

IN THE SUPREME COURT OF TEXAS

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No. 02-0104
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IN RE THE HONORABLE BRENT GAMBLE, RELATOR

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ON PETITION FOR WRIT OF MANDAMUS
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Argued on February 11, 2002

JUSTICE ENOCH delivered the Court's opinion joined by JUSTICE HECHT, JUSTICE OWEN, and JUSTICE RODRIGUEZ, and joined by CHIEF JUSTICE PHILLIPS except for Part II B.

JUSTICE BAKER filed a concurring opinion in which JUSTICE HANKINSON, JUSTICE O'NEILL, and JUSTICE JEFFERSON joined.

Brent Gamble, presiding judge of the 270th District Court in Harris County and candidate for reelection, asks this Court to order the Fourteenth Court of Appeals to vacate its conditional writ of mandamus that compels election officials to omit his name from the Republican primary ballot.¹ Although we disagree with the court of appeals' construction of the Election Code, we do agree Judge Gamble failed in the trial court to establish his entitlement to be on that primary ballot. As a result, the court of appeals was correct in ordering his name off the ballot. Accordingly, we deny this petition for writ of mandamus. But our reasons differ from the court of appeals.

¹ See *In re Triantaphyllis*, ___ S.W.3d ___ (Tex. App.--Houston [14th Dist.], orig. proceeding).

I

On December 19, 2001, Judge Gamble filed his application to have his name placed on the Republican primary ballot. In that application, he identified the office sought as "Judge, *190th* Civil Dist. Court." Yet the petitions accompanying his application identified "District Judge, *270th* Judicial District" as the elected office he sought. Initially, Judge Gamble was placed on the candidate list as a candidate for the 270th District Court. But on January 3, 2002, the day after the filing deadline, Kathy Haigler, Harris County Republican Party Primary Director, notified Judge Gamble that she planned to remove his name from the party's candidate list because his application and his petitions did not match up as required by the Election Code.

On January 9, 2002, Judge Gamble filed a petition for injunctive relief in the 55th District Court in Harris County and sought a temporary restraining order against both Haigler and the Harris County Republican Party Secretary, Iris Manes.² He ostensibly sought only to "prohibit" the party officials from removing his name, but the relief he sought was to require the officials to submit his name as a candidate for the 270th District Court on the list of candidates being certified to the Texas Secretary of State's office. His supporting affidavits showed that his political consultant prepared the application form, and that she mistakenly filled in "190th Civil Dist. Court" after completing an application for another client who held that office. Although Judge Gamble signed and swore to the truth of the application, he claims that he did not notice that the wrong court had been designated.

The trial court granted immediate relief. It ordered the secretary and primary director of the Harris County Republican Party to "refrain from omitting" Judge Gamble's name as a candidate for

² See TEX. ELEC. CODE § 273.081.

judge of the 270th District Court from the list of candidates to be submitted to the Secretary of State and others by January 12, 2002, under section 172.029 of the Election Code. The court further ordered the party officials to “refrain from preventing” Judge Gamble from correcting his application. And as it is required to do, the trial court set the merits of Judge Gamble’s claims for a temporary injunction hearing on January 18, 2002.³

Judge Gamble promptly filed a corrected application and the Harris County Republican Party chair included him as a candidate for judge of the 270th District Court on the list of candidates delivered to the secretary of state. After Judge Gamble was added to the list, he nonsuited his petition rather than proceed to a merits consideration at the January 18 temporary injunction hearing.

Tasso Triantaphyllis, the Democratic candidate for judge of the 270th District Court, attempted to intervene, but Judge Gamble had already taken his nonsuit. Mr. Triantaphyllis also filed for mandamus relief in the Fourteenth Court of Appeals on January 18, asking the court to direct Jared Woodfill, Harris County Republican Party Chair, as well as other party officials, to remove Judge Gamble from the Republican primary ballot because of defects in his original application.

