



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BESSEMER DIVISION**

COOPER EDDIE MR.,
Plaintiff,

V.

DEAN BRANDON MR.,
Defendant.

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Case No.: CV-2016-900602.00

FINAL ORDER

This is an election contest.

Plaintiff Eddie Cooper (hereafter referred to as "Plaintiff" or "Cooper"), a candidate for the office of Mayor of the City of Brighton, Alabama during the 2016 mayoral election claims Defendant Mayor Brandon Dean (hereafter referred to as "Defendant" or "Dean") is not qualified to hold the office of Mayor of the City of Brighton, Alabama because he was not a resident of Brighton for the 90 day period prior to the election date. Cooper seeks an Order from the Court removing Dean from office and installing him as Mayor.

Alternatively, Cooper contends that illegal absentee ballots were cast during the election and discounting these ballots would result in Dean not receiving a majority of the votes cast. Under this alternative theory Cooper wants the Court to Order a run-off election between he and Dean.

Dean denies these allegations.

This case was called to trial on August 7, 2017 before the undersigned. Sworn testimony and other evidence was received on August 7th and August 8th with closing argument

presented on August 9th. During trial the Court had the opportunity to hear the testimony of the parties and witnesses and observe their demeanor both on and off the witness stand.

Based upon the same and the evidence submitted to the Court and the applicable law the Court makes the following finding of facts, analysis and conclusion.

I. EVIDENTIARY SUBMISSIONS AND FINDING OF FACTS

A. ELECTION RESULTS

On August 23, 2016 municipal elections were held in the City of Brighton, Alabama resulting in the following results for the Office of Mayor: Brandon Dean - 376 votes (52%); Eddie E. Cooper - 195 votes (27%); Barbara E. “Bobbie” Watkins - 74 votes (10%); Tyrone Rudolph - 42 votes (6%) and, Annie Woods - 30 votes (4%).

B. PLAINTIFF’S RESIDENCY CLAIM

Plaintiff contends Defendant was not a resident of the City of Brighton, Alabama for the time period required by law to qualify to run for elective municipal office.

Defendant denies this contention and claims 4508 Letson Street, Brighton, Alabama has been his residence for years prior to 2016, throughout 2016 and remains his residence to date. Plaintiff presented evidence from Reverend Tyrone Banks, Defendant’s uncle; Juanita Dean, Defendant’s grandmother; and the Defendant himself in an attempt to establish that Dean was not a resident of the City of Brighton for the requisite 90 day time period prior to the election. Reverend Banks testified that he lives at 4506 Letson Street, Brighton which is next door to 4508 Letson Street and that although he does not believe 4508 was Dean’s permanent residence he could not say so for sure. However, he was sure that he saw Dean on a much more frequent

basis at 4508 Letson Street prior to the date of the 2016 Brighton municipal election than after the election.

Dean's grandmother Juanita Dean testified that Dean lived with her at the 2508 Letson Street address for years and that it was his permanent residence. She testified that this was the fact although Dean may spend the night on occasion at his girlfriend's house or in Atlanta due to his work. She further testified that he stayed in the second bedroom in the house and kept his clothes and personal belongings there.

Dean himself testified that even while he was in Washington D. C. attending college at Howard University he always considered 4508 Letson Street his permanent residence. He testified that prior to the 2016 election he would stay at 4508 at least 3 or 4 days out of the week. He further testified that while other family members have stayed at the residence on occasion (e.g., his sisters intermittently during 2016), he now lives there alone with his grandmother.

Dean further testified that since the election he has entered into a short term lease on a condo in Atlanta, Georgia to facilitate his work there but, he lives at 4508 from 10 - 15 days out of each month. He also testified that he has continually used the 4508 address for income tax purposes and to receive important mail there through the years.

Based upon the evidence presented the Court finds that Dean's legal residence for the 90 day time period prior to the date of the 2016 Brighton Municipal election was, and through the date of trial is 4508 Letson Street, Brighton, Alabama.

C. PLAINTIFF'S ILLEGAL ABSENTEE VOTE CLAIM

Cooper contends that the voting paperwork submitted by certain absentee voters was

improperly filled out. He specifically contends either: (1) the voters themselves did not sign the required forms; (2) the voters improperly listed Dean's address as the "address where they regularly received mail" when they did, in fact, not regularly receive mail at Dean's address; or, (3) the voters did not live within the city limits of Brighton.

