

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis D. Rieck, :  
Appellant :  
v. :  
Erie County Republican Committee : No. 1975 C.D. 2012  
Submitted: July 12, 2013

BEFORE: HONORABLE DAN PELLEGRINI, President Judge  
HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE McGINLEY

FILED: August 21, 2013

Dennis D. Rieck (Rieck) appeals the order of the Court of Common Pleas of Erie County (common pleas court) that sustained the preliminary objection of the Erie County Republican Committee (ECRC) and dismissed Rieck's amended complaint with prejudice.

On March 19, 2012, Rieck commenced an action in the common pleas court against the ECRC and alleged that the ECRC engaged in fraudulent report filings, misuse of funds, violation of by-laws, and violation of Pennsylvania State Finance Laws for the years 2009, 2010, and 2011. Rieck requested a forensic audit for the years 2009-2011.

On March 27, 2012, Rieck filed an amended complaint against the ECRC. Rieck accused the ECRC of filing fraudulent campaign reports, misuse of funds and violations of Pennsylvania Finance Laws for the years 2009-2011. Rieck listed seven reports that were false and fraudulent. He alleged that the

ECRC was thousands of dollars in debt and this information was required to be listed on the reports. He alleged that various officers should be charged with a felony for issuing false reports and alleged various facts to indicate discrepancies in the accounting of the ECRC.<sup>1</sup>

Rieck further alleged:

I would like to point out that we have received limited support from The Erie County Election Board. Section 1629 and paragraph (b) states that any willful false, fraudulent or misleading statement or entry made by any candidate or treasurer in any statement or report shall constitute the crime of perjury. It is my opinion that the County did as little as possible and instead of being concerned they were [sic] not interested in getting involved. We are asking the Court to order a Forensic Audit.

Several fundraisers have no record of who attended or what amount was contributed, with no information on what the State Finance Laws says must be provided. Leslie Gray allowed Jason Owen to take money and that is illegal and both are responsible. Brad Moore and the Solicitor Tim Wachter both knew that the reports were a complete lie and done on purpose to hide the fact that we were in debt.

There are several places where they said they were in debt and yet on the reports filed the same month there was no mention of debt.

The state finance laws are very clear on what happens if someone is dishonest such as the ECRC.

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<sup>1</sup> Rieck did not organize his amended complaint in numbered paragraphs.

Amended Complaint, March 19, 2012, at 2-3; Reproduced Record (R.R.) at 10-11.<sup>2</sup>

On April 12, 2012, the ECRC preliminarily objected to the amended complaint and alleged that Rieck failed to exhaust his administrative remedies:

13. Rieck's only discernible claim for relief seeks a forensic audit. . . .

14. Rieck also requests a 'full restoration by the guilty and full punishment as the law allows.' . . .

15. Because Rieck fails to state a claim for relief, as a matter of law, the Complaint must be dismissed with prejudice.

. . . .

16. The Pennsylvania Election Code provides the exclusive manner in which an aggrieved elector may seek an audit of campaign finance reports.

17. Specifically, 25 P.S. § 3256, titled 'Audit of Expense Accounts,' provides:

Within ninety (90) days after the last day for filing any report and affidavit required by this act, any (5) electors of the Commonwealth or of the political division may present a petition to the court of common pleas of the county in which is situated the office where such original report has been filed . . . for an audit of such report. . . .

18. Here, Rieck's Complaint fails to comply with the Election Code's provisions for seeking an audit because each of the allegedly fraudulent Finance Reports were [sic] due well in advance of 90 days from Rieck's initial audit request.

19. Six of the seven Finance Reports at issue were for the election taking place on November 2, 2010. . . .

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<sup>2</sup> The Reproduced Record does not contain page numbers. The designation for 10-11 was made by counting the pages.

20. The seventh Finance Report, the 6<sup>th</sup> Tuesday Pre-Primary report, was for the election taking place on November 8, 2011. . . .

21. The Pennsylvania Department of State, through the Bureau of Commissions, Elections and Legislation, publishes the Campaign Finance Report filing deadlines. . . for each election year, including the elections of 2010 and 2011. . . . .

22. All of the campaign finance reports during the 2010 election year were due on or before January 31, 2011. . . .

23. The only Finance Report for the 2011 election, the 6<sup>th</sup> Tuesday Pre-Primary report, was due on or before April 5, 2011. . . .

24. Rieck's initial complaint was not filed until March 19, 2012 and his Amended Complaint was not filed until March 29, 2012.

25. Therefore, Rieck failed to comply with the provisions of 25 P.S. §3256 because his audit request is untimely.

26. While the complaint is untimely as a matter of law, alternatively, Rieck also failed to satisfy the requirements of 25 P.S. §3256 because he is the only elector that brought the Complaint.

27. Pursuant to § 3256(a), the petition seeking an audit must be brought by five electors. Therefore, under no circumstances can Rieck's Complaint be deemed compliant with § 3256.

28. Because Rieck's violations cannot be cured by amending his petition/complaint, this Court must dismiss his complaint, with prejudice. . . . (Citations omitted).

Preliminary Objections to Plaintiff's Amended Complaint, April 12, 2012, Paragraph Nos. 13-28 at 3-4; R.R. at 21-22.

The ECRC also preliminarily objected on the basis that the amended complaint lacked specificity, that Rieck failed to attach written documents, and the amended complaint was not organized into numbered paragraphs.

