

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of :
William Parker As A Candidate :
for The Democratic Nomination :
for Representative in Congress : No. 123 M.D. 2022
for the 12th Congressional District :
Primary Election of May 17, 2022 :
:
Objection of: David Coopie :

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge

MEMORANDUM and ORDER

Before the Court is the application for *nunc pro tunc* relief in the form of a “Brief of Petitioner-Objector for *Nunc Pro Tunc* Relief” (Application) filed on behalf of David Coopie (Objector). For the reasons that follow, we deny the Application and dismiss Objector’s Petition to Set Aside the Nomination Petition of William Parker (Candidate) as a Candidate for the Democratic Nomination for Representative in Congress in the 12th Congressional District in the General Primary Election of May 17, 2022 (Primary Election).

On March 15, 2022,¹ Candidate filed a Nomination Petition with the Secretary of the Commonwealth to appear on the Primary Election ballot for the Democratic nomination to the office of Representative in the United States House

¹ Pursuant to the Pennsylvania Supreme Court’s order in *Carter v. Chapman* (Pa., No. 7 MM 2002, filed February 23, 2022), Candidate was required to circulate and file his Nomination Petition with the Secretary of the Pennsylvania Department of State (Secretary of the Commonwealth, or Secretary) on or before March 15, 2022. Pursuant to that same order, Objector was required to file his Petition to Set Aside in this Court on or before March 22, 2022. *See id.*

of Representatives for the 12th Congressional District. The Nomination Petition consists of 95 pages containing 1,321 signatures of electors.² On March 22, 2022, at 5:41 p.m., Objector filed a Petition to Set Aside Candidate’s Nomination Petition in this Court via the PACFile System alleging, *inter alia*, that 697 of the signatures contained therein are defective.

On March 23, 2022, this Court entered a Scheduling and Case Management Order³ scheduling a hearing on the Petition to Set Aside for April 4, 2022, at 10:00 a.m., and imposing certain duties and obligations upon Objector and Candidate. Specifically, therein, we directed that “[a]t the hearing, Objector shall offer proof of timely service of the petition to set aside on the Secretary of the Commonwealth.^[4]”

² Pursuant to Section 912.1(12) of the Pennsylvania Election Code (Election Code), Act of June 3, 1937, P.L. 1333, added by the Act of December 12, 1984, P.L. 968, *as amended*, 25 P.S. §2872.1(12), a candidate for the office of Representative in Congress must present at least 1,000 valid signatures of registered and enrolled electors of the candidate’s political party.

³ As this Court has explained:

The purpose of scheduling and case management orders in election cases is to facilitate the proceedings in an expeditious and timely manner due to the extreme time limitations placed on election matters. That is why objectors are ordered to immediately arrange to meet with the candidate or his/her representative to reach a stipulation as to the number of signatures that are challenged and/or valid. In short, time is of the essence in election matters. As such, the Court expects compliance.

In re Ford, 994 A.2d 9, 12 n.3 (Pa. Cmwlth. 2010).

⁴ Section 977 of the Election Code states, in relevant part:

All nomination petitions . . . received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven
(Footnote continued on next page...)

The Scheduling and Case Management Order also stated that “[a] pre-trial conference may be scheduled at any time after Monday, March 28, 2022.” However, due to Candidate’s filing of a petition in the nature of a request to expedite the hearing on the Petition to Set Aside, on Friday, March 25, 2022, this Court conducted a pre-hearing conference on the record at which both Objector’s Counsel and Candidate appeared. During the hearing, we denied Candidate’s petition and oral motion to dismiss the Petition to Set Aside based on this Court’s failure to comply with other deadlines imposed upon this Court by the Supreme Court’s order in *Carter*.⁵

days after the last day for filing said nomination petition . . . , a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition or paper be set aside. *A copy of said petition shall, within said period, be served on the officer . . . with whom said nomination petition . . . was filed.*

25 P.S. §2937 (emphasis added).

⁵ The Pennsylvania Supreme Court has previously held that the Election Code’s deadlines for this Court to hold hearings and issue decisions under Section 977 of the Election Code are understood to be “directory,” and not mandatory, because such acts involve the exercise of purely judicial functions. See *Holt 2011 Legislative Reapportionment Commission*, 38 A.3d 711, 721 n.10 (Pa. 2012) (citing *In re Moore*, 291 A.2d 531 (Pa. 1972)). In *Holt*, as applicable in this case, the Supreme Court stated: “Our adjustment of the primary election calendar does not alter the discretion vested in the Commonwealth Court, which will be tasked in its original jurisdiction with hearing any objections to nominating petitions.” *Id.*