The Court takes judicial notice that generally, the proper procedure to vote by absentee ballot in Alabama is to make a written request. Two documents must be submitted to the Absentee Election Manager (the Brighton City Clerk in this case): (1) an "Application for Absentee Ballot;" and, (2) an "Affidavit of Absentee Voter." Both must be signed by the voter: the Application need not be witnessed unless the voter signs by mark - the Affidavit must be either notarized or signed by two witnesses to the voter's signature or mark.

The voter must indicate one of the following reasons for voting absentee on the Affidavit of Absentee Voter:

- *I will be out of the county or the state on Election Day;

- *I am physically incapacitated and will not be able to vote in person on Election Day;

- *I work a required workplace shift which has at least 10 hours which coincide with the polling hours at my regular polling place;

- *I am a student at an educational institution located outside the county of my permanent residence and am therefore unable to vote at my usual polling place on election day;

- *I am a member of or a spouse or dependent of a member of the armed forces of the United States or am otherwise entitled to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff;

- *I have been appointed as an election officer at a polling place which is not my regular

polling place.

The voter must indicate on the Application for Municipal Absentee Ballot where to “[m]ail my ballot to the address where I regularly receive mail” if that address is different from the address where the voter is registered to vote.

1. INCONSISTENT SIGNATURE CLAIM

Cooper’s first witness was Steve Drexler, a forensic document and handwriting analysis expert who’s qualifications and expertise were not challenged by Dean.

Drexler testified that he had been hired by Plaintiff to examine the Application for Municipal Absentee Ballot with the Affidavit of Absentee Voter submitted during the August 2016 Brighton Municipal election. When possible, he compared the affixed signatures with a known signature (e.g., the signature on a drivers license).

Drexler found that the signature on 21 Applications for Absentee Ballot were different from the corresponding signature on the Affidavit of Absentee Voter, to wit, those evidenced on Plaintiff’s Exhibits 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

Drexler’s testimony was not objected to or controverted in any way by Dean and the Court both found his testimony and analysis credible and compelling and further adopts his factual conclusion that these Applications and corresponding Affidavits were signed by different individuals.

2. IMPROPER MAILING ADDRESS CLAIM

Dean testified that his 4508 Letson Street residence was also used as his campaign headquarters. He admits that he and his campaign workers encouraged prospective absentee

voters to use this address as one where they could receive their absentee ballot and list as an address where they regularly received mail. At least one witnesses testified that they did not know why 4508 Letson Street was used as an address where they regularly received mailed and further testified that Dean's campaign workers filled out their absentee voter paperwork.

Cooper challenges the following 19 absentee votes for improperly listing [the] "address where I regularly receive mail, if different from the street address provided above" as 4508 Letson Street, Brighton, Alabama, to wit: those votes evidenced on Plaintiff's Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22.

Of these 19 absentee voters Dean himself testified that 16 of them did not regularly receive mail at his 4508 Letson Street address. He testified the voters evidenced by Plaintiff's Exhibit 11 and 16 had lived at 4508 Letson Street and that the voter evidenced by Plaintiff's Exhibit 20 would receive mail at 4508 Letson Street. This testimony, however, does not convince the Court that any of these voters "regularly received mail" at his address.

3. FALSE REASON FOR VOTING ABSENTEE CLAIM

Absentee Voter evidenced by Plaintiff's Exhibit 61 was called to the witness stand by Cooper. She testified that although she marked "[having] a physical illness or infirmity which prevents my attendance at the polls" as the reason she voted absentee, she admitted and the Court finds that it was her brother who was infirm and that she was afraid that caring for him might prevent her from being able to vote on election day. She further testified that she was in fact present at Brighton City Hall on election day during voting hours.

Cooper called to the witness stand absentee voter evidenced by Plaintiff's Exhibit 62 who testified that although he marked "I work a shift which has at least ten (10) hours that

coincide with the polling hours at my regular polling place” as the reason he voted absentee, he admitted, and the Court finds, that this was not the case. He further testified that he was actually present at Brighton City Hall on election day during voting hours.

Defendant’s only witness testified and the Court finds that although he voted absentee in the Brighton election: (1) there was nothing preventing him from voting during the regular voting hours on August 23, 2016; and, (2) he was actually a resident of the City of Vestavia when he voted and that he had lived in Vestavia for the past two years and his two minor children were students in the Vestavia school system. This witnesses’ Application and Affidavit are admitted into evidence as Plaintiff’s Exhibit 41.

