

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition Of :
Stephanie Singer :
Candidate For Office Of: : No. 514 C.D. 2015
Philadelphia City Commissioner : Submitted: April 13, 2015
Appeal of: Stephanie Singer :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER¹**

FILED: April 23, 2015

Stephanie Singer appeals from an Order of the Court of Common Pleas of Philadelphia County (trial Court) granting Objectors² Petition to Set Aside the Nomination Petition (Petition to Set Aside) of Singer as a Democratic Candidate for the Office of Philadelphia City Commissioner in the May 19, 2015 Primary Election. On appeal, Singer argues that the trial court made several errors in

¹ Pursuant to Internal Operating Procedure § 258, this decision was reached without circulation to, or participation by, the Judges not sitting on the panel. 210 Pa. Code § 69.258.

² Objectors are Daniel Bucher, Ronald L. Reiss, and Patricia A. Saalfrank.

granting Objectors' Petition to Set Aside. Because, upon review, we conclude that the trial court did not err or abuse its discretion, we affirm.

I. BACKGROUND

Singer filed a timely Nomination Petition on March 10, 2015, containing 1,528 signatures³ in order to have her name placed on the Democratic ballot for the May 19, 2015 Primary Election for the Office of Philadelphia City Commissioner. (Trial Ct. Op. at 1.) Pursuant to Section 912.1(17) of the Election Code,⁴ a nomination petition of a candidate for the Office of Philadelphia City Commissioner must contain 1000 valid signatures of registered and enrolled members of the party for which the candidate is seeking the nomination.

Objectors filed the Petition to Set Aside, asserting that Singer's Nomination Petition did not contain 1000 valid signatures and/or that the address information for various Circulators was incorrect and/or incomplete. In the Petition to Set Aside, Objectors challenged the validity of 1,125 of Singer's signatures for various

³ We note that, while the trial court states that there were 1,528 signatures, Singer states in her brief that she originally had 1,529 signature lines and that, after removing lines she did not plan to pursue, there were 1,483 lines. (Singer's Br. at 5.) This slight discrepancy makes no difference to the outcome.

⁴ Act of June 3, 1937, P.L. 1333, added by Section 2 of the Act of December 12, 1984, P.L. 968, as amended, 25 P.S. § 2872.1(17). Under Section 912.1:

Candidates for nomination of offices as listed below shall present a nominating petition containing at least as many valid signatures of registered and enrolled members of the proper party as listed below: . . . (17) Public or party offices to be filled by a vote of the electors in cities of the first class at large: One thousand.

Id.

reasons and attached, as exhibits, a copy of the Nomination Petition (Exhibit A) and a spreadsheet setting forth Objectors' line-by-line challenges (Exhibit B). The trial court issued an Order to Show Cause,⁵ which scheduled a hearing on the matter and established certain case management requirements. Pursuant to the Order to Show Cause, on March 19, 2015, Singer filed: (1) a memorandum of law; (2) witness list; (3) expert report of J. Wright Leonard, a handwriting expert; and (4) Leonard's curriculum vitae (CV). Objectors also filed: (1) a memorandum of law; (2) witness list; and (3) a CV of their handwriting expert, William J. Reis. The first hearing on the Petition to Set Aside convened on March 20, 2015, at which time Singer argued that Objectors had failed to provide an expert report as required by the Order to Show Cause, while Objectors contended that the spreadsheet listing the line-by-line challenges attached to the Petition to Set Aside should be considered as their expert report. The trial court did not resolve this issue at that time and held a hearing "spanning approximately forty (40) hours over five (5) days which included evidence and legal arguments . . ." (Trial Ct. Op. at 2.)⁶ During the hearing Singer presented the testimony of Leonard and, although Singer again objected to Reis' testimony on the grounds that Reis had failed to supply an expert report as mandated by the trial court's Order to Show Cause,

⁵ This Order to Show Cause was issued pursuant to President Judge Administrative Order 2015-03 previously issued by President Judge Kipper-Woods, entitled "In re: Objections to Nomination Petitions – Primary Election, May 19, 2015" establishing case management provisions and the Order to Show Cause form. (President Judge Administrative Order, R.R. at 1a-3a.)

⁶ The transcripts from the hearing have been compiled into several volumes that are, respectively, 112 pages (March 20, 2015), 365 pages (March 23, 2015), 230 pages (March 25, 2015), 52 pages (March 26, 2015), 283 (March 26, 2015), and 131 pages (April 7, 2015) in length.

Singer stated that she was willing to let Reis testify. (Hr'g Tr. at 96-97, March 20, 2015.)

