

No. 22-723

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IN THE
SUPREME COURT OF APPEALS
OF
WEST VIRGINIA

CHARLESTON

EXECUTIVE COMMITTEE OF THE
REPUBLICAN PARTY OF
OHIO COUNTY WEST VIRGINIA,
ELGINE McARDLE,
ROBERT LUCHETTI,
GREGORY WILLIAM SMITH,
GEORGE CRAIG MEYER,
CARLEE J. DITTMAR,
DEBORAH MARIE SMITH, and
FAITH ELIZABETH MEYER.,
Petitioners

CASE NO. 22-723

v.

ADOLPH SANTORINE, JR.,
Respondent.

FROM THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

APPELLANT'S BRIEF

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TO: THE HONORABLES, THE JUSTICES OF THE SUPREME COURT OF
APPEALS OF WEST VIRGINIA:

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Assignments of Error

Whether the Circuit Court abused its discretion in granting Santorine's petition for writ of mandamus where 1) he failed to prove a legal right to be seated on the OCREC, 2) the OCREC had no legal duty to seat him, and 3) he failed to pursue alternative and adequate remedies to achieve placement on the OCREC

Summary of Argument

Santorine's petition for writ of mandamus alleged that he had a clear legal right to be seated and serve on the OCREC. He claimed that since he was duly elected in Magisterial District 2, and the County Commission certified the election results, mandamus relief should issue to direct the OCREC to seat him on the committee.

Unfortunately, no fact or law supports that Santorine, whose physical address placed him in Magisterial District 1 from December 2021 through the date of the primary election on May 10, 2022, was eligible to serve in a district where he did not reside. Santorine failed to prove that he resided in Magisterial District 2 on the date of filing through the date of election.

The facts and law in this case placed Santorine's residence in Magisterial District 1 from the date of filing up to and including the day of the primary election on May 10, 2022. No legal duty exists to permit an elected individual to serve in a county or district in which they do not reside. Furthermore, Santorine had alternative and adequate remedies to be seated and serve on the OCREC but blatantly refused to pursue or accept those alternatives. Without satisfying the simultaneous coexistence of all three requirements for mandamus relief, the Circuit court abused its discretion in granting Santorine's Petition for Writ of Mandamus.

Standard of Review

“The standard of appellate review of a circuit court's order granting relief through the extraordinary writ of mandamus is de novo.” Syl. Pt. 1, *Staten v. Dean*, 195 W. Va. 57, 464 S.E.2d 576(1995). “A writ of mandamus will not issue unless three elements coexist--(1) a clear legal right in the Santorine to the relief sought; (2) a legal duty on the part of respondent to do the thing which the Santorine seeks to compel; and (3) the absence of another adequate remedy.” Syl. Pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969).

Statement of Facts

Dolph Santorine, (hereinafter “Santorine”), resides at 134 Falls Church Road, Wheeling, Ohio County, West Virginia. [Appendix p. 227] In January, 2022, Santorine timely filed the requisite forms seeking election for a seat on the Ohio County Republican Executive Committee (hereinafter “OCREC”) representing Magisterial District 2. On May 10, 2022, the day of the primary election, Santorine went to his redesignated precinct¹ in Magisterial District 1 to cast his votes but did not see his name on the ballot. [Appendix p. 178-179] Redistricting had placed Santorine’s address of 134 Falls Church Road, Wheeling, Ohio County, West Virginia within Magisterial District 1 as of December 31, 2021. [Appendix p. 182-183, 186-187, 189-191]

On May 16, 2022, the Ohio County Commission conducted a canvass and determined that Santorine had been received the most votes for election to the OCREC within Magisterial District 2. [Appendix p. 233] That same day, Santorine sent a letter to the OCREC demanding that he be seated on the OCREC representing Magisterial District 2. [Appendix p. 237] In response thereto, the OCREC sent Santorine a letter indicating that while Santorine received the most votes in Magisterial District 2, he could not be seated in Magisterial District 2 because by law he resided

¹ In April, 2022, the Ohio County Commission sent Santorine notice that his precinct had changed.

in Magisterial District 1. The OCREC letter also offered Santorine a vacant seat on the OCREC within Magisterial District 1. [Appendix p. 238-239] Santorine refused the alternative remedy to be seated on the OCREC and instead filed a Complaint for Mandamus relief in the Circuit Court of Ohio County against the OCREC chair, all its individual members, as well as the OCREC as an organization. [Appendix p. 1-11]

On June 27, 2022, the OCREC, its individual members and the Chair filed a Motion to Dismiss the Complaint for Mandamus. [Appendix p. 12-19] On July 11, 2022, a hearing on the Complaint for Mandamus took place before the Honorable David J. Sims, [Appendix p. 157-226] and on August 3, 2022, granted in part the Complaint for Mandamus directing the OCREC to seat Santorine on the OCREC in Magisterial District 2 [Appendix p. 57-68]. From this order, the OCREC timely filed its Notice of Appeal on September 2, 2022.

