2013 IL App (1st) 130711-U

Third Division
April 2, 2013

No. 1-13-0711

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TRANSPARENCY & ACCOUNTABILITY IN POLITICS party, and its candidates, ROCCO J. DESANTIS, PETER M. CULAFIC, ANNABELLE J. DOWNS, LUIGI "GINO" LABELLARTE and MARYBELLE MANDEL,	)	Appeal from the Circuit Court of Cook County.
Petitioners-Appellants,	)	
v.	)	
MUNICIPAL OFFICERS ELECTORAL BOARD FOR THE VILLAGE OF NORTH RIVERSIDE, KENNETH KROCHMAL, DR. QUEENELLA MILLER, and THOMAS CORGIAT, individually and as members of the MUNICIPAL OFFICERS ELECTORAL BOARD FOR THE VILLAGE OF NORTH RIVERSIDE, JOHN BERESHEIM and DAVID D. ORR, Cook County Clerk,	)	13 COEL 000016
Respondents-Appellees.	)	Honorable Paul A. Karkula, Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Sterba and Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: The Municipal Officers Electoral Board for the Village of North Riverside did not clearly err when it held that the name of the Transparency & Accountability in Politics Party exceeded five words, and that it violated section 10-5 of the Election Code. However, the Board should have revised the name of the party instead of striking all of the candidates from the ballot. An unretired police officer receiving a disability pension holds an office incompatible with the office of Village President. A candidate who explained that the Village's inadvertent error in processing her change of voter registration led her to vote outside of the Village after she moved into the Village had not abandoned her residence in the Village for purposes of the residency requirement for candidates for public office.

¶ 2 The Transparency & Accountability in Politics Party (T&AIPP) fielded a full slate of candidates for the April 2013 election of officers for the Village of North Riverside (Village). The Municipal Officers Electoral Board for the Village (Board) struck the names of all of T&AIPP's candidates from the ballot, and the trial court affirmed the Board's ruling. T&AIPP now appeal. We reverse the ruling in part, affirm in part, and remand with directions.

¶ 3 BACKGROUND

¶ 4 On December 17, 2012, the T&AIPP filed nomination papers for its slate of candidates for Village offices. John Beresheim filed an objector's petition on December 31, 2012. According to the petition, T&AIPP's candidate for Village president, Rocco DeSantis, remained a police officer, and therefore, under section 3.1-15-15 of the Illinois Municipal Code (65 ILCS 5/3.1-15-15 (West 2012)), he was ineligible to serve as Village president. In addition, Beresheim alleged that Marybelle Mandel, one of T&AIPP's candidates for Village trustee, had not lived in the Village for one year prior to the election, and therefore she failed to meet the eligibility requirements for the office under section 3.1-10-5 of the Municipal Code (65 ILCS 5/3.1-10-5(a) (West 2012)). Finally, Beresheim claimed that T&AIPP's name violated the restriction stated in section 10-5 of the Illinois Election

Code, which provides that the nominating papers must give the name of the political party, "expressed in not more than 5 words." 10 ILCS 5/10-5 (West 2012). The Board held an evidentiary hearing on the petition.

¶ 5 DeSantis

¶ 6 The Village's finance director testified that DeSantis served as a sergeant in the Village's police department until he took disability leave. He continues to receive a disability pension for a duty-related disability. He has not retired. If he applied for reinstatement and the department found he had overcome his disability, the department would reinstate him to his position as a sergeant. DeSantis's name does not appear on the Village's list of active police officers.

¶ 7 Mandel

¶ 8 Mandel testified that she moved into her home in the Village in 2010. She presented affidavits from two of her neighbors who swore that Mandel moved into their neighborhood in the Village in 2010. Mandel presented exhibits showing that she changed her car's registration and the address on her driver's license to the Village address in 2010. In the spring of 2011, Mandel obtained permits for substantial construction work on her home. The work continued well into 2012, and during construction, she and her family sometimes stayed in homes outside of the Village. In March 2012, Mandel tried to vote in the Village. According to Mandel, the election judge told her her name did not appear on the list of voters registered in the Village, so she should try to vote at the address where she had previously registered, in Berwyn. Mandel voted in Berwyn. Beresheim presented Mandel's application for a change of voter registration, dated August 29, 2012. Mandel explained that she reapplied for a change of voter registration due to the Village's failure to process her initial

request.

