

IN THE SUPERIOR COURT OF PIKE COUNTY

2013 JUN -7 PM 12: 24

STATE OF GEORGIA

BY: *JD*
CAROLYN WILLIAMS, CLERK

ROBERT E. ADAMS, JR.,)
et al.,)
)
Plaintiffs,)
)
v.)
)
WALTER JAMES "JIM" BROOKS,)
)
Defendant.)
_____)

CIVIL ACTION FILE NO.
2013CV-038

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT

AND

BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

COMES NOW WALTER JAMES "JIM" BROOKS, Defendant in the above-styled action, and files this his Response to Plaintiffs' Motion for Summary Judgment *and* his Brief in Support of Defendant's Motion for Summary Judgment and shows the Court the following:

PART I. STATEMENT OF FACTS

Defendant resides, and at all time relevant hereto resided, at 1602 Smyrna Church Road, Molena, Pike County, Georgia. (Stipulation of Facts and Documents (hereinafter "Stip.") ¶ 2). According to the map showing the boundaries of the districts for the Pike County School Board approved in 2002, Defendant's residence was situated in District 4. (Stip. ¶¶ 1-2; Ex. "C"). As part of the normal

redistricting process conducted with each new census, the Pike County School Board District lines were redrawn in 2012. (Stip. ¶ 3). The Act¹ creating the new district boundaries was approved by the Georgia General Assembly and signed by the Governor on February 27, 2012. (Stip. ¶ 4). Under the 2012 map showing new district boundary lines, Defendant's residence is now situated in District 5. (Stip. ¶ 5; Ex. "D").

After being approved by the General Assembly and signed by the Governor, the new maps were submitted to the Department of Justice for preclearance on April 17, 2012. (Stip. ¶ 6). However, during the interim time period, qualifying for the Pike County School Board was held on May 23-25, 2012. (Stip. ¶ 7). Qualifying was done based on the only maps currently in effect at this time – the 2002 maps. Under the 2002 maps, Defendant qualified and ran for the District 4 seat. The evidence does not show that any objections were made at this time to Defendant's qualifications, nor that the Pike County Election Superintendent raised any questions of his own. After qualifying was over, the approval letter from the Department of Justice, dated June 15, 2012, was received by the Pike County School District. Receipt of the approval letter was after qualifying and after the ballots were printed and mailed to certain voters. (Stip. ¶¶ 8-9).

Defendant, having qualified as a candidate for District 4's seat on the school board, qualified for a runoff election after the primary election held on July 31, 2013. He then won the runoff election for the District 4 seat on the Pike County

¹ Act No. 308 (H.B. 906).
{Doc: 01102431.DOCX}

School Board held August 21, 2012. (Stip. ¶10; see also certified copies of the Certifications of Election attached hereto as Exhibits "A" and "B"). Defendant was sworn in and is now the District 4 member of the Pike County School Board.

For the Court's convenience, following is a timeline of the events stated above (all dates 2012):

- February 27: New maps signed by Governor Deal
- April 17: New maps submitted to DOJ
- May 23-25: Qualifying period
- June 15: DOJ preclearance granted
- July 31: Primary election
- August 3: Primary election certified
- August 21: Runoff election
- August 22: Runoff election certified

On February 26, 2013, Plaintiff filed the present action for Quo Warranto² seeking Defendant's removal from the Pike County School Board due to the fact that he no longer resides in District 4. Briefly, Plaintiffs allege that the change in the district wherein Defendant's residence is situated disqualifies Defendant for holding the seat for which Defendant qualified for and to which Defendant was elected.

² On October 4, 2012, certain of the Plaintiffs filed a suit in this Court, styled Robert E. Adams, Jr. et al. v. The Pike County School District, Lynn Brandenburg, and Walter James "Jim" Brooks, Case No. 2012-CV-518. This was a Complaint for Declaratory, Injunctive and Other Relief, alleging substantially the same issues as the present action. This case was dismissed by order of Hon. William H. Ison on December 17, 2012. Defendant requests that the Court take judicial notice of the proceedings in said case.

PART II. ARGUMENT AND CITATION OF AUTHORITY

A. STANDARD OF REVIEW

Summary Judgment is appropriate for a party when the court, viewing the facts in a light most favorable to the responding party, finds that the evidence does not create a triable issue as to each essential element of the case. Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991). Where there is no genuine issue as to any material fact and the undisputed facts establish the right of a party to recover, summary judgment should be granted. Sands v. Lamar Properties, Inc., 159 Ga. App. 718, 285 S.E.2d 24 (1981); Reed v. Adventist Health System/Sunbelt, 181 Ga. App. 750, 353 S.E.2d 523 (1987).

