

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition	:	
of David Shadding as	:	
Democratic Candidate	:	No. 572 C.D. 2014
for the Office of Committee Person	:	Submitted: April 17, 2014
	:	
Appeal of: David Shadding	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE P. KEVIN BROBSON, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: April 25, 2014

Appellant David Shadding (Candidate) appeals from an order of the Court of Common Pleas of Philadelphia County (trial court), dated March 21, 2014, which granted Appellee Joseph Middletown’s (Objector) petition to set aside the nomination petition of Candidate, docketed with the trial court at No. 02427 March Term 2014 (No. 02427).¹ Objector sought to have the nomination petitions set aside based on a defective circulator’s affidavit. We now vacate and remand.

On or about March 11, 2014, Candidate filed timely nomination petitions with the Philadelphia County Board of Elections (Board of Elections) to have his name placed on the ballot as a candidate for the position of Member of the Ward Executive Committee for the 36th Ward, 15th Division, of the City and

¹ Also at issue is a derivative order, dated March 24, 2014, and docketed at No. 02570 March Term 2014 (No. 02570), which granted a separate petition to set aside the nomination petition of Candidate, filed by Michael Johnson.

County of Philadelphia (Ward Committeeman). The Board of Elections accepted the nomination petitions, apparently consisting of two signatures pages with accompanying affidavits, which purported to contain more than the ten valid signatures required to appear on the ballot pursuant to Section 912.1(35) of the Pennsylvania 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(35). Objector then filed a petition to set aside Candidate's nomination petition.

The trial court conducted a brief hearing, during which Objector, through counsel, presented global challenges to the nomination petitions. Specifically, Objector argued that the candidate's affidavits and the affidavits of qualified elector (often referred to as the circulator's affidavits) were incomplete. The full substance of the hearing was as follows:

THE COURT: All right. So what is your challenge?

[OBJECTOR'S COUNSEL]: Your Honor, we're challenging the entire petition because the affidavit of qualified elector is not complete. The candidate's affidavit is not complete. We're also challenging -- we have six signature challenges on the first petition, and it looks like about nine on the second petition, including the fact that the candidate signed his own petition three times.

MR. SHADDING: I never signed my own petition.

THE COURT: Excuse me, Mr. Shadding.

MR. SHADDING: Oh, I'm sorry, Your Honor.

THE COURT: Well, what do you have to say with regard to the first objection, that these two notarized statements are notarizing nothing?

Everything is blank.

MR. SHADDING: Not notarized?

THE COURT: There are notarized statements where everything is blank.

MR. SHADDING: I did two petitions, number one. There are two petitions.

THE COURT: Do you have another petition?

[OBJECTOR'S COUNSEL]: There are two, and they're both left blank in the affidavit of --

THE COURT: I have an original for only one. Can I see yours?

I have the original now. One is totally blank. The other one has the same misguided notary, who signs in the place of the signature she's supposed to be notarizing.

MR. SHADDING: Your Honor, may I speak?

THE COURT: Yes.

MR. SHADDING: First of all, I only signed the petition one time.

THE COURT: We're not even talking about that.

MR. SHADDING: Okay.

THE COURT: We're talking about those affidavits that are blank.

MR. SHADDING: Can I amend that?

I've been a committeeman for more than 50 years in that same division, more than 50 years in that same division.

THE COURT: The challenge is granted. The candidate is off the ballot.

(Hearing Transcript, March 21, 2014.) By order dated March 21, 2014, the trial court granted Objector's petition to set aside, concluding that the nomination petition contained an unamendable defect.

On appeal to this Court,² Candidate argues that the trial court erred in setting aside the nomination petition because the defects in the affidavits were amendable. Candidate appears to argue that while it is true that the notary placed her name on the lines designated for the candidate and the circulator, Candidate and the notary signed the affidavits on the correct lines. Candidate contends that the defects on the nomination petitions were not fatal, and Candidate should have been permitted to amend the incomplete affidavits. Objector did not file a brief in opposition to Candidate's appeal.

First, we note that the record provided to the Court does not include the original nomination petitions. The transcript from the trial court proceedings suggest that the nomination petitions consist of two pages. Petitioner's brief includes as an exhibit a photocopy of one of the pages of the nomination petitions, which page purports to contain 16 signatures. The photocopy is of poor quality. A review of that signature page suggests that the notary inserted her name in the blank space contained in the body of the candidate's and circulator's affidavits, where the names of the candidate and circulator were supposed to be written. Also, the blanks for the ward and division numbers and the addresses of the candidate and circulator were not completed. The Candidate's signature appears on both the candidate's and circulator's affidavits, suggesting that Candidate

² This Court has appellate jurisdiction over the final order of the trial court pursuant to 42 Pa. C.S. § 762(a)(4)(i)(C) and Section 977 of the Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. § 2937. In reviewing the order of the trial court concerning the validity of challenges to a nomination petition, this Court's standard of review is whether the findings of fact are supported by substantial evidence, whether there was an abuse of discretion or whether errors of law were committed." *In re Nomination Petition of Flaherty*, 564 Pa. 671, 678, 770 A.2d 327, 331 (2001).

circulated the nomination petition, although there is no testimony of record to confirm that implication. The notary signed and placed her seal on both affidavits.

