

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-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.

**BRIEF OF APPELLANT-RESPONDENT IN RESPONSE  
TO BRIEF OF RESPONDENT-APPELLANT BUCKY MOCK**

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October 8, 2018

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Attorneys for Appellant-Respondent

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**STATEMENT OF ISSUES IN CROSS APPEAL**

- I. DID THE TRIAL COURT CORRECTLY CONCLUDE THAT RESPONDENT-APPELLANT MOCK WAS REQUIRED TO EXHAUST HIS ADMINISTRATIVE REMEDIES PRIOR TO FILING SUIT?
  
- II. DID THE TRIAL COURT CORRECTLY REJECT MOCK'S ARGUMENT THAT HIS FAILURE OR REFUSAL TO EXHAUST HIS ADMINISTRATIVE REMEDIES WAS EXCUSED BASED ON THE FUTILITY EXCEPTION?

## **STATEMENT OF THE CASE**

LaNette Samuels-Cooper, appellant-respondent, was the winner of the Democratic primary race for Clarendon County Coroner. Bucky Mock, respondent-appellant, was her Democratic challenger. Mock did not file a protest or challenge to the election pursuant to §7-17-520 of the South Carolina Code of Laws. Instead, he commenced this action in circuit court seeking, among other things, a declaration that Samuels-Cooper was unqualified for office. The trial court properly concluded that Mock's failure to utilize his statutory remedies was not excused and as a result, he was precluded from challenging the qualifications of Mrs. Cooper to be a candidate for the office of coroner. Appellant-respondent filed this appeal on other grounds, and respondent-appellant filed a cross appeal based on the trial court's grant, in part, of Samuels-Cooper's motion to dismiss.

## **FACTS**

Mrs. Samuels-Cooper adopts and reiterates the facts set forth in her final brief.

## ARGUMENTS

### I. THE TRIAL COURT CORRECTLY CONCLUDED THAT RESPONDENT-APPELLANT MOCK WAS REQUIRED TO EXHAUST HIS ADMINISTRATIVE REMEDIES PRIOR TO FILING SUIT.

The trial court did not err in granting, in part, appellant-respondent's Rule 12(b)(6), SCRCP motion for Mock's failure to exhaust his administrative remedies prior to commencing this action where he stipulated that he did not file a protest or challenge to the primary election. "The doctrine of exhaustion of administrative remedies requires that where a remedy is provided before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act." Brown v. James, 389 S.C. 41, 697 S.E.2d 604 (S.C. App. 2010). Whether administrative remedies must be exhausted is a matter within the circuit court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion (See Hyde vs. S.C. Dept. of Mental Health, 442 S.E.2d 582 (S.C. 1994).

South Carolina Code of Laws, §7-17-520, governs the practice for challenging a primary election for a county office. The statute reads 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. The protest must contain each ground for the protest stated separately and concisely. The chairman [of the county party executive committee] 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."

Upon the timely and proper filing, the executive committee will hear the protest or contest on the Thursday following the deadline for filing the protest or contest. 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. *See* S.C. Code Ann., §7-17-530. The law further provides the challenger the right to appeal the decision of the executive committee.

Here, it is undisputed that Mock did not avail himself of any administrative remedy by way of challenge to the primary election (R. p. 261, lines 24-25). Where an adequate remedy at law is available to determine a question of fact, one must pursue that administrative remedy or be precluded from seeking relief in the courts. *See Hyde vs. S.C. Dept. of Mental Health*, 314 S.C. 207, 442 S.E.2d 582 (1994); *see also Brackenbrook N. Charleston, L.P. vs. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004)). The trial court's determination that Mock's failure to follow the statutory administrative remedy precluded him from challenging Samuels-Cooper's qualifications to be a candidate for coroner was appropriate under the facts and law and did not amount to an abuse of discretion.

II. THE TRIAL COURT CORRECTLY REJECTED MOCK'S ARGUMENT THAT HIS FAILURE OR REFUSAL TO EXHAUST HIS ADMINISTRATIVE REMEDIES WAS EXCUSED BASED ON THE FUTILITY EXCEPTION.

A recognized exception to the exhaustion of administrative remedies requirement is where the party demonstrates that the pursuit of the administrative remedy would be futile or in vain. Futility, however, must be shown demonstrated by a showing comparable to the administrative agency taking 'a hard and fast position that makes an adverse ruling a certainty. *Brown*, 289 S.C. 41, 54; 697 S.E.2d 604, 611 (S.C. App.