B. PLAINTIFFS FAIL AS A MATTER OF LAW TO MAKE OUT A PROPER CASE FOR QUO WARRANTO.

"The writ of quo warranto may issue to inquire into the right of any person to any public office the duties of which he is in fact discharging. It may be granted only after the application by some person either claiming the office or interested therein." O.C.G.A. § 9-6-60. In other words, Plaintiffs must show that Defendant is ineligible to hold his seat as District 4 member of the Pike County School Board. Plaintiffs fail to meet this burden on three grounds:

1. The elections were properly held using the 2002 map, and Defendant properly qualified for the election prior to the preclearance of the 2012 map.

At the time Defendant qualified for election (May 23-25, 2012), the only map in effect was the 2002 map. (Stip. ¶¶ 1-2). Even though the 2012 map had been approved by the General Assembly and signed by the Governor on February 27,

2012, the 2012 map did not become official until preclearance was granted by the Department of Justice. (See 42 U.S.C. § 1973c(a); see also Ramos v. Koebig, 638 F.2d. 838, 844 (1981) holding new reapportionment plan will not be considered effective until receiving preclearance; Northwest Austin v. Holder, 557 U.S. 193, 198 (2009) holding all changes to election procedures suspended until approved by Attorney General; accord Shelby County v. Holder, 679 F.3d 848 (2012)). Preclearance was not granted by the Department of Justice until June 15, 2012, which occurred after qualification held on May 23-25, 2013. (Stip. ¶¶ 7-8). As a result, Pike County had no alternative but to hold the elections, a primary and a runoff, using the same 2002 maps that were in effect during qualification. Defendant, having qualified for a runoff election at the primary election held on July 31, 2012, won Defendant's seat on August 21, 2012, the date of the runoff election. (See Certifications at Exhibits "A" and "B"). Curiously, no action was filed to challenge either election under the Georgia Election Code (see e.g. O.C.G.A. § 21-2-524). Consequently, Defendant's election is presumptively valid. (See Fuller v. Thomas, 284 Ga. 397 (2008)).

2. **Plaintiff's reliance on O.C.G.A. § 20-2-51(a) is misplaced because Defendant was a resident of District 4 at the time of qualification for the election, and therefore Defendant's qualification for the election is proper pursuant to O.C.G.A. § 20-2-51(a).**

In their Brief, Plaintiffs state that Defendant's residence changed on the date Defendant qualified for election – that is simply not true. (Stip. ¶¶ 2, 5). Defendant's address remained at 1602 Smyrna Church Road, Molena, Georgia.

(Stip. ¶¶ 2, 5). At the time of qualification on May 23-25, 2012, the 2012 map had not been precleared by the Department of Justice; therefore, the 2012 map was not legal and in effect. (Stip. ¶ 7, 8). The 2012 map did not become legal and in effect until the date of preclearance, June 15, 2012, which was after qualification and after the ballots were printed and mailed to certain voters. (See 42 U.S.C. § 1973c(a)). Because Defendant was a resident of District 4 at the time of qualification, Plaintiffs' reliance on O.C.G.A. § 20-2-51(a) to support Defendant's ouster is misplaced.

O.C.G.A. § 20-2-51(a) provides in part that “[n]o person shall be eligible for election as a member of a local board of education who is not a resident of the school district in which that person *seeks* election and of the election district which such person *seeks* to represent.” (Emphasis added). This statute concerns election for local boards of education and it not a residency requirement *per se*. Further, at the time Defendant sought election to his seat (at qualification on May 23-25, 2013) he was a resident of District 4. (Stip. ¶¶ 2, 7). It was only after qualification that Defendant's residency was affected. (Stip. ¶¶ 5, 8). Defendant qualified for the District 4 seat and was thereafter elected to same – both of which have been certified by the Pike County Election Superintendent. (Stip. ¶ 10; see also certified copies of the Certifications of Election attached hereto as Exhibits “A” and “B”). The July 31, 2013, primary election and August 21, 2012, runoff election have not been challenged and, therefore, stand. There is nothing in O.C.G.A. § 20-2-51(a), or cited

elsewhere by Plaintiffs, that states Defendant is now ineligible to hold Defendant's seat because Defendant's district changed solely as a result of redistricting.³

3. The election superintendent determines eligibility of a candidate for public office, and the Pike County election superintendent properly permitted Defendant's name to be placed on the ballot for the elections.

