

SUPREME COURT OF OHIO

State ex rel. Allen v. Warren County Board of Elections

115 Ohio St. 3d 186 (Ohio 2007) · Decided September 17, 2007

SUMMARY

The Ohio Supreme Court granted a writ of mandamus compelling the Warren County Board of Elections to accept and certify the relators’ nonpartisan candidacies for Mason Municipal Court judge and place their names on the November 6, 2007 ballot. The court held that the board improperly applied the political-party nonaffiliation requirement for independent candidates to nonpartisan candidates.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Pfeifer; Lundberg Stratton; O'Connor; O'Donnell; Lanzinger; Cupp
JURISDICTION	Ohio
DECIDED	September 17, 2007
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original action for a writ of mandamus seeking to compel the Warren County Board of Elections and its members to accept and certify the relators' nominating petitions and place their names on the November 6, 2007 ballot as nonpartisan candidates for Mason Municipal Court judge.
STANDARD OF REVIEW	Mandamus requires proof of a clear legal right, a clear legal duty, and the absence of an adequate remedy in the ordinary course of law. To establish the right and duty, relators must show that the board engaged in fraud, conspiracy, abuse of discretion, or clear disregard of applicable statutes or other pertinent law.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential
PARTIES	Mitchell W. Allen, James A. Whitaker Jr., George M. Parker v. Warren County Board of Elections, Members of the Warren County Board of Elections

TOPICS

election law

ballot access

election administration

statutory interpretation

remedies

PRACTICE AREAS

election law

mandamus

administrative law

statutory interpretation

QUESTIONS PRESENTED

1. Whether the relators were entitled to a writ of mandamus compelling certification of their nonpartisan candidacies and placement on the ballot.
2. Whether Ohio law imposed an unaffiliation or disaffiliation requirement on nonpartisan candidates for municipal court judge.
3. Whether the board of elections abused its discretion or clearly disregarded applicable law by applying the independent-candidate affiliation requirement to the relators.

HOLDINGS

1. The relators were entitled to a writ of mandamus because they had a clear legal right to certification and ballot placement, the board had a corresponding clear legal duty, and the proximity of the election left them without an adequate remedy in the ordinary course of law.
2. Ohio law does not impose an unaffiliation or disaffiliation requirement on nonpartisan candidates for municipal court judge merely because their petitions must conform to petition requirements applicable to independent candidates.
3. The board abused its discretion and clearly disregarded applicable law by applying an independent-candidate nonaffiliation requirement to the relators' nonpartisan candidacies.

KEY QUOTATIONS

“where a proposed candidate strictly follows all the requirements stated in the statute governing the candidacy, [the candidate] is not required to do things required by another statute concerned with a different class of candidates.” (¶ 19)

“Based on the foregoing, relators have established that they are entitled to the requested extraordinary relief in mandamus.” (¶ 21)

FACTUAL BACKGROUND

Mitchell W. Allen, James A. Whitaker Jr., and George M. Parker submitted properly completed nominating petitions with sufficient valid signatures to run as nonpartisan candidates for Mason Municipal Court judge. Each satisfied the statutory qualifications for the office, but each was a registered Republican who voted in the May 8, 2007 Republican primary after filing the petitions. The Warren County Board of Elections refused to certify their candidacies, relying on a Secretary of State advisory opinion and *Morrison v. Colley*, authorities concerning independent candidates and affiliation with political parties.

PROCEDURAL HISTORY

The board voted not to certify the relators' petitions after they voted in the Republican primary following submission of their petitions. Allen filed an original mandamus action, and the relators filed an amended complaint. The board answered and moved for judgment on the pleadings; the Supreme Court of Ohio granted an alternative writ, ordered expedited briefing and evidence, denied oral argument, and granted the writ on the merits.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The Warren County Board of Elections and its members were ordered to accept and certify the relators' candidacies and place their names on the November 6, 2007 general election ballot as candidates for Mason Municipal Court judge.

CASES CITED

- Rust v. Lucas Cty. Bd. of Elections, 108 Ohio St. 3d 139, 2005-Ohio-5795, 841 N.E.2d 766, ¶¶ 7-8
- State ex rel. Gemienhardt v. Delaware Cty. Bd. of Elections, 109 Ohio St. 3d 212, 2006-Ohio-1666, 846 N.E.2d 1223, ¶ 29
- Morrison v. Colley, 467 F.3d 503 (6th Cir. 2006)
- In re Election of Member of Rock Hill Bd. of Edn., 76 Ohio St. 3d 601, 669 N.E.2d 1116 (1996)
- State ex rel. Reese v. Cuyahoga Cty. Bd. of Elections, 115 Ohio St. 3d 126, 2007-Ohio-4588, 873 N.E.2d 1251, ¶ 33
- State ex rel. Nagin v. Celebrezze, 63 Ohio St. 2d 323, 17 O.O.3d 391, 410 N.E.2d 762 (1980)
- State ex rel. Leslie v. Duffy, 164 Ohio St. 178, 57 O.O. 371, 129 N.E.2d 632 (1955)
- State ex rel. Altieri v. Trumbull Cty. Bd. of Elections, 65 Ohio St. 3d 164, 602 N.E.2d 613 (1992)
- State ex rel. Davis v. Pub. Emps. Retirement Bd., 111 Ohio St. 3d 118, 2006-Ohio-5339, 855 N.E.2d 444, ¶ 16

OPINION

PER CURIAM.

