

IN THE SUPREME COURT OF THE STATE OF NEVADA

MYRNA MCKINLEY; RENEE
MCKINLEY; JOAN T. WARD; AND THE
NEVADA STATE DEMOCRATIC
PARTY,
Appellants,
vs.
DEAN HELLER, NEVADA SECRETARY
OF STATE; AND RALPH NADER,
Respondents.

No. 43881

FILED

SEP 15 2004

JANETTE M. BLOCH
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellants' petition for a writ of mandamus and affirming respondent Nevada Secretary of State's decision to place the name of respondent Ralph Nader on the November 2004 ballot for the United States presidential office. First Judicial District Court, Carson City; William A. Maddox, Judge.

On August 24, 2004, appellants, the Nevada State Democratic Party and Myrna McKinley, Renee McKinley, and Joan T. Ward, who are registered voters in Clark County, filed in the district court a petition for writ of mandamus, challenging Mr. Nader's candidacy under NRS 298.109(4), which allows for challenges to a person's candidacy. In their petition, appellants contended that Mr. Nader did not meet the minimum required signatures since (1) signatures were allegedly verified by invalid circulators' affidavits, as these affidavits listed hotels or other commercial addresses instead of permanent residences; (2) signatures were allegedly obtained through misrepresentation and/or forgery; and (3) a number of signers were either not registered to vote, registered to vote at the same

time that they signed the petition, registered to vote after they signed the petition, or could not be found on the Clark County list of registered voters. Appellants also urged the district court to direct the Secretary of State to disqualify the whole petition, as the entire signature-gathering process was allegedly tainted by fraud and misrepresentation. According to appellants, writ relief was warranted, and they asked the district court to direct the Secretary of State to revoke any certification already issued as to the petition, and instruct the county clerks not to place Ralph Nader's name on the November 2004 ballot as a candidate for United States President. Although appellants challenged the petition's resulting verification, they did not question, in their petition, the means by which the candidacy petition was verified by the Secretary of State and the county clerks.

Mr. Nader opposed the petition, pointing out that NRS 298.109, which sets forth the requirement of a circulator affidavit, does not call for a circulator to list any residence. According to Mr. Nader, since the obligation for a circulator to list his or her residence is found in a Secretary of State regulation, this listing is optional. Mr. Nader also insisted that any questions regarding a circulator's legal domicile could be resolved by reference to the official journal of the notary public who notarized a respective circulator's affidavit.

The district court conducted a three-day expedited hearing on August 30 and 31, 2004, and September 1, 2004. At the hearing, the court considered the signed petition booklets, numerous third-party affidavits, affidavits of the appellants, and testimony from several witnesses. Appellants introduced evidence that at least sixteen of the circulators, who signed affidavits verifying 5,844 signatures, listed hotels or other

commercial addresses as their residences.

With regard to the allegations of misrepresentation and forgery, appellants Myrna and Renee McKinley testified that in July 2004, they were asked to sign a petition to repeal taxes, but were not advised by the circulators that the petition was in fact intended to qualify Ralph Nader for the 2004 ballot. The McKinleys also submitted affidavits to this effect, and appellants introduced other, third-party affidavits attesting that the signers signed the petition booklet without knowing the content of the petition. Appellant Joan T. Ward testified that in July 2004, she was asked to sign a petition in order to change her voter registration from non-partisan to democrat. According to Ms. Ward, she was not informed that the petition she signed was the Ralph Nader candidacy petition. Ms. Ward also testified that she only signed a single document, but later learned that her forged signature had been affixed to another document. In addition, appellants introduced five third-party affidavits from signers insisting that their signatures were forged.

