

[J-77-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CAPPY, C.J., CASTILLE, SAYLOR, EAKIN, BAER, BALDWIN, FITZGERALD, JJ.

IN RE: NOMINATION PETITION OF	: No. 172 EAL 2007
GREG PAULMIER FOR THE OFFICE OF	:
CITY COUNCIL OF THE CITY OF	: Appeal from the Order of the
PHILADELPHIA DEMOCRATIC	: Commonwealth Court entered April 9,
PRIMARY MAY 2, 2007	: 2007 at No. 570 CD 2007, which affirmed
	: the Order of the Court of Common Pleas,
OBJECTION OF: CINDY BASS	: Philadelphia County, Civil Division entered
	: on March 22, 2007 at No. 1172 March
	: Term, 2007.
PETITION OF: GREG PAULMIER	:
	:
	: SUBMITTED: APRIL 12,2007
	:

OPINION

MR. CHIEF JUSTICE CAPPY

FILED: December 28, 2007

On April 24, 2007 this Court reversed the Commonwealth Court and vacated the order of the trial court to strike Greg Paulmier from the ballot for the Democratic primary election for the 8th Council District of Philadelphia scheduled for May 15, 2007. The *per curiam* order was expedited in order to settle the issue of whether Paulmier's name would appear on the ballot in time for the election. This opinion now follows, to clarify the issue of compliance on a statement of financial interests under Section 1105 of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1101, *et seq.*

Paulmier filed a timely nomination petition to enter the race for Philadelphia City Council. He also filed a timely statement of financial interests pursuant to Section 1105 of the Ethics Act, which requires, *inter alia*, that a candidate disclose the names and

addresses of all direct and indirect sources of income. Cindy Bass, as objector, then filed a petition to strike Paulmier's nomination petition, alleging that the statement of financial interests contained material defects and/or omissions that would require Paulmier's name to be removed from the ballot. Specifically, Bass complained that Paulmier had not disclosed the addresses of certain rental properties and the names of those tenants who had paid Paulmier \$1,300 or more in the previous year. Instead, Paulmier had listed his occupation on block 6 of the form as "Housing Specialist." In block 10, which requires the disclosure of direct or indirect sources of income, Paulmier listed "rental income." Subsequent to the petition to strike his name from the ballot, Paulmier made a timely amendment of his statement to include the names and addresses of his tenants.

A three-judge panel of the Court of Common Pleas dismissed Paulmier's nomination petition and ordered his name to be struck from the ballot. The trial court relied on this Court's *per curiam* order in In re Braxton, 874 A.2d 1143 (Pa. 2005).

On appeal, Senior Judge McCloskey, sitting for the Commonwealth Court, affirmed citing Braxton, but also referencing the precedent of In re Anastasio, 820 A.2d 880 (Pa. Cmwlth. Ct. 2003), *affirmed without opinion*, 827 A.2d 373 (Pa. 2003), In re Benninghoff, 852 A.2d 1182 (Pa. 2004) and In re Littlepage, 909 A.2d 1235 (Pa. 2006).

Paulmier petitioned this Court arguing that the Commonwealth Court erred in finding that he did not make sufficient disclosure of the source of his income, or in the alternative, that if his disclosure was deficient, it was a mere technical defect, subject to amendment under this Court's holding in Benninghoff. Paulmier asserts that he believed that because he was self-employed as a housing specialist, he complied in good faith with the instructions on the financial statement form when he listed "rental income" as the sole source of his income, and "Housing Specialist" as his occupation. He submits that he did not understand or believe that the form required that he list the names of his individual tenants or the addresses of his rental properties. He contends that an attorney,

accountant, self-employed shop owner or contractor would only have to list their income and not every client or person who bought a product from them. This is because a self-employed person lists the name of his business as the source of his income, not the name of each customer who paid the self-employed person more than \$1,300 per year.

