THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2018-001520

Bucky Mock, Respondent-Appellant,

v.

Clarendon County Board of Voter Registration & Elections, Clarendon County Democratic Party, LaNette Samuels-Cooper, South Carolina Democratic Party, and South Carolina Election Commission, Defendants,

Of whom LaNette Samuels-Cooper is Appellant-Respondent,

And Clarendon County Board of Voter Registration & Elections, Clarendon County Democratic Party, South Carolina Democratic Party, and South Carolina Election Commission are Respondents.

RESPONDENT–APPELLANT BUCKY MOCK'S FINAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF THE CASE

This appeal arises out of the circuit court's order issuing a declaratory judgment that Appellant–Respondent LaNette Samuels-Cooper does not meet and cannot meet the requisite statutory qualifications to serve as coroner of Clarendon County. (R. pp. 4–15).

Respondent–Appellant Bucky Mock and Samuels-Cooper both sought the Democratic Party's nomination for coroner of Clarendon County. (R. p. 4). The filing period for candidates intending to run in the primary was open from March 16, 2018, to March 30, 2018. (Id.). Mock filed his statement of intention of candidacy and affidavit of qualification with the Clarendon County Democratic Party on March 16, 2018. (R. p. 447; Supp. R. p. 1). Samuels-Cooper then filed her statement of intention of candidacy and affidavit of qualification on March 19, 2018. (R. p. 448; Supp. R. p. 2). Although Samuels-Cooper indicated she was enrolled in a week-long Medicolegal Death Investigator Training Course set to take place from August 13–17, 2018, at Saint Louis University, she failed to check any boxes on the original affidavit indicating how she was qualified for the office of coroner. (R. p. 448).

Upon receipt of the filings, Clarendon County Democratic Party chairwoman Patricia Pringle contacted South Carolina Democratic Party chairman Trav Robertson to express her concerns regarding Samuels-Cooper's failure to check a box on the affidavit demonstrating what qualifications she possessed to run for coroner of Clarendon County. (R. pp. 345, 353). Instead of rejecting the filing, Robertson called Samuels-Cooper on April 3, 2018, requesting that she submit an amended affidavit. (R. p. 2). On April 4, 2018, after the close of the filing period, Samuels-Cooper submitted an amended affidavit. (R. p. 449). The amended affidavit indicated she was qualified to run for 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." (Id.).

Shortly thereafter, Mock emailed Robertson to alert him about Samuels-Cooper's lack of qualifications. (Supp. R. p. 10). Attached to the email was a letter from the South Carolina Coroners Association outlining the qualifications for coroners. (Supp. R. pp. 11–13). Mock also contacted Pringle regarding Samuels-Cooper's lack of qualifications. (Supp. R. p. 14). Nevertheless, his concerns fell on deaf ears. The Clarendon County Democratic Party certified both Samuels-Cooper and Mock as qualified candidates to run in the primary for the office of coroner. (R. p. 5; Supp. R. p. 4). The South Carolina Democratic Party then sent a letter to the Clarendon County Board of Voter Registration & Elections stating that Samuels-Cooper met the statutory qualifications to run for coroner. (R. pp. 452–53).

The Democratic primary was held on June 12, 2018, and Samuels-Cooper prevailed. (R. p. 6). Immediately following the primary, on June 14, 2018, Mock filed this action in circuit court seeking a temporary restraining order (TRO), injunctive relief, and a declaratory judgment that Samuels-Cooper does not meet the statutory qualifications for the office of coroner. (R. pp. 24–33). In his complaint, Mock alleged 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 she has not completed the recognized forensic science degree or certification program. (R. p. 28). Further, Mock alleged that the course in which Samuels-Cooper was enrolled is not the program recognized by the Coroners Training Advisory Committee. (Id.).