Throughout the hearing, the trial court meticulously reviewed each of the contested signatures, line-by-line. Where the challenges required a comparison of the challenged signature on the Nomination Petition with a signature on the elector's voter registration record, the two experts voiced their opinions on the veracity of each signature, and both parties' attorneys routinely cross-examined the opposing side's expert. The trial court either accepted or rejected the signature. After the first day of hearings adjourned on March 20, 2015, the parties met and conferred that evening and over the weekend in an effort to reduce the number of contested signatures. (Hr'g Tr. at 3, March 23, 2015.) During the hearing, the parties agreed that approximately 225 signatures were invalid and Objectors succeeded on about 300 other objections, leaving Singer with 996 valid signatures. Accordingly, on March 26, 2015, the trial court granted Objectors' Petition to Set Aside.

On March 30, 2015, Singer filed the following Motions with the trial court: (1) Motion for Reconsideration of the trial court's ruling of March 26, 2015 granting Objectors' Petition to Strike Singer's Nomination Petition; (2) Motion to Dismiss Objectors' Petition to Strike for Violation of Order to Show Cause; (3) Motion to Take and Receive Additional Evidence and to Reconsider Ruling as to Certain Signature Lines; and (4) Motion to Strike the testimony of Objectors' handwriting expert, William Reis. On April 2, 2015, the trial court heard argument on the Motions. Singer argued that she should be allowed to submit additional

evidence and requested that the trial court reopen the record in order to receive the affidavits or testimony of 16 electors⁷ who allegedly had signed Singer's Nomination Petition, but whose signatures had been struck at the hearing. The trial court did not reopen the record for additional testimony, or accept the affidavits or testimony of the 16 electors, finding that Singer had sufficient opportunity during the course of the hearing to present any testimony needed to rehabilitate the invalid signatures. The trial court also did not reconsider its rulings regarding the signature lines. The parties' attorneys also discussed Singer's Motion to Strike Reis' expert testimony. Another hearing was held on April 7, 2015, at which time Singer examined Objectors' expert. The trial court allowed Singer to examine Objectors' expert because Singer had objected during the hearing to Reis' testimony based on Objectors' alleged failure to provide an expert report in compliance with the Order to Show Cause. After the April 7, 2015 hearing, the trial court issued an order denying all of Singer's Motions. This appeal followed.⁸

II. DISCUSSION

On appeal, Singer argues that: (1) the trial court abused its discretion in not reopening the record to allow the introduction of additional evidence; (2) the trial court erred in not dismissing the Petition to Set Aside due to Objectors' non-compliance with the trial court's Order to Show Cause; (3) Objectors' expert

⁷ While Singer originally requested that the trial court receive 12 affidavits, 4 additional affidavits became available before the April 2, 2015 argument. (Singer's Br. at 17 n.7.)

⁸ "Our scope of review is limited to determining whether the trial court's findings of fact are supported by substantial evidence, whether the trial court abused its discretion or whether the trial court committed an error of law." In re Nomination Petition of Hanssens, 821 A.2d 1247, 1250 n.4 (Pa. Cmwlth. 2003).

testimony should have been precluded because the expert did not complete a pre-filing examination of the signatures; (4) the trial court improperly shifted the burden of proof onto Singer; (5) the trial court violated the due process rights of those electors whose signatures were struck from the Nomination Petition; and (6) the trial court miscounted the number of valid signatures on the Nomination Petition. We discuss each argument in turn.

A. Whether the Trial Court abused its discretion when it failed to reopen the record to receive the affidavits or testimony of sixteen qualified electors who signed Singer’s Nomination Petition.

Singer argues that the trial court abused its discretion by not reopening the record after the conclusion of the hearing to allow her to submit additional evidence regarding 16 electors whose signatures were struck during the hearing. Singer maintains that, because our Courts have held that the Election Code must “be liberally construed in order to protect a candidate’s right to run for office and the voters’ rights to elect the candidate of their choice,” In re Nomination Petition of Flaherty, 770 A.2d 327, 331 (Pa. 2001), the trial court abused its discretion by not reopening the record in order to afford Singer the opportunity to rehabilitate the 16 electors’ signatures. Singer also argues that on the final day of the hearing on the signature challenges, held on March 26, 2015, the trial court suggested that it would permit reconsideration and the introduction of additional evidence after the close of the hearing; however, the trial court then denied reconsideration. Singer contends that this change in position was prejudicial because Singer decided not to seek out and bring in the additional electors as witnesses on March 26, 2015. Finally, Singer contends that throughout the hearing the trial court treated Objectors more leniently than Singer.

Generally, “a court may, in its discretion, reopen the case . . . for the taking of additional testimony, but such matters are peculiarly within the sound discretion of the trial court.” In re J.E.F., 409 A.2d 1165, 1166 (Pa. 1979) (quotation omitted). Thus, a ruling denying a request for a rehearing or the introduction of additional evidence will only be disturbed where the court has abused its discretion. Id. However, it may be “proper to reopen a case to allow the introduction of additional evidence where the evidence has been omitted by accident, inadvertence, or even because of mistake as to its necessity, but not where the omission was intentional.” Id. (quotation omitted). Moreover, “a case *may* be reopened where it is desirable that further testimony be taken in the interest of a more accurate adjudication and where an honest purpose would be justly served without unfair disadvantage.” Id. (emphasis added).

