

IN THE SUPREME COURT OF OHIO

Yvette Barbara Baldwin,

Relator

v.

Hamilton County Board of Elections, *et al.*

Respondents

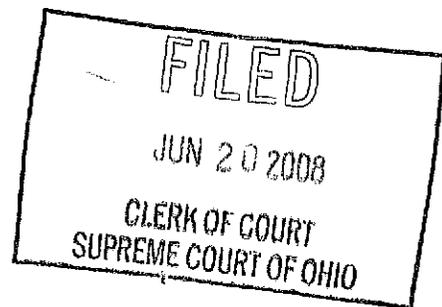
Case No. 08 - 1034

MOTION TO DISMISS ON BEHALF OF
RESPONDENT HAMILTON COUNTY
BOARD OF ELECTIONS

MOTION TO DISMISS OF RESPONDENT HAMILTON COUNTY BOARD OF ELECTIONS

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

DAVID T. STEVENSON, Ohio Reg. 0030014
Assistant Prosecuting Attorney
4000 William Howard Taft Law Center
230 East Ninth Street
Cincinnati, Ohio 45202
ddn: (513) 946-3120
fax: (513) 946-3018
e-mail: dave.stevenson@hcpros.org
*Trial Attorney for Respondent
Hamilton County Board of Elections*



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Pursuant to Civil Rule 12 (B)(6), Rule X(4)(B) of the Rules of Practice of the Supreme Court of Ohio, and for the reasons more particularly stated in the accompanying memorandum of law, Respondent Hamilton County Board of Elections hereby moves to dismiss the complaint of Relator in the above captioned matter.

Respectfully submitted,

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

by:



DAVID T. STEVENSON, Ohio Reg. 0030014

Assistant Prosecuting Attorney

4000 William Howard Taft Law Center

230 East Ninth Street

Cincinnati, Ohio 45202

ddn: (513) 946-3120

fax: (513) 946-3018

e-mail: dave.stevenson@hcpros.org

Trial Attorney for Respondent

Hamilton County Board of Elections

MEMORANDUM OF LAW

I. BACKGROUND

Respondent Board of Elections was served with a document purporting to be a complaint in mandamus on May 30, 2008. While the cover page states that it is a complaint, the interior of the document appears to include the following: 1) a letter consisting of seven unnumbered paragraphs¹ purporting to be an affidavit of Yvette Barbara Baldwin (referred to herein as the "Affidavit;" 2) an affidavit of indigency of Yvette Barbara Baldwin; 3) an unsigned copy of the letter in item 1; and, 4) numerous exhibits.

Baldwin's affidavit does not indicate that it is made on personal knowledge. Baldwin swears only that the affidavit "is the truth to the best of her knowledge." (*Affidavit*, page 2). The affidavit further provides:

The Relator Yvette Baldwin advises that she has learned through hearsay based on rumors and public gossip that the reasoning for the relator Yvette Baldwin not being listed as a viable Candidate for the 2007 City of Cincinnati Council race; is strictly due to the will of the people based on negative rumors spread amongst the citizens degrading the relator Yvette Barbara Baldwin and her character; all of which Yvette Barbara Baldwin denies. (*Affidavit*, ¶ 4).

According to her complaint, Relator Yvette Baldwin circulated a petition for election to city council in Cincinnati, Ohio, for an election to be held on November 6, 2007. (*Affidavit*, ¶1) She presented her petition "by the deadline of 4:00 PM on August 23rd, 2007." (*Affidavit*, ¶2) She did not file the appropriate filing fee on August 23 and instead mailed it "overnight express." *Id.* The filing fee was received by the board on August 30, 2007. *Id.*

Baldwin was not certified as a candidate and did not appear on the ballot in the Cincinnati councilmanic election held on November 6, 2007. (*Affidavit*, ¶¶ 1, 3, 4).

¹ The pages throughout the filing are likewise unnumbered. For clarity, the paragraphs are referred to herein in sequence as if they had been numbered.

While the complaint is very confusing – bordering on indecipherable, it appears that Baldwin is seeking an order from this Court that requires the board to declare her a candidate and “list” her on the ballot for the general election “to be held on November 6, 2007.” (*See Affidavit*, ¶¶ 1, 3,4). Baldwin also asks this Court to “resolve this original complaint and present as public record” her nominating petition. (*Affidavit*, ¶ 4). Finally Baldwin seeks “compensatory amends in the manner of equity” to “assist with the irrevocable and irreparable damages to the relator’s international, national, political, and professional career ambitions.” (*Affidavit*, ¶ 6).

II. ARGUMENT

a. Relator Is Not Entitled to a Writ of Mandamus

In order to grant a writ of mandamus, a court must find that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that the relator has no plain and adequate remedy at law. *State, ex rel. Hodges, v. Taft* (1992), 64 Ohio St.3d 1, 3, 591 N.E.2d 1186; *State ex rel. Gemienhardt v. Delaware Cty. Bd. of Elections* (2006), 109 Ohio St.3d 212, 2006-Ohio-1666, 846 N.E.2d 1223, ¶ 29.

Generally speaking, election laws are mandatory and require strict compliance. *State ex rel. Vickers, supra*; *State ex rel. Barletta v. Fersch* (2003), 99 Ohio St.3d 295, 2003-Ohio-3629; *State ex rel. Ditmars v. McSweeney* (2002), 94 Ohio St.3d 472; and *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections* (1992), 65 Ohio St.3d 167. Substantial compliance is permitted only where the statute specifically allows it. *Id.*

Candidates for election must file the appropriate filing fee at the time they file their declaration of candidacy or nominating petition. R.C. §§ 3513.10 (declaration of candidacy) and 3513.261 (nominating petitions). Neither of these sections contain provisions permitting substantial compliance.

