

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Roger E. Henderson, Circuit Court Judge

Appellate Case No.: 2021-000165

Glen OdomRespondent,

-v-

McBee Municipal Election Commission,
Charles Short, Charles Sutton, and Hewitt Dixon.....Appellants,

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The Respondent, Glenn Odom, contends that the Order of the Circuit Court which is the subject of this Appeal is not appealable. Mr. Odom was the winning candidate for the office of Mayor of McBee, South Carolina, on September 1, 2020. He won the election against Appellant Charles Short by a vote of 212 to 203. On September 3, 2020, the McBee Municipal Election Commission (hereinafter “MEC”) held a hearing to consider challenged ballots. After the challenged ballots were considered, Mr. Odom was elected mayor. James Linton and Robert Liles were elected to Town Council.

Mr. Short, Charles Smith and Hewitt Dixon filed a protest. In the protest it was contended that two persons were allowed to cast ballots who were not residents of McBee and that a representative of Mr. Odom took improper steps with absentee ballots. A hearing on the protest

was scheduled for September 25, 2020. On September 25, 2020, over Mr. Odom's objection the hearing was postponed. The hearing was rescheduled for October 14, 2020, but was again canceled at the request of the unsuccessful candidates. The hearing was then rescheduled for October 23, 2020, and again canceled at the request of the unsuccessful candidates. On October 30, 2020, Odom filed a Complaint requesting Writs of Prohibition and Mandamus. Mr. Odom's request asked the Circuit Court to (1) find that the MEC was without authority to continue the hearing as it had already done on several occasions and (2) declare Mr. Odom the winner of the election. The Circuit Court denied Mr. Odom's request for Writs of Prohibition and Mandamus by an Order dated November 13, 2020. In doing so, the Circuit Court also held that if the hearing on the protest was not conducted by November 13, 2020, it would grant the Writs. (Ex. 1, Order of November 13, 2020).

A hearing on the protest was held on November 13, 2020, and on November 20, 2020, the MEC filed an Order overturning the results of the election and ordering a new election. (Ex. 2, MEC Order). On November 20, 2020, Mr. Odom filed an appeal to the Circuit Court. After hearing arguments, the Circuit Court entered an Order dated December 29, 2020, reversing the Order of the MEC and ordering that the MEC declare Mr. Odom, Mr. Linton, and Mr. Liles as the winners of the September 1, 2020 election. (Ex. 3, Order of December 29, 2020). The losing candidates filed a Motion for Reconsideration which was denied by an Order dated January 20, 2021. (Ex. 4, Order of January 20, 2021). The present Appeal was filed February 18, 2021, appealing the Order of the Circuit Court reversing the MEC decision and the Order denying Appellants' Motion for Reconsideration.

Mr. Odom filed this Motion to Dismiss the Appeal because an appeal from a municipal election commission decision is to the circuit court and there exists no statutory basis for an appeal

of a circuit court's order to the Supreme Court. Section 5-15-140 of the South Carolina Code of Laws provides that the appeal of a decision of a municipal election commission is to the Court of Common Pleas. Section 5-15-140 does not provide for a further direct appeal to the Supreme Court. Section 5-15-140 state that

[w]ithin ten days after notice of the decision of the municipal election commission, any party aggrieved thereby may appeal from such decision to the court of common pleas. Notice of appeal shall be served on the opposing parties or their attorneys and filed in the office of the clerk of court within ten days. The notice of appeal shall act as a stay of further proceedings pending the appeal.

S.C. Code Ann. § 5-15-140 (1976). Since Section 5-15-140 does not provide for a further appeal, appellate jurisdiction to the Supreme Court would have to be established under some other statute which would supersede section 5-15-140.

The appellants may erroneously contend that jurisdiction is provided by section 14-3-330. Section 14-3-330 provides that

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment;
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330 (1976). An appeal from the Court of Common Pleas to the Supreme Court in this case is not encompassed within section 14-3-330, because an election appeal is not a law case that comes within the provision of section 14-3-330, and even if it did, section 5-15-140 would supersede section 14-3-330 because it specifically deals with municipal elections. The general rule of statutory construction is that a specific statute prevails over a more general one. *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div.*, 319 S.C. 556, 462 S.E.2d 858 (1995).

The Court of Appeals in *Wright v. Dickey*, 370 S.C. 517, 636 S.E.2d 1 (2006), dealt with an analogous issue. An attorney who had received an adverse decision from the Resolution of Fee Disputes Board of the South Carolina Bar sought to appeal a decision of the circuit court dismissing his appeal. The Court of Appeals held that there was no appeal from a decision of the fee dispute board beyond the circuit court as set forth in Rule 416 SCACR, Rule 20.

The Court of appeals in so holding stated:

No mention is made of further appeal. Indeed, further appeal runs contrary to the Board's purpose of expeditious resolution of fee disputes. *See* Rule 416, SCACR, Rule 2 ("The purpose of the Board is to establish procedures whereby a dispute concerning fees . . . may be resolve expeditiously . . ."); *Byrd v Irmo High Sch.*, 321 S.C 426, 433-34, 468 S.E.2d 861, 865 (1996) (recognizes that where a statute specifically sets forth an appeals procedure, we may not expand our jurisdiction through implication).

Wright, 370 S.C. at 521, 636 S.E.2d at 2-3. The legislature, by limiting appeals from the municipal election commission to the circuit court, clearly intended that municipal election contests be handled expeditiously and not in the manner this election dispute has been handle. Mr. Odom was elected Mayor of McBee on September 1, 2020, and almost six months later neither he nor the elected council have taken office.

Had the legislature intended an appeal beyond the circuit court to the appellate courts it would have provided for the appeal in section 5-15-140. By way of example, the legislature in

enacting procedures before the State Election Commission provided that the election contest shall be taken directly to the Supreme Court on a petition for a writ of certiorari. S.C. Code Ann. § 7-17-270 (1976).

The decision in *Stone v Leatherman*, 343 S.C. 484, 541 S.E 2d 241 (2001), is instructive as to whether specific statutes such as section 5-15-140 apply or more general statutes such as section 14-3-330. The Court in *Stone* found that the specific provisions in the Constitution and Code concerning election protests for members of the Senate are not superseded by a more general statute or rule. Based on this finding the Court in *Stone* held it did not have jurisdiction over the appeal. Similarly, in *Heffner v. Destiny Inc.*, 321 S.C. 536, 471 S.E 2d 135 (1995), the Court held that section 14-3-330 did not apply to an order compelling arbitration because section 14-3-330 conflicted with the more specific provision of section 15-48-200 regarding the appealability of orders relating to arbitration.

Appellants contend that the court has jurisdiction per Appellate Court Rule 203 (d)(IV) which provides that appeals from any final judgement from the circuit court pertaining to elections and elections procedure are to be heard by the supreme court. If the legislature had provided for an appeal beyond the circuit court it would be to the supreme court. Because §5-15-140 specifically applies to set forth the appeal process, Rule 203's general provision for appeals is not applicable and should not supersede the specific provision of §5-15-140, South Carolina Code (1976).

Respondent recognizes that the Court has previously issued opinions in appeals of cases from the Court of Common Pleas on municipal election protests. It appears that in these cases the issue of the appealability of the protests was not raised. *Taylor v. Town of Atlantic Beach Bd. Election Comm'n*, 363 S.C 8, 609 S.E 2d 500 (2005); *Butler v. Town of Edgefield*, 328 S.C 238,

493 S.C 2d 838 (1997). Based on the clear language of section 5-15-140 this Appeal should be dismissed because the Court lacks jurisdiction to hear the case.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

March 1, 2021
Hampton, South Carolina

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