However, in *Holt*, as applicable in this case, the Supreme Court also stated that “the deadlines and requirements of the [Election] Code will remain mandatory as to petitioners.” *Id.* (citing *Mellow v. Mitchell*, 607 A.2d 204, 224 (Pa. 1992), and *In re Shapp*, 383 A.2d 201, 204 (Pa. 1978)). Moreover, as applicable in this case, the Supreme Court has also held that “[s]ervice of a petition to set aside a nomination petition upon the officer [. . .] with whom a nomination petition has been filed with the time limit prescribed by [S]ection 977 of the Election Code is *mandatory*.” *In re James*, 944 A.2d 69, 73 (Pa. 2008) (emphasis in original quoting *Petition of Acosta*, 578 A.2d 407, 409 (Pa. 1990)); see also *id.* (“The deadlines set by [S]ection [977] are mandatory, and a court **(Footnote continued on next page...)**”)

At the hearing, we also inquired of Objector’s Counsel regarding service of the Petition to Set Aside on the Secretary because the Petition’s Certificate of Service that Objector filed in this Court⁶ shows that the Secretary was not served with the Petition on March 22, 2022. Rather, a separate Certificate of Service that Objector’s Counsel filed in this Court on March 23, 2002, shows that the Secretary was served with the Petition to Set Aside by eService on that date. Counsel stated to the Court, on the record, that he understood he did not have to serve the Petition to Set Aside on the Secretary until March 23, 2022, but that he would check with his associate regarding its filing and service. Accordingly, we granted Counsel the weekend to investigate the matter, and directed Counsel to file by noon on Monday, March 28, 2022, a brief regarding the timeliness of service of the Petition to Set Aside on the Secretary. Objector filed the instant Application, seeking special relief to serve the Secretary the Petition to Set Aside *nunc pro tunc*.

has no authority to waive them.”) (citing *In re Nomination Paper of American Labor Party*, 44 A.2d 48, 50 (Pa. 1945)). Furthermore, the failure to timely serve the Secretary renders the petition to set aside void. See *In re Substitute Nomination Certificate of Evans*, 632 A.2d 862, 863-64 (Pa. 1993) (holding that this Court properly dismissed a petition to set aside because it was served on the Dauphin County Election Bureau one day after the expiration of the statutory deadline); *In re Nomination Paper of Boyd*, 41 A.3d 920, 924 (Pa. Cmwlth.), *aff’d sub nom. In re Youngblood*, 42 A.3d 374 (Pa. 2012) (holding that a petition to set aside that was not served within the seven-day limit in Section 977 cannot be considered by this Court).

⁶ It is appropriate for this Court to take judicial notice of documents that are filed and entered in our docket. See, e.g., Pa.R.E. 201(b)(2) (permitting courts to take judicial notice of facts that may be “determined from sources whose accuracy cannot reasonably be questioned”); *Moss v. Pennsylvania Board of Probation and Parole*, 194 A.3d 1130, 1137 n.11 (Pa. Cmwlth. 2018) (taking judicial notice of docket entries that were not part of the original record); *Miller v. Unemployment Compensation Board of Review*, 131 A.3d 110, 115 (Pa. Cmwlth. 2015) (taking judicial notice of the entries on a claimant’s criminal docket and the records contained therein); *Germantown Cab Co. v. Philadelphia Parking Authority*, 27 A.3d 280, 283 n.8 (Pa. Cmwlth. 2011) (taking judicial notice of the docket in a Supreme Court case involving a similar point of law).

We initially note that the Election Code should be construed liberally “so as to not deprive an individual of his right to run for office, or the voters of their right to elect a candidate of their choice.” *Ross Nomination Petition*, 190 A.2d 719, 720 (Pa. 1963). The purpose of the Election Code is to protect, not defeat, a citizen’s vote. *Dayhoff v. Weaver*, 808 A.2d 1002, 1006 (Pa. Cmwlth. 2002). Furthermore, nomination petitions are presumed to be valid, and objectors bear the heavy burden of proving that a candidate’s nomination petition is invalid. *In re Nomination Petition of Shimkus*, 946 A.2d 139, 141 (Pa. Cmwlth. 2008).

With respect to the instant Application, *nunc pro tunc* relief is allowed only when: (1) a delay in filing is due to extraordinary circumstances that involve fraud or a breakdown in a court’s operation or non-negligent circumstances concerning either a party or their counsel; (2) the paper is filed within a short time after the party or their counsel discovered the untimeliness and had an opportunity to address it; (3) the elapsed time period is short; and (4) the counter-party is not prejudiced by the delay. *Cook v. Unemployment Compensation Board of Review*, 671 A.2d 1130, 1131 (Pa. 1996).

