

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Case No. 2018-CP-13-00621

Glenn Odom, Respondent,

v.

Town of McBee Election Commission and
Shilon Green, Appellants.

NOTICE OF APPEAL

The Town of McBee Election Commission and Shilon Green (collectively "Appellants") hereby appeal the order of The Honorable Roger E. Henderson dated January 22, 2019. Appellants received written notice of the entry of this order on January 22, 2019. A copy of this order is attached hereto. Review is sought directly by this Court pursuant to S.C. Code Ann. § 14-8-200(b)(5) and Rule 203(d)(1)(A)(iv) of the South Carolina Appellate Court Rules.

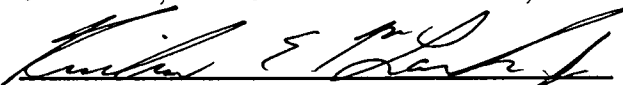
RECEIVED

FEB 01 2019

S.C. SUPREME COURT

(Signature Page Following)

SWEENEY, WINGATE & BARROW, P.A.



Martin S. Driggers, Jr. (S.C. Bar No. 13668)
Richard E. McLawhorn, Jr. (S.C. Bar No. 100179)
115 Cargill Way, Suite B
Hartsville, South Carolina 29211
T: (803) 256-2233
F: (803) 256-9177
msd@swblaw.com
rem@swblaw.com

**ATTORNEYS FOR TOWN OF MCBEE
MUNICIPAL ELECTION COMMISSION
BOWERS LAW OFFICE, LLC**



Karl S. Bowers, Jr.
S.C. Bar No. 0016141
P.O. Box 50549
Columbia, South Carolina 29250
Telephone: (803) 753-1099
Telecopier: (803) 250-3985
E-Mail: butch@butchbowers.com
ATTORNEY FOR SHILON GREEN

RECEIVED

FEB 01 2018

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHESTERFIELD)	CASE NO. 2018-CP-13-00621
)	
)	
IN RE: GLENN ODOM)	
)	
)	
)	
)	
)	
)	

ORDER

This matter came before the Court on Glenn Odom’s Rule 59(e), SCRPC, Motion to Reconsider the Court’s November 13, 2018 Order. After reviewing the parties’ submissions, the Court grants the Motion to Reconsider for the reasons stated below and remands these proceedings to the McBee Election Commission to declare Odom the winner of the Town Council election.

STANDARD

“The circuit court, sitting in an appellate capacity, does not conduct a *de novo* hearing or take testimony. The circuit court must examine the decision for errors of law, but it must accept the factual findings of the commission unless they are wholly unsupported by the evidence.” *Taylor v. Town of Atl. Beach Election Comm’n*, 363 S.C. 8, 14, 609 S.E.2d 500, 503 (2005).

FINDINGS OF FACT

On September 5, 2018, the Town of McBee held a Town Council election. Seventeen ballots were challenged or provisional and, thus, not counted. (Tr. of Hearing p. 65). Not counting the challenged votes, candidate Shilon Green received 209 votes and Glenn Odom received 208 votes. (Election Comm’n Decision). On September 6, 2018, Odom filed an election contest. (Am. Not. of Contest). Odom contested “the official results of the” election declaring Green the winner on the grounds that some votes should have been counted and other votes should not have been counted. *Id.* He stated that the “contested votes will affect the outcome and results of the election.”

Id. Specifically, Odom asked the Municipal Election Commission to count six challenged votes, making him the election winner.

The Commission held a hearing on September 25, 2018, and, after receiving testimony from four of the challenged voters and argument of counsel, it found that four of the votes for Odom should have been counted. (Election Comm'n Decision). The Commission specified its Decision that the votes should have been counted was controlled by and based on Title 7 of the South Carolina Code. *Id.* Instead of counting the votes and declaring Odom the winner, the Commission invalidated the election and ordered a new election under S.C. Code Ann. § 5-15-130. *Id.*

Odom appealed to this Court arguing the Commission should have declared him the winner rather than invalidating the election and ordering a new election. On November 13, 2018, the Court filed an Order upholding the Commission's decision to invalidate and order a new election. The Order relied upon S.C. Code § 5-15-130 to hold that the only relief available is a new election. On November 26, 2018, Odom filed a Rule 59(e), SCRCPP, Motion to Reconsider arguing that S.C. Code Ann. § 7-13-830 regarding challenged votes and not § 5-15-130 applies to this case. (Mot. pp. 2-3). He also argued that, even if § 5-15-130 applies, it does not require invalidation of the election and a new election under these circumstances. *Id.* at pp. 2-5. The Commission filed a memorandum in opposition arguing Odom did not preserve a request to be declared the election winner and the only relief available under § 5-15-130 is a new election. Green filed a memorandum in opposition arguing Odom received full relief in the form of a new election and, therefore, does not have standing to appeal, Title 7 applies to County elections, and the only relief available under § 5-15-130 is a new election. Addressing these arguments below, the Court grants the Motion to Reconsider.

