

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of Michael :
Puskaric as Republican Candidate for :
State Representative from the 39th :
Legislative District :
 : No. 170 M.D. 2022
Objections of: Madeline J. Gruz : Heard: April 8, 2022

BEFORE: HONORABLE DAN PELLEGRINI, Senior Judge*

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY SENIOR JUDGE PELLEGRINI**

FILED: April 9, 2022

Before this Court is a petition filed by Madeline J. Gruz (Objector) to set aside the nomination petitions of Michael Puskaric (Candidate) as a Republican candidate for State Representative in the 39th Legislative District. Candidate seeks to appear on the ballot in the primary election on May 17, 2022. Objector contends that Candidate’s nomination petitions lack the number of valid signatures required by law to appear on the ballot. Objector raises three issues: whether she presented sufficient evidence to establish that certain signatures were written in the hand of another without expert testimony; whether curative affidavits submitted by Candidate were legally sufficient; and whether Objector preserved additional objections to specific signatures with a general reservation of rights in her petition.

* Retired Senior Judge temporarily assigned to the Commonwealth Court.

To appear on the primary election ballot as a candidate for the office of Representative in the General Assembly, a candidate must submit petitions containing 300 valid signatures of registered electors who are members of the party whose nomination is sought.¹ 25 P.S. § 2872.1(14). Generally, “the Election Code [is to] be liberally construed so as not to deprive an individual of [the] right to run for office or the voters of their right to elect the candidate of their choice.” *In re Nomination Petition of Wesley*, 640 A.2d 1247, 1249 (Pa. 1994).

Each item on the petition, including the signature, printed name and address of the elector, must be personally written by the signer. *In re Morrison-Wesley*, 946 A.2d 789, 794 (Pa. Cmwlth.), *aff’d*, 944 A.2d 78 (Pa. 2008). It is presumed that signatures on a petition are valid and the objector bears the burden to prove that the signature is not valid. *Id.* Thus, “[w]here the court is not convinced that challenged

¹ The Election Code provides the following regarding signatures of electors:

Each signer of a nomination petition shall sign but one such petition for each office to be filled, and shall declare therein that he is a registered and enrolled member of the party designated in such petition: Provided, however, That where there are to be elected two or more persons to the same office, each signer may sign petitions for as many candidates for such office as, and no more than, he could vote for at the succeeding election. He shall also declare therein that he is a qualified elector of the county therein named, and in case the nomination is not to be made or candidates are not to be elected by the electors of the State at large, of the political district therein named, in which the nomination is to be made or the election is to be held. He shall add his address where he is duly registered and enrolled, giving city, borough or township, with street and number, if any, and shall legibly print his name and add the date of signing, expressed in words or numbers. . . .

25 P.S. § 2868.

signatures are other than genuine, the challenge is to be resolved in favor of the candidate.” *In re Nomination of Flaherty*, 770 A.2d 327, 331 (Pa. 2001), *abrogated on other grounds by In re Vodvarka*, 140 A.3d 639 (Pa. 2016). If the difference between a signature on a petition and on a voter registration card is obvious, the Court will sustain an objection based on the signature being in the hand of another; however, expert testimony is generally required to resolve this factual issue. *See In re Nader*, 865 A.2d 8 (Pa. 2004) (relying on expert testimony to resolve discrepancies between signatures); *In re Cooper*, 643 A.2d 717 (Pa. Cmwlth. 1994) (same).

Candidate filed nomination petitions with the Department of State consisting of 39 pages with 406 completed signature lines. In her petition, Objector challenged 184 of these lines for a variety of specific reasons: the signer was not a registered voter or not registered at the address indicated on the petition; the signer was not registered in the district; the signer was not a registered member of the Republican party; line information was omitted; line information was in the hand of another; the signer used a nickname or initial; the signature was printed, or some “other” reason would support invalidity.

On April 8, 2022, the Court held a hearing on the petition. Prior to the hearing, Objector and Candidate reached a stipulation that 68 of the 406 signature lines were invalid, and Objector withdrew her objections to 28 of the signature lines. At the

beginning of the hearing, the parties agreed that 254 of Candidate's signatures were valid. During the hearing, Objector withdrew 25 objections,² raising the number of uncontested signatures to 279. The Court overruled the objections to 27 additional signatures and found that Candidate cured the defective circulator statement as to 7 signatures.³ As a result, Candidate obtained 313 valid signatures in support of his nomination petitions, exceeding the 300-signature threshold requirement in the Election Code. 25 P.S. § 2872.1(14).

