

SUPREME COURT OF NEVADA

Chattah v. Cegavske

Chattah · No. 85302 · Decided September 29, 2022

SUMMARY

The Supreme Court of Nevada affirmed the denial of a preliminary injunction seeking to remove a Libertarian candidate for Attorney General from the general-election ballot. The court held that the challenge was untimely under Nevada election statutes, limiting the available remedy to polling-place signage, and concluded that the district court did not abuse its discretion in finding insufficient likelihood of success, irreparable harm, or supporting hardship and public-interest factors.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Aguirre; Hardesty; Stiglich; Cadish; Pickering; Herndon
JURISDICTION	Nevada
DECIDED	September 29, 2022
DOCKET	85302
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order denying a motion for a preliminary injunction and an application for a temporary restraining order in a preelection challenge to a candidate's qualifications.
STANDARD OF REVIEW	A district court's denial of preliminary injunctive relief is reviewed for abuse of discretion; reversal is warranted if the court abused its discretion, applied an erroneous legal standard, or relied on clearly erroneous factual findings.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion
PARTIES	Sigal Chattah v. Barbara K. Cegavske, in her official capacity as Nevada Secretary of State, John T. Kennedy

TOPICS

- election contests
- ballot access
- equitable relief
- appellate procedure
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying preliminary injunctive relief seeking removal of Kennedy's name from the general-election ballot or an insert in mail ballots.
2. Whether Nevada's election statutes permitted the requested remedies after the statutory deadline for finalizing the general-election ballot had passed.
3. Whether the Secretary of State had an independent duty to verify every candidate's qualifications before accepting a declaration of candidacy.
4. Whether the alleged harm, relative hardships, and public interest supported preliminary injunctive relief.

HOLDINGS

1. The district court acted within its discretion in denying Chattah's motion for a preliminary injunction and application for a temporary restraining order.
2. When an elector challenges a candidate's qualifications after the statutory deadline for changing the general-election ballot, the elector's remedy is limited to the statutory signage remedy; the court may not require removal of the candidate's name or an extra-statutory mail-ballot insert based on the circumstances presented.
3. The Secretary of State was not required to independently verify every candidate's qualifications before accepting a declaration of candidacy.

KEY QUOTATIONS

"To obtain a preliminary injunction, the movant must 'demonstrate that [she] has a reasonable likelihood of success on the merits and that, absent a preliminary injunction, [she] will suffer irreparable harm for which compensatory damages would not suffice.'" (2)

"'While the moving party need not establish certain victory on the merits, [she] must make a prima facie showing through substantial evidence that [she] is entitled to the preliminary relief requested.'" (2)

"NRS 293.2045(2) (providing that when a candidate's qualifications are challenged after 'the statutory deadline for making changes to the ballot has passed,' the appropriate remedy is to 'post a sign at each polling place where the person's name will appear on the ballot informing voters that the person is disqualified from entering upon the duties of the office')" (3)

FACTUAL BACKGROUND

Chattah, a candidate for Nevada attorney general, challenged Kennedy's candidacy as the Libertarian Party's attorney general nominee, asserting that he was ineligible for the office. She filed the challenge 105 days after the statutory deadline for challenging candidacy and four days after the deadline for changing the general-election ballot. She sought removal of Kennedy's name from the ballot or an insert in mail ballots, rather than the signage remedy provided by statute after the ballot-change deadline. The district court denied preliminary relief without an evidentiary hearing.

