

No. 1-13-0789

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JARRY SHELBY,)
)
Petitioner-Appellant,) Appeal from
) the Circuit Court
) of Cook County
v.)
) No. 13 COEL 47
MUNICIPAL OFFICERS ELECTORAL BOARD FOR)
THE VILLAGE OF BROADVIEW AND ITS MEMBERS,) Honorable
<i>et al.</i> ,) Edmond Ponce De Leon,
) Judge Presiding.
Respondents-Appellees.)
)

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Quinn concurred in the judgment.

ORDER

Held: Electoral Board's decision finding candidates' nomination papers to be properly filed was not clearly erroneous.

¶ 1 This action originated in front of the Municipal Officers Electoral Board (Electoral Board) for the Village of Broadview to remove the names of candidates Sherman Jones, Kevin McGrier, Nicole Benson, Garnet Walters (the candidates), as well as the name of the Broadview

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First Party, from the ballot for various municipal offices in the Village of Broadview for the April 9, 2013, consolidated general election. Jarry Shelby, the objector, alleged various deficiencies in the candidates' nomination papers. The Electoral Board overruled the objections in each of Shelby's petitions. Shelby then filed a petition for judicial review in the circuit court, challenging the Electoral Board's decision. The circuit court affirmed the Electoral Board's decision finding the candidates' nomination papers to have been properly filed, and Shelby now appeals.¹

¶ 2

I. BACKGROUND

¶ 3 On December 26, 2012, the candidates filed their nomination papers for the April 9, 2013, consolidated election with the Village of Broadview. On January 3, 2013, Jarry Shelby filed objections to the nomination papers of the candidates, which included an allegation that the nomination papers were not timely or properly filed. A call for a hearing on the objections was duly issued and served upon the members of the Electoral Board. Public hearings were held at the Broadview village hall on January 20, 2013; January 28, 2013; January 29, 2013; February 1, 2013; February 2, 2013; February 3, 2013; February 5, 2013; February 6, 2013; and February 9, 2013. At those hearings, the following testimony was heard.

¶ 4 Kevin McGrier, one of the candidates, testified that he was in attendance at both the December 3, 2012, and December 17, 2012, board meeting where the Broadview village clerk, Maxine Johnson, announced her hours for accepting nomination papers. McGrier testified that

¹This court issued an order affirming the judgment of the circuit court with the proviso, "with this court's opinion to follow."

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he filed the nomination papers for the candidates on December 26, 2012. He brought the papers to the village hall between 1:30 p.m. and 3 p.m. and handed them to the Lenore Sanchez, the deputy clerk for Broadview. Sanchez date-stamped each page and made a copy of each page, and then gave him a copy of the receipt, which read "2:19 p.m." McGrier testified that he understood that Johnson, the village clerk, would be accepting nomination papers between 3 p.m. and 5 p.m. that day. McGrier testified that the village clerk's office does not have a window, but the "village offices" do. McGrier was sitting in the mayor's office when he handed Sanchez the papers. McGrier testified that he had sent a text message to Sanchez at 12:36 p.m. to see what her availability was to receive nomination papers because the village clerk did not usually "respond to any communication."

¶ 5 McGrier testified that he went back to the village later that day to make Freedom of Information Act (FOIA) requests. He saw the village clerk at 4:53 at the village hall. She was on the administrative side of the village offices' window.

¶ 6 Lenore Sanchez, the deputy clerk, testified that she is employed by both the village of Maywood and the village of Broadview. She works full-time as the deputy village clerk for Maywood, and her duties are to serve in the absence of the village clerk, who is part-time. In December 2012, her hours were from 8:30 a.m. to 5 p.m., with a lunch break. On December 26, 2012, she was working in Maywood, accepting nomination petitions in the absence of the village clerk. She accepted petitions on the date in question in Maywood, and gave candidates a receipt for filing.

¶ 7 Sanchez testified that she was also a part-time deputy clerk for the village of Broadview.