The court of appeals agreed that the original application was defective and concluded that Judge Gamble had no right to amend it after the January 2 filing deadline. The court further concluded that the party chair had a ministerial duty to omit Judge Gamble from the list of candidates certified for the primary election once he discovered the deficiency in Judge Gamble’s application. The court conditionally issued the writ, ordering the election officials to remove Judge

³ TEX. R. CIV. P. 680.

Gamble from the list of candidates, thus omitting him from the 2002 Republican Party primary ballot.

II

Here, Judge Gamble complains that the court of appeals erred in its construction of the Election Code and abused its discretion in issuing the conditional writ that removes him from the primary ballot. His argument relies on sections 141.032 and 273.081 of the Election Code. Section 141.032(a) provides that a party official “shall review the application to determine whether it complies with the requirements as to form, content, and procedure.”⁴ This review is to be completed within five days after the application is filed unless the application is accompanied by a petition.⁵ If an application is accompanied by a petition, as was the case with Judge Gamble’s application, the “review shall be completed as soon as practicable after the date” it’s filed.⁶ If an application is defective, the election official must reject it and notify the candidate immediately in writing of the reason for the rejection.⁷

Judge Gamble argues that had party officials promptly notified him that his application and petitions were in conflict, as was their duty under section 141.032, he would have quickly remedied the error by amending the application to reflect his desire to be a candidate for the 270th District Court. He also argues that he could have corrected the error before the January 2 deadline because

⁴ TEX. ELEC. CODE § 141.032(a).

⁵ *Id.* § 141.032(b), (c).

⁶ *Id.* § 141.032(c).

⁷ *Id.* § 141.032(e).

he had filed his application on December 19, well in advance of the deadline. Judge Gamble submits that because the party officials failed to notify him of the defect until January 3 and, therefore, prevented him from curing the defect before the filing deadline, he is entitled to injunctive relief under section 273.081, which provides:

A person who is being harmed or is in danger of being harmed by a violation or threatened violation of this code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring.⁸

A request for injunctive relief invokes a court's equity jurisdiction.⁹ As is evident, the Legislature has specifically called upon the courts to exercise their equitable powers to resolve election code violations. And when exercising such jurisdiction, a court must, among other things, balance competing equities.¹⁰ Thus, the provision for injunctive relief in section 273.081 of Election Code incorporates these principles which, in turn, control the remedy.

Judge Gamble concludes that one remedy a candidate may obtain under this section is a reasonable extension of time beyond the January 2 deadline to cure a defective application which could have been corrected before the deadline but for the neglect of the party officials to act. Judge Gamble says that this Court has previously recognized remedies for candidates after the expiration

⁸ TEX. ELEC. CODE § 273.081.

⁹ *Ex Parte Hughes*, 129 S.W.2d 270, 273 (Tex. 1939).

¹⁰ *See Storey v. Central Hide & Rendering Co.*, 226 S.W.2d 615, 618-19 (Tex. 1950).

of statutory deadlines when necessary to correct a party official's statutory violation. We note, though, that in those cases, the candidates were not at fault as Judge Gamble was here.¹¹

The court of appeals in this case reasoned that when the candidate is at fault, the candidate should bear the ultimate responsibility for the error even though a party official shared responsibility for not catching the mistake before the filing deadline.¹² The court concluded that "after the filing deadline passed, Judge Gamble had no right, equitable or otherwise, to amend his application to correct the designation of the office he sought."¹³

A

As a general proposition, a candidate must bear ultimate responsibility for his or her error. But we disagree that a candidate's fault automatically precludes his or her right to seek equitable relief. Certainly, the candidate has a duty to file a compliant application before the filing deadline.¹⁴ But likewise, party officials have a duty to review the application and promptly notify the candidate when the application does not comply.¹⁵

While section 141.032 is indisputably designed to assure that candidates are properly qualified to be nominated as a party's candidate for the general election, that is not the only reason

¹¹ See *Painter v. Shaner*, 667 S.W.2d 123, 125 (Tex. 1984) (granting mandamus to allow late filing of application when county chair's office was locked); cf. *Davis v. Taylor*, 930 S.W.2d 581, 583 (Tex. 1996) (granting mandamus directing that candidate be placed on ballot even though county chair missed deadline to certify candidate to secretary of state).

