

SUPREME COURT OF ARIZONA

DAVID MAST AND TOM CROSBY,) Arizona Supreme Court
) No. CV-23-0217-SA
Plaintiffs,)
)
v.)
)
KATIE HOBBS, IN HER OFFICIAL)
CAPACITY AS GOVERNOR OF ARIZONA,)
KRIS MAYES, IN HER OFFICIAL)
CAPACITY AS ATTORNEY GENERAL OF)
ARIZONA, ADRIAN FONTES, IN HIS)
OFFICIAL CAPACITY AS SECRETARY)
OF STATE OF ARIZONA, STEPHEN)
RICHER, IN HIS OFFICIAL CAPACITY) **FILED 8/24/2023**
AS MARICOPA COUNTY RECORDER;)
SCOTT JARRETT, IN HIS OFFICIAL)
CAPACITY AS MARICOPA COUNTY)
DIRECTOR OF ELECTIONS; REY)
VALENZUELA, IN HIS OFFICIAL)
CAPACITY AS MARICOPA COUNTY)
DIRECTOR OF ELECTIONS; BILL)
GATES, CLINT HICKMAN, JACK)
SELLERS, THOMAS GALVIN, AND)
STEVE GALLARDO IN THEIR OFFICIAL)
CAPACITIES AS MEMBERS OF THE)
MARICOPA COUNTY BOARD OF)
SUPERVISORS; AND THE MARICOPA)
COUNTY BOARD OF SUPERVISORS)
)
Defendants.)
)
_____)

ORDER

A panel consisting of Chief Justice Brutinel, Vice Chief Justice Timmer, and Justices Montgomery and King have considered this matter.

On August 17, 2023, Plaintiffs David Mast and Tom Crosby filed a "Combined Complaint for Special Action Arizona

Constitution: Articles II, §§ 13, 21 & Article VII §§ 1 & 12,
United States Constitution Fourteenth Amendment: Equal
Protection & Fundamental Right to Vote, & 42 U.S.C. § 1983.”

Plaintiffs allege that Maricopa County, in conducting the 2022 General Election, neglected its statutorily-imposed duty to ensure equal treatment of absentee ballots and proper adherence to the safeguards established by the Arizona Legislature. Plaintiffs cite to A.R.S. § 16-550(A), the signature verification statute, and claim that Maricopa County did not use the correct signature verification procedures. Plaintiffs request that this Court (1) issue a writ of mandamus or order instructing Maricopa County elections officials and State elections officials to decertify the statewide and Maricopa County canvasses for the 2022 General Election because the results from Maricopa County counted a material number of vote-by-mail ballots in violation of A.R.S. § 16-550(A), a “non-technical” and nondiscretionary law, and (2) order a recount of all vote-by-mail ballots cast in Maricopa County. Should that prove “legally impossible,” Plaintiffs request the Court order a statewide recanvass based only on the legal votes cast in other counties or, in the alternative, order Maricopa County elections officials to decertify all statewide races for the 2022 General Election and order a new election be conducted in Maricopa

County in a manner that ensures strict compliance with Arizona election safeguards.

Plaintiffs contend that bringing their case in the superior court instead of this Court would add months of litigation and unnecessary expenses for both Plaintiffs and Defendants.

Plaintiffs filed their special action complaint in this Court nine months after the 2022 General Election. According to Plaintiffs, they "seek a writ of mandamus to compel Defendants, state and county officials performing government functions, to honor the Signature Verification statute—a nondiscretionary law from which elections officials have no discretion to deviate." Plaintiffs contend that elections officials violated A.R.S. § 16-550(A), citing evidence that includes hearing transcripts from another proceeding, *Lake v. Hobbs, et al.*, CV 2022-095403. As addressed by Judge Thompson in an order filed on May 22, 2023, "[t]here is clear and convincing evidence that the elections process for the November 8, 2022, General Election did comply with A.R.S. § 16-550," (emphasis added). Parties to a trial court proceeding may file an appeal in accordance with applicable court rules and may not challenge the trial court ruling in a special action proceeding. See Ariz. R.P. Spec. Act 8(a) (limiting special actions to cases where there is "no equally plain, speedy and adequate remedy by appeal").

Plaintiffs, who are not a party in CV 2022-095403, therefore cannot use a special action before this Court as an attempt to collaterally appeal Judge Thompson's May 22nd order. Additionally, mandamus relief through a special action in this Court is not appropriate where resolution depends on disputed facts. See *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 405 ¶ 20 (2020) (accepting special action jurisdiction in case "where most of the key facts . . . are not in dispute").

Moreover, under Rule 7(b), "If a special action is brought in any appellate court, and if such an action might lawfully have been initiated in a lower court in the first instance, the petition shall also set forth the circumstances which in the opinion of the petitioner render it proper that the petition should be brought in the particular appellate court to which it is presented. If the appellate court finds such circumstances insufficient, the court will on that ground dismiss the petition." Rule 7(b), Arizona Rules of Procedure for Special Actions. Plaintiffs did not provide a compelling reason as to why this matter could not be initiated in a lower court, including the superior court, which has the ability to consider any evidence presented in accordance with court rules and make factual findings. Upon consideration,

IT IS ORDERED dismissing the special action complaint without prejudice to Plaintiffs filing it in another court.

IT IS FURTHER ORDERED declining Plaintiffs' request for attorney fees and costs.

DATED this 24th day of August, 2023.

/s/

KATHRYN H. KING
Duty Justice

TO:
Ryan L Heath
Nakisa M Azizi
Amber Terry
Alexander Haberbush
Deborah L Pauly

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