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2012 IL App (3d) 110140-U

Order filed May 8, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS, <i>ex rel.</i> ,)	of the 10th Judicial Circuit,
KEVIN W. LYONS, State's)	Peoria County, Illinois,
Attorney of Peoria County,)	
)	
Plaintiff-Appellee,)	Appeal No. 3-11-0140
)	Circuit No. 11-CH-108
v.)	
)	
GENERAL JOHN PARKER,)	Honorable
)	Scott A. Shore,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant had two felony convictions in Peoria County, the trial court did not err in granting the State's *quo warranto* action barring him from running for a position as a member of the school board.
- ¶ 2 Defendant General John Parker appeals from the judgment of the circuit court, barring him from running for office of school board member pursuant to the eligibility requirements of the

School Code (105 ILCS 5/10-11 (2010)) and the Election Code (10 ILCS 5/29-15 (West 2010)). We affirm.

¶ 3 Defendant was convicted of felony theft on June 4, 1984, and July 20, 1984. On December 13, 2010, he filed nominating petitions and a statement of candidacy for Peoria District 150 school board member. In his statement of candidacy, defendant swore that he was "legally qualified to hold such office." The school board election for District 150 board members was scheduled for April 5, 2011.

¶ 4 In January of 2011, the Peoria County Clerk's office sent defendant a copy of a letter it received from the State Board of Elections. The letter stated that if defendant did not pay a \$1,200 fine from a previous election by January 26, 2011, his name would be removed from the ballot. Defendant paid the fine, and his name remained on the ballot.

¶ 5 On February 18, 2011, the Peoria County State's Attorney filed a *quo warranto* motion on behalf of the State to remove defendant's name from the ballot. In its motion, the State alleged that defendant's felony conviction disqualified him from holding public office pursuant to section 29-15 of the Election Code (10 ILCS 5/29-15 (West 2010)).

¶ 6 A hearing was held on February 22, 2011. Defendant appeared *pro se* and asked the trial judge to recuse himself because the judge was a friend of the State's Attorney, Kevin Lyons. The trial court instructed defendant to file a written motion.

¶ 7 Defendant filed his motion for substitution of judge, along with a motion to dismiss. The trial court granted the substitution motion, and the case was heard before another judge.

¶ 8 At the close of arguments, the trial court held that defendant, as an individual convicted of a felony, was barred from holding or running for school board member. The court entered judgment

enjoining defendant from running for the position and ordered that defendant's name be removed from the ballot.

¶ 9

I. School Board Member Eligibility

¶ 10 Defendant argues that the trial court erred in granting the State's *quo warranto* motion because Illinois law does not bar him from running for school board member based on a 30-year-old felony conviction.

¶ 11 The School Code provides that “[a]ll school elections shall be governed by the general election law of the State.” 105 ILCS 5/9-1 (West 2010). Section 1-1 of the Election Code states that the Election Code “is the general election law of Illinois and any reference in any other Act to ‘the general election law’ or ‘the general election law of this State’ is a reference to this Act, as now or hereafter amended.” 10 ILCS 5/1-1 (West 2010). Thus, the Election Code governs the election of school board members.

¶ 12 Various provisions in the Election Code prohibit convicted felons from holding an elective office. Section 25-2(5) of the Election Code states that every elected office becomes vacant upon the conviction of an “infamous crime” by the holder of that office. 10 ILCS 25-2(5) (West 2010); see also 105 ILCS 5/10-11 (West 2010) (elective offices under School Code become vacant upon conviction of an “infamous crime”). Section 29-15 states:

“Any person convicted of an infamous crime as such term is defined in Section 124-1 of the Code of Criminal Procedure of 1963, as amended, shall hereafter be prohibited from holding any office of honor, trust, or profit, unless such person is again restored to such rights by the terms of a pardon for the offense or otherwise according to law.” 10 ILCS 29-15 (West 2010).

¶ 13 The Officials Convicted of Infamous Crimes Act (Infamous Crimes Act) (5 ILCS 280/1 (West 2010)) also provides that any elected official of a school district "who is convicted in any court of the State of Illinois or of the United States of a felony, bribery, perjury, or other infamous crime, as understood in Section 1 of Article XIII of the Constitution of 1970, shall be, upon conviction, ineligible to continue in such office." 5 ILCS 280/1 (West 2010).

¶ 14 In this case, defendant was convicted of theft. His conviction is classified as a felony and an infamous crime. See *People ex rel. City of Kankakee v. Morris*, 126 Ill. App. 3d 722 (1984). There is no dispute that he has not received a pardon. He is therefore ineligible to hold the office of school board member in this State. Since defendant is not currently able to hold the office of school board member and was not able to hold that office when he filed his statement of candidacy, he is unable to run for school board member. See *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200 (2008) (provisions of the Illinois Municipal Code construed *in pari materia* with the Election Code indicated that eligibility provision applied to eligibility to run for office, not only the holding of office). Thus, the trial court properly granted the State's *quo warranto* action and barred defendant from running for school board member.

¶ 15 *II. Restoration of Ability to Run*

¶ 16 Nonetheless, defendant claims that section 5-5-5(b) of the Unified Code of Corrections (730 ILCS 5/5-5-5 (West 2010)) restored his ability to run for office after he had served his sentence.

