

of qualification with Defendant Clarendon County Democratic Party on March 16, 2018. Samuels-Cooper filed her affidavit of qualification with Defendant Clarendon County Democratic Party on March 19, 2018. On April 3, 2018, Samuels-Cooper received a phone call from South Carolina Democratic Party chairman Trav Robertson requesting that she submit an amended affidavit. No checkboxes had been filled on the original affidavit to indicate Samuels-Cooper's qualifications for the office of Coroner. The affidavit did indicate that Samuels-Cooper was enrolled in a week-long Medicolegal Death Investigator Training Course to take place from August 13-17, 2018 at Saint Louis University.

Samuels-Cooper submitted an amended affidavit on April 4, 2018, after the close of the filing period. The amended affidavit indicated that Samuels-Cooper was qualified to be Coroner because she has a "four-year baccalaureate degree and one year of experience in death investigation with a law enforcement agency, coroner, or medical examiner agency." That same day, Plaintiff emailed Trav Robertson, Chairman of the South Carolina Democratic Party, raising concerns about Samuels-Cooper's qualifications. Attached to the email was a letter from the South Carolina Coroners Association outlining the qualifications for coroners. Mock also contacted the Clarendon County Democratic Party Chairperson Patricia Pringle about his belief that Samuels-Cooper did not meet the statutory qualifications. Defendant Clarendon County Democratic Party certified both Plaintiff and Samuels-Cooper as qualified candidates for the office of Coroner. On April 5, 2018, Defendant South Carolina Democratic Party sent a letter to the Clarendon County Board of Voter Registration & Elections stating that Samuels-Cooper met the qualifications for the office.

The Clarendon County Democratic Primary was held on June 12, 2018. Samuels-Cooper received the most votes for the office of Coroner. The General Election date is November 6, 2018, pursuant to sections 7-13-10 and -20 of the South Carolina Code. Complaint ¶ 14. Pursuant to S.C. Code Section 7-17-520, Plaintiff had until noon on the Monday following the election to file a protest with the chairman of the Clarendon County Democratic Party. Plaintiff did not file any protest to the election with the Clarendon County Democratic Party.

Plaintiff filed the present lawsuit on June 14, 2018. Plaintiff alleges that Samuels-Cooper was not qualified to be the Coroner of Clarendon County, and that Defendants Clarendon County Board of Voter Registration & Elections and South Carolina Democratic Party had improperly certified Samuels-Cooper as a candidate for Coroner. Plaintiff alleges that Samuels-Cooper is not qualified to be Coroner because she does not have "one year of experience in death investigation with a law enforcement agency, coroner, or medical examiner agency," and furthermore, that she has not completed a recognized forensic science degree or certification program. Complaint, ¶¶ 30-31. The forensic training program that Samuels-Cooper has enrolled in is not the forensic science degree and certification program recognized by the Coroner's Training Advisory Committee.

The currently recognized certification program for South Carolina coroners is sponsored by the American Board of Medicolegal Death Investigators ("ABDMI"). In a letter dated February 21, 2012, the Coroners Training Advisory Committee, on behalf of the South Carolina Coroner's Association, advised that they had unanimously approved the ABDMI certification program as the recognized forensic science degree or certification program pursuant to S.C. Code of Laws, Section 17-5-130(G). At that time, the ABDMI

certification program was associated with Saint Louis University. The ABDMI certification program has the following requirements: the person to be certified (1) must be at least eighteen years of age at the time of application, (2) must have a high school diploma or equivalent, (3) must currently be employed in a Medical Examiner or Coroner office or equivalent federal authority with the job responsibility to "conduct death scene investigations" or supervise such investigations at time of application and examination, and (4) must have a minimum of 640 hours of death investigation experience.

Plaintiff seeks a declaratory judgment from this Court that Samuels-Cooper is not qualified to be the Coroner of Clarendon County, that her affidavit outlining her qualifications to be coroner is deficient, that the Clarendon County Democratic Party and South Carolina Democratic Party improperly certified Samuels-Cooper as having met the statutory requirements to be a coroner, and that Defendants Clarendon County Board of Voter Registration & Elections and the State Election Commission improperly certified Samuels-Cooper as a qualified candidate for general election. Furthermore, Plaintiff seeks injunctive relief barring (1) the State Election Commission and/or Clarendon County Board of Voter Registration & Elections from certifying Samuels-Cooper as a candidate for coroner; (2) stopping the State Election Commission and/or Clarendon County Board of Voter Registration & Elections from placing Samuels-Cooper's name on the general election ballot for November 6, 2018; and (3) preventing the Clarendon County Democratic Party and South Carolina Democratic Party from certifying Samuels-Cooper as the nominee for coroner.

