Affirmed and Memorandum Opinion filed August 12, 2010.

In The

Fourteenth Court of Appeals

NO. 14-10-00322-CV

SHERYL SACHTLEBEN, Appellant

V.

PHILLIP BENNETT, Appellee

On Appeal from the 25th District Court
Guadalupe County, Texas
Trial Court Cause No. 10-0343-CV

M E M O R A N D U M O P I N I O N

Appellant, Sheryl Sachtleben, the Republican nominee for Guadalupe County Justice of the Peace, Precinct Two, appeals the denial of an injunction against Phillip Bennett, the Guadalupe County Democratic Party Chairman. *See* Tex. Elec. Code Ann. § 273.081 (Vernon 2010). Sachtleben sought to prevent certification of Edmundo Castellanos, the incumbent Precinct Two Justice of the Peace, as the Democratic nominee for that position, based on an insufficient number of signatures on his petition filed in lieu of the filing fee. We affirm.

Castellanos filed his application for a place on the ballot with Bennett, the party chair, on December 29, 2009, six days before the January 4 deadline. In lieu of the filing fee, Castellanos submitted a petition containing 59 signatures. *See* Tex. Elec. Code Ann. § 141.062 (Vernon 2010). The parties agree that a minimum of 53 signatures is required. *See* Tex. Elec. Code Ann. § 172.025(2)(B) (Vernon 2010). Bennett reviewed and accepted the application and petition, and he certified Castellanos's name on the primary ballot to the county's election administrator. *See* Tex. Elec. Code Ann. § 172.028 (Vernon 2010).

Sachtleben notified Bennett that she had concerns about the validity of Castellanos's petition. She complained that eight of the signatures on the petition were invalid, rendering the petition defective because it would then have less than the statutory minimum number of signatures.[1] Sachtleben challenged only the number of valid signatures on the petition; she did not challenge Castellanos's eligibility for the office. Bennett reviewed and rejected Sachtleben's challenge.

On February 11, 2010, Sachtleben filed a petition for writ of mandamus with the Fourth Court of Appeals, which was summarily denied.[2] *See In re Sachtleben*, 04-10-00104-CV, 2010 WL 653557 (Tex. App.—San Antonio Feb. 24, 2010, orig. proceeding) (mem. op.). In its opinion denying relief, the San Antonio court cited, without elaboration, *Brady v. Fourteenth Court of Appeals*, 795 S.W.2d 712, 714 (Tex. 1990). *Brady* held that resolution of the issues presented required factual determinations that could not be made by an appellate court in an original proceeding. *Id.*

[1] For a signature on a petition to be valid, "the signer, at the time of signing, [must be] a registered voter of the territory from which the office sought is elected or has been issued a registration certificate for a registration that will become effective in that territory on or before the date of the applicable election." Tex. Elec. Code Ann. § 141.063(a)(1) (Vernon 2010).

[2] The court of appeals denied relief February 11, 2010, the same day the petition was filed, but its opinion did not issue until February 24, 2010.

On February 12, 2010, Sachtleben filed an emergency motion in the trial court requesting injunctive relief. After a visiting judge was assigned to hear the case, on February 25, 2010, the trial court held a hearing on appellant's request. Sachtleben filed an unsigned First Amended Petition immediately before the hearing. The trial court permitted her to sign the petition, have it notarized, and have the court clerk file it during the hearing. At the conclusion of the hearing, the trial court denied the injunction, citing the Fourth Court of Appeals earlier denial of mandamus relief. After its ruling, the court permitted Sachtleben and her campaign manager to testify in an offer of proof about the challenge to the signatures on the petition. *See* Tex. R. Evid. 103(a)(2).

The trial court made findings of fact and conclusions of law. The trial court found that neither Bennett nor Castellanos were provided notice by Sachtleben. They were present at the hearing, however, in response to the court's notice, which Bennett received the evening before the hearing. The trial court found that Sachtleben first notified Bennett about her concerns regarding signatures on Castellanos's petition on February 3, 2010, more than a month after his application was filed.[3] The trial court further found that Castellanos was certified as a candidate "on a petition bearing only 51 valid signatures when a minimum of 53 valid signatures was required." The court also found that Sachtleben filed her motion for emergency relief on February 12, 2010, before the beginning of early voting.[4] In its sole conclusion of law, the court found that it was "bound by the decision of the Honorable 4th Court of Appeals." The trial court issued its ruling on March 5, 2010, three days after the primary election. Sachtleben filed a notice of appeal on March 10, 2010.[5]

As an initial matter, we consider our jurisdiction over this appeal. In Sachtleben's

[3] Sachtleben asserts that she notified Bennett about her concerns on January 29, 2010, but she has not raised an issue challenging the trial court's finding to the contrary. *See McGalliard v. Kuhlmann* , 722 S.W.2d 694, 696 (Tex. 1986) (unchallenged findings are binding on appellate court).

