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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-26

Filed: 2 July 2019

Mecklenburg County, No. 18-CVS-15381

IN THE MATTER OF:

VOTER CHALLENGE BROUGHT BY MARK MADARA BEFORE THE
MECKLENBURG COUNTY BOARD OF ELECTIONS;

SABRINA BLAIN – CHALLENGED VOTER

Appeal by Challenged Voter from order entered 20 September 2018 by Judge
Todd Pomeroy in Mecklenburg County Superior Court. Heard in the Court of Appeals
6 June 2019.

The Blain Law Firm, P.C., by Sabrina Blain, for Appellant.

No brief filed for Appellee.

COLLINS, Judge.

Challenged Voter Sabrina Blain appeals the trial court's order confirming the
order of the Mecklenburg County Board of Elections sustaining challenges to Blain's
voter registration and judicial candidacy. Because the trial court applied the

incorrect standard of review, the trial court's order is reversed, and the matter is remanded to the trial court.

I. Background

On 9 July 2018, Mark Madara filed with the Mecklenburg County Board of Elections (the "Board") a challenge to the voter registration and judicial candidacy of Sabrina Blain. Specifically, Madara alleged that Blain did not reside in Precinct 71, but instead resided in Precinct 107, when she changed her registration on 26 June 2018 to reflect an address in Precinct 71. Moreover, he alleged that Blain did not reside in Judicial District 26A, but instead resided in Judicial District 26G, when she filed her Statement of Candidacy on 27 June 2018 for District Court Judge in District 26A.

On 25 July 2018, the Board conducted a preliminary hearing and found probable cause to schedule a hearing on the challenge. At the hearing on 1 August 2018, the Board found that Blain's residence and domicile on 27 June 2018 were at her house in Precinct 107, and that beginning on 3 July 2018, her residence and domicile were at her apartment in Precinct 71. On 3 August 2018, the Board voted 3-1 to sustain the challenge to Blain's voter registration, and 2-1 to sustain the challenge to Blain's judicial candidacy.¹

¹ One Board member abstained from voting on the "Candidacy Challenge because the Candidacy decision is dependent on the Registration decision; the two decisions have different appeal routes; and a reversal of the Registration decision would affect the Candidacy decision."

Blain appealed the Board's order sustaining the challenge to her voter registration to the Mecklenburg County Superior Court.² On 29 August 2018, the trial court conducted a hearing, and by order entered 20 September 2018, the trial court confirmed the Board's order sustaining the voter registration challenge. From the trial court's order, Blain appeals.³

II. Analysis

Blain argues on appeal that the trial court erred in sustaining the Board's order upholding the challenge to her voter registration because (1) the trial court applied an incorrect standard of review to her appeal, and (2) even if the trial court applied the correct standard of review, it was not applied properly.

A. Standard of Review

A decision by a county board of elections on a voter registration challenge is appealable to the Superior Court of the county in which the offices of that board are located. N.C. Gen. Stat. § 163A-919(c) (2018). "In reviewing the decision by a board sitting as a quasi-judicial body, the Superior Court acts as an appellate court." *Knight v. Higgs*, 189 N.C. App. 696, 699, 659 S.E.2d 742, 745 (2008). The scope of its review includes:

"(1) Reviewing the record for errors in law,

² The Record on appeal does not contain the Notice of Appeal/Petition for Judicial Review, as required by N.C. R. App. P. 9(a)(2)(d) (2019).

³ The Record on Appeals does not contain an "agreement, notice of approval, or order settling the record on appeal[.]" as required by N.C. R. App. P. 9(a)(2)(h) (2019).

- (2) [E]nsuring that procedures specified by law in both statute and ordinance are followed,
- (3) [E]nsuring that appropriate due process rights of a petitioner are protected including the right to offer evidence, cross-examine witnesses, and inspect documents,
- (4) [E]nsuring that decisions of [the Board] are supported by competent, material[,] and substantial evidence in the whole record, and
- (5) [E]nsuring that decisions are not arbitrary and capricious.”

Id. (quoting *Coastal Ready-Mix Concrete Co. v. Bd. of Comm’rs*, 299 N.C. 620, 626, 265 S.E.2d 379, 383 (1980)).

“Sitting as an appellate court, the trial court does not review the sufficiency of evidence as presented to it but reviews the evidence presented to the board.” *Knight*, 189 N.C. App. at 699, 659 S.E.2d at 745 (citation omitted). “Subsequent review by this Court is limited to whether the trial court committed any errors of law.” *Id.* (citing *Farnsworth v. Jones*, 114 N.C. App. 182, 441 S.E.2d 597 (1994) (concluding that the trial court erred in affirming a residency determination by a local board of elections)).

B. The Trial Court’s Standard of Review

In this case, the trial court found three facts, including the following:

- 2. The Mecklenburg County Board of Elections did not abuse its discretion.
- 3. The Mecklenburg County Board of Elections correctly considered and made findings of fact and the same are supported by the conclusions of law and the order is sustained and upheld.

IN RE MADARA

Opinion of the Court

The trial court made four conclusions of law, including the following:

2. The standard of review of this appeal is abuse of discretion.
3. The Mecklenburg County Board of Elections (Mecklenburg BOE) did not abuse its discretion in entering the August 3, 2018 Order.

The trial court then confirmed the Board's order.

As the trial court applied an incorrect abuse of discretion standard of review and failed to apply the correct standard of review set forth in *Knight v. Higgs* (quoted above), we reverse the trial court's order adjudging Ms. Blain not to be a qualified voter in Precinct 71 and directing the Board to cancel Blain's voter registration in Precinct 71. We remand the case to the trial court to apply the correct standard of review to Blain's appeal of the Board's order.

Because we conclude the trial court failed to apply the correct standard of review, we do not address whether the standard of review was applied properly.

REVERSED AND REMANDED.

Judges INMAN and DIETZ concur.

Report per Rule 30(e).