4. OTHER ILLEGAL VOTE CLAIM

Plaintiff also contends: (1) that the absentee vote evidenced by Plaintiff’s Exhibit 63 should not be counted because Dean testified this individual lived in Pleasant Grove, Alabama and not Brighton; and (2) that the absentee votes evidenced by Plaintiffs Exhibit 64, 65 and 70 should not be counted because Dean himself testified that they did not regularly receive mail at 4508 Letson Street.

The Court finds the voter evidenced in Plaintiff’s Exhibit 63 in fact lived in Pleasant Grove on the date of the election. The Court also finds that the voters evidenced in Plaintiff’s Exhibits 64 and 70 did not regularly use Dean’s address for the receipt of mail. Dean did testify that the voter evidenced in Plaintiff’s Exhibit 65 received mail at his house but the Court is not convinced that this voter “regularly received mail” at Dean’s address.

II. LEGAL ANALYSIS

A. DEAN'S LEGAL RESIDENCE

The Court has made the factual finding that Dean resided for the requisite time period at 4508 Letson Street, Brighton, Alabama and concludes that this address was his legal residence. Dean therefore, was eligible to run for the office of Mayor of the City of Brighton, Alabama. *See*, § 11-44F-1 ALA. CODE (1975).

B. ILLEGAL ABSENTEE VOTE CLAIM

1. INCONSISTENT SIGNATURES

The signature contained on the Application for Absentee Ballot and the Affidavit of Absentee Voter must be by the same individual voter applying to vote absentee. There is no provision in Alabama law authorizing another person to sign in the voter's place. *See, generally, Long v. Bryant*, 992 So.2d 673 (Ala. 2008). Thus, all 21 votes evidenced by Plaintiff's Exhibits 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 are hereby discounted and held for naught.

2. FALSE MAILING ADDRESS

Alabama law is likewise clear that if one wants their absentee ballot mailed to them at an address different from the address they list as their residence it must be one where they regularly receive mail. *Long v. Bryant, supra*. Thus, all 19 votes evidenced by Plaintiff's Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 as well as the three votes evidenced by Plaintiff's Exhibits 64, 65 and 70 are hereby discounted and held for naught.

3. FALSE REASON FOR VOTING ABSENTEE

The absentee voters evidenced by Plaintiff's Exhibit 61 and 62 gave false reasons for voting absentee. Both absentee voters, in fact, were present at Brighton City Hall on election

day during polling hours. Both votes are hereby discounted and held for naught. § 17-11-3 ALA. CODE (1975). *Long v. Bryant, supra*.

4. IMPROPER ABSENTEE VOTER RESIDENCE

Defendant's sole witness admitted that he actually lived in Vestavia Hills and the vote of that witness as evidenced by Plaintiff's Exhibit 41 has already been discounted. However, the vote evidenced by Plaintiff's Exhibit 63 must also be discounted as Dean testified he had personal knowledge that this voter actually lived in Pleasant Grove, Alabama. *See*, § 11-44F-1 ALA. CODE (1975).

III. COMPUTATION OF LEGAL VOTES

As discussed above, 46 illegal absentee votes must be discounted both from the total number of votes cast during the 2016 Brighton Mayoral Election and from Dean's total. After these deductions, Dean must obtain a majority of the legal votes cast to avoid a run-off election. § 11-46-142 ALA. CODE (1975).

The total votes cast for mayor during the election August 2016 election was 717. From this number the 46 illegal absentee votes must be deducted leaving a total of 671 legal votes cast. To avoid a run-off Dean must receive a total of 336 votes.

Dean received 376 votes during the election. From this total 46 illegal absentee votes must be deducted leaving Dean with a total of 330 votes.

IV. CONCLUSION

The Court hereby finds that the Defendant did not receive the requisite number of votes to be declared the winner of the 2016 Mayoral Election for the City of Brighton, Alabama. Thus, the Court hereby DECLARES AND ORDERS AS FOLLOWS:

1. A vacancy exists in the Office of Mayor for the City of Brighton, Alabama;
2. A run-off election pursuant to applicable Alabama law shall forthwith take place;
3. Counsel for the parties' shall immediately deliver a copy of this Order to each member of the Brighton City Council and to the Brighton City Clerk; and,
4. Costs of this action are taxed as paid. Any requests for relief not specifically granted within this Order are hereby deemed to be denied.

DONE this 25th day of September, 2017.

/s/ HON. EUGENE R. VERIN
CIRCUIT JUDGE