Per Curiam. {¶ 1} This is an original action for a writ of mandamus to compel a board of elections and its members to accept and certify the nominating petitions of certain candidates for municipal court judge and to place the candidates' names on the November 6, 2007 election ballot.

Because the board of elections abused its discretion and clearly disregarded applicable law by refusing to certify relators' nonpartisan candidacies for municipal court judge based on an advisory opinion and authorities that apply to independent candidates rather than nonpartisan candidates, we grant the writ. {¶ 2} On or before May 7, 2007, relators, Mitchell W. Allen, James A. Whitaker

Jr., and George M. Parker, filed nominating petitions to become nonpartisan candidates for Mason Municipal Court judge at the November 6, 2007 general election.

Relators' nominating petitions were completed properly without any irregularities, and the petitions contained a sufficient number of valid signatures for relators to be candidates for Mason Municipal Court judge. The petition forms that relators completed contained no declaration that they were unaffiliated with any political party. {¶ 3} Relators also satisfied the R.C.

1901.06 statutory qualifications to be a municipal court judge — each is a qualified elector and resident of the territory of the Mason Municipal Court, each is admitted to the practice of law in Ohio, and each has engaged in the practice of law in Ohio for at least six years preceding the commencement of the term of office for which he is requesting to be a candidate. *187{¶ 4} Relators are registered Republicans, and each participated in the May 8, 2007 Republican primary election. {¶ 5} On July 3, respondent Warren County Board of Elections held a regular meeting at which it voted not to certify the validity of relators' candidate petitions.

The board based its decision “upon Secretary of State Advisory Opinion No. 2007-05 and cases cited therein” because after relators filed to be candidates for municipal court judge, they voted in the Republican primary election. Relators thereafter received letters from the board notifying them of the board's decision. {¶ 6} On July 17, relator Allen filed this action for a writ of mandamus.

A few days later, relators, Allen, Whitaker, and Parker, filed an amended complaint for a writ of mandamus to compel respondents, the Warren County Board of Elections and its members, to accept and certify their nominating petitions and to place their names on the November 6 general election ballot as candidates for judge of the Mason Municipal Court. Allen also filed requests for expedited review and oral argument.

The board and its members filed an answer to the amended complaint and a motion for judgment on the pleadings. We granted an alternative writ and ordered an expedited briefing and evidence schedule. {¶ 7} This cause is now before the court for our consideration of the merits. Mandamus {¶ 8} To be entitled to the requested writ of mandamus, relators must establish a clear legal right to certification of their candidacies and placement of their names on the November 6 election ballot, a corresponding clear legal duty on the part of the board of elections and its members to certify their candidacies and place their names on the ballot, and the lack of an adequate remedy in the ordinary course of the law.

Rust v. Lucas Cty. Bd. of Elections, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766, ¶ 7. Given the proximity of the November 6 election, relators lack an adequate remedy in the ordinary course of law. State ex rel. Gemienhardt v. Delaware Cty. Bd. of Elections, 109 Ohio St.3d 212, 2006-Ohio-1666, 846 N.E.2d 1223, ¶ 29. {¶ 9} For the remaining requirements, to establish the requisite legal right and legal duty, relators “must prove that the board of elections engaged in

fraud, conspiracy, abuse of discretion, or clear disregard of statutes or other pertinent law.” Rust at ¶ 8; State ex rel.

Valore v. Summit Cty. Bd. of Elections (1999), 87 Ohio St.3d 144, 145, 718 N.E.2d 415. {¶ 10} Relators claim that the board of elections abused its discretion and clearly disregarded applicable law by relying on Secretary of State Advisory Opinion No. 2007-05 and cases cited therein to reject relators’ candidacies for Mason Municipal Court judge.

In her advisory opinion, the secretary advised all *188county boards of elections that — based on Morrison v. Colley (C.A.6, 2006), 467 F.3d 503 — R.C. 3513.257 requires that (1) “an independent candidate actually be unaffiliated, or disaffiliated, from any political party” and (2) “the required claim of unaffiliation by an independent candidate must be made in good faith.” Secretary of State Advisory Opinion.

No. 2007-05, 3. {¶ 11} The secretary of state further specified: {¶ 12} “Absent direction from the General Assembly or a court, this office is attempting to provide some guidance on this matter to the boards of elections.

