

[J-48-2014]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: NOMINATION PETITION OF : No. 29 MAP 2014
ROBERT GUZZARDI FOR THE :
REPUBLICAN NOMINATION FOR : Appeal from the order of the
GOVERNOR OF PENNSYLVANIA IN THE : Commonwealth Court at No. 158 MD 2014
REPUBLICAN PRIMARY OF MAY 20, : dated April 15, 2014.
2014 :
: SUBMITTED: April 21, 2014
:
APPEAL OF: RICHARD W. STEWART, :
ROBERT K. ROBINSON, RICHARD :
TEMS AND DONNA M. COSMELLO :

DISSENTING STATEMENT

MR. JUSTICE BAER

FILED: May 1, 2014

I dissent from the Court's per curiam order striking Robert Guzzardi from the primary ballot for the Republican Party nomination for the Office of Governor. Citing In re Nomination of Paulmier, 937 A.2d 364 (Pa. 2007), the Court concludes that the Commonwealth Court erred by applying nunc pro tunc principles to Guzzardi's late filing of his statement of financial interests with the Ethics Commission. Unlike the instant case, however, this Court's decision in Paulmier did not involve a request for nunc pro tunc relief. Moreover, the Commonwealth Court has invoked equity to afford relief from otherwise fatal defects in a nomination petition where the candidate demonstrated a non-negligent reason for a late filing. See In re Howells, 20 A.3d 617 (Pa. Cmwlth.), aff'd per curiam, 28 A.3d 915 (Pa. 2011). I would reach the same conclusion here because the Commonwealth Court conducted an evidentiary hearing and made findings of fact, which are supported by the record, establishing that Guzzardi was ready, willing, and able

to file his statement of financial interests with the Ethics Commission, and only failed to do so because a Department of State employee told him that such filing was unnecessary.

Additionally, I disagree with the observation in the Court's per curiam order that "the Commonwealth Court erred in applying nunc pro tunc constructs to excuse what it perceived to be a non-negligent failure" Slip Op. at 1. Respectfully, I do not view this case as involving a perception of non-negligent failure; rather, this case involves specific factual findings supported by evidence of record. I agree with the Commonwealth Court that what occurred here was a breakdown in the administrative process. To strike this candidate's name from the ballot is akin to denying candidates their right to appear on the ballot under circumstances where there was some accident or natural disaster preventing candidates from entering the filing office.

Accordingly, I dissent.

Madame Justice Todd joins.