

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Carolyn Cole,)
)
 Appellant,)
)
 vs.)
)
 The Town of Atlantic Beach,)
 The Town of Atlantic Beach)
 Municipal Election Commission,)
 Carolyn Gore, Lenearl Evans,)
 Kenneth McIver, Kenneth McLaurin,)
 And Joe Montgomery,)
)
 Respondents.)
)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 Civil Action No.: 2014-CP-26-01341

ORDER DISMISSING APPEAL

FILED
 HORRY COUNTY
 2014 JUN -4 PM 1:15
 MELANIE HUGGINS-WARD
 CLERK OF COURT

This matter came before me by objection of the Town of Atlantic Beach Municipal Election Commission, and its members Joe Montgomery, Carolyn Gore, and Kenneth McIver, (hereinafter collectively referred to as the "ABMEC") by and through their counsel, Amanda A. Bailey, to the acceptance by the Horry County Clerk of Court of a Notice of Intent to Appeal of Carolyn Cole and Windy Price. On March 4, 2014, I scheduled a hearing, *sua sponte*¹, to address the objection for March 5, 2014 at 3:00 p.m.

Present at the hearing on March 5, 2014 was Amanda A. Bailey, Esquire, counsel for the ABMEC, Charles Jordan, Esquire, counsel for Windy Price and Carolyn Cole, and Leah Moody, Esquire, counsel for the Town of Atlantic Beach. Also present at the hearing and testifying as witnesses were Melanie J. Huggins-Ward, Horry County Clerk of Court, and Lenearl Evans and Kenneth McLaurin.

¹ The timeliness of an appeal is a jurisdictional requirement and, as such, may be raised at anytime by either party or *sua sponte* by this Court. See Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000); see also, Friends of McLeod, Inc. v. City of Charleston, 376 S.C. 610, 614-615, 658 S.E.2d 544, 546 (S.C.App.,2008), *vacated as moot by Friends of McLeod, Inc. v. City of Charleston*, 384 S.C. 438, 682 S.E.2d 488 (2009) (stating that the timeliness of an appeal is jurisdictional).

In support of the objection, the ABMEC presented to the Court the Affidavit of Donna Baxley dated March 5, 2014, testimony of Lenearl Evans and Kenneth McLaurin contesting personal jurisdiction and a notebook with copies of the following documents:

- a) November 19, 2013 Correspondence to the Clerk of Court for Horry County, from Ms. Bailey, Esquire;
- b) November 25, 2013 correspondence and documents received by E-Mail with Notice of Intent to Appeal on behalf of Carolyn Cole and Windy Price to the Clerk of Court from Mr. Jordan;
- c) November 25, 2013 correspondence and documents by U.S. Mail with Notice of Intent to Appeal on behalf of Carolyn Cole and Windy Price to the Clerk of Court from Mr. Jordan;
- d) January 3, 2014 correspondence to the Clerk of Court from Ms. Bailey, forwarding the original sealed transcript of the testimony and exhibits of the Town of Atlantic Beach's November 14, 2013 General Election Provisional Ballot Hearing and the November 15, 2013 Protest Hearing;
- e) February 17, 2014 correspondence from Ms. Bailey to Mr. Jordan advising no appeal filed and requesting a clocked copy of the Notice of Appeal;
- f) February 19, 2014 correspondence from Ms. Bailey notifying all interested parties that the no appeal has been filed;
- g) February 21, 2014 correspondence from the ABMEC declaring the winners of the 2013 General Election;
- h) March 3, 2014 correspondence from Mr. Jordan to the Horry County Clerk of Court requesting that the enclosed copies of the Notices of Intention to Appeal by Cole and Price be filed and back-dated to November 26, 2013;
- i) March 3, 2014 correspondence from Ms. Bailey to the Horry County Clerk of Court objecting to Mr. Jordan's March 3, 2014 correspondence;
- j) March 4, 2014, E-Mail from Annette Cline at the Horry County Clerk of Court's Office to Ms. Bailey attaching clocked-in copies of the Notice of Appeal by Cole and Price; and
- k) Copy of the Public Index for Horry County referencing any actions with the party's name "Atlantic Beach".

In opposition to the objection, Cole and Price presented the testimony of Ms. Huggins-Ward, together with copies of legal authority.