Dolph Santorine registered to run for the OCREC in Magisterial District 2; his name appeared on the ballot on Magisterial District 2. Dolph Santorine by his own admission voted in a precinct located in Magisterial District 1, redistricting placed his address of 134 Falls Church Road in Magisterial District 1

Adolph Santorine Testimony [Appendix pp. 195-214]

- a. Santorine testified under oath that he recognized that it is the candidate's sole responsibility to register in the correct district. "It is on the form to register for candidacy."
- b. Santorine testified that he relied on the legislative description of district lines as well as County Commission representations that he lived in Magisterial District 2.
- c. Santorine testified that he did not personally examine the district maps located at the Ohio County Commission office for the location of his Magisterial District.
- d. Santorine acknowledged that he was present at the Ohio County Republican Executive Committee's Meet and Greet on March 24, 2022.
- e. The OCREC's exhibits presented at the hearing depicted that the Meet and Greet Agenda and handouts specifically discussed how to look up and verify one's Magisterial / State Delegate / State Senatorial / US Congressional District. [Appendix pp.240-242]
- f. Santorine testified that he "did not recall" seeing the handout which was placed on every seat at the event.

- g. Santorine testified that he “did not recall” *the first item on the agenda* which specifically discussed the redistricting lines and that an individual with a computer was present at the meeting to assist in verifying one’s voting districts.
- h. The WVSOS find voter information placed Santorine’s address in Magisterial District 1 even as of July 18, 2022 [Appendix p. 37]

At all times relevant to the mandamus petition before the Circuit Court, the redistricting maps were available for inspection at the Courthouse within the County Commission Office. The same was in fact available to all candidates, including Mr. Santorine, who negligently filled out his candidacy form in error by designating Magisterial District 2 as his residential district. These facts were confirmed by Mr. Rodd Archie of the Ohio County Commission who testified as follows:

County Commission Testimony [Appendix pp. 166-192]

- a. Mr. Archie testified that Santorine’s address of 134 Falls Church Road was continuously in Magisterial District 1 on the following dates and that the redistricting maps were available at the Ohio County Commission office at the Ohio County Courthouse:
 - December 31, 2021
 - January 29, 2022 (filing deadline for primary election)
 - May 10, 2022 (date of primary)
- b. Mr. Archie testified that *only after the primary election*, when Santorine indicated that he “did not see his name on the ballot,” *did the Commission take steps to “correct” Santorine’s Magisterial District*; however, at all times preceding the primary election, Santorine’s address was in Magisterial District 1 as the County complied with the mandates of the redistricting legislation to move voters into different Magisterial Districts.
- c. Mr. Archie testified that the County sent Santorine notice that his precinct changed in April 2022

At the July 11, 2022 hearing, counsel for the OCREC presented the WVSEC Bylaws which recognizes the candidates’ residential district as that determined by State Law. [Appendix p. 249] The evidence presented at the hearing demonstrated that the redistricting redefined Dolph Santorine’s magisterial district. The WVSEC bylaws specifically provide at Article XV that:

ARTICLE XV - COUNTY EXECUTIVE COMMITTEES

The County Executive Committee's authority is exclusive and shall include the managing and directing of Party affairs in their respective county including the collection and disbursement of Party funds; the promotion of campaigns of Republican candidates who represent their county at the national, state and local levels and the recruitment of poll workers that will represent the Republican Party on Election Day and ensure the integrity of elections.

Section 1. Membership: The membership of each County Executive Committee shall consist of the elected members of the County Executive Committee *who are geographically distributed throughout the county as determined by State Law and directed by the County Clerk of the county*, elected by the Republican voters on the primary election ballot during each non-Presidential election year and the County Officers.

At all times relevant to the granting of the mandamus, both the county and the State maps placed Santorine's address of 134 Falls Church Road, Wheeling, West Virginia within Magisterial District 1. On August 4, 2022, in accord with the Court's order, the OCREC met and appointed Santorine to the vacant seat in Magisterial District 1; Santorine was present for the meeting, responded to roll call and participated in the selection of a new Chairman. After the certification of the election, the Ohio County Commission reversed its placement of Santorine in Magisterial District 1 sometime in June, 2022. [Appendix pp. 191-192] However, the State maps were not revised to place Santorine into Magisterial District 2 until August 29, 2022 [Appendix p. 107] whereupon the OCREC notified Santorine of his placement on the OCREC to serve Magisterial District 2.

