2017 IL App (2d) 170201-U
No. 2-17-0201
Order filed March 31, 2017

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

SECOND DISTRICT

LORRAINE THURMOND,	)	Appeal from the Circuit Court
	)	of Lake County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 17-MR-113
	)	
CARL EVANS,	)	
	)	
Objector-Appellee,	)	
	)	
CITY OF NORTH CHICAGO MUNICIPAL	)	
OFFICER'S ELECTORAL BOARD;	)	
LORI COLLINS, MEMBER;	)	
LEON ROCKINGHAM, JR., CHAIR;	)	
CARLA N. WYCKOFF, in her official	)	
capacity as Lake County Clerk,	)	Honorable
	)	Diane E. Winter
Respondents.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The motion to accelerate appeal is denied, and the appeal is dismissed as moot.

¶ 2 In this election ballot appeal, petitioner, Lorraine Thurmond, has filed a motion to place the appeal on the accelerated docket or to consider the appeal under the public interest exception to the mootness doctrine. We deny the motion and dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 Petitioner filed nomination papers for the office of alderman of the third ward of the City of North Chicago. Her opponent, Carl Evans, objected to her nomination papers, and the North Chicago Municipal Officer's Electoral Board (Board) sustained the objection on January 12, 2017. The election is scheduled for April 4, 2017.

¶ 5 On January 23, 2017, petitioner filed in the trial court a petition for judicial review, and the parties dispute the timeliness of that petition under the Election Code. See 10 ILCS 5/10-10.1(a) (West 2014) ("The party seeking judicial review must file a petition with the clerk of the court and must serve a copy of the petition upon the electoral board and other parties to the proceeding by registered or certified mail within 5 days after service of the decision of the electoral board as provided in Section 10-10"); see also 10 ILCS 5/1-6(a) (West 2014) ("If the first or last day fixed by law to do any act required or allowed by this Code falls on a State holiday or a Saturday or a Sunday, the period shall extend through the first business day next following the day otherwise fixed as the first or last day, irrespective of whether any election authority or local election official conducts business on the State holiday, Saturday, or Sunday").

¶ 6 On the Board's motion, the trial court dismissed the petition with prejudice on February 8, 2017, because it was filed past the five-day deadline for seeking judicial review. See 10 ILCS 5/10-10.1(a) (West 2014). On February 17, 2017, petitioner filed a motion to reconsider. The court, for reasons that are unclear, granted the motion and vacated the dismissal on February 22, 2017.

¶ 7 Two days later, on February 24, 2017, the Board filed another motion to dismiss, arguing that petitioner had failed to serve the necessary parties. The trial court granted the motion and dismissed the petition on February 27, 2017. On March 2, 2017, petitioner filed another motion to reconsider, which was denied on March 7, 2017. Thirteen days later, on March 20, 2017, petitioner filed her notice of appeal.

¶ 8 II. ANALYSIS

¶ 9 On March 24, 2017, petitioner moved for accelerated review under Illinois Supreme Court Rule 311(b) (eff. Feb. 26, 2010), which provides in part that "[a]ny time after the docketing statement is filed in the reviewing court, the court, on its own motion, or on the motion of any party, for good cause shown, may place the case on an accelerated docket." The Board opposes the motion on the grounds that (1) petitioner has not filed or served the docketing statement required under Illinois Supreme Court Rule 312 (eff. Jan. 17, 2013) and (2) she has failed to show good cause to accelerate the appeal because she has not diligently pursued judicial review of the Board's decision. We agree that the repeated delays attributable to petitioner are grounds for denying her motion under Rule 311(b).

¶ 10 To determine whether expedited consideration of an appeal is necessary and appropriate, the court considers whether the matter under review is likely to have an immediate and irreversible impact on the parties without expedited consideration, and whether the court's judgment has the potential for any remedial effect without expedited consideration. *Lenehan v. Township Officers Electoral Board of Schaumburg Township*, 2013 IL App 130619, ¶ 18. The appellate court and our supreme court routinely grant expedited schedules on ballot access cases because "[h]olding an election without the correct candidates on the ballot would be highly detrimental to the public interest, and it is especially difficult to fashion an appropriate remedy if

candidates are restored to the ballot after the subject election has been held." *Lenehan*, 2013 IL App 130619, ¶ 18. However, resolving a complicated ballot access case often is neither practical nor judicially efficient when the candidate does not act quickly to protect his or her rights, and the candidate's self-imposed time constraints hinder full consideration of the issues. *Lenehan*, 2013 IL App 130619, ¶ 19.

¶ 11 Thus, the "customary practice" in election cases is to file the notice of appeal and docketing statement within a day or two of the circuit court's ruling, along with an opening brief and motion for accelerated docket pursuant to Rule 311(b). *Lenehan*, 2013 IL App 130619, ¶ 19. The looming ballot printing and administrative deadlines cause candidates who have been removed from the ballot for even specious reasons to run the risk of forfeiting their claims if they do not seek immediate relief. *Lenehan*, 2013 IL App 130619, ¶ 19.

¶ 12 Here, the Board sustained the objection on January 12, 2017, and petitioner was served by certified mail the next day. Petitioner waited 10 days to petition for judicial review. Once the trial court dismissed the petition on February 8, 2017, she could have filed a notice of appeal and filed a motion for expedited review. Instead, petitioner chose to pursue two motions to reconsider in the trial court, which delayed the final judgment of dismissal for a month, until March 7, 2017. Upon entry of the appealable order on that date, petitioner waited 13 days to file her notice of appeal and 4 days after that to move for expedited review.