Many of Candidate's objections allege that a signature was made in the hand of another. Candidate secured an operator from the State Uniform Registry of Electors (SURE) to retrieve voter information, including signatures on voter registration cards, in support of these objections. She did not, however, present a handwriting expert to opine on the authenticity of the signatures. Instead, she argues

² Five of these objections concerned electors who signed their voter registration card with their maiden names and signed the petition with their married names. Candidate offered signed declarations from these electors averring that they had personally signed the nomination petition. As discussed further below, Objector objected to the admissibility of the declarations because they did not specifically reference 18 Pa.C.S. § 4904 concerning unsworn falsification to authorities, but agreed that the content of the declarations otherwise cured any defect based on the difference between the signatures on the voter registration cards and the nomination petitions.

³ Candidate was the circulator of pages 21, 36, 38 and 39 of his nomination petitions. In the circulator statement, he wrote that the signers of the petition resided in Washington County when they, in fact, resided in Allegheny County, and vice versa. Candidate testified at the hearing that he personally circulated those pages and gathered the signatures, but inadvertently wrote the wrong county in the statement. He said he did not intend to deceive anyone but merely committed an "honest error." The Court found Candidate to be credible and held that he had cured the defect in these circulator statements through his sworn testimony.

that the Court, sitting as finder of fact, may make the determination as to whether a signature is genuine without expert testimony.

For 20 of these challenges, the Court held that it would need expert testimony to determine whether the signature was written in the hand of another, as the differences between the signatures on the nomination petition and in the SURE system were not so obvious as to allow the Court to make that factual finding. For these signatures, the Court believed that any differences between the nomination petitions and the SURE signature could be the result of the age of the signature in the SURE system, the type of writing instrument used, haste in signing the petition, or innumerable other factors. As a result, the Court could not determine without the aid of expert testimony that the signatures were not valid, and concluded that Objector had not met her burden of establishing that the presumptively valid signatures were in the hand of another. *Morrison-Wesley, supra*. Additionally, the Court must resolve any ambiguity in these signatures in favor of Candidate. *Flaherty, supra*.

Next, Candidate presented 8 signed declarations from signers to cure alleged defects in their signatures. The Court struck three of the signatures, in which the signer had written the zip code in the space for the street number on the petition. The remaining five declarations were from signers who changed their names after marriage and, thus, had different signatures on the petition than were reflected in the

SURE system. Objector challenges the admissibility of the declarations because they do not specifically state that they were signed under penalties of perjury pursuant to 18 Pa.C.S. § 4904 (unsworn falsification to authorities). Objector cites *Finder v. Crawford*, 167 A.3d 40 (Pa. Super. 2017) for the proposition that an unsworn affidavit must contain reference to this statute to be legally sufficient.

In *Finder*, the appellant submitted a “certification” in support of a motion for summary judgment that he alleged was a legally sufficient affidavit to support his claims. Citing to the Rules of Civil Procedure, the Superior Court noted, “[i]n order to qualify as an affidavit, it must be ‘a statement ... of fact or facts, signed by the person making it, that ... is unsworn and contains a statement that it is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.’” *Id.* at 44 (citing Pa. R. Civ. P. 76). There, the affidavit, through inadvertence or otherwise, cited to 18 Pa.C.S. § 4909, which relates to the crime of a witness or informant soliciting or accepting a bribe. Because the “incorrect citation to the criminal penalty would provide an affiant with an argument that he was unaware of the applicability of criminal penalties,” we held that the certification did not meet the definition of an “affidavit” under the Rules of Civil Procedure.

