

SUPREME COURT OF PENNSYLVANIA

In re Nomination Petition of Lawrence M. Farnese, Jr.

609 Pa. 543 (Pa. 2011) · No. No. 13 EAP 2008 · Decided March 29, 2011

SUMMARY

The Supreme Court of Pennsylvania reviews an award of litigation costs to a candidate after objectors unsuccessfully challenged his nomination petition. The court considers the scope of judicial discretion under Section 977 of the Pennsylvania Election Code, including whether bad faith or misconduct is required before costs may be imposed and whether expert expenses were properly taxable. The appeal concerns the Commonwealth Court's award of costs following the objectors' withdrawal of many challenges and concession that they could not defeat ballot access.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Chief Justice Castille; Justice Saylor; Justice Eakin; Justice Baer; Justice Todd; Justice McCaffery
JURISDICTION	Pennsylvania
DECIDED	March 29, 2011
DOCKET	No. 13 EAP 2008
DISPOSITION	reversed
PROCEDURAL POSTURE	Objectors to a nomination petition appealed the Commonwealth Court's order awarding the candidate \$5,250.95 in litigation costs after dismissing their challenge to the nomination petition. The Supreme Court previously affirmed the dismissal of the challenge to the petition but permitted review of the later cost award.
STANDARD OF REVIEW	The lower court's legal conclusions concerning cost-award authority are reviewed de novo; when the authority to award costs is clear, the exercise of that authority is reviewed for palpable abuse of discretion. The record must support factual findings concerning the litigant conduct justifying an award.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Keith Olkowski, Theresa A. Paylor v. Lawrence M. Farnese, Jr., Pennsylvania Department of State

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QUESTIONS PRESENTED

1. Whether Section 977 of the Pennsylvania Election Code permits an award of litigation costs to the prevailing party solely because that party prevailed in a nomination-petition challenge.
2. Whether the Commonwealth Court abused its discretion by awarding Farnese \$5,250.95 without identifying case-specific circumstances making the award just.
3. Whether the award violated the objectors' constitutional rights concerning ballot access, political association, and equal protection.

HOLDINGS

1. A cost award under Section 977 is not warranted solely because a party prevailed in the underlying nomination-petition challenge. The statute requires the court to determine whether shifting costs would be just under the particular circumstances.
2. The Commonwealth Court abused its discretion by awarding costs without identifying any circumstance, other than Farnese's success in the litigation, that made cost-shifting just.
3. The court declined to reach the objectors' constitutional claims because the appeal could be resolved on statutory grounds.

KEY QUOTATIONS

“For the reasons that follow, we agree with the objectors and hold that, under Section 977, an award of costs to the prevailing party is not warranted solely on the basis that the party prevailed in the underlying nomination petition challenge.” (at 369)

“With these considerations in mind, we hold that the award of costs in this case must be reversed because neither the court below nor the candidate has identified any circumstance, other than the simple fact that the candidate prevailed, to support a finding that an award of costs would be just here.” (at 373)

FACTUAL BACKGROUND

Farnese filed a nomination petition containing 1,778 presumptively valid signatures, while 500 valid signatures were required for the Democratic nomination for State Senator. Olkowski and Paylor challenged more than 1,500 signatures and alleged fraudulent or defective circulator affidavits. Farnese withdrew 934 signatures, and the parties stipulated that another 143 were invalid, but the objectors abandoned their remaining individual challenges after the Commonwealth Court rejected their theory that irregularities on some pages invalidated all pages. The Commonwealth Court dismissed the challenge and later assessed \$5,250.95 in costs, including

transcript, subpoena, and handwriting-expert expenses, without identifying circumstances beyond Farnese's prevailing-party status that made shifting costs just.

PROCEDURAL HISTORY

Olkowski and Paylor challenged Farnese's nomination petition in the original jurisdiction of the Commonwealth Court, alleging widespread invalid signatures and defects in circulator affidavits. The Commonwealth Court rejected their false-in-one, false-in-all theory, dismissed the challenge, directed that Farnese be placed on the ballot, and later awarded Farnese \$5,250.95 in costs under Section 977 of the Election Code. The Supreme Court affirmed the dismissal of the nomination-petition challenge in a prior per curiam order, then reviewed the subsequent cost award and reversed it.

DISPOSITION

reversed

CASES CITED

- In re Nomination Petition of Flaherty, 564 Pa. 671, 770 A.2d 327 (2001)
- In re Pittsburgh Home Rule Charter, 694 A.2d 1128 (Pa. Cmwlth. 1997)
- In re Nomination Paper of Rogers, 908 A.2d 942, 947 (Pa. Cmwlth. 2006)
- In re Nomination Paper of Nader, 588 Pa. 450, 905 A.2d 450 (2006)
- Lucchino v. Commonwealth, 570 Pa. 277, 809 A.2d 264 (2002)
- Oeler v. Oeler, 527 Pa. 532, 594 A.2d 649 (1991)
- In re Nomination Petition of Driscoll, 577 Pa. 501, 847 A.2d 44 (2004)
- In re Nomination Petition of Cianfrani, 467 Pa. 491, 359 A.2d 383 (1976)
- In re Nomination Papers of Nader, 580 Pa. 22, 858 A.2d 1167 (2004)
- In re Nomination Petition of James, 596 Pa. 442, 944 A.2d 69 (2008)
- Trizechahn Gateway LLC v. Titus, 601 Pa. 637, 976 A.2d 474 (2009)
- Commonwealth, Department of Environmental Protection v. Bethenergy Mines, Inc., 563 Pa. 170, 758 A.2d 1168 (2000)
- Bowser v. Blom, 569 Pa. 609, 807 A.2d 830 (2002)
- PECO Energy Co. v. Pennsylvania Public Utility Commission, 568 Pa. 39, 791 A.2d 1155 (2002)
- Lubin v. Panish, 415 U.S. 709 (1974)
- P.J.S. v. Pennsylvania State Ethics Commission, 555 Pa. 149, 723 A.2d 174 (1999)
- In re Fiori, 543 Pa. 592, 673 A.2d 905 (1996)