Plaintiff filed a Motion for Temporary Injunction on June 20, 2018. This court granted a Temporary Restraining Order on June 21, 2018. An expedited hearing was held

on July 3, 2018. Samuels-Cooper filed a Motion to Dismiss under Rule 12(b)(6) on July 19, 2018, alleging that Plaintiff had failed to exhaust his administrative remedies for contesting an election as outlined in sections 7-17-520 and -530 of the South Carolina Code of Laws. A hearing was held on July 20, 2018, recessed on that same day, and concluded on July 27, 2018. Plaintiff and Samuels-Cooper filed briefs in opposition to and support of the Motion to Dismiss, respectively. Samuels-Cooper filed her Answer on July 23, 2018.

At the hearing on July 20, Sabrina Gast, Coroner for York County and president of the South Carolina Coroner's Association, testified on behalf of the Plaintiff as to the duties of coroners and deputy coroners. Ms. Gast testified that under South Carolina law, only coroners and deputy coroners are authorized to conduct death investigations. She also testified that while the ABMDI certification program was not specified by statute in South Carolina, the ABMDI program was the program selected by the Coroners Training Advisory Committee pursuant to S.C. Code Section 17-5-130(G). She further testified that the ABMDI certification is no longer affiliated with Saint Louis University, and that there are currently no training programs available to qualify prospective coroners in South Carolina.

Defendants South Carolina Democratic Party and Clarendon County Democratic Party filed a joint Motion to Dismiss on July 24, 2018 on the basis of Plaintiff's failure to exhaust administrative remedies. Defendant Clarendon County Board of Voter Registration & Elections filed a Motion to Dismiss on July 26, 2018, arguing that Plaintiff has failed to produce any evidence showing why the Clarendon County Board of Voter Registration & Elections should be a party to the case. Defendant Samuels-Cooper and South Carolina Election Commission made oral motions at the hearing on July 27 asking

the court to consider amending its ruling on the failure to exhaust administrative remedies with regards to candidate filing issues, or in the alternative to consider dismissal on the basis of laches.

When the hearing resumed on July 27, 2018, Samuels-Cooper testified that during her time as an administrative assistant with the funeral home and Coroner's office she received phone calls reporting deaths, was responsible for dispatching the Coroner or deputy coroner's to the scene of deaths, scheduled autopsies, spoke with families of the deceased, and helped to fill out death certificates. She further testified that she had attended one or two autopsies and had been present at one death scene; she accompanied a magistrate to the scene when the Coroner and deputy coroners were unavailable. Samuels-Cooper testified, and Plaintiff agreed, that she was fired on March 9, 2018 when she made it known that she intended to run for Coroner.

CONCLUSIONS OF LAW

1. Ms. Samuels-Cooper's Motion to Dismiss under Rule 12(b)(6) is granted in part

On July 19, 2018, Ms. Samuels-Cooper filed a Motion to Dismiss, arguing that Plaintiff's suit should be dismissed under Rule 12(b)(6) for failure to exhaust available administrative remedies. Specifically, Ms. Samuels-Cooper argues that Plaintiff failed to utilize the available statutory remedies to contest county elections as provided in S.C. Code Section 7-17-520. The statute reads:

"The protests and contests in the case of county officers and less than county officers shall be filed in writing with the chairman of the county party executive committee, together with a copy for each candidate in the race not later than noon Monday following the day of the declaration by the county committee of the result of the election... The protest must contain each ground for the protest stated separately and concisely. The chairman must forthwith serve upon each candidate

in the protested race a copy of the protest, and serve a notice of the time and place of the meeting of the executive committee for the purpose of hearing the protest."

Once a protest is filed, S.C. Code Section 7-17-530 states that, "[t]he executive committee shall hear the protest or contest on Thursday following the deadline for filing the protest or contest." The protesting party has the right to be represented by counsel, to examine and cross-examine witnesses, and to produce evidence supporting their grounds for protest. *Id.* Plaintiff never filed a protest to the June 12, 2018 Clarendon County Democratic primary, opting instead to file suit in this Court on June 14, 2018. Plaintiff argues in his memorandum in opposition that he was not required to exhaust this administrative remedy because Ms. Samuels-Cooper's reasoning rests on an unpublished opinion from the South Carolina Supreme Court, the Circuit Court has jurisdiction to hear this case under Anderson, and that Plaintiff is not required to utilize administrative remedies when it would be futile to do so. For the reasons outlined below, Ms. Samuels-Cooper's Motion to Dismiss is granted in part, but the court retains jurisdiction to address her qualifications to be the Coroner for Clarendon County.