2010). In support of his position, he supplied the affidavit of Dennis Fowler, the then-President of the South Carolina Coroners' Association. In that affidavit, Mr. Fowler challenged the qualification of Samuels-Cooper to be coroner based on her alleged failure to enroll in an approved forensic science degree or certification program. (R., pp. 36-40). Mr. Fowler did not question or dispute the fact that Mrs. Samuels-Cooper had one year of death investigation experience.

Mock stipulated at the July 20, 2018 hearing in this matter that he did not file any protest or challenge to the election with the Clarendon County Democratic Party (R. p. 98, lines 4-12). Further, he asserted in his verified complaint that "if a protest was filed pursuant to the process outlined in sections 7-17-520, -530, -540, and -550 of the South Carolina Code, [he] would not have an adequate remedy at law because Defendants Clarendon Democratic Party and the South Carolina Democratic Party would act as the "jury" and "court" for a protest, thereby preventing Mock a fair hearing" (R. pp. 31-32). Seeming to recognize the significance of the omission during the trial, he attempted to guise his conversations with Ms. Pringle, the chairwoman of the Clarendon County Democratic Party, as a form of protest in the following exchange:

Direct examination of Patricia Pringle by Mr. Tyson:

"Q: Did you talk to Bucky Mock at any point in time about potential problems with Ms. Samuels-Cooper's qualifications?

A: He came - - he came to me at talked to me about it.

Q: And when was that?

A: At the office, he came by my office and said that he had questions about whether or not she was - - she was qualified.

Q: And what did you do when he raised that *protest* [emphasis added] to you about whether she was qualified?”

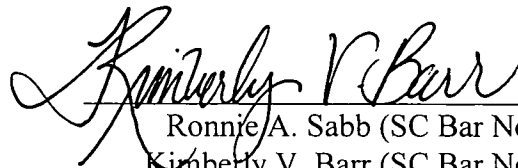
The objections of Samuels-Cooper and the state and county Democratic party to Mock’s characterization of his conversation with Ms. Pringle as a protest was sustained (R. p. 348, lines 8-25). In that same conversation with Ms. Pringle, Mock stated that he wouldn’t be really concerned about challenging Samuels-Cooper’s qualifications unless he lost the primary election. In that event, he “would do something about it” (R. p. 349, lines 4-10). Mock later questioned the qualifications of Samuels-Cooper at a candidates’ forum (R. p. 349, lines 11-13), which was later publicized in a local news article. However, the statute is clear in that all protests must be filed with the county party executive committee in writing and served on all candidates. Brief in-person conversations with the county Democratic party chairwoman and discussions at a candidates’ form cannot be substituted for the formality required under the statute. Curiously, respondent-appellant writes in his brief that he chose not to file a challenge with his own party because “it was actively helping his opponent get on the ballot” (Brief of respondent-appellant, p. 10). First, that statement is untrue. Trav Robertson, on behalf of the state Democratic Party, simply sought clarification of Samuels-Cooper of her qualifications to run for the Office of Coroner (R. pp. 266-267). As chairman, Mr. Robertson has an obligation to ensure that only qualified candidates are placed on the ballot. Second, Mock presumably only became away of the conversation between Mrs. Samuels-Cooper and Mr. Robertson during the course of the trial, which was long after the period in which he could have filed a protest. Mock’s assertion that a protest

challenge with the Clarendon County Democratic Party and the South Carolina Democratic Party would have been futile is wholly without merit. Although the chairpersons of the county and state democratic committees properly certified Samuels-Cooper as a candidate, the executive committee did not address the issues asserted by him as to the propriety of appellant's candidacy because Mock never filed a protest. Only the executive committee, and not the county chairperson, can decide a question of fact relative to an individual's candidacy as set forth in §7-17-520, S.C. Code Ann. Respondent-appellant cannot deliberately circumvent the process and later, when he loses, falsely claim that the process was not fair to him. The trial court correctly granted the motion of Samuels-Cooper to dismiss.

#### CONCLUSION

For the reasons stated above, this Court should affirm the trial court's grant of Samuels-Cooper's motion to dismiss based on Mock's failure to exhaust his administrative remedies.

RESPECTFULLY SUBMITTED:



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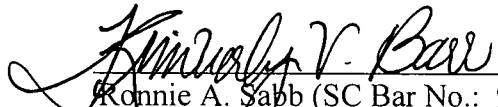
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CERTIFICATE OF COUNSEL

The undersigned certifies that appellant-respondent's final response brief  
complies with Rule 211(b), SCACR.

  
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