

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-008527

06/20/2016

HONORABLE DAVID B. GASS

CLERK OF THE COURT
L. Stogsdill
Deputy

JENNIFER LONGDON

ROOPALI HARDIN DESAI

v.

CHAD THOMAS LISK, et al.

CHAD THOMAS LISK
2353 S BEVERLY
MESA AZ 85210

EDWARD W FRANCE III
COLLEEN CONNOR
COURT ADMIN-CIVIL-CCC
DOCKET-CIVIL-CCC

NOMINATING PETITION CHALLENGE-ELECTION CHALLENGE
RULING

Courtroom 514- ECB

8:24 a.m. This is the time set for hearing re: election contest. Plaintiff, Jennifer Longdon, is represented by counsel, Roopali Hardin Desai and D. Andrew Gaona. Defendant, Chad Thomas Lisk, is present on his own behalf. Defendants, the Maricopa County Recorder and the Maricopa County Board of Supervisors, are represented by counsel, Edward W. France, III and Colleen Connor. Defendants Helen Purcell and Karen Osborne are also present.

A record of the proceedings is made digitally in lieu of a court reporter.

The number of challenges are discussed.

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Defendant Chad Lisk makes an oral motion to dismiss re: naming of all proper parties as Defendants in the Complaint.

For the reasons stated on the record,

IT IS ORDERED setting this matter for trial at **10:00 a.m. today (time allotted: 2 hours)** in this division. The Court will hear argument and address Defendant's motion at that time.

8:35 a.m. Matter concludes.

10:01 a.m. The Court reconvenes with the parties and counsel present.

A record of the proceedings is made digitally and court reporter, Kristi Week is present.

Argument is heard on Defendant Chad Lisk's oral motion to dismiss.

For the reasons stated on the record,

IT IS ORDERED denying Defendant Chad Lisk's motion to dismiss.

Defendant Chad Lisk makes an oral motion to dismiss re: timeliness of the filing of the Complaint.

For the reasons stated on the record,

IT IS FURTHER ORDERED denying the motion to dismiss.

Plaintiff's case:

Jasper Althaha is sworn and testifies.

Plaintiff's exhibit 1 is marked for identification and received in evidence.

The witness is excused.

Plaintiff rests.

10:40 a.m. The Court stands at recess.

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10:41 a.m. The Court reconvenes with the parties and counsel present.

A record of the proceedings is made digitally and court reporter, Kristi Week is present.

Defendant Chad Lisk's case:

Kristi Passarelli is sworn and testifies.

The witness is excused.

James Iannuzo is sworn and testifies.

The witness is excused.

Karen Osborne is sworn and testifies.

Defendant Chad Lisk rests.

Closing statements are presented.

For the reasons stated on the record,

IT IS FURTHER ORDERED denying the election challenge and the request for an injunction.

The Court advises counsel and the parties that it will issue a detailed ruling later this afternoon.

11:00 a.m. Matter concludes.

LATER:

Defendant Chad Thomas Lisk moved to dismiss the verified complaint on two grounds, which the court denied as follows:

1. Defendant Chad Thomas Lisk moved to dismiss the verified complaint, arguing that Plaintiff Jennifer Longdon failed to serve an indispensable party under A.R.S. § 16-351.C.2, specifically "The officer with whom the petitions are required to be filed."