ARGUMENT

THE CIRCUIT COURT ABUSED ITS DISCRETION IN GRANTING THE WRIT OF MANDAMUS ISSUED ON AUGUST 3, 2022

It is well settled law that "[a] writ of mandamus will not issue unless three elements coexist -- (1) a clear legal right in the Santorine to the relief sought; (2) a legal duty on the part of respondent to do the thing which the Santorine seeks to compel; and (3) the absence of another adequate remedy." Syllabus Point 2, *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170

S.E.2d 367 (1969). *In accord*, Syllabus Point 1, *State ex rel. Billy Ray C. v. Skaff*, 190 W.Va. 504, 438 S.E.2d 847 (1993); Syllabus Point 1, *Smith v. West Virginia State Board of Education*, 170 W.Va. 593, 295 S.E.2d 680 (1982). A *de novo* review by this Court support reversal of the Circuit Court's order granting mandamus relief where Santorine failed to establish any of the elements required for mandamus relief much less prove that all three elements simultaneously existed.

A.

Santorine failed to establish a clear legal right to be seated to serve the Second Magisterial District on the OCREC.

To prevail in this appeal, Santorine must first establish that the record supports a clear legal right to the relief sought. The record fails to support a clear legal right to serve on the OCREC because Santorine failed to establish that he resided in Magisterial District 2 on the day he filed and the day he was elected. The only witness presented by Santorine in the Court below testified that:

- a. Mr. Archie testified that Santorine's address of 134 Falls Church Road was continuously in Magisterial District 1 on the following dates and that the redistricting maps were available at the Ohio County Commission office at the Ohio County Courthouse:
 - December 31, 2021
 - January 29, 2022 (filing deadline for primary election)
 - May 10, 2022 (date of primary)
- b. Mr. Archie testified that only after the primary election, when Santorine indicated that he "did not see his name on the ballot," did the Commission take steps to "correct" Santorine's Magisterial District; however, at all times preceding the primary election, Santorine's address was in Magisterial District 1 as the County complied with the mandates of the redistricting legislation to move voters into different Magisterial Districts.

What the record demonstrates is that confusion existed as to which Magisterial District Santorine actually lived. In fact, a hearing was needed to sort it out. Even after the hearing, confusion remained as to which Magisterial District Santorine lived with the State not placing Santorine back

into Magisterial District 2 until late August, 2022 ~ long after Santorine sought mandamus relief. Suffice it to say that nothing was “clear” about Santorine’s residential address throughout the primary election cycle. What is “clear” is that on May 10, 2022, Santorine voted in Magisterial District 1 while his name appeared for election on the Magisterial District 2 ballot. Without the ability to prove that he “clearly” lived in Magisterial District 2, Santorine failed to prove the legal residency required to serve in the district to which he was elected.

B.

The OCREC had no legal duty to seat an individual to an office in which the individual did not reside.

Having failed to prove legal residency in Magisterial District 2 to which he was elected, Santorine cannot establish that the OCREC had a legal duty to seat him in Magisterial District 2. Neither the West Virginia State Executive Committee (hereinafter the “WVSEC”) Bylaws nor state code permit an individual to serve in a district in which they do not reside.

The WVSEC Bylaws defines a candidates’ district as that determined by State Law. The WVSEC bylaws specifically provide at Article XV that:

ARTICLE XV - COUNTY EXECUTIVE COMMITTEES

The County Executive Committee’s authority is exclusive and shall include the managing and directing of Party affairs in their respective county including the collection and disbursement of Party funds; the promotion of campaigns of Republican candidates who represent their county at the national, state and local levels and the recruitment of poll workers that will represent the Republican Party on Election Day and ensure the integrity of elections.

Section 1. Membership: The *membership of each County Executive Committee shall consist of the elected members* of the County Executive Committee who are *geographically distributed throughout the county as determined by State Law and directed by the County Clerk of the county*, elected by the Republican voters on the primary election ballot during each non-Presidential election year and the County Officers.

Furthermore, State Code defines residence of Officers in W. Va. Code § 6-5-4 (eff. 1909) specifically defines the residence of Officers as follows:

ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD OFFICE.

§6-5-4. Residence of officers states in pertinent part that:

...Every county and district *officer*, except the prosecuting attorney, *shall, during his continuance in office, reside in the county or district for which he was elected.*...

