2016 IL App (1st) 160528-U

THIRD DIVISION
March 9, 2016

No. 1-16-0528

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

JAN KOWALSKI,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
v.	)	No. 16 COEL 1
	)	
COOK COUNTY OFFICERS ELECTORAL BOARD;	)	
ANITA ALVAREZ; DOROTHY BROWN; and DAVID	)	
ORR, Chairman; DAVID ORR, in His Official Capacity as	)	
Cook County Clerk; and AUDREY JAYCOX, Objector,	)	The Honorable
	)	Margarita Kulys-Hoffman,
Respondents-Appellees.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

HELD: Trial court properly granted summary judgment in favor of Board with respect to petitioner's count asserting violation of Open Meetings Act where no genuine issue of material fact exists.

¶ 1 Petitioner-appellant Jan Kowalski (petitioner) currently appears before this court again upon a motion for expedited briefing schedule and decision, related to the Democratic primary election for Cook County Recorder of Deeds to be held on March 15, 2016. This court granted her motion on March 2, 2016. Upon review of this cause, we issue the instant decision affirming the trial court's grant of respondent-appellee Cook County Officers Electoral Board's (Board) motion for summary judgment.

¶ 2 BACKGROUND

¶ 3 This matter was before us in an expedited manner just recently, wherein we outlined the relevant facts involved. See *Kowalski v. Cook County Officers Electoral Bd.*, 2016 IL App (1st) 160217-U, ¶¶ 3-7. Accordingly, we present only those facts herein that are essential to our instant decision.

¶ 4 Petitioner filed nomination papers to become a candidate in said election, an objector asserted that her papers were insufficient because she had not obtained the required number of valid signatures necessary for her candidacy, and the cause proceeded to the Board, which conducted a records examination revealing that petitioner was short 554 signatures. Eventually, a hearing officer recommended that the Board sustain the challenge to petitioner's nomination petition and declare it invalid. The Board held a hearing, at which petitioner and her counsel were present, and voted to adopt the hearing officer's recommendation. At the conclusion of the hearing, the board issued its written decision declaring petitioner's nomination papers invalid and ordering that her name should not be placed on the ballot for the election. The Board signed its decision accordingly: "David Orr, Chairman by Daniel P. Madden, Anita Alvarez, Member by

Donald J. Pechous, and Dorothy Brown, Member by Gloria Legette."

¶ 5 Petitioner filed a petition for administrative review, presenting counts for judicial review of the Board's decision, as well as for civil rights violations, mandamus and injunctive relief, and amended counts asserting violations of the Open Meetings Act, the Voting Rights Act of 1965 and the Racketeer Influenced and Corrupt Organizations Act (RICO). The court denied petitioner's count for judicial review of the Board's decision; struck with the right to replead her counts regarding civil rights, voting rights and RICO violations (which petitioner later voluntarily dismissed); and dismissed with prejudice her counts for mandamus and injunctive relief. The court reserved ruling on petitioner's count regarding the Open Meetings Act and set a status date for hearing on that matter.

¶ 6 Before that hearing could take place, petitioner appealed the trial court's determinations regarding the other counts of her complaint, and we affirmed the Board's decision. See *Kowalski v. Cook County Officers Electoral Bd.*, 2016 IL App (1st) 160217-U, ¶¶ 9-16 (holding that, because petitioner did not have the required number of valid signatures and did have the ability to challenge the Board's decision but failed to do so via her own actions, the Board's decision finding her candidacy to be invalid was proper). Petitioner also filed a parallel case in the United States District Court seeking injunctive relief and mandamus, which that federal court denied. See *Kowalski v. Cook County Officers Electoral Bd.*, (N.D. Ill.) No. 16-cv-1891 (Mar. 1, 2016).

¶ 7 Meanwhile, the matter proceeded in state court with respect to petitioner's count alleging violation of the Open Meetings Act, whereupon the Board filed a motion for summary judgment. The trial court granted the Board's motion. It is this grant of summary judgment in favor of the

Board and against her with respect to her Open Meetings Act count that petitioner now appeals.

¶ 8 ANALYSIS

¶ 9 Petitioner contends that the trial court erred in granting the Board's motion for summary judgment. Amid her various assertions, she claims essentially that, because the Board was not properly constituted when it rendered its decision, her matter was never "before" the Board and, thus, its decision violated the Open Meetings Act. More specifically, petitioner insists that Madden, Pechous and Legette could not render a decision because they did not comprise a quorum of official Board members, and that the procedure they used for signing the written decision in her cause did not occur during an "open" meeting. Just as in our prior decision, we once again reject petitioner's claims, for a multitude of reasons.

