

SUPREME COURT OF KENTUCKY

Charles Hardin, M.D. v. John Montgomery

Hardin v. Montgomery · No. 2015-SC-000572-DGE; 2015-SC-000575-DGE · Decided September 21, 2016

SUMMARY

The Kentucky Supreme Court reversed the lower courts' decision setting aside the 2014 Magoffin County judge executive election and declaring the office vacant. The court held that although election-law irregularities and absentee-voting deficiencies occurred, John Montgomery failed to prove that they affected the result or rendered the vote tally substantively unreliable. The court concluded that Charles Hardin was entitled to occupy the office based on the tabulated election results.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Venters
JURISDICTION	Kentucky
DECIDED	September 21, 2016
DOCKET	2015-SC-000572-DGE; 2015-SC-000575-DGE
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Charles Hardin, the Magoffin County Board of Elections, and related officials sought review of a Court of Appeals decision affirming the Magoffin Circuit Court's judgment setting aside the November 4, 2014 election for Magoffin County judge executive and declaring the office vacant. The Supreme Court of Kentucky granted discretionary review.
STANDARD OF REVIEW	In a bench trial, factual findings are reviewed for clear error and are upheld if supported by substantial evidence, with deference to the trial court's credibility determinations. Conclusions of law are reviewed de novo. Election results may be set aside only upon affirmative proof of fraud, intimidation, bribery, or violence sufficient to show that neither contestant nor contestee can fairly be adjudged elected.
PRECEDENTIAL VALUE	precedential
PARTIES	Charles Hardin, M.D., Magoffin County Board of Elections, Renee Arnett-Shepherd, Magoffin County Clerk, Carson Montgomery, in his official capacity as a member of the Magoffin County Board of Elections, Susie Salyer, in her official capacity as a member of the

Magoffin County Board of Elections, Justin Williams, in his official capacity as a member of the Magoffin County Board of Elections v. John Montgomery

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the trial court's deviation from the statutory timetable for taking evidence required reversal of the election-contest judgment.
2. Whether the trial court improperly relied on alleged election irregularities that were not specifically pleaded in the contest petition.
3. Whether irregularities in absentee-ballot applications, in-house absentee voting, and absentee-ballot counting required invalidation of some or all absentee ballots.
4. Whether alleged vote buying, county graveling and road work, and suspected signature discrepancies established fraud or bribery sufficient to void the election.
5. Whether failures by election officials to follow voter-identification, voter-assistance, and identity-confirmation procedures required rejection of votes from the Flat Fork precinct or invalidation of the election.
6. Whether the evidence established that neither Hardin nor Montgomery could fairly be adjudged elected under KRS 120.165(4).

HOLDINGS

1. A trial court's failure to make a formal written finding of cause for extending the statutory timetable under KRS 120.165(2) does not require reversal where the court acted within its statutory discretion, the case was complex, and the deviation did not prejudice the parties.
2. Violations of absentee-ballot procedures do not invalidate absentee ballots or the election absent proof that the violations affected the electoral outcome or were sufficiently serious to undermine the integrity of the absentee vote.
3. An election-law requirement is directory, rather than mandatory, when its violation does not affect the actual merits or validity of the election; directory violations do not invalidate election results absent proof that they affected the outcome.
4. Proof of one illegally purchased vote, without unimpeachable evidence that the winning candidate or persons acting with the candidate's knowledge, consent, or procurement violated the Corrupt Practices Act, is insufficient to void an election when the remaining margin is not overcome.

5. Failures by election officials to follow voter-identification, identity-confirmation, and voter-assistance procedures, and unproven signature discrepancies, do not justify rejecting an entire precinct's votes or voiding an election absent proof that illegal votes were cast and affected the result.
6. An election may be set aside only when affirmative proof establishes fraud, intimidation, bribery, or violence so substantial that neither contestant nor contestee can reasonably be adjudged fairly elected; when tainted votes can be identified and the result fairly determined, the court must sustain the election.

KEY QUOTATIONS

"Elections are not lightly set aside." (at 6)

"Showing that the vote tally looks suspicious is not the same thing as proving the illegality of the votes tallied." (at 14)

"The contestant failed to meet the burden of affirmatively proving fraud, intimidation, bribery, or violence in the conduct of the election such that the incumbent cannot be adjudged to have been unfairly elected." (at 42)

FACTUAL BACKGROUND

In the November 4, 2014 election for Magoffin County judge executive, the certified totals gave Charles Hardin 3,281 votes and John Montgomery 3,253 votes, a twenty-eight-vote margin. Montgomery challenged the election based on alleged absentee-ballot irregularities, failures to follow voter-identification and voter-assistance procedures, vote buying, county road and gravel work, and allegedly forged voter signatures. The trial court found some procedural violations and one sufficiently supported vote purchase involving Jerry Adams, but the Supreme Court concluded that the proven irregularities did not establish enough illegal votes or corruption to undermine the certified result.

PROCEDURAL HISTORY

John Montgomery filed a statutory election contest in Magoffin Circuit Court under KRS 120.155, challenging Charles Hardin's twenty-eight-vote victory. After a bench trial, the circuit court found various election irregularities and concluded that fraud and bribery made it impossible to determine that either candidate had been fairly elected; it voided the election and declared the office vacant. The Court of Appeals affirmed. The Supreme Court reversed, directed dismissal of the election contest, and ordered that Hardin assume the office based on the certified results.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the Court of Appeals' opinion; remand to the Magoffin Circuit Court to dismiss the election-contest petition, enter an order authorizing Charles Hardin, M.D., to assume the office of Magoffin County judge executive to which he was elected, and conduct any other proceedings necessary to implement the mandate.

CASES CITED

- McClendon v. Hodges, 272 S.W.3d 188, 190 (Ky. 2008)
- Moore v. Asente, 110 S.W.3d 336, 354 (Ky. 2003)
- Stewart v. Wurts, 135 S.W. 434, 439 (Ky. 1911)
- Skain v. Milward, 127 S.W. 773, 778 (Ky. 1910)
- Ragan v. Burnett, 305 S.W.2d 759, 760 (Ky. 1957)
- Warren v. Rayburn, 267 S.W.2d 720, 721 (Ky. 1954)
- Arnett v. Hensley, 425 S.W.2d 546, 553 (Ky. 1968)
- Varney v. Justice, 6 S.W. 457, 459 (Ky. 1888)
- Skaggs v. Fyffe, 98 S.W.2d 884, 886 (Ky. 1936)
- Jarboe v. Smith, 350 S.W.2d 490, 493 (Ky. 1961)
- Humbert v. Heyburn, 42 S.W.2d 538, 541 (Ky. 1931)
- Bryan v. Gilpin, 282 S.W.2d 133, 135 (Ky. 1955)
- Gross v. Cawood, 109 S.W.2d 597, 598 (Ky. 1937)
- Beauchamp v. Willis, 189 S.W.2d 938, 941 (Ky. 1945)
- Anderson v. Likens, 47 S.W. 867 (Ky. 1898)
- Hendrickson v. Coign, 200 S.W.2d 905, 907 (Ky. 1947)
- Marilla v. Ratterman, 273 S.W. 69, 74 (Ky. 1925)
- Hall v. Martin, 208 S.W. 417, 419 (Ky. 1919)
- Upton v. Knuckles, 470 S.W.2d 822, 827 (Ky. 1971)
- Pickard v. Jones, 243 S.W.2d 46, 49 (Ky. 1951)
- Combs v. Combs, 97 S.W. 1127 (Ky. 1906)
- Scholl v. Bell, 102 S.W. 248 (Ky. 1907)

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