

Judgment rendered September 8, 2004

No. 39,408-CA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

HUEY P. DEAN

Plaintiff-Appellee

versus

LURRY D. CREW, ET AL.

Defendants-Appellant

\* \* \* \* \*

Appealed from the  
Second Judicial District Court for the  
Parish of Claiborne, Louisiana  
Trial Court No. 36397

Honorable Jenifer Ward Clason, Judge

\* \* \* \* \*

ENGLISH & ASSOCIATES  
By: Larry English  
Carlos D. Prudhomme

Counsel for  
Appellant

JAMES M. JOHNSON

Counsel for  
Appellee

STEPHEN D. HAWKLAND

Counsel for  
Secretary of State

\* \* \* \* \*

Before BROWN, STEWART, GASKINS,  
CARAWAY and MOORE, JJ.

BROWN, C.J., concurs with written reasons.

STEWART, J., concurs in the dissent by Gaskins, J., with additional reasons.

GASKINS, J., dissents with written reasons.

CARAWAY, J.

This dispute is the second suit arising from the effort to recall Huey Dean (“Dean”), Mayor of the Town of Homer. The first suit, brought by a group of voters who signed the recall petition, resulted in this court's ruling in *Young v. Sanders*, 38,412 (La. App. 2d Cir. 4/7/04), 870 So. 2d 1126, *writ denied*, 04-1137 (La. 7/2/04), 877 So. 2d 146 (hereinafter “Suit #1”), affirming the trial court's mandamus order requiring certification of the recall petition pursuant to the Election Code provision, Section 1300.3. La. R.S. 18:1300.3. Dean, who was not a party to Suit #1, brings the present action, asserting his right to contest the certification of the recall petition and to enjoin the recall for two reasons: (1) defendant, Lurry Crew, as chairman of the recall petition, was not a qualified voter in the voting area from which the mayor was elected, in violation of La. R.S. 18:1300.5(A); and (2) both Crew, as chairman of the recall petition, and Maxine Wilson, as vice chairman of the recall petition, failed to provide Dean with copies of the names of persons seeking his recall, despite repeated requests during the recall process in 2003, defeating his rights to access public records under La. R.S. 44:35. The trial court, finding merit in both of those grounds, enjoined the recall process.<sup>1</sup> The defendant, Lurry Crew, appeals.

Regardless of the specific remedies requested by Dean in this action,<sup>2</sup>

---

<sup>1</sup>The suit also named as defendants, the Governor of the State of Louisiana and the Secretary of State, and the judgment specifically enjoined both of those officials from issuing the call of a special recall election pursuant to La. R.S. 18:1300.7.

<sup>2</sup>In addition to injunctive relief, the petition sought relief in the form of attorney fees and costs for Crew's violation of the public records law, La. R.S. 44:35, for his failure to release a copy of the list of persons seeking recall during the time of circulation of the recall petition. The trial court did not grant that relief although it found the statute was violated by Crew, as chairman of the recall effort and custodian of the records.

the trial court found that the certification process for the recall petition was tainted and subject to nullification. Therefore, we view this challenge, as asserted in the petition, to be an action contesting election proceedings under Section 1405 F of the Election Code, which provides as follows:

F. An action contesting the certification of a recall petition shall be instituted within fifteen days after the governor has issued the proclamation ordering the recall election or within fifteen days after the last day for the governor to call the election if no recall election is called.

La. R.S. 18:1404 F.<sup>3</sup>

Additionally, Dean's right of action and the Election Code procedure for this action are recognized in Section 1300.17, which provides:

Nothing contained in this Chapter shall be construed to deny to any public officer recalled, or whose recall is sought, the right to contest the recall, or any proceedings in relation thereto, in any court of competent jurisdiction, for fraud or other illegality. The procedural provisions of Chapter 9, Part I, of this Code shall be applicable to such actions.

La. R.S. 18:1300.17.

Since these provisions clearly place the dispute within the Election Code and its special expedited procedure, we have determined for the reasons set forth below that Crew's appeal of the judgment was untimely pursuant to Section 1409 of the Code. Accordingly, we dismiss the appeal.

