

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0178-EL

BRIAN GARNER

APPELLANT

v. AN ELECTION APPEAL
ARISING FROM BOONE CIRCUIT COURT
HONORABLE RICHARD A. BRUEGGEMANN, JUDGE
ACTION NO. 24-CI-01869

DOUGLAS BINE; BOONE COUNTY
BOARD OF ELECTIONS; JUSTIN
CRIGLER, IN HIS CAPACITY AS
BOONE COUNTY CLERK; ERIC
DULANEY; JOHN MEFFORD; AND
JEREMY RAMAGE

APPELLEES

ORDER
DISMISSING APPEAL

* * * * *

BEFORE: A. JONES, LAMBERT, AND MCNEILL, JUDGES.

This matter is before the Court pursuant to this Court’s February 13, 2025, order to show cause. Appellee, Douglas Bine, also filed a motion to dismiss the appeal.

BACKGROUND

This matter arises from an election contest. It is undisputed that several irregularities occurred during the general election in Boone County on November 5, 2024, such that the integrity of the election was called into question. In light of these irregularities, Boone County Clerk and Appellee herein, Justin Crigler (“Crigler”), filed a petition for a recount pursuant to KRS¹ 120.017. However, the parties and the trial court all agreed that a recount could not solve the issues with the election, so the trial court denied Crigler’s petition for a recount.

Appellee, Douglas Bine (“Bine”), was an unsuccessful candidate for election to Union City Council. He intervened in Crigler’s recount action and filed an intervening complaint. Bine asserted the following four causes of action:

- I. A general election contest pursuant to KRS 120.155;
- II. A temporary injunction to set aside certification of the election (which had already taken place);
- III. Willful or negligent violation of the Kentucky Open Meetings Act by the Boone County Board of Elections; and
- IV. Willful violation of the Kentucky Open Records Act by the Boone County Clerk.

Because the facts of the voting irregularities were conceded by all parties, on

¹ Kentucky Revised Statutes.

January 31, 2025, the trial court entered an order addressing the appropriate remedy. In that order, the trial court voided the election for Union City Council commissioners, ousted the four commissioners who had been elected to the Council via the void election, and ordered that the vacancies should be filled by the Mayor of the City of Union. The trial court only addressed the election challenge and did not address Bine's claims of violations of the Kentucky Open Meetings and Records Acts. The order did not contain finality language pursuant to CR² 54.02.

Appellant, Brian Garner ("Garner"), was one of the ousted city commissioners, and he filed a notice of appeal, *pro se*. However, he did not post a supersedeas bond pursuant to KRS 120.075(1) and 120.175, so this Court issued an order to show cause on February 13, 2025.

On the same day, Bine filed a motion to dismiss the appeal. As a basis for dismissal, he argued that Garner's failure to post a supersedeas bond was fatal to the appeal, that Garner was impermissibly attempting to appeal from an interlocutory order, and that Garner had failed to name indispensable parties to the appeal.

Garner, now with the assistance of counsel, filed a response and indicated that he agreed that the appeal was taken from an interlocutory order that

² Kentucky Rules of Civil Procedure.

did not include finality language. He agreed that the appeal should be dismissed as a result. He did not address the bond or indispensable parties issues and did not file a response to the show cause order.

ANALYSIS

In order to appeal an election contest, payment of a supersedeas bond is required. KRS 120.075(1) provides:

Any party may appeal to the Court of Appeals from a judgment entered under KRS 120.065. The appeal shall be in accordance with the Rules of Civil Procedure, except that **the notice of appeal shall be filed and a supersedeas bond executed in the Circuit Court**, and the record shall be filed in the Court of Appeals, within ten (10) days after the entry of the judgment, or within such other time as the Court of Appeals may, for cause shown, permit. The entire original record shall be filed and no designation of record shall be required.

KRS 120.075(1) (emphasis added). The requirements of KRS 120.075(1) are mandatory. It is a

generally declared rule . . . that [election] contests are in the nature of summary proceedings and that the prescribed requirements are conditions precedent to the exercise of the right, thus making them jurisdictional. Being so, neither the parties nor the courts may dispense with them for any reason whatever . . . the statutory required bond—as a condition precedent to the prosecution of an appeal from the judgment of the trial court to a reviewing court—is jurisdictional and must be complied with.

Stafford v. Bailey, 138 S.W.2d 998, 999 (Ky. 1940). Accordingly, this Court is

without jurisdiction to hear the appeal of an election challenge where no bond has been posted within ten days “or within such other time as the Court of Appeals may, for cause shown, permit.” KRS 120.075(1). *See also Waller v. Watts*, 500 S.W.2d 61, 62 (Ky. 1973) (“[A] supersedeas bond in an appeal of an election contest case is a jurisdictional requisite for review by this court.”). Such a requirement cannot “be dispensed with ‘by consent, estoppel, or waiver, affirmative or implied.’” *Stafford v. Bailey*, 138 S.W.2d 998 (Ky. 1940).

In the matter *sub judice*, this Court sees no evidence that any party posted a bond. It does not even appear that any party or the trial court made any mention of the need to do so. Garner did not respond to this Court’s show cause order or otherwise provide cause to justify his failure to post a supersedeas bond. He did not file a motion seeking to post a bond outside of the ten days permitted by KRS 120.075(1) (and failed to show good cause to do so in any event). Accordingly, Garner has not strictly complied with the mandates of KRS 120.075(1) such as to invoke the jurisdiction of this Court. The failure to post a bond is fatal to Garner’s appeal.

In light of the bond issue, we decline to reach the issues of whether the appeal was impermissibly taken from an interlocutory order and whether Garner failed to name indispensable parties to the appeal. With that said, we note that the parties agree that the trial court’s order was interlocutory and lacked the

necessary finality language pursuant to CR 54.02 to render it final. Generally, interlocutory orders are not reviewable on appeal, and we can find no statute or caselaw that excepts election appeals from that general rule.

In his motion to dismiss, Bine also asserted that Garner's failure to name indispensable parties to the appeal warranted dismissal. Pursuant to RAP³ 2(A)(2),

Upon timely filing of the notice of appeal from a final and appealable order on all claims in an action, **all parties to the proceedings from which the appeal is taken**, except those who have been dismissed in an earlier final and appealable order, **shall be parties before the appellate court**. Upon timely filing of the notice of appeal from a final judgment or order on less than all claims or parties as permitted by CR 54.02(1), all parties against whom that judgment or order has been made final and appealable shall be parties before the appellate court.

RAP 2(A)(2) (emphasis added). So, even if Garner failed to name a necessary party to the appeal, that would not operate as a basis to dismiss the appeal, as any party below that had not been previously dismissed would automatically be included as a party before this Court.

WHEREFORE, having reviewed the record, and being otherwise sufficiently advised, this Court finds INSUFFICIENT CAUSE SHOWN. The above-styled appeal shall be, and hereby is, DISMISSED.

³ Kentucky Rules of Appellate Procedure.

IT IS FURTHER ORDERED that Bine's motion to dismiss shall be,
and hereby is, DENIED AS MOOT.

ENTERED: March 12, 2025

A handwritten signature in blue ink, appearing to read "J. Brian McNeil". The signature is written in a cursive style with a horizontal line underneath it.

JUDGE, COURT OF APPEALS