FALL TERM, 2016

Opinion of the Court

BAYLOR UNIVERSITY STUDENT COURT

BURNS *v.* ELECTORAL COMMISSION

Argued and Decided November 17, 2016

Justices joining the majority (3) – Justices joining the dissent (2)

JUSTICE RUTHERFORD delivered the opinion in which CHIEF JUSTICE WESTON and JUSTICE WIXSON joined.

BACKGROUND

On November 14, 2016, the Court received a petition from freshman candidate Brooke Burns for writ of certiorari appealing the Electoral Commission's (henceforth "the Commission") decision to remove her from the ballot for not following the guidelines in §3.1.2.1 of the Electoral Code (henceforth "the Code") in regards to not being able to attend the Mandatory Candidate Meeting. The Code §3.1.2.1 states that "any candidate not able to attend the Mandatory Candidate Meeting shall send a representative that is not another candidate and submit an email via Baylor email to the Electoral Commission. Sudden emergencies are excusable." Failure to meet these guidelines are grounds for removal from the ballot under the Code.

Burns received a call late Thursday, November 10, informing her that her grandmother was being transported to the hospital due to complications of a preexisting medical condition and was not expected to survive. After receiving this call, Burns contacted her

friend, Layton, noting the urgency of the situation and the possibility that she might have to go home that weekend. The following morning, Burns was informed that her grandmother's health had not improved. It was at this time that she contacted Layton, who had volunteered to drive her home, and they made plans to go home later that day. She received an email at 5:11 p.m. on Friday, November 11, informing her of a Mandatory Candidate Meeting would be held at 7:00 p.m. later that day. At this time, she contacted Rebecca Hucke and requested that she attend this meeting as her representative. Burns was in contact with Hucke several times during the hour and forty-nine minute time span between receiving the email about the Mandatory Candidate Meeting and the meeting at 7 p.m. At the conclusion of the meeting, the Commission noticed Burns' absence and her failure to send an email to the Electoral Commissioner informing him of her absence. The Electoral Commission spoke with Hucke, Burns' representative, during deliberations that concluded in a vote to remove Burns from the ballot. It was at this time that the Commission spoke with Joel Polvado, the Internal Vice President, regarding Burns' failure to submit an email. Polvado informed the Commission that he had spoken with Layton the previous night and told her to send a representative. It is disputed whether or not he told her to send an email, and Joel Polvado could not be contacted by phone during the hearing to corroborate these facts. After speaking with Polvado and Burns' representative, the Commission held a vote to determine whether Burns should be removed from the ballot. It was a unanimous decision by the Commission to remove Burns.

On Monday, November 14, Burns emailed a preliminary petition for review to the Baylor University Student Court (henceforth "the Court"), which was accepted with a 5-1 vote by the Court for proceedings.

ISSUES PRESENTED

The questions considered by the Court are twofold:

A. *Did the Electoral Commission err in not properly announcing the date, location, and time for the Mandatory Candidate Meeting?*

B. *Does the Electoral Commission's error in part A. exempt candidates from compliance with section 3.1.2 of the Electoral Code?*

C. *Notwithstanding questions A and B, did the Electoral Commission err in its interpretation of the last sentence of section 3.1.2.1 of the Electoral Code regarding "sudden emergencies?"*

DISCUSSION

A

The Student Court found that the Commission was not required to comply with part of §3.1.2, due to the nature of the election. The election in question was a result of the decision made in Hillebrand v. Electoral Commission to hold an entirely new election for the remaining five freshman vacancies in Senate. Thus, this was not a normal election, and it was not required to be run as such pursuant to §1.5 of the Code. This rule gave the Commission more leniency since the election process was being expedited. The Court found that the email sent to the candidates informing them of the Mandatory Candidate Meeting did in fact meet the Commission's burden of notifying the candidates. However, if this had been a normal election, the Commission would have failed to comply with §3.1.2.

B

In the case of the Commission's failure to comply with §3.1.2 in a normal election, this situation would not excuse the candidates of their responsibility in §3.1.2.1.