The eligibility of a candidate for public office is a question for the election superintendent, in this case the Pike County Probate Judge: "The superintendent shall determine if the candidate is qualified to seek and hold public office for which such candidate is offering. If the superintendent determines that the candidate is not qualified, the superintendent shall withhold the name of the candidate from the ballot or strike such candidate's name from the ballot if the ballots have been printed." O.C.G.A. § 21-2-6(c). The election superintendent did not withhold or strike Defendant's name from the ballot, and this Court should not substitute its judgment for that of the election superintendent. (See O.C.G.A. § 21-2-6(e)).

B. THE PROVISIONS OF ACT NO. 308 PROVIDE THAT DEFENDANT SHALL BE PERMITTED TO SERVE OUT HIS TERM.

The 2012 map was approved by the Georgia General Assembly via Act. No. 308 (H.B. 906) (the "Act") and signed by Governor Deal on February 27, 2012. (Stip. ¶ 3-4). Section 1(a) of the Act provides as follows: "Those members of the Board of Education of Pike County who are serving as such on the effective date of this section and any person selected to fill a vacancy in any such office shall continue to

³ Since Plaintiffs make no reference to O.C.G.A. § 20-2-51(b) regarding a board member's change in domicile causing that seat to become vacant, Defendant is not addressing that issue. It does not appear that Plaintiffs allege that the redistricting resulted in a change of domicile as contemplated by this section. This section, not the one cited by Plaintiffs, is the only section dealing with residency requirements.

serve as such members until the regular expiration of their respective terms of office and upon the election and qualification of their respective successors.” (Stip. Ex. “A”). Further, Section 1(d) of the Act provides as follows:

Education Districts 1 through 6, as they exist immediately prior to the effective date of this section, shall continue to be designated as Education Districts 1 through 6, respectively, but as newly described under this section, and on and after the effective date of this section, such members of the board serving from those former education districts shall be deemed to be serving from and representing their respective districts as newly described under this section.

(Stip. Ex. “A”).

Defendant acknowledges that he technically was not serving nor was he selected to fill a vacancy when preclearance was granted (he had only qualified), but the intent of the Act is manifest. While the specific facts and timing of the present case are unique, the Act clearly contemplates that there might be a change in the residency of an incumbent as a result of the redistricting and that incumbent’s seat should not be vacated. The Pike County Election Superintendent proceeded with the election as prescribed in O.C.G.A. § 21-2-6. (See O.C.G.A. § 21-2-6 giving superintendent authority on his own motion to challenge a candidate’s qualifications and withhold his name from the ballot). Moreover, the fact that none of the Plaintiffs challenged Defendant’s change of residence (as situated pursuant to the 2002 map and the 2012 map) prior to the election when Plaintiffs had ample

time to do so supports this argument.⁴ To hold otherwise would result in a retroactive application of the Act, a result that certainly is not contemplated by the plain language thereof in the Act. In addition, O.C.G.A. § 1-3-5 provides “[l]aws prescribe only to the future; they cannot impair the obligation of contracts nor, ordinarily, have a retrospective operation.” (See also Polito v. Holland, 258 Ga. 54, 55 (1988) holding that statutes generally prescribe for the future and that is the construction to be given absent a clear intention to the contrary).

PART III. CONCLUSION

Plaintiffs’ claim for quo warranto fails as a matter of law because (a) Defendant was duly qualified and subsequently elected to the Pike County School Board and legally holds his seat; and (b) the plain language of the Act supplemented by Georgia law protects Defendant from retroactive application of the redistricting. In other words, Plaintiffs cannot cite to any authority to support their claims that Defendant must vacate his seat, a seat to which Defendant was legally qualified and elected, solely because of the redistricting of his residence pursuant to the 2012 map. As a result, this Court should deny Plaintiffs’ Motion for Summary Judgment and grant Defendant’s Motion for Summary Judgment.

This 17th day of June, 2013.

⁴ That would certainly have been a more cost-effective approach than how they are proceeding now: seeking to have the election voided and to have the taxpayers bear the burden of a new election for a single school board seat.