

SUPREME COURT OF ARKANSAS

Kelly v. Martin

2014 Ark. ____ · No. CV-14-367 · Decided May 14, 2014

SUMMARY

The Supreme Court of Arkansas affirmed a circuit court ruling that Timothy D. Fox remained eligible to run for circuit judge despite failing to pay his annual attorney license fee for approximately 45 days. The court held that an automatic suspension from the practice of law for nonpayment limited Fox’s privilege to practice but did not terminate his license, so he satisfied Amendment 80’s requirement that a circuit judge be a licensed attorney for at least six years immediately preceding assuming office. The court also rejected Kelly’s res judicata argument.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Josephine Linker Hart; Raymond R. Abramson; Woody Bassett; Todd Turner
JURISDICTION	Arkansas
DECIDED	May 14, 2014
DOCKET	CV-14-367
DISPOSITION	affirmed
PROCEDURAL POSTURE	Expedited appeal from an order of the Pulaski County Circuit Court denying a pre-election challenge and finding Timothy D. Fox eligible to be a candidate for circuit judge.
STANDARD OF REVIEW	The court interpreted the Arkansas Constitution and related court rules according to their plain and ordinary meaning, considering the constitutional provisions and rules together.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential value is not otherwise characterized in the source.
PARTIES	John K. Kelly v. Mark Martin, in his official capacity as the Secretary of State for the State of Arkansas, Rob Hill, Lou Ann Carter, and Jeff Olmsted, in their official capacities as the commissioners of the Perry County Election Commission, Leonard A. Boyle, Sr., Chris Burks, and Alex Reed, in their official capacities as the commissioners of the Pulaski County Election Commission, Timothy D. Fox

TOPICS

ballot access election law constitutional law statutory interpretation appellate procedure

PRACTICE AREAS

election law constitutional law appellate procedure statutory interpretation

QUESTIONS PRESENTED

1. Whether the Arkansas Supreme Court had appellate jurisdiction over the expedited appeal concerning Fox's eligibility to appear on the ballot.
2. Whether an attorney automatically suspended from the practice of law for failing to pay the annual license fee remains a licensed attorney under amendment 80, section 16(B) of the Arkansas Constitution.
3. Whether Fox was eligible to be a candidate for circuit judge despite the forty-five-day suspension for delinquent payment of his annual license fee.
4. Whether res judicata barred the circuit court from deciding Fox's eligibility because another circuit court had considered similar issues involving a different candidate.

HOLDINGS

1. The Supreme Court of Arkansas may hear the appeal because it pertains to elections and election procedure.
2. An attorney who is automatically suspended from practicing law for failing to pay the annual license fee remains a licensed attorney because the suspension limits the privilege to practice law but does not terminate the attorney's license or remove the attorney's name from the list of licensed attorneys.
3. Fox was eligible to be a candidate for circuit judge because he remained a licensed attorney during the forty-five-day period in which he was suspended from practicing law and had been admitted to the bar more than six years before assuming office.
4. Res judicata did not bar adjudication of Fox's eligibility because Fox's eligibility had not been litigated in the other case.

KEY QUOTATIONS

“a lawyer under suspension remains licensed, because that license has not been terminated and has not resulted in the removal of the lawyer’s name from the list of licensed attorneys; it is only the lawyer’s privilege to engage in the practice of law that is limited.” (6)

“even though Judge Fox failed to pay his annual license fee for forty-five days in 2013, he nevertheless remained a licensed attorney during the period of delinquency because his license was not terminated and his name was not removed from the list of licensed attorneys.” (10)

FACTUAL BACKGROUND

Timothy D. Fox had been admitted to the Arkansas bar in 1981 and was serving the final year of a six-year term as a circuit judge. His annual attorney-license fee was due March 1, 2013; he paid the \$200 fee and a \$100 late fee on April 16, 2013, resulting in a forty-five-day automatic suspension from the practice of law. Fox sought election to continue serving as circuit judge, with the new term to begin in January 2015. Kelly argued that the suspension meant Fox had not been a licensed attorney for the six years immediately preceding the date he would assume office.

PROCEDURAL HISTORY

Kelly petitioned the Pulaski County Circuit Court for a writ of mandamus and declaratory judgment seeking to remove Fox from the ballot. The circuit court found that Fox had been delinquent in paying his annual license fee and had been automatically suspended from practicing law, but concluded that the suspension did not revoke or terminate his license and that Fox remained an eligible candidate. Kelly appealed. Fox filed a third-party appeal concerning dismissal of his complaint against the clerk of the Arkansas Supreme Court and Court of Appeals, but raised no issue from that dismissal on appeal.

DISPOSITION

affirmed

CASES CITED

- *Zolliecoffer v. Post*, 371 Ark. 263, 265 S.W.3d 114 (2007)
- *City of Fayetteville v. Washington Cnty.*, 369 Ark. 455, 255 S.W.3d 844 (2007)
- *In re Sup. Ct. License Fees*, 251 Ark. 800, 483 S.W.2d 174 (1972)
- *Wells v. Riviere*, 269 Ark. 156, 599 S.W.2d 375 (1980)
- *Richard v. Union Pac. R.R. Co.*, 2012 Ark. 129, 388 S.W.3d 422 (2012)
- *Salley v. Cent. Ark. Transit Auth.*, 326 Ark. 804, 934 S.W.2d 510 (1996)
- *Walden v. State*, 2014 Ark. 193
- *Crockett v. C.A.G. Invs., Inc.*, 2011 Ark. 208, 381 S.W.3d 793 (2011)
- *Harris v. City of Little Rock*, 344 Ark. 95, 40 S.W.3d 214 (2001)
- *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998)
- *In re Lewis*, 308 Ark. 610, 826 S.W.2d 264 (1992) (per curiam)
- *Widmer v. Widmer*, 288 Ark. 381, 705 S.W.2d 878 (1986)
- *Dep't of Career Educ., Div. of Rehab. Servs. v. Means*, 2013 Ark. 173