

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION



155 MORRIS AVENUE  
SPRINGFIELD, NJ 07081-1216

FAX/TELECOPIER COVER SHEET  
FAX NO. 973-912-0573

DATE: 10/12/06

TIME: 1140am

TO: Lia Karasick, Esq

Fax No(s): 973 509 1690

FROM: Judge R B Coleman

PHONE # OF SENDER: 973 921 9181

LENGTH OF TRANSMISSION (INCLUDING COVER SHEET) 5

- For your information.
- Please call upon receipt so we may discuss.
- Per your request.

COMMENTS:

---



---



---

CONFIDENTIALITY NOTICE

The information contained in this facsimile transmission may be privileged and confidential information intended for the sole use of the persons or entities named on this transmission. The dissemination, distribution, copying, or use of the information it contains is strictly prohibited. If you have received this transmission in error, please call the sender immediately to arrange for return of this information.

**IF YOU DO NOT RECEIVE ALL OF THE PAGES OR HAVE PROBLEMS RECEIVING THIS FACSIMILE COPY, PLEASE CALL THE SENDER AS SOON AS POSSIBLE.**

ORDER ON EMERGENT APPLICATION  
-----

IN THE MATTER OF THE  
PRIMARY ELECTION HELD ON  
JUNE 6, 2006 FOR THE  
OFFICE OF COUNCIL PERSON  
IN THE BOROUGH OF ROSELLE

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-  
MOTION NO. M-  
BEFORE PART: C  
JUDGE(S): R. B. COLEMAN  
GILROY

EMERGENT APPLICATION

FILED: 10/4/2006

BY: ROSEMARIE BULLOCK

ANSWER(S) FILED: 10/10/2006

BY: CHRISTINE DANSEREAU

APPEARANCE ONLY:

ORDER  
-----

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON  
THIS 12TH DAY OF OCTOBER, 2006, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION  
FOR

REVERSAL

GRANTED

(  )

DENIED

(  )

OTHER

(  )

SUPPLEMENTAL:

The application for reversal of the September 29, 2006 order entered in the above-captioned matter is DENIED. The matter is remanded for further relief in the Law Division in accordance with the ruling set forth below. The interim stay entered by this court on October 6, 2006, is extended to noon on Monday, October 16, 2006, at which time it is automatically dissolved.

This matter is presently before this court on an application for emergent relief following a remand hearing in the Law Division to determine the validity of certain absentee ballots cast in the Democratic Primary Election of June 6, 2006, for the Office of Council Person in the 5th Ward of the Borough of Roselle. Following the hearing conducted between September 18 through September 26, 2006, the Law Division Judge determined that thirty-one (31) absentee ballots cast in the primary election were invalid. Accordingly, the court entered an order dated September 29, 2006, which stated the following:

[T]his Court, . . . determines that based upon the Court's mathematical computation

the total valid ballots cast for candidate Dansereau is 265 and the total valid ballots cast for candidate Bullock is 261. This Court determines that based upon the evidence presented, it must assume that 7 of the 31 invalidated votes cast were cast [for] candidate Dansereau. Therefore, the Court finds that it must deduct the remaining 24 invalidated absentee ballots cast from the total ballots cast for candidate Bullock leaving candidate Bullock with 261 total valid votes.

In the same order, the court ordered that the Certificate of Election issued to candidate Rosemarie Bullock be annulled and that a Certificate of Election be issued to candidate Christine Dansereau.

Bullock appealed from that order contending that the court made an error in the mathematical computation of the result because the court deducted twenty-four (24) votes from her original total of two-hundred eighty-five (285) but failed to deduct from Dansereau's original total of two-hundred sixty-five (265) the seven (7) invalidated votes which the court assumed had been cast for candidate Dansereau.

Dansereau points out that the record before us at this time is incomplete and provides an inadequate basis for us to grant the relief requested by Bullock, the reversal of the September 29, 2006 order and the entry of judgment in her favor declaring her the Democratic candidate for the 5th Ward Council Person seat.

