

SUPREME COURT OF GEORGIA

Brooks v. Brown, 282 Ga. 154

646 S.E.2d 265 (2007) · No. No. S07A0141 · Decided June 11, 2007

SUMMARY

The Supreme Court of Georgia dismissed as moot an appeal concerning the timing of a special election for reorganized Carroll County Board of Education districts. The court held that the election had already occurred and that the challenged issues were not capable of repetition yet evading review. The court also admonished counsel and the trial court for improper ex parte communications and orders, although those orders did not affect the outcome.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Melton, Justice; Hunstein, Presiding Justice; All other Justices
JURISDICTION	Georgia
DECIDED	June 11, 2007
DOCKET	No. S07A0141
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a trial court's declaratory judgment authorizing a special Carroll County Board of Education election to be held on November 7, 2006.
STANDARD OF REVIEW	The Supreme Court independently determined whether it had jurisdiction and whether the appeal remained justiciable because mootness is a jurisdictional issue.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	Bernice Brooks v. Patti Brown, Election Supervisor of Carroll County, Carroll County Board of Elections and Registration

TOPICS

[election contests](#) [mootness](#) [election law](#) [appellate procedure](#) [statutory interpretation](#)

PRACTICE AREAS

[Election law](#) [Appellate procedure](#) [Civil procedure](#)

QUESTIONS PRESENTED

1. Whether Brooks's challenge to the election process remained justiciable after the challenged election had occurred.
2. Whether the trial court's ex parte order permitting qualifying was improper under Uniform Superior Court Rule 4.1.

HOLDINGS

1. The appeal was moot because the challenged election had already occurred and the issues were not capable of repetition yet evading review.
2. The trial court improperly entertained ex parte communications and issued an ex parte order concerning the pending proceeding, although the error did not affect the disposition because the order was unnecessary and did not require reversal.

KEY QUOTATIONS

“In general, election contest cases become moot once the general election in contention has occurred.” (267)

“Because the election contest in dispute here has already occurred and the arguments raised by Brooks are not of the type which are capable of repetition yet evading review, this case is now moot.” (267)

“Except as authorized by law or by rule, judges shall neither initiate nor consider ex parte communications by interested parties or their attorneys concerning a pending or impending proceeding.” (267)

FACTUAL BACKGROUND

House Bill 1600 reorganized the Carroll County Board of Education from six members and districts to seven members and districts, and directed that special elections for specified districts be held in conjunction with the July 18, 2006 general primary. The bill became effective only after the Department of Justice issued Voting Rights Act preclearance on July 19, 2006. The trial court authorized qualifying and a special election on November 7, 2006, and Brooks challenged both the altered election date and the ex parte order used to permit qualifying.

PROCEDURAL HISTORY

After the Department of Justice precleared House Bill 1600 on July 19, 2006, the appellees sought a declaration that the earliest practicable date for the required special election was November 7, 2006. The trial court issued an ex parte order permitting qualifying and later entered a final order authorizing the November election. Brooks appealed, challenging the trial court's authority to change the statutory election date and the propriety of the ex parte order. By the time of appellate review, the election had occurred.

DISPOSITION

dismissed

CASES CITED

- Jones v. State, 278 Ga. 669, 670, 604 S.E.2d 483 (2004)
- Jordan v. Cook, 277 Ga. 155, 157, 587 S.E.2d 52 (2003)
- Poythress v. Moses, 250 Ga. 452, 453(1), 298 S.E.2d 480 (1983)
- Swain v. Thompson, 281 Ga. 30, 635 S.E.2d 779 (2006)

OPINION

MELTON, J.

646 S.E.2d 265 (2007) BROOKS v. BROWN et al. No. S07A0141. Supreme Court of Georgia. June 11, 2007. *266 Gary Paul Bunch, Gary Bunch, P.C., Atlanta, for Appellant. David Augustus Basil, Carrollton, for Appellee. MELTON, Justice.

The Governor signed House Bill No. 1600 (HB 1600) into law on April 28, 2006.[1] HB 1600 reorganized the Carroll County Board of Education from a six member to a seven member board representing seven new districts. With regard to Districts 1, 3, 4, and 6, Sections (g)(2) and (g)(3) [2] state that a special election "shall be held in conjunction with the general primary on the third Tuesday in July, 2006 [July 18, 2006]."

