

¶ 1 *Held:* Trial court properly denied candidates' motion to assess costs following candidates'

successful appeal where candidates failed to present statutory authority entitling them to costs from objectors.

¶ 2 Objectors filed challenges to nomination papers filed by seven Democratic candidates seeking seats on the Will County Board. The electoral board decided to reject the candidates' nomination papers, and the trial court confirmed that decision. On appeal, this court reversed the decisions of the electoral board and trial court and ordered that the candidates' names be placed on the ballot. The candidates then filed a motion to assess costs against the objectors. The trial court denied the motion. We affirm.

¶ 3 In March 2012, a primary election was held in Will County for seats on the Will County Board. Following the election, several districts of the Will County Board had no Democratic candidate. As a result, in May 2012, the Democratic Central Committee met and designated candidates for the vacant slots in each of the Will County Board districts. Those candidates, Mario Carlasare, Donald Moran, Reed Bible, Chester Strzelczyk III, Chris M. Griffin, Santino Lettieri, and John Sanchez, Jr., obtained the requisite signatures and filed the necessary nomination papers to run as Democratic candidates for the Will County Board in each of the districts.

¶ 4 In June 2012, objectors Ron A. Lullo, Delores M Hornbeck, Robin Ambrosia, Paul M. Anderson, M. Michael Reilly and Peggy S. Mathews filed challenges to the nomination papers of each of the candidates, alleging that they were invalid. A two-day hearing was held before the electoral board. Following the hearing, the three-person board issued a written decision, with one member dissenting, ruling that the nomination papers of the candidates should be rejected.

¶ 5 In July 2012, the candidates filed a petition for review in the trial court. Following a hearing, the trial court confirmed the electoral board's decision. The candidates then appealed to this court.

On appeal, we ruled that the candidates' nomination papers should not have been rejected. *Carlasare v. Will County Officers Electoral Board*, 2012 IL App (3d) 120699. Therefore, we reversed the decisions of the electoral board and the trial court and ordered that the candidates' names be immediately placed on the ballot for the Will County Board election to be held in November 2012. *Id.* at ¶ 27.

¶ 6 Following this court's reversal of the decisions of the electoral board and trial court, the candidates filed a motion to assess costs, alleging that they were entitled to recover \$2,107 in filing fees and \$20 for certified mail service from the objectors, pursuant to sections 5-108 and 5-120 of the Code of Civil Procedure (Code) (735 ILCS 5/5-108, 5-120 (West 2012)). The trial court denied the candidates' motion.

¶ 7 Whether a court has statutory authority to award costs is a question of law subject to *de novo* review. *Peet v. Voots*, 386 Ill. App. 3d 404, 406 (2008). Illinois courts follow the American Rule and will not award costs to a prevailing party unless recovery of them is provided for by statute or by contract between the parties. *Id.* The party seeking fees and costs bears the burden of proving entitlement to them. *Trogub v. Robinson*, 366 Ill. App. 3d 838, 847 (2006).

¶ 8 Section 10-10.1 of the Election Code provides for judicial review of decisions of the electoral board. 10 ILCS 5/10-10.1 (West 2012). It provides:

"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 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.

The court shall set the matter for hearing to be held within 30 days after the filing of the petition and shall make its decision promptly after such hearing." 10 ILCS 5/10-10.1(a) (West 2012).

Nothing in section 10-10.1 of the Election Code allows for the recovery of costs to a successful party following an appeal of an electoral board decision. See 10 ILCS 5/10-10.1 (West 2012).

¶ 9 Nevertheless, the candidates argue that costs are available to them under Part V of the Code (735 ILCS 5/5-101 *et seq.* (West 2012)). Part V of the Code contains several cost provisions. See 735 ILCS 5/5-108, 109, 111, 116, 117, 118 & 120 (West 2012). The candidates argued below that they were entitled to costs pursuant to sections 5-108 and 5-120 of the Code (735 ILCS 5/5-108 & 120 (West 2012)). Section 5-108 of the Code provides: "If any person sues in any court of this state in any action for damages personal to the plaintiff, and recovers in such action, then judgment shall be entered in favor of the plaintiff to recover costs against the defendant ***." 735 ILCS 5/5-108 (West 2012). Additionally, section 5-120 of the Code states in pertinent part: "If any person takes an appeal to review the judgment of any other court, *** and if the judgment is reversed, the appellant shall recover costs, which may be collected in the same manner as judgments for the

payment of money are enforced." 735 ILCS 5/5-120 (West 2012). These statutes, which allow for the recovery of costs, are in derogation of the common law and must be narrowly construed. *Department of Revenue v. Appellate Court, First District*, 67 Ill. 2d 392, 396 (1977).