Paulmier then submits that even if his interpretation of the disclosure requirement was incorrect, his statement of financial interest was subject to amendment. He argues that when the information on the face of the form is technically deficient, but still sufficient to give notice of the source of income, this Court created a right to amend and bring the financial statement into full compliance with the requirements of the Ethics Act in Benninghoff, 852 A.2d at 1182. Paulmier contends that he provided the pertinent information about the source of his income as a sole proprietor who managed rental properties, distinguishing this case from the facts that constituted a fatal defect in Anastasio, 820 A.2d at 881, and in Littlepage, 909 A.2d at 1237, where the candidates listed “none” in block 10 of their financial statements, even though both candidates did receive income. Paulmier further notes that his disclosure on the statement of financial interests form was sufficient to give any reviewer notice of his ownership of rental properties, which would allow the reviewer to consult the public record for further information. Having given proper notice, Paulmier argues that if this Court finds that his first disclosure did not fully comply with the Act, then we should accept his timely amendment in which he disclosed the names and addresses of his individual tenants.¹

¹ In his Petition for Allowance of Appeal, Paulmier raises a second argument concerning the standing of the objector. He asserts that there was no evidence of record to show that the objector had standing to object, or that she lived in the district or was a registered Democratic voter. The issue of standing was not raised to the trial court, but Paulmier argues that standing is so closely tied to jurisdiction in this case that the issue cannot be waived. Our precedent is clear that this is not true; standing is not a jurisdictional question. In re deYoung I, 903 A.2d 1164, 1168 (Pa. 2006). Therefore, this issue was waived and will not be addressed here.

Bass, as objector, argues as the instructions provided by the State Ethics Commission on the financial statement form specifically demand disclosure of “the source and address, not the dollar amount, of any payment, fee ... rental income... [of \$1,300 or more of gross income,]” that the instructions clearly state that the candidate should list the address of any rental property from which he derived income of \$1,300 or more during the prior year. As Paulmier failed to do that, he did not comply with the Ethics Act. Further, his statement is not subject to amendment, because unlike the candidate in Benninghoff, the addresses of Paulmier’s rental properties and the names of his tenants cannot be obtained from the information stated on the face of the financial statement, nor is such information a matter of public record. Therefore, Bass argues that Paulmier was properly removed from the ballot for his failure to make a complete financial disclosure as required by the Ethics Act.

This Court granted allowance of appeal to determine whether the trial court erred in its determination that Paulmier’s disclosures constituted a fatal defect that would preclude his name from appearing on the ballot. On review, an appellate court may reverse a decision concerning a challenge to a nomination petition if the findings of fact are not supported by substantial evidence, there was an abuse of discretion or there was an error of law. In re Carroll, 896 A.2d 566, 573 (Pa. 2006). But here, the question concerns the proper interpretation of the Ethics Act. This is a question of statutory interpretation, and therefore, a question of law. Id. Accordingly, our scope in reviewing the record is plenary and our standard is *de novo*, which means we may consider the entire record and that we owe no deference to the lower courts. Id.

As an introductory note to the law that governs election matters, this Court observes that there are two competing cases interpreting the “fatal defect” rule related to candidate error in financial disclosure governed by 65 Pa.C.S. §1104. On one hand, under this Court’s *per curiam* order without opinion in Anastasio, 827 A.2d at 373, a candidate who

fails to strictly comply with the Ethics Act is removed from the ballot, and on the other hand, under our holding in Benninghoff, 852 A.2d at 1182, a candidate is allowed, under certain conditions, to amend his or her statement in order to bring it into compliance. Our subsequent case law has strained to reconcile the disparate policies behind these two cases, and today this Court will revisit the fatal defect rule in order to provide clear and definitive guidance to candidates who run for election in the Commonwealth.

Next, it is important to observe that two statutory schemes govern election matters, the aforementioned Ethics Act and the Pennsylvania Election Code, 25 P.S. §2600 *et seq.* This Court has held that these two statutes are *in pari materia*, as they relate to the same subject matter, and therefore, the language of the statutes must be construed together, if possible. Commonwealth, State Ethics Com'n v. Cresson, 597 A.2d 1146, 1149 (Pa. 1991). See also 1 Pa.C.S. § 1932. Notably, a candidate wishing to run for election must follow the provisions of both statutes as it is the Election Code which governs the filing of a candidate's nomination petition with the Secretary of the Commonwealth, but the Ethics Act that mandates that a statement of financial interests be appended.

