

OP 24-0524

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 207

MONTANA DEMOCRATIC PARTY,

Petitioner,

v.

MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS AND CLARK COUNTY,
HONORABLE MICHAEL F. MCMAHON, Presiding,

Respondent.

ORIGINAL PROCEEDING: Petition for Writ of Supervisory Control
In and For the County of Lewis and Clark,
Cause No. DV-2024-0542
Honorable Michael F. McMahon, Presiding Judge

COUNSEL OF RECORD:

For Petitioner:

Caitlin Boland Aarab, Boland Aarab PLLP, Great Falls, Montana

For Respondent:

Michael F. McMahon, Self-represented, Helena, Montana

For State of Montana:

Austin Knudsen, Montana Attorney General, Michael D. Russell, Alwyn T. Lansing, Thane P. Johnson, Michael Noonan, Assistant Attorneys General, Helena, Montana

Emily Jones, Attorney at Law, Billings Montana

For Secretary of State:

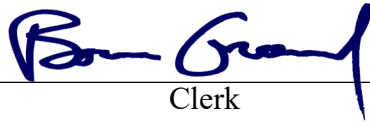
Clay Richard Leland, Austin Markus James, Secretary of State, Helena, Montana

For Intervenor Robert Barb:

Rob Cameron, Jackson, Murdo & Grant, P.C., Helena, Montana

Decided: September 17, 2024

Filed:


Clerk

Justice Dirk Sandefur delivered the Opinion and Order of the Court.

¶1 Petitioner Montana Democratic Party (MDP) seeks a writ of supervisory control over the First Judicial District Court, Lewis and Clark County, in its Cause No. BDV-2024-542. MDP alleges the District Court erred in dissolving a temporary restraining order and denying MDP's request for temporary restraining order and preliminary injunction to preclude Robert Barb from appearing on the general election ballot as the Montana Green Party's 2024 U.S. Senate Candidate. MDP argues that supervisory control is appropriate in this case because of the applicable statutory deadlines for the upcoming general election.

¶2 We invited the District Court, Defendants State of Montana and Secretary of State Christi Jacobsen (collectively "State"), and Intervenor Robert Barb to file summary responses to MDP's petition on an expedited basis. The State and Barb have responded in opposition to MDP's petition.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 The events leading to the present controversy began on June 4, 2024, when Michael Downey prevailed over Barb in the primary election to become the Green Party's 2024 U.S. Senate candidate. Downey withdrew from the general election on August 12, 2024, thus leaving the Green Party with no 2024 U.S. Senate candidate.

¶4 On August 16, 2024, Barb filed suit against the Green Party, seeking to become its 2024 U.S. Senate candidate. On August 19, 2024, Steve Kelley, the Green Party's presiding officer, certified to Jacobsen that, in accordance with § 13-10-327, MCA, the Green Party's central committee nominated/appointed Barb to fill the vacancy created by Downey's withdrawal. Kelley further requested that Barb's name be placed on the general election ballot. Barb accepted the nomination/appointment and dismissed his lawsuit that day. As noted by the District Court in its Order, "It appears undisputed that no general Green Party meeting or membership vote was held on this appointment."

¶5 Jacobsen received and filed the Green Party's "Certificate of Appointment of Replacement Candidate, Declaration of Acceptance and Oath of Candidacy," bearing Kelley's and Barb's signatures, the following day. On August 22, 2024, Jacobsen certified

the 2024 general election ballot that included Barb as the Green Party’s 2024 U.S. Senate Candidate. As found by the District Court, the timeline of relevant events on August 22, 2024, occurred as follows:

¶6 At 2:33 p.m., MDP filed the District Court lawsuit that underlies the present petition to this Court, in which it sought declaratory and injunctive relief. At 3:29 p.m., MDP filed motions for a temporary restraining order (TRO) and preliminary injunction. MDP indicated in its filing that it had provided “written notice to Defendants.” Via a process server, Jacobsen was served with MDP’s complaint and summons, but not its TRO motion, at 3:30 p.m. The District Court further stated that it learned during the August 30, 2024 hearing that MDP’s counsel did not in fact provide “written notice to Defendants,” as she had indicated in the TRO motion, but had only cc’d counsel for the Office of the Secretary of State on an e-mail she sent to the District Court’s Scheduling Clerk at 4:10 p.m. with the TRO motion and brief in support attached. At 7:06 p.m., the Office of the Secretary of State notified the County Election Administrators/Officers that it had certified the general election ballot. At 7:58 p.m., Hon. Kathy C. Seeley signed the Temporary Restraining Order and Order Setting Hearing on Plaintiff’s Motion for a Preliminary Injunction—after the certification had occurred.

