

SUPREME COURT OF ARKANSAS

Hagenbaugh v. Montgomery

308 S.W.3d 132 (Ark. 2009) · No. No. 08-1440 · Decided April 30, 2009

SUMMARY

The Supreme Court of Arkansas affirmed the dismissal of a complaint seeking to convene a grand jury to investigate alleged election fraud and violations of the Political Practices Act. The court held that Arkansas Code section 7-5-807 did not prohibit the circuit court from considering an Arkansas State Police investigative report and gave the court substantial discretion to determine whether there was good ground to believe the allegations. The court also rejected the appellants’ unsupported claims that they lacked a legal remedy or were denied a First Amendment right to a free and fair vote.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Donald L. Corbin
JURISDICTION	Arkansas
DECIDED	April 30, 2009
DOCKET	No. 08-1440
DISPOSITION	affirmed
PROCEDURAL POSTURE	Citizens appealed the Pulaski County Circuit Court's dismissal of their complaint seeking to convene a special grand jury to investigate alleged violations of Arkansas election laws and the Political Practices Act.
STANDARD OF REVIEW	Statutory-interpretation issues are reviewed de novo. The circuit court's determination whether there is good ground to believe election-related charges are true is afforded substantial latitude and will not be supplanted absent error.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Christina Hagenbaugh, Nancy K. Sears, Freda Blair, Modean Parks, Anthony Mayfield, Loraine Brand, Paula McConnell, Claudia Heer, Wayne Ives, Michael Reaves, Jeremy Reaves, Randy Wise, Ricky Wise v. Perry County Sheriff Scott Montgomery, Perry County Sheriff's Investigator Ray Byrd, Perry County Sheriff's Chief Deputy

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Ark. Code Ann. § 7-5-807 prohibited the circuit court from considering an Arkansas State Police investigative report when deciding whether there was good ground to convene a special grand jury.
2. Whether the circuit court erred by determining that there was insufficient ground to convene a grand jury to investigate the alleged election-law violations.
3. Whether dismissal of the complaint left appellants without a remedy and violated their First Amendment right to a free and fair vote.

HOLDINGS

1. Ark. Code Ann. § 7-5-807 does not prohibit a circuit court from considering an investigative report when deciding whether there is good ground to believe the charges in a grand-jury complaint are true.
2. The circuit court did not err in declining to convene a grand jury because § 7-5-807(a) gives the circuit court broad discretion to determine whether there is good ground to believe the alleged charges are true.
3. Appellants were not without a remedy and did not establish a First Amendment violation merely because their circuit-court complaint was dismissed.

KEY QUOTATIONS

“The drafters of this statutory provision endowed the circuit court with great latitude in deciding whether to convene a grand jury, and this court cannot supplant its opinion for that of the circuit court.” (at 135)

“The fact that Appellants did not prevail does not mean that they were without a remedy at law.” (at 135)

FACTUAL BACKGROUND

Appellants, citizens of Perry County, alleged that law-enforcement and court officials engaged in election fraud, voter intimidation, harassment, and misuse of criminal-justice authority during the Democratic primary for Perry County sheriff. The principal allegation was that Constable Ron Hance told Christina Hagenbaugh that an arrest warrant for her son would go away if she switched her support from candidate Jerry Best to Sheriff Scott Montgomery. An Arkansas State Police investigation included an interview in which Hance denied making such a statement and said the matter had been blown out of proportion.

PROCEDURAL HISTORY

Appellants filed a complaint under Ark. Code Ann. § 7-5-807 requesting that the circuit court convene a grand jury to investigate alleged election fraud and political intimidation arising from the May 20, 2008 Democratic primary election for Perry County sheriff. The circuit court considered an Arkansas State Police investigative report, found no grounds to convene a grand jury, and dismissed the complaint. Appellants' motion for reconsideration was deemed denied, and they appealed.

