

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM MCCORMICK COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case Number 2017-002583

J.R. Jones, South Carolina Democratic Party, and
McCormick County Democratic Party, Appellants,

v.

South Carolina Republican Party, McCormick County
Republican Party, and Clarke Anderson Stearns, Respondents.

Final Brief of Appellants

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QUESTIONS PRESENTED

Question I

The Circuit Court erred as a matter of law by not ruling that Clark Stearns does not meet the qualifications to be Sheriff of McCormick County, pursuant to S.C. Code Ann. § 23-11-110, when it was stipulated that Mr. Stearns did not have three years of experience as a law enforcement officer certified by the State of South Carolina.

Question II

The Circuit Court erred when it concluded the McCormick County Election Commission is the proper venue to challenge Clarke Stearns' qualifications to be Sheriff of McCormick County by interpreting S.C. Code Ann. § 23-11-110.

Question III

The Circuit Court erred by not issuing a writ of mandamus directing the appropriate officials withdraw certification of Clarke Stearns as meeting the qualifications to be Sheriff of McCormick County and take the steps necessary to remove him from office.

STATEMENT OF THE CASE

On March 16, 2016, the respondent, Clarke Anderson Stearns, signed the filing affidavit to run for Sheriff of McCormick County, representing he “received a two-year associate degree [in] May 1982” and had “31 years experience as a certified law enforcement officer.” R. 81 at ¶¶ 9 and 10. Exercising ministerial responsibilities, officials of the McCormick County Republican Party and the South Carolina Republican Party certified Mr. Stearns qualified to run for Sheriff of McCormick County. R. 202, lines 4-6.

On June 14, 2016, Mr. Stearns won the Republican Primary for Sheriff of McCormick County. On November 8, 2016, Mr. Stearns won the General Election for Sheriff of McCormick County.

The appellant J.R. Jones, filed an election protest with the McCormick County Registration and Elections Commission. The Commission convened an election protest hearing on November 21, 2016. R. 161-210.¹ During the hearing, Mr. Stearns testified he had never been certified as a law enforcement officer in the State of South Carolina. R. 182, lines 18-21; 24, line 185 – 25, line 3. Mr. Stearns further testified he intended to seek certification as a law enforcement officer in South Carolina because he had been elected Sheriff. R. 184, lines 18-21.

On December 7, 2016, the appellants filed a complaint seeking a declaration that Mr. Stearns does not meet the qualifications set forth in S.C. Code Ann. § 23-11-110, enjoining him from serving as Sheriff of McCormick County, and, to the extent necessary, granting a writ of mandamus directing the appropriate officials remove Mr.

¹ Pages 22, 24, 25, and 42 of the hearing are Exhibit B to the Exhibits to appellants’ Complaint. R. 40-44.

Stearns from the Office of Sheriff of McCormick County. R. 29-36. On January 2, 2017, the appellants moved for a temporary injunction, seeking to enjoin Ms. Stearns from taking office as Sheriff of McCormick County. R. 53-57. The appellants amended their complaint on January 3, 2017. R. 45-52.

On January 4, 2017, Mr. Stearns completed another affidavit. This affidavit represented Mr. Stearns had thirty-one years of law enforcement experience in the Commonwealth of Virginia. Mr. Stearns affidavit also represented that he planned to seek certification as a law enforcement officer in South Carolina *after he was sworn in as Sheriff*. R. 83-84 at ¶¶ 10, 11 and 13.

On January 6, 2017, the Honorable William P. Keesley convened a hearing on the appellants' motion for a temporary injunction. R. 219-318. By written order dated January 19, 2017, Judge Keesley ruled, "This matter is one that a circuit court can decide, and there is a difference in identity of parties between the election commission protest and this lawsuit." Judge Keesley, however, denied the appellants' motion for a temporary injunction to allow the record to be developed further, although he noted "there is a substantial possibility that the plaintiffs will prevail" on the merits. R. 1-5.

On October 4, 2017, Mr. Stearns served a motion to dismiss and motion for summary judgment. On October 16, 2017, the Honorable R. Lawton McIntosh convened a hearing on these motions. R. 321-42. By written order dated October 18, 2017, Judge McIntosh denied the motion to dismiss. R. 6-8.

On October 18, 2017, Judge McIntosh convened a bench trial on the appellants' first amended complaint. The parties stipulated to the following facts:

- 1) On March 16, 2016, when he signed the filing affidavit to run for Sheriff of McCormick County, the defendant, Clark Anderson Stearns,

had never been certified as a law enforcement officer in the State of South Carolina.

