IN THE COURT OF APPEALS OF IOWA

No. 3-617 / 12-2146
Filed July 24, 2013

KEVIN KILGORE,
Contestant-Appellant,

vs.

SPENCER LUMBARD and MELINDA ENGLAND,
Respondents-Appellees.

Appeal from the Iowa District Court for Ringgold County, Paul R. Huscher, Judge.

A write-in candidate appeals from the district court's ruling affirming in part and reversing in part the decision of the election contest court. **AFFIRMED.**

Kevin Kilgore, Diagonal, appellant pro se.

Patrick W. Greenwood, Lamoni, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DOYLE, P.J.

A write-in candidate for two township officer positions listed on an election ballot appeals from the district court's ruling affirming in part and reversing in part the decision of the election contest court. Although the district court agreed with the ultimate result of the election contest court's decision that Kilgore had not been elected in the November 2010 election to fill the office of Jefferson Township Trustee or Clerk, the district court determined the election was a nullity and therefore the election contest court's setting aside the election and assigning costs to the county was in error. Upon our review, we affirm the ruling of the district court.

***I. Background Facts and Proceedings*.**

Petitioner Kevin Kilgore lives in Ringgold County's Jefferson Township. In the 2006 general election, voters of that township passed a public measure providing that the offices of Jefferson Township Trustee and Clerk would be filled in the future by appointment, rather than election, after the elected officials terms ended. Kilgore did not appeal the passing of the measure or the election of those officials that year.

Despite the passing of the measure, the offices of trustee and clerk of the township were inadvertently included on the November 2010 general election ballot.[1] The offices were held at that time by respondents Spencer Lumbard and Melinda England. They had been elected in 2006 to four-year terms expiring in

[1] Although the 2010 ballot is not a part of our record, it appears from the record we do have that no candidates were listed for the offices of Jefferson Township trustee and clerk and that all votes cast for the positions were by write-in.

December 2010. They were reappointed to their respective offices for four-year terms beginning January 2011.

Kilgore received the majority of the votes cast for both positions as a write-in candidate.[2] However, because of the public measure previously passed, the Ringgold County Auditor determined the results of the election for the two positions were invalid, and she therefore set aside the election results and deemed the results null and void. Ultimately, the write-in votes were not listed in the voting abstract prepared by the Board of Supervisors for the November election.

At some point after the election, Kilgore learned he had received the majority of the votes cast for both offices. In early 2011, Kilgore contested the election by filing a notification of intent to contest election pursuant to Iowa Code section 62.5 (2009). Following the convening of an election contest court and a hearing, the contest court majority determined Kilgore was not duly elected in the November 2010 election because those offices should not have been included on the ballot, and the auditor and Board of Supervisors correctly invalidated the election. The election contest court set aside the election and taxed the costs to Ringgold County pursuant to Iowa Code section 62.24.

Kilgore appealed the decision of the election contest court to the district court. He asserted that because he received the majority of votes, he should have been declared elected and the vote of the people should not have been

[2] It is unclear exactly how many write-in votes Kilgore received. However, it was not disputed he received the majority of votes cast for both offices.

ignored. He also argued there was no basis in law for setting aside the results, and the contest court's decision was not supported by law.

On November 13, 2012, the district court entered its ruling affirming the election contest court's decision that Kilgore had not been elected. However, the district court disagreed with the election contest court's setting aside the election and taxing costs to Ringgold County. The district court explained:

> Since November 2006, no person has been elected, or could be elected, as a township trustee or township clerk in Jefferson Township, Ringgold County, Iowa. No ballot error, write-in campaign, or action by the County Auditor would or could result in an election to fill those offices. Quite simply, those offices could not be, and never will be, filled by election unless the Board of Supervisors pass a resolution to restore that right, and the measure is passed in a subsequent general election.
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> The placement on the 2010 ballot of a place to vote on the office of trustee or clerk was in error. . . . There was no election to be tallied and no vacancy to be filled by election. By law, the duty of filling vacancies of township officers in this township falls squarely and solely on the Supervisors. [Kilgore's] challenge must fail as there was no election to challenge.
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> The election contest court held that the election was set aside, requiring the costs to be taxed to Ringgold County. This finding was erroneous. Because there was no election, and could not have been an election, there was nothing to set aside. [Iowa Code section 62.24] provides that "if the statement is dismissed, or if the prosecution fails, the costs of the contest shall be paid by the contestant."

The district court concluded:

> [Kilgore] was not elected to fill the office of township trustee or township clerk of Jefferson Township in November 2010, as neither of those positions are filled by election. Any purported election was a nullity as a matter of law. The decision of the election contest court of March 22, 2011, is affirmed except as to costs. Because there was no office to be filled by election, the statement of intention to contest the election must be dismissed, the prosecution of the same fails, and the costs, except those on

> appeal to the Iowa Court of Appeals,[3] are taxed to the contestant, Kevin Kilgore.

Kilgore now appeals.

