DENY; and Opinion Filed August 29, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00984-CV

IN RE MARGARET O'BRIEN, Relator

Original Proceeding from
Dallas County, Texas

MEMORANDUM OPINION

Before Justices Bridges, Brown, and Schenck
Opinion by Justice Brown

Before the Court is relator's petition for writ of mandamus, and the responses of real party in interest Ashley Hutcheson and respondent Missy Shorey ("Shorey"), in her capacity as Chairwoman of the Dallas County Republican Party ("DCRP"). This election law case involves a challenge to the composition of the ballot for Justice of the Peace, Precinct 2, Place 1 for the November 2018 general election. In this original proceeding, relator complains that Shorey failed to perform a ministerial duty or non-discretionary act by refusing to decertify Ashley Hutcheson, or such other nominee, as the Republican party's replacement candidate for Justice of Peace, Precinct 2, Place 1. Relator maintains that Shorey was required by court order to decertify the prior candidate, Brian Hutcheson, from the ballot because he was disqualified from the ballot for failing to obtain the required 250 valid signatures, but Shorey was not permitted to accept and acknowledge Brian Hutcheson's withdrawal from the ballot in order to nominate a replacement

candidate under section 145.036 of the Texas Election Code. We deny the petition for writ of mandamus.

Discussion

In election disputes, parties may seek mandamus relief from this Court through a petition for writ of mandamus without first seeking relief in the trial court. *See* TEX. ELEC. CODE ANN. § 273.061 (West 2010) (authorizing the supreme court or courts of appeals to issue writs of mandamus "to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer"); *see also In re Jones*, No. 05-18-00065-CV, 2018 WL 549531, at *2–3 (Tex. App.—Dallas Jan. 24, 2018, orig. proceeding) (citing cases). Similarly, parties may bypass the intermediate appellate court and seek mandamus relief first in the Supreme Court of Texas when "there is a compelling reason" to do so. TEX. R. APP. P. 52.3(e); *In re Angelini*, 186 S.W.3d 558, 561 (Tex. 2006); *The Republican Party of Texas v. Dietz*, 940 S.W.2d 86, 93–94 (Tex. 1997). Impending election deadlines, including deadlines for the printing of ballots, present compelling circumstances to bypass the court of appeals. *In re Jones*, No. 05-18-00065-CV, 2018 WL 549531, at *2–3.

Section 273.061 provides that:

> The supreme court or a court of appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer.

TEX. ELEC. CODE ANN. § 273.061 (West 2010). As such, to be entitled to mandamus relief here, relator must show that Shorey failed to perform a duty imposed by law. Under this record, we conclude relator has not established a right to mandamus relief.

Further, as we recently noted in *In re Jones*, time is of the essence when seeking relief in an election dispute. *In re Jones*, 2018 WL 549531, at * 3 ("In the context of an election dispute,

interlocutory injunctive relief is not 'appropriate injunctive relief' permitted under section 273.081 if it is ordered at a time when the parties cannot obtain a final decision in time for election officials to comply with the final order or to permit meaningful appellate review"). "The constraints on a court's action are determined by the election schedule." *In re Meyer*, No. 05–16–00063–CV, 2016 WL 375033, at *4 (Tex. App.–Dallas Feb. 1, 2016, orig. proceeding). Based on separation of powers concerns, no order by this Court or the trial court may interfere with the orderly process of the election. *Id.* The law for more than eighty years—since Miriam "Ma" Ferguson's second election as governor—provides that a challenge to the political candidacy of an office-seeker becomes moot "when any right which might be determined by the judicial tribunal could not be effectuated in the manner provided by law." *Sterling v. Ferguson*, 53 S.W.2d 753, 761 (Tex. 1932). "Once the time to practically permit continuing judicial scrutiny (including any attendant appellate review) of the absentee ballot has expired, the case has become moot." *In re Jones*, 2018 WL 549531, at * 3 (internal citations omitted).

Here, the deadline for printing ballots is imminent and, therefore, we decline to take any action that would interfere with the orderly process of the election. Accordingly, we deny relator's petition for writ of mandamus. Due to the time-sensitive nature of these matters, the Court will not entertain motions for rehearing. *See* TEX. R. APP. P. 2.

/s/ Ada Brown
ADA BROWN
JUSTICE

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