DISPOSITION

affirmed

CASES CITED

- City of Little Rock v. Rhee, 375 Ark. 491, 292 S.W.3d 292 (2009)
- Great Lakes Chem. Corp. v. Bruner, 368 Ark. 74, 243 S.W.3d 285 (2006)
- Norman v. Norman, 347 Ark. 682, 66 S.W.3d 635 (2002)

OPINION

Hagenbaugh v. Montgomery 308 S.W.3d 132

CORBIN, J.

308 S.W.3d 132 (2009)

2009 Ark. 239

Christina HAGENBAUGH, Nancy K. Sears, Freda Blair, Modean Parks, Anthony Mayfield, Loraine Brand, Paula McConnell, Claudia Heer, Wayne Ives, Michael Reaves, Jeremy Reaves, Randy Wise, and Ricky Wise, Appellants, v. Perry County Sheriff Scott MONTGOMERY, Perry County Sheriff's Investigator Ray Byrd, Perry County Sheriff's Chief Deputy Mike Surette, Perry County Deputy Bob Barker, Perryville Police Officer Daniel Warren, and Perry County District Judge Elizabeth Wise, All in their Individual and Official Capacities, Appellees. No. 08-1440. Supreme Court of Arkansas. April 30, 2009.

*133 Cheryl V. Barnard, Perryville, for appellants.

No response. DONALD L. CORBIN, Justice. Appellants, a group of citizens residing in Perry County, Arkansas, appeal the order of the Pulaski County Circuit Court refusing to convene a grand jury to investigate allegations of violations of the Political Practices Act, specifically Ark.Code Ann. §§ 7-1-103 and 7-1-104 (Repl.2007). The allegations were related to the May 20, 2008 preferential primary election, more specifically the Democratic Primary to nominate a candidate for sheriff of Perry County. On appeal, Appellants argue that the trial court erred in considering an Arkansas State Police report concerning the alleged violations in determining the credibility of their complaint. Appellants request that this court order the circuit court to convene a grand jury for a proper investigation of their allegations. As this case involves the interpretation of our statutes concerning election laws, our jurisdiction is pursuant to Ark. Sup. Ct. R. 1-2(a)(4). We

find no error and affirm. Appellants filed a complaint on June 9, 2008, requesting the circuit court to convene a grand jury, pursuant to Ark.Code Ann. § 7-5-807 (Repl.2007), to investigate their allegations of election fraud, including voter intimidation, harassment, and abuse of the criminal justice system. Therein, Appellants alleged that the instances of election fraud had been committed by Appellees, who include members of the Perry County Sheriff's Office, the Perryville Police Department, and the Perry County District Court, while acting pursuant to statutory authority in the course of their usual duties. At the crux of the complaint was an allegation that Wye Mountain Constable, Ron Hance, told Appellant, Christina Hagenbaugh, that if she would switch her support from candidate *134 Jerry Best to Sheriff Scott Montgomery, an arrest warrant for her son would go away.[1] Prior to the filing in circuit court, an official complaint was also filed with the State Board of Election Commissioners. Due to the criminal nature of some of the allegations, the matter was turned over to the Pulaski County Prosecuting Attorney, and the state police were called in to investigate the matter. Thereafter, when the complaint was filed in circuit court, the court requested that the prosecuting attorney turn over any information he received as a result of the investigation. In response, the prosecuting attorney transmitted a copy of a report filed by State Police Lieutenant W.E. Beach. In that report, Lt. Beach stated that he interviewed Hance, who told him that the situation had been blown out of proportion and that he never told anyone that any warrants or charges would go away if they changed their political support. The circuit court entered an order on June 27, 2008, dismissing Appellants' complaint. Therein, the circuit court noted that the Arkansas State Police had conducted a preliminary investigation and determined that there was no need for a "full scale" criminal investigation into the allegations. The trial court further noted that Lt. Beach had interviewed Hance, who allegedly made statements connecting a sheriff's deputy to the alleged election misconduct and that Hance denied the statements and claims the matter was "blown out of proportion." The circuit court concluded that in its opinion there were no grounds to call a grand jury, as the state police report "casts a dark shadow upon the complaint." On July 14, 2008, Appellants filed a motion for reconsideration and a motion to file, under seal, a taped interview with Hance. In the motion for reconsideration, Appellants argued that the circuit court improperly considered the state police report in deciding this matter and, thus, deprived them of a fair court proceeding. Appellants then requested the circuit court to listen to a taped statement of Hance given to Appellants' counsel. The motion was deemed denied after thirty days, and Appellants filed their notice of appeal on September 12. On appeal, Appellants argue that the circuit court erred in dismissing their complaint where the court erroneously considered evidence outside the record in determining that there was no good reason to convene a grand jury to investigate their allegations and, thus, violated the dictates of section 7-5-807. This court reviews issues of statutory interpretation de novo, because it is for this court to determine the meaning of a statute. *City of Little Rock v. Rhee*, 375 Ark. 491, 292 S.W.3d 292 (2009). Our standard of review for issues of statutory construction is well settled: The basic rule of statutory construction is to give effect to the intent of the legislature. Where the language of a statute is

