

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000352-MR

BONNIE HENDERSON

APPELLANT

v. APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE SAM H. MONARCH, JUDGE
ACTION NO. 98-CI-00376

SAM HODGES, MARTHA BROWN, CITY OF
CLARKSON, ARVIL DUNN, JACK GOLDEN,
SHARON GUFFEY, AND MARGARET WOOSLEY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, JOHNSON AND MILLER, JUDGES.

JOHNSON, JUDGE: Bonnie Henderson has appealed a judgment of the Grayson Circuit Court upholding the November 1998 election for the office of Mayor of the City of Clarkson, a city of the sixth class located in Grayson County. Henderson finished second to Sam Hodges, and Arvil Dunn finished third. Henderson initiated an election contest alleging (1) that voter records had been kept in such a way that there could be no assurance that only qualified voters voted in the City election; and (2) that Hodges had been involved in corrupt practices that should have

disqualified his candidacy for mayor. We affirm the decision of the circuit court that upheld the validity of the election.

The City of Clarkson is contained completely within Grayson County's Clarkson voting precinct, more specifically identified as A103. The voting precinct also contains Grayson County voters who are not residents of the City of Clarkson and therefore not eligible to participate in the City elections. Review of plaintiff's exhibit 2 indicates that 1,438 voters are registered to vote in the precinct. By letter intended as a follow-up to her testimony before the trial court, the Grayson County Clerk indicated that 654 of these voters were coded as eligible to vote in the elections in the City of Clarkson. In the contested November 1998 election, Hodges received 161 votes, Henderson received 135 votes, and Dunn received 44 votes.

On appeal, Henderson alleges that the voter registration book that was maintained in the voter precinct and the procedures that were followed by the election officers were so deficient or contrary to statutory law as to justify the setting aside of the election. Henderson claims that the voter registration book was so poorly maintained that many voters not entitled to vote in the election for Mayor of the City of Clarkson could have voted in that election and that the precinct officers made inadequate efforts to determine which voters were entitled to vote in the City election.

In preparation for the November 1998 election, the Grayson County Clerk requested from the City a list of eligible voters in accordance with KRS 116.200. The City responded with a

list of utility service subscribers. Persons receiving such services who were not City residents were specially coded on the list. The county clerk testified that, being aware of the limitations of the City's response, the Board of Elections attempted to integrate that list with other listings including the records prepared to support 911 emergency services. Their efforts were not wholly successful as demonstrated by the fact that 23 voters who appeared at the polls on election day were improperly coded as being qualified to vote in City elections and ten other voters who appeared at the polls were improperly coded as not being qualified to vote in City elections. It is obvious that the precinct roster contained errors. Perhaps a better one could have been prepared with more assistance from the City of Clarkson. However, the question presented to the trial court was whether these errors affected the fairness of the election.

Henderson also complains about the efforts made by the election officials to properly verify who was entitled to vote in the City elections. Unfortunately, in attempting to make this point, Henderson's brief occasionally resorts to somewhat fanciful recitations of the evidence presented. On page eight of the brief, Henderson states: "As Ms. Manion testified, whether you were permitted to vote in the election was pretty much based upon an honor system." Review of the record indicates that this statement was actually made by counsel for Henderson. The testifying election officer did not agree with the statement. The exchange occurred during a lengthy questioning concerning the election officers' efforts to identify voters and insure that

they were properly able to cast their ballots. On page nine of the brief, counsel for Henderson states that Wade and Lashell Robin Lashley voted in the City election. Their testimony was that they voted at the Clarkson precinct (probably improperly due to their move out of the precinct) but that they did not vote in the City election. Tammy Meredith and Lori Powell were allowed to vote in the City elections because the address given on the precinct roster was clearly within the City of Clarkson. Jack Durbin did not testify that the election officials were going to allow him to vote even though he was not a City resident. Rather, he merely testified that from his observation, the voting machine was reset for him to vote as it was for every voter.

Henderson testified that Ethel Skaggs, who she brought to the polling place, was allowed to vote without signing the precinct roster. But, Henderson's testimony also recounts the confusion that occurred in attempting to assist this 97-year-old lady and her daughter in properly casting their ballots.

The standard of review of a contested election by the circuit court and the appellate court is set forth in Kentucky Revised Statutes (KRS) 120.165(4):

If it appears from an inspection of the whole record that there has been such fraud, intimidation, bribery or violence in the conduct of the election that neither contestant nor contestee can be judged to have been fairly elected, the Circuit Court, or an appellate court, on appeal, may adjudge that there has been no election. . . .

The precinct roster for the Clarkson precinct was not in perfect shape on election day 1998. But, it appears that the election officers and the voters cooperated to make the best of

occasionally confused situations. The trial court found that only two voters (an elderly couple living on the edge of the City) were improperly allowed to vote in the City elections. Furthermore, no eligible voters were denied the opportunity to vote in the City elections. The trial court's findings in this regard are not clearly erroneous, and thus, must be affirmed.¹ Therefore, we cannot say that the casting of two erroneous votes tainted the election under the statutory standards set out in KRS 120.165(4).

Henderson also alleges that Hodges participated in corrupt practices by knowingly soliciting the votes of four individuals not legally entitled to vote in the City of Clarkson because they were not residents of the City. In the case of Dennie and Jodie Wilkerson, the trial court found that they were entitled to be considered residents of the City of Clarkson, but had not actually voted in the November 1998 election. This Court does not need to review the actual question of their entitlement to vote in the City since that did not occur. The fact that the trial court could not definitively say that these two citizens were not residents of Clarkson demonstrates that Hodges could reasonably have believed that they were residents of the City when he witnessed their signatures on the voter registration cards.

The trial court found that Charles and Ester Manion had improperly voted in the City election in November 1998, since the Manions were not residents of the City. However, testimony

¹Kentucky Rules of Civil Procedure 52.01.

demonstrated that this elderly couple lived on a street which had been recently annexed into the City, although the land on which their house sat had not been included in the annexation.

Testimony further demonstrated considerable confusion as to what had been intended and what was actually accomplished by the annexation. The trial court did not err in finding that Hodges had no notice of the Manions' nonresident status when he requested their vote in the election.

Henderson cites the recent Supreme Court the case of Ellis v. Meeks, Ky., 957 S.W.2d 213 (1997). Meeks involved activities by a candidate within the polling place itself which was construed as improper solicitation of votes. There was no conduct by Hodges in this case which could be regarded as approaching the standard of Meeks.

The judgment of the Grayson Circuit Court upholding the election of Sam Hodges as Mayor of the City of Clarkson is hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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