

ORIGINAL

IN THE SUPREME COURT OF OHIO

12-0184

IN RE:

CASE NO.:

THE CONTEST OF THE ELECTION HELD ON STARK COUNTY ISSUE 6 (LAKE TOWNSHIP POLICE DISTRICT) IN THE GENERAL ELECTION HELD NOVEMBER 8, 2011

FILED
JAN 31 2012
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT
"CITIZENS FOR THE LAKE TOWNSHIP POLICE, BOB MOSS, TREASURER"

Appellant, Citizens for Lake Township Police, Bob Moss, Treasurer, hereby gives notice of its appeal as of right, pursuant to R.C. 3515.15, to the Supreme Court of Ohio, from a Judgment Entry of the Stark County Court of Common Pleas, docketed on January 25, 2012, in the case captioned, IN RE: THE CONTEST OF THE ELECTION HELD ON STARK COUNTY ISSUE 6 (LAKE TOWNSHIP POLICE DISTRICT) IN THE GENERAL ELECTION HELD NOVEMBER 8, 2011, case number 2011CV03947, Judge Haas. A true copy of the Judgment Entry being appealed is attached hereto and incorporated herein by reference.

Appellant complains and alleges that the Stark County Court of Common Pleas' Judgment Entry docketed January 25, 2012 is unlawful, unjust and unreasonable in the following respects:

The trial court improperly applied the law of laches to the facts and circumstances properly before it on the issue of the election contest; and,

The trial court unlawfully determined that the ballot irregularity is substantial, the ballot is fatal on its face and requires the rejection of the election results; and,

The trial court applied an incorrect standard of review to determine that the irregularity made the result of the election uncertain; and,

The trial court improperly considered affidavits contrary to the Ohio Rules of Evidence; and,

The trial court improperly and unlawfully disregarded the ballots cast by 5,577 electors in favor of the ballot issue resulting in a plurality of 490 votes; and,

WHEREFORE, this Appellant respectfully submits that the Judgment Entry docketed January 25, 2012, is unlawful, unjust and unreasonable and should be reversed. This Court should

RECEIVED
JAN 31 2012
CLERK OF COURT

reinstate the ballot issue as approved by the Lake Township, Stark County, voters at the November 8, 2011 General Election.

Respectfully submitted,



Charles D. Hall III (0017316)
Hall Law Firm
610 Market Avenue North
Canton OH 44702

Tel (330) 453-2336
Fax (330) 453-2919
E-Corr; halllawfirm@neohio.twcbc.com

Appellate Counsel for Citizens in Support of
Lake Township Police, Bob Moss,
Chairman

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent by electronic correspondence and by ordinary U.S. mail to all parties to the proceedings before the Stark County Court of Common Pleas in Case Number 2011CV03947.



Charles D. Hall III (0017316)
Counsel for Appellant,
Counsel for Citizens in Support of
Lake Township Police, Bob Moss,
Chairman

Service List:

December, 2011 to:

Eric J. Stecz and Mel L. Lute, Jr
Baker Dublikar Beck Wiley & Mathews
400 South Main Street
North Canton OH 44720

and

Michael J. Grady
Grady Law Office, LLC
2872 St. Albans Circle NW

North Canton OH 44720

Counsel for James Miller, et al. Contestors

and

John D. Ferrero, Stark County Prosecutor c/o
Deborah A. Dawson and David M. Bridenstine
Stark County Office Building, Suite 500
110 Central Plaza South
Canton OH 44702

Legal Counsel to the Lake Township Board of Trustees and
Stark County Board of Elections



Charles D. Hall III (0017316)
Hall Law Firm

Rec'd 1/20/2012
CDHLL

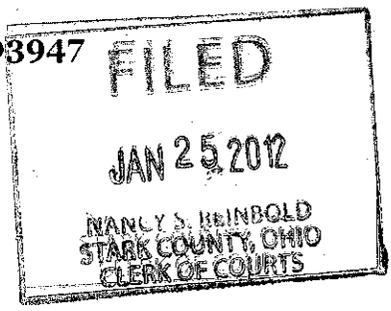
IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

