Supreme Court of Texas
September 4, 2015

In Re Shannon Dorn
No. 15-0632
Case Summary written by Keirsten Hamilton, Staff Member.

JUSTICE BROWN, joined by JUSTICE GREEN, concurred in the Court's denial of the petition for writ of mandamus.

On August 28, 2015, the Supreme Court of Texas denied the petitioner's request for writ of mandamus ordering the City Clerk of San Marcos to review signatures on a petition "seeking that the proposed amendment [to prohibit the city from using fluoridated water] be included on the city's general election ballot." The City Clerk notified the relators that the petition would not be granted because it did not include an oath certifying that the signatures were "the genuine signature of the person whose name purports to be signed"; the parties disagreed as to whether this was a requirement pursuant to the City Charter.

The Texas Election Code provides that the last date for an amendment to be added to the ballot for the November election was August 24, 2015. *See* Tex. Elec. Code § 3.005(c)(2). The relators filed their petition concerning the proposed amendment on April 2, 2015. Based on the disagreement regarding the oath requirement, the relators notified the City on May 18 and on June 16 that the city had "improperly refused to perform ministerial duties" and that the City needed to review the petition immediately. The relators did not take any legal action at that time. On June 18, the city filed a declaratory-judgment action in district court; the relators answered and counterclaimed for "declaratory, injunctive, and mandamus relief."

Issue: The issue in this case was whether the City of San Marcos improperly "refused to review the signatures for a charter amendment" under the City's charter and the Texas Election Code.

On August 14, ten days before the ballot deadline, the trial court ruled in favor of the relators ordering the city to review the petition regardless of the lack of verification. The next day, the city filed an appeal. On August 21, the relators brought their petition for mandamus

relief before the Supreme Court of Texas. The Supreme Court of Texas denied the petition.

JUSTICE BROWN, joined by JUSTICE GREEN, concurring.

Concurring with the majority, Justice Brown, joined by Justice Green, noted the importance of the timeline of events in this case. Citing *Callahan v. Giles*, Justice Brown explained that mandamus is an "extraordinary and discretionary remedy" not often employed by the Court, particularly when parties "slumber on their rights." 137 Tex. 571, 576, 155 S.W.2d 793, 795 (Tex. 1941). On May 5, the relators were aware that the city had refused to review the petition without an oath or affirmation. Justice Brown noted that while the relators knew that they had only 16 weeks to get their petition reviewed to make the August 24 deadline for addition to the November ballot, "the relators waited more than ten weeks" before they sought relief from the district court; this action was only taken after the city filed for declaratory relief a month prior. Further, Justice Brown noted that the relators failed to provide the Court with any explanation for their lack of expedience, while instead "blam[ing] the city for employing 'procedural maneuvers.'"

Additionally, he noted that without further justification showing a "compelling reason why the petition was not first presented to the court of appeals," the Court does not grant extraordinary relief such as mandamus without the party first bringing the action before the court of appeals. Justice Brown did not find the "impending statutory deadline" persuasive because the urgency "is of their own making" and "it is no excuse for skipping past the court of appeals." Ultimately, Justice Brown determined that the Supreme Court of Texas is not intended to be the "sole arbiter" for these types of cases "in a state of nearly 30 million people spread out across 254 counties." Thus, Justice Brown would not have ordered the City Clerk to review the petition.

JUSTICE DEVINE, joined by JUSTICE LEHRMANN, dissenting.

Justice Devine, joined by Justice Lehrmann, filed a dissent in which they noted that the Court should have "directed [the City Clerk] to review the signatures on the petition." Justice Devine reasoned that "[t]he City of San Marcos disregarded its own laws" by refusing to review the signatures gathered by "the people through citizen-initiated petitions." Noting that "neither the City Charter nor Texas law imposes

this requirement [any oath or affirmation]," Justice Devine reasoned that the City Clerk erred in citing section 6.03 of the City's Charter as justification for the requirement; rather, Justice Devine noted that the section was inapplicable because it "pertains exclusively to petitions regarding *ordinances*." Instead, Justice Devine reasoned that the Charter uses state law to define the proper procedures to proposing amendments, and that "[s]tate law, however, does not require the verification the City Clerk demands." *See* Tex. Loc. Gov't Code § 9.004(a); Tex. Elec. Code § 277.002.

Further, Justice Devine relied on the Court's previous holdings "'liberally constru[ing] in favor of the power reserved' to the people." Importantly, Justice Devine reasoned that the City should not have been able to initiate an interlocutory appeal in response to the district court's decision to ensure that the deadline would pass before the relators could obtain their relief. This type of action, Justice Devine noted, allows for a City to "avoid a ministerial duty or thwart the will of the people." Citing *In re Woodfill*, Justice Devine noted that the Court has "required a city to comply with its duties before the deadline"; thus, he reasoned that the Court should have done the same in this case. Justice Devine would have granted the petition and directed the City Clerk to count the signatures.