[4] Early voting began on February 16, 2010.

[5] This appeal was later transferred to this court from the Fourth Court of Appeals pursuant to a docket equalization order issued by the Texas Supreme Court.

second issue, she questions whether her challenge was required to be determined before the primary election when both candidates were unopposed. Sachtleben rejects Bennett's contention that her challenge has been rendered moot by the primary election. Appellate courts are prohibited from deciding moot controversies. *Nat'l Collegiate Athletic Ass'n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999).

The Texas Election Code states that a petition cannot be challenged after "the day before the beginning of early voting by personal appearance for the election for which the application is made." Tex. Elec. Code Ann. § 141.034 (Vernon 2010). Sachtleben's challenge began before early voting, but the trial court's ruling issued after the primary election. Both candidates were unopposed in the primary election, and absent injunctive relief, they will face each other in the November general election. Issuance of an injunction at this point would not interfere with the November general election. The only limitation on the authority to grant injunctive relief is the election schedule itself. *Gamble*, 71 S.W.3d at 318 & n.17. In a similar situation, the Texas Supreme Court provided relief after the primary election in which the challenged candidate was unopposed. *See Fitch v. Fourteenth Court of Appeals*, 834 S.W.2d 335, 337-38 (Tex. 1992). In *Fitch*, the Supreme Court granted a stay of this court's decision ordering the candidate's name removed from the ballot pending a final decision. *Id.* at 337. The Supreme Court then determined the sufficiency of the candidate's application in June, after the primary election had already occurred, but before the general election. *Id.* at 338.

Similarly, in *Triantaphyllis v. Gamble*, a challenge to an incumbent judge's application began before primary voting, but a permanent injunction was issued April 15, after the primary, requiring that the incumbent's name be placed on the November ballot. 93 S.W.3d 398, 401 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). This court held that the challenge to the candidate's application was not moot because both candidates ran unopposed in their primaries and there was time to prepare ballots before

the November election.[6] *Id.* at 406. Following these authorities, we conclude that this matter is not moot. We therefore sustain Sachtleben's second issue and hold that we have jurisdiction to consider this appeal.

In Sachtleben's first issue, she asserts that the trial court abused its discretion by denying her request for an injunction despite finding that Castellanos's petition was insufficient and she had timely challenged his ballot application. We review the trial court's grant or denial of an injunction for a clear abuse of discretion. *Tyra v. City of Houston*, 822 S.W.2d 626, 631 (Tex. 1991). A trial court abuses its discretion by (1) acting arbitrarily and unreasonably, without reference to guiding rules or principles, or (2) misapplying the law to the established facts of the case. *Downer v. Aquamarine Operators, Inc*., 701 S.W.2d 238, 241-42 (Tex. 1985). The trial court does not abuse its discretion when its decision is based on conflicting evidence and some evidence in the record reasonably supports the trial court's decision. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 211 (Tex.2002).

Included in the argument on this issue is Sachtleben's challenge to the trial court's conclusion of law that it was bound by the decision of the Fourth Court of Appeals in denying her petition for writ of mandamus. We review de novo the trial court's conclusions of law. *BMC Software Belgium v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). If we determine that a conclusion of law is erroneous, but the trial court rendered the proper judgment, the erroneous conclusion of law does not require reversal. *Id.*

In *Brady*, cited by the Fourth Court, the Texas Supreme Court vacated a writ of mandamus issued by this court because we had "decided factual questions on inconsistent and conflicting affidavits and documents." *Brady*, 794 S.W.2d at 714. An appellate court may not resolve disputed facts in an original mandamus proceeding. *Id.* In this case, the Fourth Court of Appeals did not have the benefit of an evidentiary hearing to determine the validity of the signatures on Castellanos's petition. Therefore, the court

[6] This court's opinion and judgment affirming the injunction issued on September 26, 2002.

properly denied mandamus relief based on *Brady*. *See In re Angelini*, 186 S.W.3d 558, 560 (Tex. 2006) (denying mandamus seeking to remove candidate with defective filings where factual determinations were required). The denial of mandamus relief by the court of appeals did not preclude the granting of relief by the trial court. To the contrary, the Texas Supreme Court has held that the determination of a party's entitlement to equitable relief must "be decided after a hearing on the merits where interested parties have an opportunity to be heard." *In re Gamble*, 71 S.W.3d 313, 318 (Tex. 2002). Therefore, to the extent that the trial court concluded that it was barred from granting relief solely because the Fourth Court denied relief, its conclusion is erroneous. We next consider whether the trial court's order may be sustained on other grounds.