Mock sought a declaratory judgment that Samuels-Cooper is not qualified to serve as coroner of Clarendon County, her filing affidavit outlining her qualifications to be coroner was

deficient, the Clarendon County Democratic Party and South Carolina Democratic Party improperly certified her as meeting the statutory requirements for office, the Clarendon County Board of Voter Registration & Elections and the State Election Commission improperly certified her as a qualified candidate for the general election. (R. p. 30). Mock also sought injunctive relief barring the relevant entities from certifying Samuels-Cooper as the Democratic nominee for coroner and placing her name on the general election ballot. (R. pp. 30–32). On June 20, 2018, Mock moved for a TRO, temporary injunction, and permanent injunction. (R. pp. 34–35). The circuit court entered an order granting Mock's motion for a TRO on June 21, 2018. (R. pp. 1–2). An expedited hearing on the motion for an injunction was held on July 3, 2018, during which the circuit court agreed to give Samuels-Cooper a continuance given her recent retention of counsel.

On July 19, 2018, the evening before the July 20, 2018 hearing, Samuels-Cooper filed a motion to dismiss under Rule 12(b)(6), SCRCP. (R. pp. 51–52). Samuels-Cooper alleged Mock failed to exhaust his administrative remedies for contesting an election outlined in sections 7-17-520 and -530 of the South Carolina Code (Supp. 2017). (Id.). The circuit court held a hearing the next day, recessed, and reconvened on July 27, 2018. (R. pp. 82–251). Prior to the final hearing, the parties submitted briefs addressing Samuels-Cooper's motion to dismiss, and Samuels-Cooper filed an answer. (R. pp. 53–65, 47–50). Additionally, the state and county Democratic Party filed a joint motion to dismiss on July 24, 2018, arguing Mock failed to exhaust his administrative remedies. (R. pp. 66–67). Two days later, the Clarendon County Board of Voter Registration & Elections filed a motion to dismiss, arguing Mock failed to demonstrate why that entity should be a party to this case. (R. p. 69).

At the July 20 hearing, Mock testified about Samuels-Cooper's inexperience in death investigations and lack of qualifications to become coroner. (R. pp. 125–83). In addition, Sabrina

Gast—coroner for York County and president of the South Carolina Coroners Association—testified regarding the duties of coroners and deputy coroners in this state. (R. pp. 189–247). Gast testified that only coroners and deputy coroners perform death investigations in South Carolina. (R. pp. 208–09). She further asserted that the ABMDI certification program, which was approved by the Coroners Training Advisory Committee pursuant to statute, was no longer affiliated with Saint Louis University. (R. pp. 229, 238). According to Gast, absent some other statutory qualifications, no training programs are available to qualify prospective coroners in South Carolina, unless they currently serve as a coroner or deputy coroner. (R. pp. 224–28).

A week later, the hearing resumed in circuit court. At the July 27 hearing, Samuels-Cooper testified regarding the activities she performed during her time as an administrative assistant with the funeral home and coroner's office. (R. pp. 264–342). Samuels-Cooper and the State Election Commission subsequently made oral motions asking the circuit court to reconsider its tentative ruling on the exhaustion question or, in the alternative, consider dismissing the case on the basis of laches. (R. pp. 384–85). The circuit court took all matters under advisement. (R. p. 388).

On August 3, 2018, the circuit court issued an order granting Samuels-Cooper's motion to dismiss, in part, on the ground that Mock failed to exhaust his administrative remedies in contesting her candidacy. (R. pp. 9–14). The circuit court, however, retained jurisdiction to address whether Samuels-Cooper was qualified to serve as coroner of Clarendon County. (R. p. 10). In a well-reasoned analysis, based upon the law and all testimony put forth at the hearings in this matter, the circuit court concluded Samuels-Cooper does not possess the statutory qualifications to serve as coroner, nor can she obtain the requisite qualifications within one year of holding office. (R. pp. 14–17).