The Ethics Act states that the failure to file the financial statement in accordance with the provisions of the Act is a fatal defect for a petition to appear on the ballot. See 65 Pa.C.S. §1104. A plurality of this Court considered the language of the fatality rule in Petition of Cioppa, 626 A.2d 146, 148-49 (Pa. 1993) (Opinion Announcing the Judgment of the Court), and held that the failure to file or the untimely filing of a financial statement is "fatal" and prevents a candidate's name from appearing on the ballot. Then in Anastasio, the Commonwealth Court construed Section 1104 to apply the fatality rule to material defects related to the contents of the financial statement. Anastasio, 820 A.2d at 881. The candidate in Anastasio wrote "none" in block 10 to describe the source of his income, even though he did have source(s) of income. Id. at 881. The Commonwealth Court applied a strict *per se* rule, finding that any failure to accurately and fully complete the financial

statement constituted a fatal and material defect which would bar the candidate's name from the ballot. Id. The Commonwealth Court specifically noted that although the Election Code is to be liberally construed to "protect a candidate's right to run for office and the voters' right to elect the candidate of their choice," the requirement for filing the financial statement is located in the Ethics Act which "is to be liberally construed to promote *complete* disclosure." Id. (Emphasis in original). Therefore, the Commonwealth Court declined to apply the construction of the Election Code to the case, and instead applied the rationale behind the Ethics Act alone, paving the way for strict application of the fatality rule to any material defect on the financial statement. Id.

This Court affirmed the Commonwealth Court in Anastasio without opinion. Anastasio, 827 A.2d at 373. But the application of the fatality rule was then severely restricted by our decision in Benninghoff, 852 A.2d at 1182. In Benninghoff, the candidate, an incumbent state representative, filed a timely financial statement. Id. at 1184. He listed the Commonwealth as his employer in block 6, but failed to do so once again in block 10, where he was required to disclose the source of his income, i.e., his employer. Id. This Court noted that under 65 Pa.C.S. §1107(5), the Ethics Act requires the Ethics Commission to inspect statements of financial interests, and to inform a candidate if his or her statement fails to conform to the requirements and to list, in writing, the deficiency and any resultant penalty. Id. at 1187. This Court further considered that the regulations promulgated by the Commission grant the person who files a deficient statement twenty days to amend. Id. See 51 Pa.Code §19.3(c). Therefore, we allowed the candidate in Benninghoff to amend his petition in order to stay on the ballot, stating that as all the required information could be obtained from the face of the form, the candidate had substantially complied and his defect was not fatal, but merely technical. Id.

In doing so, this Court addressed the Commonwealth Court's decision in Anastasio to apply the *per se* rule of fatality. We noted our *per curiam* affirmance, but found that

Anastasio was inapposite because that candidate failed to designate anything on block 10 of the form, instead listing “none,” despite the fact that he had income. Id. at 1188. Rather, this Court found the matter in Benninghoff to be analogous to Smith v. Brown, 590 A.2d 816 (Pa. Cmwlth. 1991), where the Commonwealth Court considered whether the fact that the statement of financial interests did not include a signature would bar the candidate from appearing on the ballot. Id. at 1189. This Court specifically approved of the fact that in Smith, the Commonwealth Court allowed the candidate to reform his financial statement, noting the importance of allowing an amendment under the Ethics Act in order to respect the language of the Elections Code, which is to be liberally construed to both protect the franchise as well as the right of the candidate to appear on the ballot. Id. This was a departure from the rationale used by the Commonwealth Court in Anastasio which held that the goal of the Election Code had no bearing with respect to statements of financial interests. Anastasio, 820 A.2d at 881.

Mr. Justice Castille wrote a concurring opinion in Benninghoff, joined by Mr. Justice Eakin. Benninghoff, 852 A.2d at 1189. He cautioned that the new rule announced by this Court in Benninghoff was not consonant with the draconian *per se* rule imposed by Anastasio, and that he would thus specifically reject Anastasio. Id. at 1190. Justice Castille emphasized that the *per curiam* order in Anastasio lacked any precedential value binding on this Court, because we did not affirm the opinion below or the rationale it expressed. Id. at 1190-91. Justice Castille considered the fatal defect language of Section 1104 and expressed his support for the rule announced in the Cioppa plurality, which would conclude that fatal defects are limited to untimely filings, and that mere defects or omissions in a petition otherwise timely filed would be subject to amendment. Id. at 1192 (citing Cioppa, 626 A.2d at 148-49).