Without any authority, Defendant Chad Thomas Lisk argues that subsection 16-

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- 351.C.2 imposes a duty on Plaintiff Jennifer Longdon to name as a party and to serve a Maricopa County elections official other than Helen Purcell, the Maricopa County Recorder. Nothing in the plain statutory language supports Defendant Chad Thomas Lisk's interpretation. Defendant Chad Thomas Lisk incorrectly argues that unless the court construes the statute as requiring inclusion and service of another person, the court is treating subsection 16-351.C.2 as surplus language. Defendant Chad Thomas Lisk's interpretation also ignores the needed flexibility in the statutory language. There are times when "[t]he officer with whom the petitions are required to be filed" is a county recorder, such as here because Defendant Chad Thomas Lisk seeks to be a candidate for Maricopa County Sheriff. However, contrary to Defendant Chad Thomas Lisk's arguments, there also are instances when the "officer with whom the petitions are required to be filed" is not one of the other persons otherwise included in A.R.S. § 16-351, such as candidates for legislative offices, for whom "[t]he officer with whom the petitions are required to be filed" is the Arizona Secretary of State. The language in subsection 16-351.C is sufficiently flexible to cover both those situations, but it does not impose a duty to name and serve an additional officer at a county recorder's office. In summary, Plaintiff Jennifer Longdon served all the persons required under A.R.S. § 16-351.C. Subsection 16-351.C.2 did not require Plaintiff Jennifer Longdon to serve an additional person in the Maricopa County Elections Department; service on the Maricopa County Recorder satisfied both subsection 16-351.C.2 and subsection 16-351.C.3.
2. Defendant Chad Thomas Lisk moved to dismiss the verified complaint, arguing that Plaintiff Jennifer Longdon failed to file the challenge timely under A.R.S. § 16-351.A. Subsection 16-351.A says a challenge must be filed "no later than 5:00 p.m. on the tenth day, excluding Saturday, Sunday, and other legal holidays, after the last day for filing nomination papers and petitions." Defendant Chad Thomas Lisk argued that Plaintiff Jennifer Longdon needed to file the election challenge by June 13, 2016. Defendant Chad Thomas Lisk recognized that June 1, 2016 was the deadline to file nominating petitions. June 1, 2016 was a Wednesday. Defendant Chad Thomas Lisk counted ten calendar days from and including June 2, 2016, which would be Saturday, June 11. Defendant Chad Thomas Lisk then excluded Saturday and Sunday and concluded that the last day to file was June 13, 2016. Defendant Chad Thomas Lisk's approach is inconsistent with and contrary to the holding in *Dedolph v. McDermott*, 230 Ariz. 130, 133, ¶ 13, 281 P.3d 484, 487 (2012). *Dedolph*

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held that based on the language in A.R.S. § 16-351.A, challenges must be filed within 10 business days, not ten calendars followed by any excluded “Saturday, Sunday and other legal holidays . . .” For that reason, the Court denied Defendant Chad Thomas Lisk’s motion based on A.R.S. § 16-351.A.

After rejecting Plaintiff Chad Thomas Lisk’s motions to dismiss, the Court then considered the merits of Plaintiff Jennifer Longdon’s complaint.

THE COURT FINDS by clear and convincing evidence as follows:

- Defendant Chad Thomas Lisk filed nomination petitions as a Libertarian Party candidate for election to the Office of Sheriff of Maricopa County.
- Absent a successful challenge, as a Libertarian Party candidate, Defendant Chad Thomas Lisk’s name would appear on the ballot as a candidate at the August 30, 2016 Primary Election.
- To qualify for the ballot as a Libertarian Party candidate, Defendant Chad Thomas Lisk must submit 1,881 valid signatures.
- Defendant Chad Thomas Lisk submitted nominating petitions containing 1,888 signatures.
- Plaintiff Jennifer Longdon challenges 158 of those signatures.
- The relevant county elections departments found that 138 of the challenged signatures are invalid and 19 of the challenged signatures are valid.
- Defendant Chad Thomas Lisk was not able to rehabilitate any of the disputed signatures that the relevant county elections departments found were invalid.

THE COURT THEREFORE FINDS by clear and convincing evidence that Defendant Chad Thomas Lisk submitted 1,750 valid signatures, which is 138 less than Defendant Chad Thomas Lisk needed to qualify for the ballot. As a result, Defendant Chad Thomas Lisk’s name may not appear on the August 30, 2016 Primary Ballot.

IT IS THEREFORE ORDERED granting Plaintiff Jennifer Longdon’s request for injunction and prohibiting Defendant Chad Thomas Lisk’s name from appearing on the August 30, 2016 Primary Ballot for election to the Office of Sheriff of Maricopa County.

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IT IS FURTHER ORDERED signing this minute entry as a final written Order of the Court. **The Court notes that no further matters remain pending and the order is entered pursuant to Rule 54(c) of the Arizona Rules of Civil Procedure.**

Dated: June 20, 2016

/s/ David B. Gass
HONORABLE DAVID B. GASS
JUDICIAL OFFICER OF THE SUPERIOR COURT

The parties are notified that under A.R.S. § 16-351(A), any notice of appeal must be filed within five calendar days after the superior court's decision in a challenge to the nomination of a candidate. *See Bohart v Hanna*, 213 Ariz. 480, 143 P.3d 1021 (2006.) An appeal that is belatedly prosecuted, such as one filed on the last day of the statutory deadline, may be dismissed on grounds of laches even if timely filed. *See McClung v Bennett*, 225 Ariz. 154, 235 P.3d 1037 (2010). Special procedural rules govern expedited appeals in election cases. Ariz. R. Civ. App. P.8.1.