IN RE:)
)
THE CONTEST OF THE)
ELECTION HELD ON STARK)
COUNTY ISSUE 6 (LAKE)
TOWNSHIP POLICE DISTRICT))
IN THE GENERAL ELECTION)
HELD NOVEMBER 8, 2011,)
)
)

CASE NO. 2011CV03947

JUDGE HAAS

JUDGMENT ENTRY



This case is an election contest under R.C. § 3515.08, et seq., in which certain Contestors who voted in the election of November 8, 2011 filed a verified petition contesting the validity of the result for Issue 6. Hearings were conducted pursuant to statute on January 6, 2012 and January 23, 2012. The Court incorporates herein all the stipulations and exhibits admitted into evidence at said hearings.

Issue 6 proposed to extend the boundaries of the present Uniontown Police District to all the unincorporated territory in Lake Township and levy a tax for that purpose pursuant to R.C. § 505.481. An affirmative result would create a township police district encompassing all of the unincorporated territory of Lake Township. The results of the election have been certified by the Board of Elections in favor of the issue. The Issue 6 certified results showed an affirmative vote of 5,577 and a negative vote of 5,087, resulting in a plurality of 490 votes.

There is no dispute that the initial resolution of the Board of Trustees, the Notices published in the Hartville News, and the ballot language for Issue 6 erroneously stated "...4.50 mills for each one dollar of valuation which amounts to forty-five cents (\$0.45)

for each one thousand dollars of valuation...,” when said language should have read “...at a rate not exceeding four and one-half (4.50) mills for each dollar of valuation, which amounts to four dollars and fifty cents (\$4.50) for each one thousand dollars of valuation.”

Election Contests

Grounds for election contests include fraud and various types of irregularities. Contestors have asserted in their petition, and it is stipulated, that the only irregularity is the ballot language which contains a miscalculation in the expression of dollars and cents per one thousand dollars of valuation. In all other respects, the ballot language for Issue 6 was accurate. This is not a case about the merits of Issue 6.

Under Ohio law, a contestor of an election must establish by clear and convincing evidence that (1) one or more election irregularities occurred, and (2) the irregularity or irregularities affected enough votes to change or make uncertain the result of the election.¹ Clear and convincing evidence is the standard because Courts must be restrained from invalidating elections, and the relief sought – the rescission of an election – is equitable in nature.²

“Additionally, every reasonable presumption should be indulged in favor or upholding the validity of an election and against ruling it void.”³ “In sum, the message of the established law of Ohio is clear: our citizens must be confident that their vote, cast for a candidate or an issue, will not be disturbed except under extreme circumstances

¹ *McMillan v. Ashtabula Cty. Bd. Of Elections* (1993), 68 Ohio St.3d 31, 34.

² See, R.C. 3515.11. *In re Election of Nov. 6, 1990 for Office of Atty. Gen. Of Ohio* (1991), 58 Ohio St.3d 103.

³ *Copeland v. Tracy* (1996), 111 Ohio App.3d 648, 655.

that clearly affect the integrity of the election.”⁴ On the other hand, it is axiomatic that for citizens to have confidence in their government, they must be able to have trust in the integrity of the election process.

Equitable Estoppel and Laches

The threshold issue is whether or not the petition is barred by the doctrine of laches. Laches will bar an action for relief in an election-related matter if the persons seeking this relief failed to act with the requisite due diligence.⁵

Contestees argue that Contestors are estopped from attacking the validity of the election because of the vast amount of information made available to the voters in Lake Township about Issue 6, including the proposed ballot language with the miscalculation. In sum, according to the Contestees, the protest is untimely because Contestors knew or should have known the correct information regarding Issue 6, and that the ballot contained an error.

This argument cuts both ways. On the one hand, the Contestees contend that because so much information was available with the correct amounts, any error on the legal notice and ballot does not matter. On the other hand, they attempt to persuade this Court to find that even though all mailings and new articles gave the correct amount, an elector had the additional responsibility of noticing an error in both the legal notice and the ballot itself. Such an obligation on the electors is beyond due diligence.

