

FOURTH DIVISION
February 23, 2017

No. 1-17-0066

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

NKYIA ERVIN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 17 COEL 2
)	
THE MUNICIPAL OFFICERS ELECTORAL BOARD)	
FOR THE VILLAGE OF HAZEL CREST, COOK)	
COUNTY, ILLINOIS,)	Honorable
)	Sharon M. Sullivan,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the order of the circuit court of Cook County denying injunctive relief and entering judgment for defendant; defendant Municipal Officers Electoral Board did not violate the Illinois Election Code by constituting multiple electoral boards to hear various challenges to nominating petitions because the plain language of the Election Code authorizes that practice.

¶ 2 Plaintiff, Nkyia Ervin, filed a complaint for injunctive relief against defendant, the Municipal Officers Electoral Board for the Village of Hazel Crest, Cook County, Illinois,

seeking an emergency injunction against “all the current Municipal Officers Electoral Boards for the Village of Hazel [*sic*], except the duly constituted Board, enjoining them from any and all further actions as Electoral Boards” pending a hearing. In her complaint, plaintiff alleged that, under the Election Code, a municipality may not constitute multiple electoral boards to hear and decide multiple objection petitions. The circuit court entered judgment for defendant. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 The Election Code provides a mechanism to object to the nominating petitions of candidates for election. The Election Code also provides for electoral boards “for the purpose of hearing and passing upon” such objections. In the case of a municipal election, which is the type at issue here, the Election Code designates certain local officials to serve as the Electoral Board (Board). In the event one of those statutorily designated members is a candidate for the office with relation to which the objector’s petition is filed, he or she is not eligible to serve on the Board. The Election Code provides for the replacement of one of the statutory members with an alternate statutory member, and for the appointment of public members appointed by the Chief Judge of the Circuit Court for any vacancies not filled pursuant to the statute.

¶ 5 Plaintiff states that on December 27, 2016, she filed objections to the nominating petitions of ten potential candidates for election to various offices in the Village of Hazel Crest (Village). In pertinent part, plaintiff filed objections to the nominating petitions filed by (1) Vernard L. Alsberry, Jr., the incumbent Village President, for election to the office of Village President; (2) Kevin Moore, Sr., current Trustee for the Village, for election to the office of Village Trustee; (3) Marlon D. Rias, current Village Clerk, for election to the office of Village Trustee; and (4) Patricia A. Jackson, current Village Trustee, for election to the office of Village Trustee. According to plaintiff, objectors’ petitions were to be considered on January 6, 2017.

Defendant states that prior to that date, the Village Attorney recognized that some of the objections that had been filed created conflicts for those local officials who, according to the Election Code, should comprise the membership of the Board because those officials were candidates for the office to which the objections pertained. Therefore (according to defendant), the Village Attorney sent two letters to the Chief Judge of the Circuit Court of Cook County requesting public members be appointed pursuant to the Election Code as replacements.

¶ 6 Specifically, on December 29, 2016, the Village Attorney wrote to the Chief Judge to request the appointment of three public members of the Board for four hearings. The Village Attorney requested the appointment of three public members to serve on the Board to hear the objections against four candidates running as a slate. Three of those four candidates were statutory members or a statutory replacement member of the Board. Another statutory member of the Board was also a candidate for the office sought by three members of the slate (Village Trustee). The Village Attorney wrote that because the candidates were running as a slate and there would be only one nominating petition to consider¹, it would be “incongruous” to have more than one electoral board determine the validity of the same petition. Thus, the Attorney requested the appointment of three public members to hear the objections to the nominating petition of the slate pertaining to the four named candidates.

¶ 7 On December 30, 2016, the circuit court of Cook County, by the Presiding Judge of the County Division, entered Special Order No. 2016-95² appointing three public members to hear

¹See 10 ILCS 5/10-2, 10-6 (West 2014); *Libertarian Party of Illinois v. Illinois State Board of Elections*, 164 F. Supp. 3d 1023, 1030 (N.D. Ill. 2016).

