

No. 1-15-0264

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 DISTRICT

JASMINE JACKSON,)	Appeal from the Circuit Court
)	of Cook County.
Petitioner-Appellant,)	
)	
v.)	
)	
EMMA JEAN ROBINSON, CITY OF CHICAGO)	
MUNICIPAL OFFICERS ELECTORAL BOARD,)	2015 COEL 000006
RICHARD A. COWEN, MARISEL A.)	
HERNANDEZ, and LANGDON NEAL, Chairman,)	
SUSANA A. MENDOZA in Her Official Capacity)	
as City Clerk, and DAVID ORR in His Official)	
Capacity as County Clerk,)	
)	Honorable Alfred J. Paul,
Respondents-Appellees.)	Judge Presiding

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in dismissing petition for judicial review of decision of City of Chicago Municipal Officers Electoral Board for lack of jurisdiction where petitioner failed to strictly comply with the service requirements of the Election Code.

¶ 2 Petitioner Jasmine Jackson seeks reversal of the January 30, 2015, trial court order dismissing her petition for judicial review seeking to challenge the decision of respondent City of

No. 1-15-0264

Chicago Municipal Officers Electoral Board ("Board") sustaining objections of respondent Emma Jean Robinson to petitioner's nomination papers seeking to become a candidate for the office of Alderman of the Twenty-Eighth (28th) Ward of the City of Chicago. On appeal, petitioner contends that she complied with section 10-10.1 of the Election Code (10 ILCS 5/10-10.1 (West 2006)) and properly served the necessary parties to vest the circuit court with subject matter jurisdiction to secure review of the electoral board's decision. Accordingly, she seeks reversal of the dismissal order and remand for further proceedings. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

I. BACKGROUND

¶ 4 Petitioner filed nomination papers with the Board of Election Commissioners of the City of Chicago seeking to become a candidate for the office of Alderman of the Twenty-Eighth (28th) Ward of the City of Chicago at the February 24, 2015, Municipal General Election. Emma Jean Robinson filed objections to petitioner's nomination papers. Following hearings and proceedings before a hearing officer, the Board sustained objections to petitioner's nomination papers and found that petitioner fell below the minimum signature requirement to be placed on the ballot. On January 9, 2015, the Board issued a written decision on the matter and served a copy of the decision to petitioner's attorney of record via United States mail, first class postage prepaid.

¶ 5 On January 13, 2015, petitioner filed her petition for judicial review of the Board's decision with the Clerk of the Circuit Court of Cook County. On January 15, 2015, petitioner's counsel filed a certification of certified mailing averring that respondents were served with a true and correct copy of the petition for judicial review, via certified postage prepaid mail on January 13 and

No. 1-15-0264

January 14, 2015. The Board is not listed on the certification and the three individual board members are listed together as:

"Langdon D. Neal, Chairman
Marisel Hernandez, Board Member
Richard A. Cowen, Board Member
Chicago Board of Elections Commissioner
69 West Washington 6th Floor
Chicago, Illinois 60602"

¶ 6 Petitioner also provided copies of four certified mail receipts as proof of service. The receipts indicate that petitioner sent notice to respondents Orr, Robinson, and Mendoza, as well as to:

"Langdon D. Neal Chairman
Chicago Board of Elections
69 West Washington 6th Floor
Chicago, Illinois 60602"

¶ 7 Following two status hearings on January 26 and January 28, 2015, in which Jackson could only provide the above proof of service, the case was continued to January 30, 2015. The Board filed its motion to dismiss the petition for judicial review on January 28, 2015, and petitioner filed a response on January 29, 2015. On January 30, 2015, following a hearing, the trial court entered a written order dismissing the petition for judicial review for lack of jurisdiction.

¶ 8 Specifically, the court found that petitioner failed to comply with the mandatory requirement of section 10-10.1 of the Election Code to serve a copy of a petition for review upon

No. 1-15-0264

"the electoral board and all parties to the proceedings" by registered or certified mail within five days of service of the decision of the Board. The court found that petitioner failed to properly serve the Board as an entity as well as Board members Cowen and Hernandez. Petitioner filed her notice of appeal on January 30, 2015, and moved for an expedited appeal. The parties complied with the expedited briefing schedule by promptly filing briefs before this court.

¶ 9

II. ANALYSIS

¶ 10 We review the granting of a motion to dismiss *de novo*. *Bettis v. Marsaglia*, 2014 IL 117050 ¶ 12. Likewise, the issue of whether a court has jurisdiction over a matter is a question of law and reviewed *de novo*. *Nelson v. Qualkinbush*, 389 Ill. App. 3d 79, 83 (2009). For election matters brought pursuant to the Election Code, Illinois courts may only exercise jurisdiction over election cases when provided for by statute. *Pullen v. Mulligan*, 138 Ill. 2d 21, 32 (1990). Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1 (West 2012)) provides the process for judicial review of a decision of an electoral board, including four explicit prerequisites to establish subject matter jurisdiction. Section 10-10.1 reads, in pertinent part:

“Except as otherwise provided in this Section, a candidate or objector aggrieved by the decision of an electoral board may secure judicial review of such decision in the circuit court of the county in which the hearing of the electoral board was held. 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. The petition shall contain a brief statement of the reasons why the decision of the

No. 1-15-0264

board should be reversed. The petitioner shall file proof of service with the clerk of the court. No answer to the petition need be filed, but the electoral board shall cause the record of proceedings before the electoral board to be filed with the clerk of the court on or before the date of the hearing on the petition or as ordered by the court." 10 ILCS 5/10-10.1 (West 2012).

¶ 11 If these prerequisites are not strictly pursued and met, no special jurisdiction is conferred upon the circuit court. *Bettis* at ¶ 14. Therefore, failure to strictly comply with the requirements of this section invites dismissal for lack of subject matter jurisdiction under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)). See *Bill v. Education Officers Electoral Board*, 299 Ill. App. 3d 548, 551-52 (1998). Likewise, lack of strict compliance deprives this court of jurisdiction and dismissal of an appeal is proper. *Hough v. Will County Board of Elections*, 338 Ill. App. 3d 1092, 1094 (2003). Accordingly, a motion to dismiss must be granted if strict compliance with section 10-10.1 is not demonstrated in the record. *Allord v. Municipal Officers Electoral Board*, 288 Ill. App. 3d 897, 902 (1997).

¶ 12 In *Bettis*, our supreme court recently ruled on the service requirements pursuant to section 10-10.1. The *Bettis* court abrogated this court's holding in *Nelson* by finding that section 10-10.1 does not require service on the Board of Elections in addition to every member of the board because service on every member accomplishes service on the board. *Bettis* at ¶¶ 24-26. The *Bettis* court reiterated that the better interpretation of section 10-10.1 is that "a petitioner has served the board when he or she has served *every* member of the board." (Emphasis added.) *Id.* at ¶ 26. Moreover, in an election matter, personal service is required and service on a necessary party's attorney is insufficient to confer jurisdiction under section 10-10.1. *Rivera v. City of Chicago*

Electoral Board, 2011 IL App (1st) 110283, ¶¶ 23-25; *Hough*, 338 Ill. App. 3d at 1094.

¶ 13 The record and briefs in this case demonstrate that petitioner failed to strictly comply with the requirements of section 10-10.1 to personally serve every member of the Board and the trial court's dismissal of the petition for judicial review must be affirmed. Petitioner contends that the parties disagreed about the effect of *Bettis* on this court's ruling in *Nelson* and the requirements of section 10-10.1. However, respondents assert that this is not true and the fact is that *Bettis* is of no aid to petitioner's case because, while service on the Board as an entity is not required, the court clearly held that service on every party was necessary and that was not achieved in the instant matter. We agree.

¶ 14 Petitioner argues that she provided proof of service to all Board members with counsel's affidavit of service and the certified mail receipt addressed to Board Chairman Neal. She argues that this indicated that the certified mailing was sent to all of the Board members in compliance with section 10-10.1 of the Election Code. Petitioner asserts that separate envelopes addressed to Cowen and Hernandez contained copies of the petition for judicial review and were placed within the envelope to Chairman Neal.

¶ 15 Petitioner cites to discussion in *Nelson* that proof of service only requires the certificate of the attorney who mailed the petition, as required by Illinois Supreme Court Rule 12(b)(3) and that petitioner's counsel provided a certificate of mailing that indicates that certified mailing was sent to all three board members. *Nelson*, 389 Ill. App. 3d at 90. However, *Nelson* continues its discussion to note that filing of return receipts or other further proof of service within the time required can only assist the trial court in assuring that special jurisdiction has been conferred and all parties are on notice. *Id.* Petitioner's argument that the certificate of service filed in this case

No. 1-15-0264

proved that petitioner met the service requirement fails because the certificate of service was not clear and, when the court investigated to determine whether special jurisdiction had been conferred, it determined that not every member of the board had been served because petitioner could only produce a certified mail receipt for Chairman Neal which contradicted counsel's certificate of service.

¶ 16 Contrary to petitioner's claim that the certificate of service in this case is proof of service of all necessary parties, where the certificate is questioned or insufficient, the court must investigate whether service actually effected complies with the rules. See *Ingrassia v. Ingrassia*, 156 Ill. App. 3d 483, 501-02 (1987). *Nelson* indicates that a certificate of service completed by an attorney may be sufficient for proving proper service was effectuated, but that is only where the certificate demonstrates proper service. In the instant matter, the certificate of service included a single entry for all three board members; therefore, respondents properly objected to the proof of service and the trial court properly inquired into whether service was sufficient.

¶ 17 Petitioner produced certified mail receipts including one sent to Board Chairman Neal but there were no receipts, or claims, for personal service to the remaining two Board members. On appeal, petitioner claims that separate envelopes made out to Cowen and Hernandez were included in the envelope served on Neal and constitute service of every member of the board. This, by definition, does not constitute personal service on Cowen and Hernandez. Both Cowen and Hernandez are necessary parties under section 10-10.1 and *Bettis* and require personal service within five days of the decision of the electoral board to confer jurisdiction for judicial review. Accordingly, the trial court did not err in dismissing the petition for lack of jurisdiction.

¶ 18 We also reject petitioner's attempt to claim that her due process rights were violated by the

No. 1-15-0264

Board's failure to properly notify her of the Board hearing in this matter. This claim is not properly before this court and is not separately advanced within petitioner's brief. Furthermore, petitioner's factual claims are wholly unsupported by the record and she has failed to provide legal support for any such claim.

¶ 19 We also note that respondent Robinson argues in her response brief on appeal that this matter is moot as on February 4, 2015, because petitioner filed a declaration of intent to be a write-in candidate for the office of Alderman of the 28th Ward in the February 24, 2015, consolidated municipal election and a party may only appear on a ballot once. Petitioner submitted a handwritten notice filed with the Chicago Board of Election Commissioners on February 17, 2015, renouncing her write-in candidacy. We need not consider the effect of these arguments and actions as we have concluded that the threshold issue of jurisdiction was properly determined by the trial court and dismissal was proper.

¶ 20

III. CONCLUSION

¶ 21 Accordingly, we affirm the judgment of the Circuit Court of Cook County.

¶ 22 Affirmed.