NO. COA06-1699

NORTH CAROLINA COURT OF APPEALS

Filed: 06 November 2007

MARTIN ANDREW OAKES

v. Lincoln County
No. 06 CVS 00838

LINCOLN COUNTY BOARD OF ELECTIONS, LINCOLN COUNTY BOARD OF EDUCATION, LINCOLN COUNTY BOARD OF COMMISSIONERS

Appeal by plaintiff from judgment entered 3 November 2006 by Judge Thomas D. Haigwood in Lincoln County Superior Court. Heard in the Court of Appeals 30 August 2007.

Martin Andrew Oakes, pro se plaintiff-appellant.

Roberts & Stevens, P.A., by K. Dean Shatley, II, for defendant-appellee Board of Education.

Pendleton & Pendleton, P.A., by Jeffrey A. Taylor, for defendants-appellees Board of Commissioners and Board of Elections.

STEELMAN, Judge.

Insofar as the method and system of election for the Lincoln Board of Education does not run afoul of our State's constitution, and defendant Lincoln County Board of Education did not violate N.C. Gen. Stat. § 115C-37(i) in holding its 2006 elections without redistricting for alleged "population imbalances" following the

2000 federal census, the trial court correctly granted summary judgment as to all defendants.

In 1973, the General Assembly established a seven-member Board of Education for Lincoln County. 1973 N.C. Sess. Laws 876, § 3. Election to a four-year term occurs on a staggered basis, with four seats in alternating general elections (1976-2008) and three in the intervening elections (1978-2010). *Id.* § 5. "All candidates shall be elected by the voters of Lincoln County at large." *Id.* The law further specifies that one of the seven seats (the "at large" seat) has no residency requirement, but that candidates for the other six seats ("residency district seats") are required to reside in a certain district of the County, including the City of Lincolnton and five Townships. *Id.* § 3. In 2006, the seats on the ballot were Catawba Springs Township, Howard's Creek Township (outside Lincolnton city limits), and Lincolnton Township (outside Lincolnton city limits).

District boundaries of the seats for Howard's Creek and Ironton Townships were adjusted by the legislature in the 2001 session. The 2001 General Assembly amended 1973 N.C. Sess. Law 876, § 3 to reflect annexations by the City of Lincolnton that incorporated portions of Howard's Creek and Irontown Townships into its municipal limits. 2002 N.C. Sess. Laws 22, § 1. By admission of the parties, the effect of the amendment was to provide that residents of Ironton and Howard's Creek Townships now living inside the municipal limits of Lincolnton were eligible for the City of

Lincolnton seat, rather than the Ironton Township or Howard's Creek Township seats.

In June 2006, plaintiff-appellant, a resident of Catawba Springs Township, attempted to file as a candidate for the Howard's Creek Township seat on the Lincoln County Board of Education in a general election to be held in November of that year. In his filing, appellant acknowledged that he "did not reside in Howard's Creek Township but was an eligible voter for the . . . seat in question." The Lincoln County Board of Elections rejected the filing, citing the municipal statutes governing the administration of Lincoln County Board of Education elections. 2002 N.C. Sess. Laws 22 (2001 session) (establishing eligibility of annexed citizens from Ironton and Howards Creek Townships for the city of Lincolnton seat); 1989 N.C. Sess. Laws 304 (changing the filing period for candidates); 1985 N.C. Sess. Laws 155 (providing for non-partisan elections; eliminating the nomination of candidates by voting district); 1973 N.C. Sess. Laws 876 (reorganizing and consolidating the Lincolnton City and County Boards of Education; creating a single administrative board for all public schools of Lincoln County). The Board notified appellant that he "could file for the seat in his own residential district[.]" Although eligible to run for the Catawba Springs Township seat in 2006, plaintiff did not attempt to file for that seat.

Plaintiff filed two complaints in the Superior Court of Lincoln County seeking injunctive relief. In case 06 CVS 0838, plaintiff asserted that the residency requirements of the six

residency district seats on the Lincoln County Board of Education imposed an additional requirement upon his candidacy in violation of Article VI, § 8 of the North Carolina Constitution, and that the Lincoln County Board of Commissioners refused to change the election districts in accordance with the principles of "one-man, one-vote." In case 06 CVS 0839, plaintiff asserted in his amended complaint that, even though all voters in Lincoln County vote for all seats on the Board of Education, because of population disparities between them, the residency districts violate the United States Constitution as enumerated in the principle of "one-man, one-vote." He further alleged that the allocation of seats on the Board of Education violated the provisions of N.C.G.S. § 115C-37, which required redistricting following a federal census. Finally he asserted that the Board of Commissioners "aided and abetted" in circumventing "equitable representation" by rejecting the Board of Education's request to change the voting method before the 2002 elections.

