

**ADAM IRVIN, CARL IRVIN
AND LONNIE HAMMOND, JR.**

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NO. 2017-CA-0614

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VERSUS

COURT OF APPEAL

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**HOWARD ANTHONY BROWN
AND THE HONORABLE
ARTHUR A. MORRELL**

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2017-07039, DIVISION "J"
HONORABLE Cherrell Sims Taplin, PRO TEMPORE

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Judge Paula A. Brown

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(Court composed of Chief Judge James F. McKay, III, Judge Edwin A. Lombard,
Judge Daniel L. Dysart, Judge Rosemary Ledet, Judge Paula A. Brown)

Charles Ferrier Zimmer, II
Daniel Ernest Davillier
DAVILLIER LAW GROUP
1010 Common Street
Suite 2510
New Orleans, LA 70112

COUNSEL FOR PLAINTIFFS/APPELLANTS

Howard A Brown, Pro Se
4711 Marques Drive
New Orleans, LA 70127

DEFENDANT/APPELLEE/IN PROPER PERSON

**REVERSED
JULY 28, 2017**

This is an election suit. Plaintiffs, Adam Irvin, Carl Irvin, and Lonnie Hammond, Jr. (collectively, “Plaintiffs”), appeal the trial court’s judgment overruling Plaintiffs’ objection to the candidacy of the defendant, Howard Anthony Brown, for Assessor of Orleans Parish. Plaintiffs contend that Mr. Brown falsely certified on his Notice of Candidacy form that he had filed his state and federal income taxes or was not obligated to file taxes, in contravention of La. R.S. 18:463(A)(2)(a)(iv).¹ For the reasons that follow, we reverse the judgment.

FACTUAL AND PROCEDURAL HISTORY

Mr. Brown filed a Notice of Candidacy form to qualify as a candidate for Assessor of Orleans Parish. Paragraph 8 of the form required Mr. Brown to certify that he had filed his federal and state income taxes for previous five years, had filed for an extension of time for filing or was not required to either file a federal or state income tax return or both. In response to Mr. Brown’s certification, Plaintiffs

¹ La. R.S. 18:46(A)(2)(a)(iv) provides: “Except for a candidate for the United States senator or representative in congress, that for each of the previous five tax years, he has filed his federal and state income tax returns, has filed for an extension of time for filing either his federal or state income tax return or both, or was not required to file either a federal or state income tax return or both.

filed a “Petition for Action Objecting to Candidacy”², seeking to disqualify him as a candidate. Plaintiffs averred that Mr. Brown’s certification in Paragraph 8 of the form was false.

The matter was set for trial on July 24, 2017. At trial, Plaintiffs introduced into evidence Mr. Brown’s Notice of Candidacy form, a public records request made to the Louisiana Department of Revenue (“LDR”), and the LDR’s response to the request. Plaintiffs individually testified that the basis for their respective objections to Mr. Brown’s candidacy was that he falsely certified that he filed his state income tax returns for each of the previous five years.

Bradley Blanchard, LDR’s representative, verified that LDR received a public records request inquiring whether or not Mr. Brown was current in filing his Louisiana tax returns. Mr. Blanchard testified that LDR’s records confirmed that Mr. Brown had filed tax returns for 2012, 2013, and 2014; however, LDR could not confirm that he filed for 2015 and 2016.

Mr. Brown testified, on his behalf, that he was not required to file federal tax returns in 2015 and 2016 because “you have to earn income to do that.” Because he was not required to file federal tax returns, he testified he also was not required to file state income tax returns. In response to direct questioning from the trial court, Mr. Brown reiterated that he did not file income tax returns for 2015 and 2016 because he did not earn any income.

² The Honorable Arthur A. Morrell, in his capacity as Clerk of Court for Criminal District Court for Orleans Parish, the Chief Election Officer for Orleans Parish, was also joined as a defendant as required by La. R.S. 18:1402(A)(2).

On cross-examination by Plaintiffs' counsel, Mr. Brown acknowledged that he had no documentary evidence to show that he filed state income tax returns for 2015 and 2016, and had no documentary records to establish he was not required to file a tax return. Mr. Brown explained that he was self-employed, that he was the sole proprietor at A.J.A. Electric, and that he

did not receive any compensation generated by A.J.A. Mr. Brown testified, however, that he and A.J.A. are one and the same, and "[w]hen A.J.A. Electric do (sic) work, ... and A.J.A. Electric collect (sic) any type of compensation, [he] collect (sic) compensation." Under further questioning, Mr. Brown conceded that A.J.A. was compensated and may have received "some type of money" for work; nevertheless, he maintained that A.J.A. did not receive any income or profit for 2015 and 2016. Mr. Brown testified his certification on Paragraph 8 was to that portion which provided that he "was not required to file either a federal or state income tax return."

The trial court found Plaintiffs presented a prima facie case that Mr. Brown had not filed federal or state tax returns in 2015 and 2016, and that he had not requested any filing extensions. Nonetheless, the trial court found that Plaintiffs had not met their burden of proof on the issue of whether or not Mr. Brown was required to file federal or state tax returns in 2015 and 2016. Accordingly, the trial court found in favor of Mr. Brown's candidacy and overruled Plaintiffs' petition objecting to his candidacy.

This appeal followed.