¶7 On August 23, 2024, Hon. Michael McMahon assumed jurisdiction of the case. On August 30, 2024, the court held a hearing on several pending motions, including MDP’s motion for TRO and preliminary injunction, the State’s motion to dissolve the August 22, 2024 TRO, and Barb’s motion to dismiss. On September 3, 2024, the court issued an order that denied MDP’s motion for TRO and preliminary injunction, the State’s motion to dissolve the TRO, and Barb’s motion to dismiss.

¶8 On September 3, 2024, MDP filed a Notice of Appeal with this Court, appealing from the District Court’s September 3, 2024 order pursuant to M. R. App. P. 6(3)(e), which provides that orders granting or dissolving, or refusing to grant or dissolve, an injunction are immediately appealable. The following day, MDP filed the present petition for writ of supervisory control, challenging the same order as its appeal.

DISCUSSION

¶9 Supervisory control is an extraordinary remedy that may be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The case must meet one of three additional criteria: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of state-wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case. M. R. App. P. 14(3)(a)-(c). Whether supervisory control is appropriate is a case-by-case decision. *Stokes v. Mont. Thirteenth Jud. Dist. Ct.*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (citations omitted).

¶10 MDP argues that supervisory control is appropriate because this matter involves purely legal questions and emergency factors make the normal appeal process inadequate. The State disagrees, pointing out that the District Court's denial of MDP's motion for a preliminary injunction is immediately appealable under M. R. App. P. 6(3)(e) and this Court has denied petitions for supervisory control where the subject order is immediately appealable under Rule 6(3).

¶11 The State is correct that, under most circumstances, we will not take supervisory control over matters that are immediately appealable under M. R. App. P. 6. In *Hert v. Mont. Sixteenth Jud. Dist. Ct.*, No. OP 24-0070, 416 Mont. 551, 545 P.3d 1067 (Feb. 6, 2024), we declined to consider a petition for supervisory control where the petitioners argued that urgency or emergency factors made the normal appeal process inadequate for their challenge of a district court's denial of their request for preliminary injunction. In that case, parents sought injunctive relief after their son was deemed ineligible to play on his high school's basketball team that school year. We noted that the subject order was immediately appealable under M. R. App. P. 6(3)(e) and the parents could request expedited briefing in an appeal. We determined that further consideration on petition for writ was unwarranted, as the parents had delayed petitioning until there was no realistic possibility that we could grant meaningful relief, even on expedited consideration, because the basketball season had nearly concluded. We also declined to consider a petition for

writ of supervisory control in *T.K. and K.K. v. Mont. Seventeenth Jud. Dist. Ct.*, No. OP 24-0078, 416 Mont. 551, 545 P.3d 1067 (Feb. 13, 2024), where petitioners asked this Court to take supervisory control after a district court enjoined them from disseminating confidential information from an ongoing dependent-neglect matter. We asserted that the subject order was immediately appealable under M. R. App. P. 6(3)(e) and that direct appeal provided an adequate remedy, such that supervisory control was unwarranted, where the petitioners had not demonstrated any emergency factors.

¶12 The present case, however, presents the rare exception where the urgency is such that the normal appeal process, even on an expedited briefing schedule, may not afford effective relief that may be available via supervisory control. M. R. App. P. 14(7)(a) allows us to obtain summary responses that provide adequate opportunity for the parties to the underlying dispute to present their arguments to this Court in a more expeditious manner than full briefing would allow. We therefore conclude that MDP’s petition for writ of supervisory control warrants further consideration as it involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate.

¶13 We thus consider whether the District Court is proceeding under a mistake of law and causing a gross injustice by denying MDP’s motion for TRO and preliminary injunction. We review a district court’s conclusions and applications of law for correctness and we review the grant of injunctive relief for a manifest abuse of discretion. *Mont. Democratic Party v. State*, 2020 MT 244, ¶ 6, 401 Mont. 390, 472 P.3d 1195.

