binding on us and are reviewed *de novo*, its findings of fact are *prima facie* true and correct and will not be overturned unless they are against the manifest weight of the evidence. See *Samuelson*, 2012 IL App (1st) 120581, ¶ 11 (citing *Cinkus v. Village*

[1]The court denied the Board's motion to dismiss petitioner's count regarding a violation of the Open Meetings Act; it ordered the Board to answer and set a status date for hearing on that matter, which is not before us on appeal.

of Stickney Municipal Officers Electoral Bd., 228 Ill. 2d 200, 210-11 (2008)). And, decisions on mixed questions of law and fact will only be reversed if they are clearly erroneous, which occurs only when we are left with a definite and firm conviction that a mistake has been committed. See *Samuelson*, 2012 IL App (1st) 120581, ¶ 11 (citing *Cinkus*, 228 Ill. 2d at 211). With the Board's findings of fact regarding the shortage of valid signatures in petitioner's nomination papers *prima facie* correct, we have no such conviction that a mistake has been committed herein.

¶ 10 We begin by noting that the memorandum submitted by petitioner to this court (in lieu of appellate brief, as permitted by our order) is completely inappropriate. This is especially so considering that petitioner herself is an attorney. It is laden with political rhetoric that is wholly unrelated to the cause at hand, citing everything from our current president's comments on democracy to Jim Crow laws that disenfranchised African-American voters decades ago. Not only is none of this relevant to what occurred here with respect to petitioner's attempt to have her name placed on the ballot for county recorder of deeds in the Democratic primary, but it is almost entirely argumentative. Her memorandum, along with her reply memorandum, present nothing more than a political diatribe of barely cogent arguments, none of which are legitimately supported by case law. Most critically, her submissions lack any citation to the record to support the claims she raises. Based on this, we could, and most probably should, strike petitioner's memoranda. See *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶¶ 7-11 (noting the requirements for submissions to courts of review as found in Illinois Supreme Court Rule 341 (Ill. S.Ct. R. 341 (eff. July 1, 2008)), the mandate that all parties including those appearing *pro se* follow them, and the reviewing court's right to strike submissions if improper); accord *In re*

Marriage of Petrik, 2012 IL App (2d) 110495, ¶ 38.

¶ 11 Putting all argumentative discourse aside, however, the only real questions at issue here are whether petitioner had the sufficient number of signatures in accordance with section 7-10 of the Code to be placed on the ballot, and whether she was able to challenge the Board's determination that she did not. As noted, following the records examination conducted by the Board, it was concluded that, of the 13,414 signatures petitioner submitted in her nomination papers, only 4,811 of them were valid, leaving petitioner 554 short of the statutory minimum required for candidacy. See 10 ILCS 5/7-10 (West 2014) (for county office, Code mandates valid signatures from at least "0.5% of the qualified electors," which would have been 5,365 signatures here). At this point, petitioner's remedy was entirely clear: file a Rule 8 motion. Rule 8 states, in relevant part:

> "Following the examination of the registration records, any candidate or objector who has made timely objections to the findings of the examinations and who requests so in writing may have a further hearing as to the results of the records examination at a time fixed by the Board before it rules on the findings from the examination. This request shall be styled "Rule 8 Motion". * * * The Motion must be delivered to the opposing party or parties and the Board within 24 hours after the completion of the examination." Cook County, IL Off. Elect. Bd. R. 8 (adopted Dec. 2015).

Accordingly, with the records examination having concluded on the evening of December 22, 2015, petitioner had until the evening of December 23, 2015 to file her motion. The record undeniably demonstrates, and petitioner herself repeatedly concedes, that she did not file a timely

Rule 8 motion.

¶ 12 The Board's rules of procedure make clear that the process of placing a would-be candidate's name on an electoral ballot is an adversarial one. Nomination papers are submitted, objections are raised, examinations take place all to effectuate a fair and appropriate outcome. Potential candidates, and their objectors, must abide by the Board's rules, which afford them the right to review Board tallies, to be present during signature reviews and to sign off confirming that proper procedure has been followed. As Board rules plainly state, any challenge to this adversarial process must come in the form of a timely filed Rule 8 motion. See Cook County, IL Off. Elect. Bd. R. 8 (adopted Dec. 2015).