¶ 9 An employee of the Village's water billing department testified that according to the Village's records, from December 1, 2011, through July 9, 2012, Mandel's family used a total of 1300 gallons of water, or about 200 gallons per month. For the remainder of 2012, the Mandels used over 6,000 gallons of water. The Village employee estimated that her family of three used about 3,000 gallons of water each month. The employee admitted that Mandel's family had paid the water bill for the Village residence for much more than one year. Mandel testified that the Village changed the water meter during the work on the house because the meter had not functioned properly, misrecording the family's actual water usage.

¶ 10 Party Name

¶ 11 T&AIPP circulated petition sheets that used "Transparency & Accountability in Politics Party" as the party's name. The statement of organization filed with the State Board of Elections identifies the party as "Transparency & Accountability in Politics party." The registration with the Internal Revenue Service identifies the party as "Transparency & Accountability in Politics," which matches the designation used on the statements of candidacy.

¶ 12 Board's Ruling and Appeal

¶ 13 The Board issued a decision in which it made findings of fact and held that DeSantis and Mandel could not run for office, and the party's name exceeded five words. The Board ordered all of T&AIPP's candidates' names stricken from the ballot. T&AIPP appealed to the circuit court, which made no findings or ruling concerning DeSantis and Mandel. The court affirmed the Board's ruling because the party's name violated the Election Code. T&AIPP now appeal to this court.

¶ 14 ANALYSIS

¶ 15 Standard of Review

¶ 16 This court reviews the Board's decision rather than the circuit court's judgment. *Thigpen v. Retirement Board of Firemen's Annuity & Benefit Fund,* 317 Ill. App. 3d 1010, 1017 (2000). We will not disturb the Board's findings of fact unless the manifest weight of the evidence demands contrary findings. If the record sufficiently supports the findings of fact, we then apply the law to those facts. *Oregon Community Unit School District No. 220 v. Property Tax Appeal Board,* 285 Ill. App. 3d 170, 176 (1996). We must give substantial weight and deference to statutory interpretations made by an administrative agency charged with administration of a particular statute, because "agencies can make informed judgments upon the issues, based on their experience and expertise." *Abrahamson v. Illinois Department of Professional Regulation,* 153 Ill.2d 76, 98 (1992). However, we must independently analyze the law in applying it to the facts. *Oregon,* 285 Ill. App. 3d at 175-76. On mixed issues of law and fact, we must reverse the Board's decision if it is clearly erroneous. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391 (2001).

¶ 17 Party Name

¶ 18 T&AIPP argues first that its name does not exceed five words, because the name of the party, "Transparency & Accountability in Politics," has only four words and the symbol "&." The Board found that the word "Party" forms part of T&AIPP's name, used in its nomination papers, petitions for nomination, and the statement of organization. We cannot say that the Board's finding is against the manifest weight of the evidence. We agree with the Board that the party has the name

"Transparency & Accountability in Politics Party."

¶ 19 The Board also held that "&" functions as a word in T&AIPP's name. T&AIPP claims "&" is only a symbol. However, the Election Code restricts a party's name to five words, and five words plus a symbol used to stand for another word would still violate the Election Code. 10 ILCS 5/10-5 (West 2012). The parties cite us no cases concerning the issue of whether "&" counts as a word. The Board cited a case that held that the symbol "IV" formed part of a party's name, but that case did not construe the legislative proscription on names that exceed five words, and the court did not consider whether "IV" counted as a word. *Vasquez v. Municipal Officers Electoral Board*, 115 Ill. App. 3d 1014, 1017-18 (1983).