Thus: {¶ 13} “If an independent candidate votes in a party primary election after filing as an independent, the candidate is not actually unaffiliated, and the candidate’s claim of independence was not made in good faith or is no longer current, and {¶ 14} “If an independent candidate was on a political party’s central or executive committee at the time he or she filed as an independent candidate, or becomes such a committee member at any time during his or her independent candidacy, the candidate is not actually unaffiliated, and the candidate’s claim of independence was either not made in good faith or is no longer current.” Id. at 3-4. {¶ 15} In Morrison, the United States Court of Appeals for the Sixth Circuit affirmed the denial of a prospective candidate’s applications for injunctive relief to prevent a board of elections and its members from excluding him from an election ballot as an independent candidate for federal congressional representative.

The court of appeals held that the prospective candidate’s claim of party nonaffiliation had to be made in good faith when he filed his independent-candidacy petition. The court determined that that claim was not made in good faith, because the filer had voted in the Republican primary election the day after he filed his petitions and had been certified as a candidate in the Republican primary for state and county Republican Party central committee positions.

467 F.3d 503. {¶ 16} The board in the instant case relied on the advisory opinion and Morrison to decide not to certify relators’ candidacies because after filing nominating petitions to be nonpartisan candidates for municipal court judge, the relators voted in the May 8 Republican primary election. See R.C. 3501.11(P) (each board of elections shall perform duties “prescribed by

law or the rules, directives, or advisories of the secretary of state”); but, cf., *In re Election of Member of Rock Hill Bd. of Edn.*

(1996), 76 Ohio St.3d 601, 609-610, 669 N.E.2d 1116 (board of elections could not rely on secretary of state advisory opinion that erroneously interpreted election statute). *189{¶ 17} The board erred in relying on the advisory opinion because relators are nonpartisan candidates rather than independent candidates for judge. Independent candidates must claim “not to be affiliated with a political party.” R.C.

3501.01(1). Nonpartisan candidates have no comparable requirement. R.C. 3501.01(J). R.C. 1901.07(B) specifies that candidates for municipal court judge may generally be nominated either by nominating petition or by primary election, provided that the court’s jurisdiction extends beyond the corporate limits of the municipal corporation in which the court is located.

This provision authorizes nonpartisan candidacies for the Mason Municipal Court, whose jurisdiction includes Deerfield Township in Warren County. R.C. 1901.02(B). {¶ 18} Although under R.C. 1901.07(B) nonpartisan candidates for municipal court judge must have their petitions “conform to the requirements provided for those petitions of candidacy contained in section 3513.257 of the Revised Code,” which governs petition requirements for independent candidates, nothing in R.C.

3513.257 requires that nonpartisan candidates be unaffiliated or disaffiliated from a political party. *State ex rel. Reese v. Cuyahoga Cty. Bd. of Elections*, 115 Ohio St.3d 126, 2007-Ohio-4588, 873 N.E.2d 1251, ¶ 33.

Moreover, neither the advisory opinion nor *Morrison* specifies that it applies to nonpartisan, as opposed to independent, candidates. See *id.* {¶ 19} In effect, the board of elections and its members demanded that relators comply with a nonaffiliation requirement applicable to independent candidates when that requirement is not imposed by statute on nonpartisan candidates like relators.

The board and its members abused their discretion and clearly disregarded applicable law by doing so. “ ‘[W]here a proposed candidate strictly follows all the requirements stated in the statute governing the candidacy, [the candidate] is not required to do things required by another statute concerned with a different class of candidates.’ ” *State ex rel. Nagin v. Celebrezze* (1980), 63 Ohio St.2d 323, 325, 17 O.O.3d 391, 410 N.E.2d 762, quoting *State ex rel.*

Leslie v. Duffy (1955), 164 Ohio St. 178, 183-184, 57 O.O. 371, 129 N.E.2d 632. {¶ 20} Finally, the board’s position is also inconsistent with our directive that words limiting the right of a person to hold office should be liberally construed in favor of those seeking to hold office, in order that the public may have the benefit of choosing from all persons who are qualified.

State ex rel. Altieri v. Trumbull Cty. Bd. of Elections (1992), 65 Ohio St.3d 164, 165, 602 N.E.2d 613. {¶ 21} Based on the foregoing, relators have established that they are entitled to the requested extraordinary relief in mandamus.

Therefore, we grant a writ of mandamus to compel the board and its members to accept and certify relators' candidacies and place their names on the November 6, 2007 general election ballot as candidates for judge of the Mason Municipal Court. This result is consistent with our recent decision in Reese.

We deny relator Allen's request for *190oral argument, because the parties' briefs and evidence are sufficient to resolve the issues raised in this case. State ex rel. Davis v. Pub. Emps. Retirement Bd., 111 Ohio St.3d 118, 2006-Ohio-5339, 855 N.E.2d 444, ¶ 16.

The Law Firm of Curt C. Hartman and Curt C. Hartman, for relators Mitchell W. Allen and Jim Whitaker Jr. George M. Parker, pro se. Rachel A. Hutzler, Warren County Prosecuting Attorney, and Keith W. Anderson, Assistant Prosecuting Attorney, for respondents. Writ granted. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.