The divergence between Anastasio’s *per se* rule and Benninghoff’s more lenient substantial compliance rule is explained when we consider the fact that the Commonwealth

Court's rationale in Anastasio was based on a consideration of the language of the Ethics Act alone, which promotes the goal of full financial disclosure. See 65 Pa.C.S. §1101.1(a). However, in Benninghoff, this Court specifically approved of reconciling that goal with the language of the Election Code, which requires a liberal construction in order to protect a candidate's right to run for office and the voters' rights to elect the candidate of their choice. See Petition of Ross, 190 A.2d 719, 719 (Pa. 1963). This divergence is irreconcilable, and so this Court now affirms that the Benninghoff rationale is correct, because as we stated above, the Ethics Act and the Election Code are *in pari materia*, and therefore, the language of each act should be considered together.² When the language of the Ethics Act is tempered by the language of the Election Code, it is clear that the intent of the Legislature is to encourage **both** full financial disclosure and protect voter choice. Read together, the Legislative intent is clearly best served by a rule that allows a timely filer to amend in order to come into full compliance giving the public both the benefit of full financial disclosure and the broadest choice of representatives. Therefore, we now hold that the fatality rule announced in Section 1104 of the Ethics Act was intended by the Legislature to bar only those candidates from the ballot who fail to file statements of financial interests or who file them in an untimely manner. Section 1104 does not bar any candidate from the ballot if he or she files in a timely manner, even if there are defects on the face of the form, so long as that candidate subsequently amends the form to correct the defect and comes into compliance with the Act in a timely manner. In other words, all defects related to the content of disclosures on a timely filed statement of financial interest

² It is important to note that the *in pari materia* rule only mandates that the language of statutes related to the same subjects be read together "if possible." See 1 Pa.C.S. § 1932. Here, the plain language of the Ethics Act and the Election Code can be read as one statute without creating contradiction, which affirms that the Legislature intended that these statutes be read *in pari materia*.

are subject to timely amendment.³ With this holding this Court specifically overrules our *per curiam* order in Anastasio, 827 A.2d at 373, as well as its progeny such as Littlepage, 909 A.2d at 1235 and In re Braxton, 874 A.2d at 1143. We note that because the Election Code and the Ethics Act are *in pari materia*, the consideration of the language of the Ethics Act alone, which undergirds the *per se* rule in the Anastasio line of caselaw was in error. And, of course, the doctrine of *stare decisis* was never intended to be used as a principle to perpetuate erroneous rules of law. Lewis v. W.C.A.B., 919 A.2d 922, 928 (Pa. 2007).

Having settled that area of law, this Court is left with the task of determining exactly what a self-employed candidate like Paulmier must disclose, either in the first timely filing or by timely amendment, in order to comply with the Ethics Act. To do so, this Court must examine the pertinent language of the Ethics Act under the Statutory Construction Act. 1 Pa. C.S. §§ 1501, *et seq.* The rules of statutory construction provide that intent of the Legislature is always our polestar when considering the interpretation and construction of statutes. See 1 Pa.C.S. § 1921(a). The best evidence of legislative intent is the words used by the General Assembly. If the words are clear and free from all ambiguity, the letter of the law is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b). Only when the Legislature uses words that are not explicit will this Court turn to other factors to ascertain its intent. 1 Pa.C.S. § 1921(c). We are to construe the words of a statute according to the rules of grammar and according to their common and approved usage. 1 Pa.C.S. §1903(a). Further, the Legislature instructs that in ascertaining its intent,

³ The Ethics Commission regulation at 51 Pa.Code §19.3(c) provides twenty days from notice of a deficiency to amend a statement of financial interest. It is also important to note that Section 1105 of the Ethics Act requires that the statement of financial interests be provided to the best of the knowledge, information and belief of the person required to file. This means that candidates must still file in good faith, even though they do have an opportunity to amend. See 65 Pa.C.S §1105(a). See also 65 Pa.C.S. §1107(5).

we may presume that it did not intend a result that is absurd, unreasonable or impossible of execution. 1Pa.C.S. §1922(1).

The words of the Ethics Act require that a candidate for office file a statement of financial interests submitting information from the prior calendar year which includes the “name and address of any direct or indirect source of income totaling in the aggregate of \$1,300 or more.” 65 Pa.C.S. §1105(b)(5). “Income” is defined by the Ethics Act as “Any money or thing of value received or to be received as a claim on future services or in recognition of services rendered in the past, whether in the form of a payment, fee, salary ... or rent....” The Act then defines the source of income as, “Any person who is a provider of an item reportable under Section 1105.” 65 Pa.C.S. §1102. “Person” is further defined to include a “business” or an “individual.” Id. And the definition of “business” includes “sole proprietorships” or “self-employed individuals” as well as “corporations” or “any legal entity organized for profit.” Id. The word “direct” is defined as “without intervening persons, influence or factor; immediate.” THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (2nd ed. 1987). Conversely, “indirect” is defined as “coming or resulting otherwise than directly or immediately.” Id.