Here, as noted by the trial court, Singer did not assert that the 16 electors were unavailable or that their testimony was omitted by accident or inadvertence. The trial court conducted 40 hours of hearing over the course of five non-consecutive days. Our reading of the transcript demonstrates that, throughout the hearing, the trial court was very accommodating to Singer, not only in scheduling the hearing on five non-consecutive days, but also in the presentation of witnesses. The trial court allowed all of Singer’s witnesses to testify and there is no evidence that the trial court ever denied the presentation of live witness testimony by Singer.⁹ Because the trial court hearing took place on non-consecutive days,

⁹ The trial court routinely encouraged Singer to present witness testimony. For instance, on March 23, 2015, during its review of elector Deanna Jenkins’ signature, the trial court stated, “[i]f she’s available then why don’t you have her here to tell me who [she] is because if you’re saying that this is the person and we know she’s available why not have her come in and say this is me.” (Hr’g Tr. at 185, March 23, 2015.) On March 26, 2015, the trial court permitted Singer

Singer had nearly a week to present witness testimony. Despite the length of the hearing and the trial court's leniency in providing Singer with numerous opportunities to present a defense to the Petition to Set Aside, Singer did not choose to present the testimony of the 16 electors at issue during those several days of hearings. The trial court concluded that "it was clearly a trial strategy by [Singer] *not* to present the 16 electors during trial." (Trial Ct. Op. at 3 (emphasis in original).) We note that the affidavits of the 16 electors were executed after the conclusion of the hearing.¹⁰ The record supports the trial court's conclusion that Singer had the opportunity to present affidavits and/or testimony of any witnesses during the 40 hours of hearings and, therefore, that the trial court did not abuse its discretion by not reopening the record for additional testimony.

Singer also contends that the trial court suggested at the hearing that it would allow the introduction of additional evidence after the completion of the hearing. However, we do not find support for this contention in the record. Before the conclusion of the hearing on March 26, 2015, Singer's counsel stated:

to present the testimony of Lillian F. Youman. Because Ms. Youman had a terrible cold, the trial court put a hold on its review of other signatures in order to allow Ms. Youman to immediately testify. (Hr'g Tr. at 90-93, March 26, 2015.) Although the trial court generally did not permit witnesses to testify by phone, on March 26, 2015 the trial court did allow one of Singer's witnesses to testify by speaker phone because the trial judge was not able to be present when she arrived to testify in person. (Hr'g Tr. at 145-50, March 26, 2015.) The trial court allowed Singer to present the testimony of Russell T. Crocket, who had to get out of bed in the middle of the night in order to attend the hearing. (Hr'g Tr. at 230-35, March 26, 2015; Motion Tr. at 54, April 2, 2015.)

¹⁰ The affidavits were all signed by the electors from March 28, 2015 through April 1, 2015. (Singer's Affidavits, R.R. at 53a-68a.)

And I think the motion [to strike the Nomination Petition] is actually premature. I want to have some exam with his expert. We've also got petitioners I want to examine. So, you know, we've gotten everything, and I think we may have tomorrow if we find 25 people to come in and testify or something. But in the meantime, I'd ask [the parties] to sit down and make sure we see eye to eye on everything; and then, probably we should recount.

(Hr'g Tr. at 281, March 26, 2015.) Thereafter, the trial court stated, "that's what I want to do before we meet because I got to do an order, and I have no idea what the numbers are" and "[t]his court is adjourned on that part. I just want to get the numbers so that I know if I need – what type of order I need to draft. Okay?" (Hr'g Tr. at 281-82, March 26, 2015.) The trial court also stated, "Right now we've done it. I'll make a ruling, and I can write the order out." (Hr'g Tr. at 282, March 26, 2015.) Later, at the April 2, 2015 argument on Singer's Motion for Reconsideration, the trial court stated, "I never denied you the right to present any witness that I know was present. And I don't remember even being asked to consider people who were not present. If it was, I basically asked for these folks to be present." (Motion Tr. at 14, April 2, 2015.)

Based on our review of the record, we do not see any evidence that Singer was misled by the trial court about the submission of additional evidence. Singer obtained the affidavits for the 16 electors at issue *after* the completion of the hearing on March 26, 2015, and there is no record evidence that, prior to the conclusion of the hearing, Singer specifically asked or the trial court told Singer it would allow her to present additional evidence. Without support in the record that Singer was misled, we cannot reverse the trial court's exercise of its discretion. Although we recognize that, because of the very short time frames within which these petition challenges must be adjudicated, extra pressure is placed on counsel

and the court; as an appellate court, we can only address arguments for which there is evidence in the record.