As discussed in Hillebrand v. Electoral Commission, it is the candidate's responsibility to understand and follow the code. The Preamble of the Code clearly states that, "ignorance of the Code will not be considered as an excuse" for not following the Code. The Petitioner's argument was that if the Commission did not fulfill §3.1.2, it nullified §3.1.2.1. We reject this argument, because the Commission's failure to follow one regulation does not nullify the candidate's duty to follow the code. For example, if a hypothetical clause states that a bank shall not float interest rates and a sub-clause stating that employees shall not forge signatures on any documents, the argument that employees can forge documents if the bank floated interest rates is absurd. Even if a clause is broken, sub-clauses are not excluded. It might be helpful to add a "saving clause," which stated that one broken clause would not weaken the authority of the document. The addition of such a clause would help to reduce the use of this argument in any future cases.

C

This case hinges on the clause at the end of §3.1.2.1 "sudden emergencies are excusable." Before this clause is examined, the Court would like to extend our deepest sympathies to Burns and her family during this difficult time. It is the Court's duty to interpret the "sudden emergencies" clause as written; however, the Court approaches this case with the utmost care and sensitivity.

The majority finds that a sudden emergency is an event that causes plans to be halted and all attention to be focused on the current situation. Once the situation that caused a "sudden emergency" ceases to be chaotic and mysterious, we would argue that it no longer holds the "sudden emergency" standing. Due to the ambiguity of this clause, the Court used a three-part test to determine whether or not the situation meets the "sudden emergency" standard. First, was this a known situation or did it happen spontaneously? If it was a known situation, then did the facts of the situation change spontaneously?

Second, are one's attentions completely occupied by the current situation, to the point where one would become incapable of communicating or attending to frivolous tasks? Third, has one been involved in the spontaneous situation for a significant amount of time before acting on the situation?

When this "sudden emergency" test is applied to the Petitioner's case, it fails. When broken down, the Petitioner's case passes the first question. A known situation in this case, Burns' grandmother's pre-existing condition spontaneously worsened and she had to be transported to the hospital. Burns' case fails the second question, demonstrated by her contact with Hucke during the hour and forty-nine-minute timespan between the time she was notified about the meeting and the time the meeting took place. The fact that she was able to contact Hucke multiple times shows that she had the time and ability to send an email to the Electoral Commissioner. Additionally, the Petitioner's case fails the third question because Burns was notified of her grandmother's condition on Thursday evening, but she did not actually decide to attend to the spontaneous situation until the following morning. In other words, the majority believes that she had sufficient time to take the proper steps in order to follow the Code.

It is with this reasoning that we do not find that Burns was experiencing a "sudden emergency" during the time between her receipt of the email at 5:11 p.m. and the time of the Mandatory Candidate Meeting.

* * * *

CONCLUSION

Therefore, the majority finds that the Commission did not err in interpreting §3.1.2.1 of the Code and took proper action in removing Burns from the ballot. Subsequently, the Court finds no reason to overrule the

Commission on the grounds that Burns did not meet her duty required by the Code to send in an email to the Electoral Commissioner when she could not make the Mandatory Candidate Meeting for reasons that did not entail a sudden emergency.

The injunction freezing the new freshman elections is lifted at the time of this opinion's release. The Commission shall endeavor to maintain the three-school day campaign period originally given to the candidates before the election is held.

The decision of the Electoral Commission is hereby affirmed.
It is so ordered.

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JUSTICE SHEETS filed a dissenting opinion, in which JUSTICE VECSERI joined

The case of Burns vs Electoral Commission hinged on several questions which all centered around §3.1.2.1 of the Electoral Code. The aforementioned section lists the steps that a candidate is to take if they will be unable to attend the Mandatory Candidate Meeting (hereafter "Meeting") in a Student Election. Included within that section is a clause which excuses candidates from the requirements elaborated within §3.1.2.1 if they suffer a "sudden emergency".

Both the Majority and this Dissent agree that the purpose of the "sudden emergency" clause within §3.1.2.1 is to excuse candidates from the steps listed in that section and that section only. Where we fundamentally disagree is in our interpretation of what is meant by a "sudden emergency."

