

Matter of Cartwright v Kennedy

2024 NY Slip Op 32880(U)

July 23, 2024

Supreme Court, Schenectady County

Docket Number: Index No. 906349-24

Judge: Christina L. Ryba

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STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY

In the Matter of the Application of CAROLINE
CARTWRIGHT, MATTHEW NELSON, JOSEPH R.
RHONE, JR., and ALEXANDER PEASE,

Petitioners,

-against-

DECISION/ORDER
Index No. 906349-24

ROBERT F. KENNEDY, JR., NICOLE SHANAHAN,
DONNA L HARRIS, DAWN M. D'ARCANGELO,
ROSS W. ELAKMAN, ALAN S. GOMPERS,
LISA B. JACQUES, KEVIN J. MADONNA,
VICTORIA E. MADONNA, PHILIP J. MARESCO,
JENSUH Y. MCCORMACK, JAVIER EDUARDO
MERIZALDE, JENNIFER MEYERSON, KENNETH
A. NOGA, MARY C. O'DONNELL, GINA M. KRAUSE,
VALENTIN PARKS JR., NANCY V. PIERRO,
TERESA E. POLSKY, VARIN D. SAWH, LAWRENCE
P. SCHNAPF, CELESTE L. SHEAR, JEHANZEB SYED,
EILEEN S. TEPPER, BRUCE T. THORNE, LITA L.
THORNE, JOSHUA VOGEL, KRISTIN ANN MARIE
WHITE, KELLY A. ZANETO and SUSAN PETERS,

Respondents-Candidates,

-and-

HENRY T. BERGER, PETER S. KOSINSKI, ESSMA
BAGNUOLA and ANTHONYJ. CASALE, Commissioners
constituting the New York State Board of Elections.

Respondents.

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RYBA, J.,

On May 28, 2024, the independent body designated as “We the People” filed an independent nominating petition with the New York State Board of Elections nominating Robert F. Kennedy, Jr. as candidate for President of the United States, Nicole Shanahan as candidate for Vice President of the United States, and 28 named individuals as candidates for Elector of President and Vice President of the United States (hereinafter collectively referred to as respondents) in the November 5, 2024 general election. Alleging that the nominating petition contained an insufficient number of valid signatures to meet the threshold required to secure the nomination, petitioners filed general and specific objections with the Board of Elections and served a flash drive containing a digital copy of the objections upon each of the respondents. Prior to the Board of Election’s ruling on the objections, petitioners commenced this Election Law § 16-102 proceeding in Dutchess County Supreme Court seeking to invalidate the nominating petition on a myriad of grounds, including allegations that a number of subscribing witness statements and individual signatures suffer from fatal defects, that fraudulent methods were used during the signature collection process, and that respondent Kennedy falsely represented on the nominating petition that he is a resident of New York State when in truth he is a resident of California. According to the petition, Kennedy falsely represented that he resides in New York State to conceal from signatories the fact that he and Nicole Shanahan, the candidate for Vice President, are both residents of California, which would constitutionally preclude them from winning the 54 electoral votes allocated to California in the November 2024 Presidential Election (see, US Const. Art. II § 1, cl. 3; US Const. Amend. XII).

In lieu of serving an answer, respondents filed a motion to dismiss the petition on the ground that petitioners lack standing because they failed to properly file and serve specifications of objections

as required by Election Law § 16-102(1), or in the alternative, because petitioners failed to join James L. Shear, one of the 28 candidates for the public office of Elector named in the nominating petition, as a necessary party to this proceeding prior to the expiration of the Statute of Limitations. Petitioners opposed the motion and cross-moved for a summary determination invalidating the nominating petition based upon Kennedy's alleged misrepresentation regarding his State of residence. Meanwhile, respondents moved for a change in venue from Dutchess County to Albany County, and that motion was granted by Decision and Order dated July 5, 2024.

After the matter was transferred to Albany County, this Court held a virtual conference at which petitioners' counsel requested that the trial in this matter be limited to the sole issue of whether Kennedy misrepresented his State of residence in the nominating petition. A bench trial on that issue is scheduled to commence on July 29, 2024. By letter dated July 16, 2024, the Board of Elections advised the Court that it has since ruled on petitioners' specific objections and found the independent nominating petition to contain a sufficient number of valid signatures to warrant its validation at its next meeting on July 29, 2024. The Board of Election's determination in that regard is not yet final, and any challenge thereto has not been placed before this Court. Respondents' motion to dismiss the petition and petitioners' cross motion for a summary determination invalidating the nominating petition are now ripe for the Court's determination.