The record reveals that the ruling of the trial court against the defendants was rendered orally at the conclusion of the trial on Thursday, August 26, 2004. The court granted the injunctive relief sought by Dean,

---

<sup>3</sup>The record, although not entirely clear, indicates that the Governor did not render a proclamation within fifteen days of the petition's certification for a special recall election pursuant to La. R.S. 18:1300.7; yet, the 15-day or 30-day period for Dean to contest the certification of the recall petition had not passed when this action was commenced.

finding that the chairman of the recall petition effort did not reside in the city limits of the Town of Homer. The court reiterated to counsel the “very short” time delays for election code proceedings, and counsel for Dean offered to draft a written judgment as soon as possible. That written judgment was then signed by the court and filed in the record later, on August 26.

The record next reflects that written notice of judgment was mailed to all parties on Friday, August 27, 2004. The next pleading in the record is Crew's “Notice of Appeal,” requesting an order of appeal. Attached to the “Notice of Appeal” is counsel's certificate of service dated August 31, 2004, showing that other counsel and parties were notified by mail of the appeal. Nevertheless, the actual “Order” for appeal was not signed by the trial court until September 1, 2004, while the Notice of Appeal and Order, themselves, were not filed in the record until September 2. Upon the lodging of appeal with this court on September 3, 2004, we set a time for oral argument of this case and issued an order for the parties to show cause why the appeal should not be dismissed as untimely.

The provisions for the rendition of a judgment under the Election Code and its appeal are contained in Section 1409, which provides, in pertinent part, as follows:

C. In all actions, the trial judge shall render judgment within twenty-four hours after the case is submitted to him and shall indicate the date and time rendered on the judgment. The clerk of the trial court shall immediately notify all parties or their counsel of record by telephone and/or facsimile transmission of the judgment.

D. Within twenty-four hours after rendition of judgment, a party

aggrieved by the judgment may appeal by obtaining an order of appeal and giving bond for a sum fixed by the court to secure the payment of costs. The clerk of the trial court shall give notice of the order of appeal to the clerk of the court of appeal and to all the parties or their counsel of record. The trial judge shall fix the return day at a time not to exceed three days after rendition of judgment.

At the oral argument of this case, Crew's counsel asserted that he did not receive notice of the judgment until August 31, five days after the signing of the judgment. That day may have coincided with the time of counsel's receipt of the clerk's written notice of judgment. However, counsel did not elaborate.

From our review of these proceedings, we first find that the statute itself gives notice that an Election Code judgment shall be rendered within twenty-four hours of the close of the trial. The case was not taken under advisement by the trial court at the conclusion of trial. Instead, Crew received initial notice by the trial court's oral ruling of the adverse judgment. Section 1409 J requires the signing of a written judgment, and that occurred timely within twenty-four hours of the close of trial. Whether Crew or his counsel received notice via facsimile or telephone on August 26, 2004, was not reviewed with this court during oral argument. Nevertheless, the law itself gave a special notice that an appeal would be required to be filed within forty-eight hours of the close of trial. Despite that notice, Crew waited until August 31 without seeking further inquiry of this expedited proceeding. Moreover, on August 31, when Crew's counsel received notice of judgment, no filing of a motion for appeal occurred. Such notice, if first received on that date, showed that “twenty-four hours after the rendition of judgment”

had passed by Friday, August 27. Nevertheless, no action for appeal was taken on August 31, and another day elapsed before the trial court signed the order of appeal on September 1.

Accordingly, under the provisions of Section 1409 of the Election Code, we find that Crew received ample notice of the August 26 judgment and that the appeal on September 1 came too late. The appeal is dismissed with costs assessed to appellant.

**APPEAL DISMISSED.**

BROWN, C.J., concurring,

I agree with the dissent that the question of Mr. Crew's eligibility should not defeat the recall petition. I agree, however, with the trial court that the failure/refusal to provide the names on the recall petition was an illegality that affected the validity of the recall.

Because I would affirm, I concur in the opinion.