¶ 10 Primary among these is *res judicata*. This doctrine states that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent cause of action between the parties on the same cause of action. See *Cooney v. Rossiter*, 2012 IL 113227, ¶ 18. This encompasses all matters that were actually decided in the original action, as well as matters that could have been decided. See *Cooney*, 2012 IL 113227, ¶ 18. So long as claims arise from a single group of operative facts, they are considered part of the same cause of action. See *Cooney*, 2012 IL 113227, ¶¶ 21-22 (separate claims, even if there is not a substantial overlap of evidence among them and even if they assert different theories of relief, are still considered part of the same cause of action for the purposes of *res judicata* if they arise from a single group of operative facts).

¶ 11 Simply put, we already, and explicitly, ruled upon petitioner's very contentions here in

her prior appeal before this court. In that decision, we made it a clear point to address what was a recurrent assertion in her memoranda, namely, that the designee process employed by the Board in hearing election matters is improper. See *Kowalski v. Cook County Officers Electoral Bd.*, 2016 IL App (1st) 160217-U, ¶¶ 15-16. In fact, petitioner at that time argued that the Board was " 'impermissibly constituted' " when it rendered its decision in her cause because it consisted of "alleged" designees Madden, Pechous and Legette rather than duly-elected officials Orr, Alvarez and Brown, who she insisted could not abdicate their Board duties to any proxy. See *Kowalski v. Cook County Officers Electoral Bd.*, 2016 IL App (1st) 160217-U, ¶ 15.

¶ 12 This is exactly what petitioner alleges again in the instant appeal. The only difference is that she now couches it as an allegation of a violation of the Open Meetings Act. However, regardless of her new characterization, it is the same contention worthy of the same answer it is completely and inherently incorrect. Just as we found last time, and now with even more "emphatic contradistinction to petitioner's declarations" (*Kowalski v. Cook County Officers Electoral Bd.*, 2016 IL App (1st) 160217-U, ¶ 16), we note the law is indisputably clear that Board members may name proxies and designees to act and serve on their behalf, including to review, consider, render and issue Board decisions. See 10 ILCS 5/10-9(2) (West 2014) (noting that Board consists of "the county clerk, or an assistant designated by the county clerk, the State's [A]ttorney of the county, or an Assistant State's Attorney designated by the State's Attorney, and the clerk of the circuit court, or an assistant designated by the clerk of the circuit court"); *Rita v. Mayden*, 364 Ill. App. 3d 913, 918 (2006) (in using "or," the plain language of section 10-9(2) makes clear that Board members may designate others to serve on their behalf). Petitioner

cannot overcome this legal principle, even in her attempt to reargue the same issues she did before us less than a month ago. Moreover, nothing in the Illinois Election Code requires that such designations have to be in writing, or posted for notification purposes, or made in some specified manner that petitioner now advocates just because the designation process is not done the way petitioner would like does not mean her way, whatever it is and which is unsupported by any legal precedent, is appropriate. Again, having already addressed this very matter in our prior decision, we reject petitioner's claims in the instant appeal based on *res judicata*.

¶ 13 Were this not enough, there are many other reasons upon which we reject petitioner's claims. Summary judgment, which the trial court granted in favor of the Board here, is proper when the pleadings, affidavits, depositions and admissions of record, construed strictly against the moving party, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001); accord *Purtill v. Hess*, 111 Ill. 2d 229, 240-44 (1986). Contrary to petitioner's insistence, there is simply no genuine issue as to any material fact that would prevent summary judgment in the Board's favor in this cause.

¶ 14 Petitioner takes issue not only with the makeup of the Board but also the procedure the Board used to render its final decision in her cause. She repeatedly alludes to a conspiracy of closed-door sessions, improper voting and a pre-typewritten decision she claims decided her fate before her case even began all violating her right to an open meeting. However, this is a total mischaracterization of what occurred here.

¶ 15 The purpose of the Open Meetings Act (Act) is to ensure that deliberations and actions of

public bodies, such as the Board, are conducted in an open and public session. See 5 ILCS 120/1 (West 2014). Under the Act, a quorum of members of the public body is to be present at such a session, and the public body may not take any final action at a closed meeting. See 5 ILCS 120/2, 2.01 (West 2014).

