

COURT OF APPEALS
MORGAN COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE EX REL. REBECCA GRADY :

Plaintiff - Appellant :

-vs- :

THE VILLAGE OF CHESTERHILL, :
OHIO, ET AL. :

Defendants - Appellees :

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 14AP0006

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Morgan County
Court of Common Pleas, Case No.
14CV0036

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT:

June 4, 2015

APPEARANCES:

For Plaintiff-Appellant

BRIAN W. BENBOW
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For DefendantS-Appellees

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Baldwin, J.

{¶1} Appellant Rebecca Grady appeals a judgment of the Morgan County Common Pleas Court dismissing her mandamus petition. Appellees are the Village of Chesterhill, Richard D. Wetzell, Sr., Terry Fleming, Ronnie Mayle, Jr., Kathy Smedley, Tonya Tabler, and Chastity Mayle.

STATEMENT OF FACTS AND CASE

{¶2} Appellant ran for elected office on November 5, 2013, as council person for the Village of Chesterhill. The term was to commence on January 6, 2014. Appellant's election to the council was certified by the Morgan County Board of Elections on November 25, 2013. Her qualifications were not formally contested prior to the election, nor were the election results formally contested.

{¶3} On January 6, 2014, council held a meeting, at which it resolved not to recognize appellant's election to the position of council person based on council's belief that she was not qualified to run for the office. Council believed she did not meet the residency requirement, as she had not lived in the village for a period of one year prior to the election.

{¶4} The oath of office was administered to appellant on January 15, 2014, by the Common Pleas Court judge in Morgan County; however, council continued to refuse to seat her as a council person because she was not a resident of the village for a period of one year prior to her election. At the February council meeting, council formally declared the position to be vacant.

{¶5} Appellant commenced an action in mandamus to compel the council to recognize her election. Following an evidentiary hearing in the Common Pleas Court, the court found that appellant “did not clearly prove that she had been a resident of the Village for the year immediately preceding November 5, 2013.”

{¶6} Appellant assigns two errors on appeal:

{¶7} “I. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT FAILED TO RECOGNIZE PETITIONER’S CERTIFICATE OF ELECTION IN MANDAMUS AS BEING CONCLUSIVE TO THE ELECTION RESULTS FOR THE CITY COUNCIL OF CHESTERHILL. THE TRIAL COURT FURTHER ERRED BY DENYING PETITIONER’S WRIT OF MANDAMUS WHEN IT FOUND THAT THE VILLAGE OF CHESTERHILL HAD THE LEGAL AUTHORITY TO IGNORE AN ELECTION RESULT WITHOUT HAVING FIRST HAVING INITIATED A TIMELY ELECTION CONTEST PURSUANT TO R.C. 3515.08. THIS STATUTE IS THE SOLE REMEDY PROVIDED BY STATUTE FOR THE CORRECTION OF ALL ERRORS, FRAUDS AND MISTAKES THAT MAY OCCUR IN AN ELECTION INCLUDING THE LACK OF QUALIFICATIONS OF A CANDIDATE. THE TRIAL COURT ACCORDINGLY ERRED WHEN IT CONDUCTED A *DE FACTO* ELECTION CONTEST, A COLLATERAL ATTACK UPON PETITIONER’S CERTIFICATE OF ELECTION, WHEN IT LACKED SUBJECT MATTER JURISDICTION TO DO SO IN THAT A TIMELY ELECTION CONTEST HAD NOT BEEN FILED. THE TRIAL COURT ACCORDINGLY ERRED IN ALLOWING A COLLATERAL ATTACK UP ON AN ELECTION RESULT IN MANDAMUS WITHOUT SUBJECT MATTER JURISDICTION TO DO SO.

{¶8} “II. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT FAILED TO GIVE ANY WEIGHT TO PETITIONER’S INTENT, WHICH WAS THAT 7355 MARION STREET, CHESTERHILL, OHIO WAS HER RESIDENCE IN VIOLATION OF THE OHIO SUPREME COURT DECISION IN *HUSTED V. BRUNNER*. THE TRIAL COURT’S FINDING THAT PETITIONER DID NOT RESIDE AT 7355 MARION STREET, CHESTERHILL, OHIO WAS THEREFORE CLEARLY ERRONEOUS. THE TRIAL COURT ACCORDINGLY ERRED IN NOT FINDING THAT PETITIONER HAD RESIDED IN THE VILLAGE OF CHESTERHILL FOR THE REQUIRED ONE-YEAR PERIOD PRIOR TO HER ELECTION TO CHESTERHILL CITY COUNCIL AND WAS THEREFORE (SIC) QUALIFIED TO ASSUME HER ELECTED POSITION.”

I.