¶ 13 In the instant cause, the results of the Board's records examination of petitioner's nomination pages, as concluded on December 22, 2015, revealed that petitioner was 554 signatures short of the statutory minimum required for her candidacy. While petitioner is correct that she submitted almost three times the number of signatures required, respondent raised objections. The Board, during its records examination, reviewed all of the objections raised 10,160 of them. While 1,557 objections were overruled, 8,603 were sustained by the Board, resulting in a shortfall for petitioner. The findings were preserved for review for both petitioner and respondent. Respondent, in turn, timely filed a Rule 8 motion. Petitioner did not.[2]

[2]Instead of filing her Rule 8 motion as required under the Board's rules of procedure within 24 hours, or by the evening of December 23, 2015, petitioner chose instead to file a motion for extension of time to file a Rule 8 motion on that date, and then to attach a proposed Rule 8 motion to her motion to reconsider the denial of her extension request which she did not file until the evening of December 24, 2015, well after the 24-hour deadline. There is nothing in Rule 8 that allows for an extension of time of the 24-hour deadline.

By her very own failure to comply with Rule 8, which she concedes, petitioner divested herself of the ability to be heard. A timely filed Rule 8 motion was her opportunity to make a record, to raise the allegations of impropriety she claims now before this court, and to potentially rehabilitate her candidacy. She chose not to pursue that opportunity. Because of that, there is nothing that can be done now.

¶ 14 Ultimately, following the records examination, the Board determined that petitioner did not submit the sufficient number of signatures in accordance with section 7-10 of the Code to be placed on the ballot. By her failure to file a timely Rule 8 motion pursuant to the Board's rules of procedure, petitioner, by her own actions, divested herself of the ability to challenge the Board's determination. Petitioner provides us with no legitimate legal basis to go back in time, and we can do nothing but affirm the Board's decision.

¶ 15 As a final matter, we note that petitioner devotes a major portion of her memoranda filed in this cause to repeated complaints regarding the designee process employed by the Board in hearing election matters. Indeed, the record shows that the Board's decision in this cause was signed as follows: "David Orr, Chairman by Daniel P. Madden, Anita Alvarez, Member by Donald J. Pechous, and Dorothy Brown, Member by Gloria Legette." Petitioner argues that the Board was "impermissibly constituted" when it rendered its decision, she insists that its members and signatories to the decision were required to "recuse themselves" for various reasons, and she declares that the Code "does not authorize these duly-elected officials to abdicate their duties to any proxy." In fact, petitioner's reply memorandum repeatedly refers to the Board and its members and designees (and to the whole political system of Cook County) as "the big boys"

who colluded, even before any review of her nomination papers was conducted, to ensure that her name not appear on the ballot because she is an outsider who refuses to bow to their patronage.

¶ 16 Again, this political rhetoric is completely inappropriate and has no legitimate place in this forum. It has nothing to do with voters' ability to properly register to vote, to actually vote, or to have their votes counted. Simply put, 10,160 of the 13,414 voter signatures petitioner obtained were invalid, leaving her 554 signatures short of being able to become a viable candidate pursuant to the Code. This is a fact that could not be changed, and had nothing to do with who was present at the Board hearings on this matter or who signed off on the Board's decision. And, even if it did, in emphatic contradistinction to petitioner's declarations, the Code explicitly allows Board members to name proxies and designees to act on their behalf. See 10 ILCS 5/10-9(2) (West 2014) (noting that Board consists of "the county clerk, or an assistant designated by the county clerk, the State's [A]ttorney of the county, or an Assistant State's Attorney designated by the State's Attorney, and the clerk of the circuit court, or an assistant designated by the clerk of the circuit court"); *Rita v. Mayden*, 364 Ill. App. 3d 913, 918 (2006) (in using "or," the plain language of section 10-9(2) makes clear that Board members may designate others to serve on their behalf). As with her other complaints, we likewise find no merit in her assertions here.

¶ 17 CONCLUSION

¶ 18 Accordingly, for all the foregoing reasons, we affirm the decision of the Board declaring petitioner's nomination papers for the office of Recorder of Deeds of Cook County invalid and

ordering that her name not be printed on the ballot for the primary election to be held on March 15, 2016.

¶ 19 Affirmed.