After reviewing the documents presented, the testimony, and arguments of counsel, I dismiss the Notice of Intent to Appeal filed by Carolyn Cole as untimely, and find as follows:

1. These matters arise from the Town of Atlantic Beach General Election noticed and held by the ABMEC on November 12, 2013.
2. The ABMEC announced the unofficial results of the election at the close of the polls on November 12, 2013.
3. The ABMEC held a Provisional Ballot hearing on November 14, 2013 at 10:00 a.m., and the election results were certified, and candidates Kenneth McLaurin and Lenearl Evans were declared winners.
4. On November 14, 2013, the ABMEC received a Notice, Petition to Proceed in Original Jurisdiction of the South Carolina Supreme Court and incorporated Memorandum of Law and Summons and Complaint for Declaratory Judgment, For Injunctive Relief and *Quo Warranto* filed by Caroline Cole, Windy Price, Patricia Bellamy and Charlette Hudson. This Motion was denied on December 19, 2013. See Cole, et al. v. The Town of Atlantic Beach, et al., Appellate Case No. 2013-002514.
5. In addition, Protests of Election were delivered to the ABMEC by Carolyn Cole and Windy Price on November 14, 2013. The Protests of Election by Cole and Price were identical.
6. As a result of the Protests of Election by Cole and Price, the Election Protest Hearing was scheduled, noticed, and held by the ABMEC on November 15, 2013 at 3:00 p.m.

7. Following the conclusion of the evidence at the Election Protest Hearing on November 15, 2013, a motion was made, seconded and carried by the ABMEC that the election protests filed by Price and Cole be denied. Cole, Price, and their counsel, Charles Jordan, were present, as was Patricia Bellamy.

8. As a result of the motion and decision of the ABMEC on November 15, 2013, an Order and Report of the ABMEC was then filed and served on November 19, 2013.

9. The Order and Report were filed with the Horry County Clerk of Court pursuant to Section 5-15-130 of the South Carolina Code on November 19, 2013.

10. The Transcript of the Election Protest Hearing and the Provisional Ballot Hearing were timely ordered and, upon receipt, filed with the Horry County Clerk of Court pursuant to Section 5-15-130 on January 3, 2014.

11. According to the ABMEC, Ms. Bailey received, by email, a copy of Cole and Price's Notice of Intent to Appeal on November 26, 2013. This copy was not clocked-in by the Horry County Clerk of Court and the Certificates of Service were unsigned. The unsigned Certificates of Service reflected the interested parties were to be served by regular U.S. Mail.

12. Thereafter, Ms. Bailey received, by regular U.S. Mail, a copy of Cole and Price's Notice of Intent to Appeal on December 2, 2013, which was also not clocked-in by the Horry County Clerk of Court. This copy did not include a Certificate of Service for the Notice of Intent to Appeal by Windy Price, but did include the original Certificate of Service for the Notice of Intent to Appeal by Caroline Cole signed by Mr. Jordan, which reflected service by regular U.S. Mail.

13. According to the Affidavit of Donna Baxley, on February 17, 2014, Donna Baxley, an employee with the McNair Law Firm, attempted to file the ABMEC's Motion for an

Expedited Hearing of the Appeals of Cole and Price with the Horry County Clerk of Court's office on behalf of Ms. Bailey. The Horry County Clerk of Court's office refused the filing stating that no appeals had been filed and no case number assigned.

14. On February 17, 2014, Ms. Bailey called and spoke with Ms. Huggins-Ward, regarding the refusal of the filing of the Motion for an Expedited Hearing for the Appeals of Cole and Price. Ms. Huggins-Ward stated that no appeals had been filed, and therefore no case numbers had been assigned.

15. On February 17, 2014, Ms. Bailey notified Mr. Jordan, by letter, that the appeals had not been filed and no case numbers assigned, and requested he provide clocked-in copies or proof of payment. Mr. Jordan did not provide a clock-in copy nor proof of payment for the appeals.

16. On February 19, 2014, Ms. Bailey sent formal notice to all interested parties that no appeal had been filed, and as a result there was no stay imposed by Section 5-15-140.

17. Thereafter, the ABMEC notified all interested parties by letter dated February 21, 2014 that the certified results of the election were final.

18. As a result, the winners of the November 2013 General Election were sworn-in as members of the Town Council for Atlantic Beach and they have been seated on council and voted on matters, including recently on March 3, 2014.

19. On March 3, 2014, Mr. Jordan hand-delivered a letter to Ms. Huggins-Ward, enclosing the Notices of Intent to Appeal for Cole and Price. In his letter, Mr. Jordan requested that the Notices be filed and back-dated to November 26, 2014.