¹² *Triantaphyllis*, ___ S.W.3d at ___.

¹³ *Id.* at ___.

¹⁴ See TEX. ELEC. CODE §§ 141.031, 172.023.

¹⁵ *Id.* § 141.032.

for the provision. This section also serves as a safety net for candidates who file their applications early in the filing period, assuring that individuals willing to commit to public service will receive the assistance of party officials in complying with the myriad and technical requirements for becoming a party candidate. There would be no purpose to the duty to notify the prospective candidate of defects in his or her application if the intent was not to allow an opportunity to cure those defects, particularly if the defects can be corrected before the filing deadline.¹⁶ Thus, a party official's failure to follow the application review and notice requirements of section 141.032 in a timely manner is also significant and is a consideration for a court called upon to hear a candidate's claim for equitable relief. To be sure, the candidate's own fault is a consideration when weighing the right to equitable relief, but mistakes on an application are not an absolute bar to equitable relief.

In the end, a court's power to fashion equitable relief in an election case is not unrestrained. While a court may order equitable relief from a statutory deadline, its action is constrained by the election schedule itself. Generally, courts will not exercise equitable powers when their exercise may delay the election.¹⁷ Further, while extending the statutory deadline is one example of equitable relief, it is an extraordinary departure from the careful planning of the legislature, and not to be invoked lightly.

B

¹⁶ See *Escobar v. Sutherland*, 917 S.W.2d 399, 406 (Tex. App.--El Paso 1996, orig. proceeding).

¹⁷ See *Blum v. Lanier*, 997 S.W.2d 259, 263 (Tex. 1999) (injunction that delays election is improper).

In this case, Judge Gamble contends that the only defect in the application is a clerical one, appearing on its face that party officials should have noticed and called to his attention well before the filing deadline expired. Such facts, if true, state a claim for equitable relief. Mr. Triantaphyllis may, of course, disagree with Judge Gamble's allegations or have other evidence which demonstrates that equitable relief should not be granted. Whether Judge Gamble is entitled to equitable relief, therefore, can only be decided after a hearing on the merits where interested parties have an opportunity to be heard.

III

Although we agree that equitable remedies may be fashioned and that, under limited circumstances, statutory deadlines may be extended to correct an official's violation of a statutory duty, we have no basis to grant the relief requested by Judge Gamble in this case. The only order supporting Judge Gamble's entitlement to equitable relief is a temporary restraining order which is not a decision on the merits. It issued here without opposing arguments or challenge, and while we are concerned with its use as a tool for affirmative relief in this case, that is not the focus of our attention. Rather as a matter of law, the order, because it was a temporary restraining order, provided only interim relief.¹⁸ It got Judge Gamble's name on the list certified to the secretary of state, but regardless, it could not assure him a place on the ballot. That's because he did not pursue

¹⁸ See TEX. R. CIV. P. 680.

the matter to a determination on the merits that would entitle him to be on the ballot. The temporary restraining order had limited life, and it did not survive Judge Gamble's nonsuit.¹⁹

Which brings us to Mr. Triantaphyllis's petition for writ of mandamus in the court of appeals. On January 18, when this action was brought, Judge Gamble's application on file at the filing deadline was defective. There was no court decision entitling Judge Gamble to amend his application after the statutory deadline. Mr. Triantaphyllis' mandamus petition, which attacked the original application, had a basis in law for being granted. Accordingly, the court of appeals did not abuse its mandamus authority when it ordered Judge Gamble's name removed.²⁰

The petition for writ of mandamus is denied.

Craig T. Enoch
Justice

Opinion delivered: February 19, 2002

¹⁹ See *Ex Parte Lesikar*, 899 S.W.2d 654, 654 (Tex. 1995) (temporary restraining order not extended by implication).

²⁰ See TEX. ELEC. CODE §§ 273.061, 273.062.