¶ 20 As the symbol "&" serves the function of the word "and," we find that the Board did not clearly err when it held that "&" is a word for purposes of the Election Code. Thus, we affirm the Board's finding that T&AIPP's name violates the Election Code restriction on party names. 10 ILCS 5/10-5 (West 2012). However, the resolution of the appeal involves the further question of the proper remedy for the violation of the Election Code.

¶ 21 T&AIPP asks this court to permit its candidates to run as independents, with no party affiliation indicated, as the court did in *Vasquez*. In *Vasquez*, the court found the candidate could not use the party name from the signature sheets because he filed as a candidate from a new party, but he used a name very close to that of an established party, and he did not comply with requirements for filing as a member of an established party. The court decided to strike only the party's name from the ballot, permitting the candidate to run as an independent. *Vasquez*, 115 Ill. App. 3d at 1018.

¶ 22 Beresheim points out that the Election Code has special provisions for candidates seeking to run as independents, and none of T&AIPP's candidates meet the statutory criteria for such candidacies. See 10 ILCS 5/10-3 and 10-4 (West 2012). The objector in *Vasquez* apparently did not raise this issue, as the court did not address the special requirements for running as an independent.

¶ 23 Printing ballots that present the T&AIPP candidates as independents fails to protect the right to create new political parties. The United States Supreme Court said:

> "For more than two decades, this Court has recognized the constitutional right of citizens to create and develop new political parties. The right derives from the First and Fourteenth Amendments and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences. [Citations.] To the degree that a State would thwart this interest by limiting the access of new parties to the ballot, we have called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation, [citation], and we have accordingly required any severe restriction to be narrowly drawn to advance a state interest of compelling importance." *Norman v. Reed*, 502 U.S. 279, 288-89 (1992).

¶ 24 We find that the inclusion of "&" in a party's name, making the name exceed the five word

limit permitted by the Election Code (10 ILCS 5/10-5 (West 2012)), does not qualify as the kind of weighty interest that can justify the exclusion from the ballot of a new political party or those candidates who met all other requirements for presenting themselves as the candidates of a new party.

¶ 25 A Minnesota case provides a solution that avoids any problem with the requirements for independent candidacies. In *Schiff v. Griffin*, 639 N.W.2d 56 (2002), the electoral board rejected a candidate's asserted party name of "DFL-Endorsed," and printed the ballot with the candidate listed as a Democratic-Farmer-Laborer candidate. The appellate court affirmed.

¶ 26 Following the principles stated in *Norman*, and the result reached in *Schiff*, the Board here should have renamed T&AIPP in a manner that would permit inclusion of the party and its candidates on the April 9, 2013, ballots. We reverse the Board's decision and direct the Board to place the candidates on the ballot as nominees of the "Transparency Accountability in Politics Party."

¶ 27 DeSantis

¶ 28 We agree with the Board's discussion of the objection to DeSantis's candidacy. The Board quoted the applicable principles as follows:

> "Incompatibility [of offices] * * * is present when the written law of a state specifically prohibits the occupant of either one of the offices in question from holding the other and, also, where the duties of either office are such that the holder of the office cannot in every instance, properly and fully, faithfully perform all the duties of the

> other office. This incompatibility may arise from multiplicity of business in the one office or the other, considerations of public policy or otherwise." *People ex rel. Myers v. Haas*, 145 Ill. App. 3d 283, 286 (1908), quoted in *Rogers v. Village of Tinley Park*, 116 Ill. App. 3d 437, 440 (1983).