¶ 13 The disputed viability of the petition for judicial review is likely to have an immediate and irreversible impact on the parties without expedited consideration, as the election will pass before the issue is resolved. Including the correct candidates on the ballot is certainly important, and the urgency of petitioner's claim cannot be overstated. However, petitioner's own litigation

strategy created this exigency, which has severely diminished the potential for any remedial effect if she were to succeed on the merits.

¶ 14 Voting by mail and early voting began on March 20, 2017, the day that petitioner finally filed her notice of appeal. With each passing day after February 8, 2017, that petitioner did not appeal the dismissal of her petition for judicial review, the logistics of adding her name to the ballot for consideration by the voters, including early voters, became increasingly problematic. Resolving this ballot access case under these circumstances is neither practical nor judicially efficient because petitioner did not act quickly to protect her rights. See *Lenehan*, 2013 IL App 130619, ¶ 19.

¶ 15 Petitioner recognizes that a denial of expedited review would result in the election rendering the appeal moot. See *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶ 28 ("A case on appeal becomes moot where the issues presented in the trial court no longer exist because events subsequent to the filing of the appeal render it impossible for the reviewing court to grant the complaining party effectual relief"). Petitioner already has filed an appellate brief, but implementing a conventional briefing schedule would extend beyond election day.

¶ 16 Accordingly, petitioner argues in her motion that, if we deny expedited review such that the election would pass before we render our decision, we nevertheless should consider the appeal under the public interest exception to the mootness doctrine. An appeal is moot if no actual controversy exists or when events have occurred that make it impossible for the reviewing court to render effectual relief. *Commonwealth Edison Co. v. Illinois Commerce Commission*, 2016 IL 118129, ¶ 10 (*ComEd*). As a general rule, reviewing courts do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided. Our supreme court has declared that it will not

review cases merely to establish a precedent or guide future litigation. *ComEd*, 2016 IL 118129, ¶ 10. When a decision on the merits would not result in appropriate relief, such a decision would essentially be an advisory opinion. *ComEd*, 2016 IL 118129, ¶ 10.

¶ 17 The public interest exception to the mootness doctrine permits review of an otherwise moot question when the magnitude or immediacy of the interests involved warrants action by the court. The public interest exception applies only when (1) the question presented is of a public nature; (2) an authoritative determination of the question is desirable for the future guidance of public officers; and (3) the question is likely to recur. *ComEd*, 2016 IL 118129, ¶ 12.

¶ 18 Petitioner contends that (1) the timeliness of her petition for judicial review is of public interest because it is a question of election law and "the time for filing documents is a very, very important issue"; (2) there "appear to be no appellate decisions dealing with this exact issue"; and (3) the issue is likely to recur because it affects the jurisdiction of the circuit court to consider petitions for judicial review. In opposition to petitioner's motion to expedite the appeal, the Board argues that the exception does not apply and that the appeal should be dismissed as moot. We agree with the Board.

¶ 19 The public interest exception is narrowly construed and requires a clear showing of each of its criteria, otherwise the exception may not be invoked. Indeed, the public interest exception is invoked only on "rare occasions" when there is an extraordinary degree of public interest and concern. *ComEd*, 2016 IL 118129, ¶ 13.

¶ 20 Petitioner has failed to show at least the second and third criteria. The second requirement for the public interest exception to apply is that an authoritative determination of the question is desirable for the future guidance of public officers. *ComEd*, 2016 IL 118129, ¶ 15. Reviewing courts do not review cases merely to set precedent or guide future litigation. " 'If all

that was required under this factor was that the opinion could be of value to future litigants, the factor would be so broad as to virtually eliminate the notion of mootness. Instead, the factor requires that the party asserting [justiciability] show that there is a "need to make an authorative determination for future guidance of public officers." ' " *ComEd*, 2016 IL 118129, ¶ 15 (quoting *In re Alfred H.H.*, 233 Ill. 2d 345, 357-58 (2009) (quoting *In re Adoption of Walgreen*, 186 Ill. 2d 362, 365 (1999))).

¶ 21 In deciding the need for an authoritative determination, a reviewing court looks to whether the law is in disarray or conflicting precedent exists. *ComEd*, 2016 IL 118129, ¶ 16. When a case presents an issue of first impression, as petitioner concedes here, no conflict or disarray in the law exists. *ComEd*, 2016 IL 118129, ¶ 16. We decline to render an advisory opinion interpreting the five-day filing period for petitions for judicial review brought under the Election Code. There is no conflicting precedent regarding the statutory deadline. We conclude that the second criterion for application of the public interest exception is not met in this case.

¶ 22 The third requirement for the public interest exception to apply is that the question is likely to recur. *ComEd*, 2016 IL 118129, ¶ 18. Petitioner's argument on this factor is a bare claim that "this issue is likely to recur in future municipal elections." However, potential candidates for office whose names have been removed from the ballot almost certainly will, unlike petitioner, seek judicial review as soon as possible. Assuming the candidates' goal is to secure a place on the ballot, they will not risk forfeiture of their time-sensitive rights by seeking to extend the filing period to the last possible date under the law. Petitioner has made no showing of any probability or "substantial likelihood" that the issue is likely to recur. We determine that the third criterion for application of the public interest exception is not met.

¶ 23 For the reasons stated, we deny petitioner's motion to accelerate the appeal or consider it under the public interest exception to the mootness doctrine. After considering the parties' thorough arguments on mootness, we dismiss the appeal.

¶ 24 Appeal dismissed.