Rel: October 29, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200217

Debbie Hiltz

v.

Anita Bedwell

1200219

Anita Bedwell

v.

Debbie Hiltz

Appeals from Etowah Circuit Court
(CV-20-75)

BRYAN, Justice.

Debbie Hiltz appeals, and Anita Bedwell cross-appeals, from a judgment of the Etowah Circuit Court ("the circuit court"), in an election contest, declaring Bedwell, the contestee, the winner of an election for the Office of City Council, Place 1, in Rainbow City. See § 11-46-70, Ala. Code 1975 ("If the party whose election is contested is found to have been duly and legally elected, judgment must be entered declaring him entitled to have and to hold the office to which he was so elected."). We affirm the circuit court's judgment in Hiltz's appeal, and we dismiss Bedwell's cross-appeal.

Background

Hiltz and Bedwell were candidates for the Office of City Council, Place 1, in Rainbow City in an August 25, 2020, election. On September 1, 2020, the City Council of Rainbow City certified the results of the election, with a final tally of 879 votes in favor of Hiltz and 880 votes in favor of Bedwell. Bedwell was declared the winner of the election. See §

11-46-55(a), Ala. Code 1975 ("If it appears that any candidate ... has received a majority of the votes cast for that office ..., the municipal governing body shall declare the candidate elected to the office ....").

On September 3, 2020, Hiltz filed in the circuit court an election contest pursuant to § 11-46-69, Ala. Code 1975, which provides, in relevant part:

> "(b) Any contest of ... an election [for an office of a city or town] must be commenced within five days after the result of the election is declared. Such contest shall be instituted in the manner prescribed by Section 17-15-29[, Ala. Code 1975,] and, except as otherwise provided in this article [i.e., Article 2, Chapter 46, Title 11, Ala. Code 1975], all proceedings relative to contests of elections to municipal offices shall be governed by the provisions of Articles 2 and 3, Chapter 15, Title 17 of this Code, insofar as they are applicable."

"Section 17-15-29 is now codified at § 17-16-56. Articles 2 and 3, Chapter 15 of Title 17, are now codified at §§ 17-16-47 through -62 and §§ 17-16-63 through -76, respectively." Smith v. Burkhalter, 28 So. 3d 730, 735 n.5 (Ala. 2009); see also Long v. Bryant, 992 So. 2d 673, 685 n.5 (Ala. 2008).

In pertinent part, § 17-16-56, Ala. Code 1975, provides:

> "If the contest is of an election to ... any office of a city or town not in this article [i.e., Article 3, Chapter 16, Title 17, Ala. Code 1975,] otherwise provided for, the party contesting

> must file in the office of the clerk of the circuit court of the county in which the election was held, a statement in writing, verified by affidavit, of the grounds of the contest as provided in this article and must give good and sufficient security for the costs of the contest, to be approved by the clerk. ... The contest is triable by the court without the intervention of a jury and must be heard and tried in precedence of all other cases, civil or criminal, standing for trial in the court."

The verified statement filed by Hiltz in the circuit court asserted that, during the canvassing of provisional ballots, a number of provisional ballots were not counted "for various reasons." See § 11-46-55(a)("If the certification results of provisional ballots cast at the election have been received from the board of registrars prior to the first Tuesday next after the election, ... the municipal governing body, at any special or regular meeting, may canvas the results before the first Tuesday next after the election."). Hiltz contended that she had reason to believe that multiple provisional ballots that had not been counted should have been counted and that the result of the election could have changed if those ballots had been counted. See § 11-46-69(a)(4)(listing "[t]he rejection of legal votes" as one cause for contesting an election to an office of a city or town). The circuit court set a bond for the election contest in the amount of $5,000,

which Hiltz posted.

On September 10, 2020, Bedwell filed a motion to dismiss the election contest, asserting that Hiltz had failed to explain how not counting the provisional ballots identified in her verified statement was error. Hiltz filed a response to Bedwell's motion to dismiss, contending, among other things, that Hiltz had complied with all the statutory requirements to contest the election. On September 21, 2020, the circuit court entered an order denying Bedwell's motion to dismiss.

On September 24, 2020, Bedwell filed an answer to Hiltz's verified statement contesting the election. As a "first special defense," Bedwell asserted that the decision reached by the Etowah County Board of Registrars to reject nine provisional ballots "should be final." See § 11-46-4(a), Ala. Code 1975 ("It shall be the duty of the various boards of registrars to conduct an identification program of electors residing in the municipality and eligible to vote in municipal elections ...."); and § 11-46-55(a). As a "counterclaim," Bedwell asserted that two additional provisional ballots -- respectively cast by K.T. and by J.T. -- were not counted but should have been.

Hiltz thereafter filed a motion to dismiss Bedwell's "counterclaim." In summary, Hiltz argued that the request for relief styled in Bedwell's answer as a "counterclaim" was, in actuality, an election contest. Hiltz argued that Bedwell had not complied with the statutory requirements for asserting an election contest and that her "counterclaim" should, therefore, be dismissed. The circuit court denied Hiltz's motion to dismiss. Hiltz then filed an answer to Bedwell's "counterclaim," essentially asserting the same argument set out in her motion to dismiss. Thus, altogether, Hiltz and Bedwell collectively challenged 11 provisional ballots that had not been counted.

After conducting a trial, see § 17-16-56, the circuit court entered an order on November 18, 2020, identifying 6 of the 11 challenged provisional ballots that it determined should not be counted. Included in that group was the ballot of G.D.C. The circuit court ordered that the five remaining provisional ballots would be opened and counted the next day. On November 19, 2020, the circuit court entered an order stating that five provisional ballots had been opened and counted. Included in that group were the ballots of K.T., J.T., and M.C., all of whom had voted for Bedwell.

Also included in that group were the ballots of L.M. and G.C.,[1] both of whom had voted for Hiltz.

With the eligible provisional ballots included, the circuit court determined that the final tally of votes was 881 votes in favor of Hiltz and 883 votes in favor of Bedwell. The circuit court declared Bedwell to be the winner of the election. See § 11-46-70, Ala. Code 1975.

Hiltz thereafter filed a motion to alter, amend, or vacate the circuit court's judgment. Among other things, Hiltz argued that the circuit court had wrongfully excluded the provisional ballot of G.D.C. In response to Hiltz's postjudgment motion, the circuit court entered an order stating that G.D.C.'s ballot would be allowed but that the circuit court would not open it because a single vote in favor of either Hiltz or Bedwell would not change the outcome of the election. The circuit court denied all other relief sought in Hiltz's postjudgment motion. Hiltz appealed, and Bedwell cross-appealed.

Analysis

[1]The circuit court's judgment actually refers to this voter as "C.G." It appears that the voter's initials were simply transposed.

I. Hiltz's Appeal (case no. 1200217)

Hiltz asserts three primary arguments on appeal. We consider each in turn.

A. Bedwell's "Counterclaim"

On appeal, Hiltz first argues that the circuit court erred by permitting Bedwell to assert a "counterclaim." Hiltz contends that Bedwell should not have been permitted to rely on the provisional ballots of K.T. and J.T., which the circuit court ultimately determined should be counted in the final tally of votes cast for Bedwell. In support of her argument, Hiltz correctly asserts that, under this Court's precedent, statutes governing election contests must be strictly construed. See Fluker v. Wolff, 46 So. 3d 942, 950 (Ala. 2010)(" 'An election contest is a statutory matter, and the statute governing the election must be strictly observed and construed. Watters v. Lyons, 188 Ala. 525, 66 So. 436 (1914).' Long v. Bryant, 992 So. 2d 673, 680 (Ala. 2008).").

Hiltz argues that, by permitting Bedwell to identify two provisional ballots that Bedwell believed should be counted as a "counterclaim" to Hiltz's election contest, the circuit court effectively allowed Bedwell to

bring her own election contest and that Bedwell's election contest circumvented certain requirements set out in § 11-46-69 and § 17-16-56 because: (1) Bedwell did not file her "counterclaim" within five days of when the results of the election were declared, (2) Bedwell's "counterclaim" was not accompanied by a sworn statement specifying the statutory grounds of her contest, and (3) Bedwell was not required to post a bond as security for the contest. In her reply brief, Hiltz asserts that her argument may present "a case of first impression." Hiltz's reply brief at 23.