Given the words of the Ethics Act, and the definitions the Legislature has provided, it is clear that all income, directly or indirectly received, must be taken into account, and that the “source” of that income must be disclosed. Therefore, when a candidate like Paulmier receives over \$1,300 dollars in a year from a specific source, he must identify the source, either the business or individual, who made that particular contribution to his income. Notably, in the case of rental income, the statutory definitions are written so broadly that there are two distinct sources to which a candidate like Paulmier might attribute his income. A “source” is any individual who provides income, and as Paulmier has 13 tenants who each pay him more than \$1,300 a year in rental fees, each tenant is a statutorily defined source of Paulmier’s income. At the same time, the statute also defines “source” as a

business which includes a sole proprietorship or self-employed individual. A sole proprietorship references an “individual” who is an “owner of a business establishment.” THE RANDOM HOUSE DICTIONARY. A self-employed individual is one who “earn[s] one’s living directly from one’s own profession or business, rather than as an employee earning salary or commission from another.” Id. The rents Paulmier receives come to him as a self-employed business owner of rental properties, not as salary from an employer. Further, by statutory definition, his self-employment is a business which is a source of his income. Therefore, the Ethics Act has defined “source” in a manner that shows that the same contribution to income, in this case a year’s worth of rent, can be attributed to two, distinct, statutorily defined persons, one a business or sole proprietorship, and the other an individual, the renter who pays Paulmier over \$1,300 of rent in a year. This same scenario would be true for any other self-employed individual such as a doctor, lawyer, plumber, freelance writer or store owner.

This raises the question of which source to disclose. Section 1105 demands the disclosure of “any direct or indirect source of income.” As previously stated, “source” is a “person who contributes [income],” and “person” is any “individual **or** business.” 65 Pa.C.S. §1105(b)(5) (emphasis added). Therefore, the Legislature’s words, upon incorporating the statutory definition, are a demand for the disclosure of “any direct or indirect contribution of income from an individual **or** business.” The word “or” is defined as a conjunction “used to connect words, phrases, or clauses representing alternatives.” THE RANDOM HOUSE DICTIONARY. In other words, “or” is disjunctive. It means one or the other of two or more alternatives. So it would seem that the Legislature intended that with respect to a specific contribution to income, in this case a year’s worth of rental payments, a candidate must disclose that contribution’s source, and when that same contribution to income has more than one statutorily defined source, the candidate may list either the individual **or** business that serves as a source of that income. In this case, that would require a disclosure of each

individual tenant's name and address, **or** the disclosure of Paulmier's business and business address.

This holding is inapposite to that of the Commonwealth Court in In re deYoung II, 900 A.2d 961 (Pa. Cmwlth. Ct. 2006) in which the court decided that the self-employed like Paulmier are required to divulge the *individual* sources of their income. In deYoung II, a candidate disclosed that she was a community minister, writer and consultant. Id. at 962. In other words, she had disclosed self-employment as the business source of her income. Having listed a source to which she could attribute her income, she did not record the fact that one of her clients had individually paid her more than \$1,300. Id. at 963. The Commonwealth Court determined that listing one's own name as a self-employed individual was not sufficient to provide the public with an accurate picture of the source of the candidate's income. Id. at 965. The rationale behind the Commonwealth Court's decision was the fact that the Legislature has stated that the Ethics Act should be liberally construed to promote complete financial disclosure. Id. See 65 Pa.C.S. §1101.1(a). But this interpretation belies the fact that the Legislature specifically defined "source" to include self-employment, as stated above. Therefore, the Legislature intended that the disclosure of self-employment was the disclosure of a source of income that would satisfy the requirements of the Ethics Act. Accordingly, we reject the interpretation of the Commonwealth Court in deYoung II.

Based on the reasoning above, we hold that Paulmier's first statement of financial interests did not comply with Section 1105 of the Ethics Act, because he did not disclose the individual or business source of his rental income. But, as Paulmier did amend in a timely manner and then disclosed one of the two statutorily defined sources of his rental income as the Act requires, we hold that the Commonwealth Court improperly struck the candidate from the ballot, which action we reversed by *per curiam* order dated April 24, 2007.

Mr. Justice Eakin, Madame Justice Baldwin and Mr. Justice Fitzgerald join the opinion.

Mr. Justice Castille files a concurring opinion.

Mr. Justice Saylor files a concurring opinion.

Mr. Justice Baer files a concurring opinion.