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As the deputy clerk of Broadview, she assumed the responsibilities of the village clerk in the village clerk's absence. Sanchez testified that on the morning of December 26, 2012, she received a call from Sherman Jones, the mayor of Broadview, informing her that the village clerk of Broadview had called in sick, and asking her to come to the Broadview village hall that day in case any candidates filed nomination papers.

¶ 8 Sanchez indicated that she could go over to Broadview on her lunch break, and thereafter arrived at the village hall of Broadview at about 1:30 p.m. While at the village hall, she accepted nomination papers from McGrier. She was in the back offices, outside the village clerk's office, when she accepted the papers. Sanchez testified that she was given the papers at around 1:40 p.m. and took them to the front of the village offices to date-stamp them. She had to take apart a binder, which was difficult because she had to break a seal. The first date-stamped nomination paper had a time of 2 p.m., and the receipt for all of the nomination papers contained a completion time of 2:19 p.m. Sanchez then signed the receipt, gave McGrier a copy of the papers, and left the village hall with the original papers. Sanchez testified that only later did she find out that the village clerk had set hours to submit nomination papers that day from 3 p.m. to 5 p.m.

¶ 9 Sanchez testified that she took the documents with her because she did not have anywhere to leave the documents since the village clerk's office was closed and locked. Johnson later reached out to Sanchez asking if she had accepted any petitions in Broadview that day. Sanchez responded that she had and asked when they should be dropped off, but did not get a response. Johnson called her the next day and told her to bring the nomination papers to the

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village hall in Broadview. Sanchez dropped the papers off at approximately 4 p.m. on December 27, 2012. The village clerk then created another receipt for the nomination papers, which Sanchez signed, indicating the receipt time of 4:05 p.m. on December 27, 2012.

¶ 10 Sanchez testified that she had been employed by Broadview as deputy clerk since July 2008, when she was appointed by the board of trustees. Sometime in 2010 there was a budget cut that affected the village clerk's office, and the budget for Sanchez's salary was cut considerably. In July 2010, Sanchez sent a letter to the board of trustees explaining that she could not work at such a reduced salary and would have to resign if she had to work at the reduced salary. Johnson asked her to stay on, but Sanchez's duties were considerably reduced. Sanchez would then only do work for Broadview if someone from the village of Broadview called her and asked her to do something. She was never reappointed, but testified that a deputy clerk continues to serve until replaced, according to the statute.

¶ 11 Sherman Jones, the mayor of Broadview, testified that he was at the meeting where the village clerk announced the hours she would be accepting nomination papers. Jones testified that his plan was to bring the nomination papers for the Broadview First Party to the village clerk on Friday, December 21, 2012. Jones was notified on the 21st that the village clerk would not be coming in that day. Jones testified that the hours of the village offices on Wednesdays are from 8:30 a.m. to 2 p.m. Jones does not have a key to the village clerk's office, or the records room.

¶ 12 Jones further testified that on December 26, 2012, he had no communication with Maxine Johnson. He called Lenore Sanchez on December 26, 2012, and told her he needed to get nomination papers filed because Johnson had not been in on the previous Friday, and he did not

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know her hours for that day. Sanchez indicated that she could come to Broadview on her lunch hour, at around 1:30 p.m. Kevin McGrier arrived at the village hall at around the same time, and handed Sanchez the documents while in Jones' office. Sanchez went to date-stamp the documents and stated that she would let the village clerk know that they had been filed.

¶ 13 Jones testified that he appointed Sanchez to deputy clerk in 2009. Jones stated that in August 2010, there was allegedly a resignation email tendered. On April 18, 2011, there was an ordinance where Jones selected Lenore Sanchez as deputy clerk. It has been his custom every year to have an ordinance passed reappointing appointed officials.

¶ 14 Maxine Johnson, the village clerk, testified that she was elected in 2009. After being elected village clerk, she learned the duties and responsibilities from her mentor, Lenore Sanchez. Johnson testified that candidates submitted their nomination papers during the posted hours, through a window of the clerk's office. She then gave the candidates a receipt. She never authorized Lenore Sanchez to receive nomination papers.