The issue before the Court is whether the defective affidavits are amendable. As to the notary's name appearing in the blank in the body of the affidavits instead of the candidate's and circulator's names, this Court dealt with a similar situation in *In re Graham*, 574 A.2d 1182 (Pa. Cmwlth. 1990). In *Graham*, our court considered whether a defective circulator's affidavit could be amended when the circulator signed the circulator's affidavit but the candidate's name appeared in the body of the affidavit instead of the circulator's name. We explained the issue as follows:

The issue before the common pleas court which is now before this Court on appeal is whether a "mismatched" circulator's affidavit attached to Graham's nomination petition is an amendable defect under Section 977 of the Pennsylvania Election Code (Election Code), [Act of June 3, 1937, P.L. 1333, *as amended*,] 25 P.S. § 2937. The affidavit was "mismatched" in that the actual circulator, Horrita Bell, signed her name on the proper line of the circulator's affidavit, but the name of the candidate (Graham) was printed in the body of the affidavit form.

In re Graham, 574 A.2d at 1183. In deciding this issue, this Court opined:

[Section 977 of the Election Code] provides in pertinent part that "material errors or defects apparent . . . on the face of the accompanying or appended affidavits" are amendable after hearing at the discretion of the court. It is beyond peradventure that the mismatched name and signature on the circulator's affidavit in this case is a defect apparent on the face of the affidavit. While we have not found, nor have any decisions on point by this Court been cited to us by the parties, the Superior Court has addressed this very issue in *Conner Appeal*, 175 Pa. Superior Ct. 382, 104 A.2d 758 (1954). The *Conner* Court held that where there was an obvious error in a

circulator's affidavit in that the name of the candidate rather than the affiant had been typed in, common pleas court did not abuse its discretion by permitting an amendment to the affidavit striking out the candidate's name and inserting the affiant's name. We find this decision persuasive and controlling

Id. at 1183-84 (footnote omitted).

As in *Graham*, the affidavits now before the Court were notarized by a notary, but contained defects apparent on the face of the affidavits. Here, the names listed in the bodies of the affidavits (*i.e.*, the name of the notary) do not match the names of the candidate and circulator. It appears that Candidate's name, if Candidate, in fact, circulated the nomination petitions, should have appeared on those lines. Thus, the circumstances as to the "mismatched" names are sufficiently similar to the circumstances present in *Graham*, such that we conclude that the trial court erred in concluding that the defect was not amendable.

The affidavits are also defective on their face to the extent that the blanks for the addresses of the candidate and circulator and the blanks for the ward and division numbers were not completed. These defects, however, are similarly amendable. Moreover, we note that information regarding the ward and division numbers and Candidate's residence is affixed to the front of the nomination petitions, and there is no requirement that such information be contained in the body of the affidavits at the time of circulation. Thus, there is no concern that the absence of the information on the affidavits caused any elector's confusion at the time of signing.

Because the trial court erred in concluding that the defects apparent on the face of the notarized candidate's and circulator's affidavits were not amendable, we vacate the trial court's order and remand this matter to the trial court for further hearing, during which the trial court shall allow Candidate the

opportunity to amend the affidavits through testimony of the notary, Candidate, and individual signing the circulator's affidavits.³ In the event that Candidate successfully amends the nomination petitions, the trial court shall consider the signature challenges not previously considered by the Court.⁴

P. KEVIN BROBSON, Judge

³ In order to be permitted to amend the affidavits, Candidate must establish that Candidate and the individual(s) who signed the affidavits as the circulator(s) personally appeared before the notary and signed the affidavits, and that the notary notarized the affidavits but erred by including her name in the blank within the body of the affidavits instead of the name of the Candidate or circulator, as the case may be. (Candidate appears to have circulated at least one of the petitions himself, but it is unclear if he circulated the other, because the nomination petitions are not contained within the record provided to the Court).

⁴ By separate petition to set aside the nomination petition of Candidate, docketed with the trial court at No. 02570, Mr. Johnson also objected to Candidate's nomination petition. By order dated March 24, 2014, the trial court granted Mr. Johnson's petition to set aside. Thereafter, on April 7, 2014, Candidate filed with the trial court *one* notice of appeal, purporting to appeal the orders docketed at No. 02427 *and* No. 02570. By order dated April 9, 2014, this Court deemed Candidate to have appealed only the matter docketed at No. 02427. The Court allowed Candidate an opportunity to perfect the appeal of the matter docketed at No. 02570, but Candidate did not perfect a separate appeal. Thereafter, we received the record from the trial court, which reveals that although the trial court did not officially consolidate the matters, the trial court handled the matters as if they had been consolidated. Specifically, the trial court conducted a hearing on No. 02427, granting Objector's petition to set aside. The trial court then conducted the briefest of hearings on No. 02570, granting the petition to set aside in that matter based on the order entered in No. 02427. In other words, the trial court entered a derivative order in No. 02570 based on its' order in No. 02427. The trial court then accepted the single notice of appeal and filing fee, the trial court judge addressed both matters in one Pa. R.A.P. 1925 Opinion, and the trial court sent a record to this Court which included documents from both matters. Under these circumstances, we deem the trial court to have, by its actions, consolidated these matters. We note that because we vacate the order entered in No. 02427, it no longer forms a basis for the order entered in No. 02570, and the trial court's order entered in No. 02570 is hereby vacated as well. On remand, the trial court shall address the petitions to set aside filed by both objectors in these matters on a consolidated basis.

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ORDER

AND NOW, this 25th day of April, 2014, the orders of the Court of Common Pleas of Philadelphia County (trial court), dated March 21, 2014, and March 24, 2014, and docketed in 02427 March Term 2014 and 02570 March Term 2014, respectively, which matters this Court deems consolidated by the trial court, are hereby VACATED, and the matter REMANDED for further proceedings consistent with the attached Opinion. In the event that this matter is subsequently appealed to this Court, the trial court is directed to include in its certified record the original nomination petitions of David Shadding.

Jurisdiction relinquished.

P. KEVIN BROBSON, Judge