However, as Bedwell points out in response, this Court has previously explained that there is no statutory basis for the winner of an election to initiate a contest to the votes received by a candidate who lost an election. In Eubanks v. Hale, 752 So. 2d 1113 (Ala. 1999), the Court considered a contest to an election for the office of sheriff of Jefferson County, which contest had been dismissed by the Jefferson Circuit Court. On appeal, the contestants argued, among other things, that this Court should render a judgment in their favor because the contestee did not file a "cross-contest." Id. at 1134. The Court stated: "[T]he contestee correctly

points out that the statutes do not require that he file an independent 'cross-contest.' " Id.

In addressing the contestants' argument, this Court quoted from former § 17-5-1, Ala. Code 1975, the precursor to § 17-16-40, Ala. Code 1975. Then, as now, the pertinent language of the relevant statute provided: " 'The election of any person declared elected to ... any office which is filled by the vote of a single county ... may be contested ....' " Eubanks, 752 So. 2d at 1134. The Court reasoned as follows:

> "Under the language of the statute, then, only the election of a 'person declared elected' may be contested. Because Woodward had not been declared the winner of the sheriff's race, the statute did not authorize Hale[, who had been declared the winner of the race,] to file an election contest."

Id.

Similar to the language used in § 17-16-40, § 11-46-69, contains the following pertinent language with regard to municipal elections: "(a) The election of any person declared elected to any office of a city or town may be contested by any person who was at the time of the election a qualified elector of such city or town ....' " Thus, this Court's decision in Eubanks demonstrates that Bedwell was not statutorily authorized to initiate a

contest to challenge the votes received by Hiltz because Hiltz was not "declared elected to" the office of city council. § 11-46-69(a). Therefore, the relevant provisions of § 11-46-69 and § 17-16-56 governing the requirements for the initiation of an election contest did not apply to Bedwell's "counterclaim," because the relief Bedwell sought was categorically not a challenge to the "election of [the] person declared elected to" the office of city council. § 11-46-69(a).

In her reply brief, Hiltz suggests that Eubanks is distinguishable because the Eubanks Court specifically noted that the contestee in that case had complied with the requirements of former § 17-15-21, Ala. Code 1975, the precursor to § 17-16-48, Ala. Code 1975, which states, in relevant part:

> "No testimony must be received of any illegal votes or of the rejection of any legal votes in any contested election commenced under the provisions of this article [i.e., Article 3, Chapter 16, Title 17, Ala. Code 1975,] unless the party complaining thereof has given to the adverse party notice in writing of the number of illegal votes and by whom given and for whom given, and at what precinct or voting place cast, or the number of legal votes rejected, and by whom offered, and at what precinct or voting place cast, which the party expects to prove on the trial."

See Eubanks, 752 So. 2d at 1133. However, Hiltz has not argued that Bedwell did not comply with the requirements set out in § 17-16-48. As explained above, Hiltz's argument is that Bedwell was obligated to satisfy the identified provisions of § 11-46-69 and § 17-16-56 for initiating an election contest as a prerequisite to identifying additional provisional ballots that she believed should be counted. For the reasons already explained, Hiltz's argument in that regard lacks merit, and Eubanks is not materially distinguishable on this point.

The heart of the issue raised by Hiltz's argument is actually whether Bedwell properly could, during the course of litigating the election contest already initiated by Hiltz, identify as a "counterclaim" provisional ballots that she believed should have been counted -- but were not -- in addition to those provisional ballots Hiltz was already contending should be counted. As explained above, Hiltz has identified no statute prohibiting such a practice; the statutes Hiltz cites pertain only to the initiation of election contests. Again, this Court's decision in Eubanks is instructive.

Specifically, the Eubanks Court also considered whether, in the election contest at issue in that case, the declared winner of the election

should also be permitted to present evidence. In resolving that question, the Eubanks Court cited the precursor to § 17-16-59, Ala. Code 1975, which provides, in relevant part:

> "If, on the trial of the contest of any election, ... it shall appear that any person other than the one whose election is contested, received or would have received, had the ballots intended for the person and illegally rejected been received, the highest number of legal votes, judgment must be given declaring such person duly elected ...."