Here, each of the declarations submitted by Candidate contained the following provision: “I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.” *See* Affidavits of Jill

Spitznagel, Diana Ifft-Cecotti, Chelsea Joyce, Charlotte Matthews & Danielle McPherson, at ¶ 8. The declarations comply with the Uniform Unsworn Declarations Act, 42 Pa.C.S. § 6201 *et seq.*, which mandates that an unsworn declaration include this language. 42 Pa.C.S. § 6206. Moreover, they comply with *Fisher*, which makes clear that the signer of an unsworn affidavit must acknowledge that they are signing under penalty of perjury. Accordingly, the declarations are legally sufficient and cured any deficiencies in these signatures.

Finally, at the hearing, Objector attempted to raise several objections to signatures that were not pled in her original petition, citing paragraph 8 of the petition.⁴ Candidate objected to these additional objections as waived. The Election Code grants courts discretion to entertain amendments to objections to signatures, but only as long as the new claim is sufficiently related to those in the original petition to “advise the proposed candidate of the errors in his [or her] nomination petitions[.]” *In re Nomination Petition of Bryant*, 852 A.2d 1193, 1196 (Pa. 2004) (quoting *In re Appeal of Beynon*, 88 A.2d 789 (Pa. 1952)). Our Supreme Court has held that even where an objector has timely challenged a nomination petition, it is improper to allow “an entirely new objection subsequent to the expiration of the

⁴ Paragraph 8 reads: “Petitioner respectfully reserves the right to add such additional objections as are appropriate under applicable law at the time of the hearing.” For example, after viewing information in the SURE system at the hearing Objector argued for the first time that the signer on page 10, line 6, was not a registered member of the Republican party.

statutorily-prescribed seven-day period.” *Id.* Because Candidate was not put on notice of these additional bases for objections to the signatures, the Court did not allow Objector to raise them in the first instance at the hearing.

Thus, for all of the aforementioned reasons, Objector’s petition to set aside Candidate’s nomination petition is denied.


DAN PELLEGRINI, Senior Judge

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:

ORDER

AND NOW, this 9th day of April 2022, the Petition to Set Aside the Nomination Petition of Michael Puskaric as Republican Candidate for the State Representative in the 39th Legislative District is DENIED. The Chief Clerk shall notify the parties hereto and their counsel of this order and also certify a copy hereof to the Secretary of the Commonwealth.


DAN PELLEGRINI, Senior Judge

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE: TEMPORARY MODIFICATION : No. 571 Judicial Administration Docket
OF THE RULES OF APPELLATE :
PROCEDURE ARISING UNDER THE :
PENNSYLVANIA ELECTION CODE :

ORDER

PER CURIAM

AND NOW, this 5th day of April, 2022, in order to expedite the appellate process regarding appeals from challenges to nomination petitions for **any and all** candidates running for office in the May 17, 2022 General Primary Election, Pa.R.A.P. 903(c)(1)(ii), providing for a ten-day appeal period from an order in any matter arising under the Pennsylvania Election Code, is **TEMPORARILY MODIFIED** to provide for a five-day appeal period.

Additionally, Pa.R.A.P. 107 is **TEMPORARILY SUSPENDED** to the extent it specifies that weekends and holidays are to be excluded from calculating the five-day appeal period.

In appeals arising under the Election Code that fall within this order, appellants shall file briefs within twenty-four hours after filing their notice of appeal and jurisdictional statement. Appellees' briefs are due within twenty-four hours of the filing of appellants' briefs. Further, Pa.R.A.P. 2113 (regarding reply briefs) is **TEMPORARILY SUSPENDED** in these matters; no reply briefs will be permitted.

Notices of appeal, jurisdictional statements, and briefs shall be filed electronically when counsel or the litigants have a PACFile account. Otherwise, counsel or the litigants shall contact the relevant filing office during normal business hours to make alternative arrangements to ensure that the filing office actually receives the submissions by the applicable deadline.

Pa.R.A.P. 1931(a) and (c) (regarding the deadline for transmittal of the record when complete) are **TEMPORARILY SUSPENDED** in these matters, and the record shall be transferred as soon as practicable. The lower court may transmit partially completed records in the interest of facilitating prompt resolution of any appeal in these matters.

Applications for reconsideration or reargument will not be entertained by this Court on election matters falling under this order.

Any court deciding a matter that arises under the Pennsylvania Election Code in relation to the May 17, 2022 General Primary Election shall append a copy of this order to its decision.

A True Copy Nicole Traini
As Of 04/05/2022

Attest: Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania