

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 0474

STATE OF LOUISIANA BOARD OF ETHICS

VERSUS

KEVIN "BUTCHIE" AMBEAU, SR.

Judgment rendered March 6, 2015.

* * * * *

Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 624059
Honorable Timothy Kelley, Judge

* * * * *

TRACY M. BARKER
BATON ROUGE, LA

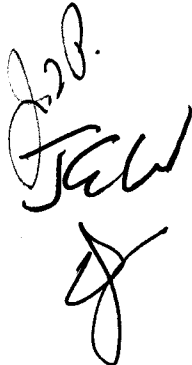
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PLAINTIFF-APPELLEE
THE LOUISIANA BOARD OF ETHICS

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DEFENDANT-APPELLANT
KEVIN "BUTCHIE" AMBEAU, SR.

* * * * *

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.



PETTIGREW, J.

In this case, appellant, Kevin "Butchie" Ambeau, Sr. ("Mr. Ambeau"), challenges the December 16, 2013 judgment of the trial court ordering him to pay the State of Louisiana \$2,500.00, representing the civil penalty assessed by the Louisiana Board of Ethics (the "Board") for the late filing of his 2010 Tier 2 candidate personal financial disclosure statement. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

At all times pertinent hereto, Mr. Ambeau was the Chief of Police of St. Gabriel, Louisiana. On February 9, 2011, Mr. Ambeau qualified to run for re-election in the April 2, 2011 election. On March 22, 2011, the Board issued a Notice of Delinquency to Mr. Ambeau pursuant to La. R.S. 18:1495.7 and La. R.S. 42:1124.2. Mr. Ambeau received the notice on March 24, 2011, advising him that he had 14 business days within which to file his 2010 Tier 2 candidate personal financial disclosure statement. It was not until September 13, 2011, that Mr. Ambeau filed his 2010 Tier 2 candidate personal financial statement -- 153 days late.

On October 25, 2011, the Board issued a Late Fee Assessment Order to Mr. Ambeau for \$2,500.00, setting out the time delays within which Mr. Ambeau could dispute the assessment. The applicable time delays for Mr. Ambeau to request a waiver, appeal the assessment, or appeal the final Late Fee Assessment Order expired, yet the Board continued its unsuccessful attempts at amicably settling the matter with Mr. Ambeau in an effort at avoiding the necessity of filing suit.

On August 23, 2013, the Board filed a petition in the 19th Judicial District Court requesting that Mr. Ambeau be made to appear and show cause why the Late Fee Assessment Order of the Board should not be made executory. The matter proceeded to hearing on December 2, 2013, at which time the trial court heard argument from respective counsel and considered the evidence introduced. The trial court signed a judgment on December 16, 2013, providing as follows:

IT IS ORDERED, ADJUDGED AND DECREED that the defendant, Kevin "Butchie" Ambeau, Sr., shall pay to the State of Louisiana the sum of \$2500, representing the civil penalty assessed by the Louisiana Board

of Ethics (the "Board"), for his late filing of his 2010 Tier 2 candidate personal financial disclosure statement, together with legal interest from the date of the Petition and all costs of these proceedings, for the violations of La. R.S. 18:1495.7, La. R.S. 42:1124.2, and La R.S. 42:1124.4.

It is from this judgment that Mr. Ambeau appeals.

DISCUSSION

Louisiana Revised Statutes 42:1124, 42:1124.2, and 42:1124.3 require State and local elected officials and other appointees to file an annual personal financial disclosure statement no later than May 15th of each year during which the elected official or person holds an office or position included in the statutes. Louisiana Revised Statutes 18:1495.7 mandates that any person who becomes a candidate for an office for which the holder of the office is required to file financial disclosure statements pursuant to La. R.S. 42:1124, 42:1124.2, or 42:1124.3, shall file a financial disclosure statement as required by said statutes for the office for which he is a candidate.

At all times pertinent hereto, La. R.S. 18:1495.7 provided as follows:

A. Any person who becomes a candidate for an office for which the holder of the office is required to file financial disclosure statements pursuant to R.S. 42:1124, 1124.2, or 1124.3 shall file a financial disclosure statement as required by R.S. 42:1124, 1124.2, or 1124.3 for the office for which he is a candidate. The statement required by this Section shall be filed within ten days of the day the candidate files his notice of candidacy for the office.^[1] If the person is required by R.S. 42:1124, 1124.2, or 1124.3 to file a statement for the office for which he is a candidate, such filing shall satisfy the requirements of this Section.

B. Any person who fails to file or fails to timely file the financial statement required by Subsection A of this Section, or who fails to disclose or fails to accurately disclose information required to be included in the financial statement required by Subsection A of this Section, shall be subject to penalties as provided in R.S. 42:1124.4.