Plaintiff correctly notes that Ms. Samuels-Cooper cites to an unpublished opinion from the South Carolina Supreme Court in support of her Motion to Dismiss. In that order, our Supreme Court dismissed a lawsuit challenging a 2012 state senate election in Clarendon County after plaintiff declined to exhaust the available administrative remedies before filing suit. *McFadden v. Clarendon Cty. Election Comm'n*, Order No. 2012-212849 (S.C. Sup. Ct. filed Oct. 3, 2012). It is well-settled that "[m]emorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 268(d)(2), SCACR. However, there is precedent in South Carolina case law stating that where administrative remedies are

available, they must be exhausted before an individual may bring suit in the circuit court. "The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to the application of the general rule." *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994) (citing *Andrews Bearing Corp., supra*; *Ex parte Allstate Ins. Co.*, 248 S.C. 550, 151 S.E.2d 849 (1966)). Furthermore, where an adequate administrative remedy is available to determine a question of fact, an aggrieved party must pursue the administrative remedy or be barred from bringing suit in the courts. *Id.* (citing *Meredith v. Elliot*, 247 S.C. 335, 147 S.E.2d 244 (1966)). Here, Plaintiff seeks a declaration that Ms. Samuels-Cooper is not qualified to be a candidate for the office of Coroner for Clarendon County. It is uncontested that Plaintiff did not protest the June 12 primary election using the procedure outlined in S.C. Code Section 7-17-520. As will be explained further, this court holds that because Plaintiff did not follow the administrative procedures available to contest this election, he may not challenge Ms. Samuels-Cooper's qualifications to be a candidate for coroner.

Plaintiff also argues that the Supreme Court of South Carolina's decision in *Anderson v. South Carolina Election Comm'n* is the controlling law in this scenario. *Anderson v. South Carolina Election Comm'n*, 397 S.C 551, 725 S.E.2d 704 (2012). In that case, our Supreme Court held that judicial intervention is necessary to ensure that only legally qualified candidates are included on the ballots. *Id.* at 555, 725 S.E.2d at 706. The court held that the circuit court did have jurisdiction over the dispute, despite the fact that no harm had yet occurred because no unqualified candidates had been elected. *Id.* The Supreme Court stated that, absent relief, plaintiffs, as voters, faced the substantial likelihood that they would have to select from a slate of candidates who may not be

qualified. *Id.* at 555-56, 725 S.E.2d at 706. Therefore, the Supreme Court granted relief to require compliance with the law to ensure that only candidates who were legally qualified would appear on the ballot. *Id.* at 556, 725 S.E.2d at 706. Furthermore, the Supreme Court held that it was not being asked to adjudicate a contested election, but rather to interpret a statute, which is a judicial function and responsibility. *Id.* at 555, 725 S.E.2d at 706. This court agrees with Plaintiff's argument on this ground. Because the office of coroner has statutorily defined requirements, similarly to the office of sheriff, this court is not being asked to judge the outcome of a contested election. Instead, it is being asked to interpret the statute setting forth the qualifications for coroner, and to determine if Ms. Samuels-Cooper meets those qualifications, and it has the jurisdiction to do so.

Lastly, Plaintiff argues that commencing this action in the circuit court was proper because it would have been futile to exhaust the available administrative remedies. A generally recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of them would be a vain or futile act. *Ward v. State*, 343 S.C. 14, 19, 538 S.E.2d 245, 247 (2000). A party must demonstrate futility by a showing that is comparable to the administrative agency taking a "hard and fast position that makes an adverse ruling a certainty." *Brown v. James*, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct. App. 2010). In the *Brown* case, the plaintiff was a school teacher who had sued the district superintendent for violating the South Carolina Teacher Employment and Dismissal Act. The circuit court granted defendant's motion for summary judgment due to plaintiff's failure to exhaust her administrative remedies. The Court of Appeals reversed, noting that requiring the plaintiff to exhaust those remedies would require her to go before the school board, which had already voted to accept the defendant's

recommendation not to renew plaintiff's teaching contract. The Court of Appeals held that plaintiff was not required to participate in a hearing after a final decision had been made regarding nonrenewal of her contract. Such a pursuit would have been futile, and the circuit court had jurisdiction to hear plaintiff's direct appeal. Similarly, in *Ward*, the Supreme Court reversed the circuit court's grant of a motion to dismiss for plaintiff's failure to exhaust administrative remedies. Plaintiff in that case sought a declaratory judgment against the state, alleging that an act eliminating tax exemption for state retirees was unconstitutional. 343 S.C. at 16, 538 S.E.2d at 246. Our Supreme Court held that the circuit court had subject matter jurisdiction because it would have been a futile act for the plaintiff to challenge the constitutionality of a statute in front of an agency that could not rule on the issue. *Id.* at 19, 538 S.E.2d at 247.