¶ 10 In *Peet v. Voots*, 386 Ill. App. 3d at 405, this court ruled that the cost provisions of article V of the Code do not apply to an election contest brought under section 23-23 of the Election Code (10 ILCS 5/23-23 (2012)). We found nothing in the Election Code that authorizes the cost provisions of article V of the Code to be applied to election cases. *Peet*, 386 Ill. App. 3d at 406-09.

¶ 11 The candidates, however, contend that we should rely on the Fifth District's decision in *Craig v. Electoral Board of Oconee Township*, 207 Ill. App. 3d 1042 (1991), instead of our decision in *Peet*. In *Craig*, the Fifth District ruled that costs incurred by the Electoral Board were properly assessed against a nominee who objected to the caucus procedure and nomination papers after his nomination was not accepted, pursuant to section 5-109 of the Code (735 ILCS 5/5-109 (West 2012)). *Craig*, 207 Ill. App. 3d at 1048. The court ruled that "the trial judge was empowered to award costs herein" based on section 5-109 of the Code, which allows a defendant to recover costs. *Id.*

¶ 12 Notwithstanding the *Craig* case, we find our decision in *Peet* to be on point and controlling in this case. Like section 23-23 of the Election Code, nothing in section 10-10.1 of the Election Code allows for costs to be recovered by a party. Additionally, no other language in the Election Code incorporates the cost provisions of article V of the Code. Thus, the Election Code does not authorize the candidates' recovery of costs and fees from the objectors.

¶ 13 The candidates next contend that they are entitled to costs because their action was administrative in nature. "Judicial review of an electoral board's decision is considered to be

administrative review." *Carlasare*, 2012 IL App (3d) 120699, ¶ 15. Article III of the Code, which applies to administrative review cases, contains a cost provision, which states: "The circuit court has power *** in case of affirmance or partial affirmance of an administrative decision which requires the payment of money, to enter judgment for the amount justified by the record and for costs, which judgment may be enforced as other judgments for the recovery of money." 735 ILCS 5/3-111(a)(8) (West 2012). No provision of article III of the Code provides that the cost provisions of article V of the Code apply to administrative review cases.

¶ 14 Here, the cost provision contained in article III of the Code does not apply. Section 3-111 allows the trial court to grant costs in administrative review actions only in very limited circumstances: (1) when the administrative decision is affirmed or partially affirmed, and (2) the decision requires the payment of money. See 735 ILCS 5/3-111(a)(8) (West 2012). Neither of these circumstances is present in this case, where the administrative decision was reversed on appeal, and the decision did not require the objectors to pay a monetary judgment. Thus, the candidates' argument that they are entitled to costs pursuant to administrative review is without merit.

¶ 15 Finally, the candidates argue for the first time on appeal that they are entitled to costs pursuant to section 29-17 of the Election Code, which provides:

"Any person who subjects or causes to be subjected, a citizen of the State of Illinois or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution or laws of the United States or of the State of Illinois, relating to registration to vote, the conduct of elections, voting, or the nomination or election of candidates for public or political office, shall be liable to the party injured or any person affected, in any action or proceeding for

redress." 10 ILCS 5/29-17 (West 2012).

¶ 16 However, because the candidates never argued in the trial court that section 29-17 of the Election Code allowed them to recover costs, we cannot reach the issue in this case. "Generally, a party who does not raise an issue in the trial court forfeits the issue and may not raise it for the first time on appeal." *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 695 (2010). In their motion to assess costs, the candidates cited no statutory provision entitling them to costs. Thereafter, in their brief on the issue of costs, they asserted that they were entitled to costs "pursuant to 735 ILCS 5/5-108, 5-120." The candidates never argued in the trial court that they were entitled to costs pursuant to section 29-17 of the Election Code; they have forfeited that issue and may not raise it for the first time on appeal. See *Bos*, 406 Ill. App. 3d at 695.

¶ 17 The judgment of the trial court of Will County is affirmed.

¶ 18 Affirmed.