ANALYSIS

No party challenged the Commission's finding that four of the challenged votes for Odom should have been counted and that counting them would have resulted in Odom being declared the winner of the election. Therefore, it is the law of this case, and the only issue before me is whether the Commission erred as a matter of law in ordering a new election rather than declaring Odom the winner. *See Shirley's Iron Works*, 403 S.C. at 573, 743 S.E.2d at 785 ("An unappealed ruling is the law of the case and requires affirmance."). Upon reconsideration, I find that Title 7 applies to this election contest based on challenged votes. Further, I find that, even if Title 5 applied, as the Town and Green argue, it does not require a new election under these circumstances.

I. Odom Preserved a Request that the Commission Declare Him the Election Winner

The Court first addresses the Commission's position that Odom did not preserve the argument that it should have declared him the winner of the election. The Commission incorrectly asserts Odom did not seek that relief in his Notice of Election Contest. The Notice plainly states Odom contested the results and his contest "will affect the outcome and results of the election." (Not.). This clearly encompasses a request that the Commission declare Odom the election winner. "Error preservation principles are intended to enable the trial court to rule after it has considered all relevant facts, law, and arguments. The rationale for the rule is that until the trial court considers the matter and makes a ruling, an appellate court is unable to find error." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 372-73, 628 S.E.2d 902, 919 (Ct. App. 2006) (internal citation omitted). The Commission knew Odom asked it to declare him the winner and that those opposing him wanted a new election. (Tr. of Hearing pp. 79-81, 84-86). It ruled on the issue by ordering a new election. The issue is preserved.

II. Odom has Standing to Seek a Remedy that the Commission Declare Him the Election Winner

Green argues that because Odom received a new election, he does not have standing to seek a different remedy. This argument is based on Green's assertion that a new election is the only remedy available. This is not an issue of standing but of what remedies are available to Odom. "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right and is a fundamental prerequisite to instituting an action. As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation." *S.C. Dep't of Soc. Servs. v. Smith*, 423 S.C. 60, 88, 814 S.E.2d 148, 162 (2018) (internal quotation marks and citation omitted). Odom, as an election candidate, has a right to make a legal claim or seek judicial enforcement of a right to contest the election based on challenged votes. He has a personal stake in whether the votes are counted and the result of that determination. Odom has standing regarding the subject matter of this election contest litigation, including the available remedies for relief.

III. S.C. Code Ann. § 7-13-830 Applies to this Case

The provisions of Title 7, not Chapter 5, apply to the relief awarded in this case. "Title 7 of the South Carolina Code (1976) is known as the 'South Carolina Election Law;' and is applicable to *all* elections in South Carolina." *Taylor v. Roche*, 271 S.C. 505, 509, 248 S.E.2d 580, 582 (1978) (emphasis added) (citing S.C. Code Ann. § 7-1-40 ("*This Title shall apply to and control all elections*, including elections for the issuance of bonds and other elections in which any question or issue is submitted to a vote of the people.") (emphasis added)). Section 5-15-10 states "Municipal primary, general and special elections shall be conducted pursuant to Title 7, mutatis mutandi, except as otherwise provided for *specifically* in Chapters 1 through 17" of Title 5. (emphasis added). In other words, "Municipal elections must be conducted pursuant to the South Carolina Election Law contained in Title 7, with any necessary changes in points of detail." *George v. Municipal Election Comm'n*, 335 S.C. 182, 190, 516 S.E.2d 206, 210 (1999) (citing

S.C. Code Ann. § 5-15-10). This case involves a vote challenge, which is specifically provided for in Title 7 under § 7-13-830 and not Title 5.

Section 7-13-830 provides the “Procedure when voter challenged” and requires that “each ballot whose challenge was decided in favor of the voter must be removed from the envelope, mingled, and *counted and the totals added to the previously counted regular ballot* total of all precincts without attribution to a particular precinct.” § 7-13-830 (emphasis added). This language applies to this voter challenge case and dictates that the four votes the Commission determined should have been counted are added to the previously counted ballots. The result of following this plain language is that Odom is the election winner and the Commission erred in ordering a new election rather than declaring him a winner.