This case is distinguishable from *Brown* and *Ward*. In these prior cases, the administrative agency that would have heard plaintiffs' protests had already made an adverse ruling to the plaintiff or had no power to rule on plaintiff's protest. By contrast, no such adverse ruling was issued in this matter. Plaintiff sent an email on April 4, 2018, to Trav Robertson, chairman of the South Carolina Democratic Party. In that email to Mr. Robertson, Plaintiff raised his concerns regarding Ms. Samuels-Cooper's lack of qualifications to be Coroner. Plaintiff attached to his email a letter from the South Carolina Coroner's Association outlining the qualifications to be a coroner in South Carolina. Mr. Robertson replied to Plaintiff on April 6, stating that based on consultation with and advice from legal counsel, that the South Carolina Democratic Party certified all Democratic candidates for coroner in Clarendon County. Likewise, Patricia Pringle, chairwoman of the Clarendon County Democratic Party, emailed Plaintiff to notify him that all candidates for

coroner in Clarendon County had been certified by the South Carolina Democratic Party. This correspondence does not constitute an adverse ruling which would make Plaintiff's pursuit of available administrative remedies futile. The State Democratic Party Chairman cannot rule on a protest filed with a county party executive committee. Likewise, the chairman of the county party executive committee cannot rule alone on questions of fact relative to an individual's candidacy. *See* S.C. Code Section 7-17-530. Plaintiff failed to exhaust the applicable administrative procedures available to him to contest the election, and no circumstances are present to excuse his failure to do so. Ms. Samuels-Cooper's Motion to Dismiss is granted in part, and Plaintiff may not challenge her candidacy for Coroner of Clarendon County.

2. Ms. Samuels-Cooper does not meet the statutory qualifications to be coroner

South Carolina law outlines the qualifications for the office of coroner in S.C. Code Section 17-5-130. Ms. Samuels-Cooper indicated in her amended affidavit and testimony that she was qualified to be coroner under S.C. Code Section 17-5-130(A)(2)(c), stating that she had a four-year baccalaureate degree and one year of experience in death investigation with a law enforcement agency, coroner, or medical examiner agency. Ms. Samuels-Cooper testified that she believed she had fulfilled the one year of experience in death investigation because of her 13 years of employment as an administrative assistant to decedent, who was Coroner for Clarendon County until his death on January 17th of this year. She testified that she took phone calls reporting deaths, contacted and dispatched the coroner and/or deputy coroners to death scenes, scheduled autopsies, spoke with families of the deceased, and helped to fill out death certificates. She also testified that she had attended one or two autopsies and was present at one death scene.

While South Carolina law does not define "death investigation," it does define numerous duties and responsibilities for coroners and deputy coroners. S.C. Code Section 17-5-510 states that "[i]n counties which have both a coroner and a medical examiner: (1) the coroner has the ultimate responsibility for carrying out the duties required by this article." S.C. Code Section 17-5-530(A) states that:

If a person dies:

- (1) as a result of violence;
- (2) as a result of apparent suicide;
- (3) when in apparent good health;
- (4) when unattended by a physician;
- (5) in any suspicious or unusual manner;
- (6) while an inmate of a penal or correctional institution;
- (7) as a result of a stillbirth when unattended by a physician; or
- (8) in a health care facility...

a person having knowledge of the death immediately shall notify the county coroner's or medical examiner's office. This procedure must also be followed upon discovery of anatomical material suspected of being or determined to be a part of a human body.

S.C. Code Section 17-5-530(B) further states that "[t]he coroner or medical examiner shall make an immediate inquiry into the cause and manner of death and shall reduce the findings to writing on forms provided for this purpose." S.C. Code Section 17-5-520(A) provides that "[i]n addition to the powers vested in other law enforcement officials to order an autopsy, the coroner or medical examiner is authorized to determine that an autopsy be made."