PROCEDURAL HISTORY

Chattah, a candidate for Nevada attorney general, challenged John T. Kennedy's qualifications and sought to prevent his name from appearing on the general-election ballot or to require an insert concerning his alleged ineligibility in mail ballots. The First Judicial District Court denied the requested preliminary injunction and temporary restraining order after a non-evidentiary proceeding. The Nevada Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Excellence Community Management, LLC v. Gilmore, 131 Nev. 347, 350-51, 351 P.3d 720, 722 (2015)
- Shores v. Global Experience Specialists, Inc., 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018)
- Coronet Homes, Inc. v. Mylan, 84 Nev. 435, 437, 442 P.2d 901, 902 (1968)
- Oakland Tribune, Inc. v. Chronicle Publishing Co., 762 F.2d 1374, 1377 (9th Cir. 1985)
- University and Community College System of Nevada v. Nevadans for Sound Government, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004)

OPINION

Chattah v. Cegavske (Ballot Issue)

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIGAL CHATTAH, AN INDIVIDUAL, No. 85302

Appellant, vs.

BARBARA K. CEGAVSKE, IN HER FILED

OFFICIAL CAPACITY AS NEVADA

SECRETARY OF STATE; AND JOHN T. SEP 29 2022

KENNEDY, AN INDIVIDUAL, TH A. BROWN

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ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion for a preliminary injunction and application for a temporary restraining order in an action challenging a candidate's qualifications for the Office of Attorney General. First Judicial District Court, Carson City; James E. Wilson, Judge." Appellant is a candidate for Nevada attorney general, and in district court she moved for a preliminary injunction to enjoin respondent Secretary of State from including respondent John T. Kennedy's name on the November ballot as the Libertarian Party's attorney general candidate because Kennedy is not eligible for the office. The Secretary of State opposed the motion to the

extent that appellant sought relief beyond what NRS 293.2045 permits when, as here, an elector files her challenge after the statutory deadline for revising the general election ballot. Following a non- 'Pursuant to NRAP 34(0(1), we have determined that oral argument is not warranted.

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2_ - oS9 3 evidentiary hearing, 2 the district court denied appellant's motion for a preliminary injunction and application for a temporary restraining order. To obtain a preliminary injunction, the movant must "demonstrate that [she] has a reasonable likelihood of success on the merits and that, absent a preliminary injunction, [she] will suffer irreparable harm for which compensatory damages would not suffice." Excellence Cmty. Mgrnt. Gilmore, 131 Nev. 347, 350-51, 351 P.3d 720, 722 (2015). "While the moving party need not establish certain victory on the merits, [she] must make a prima facie showing through substantial evidence that [she] is entitled to the preliminary relief requested." Shores v. Glob. Experience Specialists, Inc., 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018); see Coronet Homes, Inc. v. Mylan, 84 Nev. 435, 437, 442 P.2d 901, 902 (1968) (observing that in the absence of testimony, exhibits, or documentary material to support a request for preliminary injunctive relief, such relief should be denied). Having reviewed the record and considered the parties' arguments in light of these standards, the controlling law, and the type of relief appellant requested, we conclude that the district properly denied appellant's motion for a preliminary injunction. Excellence Crnty. Mgrnt.,

131 Nev. at 351, 351 P.3d at 722 (recognizing that Nevada appellate courts

will not reverse a district court decision denying preliminary injunctive relief unless the district court abused its discretion, applied an erroneous legal standard, or relied on clearly erroneous factual findings). Applying the preliminary injunction standards, the district court correctly 2 The parties agreed to have the district court decide the matter on the briefing and arguments they made at district court conferences and without an evidentiary hearing.

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determined that neither the statutes governing candidate challenges nor any other law or equity required Kennedy's name to be removed from the ballot after the statutory deadline for finalizing the ballots had passed. The record supports the district court's conclusion that appellant failed to show a sufficient likelihood of success on the merits to justify the extent of relief sought (removal of Kennedy's name from the general election ballot or having county election officials include an insert with mail ballots regarding Kennedy's ineligibility for office). In particular, appellant did not