²Neither the letters written by the Village Attorney or the circuit court’s special orders are included in the record on appeal, but they are included in defendant’s appendix to its appellee’s brief. Although defendant’s brief states it “supplements the *** record,” defendant did not file a motion pursuant to Illinois Supreme Court Rule 329 (eff. Jan. 1, 2006). Nor has plaintiff filed a

the objections to the nominating petition of the slate in question and against the four candidates. The four candidates included Vernard L. Alsberry, the incumbent Village President and candidate for reelection to that office. On January 5, 2017, the Village Attorney wrote back to the Presiding Judge stating that upon further review of the Election Code, she (the Village Attorney) determined that “statutorily, the Electoral Board to hear the objections against Vernard L. Alsberry, Jr. for the office of President should consist of the Village Clerk [(who is a member of the slate)], the Senior Trustee [(who is running for reelection but is not a member of the slate)] and the Second Most Senior Trustee [(who is a member of the slate)].” On January 5, 2017, the court entered Amended Special Order No. 2016-95 in accordance with the Village Attorney’s request. On January 10, 2017, the court entered Second Amended Special Order No. 2016-95, which was identical to the first Amended Special Order No. 2016-95 except that Second Amended Special Order No. 2016-95 removed a specific reference to the nominating petition of the slate. Thus, Second Amended Special Order No. 2016-95 appointed three public members for the Village of Hazel Crest, Illinois Electoral Board to hear the objections against Marlon D. Rias, Kevin Moore Sr., and Java Rogers (all members of the slate).

¶ 8 Also on December 29, 2016, the Village Attorney wrote separately to the Chief Judge to request the appointment of two public members of the Board for five hearings. The letter states that five petitions were filed objecting to the nominating petitions of five candidates for the office of Village Trustee. Plaintiff filed three of the objecting petitions: those against candidates

motion to strike those portions of defendant’s brief. We could find that the parties have stipulated that these documents are part of the record given plaintiff’s reference to many of the documents contained in the appendix. See *Marzouki v. Najjar-Marzouki*, 2014 IL App (1st) 132841, ¶ 20. We do not so find because the information gleaned from the documents in the appendix are used only to provide some context for the dispute between the parties and form no part of the basis for our disposition of plaintiff’s appeal, which presents a pure question of law that is not dependent upon the resolution of any dispute of fact.

Patricia Jackson, Deidre Dyer, and Lee Fantroy. Jackson, Dyer, and Fantroy are running as a second slate separate from the slate referenced above. The letter states that the Trustees with the longest and second-longest term of service as Village Trustee are both running for reelection and, therefore, neither is “available to serve on the Village of Hazel Crest Electoral Board.” The Village Attorney requested the appointment of two public members of the Board to hear the objections to the nominating petitions of Jackson, Dyer, and Fantroy (and two other objections filed by a nonparty to this appeal). On December 20, 2016, the circuit court of Cook County, by the Presiding Judge of the County Division, entered Special Order No. 2016-85 in accordance with the Village Attorney’s request.

¶ 9 On January 9, 2017, plaintiff filed a complaint for injunctive relief in the circuit court of Cook County. Plaintiff’s complaint alleged that the circuit court of Cook County “appointed three disinterested public members to serve as the duly constituted Municipal Officers Electoral Board [(Board)] for the Village of Hazel Crest, Cook County, Illinois;” but, plaintiff alleged, “in apparent violation of the Illinois Election Code, the Village of Hazel Crest added 4 other individuals as members of the [Board], and by permutation and combination, reconstituted said Board into 4 separate and distinct Boards, with 4 distinct group [*sic*] of members, and 4 distinct individuals serving as Chairman of each of the 4 distinct and separate Boards.” The four members allegedly “added” to the Board were the statutorily authorized members of the Board; to wit: Vernard L. Alsberry, Jr., President of the Village of Hazel Crest; Marlon D. Rias, Clerk for the Village of Hazel Crest; Susan M. Pate, the longest serving Trustee for the Village of Hazel Crest; and Kevin Moore, Sr., the second-longest-serving Trustee for the Village of Hazel Crest (hereinafter collectively “the Village officials”). Each of the village officials is a candidate for an office for which plaintiff filed an objection. Plaintiff alleged that the “duly constituted”

Board consisted only of the public members appointed by the Chief Judge of the Circuit Court of Cook County.

¶ 10 On January 10, 2017, the trial court entered an order denying the request for injunctive relief. The court found that pursuant to section 10-9 of the Election Code, “a municipality may have multiple electoral boards in the event of statutory ineligibility of the statutory members to hear and pass upon an objector’s petition.”

