

2000 Mich. App. LEXIS 1980, *

RAY ANTHONY ANDERSON and KENNETH N. HYLTON, JR., Plaintiffs-Appellees, v WAYNE COUNTY CLERK, Defendant-Appellee, and KEN HAYDEN a/k/a KENNETH HAYDEN, and ROSEMARY PARKS, Defendants, and LAMAR LEMMONS, JR., Defendant-Appellant.

No. 213191

COURT OF APPEALS OF MICHIGAN

2000 Mich. App. LEXIS 1980

February 18, 2000, Decided

NOTICE: [*1] IN ACCORDANCE WITH THE MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

PRIOR HISTORY: Wayne Circuit Court. LC No. 98-816293-AW.

DISPOSITION: Affirmed.

CORE TERMS: candidate, election, writ of mandamus, clerk, ballot, campaign contributions, legal duty, accepting, abuse of discretion, legal right, statutory definition, irreparable injury, documentation, electorate, injunction, enjoining, residency, notice, false information, public office, extraordinary remedy, properly issued, adequate remedy, purpose behind, injunctive relief, imminent danger, non-discretionary, reconsideration, soliciting, punishable

JUDGES: Before: O'Connell, P.J., and Murphy and Talbot, JJ. William B. Murphy concurring.

OPINION

PER CURIAM.

Defendant-appellant ("appellant") appeals as of right from an order granting plaintiffs' request for a writ of mandamus ordering the Wayne County Clerk to remove appellant's name from an election ballot and enjoining appellant from holding himself out as a candidate in the election or accepting campaign contributions. We affirm.

Plaintiffs, who were candidates for the 1998 election to the state house of representatives, sought to compel the Wayne County Clerk to disqualify appellant from being a candidate in that election, alleging that he provided false information in his affidavit of identity. Appellant had listed an address on the affidavit that plaintiffs argued was not his residence. The trial court issued the writ, ordering the clerk to remove appellant's name from the list of certified candidates. The court also enjoined appellant from holding himself out to the public [*2] as a candidate or from accepting or soliciting campaign contributions for the election.

Appellant argues that the trial court improperly granted the writ of mandamus. We review the

decision whether to grant a writ of mandamus for an abuse of discretion. *In re MCI Telecommunications Complaint*, 460 Mich 396, 443-444; 596 NW2d 164 (1999). A writ of mandamus is an extraordinary remedy, whereby a court compels a public officer to perform a clear legal duty. *Lee v Macomb Co Bd of Comm'rs*, 235 Mich App 323, 331; 597 NW2d 545 (1999). The writ is properly issued where the plaintiff demonstrates that "(1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial in nature, and (4) the plaintiff has no other adequate legal or equitable remedy." *White-Bey v Dep't of Corrections*, Mich App ; NW2d (Docket No. 213395, issued 12/28/1999), slip op at 2.

Plaintiffs alleged that the address listed by appellant on his affidavit of identity was not his residence. Under MCL **168.558(1) [*3]** ; MSA 6.1558(1), a candidate filing a nominating petition or a filing fee must also file an affidavit of identity, containing the candidate's name and address, among other information. Making a false statement in the affidavit is punishable as perjury. *Id.* The purpose behind the affidavit of identity is "to insist upon full and complete identification of candidates for public office in order to provide the electorate with the information necessary to cast their ballots effectively for the candidates of their choice." *Sullivan v Secretary of State*, 373 Mich 627, 631; 130 NW2d 392 (1964). Providing false information on an affidavit of identity does not further the purpose behind the statutory requirement. It is also punishable as a felony. Therefore, the providing of a false address on the affidavit of identity clearly does not constitute compliance with the statute.

Furthermore, MCL **168.558(1)**; MSA 6.1558(1) also provides that the clerk "shall not certify to the board of election commissioners the name of a candidate who fails to comply with this section." Therefore, if appellant did not comply with the statute, the clerk owed [*4] a clear, non-discretionary legal duty to remove his name from the election ballot. Plaintiffs, as other candidates in the election, certainly had an interest in ensuring that only properly certified candidates were placed on the ballot. They had a clear legal right to the performance of the clerk's duty to certify only the names of candidates who complied with the statute. Due to the exigencies of an impending election, plaintiffs had no other adequate remedy at law or in equity. Therefore, if appellant provided a false address on the affidavit, the court properly issued the writ of mandamus.

Appellant argues that the trial court incorrectly determined that he provided a false address on the affidavit of identity. Appellant contends that it was improper for the court to employ the definition of "residence" contained in MCL 168.11(1); MSA 6.1011(1) in determining whether he provided a false address. MCL 168.11(1); MSA 6.1011(1) defines "residence" as "that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging." However, the statutory definition expressly does not alter judicial [*5] interpretation of the term "residence." Appellant argues that the trial court should have used a judicial definition different from the statutory definition, but appellant does not identify exactly what definition should have been used. Indeed, our Court has previously employed the statutory definition in examining an affidavit of identity. See *Gallagher v Keefe*, 232 Mich App 363, 372; 591 NW2d 297 (1998). The instant case is similar to *Gallagher*, where the defendant listed an address on her affidavit of identity that was not her residence, when she in fact resided in a different district. This Court held that she did not meet the residency requirement of MCL 46.411; MSA 5.359(11).