The Eubanks Court stated: "[W]e conclude that the contestee is not prohibited from introducing such evidence of votes cast illegally for Woodward. Neither are the contestants foreclosed from offering any other evidence of illegal votes that they claimed were cast for Hale." 752 So. 2d at 1134.

With regard to municipal elections, § 11-46-70 contains nearly identical language to that found in § 17-16-59:

> "If, on the trial of the contest of any municipal election, it shall appear that any person other than the one whose election is contested, received or would have received, had the ballots intended for him and illegally rejected been received, the requisite number of votes for election, judgment must be entered declaring such person duly elected ...."

Thus, this Court's decision in Eubanks indicates that, during the trial of

Hiltz's election contest to determine whether the conditions of § 11-46-70 that could result in Hiltz's winning the election had been met, the circuit court properly permitted Bedwell to present evidence of additional provisional ballots that she believed should have been counted in response to Hiltz's allegations.

Bedwell cites additional cases in support of her position that contestees are permitted to raise issues of their own in election contests. For instance, this Court's decision in Town of Mountainboro v. Griffin, 26 So. 3d 407 (Ala. 2009), involved an annexation election. The declared result of the election was that a greater number of votes had been cast in favor of annexation. Certain qualified electors initiated an election contest. "In response to the ... election contest, [the Town of] Mountainboro and [the City of] Boaz (sometimes collectively referred to as 'the contestees') alleged, among other things, that illegal votes likewise had been cast against annexation and that, if those votes were not considered, the resulting vote totals would favor annexation." Griffin, 26 So. 3d at 408. The contestants argued that the contestees did not have "legal standing to defend the pro-annexation election result by challenging

the legality of votes cast against annexation." Griffin, 26 So. 3d at 408-09. "[T]he trial court held that neither municipality was a 'qualified elector' and, consequently, that neither was entitled to challenge the legality of votes cast against annexation." Griffin, 26 So. 3d at 409. On appeal, this Court reversed the trial court's judgment as it related to the Town of Mountainboro, which, it appears, was the only contestee that had appealed.

In so doing, the Griffin Court distinguished between initiating an annexation election and defending the outcome of such an election. The Griffin Court noted that § 11-42-2(8), Ala. Code 1975, provides, in pertinent part, that "[t]he result of [an annexation] election may be contested by any qualified elector voting at the election in the manner provided for contest of general municipal elections, making the city or town the contestee." See Griffin, 26 So. 3d at 409. In determining that the Town of Mountainboro was not prohibited from defending the outcome of the annexation election, the Griffin Court relied on this Court's decision in Eubanks:

> "As in Eubanks v. Hale, [752 So. 2d 1113 (Ala. 1999),] the

> applicable statutes in this case -- [Ala. Code 1975),] §§ 11-42-2(8) and 11-46-69(a), which in all material respects is worded the same as the statute at issue in Eubanks -- do not require the filing of a cross-contest. As in that case, 'we conclude that the contestee is not prohibited from introducing ... evidence of votes cast illegally for [the losing side].' 752 So. 2d at 1134. That is, we conclude that Mountainboro, as a properly named contestee in this case, had standing to try to preserve the declared outcome of the election both by rebutting the evidence of illegal votes cast in favor of the proposed annexation offered by the contestants and by submitting evidence of illegal votes cast against the proposed annexation.
>
> "Our conclusion finds support in common sense, reason, and fairness."

Griffin, 26 So. 3d at 411. The Griffin Court continued:

> "Moreover, we cannot conclude that the legislature, in adapting § 11-46-69[, Ala. Code 1975,] to an annexation election in § 11-42-2(8), [Ala. Code 1975,] intended to establish a process by which a contestant can obtain a binding judgment from a court of law establishing the legality or illegality of an annexation election by naming someone as a 'contestee,' or defendant, who cannot fully defend the outcome of that election. If the otherwise properly named defendants in such a proceeding lack the necessary standing to fully and fairly defend the outcome of the election, one may question not only the integrity of the outcome achieved in such a proceeding but, indeed, whether the proceeding enjoys the necessary adverseness of parties to make for a 'case' over which the court has subject-matter jurisdiction in the first place."