South Carolina law also allows for duly appointed and approved deputy coroners to carry out the duties of the office of coroner. "A county coroner shall appoint one or more deputies or investigators to be approved by the judge of the circuit or by any circuit judge presiding therein... When duly qualified, as herein required, the deputy coroner may do and perform any or all of the duties appertaining to the office of the coroner." S.C. Code Ann.

§17-5-70 (1976). Sabrina Gast, current president of the South Carolina Coroner's Association, testified at the July 20th hearing, that these duties pertaining to death investigations may only be performed by coroners and duly appointed deputy coroners. Ms. Samuels-Cooper undoubtedly has many hours over the past 13 plus years assisting the coroner and deputy coroners in the performance of their duties. However, our law states that the duties appertaining to death investigations, such as responding to death scenes, determining the manner and cause of death, and ordering autopsies to be performed, may be performed by coroners and deputy coroners (in addition to medical examiners and solicitors in certain circumstances), but not by administrative assistants. To say that an administrative assistant in a coroner's office has sufficient death investigation experience to qualify to be a coroner would be similar to saying that a judge's administrative assistant is competent to take the bench because of his experience in the judge's chambers. Based on the qualifications Ms. Samuels-Cooper indicated in her affidavit, and South Carolina state law, this court holds that Ms. Samuels-Cooper is currently not qualified to be the coroner for Clarendon County.

Based on this court's understanding of the prevailing law, it is also the court's conclusion that there is currently no possibility for Ms. Samuels-Cooper to become qualified for the office of coroner. S.C. Code Section 17-5-130(A)(2)(e) provides that a person may also qualify to be a coroner if they "have completed a recognized forensic science degree or certification program or be enrolled in a recognized forensic science degree or certification program to be completed within one year of being elected to the office of coroner." Furthermore, candidates for coroner must submit an affidavit showing "the date the person completed a recognized forensic science degree or certification

program, or information regarding the person's enrollment in a recognized forensic science degree or certification program..." S.C. Code Ann. § 17-5-130(B)(4)(h).

Ms. Samuels-Cooper indicated in her amended affidavit of qualifications, and in her testimony, that she had enrolled in and paid for a week-long Medicolegal Death Investigator Training Course to take place from August 13-17, 2018 at Saint Louis University. Sabrina Gast indicated during her testimony that the only currently recognized forensic science degree or certification program recognized by the South Carolina Coroner's Association is the ABMDI registry certification. This course was unanimously approved by the Coroners Training Advisory Committee in a letter dated February 21, 2012. S.C. Code Section 17-5-130(G) gives the Coroners Training Advisory Committee the authority to determine the recognized forensic science degree or certification program for South Carolina coroners. The requirements for this certification program are listed above in the facts section. At the time of Ms. Samuels-Cooper filing her affidavit, and as of the time of this case, she has not completed a recognized forensic science degree or certification program, nor is she enrolled in one. Furthermore, testimony at the July 27 hearing shows that Ms. Samuels-Cooper will be unable to be enrolled in any forensic science degree or certification program within the one-year time frame outlined in S.C. Code Section 17-5-130(A)(2)(e). Testimony at the hearing indicated that the requirements of 640 hours of death investigation experience and employment at a coroner's office were not only requirements for the ABMDI registry certification, but also for the education courses offered through ABMDI. Testimony indicated that it takes approximately one year working in a coroner's office to accumulate the necessary death investigation hours to become certified.

(3) Defendant South Carolina Election Commission and Defendant Samuels-Cooper's Motion to Dismiss for Laches are moot

At the continued hearing on July 27, 2018, Defendants South Carolina Election Commission and Ms. Samuels-Cooper made oral motions asking this court to consider amending its ruling on the failure to exhaust administrative remedies with regards to candidate filings issues, or in the alternative to consider dismissal on the basis of laches. Since this court has granted Ms. Samuels-Cooper's Motion to Dismiss for Plaintiff's failure to exhaust his available administrative remedy to contest the election, these points are moot.

CONCLUSION

Based on the case law and statutes considered in the preceding section, the ruling of this court is as follows: Defendant LaNette Samuels-Cooper's Motion to Dismiss under Rule 12(b)(6) is granted in part, and Plaintiff is barred from contesting her qualifications as a candidate on the election ballot for the office of Coroner for Clarendon County; additionally, this court finds that Ms. Samuels-Cooper is currently not qualified for the office of coroner, and based on the testimony and evidence in the record, will be unable to become qualified for the office within the one-year time period specified by statute.

AND IT IS SO ORDERED!

At Manning, South Carolina
Dated: August 3, 2018

R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit

