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DISTRICT II

March 17, 2021

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

2020AP1271-AC

James Sewell v. Racine Unified School District Board of
Canvassers (L.C. #2020CV1023)

Before Reilly, P.J., Gundrum and Davis, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

James Sewell, Dennis Montey, and George Meyers (collectively, the appellants) appeal from a circuit court order upholding the result of a recount. Based upon our review of the briefs

and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm.

On April 7, 2020, voters in the Racine Unified School District approved a referendum allowing additional spending on public schools for the next thirty years. The measure passed by only five votes in an election that had 33,491 total votes.

The appellants requested a recount pursuant to WIS. STAT. § 9.01. Between April 18-24, 2020, the Racine Unified School District Board of Canvassers (BOC) completed the recount, opening and recounting all of the ballots in public and observed by the appellants. The recount confirmed the original result.

The appellants appealed to the circuit court. There, they asserted the right to “examine the ballots” and “have those votes recounted in their presence in open court.” The court did not directly address that request. However, it ultimately upheld the result of the BOC’s recount, finding that “the procedure utilized by the BOC in this recount was proper and provided an accurate result.”

On appeal, the appellants renew their request to examine the ballots in open court so that another recount can occur. They claim the right to do so under WIS. STAT. § 7.54. Additionally, they cite *State ex rel. Graves v. Wiegand*, 212 Wis. 286, 249 N.W. 537 (1933), which examined an earlier version of that statute. The interpretation and application of a statute to a set of facts

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

presents a question of law that we review de novo. *Acuity v. Albert*, 2012 WI App 87, ¶8, 343 Wis. 2d 594, 819 N.W.2d 340.

WISCONSIN STAT. § 7.54 is entitled “Contested elections” and provides:

In all contested election cases, the contesting parties have the right to have the ballots opened and to have all errors of the inspectors, either in counting or refusing to count any ballot, corrected by the board of canvassers or court deciding the contest. The ballots and related materials may be opened only in open session of the board of canvassers or in open court and in the presence of the official having custody of them.²

We are not persuaded that WIS. STAT. § 7.54 aids the appellants’ argument. Although the statute authorizes the opening of ballots in court, it does not require that a court do so. In this case, opening the ballots in court was unnecessary as (1) the ballots had already been opened by the BOC during its recount; and (2) the circuit court found that “the procedure utilized by the BOC in this recount was proper and provided an accurate result.” The appellants have not demonstrated that the court’s finding was erroneous.

If anything, *Wiegand* supports our reading of the statute. There, the challenger to an election recount complained that ballots were not properly preserved. See *Wiegand*, 212 Wis. at 288. The circuit court did not open the ballots and conduct another recount when reviewing the

² The version of the statute examined in *State ex rel. Graves v. Wiegand*, 212 Wis. 286, 291, 249 N.W. 537 (1933) provided:

In all cases of contested elections the parties contesting the same shall have the right to have said ballots opened, and to have all errors of the inspectors in counting or refusing to count any ballot, corrected by the court or body trying such contest, but such ballots shall be opened only in open court or in open session of such body and in the presence of the officer having the custody thereof.

board of canvassers' decision; rather, it assessed the ballot-handling process and made findings regarding security. *Id.* at 289-90. Finding that no tampering or misconduct occurred, it upheld the result of the recount. *Id.* at 290. The supreme court then affirmed. *Id.* at 296. Given this fact, as well as the circuit court' finding in this case regarding the procedure utilized by the BOC, we decline the appellants' request to remand the matter so that the ballots can be examined and recounted in open court.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals