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2013 IL App (3d) 120963-U

Order filed September 10, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

JOSEPH E. ROUDEZ,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Petitioner-Appellant,)	Will County, Illinois,
)	
v.)	
)	
VIVIAN E. COVINGTON, as a candidate for)	
Mayor of the Village of University Park;)	Appeal No. 3-12-0963
LARRY "LB" BROWN, as a candidate for)	Circuit No. 11-MR-479
Mayor of the Village of University Park; and)	
NANCY SCHULTZ VOOTS, as Will County)	
Clerk, and DAVID ORR as Cook County)	
Clerk, constituting the Election Authorities for)	
the Village of University Park, Illinois, for the)	
Consolidated Election held on April 5, 2011,)	Honorable
)	Barbara Petrungaro,
Respondents-Appellees.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Wright and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* In a case involving an election contest to the results of the April 5, 2011, mayoral race in University Park, the circuit court found, *inter alia*, that one challenged ballot was properly counted and three provisional ballots were properly not counted. Accordingly, the circuit court dismissed the verified election contest

petition and granted a motion by the respondent to have her declared the winner of the mayoral race. On appeal, the appellate court affirmed the circuit court's judgment.

¶ 2 The petitioner, Joseph E. Roudez, filed a verified election contest petition against the respondents, Vivian E. Covington, Larry "LB" Brown, Nancy Shultz Voots, and David Orr. Roudez contested the University Park mayoral election, which was conducted on April 5, 2011, and which resulted in Covington winning the election by two votes. In relevant part, Roudez argued that Jermalle Wright's vote should not have been counted and that the provisional ballots of Sidney Bell, Darla Boyd, and Aaron Parker should have been counted. After a hearing, the circuit court found that Wright's vote was properly counted and that the provisional ballots of Bell, Boyd, and Parker were properly not counted. On appeal, Roudez challenges the court's findings on Wright's ballot and the provisional ballots of Bell, Boyd, and Parker. We affirm.

¶ 3 **FACTS**

¶ 4 On April 5, 2011, a mayoral election was held in University Park which resulted in Covington receiving two more votes than Roudez. On May 25, 2011, Roudez filed a verified election contest petition, alleging that several ballots had been improperly counted and others had been improperly not counted, and requested a full recount. In part, Roudez argued that Jermalle Wright's vote should not have been counted because he voted from an address—548 Allan Lane— at which he did not reside, and also that the provisional ballots of Aaron Parker, Sidney Bell, and Darla Boyd should have been counted.

¶ 5 On April 24-25, 2012, the circuit court held a hearing on Roudez's petition. The evidence presented at the hearing that is relevant to the disposition of this appeal is as follows. Richard Cobbins testified that he was Jermalle Wright's landlord between November 2009 and July 2011

in University Park. Cobbins stated that Wright and his family moved out in July 2011 over a period of less than 30 days after Cobbins had Wright evicted. It was Cobbins' belief that Wright in fact resided at the rental property at 657 Sullivan Lane in University Park between November 2009 and July 2011. Roudez presented no other evidence on Jermalle Wright's residency.

¶ 6 Sidney Bell, Jr., testified that he had lived at 1024 Monterey Court in University Park for approximately two years. Prior to that time, he lived at 8044 South Woodlawn Avenue in Chicago. He used to live at 8100 South Woodlawn, but that was his father's address and he moved out of that house at age 23 to 8044 South Woodlawn. However, he agreed that his signature was on a November 2010 provisional ballot in Cook County on which he listed his address as 8100 South Woodlawn. He voted in Cook County because he did not know where to vote in Will County from his new University Park address, even though he had registered to vote from his University Park address around September 2010. He claimed that he did not receive his University Park voter registration card until December 2010 or January 2011. When he went to vote in the April 2011 election in University Park, he was told that his name was not in the voter registry. He was given a provisional ballot, which he filled out and turned in. He was not told of any additional steps that he had to take to ensure that his vote would be counted, and he did not take any such action.