STANDARD OF REVIEW

This Court discussed the appropriate standard of review in *Nixon v.*

Hughes, as follows:

Appellate courts review a trial court's findings of fact utilizing the manifest or clearly wrong standard of review. *Duhon v. Briley*, 12-1137, p. 3 (La. App. 4 Cir. 5/23/13), 117 So.3d 253, 257. "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong." *Id.*

"Regarding issues of law, the standard of review of an appellate court is simply whether the court's interpretive decision is legally correct." *Id.*, 12-1137, p. 4, 117 So.3d at 257-258. "Accordingly, if the decision of the trial court is based upon an erroneous application of law rather than on a valid exercise of discretion, the decision is not entitled to deference by the reviewing court." *Id.* 12-1137, p. 4, 117 So.3d at 258.

2015-1036, p. 2 (La. App. 4 Cir. 9/29/15), 176 So.3d 1135, 1137.

DISCUSSION

Plaintiffs raise the following three assignments of error: 1) the trial court committed legal error by ruling that compensation received by Mr. Brown or A.J.A. was not income within the meaning of state or federal tax law; 2) the trial court erred by not shifting the burden of proof to Mr. Brown to demonstrate that his statements in his Notice of Candidacy were true and accurate, specifically the finding that under Paragraph 8, he was not required to file a federal or state tax return; and 3) the trial court erred in finding Plaintiffs retained the burden of proof — even after Plaintiffs proved Mr. Brown had not filed a tax return in 2015 and 2016.

This Court shall first consider Plaintiffs' claims that the trial court committed legal error in its placement of the burden of proof.

Burden of Proof

Our jurisprudence is well-settled that the person objecting to a party's candidacy bears the burden of proof. *Landiak v. Richmond*, 2005-0758, p. 6 (La. 3/24/05), 899 So.2d 535, 541. "Because election laws must be interpreted to give the electorate the widest possible choice of candidates, a person objecting to candidacy bears the burden of proving that the candidate is disqualified. *Id.* "However, once the party bearing the burden of proof has established a prima facie case, the burden then shifts to the opposing party." *Louisiana State Board of Ethics v. Garrett*, 2006-0263, p. 8 (La. App. 4 Cir. 3/21/06), 929 So.2d 176, 180.

As the Supreme Court explained in *Landiak*:

Generally, the legal term "burden of proof" "denotes the duty of establishing by a fair preponderance of the evidence the truth of the operative facts upon which the issue at hand is made to turn by substantive law." *Black's Law Dictionary* (8th ed). Under Louisiana's civil law, the "burden of proof" may shift back and forth between the parties as the trial progresses. Therefore, when the burden of proof has been specifically assigned to a particular party, that party must present sufficient evidence to establish the facts necessary to convince the trier of fact of the existence of the contested fact. Stated another way, the party on which the burden of proof rests must establish a prima facie case. If that party fails to carry his burden of proof, the opposing party is not required to present any countervailing evidence. On the other hand, once the party bearing the burden of proof has established a prima facie case, the burden then shifts to the opposing party to present sufficient evidence to overcome the other party's prima facie case.

2005-0758, p. 8, 899 So.2d 535 at 542.

In the present matter, Mr. Brown certified that the following statement in Paragraph 8 of the Notice of Candidacy form was true:

If I am a candidate for any office other than United States senator or representative in congress, that for each of the previous five tax years, I have filed my federal and state income tax returns, have filed for an extension of time for filing either my federal or state income tax return, have filed for an extension of time for filing either my federal or state income tax return or both, or was not required to filed either a federal or state income tax return or both.

The trial court found Plaintiffs made a prima facie case that Mr. Brown had neither filed his 2015 and 2016 tax returns nor had he requested an extension. At that juncture, we find, as Plaintiffs contend, the statutory provisions and jurisprudence support a finding that the burden of proof shifts to the candidate to prove the truth of his or her attestations — including that he or she was not required to file either federal or state tax returns or both. Only the candidate is in the position to establish whether he or she was required to file taxes.

Once Plaintiffs established a prima facie case to disqualify Mr. Brown, the burden of proof shifted to Mr. Brown to prove that the attestations made in his Notice of Candidacy form were true — specifically, that he did not file tax returns because he was not required to do so. Mr. Brown did not dispute these facts; instead, he merely asserted — without any documentary proof — that he was not required to file tax returns for the years 2015 and 2016. Mr. Brown also admitted that A.J.A. made “some money” and received compensation. We find these admissions, coupled with the fact that he did not present any documentary evidence to show he was not required to file taxes, were insufficient evidence to rebut Plaintiffs’ prima facie case.

Based upon our determination that the trial court erred as a matter of law in failing to shift the burden of proof to Mr. Brown once Plaintiffs presented prima facie evidence showing grounds for disqualification, this Court is no longer compelled to defer to the trial court's findings. *See Nixon, supra*. Our *de novo* review of the record establishes that Mr. Brown did not offer sufficient evidence to establish he was not required to file tax returns.

CONCLUSION

Based on the forgoing reasons, we hereby reverse the trial court's judgment, grant Plaintiffs' Petition For Action Objecting To Candidacy, and disqualify Mr. Brown from candidacy for the Office of Assessor of Orleans Parish.³

REVERSED

³ Having found that Mr. Brown did not meet his burden of proof to show he was not required to file tax returns, pretermits discussion of Plaintiffs' claim that the trial court erred in ruling that compensation receive by Mr. Brown or A.J.A. was not income for purposes of state and federal tax law.