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2013 IL App (3d) 130034-U

Order filed April 16, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

DAN L. SULLIVAN,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellee,)	Kankakee County, Illinois,
)	
v.)	
)	
THE ELECTION BOARD OF THE CITY OF)	Appeal No. 3-13-0034
KANKAKEE, and its members; NINA)	Circuit No. 12-MR-849
EPSTEIN, ANJANITA DUMAS, STEVEN)	
HUNTER, DENNIS BARON,)	
)	
Defendants,)	
)	
and objector MICHAEL ARSENEAU,)	Honorable
)	Ronald J. Gerts,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Schmidt and Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The Electoral Board's order finding that the candidate was disqualified and striking his name from the ballot was against the manifest weight of the evidence.

¶ 2 The plaintiff, Dan L. Sullivan, filed a statement of candidacy and corresponding petitions seeking the Republican party nomination as mayor of the City of Kankakee, Illinois (the City). Thereafter, Michael Arseneau filed a petition with the Election Board of the City of Kankakee (Board), objecting to Sullivan's nomination papers and claiming that Sullivan was ineligible to seek office due to an arrearage allegedly owed to the City. 65 ILCS 5/3.1-10-5(b) (West 2010). The Board conducted a hearing on Arseneau's objection, after which it struck the candidate's name from the ballot. Sullivan sought judicial review of that decision. The circuit court of Kankakee County held that the Board's decision was against the manifest weight of the evidence, reversed the Board's decision, and ordered that Sullivan's name be placed on the ballot. Arseneau filed an expedited appeal to this court pursuant to Illinois Supreme Court Rule 311(b) (eff. February 10, 2010). Following receipt of briefs from both parties and the record on appeal, this court issued an order on February 8, 2013, reversing the Board's decision and affirming the circuit court's decision that Sullivan's name should appear on the ballot. The order noted that this formal decision would follow.

¶ 3 **BACKGROUND**

¶ 4 On December 7, 2012, the Board held a hearing on Arseneau's petition objecting to Sullivan's nominating petition. The objection alleged that Sullivan owed an indebtedness to the City of approximately \$6,000, which would disqualify him from seeking municipal office under section 3.1-10-5(b) of the Illinois Municipal Code (the Code). 65 ILCS 5/3.1-10-5(b) (West 2010). As evidence of Sullivan's indebtedness, Arseneau submitted into evidence certified copies of collection records from the city's collection department showing Sullivan had an outstanding debt to the city for fines, fees, and assessments assessed against various rental

properties titled to Sullivan. The record was unclear as to which assessments were associated with a specific parcel of property.

¶ 5 Sullivan entered into evidence documentation relevant to his filing of bankruptcy. Those records indicated that some of the outstanding assessments were discharged in the bankruptcy proceeding. The Board concluded that the bankruptcy discharged some of the assessments but not others. Sullivan also entered into evidence before the Board a copy of a docket sheet from the lawsuit filed by the City against him seeking collection of the outstanding debt. The docket sheet indicated that the matter was settled for a payment of \$1,000 by Sullivan. The record also contained a copy of Sullivan's personal check payable to the City for \$1,000 with a notation indicating payment in settlement of a case with the docket number of the city's collection lawsuit. Sullivan maintained that the evidence before the Board was insufficient to establish that he was currently indebted to the City. Rather, he maintained, the evidence established that the debt that Arseneau claimed he owed had been either discharged in bankruptcy or settled in litigation and Arseneau had presented nothing to establish that the debts remained outstanding.

¶ 6 The Board acknowledged that the evidence established that the bankruptcy and the settlement had satisfied some of the debt. It found, however, that Sullivan had failed to establish which debts had been covered by the bankruptcy and the settlement and, thus, he had failed to establish that the entire liability to the City had been satisfied. It held, therefore, that Arseneau had proven the allegations of his petition and struck Sullivan's name from the ballot.

¶ 7 Sullivan sought review of the Board's decision in the circuit court of Kankakee County. The court reversed the Board's decision. The court found that the evidence produced before the Board was insufficient to establish that Sullivan owed a debt to the City at the time he filed his

nominating petition. The court also noted its own observation that the fact that the City settled a case in litigation did not often get communicated back to the City's collection department, such that the records of that department did not often reflect the fact that the debt had been settled as the result of litigation. The court reversed the decision of the Board and ordered Sullivan's name placed upon the ballot. This appeal followed.