STEWART, J., concurs in the dissent by GASKINS, J., with additional reasons.

The majority misconstrues the salient facts and law in this matter by classifying it as a pure election dispute. Counsel for the appellee in his brief and upon direct examination of this Court during oral argument, failed to cite any provision of the election code that authorized the action prayed for in his petition to the district court. In fact, his main complaint has always been that the appellants did not comply with the custodial requirements of disclosing the recall petitions under the public records doctrine.

The judgment of the trial court enjoining the Governor and Secretary of State from holding an election that has not been called is facially defective and beyond the scope of powers of the district court.

Lastly, the majority opinion avoids the fundamental issue before the court. That is, the right of the citizens of Homer to hold a lawful election and allow their votes to be heard. The majority opinion is tantamount to a disenfranchisement of those citizens in clear derogation of their constitutionally protected right to vote.

Thus, I respectfully dissent.

GASKINS, J., dissents.

I respectfully dissent. The majority refuses to hear this appeal, contending that the appellants did not timely obtain an order of appeal, as mandated under La. R.S. 18:1409. I disagree. From the inception of this lawsuit, the times set out under the election law were disregarded.<sup>4</sup> The hearing at the trial court should have been held on the fourth day after the filing of the case *sub judice*. Instead, it was held 15 days later. La. R.S. 18:1406. After the trial judge rendered judgment, the clerk of court was charged with immediately notifying all parties or their counsel by telephone or FAX. La. R.S. 18:1409. Instead, a certified judgment was mailed to counsel. This appeal was taken within 24 hours of the certified notice.

Appeals are favored under the law. When the court, or its officers, do not follow the law regarding notice of judgment, it is unfair to penalize the litigants by requiring their strict compliance with the time limitations. Once given notice, the appellants tendered the order of appeal timely. I would allow this appeal to be heard.

The trial judge found that the chairman and vice-chairman on the recall petition were not qualified voters. Under the provisions of La. R.S. 18:1300.5(A), the chairman and vice-chairman on a recall petition each shall be a qualified voter in the voting area from which the public official whose recall is being sought is elected. When the recall petition was instigated, Mr. Crew, the chairman, lived outside the city limits, but when the petition was submitted to the Registrar of Voters, he had moved across the street and

---

<sup>4</sup>There could be some argument that this case was not brought under the Election Code but for purposes of this response I will assume the Election Code applies.

within the city limits. Mr. Crew testified that he believed this contested address to be within the city limits and had voted in mayoral and city council elections. Likewise, the registrar had issued a voter identification card that showed Mr. Crew to be a city resident.

An argument could be made that because of the misconception of Mr. Crew and the registrar regarding his residence within the city limits, he was qualified to be the recall petition's chairman. However, even taking the trial court's position that Mr. Crew is not eligible for this chairmanship, the petition is not defeated. La. R.S. 18:1300.5 provides that the vice-chairman is entitled to act on the death, disability, absence, or resignation of the chairman. The vice-chairman, Maxine Wilson, was not disqualified. The statute provides for a situation such as we have here, where a vice-chairman has to step in for a chairman who is unable to complete his duties. The disqualification of Mr. Crew, consequently, would not defeat the recall petition.

Numerous public records requests were issued by Mayor Dean to Mr. Crew and Ms. Wilson to obtain the names on the petition. Several names were provided initially to the mayor but, as more were collected, they were not disclosed until right before the entire list was submitted. The trial court found that the failure to respond to the public records request was an illegality that affected the validity of the recall. See La. R.S. 18:300.17.

The law clearly provides that the chairman and vice-chairman are subject to all the provisions of La. R.S. 44:31, *et seq.*, the Public Records Act. La. R.S. 18:1300.5. This act provides remedies for failure to respond

to public records requests, such as mandamus, penalties, and attorney fees. Testimony in this hearing indicated the mayor knew that names were being collected and that the appellants did not intend to give him updated lists until they received them back from the workers. While there could be an instance where a failure to comply with the Public Records Act might constitute fraud or illegality, the circumstances of this case do not.

I would, therefore, reverse the trial court's injunction.