

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge.

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OCT 08 2018

S.C. SUPREME COURT

Appellate Case No.: 2018-001520

Bucky Mock, Respondent-Appellant,

vs.

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.

FINAL BRIEF OF RESPONDENT SOUTH CAROLINA DEMOCRATIC PARTY

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COUNTER-STATEMENT OF THE ISSUES ON CROSS-APPEAL

1. Did the circuit court abuse its discretion by finding that Respondent-Appellant's complaint should be dismissed after Respondent-Appellant admittedly failed to exhaust administrative remedies?
2. Did the circuit court correctly find that the futility exception to the requirement for exhaustion of administrative remedies did not apply because a protest was never raised to the Clarendon County Democratic Party Executive Committee?

STATEMENT OF THE CASE

Respondents South Carolina Democratic Party and Clarendon County Democratic Party hereby join and incorporate the Statement of the Case set forth in the Final Appellant's Brief of Appellant-Respondent LaNette Samuels-Copper as if set forth herein verbatim.

STANDARD OF REVIEW

“Whether administrative remedies must be exhausted is a matter within the trial judge's sound discretion and his decision will not be disturbed on appeal absent an abuse thereof.” *Hyde v. South Carolina Dept. of Mental Health*, 314 S.C. 207 at 208, 442 S.E.2d 582 at 582-83 (1994) (citing *Stanton v. Town of Pawley's Island*, 309 S.C. 126, 420 S.E.2d 502 (1992); *Andrews Bearing Corp. v. Brady*, 261 S.C. 533, 201 S.E.2d 241 (1973)). “Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts.” *Hyde*, 314 S.C. at 208, 442 S.E.2d at 583. “[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); *Moore v. Sumter County Council*, 300 S.C. 270, 387 S.E.2d 455 (1990).

This “Court has indicated that dismissal may be proper under Rule 12(b)(6), SCRCPP, for failure to state a claim where the opposing party is required to exhaust its administrative remedies as a matter of law, but failed to do so.” *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 101, 674 S.E.2d 524, 529 (Ct. App. 2009); see also *Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 176, 551 S.E.2d 263, 273 (2001) (stating the exhaustion of remedies precludes original resort to courts where an administrative agency is granted exclusive jurisdiction by the express terms of a statute). “An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

ARGUMENT

A. THE CIRCUIT COURT CORRECTLY DISMISSED RESPONDENT-APPELLANT'S COMPLAINT DUE TO RESPONDENT-APPELLANT'S ADMITTED FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

S.C. Code §7-17-520 governs the procedure for initiating challenges to a candidate in primary elections, and requires as follows:

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. Service may be perfected by depositing with the county sheriff a copy of the protest for the chairman together with a sufficient number of copies to be served upon all candidates in the protested or contested race. The sheriff must take immediate steps to deliver these copies to the chairman. 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.

At such hearings, the challenger has the right to be represented by counsel, to examine and cross-examine witnesses, and to produce evidence relevant to the grounds of protest. S.C. Code Ann., §7-17-530. Moreover, the initiation of a hearing gives the chairman of the committee significant powers and opportunity to investigate the challenge, including the authority to administer oaths and subpoena witnesses. The law further affords the challenger the right to appeal the decision of the executive committee.

In this matter, it is undisputed that Respondent-Appellant did not file a challenge in accordance with § 7-17-520. (R. pp. 4; 175). The circuit court correctly found that there were no circumstances that excused Respondent-Appellant's failure to exhaust administrative remedies. (R. p. 14). Respondent-Appellant incorrectly contends that the question is whether there is an *exclusive* administrative remedy that a party failed to exhaust. This would be a departure from the current standard, which asks whether "an *adequate* remedy at law is available to determine a

question of fact,” *Hyde*, 314 S.C. at 207,442 S.E.2d at 583 (emphasis added). Respondent-Appellant makes no contention that the available remedy itself was inadequate to potentially redress his concerns. An available remedy “must” be pursued prior to the aggrieved party seeking relief in the courts, including declaratory actions. *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 319 S.C. 388, 390, 461 S.E.2d 819, 821 (1995).

B. THE CIRCUIT COURT CORRECTLY HELD THAT THE FUTILITY EXCEPTION TO THE REQUIREMENT FOR EXHAUSTION OF ADMINISTRATIVE REMEDIES DID NOT APPLY BECAUSE A PROTEST WAS NEVER RAISED TO THE CLARENDON COUNTY DEMOCRATIC PARTY EXECUTIVE COMMITTEE.

Mock's assertion that a protest challenge with the Clarendon County Democratic Party Executive Committee would have been futile is without merit because there is no evidence in the record that the executive committee had ruled or indicated a ruling as to LaNette Samules-Cooper's qualifications. First, the position of the State Democratic Party Chairman is irrelevant because he did not testify at the trial of this matter and does not sit on the Clarendon County Democratic Party Executive Committee. Second, the Clarendon County Executive Committee is comprised of five members including the chairperson, only one of whom was examined as a witness at the trial of this matter. (R. p. 342). Thus, the Respondent-Appellant's argument that the available administrative remedy was futile rests solely on his characterization of the testimony of one member of the panel.

Importantly, Respondent-Appellant's failure to comply with S.C. Code § 7-17-520 meant that the Committee never had the powers afforded by § 7-17-530, such as the ability to subpoena witnesses to testify under oath. Therefore, the Respondent-Appellant cannot demonstrate futility of the statutory administrative process available in this matter because the Committee was never provided the opportunity to fully inquire into the matters complained of as outlined in the statute.

CONCLUSION

Based on the foregoing, Respondents respectfully submit that this Court should uphold the circuit court's grant of the South Carolina and Clarendon County Democratic Party's Motion to Dismiss because Respondent Appellant willfully failed to exhaust available administrative remedies, and the available remedies were not futile.

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PROOF OF SERVICE

I certify that I have caused the service of Respondent's Final Brief on Respondent-Appellants, Appellant-Respondent, and Respondents by U.S. Mail on October 8, 2018 to the attorneys of record at the following addresses:

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