We also find no support in the record for Singer's contention that the trial court was more lenient with Objectors than with Singer. As stated previously, the trial court was more than accommodating to Singer in her defense of the Petition to Set Aside. Moreover, after conducting a hearing on the signature challenges which took place over several non-consecutive days and totaled more than 40 hours, the trial court conducted two additional days of arguments/hearings on Singer's several Motions before deciding to deny the Motions. As described in more detail subsequently in this opinion, the trial court was particularly patient and tried, whenever possible, to carefully review and accept the challenged signatures on Singer's Nomination Petition as valid.

B. Whether the trial court erred in failing to dismiss Objectors' Petition to Set Aside for not following the trial court's case management provisions of the Order to Show Cause, which required that (1) Objectors immediately arrange a meeting with Singer to review all of the challenged signature lines before the hearing; and (2) Objectors file the expert reports of all of its expert witnesses.

Singer contends that she reached out to Objectors' counsel within 90 minutes of the filing of the Petition to Set Aside on March 17, 2015, and again the next morning, but that Objectors did not meet with Singer and her counsel until 3:15 p.m. on March 19, 2015. Singer contends that this prejudiced her because she was forced to grapple with "hundreds of objections, a large number of which could have been resolved before trial had the parties had a full opportunity to meet and confer." (Singer's Br. at 24.)

Singer also argues that Objectors did not comply with the trial court’s case management provision in the Order to Show Cause providing that Objector submit an expert report. Singer contends that the expert should have been precluded from testifying due to Objectors’ failure to submit the expert report. Under Pennsylvania Rule of Civil Procedure 4003.5(a)(1)(B), an expert report should “state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.” Pa. R.C.P. No. 4003.5(a)(1)(B). Singer asserts that the lack of an expert report prejudiced her by leaving her in the dark about the substance of the facts and opinions on which the expert intended to testify.

“[A] court has inherent power to enforce its own orders . . . and . . . this court will not interfere with enforcement absent an abuse of discretion.” Commonwealth v. Shaffer, 712 A.2d 749, 751 (Pa. 1998); see also Konya v. District Attorney of Northampton County, 669 A.2d 890, 892 (Pa. 1995) (concluding that whether a court disregards a party’s violation of its order is within the sound discretion of the court). In the instant case, the trial court’s case management provision stated that, “the Objector shall immediately arrange to meet with Candidate or Candidate’s representative to review before the hearing each and every challenged signature line.” (Order to Show Cause at 2, R.R. at 10a.)

Singer did not respond to the Petition to Set Aside until March 19, 2015. The response informed Objectors of the signatures which Singer intended to rehabilitate. Thus, although the parties did not have the opportunity to review all of the contested signatures before the start of the hearing, Singer acknowledges

that they did meet to begin to review signatures later that day, March 19, 2015, after Singer provided her response to Objectors. We cannot say that what occurred conflicts with the Order to Show Cause, given the time frames involved. Moreover, as the trial court stated, the parties also met on March 21, 2015 and March 22, 2015 in order to review the contested signatures and apparently were not able to resolve many of the disputed signature challenges during their meetings but, rather, required the trial court's involvement to do so. (Motion Tr. at 29-30, April 2, 2015.) There is, therefore, evidence to demonstrate that Singer was not prejudiced by any delay in the meeting. The trial court did not abuse its discretion in permitting a slight deviation from its case management provisions in its Order to Show Cause, particularly given that the trial court's interpretation of its own order should be given great deference. Lang v. Department of Transportation, 13 A.3d 1043, 1046 (Pa. Cmwlth. 2011).

With respect to the expert report, Singer is aware that, under In re Nomination Petition of Johnson, 502 A.2d 142, 144-45 (Pa. 1985), election proceedings are removed from the strictures of the Pennsylvania Rules of Civil Procedure. While the trial court was not governed by the Rules of Civil Procedure's requirements for expert reports, Singer argues that it "provides a useful definition of the contents to be found in an expert report." (Singer's Br. at 26 n.12.) Here, Objectors attached a spreadsheet to their Petition to Set Aside which listed each challenged signature and the basis for each challenge. (Petition to Set Aside, Ex. B.) This spreadsheet incorporated the results of expert Reis' initial examination of Singer's Nomination Petition, in which Reis listed his grounds, as a handwriting expert, for questioning the validity of certain signatures

on the Nomination Petition. (William Reis Nomination Petition Examination, Ex. R-11, R.R. at 14a-35a.) Only objections preserved in the Petition to Set Aside may be raised at the hearing, and the experts may testify with regard to the validity of those challenged signatures. Here, the spreadsheet that was attached to the Petition to Set Aside included specific objections to the challenged signatures listed by page and line number. This provided Singer with sufficient notice of the specific page and line number challenges and the reasons for the objections that would be raised at the hearing. See, e.g., In the Matter of Nomination Petition of Samms, 674 A.2d 240, 243 (Pa. 1996) (holding that “set[ting] forth the exact page and line number of every contested signature on the nomination petition . . . was perfectly adequate to provide” notice); In re Nomination Petition of Bishop, 579 A.2d 860, 862-63 (Pa. 1990) (holding that the Election Code requires that the objector provide specific objections to the nomination petition’s signatures in order to give fair notice to the candidate and provide that candidate with enough information to prepare a defense to the challenged signatures).

