

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Lower Court Case No. 2020-CP-13-00785

Appellate Case No. 2021-000165

Glenn Odom.....Respondent,

v.

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

**APPELLANTS’ RETURN IN OPPOSITION TO
RESPONDENT’S MOTION TO DISMISS**

Appellants McBee Municipal Commission, Charles Short, Charles Sutton, and Hewitt Dixon, by and through their undersigned counsel, submit this return to in opposition to Respondent Glenn Odom’s motion to dismiss the appeal. For the reasons that follow, the Court should deny Respondent’s motion.

BACKGROUND

This case arises out of the September 1, 2020 election for Mayor and two open seats on Town Council in the Town of McBee. The Town of McBee Municipal Election Commission (the MEC) certified the results of the election for the two open seats on Town Council as follows: James Linton: 211; Robbie Liles: 201; Charlie Sutton: 191; Hewitt Dixon: 174; Dawn Boykin: 34;

Write-In: 1. The MEC certified the results of the mayoral election to be: Glenn Odom: 213; Charlie Short 203; Write-In: 2.

Short, Sutton, and Dixon filed a timely protest of the September 1, 2020 election with the MEC. The MEC then conducted a hearing on the contest via Zoom that began on September 4, 2020 and concluded on November 13, 2020. Testimony was taken from nine witnesses, including six voters, a handwriting expert, a private investigator, and Sydney Baker—an employee of Alligator Rural Water Authority who assisted voters with applying for, filling out, and delivering absentee ballots. After considering the testimony presented at the hearing, on November 19, 2020, the MEC entered an order holding (1) that it did not believe Baker’s testimony that she was not a paid volunteer of Glenn Odom’s campaign; and (2) that her involvement with the application for and delivery of between 10 and 28 ballots was therefore a violation of section 7-15-330 of the South Carolina Code. What is more, the MEC held the section violation rendered the outcome of the election doubtful.

Respondent appealed the MEC’s decision to the circuit court and ultimately filed a second amended notice of appeal on November 20, 2020. In this notice, Respondent requested that the circuit court reverse the MEC’s order and declare him, Linton, and Liles the winners of the election. A hearing on Odom’s appeal was held before the Honorable Roger E. Henderson on December 21, 2020. At the hearing, Odom argued there was no evidence that Baker was a paid employee of the Odom campaign or that she violated any law. According to Odom, section 7-15-330 permits any qualified elector to request an absentee ballot for any other person, without exception. He further argued that the MEC’s reliance on its finding in the 2016 contest was improper as it was not part of the record. Finally, Odom argued section 7-14-420 requires that any absentee ballot challenge be made on the date of the election and that none of the ballots requested and/or delivered by Baker were challenged on the date of the election.

On December 29, 2020, Judge Henderson granted Odom’s appeal, making the following findings: (1) the only evidence was Baker assisted electors in making their requests for absentee ballots; (2) the MEC was without evidence that Baker was a paid volunteer of the Odom campaign staff; (3) the MEC improperly relied on its 2016 decision involving Baker and Odom in its November 19, 2020 decision; (4) Baker’s request of absentee ballots for voters was not a violation of section 7-14-330; and (5) even if Baker did violate section 7-15-330, that was not sufficient to render the outcome of the election doubtful.

The next day, Short, Sutton, and Dixon filed a motion to reconsider. In a memorandum in support filed on January 7, 2021, Short, Sutton, and Dixon argued (1) there was evidence that Baker did more than merely assist electors in requesting absentee ballots and that her conduct did violate South Carolina law, rendering the outcome of the election doubtful; (2) it was proper for the MEC to consider prior decisions in its November 19, 2020 decision; and (3) evidence in the record supported the decision of the MEC. Odom filed a memorandum in opposition, making similar arguments to those made at the December 21, 2020 hearing. On January 21, 2021, the circuit court denied the motion to reconsider. Appellants filed the instant appeal on February 18, 2021.

On March 1, 2021, Respondent filed a motion to dismiss the appeal, arguing this Court has no jurisdiction to hear appeals from circuit court on municipal election matters. Appellants’ return in opposition follows.