R.C. § 505.481(B) specifically requires that the mills shall be stated in dollars and cents per one thousand dollars of taxable valuation. The legislature chose to require this

⁴ *In re Election of Nov. 6, 1990 for Office of Atty. Gen. Of Ohio, supra*

⁵ *State ex rel. Stoll v. Logan Cty. Bd. Of Elections* (1993), 117 Ohio St.3d 76.

mandatory language when putting a tax levy on the ballot in conjunction with the expansion of a township police district.

A review of all the material submitted by Contestees demonstrates that other than the June 27, 2011, meeting minutes, the legal notice and the ballot language, none of the campaign materials ever expressed the amount of the ballot issue in dollars and cents per one thousand dollars of valuation as required by R.C. § 505.481(B). Instead, the cost of the levy was either expressed in millage, cost per day, or an annual cost.

Finally, the Court finds that the circulation of the Hartville News, where the legal notice was published, was not adequate to put the Contestors on notice of the irregularity so as to estop them from contesting the results. This case is distinguishable from *Smith v. Scioto Cty. Board of Elections*⁶ because of the nature of the publication chosen. To find otherwise would place too much of a burden on the Contestors. The Court thus finds that the Contestors acted with due diligence.

Outcome Placed in Doubt

The mistake leads a voter to the conclusion that the tax he or she is approving is ten times less than the amount that the Contestees seek to collect. Contrary to the assertions of the Contestees, this error is more than a “clerical error” and the degree of this error is substantial enough to mislead the voters.

Contestors argue that because Issue 6 involved a tax levy, and because the irregularity is substantial, the ballot is fatal on its face and requires the rejection of the election results.⁷ While this Court agrees that the irregularity was substantial and in theory could be a basis for a rejection of the result, the Court is reluctant to find that the

⁶ (2009) 123 Ohio St.3d 467.

⁷ See, *Beck v. city of Cincinnati* (1955), 162 Ohio St. 473.

Beck case is dispositive. There, the court was concerned with the persuasive language inserted into the ballot that was not authorized by law. Here, the ballot contains a miscalculation not a coercive statement. However, it is clear from the *Beck* case that tax issues are to be closely scrutinized. Accordingly, the only issue is whether the irregularity made the result of the election uncertain.

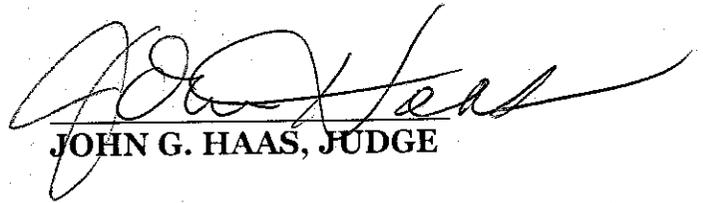
Contestors are not required to show that a different result would have been certain. Their burden is to show that the irregularity made the result uncertain. This they have done. Contestors are not required to bring into court 246 voters who voted "yes" to say they would have voted "no". Based on the witness testimony, the affidavits, and the compressed time period for hearings on contested elections, Contestors have met their burden. The Court is convinced that the result of the election was uncertain due to the irregularity contained in the ballot language.

This Court is sensitive to the axiom that citizens must be confident that their votes will not be disturbed except under extreme circumstances that clearly affect the integrity of the election, and this Court is reluctant to set aside an election result. However, for the electorate to be confident in their government they must be able to trust in the integrity of the election process.

Accordingly, this Court holds that the relief sought by Contestors is **GRANTED** and the result of the November 8, 2011 election as to Issue 6 is hereby set aside. Costs to be paid by the County per statute.

IT IS SO ORDERED.

This is a final appealable order and there is no just cause for delay.



JOHN G. HAAS, JUDGE

To: Atty. Michael J. Grady
Atty. Eric J. Stecz
Atty. Deborah A. Dawson
Atty. Charles Hall