

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charles B. Kallas,
Appellant-Plaintiff,

v.

Lake County Board of Elections
and Registration,
Appellee-Defendant.

February 22, 2023

Court of Appeals Case No.
22A-PL-906

Appeal from the Lake Superior
Court

The Honorable John M. Sedia,
Judge

Trial Court Cause No.
45D01-2108-PL-613
45D01-2108-PL-614

Memorandum Decision by Judge Mathias
Judges Bradford and Pyle concur.

Mathias, Judge.

[1] Charles B. Kallas appeals the Lake Superior Court’s denial of his petition for judicial review following an adverse decision by the Lake County Board of Elections and Registration (“the Board”). Kallas likewise appeals the trial court’s denial of his motion to correct error and his motion to set aside the judgment. Kallas raises five issues for our review, which we restate as the following four issues:

1. Whether the designated evidence established a genuine issue of material fact as to whether a member of the Board was also a member of a political candidate’s committees.
2. Whether Kallas preserved for judicial and appellate review various assertions that the Board violated his due-process rights.
3. Whether the trial court imposed improper procedures on Kallas in its consideration of his petition for judicial review.
4. Whether the trial court abused its discretion when it denied Kallas’s motion to correct error and motion to set aside the judgment.

[2] We affirm.

Facts and Procedural History¹

- [3] On May 4, 2021, Kallas filed a complaint with the Board in which he alleged that the Board’s chairman, Kevin Smith, was serving on the Board in violation of Indiana law. In particular, Kallas alleged that Smith had served as a member of a political candidate’s committee, McDermott for Congress, which City of Hammond mayor Thomas McDermott, Jr. had established in his bids for a seat in Congress. Kallas further alleged that Smith had served as a member of the candidate’s committee McDermott for Hammond, which McDermott had established in his re-election bids for mayor. A candidate’s committee, also called a principal committee, *see Ind. Code § 3-5-2-7 (2022)*, is a required committee for certain political campaigns, *see I.C. § 3-9-1-5(b)*. Candidate’s committees are subject to numerous filing and reporting requirements, *see I.C. §§ 3-9-1-1 to -26; I.C. §§ 3-9-5-1 to -22*, in particular with respect to reporting campaign contributions and expenditures, *see I.C. § 3-9-5-14*.
- [4] In light of his allegations, Kallas asserted that Smith was ineligible to serve on the Board pursuant to [Indiana Code sections 3-6-5-3\(a\)\(1\) and 3-9-1-2](#). [Indiana Code section 3-6-5-3\(a\)\(1\)](#) states: “A person who is a candidate for elected office *or a member of a candidate’s committee* may not be appointed as . . . a member of a county election board” (Emphasis added.) [Indiana Code section 3-9-1-2](#) provides: “Each [candidate’s] committee must have a chairman and a treasurer

¹ We reject Kallas’s request to strike the statement of facts presented by the Board in its brief on appeal.

who are ex officio members of the committee.” The Indiana Code similarly provides that “[a] candidate is an ex officio member of the candidate’s committee,” [I.C. § 3-9-1-8](#), and “[a] candidate may be chairman, treasurer, or both chairman and treasurer of the candidate’s committee,” [I.C. § 3-9-1-7](#). Among other duties, a county election board conducts at least some oversight of local candidate’s committees and has exclusive jurisdiction to disband a candidate’s committee for local office. *See* [I.C. § 3-9-1-12\(d\)\(1\)](#).

[5] Attached to his complaint, Kallas included various exhibits. Specifically, Kallas included a screenshot of the McDermott for Hammond campaign website, which identified Smith as a “Campaign Manager.” Appellant’s App. Vol. 2, p. 25. Kallas also included a Statement of Organization form from the McDermott for Congress committee, which had been filed with the Federal Elections Commission. That form identified Smith as the “Manager” and “Designated Agent” for that committee. *Id.* at 34. Along with that form, Kallas included committee expenditure reports from McDermott’s candidate’s committees, which showed payments from the committees to Smith for “[r]eimb[ur]sement of] campaign expenses” and for “[p]olitical . . . expenses.” *Id.* at 27-30. Kallas also introduced evidence that Smith had appeared on a local radio station campaigning for McDermott’s attempt to secure a seat in Congress.