20. In response to Mr. Jordan's letter, Ms. Bailey objected to Mr. Jordan's request to back-date the Notices of Intent to Appeal for Cole and Price by voice mail and by faxed letter to Ms. Huggins-Ward on March 3, 2014.

21. Ms. Huggins-Ward testified that, on March 4, 2014, she located a copy of the Notice of Appeal in a general file for election matters related to the Town of Atlantic Beach bearing a clock-in date of November 27, 2014. Ms. Huggins-Ward confirmed that, as of March 5, 2014, no filing fee had been paid and no case number had been assigned to the appeals.

22. Ms. Huggins-Ward testified that the clocking-in of the Notices of Appeal by Cole and Price was an error, and that the Notices of Appeal should not have been clocked-in and placed in the general file for election matters related to the Town of Atlantic Beach.

23. It is as a result of the actions and correspondence on March 3 and 4, 2014 that this hearing was conducted to determine whether the Notices of Intent to Appeal by Windy Price and Carolyn Cole were perfected by filing and serving within ten (10) days, as required by S.C. Code Ann. 5-15-140.

24. Rule 79(b)(1) of the South Carolina Rules of Civil Procedure requires that the Clerk of Court file and assign a file number to an appeal upon receipt. That was not done in this case.

25. As a result, and in order for this Court to issue this Order and for the Order and filings to be properly indexed and docketed in the Court filing system, I verbally ordered the Horry County Clerk of Court's office to accept a filing fee for the Notices of Appeal from Price and Cole and to open a file and assign a case number for each appeal as of March 5, 2014, the date of the hearing pursuant, to Rule 79(c) and (d), SCRCF.

26. The ABMEC asserts that inconsistencies with the filings dated November 27, 2014 raise doubt as to whether the Notices of Appeal from Ms. Price and Ms. Cole were properly or timely filed with the Horry County Clerk of Court.

27. In particular, the ABMEC point to the following inconsistencies:

- i) No appeal filing was located by the Horry County Clerk of Court's office on November 17, 2013, following inquiry by Donna Baxley and Ms. Bailey;
- ii) No appeal filing was located by the Horry County Clerk of Court's office at any time prior to March 4, 2014;
- iii) The November 27 filings were located only after a correspondence from Mr. Jordan requesting that they accept and back-date his filing;
- iv) The November 27 filings were clocked-in without a filing fee and not assigned a case number;
- v) The general Atlantic Beach election file maintained by the Horry County Clerk of Court does not have a case number, is not indexed, and is not generally available to be searched by the public;
- vi) Mr. Jordan did not have clocked-in copies of the Notices of Appeal and did not provide the same at any time, even after request by Ms. Bailey on November 17, 2013;
- vii) The copies of the Certificates of Service sent by e-mail to Ms. Bailey and by U.S. Mail to Ms. Bailey do not match those forwarded from the Horry County Clerk of Court's office with a filing date of November 27, 2013. For example, the copies that were sent by Mr. Jordan, by e-mail, were unsigned, and the original signature on the Certificate of Service that was sent to Ms. Bailey, by U.S. Mail, for the

Notice of Intent to Appeal for Carolyn Cole does not match the signature contained on the copy with a clock-in date of November 27, 2013;

- viii) The copies of the Certificates of Service that were filed do not have the same type of clock-in stamp as the Notices of Appeal for Cole and Price clocked-in by the Horry County Clerk of Court's office on November 27; and
- ix) The copies of the Certificates of Service do not reflect that the interested parties were served pursuant to Rule 4(d)(8), SCRCRCP and/or within ten (10) days as required by S.C. Code Ann. Section 5-15-140.

28. Cole and Price maintain that their appeals were properly perfected because the clock-in date of November 27, 2013 reflects that the appeals were received by the Horry County Clerk of Court's office and filed on that date. In support of this position, Cole and Price cite to Sternberger v. McSween, 14 S.C. 35 (1880) ("A paper is said to be filed when it is delivered to the proper officer and by him received to be kept on file.") and Loyd's Inc., et al. v. Good, 306 S.C. 450, 453, 412 S.E.2d 441. 443 (Ct. App. 1991) ("In Sternberger v. McSween, our Supreme Court defined "filing a paper" by stating "a paper is said to be filed when it is delivered to the proper officer and by him received to be kept on file.").