ARGUMENT

Contrary to Respondent’s novel assertion, this Court has appellate jurisdiction to review the final decision of a circuit court on appeal from a municipal election protest.

According to Respondent, neither section 5-15-140 nor section 14-3-330 of the South Carolina Code grants this Court appellate jurisdiction. See S.C. Code Ann. § 5-15-140 (“Within 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. § 14-3-330 (setting forth appellate jurisdiction in law cases). But section 5-15-140 does not prevent a party from appealing the circuit court’s decision to this Court.¹ Further, as a final order affecting a substantial right, the circuit court’s order certainly meets the threshold requirements for appealability under section 14-3-330.

In any event, those statutes are not dispositive. The crux of Respondent’s motion is that he believes Appellants’ only basis for an appeal to this Court lies in Rule 203(d)(1)(A)(iv), SCACR. He argues an appellate court rule cannot grant jurisdiction when the General Assembly has not. Respondent’s argument, however, ignores that the General Assembly has granted this Court jurisdiction. See S.C. Code Ann. § 14-8-200(b)(5) (stating an appeal “lies of right directly to the Supreme Court” from “a final judgment from the circuit court pertaining to elections and election procedure”). After all, elections are “a matter of great public importance. Integrity in elections is foundational.” Anderson v. S.C. Election Comm’n, 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012) (per curiam).

Indeed, the Court has repeatedly decided appeals from the circuit court pertaining to municipal election protests and developed an entire body of case law on the subject. E.g., Odom v. Town of McBee Election Comm’n, 427 S.C. 305, 831 S.E.2d 429 (2019); Cole v. Town of Atl. Beach Election

¹ If the General Assembly intended to limit appellate rights in municipal election protests, it certainly knew how to do so. A review of other statutory provisions concerning appeals from election-related matters confirms as much. See, e.g., S.C. Code Ann. § 7-5-230(C) (limiting appellate rights to only the voter, not the challenger, when the voter’s residency is challenged).

Comm'n, 393 S.C. 264, 712 S.E.2d 440 (2011); Armstrong v. Atl. Beach Mun. Election Comm'n, 380 S.C. 47, 668 S.E.2d 400 (2008) (per curiam); Gecy v. Bagwell, 372 S.C. 237, 642 S.E.2d 569 (2007) (per curiam); Taylor v. Town of Atl. Beach Election Comm'n, 363 S.C. 8, 609 S.E.2d 500 (2005); Blair v. City of Manning, 345 S.C. 141, 546 S.E.2d 649 (2001); Broadhurst v. Myrtle Beach Election Comm'n, 342 S.C. 373, 537 S.E.2d 543 (2000); George v. Mun. Election Comm'n of Charleston, 335 S.C. 182, 516 S.E.2d 206 (1999); Butler v. Town of Edgefield, 328 S.C. 238, 493 S.E.2d 838 (1997); Burgess v. Easley Mun. Election Comm'n, 325 S.C. 6, 478 S.E.2d 680 (1996).

Yet Respondent believes he found the ticket to escape this Court's review of matters that continue to arise each time the Town of McBee holds an election in which he is involved. He did not. Appellants are appealing the circuit court's order granting Respondent's appeal from the MEC and the circuit court's order denying Appellants' motion to reconsider. Both orders are final and concern the integrity of the Town of McBee's September 1, 2020 municipal election. Because this is an appeal of a final judgment from the circuit court pertaining to an election, this Court has appellate jurisdiction. See S.C. Code Ann. § 14-8-200(b)(5); Rule 203(d)(1)(A)(iv), SCACR. Respondent's arguments to the contrary are without merit.

CONCLUSION

In sum, the Court has jurisdiction over this appeal from "a final judgment from the circuit court pertaining to elections and election procedure" under subsection 14-8-200(b)(5) of the South Carolina Code. The Court should therefore deny Respondent's motion to dismiss the appeal and proceed to a review on the merits.

(Signature page to follow)

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