¶ 7 Darla Boyd testified that she had lived at 689 Sullivan Lane in University Park for approximately 10 years. She registered to vote from that address in 2004. At the time of the hearing, she was in the process of purchasing a home in Sauk Village in Cook County on a rent-to-buy agreement. She did not live at that house; her daughter and her daughter's son lived there. While Boyd had a driver's license with her University Park address on it, she also had a state

identification card that had the Sauk Village address on it. Boyd testified that she applied for the identification card in 2009 because she needed it to be able to pay the utilities on the Sauk Village home, which were in her name. She never intended to live at the Sauk Village home, and when she applied for the identification card, she told the Secretary of State's office employee that she did not want to change her voter registration. When she went to vote in the April 2011 election in University Park, she was told that her name was not in the voter registry. She was given a provisional ballot, which she filled out and turned in. She was not told of any additional steps that she had to take to ensure that her vote would be counted, and she did not take any such action.

¶ 8 Aaron Parker testified that he has resided at 515 Barrington Court in University Park for approximately five years. He completed a voter registration form to vote from that address in January 2011 when he applied for an Illinois Link card with the Department of Human Services in Will County. He did not read the entire voter registration form, including the section that informed the applicant that if he or she did not receive a confirmation within two weeks, he or she should contact the County Clerk or the Board of Election Commissioners. Parker testified that he in fact did not receive a registration confirmation within two weeks of filling out the application, but he did not take any responsive action. When he went to vote in the April 2011 election in University Park, he was told that his name was not in the voter registry. He was given a provisional ballot, which he filled out and turned in. He was not told of any additional steps that he had to take to ensure that his vote would be counted, and he did not take any such action.

¶ 9 Judith Wiedmeyer testified that she was the chief deputy clerk at the Will County Clerk's Office. Among other things, Wiedmeyer testified regarding the process for evaluating whether

provisional ballots would be counted. Initially, there must be a name, address, and signature on the sealed envelope. Then, there are three steps taken to determine whether the provisional ballot is counted. First, the Will County Clerk's Office searches their voter registration database by name, address, and/or birth date. Second, if the initial search produces no results, then the Secretary of State's database is searched. Third, if the Secretary of State's database produces no results, the Illinois Voter Registration System is searched, which is a database containing all registered voters for the entire state. Wiedmeyer testified that these procedures are performed according to statutory mandates.

¶ 10 Wiedmeyer further testified regarding what occurs if the voter's name is found in any of the databases. She stated:

"if it was in our database and the voter simply did not change their address but they did go to the correct polling place for their new address, then the ballot would count. If they were an actively [*sic*] voter in Will County, they went to the correct polling place and voted, then the ballot would count."

If the voter's name was not found in any of the databases, however, the ballot would not count because "there is nothing to support the fact that they are even registered."

¶ 11 Wiedmeyer also provided specific details regarding the provisional ballots filled out by Bell, Boyd, and Parker. With regard to Bell's provisional ballot, Wiedmeyer testified that the search of the Will County voter database showed that Bell's registration had been deleted. The Clerk's Office also searched the Illinois Voter Registration System and found that Bell was registered in Chicago as of January 4, 2011, at 8100 South Woodlawn Avenue. Accordingly, his provisional ballot from the April 2011 University Park election was not counted because he was

registered to vote at that time in Cook County and because he did not provide any additional information supporting his right to vote in University Park within two days of the election.

¶ 12 With regard to Boyd's provisional ballot, Wiedmeyer testified that the search of the Will County voter database showed that Boyd was registered to vote out-of-county. The State Board of Elections was responsible for changing Boyd's registration to out-of-county, which they do when they find duplicate registrations for one voter. Wiedmeyer testified that they also searched the Illinois Voter Registration System and found that Boyd was actively registered in Cook County from the Sauk Village address.