In any event, under any reasonable understanding of residency, plaintiffs presented substantial evidence that appellant did not reside at the address he listed on the affidavit of identity. Appellant listed 8500 E. Outer Drive, Detroit, as his address in the affidavit. The Detroit Police Department conducted an investigation into this address and determined that it was vacant. The owner of the property submitted an affidavit stating that he never [*6] received any payments of rent from appellant and that appellant did not enter into a lease until after the date the affidavit of identity was filed. Mail returned from the address as vacant was presented to the court. Phone records

indicated that the phone number listed on the affidavit did not correspond to the address. Also, photographs of the address were admitted, showing a lack of evidence of habitation at the house. The front door was padlocked, the rear door was boarded up, some windows were broken, and there was no observable furniture. Moreover, appellant was later provided an opportunity to present documentation that he lived at the address listed on the affidavit, but he failed to appear with the documentation. Under these circumstances, the trial court properly concluded that the address listed on appellant's affidavit of identity was a false address. Therefore, the court did not abuse its discretion in issuing the writ of mandamus.

Appellant also argues that he was denied due process of law and his right to seek election to public office because he was not given adequate notice of the proceedings against him and was not provided an opportunity to be heard. However, appellant's [*7] candidacy for office was terminated pursuant to statutory authority. We also conclude that appellant was not denied due process.

In a civil case, due process "generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). In this case, the record reflects that appellant received notice of the proceedings and was given an adequate opportunity to be heard. Service of process was made by mail to the address appellant listed on the affidavit of identity and by posting in the city-county building. Additionally, the record indicates that appellant's son was present at the initial hearing on June 10, 1998, where the court ordered the clerk to investigate the address. The record also indicates that appellant, or possibly his son, was present at the June 17, 1998 hearing where the court issued the writ of mandamus. Furthermore, appellant testified at a hearing for reconsideration that he did reside at the address listed on the affidavit. The court stated that, due to the equivocal nature of appellant's testimony, [*8] he would allow appellant to return the next day with documentation to show his residency. However, appellant failed to timely appear the next day, and his counsel withdrew the motion for reconsideration. ¹

FOOTNOTES

¹ Appellant contends on appeal that he was merely thirty minutes late for the hearing. However, appellant then waited two weeks before filing a motion for a new trial, informing the trial court of his reason for being late for the hearing.

Appellant also argues that the writ of mandamus and injunction should not have been issued because there was no showing of fraud. However, the action as pleaded did not require a showing of fraud, but rather, only that plaintiffs had a clear legal right to the performance of a clear, non-discretionary legal duty. Appellant's reliance on cases setting forth the elements of actionable fraud is therefore misplaced.

Finally, appellant argues that the trial court erred by enjoining him from holding himself out as a candidate and accepting or soliciting campaign contributions. [*9] Appellant contends that there was no showing of a danger of irreparable injury to merit injunctive relief. We review the trial court's decision whether to grant injunctive relief for an abuse of discretion. *Kernen v Homestead Development Co*, 232 Mich App 503, 509-510; 591 NW2d 369 (1999). We find no abuse of discretion in this case.

"Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Jeffrey v Clinton Twp*, 195 Mich App 260, 263-264; 489 NW2d 211 (1992). Injunctive relief may be appropriate in the context of election law, where the exigency of a pending election often renders

any legal remedy inadequate. See, e.g., *Treasurer of the Committee to Elect Gerald D Lostracco v Fox*, 150 Mich App 617, 621; 389 NW2d 446 (1986). Here, the court did not abuse its discretion in enjoining appellant from holding himself out as a candidate or accepting campaign contributions. The court found that appellant's name should not be on the ballot and issued a writ of mandamus to [*10] remove his name from the ballot, resulting from appellant's failure to comply with the requirements of the affidavit of identity. The public policy behind this requirement is to provide complete and accurate information about candidates to the electorate. *Sullivan, supra* at 631. The court's injunction only assured that the electorate would not be misled about who the properly certified candidates were. Moreover, had appellant continued to hold himself out as a candidate, plaintiffs faced the danger of a loss of votes. This constitutes a real and imminent danger of irreparable injury. *Lostracco, supra* at 621. Because plaintiffs demonstrated "an actual or threatened invasion of [their] right to seek office in a fair election," an injunction was a proper remedy in this case. *Id.*

Affirmed.

/s/ Peter D. O'Connell


/S/ Michael J. Talbot

CONCUR BY: William B. Murphy

CONCUR

I concur in result only.

/s/ William B. Murphy

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