

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

Matter of the Application of Brent P. Sheldon v. Sally A. Jaroszynski

CAE 16-01389 · No. CAE 16-01389 · Decided August 17, 2016

SUMMARY

The New York Supreme Court, Appellate Division, Fourth Department dismissed an appeal by a county Board of Elections commissioner from an order invalidating signatures on Sally A. Jaroszynski's designating petition for Chautauqua County Family Court Judge. The court held that the commissioner was not aggrieved by the order and noted that Jaroszynski had not appealed, so her arguments were beyond appellate review.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	CARNI, J.P.; LINDLEY, J.; NEMOYER, J.; CURRAN, J.; SCUDDER, J.
JURISDICTION	New York
DECIDED	August 17, 2016
DOCKET	CAE 16-01389
DISPOSITION	dismissed
PROCEDURAL POSTURE	Norman P. Green, a commissioner of the Chautauqua County Board of Elections, appealed from an order in an Election Law proceeding that invalidated signatures on Sally A. Jaroszynski's designating petition.
STANDARD OF REVIEW	An appellate court reviews only issues raised by a party who has taken an appeal and dismisses an appeal by a party who is not aggrieved by the order.
PRECEDENTIAL VALUE	Published memorandum and order of the Appellate Division, Fourth Judicial Department.
PARTIES	Norman P. Green, Commissioner, Chautauqua County Board of Elections v. Brent P. Sheldon

TOPICS

election law

appellate jurisdiction

appellate procedure

standing

civil procedure

PRACTICE AREAS

election law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the commissioner of the Chautauqua County Board of Elections was aggrieved by the order invalidating signatures on Jaroszynski's designating petition and therefore had a right to appeal.
2. Whether Jaroszynski's contentions could be considered when she had not appealed from the order.

HOLDINGS

1. Green was not aggrieved by the order and therefore lacked a basis to appeal; the appeal was dismissed.
2. Jaroszynski's contentions were beyond the court's review because she did not take an appeal from the order.

FACTUAL BACKGROUND

Sally A. Jaroszynski sought designation as the Conservative Party candidate for Chautauqua County Family Court Judge in the September 13, 2016 primary election. In an Election Law proceeding, the Supreme Court invalidated signatures on her designating petition. Norman P. Green, a commissioner of the Chautauqua County Board of Elections, appealed from that order, although the Appellate Division concluded that he was not aggrieved by it.

PROCEDURAL HISTORY

The Supreme Court, Chautauqua County, entered an order on August 12, 2016, that, among other things, invalidated Jaroszynski's designating petition for the Conservative Party primary candidacy for Chautauqua County Family Court Judge. Green appealed. The Appellate Division dismissed the appeal because Green was not aggrieved by the order. It also held that contentions raised by Jaroszynski were beyond appellate review because she had not appealed.

DISPOSITION

dismissed

CASES CITED

- Matter of Terranova v Fudoli, 66 AD3d 1530, 1531
- Matter of Carney v Davignon, 289 AD2d 1096, 1097
- Matter of Mantello v Board of Elections of Rensselaer County, 265 AD2d 592, 593
- Matter of Brown v Starkweather, 197 AD2d 840, 841, lv denied 82 NY2d 653
- Hecht v City of New York, 60 NY2d 57, 61

- Matter of Carroll v Chugg, 141 AD3d 1106
- Matter of Espinoza v Berbari, 288 AD2d 934, 934

OPINION

PER CURIAM.

SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department 654 CAE 16-01389 PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND SCUDDER, JJ. IN THE MATTER OF THE APPLICATION OF BRENT P. SHELDON, OBJECTOR, PETITIONER-RESPONDENT, V MEMORANDUM AND ORDER SALLY A. JAROSZYNSKI, PURPORTED CANDIDATE FOR CHAUTAUQUA COUNTY FAMILY COURT JUDGE, RESPONDENT, NORMAN P. GREEN, COMMISSIONER, CHAUTAUQUA COUNTY BOARD OF ELECTIONS, RESPONDENT-APPELLANT, AND BRIAN C. ABRAM, COMMISSIONER, CHAUTAUQUA COUNTY BOARD OF ELECTIONS, RESPONDENT-RESPONDENT.

MICHAEL ROBERT CERRIE, DUNKIRK, FOR RESPONDENT-APPELLANT. SEAN W. CONNOLLY, FREDONIA, FOR PETITIONER-RESPONDENT. ERICKSON WEBB SCOLTON & HAJDU, LAKEWOOD (PAUL V. WEBB, JR., OF COUNSEL), FOR RESPONDENT-RESPONDENT. SALLY A. JAROSZYNSKI, FALCONER, RESPONDENT PRO SE. Appeal from an order of the Supreme Court, Chautauqua County (Paul B. Wojtaszek, J.), entered August 12, 2016 in a proceeding pursuant to the Election Law.

The order, insofar as appealed from, invalidated signatures on the designating petition of respondent Sally A. Jaroszynski. It is hereby ORDERED that said appeal is unanimously dismissed without costs. Memorandum: Respondent Norman P. Green, Commissioner of the Chautauqua County Board of Elections, appeals from an order that, inter alia, invalidated the designating petition of respondent Sally A. Jaroszynski by which Jaroszynski sought to be designated as a Conservative Party candidate for the office of Chautauqua County Family Court Judge in the September 13, 2016 primary election.

We agree with petitioner that Green is not aggrieved by the order, and we therefore conclude that this appeal must be dismissed (see Matter of Terranova v Fudoli, 66 AD3d 1530, 1531; Matter of Carney v Davignon, 289 AD2d 1096, 1097; Matter of Mantello v Board of Elections of Rensselaer County, 265 AD2d 592, 593; Matter of Brown v Starkweather, 197 AD2d 840, 841, lv denied 82 NY2d 653).

We further note that Jaroszynski did not take an appeal from the order (see CPLR 5515 [1]). Therefore, any contentions raised by her are beyond our review (see -2- 654 CAE 16-01389 Hecht v City of New York, 60 NY2d 57, 61; see also Matter of Carroll v Chugg, 141 AD3d 1106; see

generally Matter of Espinoza v Berbary, 288 AD2d 934, 934). Entered: August 17, 2016 Frances E. Cafarell Clerk of the Court

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