¶14 At issue is the District Court’s determination that MDP had failed to comply with the “express and exclusive statutory process for contesting nominations” set forth in § 13-36-102, MCA. Because the court determined that § 13-36-102, MCA, applied, it further concluded that MDP’s failure to comply with this statute meant MDP was not likely to succeed on the merits. The court thus concluded MDP was not entitled to a preliminary injunction because it did not establish the necessary criteria under § 27-19-201(1)(a), MCA.

¶15 MDP argues the District Court erred by concluding MDP was required to follow the procedure set forth in § 13-36-102, MCA, when it challenged the Green Party’s

nomination/appointment of Barb. MDP asserts that § 13-36-102, MCA, applies only to challenges made to the results of a primary or general election and does not apply when a party challenges the appointment of a replacement candidate under § 13-10-327, MCA. The crux of MDP's argument is that Barb was not "nominated" within the meaning of the election code, but rather was "appointed" as a replacement candidate.

¶16 A district court's statutory interpretation is a question of law, which we review for correctness. *Maier v. State*, 2021 MT 296, ¶ 7, 406 Mont. 280, 498 P.3d 755. Statutory language must be construed according to its plain meaning and if the language is clear and unambiguous, no further interpretation is required. *Maier*, ¶ 8 (quotation and citation omitted). In construing a statute, this Court must also read and construe each statute as a whole so as to avoid an absurd result and to give effect to the purpose of the statute. *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶ 46, 302 Mont. 209, 14 P.3d 487 (citation and quotation omitted).

¶17 Within constitutional limits, the Legislature has the exclusive authority to provide, define, and limit the procedures, standards, and remedies available for enforcement of compliance with Montana's election laws. *Larson v. State*, 2019 MT 28, ¶ 21, 394 Mont. 167, 434 P.3d 241 (citing Mont. Const. art. III, § 1, and art. V, § 1). Under § 13-36-101, MCA, an elector may contest the right of any person to any nomination or election to public office for which the elector has the right to vote if the elector believes, inter alia, a deliberate, serious, and material violation of any provision of the law relating to nominations or elections has occurred. Section 13-36-102(1), MCA, provides, in part, "Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination the person intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had."

¶18 It is undisputed that MDP did not follow the procedure set forth in § 13-36-102(1), MCA. However, MDP maintains this procedure is inapplicable because Barb was "appointed," not "nominated," as the Green Party's 2024 U.S. Senate candidate. MDP

notes that § 13-10-327, MCA, speaks of the replacement candidate as being appointed, not nominated:

(1) Except as provided in 13-10-328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate, if a party candidate dies or withdraws after the primary and before the general election, or if a candidate is disqualified pursuant to 13-37-126 from having the candidate's name appear on a general election ballot, the affected political party *shall appoint* someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee *shall make the appointment* as provided by the rules of the party.

. . . .

(2) Except as provided in this section, *appointments to fill vacancies* must be made no later than 76 days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party *shall appoint* a candidate within 5 days after being notified of the vacancy. One of the procedures provided in 13-12-204 must be used to place *the name of the appointee* on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving *the certificate of appointment*, accompanied by a statement of acceptance and the filing fee, *shall certify the name of the appointee* for the ballot.

(Emphasis added). MDP argues that §§ 13-10-327(3) and (4), MCA, clearly perceive that a substitute candidate is appointed—not nominated: Section 13-10-327(3), MCA, explains that the appointing committee is to provide a certificate containing the information that would be required for a declaration of nomination to the officer with whom such declaration would be filed, but § 13-10-327(4), MCA, indicates that this certificate is

correctly deemed a “certificate of *appointment*,” and the receiving officer shall certify the name of the “appointee”—not “nominee”—for the ballot.

¶19 MDP further asserts that Title 13 does not use the terms “nomination” and “appointment” interchangeably. For example, § 13-1-101(8)(a), MCA, defines “candidate” as “an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law.” MDP argues that Title 13, Chapter 36 governs challenges to nominations, but does not extend more broadly to challenges to appointments. MDP argues that the contest procedure set forth in § 13-36-102(1), MCA, therefore does not apply to challenges to candidates who are appointed to fill a vacancy occurring if a party’s candidate dies or withdraws after the primary and before the general election, such as occurred in this instance.