[6] The Board set a hearing on Kallas’s complaint for July 20 and provided Kallas with notice of that hearing. Kallas appeared in person. At the commencement of the hearing, Michelle Fajman, the Board’s Director, took roll call of the Board members present. Fajman recognized that Smith had filed a

“letter . . . appointing” Jim Wieser as Smith’s proxy and acting chairman for the hearing. *Id.* at 162. Fajman stated that Wieser had been a proxy previously and that the Board had his “oath on file.” *Id.* Kallas did not object to Wieser serving as Smith’s proxy at any time during that hearing.

[7] After some formalities and other matters, the Board proceeded to hear Kallas’s complaint regarding Smith’s membership on the Board. As the Board did so, one of the Board’s attorneys recused herself from providing advice to the Board on Kallas’s complaint. Kallas did not object to the attorney’s recusal or to the Board continuing to receive advice from a remaining attorney.

[8] The Board then informed Kallas that Smith’s attorney had filed a motion to dismiss Kallas’s complaint with the Board. When Kallas stated that he had not received the motion to dismiss, the Board provided him with a copy. The Board then proceeded to consider the merits of both Kallas’s complaint and the motion to dismiss without objection from Kallas.

[9] In considering the merits of the complaint and the motion, the Board took into account Kallas’s exhibits, with Wieser noting that the exhibits “show[] that [Smith was] not . . . the candidate[] and not the treasurer” of either committee. *Id.* at 191. Another Board member then asked Kallas if it was his “contention that someone can be a member of a [candidate’s] committee without being [the] candidate or the treasurer?” *Id.* at 194. Kallas responded that that was his contention. Multiple Board members expressed concern that that interpretation “would leave you with an election board with nobody on it.” *Id.* at 197. Wieser

added that “the evidence was introduced and does show . . . that Mr. Smith is an agent [H]e can’t be a principal if he’s an agent.” *Id.* at 197-98.

[10] Two Board members then moved to grant Smith’s motion to dismiss. After clarifying that the Board was “converting” the motion to dismiss “into a motion for summary judgment” based on the consideration of the Kallas’s exhibits, the Board unanimously granted Smith’s motion. *Id.* at 202-03.

[11] Thereafter, Kallas filed a complaint for declaratory judgment on the same subject matter in the Lake Superior Court, which the court converted to a petition for judicial review from the Board’s adverse decision.² After reviewing the record, the court concluded that Kallas had not preserved various due-process arguments he made to the trial court. The court further concluded that the Board’s decision on Kallas’s complaint was not contrary to law, and the court affirmed the Board’s decision.

[12] Kallas filed a motion to correct error and a motion to set aside the judgment. In those motions, Kallas alleged two pieces of newly discovered evidence. First, he asserted that a public records request showed that Wieser’s oath of office as Smith’s proxy was stamped as having been received the day after the July 20 hearing before the Board. According to Kallas, this showed that Wieser’s participation at the July 20 hearing was contrary to law. Second, Kallas asserted

² Judicial review in the trial court of an adverse decision of a county election board is authorized under [Indiana Code section 3-6-5-34](#).

that, the day before the July 20 hearing, the McDermott for Hammond committee contributed \$500 to a re-election committee for Lorenzo Arredondo, another Board member. According to Kallas, this showed an undisclosed conflict of interest that also rendered the Board’s judgment contrary to law.

[13] The trial court denied Kallas’s motion to correct error and his motion to set aside judgment. This appeal ensued.