This matter was heard by the trial court upon the parties' cross motions for summary judgment upon stipulated facts. The parties also stipulated that there were no genuine issues of material fact. At the hearing, plaintiff dismissed his claims asserting a violation of the United States Constitution and the Voting Rights Act of 1965. The two cases were consolidated for hearing and disposition.

The trial court granted defendants' motion for summary judgment, denied plaintiff's motion for summary judgment, and

dismissed plaintiff's complaints, with prejudice. Plaintiff appeals.

N.C. R. App. P. 28(a) "requires that a question be presented and argued in the brief in order to obtain appellate review." *Love v. Pressley*, 34 N.C. App. 503, 514, 239 S.E.2d 574, 581 (1977) (citing *State v. McMorris*, 290 N.C. 286, 225 S.E.2d 553 (1976); *State v. Brothers*, 33 N.C. App. 233, 234 S.E.2d 652 (1977)). At oral argument, plaintiff acknowledged naming the Board of Commissioners as a party "in the belief that the Commissioners acted illegally" in taking no action on the Board of Education's 2002 recommendations for redistricting. As there is nothing in the record to support this claim, and appellant's brief discusses only the Board of Education in its arguments, plaintiff has not preserved any issues pertaining to the Board of Commissioners or the Board of Elections. Thus, we limit our analysis to defendant Lincoln County Board of Education.

A trial court's ruling on a motion for summary judgment is reviewed by this Court "in the light most favorable to the non-moving party." *Bradley v. Hidden Valley Transp., Inc.*, 148 N.C. App. 163, 165, 557 S.E.2d 610, 612 (2001) (citation omitted), *aff'd*, 355 N.C. 485, 562 S.E.2d 422 (2002).

Appellate review of an order awarding summary judgment is limited to a *de novo* review of the trial court's conclusions of law. *Coastal Plains Utils., Inc. v. New Hanover County*, 166 N.C. App. 333, 340-41, 601 S.E.2d 915, 920 (2004). However, although a *de novo* standard of review applies to summary judgment orders,

constitutional challenges to acts of the General Assembly are reviewed on a deferential standard, and "[w]here a statute is susceptible of two interpretations, one of which is constitutional and the other not, the courts will adopt the former and reject the latter." *Guilford Co. Bd. of Educ. v. Guilford Co. Bd. of Elections*, 110 N.C. App. 506, 511, 430 S.E.2d 681, 685 (1993) (citing *Wayne County Citizens Ass'n v. Wayne County Bd. of Comm'rs*, 328 N.C. 24, 29, 399 S.E.2d 311, 315 (1991)) (internal quotation marks omitted).

In his first argument, appellant contends that the trial court erred in its conclusion that the residency-based method of election for seats on the Lincoln County Board of Education does not violate Article VI, Section 8 of the North Carolina Constitution. Interpreting the term "office" to refer to a particular seat on the Lincoln County Board of Education, he argues that the residency requirement unconstitutionally disqualifies him from running for the Howard's Creek Township seat. We disagree.

Relying upon *Moore v. Knightdale Bd. of Elections*, 331 N.C. 1, 413 S.E.2d 541 (1992), appellant first argues that the "clear meaning" of Article VI, Section 8 prohibits the General Assembly from imposing residency requirements on seats on the Lincoln County Board of Education as such a requirement amounts to an additional disqualification for office. Second, appellant argues that the term "office" refers to each seat on the Lincoln County ballot because: (1) the word "offices" is used elsewhere in the Constitution; (2) "seat" is not clearly defined but only referenced

as an elected member of the General Assembly 'taking his seat'; (3) a case governing the election of judges by residency district is inapposite as the Constitution expressly permits such a requirement; and (4) the statute governing Elections requires the Board of Elections to include "the title of each office to be voted on and the number of seats to be filled in each ballot item" and the Lincoln County Board of Elections listed "Board of Education - Howard's Creek" as a separate entry from the other seats on the ballot. Finally, he argues that, as the framers of our State constitution included a residency requirement for judges, such express permission could have been included for other offices, had that been the framers' intent.