¶29 The Board then explained its understanding of *Rogers* and application of the principles stated in *Rogers* to the facts here:

> "In *Rogers*, the Court ruled there was incompatibility of offices where a police officer seeking a leave of absence was elected as a village trustee. Specifically, the Court noted that a leave of absence would not remove the incompatibility. Even during a leave of absence, the officer would still have rights that are incompatible with his service as a trustee (i.e. seniority, pension, insurance). *Rogers*, 116 Ill. App. 3d at 44[5.]
>
> Similarly, DeSantis has rights that are incompatible [with] serving as Village President. While he is receiving a disability pension, DeSantis is not retired from the North Riverside Police Department. While it is unlikely, there remains a possibility that he could return to the Department and resume his rank as Sergeant.
>
> Moreover, as Village President, he will consider public policy

> decisions that could directly impact his rights as a police officer and his disability benefits. For example, the Village is required to maintain sufficient funds in its police pension. The Village appropriates monies to the pension fund and adopts annual tax levies for the pension fund. DeSantis receives his disability payments from this same fund. Further, as Village President, DeSantis would have the authority and power to appoint members of the Board overseeing the pension fund. He may also be called upon to consider and vote on policies and agreements that relate to the rights and duties of police officers.
>
> In our opinion, the facts demonstrate an incompatibility of offices. Therefore, we find DeSantis is not qualified to serve as Village President."

¶ 30 We adopt the reasoning and holding of the Board on this issue. We affirm the decision to exclude DeSantis from the ballot.

¶ 31 Mandel

¶ 32 Finally, T&AIPP challenges the Board's decision to remove Mandel from the ballot for failing to meet the residency requirement. The Board made few findings regarding Mandel. It noted that it admitted into evidence several affidavits and exhibits Mandel offered, but the Board made no findings concerning the content or credibility of those affidavits and exhibits. The Board noted that

the Village's Building Department issued building permits to Mandel and her husband in 2011 for the Village home. At Mandel's address in the Village, the Mandels, a family of four, used only 200 gallons of water per month from December 1, 2011, through July 2012; thereafter, they used more than 1,000 gallons per month. The Board relied most heavily on Mandel's admission that in March 2012 she voted in Berwyn because the Village did not show her as registered at her address in the Village. Although Mandel believed she had changed her voter registration before the March 2012 election, she submitted a new change of address form in August 2012.

¶ 33 Our supreme court, in *Maksym v. Board of Election Commissioners*, 242 Ill. 2d 303 (2011), established the framework for assessing a claim that a candidate has not met the residency requirement for the office the candidate seeks. The court said:

> "First, to *establish* residency, two elements are required: (1) physical presence, and (2) an intent to remain in that place as a permanent home. [Citation.] Second, once residency is established, the test is no longer physical presence but rather abandonment. Indeed, once a person has *established* residence, he or she can be physically absent from that residence for months or even years without having abandoned it ***. *** Third, both the establishment and the abandonment of a residence is principally a question of intent. [Citation.] And while '[i]ntent is gathered primarily from the acts of a person' (*Stein v. County Board of School Trustees,* 40 Ill. 2d 477,

> 480 (1968)), a voter is competent to testify as to his intention, though such testimony is not necessarily conclusive (citation). Fourth, and finally, once a residence has been established, the presumption is that it continues, and the burden of proof is on the contesting party to show that it has been abandoned." (Emphasis in original.) *Maksym*, 242 Ill. 2d at 319.

¶ 34 The Board here made no findings as to when Mandel established her Village home as her residence, and it did not address the sufficiency of Mandel's evidence that she moved to the Village in 2010. In other cases involving inadequate findings by an administrative agency, the courts have remanded the matter for further findings. See *Brinker Trucking Co. v. Illinois Commerce Comm'n*, 19 Ill. 2d 354, 358 (1960). However, due to the rapid approach of the date for the election, we do not have the luxury of scheduling further hearings in this case. We will assess the weight of the evidence in the framework of *Maksym* in light of the Board's scant factual findings.

¶ 35 Mandel presented affidavits and exhibits that supported her testimony that she moved into the Village in 2010, well over a year before the election. Beresheim presented no contrary evidence. One of Beresheim's witnesses, from the Village's water billing department, testified that the Mandels had paid the water bill for the Village residence for more than a year. We find that Mandel established her residence in the Village in 2010.

¶ 36 *Maksym* directs us next to consider the question of whether Beresheim met the burden of proving that Mandel abandoned the residence. Beresheim showed that, according to Village records,

Mandel's family used very little water at the Village residence from December 2011 through July 2012, that Mandel voted in Berwyn in March 2012, and that in August 2012, Mandel submitted a change of address for her voter registration. Mandel showed that she applied for several building permits in 2011, and much of the house underwent reconstruction in 2012. The decreased water usage during this construction does not show an intent to abandon the residence.

¶ 37 The Board relied primarily on Mandel's admission that she voted in Berwyn in March 2012. The Board held that under the reasoning of *Neely v. Board of Election Commissioners*, 371 Ill. App. 3d 694 (2007), Mandel could not claim that she lived in the Village for more than a year prior to the April 2013 election. In *Neely*, the candidate presented evidence that he lived in Chicago's 20th Ward for more than 10 years prior to the February 2007 election, in which he sought the office of 20th Ward alderman. The objectors proved that in March 2006, less than one year before the February 2007 election, the candidate voted in the 8th Ward. The candidate changed his voting registration to the 20th Ward after the March 2006 election. The Chicago Board of Election Commissioners found the candidate ineligible for a 20th Ward office based on his March 2006 vote. The *Neely* court said:

> "[T]he Board looked to the public record of his registration, and particularly to the exercise of the power to vote in the 8th Ward in March 2006, as a deliberate assertion of residence in that ward. Neely did not present any evidence that the vote resulted from inadvertent error or misunderstanding. See *Dixon v. Hughes*, 587 So. 2d 679 (La.

> 1991); *In re Jackson*, 14 S.W.3d 843 (Tex. App. 2000). He explained that he intentionally misrepresented his residence to the Board in 2006 to keep his actual residence secret. We agree with the Board that this explanation cannot justify inclusion of his name on a ballot for office representing the 20th Ward.
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> *** Because of Neely's deliberate assertion of residency in the 8th Ward on March 21, 2006, the Board properly found Neely unqualified for election from the 20th Ward for the February 2007 election." *Neely*, 371 Ill. App. 3d at 700.

¶ 38 The reasoning of *Neely* points to two important distinctions between this case and *Neely*. First, Mandel testified that she believed she had changed her voter registration in 2011, but when she went to the polls in the Village in March 2012, a Village official told her that her registration had not changed, so she could vote only from her former address, in Berwyn. This constitutes evidence that the vote in Berwyn resulted from inadvertent error. See *Neely*, 371 Ill. App. 3d at 700. Second, Mandel voted in Berwyn in March 2012, more than a year before the April 2013 election in which she seeks to present herself as a candidate. All indicia of her residence, apart from her voter registration, point to the Village as her permanent residence as of April 1, 2012, and no evidence shows that since that date she has ever asserted residence anywhere other than the Village. Thus, Beresheim here did not meet the burden of proving that Mandel abandoned her Village residence, or that she used another address as her residence address less than one year before the April 2013

election. Accordingly, under *Maksym* and the reasoning of *Neely*, the Board committed clear error when it held that Mandel did not reside in the Village for at least one year prior to the election to be held on April 9, 2013.

¶ 39 CONCLUSION

¶ 40 Although the evidence does not contradict the Board's finding that T&AIPP's name violated the Election Code, the Board imposed the wrong sanction when it struck all of the candidates' names from the ballot instead of editing the party name to something that complied with the Election Code. The evidence in the record shows that the Board clearly erred when it held that Mandel did not meet the residency requirement for the office she sought. We agree with the Board's conclusion that an unretired police officer receiving a disability pension remains ineligible for office, so the Board correctly struck DeSantis's name from the ballot. We affirm the decision to strike DeSantis's name from the ballot, but we reverse the decision to strike Mandel's name and the names of the other T&AIPP candidates, and we direct the Board to list the candidates with the party name, "Transparency Accountability in Politics Party," on the April 9, 2013, ballot.

¶ 41 Affirmed in part, reversed in part and remanded with instructions.