First addressing respondents' motion to dismiss the petition due to the alleged failure to join a necessary party, CPLR 1001 establishes rules governing when the nonjoinder of a party requires dismissal of an action or proceeding. CPLR 1001 (a) provides that necessary parties are those who ought to be joined to afford complete relief between the parties, or those whose interests might be inequitably affected by a judgment in the action (see, CPLR 1001[a]; Saratoga Cnty. Chamber of

Com., Inc. v Pataki, 100 NY2d 801, 819 [2003]; JMMJ Dev., LLC v Woodvale Holdings, LLC, 207 AD3d 830, 831 [2022]; Farrell v City of Kingston, 156 AD3d 1269, 1271 [2017]). Where a party who has been deemed to be “necessary” pursuant to CPLR 1001 (a) cannot be joined in the action, the Court must then determine whether the action must be dismissed or whether it may proceed in the party’s absence (see, CPLR 1001 [b]). “Joinder rules serve an important policy interest in guaranteeing that absent parties at risk of prejudice will not be embarrassed by judgments purporting to bind their rights or interests where they have had no opportunity to be heard” (Red Hook/Gowanus Chamber of Com. v New York City Bd. of Standards & Appeals, 5 NY3d 452, 458 [2005] [internal quotations omitted]). Accordingly, if the Court finds that the necessary party’s interests will be adequately represented by other parties who have been joined in the action, nonjoinder of the necessary party may be excused and the matter may proceed in their absence (see, Saratoga Cnty. Chamber of Com., Inc. v Pataki, 100 NY2d at 819–20 [2003]).

Applying the foregoing standard, the Court rejects respondents’ argument that the failure to join James L. Shear, one of the 28 candidates for Elector, requires dismissal of this proceeding for failure to join a necessary party. It is well settled that the potential for prejudice resulting from nonjoinder is greatly diminished where the interests of the nonjoined party are so inextricably intertwined with the interests of a party who has been joined, such that they can be deemed to “stand or fall together” (Matter of Mount Pleasant Cottage School Union Free School Dist. v. Sobol, 163 AD2d 715, 716 [1990], affd. 78 NY2d 935 [1990]; see, Matter of Awad v State Educ. Dept. of NY, 240 AD2d 923, 925 [1997]; Matter of Storrs v Holcomb, 245 AD2d 943, 945 [1997]; Doner v Comptroller of State of NY, 262 AD2d 750, 751 [1999]). Under such circumstances, nonjoinder of a necessary party may be excused (see, id.). Here, it is undisputed that all other candidates named in

the nominating petition, including the 27 individuals also named as candidates for Elector, have been joined as parties, are represented by counsel, have interposed the present motion to dismiss, and have submitted opposition to petitioners' motion for summary judgment. As one of the candidates for Elector named in the nominating petition, Shear's interests will undoubtedly "stand or fall" with the interests of the remaining candidates who have been joined as respondents in this proceeding. Any judgment in this proceeding, whether validating or invalidating the nominating petition, will necessarily affect Shear in the same manner as it affects the other nominated candidates who have been joined herein. Under these circumstances, the Court finds that Shear's interests are adequately protected by the named respondents and no prejudice will result by the continuation of this matter in his absence. Accordingly, dismissal of the petition for failure to join Shear as a necessary party to this action is not warranted (see, Saratoga Cnty. Chamber of Com., Inc. v Pataki, 100 NY2d at 819–20 [2003]; Cox v Spoth, 165 AD3d 1648, 1650 [2018]; Matter of Marafito v McDonough, 153 AD3d 1123, 1125 [2017]; Matter of Max v Ward, 107 AD3d 1597, 1599 [2013]; Matter of Snell v Young, 88 AD3d 1149, 1150 [2011], lv denied 17 NY3d 715 [2011]; New York State Comm. of Indep. v New York State Bd. of Elections, 87 AD3d 806, 811 [2011]; Matter of Kryzan v New York State Bd. of Elections, 55 AD3d 1217, 1219 [2008]; Sawicki v County of Suffolk, 4 AD3d 465, 466 [2004]).