The parties all filed motions to alter or amend judgment as well as responses in opposition. (R. pp. 70–81). On August 13, 2018, at the request of Samuels-Cooper, the circuit court held a hearing on the motions. (R. pp. 425–45). That same day, the circuit court issued an amendment to the order, dismissing the South Carolina Democratic Party, the Clarendon County Democratic Party, and the Clarendon County Board of Voter Registration & Elections. (R. p. 21). Further, the circuit court concluded the issues of laches and estoppel were moot and held that all other matters addressed in the initial order stand. (Id.). This cross-appeal followed.[1]

STANDARD OF REVIEW

This Court recently adopted the "any evidence" standard in reviewing an election-related appeal from a circuit court order issuing a declaratory judgment regarding a county-level school board candidate's qualifications. See Gantt v. Selph, 423 S.C. 333, 341–42, 814 S.E.2d 523, 528 (2016). The same standard of review should apply here. "Under this deferential standard, the findings of fact reached by the lower tribunal cannot be disturbed if there is any probative evidence in the record supporting the findings." Id. at 341, 814 S.E.2d at 528; see also Knight v. State Bd. of Canvassers, 297 S.C. 55, 57, 374 S.E.2d 685, 686 (1988) (holding that, in an appeal from a decision by the State Board of Canvassers, this Court's review is limited to correcting errors of law, and the board's findings of fact shall not be overturned unless wholly unsupported by the evidence); Taylor v. Town of Atl. Beach Election Comm'n, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005) (providing that, in municipal election cases, this Court reviews the judgment of the circuit court only to correct errors of law and must accept the circuit court's factual findings unless they are wholly unsupported by the evidence).

[1] With her notice of appeal, Samuels-Cooper filed a motion for an injunction pending appeal, and Mock filed a return in opposition. This Court issued an order denying Samuels-Cooper's motion and set an expedited briefing schedule.

ARGUMENT

The Court should affirm the circuit court's order because it (1) properly declined to address Samuels-Cooper's laches argument and (2) correctly retained jurisdiction to issue a declaratory judgment that Samuels-Cooper does not possess the requisite statutory qualifications to serve as coroner of Clarendon County.

I. The circuit court properly declined to grant LaNette Samuels-Cooper's motion to dismiss based upon the doctrine of laches.

The Court should affirm the circuit court's decision not to grant Samuels-Cooper's motion to dismiss on the basis of laches because the doctrine is inapplicable.

"Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done." Jefferson Pilot Life Ins. Co. v. Gum, 302 S.C. 8, 11, 393 S.E.2d 180, 181 (1990). "Under the doctrine of laches," the Court will find a cause of action is barred "if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or otherwise detrimentally change his position." Sloan v. Dep't of Transp., 379 S.C. 160, 174, 666 S.E.2d 236, 243 (2008). "Delay alone in the assertion of a right does not constitute laches." Bonney v. Granger, 292 S.C. 308, 319, 356 S.E.2d 138, 145 (Ct. App. 1987). "Whether a plaintiff is barred by laches is to be determined in light of the circumstances of each particular case." Jefferson Pilot Life Ins. Co., 302 S.C. at 11, 393 S.E.2d at 181–82.

Here, the crux of Samuels-Cooper's argument is that Mock's action against her should be barred by laches because he delayed challenging her qualifications until after the Democratic primary. Samuels-Cooper's argument, however, is directly at odds with her contention that Mock should have filed a protest with the county party executive committee two days after the primary.

See S.C. Code Ann. § 7-17-520. If a statute expressly contemplates a post-election remedy,[2] then it makes little sense to argue that a party cannot file a challenge after the election. Samuels-Cooper cannot have her cake and eat it too. In any event, it is well-settled that "[d]elay alone in the assertion of a right does not constitute laches." Bonney, 292 S.C. at 319, 356 S.E.2d at 145.

The Democratic primary was held on June 12, 2018, and Mock filed this action in circuit court on June 14, 2018. Mock did not "deliberately choose to waive any rights he had," App.-Resp. Br. at 14, or otherwise sleep on his rights; rather, he seasonably asserted them. And two days does not constitute "unreasonable delay." Sloan, 379 S.C. at 174, 666 S.E.2d at 243. The issue was still brought to the attention of the circuit prior to the general election. Although Samuels-Cooper was removed from the general election ballot, she cannot demonstrate any prejudice stemming from Mock's decision to file this action less than two days after the primary—instead of before the primary—because this challenge came as no surprise to her. Samuels-Cooper was well aware of the concerns regarding her lack of qualifications throughout the primary campaign and refused to withdraw from the race. (Supp. R. pp. 5–9).