As to appellants' contentions regarding a number of signers who were either not registered to vote, registered to vote at the same time that they signed the petition, registered to vote after they signed the petition, or could not be found, appellants introduced third-party affidavits and the affidavit of appellants' expert witness, Democratic Party statistical/computer expert, Ian Glinka. In his affidavit, Mr. Glinka explained that he established the number of disqualified signatures by comparing the candidacy petition against Clark County's voter registration list. Mr. Glinka testified extensively during the proceedings on the question of when particular individuals signed the candidacy petition and registered to vote, whether particular individuals were

registered to vote at all, and whether signers of the petition could be located. According to Mr. Glinka's testimony, 559 signers were not registered to vote at the time that they signed the candidacy petition, 814 signers were not registered to vote, and 1,905 signers could not be located on the Clark County voter registration list. Appellants also introduced approximately sixty-four form affidavits signed by third-party registered voters wishing to have their names removed from Mr. Nader's candidacy petition for various reasons, including (1) forged signatures, (2) the document that they signed was allegedly for a purpose other than qualifying Mr. Nader for the ballot, (3) they signed the document when they were not registered to vote, (4) the person who signed the verification affidavit was different from the circulator, and (5) the circulator represented that signing the petition was part of the voter registration process.

The district court also heard testimony from Jennifer Breslin, the independent contractor hired by Mr. Nader to oversee the signature-gathering process in Nevada; Harvard Lomax, Clark County Registrar of Voters; a Secretary of State's office employee; and one Clark County registrar of voters' employee. Ms. Breslin testified regarding the process she implemented to obtain valid signatures on behalf of Mr. Nader. Mr. Lomax also testified as to the signature-gathering process and stated that he did not receive any complaints concerning Ms. Breslin's methods for gathering valid signatures.

On September 1, 2004, at the end of the hearing, the district court rendered an oral decision denying the petition and affirming the Secretary of State's decision to place Mr. Nader's name on the November ballot. On the same day, the district court entered a written order that

expressly incorporated its oral decision.

The district court concluded that the term "reside" is ambiguous. After noting that NRS 298.109(2) does not require a circulator to list his or her residence at all, the court observed that since the regulation does not define the language, "reside," the term could mean the place where the circulator resides while gathering signatures. Accordingly, the court declined to direct the Secretary of State to disqualify the 3,529 signatures attached to the affidavits of circulators who listed hotels and commercial property as their residences.

Although the district court denied the petition, it nevertheless disqualified a total of 3,348 signatures. Specifically, it found that 559 signatures affixed to the petition were obtained before the signers had registered to vote. The court found that 814 signatures were from people who were not registered to vote. Also, the court concluded that 1,905 signatures could not be verified, since there was no record of those people on the Clark County voter registration list. The district court also disqualified the 6 forged signatures. And finally, the district court found that 64 signatures were obtained by misrepresentation and should be disqualified. Additionally, the district court determined that even with the disqualified signatures, the petition contained well over the 5,015 minimum signatures required. Finally, although the district court did not expressly reject appellants' contention that the entire petition should be barred because it was fraught with irregularities, the court implicitly rejected this contention. This appeal followed.

DISCUSSION

NRS 298.109(2) provides that each document in support of an independent candidate's petition for the office of United States President

must “contain the affidavit of the person who circulated the document that all signatures thereon are genuine to the best of his knowledge and belief and were signed in his presence by persons registered to vote in that county.” Although the statute requires an affidavit from a circulator, it is silent as to the form of the affidavit. NRS 293.124(2) authorizes the Secretary of State to adopt regulations to carry out his duties as chief elections officer. Pursuant to that authorization, the Secretary of State has adopted Nevada Administrative Code (NAC) 293.182(2)(b)(2). This provision, with emphasis added, requires a petition circulator to complete an affidavit “in substantially the following form”:

“STATE OF NEVADA
COUNTY OF _____

I, _____ (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that I believe them to be genuine signatures; and (6) that I believe each person who signed was at the time of signing a registered voter in the county of his residence.

Signature of circulator

Subscribed and sworn to or affirmed
before me this _____ day of _____, _____.

Notary public or other person licensed
to administer an oath.”

