

Haight v Caviglia

2018 NY Slip Op 34005(U)

September 18, 2018

Supreme Court, Dutchess County

Docket Number: 52715/18

Judge: Maria G. Rosa

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa

Justice

ERIK HAIGHT,
Republican Commissioner of Elections, Dutchess County,

Petitioner,

-against-

DECISION, ORDER AND
JUDGMENT

MARCO CAVIGLIA,
Democratic Commissioner of Elections, Dutchess County, Index No. 52715/18
DUTCHESS COUNTY BOARD OF ELECTIONS,

Respondent-Board,

COLEEN E. SNOW,
Purported Candidate for Councilmember
in the Town of Pawling,

Respondent.

For an Order Pursuant to CPLR Article 78 and Section 3001.

The following papers were read on this proceeding to remove a candidate from the 2018
General Election ballot.

AMENDED ORDER TO SHOW CAUSE
VERIFIED PETITION
EXHIBITS A - E

VERIFIED ANSWER
MEMORANDUM OF LAW
EXHIBITS A -G

VERIFIED ANSWER

REPLY AFFIRMATION

Petitioner, the Republican Commissioner of Elections for Dutchess County, commenced this proceeding by order to show cause seeking a judgment requiring the removal of candidate Coleen E. Snow from the 2018 General Election ballot as the candidate of the Women's Equality Party for the office of Pawling Town Councilmember. Designating petitions nominating Snow as the Women's Equality Party candidate for the office were filed with the Dutchess County Board of Elections on July 10, 2018. On that same date, the President of the New York State Women's Equality Party filed with the Board of Elections a certificate of nomination pursuant to Election Law §6-120 authorizing the nomination of Snow for that office. Petitioner alleges that respondent Marco Caviglia, the Democratic Commissioner of Elections for Dutchess County, reviewed the designating petition on July 11, 2018 and found it valid. Petitioner maintains the designating petition is not valid because the Women's Equality Party failed to establish and/or organize a county committee under Article 2 of the Election Law and thus there was no lawful authority for Snow's nomination either by caucus or primary election. Petitioner asserts that Election Law §6-108 establishes the sole process and procedures for party nominations for town offices in New York. He maintains that under that statute party nominations in Dutchess County, because it has fewer than 750,000 inhabitants, "shall be made by caucus or primary election, as the rules of the county committee shall provide...." As the Women's Equality Party does not have a county committee, petitioner contends that there was no lawful basis for it to hold a caucus or primary under Election Law §6-108, thereby precluding it from nominating Snow as the Women's Equality Party candidate.

Respondent Snow opposes the petition and asserts a counter-claim and cross-claim for an order requiring the Dutchess County Board of Elections to validate a ballot containing her name on the Women's Equality Party line. Snow further seeks attorney's fees and costs alleging this is a frivolous proceeding.

Election Law §16-102(1) confers upon this court jurisdiction over proceedings to contest the nomination or designation of any candidate for public office. Petitioner's challenge to Snow appearing as the Women's Equality Party candidate for the office of Town of Pawling Councilmember constitutes a challenge or contest to the designation or nomination of a candidate for public office. While petitioner denominates this proceeding as seeking relief under CPLR Article 78 and §3001, it is in reality a proceeding under Election Law §16-102(1). See Scaringe v. Ackerman, 119 AD2d 327 (3rd Dept 1986). Accordingly, this proceeding is governed by the statute of limitations set forth in Election Law §16-102(2). See Ciotti v. Westchester Cty Bd. of Elections, 109 AD3d 988, 989 (2nd Dept 2013). It is undisputed that petitioner did not commence the proceeding within fourteen days after the last day to file the designating petitions at issue as required under Election Law §16-102(2). Accordingly, respondent Snow correctly asserts that the proceeding was not timely filed. See Haight v. Knapp, 88 AD3d 921 (2nd Dept 2013).

Petitioner further lacks capacity and standing to maintain this proceeding. As the County Board of Elections is a creature of statute, it has neither an inherent nor a common-law right to bring an action. See Graziano v. Cty. of Albany, 3 NY3d 475, 478-79 (2004). There is no enabling

legislation or other statutory predicate authorizing petitioner to maintain this suit in his capacity as a Commissioner of Elections. See Scannapieco v. Riley, 132 AD3d 705 (2nd Dept 2015). Moreover, he further lacks standing to commence this proceeding in that capacity pursuant to Election Law Article 16. Id. The nomination or designation of a candidate for public office by reason of a filed petition may be contested in this court “by any aggrieved candidate, or by the chairman of any party committee or by a person who shall have filed objections....” Election Law §16-102. Petitioner does not fall under any of these categories and thus lacks standing. Based upon the foregoing, it is

ORDERED that the petition is dismissed as time-barred and for lack of capacity and standing. In light of the foregoing, the court declines to address the remaining grounds upon which respondent Snow seeks dismissal. It is further

ORDERED that respondent Snow’s cross-motion is granted and the Dutchess County Board of Elections shall certify a ballot for the November 6, 2018 General Election that contains the name of Coleen E. Snow as the Women’s Equality Party candidate for the office of Town of Pawling Councilmember. Although there is no Dutchess County Women’s Equality Party, there is a state party the rules for which were filed with the Dutchess County Board of Elections. Those rules provide, and case law holds, that where no duly organized county committee exists, the state party may validly nominate candidates for town office. Cooke v. Donohue, 37 NY2d 835 [1975]). It is further

ORDERED that respondent Snow’s cross-motion for attorney’s fees and costs is denied. While there were clear procedural impediments to petitioner maintaining this proceeding of which he should have been aware based upon his commencement of a prior proceeding dismissed on similar grounds [See Haight v. Knapp, 88 AD3d 921 (2nd Dept 2011)], his substantive claims are not frivolous to the extent that the imposition of sanctions is warranted.

The foregoing constitutes the decision, order and judgment of the Court.

Dated: September 18, 2018
Poughkeepsie, New York

ENTER:



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MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.