The Election Code provides for injunctive relief to prevent harm from code violations. "A person who is being harmed or is in danger of being harmed by a violation or threatened violation of this code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring." Tex. Elec. Code Ann. § 273.081 (Vernon 2010). The Texas Supreme Court has recognized that a trial court may fashion equitable relief regarding the placement or removal of a candidate's name on the ballot. *See Gamble*, 71 S.W.3d at 315. "[T]he legislature [in section 273.081] has specifically called upon the courts to exercise their equitable powers to resolve election code violations. And when exercising such jurisdiction, a court must, among other things, balance competing equities." *Id.* at 317.

The Texas Supreme Court has held that provisions that restrict the right to hold office must be strictly construed against ineligibility. *Wentworth v. Meyer*, 839 S.W.2d 766, 767 (Tex. 1992). In recent years, the Texas Supreme Court has repeatedly ruled in favor of candidates being permitted a place on the ballot despite defects in their applications and petitions. *See In re Holcomb*, 186 S.W.3d 553, 555 (Tex. 2006) (holding candidate was entitled to an opportunity to obtain replacement signatures after the filing deadline); *In re Sharp*, 186 S.W.3d 556, 557 (Tex. 2006) (granting the candidate the opportunity to cure a presumed defective petition filed the day of the

deadline); *In re Francis,*186 S.W.3d 534, 541 (Tex. 2006) (holding that the trial court must allow a candidate to cure defects a party chair overlooked and approved).

Thus, the Texas Supreme Court has construed the Election Code provisions at issue in this case to require that a candidate be given an opportunity to cure defective applications and petitions. The Election Code does not require exclusion from the ballot as a mandatory remedy when a curable defect exists. *Francis*, 186 S.W.3d at 536. The Code also does not state that a candidate must be removed from the ballot when petition signatures are invalid. *Id.* at 539. A candidate's own fault does not bar him from obtaining equitable relief. *Gamble*, 71 S.W.3d at 318.

In *Francis*, the candidate was permitted to correct petitions containing 95 invalid signatures because the error had not been discovered by party officials. 186 S.W.3d at 537. "Party chairs are not required to be lawyers, nor are they required to be perfect. They have a very limited time to review thousands of papers during the window in which they must be filed. In such circumstances, they do not need the added burden that their own minor mistakes (when looking for the minor mistakes of others) might destroy a candidate's public career." *Id.* at 542.

We are directed to balance the competing equities in determining whether injunctive relief to resolve an election code violation is appropriate. *See Gamble*, 71 S.W.2d at 317. Castellanos filed his application and petition six days before the deadline. His petition contained six additional signatures over the statutorily required number. Bennett, the party chair, did not observe any defect in the petition and certified Castellanos's application. Sachtleben waited over a month to challenge his petition. She failed to provide notice for the hearing on her challenge so that Castellanos and Bennett could prepare for the hearing, possibly refuting her challenge to the signatures. Sachtleben also filed an amended petition during the hearing. On a sparse evidentiary record, largely comprised of the offer of proof made after the court's ruling, the trial court found that the petition was short by only two signatures, which the parties agree

could easily have been remedied.[7] The harm to Castellanos in granting injunctive relief would be irreparable. Any harm to Sachtleben that would be caused by the inability to receive a windfall in the form of an unopposed general election is far outweighed by the voters' interest in electing the candidate of their choice. *See Triantaphyllis*, 93 S.W.3d at 405.

In balancing the equities presented in Sachtleben's challenge, we hold that the trial court did not abuse its discretion in denying injunctive relief in this case. "The public interest is best served when public offices are decided by fair and vigorous elections, not technicalities leading to default." *Francis*, 186 S.W.3d at 542. The right to vote for a candidate of one's choice has been described as "the essence of a democratic society." *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S.Ct. 1362 (1964). We overrule Sachtleben's first issue.

Accordingly, we affirm the trial court's judgment.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Boyce.

[7] Sachtleben concedes in her brief that "[i]t is important to note that had [Bennett] performed his duty [when presented with Sachtleben's challenge] to reject Castellanos's application, his candidacy for Justice of the Peace, Precinct 2, Guadalupe County could have been saved."