¶ 8

ANALYSIS

¶ 9 Arseneau raised two issues on appeal: (1) the Board's decision was supported by the manifest weight of the evidence and should be affirmed; and (2) the circuit court erred in considering evidence outside the record before the Board when it commented on its own knowledge regarding a lack of communication between the City's legal department and its collection department regarding settlements resulting from collection lawsuits.

¶ 10 Judicial review of an electoral board's decision is considered to be an administrative review. *Carlasare v. Will County Officers Electoral Board*, 2012 IL App (3d) 120699, ¶ 15. On appeal in such cases, we review the decision of the electoral board, not the determination of the trial court. *Id.* For that reason, we do not address Arseneau's second argument, *i.e.*, that the trial court considered evidence outside the record in reversing the decision of the Board.

¶ 11 Addressing Arseneau's initial argument that the Board's ruling was correct, we agree that at issue herein is whether the Board's finding that Arseneau proved that Sullivan was ineligible to be on the ballot was against the manifest weight of the evidence. *Cinkus v. Village of Stickney Municipal Officers Election Board*, 228 Ill. 2d 200, 210 (2008) (electoral board's findings of fact will not be reversed unless they are against the manifest weight of the evidence). We find that

the Board's determination that Arseneau had established Sullivan's ineligibility was against the manifest weight of the evidence.

¶ 12 In the instant matter, Arseneau objected to Sullivan's nomination based upon the allegation that he was ineligible to run for public office due to an alleged indebtedness to the City. Section 3.1-10-5(b) of the Code provides:

"A person is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony." 65 ILCS 5/3.1-10-5(b) (West 2010).

¶ 13 In a proceeding to contest a candidate's nomination papers, the burden of proof is on the objector. *Hagen v. Stone*, 277 Ill. App. 3d 388, 390 (1995). The policy of this State is to provide candidates for public office with access to the ballots, and, thus, to allow the citizens a right to vote. *Carlasare*, 2012 IL App (3rd) at ¶19. Here, the quantum of evidence offered by the objector was simply insufficient to establish that Sullivan owed an indebtedness to the City at the time his petition was filed. The Board's finding that Arseneau had proven Sullivan's indebtedness to the City was against the manifest weight of the evidence. The evidence established that Sullivan at one time owed a significant amount to the City. However, the record also clearly established that some or all of the debt was extinguished, either through a bankruptcy proceeding or in settlement of the collection suit initiated against Sullivan by the City. In granting the objection and removing Sullivan from the ballot, the Board acknowledged that the bankruptcy and the settlement satisfied some or all of the indebtedness; however, it placed the

burden on Sullivan to establish that no debt remained outstanding at the time of the filing of his nominating petition. This was error, as the burden is upon the objector to prove that the candidate is ineligible for office. *Hagen*, 277 Ill. App. 3d at 390. Shifting the burden of proof to the candidate to establish that he should remain on the ballot renders the Board's decision contrary to the manifest weight of the evidence. *Watson v. Electoral Board of the Village of Bradley*, 2013 IL App (3d) 130142 ¶47.

¶ 14 Here, the evidence before the Board established, at best, that Sullivan had owed an indebtedness to the City and that the indebtedness Arseneau claimed Sullivan owed did not reflect the impact of the bankruptcy or the settlement. While it is possible that Sullivan still owed an indebtedness to the City at the time his nomination papers were filed, the record before the Board did not prove that Sullivan was still indebted to the City. Given the evidence of Sullivan's bankruptcy and the settlement of the City's collection suit, it was necessary for Arseneau to establish that an indebtedness still existed after those two events. The record simply does not establish what debt, if any, still remained due and owing to the City at the time Sullivan's nominating petition was filed. Given this record, the Board's finding that Arseneau carried his burden of proof is against the manifest weight of the evidence.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the judgment of the circuit court reversing the decision of the Election Board of the City of Kankakee is affirmed.

¶ 17 Affirmed.