

Nebraska Republican Party, )  
)  
Appellant, )  
)  
v. )  
)  
John A. Gale, Secretary )  
of State of the State of )  
Nebraska, et al. )  
)  
Appellees. )

Case No. S-12-237.

**FILED**

**MAR 26 2012**

CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS

HEAVICAN, C.J., CONNOLLY, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

This is an appeal from a March 21, 2012, order of the district court for Lancaster County in a special proceeding brought pursuant to Neb. Rev. Stat. § 32-624 (Reissue 2008). That order dismissed with prejudice a "Petition for Review of Secretary of State Determination Opinion" filed by the Nebraska Republican Party against the Nebraska Secretary of State, John A. Gale.

The district court proceeding arose from a March 6, 2012, objection filed by appellant with the Nebraska Secretary of State in which it challenged, pursuant to § 32-624, the candidate filing of Bob Kerrey for United States Senate. On March 16, 2012, the Secretary of State issued his Determination Opinion concluding that Kerrey's name could appear on the May 15, 2012, primary election ballot.

On March 20, 2012, appellant herein filed its petition in district court for review of the Secretary of State's



Determination Opinion. Section 32-624 permits a "political party committee or other interested person" to file an "application" for a summary review of the Secretary of State's decision to "a judge of the county court, district court, Court of Appeals, or Supreme Court . . . ." The petition filed in this case avers that pursuant to § 32-624, the "statutory deadline for reversing a finding by Secretary Gale is fifty-five days prior to the primary election, or March 21, 2012." An expedited summary adjudication was sought in the district court. A judgment was filed by the district court at 7:18 p.m. on March 21, 2012, with the case being dismissed with prejudice.

Upon filing of that March 21 judgment, the Nebraska Republican Party electronically filed a notice of appeal and docket fee in the district court on that same date. On March 22, the district court for Lancaster County electronically filed the appeal with the Clerk of the Supreme Court, and the appeal was then docketed in the Nebraska Court of Appeals on March 22. This court thereafter, on its own motion, moved the appeal to its docket pursuant to its authority under Neb. Rev. Stat. § 24-1106(3) (Reissue 2008).

For the sake of completeness, the court notes that appellant filed in this court a notice pursuant Neb. Ct. R. App. P. § 2-109(E) and asserts therein that this is an appeal which "involves the constitutionality of Nebraska statutes."

Appellant's brief on appeal fails to assign as error an issue regarding the unconstitutionality of any specific state statute.<sup>1</sup> This Court finds that this is not an appeal involving the constitutionality of a Nebraska statute.

This court entered an order to show cause on March 22, 2012, directing that the parties address its jurisdiction in this matter. Further, the parties were ordered to address the issue of whether § 32-624, which requires that an order shall be made by a judge "on or before the fifty-fifth day preceding the election" in order to reverse a decision of the Secretary of State, would prohibit this court from granting relief to appellant after that 55-day limitation period had run because such relief would violate the legislative mandate of § 32-624.

In response to the order to show cause, all parties responded to the court's order and the issues raised therein.

Past reported decisions of the Nebraska Supreme Court support the view that appellate jurisdiction seems to exist in these "§ 32-624" type proceedings, albeit under the predecessor

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<sup>1</sup> See, *Alegent Health Bergan Mercy Med. Ctr. v. Haworth*, 260 Neb. 63, 615 N.W.2d 460 (2000) (where brief contains no assignment of error based upon alleged unconstitutionality of statute, argued error will not be considered by an appellate court).

statutes to current Nebraska law, at least where such appeal is taken from a judge of the district court.<sup>2</sup>

Despite the uncertainty in our case law and orders of this court in appeals from such proceedings, we will assume without deciding that subject matter jurisdiction does exist in the matter before this court today. But the relief sought by appellant is not available under the election scheme as provided for by the Legislature

A court may have subject matter jurisdiction in a matter over a certain class of case, but it may nonetheless lack the authority to address a particular question or grant the particular relief requested.<sup>3</sup> We have stated:

Subject matter jurisdiction is a court's power to hear and determine a case in the general class or category to which the proceedings in question belong and to deal with the general subject involved in the action or proceeding

