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COMMON PLEAS COURT

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MARGIE MURPHY MILLER  
CLERK OF COURTS  
ALLEN COUNTY, OHIO

IN THE COMMON PLEAS COURT OF ALLEN COUNTY, OHIO

THE STATE OF OHIO ON RELATION OF  
ALICE DONAHUE

: CASE NO. CV2021 0098

VS

: DECISION

THE ALLEN COUNTY BOARD  
OF ELECTIONS

: JUDGE JAMES BROGAN  
(by assignment)

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This case arises out of the election for Mayor of the City of Lima in November 2021. Ms. Elizabeth Hardesty (hereinafter “Hardesty”) is a candidate for Mayor of Lima. Hardesty submitted her petition of candidacy to the Board of Elections on February 3, 2021. On February 18, 2021, Barton H. Mills (hereinafter “Mills”), submitted a protest to the Board regarding Hardesty’s residency. Pursuant to R.C.§3513.05, the protest was filed in writing and was submitted one day prior to the statutory protest deadline of February 19, 2021. Thereafter, the Board scheduled a hearing regarding the protest for March 4, 2021. The primary was to be held on May 4, 2021.

The issue of the hearing was whether Hardesty qualified for candidacy pursuant to Section 72 of the Charter of the City of Lima which requires all elected officers of the City to be residents and electors of the City for at least (6) six months before the last date on which nominating petitions can be filed, in accordance with the relevant provisions of the Charter of the City of Lima, which in this case was February 3, 2021. Six months prior to February 3, 2021 was August 3, 2020, which is the applicable timeframe for determining Hardesty’s residency.

On March 4, 2021 Mills and Hardesty presented evidence as to whether Hardesty qualified as a candidate for Mayor. Following the presentation of evidence, the Board rejected Mills' protest. On April 1, 2021 Mills filed his first complaint wherein he sought a writ of prohibition from this Court to prevent the Board from placing Hardesty on the ballot on election day May 4, 2021. On April 14, Mills amended his complaint to add Donahue as a relator seeking the same relief.

On April 28, 2021, this Court conducted a pretrial conference with counsel for all parties. This Court pointed out that the respondents still had additional time to respond to the amended complaints, but early voting had already begun in the primary election on April 6, 2021. This Court indicated the petitioner's request for a writ of prohibition for the primary election of May 4, 2021 would probably be denied because of the defense of laches. The election took place on May 4, 2021 and Elizabeth Hardesty was elected to be a candidate for mayor in the general election on November 3, 2021. The petitioners' request for the writ of prohibition was thereby effectively denied.

Once the primary election was over, the Mills and Donahue petitions became moot since they only challenged Hardesty's qualifications for the primary election. On May 21, 2021 the petitioners filed a motion for leave to file a third amended complaint. This time the petitioners' sought a writ of prohibition prohibiting the Board from placing Hardesty's name on the November general election ballot or in the alternative a declaration that Hardesty is not qualified to be Mayor of Lima. The Board opposed the motion to amend the original petition. This Court granted the petitioner's third motion to amend on June 9, 2021.

We are of course confined to the record that the Board received at the Board hearing since it is its discretion this Court is reviewing. The relevant period for Hardesty's qualifications as a resident elector is the six months next proceeding the election which was August 3, 2021.

At the Board hearing Hardesty submitted as Exhibit A her own affidavit regarding her qualifications. It reads as follows in pertinent part:

1. My permanent address and residence has always been 341 Lincoln Avenue, Lima, Allen County, Ohio.
2. Despite where my job has taken me throughout the past 20 years, I have never put down roots or intended to make my residence anywhere but Lima, Ohio.
3. I registered to vote the day I became eligible and have voted in every single election in Allen County, Ohio, either by absentee or in-person, including by in-person voting for the November 2020 election.
4. The Allen County Board of Elections has mailed an absentee ballot to me every time I have requested one and my residence has never been previously questioned.
5. Over the past 15 years, my employment as an Exploration Geologist has required my absence from my permanent residence for periods of time, both short and long, but I have always intended and have always returned to my permanent residence in Lima, Ohio.
6. Regardless of how long I have been absent from Lima for any jobs, I always intended to return to my family residence on Lincoln Avenue.

