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DISTRICT IV

January 12, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP1444-AC

Bonnie Vance, Christopher Underwood and Joseph Egloff v. Town of Cleveland Board of Canvassers, and Phil Hazard (L.C. #2015CV59)

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

The issue in this case is whether the absentee ballots of approximately forty-nine voters in the Town of Cleveland should be invalidated because of alleged irregularities that occurred in the absentee voting process during the April 2015 Town election. Bonnie Vance, Christopher Underwood and Joseph Egloff (collectively, Vance), the losing candidates in this election, appeal the decision of the circuit court affirming the decision of the Town of Cleveland Board of Canvassers upholding the election results.¹ Based upon our review of the briefs and record, we

¹ The circuit court ordered that winning candidate Phil Hazard intervene in this action.

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).² We affirm the circuit court's order which affirms the Board's decision.³

An election was held in the Town of Cleveland in April 2015 for three positions in the town government. Phil Hazard, Byron Hazard, and Ralph Prindle were declared the winning candidates. Vance petitioned the Board for a recount of the votes and the Board held a recount proceeding. At the recount proceeding, Vance complained about multiple asserted irregularities, but the Board affirmed the results of the election. Vance appealed the Board's decision to the circuit court, pursuant to WIS. STAT. § 9.01(6), and requested that the court invalidate all in-person absentee ballots cast at the residence of Hazard, approximately forty-nine votes. At the time of the election, Hazard was the town clerk and used his residence as the office of the town clerk. After taking evidence, the court affirmed the decision of the Board and denied Vance's requested relief.

WISCONSIN STAT. § 9.01 is the exclusive remedy for any claims of irregularities, defects, or mistakes committed during the voting or canvassing process. WIS. STAT. § 9.01(11); *Carlson v. Oconto Cty. Bd. of Canvassers*, 2001 WI App 20, ¶5, 240 Wis. 2d 438, 623 N.W.2d 195. On appeal, we review the decision of the Board, not the circuit court. *Carlson*, 240 Wis. 2d 438, ¶20. We shall set aside or modify the determination of the Board only if we find that the Board has erroneously interpreted a provision of law and a correct interpretation compels a particular

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

³ This is an expedited appeal under WIS. STAT. § 9.01(9)(c) and WIS. STAT. RULE 809.20.

action. See *Logerquist v. Board of Canvassers for Town of Nasewaupee*, 150 Wis. 2d 907, 912, 442 N.W.2d 551 (Ct. App. 1989).

On appeal, Vance makes four arguments concerning purported irregularities that occurred during the absentee voting process. We do not address those arguments because, as we now explain, all of the arguments that Vance makes are directed at the circuit court's proceeding, including evidence taken at that proceeding, with exceptions addressed below.

The problem is that Vance directs almost all of her arguments by pointing to the record before the circuit court. That is, her arguments presuppose that we are reviewing the circuit court proceeding.⁴ For example, one of the four arguments that Vance advances is that Hazard improperly moved the polling place to his residence. In support of her argument, Vance points to Hazard's concession before the circuit court that he was unaware of any authority for him to move the polling place to his residence. Similarly, in support of a second argument that Vance makes, that Hazard did not set up a legally sufficient polling place, Vance argues that the circuit court erred by looking for evidence that a voter was actually affected by the irregularities in the polling place. These and similar arguments are misdirected. With exceptions not applicable here, our review is limited to the Board proceeding. *Oconto Cty. Bd. of Canvassers*, 240 Wis. 2d 438, ¶5. Our review of Vance's brief on appeal reveals no explanation as to why we should or are required to reverse the Board's decision based on any action taken by the circuit court.

⁴ There are a limited number of circumstances under which the circuit court can take evidence, none of which apply here. See WIS. STAT. § 9.01(8)(c).

We acknowledge that Vance may be complaining that she attempted to offer evidence to the Board and that the Board erred by excluding such evidence. However, there are two problems with this argument. First, it is poorly developed in terms of why the Board would have been required to entertain the proffered evidence. Second, we are given no reason why such evidence would or should have made a difference. Vance offered testimony from the district attorney regarding Hazard engaging in electioneering and a document purporting to be an email composed by losing candidate Chris Underwood. However, Vance does not provide a reason why the district attorney's testimony on electioneering would matter. So far as we can tell, the district attorney was not prepared to offer factual information, but rather merely his opinion regarding legal issues. As for Underwood's email, the Board did not receive the email into evidence, and Vance did not otherwise take steps to preserve the content of the email for purposes of later review. Therefore, we have no record of what the content of the email is and, consequently, no basis for thinking it would matter.

Vance also complains in passing that the Board ignored "the standards that exist for evaluation of the fairness of the election." However, Vance fails to direct our attention to the standards that the Board failed to follow. For that reason, we will not address this argument further. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

