

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David Donato, :
Appellant :
v. :
City of McKeesport and : No. 2104 C.D. 2007
James Brewster : Submitted: July 18, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: August 14, 2008

David Donato (Donato) appeals the order of the Court of Common Pleas of Allegheny County (trial court) that granted the motion for a directed verdict of the City of McKeesport (McKeesport) and James Brewster (Brewster).

Donato, a resident of McKeesport, filed a Complaint in Mandamus in the trial court and sought to have the trial court compel McKeesport and Brewster, the mayor of McKeesport, to enforce Section 1805(5) of the Home Rule Charter of the City of McKeesport (Charter).¹ Donato alleged:

¹ Section 1805(5) of the Charter provides:

No person who holds any compensated appointive City position shall make, solicit or receive any contribution to the campaign funds of any political party or any candidate for public office or take any part in the management affairs or political campaigns of any political party, but he may exercise his rights as a citizen to express his opinions and to cast his vote.

(Footnote continued on next page...)

8. It has been brought to the attention of the Mayor that three employees of the city of McKeesport have filed with the Department of Elections for candidacy for the School Board of the McKeesport Area School District.

9. The three employees are Joseph Lopretto, Christopher Halaszynski, and James Brown. All three are compensated employees appointed by the City.

10. By virtue of section 1805 of the Home Rule Charte [sic] all three are prohibited from running for the School Board as long as they are employees. If they intend to run the City is required to terminate their employment under the section (b) Penalties.

11. In addition these three candidates have filed affidavits with the Allegheny County Bureau of Elections indicating their intention to raise campaign funds in excess of \$250.00

12. This is also a prohibited activity under section 1805.

13. Specific demands have been made upon the Mayor to terminate the employees if they continue this illegal conduct. Defendant [Brewster] has refused to do this despite the clear violations of the Home Rule Charter.

.....

16. Despite these demands by Plaintiff [Donato] Defendant [Brewster] refuses to enforce the Home Rule Charter.

17. There is no adequate remedy at law or equity.

(continued...)

. . . Penalties. . . Any person who by himself or with others willfully violates any of the provisions of paragraph (5) shall be guilty of an offense and upon conviction thereof, shall be punishable by a fine. Any person convicted under this section shall be ineligible for a period of five (5) years thereafter, to hold any City office or position and if an officer or employee of the City, shall immediately forfeit his office or position.

Complaint in Mandamus, March 23, 2007, Paragraphs 8-13, and 16-17 at 2-3.²

On October 16, 2007, the trial court conducted a hearing. Initially, the trial court denied motions for summary judgment presented by each side. The parties stipulated to the authenticity of records from the Allegheny County Bureau of Elections which indicated that Christopher Halaszynski (Halaszynski), Steven E. Condrosky (Condrosky), Joe Lopretto (Lopretto), and James Brown (Brown) filed nominating petitions for the McKeesport Area School District School Board. All but Brown filed campaign finance statements. Patricia Williams, city clerk for McKeesport, submitted minutes from the Home Rule Study Commission for 1972 and 1973.³

Donato testified that he served on the School Board for the McKeesport Area School District from 1983 to 1995, while employed with McKeesport. He was reelected to the School Board in 2002. Notes of Testimony, October 16, 2007, (N.T.) at 29. After reviewing the Charter, Donato determined that Halaszynski, Condrosky, Lopretto, and Brown were prohibited from running for School Board director because they were McKeesport employees. N.T. at 38. Donato requested that Brewster enforce the Charter. N.T. at 90. On cross-examination, Donato admitted he was unaware of anyone prosecuted for violating Section 1805(5) or of anyone prevented from running for office under Section 1805(5). N.T. at 45-46. He further admitted that to the best of his knowledge none

² The Complaint in Mandamus is included in the Reproduced Record. Also, the hearing transcript is included in the Reproduced Record. Unfortunately, the Reproduced Record does not contain page numbers.

³ McKeesport adopted the Charter in 1973.

of the candidates received any contributions. N.T. at 50. Donato further admitted that he did not believe that Halaszynski, Condrosky, Lopretto, and Brown were aware that they violated Section 1805(a)(5). N.T. at 72.

After Donato rested, McKeesport and Brewster moved for a directed verdict on the basis that Donato himself violated the same section of the Charter with the aid and encouragement of previous mayors when he ran for office, that there was no clear duty on the part of the mayor to act, there was no clear right to relief as it was unclear whether anyone violated the Charter, and that equitable principles required ruling in favor of McKeesport and Brewster.