29. In addition, Cole and Price presented the testimony of Ms. Huggins-Ward who testified that the clock-in date of November 27, 2013 reflects that the Horry County Clerk of Court's office received the Notices of Appeal on that date, but that they were erroneously placed in a general file and further erroneously clocked-in.

30. Ms. Huggins-Ward testified that the Notices of Appeal should not have been clocked-in because no filing fees were presented with the filings. The Horry County Clerk of

Court's office historical course of performance and course of dealing requires the collection of a filing fee for a municipal election appeal prior to accepting the filing.

31. Had a mistake not been made by accepting the filings and placing them in the general election file for Atlantic Beach, Ms. Huggins-Ward testified that the Notices of Appeal would have been returned to Mr. Jordan to file with the required filing fee, and the Appeals would have been filed and assigned a case number only upon receipt of the filing fees.

32. Ms. Huggins-Ward further testified that she was on vacation on November 27, 2013 and did not know what happened with the filing of the Notices of Appeal.

33. In addition, when questioned regarding the difference between the clock-in stamps on the Certificates of Services and the Notices of Appeal, Ms. Huggins-Ward testified that the Certificates of Service appear to have been clocked-in on her deputy's clock-in machine in the back, while the Notices of Appeal appear to have been clocked-in on the other machines at the front window for the Horry County Clerk of Court.

34. The ABMEC presented testimony from Lenearl Evans and Kenneth McLaurin. Mr. Evans testified that he has never received or been served with a copy of the Notice of Intent to Appeal for Carolyn Cole or Windy Price by U.S. Mail or otherwise and that his address is different than that identified on the Certificate of Service signed by Mr. Jordan.

35. Specifically, Mr. Evans testified that his address is 607-C 31st Ave, South, Atlantic Beach, SC 29582, while the Certificates of Service from Mr. Jordan show Mr. Evan's address as 607-C 37th Ave, South, Atlantic Beach, SC, 29582.

36. Cole and Price had knowledge of Mr. Evans address at 607-C 31st Ave, South, Atlantic Beach, SC 29582 by correspondence dated November 21, 2013, which was filed with the Horry County Clerk of Court in the general election file for the Town of Atlantic Beach, and

by virtue of the evidence presented at the Protest Hearing on November 15, 2013, specifically Exhibit 5 to the transcript of the Protest Hearing.

37. Similarly, Mr. McLaurin testified that he has never received or been served with a copy of the Notice of Intent to Appeal for Carolyn Cole or Windy Price by U.S. Mail or otherwise.

38. In addition, Mr. McLaurin testified that, prior to March 3, 2014, he had been to Horry County Clerk of Court's office to record a copy of his Oath of Office after he was sworn-in to Town Council for Atlantic Beach. Mr. McLaurin testified that he asked an employee named Kenneth in the Horry County Clerk of Court's office if there was any appeal filed by Ms. Cole or Ms. Price and that, in response, he was informed that no appeal had been filed and no case number assigned.

39. The ABMEC maintains that the inconsistencies regarding the filing and the clocked-in date raise doubt as to the accuracy of the November 27, 2013 clock-in date for the Notices of Appeal by Cole and Price.

40. The inconsistencies noted by the ABMEC arose only after the ABMEC attempted to file Motions for Expedited Hearing and through no fault of the ABMEC.

41. The testimony presented at the hearing reflects that the filed copies of the Notices of Appeal were not discovered by Mr. Jordan, Cole, Price or the Horry County Clerk of Court's office until after Mr. Jordan's March 3, 2014 letter. This gives me great concern.

42. Further, a party has a duty to monitor the progress of the case and to timely prosecute it. See Goodson v. American Bankers Insurance Company of Florida, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). Cole and Price delayed unreasonably in monitoring

their appeals and in any attempts to reconcile the filing inconsistencies. These delays have operated to the prejudice of the interested parties.

43. Notwithstanding, even if the Notices of Appeal were clocked-in on November 27, 2013 as Cole and Price maintain, there is no dispute that they were clocked-in in error, and that no filing fees were paid or case number assigned at any time prior to this hearing.

44. Rule 3(b) of the South Carolina Rules provides for the waiver of a filing fee only upon motion for leave to proceed *in forma pauperis*. In Ex Parte: Martin v. State, 321 S.C. 533, 471 S.E.2d 134 (1995), the Court held, “[i]n the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed *in forma pauperis* may only be granted where specifically authorized by statute or required by constitutional provisions.” Id. at 535, 471 S.E.2d at 134-35 (citations omitted).