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<sup>2</sup>*Porter v. Flick*, 60 Neb. 773, 84 N.W. 262 (1900); *State ex rel. Quinn v. Marsh*, 141 Neb. 436, 3 N.W.2d 892 (1942); *State ex rel. Meissner v. McHugh*, 120 Neb. 356, 233 N.W. 1 (1930) (single justice opinion). But see *State ex rel. Chambers v. Beermann*, 229 Neb. 696, 428 N.W.2d 883 (1988) (Supreme Court case No. AP-096; October 18, 1988, order of Justice Leslie Boslaugh denying appeal to full court from order of single justice of Supreme Court under § 32-517, predecessor statute to § 32-624, stating "[n]o procedure for appeal to this or any other court is authorized by . . . section [32-517].").

<sup>3</sup>*In re Interest of Trey H.*, 281 Neb. 760, 798 N.W.2d 607 (2011); See also, *In re Estate of Hockemeier*, 280 Neb. 420, 786 N.W. 2d 680 (2010).

before the court and the particular question which it assumes to determine. But the question of a court's subject matter jurisdiction does not turn solely on the court's authority to hear a certain class of cases. It also involves determining whether a court has authority to address a particular question that it assumes to decide or to grant the particular relief requested.<sup>4</sup>

Section 32-624 directs that a decision of the Secretary of State shall become final unless an order shall be made by a judge "on or before the fifty-fifth day preceding the election" changing that decision. An order by any court made after that time period would violate such legislative mandate and no relief may be afforded to the party from such an order after the fifty-fifth day.

In election cases, this court has no authority to grant relief where the Legislature has established by statute strict deadlines which must be met in order to guarantee that the state's election process is safeguarded against uncertainty and disruption. Section 32-624 and Neb. Rev. Stat. § 32-801 (Reissue 2008) are such statutes. As stated in the affidavit of Secretary of State Gale, attached to his response to this court's order to show cause,

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<sup>4</sup> *In re Interest of Trey H.*, 281 Neb. at 766, 798 N.W.2d 607 at 613. See, *State ex rel. Lamm v. Nebraska Bd. of Pardons*, 260 Neb. 1000, 620 N.W.2d 763 (2001); *Ryan v. Ryan*, 257 Neb. 682, 600 N.W.2d 739 (1999).

[i]n reliance on Neb. Rev. Stat. § 32-624, and the Order of the District Court for Lancaster County entered March 21, 2012, [he] began certification of the May 15, 2012, primary election ballot at approximately noon on Thursday, March 22, and completed the process of ballot certification on that same day for all 93 Nebraska counties at approximately 1:30 p.m.

That certification duty is imposed upon Secretary of State Gale by § 32-801, and no one asserts he should disregard that statutory obligation.

Thus, for the reasons stated above this Court determines that under the statutory procedure established by the Legislature, it lacks authority to grant the relief sought by appellant. This appeal is therefore dismissed.

APPEAL DISMISSED.

WRIGHT and STEPHAN, JJ., not participating.

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

Nebraska Republican Party, )  
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Appellant, )  
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v. )  
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John A. Gale, Secretary )  
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ORDER

**FILED**

MAR 26 2012

CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS

This matter is before the Court on the *Motion to Expedite Appeal and Advance Oral Argument* filed by appellant herein on March 22, 2012, and *Motion for Summary Dismissal or Affirmance* filed by appellee/intervenor Bob Kerrey on March 22, 2012.

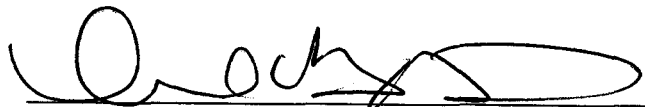
The appeal in this matter has been dismissed by this Court in an opinion filed on this date, thus the pending motions before this Court are thereby rendered moot.

IT IS THEREFORE ORDERED that appellant's *Motion to Expedite Appeal and Advance Oral Argument* is denied as moot.

IT IS FURTHER ORDERED that appellee/intervenor's *Motion for Summary Dismissal or Affirmance* is denied as moot.

Dated this 26th day of March, 2012.

BY THE COURT:



Michael G. Heavican, Chief Justice



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