

[Cite as *State ex rel. Mesaros v. Greene Cty. Bd. of Elections*, 2010-Ohio-1611.]

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
GREENE COUNTY

STATE, ex rel., DAVID P. MESAROS

*Relator*

v.

GREENE COUNTY BOARD OF ELECTIONS, et al.

*Respondents*

:Appellate Case No.2010-CA-20

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**DECISION AND FINAL JUDGMENT ENTRY; WRIT OF MANDAMUS**

March 26, 2010

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PER CURIAM:

{¶ 1} On March 18, 2010, Relator, David P. Mesaros, filed a “Verified Complaint for Writs of Prohibition or Mandamus,” copy attached hereto. Mesaros seeks a writ of prohibition from this Court prohibiting Respondents, the Greene County Board of Elections and the board members individually, from removing his name as candidate for Greene County Common Pleas Judge, General Division, on the May 4, 2010 primary election ballot. He further seeks a writ of mandamus compelling Respondents to accept and certify his declaration of candidacy and petitions for Greene County Common Pleas Court Judge,

General Division, and to place his name on the May 4, 2010 primary election ballot.

{¶ 2} This Court held a telephone conference with counsel for the parties on March 19, 2010. At that time, the court established an expedited briefing schedule for this matter. On March 23, 2010, Respondents filed an Answer, and the parties jointly filed “Stipulations of Fact.” On March 24, 2010, Mesaros filed a “Memorandum in Support of Complaint for Prohibition and Mandamus.” Respondents filed a merit brief on March 26, 2010.

{¶ 3} In relevant part, the Stipulations of Fact set forth the following:

{¶ 4} Mesaros filed a declaration of candidacy and multiple part-petitions for the office of Judge of the Court of Common Pleas of Greene County, Ohio, General Division, on February 17, 2010. Within the declaration of candidacy, Mesaros indicated that he sought to be a candidate for nomination to the office of Judge of the Court of Common Pleas of Greene County, General Division, as a member of the Republican Party for the full term commencing “January 2011.” The specific commencement date of the office for which Mesaros intends to run is February 9, 2011. Respondents certified Mesaros’s petitions on February 23, 2010.

{¶ 5} On February 26, 2010, Mark Humbert, a qualified elector in Greene County, Ohio, filed a protest to Mesaros’s candidacy. Consequently, at the conclusion of a public hearing on March 12, 2010, Respondents voted to de-certify Mesaros’s petitions, pursuant to R.C. 3513.08, and relying on *State ex rel. Clinard v. Greene Cty. Bd. of Elections* (1990), 51 Ohio St.3d 87.

#### Writ of Mandamus

{¶ 6} To be entitled to the requested writ of mandamus, Mesaros must establish a

clear legal right to the relief requested, i.e., a clear legal right to the certification of his petitions and declaration of candidacy for nomination to the office of Judge of the Court of Common Pleas of Greene County, General Division; a clear legal duty on the part of Respondents to perform the acts, i.e., a corresponding duty of the board of elections and its members to certify Mesaros's petitions and declaration of candidacy for nomination to the office of Judge of the Court of Common Pleas of Greene County, General Division; and the lack of a plain and adequate remedy in the ordinary course of law. *State ex rel. Grounds v. Hocking Cty. Bd. of Elections*, 117 Ohio St.3d 116, 2008-Ohio-566, at ¶10, citing *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 115 Ohio St.3d 405, 2007-Ohio-5346, at ¶8. There is no dispute that Mesaros has established that he lacks an adequate remedy in the ordinary course of law, as the present action was filed approximately two months before the May 2010 primary election. *Id.*, citing *State ex rel. Columbia Res. Ltd. v. Lorain Cty. Bd. of Elections*, 111 Ohio St.3d 167, 2006-Ohio-5019, at ¶28.

{¶ 7} In order to establish the clear legal right and legal duty, as provided above, Mesaros must further “prove that the board of elections engaged in fraud, corruption, abuse of discretion, or clear disregard of statutes or other pertinent law.” *Id.* at ¶11, quoting *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, at ¶8. Here, Mesaros contends that Respondents disregarded applicable law when they de-certified his petitions, as violating R.C. 3513.08, for failing to designate the correct commencement date of the term of the office for which he seeks nomination. Specifically, Mesaros argues that R.C. 3513.08 does not require designation of a commencement date unless two or more seats for Judge of the Greene County Common Pleas Court, General Division, were to be elected at the May primary election. Here, it is undisputed that only one common pleas court, general

division, seat is subject to the upcoming election.