26 So. 3d at 411 (footnote omitted). We conclude that the considerations

articulated in Griffin regarding the ability of contestees to defend against an election contest apply with equal measure to the circumstances of this case and Bedwell's "counterclaim."

Hiltz argues in her reply brief that Griffin is distinguishable because, she says, the contestees in that case did file a " 'counter-contest[].' " 26 So. 3d at 408. However, the language from Griffin that Hiltz cites indicates only that the contestants in that case had referred to the contestees' responsive allegations as a " 'counter-contest[].' " Id. There is no indication from this Court's decision in Griffin that the contestees in that case had attempted to satisfy the pertinent provisions of § 11-46-69 or § 17-16-56 as a prerequisite to asserting their allegations, and, more importantly, there was no holding by this Court that the contestees were obligated to do so.

As another example, in Fluker, 46 So. 3d at 945, the declared winner of a mayoral election "responded" to the allegations raised in an election contest by "claiming that illegal votes were cast in favor of [the contestant] and that legal votes in [the contestee]'s favor were rejected and that if both were taken into account his vote tally would still exceed [the

contestant]'s." The trial court ultimately determined that the contestant had received the most legal votes, and the contestee appealed. Although the Fluker Court rejected the contestee's appellate arguments and affirmed the trial court's judgment, it did not do so on the ground that the contestee was not permitted to challenge additional votes in the election contest already initiated by the contestant.

Jacobs v. Ryals, 401 So. 2d 776 (Ala. 1981), also involved a mayoral election. A losing candidate initiated an election contest, challenging certain votes. The contestee "counterclaimed," challenging certain votes that had been cast for the contestant. Jacobs, 401 So. 2d at 777. The trial court conducted a trial and ultimately declared that the final tally of votes resulted in a tie, after rejecting, among others, the two votes identified by the contestee and adding certain others. The trial court ordered that a new election should be conducted, and the contestant appealed. The Jacobs Court affirmed the portion of the trial court's judgment ordering that a new election should be conducted after holding, among other things, that the trial court was correct in rejecting the votes identified in the contestee's "counterclaim."

In her reply brief, Hiltz argues that Fluker and Jacobs are distinguishable primarily because, she says, the statutory-compliance arguments that she asserts in this case were not asserted in those cases and the contestees in those cases were permitted to raise the pertinent issues without objections from the contestants. However, as explained above, this Court's decision in Eubanks considered arguments substantially similar to those asserted by Hiltz in this case and rejected them. The practices described in Fluker and Jacobs are consistent with the pertinent holding from Eubanks, and we agree with Bedwell that Fluker and Jacobs further illustrate how Hiltz's position contradicts the historical interpretation of the statutory scheme at issue.

As another example, Bedwell also cites Waltman v. Rowell, 913 So. 2d 1083 (Ala. 2005), which, like the present case, involved a city-council election. The challenger lost the election and filed an election contest, challenging certain ballots. The contestee, "responded by contesting certain votes that [the contestee] sa[id] were illegal or ineligible and that had been included in the tally for [the contestant]." Waltman, 913 So. 2d at 1084. In its judgment, the trial court declared the contestant to be the

winner of the election. The contestee appealed. After considering the contestee's arguments on appeal, the Waltman Court reversed the trial court's judgment and remanded the cause for the contestee to be declared the winner of the election. Hiltz does not directly address the procedural history of Waltman in her reply brief.

In light of the foregoing cases cited by Bedwell on appeal, we cannot reverse the circuit court's judgment based on Hiltz's argument that Bedwell could not properly identify as a "counterclaim" additional provisional ballots that she believed should be counted in the election contest initiated by Hiltz without first satisfying the pertinent requirements of § 11-46-69 and § 17-16-56. As explained, the relevant provisions of those statutes govern the initiation of election contests, and Bedwell's "counterclaim" was not such a contest. Therefore, the portions of those statutes that Hiltz invokes on appeal did not apply to Bedwell's "counterclaim." Moreover, the cases cited by Bedwell demonstrate that contestees should be, and have historically been, permitted to defend the outcomes of elections by raising responsive issues in an election contest initiated by another party.