¶ 13 With regard to Parker's ballot, Wiedmeyer testified that the search of the Will County voter database produced no results on Parker, but a search of the Illinois Voter Registration System returned a result that Parker was registered to vote from a Cook County address in Blue Island as of October 1, 2008. She testified that she was not presented with any information to dispute Parker's Cook County voter registration within two days of the election. On cross-examination, Wiedmeyer stated that she did not believe that election judges were told to tell voters filling out provisional ballots that they could present additional information within two days of the election regarding their eligibility to vote from that location. She also stated on cross-examination that it is the obligation of the state agency who takes a person's voter registration to transmit that registration to the Will County Clerk's Office.

¶ 14 At the close of the hearing, the circuit court took the matter under advisement.

¶ 15 On July 19, 2012, the circuit court issued its written order. Of relevance to this appeal, the court found that: (1) Jermalle Wright's vote was properly counted because the testimony presented failed to definitively establish that he was not living at his registered voting address

and because no testimony was presented on where he intended to reside; (2) Sidney Bell's vote would not be counted because the fact that he voted in Cook County after he had registered in Will County caused him to be registered in Cook County; (3) Darla Boyd's vote would not be counted because she had two different identification cards with two different addresses; and (4) Aaron Parker's vote should have been counted because the Department of Human Services was at fault for his registration problem.

¶ 16 On August 3, 2012, Roudez filed a motion to reconsider in which he challenged only the circuit court's rulings on Jermalle Wright's ballot and the provisional ballot of Darla Boyd. In addition, the propriety of opening Parker's provisional ballot was addressed. Along with her response to Roudez's motion to reconsider, Covington filed a motion to dismiss the election contest and to declare her the winner of the mayoral race. The court heard arguments on the motions and later issued an order denying Roudez's motion to reconsider and granting Covington's motion. Roudez appealed.

¶ 17 ANALYSIS

¶ 18 On appeal, Roudez argues that the circuit court erred when it found that: (1) the ballot cast by Jermalle Wright was properly counted; and (2) the provisional ballots cast by Sidney Bell, Darla Boyd, and Aaron Parker were properly not counted.

¶ 19 On appeal from a circuit court's decision in an election contest, we will not disturb the court's rulings unless they are against the manifest weight of the evidence. *Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594, 622 (2004) (quoting *Dirst v. McDonald*, 372 Ill. 498, 502 (1939)). A ruling is against the manifest weight of the evidence if the opposite conclusion is clearly apparent. *Qualkinbush*, 357 Ill. App. 3d at 622.

¶ 20

I. JERMALLE WRIGHT'S BALLOT

¶ 21 First, Roudez argues that the circuit court erred when it found that Jermalle Wright's vote was properly counted. Roudez argues that Wright voted from 548 Allan Lane in University Park, but he actually lived at 657 Sullivan Lane in University Park, which was in a different precinct.

¶ 22 Our supreme court has recently reiterated the principles behind residency for voting purposes:

"First, to *establish* residency, two elements are required: (1) physical presence, and (2) an intent to remain in that place as a permanent home. *Hughes v. Illinois Public Aid Comm'n*, 2 Ill. 2d 374, 380 (1954) (citing voting cases). Second, once residency is established, the test is no longer physical presence but rather abandonment. Indeed, once a person has *established* residence, he or she can be physically absent from that residence for months or even years without having abandoned it:

'[T]he shortest absence, if at the time intended as a permanent abandonment, is sufficient, although the party may soon afterwards change his intention; while, on the other hand, an absence for months, or even years, if all the while intended as a mere temporary absence for some temporary purpose, to be followed by a resumption of the former residence, will not be an abandonment.' *Kreitz v. Behrensmeyer*, 125 Ill. 141, 195 (1888).

