

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of King v. Ugell

2023 NY Slip Op 02601 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2023) · No. 2023-04055 · Decided May 11, 2023

SUMMARY

The Appellate Division, Second Department reversed an order invalidating Scott B. Ugell's designating petition for Town Supervisor of the Town of Clarkstown. The court held that Ugell's status as a Town Justice did not disqualify him from candidacy and that the petitioners failed to prove fraud by clear and convincing evidence. The proceeding was dismissed and the petition to invalidate the designating petition was denied.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; Lara J. Genovesi, J.; Deborah A. Dowling, J.; Janice A. Taylor, J.
JURISDICTION	New York
DECIDED	May 11, 2023
DOCKET	2023-04055
DISPOSITION	reversed
PROCEDURAL POSTURE	Separate appeals from a final order of the Supreme Court, Rockland County, that, after a hearing, granted a proceeding under Election Law § 16-102 and invalidated a designating petition.
STANDARD OF REVIEW	The Appellate Division reviewed the legal determination of candidate eligibility and whether the evidence established election-related fraud by clear and convincing evidence.
PRECEDENTIAL VALUE	Published opinion; precedential value under New York appellate practice.
PARTIES	Scott B. Ugell, Lawrence A. Garvey v. Emily King, et al.

TOPICS

election contests

election law

appellate procedure

standard of review

municipal law

PRACTICE AREAS

election law

appellate procedure

municipal law

QUESTIONS PRESENTED

1. Whether Ugell was disqualified from candidacy for Town Supervisor because he was serving as a Town Justice and was subject to the Rules Governing Judicial Conduct.
2. Whether petitioners proved by clear and convincing evidence that fraud permeated the designating petition or that there was actual deception of voters or party members sufficient to invalidate it.

HOLDINGS

1. Ugell's status as a Town Justice and his subjection to the Rules Governing Judicial Conduct did not disqualify him from running for Town Supervisor under Election Law § 6-122.
2. Petitioners failed to establish by clear and convincing evidence that fraud permeated the designating petition or that there was actual deception of voters or party members; therefore, invalidation was unwarranted.

KEY QUOTATIONS

"The proper evidentiary standard for proving fraud in an Election Law proceeding is clear and convincing evidence" (at 1)

"[A]s a general rule, a petition for an opportunity to ballot will be invalidated on the ground of fraud only if there is a showing that the entire petition is permeated with fraud" (at 1)

"actual deception of the voters or members of the party involved" (at 2)

FACTUAL BACKGROUND

Scott B. Ugell, a Town Justice, was designated as a candidate for the Republican nomination for Town Supervisor of the Town of Clarkstown in a primary election scheduled for June 27, 2023. Petitioners challenged his designating petition, asserting that he was ineligible and that the petitioning process was permeated with fraud. After hearing conflicting and partly incredible testimony, Supreme Court invalidated the designating petition.

PROCEDURAL HISTORY

The petitioners commenced a proceeding seeking, among other relief, to invalidate a petition designating Scott B. Ugell as a Republican primary candidate for Town Supervisor of the Town of Clarkstown. After a hearing, Supreme Court concluded that Ugell was ineligible because he was a Town Justice and that the petitioning process was permeated with fraud. The Appellate Division reversed, denied the petition, and dismissed the proceeding.

DISPOSITION

reversed

CASES CITED

- Matter of Clancy v. Sloan, 273 N.Y. 152, 155
- Matter of Li v. Meehan, 52 A.D.3d 544, 545
- Matter of McArdle v. Weis, 142 A.D.3d 567, 569
- Matter of Steinert v. Daly, 118 A.D.3d 808, 808
- Matter of Powell v. Tendy, 131 A.D.3d 645, 646
- Matter of Ariola v. Maio, 195 A.D.3d 888, 889
- Matter of Bishop v. Leahey, 194 A.D.3d 1250, 1251-1252
- Matter of Mahoney v. Moynihan, 40 N.Y.2d 906, 907
- Matter of Farbstein v. Suchman, 26 N.Y.2d 564, 567
- Matter of McGraw v. Power, 307 N.Y. 824, 825

OPINION

PER CURIAM.

Matter of King v Ugell (2023 NY Slip Op 02601) Matter of King v Ugell 2023 NY Slip Op 02601 Decided on May 11, 2023 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on May 11, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P.

LARA J. GENOVESI DEBORAH A. DOWLING JANICE A. TAYLOR, JJ. 2023-04055 (Index No. 31728/23) [*1]In the Matter of Emily King, et al., petitioners- respondents, vScott B. Ugell, et al., appellants, et al., respondent. DECISION & ORDERIn a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition designating Scott B. Ugell as a candidate in a primary election to be held on June 27, 2023, for the nomination of the Republican Party as its candidate for the public office of Supervisor of the Town of Clarkstown, Scott B. Ugell and Lawrence A. Garvey separately appeal from a final order of the Supreme Court, Rockland County (Paul I. Marx, J.), dated April 28, 2023.

The final order, after a hearing, granted the petition, inter alia, to invalidate the designating petition.ORDERED that the final order is reversed, on the law, without costs or disbursements, the petition, inter alia, to invalidate the designating petition is denied, and the proceeding is dismissed.The petitioners commenced this proceeding, inter alia, to invalidate a petition designating Scott B. Ugell as a candidate in a primary election to be held on June 27, 2023, for the

nomination of the Republican Party as its candidate for the public office of Supervisor of the Town of Clarkstown.

After a hearing, the Supreme Court concluded (1) that Ugell was ineligible to be a candidate for the office of Town Supervisor because he currently holds the position of Town Justice, and (2) that the petitioning process was permeated with fraud. Thereafter, the court granted the petition, *inter alia*, to invalidate the designating petition. Ugell and Lawrence A. Garvey separately appeal. The petitioners presented no basis to disqualify Ugell under Election Law § 6-122.

The fact that Ugell is subject to the Rules Governing Judicial Conduct (22 NYCRR) part 100 as a Town Justice does not disqualify him from running for the office of Town Supervisor (see *Matter of Clancy v Sloan*, 273 NY 152, 155; *Matter of Li v Meehan*, 52 AD3d 544, 545). "The proper evidentiary standard for proving fraud in an Election Law proceeding is clear and convincing evidence" (*Matter of McArdle v Weis*, 142 AD3d 567, 569). "[A]s a general rule, a petition for an opportunity to ballot will be invalidated on the ground of fraud only if there is a showing that the entire petition is permeated with fraud" (*Matter of Steinert v Daly*, 118 AD3d 808, 808; see *Matter of Powell v Tendy*, 131 AD3d 645, 646).

"The inclusion of a candidate's name on a designating petition, without his or her consent, may constitute fraud" (*Matter of Ariola v Maio*, 195 AD3d 888, 889). Here, in light of the conflicting and, in part, incredible testimony, the Supreme Court erred in determining that the petitioners established, by clear and convincing evidence, fraud so as to warrant invalidating the designating petition (see *Matter of Bishop v Leahey*, 194 AD3d 1250, 1251-1252).

Moreover, the petitioners failed to establish, by clear and convincing evidence, [*2]"actual deception of the voters or members of the party involved" (*Matter of Mahoney v Moynihan*, 40 NY2d 906, 907; see *Matter of Farbstein v Suchman*, 26 NY2d 564, 567; *Matter of McGraw v Power*, 307 NY 824, 825). In light of our determination, we need not reach the parties' remaining contentions. **BRATHWAITE NELSON, J.P., GENOVESI, DOWLING and TAYLOR, JJ., concur.** **ENTER: Maria T. Fasulo** Clerk of the Court