On October 16, 2007, the trial court granted the motion for directed verdict and dismissed Donato's case:

Whether or not these individuals solicited or received any contributions to any campaign funds of any political party or any candidate for political office, or if they took any part in the management, affairs, or political campaigns of any political party, is not supported, however, by any of the evidence. We find that none of the employees engaged in such activities.

....

After hearing, we dismissed the Plaintiff's [Donato] complaint as we found no explicit prohibition against the activity engaged in by the employees of the Defendant-City. There is nothing in Section 1805 that specifically prohibits the running for election, nor does it specifically prohibit the filing of affidavits indicating an intention to run and/or seek campaign financing. Further, the remedy available to a resident of the City or the administration of the Defendant-City, is clearly set forth in subsection (b). The penalty for a violation of Section 1805(5) is, after the institution of criminal proceedings and a finding of willful violation, a corresponding finding of guilt of

offense subjecting the individual to a fine and subsequent removal from employment. Accordingly, there is an available and adequate remedy, only after a determination of willful violation by the appropriate authority. (It should also be noted here that in Plaintiff's [Donato] testimony, he acknowledged he did not believe any of the four employees 'willfully' violated the provisions of Section 1805). (Emphasis in original).

Trial Court Opinion⁴, October 18, 2007, at 2-3.

Donato contends that the trial court erred when it granted a directed verdict, when it found relief available other than mandamus, in its interpretation of Section 1805(5) of the Charter, and because it did not address eligibility to be a candidate under Section 322 of the Public School Code of 1949 (Code),⁵ when two of the persons running for the school board were police officers.⁶

Initially, Donato contends that the trial court erred when it granted a directed verdict after he presented his case and before McKeesport and Brewster presented their case.

Pa.R.C.P. No. 226(b) provides, "At the close of all the evidence, the trial judge may direct a verdict upon the oral or written motion of any party."

⁴ The trial court issued a second opinion after Donato appealed to this Court which is substantially the same as the October 18, 2007, opinion.

⁵ Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §3-322.

⁶ This Court's review is limited to whether the trial court abused its discretion or committed an error of law necessary to the outcome of the case. Snyder v. North Allegheny School District, 722 A.2d 239 (Pa. Cmwlth. 1998).

In Nikole, Inc. v. Klinger, 603 A.2d 587, 594 (Pa. Super. 1992), *petition for allowance of appeal denied*, 535 Pa. 660, 634 A.2d 223 (1993), our Pennsylvania Superior Court concluded that it was not reversible error for a trial court to grant a directed verdict in favor of a defendant after the conclusion of the plaintiff's case: "The outcome of the case would have been the same if the trial court had denied Nikole's [the defendant] motion, Nikole [the defendant] had rested, and the court then entered a verdict in Nikole's [the defendant] favor."

Here, the trial court did not commit reversible error when it granted McKeesport's and Brewster's motion for a directed verdict after Donato presented his case and before McKeesport and Brewster presented their case.

Donato next contends that the trial court erroneously determined relief other than mandamus⁷ was available and that the trial court incorrectly interpreted Section 1805(5) of the Charter.

The trial court ably disposed of these issues in its comprehensive opinion. With respect to its interpretation of Section 1805(5), the trial court determined that a violation under Section 1805 of the Home Rule Charter must be willful and Donato conceded that the alleged violations were not willful.

⁷ Mandamus is an extraordinary writ designed to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other adequate and appropriate remedy. Princeton Sportswear Corp. v. Redevelopment Authority, 460 Pa. 274, 333 A.2d 473 (1975).

Therefore, we shall affirm on the basis of that opinion. David Donato v. City of McKeesport and James Brewster (G.D. 07-6322, Filed October 18, 2007).

Finally, Donato contends that the trial court erred when it did not address the eligibility of two of the candidates for school board under Section 322 of Code, 24 P.S. §3-322, which prohibits a constable from running for the office of school director. These two candidates were police officers which Donato likens to a constable. Regardless of whether the two candidates were in violation of the Code neither McKeesport nor Brewster had any mandatory duty to enforce the Code. The trial court properly determined that this section of the Code was not relevant.

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

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James Brewster	:
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ORDER

AND NOW, this 14th day of August, 2008, the order of the Court of Common Pleas of Allegheny County (GD-07-6322), filed October 18, 2007, is affirmed.

BERNARD L. McGINLEY, Judge