¶ 11 On January 11, 2017, plaintiff filed a notice of appeal. On the same day plaintiff filed an emergency motion pursuant to Illinois Supreme Court Rule 311(b) (eff. Mar. 8, 2016) to accelerate the docket. On January 13, 2017, this court allowed the motion and entered an accelerated briefing schedule, and briefing concluded on February 14, 2017.

¶ 12 ANALYSIS

¶ 13 Section 10-9 of the Election Code (10 ILCS 5/10-9 (West 2014)) provides, in pertinent part, as follows:

“The following electoral boards are designated for the purpose of hearing and passing upon the objector's petition described in Section 10-8.

* * *

3. The municipal officers electoral board to hear and pass upon objections to the nominations of candidates for officers of municipalities shall be composed of the mayor or president of the board of trustees of the city, village or incorporated town, and the city, village or incorporated town clerk, and one member of the city council or board of trustees, that member being designated who is eligible to serve on the electoral board and has served the greatest number of years as a member of the city council or board of trustees, of whom the mayor or president of the board of trustees shall be the chairman.

* * *

In the event that any member of the appropriate board is a candidate for the office with relation to which the objector's petition is filed, he shall not be eligible to serve on that board and shall not act as a member of the board and his place shall be filled as follows:

* * *

b. In the municipal officers electoral board by the eligible elected city council or board of trustees member who has served the second greatest number of years as a city council or board of trustees member.

* * *

Any vacancies on an electoral board not otherwise filled pursuant to this Section shall be filled by public members appointed by the Chief Judge of the Circuit Court for the county wherein the electoral board hearing is being held upon notification to the Chief Judge of such vacancies. The Chief Judge shall be so notified by a member of the electoral board or the officer or board with whom the objector's petition was filed. In the event that none of the individuals designated by this Section to serve on the electoral board are eligible, the chairman of an electoral board shall be designated by the Chief Judge.” 10 ILCS 5/10-9 (West 2014).

¶ 14 The sole question presented in this appeal is whether, under the foregoing provisions of the Election Code, a municipality may create more than one Board for the purpose of hearing and passing on more than one objection. This question presents an issue of statutory construction, which we consider *de novo*. *Gassman v. Clerk of the Circuit Court of Cook County*, 2017 IL App (1st) 151738, ¶ 15. “The fundamental rule of statutory interpretation is to

ascertain and effectuate the intent of the legislature. [Citation.] The best indication of that intent is the language of the statute itself, which must be given its plain and ordinary meaning.” *Id.*

“Where the statutory language is clear and unambiguous, the court must give it effect without resort to other tools of interpretation. [Citation.] It is never proper for a court to depart from the plain language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent. [Citation.]” *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 52. Based on our review of section 10-9 of the Election Code, we find that a municipality may constitute multiple electoral boards when multiple objections to nominating petitions are filed.

¶ 15 Plaintiff argues the plain language of the statute creates “[t]he municipal officers electoral board” (emphasis added) and not the municipal officers electoral boards, therefore, the Village of Hazel Crest violated the statute by creating multiple boards to hear and pass upon her objections. Plaintiff also argues that the Board is to be comprised of only three members, but the Village of Hazel Crest “combined seven people as members to form four different boards.” Plaintiff argues the ineligibility of statutory members of the Board did not authorize the Village to create “additional boards.” She asserts that because there was not an individual vacancy (because all three statutory members were ineligible as “candidates for election/re-election, and objections had been filed against the nomination papers of each of them”), section 10-9(b) does not apply. Plaintiff argues that in this instance, the Election Code provides that the Chief Judge is to appoint three public members to serve as the Board for all objections, regardless of whether statutory members of the Board are eligible or ineligible to hear and decide the various individual objections. We find this is a misconstruction of the statute.