The Secretary of State has duly adopted NAC 293.182(2)(b)(2) under his statutory authority to do so.¹ The construction of an

¹See NRS 293.124(2).

administrative regulation is a question of law,² and “[r]ules of statutory construction apply to administrative regulations.”³ In interpreting a statute, provisions should be read together.⁴ When the language of a statute is expressly clear and unambiguous, the apparent intent must be given effect, as no room for construction exists.⁵ A statute is ambiguous if reasonable persons can assign it different meanings.⁶ When a statute is ambiguous, the plain meaning rule does not apply, and the intent of the Legislature must be ascertained in light of the statute’s object and purpose.⁷ In determining legislative intent, “[t]he meaning of the words used may be determined by examining the context and the spirit of the law or the causes which induced the legislature to enact it. The entire subject matter and policy may be involved as an interpretative aid.”⁸ Statutory interpretation should achieve a reasonable meaning and avoid meaningless or unreasonable results.⁹

²See State, Div of Insurance v. State Farm, 116 Nev. 290, 995 P.2d 482 (2000).

³Meridian Gold v. State, Dep’t of Taxation, 119 Nev. ___, ___, 81 P.3d 516, 518 (2003).

⁴See McKay v. Bd. of Supervisors, 102 Nev. 644, 648, 730 P.2d 438, 442 (1986).

⁵See id. at 649, 730 P.2d at 442.

⁶Id.

⁷Id. at 650-51, 730 P.2d at 442-43.

⁸Id. at 650-51, 730 P.2d at 443 (citation omitted).

⁹See, e.g., General Motors v. Jackson, 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995); Las Vegas Sun v. District Court, 104 Nev. 508, 511, 761 P.2d 849, 851 (1988).

The regulation's term "reside" could mean actual residence or legal domicile or could indicate that the circulator can choose which address to provide; thus the language is ambiguous. A review of the NAC fails to reveal the intent of the regulation's drafters. Since Nevada's election statutes do not contain a residency requirement for petition circulators, and the state's geography is vast, it is reasonable to expect an out-of-state or out-of town circulator to list either the local place where he or she is staying or a permanent address.¹⁰

NRS 293.127(1)(c) expresses the state's interest in ensuring that the people's will is served by state election laws. This statutory provision explains that election laws must be liberally construed to effectuate the will of the electors. Here, a significant number of registered voters signed the petition to place Ralph Nader on the November ballot, and their interest in having the choice to vote for him should not be negated.

Finally, as for appellants' contention that the entire signature-gathering process was allegedly tainted by fraud and misrepresentation, we conclude that the district court did not abuse its discretion by upholding the candidacy petition. The district court, while making no factual finding with respect to this issue, declined to direct the Secretary of State to strike the petition. Consequently, the district court implicitly


¹⁰Although appellants assert that under Williams v. Clark County District Attorney, 118 Nev. 473, 50 P.3d 536 (2002), "reside" must be read to mean actual residence and legal domicile, their reliance on Williams is misplaced. In Williams, this court examined and construed a statutory definition in concluding that the "residence" of a candidate for public office is his or her actual residence and legal domicile. That opinion has no bearing on what address must be provided by a petition circulator.

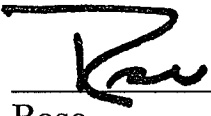
found that the petition was otherwise sound. A determination that the process was not overrun by fraud is supported by substantial evidence in the record.¹¹


We therefore conclude that the district court did not abuse its discretion in denying the writ petition,¹² and we affirm the district court's order.

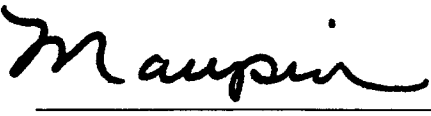
It is so ORDERED.¹³

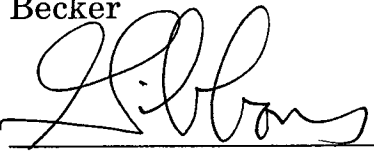
 C.J.
Shearing

 J.
Agosti

 J.
Rose

 J.
Becker

 J.
Maupin

 J.
Gibbons

 J.
Douglas

cc: Hon. William A. Maddox, District Judge
Lionel Sawyer & Collins/Las Vegas
Attorney General Brian Sandoval/Carson City
Keith Loomis
Carson City Clerk

¹¹See Idaho Resources v. Freeport-McMoran Gold, 110 Nev. 459, 460, 874 P.2d 742, 743 (1994).

¹²See Clark County v. Doumani, 114 Nev. 46, 952 P.2d 13 (1998).

¹³In light of this order, we need not address appellants' remaining issues.