

IN THE CIRCUIT COURT OF TEXAS COUNTY, MISSOURI

STATE OF MISSOURI, ex rel.)
STEPHEN PIERCE,)
)
Relator,)
)
v.)
)
)
LAURA CROWLEY, COUNTY)
CLERK FOR TEXAS COUNTY,)
MISSOURI)
)
Respondent)
)
and)
)
GEORGE SCHOLTZ,)
)
Respondent-Intervenor)

Case No. 20TE0CC00076

WRIT OF MANDAMUS TO LAURA CROWLEY,
COUNTY CLERK FOR TEXAS COUNTY, MISSOURI

This case came before the Court May 14, 2020. The parties appeared in person and Relator and Respondent together with Counsel via Webex due to the ongoing Covid-19 pandemic and because of the orders of the Missouri Supreme Court and the Presiding Judge of the 25th Judicial Circuit against in-person court proceedings.

Evidence was adduced and argument heard. The case was then taken under advisement.

UPON THE EVIDENCE OFFERED, ADGUDGED AND ADDUCED,
THE COURT FINDS AS FOLLOWS:

FINDINGS OF FACTS

1. Texas County, Missouri is a Third Class County.
2. Respondent Laura Crowley is the County Clerk for Texas County.
3. Respondent is the Election Authority for Texas County.

4. Texas County Memorial Hospital is a political subdivision with an elected Board of Trustees who are elected by the qualified voters of Texas County, Missouri.
5. Election to the Board of Trustees for the Texas County Memorial Hospital is a nonpartisan election.
6. At the scheduled April election there was one open position on the Board of Trustees for the Hospital.
7. At the end of the day on January 21, 2020, there were two people who had file to run for the one open board position, Respondent-Intervenor, George Scholtz and Gina Umfleet.
8. Gina Umfleet completed the necessary affidavit stating she was not delinquent on taxes.
9. On or about February 11, 2020 Respondent sent Gina Umfleet a letter saying she did not qualify as a candidate per Section 115.306 RSMo and she was being removed from the ballot.
10. Respondent Crowley believed Gina Umfleet did not qualify as a candidate because of unpaid personal property taxes for 2019.
11. On or about February 4, 2020 Gina Umfleet had attempted to pay her unpaid 2019 personal property taxes by personal check which was returned for insufficient funds.
12. On or about February 14, 2020 Gina Umfleet made the insufficient funds check good by paying cash to the Texas County Collector.
13. On or about March 2, 2020, Relator Stephen Pierce went to the Texas County Clerk's office seeking to file as a write-in candidate for the open seat on the Texas County Memorial Hospital Board of Trustees.
14. Relator requested of Deputy Clerk Marjorie Stroup the forms to file as a write-in candidate.
15. Ms. Stroup said she would have to call Respondent Crowley, which she did.
16. Respondent Crowley arrived at the office in about 20 minutes.
17. Respondent Crowley was aware Relator was seeking the form to file as a write-in candidate.
18. Respondent Crowley called the Secretary of State's Office and, based on the advice she received, did not give Relator the form to file as a write-in candidate and told Relator the office would not be on the ballot.
19. Relator otherwise qualifies to be a candidate or write-in candidate for the office of Trustee for the Texas County Memorial Hospital.
20. On March 18, 2020, Missouri Governor Mike Parsons signed Executive Order 20-03 moving the April 7 municipal elections (including the

election for Board of Trustees for the Texas County Memorial Hospital) to June 2, 2020.

21. During the hearing it was stated, without dispute by Relator, that some absentee ballots have already been cast in this election but they did not contain the office of Hospital Trustee.
22. As a result Relator filed his petition seeking mandamus issue to the Respondent Crowley.

CONCLUSIONS OF LAW

23. Section 115.124.1 RSMo provides that if the number of candidates for election to nonpartisan office equals the number positions available then the ballot measure is not placed on the ballot and the political subdivision does not have to pay its proportional share of the election cost.
24. However the last sentence of 115.124.1 RSMo states:
“Notwithstanding any other provision of law to the contrary, if at any election the number of candidates filing for a particular office exceeds the number of positions to be filled at such election, the election authority shall hold the election as scheduled, even if a sufficient number of candidates withdraw from such contest for that office so that the number candidates remaining **after the filing deadline** is equal to the number of positions to be filled.” (emphasis added)
25. Section 115.124 does not limit “candidates” to “qualified candidates” as Respondents argue.
26. Chapter 115 does not define “candidate” as only those qualified to be a candidate or serve in the office.
27. A plain reading of Section 115.124 means once the filing deadline closed on January 21, 2020, Respondent Crowley was duty bound to put the election for Hospital Trustee on the ballot, even if one or more candidates later withdrew or were removed from the ballot.
28. Respondent Crowley relied on Section 115.306 to remove Gina Umfleet from the ballot. She did not advise Ms. Umfleet of the unpaid personal property taxes, nor that removal from the ballot imminent.
29. Section 115.306.2(3) evinces a clear intent of the legislature that a candidate for office be given 30 days to rectify any unpaid taxes before removal from the ballot.
30. Gina Umfleet rectified her unpaid personal property tax delinquency within 30 days of the close of candidate filing, leaving aside the insufficient funds check, by paying cash on or about February 14, 2020.
31. Gina Umfleet should not have been removed from the ballot.

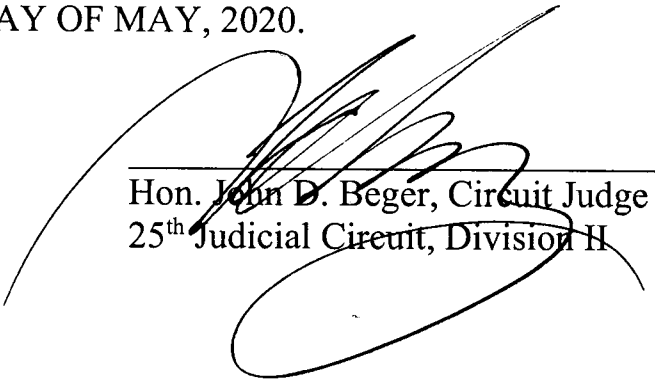
32. A plain reading of Section 115.453(4) states Respondent Crowley must count the votes for any write-in candidate if they have filed “a declaration of intent to be a write-in candidate” at the latest by the second Friday preceding the election.
33. Respondent Crowley argues the time for filing as a write-in candidate expires at the time of candidate filing, in this case January 21, 2020. That is plainly illogical and rejected by this Court.
34. On March 2, 2020 when Relator went to Respondent Crowley’s office and expressed his intent to file as a write-in candidate for the office of Hospital Trustee he should have been provided with the necessary form to do so notwithstanding any advice Respondent may have received from the Office of Secretary of State.
35. Respondents, in part, rely on the last sentence of Section 115.125.3 which states: “No court shall have the authority to order an individual or issue be placed on the ballot less than eight weeks before the date of the election.”
36. Clearly that sentence must be read in the context of all of Section 115.125.3 which pertains to late notification to election authorities by political subdivisions of elections if made pursuant to court order.
37. The last sentence of Section 115.125.3 does not pertain to the situation presently before the court, when one candidate’s name has been improperly removed from the ballot and, as a result, the election for an office improperly taken off the ballot and where someone else, seeking to put his name forward as a write-in candidate has been improperly denied that statutory right.

WHEREFORE, IT IS ORDERED, ADJUDGED and DECREED:

- A. That Respondent Laura Crowley shall cause to be placed on the ballots for municipal (nonpartisan) election to be held June 2, 2020 in Texas County the election for Trustee to the Board of the Texas County Memorial Hospital.
- B. That on such ballot for such election shall appear the names George Scholtz and Gina Umfleet.
- C. The ballot shall also contain a space for voters to write-in the name of a candidate for that election.
- D. That any write-in votes for Relator Stephen Pierce shall be counted in such election for such office if he files with Respondent Crowley’s office a declaration of intent to be a write-in candidate for that office on or before May 22, 2020.

- E. If Relator requests the form for such declaration from Respondent Crowley she is ordered to provide him with that form.
- F. Relator is further ordered to contact those voters who have cast absentee ballots and allow them to cast their vote for Trustee for Texas County Memorial Hospital, before June 2, 2020, on the ballot containing that election or, in the alternative, on a special ballot limited to that election.
- G. Costs herein are remitted and the Circuit Clerk shall refund to Relator his filing fee.
- H. The Circuit Clerk shall provide a copy of this order to the Sheriff of Texas County for service upon Respondent Laura Crowley.

SO ORDERED THIS 15TH DAY OF MAY, 2020.



Hon. John D. Beger, Circuit Judge
25th Judicial Circuit, Division II