2) After Mr. Stearns's affidavit was filed with the South Carolina Election Commission, it was publicly available on the website of the South Carolina Election Commission.

3) The Plaintiff, J.R. Jones, was not aware of any issue pertaining to Mr. Stearns's statutory qualifications to be a sheriff in the State of South Carolina until after the 2016 General Election.

4) Alonzo Harrison, Chair of the McCormick County Democratic Party, was not aware of any issue pertaining to Mr. Stearns's statutory qualifications to be a sheriff in the State of South Carolina until after the 2016 General Election.

5) Mr. Stearns obtained his certification as a law enforcement officer in South Carolina from the South Carolina Criminal Justice Academy on September 6, 2017.

R. 353-54; 115-16. Judge McIntosh requested briefs and contemplated time for responsive pleadings. R. 359-61. On October 31, 2017, the appellants and Mr. Starnes filed memoranda of law. R. 117-41.

On November 6, 2017, the Circuit Court issued a Form 4 order denying the relief requested in the appellants' amended complaint. R. 9-11. On November 9, 2017, the appellants filed Rule 59(e), SCRCF motion. R. 158-60.

On November 13 and 16, 2017, the appellants and Mr. Stearns proffered responses to the post hearing briefs, as the Circuit Court had issued a ruling without allowing the parties time to respond to each other's filings. R. 142-57.

On November 28, 2017, the Circuit Court issued orders denying the appellants' request for relief and denying the appellants' Rule 59(e), SCRCF motion. R. 12-25.

This appeal follows.

ARGUMENTS

Question I

The Circuit Court erred as a matter of law by not ruling that Clark Stearns does not meet the qualifications to be Sheriff of McCormick County, pursuant to S.C. Code Ann. § 23-11-110, when it was stipulated that Mr. Starnes did not have three years of experience as a law enforcement officer certified by the State of South Carolina.

The primary question before this Court is whether Clarke Stearns meets the statutory qualifications to be Sheriff of McCormick County. The Circuit Court did not rule on this issue. R. 9-27. The appellants' Rule 59(e), SCRCF motion pointed out the Circuit Court's "order does not address this issue" and moved the court below to "enter an order declaring Mr. Stearns does not meet the qualifications of sheriff set forth in S.C. Code Ann. § 23-11-110." R. 158-60.

"As used in election law, whether an individual is qualified for office asks whether she meets the constitutional or statutory requirements for the office." *Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 384, 735 S.E.2d 453, 458 (2012) (citing *Ravenel v. Dekle*, 265 S.C. 364, 218 S.E.2d 521 (1975)). Thus, this question is a matter of statutory construction.² "[T]he construction of a statute is a judicial function and responsibility." *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596, 600, fn. 2, 614 S.E.2d 629, 631, fn. 2 (2005). *And see Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012) ("[W]e are not asked to judge a disputed legislative election but rather to interpret a statute.").

Because of the parties' stipulation, this issue "is a question of law subject to de novo review." *In re Manigo*, 398 S.C. 149, 157, 728 S.E.2d 32, 35 (2012) (citing

² S.C. Const. art. V, § 24 provides, "The General Assembly also may provide by law for the age and qualifications of sheriffs."

Transp. Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010)). Under this Court’s standard of review:

The cardinal rule of statutory construction is that the intent of the legislature must prevail if it reasonably can be discerned from the words used in the statute. These words must be construed in context and in light of the intended purpose of the statute in a manner which harmonizes with its subject matter and accords with its general purpose. [I]f the language is plain and unambiguous, [the Court] must enforce the plain and clear meaning of the words used. But if applying the plain language would lead to an absurd result, [the Court] will interpret the words in such a way as to escape the absurdity. A merely conjectural absurdity is not enough; the result must be so patently absurd that it is clear that the General Assembly could not have intended such a result.

Manigo, 398 S.C. at 157, 728 S.E.2d at 35-36 (internal citations and quotations omitted).

“Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011).

S.C. Code Ann. § 23-11-110 establishes the qualifications to be a sheriff in South Carolina. S.C. Code Ann. 23-11-110 (A)(5) requires specified amounts of law enforcement experience based on the extent of a candidate’s educational background. Because Mr. Stearns “received a two-year associate degree [in] May 1982” (R. 39 at ¶ and 10), the statute mandates Mr. Stearns must “three years experience as a certified law enforcement officer.” S.C. Code Ann. § 23-11-110(A)(5)(b).