These provisions further direct that, "[a]s soon as practicable after this section becomes effective, the election superintendent of Carroll County shall call a special election for the purpose of electing such members."

In accordance with HB 1600, the Board of Education submitted the proposed changes to the U.S. Department of Justice for pre-clearance under the Voting Rights Act of 1965 on May 31, 2006. The Department of Justice issued its pre-clearance letter approving the changes on July 19, 2006, at which time HB 1600 became effective.

On August 2, 2006, Patti Brown, as Election Supervisor of Carroll County, and the Carroll County Board of Elections and Registration (Appellees) brought a declaratory action seeking a ruling from the trial court that the earliest practical time for the special election was in conjunction with the general election on November 7, 2006. Additionally, on August 3, 2006, Appellees asked for and received an ex parte order permitting them to open qualifying for Districts 1, 3, 4, and 6 from August 9, 2006 through August 11, 2006.

The trial court issued its final order on September 18, 2006. The order authorized Appellees to hold the special election on November 7, 2006. Bernice Brooks, the District 1 representative both before and after HB 1600 reorganized the Board of Education, now appeals.[3] She argues that the trial court was without authority to rewrite HB 1600 to allow the special election to take place on a date other than July 18, 2006.

Additionally, Brooks contends that the ex parte order allowing Appellees to open qualifying *267 for the special election was improper under Uniform Superior Court Rule 4.1. Where there is

uncertainty as to jurisdiction in any given case, this Court has a mandatory responsibility to determine whether jurisdiction, in fact, exists. See *Jones v. State*, 278 Ga. 669, 670, 604 S.E.2d 483 (2004).

In general, election contest cases become moot once the general election in contention has occurred. See *Jordan v. Cook*, 277 Ga. 155, 157, 587 S.E.2d 52 (2003). Because the election contest in dispute here has already occurred and the arguments raised by Brooks are not of the type which are capable of repetition yet evading review, this case is now moot. See *Poythress v. Moses*, 250 Ga. 452, 453(1), 298 S.E.2d 480 (1983).

Contrary to Brooks' arguments, *Swain v. Thompson*, 281 Ga. 30, 635 S.E.2d 779 (2006), does not alter this result. In *Swain*, the appellant challenged the results of a mayoral election and wished to prevent the mayor-elect from taking office.

In that situation, the case was not moot because the mayor-elect had not yet taken the oath of office following the election. *Id.* at 30 n. 1, 635 S.E.2d 779. Here, on the other hand, Brooks challenges the election process, itself, not the election of a particular person.

As such, *Swain* does not apply in this situation, and this case must be dismissed as moot. 2. We must, however, take this opportunity to admonish the Appellees' counsel and the trial court against the pursuit of improper ex parte communications and the issuance of improper ex parte orders. "Except as authorized by law or by rule, judges shall neither initiate nor consider ex parte communications by interested parties or their attorneys concerning a pending or impending proceeding."

Uniform Superior Court Rule 4.1. It is undisputed that, in this case, the trial court entertained ex parte communications with Appellees' counsel and issued an order based on these communications. Although these ex parte orders do not ultimately affect the outcome of this case, [4] they were improper and should be strictly guarded against in the future. Appeal dismissed.

All the Justices concur, except HUNSTEIN, P.J., who concurs in the judgment only. NOTES [1] 2006 Ga. L. 618. [2] Section (g)(2) addresses Districts 1, 3, and 6, and Section (g)(3) addresses newly created District 4.

The two sections are otherwise essentially the same. [3] Prior to this appeal, Brooks filed a motion for writ of supersedeas which this Court denied. [4] Even if this case were not otherwise moot, the trial court's improper ex parte order would not require reversal. Sections (g)(2) and (g)(3) of HB 1600 grant statutory authority to Appellees to call a special election "[a]s soon as practicable after this section becomes effective."

(Emphasis supplied.) Because Appellees already had statutory authority to hold the special election "as soon as practicable," the trial court's order in this case was superfluous and

unnecessary to allow the Appellees to conduct the election in the manner that they did.

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