Standard of Review

[14] Kallas appeals the trial court’s denial of his petition for judicial review. In general:

A trial court may examine an election board’s decision to determine if it was incorrect as a matter of law. *Clay v. Marrero*, 774 N.E.2d 520, 521 (Ind. Ct. App. 2002). However, it may neither conduct a trial de novo nor substitute its decision for that of the board. *Id.* Unless the decision is illegal, the decision must be upheld. *Id.* On appeal, we are restricted by the same considerations. *Id.* In essence, an abuse of discretion standard applies. *Id.*

Price v. Lake Cnty. Bd. of Elections & Registration, 952 N.E.2d 807, 809 (Ind. Ct. App. 2011).³ An abuse of discretion occurs where the decision is contrary to the

³ As we noted in *Price*:

the Indiana Administrative Orders and Procedures Act (AOPA) does not apply to county election boards. See Ind. Code § 4-21.5-1-3 (“Agency’ means any officer, board, commission, department division, bureau, or committee of *state* government that is responsible for any stage of a proceeding under this article.” (emphasis added)); *Clay*, 774

logic and effect of the facts and circumstances before the decision maker, or where the decision is contrary to law. *E.g.*, *Bruder v. Seneca Mortg. Servs., LLC*, 188 N.E.3d 469, 471 (Ind. 2022). We owe no deference to a local election board’s interpretation of a statute, which we will review de novo. *Cf. City of Bloomington Bd. of Zoning Appeals v. UJ-Eighty Corp.*, 163 N.E.3d 264, 267 (Ind. 2021) (reviewing a county board of zoning appeals’s interpretation of a zoning ordinance de novo); *see also Clay*, 774 N.E.2d at 521 n.3 (applying the same standard of review on appeal from the decision of a county board of zoning appeals to the appeal of a decision from a county election board).

[15] Here, however, the Board framed its decision on Kallas’s complaint as a summary judgment, and it premised its ruling on evidentiary designations rather than witness testimony or credibility. Likewise, the trial court entered its judgment on Kallas’s petition for judicial review after considering only the designated evidence, including the transcript of the July 20 hearing before the Board. We therefore conclude that the proper standard of review in this appeal is the same as an appeal from the entry of summary judgment. As our Supreme Court has made clear,

[w]e review summary judgment de novo, applying the same standard as the trial court: “Drawing all reasonable inferences in favor of . . . the non-moving parties, summary judgment is appropriate ‘if the designated evidentiary matter shows that there

N.E.2d at 521 n.3. Accordingly, we use the standard of review for decisions of other county boards, such as zoning boards. *Clay*, 774 N.E.2d at 521 n.3.

952 N.E.2d at 809 n.3.

is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (quoting T.R. 56(C)). “A fact is ‘material’ if its resolution would affect the outcome of the case, and an issue is ‘genuine’ if a trier of fact is required to resolve the parties’ differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences.” *Id.* (internal citations omitted).

The initial burden is on the summary-judgment movant to “demonstrate [] the absence of any genuine issue of fact as to a determinative issue,” at which point the burden shifts to the non-movant to “come forward with contrary evidence” showing an issue for the trier of fact. *Id.* at 761-62 (internal quotation marks and substitution omitted). And “[a]lthough the non-moving party has the burden on appeal of persuading us that the grant of summary judgment was erroneous, we carefully assess the trial court’s decision to ensure that he was not improperly denied his day in court.” *McSwane v. Bloomington Hosp. & Healthcare Sys.*, 916 N.E.2d 906, 909-10 (Ind. 2009) (internal quotation marks omitted).

Hughley v. State, 15 N.E.3d 1000, 1003 (Ind. 2014) (omission and some alterations original to *Hughley*).

[16] As for Kallas’s challenge to the trial court’s denial of his motion to correct error and his motion to set aside the judgment, our standard of review is again well-settled: “we review a trial court’s decisions on both motions to correct error and motions for relief from judgment for an abuse of discretion.” *Cnty. Materials Corp. v. Ind. Precast, Inc.*, 187 N.E.3d 253, 261 (Ind. Ct. App. 2022), *trans. denied*.

1. The designated evidence is insufficient as a matter of law to show that Smith was a member of either of the candidate's committees.

[17] We first address the merits of Kallas's initial complaint to the Board, namely, whether the designated evidence showed that Smith was a member of one of McDermott's candidate's committees. Kallas asserts that the Board erred when it entered judgment for Smith because, while the Indiana Code defines ex officio members of a candidate's committee, it does not exclude the presence of other members. Kallas then asserts that his designated evidence to the Board shows that Smith was one such member of the two candidate's committees. In response, the Board asserts that the statutory ex officio members are the only permissible members of a candidate's committee.

