

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean Gill, Robert Smith, Tim Ramos, :
and Jackie Rivera, :
Appellants :

v. :

Lehigh County Board of Elections, :
Phillips Armstrong, Jennifer Allen, :
Dennis Nemes, Timothy A. Benyo, :
and Diane Gordian :

No. 1135 C.D. 2022
Heard: October 21, 2022

v. :

Pennsylvania Alliance for Retired :
Americans :

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

FILED: October 24, 2022

Sean Gill, Robert Smith, Tim Ramos and Jackie Rivera (Appellants) appeal from an October 18, 2022 decision of the Court of Common Pleas of Lehigh County (trial court) that denied their motion for a preliminary injunction. Appellants have also filed an Emergency Application for Stay and Injunction Pending Appeal in Election Related Matter (Application), which is the matter currently before this Court for disposition. On October 21, 2022, this Court issued an Order denying the Application, and we now issue the following opinion in support of that Order.

On September 1, 2022, Appellants filed a Complaint in Equity and Mandamus (Complaint) in the trial court and requested a special and preliminary injunction that sought to: 1) enjoin the Lehigh County Board of Elections (Board) from using drop-boxes to receive absentee or mailed ballots unless they are physically monitored in-person to assure that the person delivering the ballot is only delivering his or her own ballot, unless the person is an authorized designated agent of a disabled voter with the proper affidavit signed by the voter and verified by the election board; 2) enjoin the Board from accepting, counting, or canvassing any mailed or absentee ballot that was delivered by a person other than the voter himself or herself, except for ballots delivered by an authorized designated agent of a disabled voter; and 3) compel the Board to fulfill its statutory duties to assure that void and invalid ballots are not commingled with valid ballots and not counted in the November 8, 2022 General Election and all elections thereafter. Appellants also filed a petition for emergency special injunction on September 6, 2022 seeking the same relief.

On September 9, 2022, the parties entered into a Stipulation agreeing that the Board would not receive any ballots at drop-box locations until an October 7, 2022 hearing on the request for a preliminary injunction and further order of the trial court, but also agreeing that the Board may receive mailed and absentee ballots in person between the hours of 8:00 am and 4:00 pm in the Lehigh County Government Center. The parties further agreed that the Board would not accept, count, or canvass any mailed or absentee ballot in situations where the Board would reasonably know that those ballots were delivered by a person other than the voter themselves, unless such ballot was delivered by the authorized agent of a disabled voter.

On October 18, 2022, following the hearing, the trial court denied Appellants' request for a preliminary injunction. Appellants thereafter sought a stay from the trial court. In an October 20, 2022 order denying the stay, the trial court noted that Appellants' claims of alleged harm of potential voter dissolution were speculative and that, for this reason, they did not meet the requirements for an injunction. Further, the trial court stated that

Most importantly, many Lehigh County voters use drop boxes to securely and timely deliver their ballots to select a candidate of their choosing. Accordingly, significant public interest factors would certainly be affected by the elimination of drop boxes, and such action would be contrary to the permitted actions of the Board under the authority granted it in the decision of *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), which permitted a county to use drop boxes for the receipt of mail-ballots. Therefore, [Appellants'] motion and application are denied.

(Trial Court's 10/20/2022 Order, p. 2, n.1). Appellants' Application to this Court followed.

A supersedeas/stay is warranted where:

1. The petitioner makes a strong showing that he is likely to prevail on the merits.
2. The petitioner has shown that without the requested relief, he will suffer irreparable injury.
3. The issuance of a stay will not substantially harm other interested parties in the proceedings.
4. The issuance of a stay will not adversely affect the public interest.

Pa. Pub. Util. Comm'n v. Process Gas Consumers Grp., 467 A.2d 805, 808-809 (Pa. 1983). For a stay to issue, the petitioner must make a strong showing on all four *Process Gas* criteria. *Id.* at 809.

Appellants also request preliminary injunctive relief from this Court. To warrant a preliminary injunction, a party must establish the following six essential prerequisites:

(1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest.

SEIU Healthcare P[a.] v. Commonwealth, . . . 104 A.3d 495, 502 ([Pa.] 2014) (citing *Warehime v. Warehime*, . . . 860 A.2d 41, 46-47 ([Pa.] 2004)). Because the grant of a preliminary injunction is an extraordinary remedy, the failure to establish a single prerequisite requires the denial of the request for injunction. *Summit Towne [Centre Inc. v. Shoe Show of Rocky Mount, Inc.]* . . . 828 A.2d 995, 1000 (Pa. 2003)], 828 A.2d at 1000.

SPTR, Inc. v. City of Philadelphia, 150 A.3d 160, 166 (Pa. Cmwlth. 2016). The burden of proving each prerequisite rests on the moving party. *Weeks v. Dep't of Human Servs.*, 222 A.3d 722 (Pa. 2019); *SEIU Healthcare*; *Summit Towne*.

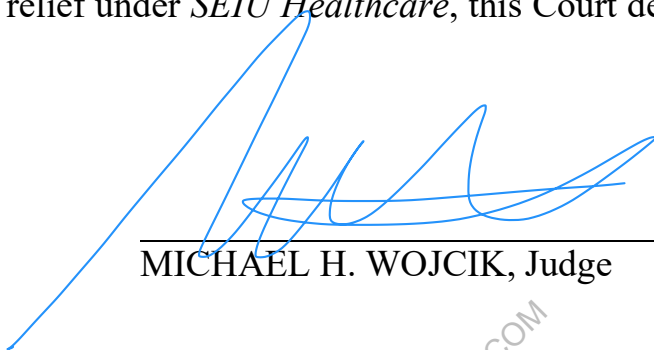
On October 21, 2022, this Court held argument on Appellants' Application. Following argument, this Court denied the Application, as it agreed with the reasoning of the trial court set forth in its October 20, 2022 Order. Specifically, the trial court denied the relief requested by Appellants because the harm they alleged was speculative and because the use of drop-boxes has been approved by our Supreme Court. The Court notes that, in *Pennsylvania Democratic Party v. Boockvar* (*Boockvar*), the Pennsylvania Supreme Court stated that

. . . we need not belabor our ultimate conclusion that the Election Code [Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-35910] should be interpreted to allow county boards of election **to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes**. This conclusion is largely the result of the clear legislative intent underlying Act 77 [of 2019], which animates much of this case, to provide electors with options to vote outside of traditional polling places. Section 3150.16(a) of the Election Code [25 P.S. § 3150.16,] undeniably exemplifies this intent by granting the Pennsylvania electorate the right to vote by way of a mail-in ballot beyond the circumstances that ordinarily allow this alternative, such as voter absenteeism.

Boockvar, 238 A.3d at 361 (emphasis added).

Given the Supreme Court's ruling in *Boockvar*, this Court concludes that Appellants have failed to establish that they are likely to prevail on the merits of their appeal. In *Boockvar*, our Supreme Court specifically held that the use of ballot drop-boxes is permitted under the Election Code. Further, Appellants ask this Court to set forth guidelines for the use of ballot drop-boxes, which guidelines do not appear in the Election Code. As crafting new requirements for the use of ballot drop-boxes appears to be beyond the scope of this Court powers, and instead lies

solely in the province of the legislature, the Court declined Appellants' request for preliminary injunctive relief seeking to force the Board to change the way it administers its ballot drop-boxes. Because Appellants failed to establish a likelihood of success on the merits, which is required for both a stay under *Process Gas* and preliminary injunctive relief under *SEIU Healthcare*, this Court denied Appellants' Application.



MICHAEL H. WOJCIK, Judge

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