¶ 15 Johnson testified that on December 26, 2012, she sent a text message to Sanchez, asking if anyone from Broadview had filed petitions with her. Sanchez responded, "yes," and Johnson asked why. Sanchez told Johnson that she was told Johnson was sick and was asked to come into Broadview to accept nomination papers. Sanchez told Johnson she would drop the papers off in the morning, but did not do so until after 4 p.m. on December 27, 2012.

¶ 16 Johnson testified that Sanchez would fill in for her and complete her duties if Johnson was absent. She did so in 2012 when Johnson was in a car accident. Johnson testified that she does not have set office hours, but tries to stick to 20 hours a week, which is required of the

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village clerk.

¶ 17 Johnson testified that the clerk's office has no set hours. It is only open when she is there, which is usually after 5 p.m. For accepting nomination papers, however, she set her hours from 3 p.m. to 5 p.m. on certain dates.

¶ 18 At the close of all the testimony and evidence, the Electoral Board found that there was enough factual support in the record and from the testimony to find that either Sanchez was the deputy clerk, or was acting under the authority of deputy clerk, when she accepted the candidates' nomination papers. The regular business hours of the village hall on the date in question were from 8 a.m. to 2 p.m., and the documents were given to the deputy clerk prior to 2 p.m. The Board found that the nomination papers were properly filed and the candidates' names should be included on the April 2013 consolidated election ballot.

¶ 19 Shelby petitioned the circuit court for judicial review pursuant to the Illinois Election Code (10 ILCS 5/10-10.1 (West 2010)). The circuit court noted that the Board's factual findings were deemed *prima facie* true and correct and would not be overturned unless against the manifest weight of the evidence. Decisions on mixed questions of law and fact would only be reversed if clearly erroneous. The court found that Sanchez was the duly acting deputy clerk pursuant to statute and as the successor when she resigned and no appointment was made, and that she was a *de facto* deputy clerk as determined by the Board. The court found that based on the record, the Board's decision on the filing of the nomination papers was not clearly erroneous. Shelby now appeals.

¶ 20

II. ANALYSIS

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¶ 21 On appeal, Shelby contends that the Electoral Board's decision was clearly erroneous because the nomination papers were not properly filed for several reasons: (1) the nomination papers were not filed during the regular business hours of the village clerk, (2) McGrier's delivery of the papers did not constitute a proper filing, (3) Sanchez was not the deputy clerk, nor was she a *de facto* deputy clerk, when she accepted the nomination papers, and (4) Sanchez was not legally authorized to accept papers on behalf of the village clerk. For the following reasons, we affirm the finding of the Electoral Board.

¶ 22 *Standard of Review*

¶ 23 Where a court reviews an electoral board's decision pursuant to section 10-10.1 of the Election Code, we review the decision of the board, not the court. *Cinkus v. Village of Stickney Municipal officers Electoral Board*, 228 Ill. 2d 200, 212 (2008). Here, the parties concede, and we have determined, that the appropriate standard of review is the "clearly erroneous" standard applicable to questions of mixed fact and law. Our supreme court has recently reiterated that "[m]ixed questions of fact and law" are " 'questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.' " *Cinkus*, 228 Ill. 2d at 211 (quoting *American Federation of State, County & Municipal Employees, Council 31 v. Illinois State Labor Relations Board*, 216 Ill. 2d 569, 577 (2005)). Mixed questions of law and fact, like those presented in this case, are reviewed under a "clearly erroneous standard." *Cinkus*, 228 Ill. 2d at 211. An administrative agency's decision is deemed "clearly erroneous" when the reviewing court is left with the " 'definite and firm

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conviction that a mistake has been committed." ' ' " *Cinkus*, 228 Ill.2d at 211 (quoting *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001) (quoting *United States v. United States Gypsum Co.*, 222 U.S. 364, 395 (1948))).

¶ 24 *Regular Business Hours of Village Clerk*

¶ 25 Petitioner contends that the Electoral Board erroneously found that the candidates' nomination papers were properly filed where the nomination papers were not filed during the customary hours of the village clerk.