Stated differently, a residence is not lost 'by temporary removal with the intention to return, or even with a conditional intention of acquiring a new residence, but

when one abandons his home and takes up his residence in another county or election district.' (Internal quotation marks omitted.) *Clark v. Quick*, 377 Ill. 424, 427 (1941). Third, both the establishment and the abandonment of a residence is principally a question of intent. *Park v. Hood*, 374 Ill. 36, 43 (1940). And while '[i]ntent is gathered primarily from the acts of a person' (*Stein v. County Board of School Trustees*, 40 Ill. 2d 477, 480 (1968)), a voter is competent to testify as to his intention, though such testimony is not necessarily conclusive (*Coffey v. Board of Election Commissioners*, 375 Ill. 385, 387-88 (1940)). Fourth, and finally, once a residence has been established, the presumption is that it continues, and the burden of proof is on the contesting party to show that it has been abandoned. *People v. Estate of Moir*, 207 Ill. 180, 186 (1904)." [Emphases in original.] *Maksym v. Board of Election Commissioners of City of Chicago*, 242 Ill. 2d 303, 319 (2011).

¶ 23 In this case, with regard to Wright's residency, Roudez presented only the testimony of Cobbins, from whom Wright rented a home at 657 Sullivan Lane in University Park. While Cobbins's testimony established that Wright had rented that home from November 2009 to July 2011, and Cobbins opined that Wright resided at that address, the circuit court correctly noted that Cobbins's testimony by itself was insufficient to establish that Wright did not reside at 548 Allan Lane in University Park, which was his registered address. As *Maksym* points out, once residency has been established, it is presumed that such residence continues, and it is incumbent on the contesting party to show that such residency has been abandoned. *Maksym*, 24 Ill. 2d at 319. Roudez presented no evidence whatsoever on whether Wright had abandoned his residency

at 548 Allan Lane in accord with the well settled residency principles recited in *Maksym*. Under these circumstances, we agree with the circuit court that Roudez failed to definitively establish that Wright was not residing at his registered address. Accordingly, we hold that the circuit court did not err when it ruled that Wright's vote was properly counted.

¶ 24 II. THE PROVISIONAL BALLOTS OF SIDNEY BELL, DARLA BOYD,
AND AARON PARKER

¶ 25 Second, Roudez argues that the circuit court erred when it ruled that the provisional ballots of Sidney Bell, Darla Boyd, and Aaron Parker were properly not counted.

¶ 26 Section 18A-15 of the Election Code (10 ILCS 5/18A-15 (West 2010)) provides procedures for the validation and counting of provisional ballots in elections. Initially, we note that with regard to the provisional ballots of Bell and Boyd, Roudez does not allege that the Will County Clerk's Office violated this section when it invalidated those two provisional ballots.

¶ 27 With regard to Sidney Bell's provisional ballot, we first note that Roudez did not challenge the court's ruling on this ballot in his motion to reconsider. To properly preserve an alleged error for appellate review, the complaining party must raise the issue during trial and in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988); see also *Hoffer v. School District U-46*, 273 Ill. App. 3d 49, 57 (1995) (applying forfeiture principles in an election contest appeal). However, waiver and forfeiture principles are an admonition to the litigants and not a limitation upon the reviewing court. *Jackson v. Board of Election Commissioners of City of Chicago*, 2012 IL 111928, ¶ 33 (also noting that this "principle is not and should not be a catchall that confers upon reviewing courts unfettered authority to consider forfeited issues at will"). Given the importance of this type of case and that Covington has addressed the issue on appeal without

claiming forfeiture, we will address the merits of this issue.

¶ 28 Roudez argues that Bell's provisional ballot should have been counted because the fact that he did not receive his voter registration card until December 2010 or January 2011 caused him to be unaware of where to vote in University Park in the November 2010 election and thereby vote in Cook County instead. We are not persuaded.