However, the application of *nunc pro tunc* relief in proceedings under the Election Code is extremely limited. As the Pennsylvania Supreme Court has explained:

[T]he judiciary should act with restraint, in the election arena, subordinate to express statutory directives. Subject to constitutional limitations, the Pennsylvania General Assembly may require such practices and procedures as it may deem necessary to the orderly, fair, and efficient administration of public elections in Pennsylvania. At least where the Legislature has attached specific consequences to particular actions or omissions, Pennsylvania courts may not mitigate the legislatively prescribed outcome through recourse to equity.

In re Guzzardi, 99 A.3d 381, 386 (Pa. 2014).

Moreover, erroneous guidance from the Department of State or a county board of elections cannot alter the plain terms of the Election Code. Indeed, as the Supreme Court has recently stated:

But it is the Election Code’s express terms that control, not the written guidance provided by the Department [of State]. And as this Court repeatedly has cautioned, even erroneous guidance from the Department or county boards of elections cannot nullify the express provisions of the Election Code. *See [In re] Guzzardi*, 99 A.3d at 388 (“[E]ven if there was some miscommunication at the Department of State . . ., this does not offset the underlying, self-acknowledged mistake” of the candidate “in failing to apprehend, from the outset, the express statutory requirement to file a statement of financial interests with the Election Commission.”); [*In re Canvass of Absentee Ballots of November 4, 2003 General Election*, 843 A.2d 1223, 1225 (Pa. 2004)] (holding that the delivery of absentee ballots by third persons rendered them invalid, notwithstanding indications from the Allegheny County Board of Elections that the practice was permitted).

In re Scroggin, 237 A.3d 1006, 1021 (Pa. 2020). *See also Matter of Nomination Papers of Mlinarich*, 266 A.3d 1189, 1198-99 (Pa. Cmwlth. 2021) (“[W]here the Election Code provision at issue is clear and express, the Court cannot use equitable principles to deviate from that plain language. *In re Guzzardi*, 99 A.3d at 388; *In re Scroggin*, 237 A.3d at 1021.”).

With respect to the Application of *nunc pro tunc* relief herein, Objector argues, in relevant part:

Applying the above standards [supporting the grant of *nunc pro tunc* relief] to the case at bar, [Objector had to rely on [this Court’s] PACFile System which was not user friendly and had to rely on the inefficient call center

[at the Department of State] which routed calls to the next call center representative w[ho] may or may not have experience in filing which caused an inefficient filing system that caused the delay [in filing the Petition to Set Aside]. The [Petition to Set Aside] was filed within hours of the deadline. The Election [Code] impose[s] a very tight timeline with little margin of error and the delay in this case was *de minimis* and there was no [e]ffect on the rights of the opposing party.

Brief of Petitioner-Objector for *Nunc Pro Tunc* Relief at 4.

In support of the foregoing assertions, Objector appended an affidavit to the Application, in which Jeffrey Woodard (Affiant), a part-time administrator in Objector’s Counsel’s office, makes several statements under oath and subject to Section 4904 of the Pennsylvania Crimes Code, 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities). *See* Brief of Petitioner Objector for *Nunc Pro Tunc* Relief, Appendix 1. Affiant states that: (1) on Tuesday, March 22, 2022, at approximately 4:00 p.m., he met with Objector, who had completed checking the signatures and information on Candidate’s Nomination Petition; (2) he then consulted with Objector’s Counsel and completed the Petition to Set Aside; (3) he outlines his difficulty in navigating this Court’s PACFile System at that time, and references instructions that he received from unnamed individuals in the Allegheny County Department of Court Records and this Court relating to filing the Petition to Set Aside; (4) he references another call that he made to the Department’s Bureau of Elections that same day, during which he was instructed by another unnamed individual that he did not have to “file” the Petition to Set Aside with the Department, and that he only needed to follow this Court’s February 14, 2020 order at No. 126 Misc. Dkt. No. 3,⁷ relating to the filing of petitions to set aside nomination

⁷ We note that our February 14, 2020 order merely outlines what must be filed in this Court relating to a petition to set aside, and in no way absolves a party from conforming to the statutory **(Footnote continued on next page...)**

petitions in this Court; (5) he references a second call that he made to the Department's Bureau of Elections the following day, March 23, 2022, during which he was instructed by yet another unnamed individual "who again said [that] we did not have to file [the Petition to Set Aside] with their office" and directly read this Court's February 14, 2020 order to him "and stated that [he] can email them a copy" and then later mail a copy to the Department within two days; and (6) he then sent the originals of the Petition to Set Aside to this Court and the Secretary. *See id.* ¶¶3-9.