plain and unambiguous, we determine legislative intent from the ordinary meaning of the language used. In considering the meaning of a statute, we construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. We construe the statute so that no word is left void, superfluous or insignificant, *135 and we give meaning and effect to every word in the statute, if possible. *Id.* at 495, 292 S.W.3d at 294 (quoting *Great Lakes Chem. Corp. v. Bruner*, 368 Ark. 74, 82, 243 S.W.3d 285, 291 (2006) (citations omitted)). Section 7-5-807 provides in relevant part: (a) If ten (10) reputable citizens of any county shall file a complaint with the circuit judge within twenty (20) days after any election alleging that illegal or fraudulent votes were cast, that fraudulent returns or certifications were made, or that the Political Practices Act was violated, the circuit judge, if in his or her opinion there is good ground to believe the charges to be true, shall convene a special term at once unless the regular term is in session or will convene within thirty (30) days. Considering the plain language of this statute, it is apparent that Appellants' argument is without merit. First, nothing in the plain language of this statute prohibited the circuit court from considering the state police report in reviewing Appellants' complaint. Moreover, Appellants present us with only conclusory allegations, and no citation to authority, to support their contention that the circuit court could look only to the face of the complaint in making such a determination. It is axiomatic that where no citation to authority or convincing argument is offered, this court will decline to address the issue on appeal. *Norman v. Norman*, 347 Ark. 682, 66 S.W.3d 635 (2002). Appellants' attempted reliance on Ark.Code Ann. § 16-85-503(a) (Repl.2005) describing the role of a grand jury does not explain why the circuit court was prohibited from considering the state police report. Second, and more importantly, the statute provides that a grand jury will be convened only where the circuit judge "if in his or her opinion" determines "there is good ground to believe the charges to be true." Ark.Code Ann. § 7-5-807(a) (emphasis added). The drafters of this statutory provision endowed the circuit court with great latitude in deciding whether to convene a grand jury, and this court cannot supplant its opinion for that of the circuit court. Finally, we find no merit to Appellants' contention that they have been denied their First Amendment right to a free and fair vote because they are left with no remedy at law, where the circuit court dismissed their complaint and where no other agency would complete a thorough investigation of their complaint. Again, this is a conclusory allegation unsupported by convincing argument or authority. *Norman*, 347 Ark. 682, 66 S.W.3d 635. Nevertheless, it is a meritless argument, as Appellants clearly had a remedy, the filing and review of a complaint in circuit court. The fact that Appellants did not prevail does not mean that they were without a remedy at law. Affirmed.

NOTES

[1] The complaint listed other events including stopping use of a local business owner who supported candidate Best, issuing a warrant for Hagenbaugh's sister on a hot-check charge, and searching a home after an emergency call was placed when someone there suffered an allergic reaction. Appellants alleged that these events were the direct result of political intimidation.