B. The Provisional Ballots of K.T. and J.T.

Hiltz next argues that the circuit court erred by counting the ballots of K.T. and J.T. in the tally of votes cast for Bedwell. The basis of Hiltz's argument appears to be that, during Bedwell's case-in-chief at trial, Bedwell did not present specific evidence establishing that the provisional ballots of K.T. and J.T. should have been counted. Hiltz appears to argue that, by failing to do so, Bedwell did not make a prima facie showing regarding the merits of her "counterclaim." See, e.g., Waltman, 913 So. 2d at 1089 ("[I]t is the responsibility of a party seeking to have a vote excluded to make a prima facie showing that the vote was illegally cast."). However, as Bedwell points out in response, Bedwell proffered evidence during Hiltz's case-in-chief regarding the ballots of K.T. and J.T.

The provisional ballots of K.T. and J.T., who resided at the same address, were not initially counted because it was determined by the board of registrars that their address was not located within the city limits of Rainbow City. During Hiltz's case-in-chief, Bedwell offered copies of the provisional ballots, and they were admitted as evidence. Bedwell's counsel also elicited testimony from Beth Lee, the Rainbow City

Clerk, who testified that the address was, in fact, located within the city limits of Rainbow City. Additionally, Bedwell called Lee to testify as the only witness in her case-in-chief. Although Bedwell's counsel did not revisit Lee's testimony concerning K.T. and J.T., Lee was asked about other voters, and Bedwell offered as evidence a map demarcating the corporate boundaries of Rainbow City, which was admitted.

Thus, based on the foregoing evidence, Bedwell made a prima facie showing that K.T. and J.T. were eligible to vote in the city-council election. See Hawkins v. Persons, 484 So. 2d 1072, 1074 (Ala. 1986)("A person is eligible to vote in a municipal election if he is a qualified elector of Alabama who has resided in the city in which he seeks to vote for at least 30 days prior to the election and if he has properly registered to vote in the county in which the city is located at least 10 days before the election. See ... Section 11-46-38, Code of Alabama (1975)."). Hiltz cites no authority indicating that Bedwell could meet her initial burden of proving her "counterclaim" exclusively via the evidence presented in Bedwell's case-in-chief.

Once Bedwell made a prima facie showing in support of her

"counterclaim," the burden then shifted to Hiltz to rebut the evidence presented by Bedwell. See, e.g., Fluker, 46 So. 3d at 955 ("As the contestant, Wolff had the burden of showing that W.M.H.'s vote was illegally cast. ... Wolff did so, and the burden then shifted to Fluker to present evidence indicating that W.M.H.'s vote was legally cast."). On appeal, Hiltz identifies no evidence indicating that K.T. and J.T. did not, in fact, reside within the city limits of Rainbow City.

To the extent that Hiltz is challenging the credibility and weight of the evidence presented by Bedwell, we note that the applicable standard of review requires that this Court give a presumption of correctness to the circuit court's findings based on ore tenus testimony and documentary evidence. See Fluker, 46 So. 3d at 950 (" 'The [ore tenus] rule applies to "disputed issues of fact," whether the dispute is based entirely upon oral testimony or upon a combination of oral testimony and documentary evidence.' Reed v. Board of Trs. for Alabama State Univ., 778 So. 2d 791, 795 (Ala. 2000)(citing Born v. Clark, 662 So. 2d 669, 672 (Ala. 1995)).' "). In light of the foregoing, we cannot reverse the circuit court's judgment based on Hiltz's argument that Bedwell failed to make a prima facie

showing that the provisional ballots of K.T. and J.T. should have been counted.

C. The Provisional Ballot of G.D.C.

Next, Hiltz argues that the circuit court erred by deciding in its postjudgment order that, although eligible, the ballot of G.D.C. should not be opened. The circuit court concluded that a single vote in favor of either Hiltz or Bedwell would not change the outcome of the election because Bedwell had won the election by receiving 883 votes, as compared with the 881 votes received by Hiltz. Hiltz contends that it was impermissible for the circuit court to declare Bedwell the winner of the election by an "indeterminate" amount of votes. Hiltz's brief at 27. Hiltz asserts that this Court considered a similar argument in Ex parte Vines, 456 So. 2d 26 (Ala. 1984). However, Hiltz's citation to this Court's decision in Ex parte Vines does not demonstrate reversible error by the circuit court.