{¶ 8} Upon due consideration of the materials presented to this Court, we find that Mesaros has satisfied his burden of establishing a clear legal right to certification of his petitions and declaration of candidacy for nomination to the office of Judge of the Court of Common Pleas of Greene County, General Division. He further has demonstrated that Respondents have a corresponding legal duty to certify his petitions and candidacy.

{¶ 9} R.C. 3513.08 provides:

{¶ 10} “Each person filing a declaration of candidacy for nomination at a primary election as a candidate for election to the office of judge of the supreme court, court of appeals, court of common pleas, probate court, and such other courts as are established by law, in addition to designating in such declaration the office for election to which he seeks such nomination, shall, *if two or more judges of the same court are to be elected at any one election*, designate the term of the office for election to which he seeks such nomination by stating therein, if a full term, the date of the commencement of such term as follows: ‘Full term commencing \_\_\_\_\_(Date) \_\_\_\_\_,’ or by stating therein, if an unexpired term, the date on which such unexpired term will end as follows: ‘unexpired term ending \_\_\_\_\_(Date) \_\_\_\_\_.’ ” (Emphasis added.)

{¶ 11} It is evident to this Court that the statute requires the designation of a commencement date for the term of office subject to an election only in the event two or more judges of the same court are to be elected. To that extent, we do not find Respondents’ interpretation of *Clinard*, 51 Ohio St.3d 87, persuasive. There, confusion was compounded by the judicial candidate’s failure to indicate for which division of common

pleas court he sought candidacy despite there being one judicial seat open in the General Division of the Greene County Common Pleas Court, one judicial seat open in the Domestic Relations Division, and one judicial seat open in the Probate Division. Again, there is no confusion here that the only judicial seat on the Greene County Common Pleas Court subject to the primary election is that for the General Division. Mesaros specifically indicated his nomination for such in his declaration of candidacy. Thus, we find *Clinard* distinguishable and the contested requirement of R.C. 3513.08 inapplicable in the present matter.

{¶ 12} Furthermore, we note that Mr. Humbert premised his objection on the fact that judicial seats in the Second District Court of Appeals are to be elected, thereby allegedly demonstrating that two or more candidates for judge are running in the May primary election. As indicated by Mesaros at the March 12, 2010 hearing, the Common Pleas Court of Greene County and the Second District Court of Appeals are two distinct, separate courts. R.C. 3513.08 contemplates that a commencement date must be designated in the declaration of candidacy when “two or more judges *of the same court* are to be elected.” (Emphasis added.) That is not the case here.

{¶ 13} Wherefore, for good cause shown, Relator’s complaint for a writ of mandamus is GRANTED. Respondents, the Greene County Board of Elections and the board members individually, are hereby ORDERED to certify Relator’s declaration of candidacy and petitions for nomination to the office of Judge of the Court of Common Pleas of Greene County, General Division, for the full term commencing February 9, 2011. Insofar as no protests to Relator’s candidacy have been raised unrelated to the present matter, Relator’s name shall remain on the ballot for the May 4, 2010 primary election.

{¶ 14} The Clerk of the Courts for the Greene County Court of Appeals shall issue the within writ by serving a copy of it upon Elizabeth Ellis, counsel for Respondents, who has agreed to accept service of the writ on behalf of Respondents, thereby waiving the requirement of R.C. 2731.08 that a writ of mandamus is to be served personally upon the respondents by the county sheriff.

{¶ 15} In light of the foregoing, it is not necessary for this Court to address Relator's arguments for a writ of prohibition.

{¶ 16} Relator's request for attorney fees is DENIED. Respondent shall bear costs.

SO ORDERED.

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MARY E. DONOVAN, Presiding Judge

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JAMES A. BROGAN, Judge

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MIKE FAIN, Judge

To the Clerk: Pursuant to Civil Rule 58(B), please serve on all parties not in default for failure to appear notice of judgment and its date of entry upon the journal.

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MARY E. DONOVAN, Presiding Judge