For purposes of S.C. Code Ann. § 23-11-110(A)(5), a “‘certified law enforcement officer’ is a person who has been issued a certificate as a law enforcement officer pursuant to” S.C. Code Ann. § 23-23-10, *et. seq.* S.C. Code Ann. § 23-23-10 provides:

In order to ensure the public safety and general welfare of the people of this State, and to promote equity for all segments of society, a program of

training for law enforcement officers and other persons employed in the criminal justice system in this State is hereby proclaimed and this chapter must be interpreted to achieve these purposes principally through the establishment of minimum and advance standards in law enforcement selection and training.

S.C. Code Ann. § 23-23-10(D) designates the South Carolina Criminal Justice Academy as the responsible authority for implementing this policy. S.C. Code Ann. § 23-23-40 establishes our state's law enforcement certification requirement. The plain meaning of § 23-11-110(A)(5), therefore, requires Mr. Stearns to have three years of experience as a law enforcement officer certified by the State of South Carolina. Our General Assembly intended for a county sheriff to meet the minimum qualifications established by the South Carolina Criminal Justice Academy and have a minimum amount of experience working within our state's unique criminal justice system and enforcing the laws of our state. Simply put, Mr. Stearns' experience as a law enforcement officer in Virginia does not qualify him to be a sheriff in South Carolina pursuant to 23-11-110(A)(5).

As stipulated, Mr. Stearns first obtained his certification as a law enforcement officer in South Carolina on September 6, 2017. R. 115-16. Mr. Stearns becoming a certified law enforcement officer in South Carolina—ten months after the general election—does not render the appellants' complaint moot. Mr. Stearns was not qualified to be Sheriff when he signed his filing affidavit. He was not qualified to be Sheriff when he won the general election. He was not qualified to be Sheriff when he took the oath of office. He is not qualified to be Sheriff today.

This Court, accordingly, should declare Mr. Stearns does not meet the statutory qualifications to be a sheriff in South Carolina. Such a declaration will have the effect of removing Mr. Stearns from office. Although removal from office might seem to be a

drastic measure, this Court has warned political parties that improperly certify candidates for office proceed “at their own peril.” *Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 130, 727 S.E.2d 418, 421 (2012). *And see Tempel v. S.C. State Election Comm’n*, 400 S.C. 374, 735 S.E.2d 453 (2012) (ordering special primary election after unqualified candidate appeared on ballot).

Question II

The Circuit Court erred when it concluded the McCormick County Election Commission is the proper venue to challenge Clarke Stearns’ qualifications to be Sheriff of McCormick County by interpreting S.C. Code Ann. § 23-11-110.

The Circuit Court ruled:

The plaintiffs clearly had available a specific remedy to challenge [Mr. Stearns’] certification as being qualified to run for the office of Sheriff of McCormick County. Plaintiffs abandoned their appeal after being unsuccessful [in] their challenge at the county level. Having a specific remedy available, plaintiffs cannot seek a writ of mandamus.

R. 9. The appellants’ Rule 59(e), SCRPC motion argued the Circuit Court misunderstood “the authority of the McCormick County Board of Canvassers.” R. 158-60.

Title VII of the South Carolina Code establishes procedures for elections. Nothing in Title VII grants the McCormick Board of Canvassers the authority to determine the qualifications of candidates for county office. S.C. Code Ann. § 7-17-10 governs the meeting and organization of the McCormick County Board of Canvassers. Section 7-17-20 establishes the authority of the County Board of Canvassers:

The county board of canvassers, respectively, shall then proceed to canvass the votes of the county and make such statements of such votes as the nature of the election shall require no later than noon on the Saturday next following the election and at such time shall transmit to the State Board of Canvassers the results of their findings.

The authority of the McCormick County Board of Canvassers, therefore, is limited to counting the votes (including absentee votes), examining the provisional ballots, considering challenges and protests to specific votes, and certifying the results of the election. As outlined above, the question before this Court is whether Mr. Stearns meets the qualifications to serve as Sheriff of McCormick County as set forth in S.C. Code Ann. § 23-11-110. An interpretation of § 23-11-110 is also outside the scope of the county election commission. After all, the results of the election are not in dispute. Rather, the appellants ask this Court to interpret a statute. “[T]he construction of a statute is a judicial function and responsibility.” *JRS Builders, Inc.*, 364 S.C. at 600, fn. 2, 614 S.E.2d at 631, fn. 2. This Court, furthermore, recognized the distinction between being “asked to judge a disputed legislative election” and “to interpret a statute.” *Anderson*, 397 S.C. at 555, 725 S.E.2d at 706. Thus, the Judiciary—not the McCormick County Board of Canvassers—is the appropriate venue to resolve this controversy. The Circuit Court erred when it concluded that the McCormick County Election Commission is the proper authority to interpret § 23-11-110.

