

SUPREME COURT OF KENTUCKY

Franklin v. Lambert

41 S.W.3d 852 (Ky. 2001) · Decided April 26, 2001

SUMMARY

The Kentucky Supreme Court considered whether SCR 1.060(4) limits a person seeking appointment as circuit court clerk to a single special qualifying examination. The court held that the rule does not prohibit multiple examinations in the vacancy-appointment context, denied Franklin’s requested writ of prohibition, and directed that Pelfrey’s examination results be released and certified.

OPINION

LAMBERT, J.

LAMBERT, Chief Justice. The issue presented is whether SCR 1.060(4), a provision which requires a special qualifying examination for applicants seeking appointment to the office of circuit court clerk upon the occurrence of a vacancy, limits the number of times that the examination may be administered to any one person.

To resolve this issue of first impression, we must look to the specific language of SCR 1.060(4), as well as KRS 30A.150, the statute governing the appointment process. We will also address the policies underlying the examination of persons aspiring to the office of circuit court clerk.

The facts of this case are as follows. In December 2000, following the retirement announcement of the Morgan Circuit Court Clerk, Circuit Judge Samuel C. Long designated Petitioner, Darby Franklin, and Intervening Respondent, Donna Pelfrey, to be administered a special clerk’s examination pursuant to SCR 1.060(4) for the purpose of determining their eligibility to fill the vacancy.

To be qualified, an applicant for circuit court clerk must receive a grade of 70% or more on the examination.¹ After eligibility is determined, the appointment is made by the chief circuit judge pursuant to KRS 30A.150 until a replacement is elected as provided in section 152 of the Constitution of Kentucky. Upon receiving the designations set forth above, the Administrative Office of the Courts (“AOC”) prepared the examination and administered it to both applicants on January 5, 2001.

The examination was first graded electronically. Franklin received a passing grade on the examination; Pelfrey did not. Pelfrey’s examination was later re-graded by hand, as provided by internal AOC policy for applicants who have scored between 65% and 70%. Pelfrey’s score was

determined to be 69.25%. Prior to taking the test, Pelfrey wrote AOC a letter identifying various differences between the printed study materials and prevailing office practices.

As a result of this complaint, there was a second review of Pelfrey's examination, and it revealed an error in the answer key. Accordingly, Pelfrey's final score was determined to be 69.85%. On January 22, 2001, Judge Long contacted AOC and requested that Pelfrey be given another opportunity to take the examination.

In support of his request, Judge Long cited Pelfrey's many years of deputy clerk service, her extremely close to passing score, and the alleged flawed study materials. AOC agreed to allow Pelfrey to re-take the examination, and she took it again on January 26, 2001. This examination has been graded, yet the results have not been certified or released. Upon learning that Pelfrey had been allowed to re-take the examination, Franklin sent AOC a letter of protest.

He then filed a motion in this Court pursuant to *854CR 57 and CR 76.36 seeking to prohibit Cicely Jaracz Lambert, in her official capacity as Director of AOC, from administering the special examination more than once to any candidate, from grading any additional examination that had already been administered, and from certifying the results of any additional examination.

Franklin also filed a motion for intermediate relief, seeking to prohibit AOC from releasing or certifying the results of the January 26 special examination pending this Court's ruling on the underlying motion. This Court granted Franklin's motion for intermediate relief, and also stayed the appointment process provided for in KRS 30A.150 until further order of the Court.

SCR 1.060(4) provides as follows: In the event of a vacancy in the office of the circuit court clerk, a special examination shall be prepared by the Administrative Office of the Courts to be administered to such person or persons designated by the chief circuit judge responsible for filling the vacancy by appointment, and to be administered to prospective candidates for election to fill the unexpired term.

Franklin contends that SCR 1.060(4) prohibits the administration of more than one special examination when there is a vacancy to be filled by appointment. He construes the language "a special examination shall be" to be a limit of one special examination because the phrase is in the singular.

We do not interpret the rule so narrowly. The language used neither prohibits nor explicitly authorizes the administration of multiple examinations. The language is quite general in nature, as it merely mandates that a special examination be administered and that AOC be the agency responsible for preparation of the examination.

In fact, the rule simply does not address a situation, as here, in which there were two applicants for the appointment where one passed and the other failed, but the appointing authority requested

a second examination for the failing applicant. There could be no doubt that if both applicants had failed, a subsequent examination would have been necessary.² The language of the rule does not address contingencies and its failure of specificity in this regard should lead to a broad construction, provided, however, that the distinction between applicants for appointment and persons taking the examination to gain ballot access be clearly understood.

See, *infra*. The only case construing the provisions of SCR 1.060 is *Combs v. Huff*.³ In *Combs*, two persons wanted to run for the office of Knott Circuit Court Clerk on the Democratic ticket in 1993. Huff was exempt from taking the examination by virtue of his incumbency. Combs took the test but did not receive a passing grade. Combs sought to be a candidate, nevertheless, arguing that he was entitled to a post-election opportunity to take the examination to gain certification.

This Court affirmed the rule and held that eligibility for the office must be determined prior to gaining access to an election ballot.⁴ *Combs* was thus prevented from running for office. *Franklin* reads *Combs* to impose a limit of one examination, but we distinguish *Combs* from the instant case because it *855 dealt with the clerk's examination administered to persons seeking the office through the electoral process, not to persons seeking appointment to a vacancy.

The critical distinction is twofold: in the event of a vacancy, KRS 30A.150 requires that the chief circuit judge appoint a qualified successor, and the appointment must occur within a limited amount of time. Specifically, KRS 30A.150 provides, Whenever a vacancy occurs in the office of the clerk, the chief judge of the judicial circuit shall within thirty (30) days appoint a qualified successor to the office who shall serve until replaced as provided by Section 152 of the Constitution.

Necessarily, therefore, the views of the chief circuit judge, by virtue of being the appointing authority, are entitled to considerable weight. The responsibility to appoint a "qualified" person within a short time confers on the judge the power to require a subsequent examination even if one or more persons so examined have passed the first examination. Our view as to the distinction between election and appointment and its effect on the examination process is strengthened by reference to SCR 1.060(3) and (4).

SCR 1.060(3) is detailed as to the requirements of the examination, and SCR 1.060(1) mandates successful completion before a candidate is qualified. As determined in *Combs v. Huff*, success on the examination is a prerequisite for seeking the office.

In contrast, SCR 1.060(4) is without any such specificity, as all the circumstances that might arise in the process of filling a vacancy could not be reasonably anticipated. This Court is not unmindful of language appearing in *Combs v. Huff* in which we describe multiple examinations as an "absurdity," and we do not retreat from this view.

However, we are persuaded from the text and architecture of the relevant constitutional, statutory, and rules provisions that in this circumstance, the possibility of multiple examinations must be tolerated. In that context, we note that any person appointed to fill a vacancy will occupy the office only until the next opportunity of the voters to choose the official.

Upon the foregoing reasons, the request for a writ of prohibition is hereby denied, and the results of Pelfrey's examination shall be released and certified. The stay of proceedings entered herein on January 26, 2001, is hereby vacated. IT IS SO ORDERED. COOPER, and JOHNSTONE, JJ., concur. KELLER, J., files a separate concurring opinion. WINTERSHEIMER, J., dissents by separate opinion in which GRAVES, J., joins.

STUMBO, J., not sitting.. SCR 1.060(2).. Just such a situation occurred in December, 1994, when a person designated to take a vacancy test for Cumberland County Circuit Court clerk failed. She was re-tested, along with another person, and both received passing grades.. Ky., 858 S.W.2d 160 (1993).. See SCR 1.060(3).