On the date he was elected to the OCREC in Magisterial District 2, both the County and the State recognized Santorine as a resident of Magisterial District 1. The record is unequivocal on that point. As such, the OCREC had no legal duty to seat Santorine on the OCREC in Magisterial District 2 based upon either its own bylaws or under West Virginia State Code.

Notwithstanding his inability to establish a legal duty for the OCREC to act, additional caselaw supports that the Circuit Court had no jurisdiction to interfere with the OCREC, acting within its own administrative capacity to regulate its committee.

C.

Neither the Committee members individually nor collectively have a legal duty to seat Santorine contrary to its own bylaws or State law.

Santorine seeks to have this Court affirm a mandate that the OCREC place Dolph Santorine on the committee as the representative of Magisterial District 2. Unfortunately, in addition to the arguments set forth above, this Court has specifically ruled that the Court cannot do so and the seminal case on the issue is actually cited within the WVSEC bylaws (See *State ex rel. Zagula v. Grossi*, 149 W.Va. 11, 19, 138 S.E.2d 356, 361 (1964), which provides inter alia:

“it is a well settled principle that political committees have very broad powers in matters of party regulation, and the courts, respecting that power, seldom find basis of justification for interference therewith. (citations omitted)

Santorine has failed to establish a clear legal right to the relief sought, cannot establish that the OCREC had a legal duty to do that which Santorine sought as relief, and most importantly the evidence adduced at the hearing demonstrates that Santorine failed to avail himself of alternative remedies to obtain the relief sought. The above factual and legal arguments unequivocally support Respondent's position that Santorine cannot establish a clear legal right to trigger mandamus relief and the Circuit Court abused its discretion in granting the relief.

D.

Santorine had alternative and adequate remedies which he refused to pursue or accept.

To prevail on a writ of mandamus, three essential elements must co-exist and be satisfied, the last of which is that no other alternative remedy was available to Santorine. Attached to Santorine's complaint is a letter dated May 18, 2022, which the OCREC sent to Dolph Santorine explaining his options to be seated in the proper Magisterial District on the OCREC. That correspondence specifically provided that: [Appendix p. 239]

"Notwithstanding, the Committee's decision not to seat you on the Ohio County Republican Executive Committee in Magisterial District 2 does not preclude you from seeking an appointment to fill the vacancy in Magisterial District 1. The newly elected Committee will be accepting written letters of intent to fill all the vacant positions not filled by the election. Should you wish to be considered for an appointment to that seat, you are certainly free to send your letter of intent and request to fill the vacancy in Magisterial District 1 on or before June 8, 2022, to my email and I will forward it to the committee for further processing.

The newly elected committee will meet and elect officers soon. The opportunity to fill all vacancies will be open to all Ohio County residents who meet the residency requirements under the same terms. As

conservatives, we seek to abide by the letter of the law but do not seek to preclude your efforts to contribute to the party.

Santorine failed to avail himself of an alternative remedy to achieve the relief sought in his petition and instead opted for litigation as well as seek fees and costs from the Committee, a claim which is not supported in law. *See Graf v. Frame*, 352 S.E.2d 31 (W. Va. 1986), *Syllabus Pt. 5*, wherein this Court stated that "[o]rdinarily, in mandamus proceedings, costs [and reasonable attorney fees] will not be awarded against a public officer who is honestly and in good faith endeavoring to perform his duty as he conceives it to be." Santorine's testimony that he would not have prevailed on such an application is without merit as the test is not whether he would have prevailed but whether an alternate remedy was available. Santorine's speculation that he would not have prevailed is contrary to the record which specifically indicates offers to place him on the OCREC.

Santorine was provided a remedy that was fully commensurate with the mandamus relief he seeks. By his own admission, he failed to avail himself of the alternative of applying for the vacant position where his physical address is in Magisterial District 1. Instead, Santorine chose to file a Complaint for Mandamus relief wherein not a single element could be proven or was proven.

CONCLUSION

Santorine failed to prove any of the three elements required for a mandamus relief much less that any of them co-existed in this case. As such, the Circuit Court's order granting mandamus relief must be reversed.

Statement Regarding Oral Argument

If the Court determines that oral argument is necessary, this case is appropriate for a Rule 19 argument and disposition by memorandum decision.

Respectfully submitted,

By:

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CERTIFICATE OF SERVICE

I, Elgine Heceta McArdle, do hereby certify that a copy of the foregoing *APPELLANTS BRIEF* was served upon the below listed parties via ELECTRONIC FILING this 5th day of December, 2022:

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