45. In Sullivan v. South Carolina Dept. of Corrections, 355 S.C. 437, 445-446, 586 S.E.2d 124, 128 (2003), the court noted that “there is no statutory provision that permits the waiver of filing fees for an appeal brought under the APA, and S.C.Code Ann. § 8-21-310(11)(a) provides that a clerk of court must collect a filing fee of \$100.00 for *any* complaint or petition.”

46. In the present case, neither Cole nor Price moved to proceed *in forma pauperis* and, similar to Sullivan, there is no statutory provision that permits the waiver of filing fees for an appeal brought under the municipal election appeal statute, S.C. Code Ann. §5-15-140.

47. As a result, even if the Notices of Appeal were clocked-in on November 27, 2013, they were not properly filed with the Horry County Clerk of Court’s office by Cole or Price without the required fees.

48. Further, even if the Notices of Appeal were clocked-in on November 27, 2013, Cole and Price have not timely filed, served, or perfected their appeal pursuant to the municipal election appeal statute.

49. Section 5-15-140 of the South Carolina Code provides:

Within ten days after notice of the decision of the municipal election commission, any party aggrieved thereby may appeal from such decision to the court of common pleas. Notice of appeal shall be served on the opposing parties or their attorneys and filed in the office of the clerk of court within ten days. The notice of appeal shall act as a stay of further proceedings pending the appeal.

50. Cole and Price had notice of the ABMEC's decision on November 15, 2013, when their protests were denied on the record at the public Election Protest Hearing, in which they attended together with their counsel.

51. Appellate proceedings in the circuit court shall be in accordance with the South Carolina Rules of Civil Procedure. Rule 74, SCRCP; State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 51 - 52 (2011).

52. While Rules 74 and 75 of the South Carolina Rules of Civil Procedure provide for a uniform procedure for appeals to the Circuit Court, these rules only apply where there is no provision by statute. Rules 74 and 75 are added to supply omissions in statutes providing for appeal to the Circuit Court where no provision is made for the time to file notice of intention to appeal, the form of the record on appeal, or how it shall be transmitted. See Karl Sitte Plumbing v. Darby Development Corp., 295 S.C. 70, 76, 367 S.E.2d 162, 165 (Ct. App. 1988).

53. Unlike Rules 74 and 75, SCRCP, the municipal election appeal statute, S.C. Code Ann. § 5-15-140, does not require receipt of written notice of the decision of the ABMEC prior the time for filing an appeal commences. Rather, S.C. Code Ann. § 5-15-140 requires the filing and service of a Notice of Appeal within "ten days after notice of the decision."

54. It is undisputed that Cole and Price, and their attorney, had notice of the decision of the ABMEC on November 15, 2013, when the ABMEC denied the protests by a motion on the record in open session, which was seconded and unanimously approved.

55. In Davis v. Town of Cayce, 164 S.E. 883, 883 -884 (1932), the court was presented with the argument that the appellant prematurely filed a notice of appeal after receiving verbal notice of the decision of the council at the conclusion of the protest hearing but before the filing of the written report. The Davis court declined to penalize the appellant for filing prior to the written notice, but stated that “the statute provides for an appeal within five days after notice of the decision of the council, and, when the decision was announced at the conclusion of the hearing, contestees had notice of the same.”

56. Cole and Price assert that they should be charged with notice only upon receipt of the written order filed by the ABMEC and not the decision of the ABMEC at the conclusion of the hearing because they could not have knowledge of the grounds for ABMEC’s decision until receipt of the written order. This argument is without merit.

57. Following the decision on November 15, 2013, the ABMEC filed and served its report on November 19, 2013, as required by S.C. Code Ann. §5-15-130.

58. In a previous election dispute involving the Town of Atlantic Beach, the South Carolina Court of Appeals held that “the statute does not require a written order containing findings of fact or conclusions of law similar to those, e.g., required of tribunals in APA or family court proceedings.” Taylor v. Town of Atlantic Beach Election Com'n, 363 S.C. 8, 15, 609 S.E.2d 500, 503 - 504 (2005). For Cole and Price to assert that they would not be on notice of the grounds of the ABMEC’s decision until receipt of the report ignores this case precedent.

