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STATE OF MICHIGAN
COURT OF APPEALS

LEIGH REED-PRATT,

Plaintiff-Appellant,

v

DETROIT CITY CLERK, DETROIT ELECTION
COMMISSION, and JANEY AYERS,

Defendants-Appellees.

FOR PUBLICATION

December 16, 2021

9:10 a.m.

No. 357150

Wayne Circuit Court

LC No. 21-005405-CZ

Before: CAVANAGH, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff, Leigh Reed-Pratt, appeals as of right the trial court order denying her request for a declaratory judgment. For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

This case involves events that occurred before the August 2021 primary election in the City of Detroit. On April 6, 2021, defendant, Janeey Ayers, filed an affidavit of identity (AOI) that included the following statement before her signature:

By signing this affidavit, I swear (or affirm) that the facts I have provided are true. I further swear (or affirm) that the facts contained in the statement set forth below are true. (See Section “E” on reverse for further information.)

At this date, all statements, reports, late filing fees, and fines due from me or any Candidate Committee organized to support my election to office under the Michigan Campaign Finance Act, PA 388 of 1976, have been filed or paid.

I acknowledge that making a false statement in this affidavit is perjury—a felony punishable by a fine up to \$1,000 or imprisonment for up to 5 years, or both. (MCL 168.558, 933 and 936).

On April 23, 2021, plaintiff challenged Ayers's candidacy in a letter her lawyer submitted to the City Clerk and members of the Detroit Election Commission (the Commission). Plaintiff contended that Ayers's AOI contained a false statement because, contrary to the attestation she made in her AOI, she had two outstanding campaign finance reports that were required to be filed under the Michigan Campaign Finance Act. Plaintiff argued that, as a result of Ayers's false statement, the City Clerk had a legal duty under MCL 168.558(4) to not certify Ayers's name to the Commission for placement on the August 2021 primary election ballot for an at-large city council seat.

On April 27, 2021, the City Clerk responded that, although a facially improper affidavit was grounds to disqualify a candidate, the accuracy of a candidate's campaign finance report could not be ascertained by looking at the face of the AOI. As a result, the response to the challenge was not ministerial. The City Clerk noted that, because the campaign finance reports were supplied to the County Clerk, she would have to inquire of the County Clerk as to whether Ayers's had two outstanding campaign finance reports when she filed her AOI on April 6, 2021. In response to the City Clerk's inquiry as to the status of Ayers's campaign finance reporting, the County Clerk advised:

According to the campaign finance records for Ms. Ayers, as of April 6, 2021, Ms. Ayers had outstanding amended campaign finance reports associated with the 2018 Annual, July 2019 Quarterly, October 2019 Quarterly, 2019 Annual, July 2020 Quarterly, October 2020 Quarterly and the 2020 Annual campaign statements. The amended campaign statements due were filed on April 25, 2021.^[1]

Thereafter, on April 29, 2021, the City Clerk refused to not certify Ayers's name for placement on the ballot. Plaintiff filed an action for declaratory relief on the same day. She then filed a motion asking the court to decree that (1) Ayers failed to file seven amended campaign finance reports she was required to file under the MCFA, (2) Ayers made a false statement in her AOI when she affirmed that she had filed all required campaign finance reports, and (3) the City Clerk had a duty to not certify Ayers's name to the Commission under MCL 168.558(4). After briefing by all the parties and three motion hearings, the trial court denied plaintiff's motion and dismissed the complaint, concluding amended campaign finance reports did not fall within MCL 168.558(4) and that plaintiff had failed to demonstrate Ayers made a knowingly false statement in her AOI. Plaintiff now appeals.

II. MOOTNESS

We first address the applicability of the mootness doctrine because "the question of mootness is a threshold issue that a court must address before it reaches the substantive issues of a case." *Can IV Packard Square, LLC v Packard Square, LLC*, 328 Mich App 656, 661; 939 NW2d 454 (2019). An issue is moot if it is presented under circumstances "in which a judgment

¹ Additionally, on April 27, 2021, plaintiff filed a request with the Secretary of State and the State Director of Elections, asking that they take supervisory control and direct the City Clerk to not certify Ayers's candidacy. The Secretary of State and the State Director of Elections did not respond to the request by the deadline noted in plaintiff's e-mail.

cannot have any practical legal effect upon a then existing controversy.” *TM v MZ*, 501 Mich. 312, 317; 916 NW2d 473 (2018) (quotation marks and citation omitted). “However, a moot issue will be reviewed if it is publicly significant, likely to recur, and yet likely to evade judicial review.” *In re Indiana Mich Power Co*, 297 Mich App 332, 340; 824 NW2d 246 (2012).