In an apparent attempt to demonstrate prejudice, Samuels-Cooper contends "the respondents have incurred additional expenses in holding a special election." App.-Resp. Br. at 14. But she failed to allege what expenses, if any, she incurred as a result of the special election. Samuels-Cooper's complaint that "she has been adjudged to be unqualified to serve as coroner, even though she won the majority vote at the Democratic primary," id., is equally unavailing because she cannot argue prejudice stems from a correct legal ruling. Finally, Samuels-Cooper's conclusory assertion that she "may suffer irreparable harm even if the judgment of the circuit court

[2] The statutory remedy is not the exclusive remedy. As explained in greater detail in Mock's Final Brief of Appellant on cross-appeal, the circuit court and the county party executive committee retained concurrent jurisdiction over this dispute.

is reversed" is without merit. The requested relief in her own conclusion belies this argument. See id. at 21 (requesting that respondents "certify [her] as the sole Democratic nominee").

Regardless, Samuels-Cooper did nothing to "detrimentally change her position" and could not have reasonably believed this problem was going away. Sloan, 379 S.C. at 174, 666 S.E.2d at 243. A pre-election challenge would have yielded no different result because she simply does not possess the requisite statutory qualifications to run for or serve as coroner of Clarendon County. And while Samuels-Cooper may have incurred expenses defending this action, she would have incurred the same costs if the challenge had been filed prior to the election. Samuels-Cooper was on notice that Mock and the Coroners Association were concerned with her lack of qualifications, and she declined the opportunity to avoid incurring expenses by withdrawing from the race.

Under the circumstances of this case, Samuels-Cooper failed to demonstrate that Mock's action in circuit court should be barred by the doctrine of laches. Accordingly, the Court should affirm the circuit court's decision not to decide this case on that unsupported ground.

II. The circuit court correctly issued a declaratory judgment that Samuels-Cooper does not possess the requisite statutory qualifications to serve as coroner of Clarendon County.

A. The circuit court properly retained jurisdiction to issue a declaratory judgment regarding Samuels-Cooper's lack of statutory qualifications to serve as coroner.

The Court should affirm the circuit court's decision to retain jurisdiction over this matter to rule on Samuels-Cooper's failure to meet the statutory qualifications to serve as coroner of Clarendon County.[3]

[3] As noted in his Final Brief of Appellant on cross-appeal, Mock maintains his position that the circuit court erred in finding he was required to exhaust administrative remedies prior to challenging Samuels-Cooper's qualifications as a candidate in circuit court. In raising the present issue, Mock does not waive that argument. Nevertheless, to the extent the Court agrees with the circuit court on the exhaustion point, the Court should find the circuit court's distinction of candidacy versus holding office was appropriate and affirm the declaration that Samuels-Cooper is not qualified to serve as coroner of Clarendon County.

"Declaratory judgments are neither legal nor equitable and, therefore, the standard of review depends on the nature of the underlying issues." Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). As noted above, under the any evidence standard, the Court's review of the present dispute is limited to correcting errors of law, and it will only overturn findings of fact that are wholly unsupported by the evidence. See Gantt, 423 S.C. at 341, 814 S.E.2d at 528. Here, Samuels-Cooper is essentially arguing the circuit court erred as a matter of law in issuing a declaratory judgment regarding her lack of qualifications to hold office because it determined Mock could not challenge her qualifications as a candidate. Interestingly, Samuels-Cooper cites no law in support of this proposition. A review of the relevant authorities, however, is instructive.

As this Court recently noted, "[i]n the absence of authority vested in another branch of government," a party is "entitled to pursue relief pursuant to the Uniform Declaratory Judgments Act." Id. (citing S.C. Code Ann. §§ 15-53-10 through -140 (2005)). Under the Act, the circuit court had the "power to declare rights, status[,] and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20 (2005); see also Rule 57, SCRCP (asserting that "[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate").

"The Declaratory Judgments Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). To that end, this Court has instructed that "[t]he Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship." Id. at 423–24, 593 S.E.2d at 466.