Singer argues that the trial court’s conclusion regarding the expert report is inconsistent with this Court’s opinion in In re Nomination Petition of Payton, 945 A.2d 279, 283-84 (Pa. Cmwlth. 2008) (single judge opinion, Smith-Ribner, J.), in which we precluded an expert opinion after the objector did not comply with our Court’s case management order requiring the production of an expert report. In In re Nomination Petition of Payton, however, we were acting in our original jurisdiction and, therefore, had the inherent authority to interpret and enforce our own order. Shaffer, 712 A.2d at 751. This is the same authority which the trial court has in this case. Thus, although In re Nomination Petition of Payton can also

be interpreted to support our determination in this case, we nonetheless note that In re Nomination Petition of Payton is a single judge opinion, which is not binding on this Court.¹¹

The relevant case management provisions of the Order to Show Cause state that “Objector and Candidate shall each file . . . expert reports of all expert witnesses.” (Order to Show Cause, R.R. at 10a.) The trial court concluded that Objectors’ spreadsheet constituted its expert report and Objectors’ spreadsheet does contain the objections that Reis identified in his initial review of the signatures on Singer’s Nomination Petition. While the spreadsheet may not technically be an expert report for all purposes, the spreadsheet sufficiently apprised Singer of the basis for each of Objectors’ objections prior to the start of the hearing and Singer was not prejudiced in her ability to question Reis at the hearing on the bases for his opinions regarding the challenged signatures. Moreover, the case management provisions of the Order to Show Cause only required Objectors to file an expert report if they produced one, and there is no requirement under our law that an expert, who is a witness in an election challenge, must produce an “expert report” in order to be permitted to testify. Because the

¹¹ Pursuant to Section 414 of this Court’s Internal Operating Procedures:

(b) Except as provided in subsection (d) (relating to single judge opinions in election law matters), *a single judge opinion of this court, even if reported, shall be cited only for its persuasive value and not as a binding precedent.*

....

(d) A reported opinion of a single judge filed after October 1, 2013, in an election law matter may be cited as binding precedent in an election law matter only.

210 Pa. Code § 69.414(b), (d) (emphasis added).

trial court had the inherent authority to interpret and enforce its own order, Shaffer, 712 A.2d at 751, and Singer was not prejudiced by the lack of an expert report, the trial court did not abuse its discretion in concluding that Objectors complied with its Order to Show Cause.

C. Whether the trial court committed an error of law when it failed to reject Objectors' challenges to signature lines where Objectors' expert did not conduct the necessary pre-filing investigation.

Singer claims that Objectors should not have been allowed to pursue their illegibility objections because their expert, Reis, did not make any attempt to confirm that legible information on the signature lines did not lead to a registered elector. Similarly, with respect to “not registered” and “not registered at address” objections, Reis did nothing before the hearing to verify the veracity of the objections. Singer asserts that Reis also did not attempt to compare the signatures on the Nomination Petition to signatures on file with the Philadelphia Board of Elections prior to the hearing.

“Nomination petitions are presumed to be valid,” and it is the objector’s heavy burden to prove “that a candidate’s nomination petition is invalid.” In re Nomination Petition of Shimkus, 946 A.2d 139, 141 (Pa. Cmwlth. 2008) (single judge opinion, Cohn Jubelirer, J.). In this instance, Objectors filed the Petition to Set Aside, which included a spreadsheet with the specific page and line number objections, and the reasons for the objections. When reviewing Singer’s Nomination Petition for possible challenges to the signature lines, Reis conducted his review in accordance with his expertise. Although Singer argues that Reis was required to engage in a more thorough pre-filing investigation, by confirming that

legible information on the signature lines did not lead to a registered elector or by verifying the veracity of the objections, Reis was not required to conduct such an investigation. Reis testified that he reviewed the signatures on the Nomination Petitions in the same manner as he has previously done, examining them for defects observable on their face. (Hr'g Tr. at 13-16, April 7, 2015.) These defects include, but are not limited to, missing information, illegible information, and signatures that appear to have been written by the same hand. Objectors assigned other individuals to go to the Philadelphia Board of Elections to determine whether the electors who signed the Nomination Petition were registered at the address listed, and registered in the correct political party. We have found no precedent placing the sole responsibility for an objector's pre-filing investigation on a handwriting expert. Objectors' burden to prove the invalidity of the signatures remained the same irrespective of the thoroughness of the expert's pre-filing investigation. Singer was apprised of the basis of Objectors' objections prior to the hearing and had the opportunity to cross-examine Reis throughout the five days of hearings regarding his opinions about the challenged signatures. Accordingly, the trial court did not commit an error of law or abuse its discretion by not rejecting Objectors' challenges to the signature lines where Objectors' expert did not conduct the type of pre-filing investigation that Singer asserts should have been undertaken.

