2023 IL App (1st) 230498-U

No. 1-23-0498

Filed March 28, 2023

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ALDA LEAVY-SKINNER Petitioner-Appellant, v. MUNICIPAL OFFICERS ELECTORAL BOARD for the VILLAGE of DIXMOOR, FITZGERALD K. ROBERTS, Chairman, JAUNITA DARDEN, Member, DWAYNE TYSON, Member, and CHARLENE MCFADDEN, Objector, Respondents-Appellees.	)	Appeal from the Circuit Court of Cook County. 23 COEL 17 Honorable Tracie Porter, Judge, Presiding.

JUSTICE MARTIN delivered the judgment of the court.
Justices Hoffman and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court had subject matter jurisdiction when petition for judicial review of electoral board's decision was timely filed in strict compliance with the Election Code.

¶ 2 Alda Leavy-Skinner submitted nomination papers to be a candidate for the office of Trustee of the Village of Dixmoor, Illinois, in the upcoming April 4, 2023, election. Charlene McFadden

filed an objection to Leavy-Skinner's candidacy, alleging disqualifying defects in Leavy-Skinner's nomination papers. Specifically, McFadden asserted that Leavy-Skinner's petitions—which listed her address in Blue Island, Illinois and identified the office she sought as "Village Trustee"—confused voters as to whether she was running for Village Trustee of Blue Island or of Dixmoor. McFadden further claimed "on information and belief" that Leavy-Skinner did not personally circulate her petitions, despite certifying she had.

¶ 3 In a March 8 meeting, the Municipal Officers Electoral Board for the Village of Dixmoor (Electoral Board) sustained McFadden's objection and disqualified Leavy-Skinner's candidacy. Leavy-Skinner was not physically present at the meeting but participated via the video conferencing platform Zoom and by telephone. Leavy-Skinner's attorney, McStephen Solomon, also participated in the meeting via Zoom and telephone. On the record, both Solomon and Leavy-Skinner authorized Cynthia Mossuto, another candidate who was physically present, to accept, on Leavy-Skinner's behalf, service of the Electoral Board's written decision disqualifying Leavy-Skinner. Later that day, Leavy-Skinner filed a petition in the circuit court for judicial review of the Electoral Board's decision. The Electoral Board placed a copy of its decision in the mail addressed to Leavy-Skinner on March 10.

¶ 4 A few days later, the Electoral Board filed a motion to dismiss Leavy-Skinner's petition pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2022)). In its motion, the Electoral Board asserted that the circuit court lacked subject matter jurisdiction because Leavy-Skinner failed to strictly comply with the requirements of the Election Code (10 ILCS 10/ 1 *et seq*. (West 2022)). Specifically, the Electoral Board pointed to the requirement that a petition for judicial review must be filed "within 5 days after service of the [Electoral Board's] decision." See 10 ILCS 5/10-10.1(a) (West 2022). According to the Electoral Board, this provision

of the Election Code requires that a petition for judicial review may only be filed *after* service upon the aggrieved party. The Electoral Board insisted that Leavy-Skinner filed her petition before she was served with its written decision on March 10.

¶ 5 Leavy-Skinner filed a response arguing that she was served on March 8 when Mossuto accepted service on her behalf and with her authorization. The Electoral Board countered that the Election Code does not provide for service by such means, Leavy-Skinner's authorization was ineffective, and Mossuto's receipt of the decision did not constitute service.

¶ 6 Following a hearing on March 17, the circuit court granted the Electoral Board's motion to dismiss, finding that the court lacked subject matter jurisdiction due to Leavy-Skinner's failure to strictly comply with the Election Code's requirements. Leavy-Skinner filed a notice of appeal later the same day. We granted her motion for expedited review and ordered the parties to submit memoranda in lieu of briefs according to an expedited schedule. Leavy-Skinner also filed a motion requesting that we retain jurisdiction and proceed to review her challenge to the Electoral Board's decision, if we first determine that her petition for judicial review was properly filed. We ordered that the motion to retain jurisdiction be taken with the case.