¶ 17 In construing a statute, our task is to "ascertain and give effect to the legislature's intent." *Lieb v. Judges' Retirement System*, 314 Ill. App. 3d 87, 92 (2000). The best indicator of the legislature's intent is the plain language of the statute. *Lee v. John Deere Insurance Co.*, 208 Ill.2d 38 (2003). Where the statute's language is clear, it should be given effect without resort to other aids

of statutory construction. *Id.* at 92.

¶ 18 Section 5-5-5(b) of the Unified Code of Corrections states that a person convicted of a felony is ineligible to hold a constitutional office until the completion of his sentence. 730 ILCS 5/5-5-5(b) (West 2010). Under the Illinois Constitution, the state legislature also has the authority to enact statutes that set forth the qualifications and eligibility requirements for convicted felons seeking a local office. See Ill. Const. 1970, art. XIII, §1. In accordance with that authority, section 29-15 of the Election Code prohibits any person convicted of an infamous crime from holding an elective office “unless such person is again restored to such rights by the terms of a pardon for the offense or otherwise according to law.” 10 ILCS 5/29-15 (West 2010). In addition, section 10-11 of the School Code provides that a school board member's office becomes vacant upon “[h]is or her conviction of an infamous crime, of any offense involving a violation of official oath, or of a violent crime against a child.” 105 ILCS 5/10-11 (West 2010).

¶ 19 It is clear from the plain language of these statutes that section 5-5-5(b) of the Unified Code of Corrections does not restore defendant's eligibility to run for the office of school board member. Section 5-5-5(b) states that a convicted felon may hold a constitutional office after he completes his sentence. However, defendant is not attempting to hold a "constitutional" office. Defendant is seeking to hold a local school board office created by the legislature. See Ill. Const. 1970, art. VII, §12. When a local office is created by statute, the legislature has the discretionary authority to specify the qualifications required to hold that office. *East St. Louis Federation of Teachers, Local 1220 v. East St. Louis School District No. 189 Financial Oversight Panel*, 178 Ill. 2d 399 (1997). The legislature has a legitimate state interest in maintaining the public trust in local offices. See *People v. Hofer*, 363 Ill. App. 3d 719 (2006). To that extent, it has determined that persons

convicted of an infamous crime are prohibited from holding elected offices such as school board member. The language of section 5-5-5(b) does not contradict that determination because it does not apply here. See *Hofer*, 363 Ill. App. 3d at 724 (statute barring formerly convicted felons from holding municipal office was valid; legitimate difference between local offices and constitutional offices governed by section 5-5-5(b)); cf. *Coles v. Ryan*, 91 Ill. App. 3d 382 (1980).

¶ 20

III. Constitutional Claims

¶ 21 Defendant argues that he has a fundamental right to run for and hold public office and that the *quo warranto* action against him is unconstitutional. The State argues that defendant forfeited this argument by failing to raise it in the trial court. We agree that the record does not indicate that defendant challenged the constitutionality of the *quo warranto* action in the trial court. The failure to raise an argument in the trial court, even if the argument concerns the constitutionality of a statute, forfeits the issue. *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113 (2010).

¶ 22 Moreover, failure to support a claim adequately on appeal can also result in forfeiture. Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006). Here, defendant claims that barring felons from running should be subject to a strict scrutiny analysis. However, he fails to cite any case law that supports his argument. In addition, defendant attempts to support his constitutional claims by presenting allegations of improper motivations by the State's Attorney and the trial judge, but the facts he cites were not presented as evidence to the trial court. Given defendant's forfeiture of the issue and lack of support in the record, we decline to address the constitutional arguments raised on appeal.

¶ 23

IV. Procedural Claims of Error

¶ 24 Last, defendant raises two procedural arguments. First, defendant claims that the trial court erred as a matter of procedure by allowing the State to file an objection after the time for filing an

objection with the electoral board had passed. Defendant's argument incorrectly assumes that the State's Attorney's authority is affected by the Election Code provisions for an objection to a candidate. In *People ex rel. Frazier v. Altenberg*, 260 Ill. 191 (1913), the supreme court held:

"Common-law courts of general and original jurisdiction have the power to inquire into the regularity of elections by an information in the nature of *quo warranto*. This jurisdiction remains even though statutes provide special proceedings for the contest of elections, unless 'it appears with unequivocal certainty that the Legislature intended to take it away.' [Citation]" *Altenberg*, 260 Ill. at 192-93.

Under section 18-101 of the Code of Civil Procedure, the State has the authority to file a *quo warranto* action against any person who "usurps, intrudes into, or unlawfully holds or executes any office." 735 ILCS 5/18-101 (West 2010). The Election Code does not limit that authority. Compare 735 ILCS 18-101 (West 2010) with 10 ILCS 5/23-1.1a *et seq.* (West 2010). Thus, the trial court did not err in allowing the *quo warranto* action to proceed in this case.

¶ 25 Second, defendant argues that the State's action was untimely because it was filed before the election. We disagree. A delay in challenging defendant's eligibility would have had a detrimental effect on defendant and the public. Waiting until after the election to file an injunction would have caused defendant to expend money and effort campaigning, only to be removed from the seat if he won the election. Moreover, a challenge raised after the election would have had a detrimental effect on the public by allowing an ineligible candidate to seek office. Accordingly, the trial court properly granted the State's motion and barred defendant from placing his name on the ballot.

¶ 26

CONCLUSION

¶ 27 The judgment of the circuit court of Peoria County is affirmed.

¶ 28 Affirmed.