D. Whether the trial court committed an error of law by shifting the burden of proof to Singer.

Singer contends that the trial court improperly shifted the burden to her to demonstrate the validity of the signatures. For instance, where the address on the Nomination Petition differed from the registered voter address as found in the

Statewide Uniform Registry of Electors, or SURE system,¹² the trial court required Singer’s expert to compare the Nomination Petition signature to the signature on the voter’s registration record. Where Singer’s expert concluded that the signatures were a match, but Objectors’ expert concluded otherwise, the trial court invariably followed the opinion of Objectors’ expert. Singer argues that this burden shifting is unprecedented under Pennsylvania law.

“Section 908 of the Election Code states that each elector ‘shall add his residence, giving city, borough or township, with street and number, if any. . . .’ 25 P.S. § 2868,” and a signature is invalid if the elector does not provide a complete address. In re Nomination Petition of Morrison-Wesley, 946 A.2d 789, 795-96 (Pa. Cmwlth. 2008) (single judge opinion, Leavitt, J.). “Under Section 908 of the Election Code, the elector’s address must conform to the elector’s address as it appears on the voting registration card to ensure that the elector signing the petition is actually registered and resides in the correct district.” Id. “[A]bsent extraordinary circumstances, electors who declare a residence at an address different than the address listed on their voter registration card are not qualified electors at the time they sign a nomination petition unless they have completed the removal notice required by the Voter Registration Act[,]” 25 Pa. C.S. § 1501. In re Nomination Petition of Flaherty, 770 A.2d at 333; see also In re Nomination Papers of Nader, 858 A.2d 1167, 1183 (Pa. 2004) (holding that “absent extraordinary circumstances, an individual who signs a nomination petition that

¹² The statewide database of voter registration is known as the SURE system. In re Nomination Petition of Morrison-Wesley, 946 A.2d 789, 792 n.4 (Pa. Cmwlth. 2008) (single judge opinion, Leavitt, J.) (“The SURE system is . . . the statewide database of voter registration maintained by the Department of State and administered by each county.”).

lists an address other than the one provided on his voter registration card is not a qualified elector”). The “objector makes a *prima facie* case that a signature is invalid where the residence declared by the elector on the nomination petition cannot be confirmed by the voter registration records.” In re Nomination Petition of Vodvarka, 994 A.2d 25, 32 (Pa. Cmwlth. 2010) (single judge opinion, Leavitt, J.). “*The burden then shifts to the candidate to show an extraordinary circumstance*” to rehabilitate the signature line. Id. (emphasis added).

Our review of the transcript in the instant case shows that the trial court painstakingly and carefully reviewed every signature with the experts and counsel. If the name of the elector could be determined from the Nomination Petition, but there was no elector with that name registered at the address on the Nomination Petition, under current precedent, Objectors successfully made their *prima facie* case that the signature was invalid. The trial court then shifted the burden to Singer to rehabilitate the signature. Using voter identification information provided by Singer, the trial court tried to find a registered elector with that name in the SURE system. If a registered elector with the same name as the name on the Nomination Petition was found in the SURE system, the trial court permitted Singer to meet her burden by showing that the signatures on the Nomination Petition and the voter’s registration matched. Thus, if Objectors’ expert testified credibly that the signature was not in the same hand, or if there was a question about the authenticity of the signature, the trial court found that the signature was not rehabilitated. However, if the experts agreed that the signature on the Nomination Petition appeared to be in the same hand as the voter registration record, the trial court counted the signature as valid, notwithstanding that there was

no explanation regarding why the addresses did not match or how long it had been since the elector had voted.¹³ See, e.g., In re Nomination Petition of Vodvarka, 994 A.2d at 32 (concluding that where addresses do not match, the candidate may rehabilitate the signature by demonstrating “extraordinary circumstances, such as the fact that the elector has recently moved” or that the elector is living temporarily at a residence different from the residence on his or her voter registration because that residence recently burnt down).

The trial court only shifted the burden to Singer to rehabilitate the signature *after* Objectors had made their *prima facie* case that the signatures were invalid where an address on the Nomination Petition did not match the address on the

¹³ For example, at the March 23, 2015 hearing, the trial court examined the signature of Linda Bryant, whose address on the Nomination Petition did not match the address on her voter registration record. (Hr’g Tr. at 31-32, March 23, 2015.) Since there were two voter IDs for that name in the SURE system the trial court stated that, “[c]ounsel one I’m okay with that. Two we’ll have to flip. You tell me which one you believe it is and we’ll go from there.” (Hr’g Tr. at 33, March 23, 2015.) After Singer’s counsel picked a voter ID, Objectors’ expert agreed that the signature on Linda Bryant’s voter registration record matched the signature on the Nomination Petition. (Hr’g Tr. at 33, March 23, 2015.) Thereafter, the trial court stated that Objectors’ “expert agrees it was written by the same person. I will grant it. Her signature is accepted.” (Hr’g Tr. at 33, March 23, 2015.) In this instance, although the addresses did not match, the trial court accepted the signature without Singer otherwise demonstrating the existence of extraordinary circumstances.

