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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	IN THE FIFTEENTH JUDICIAL CIRCUIT
)	
William Booker, Lynda Booker, Elaine)	Civil Action No. 2024-CP-26-07193
Finney, Sarah Blair, Linda Cheatham,)	
Harold Cheatham,)	
)	
Appellant,)	
)	
vs.)	<u>ORDER</u>
)	
Kenneth McIver, Caroline Gore, and)	
Derrick Stevens in their official capacities)	
as members of the Town of Atlantic Beach)	
Municipal Election Commission,)	
)	
Respondents.)	

This matter came before the Court on October 30, 2024 for a hearing on Appellant Carla Taylor’s appeal of the October 17, 2024 decision of Respondents Kenneth McIver, Caroline Gore, and Derrick Stevens in their official capacities as members of the Town of Atlantic Beach Municipal Election Commission (the Municipal Election Commission), finding Shaun Swinson’s election protest timely and upholding Swinson’s election protest. After careful consideration of the record, submissions to the Court, and the respective arguments made by the parties, the Court reverses the Municipal Election Commission’s decision.

BACKGROUND

On November 7, 2023, the Town of Atlantic Beach held elections for mayor and two council seats. After the polls closed on November 7, 2023, the unofficial election results reflected Jaqueline Gore and Appellant Taylor were the two winners of the council race with 69 and 53 votes, respectively. On November 9, 2023, the Municipal Election Commission met to hear challenges to

several provisional ballots cast in the November 7, 2023 election. After the hearing, Gore and Appellant Taylor were still the top two vote recipients with 71 and 69, respectively.

Also on November 9, 2023, a losing mayoral candidate filed a timely protest to the mayoral election pursuant to section 5-15-130 of the South Carolina Code. No candidate filed a protest in the town council election within the statutorily required forty-eight (48) hour period. Despite section 5-15-130 requiring the Municipal Election Commission to hear the mayoral election protest within forty-eight (48) hours of the protest being filed, the Municipal Election Commission did not meet to hear the protest until April 3, 2024.¹ After ruling on the mayoral protest at the April 3rd meeting, the Municipal Election Commission unanimously certified the town council election results. The final votes certified that Jacqueline Gore, Appellant Taylor, Jerry Finney, and Shaun Swinson each received 71, 69, 62, and 49 votes, respectively. Each of the three Municipal Election Commission members signed and certified the final results, certifying Gore and Appellant Taylor as the winners of the November 7, 2023 council race.

On April 4, 2024, Appellant Taylor was sworn into office and signed the Oath of Office. The Town Clerk, Cheryl Pereira, duly executed the Oath. The Town of Atlantic Beach transmitted Taylor's Oath of Office and the certified results of the election to the Horry County Election Commission. Sandy Martin, the Director of the Horry County Office of Voter Registration and Election Commission, certified that Appellant Taylor and Jacqueline Gore were the winners of the Town Council election.

Thereafter, on either April 3 or 4, 2024, Swinson—a candidate in the November 7, 2023 town council race—filed a protest of the certified election results for the town council election. Despite

¹ Notably, the Municipal Election Commission did not elect to schedule the belated protest hearing until mayoral candidate, John David, filed a Writ of Mandamus requesting this Court force the Municipal Election Commission to act to administer its ministerial duties and resolve the outstanding mayoral election protest.

Appellant Taylor being sworn into office and the Horry County Election Commission certifying the results, the Atlantic Beach Town Council failed to recognize Appellant Taylor as a duly elected member of the Town Council, ostensibly due to Swinson's belated election protest. The Municipal Election Commission, however, took no action to resolve Swinson's belated appeal, despite being statutorily required to do so and being advised by its legal counsel it needed to act on the untimely filed protest.

On April 26, 2024, Appellant Taylor filed an injunction to enjoin the Municipal Election Commission, Town Manager, and the other members of the Town Council from refusing to recognize her as a properly serving Town Council Member. *See Taylor v. Jake Evans et al.*, No. 2024-CP-2602866 (S.C. Ct. of Common Pleas, Horry Cnty.). In its response and at oral argument, the Municipal Election Commission argued the Court did not have jurisdiction to grant the injunction. The Municipal Election Commission further argued there was a process already in place to hear Swinson's election protest and Appellant Taylor had to wait until the conclusion of the Municipal Election Commission process before appealing to this Court. On May 23, 2024, this Court denied Appellant Taylor's injunction. This Court assumed that such an important matter would move forward in an expedited manner to resolve the untimely filed election protest.

