

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ADDIE L. GREENE, PHILIPPE
“BOB” LOUIS-JEUNE,
MACKENSON “MACK”
BERNARD,

CASE NO. 1D12-4520

Appellants,

v.

JEFF CLEMENS; SUSAN
BUCHER, Palm Beach County
Supervisor of Elections; KEN
DETZNER, in his capacity as the
FLORIDA SECRETARY OF
STATE; THE HONORABLE RICK
SCOTT, in his capacity as a member
of the FLORIDA ELECTIONS
CANVASSING COMMISSION;
THE HONORABLE PAMELA
BONDI, in her capacity as a
member of the FLORIDA
ELECTIONS CANVASSING
COMMISSION; THE
HONORABLE JEFF ATWATER,
in his capacity as a member of the
FLORIDA ELECTIONS
CANVASSING COMMISSION;
THE HONORABLE CAROLINE
SHEPHERD, in her capacity as a
member of the PALM BEACH
COUNTY CANVASSING
BOARD; CARRIE E. WARD, in
her capacity as a member of the
PALM BEACH COUNTY
CANVASSING BOARD; AMY
BORMAN, in her capacity as a
member of the PALM BEACH

COUNTY CANVASSING
BOARD,

Appellees.

Opinion filed October 19, 2012.

An appeal from an order of the Leon County Circuit Court.
Terry P. Lewis, Judge.

Juan-Carlos Planas of Kurkin Forehand Brandes LLP, Aventura, for Appellants.

Ronald G. Meyer and Jennifer S. Blohm of Meyer, Brooks, Demma, and Blohm, P.A., Tallahassee, for Appellee Jeff Clemens.

Pamela Jo Bondi, Attorney General, and Jonathan A. Glogau, Assistant Attorney General, Tallahassee, for Appellee Florida Elections Canvassing Board.

Kenneth G. Spillias of Lewis, Longman & Walker, P.A., West Palm Beach, for Appellees Susan Bucher, Supervisor of Elections; and Caroline Shepherd, Carrie E. Ward, and Amy S. Borman, Palm Beach County Canvassing Board.

Daniel E. Nordby, General Counsel, and Ashley E. Davis, Assistant General Counsel, Florida Department of State, for Appellee Kenneth W. Detzner, Florida Secretary of State.

Richard Thierry Champagne of the Champagne Law Group, P.A., North Miami, for Amicus Curiae Haitian American Professionals Coalition.

PER CURIAM.

We affirm this appeal from an election contest finding that the circuit court properly followed the applicable statute.¹ After a machine and manual recount, it was

¹ We have addressed only those issues that were properly preserved and raised on

determined that Jeff Clemens defeated Mackenson Bernard by 17 votes in the Democratic primary for State Senate District 27. Regarding the canvassing of absentee ballots, section 101.68(2)(c)1., Florida Statutes (2011), provides in pertinent part:

The canvassing board shall, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books to see that the elector is duly registered in the county and to determine the legality of that absentee ballot An absentee ballot shall be considered illegal if it does not include the signature of the elector, as shown by the registration records.

The Palm Beach County Canvassing Board rejected forty absentee ballots finding that the signatures on the ballots did not match the electors' signatures in the voter registration records. The Florida Elections Canvassing Commission certified the results. "[T]here is a presumption that returns certified by election officials are presumed to be correct." Boardman v. Esteva, 323 So. 2d 259, 268 (Fla. 1976) (citing Burke v. Beasley, 75 So. 2d 7 (Fla. 1954)).

Bernard and two electors filed a complaint to contest the election under section 102.168, alleging that the circuit court was required to review affidavits and accept testimony from voters whose absentee ballots had been rejected. Section 102.168(8) provides:

In any contest that requires a review of the canvassing board's decision on the legality of an absentee ballot pursuant to s. 101.68 based upon a comparison of the signature on the voter's certificate and the signature of

appeal.

the elector in the registration records, the circuit court may not review or consider any evidence other than the signature on the voter's certificate and the signature of the elector in the registration records. The court's review of such issue shall be to determine only if the canvassing board abused its discretion in making its decision.

“Since there is no common law right to contest elections, any statutory grant must necessarily be construed to grant only such rights as are explicitly set out.” McPherson v. Flynn, 397 So. 2d 665, 668 (Fla. 1981) (citing Pearson v. Taylor, 32 So. 2d 826 (Fla. 1947)).

It is a fundamental principle of statutory interpretation that legislative intent is the “polestar” that guides a court's interpretation of a statute. See Borden v. East-European Ins. Co., 921 So. 2d 587, 595 (Fla. 2006); State v. J.M., 824 So. 2d 105, 109 (Fla. 2002); Reynolds v. State, 842 So. 2d 46, 49 (Fla. 2002). Courts endeavor to construe statutes to effectuate the intent of the legislature. See White v. Pepsico, Inc., 568 So. 2d 886, 889 (Fla. 1990). To discern legislative intent, courts look “primarily” to the actual language used in the statute. See Golf Channel v. Jenkins, 752 So. 2d 561, 564 (Fla. 2000). Further, “[w]hen the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent.” Daniels v. Fla. Dep't of Health, 898 So. 2d 61, 64 (Fla. 2005).

In an election contest, section 102.168(8) allows the circuit court to review only the elector's signature on the voter's certificate and the signature of the elector in the

registration records to determine if the canvassing board abused its discretion in making its decision. The statute explicitly states that the circuit court may not review or consider any other evidence. Here, the circuit court reviewed the evidence allowed by section 102.168(8) and found that the canvassing board had not abused its discretion. Appellants' argument that the circuit court was required to review additional evidence is contrary to the plain meaning of the statute.

Because the circuit court properly followed the clear and unambiguous language of the applicable statute, we AFFIRM. The mandate shall issue forthwith, and no motion for rehearing shall be entertained.

CLARK, MARSTILLER, and MAKAR, JJ., CONCUR.