Hardesty testified at the hearing that she currently has a Pennsylvania drivers license. She stated her automobile is presently registered in Texas. She testified she currently has bank accounts in Lima which she has had since she was 17 or 18 years of age. She testified she has a durable power of attorney, a living will, and a will all of which were executed in Ohio. Hardesty

testified that her employer Chemostrat is located in Houston, Texas and she has been working for the lab in Houston pro bono since the pandemic happened. (T. 32) She testified she hasn't worked from the Houston location since August of 2020. (T. 33)

Hardesty testified she has received Allen County absentee ballots at places that she has worked in London, Pittsburg, and Houston. She also testified she has occasionally voted in person (T. 35) She testified she has four safety deposit boxes, one in Citizens National Bank in Lima, two in Pittsburg, and one in Houston. She stated she opened a Chase Manhattan bank account in Lima and she goes to Chase in Houston and other cities. She stated she has a PNC bank account in Pittsburg because Chase was not in Pittsburg when she worked there.

Hardesty testified she lost her job in March 2020 but did help out at Chemostrat. She testified she did not travel after she was laid off in Texas because of Covid restrictions. She testified that when flights were back up in October she has spent the majority of her time here. (T. 47) There was no evidence presented that Hardesty ever voted anywhere but in Lima, Ohio.

Mills presented evidence that Hardesty posted on her Facebook account on January 9, 2021 the she was glad to be home in Houston with her cat. He also presented evidence that Hardesty listed her home in on Facebook as Houston, Texas on February 1, 2021 but then changed it on February 2, 2021 to "lives in Lima, Ohio."

In their third amended complaint, Mills and Donahue challenged Hardesty's qualifications to be on the ballot for the general election on November 2, 2021. They claimed that by placing Hardesty on the general election ballot the Board had acted in clear disregard of applicable legal provisions and thereby abused its discretion. The petitioners ask this Court to

prohibit the Board from placing Hardesty on the general election ballot and to declare that Hardesty is not qualified to be Mayor of Lima.

Both defendants then moved to dismiss the petitioner's third complaint. They cite the Ohio Supreme Court's decision in *Whitman v. Hamilton County Board of Elections*, 97 Ohio St. 3d 216, 2002-Ohio-5923. In that case the Supreme Court in a per curiam opinion cited with approval an Ohio Attorney General Opinion that after the primary election, a county board of elections has no authority to remove from the general election ballot the name of a candidate, who was elected at the primary election. The Court noted that Paragraph one of the opinion provides "any determination by a board of elections as to validity of a person's candidacy must be made well before the primary election" *Id* at 2-206. By not challenging Hardesty's qualifications in a timely manner for the primary, the relators are foreclosed now from challenging her candidacy for the general election.

It is fundamental that extreme diligence and promptness of action are required in election cases. *State ex rel White v Franklin Cty Bd of Elections* (1992) 6J Ohio St 3d 45,49. This is extremely important in light of the advent of early voting which occurred here on April 6, 2021. The hearing transcript was filed on April 1, 2021.

The qualifications to be an elected officer of the City of Lima are set out in Section 72 of the City of Lima Charter, as amended on November 5, 1974 and May 7, 2013 as follows:

"(A)...all elected officers of the City of Lima shall be residents and electors of the City for at least 6 months before the last date on which nominating petitions can be filed in accordance with this charter..."

O.R.C. §3503.02 which is styled "Residence determination rules" further defines the definition of resident:

All registrars and precinct election officials, in determining the residence of a person offering to register or vote, shall be governed by the following rules:

“(A) That place shall be considered the residence of a person in which the person’s habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.

(B) A person shall not be considered to have lost the person’s residence who leaves the person’s home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

(H) If a person goes into another state and while there exercises the right of a citizen by voting, the person shall be considered to have lost the person’s residence in this state.”

Hardesty argues that the coupling of one’s place of voter registration with the definition of a resident is a less indication that both the Lima Charter and the Ohio legislature consider the place of voter registration a significant indication of one’s residence. Hardesty notes that Section 72 of the Charter does not use the word “live” in the City of Lima in the colloquial sense of the word. The Relators argue that the respondents interpretation of the Charter and the term “resident” makes entire sections of the Charter nonsensical. (see last filing June 21, 2021)

The Board was clearly acting in a quasi-judicial capacity when it conducted the March 4, 2021 hearing.