A party who challenges the constitutionality of a legislative act bears the burden of proof that the statute violates the Constitution beyond a reasonable doubt. *Guilford Co.*, 110 N.C. App. at 511, 430 S.E.2d at 684 (citations omitted). It is firmly established that the North Carolina Constitution is a limit on the power of the people, not a granting of power. *Wayne County Citizens Ass'n v. Wayne County Bd. of Comm'rs*, 328 N.C. at 29, 399 S.E.2d at 315. Any power not clearly limited by the State Constitution is reserved to the people of North Carolina, and an act of the people through their legislature is presumptively valid unless it contravenes a specific provision of the State Constitution. *Id.* Accordingly, great deference is accorded to acts of the legislature as the agent of the people. *State ex rel. Martin v. Preston*, 325 N.C. 438, 448, 385 S.E.2d 473, 478 (1989).

In relevant part, the North Carolina Constitution states that "[t]he following persons shall be disqualified for office: First, any person who shall deny the being of Almighty God. Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office." N.C. Const., art. VI, § 8.

Appellant argues that Article VI, § 8 should be read as "if you can vote for the office, you can run for the office." However, we must first interpret the language of the statute:

> Sec. 3. The newly constituted and established Lincoln County Board of Education shall consist of seven *members*, and each of said *members* shall be residents and qualified voters of the townships according to the *membership* allocations hereinafter made to said townships . . . .
>
> . . . .
>
> One *member* shall be elected from the county at large, without regard to township.

1973 N.C. Sess. Laws 876, § 3 (emphasis added). Since the word "member" is susceptible to two interpretations, one which is Constitutional ("seat") and one which is not ("office"), we "adopt the former and reject the latter." *Guilford Co.*, 110 N.C. App. at 511, 430 S.E.2d at 685 (citations omitted). This argument is overruled.

In his second argument, appellant contends that the trial court erred in its conclusion that the Board of Education was not required by N.C.G.S. § 115C-37 to redistrict following each federal census. He argues that the statute should be read within the

context of other statutes governing the elections of county commissioners and council members. We disagree.

In matters of statutory construction, our principal task is to ensure that the purpose of the legislative body, or legislative intent, is achieved. *Elec. Supply Co. v. Swain Elec. Co.*, 328 N.C. 651, 656, 403 S.E.2d 291, 294 (1991). Where the statute is clear and unambiguous, the plain words of the statute suffice, and no judicial construction is necessary. *See Wiggs v. Edgecombe County,* 361 N.C. 318, 322, 643 S.E.2d 904, 907 (2007).

The relevant portion of N.C.G.S. § 115C-37 reads:

> (i) The local board of education shall revise electoral district boundaries from time to time as provided by this subsection. If district boundaries are set by local act or court order and the act or order does not provide a method for revising them, the local board of education shall revise them only for the purpose of (i) accounting for territory annexed to or excluded from the school administrative unit, and (ii) correcting population imbalances among the districts shown by a new federal census or caused by exclusions or annexations. After the General Assembly has ratified an act establishing district boundaries, the local board of education shall not revise them again until a new federal census of population is taken or territory is annexed to or excluded from the school administrative unit, whichever event first occurs.

N.C.G.S. § 115C-37(i) (2005).

In their focus on the second sentence of this subsection of the statute, the litigants have altogether ignored the third sentence. The statute proscribes redistricting by a local Board of Education following ratification by the General Assembly of legislation establishing district boundaries until a new federal

census is taken or further annexations occur. Since 2002 Sess. Law 22 established that residents of Ironton and Howard's Creek Townships inside the city limits of Lincolnton are eligible for the city of Lincolnton seat, rather than Ironton or Howard's Creek Township seats, the Board of Elections is proscribed from further redistricting until 2010 or further annexations by the city of Lincolnton, whichever comes first.

Finally, we note that appellant's brief addresses only two of three original assignments of error. Pursuant to N.C. R. App. P. 28(b)(6) (2007), we deem the last assignment of error to be abandoned.

AFFIRMED.

Judges ELMORE and STROUD concur.

Report per Rule 30(e).