¶ 16 The fatal flaw in plaintiff’s reasoning is that it is based on applying section 10-9 to an election in the aggregate whereas under the plain language of the statute section 10-9 of the

Election Code is properly applied to objections to nominating petitions singularly. It is the filing of an objection that triggers the creation of an electoral board, and each filing of an objection triggers the creation of a distinct electoral board. We find support for our conclusion that each new objection causes the creation of a separate electoral board in section 10-10 of the Election Code. Although plaintiff's complaint is based on section 10-9, our supreme court has held that the doctrine of *in pari materia* is applicable to different sections of the same statute "and is consonant with one of our fundamental rules of statutory construction—to view all of the provisions of a statute as a whole. [Citation.]" (Internal quotation marks omitted.) *Collinsville Community Unit School District No. 10 v. Regional Board of School Trustees of St. Clair County*, 218 Ill. 2d 175, 185-86 (2006).

¶ 17 Section 10-10 states that within 24 hours of the receipt of the nomination papers and the objector's petition, the chairman must send a "call" to all parties involved "which call shall set out the fact that the electoral board is required to meet to hear and pass upon the objections" and state when and where the Board will meet for that purpose. 10 ILCS 5/10-10 (West 2014).

Section 10-10 goes on to state as follows:

"The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be *** and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1." 10 ILCS 5/10-10 (West 2014).

Then, upon the expiration of the period for judicial review of the Board's decision, the Board must transmit a certified copy of its ruling to the officer with whom the nomination papers were on file. *Id.*

¶ 18 It is clear from the language in section 10-10 that an electoral board exists for the sole purpose of hearing and deciding a single objector's petition. There is no language in section 10-10 pertaining to procedures by the Board once proceedings on the objection petition at issue are concluded. We recognize that section 10-9 initially states that the Board is "to hear and pass upon *objections* to the *nominations* of *candidates* for officers of municipalities." (Emphases added.) 10 ILCS 5/10-9(3) (West 2014). However, the use of the plural in the general descriptions of the function of the Board is not repeated in those portions of the statute addressing the ineligibility of statutory Board members. Later, the statute states that if a member of the "appropriate board" is a candidate for the office "with relation to which the objector's petition is filed" that member shall not be eligible to serve on "that board." 10 ILCS 5/10-9 (West 2014). The plain language of the statute, particularly the reference to "that board" constituted for the purpose of hearing and deciding "the objector's petition," indicates that the Board is formed in relation to a petition singularly, not an election generally. If the latter were true, then the statute would say that if any objections to nominating petitions are filed during an election cycle, then an electoral board shall be formed to decide those objections. The statute does not say that, and its structure does not suggest that construction of the statute. Our interpretation is not harmed by the fact that in some instances the same members comprised the various boards formed for purposes of deciding the multiple objections that were filed in this election. The Election Code requires certain municipal officers to serve on the Board if eligible. Thus, the statute contemplates that the same statutory members, including the statutory

replacement member, may be eligible to hear multiple objections, and nothing in the statute states that those members may hear only one objection.

¶ 19 Plaintiff argues in effect that if all of the statutory Board members are ineligible to hear any one objector's petition during an election, all statutory members are ineligible to hear any and all objector's petitions during that election. There is no support for that reading in the plain language of the statute. Plaintiff's argument is only tenable if the statute provides that the ineligibility of a statutory Board member with regard to one objection (one in which the member is a candidate for the office with relation to which the objection petition is filed) disqualifies that statutory member from participation on a Board for purposes of hearing and deciding an objection which that statutory member *is eligible* to hear and decide (one in which the member is not a candidate for the office with relation to which the objector's petition is filed). The Election Code does not contain any language to that effect, and we may not read into the statute exceptions, limitations, or conditions that are not contained in its plain language. *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 15 (“a court is not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express”). To the contrary, the plain language of the statute favors participation by a statutory member of the Board, including a statutory replacement member, if a statutory member is eligible, and only provides for public members to fill vacancies “not otherwise filled pursuant to this Section.” See 10 ILCS 5/10-9(3) (West 2014) (“board *** *shall* be composed of ***”) (emphasis added); *Oswald v. Hamer*, 2016 IL App (1st) 152691, ¶ 23 (“Generally, the use of the word ‘shall’ indicates a mandatory intent.”).