On October 5, 2006, we entered a scheduling order to allow the parties to submit briefs and on October 6, 2006, we granted an interim stay to October 12, 2006, or to the date of any earlier order of this court precluding the printing of ballots for the position of Council Person for the 5th Ward of the Borough of Roselle. Indeed, as both parties recognize, we are hampered in our review of the ruling by the trial judge in that the transcript of the proceedings is not available. As a consequence, we are not privy to the trial judge's reasons for subtracting only twenty-four (24) of the thirty-one (31) invalidated absentee votes. We observe, however, that if the issue is truly a simple mathematical error or oversight, the trial court could have corrected the order on its own initiative or on the motion of any party. See R. 1:13-1, which authorizes the correction of clerical mistakes in judgments, orders or other parts of the record, and errors arising from oversight and

omission at any time, on such notice and terms as the court directs, notwithstanding the pendency of an appeal.

The court's order states that the court assumed — not that it found as a fact — that seven (7) of the invalidated votes were cast for Dansereau. The court did not ascertain for whom any of the invalid votes were cast. Moreover, Dansereau complains the court improperly rejected a proffer from her to present the testimony of six (6) voters who voted by absentee ballot for Dansereau. As Dansereau notes, if those voters had been allowed to testify or if the hearing had moved into a phase to determine for whom the invalid votes had been cast, the uncertainty regarding the result would have been removed. Dansereau had the burden of showing that illegal votes were cast in numbers sufficient to change the result and also the burden of showing, to the extent possible, for whom the illegal votes were cast. Petition of Hartnett, 163 N.J. Super. 257, 266 (App. 1978); Application of Murphy, 101 N.J. Super. 163, 167 (App. Div.), certif. denied 52 N.J. 172 (1968).

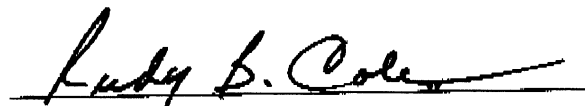
Because we do not know and cannot glean from the record before us why the court assumed the seven (7) votes had been cast for Dansereau and, if so, why they were not subtracted from her total, we are obliged to remand for a clarification or modification with an explicit statement of the reasons for the court's findings and conclusions.

As we understand the situation, and in this we confess that we are speculating, the court may have felt obliged by the rationale of Petition of Byron, 165 N.J. Super. 468, 476 (Law Div. 1978), to assume that the seven (7) absentee votes received by Dansereau were among the thirty-one (31) votes invalidated as a result of the hearing, however, Byron was decided on motions for summary judgment, without the benefit of a plenary hearing. In Byron, the election results in two boroughs were challenged. As to one borough, the Board of Elections rejected one-hundred fifty-two (152) absentee ballots. None of those votes were counted and the election results were unchanged. As to the other borough, fifty-one (51) absentee ballots were questioned, and in light of the procedural posture, the court viewed the facts in the light most favorable to the party opposing the election contest. Because there were more than fifty-one (51) absentee ballots cast and there was no way to distinguish the particular ballots questioned, the court subtracted two (2) absentee votes from the total votes of the challenger, who had only received two (2) absentee votes. The court recognized that was the result most favorable to the opponent from whose total the remaining forty-nine (49) absentee ballots were subtracted.

In this case, the court had the benefit of testimony from thirty-eight (38) witnesses. It had, and apparently still has, a means by which to determine whether the seven (7) absentee votes received by Dansereau were among the thirty-one (31) invalidated votes. We direct that the hearing be reconvened as expeditiously as possible; that the trial judge clarify, or if necessary explicitly modify its decision; state the basis for its result; and enter judgment accordingly.

Because the ballots must be printed no later than Monday, October 16, 2006, we require that the remand be completed by noon on that date.

FOR THE COURT:

  
RUDY B. COLEMAN, J.A.D.