III. Discussion.

On appeal Kilgore sets forth eight "issues." His arguments are not the model of clarity, and he has failed to articulate and support many of his claims on appeal. Additionally, the respondents point out that multiple issues he asserts were not raised before the district court or the election contest court. We therefore address the respondents' error preservation concerns, as well as Kilgore's preserved claim, in turn. The parties agree our review is de novo.[4] *See* Iowa R. App. P. 6.907; *see also Taylor v. Cent. City Cmty. Sch. Dist.*, 733 N.W.2d 655, 657 (Iowa 2007).

A. Error Preservation.

"Our error preservation rules provide that error is preserved for appellate review when a party raises an issue and the district court rules on it." *State ex rel. Miller v. Vertrue, Inc.*, ___ N.W.2d ___, ___, 2013 WL 3377866, at *3 (Iowa 2013). The mere filing of a notice of appeal is not sufficient to preserve error for our review. *See* Thomas A. Mayes & Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice*, 55 Drake L. Rev. 39, 48 (Fall 2006) (explaining that "[a]s a general rule, the error preservation rules require a party to raise an issue in the trial court and obtain a

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[3] *See Kilgore v. Lumbard*, No. 11-1688, 2012 WL 1860707, at *1-2 (Iowa Ct. App. May 23, 2012).

[4] Kilgore addresses the standard of review in his Issue I. Because we agree our review is de novo and the respondents do not challenge that standard of review, we do not address the issue further.

ruling from the trial court"). "Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal." *Taft v. Iowa Dist. Court ex rel. Linn Cnty.*, 828 N.W.2d 309, 322 (Iowa 2013). It is not enough for a party to make only general reference to a constitutional provision in the district court and then seek to develop the argument on appeal to preserve error. *Id.* at 322-23. Moreover, if the district court fails to make specific findings on an issue raised by a party, a motion to enlarge or amend the court's ruling pursuant to Iowa Rule of Civil Procedure 1.904(2) should be filed for the district court to address the issue. *Id.* at 323. These rules are not designed to be hypertechnical. *Mitchell v. Cedar Rapids Cmty. Sch. Dist.*, ___ N.W.2d ___, ___, 2013 WL 3129384, at *5 (Iowa 2013). Rather, they exist to ensure that district courts have the opportunity to correct or avoid errors and to provide appellate courts with a record to review. *State v. Pickett*, 671 N.W.2d 866, 869 (Iowa 2003).

Here, Kilgore argues the election contest court failed to address many of his arguments raised therein. He then asserts the district court failed to address those issues not addressed by the election contest court, as well as other issues he raised in district court. However, Kilgore did not file a motion to amend or enlarge the district court's ruling to address those issues he claims were not addressed. Consequently, those issues he claims were not addressed by the district court are not preserved for our review.

Additionally, we agree with the respondents that Kilgore failed to preserve for our review his arguments concerning the "Causes of Contest," "Hearing in a District Court Appellate Proceeding," "County Attorney," "Bond Debt," and

"Judicial Election Statutes." These arguments were not raised in or decided by the district court. Additionally, Kilgore's random mention of these issues, without any real analysis, argument, or supporting authority is insufficient to prompt this court's consideration. *See State v. Mann*, 602 N.W.2d 785, 788 n. 1 (Iowa 1999); *Soo Line R.R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 689 (Iowa 1994). We therefore do not address these arguments any further.

B. Costs.

Iowa Code section 62.24 provides that, in contesting the election of county officers:

> The contestant and the incumbent are responsible for the expenses of the witnesses called by them, respectively. If the results of the election are upheld by the contest, if the statement is dismissed, or if the prosecution fails, the costs of the contest shall be paid by the contestant. If the court or tribunal trying the contest determines that the contestant won the election, or if the election is set aside, the costs of the contest shall be paid by the county.

The election court set aside the election, and because it set aside the election, it taxed the costs to Ringgold County pursuant to section 62.24. For the same reasons given by the district court, we find Ringgold County should not have to bear the costs of the election contest.

The purported election for Jefferson Township Trustee and Clerk was a nullity as a matter of law because those positions were to be filled by appointment, not by election. A "nullity" is "Nothing; no proceeding; an act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect." Black's Law Dictionary 1216 (4th ed. 1968). The purported election being a nullity, there was no election. There being no election, there was no election to be set aside. With

no set aside of an election, coupled with the fact the contest court and the district court found Kilgore had not been elected, the third sentence of section 62.24 providing that the costs of the contest be taxed to the county does not come into play.

Furthermore, the district court correctly decreed Kilgore's statement of intention to contest the election must be dismissed. Such action triggers the second sentence of section 62.24, which provides the contestant pay the costs of the contest. Moreover, the district court correctly decreed Kilgore's prosecution of the election contest failed. Again, such action triggers the provision of the statute requiring the contestant to pay the costs. *See* Iowa Code § 62.24. Consequently, we find no error in the district court's determination the election contest court erred in assigning costs to the county instead of Kilgore. Accordingly, we affirm the ruling of the district court assigning costs to Kilgore.

IV. Conclusion.

For the foregoing reasons, we affirm in all respects the district court's ruling affirming in part and reversing in part the decision of the election contest court. Costs on appeal are assessed to Kilgore.

AFFIRMED.