Following oral argument, the common pleas court sustained the preliminary objection:

As the Court understands it, the audit procedure provided in 25 P.S. §3256 is not merely a mechanism by which electors can challenge entries made in campaign finance reports, but rather a more universal mechanism for challenging violations of the Election Code in general. Furthermore, as plainly stated by the Pennsylvania Supreme Court in *Brunwasser [v. Fields]*, 487 Pa. 283, 409 A.2d 352 (1979), the audit procedure should be strictly followed and is the exclusive remedy for suspected Election Code violations.

Even if the Court believes Plaintiff [Rieck] was wrongly denied access to documents, such a denial would have given him the only reason he needed to petition the Court for an audit, presuming he had four other electors willing to join in his petition. He was not required to wait until he had the elusive documents in hand before he filed a petition with the Court. As it happened, he waited for both 90 day windows to expire following the filing deadlines, and then presented an audit request to the Committee [ECRC], instead of to the Court as the statute required him to do. He has now presented a petition to the Court alone (i.e., not joined by four other electors) and substantially later than the statute requires.

Because the prescribed procedure for requesting an audit was not followed, and because the timeliness defect is not one that can be cured by the filing of a second amended complaint, the Court must sustain Defendant's [ECRC] first preliminary objection. The Court is simply enforcing a law that is absolutely clear. The law in

question divests the Court of jurisdiction to entertain Plaintiff's [Rieck] petition on the merits.

Common Pleas Court Opinion, August 9, 2012, at 3-4.

Rieck contends that he could not make any sort of filing until he had all the available facts and because the ECRC failed to make the reports available for twenty-four months, his filing was not untimely. He also contends that state law was not enforced when he filed the amended complaint and no action was taken. He also contends that the common pleas court erred when it did not permit his request for a jury trial.<sup>3</sup>

Essentially, Rieck argues that he could not file a timely request for audit because the ECRC did not produce all the reports in a timely manner.

Section 1636(a) of the Election Code (Code),<sup>4</sup> 25 P.S. §3256(a), provides:

Within ninety (90) days after the last day for filing any report and affidavit required by this act, any five (5) electors of the Commonwealth or of the political division may present a petition to the court of common pleas of the county in which is situated the office where such original report has been filed or with the Commonwealth Court in the case of original report filed with the Secretary of the Commonwealth for an audit of such

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<sup>3</sup> This Court's review is to determine whether on the facts alleged the law states with certainty that no recovery is possible. Hawks by Hawks v. Livermore, 629 A.2d 270, 271 n. 3 (Pa. Cmwlth. 1993). This Court must accept as true all well pled allegations and material facts averred in the complaint as well as inferences reasonably deducible therefrom and any doubt should be resolved in favor of overruling the demurrer. Id.

<sup>4</sup> Act of June 3, 1937, P.L. 1333, *as amended*. This section was added by the Act of October 4, 1978, P.L. 893.

report. Thereupon the court shall direct the officer or board with whom such report has been filed to certify the same to the court for audit and may, in its discretion, require security to be entered for costs. The court may, in its discretion, appoint an auditor to audit such report, but the fees of such auditor shall be a reasonable sum per day for each day actually engaged. The court or auditor shall fix a day as early as may be convenient for the audit, at which time the person by whom such report has been filed shall be required to be present in person to vouch his report and to answer on oath or affirmation all such relevant questions concerning the same, as may be put to him by the petitioners or their counsel. The auditor shall issue subpoenas to all parties to whom the petitioners or the filer of the report may require, to give evidence concerning such report, and he shall determine, subject to exception, all questions as to the admissibility of evidence, and shall file a copy of the evidence with his findings. If upon the audit, the court shall decide that the report was false in any substantial manner, or that any expenses have been incurred in contravention of this act, the costs of said audit shall be paid by the filer of the report, otherwise the court shall make such order as to payment of costs as shall be just in the circumstances.

Additionally, Section 1636(b) of the Code, 25 P.S. §3256, provides that following an audit, if the court decides there was a violation of the Code, it shall certify its decision to the appropriate prosecutorial officer.

The common pleas court determined that Rieck did not follow the procedures set forth in the Code because he did not petition for an audit in a timely manner. Rieck clearly did not file his audit request in compliance with the Code. In Brunwasser v. Fields, 487 Pa. 283, 409 A.2d 352 (1979), our Pennsylvania Supreme Court held that in order to invoke penalties under the Code, a petitioner must comply with the procedures of the Code. This Court discerns no error on the

part of the common pleas court when it determined that Rieck did not follow the procedures set forth in the Code.

Rieck argues that the common pleas court failed to grant his request for a jury trial. However, once again under the procedures in Section 1636(a) of the Code, the audit was the first step in the process. If the common pleas court then deemed it advisable, it could refer the findings to the appropriate prosecutorial authority. Eventually, if the prosecutorial authority charged anyone with a crime, there could be a jury trial. Rieck failed to follow the procedures outlined in the Code.

Accordingly, this Court affirms.

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BERNARD L. McGINLEY, Judge

Judges Brobson, McCullough and Covey did not participate in the decision in this case.



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis D. Rieck, :  
                          Appellant :  
                                      : :  
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                                      : No. 1975 C.D. 2012  
Erie County Republican Committee :

**ORDER**

AND NOW, this 21st day of August, 2013, the order of the Court of Common Pleas of Erie County in the above-captioned matter is affirmed.

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BERNARD L. MCGINLEY, Judge