¶ 26 Section 10-6 of the Election Code states, in pertinent part:

"Certificates of nomination and nomination papers for the nomination of candidates for the offices of political subdivisions to be filled at regular elections other than the general election shall be filed with the local election official of such subdivision *** not more than 113 nor less than 106 days prior to the consolidated election ***." 10 ILCS 5/10-6 (West 2010).

¶ 27 Section 1-4 of the Election Code states that:

"In any case in which this Act prescribes a period of time within which petitions for nomination must be filed, the office in which petitions must be filed shall remain open for the receipt of such petitions until 5:00 P.M. on the last day of the filing period." 10 ILCS 5/1-4 (West 2010).

¶ 28 The Election Code defines the local election official as "the clerk or secretary of a unit of

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local government or school district, as the case may be ***." 10 ILCS 5/1-3(10) (West 2010).

Our supreme court has stated that filing nomination papers "with the clerk" means filing nomination papers "at the customary office and within the customary office hours." *Daniels v. Cavner*, 404 Ill. 372, 378 (1949). Section 1-3(22) of the Election Code requires that the election office be open to the public for a minimum of seven hours a day. 10 ILCS 5/1-22 (West 2010). It does not mandate any specific hours, only the minimum number of hours. *Hamm v. Township Officers of Bremen Electoral Board*, 389 Ill. App. 3d 827, 834 (2009).

¶ 29 In the case at bar, Wednesday, December 26, 2012, was the last day for filing nomination papers for the consolidated election in Broadview. The Broadview village hall was open from 8:30 a.m. to 2 p.m., and the village clerk was to be accepting nomination papers from 3 p.m. to 5 p.m. at the village hall. Deputy Clerk Lenore Sanchez testified at the hearing that she went to the village hall on December 26, 2012, at approximately 1:35 p.m. to accept nomination papers. Sanchez accepted nomination papers for the Broadview First Party and the candidates, which were tendered by Kevin McGrier, while he was in the village offices. This tender of nomination papers occurred just outside of the locked village clerk's office, prior to 2 p.m. Petitioner contends that the Electoral Board erroneously found that the candidates timely filed their nomination papers because the village clerk's customary hours on the day in question were from 3 p.m. to 5 p.m., and thus the candidates had to file their nomination papers in that window of time, in the village clerk's office. Petitioner relies on *Keating v. Iozzo*, 155 Ill. App. 3d 774 (1987), for this proposition.

¶ 30 In *Keating*, an objector appeared at the village hall shortly after 3 p.m., after he was

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personally told by the village clerk that the village clerk would only be at the village hall to accept nomination papers until noon. Importantly, the court in *Keating* noted that when the candidate arrived, the village clerk was not present, "[n]or was there a deputy clerk available. Thus candidate Iozzo was not able to file his objections until the following day." The court found that even though the village hall had been open, that did not establish that the village clerk's presence was required during village hall hours.

¶ 31 The distinguishing fact in *Keating* is that a deputy clerk was not available during the village hall's customary hours to accept nomination papers. In the case at bar, the deputy clerk was present in the village hall, during the village hall's customary business hours, when she accepted the nomination papers. Moreover, section 1-4 of the Election Code, as stated above, requires that the office in which petitions must be filed shall remain open for the receipt of such petitions until 5 p.m. on the last day of the filing period." 10 ILCS 5.1-4 (West 2010). This court has found that section 1-4 does not require the office to close at 5 p.m., but rather provides "a floor but not a ceiling" for when an election authority must accept nomination papers. *Welch v. Educational Officers Electoral Board for Proviso High School District 209*, 322 Ill. App. 3d 568, 575 (2001). In that same vein, we do not find that filing the nomination papers outside of the two-hour window provided for filing, on the last day to file nomination papers, while in the customary office during customary business hours, was untimely. Moreover, section 1-3(22) of the Election Code requires that the election office (here, the village clerk's office) to be open to the public for a minimum of seven hours a day, not two hours. Accordingly, we find that the trial court's finding that the nomination papers were timely submitted to the proper officer at the

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customary office within the customary office hours, was not clearly erroneous. *Daniels*, 404 Ill. at 378.

¶ 32 *Delivery of Nomination Papers*

¶ 33 Shelby's next contention is that candidate McGrier's delivery of the nomination papers was not sufficient to constitute a proper filing. It is well settled that the person filing has the duty of delivery of the paper and the officer has the duty of making the appropriate endorsement. *McReynolds v. Hartley*, 251 Ill. App. 3d 1038, 1041 (1993) (citing *Matter of Davison's Estate*, 102 Ill. App. 3d 644, 645 (1981)). "Delivery alone has been held to constitute filing since the person filing has no control over the officer who receives documents." *Davison*, 102 Ill. App. 3d at 645. "Subsequent ministerial tasks of the clerk evidence the filing of a document but are not essential to its perfection." *Id.*

¶ 34 Here, McGrier delivered the nomination papers to the deputy clerk, in the village hall outside the village clerk's office, prior to the deadline for filing nomination papers and within the village hall's regular business hours. As discussed below, Sanchez had authority to accept nomination papers on behalf of the village clerk, and thus the nomination papers were properly delivered.

¶ 35 Shelby's reliance on *Daniels v. Caver*, 404 Ill. 372 (1949), does not persuade us otherwise. In *Daniels*, candidates for various offices in the city of Venice brought their nomination papers to the city clerk's residence at midnight on the last day for filing. The clerk told the candidates they were too late. He then took the papers and made a notation on them that they had been left with him at 12:12 a.m. The candidates sought a writ of *mandamus* compelling

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the clerk to print their names on the ballot of the city election. The trial court granted the writ, but the supreme court reversed, finding that the determinative issue was "the propriety of filing nomination papers at the clerk's residence rather than at his office." *Daniels*, 404 Ill. at 375. The court noted that there was no indication that the candidates had "attempted to file their petitions at the clerk's office on the day in question either before or after the normal closing hours." *Id.* at 379. The court concluded that in order for such a filing to be effective, it must be made at the customary office and within the customary office hours. *Id.* at 378.

¶ 36 Here, in contrast to *Daniels*, the candidates delivered their nomination papers to the deputy clerk in the village offices, outside the village clerk's office, and not at the village clerk's residence. Accordingly, we find that it was not clearly erroneous for the Electoral Board to find that delivery of the nomination papers was proper in this case.

¶ 37 *Sanchez as Deputy Clerk*

¶ 38 Petitioner next contends that the nomination papers were not filed with the proper officer because Sanchez was not the deputy clerk when she accepted the nomination papers. Section 3.1-30-5(a) of the Illinois Municipal Code provides that the mayor or president, as the case may be, may appoint "officers necessary to carry into effect the powers conferred upon municipalities." 65 ILCS 5/3.1-30-5(a) (West 2010). Sanchez was appointed deputy clerk by Jones, the village president, in 2009, but appears to have attempted to resign in 2010. However section 3.1-30-5(d) of the Municipal Code states that if an appointed officer resigns, "he or she shall continue in office until a successor has been chosen and has qualified. If there is a failure to appoint a municipal officer, or the person appointed fails to qualify, the person filling the office

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shall continue in office until a successor has been chosen and has qualified." 65 ILCS 5/3.1-30-5(d) (West 2010). Therefore, Sanchez continued in office as deputy clerk after her resignation.

¶ 39 Moreover, in 2011, Sanchez was reappointed to deputy clerk by Ordinance CO-11-10, which states in pertinent part:

"WHEREAS, there currently exists a vacancy in the position of Deputy Clerk within the Village; and

WHEREAS, the Corporate Authorities have determined that it is both advisable and in the best interest of the Village and its residents to approve the President's appointment of Lenore Sanchez to the position of Deputy Clerk, April 19, 2011. The Board notes the ordinance in 2009 appointing the Deputy Clerk has identical language."