Similarly, later on the same day, the trial court examined the signature of Jeffrey Martinez, whose address on the Nomination Petition did not match the address on the voter ID. (Hr’g Tr. at 167, March 23, 2015.) Singer’s expert testified that she believed the signature on the Nomination Petition matched the signature on the Voter ID. (Hr’g Tr. at 171, March 23, 2015.) Objectors’ expert testified that the signature on the Nomination Petition was illegible, but that the printing on the voted ID looked similar to the printing on the Nomination Petition, stating that “It looks like it’s done by the same person.” (Hr’g Tr. at 172, March 23, 2015.) The trial court then accepted the signature without any further findings on the existence of an extraordinary circumstance. (Hr’g Tr. at 173-74, March 23, 2015.)

elector's voter registration record. While it is unclear whether the trial court's novel approach in permitting rehabilitation without any explanation for the address discrepancy is consistent with case law under In re Nomination Petition of Flaherty and In re Nomination Petition of Vodvarka defining "extraordinary circumstances," it demonstrates the trial court's efforts to liberally construe the Election Code so as not to deprive these electors of the ability to sign Singer's Nomination Petition.¹⁴ These efforts were, in this respect, ultimately beneficial to Singer. Accordingly, the trial court did not err in shifting the burden to Singer in instances where the addresses did not match. There is also no evidence in the record that the trial court improperly shifted the burden to Singer in any other signature challenges.

E. Whether the striking of signature lines without giving notice and opportunity to be heard to the electors who signed the Nomination Petition violates those electors' constitutional rights.

Singer argues that the striking of electors' signatures has deprived the electors of their right to elect a candidate of their choice. Singer contends that by not giving electors' notice that their signatures were being struck, electors were deprived of their liberty interests without due process.

Although this is a novel issue, Pennsylvania courts have long recognized that the "Election Code should be liberally construed so as not to deprive a

¹⁴ Objectors argue that, because no attempt was made by Singer to demonstrate extraordinary circumstances in situations where the addresses did not match, the trial court committed a reversible error in accepting 56 signatures with non-matching addresses. Because we affirm the trial court's Order, it is unnecessary to address Objectors' argument. It is questionable whether the trial court's novel approach in these cases is consistent with current case law definitions of "extraordinary circumstances."

candidate of the right to run for office or the voters of their right to elect a candidate of their choice.” In re Petition of Cioppa, 626 A.2d 146, 148 (Pa. 1993) (footnote omitted). Singer argues that notice must be given, apparently by an objector, to any elector whose signature is being challenged before it can be stricken. However, our courts have never concluded that a voter’s right to elect a candidate of his or her choice requires that notice be given before an elector’s signature can be stricken from a nomination petition.

An elector’s right to vote receives constitutional protection and the Election Code protects that right. The ability to sign a Nomination Petition is an important part of the election process; however, there are limitations on that ability. In this case, electors must be registered to vote, in the same political party as the candidate, and be residents of the electoral district. These limitations, and the enforcement thereof, are designed to protect the electoral process by, *inter alia*, preventing fraud. It would be impractical and impossible for objectors to give notice to every elector who has signed, or purportedly signed, a nomination petition, particularly given the time constraints for filing and deciding election challenges.

Singer is concerned that the current process of adjudicating nomination petition challenges permits objectors to easily challenge signatures and imposes great burdens and costs on candidates to prove the challenges unfounded. The reality of these challenges, according to Singer, thus impermissibly burdens both candidates and the electors who wish to vote for them. Singer states that the “electors were given no notice that their signatures were subject to challenge . . .

[n]or were they given any opportunity to be heard as to the validity of their signatures, either through affidavit or live testimony.” (Singer’s Br. at 35.) Although Singer could provide notice to any electors whose signatures were being challenged, that is one of the burdens about which she argues. We also note that the fact that signatures on nomination petitions are subject to challenge is set forth in the Election Code and there is a presumption that citizens know the law. In addition, any electors that Singer notified who had signed her Nomination Petition were also given an opportunity to be heard, through live testimony, by the trial court.