In this case, the City Clerk certified Ayer’s name to the Commission for inclusion on the August 2021 primary ballot, the Commission has voted to include Ayers’s name on the ballot, and the election has already concluded. Therefore, a declaration that Ayers made a false statement on her AOI, possibly triggering a legal duty for the City Clerk to not certify Ayers’s name for inclusion on the August 2021 primary ballot, would not “have any practical legal effect upon” an existing controversy. *TM*, 501 Mich at 317. Nevertheless, we consider the merits of plaintiff’s appeal because “the strict time constraints of the election process necessitates that, in all likelihood, such challenges often will not be completed before a given election occurs” *Gleason v Kincaid*, 323 Mich App 308, 317; 917 NW2d 685 (2018). And, as a result, there is a reasonable expectation that the issues involved in this appeal could recur yet escape judicial review.

III. DECLARATORY JUDGMENT

A. STANDARD OF REVIEW

Plaintiff argues the trial court erred in denying her motion for declaratory judgment. “Questions of law relative to declaratory judgment actions are reviewed de novo, but the trial court’s decision to grant or deny declaratory relief is reviewed for an abuse of discretion.” *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 376; 836 NW2d 257 (2013). An abuse of discretion occurs when the trial court’s decision falls outside the range of reasonable and principled outcomes. *Barrow v Detroit Election Comm*, 305 Mich App 649, 662; 854 NW2d 489 (2014). “[T]he trial court’s factual findings will not be overturned unless they are clearly erroneous.” *Ter Beek v City of Wyoming*, 297 Mich App 446, 452; 823 NW2d 864 (2012). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed.” *Home-Owners Ins Co v Perkins*, 328 Mich App 570, 579; 939 NW2d 705 (2019).

B. ANALYSIS

To be included on the primary election ballot of any political party in this state, a candidate must “have filed nominating petitions according to the provisions of” the Michigan Election Law, MCL 168.1 *et seq.*, and complied with “all other requirements” of the law. MCL 168.550. The filing of certain documents—including AOIs—is governed by MCL 168.558. *Nykoriak v. Napoleon*, 334 Mich App 370, 376-377; 964 NW2d 895 (2020). Relevant to this appeal, subsection (4) provides:

An affidavit of identity must include a statement that as of the date of the affidavit, all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282, have been filed or paid; and a statement that the candidate acknowledges that making a false statement in the affidavit is perjury, punishable by a fine up to \$1,000.00 or

imprisonment for up to 5 years, or both. . . . An officer shall not certify to the board of election commissioners the name of a candidate who fails to comply with this section, or the name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section. [MCL 168.558(4).]

“The failure to supply a facially proper affidavit of identity (AOI), i.e., an affidavit that conforms to the requirements of the Election Law, is a ground to disqualify a candidate from inclusion on the ballot.” *Stumbo v Roe*, 332 Mich App 479, 480; 957 NW2d 830 (2020). Candidates are required to strictly comply with MCL 168.558. *Nykoriak*, 334 Mich App at 377.

Here, plaintiff contends that Ayers’s AOI contained a false statement related to the filing of amended campaign finance reports. In support, plaintiff submitted documentation from the County Clerk indicating that as of April 6, 2021, Ayers had not filed seven amended campaign finance reports. Plaintiff contends that because Ayers’s AOI contained a false statement indicating that she had filed all necessary statements and reports, MCL 168.558(4) required the City Clerk to not certify Ayers’s name to the Commission for inclusion on the August 2021 primary ballot. Further, she argues that the trial court should have ordered the Detroit City defendants to not include her name on the ballot.

