

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2023-000382

Reginald Evans,

Appellant,

v.

Sumter County Election Commission,

Respondent.

INITIAL BRIEF OF RESPONDENT

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S.C. SUPREME COURT

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COUNTER-STATEMENT OF ISSUES ON APPEAL

- I. **DID THE CIRCUIT COURT CORRECTLY RULE THAT IT LACKED SUBJECT MATTER JURISDICTION TO HEAR AN APPEAL FROM THE ELECTION BOARD DECISION ON A SCHOOL BOARD ELECTION?**

- II. **DID THE CIRCUIT COURT CORRECTLY DISMISS ON THE MERITS THE APPEAL FROM THE ELECTION BOARD DECISION ON THE CITY COUNCIL ELECTION WHEN THE EVIDENCE DID NOT ESTABLISH IRREGULARITIES THAT AFFECTED THE RESULT OF THE CITY COUNCIL ELECTION?**

- III. **ARE APPELLANT'S REMAINING ALLEGED ERRORS PRESERVED FOR APPELLATE REVIEW BY THIS COURT?**

STATEMENT OF THE CASE

Respondent Sumter Election Commission, properly identified as the Sumter County Registration/Election Board, objects to Appellant's Statement of the Case (Initial Brief of Appellant p. 3) which fails to comply with Rule 208(b)(1)(C), SCACR, does not relate to the history of the proceedings, contains matter not contained in the Record of this case, and contains contested matter. Respondent, not wishing to be bound by Appellant's Statement of the Case, submits the following Statement of the Case.

This is an election protest case. Appellant Reginald Evans ("Evans" or "Appellant") was a candidate for two public offices in a public election held in Sumter County on November 8, 2022. He was one of two candidates for Sumter County School District Board Area Nine, and one of five candidates for Sumter City Council District One. (Record of Board Proceedings p. 56.) Evans lost both races, receiving 62 of 999 votes cast in the five-candidate race for City Council. (Record of Board Proceedings p. 18.)

Evans' notice of contest of the election results was filed with the Sumter County Registration/Election Board (referred to in the caption of this action as the Sumter County Election Commission) on November 10, 2022. (Record of Board Proceedings p. 35.) The notice of contest cited S.C. Code § 5-15-30, and stated that it was a contest of the elections for both the School District Board Area Nine and Sumter City Council District One. The notice specified two reasons for the contest: (1) information that persons outside of Council District One and School District Board Area Nine were allowed to vote, and (2) two precincts (Morris College and Folsom Park) showed "undervotes" for City Council compared to total votes.

The Sumter County Registration/Election Board ("Election Board") held a hearing on the notice of contest on November 21, 2022, and denied Evans' protest for both elections. The

transcript of the hearing and related documents are contained in the Election Board's Record of Proceedings. (Record of Board Proceedings including title page, index, and pp. 1-59.)

A runoff election between the top two vote-getters for the City Council seat was held on November 22, 2022. Evans was not a candidate in the runoff election. On the runoff election date, at 3:29 p.m., Evans filed with the Court of Common Pleas a "Notice Appeal" from the "order and judgment of the Sumter County Election Commission Dated November 21, 2022." (Notice of Appeal showing Clerk of Court recorded stamp for November 22, 2022.) The Notice contained no grounds for appeal, asserted no allegations or specifications of errors by the Election Board, and asserted no other basis for relief.

On December 9, 2022, the Election Board filed in the circuit court case a Record of Proceedings before the Election Board. (Record of Board Proceedings, including title page, index, and pp. 1-59.) The Election Board filed a Return to the Notice on December 14, 2022. (Return of Election Board pp. 1-3.) The Return, among other things, denied any error of law or unsupported findings by the Election Board, and denied any showing by Evans of any election illegalities or irregularities sufficient to require a new election. The Return also asserted that the City of Sumter previously had transferred total responsibility for conducting municipal elections (including responsibility for election contests) to the Election Board pursuant to S.C. Code § 5-15-145, and that appeals from Election Board decisions on the results of municipal elections were to be taken to the circuit court. The Return further asserted that the circuit court lacked subject matter jurisdiction of an appeal from a County School District Board election.

A hearing on the merits of Evans' appeal to circuit court was held before the Honorable George M. McFaddin, Jr., Circuit Court Judge, on January 6, 2023. Following the hearing, Judge McFaddin issued, on January 11, 2023, an Order dismissing the appeal concerning the School

Board seat based on lack of subject matter jurisdiction, and dismissing on the merits the appeal concerning the City Council seat. (Order filed January 11, 2023.)