Although we sympathize with concerns arising from the nomination petition challenges that can burden aspiring candidates, we are also cognizant of the reality recognized by the trial court that a candidate can try to avoid the burden of challenges to nomination petitions by obtaining many more signatures than the minimum required. We are also aware that electors can vote for the candidate of their choice by writing in the candidate’s name on the ballot. In short, the Election Code does not provide for such notice and, under current law, we are not convinced that such notice is constitutionally required. Therefore, although Singer raises a novel argument, we find that the trial court did not violate the electors’ constitutional rights by not providing notice that their signatures were being struck from the Nomination Petition.

F. Whether the Trial Court miscounted the number of valid signatures on the Nomination Petition; when the count is corrected, Singer has the necessary 1,000 signatures.

Singer argues that there are four signatures that the trial court accepted, but which were not included in Singer’s final Nomination Petition signature tally. The

four signatures are for electors Gregory Walker, Damien Reid, Callie Aderson, and Jacqueline Starks. Because Singer's final tally was 996 signatures, Singer contends that the inclusion of these four signatures would allow her to satisfy her signature requirement under the Election Code and necessitate that we reverse the trial court's Order granting the Petition to Set Aside.

Singer did not include this issue in her Statement of Issues to be Presented on Appeal. If Singer would have alerted the trial court to this concern, the trial court would have been able to examine the record and determine whether these signatures had been properly counted. The signature tallies for the several days of hearings were largely conducted off the record. There appears to be no dispute that the final total of valid signatures was 996. It would not be possible for this Court to determine, in the first instance, whether or not these four signatures were included by the trial court in Singer's final signature tally. We have, nonetheless, reviewed the signatures, and the transcript pages where the signatures were discussed, and have the following observations.

It does not appear that the trial court intended to include all four signatures in the signature tally. With respect to Jacqueline Starks, Objectors contended that her signature on the Nomination Petition and registration card did not match. (Hr'g Tr. at 237, March 23, 2015.) When Singer's expert examined the two signatures, the trial court asked the expert, "In regards to the start [of the signature], there's a very distinct loop at the end. Is that part of the signature in that one?" (Hr'g Tr. at 240, March 23, 2015.) Singer's expert replied, "[n]o the signature on the petition last name is abbreviated. It only has what appears to be

three of four letters which are incomplete. It does not look like the registration.” (Hr’g Tr. at 240-41, March 23, 2015.) Objectors’ expert then examined the two signatures and stated that, based on the differences in the two signatures, “it’s the work of two different people.” (Hr’g Tr. at 242, March 23, 2015.) Thereafter, the trial court stated, “Okay, I’m going to rule that -- I was really concerned about that loop thing.” (Hr’g Tr. at 242, March 23, 2015.) Thus, we would conclude that the trial court did not intend to count Starks’ signature as valid.

Regarding Callie Aderson’s signature, while Objectors contended that the Nomination Petition and voter registration addresses did not match and that the signature was illegible, it is unclear whether the trial court accepted or rejected the signature or whether it was included in Singer’s final tally of signatures. (Hr’g Tr. at 251, 253, March 26, 2015.) As for Gregory Walker’s and Damien Reid’s signatures, while the trial court did appear to accept these signatures as valid, because the final vote tallies occurred off the record as with all the signatures, this Court cannot determine whether they were counted as valid in the final signature tally. (Hr’g Tr. at 180, 362, March 23, 2015.)

Thus, the trial court expressly rejected one of the four signatures that Singer alleges was not, but should have been, counted and did not expressly accept a second; therefore, even if the trial court did not include the other two signatures in the final signature tally, Singer would still be two signatures short of the required total of 1,000 valid signatures. Although Singer has concerns about whether all of the signatures she thought were valid were included in the final signature tally, those concerns needed to be raised with the trial court. Because most of the

signature tallies occurred off the record, we cannot verify whether or not those signatures were included in the final tally. Therefore, based on the record before us, we are constrained to conclude that the trial court did not miscount the number of valid signatures on Singer's Nomination Petition.

III. CONCLUSION

Accordingly, based on our resolution of the issues raised by Singer in this appeal, her Nomination Petition does not contain the requisite number of signatures required to place her name on the ballot as a Democratic Candidate for the Office of Philadelphia City Commissioner in the May 19, 2015 Primary Election. Therefore, the trial court's Order is affirmed.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition Of :
Stephanie Singer :
Candidate For Office Of: : No. 514 C.D. 2015
Philadelphia City Commissioner :
Appeal of: Stephanie Singer :

ORDER

NOW, April 23, 2015, the Order of the Court of Common Pleas of Philadelphia County, entered in the above-captioned matter, which granted the Petition to Set Aside the Nomination Petition of Stephanie Singer, is hereby **AFFIRMED**. The Philadelphia Board of Elections is directed to remove the name of Stephanie Singer as a Candidate for the Democratic nomination for the Office of Philadelphia City Commissioner on the May 19, 2015 Primary Election ballot. The Chief Clerk is directed to send a copy of this Order to the Philadelphia Board of Elections.

RENÉE COHN JUBELIRER, Judge