Respondents next argue that petitioners lack standing to institute this Election Law § 16-102 proceeding because they did not properly file and serve specifications of objections as required by Election Law § 6-154. As relevant here, Election Law § 16-102 (1) provides that "[t]he nomination or designation of any candidate for any public office or party position or any independent nomination . . . may be contested in a proceeding instituted in the supreme court by . . . a person who shall have filed objections, as provided in this chapter." Election Law § 6-154 (3) (b) provides in pertinent part

that “no specifications of objections to any petition . . . will be considered unless the objector filing the specifications personally delivers or mails by overnight mail a duplicate copy of the specification to each candidate for public office named on the petition.” Respondents argue that the statutory requirement for service of a “duplicate copy” of specifications may only be fulfilled by service of a duplicate *paper* copy, and that petitioners’ service of a flash drive containing a *digital* copy of the specifications was legally insufficient. Respondents further argue that, even assuming that service of a digital copy of the specifications is acceptable under the statute, service was nonetheless defective because each digital copy served upon respondents was missing one page. In view of these claimed deficiencies, respondents reason that petitioners cannot be deemed to be “persons who filed objections” entitled to initiate a proceeding under Election Law § 16-102.

The Court is not persuaded. First, the Court rejects the proposition that service of digital copies is not permitted under Election Law § 6-154 because the statutory mandate for service of a “duplicate copy” of specifications must be interpreted to require a duplicate *paper* copy of the specifications. When interpreting the meaning of “duplicate copy” as set forth in the statute, the Court’s primary objective is to discern and effectuate the intent of the Legislature (*see, People v Silburn* 31 NY3d 144 [2018]; *Canales v Pinnacle Foods Grp. LLC*, 117 AD3d 1271 [2014]). “As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself” (*Majewski v Broadalbin–Perth Cent. School Dist.*, 91 NY2d 577, 583 [1998]; *see, People v Page*, 35 NY3d 199, 206 [2020]; *Albany L. Sch. v New York State Off. of Mental Retardation & Developmental Disabilities*, 19 NY3d 106, 120 [2012]). As a general rule, the plain language of a statute controls questions of interpretation (*see, Town of Southampton v New York State Dep’t of Env’t Conservation*, 194 AD3d 1310, 1315 [2021], *aff’d as modified*, 39 NY3d 201 [2023];

Matzell v Annucci, 183 AD3d 1, 4 [2020]).

Here, Election Law § 6-154 contains no language limiting the definition of “duplicate copies” to include only duplicate *paper* copies. The failure of the Legislature to include such language warrants an inference that its exclusion was purposeful (see, Soriano v Elia, 155 AD3d 1496, 1500 [2017]; McKinney's Cons Laws of NY, Book 1, Statutes § 74). Had the Legislature intended to limit the meaning of “duplicate copies” to include only *paper* copies, and not *digital* copies, it would have said so (see, Matter of Marian T. [Lauren R.], 36 NY3d 44, 51–52 [2020]; People ex rel. Marrero v Stanford, 218 AD3d 1105 [2023]). It is well established that “a court cannot amend a statute by inserting words that are not there, nor will a court read into a statute a provision which the Legislature did not see fit to enact” (Matter of Chemical Specialties Mfrs. Assn v Jorling, 85 NY2d 382, 394 [1995] [internal quotation marks and citations omitted]; see, People ex rel. Marrero v Stanford, 218 AD3d 1105 [2023]). For the Court to read language into the statute requiring “duplicate copies” of specifications to be in paper form would violate this settled principle of statutory construction.

Indeed, the Court’s interpretation of the term “duplicate copy” to include digital copies is consistent with the ordinary and commonly understood meaning of those words. Using dictionary definitions as helpful guideposts (see, Yaniveth R. v LTD Realty Co., 27 NY3d 186, 192 [2016]; Ronkese v Tilcon New York, Inc., 153 AD3d 259, 262 [2017]), the Court construes the word “duplicate” to have its commonly understood meaning of “either of two things exactly alike” (<https://www.merriam-webster.com/dictionary/duplicate>), and the word “copy” to have its commonly understood meaning of “an imitation, transcript, or reproduction of an original work” (<https://www.merriam-webster.com/dictionary/copy>). Applying these definitions, the Court concludes that the phrase “duplicate copy” as used in Election Law § 6-154 encompasses digital copies of a paper

document, such as the digital copies contained on the flash drives served by petitioners in this matter.