¶ 29 Here, the evidence established that despite the fact that he registered to vote in University Park around September 2010, Bell voted in the November 2010 election via provisional ballot in Cook County. Doing so changed his voter registration to Cook County. See 10 ILCS 5/18A-15(b)(1) (West 2010) ("[t]he provisional voter's affidavit shall serve as a change of address request by that voter for registration purposes for the next ensuing election if it bears an address different from that in the records of the election authority"). As Wiedmeyer testified, at the time of the April 5, 2011, election, Bell was registered to vote in Cook County. Accordingly, under these circumstances, we hold that the circuit court did not err when it ruled that Bell's provisional ballot would not be counted.

¶ 30 With regard to Darla Boyd's provisional ballot, Roudez argues that the ballot should have been counted because the Secretary of State's office improperly changed Boyd's voter registration address from University Park to Sauk Village and thereby improperly disenfranchised her in University Park. The only case Roudez cites in support of this argument is *Pullen v. Mulligan*, 138 Ill. 2d 21, 70 (1990), for the proposition that "[a]s a general rule, ignorance inadvertence, mistake, or even intentional wrong on the part of election officials will not be permitted to disenfranchise voters." However, *Pullen* cited that principle with regard to the invalidation of ballots that had numbers written on them by election officials (*Pullen*, 138 Ill. 2d at 70), and

tracing that principle back through case law reveals that those cases all involved the conduct of officials in charge of an election (see *Sibley v. Staiger*, 347 Ill. 2d 288, 293 (1932); *Allen v. Fuller*, 332 Ill. 304, 314 (1928); *People ex rel. Vance v. Bushu*, 288 Ill. 277, 280 (1919)) and not the situation as presented by Boyd's provisional ballot in this case.

¶ 31 Here, Boyd testified that she did not intend to change her voter registration from University Park to Sauk Village when she applied for a state identification card with the Sauk Village address. Nevertheless, as Wiedmeyer testified, the search that occurred pursuant to section 18A-15 of the Election Code revealed that the State Board of Elections had changed Boyd's voter registration to the Sauk Village address in Cook County because it found duplicate voter registrations for Boyd. Roudez has not established that the Will County Clerk's Office committed any error with regard to the process it employed in invalidating Boyd's provisional ballot. Accordingly, under these circumstances, we hold that the circuit court did not err when it ruled that Boyd's provisional ballot would not be counted.

¶ 32 With regard to Aaron Parker's provisional ballot, we first note that Roudez trailed Covington by two votes. Even if Parker's provisional ballot was improperly discounted, such error would be insignificant. Given that no error occurred with regard to the other ballots challenged in this case, even if Parker had voted for Roudez, adding Parker's vote to Roudez's total would not change the outcome of the election. Accordingly, we reject Roudez's argument on this issue. See 10 ILCS 5/23-23.2 (West 2010) ("[a] court hearing an election contest pursuant to this Article or any other provision of the law shall grant a petition for a recount properly filed where, based on the facts alleged in such petition, there appears a reasonable likelihood the recount will change the results of the election"); see also *Qualkinbush*, 357 Ill.

App. 3d at 621 (holding that even if the circuit court erred when it denied the admission of certain votes, that error would have been harmless because it would not have changed the outcome of the election).

¶ 33 Moreover, with regard to all three of these provisional ballots, the evidence established that neither Bell, Boyd, nor Parker provided additional information to the county clerk or the board of election commissioners within two days of the election regarding their voter registration status to support their attempts to vote in University Park for the election that was held on April 5, 2011. See 10 ILCS 5/18A-15(d) (West 2010) (stating that "[t]he provisional voter may, within 2 calendar days after the election, submit additional information to the county clerk or board of election commissioners"). The failure of Bell, Boyd, and Parker to do so provides further support for the circuit court's findings that those three provisional ballots were properly invalidated.

¶ 34 Under the circumstances presented by this case, we hold that the circuit court did not err when it dismissed Roudez's petition and declared Covington the winner of the April 5, 2011, mayoral election in University Park.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 37 Affirmed.