A motion “to reconsider” was filed by Evans on January 17, 2023. The motion stated no specific grounds and alleged only that the circuit court “erred in its ruling” on each of the election appeals. (Motion filed January 17, 2023.) An Order by Judge McFaddin denying the motion was filed on February 7, 2023. (Order filed February 7, 2023.)

Evans filed his notice of appeal to this Court on March 8, 2023. Based on the operation of S.C. Code § 5-15-120 (which provides, in part, that “and in the case a contest is finally filed the incumbents shall hold over until the contest is finally determined.”) and S.C. Code § 5-15-40 (which provides, in part, that “The notice of appeal [from the municipal election commission to the court of common pleas] shall act as a stay of further proceedings pending the appeal.”), the successful candidate in the runoff election for Sumter City Council District One has been unable to be sworn into office.

OBJECTION TO APPELLANT’S STATEMENT OF THE FACTS

Respondent objects to Items 1, 2, 3, 4, 5, 6, 9, 11, 14, 15, and 19 of Appellant’s Statement of the Facts as matter not contained in the record or, in the case of item 11, contested matter.

STANDARD OF REVIEW

This Court, in Taylor v. Town of Atlantic Beach Election Commission, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005), described its standard of review, as follows:

In municipal election cases, we review the judgment of the circuit court only to correct errors of law. Our review does not extend to findings of fact unless those findings are wholly unsupported by the evidence. We will employ every reasonable presumption to sustain a contested election, and will not set aside an election due to mere irregularities or illegalities unless the result

is changed or rendered doubtful. In the absence of fraud, a constitutional violation, or a statute providing that an irregularity or illegality invalidates an election, we will not set aside an election for a mere irregularity.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY RULED THAT IT LACKED SUBJECT MATTER JURISDICTION TO HEAR AN APPEAL FROM THE ELECTION BOARD DECISION ON THE SCHOOL BOARD ELECTION.

Subject matter jurisdiction is defined as “the power [of a court] to hear and determine cases of the general class to which the proceedings in question belong.” In Re November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009). “Issues related to subject matter jurisdiction may be raised at any time.” Id.¹

Evans’ statements in brief concerning the dismissal of the School Board election appeal, to the extent they present argument,² are conclusory only and present no authority contrary to the statutory authority cited by the circuit court Order. The analysis by the circuit court of S.C. Code §§ 7-17-30, 7-17-60, and 7-17-210, concerning the hearing of appeals by the State Election Commission, is not countered by Appellant’s citation to S.C. Code §§ 7-17-260 and 7-17-270.

II. THE CIRCUIT COURT CORRECTLY DISMISSED ON THE MERITS THE APPEAL FROM THE ELECTION BOARD DECISION ON THE CITY COUNCIL ELECTION WHEN THE EVIDENCE DID NOT ESTABLISH IRREGULARITIES THAT AFFECTED THE RESULT OF THE CITY COUNCIL ELECTION.

The record fails to show any evidence of election irregularities, much less irregularities sufficient to change the election outcome for Evans as a losing candidate. Broadhurst v. City of Myrtle Beach Election Commission, 342 S.C. 373, 379, 537 S.E.2d 543, 545-46 (2000) (“The

¹ In the case of In Re November 4, 2008 Bluffton Town Council Election, the Court held that the circuit court, and not the State Election Commission, was the proper appellate tribunal for a municipal election protest heard by a County Board of Elections after a transfer of authority for conducting municipal elections to that Board from the Town of Bluffton. The Court determined that the State Election Commission lacked subject matter jurisdiction.

² Evans’ presentation of questions to the Court falls short of argument. (Initial Brief of Appellant p. 9.)

Court will employ every reasonable presumption to sustain a contested election, and will not set aside an election due to mere irregularities unless the result is changed or rendered doubtful.”). Evans called no voters or potential voters as witnesses at the Election Board hearing. (Record of Board Proceedings pp. 12-13.) He could not demonstrate at the Election Board hearing that otherwise eligible voters were not allowed to vote without registration cards. Neither did Evans present witnesses or evidence to show that voters were confused or misled by any revised school board or city council district lines, or that persons not entitled to vote actually voted.