On appeal, Mr. Ambeau argues that the trial court erred in finding that he was required to file a 2010 personal financial disclosure statement as a candidate when he was serving as the elected chief of police for St. Gabriel and qualified to seek re-election in the April 2011 general primary election. Rather, Mr. Ambeau asserts, he was only

¹ Louisiana Revised Statutes 18:1495.7 was amended by La. Acts 2012, No. 574 §1 to reduce the time period for filing a candidate personal financial disclosure statement from ten days from the date the candidate filed his notice of candidacy to three days after the close of the qualifying period.

required to file an annual personal financial disclosure statement no later than May 15th of each year during his tenure of office. He maintains that the Board ignored the most important provision of La. R.S. 18:1495.7(A), i.e., "If the person is required by R.S. 42:1124, 1124.2, or 1124.3 to file a statement for the office for which he is a candidate, such filing shall satisfy the requirements of this Section." Mr. Ambeau points out that he filed two personal financial disclosure statements for 2010 when only one was due. Thus, Mr. Ambeau asserts, the Late Fee Assessment Order issued by the Board was an absolute nullity and must be reversed by this court.

In response, the Board points out that the judgment appealed from does not contain a ruling that requires Mr. Ambeau to file a Tier 2 candidate personal financial disclosure statement. Rather, the Board maintains, the only issue presented to the trial court was the conversion of the Board's Late Fee Assessment Order into an order of the trial court pursuant to La. R.S. 42:1135.² The Board further argues that Mr. Ambeau's appeal is prescribed as all applicable time delays to challenge the late fee assessment have expired. The Board notes that the time period to challenge whether he was required to file a 2010 Tier 2 candidate personal financial disclosure statement was either within 14 business days of receiving the notice of delinquency, within 30 days of receiving the Late Fee Assessment Order through the "good cause" waiver request procedure, within 30 days of receiving the Late Fee Assessment Order through appealing the assessment to the Ethics Adjudicatory Board, or through the appellate procedure set forth in La. R.S. 42:1142. Thus, because Mr. Ambeau did not take advantage of any of those procedures to challenge his filing requirement, the Board asserts, such issue is not properly before this court.

² Louisiana Revised Statutes 42:1135 provides as follows with regard to the enforcement of an order of the Board:

The Board of Ethics shall have the right to enforce any valid regulation, final decision, or final order of the Board of Ethics or the Ethics Adjudicatory Board in any court of competent jurisdiction in this state by a mandamus or injunction suit brought for that purpose. The district court for the parish wherein the Board of Ethics is domiciled shall have authority to convert a valid final decision or final order into a court order, upon receipt from the Board of Ethics of a rule to show cause for that purpose.

Directing our attention to Mr. Ambeau's argument that he was only required to file one personal financial disclosure statement per year, the Board posits, that even assuming that this argument is valid, the evidence in the record does not support his position because his 2010 personal financial disclosure statement was not timely filed. Thus, the Board maintains, Mr. Ambeau was required to file a 2010 Tier 2 candidate personal financial disclosure statement pursuant to La. R.S. 18:1495.7.

After reviewing the record before us, we agree with the Board that all the time delays to request a waiver of the late fee or appeal the appropriateness of the assessment have expired. All that was before the trial court, at the December 2, 2013 hearing, was a rule to show cause why the Board's Late Fee Assessment Order should not be made executory.

According to the record, while Mr. Ambeau was the incumbent police chief of St. Gabriel in 2010, Mr. Ambeau did not file a 2010 personal financial disclosure statement timely. In fact, he did not file his 2010 personal financial disclosure statement until July 30, 2013. Thus, as there was no "filing" on record when Mr. Ambeau qualified in February 2011 to run for re-election in the April 2011 election, he was required, pursuant to La. R.S. 18:1495.7, to file a Tier 2 candidate personal financial disclosure statement within ten days of qualifying. The evidence reveals that this statement was not filed until September 13, 2011.³ We further note that the 2009 personal financial disclosure statement due on May 15, 2010, was not filed until August 21, 2012.

On discovery of Mr. Ambeau's failure to file his 2010 Tier 2 candidate personal financial disclosure statement, the Board issued a March 22, 2011 notice of delinquency, followed by an October 25, 2011 Late Fee Assessment Order advising him that he had until November 28, 2011, to pay the \$2,500.00 late fee. The cover letter transmitted along with the Late Fee Assessment Order also indicated that Mr. Ambeau had 30 days from the date of the letter to either request a waiver of the late fee and/or appeal the

³ The record further reflects that Mr. Ambeau filed a third personal financial disclosure statement covering the 2010 calendar year. He filed a 2010 personal financial disclosure statement on August 21, 2012, in connection with the October 22, 2011 election for Iberville Parish Sheriff, an office different from the office he held at the time.

assessment directly to the Ethics Adjudicatory Board. Because Mr. Ambeau did not request a waiver or an appeal to challenge the assessment, the Late Fee Assessment Order became the final order of the Board. Thereafter, the Board properly filed a rule to show cause to have the final order of the Board converted into a judgment of the trial court. Having reviewed the evidence in the record and the applicable statutory law, we find no error in the trial court's ruling converting the Board's Late Fee Assessment Order into a final judgment of the trial court. Mr. Ambeau's arguments on appeal are without merit.

CONCLUSION

For the above and foregoing reasons, we affirm the December 16, 2013 judgment of the trial court and assess all cost associated with this appeal against appellant, Kevin "Butchie" Ambeau, Sr.

AFFIRMED.