The second prong requires the Court (or Board, as is the case here) exercise power that is outside the bounds of their jurisdiction. The courts will look at “whether [the Board] ‘acted fraudulently or corruptly, abused its discretion, or clearly disregarded applicable law.’” *State ex rel. Miller v. Hamilton Cty, Bd. of Elections*, 2021-Ohio-831, ¶ 28, quoting *State ex rel. Brown v Butler Cty. Bd. of Elections*, 109 Ohio St. 3d 63, 2006-Ohio-1292, 846 N.E.2d 8, ¶ 23. These are four distinct arguments which must be separately raised. Here, the Petitioners have alleged that the Board acted “in clear disregard of applicable legal provisions, and thereby abused its

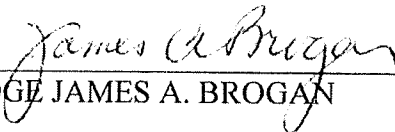
discretion” Petitioner Donahue’s Complaint in Prohibition, ¶ 14; *See also*, Petitioner Mill’s Complaint in Prohibition, ¶ 4. The allegations made by Petitioners fall under the umbrella of clearly disregarding applicable legal provisions, which is distinct from abuse of discretion. When presented with an allegation that a Board has acted in clear disregard of applicable legal provisions, the courts look at whether the Board applied the appropriate provisions of law, not whether they abused their discretion when weighing the evidence, or acted fraudulently, or corruptly. *State ex rel. Husted v. Brunner*, 123 Ohio St 3d 288, 2009-Ohio-5327. The Relators assert that the Board misapplied the term “resident” as defined in the Charter and the statute. This Court finds they did not do so. The Board also did not abuse its discretion in crediting Hardesty’s testimony and evidence. Abuse of discretion implies that the Board engaged in “unreasonable, arbitrary, or unconscionable conduct.” *State ex rel. O’Beirne v. Geauga County Bd of Elections*, 80 Ohio St. 3d 176, 179, 685 N.E. 2d 502, 505, 1997-Ohio-348. The Ohio Supreme Court has held that the Court will not substitute its judgment for a board of elections, even if conflicting evidence is presented to a board of elections. *State ex rel. Wolfe v. Delaware County Bd. of Elections*, 88 Ohio St. 3d 182, 185, 724 N.E. 2d 771, 774, 2000-Ohio-294, *State ex rel. O’Beirne v. Geauga Cty of Bd of Elections* (1997), 80 Ohio St. 3d 176, 181, 685 N.E. 2d 502, 506; *State ex rel. Kelly v. Cuyahoga Cty Bd of Elections* (1994), 70 Ohio St. 3d 413, 414, 639 N.E. 2d 78.

Hardesty testified that while she was in Texas until October 2020, it was due to the travel restrictions caused by COVID-19 but her intent was always to return to her home in Lima which was corroborated by her voting record. There is no evidence in this record that the Board of Elections of Allen County abused its discretion in placing Elizabeth Hardesty on the general election ballot for November 2, 2021.

The Respondents have each filed motions to dismiss the relators third amended complaint. Because they have submitted material outside the pleadings this Court will convert their motions to motions for summary judgment pursuant to Civ. R. 12.

In requesting the writ of prohibition the relators were required to demonstrate that the Board of Elections abused its discretion in deciding that Hardesty was qualified to be on the ballot for Mayor in the general election. They have failed to do so. Accordingly, the Relators request for a Writ of Prohibition is hereby Denied and Summary Judgment is hereby entered in favor of the Respondents, Board and Elizabeth Hardesty upon their motions.

**IT IS SO ORDERED. THIS IS A FINAL APPEALABLE ORDER.**

  
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JUDGE JAMES A. BROGAN

The clerk of this court shall forward a file stamped copy of this judgement Entry by regular mail to each attorney of record and each party not represented by counsel. The fact of mailing shall be entered on the docket and charged as costs.