Evans’ complaints in the Election Board hearing about “undervotes” in the split precincts of Folsom Park and Morris College (which were partially within and partially without of City Council District One) (Record of Board Proceedings p. 43) failed to establish fraud or voter confusion. In the absence of voter testimony, the failure of Evans to receive as many votes for City Council as he received for School Board in those precincts easily could be attributed to the circumstance that he was one of two candidates for School Board but one of five candidates for City Council. (Record of Board Proceedings pp. 43, 56 and 57.) Likewise, any difference between total votes cast in the precincts and votes cast for City Council in the precincts reasonably can be attributed to the split nature of these precincts (some voters in those precincts were not in Council District One). Additionally, the hearing revealed that Evans received no votes for City Council in the Palmetto Park precinct not because of an election irregularity but because that precinct was not in City Council District One. (Record of Board Proceedings pp. 24, 25, 39, 40, 43, and 58.)

Evans also contended, at the Election Board hearing (Record of Board Proceedings pp. 15-19), that a recount should have been ordered for every precinct in which the vote differences between any two consecutive (in order of votes) candidates were within one percent of the vote total. However, S.C. Code § 7-17-280 (“Mandatory recounts”) applies the requirement for recount

only as between the candidate declared as the election winner and the next highest vote-getter. Similarly, in argument to this Court (Initial Brief of Appellant p. 9), Evans contends, without legal authority, that a recount “should have been done” even though a runoff between the top two vote-getters was held.

III. APPELLANT’S REMAINING ALLEGED ERRORS ARE NOT PRESERVED FOR APPELLATE REVIEW BY THIS COURT.

At the outset of the argument section of his brief (Initial Brief of Appellant p.7), Appellant attempts to assert new alleged irregularities related to the election. These include (1) the alleged failure of the Election Board to inform citizens of the correction location to vote, and (2) the alleged failure of the Election Board to inform the public and candidates of the availability of the challenged ballot hearing and the election protest hearing. However, these were not allegations set out in the notice of contest, raised by evidence in the Election Board hearing, ruled on in the Order of the circuit court, ruled on in the Order of the circuit court, or raised in Evans’ motion for reconsideration. These issues, having not been previously presented by Appellant, cannot be presented now.³

Additionally, Evans contends that the circuit court erred in addressing only errors affecting the “results” of the election. Respondent urges that any expressed interest by the circuit court in the effect of any irregularities on the results of the election was fully in accord with this Court’s standard of review cited above. The circuit court, sitting in an appellate capacity [in an election case], may not consider issues which were not raised to the election commission. The circuit court has no authority to conduct a full hearing when one is denied by the election commission; nor does

³ Moreover, these alleged errors lack merit and evidentiary support. Citizens are charged with knowledge of existing law. Ex parte Wessinger, 235 S.C. 239, 111 S.E.2d 13 (1959).

it have authority to take testimony or conduct a de novo hearing. Taylor v. Town of Atlantic Beach Election Commission, 363 S.C. 8, 17, 609 S.E.2d 500, 504 (2005).

Evans' final argument in brief is that a City Council runoff election should not have been held, and the School Board election winner should not have been sworn in, before his election protest was concluded.⁴ As to holding of the City Council runoff election, that issue was not a ground in the Notice of Appeal to the circuit court, was not raised (as understood by Respondent) in the circuit court hearing, was not addressed in the Order of the circuit court, and was not an issue for "reconsideration" by the circuit court described in Evans' Motion filed on January 17, 2023. Additionally, the Record shows that the file-stamped "Notice Appeal" that initiated this legal action in circuit court was not filed prior to the commencement of the runoff election on the morning of November 22 but was filed during the mid-afternoon of the runoff election day and well after the runoff election was underway. (Notice of Appeal showing Clerk of Court file stamp dated November 22, 2022). Moreover, the Record is silent as to any legal action by Respondent filed subsequent to the runoff election to set it aside. Under these circumstances, Respondent urges that the issue of whether the runoff election should have been held on November 22 has not been preserved by Evans for appellate review by this Court.

⁴ This argument as to the School Board winner is foreclosed since the circuit court lacked subject matter jurisdiction to hear the School Board election appeal, and since Evans did not file a separate timely appeal to the State Election Commission of the Election Board decision on the School Board election.

CONCLUSION

For the reasons stated and apparent from the record, the Respondent Election Board urges that this Court affirm the judgment of the circuit court dismissing the appeal from the Election Board decision.

Respectfully submitted,

May 4, 2023

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