We assert that any clause designed to excuse an individual from requirements that they are otherwise obligated to meet, if that clause is contingent upon a certain event, is not meant to limit the time being excused to the moment in which the event happens. To illustrate, we examine the instance of a candidate's being struck by

a car. It is absurd to believe that an excuse which is issued as a result of the car accident is meant to excuse the individual from their prior obligations only during the time that they are actually in contact with the car. This being established, we further assert that the intended duration of such an excuse is the time both during a traumatic event and the period after such an event in which an individual suffers intense emotional, physical, or psychological stress as a result of the original event. Essentially, such an excuse is meant to relieve an individual of their obligations for the period in which the direct effects of the emergency are felt.

In the event of a clause which denotes a particular event, it is important to examine each case fully within itself. In this particular event, the emergency which befell Candidate Burns was the intensification of her Grandmother's preexisting medical condition to the point that she was hospitalized and her family believed her death to be imminent. While no member of the Court would contend that this did not meet the definition of an "emergency", we disagree on whether the application of the modifier "sudden" is appropriate. It is the assertion of this Dissent that Candidate Burns was in the midst of a "sudden emergency" during the time of the Meeting. We do not accept the assertion that the ability and wherewithal of Candidate Burns to make arrangements for a representative to the Meeting precludes the application of the "sudden emergency" clause.

In this case, Candidate Burns was notified of her Grandmother's hospitalization on the afternoon of Thursday Nov 10th and she was back home well before 7pm on Friday Nov 11th, the time set for the Meeting. We believe that this period, either within 24 hours or just exceeding, is within the time frame of a "sudden emergency" in the event of a medical complication. To provide a contrasting example, let us suppose that Candidate Burns' Grandmother were scheduled for surgery and had been scheduled for surgery for a number of months or even weeks. Such an event would not meet

the time frame of a "sudden emergency" because Candidate Burns would have ample opportunity to make arrangements for her absence and to tend to any preexisting obligations she may have. As it happened, Candidate Burns was not given such opportunity.

The Majority Opinion of the Court puts forth a 3-pronged test by which an event is determined to be a "sudden emergency". We believe that the second point, specifically whether "one's attentions completely occupied by the current situation, to the point where one would become incapable of communicating or attending to frivolous tasks", is not necessarily applicable to all "sudden emergencies". If an event which imposes no physical limitations upon the Candidate themselves but which presents an extreme emotional or psychological burden occurs, it is entirely possible that the Candidate will use any available means in an attempt to distract themselves from the event. Medical emergencies require special consideration. In many cases involving medical complications, the patient's loved ones are not permitted access to all areas of the hospital. This results in the relative (or in this case, the Candidate) being forced to wait in an area where they are removed from their loved one. It is not unreasonable to assume that they would perform activities such as sending emails or calling friends during this time. We do not believe that the ability to call or email an individual about a matter which the Candidate finds to be pressing or important necessarily precludes the existence of a "sudden emergency".

Working from our previous assumption (that Candidate Burns did suffer a "sudden emergency"), it is clear that the steps prescribed in §3.1.2.1 of the Electoral Code would no longer apply. Specifically, we assert that Candidate Burns was bound neither by the requirement to send a representative to the Meeting nor by the requirement to notify the current Electoral Commissioner of her absence.

The Respondent in this case asserted that, even if Candidate Burns may have been excused from the

aforementioned requirements at one point, those requirements became applicable when she chose to send a representative to the Meeting in her stead. We argue that any steps that Candidate Burns took to ensure that she received any information disclosed in the Meeting were simply the prudent steps of an individual who knew that important dates or regulations would likely be discussed at the Meeting, regardless of whether or not those steps existed within the Code. Essentially, we believe that a Candidate does not "opt-in" to a set of required steps simply by taking a step which happens to exist within the set. Additionally, the argument that the time Candidate Burns took to contact her representative and/or her friend could have been used to contact the Electoral Commissioner is irrelevant as the existence of the "sudden emergency" excuses her from any responsibility to contact the Commissioner under §3.1.2.1 of the Electoral Code.

While we do not believe that any one set of standards can be unilaterally applied in every case in order to determine whether a "sudden emergency" exists, we do believe that the circumstances in Candidate Burns' case do constitute such an emergency. For that reason, we disagree with the Majority's assertion that she should be held responsible for the requirements of §3.1.2.1.

Therefore, we respectfully dissent.