¶ 7 We review a trial court's order granting a section 2-619 motion to dismiss *de novo*. *Williams v. Miracle Center, Inc.,* 2022 IL App (1st) 210291, ¶ 29. A section 2-619 motion admits the legal sufficiency of the complaint but raises defects, defenses, or other affirmative matters on the face of the complaint or established by external submission, which defeat the cause of action. *Id*. We accept all well-pled facts in the complaint as true and construe the pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.* The motion should be granted only when the plaintiff can prove no set of facts that would entitle them to relief. *Id*.

¶ 8 Section 2-619 provides that a defendant may seek dismissal of an action on the grounds that the court lacks jurisdiction of the subject matter of the action. 735 ILCS 5/2-619(a)(1) (West 2022). The circuit court lacks inherent authority to review decisions of election boards. *Allord v. Municipal Officers Electoral Board for the Village of South Chicago Heights*, 288 Ill. App. 3d 897, 900 (1997). Instead, the circuit court's jurisdiction is limited by the statutory language contained in section 10-10.1 of the Election Code. *Id*. The jurisdictional requirements are: (1) the aggrieved party must file their petition with the clerk of court within five days after service of the decision; (2) the aggrieved party must serve copies of the petition on the necessary parties by registered or certified mail within five days after service of the decision; (3) the aggrieved party must state in the petition why the decision should be reversed; and (4) the aggrieved party must file proof of service with the clerk of the court. *Bey v. Brown*, 2015 IL App (1st) 150263, ¶ 48; 10 ILCS 5/10-10.1(a) (West 2022). "[A]s long as the dictates of section 10-10.1(a) are clear and not confusing, they must be strictly observed." *Id.* ¶ 51 (citing *Bettis v. Marsaglia*, 2014 IL 117050).

¶ 9 The jurisdictional issue in this case involves interpretation of the Election Code's requirement that the petition be filed "within 5 days after service of the decision." The Electoral Board insists that strict compliance requires that an aggrieved party may file only within the five days after service has been perfected. In other words, they contend that service of their decision is a jurisdictional prerequisite to file a petition for judicial review and the petition may only be filed between the date of service and five days thereafter. Following this interpretation, the Electoral Board argues that Leavy-Skinner's petition was premature.

¶ 10 When construing a statute, our primary objective is to ascertain and give effect to the legislature's intent. *Bettis*, 2014 IL 117050, ¶ 13. The best indication of legislative intent is the language used in the statute given its plain ordinary meaning. *Id.* We must not read exceptions,

limitations, or conditions into the statute that conflict with clearly expressed intent. *Id*. We presume the legislature did not intend absurdity, inconvenience, or injustice. *Id.* Thus, each word, clause, and sentence must be given a reasonable construction. *Id.*

¶ 11 Here, the interpretation that the Electoral Board urges emphasizes the word "after," contending it signals that a petitioner may only file for judicial review after service of the decision is perfected. In our view, this is an unreasonable construction that the legislature could not have intended. It is semantic and excessively literal. Rather, like any other statute of limitations, the five-day period to file a petition for judicial review is a limitation on the time to commence such an action. The words "within 5 days after service" simply enable determination of the limit in each particular case. We find that Leavy-Skinner timely filed her petition for judicial review.

¶ 12 The purpose of any statutory limitation on the commencement of an action is to provide an adequate time for a diligent plaintiff to bring a cause of action and prevent plaintiffs from sleeping on their rights to the detriment of defendants. 51 Am. Jur. 2d *Limitation of Actions* §§ 5-6 (2023). A limitation promotes expedience and avoids inconveniences caused by delay. *Id*. § 9. Leavy-Skinner filed her petition well before the limitation period expired. She did not sleep on her rights to the Electoral Board's detriment. Rather, she acted diligently by filing her petition once the Electoral Board had issued a written decision. Diligence is essential in litigating ballot access issues as such matters become moot once the election takes place. *Jackson v. Board of Election Commissioners of the City of Chicago*, 2012 IL 111928, ¶ 36. The Electoral Board's interpretation runs contrary to the interests underlying the five-day limitation period.