In Ex parte Vines, one of four voting machines malfunctioned during a mayoral election. As a result, Ed Yeargan, the candidate who was declared to have received the third most votes in the election, was deprived in the certified results of the election of all the votes that had

been cast for him on the malfunctioning machine. Yeargan initiated a declaratory-judgment action, and the trial court set aside the election and ordered that another election be conducted. However, the trial court ordered that only the voters who had cast their votes on the malfunctioning machine on the day of the election would recast their votes in the new election.

The candidate who was declared to have received the second most votes in the certified results of the original election, Robert Vines, then filed a petition for the writ of prohibition in this Court, arguing that the trial court had exceeded its discretion in ordering that a new election be conducted, at which only a portion of the electorate would be permitted to vote. This Court agreed after considering the various possible outcomes of an election contest that are authorized under § 11-46-70:

> "If, on the trial of the contest of any municipal election, it shall appear that any person other than the one whose election is contested, received or would have received, had the ballots intended for him and illegally rejected been received, the requisite number of votes for election, judgment must be entered declaring such person duly elected, and such judgment shall have the force and effect of investing the person thereby declared elected with full right and title to have and to hold the office to which he is declared elected.

> "If it appears that no person has or would have had, if the ballots intended for him and illegally rejected had been received, the requisite number of votes for election, judgment must be entered declaring this fact, and such fact must be certified to the municipal governing body and the vacancy in the office, election to which had been contested, shall be filled in the manner prescribed by law for filling the vacancy in such office.
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> "If the person whose election is contested is found to be ineligible to the office, judgment must be entered declaring the election void, and the fact must be certified to the municipal governing body. The vacancy in such office shall be filled in the manner prescribed by law.
>
> "If the party whose election is contested is found to have been duly and legally elected, judgment must be entered declaring him entitled to have and to hold the office to which he was so elected."

The Ex parte Vines Court stated:

> "Candidate Yeargan did not contend, nor could he, that had the votes intended for him not been illegally rejected in [the malfunctioning machine], he would have received the requisite number of votes for election as mayor (one half of the votes cast plus one). Instead, it was his contention that if he received the number of votes to which he was entitled, he would be eligible for a run-off position in the coming election.
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> "Therefore, the second paragraph of § 11-46-70[, Ala. Code 1975,] controls, and, once it was shown that no person 'ha[d] or would have had, if the ballots intended for him and illegally rejected had been received, the requisite number of votes for election,' the trial court should have entered

> judgment 'declaring this fact.' Thereupon, the court should have ordered another election held to fill the office of mayor.
>
> "There is simply no statutory authority for holding an election limited to [the votes cast on the malfunctioning machine] and also limited to those electors who voted in the July 10 election."

456 So. 2d at 29. The Court concluded that "[t]he only statutory remedy ... was to order another election," and it granted Vines's petition for the writ of prohibition. Id.

In this case, however, the circuit court did not determine that no person had received the requisite number of votes for election, as was the case in Ex parte Vines. In this case, the circuit court determined that Bedwell had received the requisite number of votes for election. Therefore, the final paragraph of § 11-46-70 controls in this case, as opposed to the second paragraph of § 11-46-70, which controlled in Ex parte Vines.

Section 11-46-55(a) provides, in relevant part: "If it appears that any candidate ... in the election has received a majority of the votes cast for that office ... the municipal governing body shall declare the candidate elected to the office ...." Thus, Bedwell was required to receive a majority

of the legal votes cast to win the election. The circuit court's judgment determined that 881 legal votes had been cast for Hiltz and that 883 legal votes had been cast for Bedwell. The circuit court's postjudgment order determined that one additional legal vote, G.D.C.'s vote, had been cast. Thus, altogether, the circuit court determined that 1,765 (881 + 883 + 1) legal votes had been cast in the election.