However, we find the statements made in the foregoing Affidavit to be not credible.⁸ Specifically, Affiant fails to provide the names of any of the multiple individuals who purportedly provided him with instructions regarding the filing and service of the Petition to Set Aside and, in particular, absolved him of the necessity to follow the service requirements of Section 977 of the Election Code. Affiant's failure to provide any specificity with respect to the individuals with whom he spoke in the multiple government offices just last week militates against a finding that the purportedly erroneous instructions that he received during these telephone conversations are to be believed as true.⁹

requirements of Section 977, or what is required to be filed with or served upon the Secretary of the Commonwealth under any provision of the Election Code.

⁸ "[T]he trier of fact, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, is free to believe all, part or none of the evidence." *Commonwealth v. Harper*, 403 A.2d 536, 539 (Pa. 1979). "It is within the purview of the fact finder to draw all reasonable inferences from the evidence presented[.]" *Ellis v. City of Pittsburgh*, 703 A.2d 593, 594 (Pa. Cmwlth. 1997).

⁹ *See, e.g., Tork-Hiis v. Commonwealth*, 735 A.2d 1256, 1257 (Pa. 1999) ("The [trial] court found appellees' claim that they were unable to determine which agency they should sue to be incredible, particularly in light of the affidavit of appellees' paralegal who was assigned this **(Footnote continued on next page...)**")

In addition, although Affiant references his consultation with Objector’s Counsel prior to completing and filing the Petition to Set Aside on March 22, 2022, he does not reference Counsel’s belief that the Petition to Set Aside was permitted to be filed and served on March 23, 2022. As noted above, during the March 25, 2022 hearing before this Court, Objector’s Counsel, as an officer of the Court,¹⁰ conceded his belief that the Petition to Set Aside timely could have been served on the Secretary on March 23, 2022. We find that this representation made by Counsel in open court is more credible and believable than the statements provided by Affiant in the Affidavit. Counsel’s belief in this regard is corroborated by the Certificate of Service that Counsel filed in this Court on March 23, 2022, which states that he personally served the Secretary of the Commonwealth with the Petition to Set Aside via eService on that date.

Moreover, to the extent that the statements in the Affidavit are to be believed, any purportedly erroneous instructions provided by the unnamed individuals in the several government offices do not absolve Objector from complying with the affirmative filing and service requirements of Section 977 of the Election Code or entitle him to the requested *nunc pro tunc* relief. *In re Scroggin; In re Guzzardi; Appeal of Pierce; Matter of Nomination Papers of Mlinarich*. Because Objector failed to serve the Secretary of the Commonwealth with the

matter. She testified that over the course of more than two years she recalled making a total of four telephone calls on unspecified dates, to unspecified persons at various state agencies and was unsuccessful in her efforts to determine the proper agency to sue.”) (footnote omitted).

¹⁰ See, e.g., Pa.R.P.C. 3.3(1)(a) (“A lawyer shall not knowingly . . . make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”); *Bisher v. Lehigh Valley Health Network, Inc.*, 265 A.3d 383, 410 n.16 (Pa. 2021) (“[A]s officers of the court, attorneys are bound by the Rules of Professional Conduct and must be candid with the court. See Pa.R.P.C. 3.3(a)(1)[.]”).

Petition to Set Aside on March 22, 2022, *i.e.*, within seven days of the deadline for Candidate's filing his Nomination Petition on March 15, 2022, the Petition to Set Aside is void under Section 977 of the Election Code and will be dismissed. Section 977 of the Election Code, 25 P.S. §2937; *In re James*; *In re Substitute Nomination Certificate of Evans*; *Petition of Acosta*; *In re Nomination Paper of Boyd*.

Accordingly, based on the foregoing, we issue the following:

ORDER

AND NOW, this 30th day of March, 2022, it is hereby ORDERED:

1. The application for *nunc pro tunc* relief in the form of a "Brief of Petitioner-Objector for *Nunc Pro Tunc* Relief" filed on behalf of David Coopie (Objector) is DENIED.

2. Objector's Petition to Set Aside the Nomination Petition of William Parker as a Candidate for the Democratic Nomination for Representative in Congress for the 12th Congressional District in the General Primary Election of May 17, 2022, is DISMISSED.

3. The hearing scheduled for April 4, 2022, at 10:00 a.m., in Courtroom 712, 7th Floor, City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania, is CANCELLED.

4. The Secretary of the Commonwealth of Pennsylvania is directed to PLACE on the ballot the name of William Parker as a Candidate for the Democratic Nomination for Representative in Congress for the 12th Congressional District in the General Primary Election of May 17, 2022.

5. Each party shall bear his own costs.

6. The Prothonotary shall notify the parties hereto and their counsel of this order and shall also certify a copy hereof to the Secretary of the Commonwealth of Pennsylvania forthwith.



MICHAEL H. WOJCIK, Judge