Here, the General Assembly has not vested exclusive authority to decide this controversy in another branch of government. Bringing this challenge prior to the general election is appropriate because it avoids the prospect of the citizens of Clarendon County having a coroner in office who (1) is not qualified to perform the duties of this important position and (2) cannot obtain the necessary qualifications within one year of holding office. The circuit court, in recognition of these serious concerns, "grant[ed declaratory] relief to require compliance with the law and ensure that only legally qualified candidates are included on the ballots." Anderson v. S.C. Election Comm'n, 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012) (per curiam).

To the extent Samuels-Cooper elects to take the same position she did below, Mock did challenge her qualifications to serve as coroner of Clarendon County, not just her ability to run as a candidate for the position of coroner. Samuels-Cooper's affidavit was deficient, to be sure, because she failed to check any boxes demonstrating her qualifications. And the Democratic Party acted in contravention of the law by allowing her to file an amended affidavit outside of the filing deadline. See S.C. Code Ann. § 17-5-130(B)(1) (2014) (requiring candidates for coroner to file an affidavit identifying their qualifications "no later than the close of filing"). But that was not the sole basis upon which Mock challenged her qualifications. In fact, Mock did not even know about the original defective affidavit until the time of the first hearing. When he filed his complaint, Mock was only aware of the second untimely affidavit, and his challenge was tailored to the purported substantive qualifications Samuels-Cooper claimed she possessed in that filing.

Indeed, at the outset of his complaint, Mock asked that the circuit court declare that "Samuels-Cooper does not meet the statutorily required qualifications of section 17-5-130 of the South Carolina Code to be a candidate for coroner of Clarendon County." (R. p. 25 ¶ 11). Mock then asserted that Samuels-Cooper was "not qualified to be a coroner in South Carolina," (R. p. 28

¶ 33), because, among other things, "she has not conducted death investigations." (R. p. 28 ¶ 30). In his prayer for relief, Mock asked the circuit court, in relevant part, to issue a declaratory judgment that Samuels-Cooper "does not meet the statutory qualifications to become coroner of Clarendon County." (R. p. 32).

When liberally construing the complaint, as required under a Rule 12(b)(6) motion to dismiss, the circuit court correctly concluded that Mock challenged both the candidacy issue surrounding Samuels-Cooper's deficient affidavit and the separate question regarding Samuels-Cooper's failure to meet the statutory qualifications for office. See, e.g., Doe v. Bishop of Charleston, 407 S.C. 128, 134, 754 S.E.2d 494, 497 (2014) (asserting that "the pleadings must be construed liberally" in reviewing a motion to dismiss, and "[i]f the facts alleged and inferences reasonably deducible from the allegations set forth in the complaint, viewed in the light most favorable to the plaintiff, entitle him to relief on any theory, dismissal under Rule 12(b)(6) is improper"). Thus, the circuit court properly denied Samuels-Cooper's motion to dismiss on this ground and proceeded to the merits of this dispute.

In sum, the Court should find the circuit court appropriately distinguished Mock's challenge to Samuels-Cooper's candidacy from the challenge to her statutory qualifications to serve as coroner of Clarendon County. Samuels-Cooper failed to meet her burden to justify the circuit court dismissing the entire action, and the court had the power to issue a declaratory judgment on this question of public importance because it was not exclusively delegated to another branch of government.

B. Samuels-Cooper is not qualified to serve as coroner of Clarendon County and cannot obtain the necessary qualifications within one year.

Turning to the merits, the Court should affirm the circuit court's determination that Samuels-Cooper is not qualified to serve as coroner of Clarendon County because its decision is supported by overwhelming evidence in the record.

1. Samuels-Cooper currently is not qualified to serve as coroner.

Initially, Samuels-Cooper does not currently meet the statutory requirements to serve as coroner of Clarendon County.

The General Assembly outlined seven potential ways an individual can meet the qualifications for the office of coroner in section 17-5-130(A)(2) of the South Carolina Code (2014). Subsection 17-5-130(B)(4) requires candidates for coroner to file an affidavit demonstrating how they meet the qualifications for office. In her amended filing affidavit, Samuels-Cooper indicated she was qualified to be coroner under subsection 17-5-130(A)(2)(c), stating she had a four-year baccalaureate degree and one year of experience in death investigations with a law enforcement agency, coroner, or medical examiner agency. While the term "death investigation" is not defined by statute, the relevant statutes do define the numerous duties and responsibilities for coroners and deputy coroners. See, e.g., S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991) (asserting that "words in a statute must be construed in context," and "in ascertaining the meaning of [a] term," the court "must look to other terms in the statute").

Under section 17-5-510 of the South Carolina Code (2014), "[i]n counties which have both a coroner and a medical examiner[,] . . . the coroner has the ultimate responsibility for carrying out the duties required by this article." Section 17-5-530 provides 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;

(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 Ann. § 17-5-530(A) (2014).

The statute further provides 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."[4] S.C. Code Ann. § 17-5-530(B) (emphasis added). This is the primary function of a coroner: to perform death investigations. And the portion of the statute emphasized above is the definition of what constitutes a death investigation. To perform death investigations, individuals must have the required experience and expertise.

South Carolina law also allows for duly appointed and approved deputy coroners to carry out the duties of the office of coroner. See S.C. Code Ann. § 17-5-70 (2014) ("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

[4] Likewise, subsection 17-5-520(A) states 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." S.C. Code Ann. § 17-5-520(A) (2014).

coroner may do and perform any or all of the duties appertaining to the office of the coroner."). In other words, deputy coroners may perform death investigations.

These statutes, when read together, demonstrate the General Assembly's intent that only coroners and duly appointed coroners may perform death investigations.[5] See, e.g., Beaufort Cty. v. S.C. State Election Comm'n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) ("The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. . . . All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. Moreover, it is well settled that statutes dealing with the same subject matter are in para materia and must be construed together, if possible, to produce a single, harmonious result." (internal citations omitted)).

While Samuels-Cooper may have accumulated many hours over the past thirteen years performing administrative functions to assist the coroner and deputy coroner in the performance of their duties, as the circuit court concluded, this is insufficient. Samuels-Cooper testified that, during her time as an administrative assistant with the funeral home and the coroner's office, she received phone calls reporting deaths, was responsible for dispatching the coroner and deputy coroners to death scenes, scheduled autopsies, spoke with families of the deceased, and helped to fill in portions of death certificates. Further, Samuels-Cooper testified that she attended one or two autopsies, had been present at one death scene, and accompanied a magistrate to a death scene on one occasion when the coroner and deputy coroners were unavailable. The circuit court heard all of this evidence and concluded it was not sufficient. The vast majority of these functions are

[5] Indeed, this interpretation is consistent with the practice of coroners across the state. During the hearing, Sabrina Gast, current president of the South Carolina Coroners Association, testified that only coroners and deputy coroners may perform the duties pertaining to death investigations.

administrative in nature. Even assuming some tasks bled into the duties of a coroner or deputy coroner, when taken as a whole, these activities still would not amount to one year of death investigation experience as required under the statute. The circuit court so found, and its conclusion is supported by "any probative evidence in the record."

Under South Carolina law, the duties appertaining to death investigations—such as responding to death scenes, determining the manner and cause of death, and ordering the performance of autopsies—may only be performed by coroners or deputy coroners.[6] Nothing in the law supports Samuels-Cooper's position that an administrative assistant may perform these duties. Indeed, as the circuit court cogently observed, "[t]o 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." (R. p. 16). Further, contrary to Samuels-Cooper's assertions, the circuit court did not solely rely upon the testimony of Gast and Mock in determining that only coroners and deputy coroners may perform death investigations.

Accordingly, based upon the alleged qualifications Samuels-Cooper identified in her amended affidavit, she is not qualified to serve as coroner of Clarendon County and the Court should affirm the circuit court's decision.

2. Samuels-Cooper cannot obtain the necessary qualifications within one year.

Additionally, under the prevailing law, Samuels-Cooper has no means by which to become qualified for coroner of Clarendon County.

Subsection 17-5-130(A)(2)(e) provides that an individual may become qualified for coroner if she has "completed a recognized forensic science degree or certification program or be

[6] In some limited instances, none of which are applicable here, medical examiners and solicitors may perform these duties as well.

enrolled in a recognized forensic science degree or certification program to be completed within one year of being elected to the office of coroner." S.C. Code Ann. § 17-5-130(A)(2)(e) (2014). To qualify for this exception, an individual 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) (2014).

By statute, the Coroners Training Advisory Committee has the authority to determine the recognized forensic science degree or certification program for South Carolina coroners. S.C. Code Ann. § 17-5-130(G) ("The Director of the South Carolina Criminal Justice Academy shall appoint a Coroners Training Advisory Committee to assist in the determination of training requirements for coroners and deputy coroners and to determine those forensic science degree and certification programs that qualify as 'recognized' pursuant to the requirements of this section. The committee must consist of no fewer than five coroners and at least one physician trained in forensic pathology as recommended by the South Carolina Coroners Association.").

During the hearing, Gast testified that the only forensic science degree or certification program currently "recognized" is the ABMDI registry certification program. The Coroners Training Advisory Committee unanimously approved this certification program in a letter dated February 21, 2012, and it has remained the "recognized" program ever since that time. To be eligible to apply for certification under the ABMDI program, an individual must (1) be at least eighteen years of age at the time of application; (2) have a high school diploma or equivalent; (3) currently be employed in a medical examiner's office, a coroner's office, or an equivalent federal authority with the job responsibility to "conduct death scene investigations" or supervise such

investigations at the time of application and examination; and (4) have a minimum of 640 hours of death investigation experience. (R. p. 7).

According to Samuels-Cooper's amended affidavit and testimony, she 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. Gast, however, testified that this training course is not the same as the ABMDI certification program. Therefore, Samuels-Cooper was not enrolled in the recognized forensic science degree or certification program when she filed her affidavit, nor is she currently enrolled. See S.C. Code Ann. § 17-5-130(A)(2)(e). More importantly, she cannot enroll in the ABMDI program because she is not currently employed in a coroner's office and does not have a minimum of 640 hours of death investigation experience. As the circuit court noted, these two prerequisites "were not only requirements for the ABMDI registry certification, but also for the education course offered through ABMDI." (R. p. 17). At the hearing, Gast testified it would take approximately one year of working in a coroner's office just to obtain the requirements to apply for the ABDMI certification, which is the forensic science degree or certification program "recognized" by the Coroners Training Advisory Committee. (R. p. 230).

Because Samuels-Cooper is not "enrolled in a recognized forensic science degree or certification program to be completed within one year of being elected to the office of coroner," she cannot meet the one-year exception to serve as coroner of Clarendon County. S.C. Code Ann. § 17-5-130(A)(2)(e). Thus, the Court should affirm the circuit court because its legal analysis on this issue is sound and supported by "any probative evidence in the record."

CONCLUSION

Based upon the foregoing, the Court should affirm the circuit court's issuance of a declaratory judgment that Samuels-Cooper does not possess the necessary statutory qualifications

to run for or serve as coroner of Clarendon County because she (1) has no experience in death investigations and (2) cannot obtain the requisite experience within one year of holding office.[7]

Respectfully submitted,

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October 5, 2018

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[7] Samuels-Cooper's request for costs, see App.-Resp. Br. at 21, is both premature and without merit. See Rule 222(d), SCACR (asserting that "[a] party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed"); Rule 222(a), SCACR (providing that the party to whom costs on appeal may be awarded is dependent upon whether the judgment is affirmed or reversed).

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2018-001520

Bucky Mock, Respondent,

v.

Clarendon County Board of Voter Registration & Elections, Clarendon County Democratic Party, LaNette Samuels-Cooper, South Carolina Democratic Party, and South Carolina Election Commission, Defendants,

Of which LaNette Samuels-Cooper is the Appellant.

PROOF OF SERVICE

I certify that I have caused the service of Respondent-Appellant's Final Brief of Respondent on Appellant-Respondents and Defendants by U.S. Mail on October 5, 2018, to the attorneys of record at the following addresses:

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