59. Further, Cole and Price's Notices of Appeal set forth no specific grounds or exceptions on appeal, and such specificity is not required. Their issues on appeal are limited to the grounds raised in their Election Protests. See Butler v. Town of Edgefield, 328 S.C. 238, 245-246, 493 S.E.2d 838, 842 (1997) ("The notice in an election contest 'should briefly state facts or a combination of facts sufficient to apprise the contestee of the cause for which his election is contested, it being insufficient to allege generally that fraud was committed, or to allege mere conclusions of the pleader.' The purpose of the notice requirement is to adequately inform the contestee as to the nature of the contest. Section 5-15-130 codifies this by requiring a 'concise statement of the grounds.'") (citations omitted).

60. As a result, I find that S.C. Code Ann. §5-15-140 required Cole and Price to file and serve their Notices of Appeal within 10 days of the decision of the ABMEC unanimously approved at the conclusion of the Protest Hearing on November 15, 2013.

61. Therefore, even if the Notices of Appeal were clocked-in on November 27, 2013, Cole and Price have not timely filed the Notices within 10 days of notice of the decision of the ABMEC as required by Section 5-15-140.

62. Moreover and in any event, even if the Notices of Appeal were clocked-in on November 27, 2013, Cole and Price have not timely served the Notices of Appeal pursuant to Section 5-15-140, which requires service on the opposing parties or their attorneys within 10 days of notice of the decision of the ABMEC.

63. Of the numerous interested parties, the opposing parties to Cole and Price's Notice of Appeal included, *inter alia*, the other candidates in the 2013 General Election: Kenneth McLaurin, Lenearl Evans, and Retha Pierce.

64. The ABMEC maintains that service was required by personal process or certified mail pursuant to Rule 4, SCRPC because absent a summons and service, this Court would have no means of obtaining personal jurisdiction over the parties.

65. Cole and Price maintain that services was proper pursuant to Rule 5(a)(10) and (b)(1) (permitting service by mail of grounds or exceptions on appeal) because the Certificates of Service reflect that the Notices were sent by U.S. Mail to the last known addresses of the opposing parties.

66. Regardless of what type of service was required on the opposing parties, it is undisputed that the Notices of Appeal were not served on Lenearl Evans by personal service, certified mail, delivering a copy to him, and/or by mailing it to him at his last known address. The testimony, and evidence presented and on file, reflect that Lenearl Evans' address on any and all versions of the Certificates of Service was erroneous.

67. As a result, I find that, even if the Notices of Appeal were clocked-in on November 27, 2013, Cole and Price have not timely served the Notices on opposing parties within 10 days, as required by Section 5-15-140.

68. In municipal election cases, courts 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. Berry v. Spigner, 226 S.C. 183, 190, 84 S.E.2d 381, 384 (1954) (internal quotes omitted).

69. "Voters who have done all in their power to cast their ballots honestly and intelligently are not to be disfranchised because of an irregularity, mistake, error, or even wrongful act, of the officers charged with the duty of conducting the election, which does not prevent a fair election and in some way affect the result." Id.

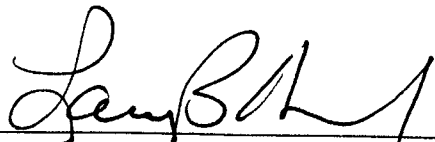
70. There is no right to contest an election under the common law. Taylor, 363 S.C. at 12-15, 609 S.E.2d at 502 – 504. “The right to contest an election exists only under the [state] constitutional and statutory provisions, and the procedure proscribed by statute must be strictly followed.” Id., citing Taylor v. Roche, 271 S.C. 505, 509, 248 S.E.2d 580, 582 (1978) and S.C. Const. art. II, 10 (“General Assembly shall ... establish procedures for contested elections, and enact other provisions necessary to the fulfillment of and integrity of the election process”).

71. Cole and Price did not strictly follow the procedure for appealing the decision of the ABMEC to deny their Election Protests, and therefore they have waived their right to contest the November 12, 2013 General Election by appeal.

72. Further, as a result of the irregularities regarding the filing of the Notices of Appeal and Certificates of Service by Cole and Price, and their failure to timely file and timely serve the Notices of Appeal as required by S.C. Code Ann. 5-15-140, I find that this court lacks jurisdiction to hear the appeals and dismiss the same as untimely.

NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the Notice of Appeal file by Appellant Carolyn Cole be dismissed.

IT IS SO ORDERED.


Larry B. Hyman
Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina

March 2, 2014
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