{¶9} In her first assignment of error, appellant argues that the court erred in dismissing her petition in mandamus, as appellees failed to challenge the election by a statutory election contest. She argues that because she held an unchallenged certificate of election, she had a clear legal right to be seated on the village council, and the court erred in undertaking an analysis of whether she met the residency requirement to run for council.

{¶10} Our standard of review on a dismissal of a writ of mandamus is de novo. *State v. Budgake v. Canton*, 5th Dist. Stark No. 2013CA00111, 2014-Ohio-903, ¶8, citing *Athens County Commissioners v. Ohio Patrolmen's Benevolent Association*, 4th Dist. Athens No. 06CA49, 2007–Ohio–6895. A de novo standard of review requires an independent review of the trial court's decision without any deference to the trial court's

determination. *Id.*, citing *Brown v. County Commissioners of Scioto County*, 87 Ohio App.3d 704, 622 N.E.2d 1153 (4th Dist.1993).

{¶11} For a court to grant a writ of mandamus, the relator must establish: (1) a clear legal right to the requested relief; (2) a clear legal duty to perform these acts on the part of the respondent; and (3) the lack of a plain and adequate remedy in the ordinary course of law. *State ex rel. Neff v. Corrigan*, 75 Ohio St.3d 12, 1996–Ohio–231.

{¶12} The trial court found that R.C. 731.44 vests the village council with the authority to determine the qualifications of its members, and the court could not substitute its judgment for that of the council.

{¶13} R.C. 731.44 provides in pertinent part, "The legislative authority of a municipal corporation shall be the judge of the election and qualification of its members." The Ohio Supreme Court in the past interpreted this section to give city legislatures exclusive jurisdiction over election contests involving these bodies. E.g., *State, ex rel. Prosecuting Attorney v. Berry*, 47 Ohio St. 232, 24 N.E. 206 (1890); *State ex rel. Holbrock v. Egry*, 79 Ohio St. 391, 87 N.E. 269 (1909).

{¶14} However, each of these cases was decided prior to the enactment of the predecessor to R.C. 3515.08, which authorizes an election contest of "any public office." In determining that a common pleas court had jurisdiction over a city council election contest, the Ohio Supreme Court stated:

R.C. 3515.08 authorizes an election contest of 'any public office.' With certain exceptions not pertinent here, a court of common pleas, for the county where the election took place, hears and

decides such a contest. In light of this broad unrestricted grant of jurisdiction to courts, it is inconceivable that the General Assembly intended R.C. 731.44 to deprive courts of jurisdiction over election contests such as these. Further, when statutes dealing with the same subject conflict, the later enacted controls. R.C. 1.52. Here, R.C. 3515.08 is the later enactment. Consequently, we conclude that R.C. 3515.08 conferred jurisdiction upon the court of common pleas to hear this case." *Hitt v. Tressler*, 4 Ohio St.3d 174, 176, 447 N.E.2d 1299, 1302 (1983).

{¶15} Further, well-established principles of statutory construction require that specific statutory provisions prevail over conflicting general statutes. *State v. Volpe*, 38 Ohio St.3d 191, 193, 527 N.E.2d 818, 820 (1988). R.C. 1.51 codifies this rule of statutory construction, stating, "If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail."

{¶16} As both the later enactment and the more specific provision, R.C. 3515.08 sets forth the required procedure for an election contest. Having not instituted a proper

election contest, appellees were without authority to declare appellant unqualified to run for village council after she was duly elected.

{¶17} Even if R.C. 731.44 reserves to the council some authority to determine the validity of an election independent of a proceeding initiated in accordance with R.C. 3515.08, the statute does not give council unfettered authority to elect or expel a member in any fashion they desire. See *State, ex rel. Powers v. Curtis*, 12th Dist. Clinton No. CA2002-10-039, 2003-Ohio-6104, ¶20. In the instant case, after the election results were certified and appellant was sworn into office, council chose to not recognize the election based on a belief that she was not a resident of the village for one year prior to the election as required by R.C. 731.12. Reading R.C. 731.44 in a manner that allows council to refuse to recognize a duly elected council person because of perceived but unchallenged irregularities in the election undermines the integrity of the democratic process.

{¶18} Once properly appointed or elected, Ohio law provides several ways a village council member may be removed from office. *Powers, supra*, ¶16. R.C. 731.12 states that any member who removes from the village shall forfeit the member's office. While council may have been able to remove appellant from council because she was not a resident of the village, council did not have the authority to refuse to recognize the certification of her election and refuse to seat her in the absence of a valid election contest.

{¶19} The first assignment of error is sustained.

II.

{¶20} The second assignment of error is rendered moot by our disposition of the first assignment of error.

{¶21} The judgment of the Morgan County Common Pleas Court is reversed. This cause is remanded to that court for further proceedings according to law. Costs are assessed to appellees.

By: Baldwin, J.

Farmer, P.J. and

Wise, J. concur.