¶20 Barb argues that the terms “nomination” and “appointment” are synonymous and are used interchangeably in Title 13 and elsewhere in Montana statutes, but the examples he cites are not persuasive. First, he points out that Title 13, Chapter 10, Part 5, is titled “Methods of Nomination other than by Primary Election.” However, the methods of nomination described in Title 13, Chapter 10, Part 5, apply to independent candidates and political parties not eligible to participate in the primary election. It does not foreclose “appointment” being a distinct procedure for replacement candidates. MDP’s position is not that there is only a single path to “nomination”—it is that appointments made under § 13-10-327, MCA, are distinct from nominations. Somewhat more persuasive is Barb’s second example, where he draws our attention to § 5-2-406(1)(b), MCA, which applies to vacancies in the State Senate. This statute provides that if a vacancy occurs on or after the 85th day prior to a primary election, a political party desiring to enter a candidate in the general election shall select a candidate as provided in § 13-10-327, MCA, and notify the Secretary of State of “the party *nominee*.” (Emphasis added). However, balanced against the more precise manner in which Title 13 uses the terms “nomination” and “appointment,” this single reference in a different part of the Code appears more likely an inadvertent conflation of what Title 13 intends to be two distinguishable categories.

¶21 In this case, we agree with MDP that Title 13 distinguishes between a nomination and appointment, specifically in the context of replacing a deceased or withdrawn candidate via the mechanism provided in § 13-10-327, MCA. As stated in *Larson*, ¶ 21, the Legislature has the authority to provide the procedures and remedies available for enforcement of compliance with Montana’s election laws. In this case, the Legislature has chosen a procedure for challenging nominations that does not likewise apply to the appointment of a replacement candidate. Although the parties do not discuss the consequences of their respective conflicting interpretations of the statutory scheme, interpreting Title 13 to require a party—who wishes to challenge whether the process to appoint a replacement for a deceased or withdrawn candidate complies with § 13-10-327, MCA—to wait until *after* certification to contest the candidate would be at odds with allowing ballots to be printed and distributed in a timely fashion. Although such would not be an absurd result, it would not give effect to the purpose of the statute, which in part requires political parties to comply with their own bylaws in appointing replacement candidates in the event of the death or withdrawal of a nominee after the primary election.

¶22 *Larson* further provides that the Legislature’s failure to expressly specify a private remedy for enforcing a statutory duty or requirement does not necessarily preclude the availability of a private remedy, even in the presence of the express provision of an agency or other government remedy. *Larson*, ¶ 27 (citations omitted). Thus, MDP is not precluded from challenging the Montana Green Party’s alleged failure to comply with its own bylaws in appointing Barb as a replacement candidate under § 13-10-327(1)(a), MCA.

¶23 MDP next argues that, in addition to determining the District Court erred in applying § 13-36-102(1), MCA, this Court should proceed to apply the preliminary injunction factors and remand this matter to the District Court with instructions to enjoin the Secretary of State and the State of Montana from allowing a Green Party candidate for U.S. Senate to appear on the 2024 general election ballot. Under § 27-19-201, MCA, a preliminary injunction order or temporary restraining order may be granted when the applicant establishes that: (a) the applicant is likely to succeed on the merits; (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief; (c) the balance of

equities tips in the applicant’s favor; and (d) the order is in the public interest. In this case, we conclude that a preliminary injunction shall not issue because MDP has not established that it is likely to succeed on the merits.

¶24 Section 13-10-327(1)(a), MCA, requires the state central committee of the Montana Green Party to appoint a replacement candidate “as provided by the rules of the party.” In this case, MDP alleges the Green Party’s bylaws “specify that ‘decision-making on statewide issues and endorsement of statewide candidates’ is the exclusive right of the membership, exercised through majority vote of ‘[a]ll individual members in attendance at a general meeting of the Montana Green Party.’” Regarding Barb’s appointment, however, the Green Party did not convene a general meeting of the membership. Instead, the Green Party’s officers appointed Barb. MDP argues this appointment was made in contravention of the party’s rules and the appointment is therefore invalid as the Green Party failed to comply with § 13-10-327(1)(a), MCA. MDP maintains the Green Party’s bylaws bestow only ministerial duties upon the party’s officers and it would be unreasonable to interpret the bylaws to allow the officers to appoint a replacement candidate when the bylaws otherwise hold that the membership has the exclusive right to endorsement of statewide candidates.