Therefore, 883 votes constituted a majority of the legal votes cast. See § 11-46-55(b)("If a single office is to be filled at the election and there is more than one candidate therefor, then the majority of the votes cast for the office in the election shall be ascertained by dividing the total votes cast for all candidates for the office by two, and any number of votes in excess of one half of the total votes cast for all candidates for the office shall be a majority within the meaning of subsection (a)."). Because the circuit court determined that Bedwell had received 883 legal votes, it properly concluded that "the party whose election [wa]s contested [wa]s found to have been duly and legally elected." § 11-46-70.

Hiltz contends that Ex parte Vines stands for the proposition that "a final vote tally must be certified." Hiltz's brief at 28. However, the

relevant statement from Ex parte Vines, 456 So. 2d at 29, actually provided: "If one of the candidates receives a majority as defined by § 11-46-55(b), [Ala. Code 1975,] he shall be certified as elected thereunder," which, as explained, is what the circuit court did in this case. Hiltz cites no authority demonstrating that the circuit court committed reversible error by declining to open the provisional ballot of G.D.C. Although the circuit court ultimately determined in its postjudgment order that G.D.C.'s ballot had been lawfully cast, Bedwell had already met the statutory requirements for winning the election under 11-46-55(a) and, consequently, for prevailing in the election contest under § 11-46-70. Therefore, there was no statutory reason to determine for whom G.D.C. had voted, and we cannot reverse the circuit court's judgment based on this argument.

II. Bedwell's Cross-Appeal (case no. 1200219)

In her cross-appeal, Bedwell argues that the circuit court erred by determining that the provisional ballots of L.M., G.C., M.C., and G.D.C. should be counted. G.C. and M.C. resided at the same address, and G.D.C. was their son who had resided with them at some point but had

also resided at a different address. With regard to L.M., G.C., and M.C., Bedwell argues that the circuit court incorrectly applied § 17-3-33, Ala. Code 1975, which contains provisions concerning "liners," or voters who reside on property that is intersected by territorial lines. With regard to G.D.C., Bedwell argues that he did not register to vote with his current address within 10 days of the election. See Hawkins, 484 So. 2d at 1074.

Hiltz responds to Bedwell's arguments in her reply brief. However, Bedwell also states that the issues raised in her cross-appeal are moot if this Court determines that the provisional ballots of K.T. and J.T., which are discussed in Section I of this opinion addressing Hiltz's appeal, were properly allowed by the circuit court. Bedwell's brief at 11. In other words, Bedwell contends that, so long as the provisional ballots of K.T. and J.T. are included in the tally of votes cast for Bedwell, the circuit court properly declared her to be the winner of the election, regardless of whether the circuit court incorrectly determined that the provisional ballots of L.M., G.C., M.C., and G.D.C. should be counted. She states: "The cross-appeal is relevant only in the event this Court should determine that the ... votes [of K.T. and J.T.] for Bedwell were improperly

added." Bedwell's brief at 21.

As explained in Section I of this opinion, Hiltz has failed to demonstrate on appeal that the circuit court erred by counting the votes of K.T. and J.T. that were cast in Bedwell's favor. Thus, the circuit court properly declared Bedwell the winner of the August 25, 2020, election for the Office of City Council, Place 1, in Rainbow City. Therefore, according to the brief submitted in support of her cross-appeal, Bedwell's appellate arguments are moot, and she seeks no further relief in this Court.

Conclusion

Although Hiltz indicates on appeal that one of her arguments might present a question of first impression for this Court, the cases cited by Bedwell in response demonstrate that the Court has already considered and rejected in previous cases arguments that were substantially similar to the alleged question of first impression raised by Hiltz. Moreover, Hiltz's other arguments are not supported with adequate authority demonstrating reversible error by the circuit court. In light of the foregoing, the circuit court's judgment is affirmed in Hiltz's appeal.

According to Bedwell's appellate brief, the issues she raises in her

cross-appeal are moot if this Court determines that Hiltz's appeal lacks merit. Thus, because Hiltz's appellate arguments are not meritorious, Bedwell's cross-appeal is moot. Therefore, Bedwell's cross-appeal is dismissed.

1200217 -- AFFIRMED.

1200219 -- APPEAL DISMISSED.

Parker, C.J., and Bolin, Wise, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.

Shaw, J., concurs in the result.