To apply § 5-15-130 to invalidate an election and require a new election when challenged votes are decided in favor of the voter would render § 7-13-830 meaningless because its remedy of counting the votes would never be used. *See Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192-93 (2014) (“This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless.”).

IV. S.C. Code Ann. § 5-15-130 Does Not Require a New Election in this Case

As an alternative and separate ground for declaring Odom the election winner, even if § 5-15-130 applies, it does not require a new election under these circumstances. “In the absence of fraud, a constitutional violation, or a statute providing that an irregularity or illegality invalidates an election, [the Court] will not set aside an election for a mere irregularity.” *Taylor v. Town of Atl. Beach Election Comm’n*, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005). This case does not involve fraud or a constitutional violation. The only statute that allegedly invalidates the election is § 5-15-130. It requires a new election only “*when* the [election commission’s] decision

invalidates the election.” S.C. Code Ann. § 5-15-130 (emphasis added). The Election Commission’s decision was that four votes should have been counted. This does not invalidate an election but only counts votes that were previously provisional. That counting the votes would result in one candidate being declared the winner does not mandate invalidation or a new election.

The Election Commission takes issue with Odom’s citation to *Trapp v. S.C. Board of State Canvassers*, 273 S.C. 163, 255 S.E.2d 670 (1979), in his Motion to Reconsider. However, the Election Commission misses the point. It is irrelevant that *Trapp* involved a County election and this case involves a Municipal election. The point is that both cases involve challenged votes, and that procedure and remedy are provided for in Title 7.

CONCLUSION

The Court grants Odom’s Motion to Reconsider and holds the Municipal Election Commission erred in invalidating the election and ordering a new election. Odom was the winner of the Town Council Election. The Court remands these proceedings to the Municipal Election Commission to count the contested votes and declare Odom the winner of the Town Council Election consistent with the provisions of this Order.

AND IT IS SO ORDERED.

Dated: _____

The Honorable Roger E. Henderson
Circuit Court Judge



Chesterfield Common Pleas

Case Caption: Glenn Odom VS Linda Sterling

Case Number: 2018CP1300621

Type: Order/Other

So Ordered

s/Roger E. Henderson 2754

Electronically signed on 2019-01-21 10:33:44 page 7 of 7

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

FEB 01 2019

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Case No. 2018-CP-13-00621

Glenn Odom, Respondent,

v.

Town of McBee Election Commission and
Shilon Green,Appellants.

PROOF OF SERVICE

I certify that I have served Appellants Town of McBee Election Commission and Shilon Green's Notice of Appeal on Respondent by depositing a copy of each in the United States Mail, postage prepaid, on January 30, 2019 addressed to their attorneys of record, listed as follows:

John E. Parker, Esquire
Peters, Murdaugh, Parker, Eltroth & Detrick, PA
PO Box 457
Hampton, SC 29924
Attorney for Respondent

January 30, 2019

(Signature Page Following)

SWEENEY, WINGATE & BARROW, P.A.



Martin S. Driggers, Jr. (S.C. Bar No. 13668)
Richard E. McLawhorn, Jr. (S.C. Bar No. 100179)
115 Cargill Way, Suite B
Hartsville, South Carolina 29211
T: (803) 256-2233
F: (803) 256-9177
msd@swblaw.com
rem@swblaw.com

**ATTORNEYS FOR TOWN OF MCBEE
MUNICIPAL ELECTION COMMISSION
BOWERS LAW OFFICE, LLC**



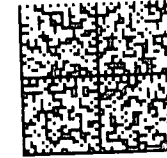
Karl S. Bowers, Jr.
S.C. Bar No. 0016141
P.O. Box 50549
Columbia, South Carolina 29250
Telephone: (803) 753-1099
Telecopier: (803) 250-3985
E-Mail: butch@butchbowers.com
ATTORNEY FOR SHILON GREEN

S·W·B

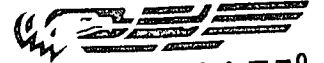
SWEENEY WINGATE & BARROW P.A.

1515 LADY ST. (29201) • PO BOX 12129 • COLUMBIA, SC 29211

Daniel E. Shearhouse
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201



U.S. POSTAGE >> PITNEY BOWES



ZIP 29201 \$ 001.75⁰
02 4W
0000350880 JAN. 30. 2019

4565-11813