¶ 13 We also find that *McDonald v. Cook County Officers Electoral Board*, 2018 IL App (1st) 180406—which the Electoral Board relies on to argue that Leavy-Skinner's filing was premature—is readily distinguishable. In *McDonald*, a candidate for Cook County Clerk filed her

petition in anticipation of a decision disqualifying her, which was rendered four days later. *Id.* ¶¶ 6-7. This court found that the anticipatory petition was filed prematurely, but the candidate cured the jurisdictional defect by filing an amended petition two days after the electoral board issued its written decision. *Id.* ¶¶ 19-20; see also *Forcade-Osborn v. Madison County Electoral Board*, 334 Ill. App. 3d 756, 758 (2002) (finding that a petition for judicial review was premature when filed before an electoral board had reduced its decision to writing). Here, Leavy-Skinner filed her petition after the Electoral Board issued its written decision. To be sure, she attached a copy of the decision to her petition. Since her petition was not anticipatory and filed within the limitation period, we find that Leavy-Skinner properly invoked the circuit court's subject matter jurisdiction.

¶ 14 Separately, we find that Leavy-Skinner was, in fact, served with the Electoral Board's decision on March 8 before she filed her petition. While not physically present, Leavy-Skinner participated via Zoom and had actual knowledge of the Electoral Board's decision. Since the beginning of the COVID-19 pandemic, we have increasingly relied on Zoom to conduct judicial and administrative proceedings. Even when the loss of parental rights has been at stake, we have found participation by Zoom sufficient to constitute presence. See, *e.g.*, *In re P.S. and A.S.*, 2021 IL App (5th) 210027. We fail to see why a party participating by Zoom in a hearing on an objection to nomination papers could be considered any less present.

¶ 15 Under the Election Code, however, a party is not deemed to have been served with an electoral board's decision merely because the party was present at the meeting when such decision was issued. Instead, the Election Code contemplates that service shall be made in open proceedings upon parties who "appear for receipt of the decision." 10 ILCS 5/10-10 (West 2022). Leavy-Skinner's participation via Zoom did not qualify as appearing for receipt of the Electoral Board's decision. But we believe that Leavy-Skinner's participation via Zoom coupled with her express

authorization for Mossuto to accept service on her behalf qualified as appearance for receipt of the decision. Basic principles of agency allow for a person to authorize another to accept service on their behalf. Nothing in the Election Code prohibits service upon an authorized agent. Leavy-Skinner's inclusion of the Electoral Board's decision in her petition underscores that service was perfected by Mossuto's acceptance.

¶ 16 A decision such as this calls for remand to the circuit court to proceed on the merits of the petition. At present, the election is only one week away. Leavy-Skinner requests that we retain jurisdiction to consider the merits of her petition for judicial review in place of the circuit court as time will unlikely permit for both proceedings on remand and appellate review. To that end, her memorandum raises issues challenging the Electoral Board's decision. The Illinois Constitution provides that the appellate court may exercise original jurisdiction when necessary to the complete determination of any case on review. Ill. Const. 1970, art. VI, § 6. However, we find that original jurisdiction in this court is neither necessary nor appropriate in this case. The circuit court is capable of reaching a complete determination of the case in expedited proceedings on remand. Further, original jurisdiction in this matter would have us consider issues not presented in the trial court and not appearing on the record. See *Kobrand Corp. v. Foremost Sales Promotions, Inc.*, 8 Ill. App. 3d 418, 422 (1972) (declining to exercise original jurisdiction to consider "issues not presented to the trial court and not appearing in the record."). Therefore, we deny Leavy-Skinner's motion to retain jurisdiction and will not address the other issues raised in her memorandum.

¶ 17 Based on our decision, we reverse the circuit court's order dismissing Leavy-Skinner's petition for lack of subject matter jurisdiction and remand this cause to the circuit court for expeditious proceedings on the merits. The mandate shall issue *instanter*.

¶ 18 Reversed and remanded.

¶ 19 Motion to retain jurisdiction denied.