timely challenge Kennedy's candidacy in accordance with governing statutes,³ and thus her remedy was statutorily limited to signs posted at polling places to notify voters of Kennedy's disqualification.⁴ NRS 293.2045(2) (providing that when a candidate's qualifications are challenged after "the statutory deadline for making changes to the ballot has passed," the appropriate remedy is to "post a sign at each polling place").³ Appellant filed her challenge to Kennedy's candidacy 105 days after the statutory deadline for doing so, and 4 days after the statutory deadline for changing the ballot had passed. ⁴Appellant asked the court to afford a remedy the statute does not allow on the ground that the available remedy at this point (signage at polling places) is inadequate because voters using mail-in ballots will not see such signs. That issue, however, is beyond the scope of this appeal, which concerns only whether the district court abused its discretion in denying injunctive relief based on the statutory remedies presently available in preelection candidacy challenges, depending on when the challenge is made. See NRS 293.2045(1), (2).

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³ (01 1947A where the person's name will appear on the ballot informing voters that the person is disqualified from entering upon the duties of the office");⁵ see NRS 293.182(1) (providing a deadline for an elector to challenge a person's qualifications for an office); see also NRS 293.165(4) (stating, in the context of procedures to fill vacancies in nominations, that "[n]o change may be made on the ballot for the general election after 5 p.m. on the fourth Friday in July of the year in which the general election is held"); NRS 293.166(3) (same in the context of procedures to fill vacancies in certain nominations). In reaching that conclusion, the district court properly rejected appellant's argument that it was the Secretary's burden to verify the qualifications of every person who submits a declaration of candidacy. Appellant's argument in that regard is based on an overreading of NRS 293.124(1), which provides that the Secretary "is responsible for the execution and enforcement of the provisions of title 24 of NRS and all other provisions of state and federal law relating to elections in this State." As the district court concluded, the statutory scheme contemplates that the Secretary will rely on the candidate's declaration, which is made under penalty of perjury and includes a representation that the candidate is qualified, see, e.g., NRS 293.177, and provides that the Attorney General or ⁵ In moving for a preliminary injunction, appellant did not seek relief in the form of signs at polling places, although NRS 293.2045(2) allows for such a remedy under the circumstances here. She likewise does not indicate in her appellate brief that she was challenging the district court's order on the basis that it did not enter a preliminary injunction requiring such signage. We therefore do not further address the issue.

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4 (01 1947A Agapz District Attorney, not the Secretary, will investigate if an elector timely challenges a candidate's qualifications, see NRS 293.182 (making it incumbent on an elector to file a challenge within that statute's deadline). As to the irreparable harm element, we perceive no abuse of discretion in the district court's determination that the harm alleged was speculative and could have been avoided by a timely challenge. See *Oakland Tribute, Inc. v. Chronicle Pub'g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (concluding that a "long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm"). Finally, we conclude that the district court did not abuse its discretion in finding that the relative hardships and public interest weighed against the preliminary injunctive relief sought, as the court appropriately considered appellant's interest in having voters decide between qualified candidates, the significant cost to taxpayers for the extra-statutory remedies appellant sought given her delay in challenging Kennedy's candidacy, and the Secretary of State's and public's interest in having electors timely comply with election statutes.⁶ *Univ. and Crnty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004) (recognizing that, in considering a preliminary injunction, courts also "weigh the potential hardships to the relative parties and others, and the public interest"). ⁶Appellant's argument regarding hearsay evidence, assuming she raised this argument below, does not warrant reversal, particularly when appellant, as plaintiff, had the burden of making a prima facie case in support of the relief requested and she declined the opportunity to develop a factual record through an evidentiary hearing.

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In sum, we conclude that the district court was within its discretion to deny appellant's request for preliminary injunctive relief, and we therefore ORDER the judgment of the district court AFFIRMED.% J. arraguirre Hardesty .414G4-12 , J. J. Stiglich Cadish Pickering Herndon cc: Hon. James E. Wilson, District Judge Joey Gilbert Law Attorney General/Las Vegas Gallian Welker & Beckstrom, LC/Las Vegas Carson City Clerk %The Honorable Abbi Silver, Justice, did not participate in the decision of this matter.

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