¶ 16 It is clear in the instant cause that an open meeting was had, in direct compliance with the Act. A quorum of the Board was present in fact, all three members (Orr, Alvarez and Brown) had appointed designees (Madden, Pechous and Legette, respectively) who appeared at the public session to hear petitioner's cause. Petitioner makes much of the fact that the transcript of the session also mentions a "Ms. Jeannine Bass" as a "Board Member" who supposedly voted with respect to her cause. This, however, was nothing more than a transcribed mistake. At the outset of the Board's session, Chairman Madden made clear, as he called the session to order, that he was present on behalf of Orr, that Pechous was present on behalf of Alvarez and that Legette was present on behalf of Brown they would be the voting members of the Board and, in fact, they are the ones, and the only ones, who signed the pertinent order in petitioner's cause. See 10 ILCS 5/10-9(2.5) (West 2014) (Board is comprised of three members).[1] Thus, that a "Ms. Bass" was mentioned within the transcript is completely irrelevant.

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[1]Chairman Madden's announcement of the presence of the three designees came at the very start of the Board's session on the day petitioner's cause was heard, immediately before the first case of that day, *Canaday v. Petrone*, 15 COEB JUD 04. According to Board rules, after a session initially convenes, it "will be in session continuously until all objections transmitted to it have been considered and disposed of." Cook County, IL Off. Elect. Bd. R. 13 (adopted Dec. 2015). Accordingly, his announcement, and its effect and enforcement, applied to all the cases heard that day, including petitioner's. See *Finish Line Express, Inc. v. City of Chicago*, 72 Ill. 2d 131, 136 (1978) (judicial notice may be taken of public records).

¶ 17 In addition, there is nothing in the record to support petitioner's allusions to inappropriate behavior on the part of the Board in any way. The Board was present, as were petitioner and her counsel. In its open session, the Board heard argument. It moved to adopt the hearing officer's recommendation. This motion was seconded and voted upon during the session. All three designees voted unanimously that petitioner's candidacy would not proceed because she did not have the required number of valid signatures. It then issued its written decision accordingly, signed by all three voting designee-members. This is exactly what comprises an open meeting under the Act.

¶ 18 Finally, petitioner makes much of the fact that the Board issued a signed, "previously typewritten" decision at the conclusion of the hearing. She asserts that the Board violated the Act by failing to complete its final action in an open meeting and, instead, pre-prepared its decision behind closed doors before her cause was even heard. Again, petitioner is completely out of bounds here. Surely, discussion about petitioner's cause was had before her hearing date; indeed, the Board members had already reviewed and considered the hearing officer's recommendation regarding her matter. However, the "final action" of the Board here, which pursuant to the Act must be taken in a public forum, was not, as petitioner insinuates, its pre-preparation of a typewritten memorandum it would use as the basis of its decision following the hearing. Rather, its final action where it publicly expressed its opinion on the issues presented by petitioner was the Board's vote, which took place during the public hearing in this cause. This procedure, which we note is typical of the Board's process in reviewing cases, was in clear compliance with the Act. See *Board of Education of Springfield School District No. 186 v. Attorney General of*

Illinois, 2015 IL App (4th) 140941 ¶¶ 31-32 (party's claim that final action of board took place in a closed session during which members reviewed written decision and signed it and thereby violated Open Meetings Act could not stand; board's final action was its roll call at the subsequent public meeting and its approval of the decision via a public vote).

¶ 19 Ultimately, petitioner fails to point to even a hint, much less a credible genuine issue of material fact, regarding a Open Meetings Act violation with respect to what occurred in her cause. Essentially, petitioner was summoned before the Board where she appeared with her counsel in a designated room before a dais of people who were publicly and officially introduced to her as the specific designees of each Board member. A public meeting was held, a vote was taken during it and a written decision signed by each of the three designees in their capacities as such was issued. At no point did petitioner ever object to the Board's composition or raise an issue with respect to its procedure. And now, after all this, she comes before us presenting as her argument on appeal that these people were unauthorized imposters who colluded to secretly vote and issue a final decision in her cause before she even appeared before them. We will reserve any untoward commentary at this point and choose to stand, instead, on the record before us which undeniably refutes her claims and fully supports our conclusion here: there was no violation of the Open Meetings Act.

¶ 20 CONCLUSION

¶ 21 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court.

¶ 22 Affirmed.