[18] We need not resolve the parties' dispute over whether the Indiana Code permits members of a candidate's committee beyond the statutory ex officio members. Assuming for the sake of argument that the Indiana Code does permit such members, Kallas's designated evidence is not sufficient to show that Smith was one of them. Regarding Smith's purported membership on the candidate's committee for McDermott's re-election as mayor, the evidence consists only of a screenshot of the campaign website, which identifies Smith as the campaign manager. But Kallas cites no authority for the proposition that being the manager of a campaign necessarily makes one a member of a candidate's committee for that campaign, and the evidence here neither demonstrates nor implies that Smith held dual roles within the campaign. Again, a candidate's

committee has specialized responsibilities within a campaign. *See, e.g., I.C. § 3-9-5-14.* A candidate's committee is not the campaign itself. Accordingly, Smith was entitled to judgment as a matter of law on the question of whether he was a member of McDermott's mayoral candidate's committee.

[19] Similarly, the designated evidence is not sufficient to show that Smith was a member of McDermott's candidate's committee for a congressional seat. Here, the designated evidence includes the FEC form, which identified Smith as the "Manager" and "Designated Agent" of the candidate's committee. Appellant's App. Vol. 2, p. 34. But, while those titles show some relationship between Smith and the candidate's committee, they do not demonstrate that Smith was a member of the committee, and Kallas's jump to that conclusion is simply speculation.

[20] Kallas also designated evidence to show that Smith had received payments from McDermott's candidate's committees, which payments were described as "[r]eimbursements for] campaign expenses" or payments for "political . . . [e]xpenses." *Id.* at 27-30. And Kallas designated evidence to show that Smith had actively campaigned for McDermott. That evidence shows a clear relationship between Smith and McDermott's campaigns. Indeed, the evidence makes clear that Smith was actively involved in McDermott's campaigns. But, again, the campaigns are not the candidate's committees, and, thus, that evidence is not sufficient to show that Smith was a member of either of the candidate's committees.

[21] Accordingly, the trial court properly denied Kallas’s petition for judicial review from the Board’s decision to enter summary judgment for Smith on Kallas’s complaint, and we affirm the trial court’s judgment.

2. Kallas has not preserved his various due-process arguments for judicial or appellate review.

[22] On appeal, Kallas also alleges a number of due-process arguments challenging the Board’s judgment against him.⁴ In particular, Kallas alleges the following due-process violations: (1) the Board failed to issue a report stating its findings on Kallas’s complaint; (2) the Board violated Kallas’s due-process rights when it put the burden to prove his complaint on him; (3) he was not given proper notice of Smith’s motion to dismiss; (4) the Board had no authority to hear a motion to dismiss; and (5) Smith was allowed to vote on Kallas’s complaint against Smith by way of Smith’s proxy on the Board.

[23] Failure to object to the procedure of a local board results in the forfeiture of an alleged error in that procedure. *See, e.g., Crooked Creek Conservation & Gun Club, Inc. v. Hamilton Cnty. N. Bd. of Zoning Appeals*, 677 N.E.2d 544, 550 (Ind. Ct. App. 1997), *trans. denied*; *Ripley Cnty. Bd. of Zoning Appeals v. Rumpke of Ind., Inc.*, 663 N.E.2d 198, 204 (Ind. Ct. App. 1996), *trans. denied*. Kallas did not raise his

⁴ Kallas raised other due-process arguments to the trial court that he does not present on appeal. *See* Appellant’s App. Vol. 2, pp. 18-19. Further, insofar as Kallas suggests that the Lake County Circuit Court Clerk failed to follow proper procedures, or that his complaint to the Board should have been governed by [Indiana Code chapter 3-6-5.1](#), those arguments are not supported by cogent reasoning, and we do not consider them. *See Ind. Appellate Rule 46(A)(8)(a)*.

second, third, fourth, or fifth due-process arguments to the Board during the July 20 hearing. Thus, he did not preserve those arguments either for judicial review or for our review.

