

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ELEANORA C. BELL,	:	
Appellant	:	
	:	
v.	:	No. 801 C.D. 1999
	:	Argued: April 21, 1999
LEHIGH COUNTY BOARD OF	:	
ELECTIONS and CITY OF	:	
ALLENTOWN and THOMAS W.	:	
BURKE, DANIEL SCOTT	:	
ARMSTRONG, PATRICIA M.	:	
ENGLER, RUSSELL W. PLATEK	:	
and R. SCOTT UNGER	:	

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE JOSEPH T. DOYLE, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge

OPINION BY JUDGE FRIEDMAN FILED: April 26, 1999

Eleanor C. Bell (Bell) appeals from an order of the Court of Common Pleas of Lehigh County (trial court) denying Bell’s motion to preliminarily enjoin the Lehigh County Board of Elections (Board) from placing a voter initiative relating to the City of Allentown’s (City) Landlord Licensing Law (Ordinance) on the May 1999 election ballot. We affirm.

On November 25, 1998, five City voters, desiring to invoke the initiative process of the City’s Home Rule Charter (Charter),¹ submitted ninety-three petitions to the City clerk. The petitions contained more than 2,000

¹ Sections 1002 to 1009 of the Charter govern the initiative process. (S.R.R. at 70b-71b.)

signatures of registered City voters and requested that the proposed Ordinance be placed on the ballot at the next municipal election. On January 27, 1999, the City clerk certified to the Board that the City had obtained petitions containing the requisite number of signatures for placement of the proposed Ordinance on the May 1999 primary election ballot. The Board accepted the certification and, on March 17, 1999, agreed to place the proposed Ordinance on the May 18, 1999 primary election ballot.

Bell subsequently filed a complaint against the Board and the City (Board/City) seeking to have the trial court enjoin the placement of the proposed Ordinance on the May 1999 primary ballot. Bell's complaint contained four objections.

In Count I of the complaint, Bell argued that the provisions of the City's Charter that govern the initiative process are void pursuant to section 2962(a)(5) of the Home Rule Charter and Optional Plans Law (Home Rule Charter Law).² According to Bell, The Third Class City Code (Code),³ not the Charter, governs the initiative process, and the Board/City failed to apply the Code to the procedure here. In Count II of the complaint, Bell argued that sections 1030 and

² Section 2962(a)(5) of the Home Rule Charter Law, 53 Pa.C.S. §2962(a)(5), provides that with respect to the "conduct of elections," a home rule charter shall not give any power or authority to the municipality that is contrary to, or in limitation or enlargement of, powers granted by statutes that are applicable to a class of municipalities.

³ Act of June 23, 1931, P.L. 932, as amended, 53 P.S. §§35101-39701.

1050 of the Code,⁴ which apply here, prohibit the use of the initiative process for a proposed ordinance that pertains to the preservation of the public health and safety. Bell then asserted that because the purpose of the proposed Ordinance is to protect the public health and safety, the Board/City should have disallowed the use of the initiative process here. In Count III of the complaint, Bell asserted that, even if the initiative process in the City's Charter applies here, and not the process set forth in the Code, the circulators of the petitions failed to comply with the requirement that a circulator state the number of signatures on the petition. Finally, in Count IV of the complaint, Bell argued that the adoption of legislation through the initiative process violates the due process rights of persons opposed to the legislation. Bell maintained that the initiative process deprives opponents of the legislation of their right to be heard by the voters. (S.R.R. at 4b-13b.)

The Board and the City each filed answers to Bell's complaint. (S.R.R. at 39b-51b.) On March 18, 1999, the trial court granted leave to intervene to Thomas W. Burke, Daniel Scott Armstrong, Patricia M. Engler, Russell W. Platek and R. Scott Unger. (S.R.R. at 52b.) A hearing was held before the trial court on March 19, 1999, and, on March 23, 1999, the trial court issued an order

⁴ Section 1030 of the Code, 53 P.S. §36030, provides that any proposed ordinance may be submitted to a city council by a petition signed by the electors of any city, except proposed ordinances relating to "any matter, subject or thing, which is not the subject of a referendum vote as provided in [section 1050 of the Code]."

Section 1050(c) of the Code, 53 P.S. §36050(c), provides that no ordinance passed by a city council shall go into effect before ten days from the time of its final passage, except "[o]rdinances for the preservation of the public peace, health, morals, safety, and in the exercise of the police powers of the city government, and for the prevention and abatement of nuisances."

denying Bell a preliminary injunction. (See Appellant’s brief at 3.) On April 8, 1999, the trial court issued an opinion in support of its March 23, 1999 order. (See Trial court op. at 2 n.1.)

On appeal to this court,⁵ Bell argues: (1) section 2962(a)(5) of the Home Rule Charter Law does not permit the City to alter the initiative process in its Charter; (2) the initiative process set forth in the Code, which applies here, precludes this particular initiative; (3) even if the City’s Charter applies in this case, its provisions governing the initiative process were not followed; and (4) the adoption of legislation by the initiative process violates the due process rights of the opponents to the legislation.

Because we believe that the trial court thoroughly analyzed these issues and correctly answered them, we affirm the trial court’s March 23, 1999 order and adopt the well-reasoned opinion of Judge Alan M. Black in Bell v. Lehigh County Board of Elections, Court of Common Pleas of Lehigh County, Civil Division, No. 99-E-15, filed April 9, 1999.

ROCHELLE S. FRIEDMAN, Judge

⁵ Our scope of review in this case is limited. On appeal from a decree denying a preliminary injunction, we will not inquire into the merits of the controversy but will, instead, examine the record only to determine if there were any apparently reasonable grounds for the action of the trial court. James T. O’Hara, Inc. v. Borough of Moosic, 611 A.2d 1332 (Pa. Cmwlth. 1992) (citing Lutz Appellate Printers, Inc. v. Department of Property and Supplies, 472 Pa. 28, 370 A.2d 1210 (1977)).

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ORDER

AND NOW, this 26th day of April, 1999, the order of the Court of Common Pleas of Lehigh County, dated March 23, 1999, is affirmed.

ROCHELLE S. FRIEDMAN, Judge