

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Reginald Evans,

Plaintiff/Appellant,

vs.

Sumter County Election Commission,

Defendant/Respondent.

IN THE COURT OF COMMON PLEAS

RECEIVED

Civil Action No. 2022-CP-43-01870

MAR 08 2023

S.C. SUPREME COURT

ORDER CERTIFIED TRUE COPY
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Sherry H. How
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This election appeal from the decision of the Sumter County Election Commission (formally identified as the Sumter County Registration/Election Board) came before the undersigned for hearing on January 6, 2023. The appellant Reginald Evans appeared pro se, and the Sumter County Registration/Election Board (“the Board”) was represented by Attorney Danny C. Crowe. The Board's Director Patricia G. Jefferson also was present.

The appeal concerns the Board’s November 21, 2022, decision denying Mr. Evans’ protest of the results of the November 8, 2022, elections for Sumter City Council District 1 and for School District Area Nine. Mr. Evans was an unsuccessful candidate for both offices. Following the Board’s decision, Mr. Evans filed this single appeal with the Circuit Court. For the separate reasons set out below, this Court dismisses for lack of subject matter jurisdiction the appeal of the Board’s decision concerning the School Board seat, and denies and dismisses on its merits the appeal of the Board’s decision concerning the City Council seat.

APPEAL OF THE ELECTION CONCERNING SCHOOL DISTRICT AREA NINE

S.C. Code section 7-17-30 provides that protests or contests that arise from elections for county officers and “less than county offices, except for primaries and municipal elections” are

decided by the county board of canvassers (here, the Sumter County Board). Pursuant to S.C. Code section 7-17-60, appeal from such a decision of a county board is to the State Board of Canvassers. The State Election Commission constitutes the State Board of Canvassers per S.C. Code 7-17-210.

Accordingly, Mr. Evans' appeal of the Board decision concerning the School Board seat should have been made to the State Election Commission, rather than to the Circuit Court. Because of this statutory framework requiring appeal from the County Board to the State Election Commission prior to any review by the courts, the Circuit Court lacks jurisdiction over the subject matter of the appeal concerning the School Board seat.

As allowed by Rule 12(b) of the South Carolina Rules of Civil Procedure, the Board raised the defense of this Court's lack of subject matter jurisdiction in its Return to the Notice of Appeal in this case, and also presented the defense by its argument at the hearing. Additionally, as provided by Rule 12(h)(3), SCRCP, "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

APPEAL OF THE ELECTION CONCERNING CITY COUNCIL DISTRICT 1

In its Return, the Board asserted that, in accord with S.C. Code section 5-15-145, the City of Sumter previously had transferred responsibility for conducting City elections to the Board, including responsibility for deciding protests or contests of the results of municipal elections. S.C. Code section 5-15-140 provides that an appeal from a decision on a municipal election protest or contest is to the Circuit Court.

A leading case on the law of appeals of municipal elections is Taylor v. Town of Atlantic Beach Election Commission, 363 S.C. 8, 609 S.E.2d 500 (2005). In Taylor, the State Supreme Court set out several principles that address the procedure for such appeals, as well as the basis for court review of such appeals. One primary principle is that the Circuit Court, sitting in an appellate

capacity, does not have the authority to conduct a de novo hearing or take testimony, may not consider issues which were not raised to the election commission, and does not have the authority to conduct a full hearing when one is denied by the election commission. Taylor, 363 S.C. at 17, 609 S.E.2d at 504. In functioning as an appellate court, the Circuit Court must examine the decision of the municipal election commission (here, the Board) for errors of law but it must accept the factual findings of the commission (here, the Board) unless the findings are wholly unsupported by the evidence. Taylor, 363 S.C. at 14-15, 609 S.E.2d at 503. The statutes on protests of municipal elections, including S.C. Code section 5-15-130, do not require that the commission issue a written order. Taylor, 363 S.C. at 15, 609 S.E.2d at 503-504.

The Taylor case also addresses some of the requirements for an action protesting an election. For example, a notice of protest or contest of a municipal election, filed pursuant to Section 5-15-130, should briefly state facts or a combination of facts sufficient to apprise the election commission and winning candidate of the reason for the challenge. It is not sufficient to allege fraud generally or mere conclusions of the protesting person. Taylor, 363 S.C. at 17, 609 S.E.2d at 504.

Importantly, the Supreme Court in Taylor, quoting the earlier case of Butler v. Town of Edgefield, 328 S.C. 238, 246, 493 S.E.2d 838, 842 (1997), also restated the “two prerequisites to maintaining an election contest in South Carolina: (1) the contest notice must allege irregularities or illegalities; and (2) the alleged irregularities or illegalities must have changed or rendered doubtful the result of the election in the absence of fraud, a constitutional violation, [or] a statute providing that such irregularity or illegality shall invalidate the election.” Taylor, 363 S.C. at 16, 609 S.E.2d at 504. In other words, as applicable here, irregularities or illegalities in the election, if any, must have changed the election result or rendered it doubtful.

Applying these legal principles to the appeal of the municipal election for Sumter City Council District 1, this Court finds and concludes that there were no errors of law and no unsupported factual findings in the Board's decision on the municipal election protest by Reginald Evans. Moreover, the Court's own review of the record and consideration of the arguments of the parties fail to reveal or establish the existence of any irregularities or illegalities in the election that could be said to have changed the election result or rendered the result doubtful.

The Notice of Appeal to this Court filed by Mr. Evans contained no grounds for appeal, no allegations or specifications of errors by the Board, and no other basis for relief. Nevertheless, the Court, as stated above, has considered carefully the arguments at the hearing and has reviewed the record and filings in this case.

In the November 8 Council election, Mr. Evans finished fifth in a field of five candidates. He received 62 of 999 votes cast for the District 1 Council seat. (Page 18 of the hearing transcript in the Record filed by the Board with the Court). His notice of protest to the Board dated November 10 (Attachment 1 to the hearing transcript at page 35 in the Record filed by the Board) stated two grounds: (1) he was informed that people outside the district voted, and (2) there were large numbers of undervotes in the Morris College and Folsom Park precincts (with "undervotes" referring to differences between the number of persons voting in the School District race but not in the Council district race). At the hearing before the Board, he also made arguments concerning sample ballots, registration cards, the absence of Palmetto Park precinct results in the Council vote, and a need for an automatic recount for less than one percent vote differences in certain precincts among certain candidates. During its hearing, the Board eventually advised Mr. Evans that the hearing was limited to issues raised in the notice of protest, that Palmetto Park was not a precinct in Council District 1, that Folsom Park precinct was included in the vote totals for Council District

1, and that the automatic recount statute only applied to total votes and not to votes in individual precincts. At the conclusion of its hearing, the Board denied any protests by Mr. Evans.

As stated above, the Court's review of the record and consideration of the arguments show no error by the Board. Additionally, the Court finds no basis, under the principles of our statutory and case law, to reverse or amend the decision of the Board.

ORDER

Based on the above reasons, findings, and conclusions, **IT IS ORDERED** that:

1. The appeal from the decision of the Sumter County Registration/Election Board concerning the election for School Board Area Nine is **DISMISSED** for lack of subject matter jurisdiction of this Court.

2. The appeal from the decision of the Sumter County Registration/Election Board concerning the election for Sumter City Council District 1 is **DISMISSED** on its merits. Judgment shall be entered in favor of the Board.

AND IT IS SO ORDERED.

George M. McFaddin, Jr., Circuit Court Judge

Dated: _____



Sumter Common Pleas

Case Caption: Reginald Evans VS Election Commission
Case Number: 2022CP4301870
Type: Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759

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