Having concluded that Election Law § 6-154 permits service of duplicate copies of specifications in digital form, the Court now addresses respondents' argument that petitioners nonetheless failed to comply with that statute because the digital copies served were missing a page that was included in the original filing, to wit, the notarization page for petitioner Joseph R. Rhone Jr.'s signature. Respondents reason that, without the missing notarization page, the digital copies served were not "duplicates" of the original specifications and could not fulfill the service requirements of Election Law § 6-154. However, it is well settled that the standard for compliance with the provisions of Election Law § 6-154 governing general and specific objections is "substantial compliance" (Rimkus v Rogers, 220 AD3d 1235, 199 [2023]). Inasmuch as the Election Law does not require that specifications of objections be notarized, the failure to include a single unnecessary notarization page within the voluminous specifications served upon respondents is not fatal, especially since the specifications served otherwise contained all of the information necessary to clearly identify the contested signatures involved (see, Matter of Felsen v Scaringe, 54 NY2d 932, 934 [1981]; Jones v DeSantis, 227 AD3d 845, 847 [2024], lv deneid 41 NY3d 406; Rimkus v Rogers, 220 AD3d at 1236 [2023]). As respondents have failed to establish that the digital copies of specifications served by petitioners did not substantially comply with Election Law § 6-154, dismissal of the complaint on that ground is not warranted.

The Court will now turn to petitioners' cross motion for a summary determination invalidating the nominating petition on the ground that it falsely identifies Kennedy as a resident of New York State, when in fact he is a resident of California. A summary determination in a special proceeding is akin to a motion for summary judgment and will be made on the pleadings and papers before the

Court where there are no triable issues of fact raised (see, CPLR 409 [b]; Matter of Korotun v Laurel Place Homeowner's Assn., 6 AD3d 710, 711 [2004]). On the issue of residency, the burden rests with petitioners to establish by clear and convincing evidence that Kennedy does not reside at the New York State address listed as his residence on the nominating petition (see, Matter of Shafer v Dorsey, 43 AD3d 621, 622–623 [2007]; Matter of Johnson v Simpson, 43 AD3d 478 [2007]; Matter of Diamondstone v Connor, 32 AD3d 482 [2006]). However, the record before the Court raises disputed questions of fact surrounding the issue of Kennedy's residence that cannot be resolved without a trial. Accordingly, petitioners' motion for a summary determination is denied and the matter will proceed to trial before this Court on July 29, 2024.

To the extent that the parties' arguments have not been specifically addressed, they have been reviewed and found to be lacking in merit or otherwise unnecessary to address.

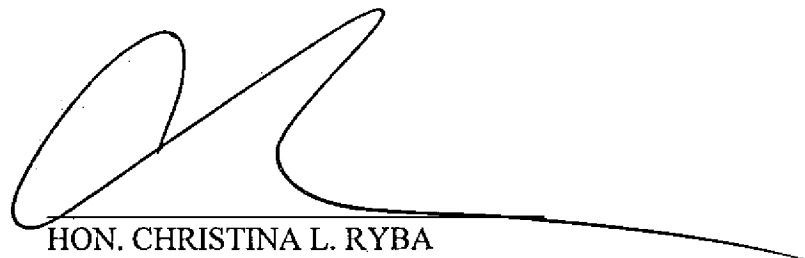
For the foregoing reasons, it is

ORDERED that the motion to dismiss the petition is denied, and it is further

ORDERED that the cross motion for a summary determination is denied.

This constitutes the Decision and Order of the Court, the original which is being transmitted to the Albany County Clerk for electronic filing and entry. Upon such entry, counsel for petitioners shall promptly serve notice of entry on all other parties (see Uniform Rules for Trial Courts [22 NYCRR § 202.5-b [h][1], [2]).

Dated: July 23, 2024



HON. CHRISTINA L. RYBA
Supreme Court Justice