In this case, Baldwin appears to seek, in addition to “compensatory amends” (presumably damages of some sort), a writ that would require the Board to certify her candidacy for Cincinnati City Council for an election that has passed or otherwise validate her petition for said past election. By her own admission, Baldwin did not pay her filing fee at the time she filed her nominating petition. Nor did she pay prior to the deadline for filing the petition. She neither strictly complied with the law requiring filing fees, declaration, and nominating petitions to be filed together; nor substantially complied by meeting all requirements prior to the deadline. As a result, her petition and candidacy were nullities. The Board therefore was under no legal obligation to process her petitions or certify her candidacy.

b. The Passage of the Election Renders this Matter Moot.

It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect. *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, *14, 257 N.E.2d 371, **372. It has become settled judicial responsibility for courts to refrain from giving opinions on abstract propositions and to avoid the imposition by judgment of premature declarations or advice upon potential controversies. *Id.* Ohio courts must exercise judicial restraint in matters that are no longer controversies. *Tschantz v. Ferguson* (1991), 57 Ohio St.3d 131, 133, 566 N.E.2d 655, 657. It is well established that courts do not have jurisdiction to consider moot issues; rather, courts decide actual cases in controversy. *Carver v. Deerfield Twp.* (2000), 139 Ohio App.3d 64, 77, 742 N.E.2d 1182, 1190-1191.

Election matters may become moot if no effective relief may be accorded any of the parties due the passage of an election. *Storer v. Brown* (1974), 415 U.S. 724, 737, 94 S.Ct.

1274, 1282. In Ohio, mandamus does not lie to place a candidate's name on the ballot when the election has been held. *State ex rel. Keller v. Loney* (1959), 169 Ohio St. 394, 159 N.E.2d 896.

In this matter, Baldwin either seeks certification to the ballot for an election that was held seven months ago, or some sort of order validating petition papers she improperly filed. Both are vain acts due to the passage of the election. This matter is moot and must be dismissed.

c. Relator's Affidavit in Support of Her Petition does not meet the Requirements of S.Ct. Prac. R. X.

The procedures by which original actions in this court are conducted are governed by the Rules of Practice of the Supreme Court. *S.Ct.Prac.R. X*. Section 4(B) of that rule requires the following:

(B) All complaints shall contain a specific statement of facts upon which the claim for relief is based, shall be supported by an affidavit of the relator or counsel specifying the details of the claim, and may be accompanied by a memorandum in support of the writ. The affidavit required by this division shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit. All relief sought, including the issuance of an alternative writ, shall be set forth in the complaint.

The requirement that the affidavit in support of an original action be based upon the affiant's personal knowledge is mandatory. An affidavit of counsel that the facts in the complaint are "true and accurate to the best of her knowledge and belief," does not comply with *S.Ct.Prac.R. X(4)(B)*." *State ex rel. Hackworth v. Hughes* (2002), 97 Ohio St.3d 110, *113, 776 N.E.2d 1050, **1055. Nor does an affidavit that states that the allegations in a complaint are "true and correct" based on the attorney's 'personal knowledge and information' or 'personal information and knowledge.'" *State ex rel. Comm. for Charter Amendment for an Elected Law Director v. Bay Village*, (2007), 2007-Ohio-5380 ¶13, 2007 WL 2965041, *2.

Baldwin's affidavit is only the "truth to the best of her knowledge," which appears to be based solely on rumor, gossip, and hearsay. As such, her affidavit does not comply with this Court's rules of practice and her complaint based thereon should be dismissed.

d. The Subject Matter Jurisdiction of the Supreme Court Does Not Extend to Claims for Damages.

This Court has original jurisdiction over actions in: 1) Quo warranto; 2) Mandamus; 3) Habeas corpus; 4) Prohibition; 5) Procedendo; 6) In any cause on review as may be necessary to its complete determination; and 7) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. OH Const. Art. IV, §§ 2

To the extent that Baldwin's complaint asserts a claim for damages, this Court lacks subject matter jurisdiction. *State ex rel. Intern. Union of Operating Engineers, Local Nos. 18, 18A, 18B, 18C, 18RA, AFL-CIO v. Simmons* (Ohio, 1991), 58 Ohio St.3d 247, 250, 569 N.E.2d 886, 889.

III. CONCLUSION

For the foregoing reasons, Relator Baldwin's complaint in mandamus is not well taken and must be dismissed.

Respectfully submitted,

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

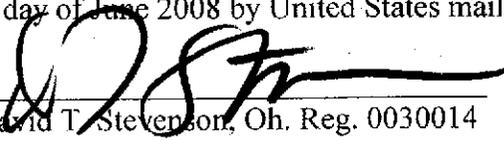
by:



DAVID T. STEVENSON, Ohio Reg. 0030014
Assistant Prosecuting Attorney
Trial Attorney for Respondent
Hamilton County Board of Elections

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion to dismiss was served upon Relator Yvette Barbara Baldwin at the address listed upon her complaint and on counsel for the City of Cincinnati Elections Commission on the 19th day of June 2008 by United States mail.



David T. Stevenson, Oh. Reg. 0030014