[24] As for Kallas’s argument that the Board failed to issue a report stating its findings on Kallas’s complaint, Kallas cites no relevant authority that imposed any such burden on the Board here. *See* [Ind. Appellate Rule 46\(A\)\(8\)\(a\)](#); *cf.* [I.C. § 3-6-5-31](#) (requiring the Board to investigate only if it finds that “there is substantial reason to believe” a violation has occurred, and requiring the Board to “take . . . action” only if it finds “a person has engaged or is about to engage in . . . a violation of a provision of this title”). We therefore conclude that this argument is without merit.

3. The trial court did not impose any improper procedures on Kallas.

[25] Kallas also asserts the trial court erred in the manner in which it conducted judicial review because it did not permit Kallas to engage in additional discovery and because the court improperly consolidated Kallas’s complaint regarding Smith with his complaint in another matter he had brought to the Board at the same hearing and for which he also sought judicial review.⁵ Kallas

⁵ In this part of his brief on appeal, Kallas also argues that the trial court erred in conducting judicial review because it did not properly consider his arguments regarding Smith’s proxy, Smith’s failure to serve Kallas with the motion to dismiss, the absence of written findings from the Board, and the Board’s purported failure to apply [Indiana Code chapter 3-6-5.1](#). For the same reasons we have rejected those arguments above, we affirm the trial court’s rejection of them.

also argues that the trial court exhibited judicial bias when it adopted the Board's statement of the evidence under [Indiana Appellate Rule 31](#) as the court's own.

[26] Kallas's arguments are again without merit. He cites no authority for the proposition that he is entitled to additional discovery on a petition for judicial review. The trial court's consolidation of the two complaints is irrelevant to our independent review of the record; we are able to separate the wheat from the chaff. And nothing in [Appellate Rule 31](#) prohibits a trial court from adopting a party's statement as the court's own. We reject all of those arguments accordingly.

4. The trial court did not abuse its discretion when it denied Kallas's motion to correct error and motion to set aside the judgment.

[27] Last, Kallas asserts that the trial court abused its discretion when it denied his motion to correct error and his motion to set aside the judgment. Attached to those motions, Kallas included what he alleged were two pieces of newly discovered evidence: a document showing Wieser's oath of office as Smith's proxy dated the day after the July 20 hearing, and financial disclosures that showed that McDermott's candidate's committee for re-election as mayor had contributed money to the re-election committee of Board member Arredondo the day before the July 20 hearing. To prevail on a claim of newly discovered evidence, the proponent of the evidence must show, among other things, that the allegedly new evidence "will probably produce a different result at retrial."

Cnty. Materials Corp., 187 N.E.3d at 265 (quoting *Bunch v. State*, 964 N.E.2d 274, 283 (Ind. Ct. App. 2012), *trans. denied*).

[28] Regarding the oath-of-office document, at the July 20 hearing, the Director of the hearing stated that she had possession of Wieser's oath of office as Smith's proxy. Kallas cannot show that the document file stamped on July 21 was a different document. Thus, this document is not likely to produce a different result at trial, and the trial court did not abuse its discretion when it denied Kallas's motions to have the Board's decision set aside on the theory that Wieser was not qualified to sit on the Board at the July 20 hearing.

[29] As for the financial disclosure, Kallas's argument in his complaint to the Board was that McDermott's candidate's committees had a committee member on the Board that by law conducted at least some oversight of the committees. Having another Board member receive a financial contribution from one of those committees the day before the Board is asked to determine that question is an apparent conflict of interest, and we are not impressed by the Board member's failure to disclose the apparent conflict of interest at the July 20 hearing.

[30] Nonetheless, Kallas does not suggest that the improper presence of one of five Board members is structural error. And, for the reasons explained in Issue One above, we have no reason to conclude that the other four Board members would have come to a different conclusion had the fifth member's apparent conflict of interest been disclosed. We therefore cannot say that a different

outcome would have been likely based on this evidence. Thus, we again cannot say that the trial court abused its discretion when it denied Kallas's motions.

Conclusion

[31] For all of the above-stated reasons, we affirm the trial court's denial of Kallas's petition for judicial review, its denial of his motion to correct error, and its denial of his motion to set aside the judgment.

[32] Affirmed.

Bradford, J., and Pyle, J., concur.