The issue, then, is whether MCL 168.558(4) requires that all campaign finance reports and all amended campaign finance reports had been filed as of the date a candidate signs and files his or her AOI. The trial court determined that amended reports are not covered by MCL 168.558(4) because the failure to file an amended report does not erase the initial filing of the report. Ayers argues that the trial court’s determination was erroneous. We agree. MCL 168.558(4) provides that “*all* statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate’s election under the [MCFA] . . . have been filed or paid.” (Emphasis added). This language is unambiguous and extremely broad. Indeed, “there cannot be any broader classification than the word ‘all.’ In its ordinary and natural meaning, the word ‘all’ leaves no room for exceptions.” *Heritage Resources, Inc v Caterpillar Fin Serv Corp*, 284 Mich App 617, 642; 774 NW2d 332 (2009) (citation omitted). The plain language of the statute, therefore, applies without distinction to both an initial report and an amended report.

That does not end our inquiry, however. Relevant to the issues raised on appeal, MCL 168.558(4) requires a candidate to attest that all reports—amended or otherwise—that are required by the MCFA have been filed. As a result, Ayers’s statement that she had made the requisite filings is only false if the seven outstanding campaign finance reports were required to be filed under the MCFA.

There is no explicit reference to amended campaign finance reports in the MCFA. However, MCL 169.216 details what a filing official's obligations are when it receives a campaign finance report.² As relevant here, MCL 169.216(6) explains that a filing official must determine whether a filing complies with the MCFA. If the filing does not comply with the MCFA,

[w]ithin 4 business days after the deadline for filing a statement or report under this act, the filing official shall give notice to the filer by registered mail of an error or omission in the statement or report and give notice to a person the filing official has reason to believe is a person required to and who failed to file a statement or report.
[MCL 169.216(6) (emphasis added).]

Thereafter, under MCL 169.216(7), “[w]ithin 9 business days after the report or statement is required to be filed, *the filer shall make any corrections* in the statement or report filed with the appropriate filing official.” (Emphasis added.) Thus, a correction to a report or statement is itself a report or statement that is required to be filed under the MCFA.

The amended reports requested by the County Clerk on March 1, 2021, did not fall under the above provisions. The County Clerk requested the annual 2018, July 2019, October 2019, annual 2019, July 2020, October 2020, and annual 2020 reports, but that request was made more than four business days after the deadline for filing each report. See MCL 169.235(1) (requiring the filing of an annual report not later than January 31 of each year); MCL 169.233(1)(c) (requiring the filing of quarterly reports not later than July 25 and October 25 of each year). In addition, the County Clerk's email did not identify any error or correction in any of the seven campaign finance reports he requested. Instead, he asked that Ayers refile the reports *as previously filed*. Consequently, his request did not fall within the scope of MCL 169.216, and no party has identified any other provision of the MCFA that obligated Ayers to file a report or statement in response to the County Clerk's e-mail. Because the seven amended reports were not “required of the candidate . . . under the [MCFA],” MCL 168.558(4), there is no evidence that Ayers made a false statement when she swore to have filed all reports required under the MCFA. Further, because there was no false statement in the AOI, the trial court did not err by denying plaintiff's request for declaratory relief.³

² In this case, Ayers's campaign finance reports were required to be filed with the County Clerk. MCL 169.236(6). Thus, the County Clerk was the “filing official.” MCL 169.207(3).

³ Plaintiff also argues that the trial court erred by failing to follow this Court's opinion in *Burton-Harris v Wayne Co Clerk*, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 353999). However, our Supreme Court has vacated the portion of that case that plaintiff relies upon. *Burton-Harris v Wayne Co Clerk*, ___ Mich ___ (2021) (Docket No. 353999). Consequently, we discern no error in the court's decision to not apply *Burton-Harris*.

Moreover, there is no merit to plaintiff's argument that the trial court was bound by the County Clerk's determination that as of April 6, 2021, Ayers had seven outstanding amended campaign finance reports. Although the County Clerk was required to make that determination pursuant to MCL 169.216(6), there is no language mandating that the County Clerk's findings of

Affirmed. A matter of public significance being involved, no taxable costs are awarded.
MCR 7.219(A).

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto
/s/ Michael J. Kelly

fact may not be disputed in a court of competent jurisdiction, nor is there language precluding the trial court from reaching a different determination after review of the pertinent legal authority and factual background. Moreover, we note that, in this particular case, the County Clerk's letter only indicated that the seven amended campaign finance reports had not been filed. There was no indication in the letter that the reports were required to be filed under the MCFA.