¶ 20 Moreover, “when undertaking the interpretation of a statute, we must presume that when the legislature enacted a law, it did not intend to produce absurd, inconvenient, or unjust results. [Citation.]” *Board of Education of Springfield School District No. 186 v. Attorney General of*

Illinois, 2017 IL 120343, ¶ 25. It would be absurd to construe the statute to disqualify all four of the statutory members from hearing and deciding all objections during an election if all four potential statutory members are candidates in the election without also construing the statute to (a) permanently disqualify a single statutory member from hearing and deciding all objections during an election if he or she alone is a candidate in the election, and (b) permanently disqualify all statutory members if any one is a candidate in the election. The statute does not contain such limitations on participation on the Board. A statutory member is only disqualified if he or she “is a candidate for the *office* with relation to which the objector’s petitions is filed” (emphasis added), not if he or she is a candidate in the *election* with relation to which the objector’s petition is filed or if any statutory member is a candidate in the election with relation to which the objector’s petition is filed. Again, we may not read provisions into the statute that are not in its plain language. Thus, a provision that is required so that plaintiff’s interpretation of the statute is not absurd is not only absent from the statute, it would be in direct contradiction with the plain language of the statute, which only proscribes participation on the Board by statutory members who have a conflict with an objection in relation to a particular office.

¶ 21 Additionally, no provision disqualifying all of the statutory members from hearing and deciding all objections during an election if any one potential statutory member is a candidate in the election is implicit in section 10-9 as evidenced by the fact that the statute contemplates statutory members and public members serving on the same Board. If such a provision was implicit in the statutory scheme, service on a Board by both statutory members and public members would not be possible because the disqualification of one statutory member would be a disqualification of all. The statutory language which contemplates statutory and public members serving on the same Board is found in the following provision: “[i]n the event none of the individuals designated by this Section to serve on the electoral board are eligible, the chairman of

an electoral board shall be designated by the Chief Judge.” 10 ILCS 5/10-9 (West 2014). The statute also states that “[i]n the event that the chairman of the electoral board is ineligible to act because of the fact that he or she is a candidate for the office with relation to which the objector’s petition is filed, then the substitute chosen under the provisions of this Section shall be the chairman.” *Id.* We must read these two provisions together, so as not to render either meaningless. *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2015 IL 117443, ¶ 17 (“A court will not read statutory language in isolation but must consider it in the context of the statute as a whole.”); *Stroger v. Regional Transportation Authority*, 201 Ill. 2d 508, 524 (2002) (“The statute should be construed as a whole and, if possible, in a manner such that no term is rendered meaningless or superfluous.”). Reading these provisions in this way, either the mayor or president of the board of trustees or the trustee with the second-longest term of service is to serve as chairman, and if neither is eligible, then a public member appointed by the Chief Judge shall be designated chairman of the Board. Thus, the statute contemplates that a Village Clerk, the longest-serving trustee, and a public member may comprise an electoral board, in which case the public member would serve as the chairman. If we construe section 10-9 to mean that the ineligibility of one statutory member disqualified all statutory members, as we would have to do under plaintiff’s interpretation of the statute to avoid an absurd result, then the foregoing provisions of the statute would be meaningless.

¶ 22 In light of the foregoing, we may not adopt plaintiff’s construction of the statute.

Plaintiff sought an emergency injunction pending a hearing on the issues raised in her complaint.

“To establish entitlement to preliminary injunctive relief, a plaintiff must show (1) a clearly ascertainable right in need of protection, (2) that he will suffer irreparable harm without protection of that right, (3) that there is no adequate remedy at law, and (4) that there is a substantial likelihood of success on the

merits of the underlying action. [Citation.] Generally, an abuse of discretion standard of review applies, but when, as here, the case raises pure questions of law, the determination of the merits of the permanent injunction is subject to *de novo* review. [Citation.]” *Christian Assembly Rios de Agua Viva v. City of Burbank*, 408 Ill. App. 3d 764, 768 (2011).

The sole issue raised in plaintiff’s complaint was that the Village of Hazel Crest violated section 10-9 of the Election Code when it impaneled more than one electoral board to hear and decide the multiple objectors’ petitions it received which created varying conflicts for the statutory members of the Board. Under our construction of the plain language of the statute, the Village was authorized to act as it did. The Village complied with the statute. Plaintiff is not entitled to the relief sought in her complaint. Accordingly, we hold the circuit court of Cook County properly denied plaintiff’s complaint for injunctive relief.

¶ 23

CONCLUSION

¶ 24 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 25 Affirmed.