Almost three months later after repeated requests by Appellant Taylor to act, the Municipal Election Commission held an information meeting and decided not to act on Swinson's election protest. Counsel for the Municipal Election Commission advised the Commission to not rule on Swinson's appeal until after the conclusion of the unrelated Town of Atlantic Beach mayoral election appeal and the completion of an alleged South Carolina Law Enforcement Division (SLED) investigation into alleged fraud of certain voters in the municipal election. At the time of this informational session, the Town had not asked SLED to investigate anything and subsequently

had to recant this false representation to the public. Appellant Taylor continued her requests for the Municipal Election Commission to act. After the Commission ignored her requests and refused to act, she filed a Writ of Mandamus on September 3, 2024, requesting the Court to order the Municipal Election Commission to perform its ministerial responsibilities. On September 4, 2024, concerned Atlantic Beach citizens, William Booker, Lynda Booker, Elaine Finney, Terry Finney, Sarah Blair, Linda Cheatham, and Harold Cheatham (third parties), also filed a Writ of Mandamus requesting the Court order the Municipal Election Commission to abide by the plain and unambiguous language of the South Carolina Code and require the Municipal Election Commission to perform its ministerial obligations.

On October 14, 2024, this Court granted Taylor's and the third parties' Writs of Mandamus and ordered the Municipal Election Commission to perform its ministerial duties no later than October 19, 2024. The Court expressed concern that the Municipal Election Commission appeared to be intentionally utilizing delay tactics to stall the final resolution of Swinson's election protest. Additionally, this Court noted that Swinson filed his protest approximately 149 days after the election, well outside of the time requirement pursuant to section 5-15-100. The Court also advised "it would issue a separate order as to the timeliness and applicable statutes on the process of the election results should it become necessary depending on the findings of the Commission."

On October 17, 2024, the Municipal Election Commission met and found Swinson's protest timely and voted to uphold Swinson's election challenge.² On October 18, 2024, Appellant Taylor filed a Notice of Appeal pursuant to section 5-15-140 of the South Carolina Code. That

² A review of the hearing transcript shows Swinson presented no evidence to support his election protest claims. In fact, the only evidence he presented was his own testimony that he was not qualified to be a candidate for the November 7, 2023 election. Thus, it appears to this Court that the Municipal Election Commission's decision to uphold Swinson's election protest is wholly unsupported by the evidence presented at the hearing.

same day, counsel for Appellant and the Municipal Election Commission agreed to argue this appeal before the Court on October 30, 2024. This Court acknowledged the parties' consent and scheduled the hearing on the Notices of Appeal for October 30, 2024.

STANDARD

In municipal election cases, the circuit court on appeal corrects only errors of law. *Taylor v. Town of Atl. Beach Election Comm'n*, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005). The court's review does not extend to findings of fact unless those findings are wholly unsupported by the evidence. *Gecy v. Blackwell*, 372 S.C. 237, 241, 642 S.E. 2d 569, 571 (2007). The court "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." *Id.* (citing *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 379, 537 S.E.2d 543, 546 (2000)).

DISCUSSION

I. Swinson's Protest Was Untimely As a Matter of Law.

It is undisputed by all parties that the Town Council election occurred on November 7, 2023. It is also undisputed that Swinson did not file his election protest until either April 3 or 4, 2024. At the protest hearing on October 17, Swinson testified and admitted he did not file his protest within forty-eight hours of the closing of the polls of the election on November 7, 2023. Rather, approximately 149 days had elapsed since the closing of the polls when Swinson filed his election protest.

Section 5-15-130 states in part, "[w]ithin forty-eight hours after the closing of the polls, any candidate may contest the result of the election as reported by the managers." "In South Carolina, the right to contest an election exists only under our constitutional and statutory provisions, and 'the procedure proscribed by statute must be strictly followed.'" *Odom v. Town of McBee Election*

Comm'n, 427 S.C. 305, 831 S.E. 2d 429, (2019) (quoting *Taylor v. Roche*, 271 S.C. 505, 509, 248 S.E.2d 580, 582 (1978)); *see also* S.C. CONST. art. II, § 10 (“The General Assembly shall . . . establish procedures for contested elections, and enact other provisions necessary to the fulfillment and integrity of the election process.”).

The plain language of section 5-15-130 is clear. A candidate must file an election protest within forty-eight hours of the polls closing. In this case, Swinson did not file his election protest within forty-eight hours of the polls closing on November 7, 2023. Thus, this Court finds that Swinson’s election protest was untimely and the Municipal Election Commission’s decision to hear the protest was an error of law. The Court reverses the Municipal Election Commission’s decision accordingly.

II. The Municipal Election Commission’s Analysis of After-Discovered Evidence is Erroneous.

Additionally, the Court finds that the Municipal Election Commission must comply with the statutory timing requirements when hearing election protests. According to the Municipal Election Commission, it could not act on Swinson’s untimely “protest” until there was a final decision on the appeal of the Municipal Election Commission’s decision pertaining to the mayoral election and until SLED completed its supposed investigation into voter qualifications of some residents of Atlantic Beach. This is not what the law requires under these circumstances. The Municipal Election Commission argues the Supreme Court ruling in *Gecy v. Bagwell*, 372 S.C. 237, 241, 642 S.E.2d 569, 571 (2007), supports its conclusion. Not so. In *Gecy*, the candidate challenging the voter qualifications filed a timely protest pursuant to section 5-15-130, which requires a candidate to file a protest within forty-eight hours after the polls close. *Id.* at 239, 642 S.E.2d at 570. The issue there was whether the “after-discovered evidence” should be excluded from the protest hearing since such a challenge could have been brought prior to the election. *Id.* at 244, 642 S.E.2d at 572. The

Supreme Court allowed this evidence at the protest hearing. *Id.* But the Supreme Court never ruled that after-discovered evidence trumps the 48-hour protest filing requirement. Nor could it. The candidate in that case “filed a timely protest of the election.” *Id.* at 239, 642 S.E.2d at 570. Thus, in this case, the Municipal Election Commission’s argument that it cannot move forward on Swinson’s appeal until all after-discovered evidence is found, irrespective of the fact that Swinson did not file a timely protest under the statutory requirements, is an error of law.

In *Dukes v. Redmond*, 357 S.C. 454, 593 S.E.2d 606 (2004), our Supreme Court again dealt with this after-discovered evidence rule. The Court held after-discovered evidence could be presented at the protest hearing. *Id.* at 457, 593 S.E.2d at 608. But, as in *Gecy*, the challenger in *Dukes* otherwise filed a timely protest. *Id.* It was not an open-ended period of wait and see what evidence might be discovered, as the Municipal Election Commission argues here.

Regardless of the outcome of the appeal in the mayoral race or the purported SLED investigation, Swinson’s protest was still untimely. The after-discovered evidence rule must be applied consistently with the time constraints set out in the municipal election code. *See* S.C Code Ann. § 5-15-130. *Gecy* did not provide otherwise. Therefore, the Municipal Election Commission’s argument that it is not timely to hear Swinson’s appeal since not all after-discovered evidence has not been developed, is erroneous.

III. Swinson Was Ineligible to Run for Office.

Swinson ran as a candidate for the Town of Atlantic Beach Town Council and finished last in a four-person race. During the October 17, 2024 Municipal Election Commission hearing, Swinson testified he was not eligible to run for Town Council in 2023. Nor will he be eligible to run for public office until 2028. As the evidence before the Municipal Election Commission establishes, Swinson is a convicted felon who pled guilty in Federal Court in 2006 and was not

released from Federal Supervised Release until 2013. As a result of this evidence, the only logical conclusion is that Swinson is not eligible to be a candidate or run as a candidate until 2028. Yet he completed a Statement of Candidacy for the General Election in the town of Atlantic Beach and attested on that form that he was not a “convicted felon” and was a qualified candidate. Based on Swinson’s October 17, 2024 testimony, this Court finds by overwhelming evidence that Swinson’s attested statements on the Statement of Candidacy were untrue.

Article VI section 1 of the South Carolina Constitution states,

[n]o person may be popularly elected to and serve in any office in this State or its political subdivisions unless he possesses the qualifications of an elector, is not disqualified by age as prescribed in this Constitution, and has not been convicted of a felony under state or federal law However, notwithstanding any other provision of this Constitution, this prohibition does not apply to a person who has been pardoned under state or federal law or to a person who files for public office fifteen years or more after the completion date of service of the sentence, including probation and parole time.

S.C. CONST. art. VI, § 1. This Court finds that Swinson was ineligible to be a candidate for office in the Town of Atlantic Beach Town Council race on November 7, 2023.

Additionally, section 5-15-130 states, “any *candidate* may contest the result of the election.” S.C. Code Ann. § 5-15-130 (emphasis added). The Court finds that because Swinson was ineligible to be a candidate for office, he also cannot legally protest an election under section 5-15-130, and even if it had been timely (it wasn’t), his protest should have been dismissed.

CONCLUSION

Three hundred and fifty-nine days have elapsed since the November 7, 2023 Town of Atlantic Beach election. This town council race must finally be resolved. Based on the lengthy record in this action, this Court is convinced the Municipal Election Commission would not have met to dispose of Swinson’s election protest if this Court had not ordered it do so. Further, this Court is extremely

concerned by the Municipal Election Commission's actions to delay the resolution of this Town Council race. It appears to this Court that the Municipal Election Commission's repeated delays were frivolous and intentional to thwart the will of the people who elected Appellant Taylor to serve on Town Council. If election commissions across our country handled election protests in this manner, the very backbone of our democracy would be broken and in disarray. This matter is extremely important to democracy in our state and country.

Based on the above, the Court reverses the Municipal Election Commission's decision, finds Shaun Swinson's election protest was untimely and was not meritorious in any event because Swinson was not qualified to run as a candidate in the Town Council race, and orders that Appellant Taylor be seated as an Atlantic Beach Town Council member immediately. Because Appellant Taylor has already signed the Oath of office and been recognized by the Horry County Commission on Voter Registration and Elections as the duly elected member of Town Council, she should hereby immediately begin serving on Town Council and have all the same rights as other members of the council.

IT IS SO ORDERED!

November 1, 2024



Horry Common Pleas

Case Caption: William Booker , plaintiff, et al VS Kenneth McIver , defendant, et al

Case Number: 2024CP2607193

Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157