Although not addressed in the order dated November 6, 2017, the order dated November 28, 2017³ concludes the decision of the McCormick County Board of Canvassers is the law of the case and the appellants are collaterally estopped from challenging Mr. Stearns qualifications to be sheriffs because of that ruling. These conclusions overlook three important points. First, as discussed above, the McCormick County Election Commission never had the authority to interpret S.C. Code Ann. § 23-11-110. The only issue decided by the McCormick County Election commission was whether Mr. Stearns got more votes than Mr. Jones. Second, as Judge Keesley correctly concluded, “This matter is one that a circuit

³ The order dated November 28, 2017 was drafted by counsel for Mr. Stearns.

court can decide, and there is a difference in identity of parties between the election commission protest and this lawsuit.” Third, and most importantly, the question before this Court involves an *on-going* violation of S.C. Code Ann. § 23-11-110, which is Mr. Stearns continued failure to meet the qualifications for Sheriff of McCormick County because he does not have three years of experience as a law enforcement officer certified by the State of South Carolina.

The judiciary—not the county election commission—is the appropriate authority to interpret § 23-11-110 and determine whether Mr. Stearns meets the qualifications to be a sheriff in South Carolina.

Question III

The Circuit Court erred by not issuing a writ of mandamus directing the appropriate officials withdraw certification of Clarke Stearns as meeting the qualifications to be Sheriff of McCormick County and take the steps necessary to remove him from office.

Although questioning “whether the certification of a candidate as being ‘qualified’ to run for office being sought constitutes a ministerial duty,” the Circuit Court decision to deny a writ of mandamus was based on the erroneous conclusion that the appellants had a remedy through the McCormick County Election Commission. R. 9. The appellants’ Rule 59(e), SCRCF motion pointed out the process of certifying candidates for elected office is not discretionary and, once the Circuit Court determined “Mr. Stearns does not meet the qualifications to be sheriff, he is no longer Sheriff as a matter of law,” and any action to remove him from office would be ministerial. R. 158-60.

“The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law.” *Porter v. Jedziniak*, 334 S.C. 16, 18, 512 S.E.2d 497, 497-98 (1999). “To obtain a writ of

mandamus requiring the performance of an act, the petitioner must show (1) a duty of respondent to perform the act, (2) the ministerial nature of the act, (3) the petitioner's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy.” *Id.*

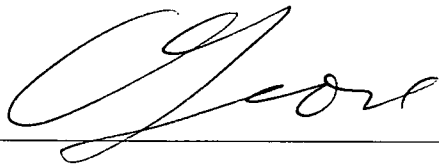
Mr. Stearns had a duty to complete his filing affidavit accurately. The McCormick County Republican Party and South Carolina Republican Party had duties to certify only a candidate that met the statutory qualifications. These acts are ministerial in nature. The appellants have a right for the Sheriff of McCormick County to meet the statutory qualifications for that office. No other legal remedy exists. As seen in Question II, *supra*, the courts of our State—not the McCormick County Board of Canvassers—is the proper venue to interpret statutes and determine the qualifications for elected office. *See Anderson and JRS Builders, Inc., supra.*

This Court should issue a writ of mandamus directing the appropriate officials take the steps necessary decertify Mr. Stearns as candidate and remove him from office.

CONCLUSION

This Court should reverse the Circuit Court, enter an order declaring Clark Stearns does not meet the qualifications to be Sheriff of McCormick, and direct the appropriate officials take the steps necessary decertify Mr. Stearns as candidate and remove him from office.

Respectfully Submitted,

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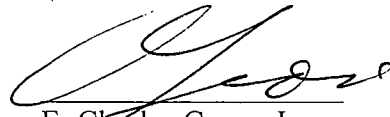
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Rule 211(b), SCACR Certification

I certify that this Final Brief of Appellant complies with Rule 211(b), SCACR.



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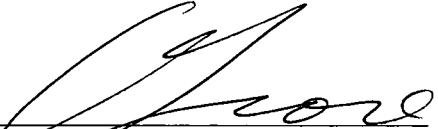
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