¶ 40 Accordingly, Sanchez was the duly acting deputy clerk of Broadview when the candidates submitted their nomination papers on December 26, 2012. However, even if we were to somehow find that she was not the deputy clerk at that time, we would nevertheless find that she was a *de facto* deputy clerk as determined by the board of elections. A person has been found to be a *de facto* officer if an appointment has been made by contract, either express or implied, "and that one may lawfully hold a municipal position by virtue of a colorable appointment coupled with performance of the duties of the position and remuneration therefor under applicable appropriation ordinances." *People ex rel. Siegal v. Rogers*, 397 Ill. 187, 195 (1947).

¶ 41 In *Sharp v. Thompson*, 100 Ill. 447 (1881), a deputy clerk had only been verbally appointed but had not been legally appointed. The deputy clerk nevertheless performed the

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duties of a deputy clerk. The *Thompson* court found that the deputy clerk was at least an officer *de facto*, and that the acts of officers *de facto* are as valid and effectual as acts of officers *de jure* when they concern the public or the rights of third persons. *Thompson*, 10 Ill. at 449.

¶ 42 Here, Sanchez testified that she performed the village clerk's duties in Johnson's absence. Johnson testified that Sanchez filled in for her when she was absent, and would perform tasks for her if asked. She also performed duties of the village clerk when asked by the mayor or members of the board of trustees. Accordingly, we find that it was not clearly erroneous for the Electoral Board to find that even if Sanchez had not been properly appointed deputy clerk, that she was the *de facto* deputy clerk when the nomination papers were submitted to her on December 26, 2012, at the village offices.

¶ 43 *Sanchez's Legal Authorization to Accept Nomination Papers*

¶ 44 Shelby's final contention on appeal is that even if Sanchez was a deputy clerk, she was not legally authorized to accept nomination papers in place of the village clerk. Shelby relies on section 10-6 of the Election Code, which states that nomination papers "shall be filed with the local election official," and section 1-3(10) of the Election Code which defines a "local election official" as "the clerk or secretary of a unit of local government or school district, as the case may be ***." Shelby contends that therefore, "the only local election official in Broadview is Johnson, the Village Clerk." However, Shelby points to no authority that says "the clerk" in section 1-3(10) of the Election Code means only the village clerk, and excludes a deputy clerk. Additionally, as we stated above, the Election Code's mandate that nomination papers be filed with "the clerk," has been found by our supreme court to mean filed "at the customary office and

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within the customary office hours." *Daniels*, 404 Ill. at 378. Here, as discussed above, the nomination papers were properly filed in the village offices within the customary business hours.

¶ 45 Shelby further contends, relying on section 3.1-35-95 of the Illinois Municipal Code that Sanchez could only have accepted nomination papers if there had been a written directive from Johnson. However, Shelby does not contend that this section of the Municipal Code conflicts with the Election Code. Nor does Shelby make an argument for which of the two codes should prevail in the face of a potential conflict. We note that a reviewing court is entitled to have issues clearly defined with pertinent authority cited and coherent arguments presented; arguments inadequately presented on appeal are waived. *Eckiss v. McVaigh*, 261 Ill. App. 3d 778, 786 (1994) (S. Ct. Rule 341(h)(7) (eff. Feb. 13, 2013).

¶ 46 Waiver aside, as stated above, delivery of nomination papers alone has been held to constitute filing since the person filing has no control over the officer who receives documents. *McReynolds*, 251 Ill. App. 3d at 1041; *Davison*, 102 Ill. App. 3d at 645. Subsequent ministerial tasks of the clerk evidence the filing of a document but are not essential to its perfection. *Id.* In *McReynolds*, the court found that the petitioners would have timely filed their petition "by presenting it to a deputy clerk prior to 4:30 p.m." *Id.* at 1042. Here, the candidates presented their nomination papers to a deputy clerk (both the deputy clerk and the candidates believed the deputy clerk had authority to accept nomination papers), in the village offices, prior to the deadline for filing nomination papers. Accordingly, whether the deputy clerk had been specifically authorized to accept nomination papers by the village clerk has no bearing in this case on whether the nomination papers were properly filed, and thus we cannot say that the trial

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court's finding that the nomination papers were properly filed was clearly erroneous.

¶ 47

III. CONCLUSION

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 49 Affirmed.