¶25 Barb focuses on the statute’s requirement that the “state central committee” of the party make the appointment. At the August 30, 2024 hearing, MDP conceded that the “state central committee” of the Montana Green Party consists of its three officers, and that those three officers agreed to appoint Barb. Thus, since the state central committee appointed Barb, it can only have violated its bylaws if the decision to appoint Barb was either a statewide issue or the endorsement of a statewide candidate.

¶26 Barb argues that the Green Party officers’ decision to appoint a replacement candidate did not require a vote of the membership because the appointment was neither a “statewide issue” nor an “endorsement of a statewide candidate.” Just as MDP argues that “nominations” and “appointments” are distinct concepts, Barb argues that “issues” and “candidates” are distinct and different concepts within the applicable statutes. He notes that § 13-1-101(6), MCA, provides a definition for “ballot issue” or “issue” that is distinct

from the definition of “candidate” in § 13-1-101(8), MCA. He further notes that § 13-12-201, MCA, providing for certification of candidate names and ballot issues, describe candidates and issues separately. Thus, he maintains, his appointment was not a statewide issue. Barb further argues that his appointment was distinct from an “endorsement,” as political parties may endorse candidates in the primary that do not ultimately become their nominee—and conversely may not endorse the candidate who represents them on the ballot.

¶27 Most significantly, the State points out that the Montana Green Party’s bylaws are silent as to the manner or basis for Green Party compliance with the clear and unambiguous command of § 13-10-327(1)(a), MCA, for its “state central committee” to “appoint” a substitute candidate for statewide office when its primary nominee “withdraws after the primary and before the general election.” The State thus asserts that MDP’s allegation that the Montana Green Party failed to appoint Barb in accordance with its bylaws is merely speculative based only on MDP’s own unsupported “belief” and the above-referenced citation to an inapplicable bylaws provision.

¶28 As noted above, to obtain a preliminary injunction, an applicant must establish four criteria, the first of which is that the applicant is likely to succeed on the merits. Section 27-19-201(1), MCA. We agree with the State that MDP has made no preliminary showing as a matter of law or fact that the Montana Green Party bylaws provision, requiring that “[t]he membership shall be responsible for decision-making on statewide issues and endorsement of statewide candidates,” likely applies to the “state central committee” appointment required by § 13-10-327(1)(a), MCA. For purposes of § 27-19-201(1), MCA, MDP has thus failed to demonstrate that it is likely that the Montana Green Party violated its party “rules” when its state central committee appointed Barb to fill the vacancy created by Downey’s withdrawal, as certified to the Secretary of State in accordance with § 13-10-327, MCA.

¶29 Finally, MDP argues that the Green Party’s certification was untimely because § 13-10-327(2), MCA, requires that appointments to fill vacancies must be made no later than 76 days before the election. MDP asserts that the Green Party needed to have appointed

Barb as its replacement candidate by August 21, 2024. However, notwithstanding MDP's timeliness argument, the District Court found the Green Party appointed Barb on August 19, 2024, and MDP expressly stated that the relevant facts in this case are undisputed. MDP cannot both assert that this matter is susceptible to consideration on writ of supervisory control because the issues present are purely legal and also challenge one of the District Court's factual findings. Thus, its timeliness argument is unpersuasive.

¶30 We will affirm the district court when it reaches the right result, even if it reaches the right result for the wrong reason. *Mont. Democratic Party*, ¶ 6 (citation omitted). In this instance, while we disagree with the District Court's application of § 13-36-102, MCA, we agree that MDP is not entitled to a preliminary injunction because it did not establish that its suit is likely to succeed on the merits as required by § 27-19-201(1), MCA. MDP has thus failed to demonstrate that supervisory control is warranted under any of the mandatory criteria specified in M. R. App. P. 14(3)(a)-(c).

CONCLUSION

¶31 MDP has not convinced us that the District Court erred in its rulings in its September 3, 2024 Order, although we reach the same result as that court under a different analysis. Since we have not concluded that the District Court is proceeding under a mistake of law, this matter is not susceptible to writ of supervisory control.

ORDER

¶32 IT IS THEREFORE ORDERED that MDP's Petition for Writ of Supervisory Control is DENIED.

¶33 The Clerk is directed to provide immediate notice of this Opinion and Order to all counsel of record in the First Judicial District Court, Lewis and Clark County, Cause No. BDV-2024-542, and the Honorable Michael McMahon, presiding.

DATED this 17th day of September, 2024.

/S/ DIRK M. SANDEFUR
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ JIM RICE