

SPRING TERM, 2017

Opinion of the Court

NOTICE: The following document represents the official Opinion of the Baylor University Student Court, and constitutes a binding decision on all parties concerned within the jurisdiction of the Court. This decision, and all concurring or dissenting opinions, will remain on the official record for seven (7) years in accordance with Court precedent.

BAYLOR UNIVERSITY STUDENT COURT

DICKERSON v. POLVADO

Argued and Decided March 30, 2017

By Unanimous Decision

CHIEF JUSTICE WESTON delivered the opinion in which DEPUTY CHIEF JUSTICE RUTHERFORD, JUSTICE WIXSON, JUSTICE VECSERI, JUSTICE ABEL, and JUSTICE CALVERT joined.

With concurrence by JUSTICE CALVERT.

BACKGROUND

On March 29, 2017, the Baylor University Student Court (henceforth “the Court”) received a Petition from Student Body President candidate, Amye Dickerson, the Defendant in Polvado v. Dickerson and the Petitioner in the appellate case at hand, Dickerson v. Polvado, for Writ of Certiorari appealing the Electoral Commission’s (henceforth “the Commission”) decision in Polvado v. Dickerson. Their decision was to sanction her campaign by prohibiting usage of social media campaigning for failing to abide by the guidelines in §3.2.8.1 of the Electoral Code (henceforth “the Code”) in regards to having campaign videos approved by Student Activities and the Commission. The Code §3.2.8.1 states, “The candidate shall submit hard copies of material designs (including screenshots of web pages, etc.) to the Student Government office. In order to submit a campaign video for approval, the video shall be submitted via email to the Electoral Commissioner.” The Code asserts in §6.3.1 that failure to abide by the Code provides the grounds for subjecting the candidate to sanctions.

Joel Polvado, the Plaintiff in Polvado v. Dickerson and the Respondent in the case at hand, Dickerson v. Polvado, brought a case against Ms. Dickerson on March 28, 2017, where it was heard

and decided by the Commission. Mr. Polvado claimed Ms. Dickerson had violated §3.2.8.1 of the Code when she posted two campaign videos to her Facebook campaign page without prior approval from Student Activities and the Commission. During the proceedings, the Electoral Commissioner, Justin Plescha, asked the Plaintiff “Why are you here tonight?” At this time, the Plaintiff began to discuss Ms. Dickerson’s videos and the number of views that the videos had received. Defendant’s advocate made a Rule 6.B.4.i objection to the Plaintiff’s testimony regarding damages. The Electoral Commissioner overruled the objection. During the announcement of sanctions, the Commission corrected the number of views quoted by the Plaintiff. The Commission only considered one of the two videos because the posting of one video had already exceeded the 24-hour period to file a case. The Commission ruled in favor of the Plaintiff. In the Commission’s opinion, they stated that the Defendant violated §3.2.8.1 of the Code for not receiving approval from Student Activities and the Commission before posting campaign material, specifically, the campaign video. The Defendant argued that an exception to §3.2.8.1 is provided by §3.4.5.4, which declares: “Student Activities must approve campaign web pages and campaign social networking pages. Individual posts are not subject to approval, provided the posts do not violate Baylor branding or the code of ethics.” The Commission ruled that §3.4.5.4 did not constitute an exception to §3.8.2.1.

On Thursday, March 30, the Petitioner submitted a preliminary petition for review, which was accepted by the unanimous vote of the Court for proceedings.

JURISDICTION

The Court’s jurisdiction on this matter is twofold. First, the Commission is the sole governing authority for campaigns. For the Spring 2017 elections, the Commission was charged with hearing disputes between candidates over the Code (§6.2). As a result of a hearing, the Commission sanctioned Ms. Dickerson. By sanctioning Ms. Dickerson, the Commission made a decision that constitutes the basis for an appeal. This represents a decision as it is an action regarding an election and thus, falls under the case of *Oury, et al. v. Electoral Commission* (2014), where the Court held that an action by the Commission in regards to an election qualifies as a decision within the meaning of Art. IV, Sect. 5, Par. 3 (A)(iii)(e) of the Baylor University Student Body Constitution (henceforth “the Constitution”). The second part of the Court’s jurisdiction comes from the explicit language of the code. §6.4.1 of the Code states, “The Student Court shall have appellate

jurisdiction in all decisions made by the Electoral Commission.”
This clause gives jurisdiction to the Court to review this matter.

ISSUES PRESENTED

The questions considered by the Court are twofold:

- A. Did the Electoral Commission err in their decision to find Ms. Dickerson guilty of violating the Electoral Code?*
- B. Did the Electoral Commission err in overruling Defense’s objection to testimony regarding items not mentioned in the complaint?*

DISCUSSION

A

The Court finds that the Code §3.2.8.1 requires the Commission to regulate the posting of all campaign material, establishing a clear rule for how the Commission is expected to enforce the Code, by stating: “The candidate shall submit hard copies of material designs (including screenshots of web pages, etc.) to the Student Government office. In order to submit a campaign video for approval, the video shall be submitted via email to the Electoral Commissioner.” Thus, the Court finds that the Commission did not err in their decision and reaffirms their interpretation of the Code in their issuance of sanctions to the Defendant. By posting a campaign video that had not been authorized by either the Commission or Student Activities, the Defendant was in clear violation of the Code. During the Commission’s hearing of *Polvado v. Dickerson*, an argument was made by the Defendant that §3.4.5.4 of the Code constituted an exception to §3.2.8.1. §3.4.5.4 serves to exempt individual posts that contain material that has already been approved by Student Activities and the Commission. The campaign video in question never received approval from Student Activities or the Commission, which supersedes the fact that it constituted a single post on a social media page. The Court finds that, had the video been previously approved, its posting would have been lawful and there would be no need for sanctions. However, without prior approval from either of the governing bodies, the posting of the video was a violation of the Code.

B

While the Court finds that the Commission did err in overruling the Defense's objection to testimony not in the complaint, the Commission did not err in their deliberations and issuance of sanctions. During the proceedings of Dickerson v. Polvado, Counselor for the Respondent stated that the Commission mentioned the views of the video in question during the sanctioning process, but the views of the video did not seem to affect the severity of the sanctions. The Commission is charged with enforcing the Code, not making reparations for personal damages, which were alleged to be the number of views in this case. Sanctions are issued based on the egregiousness of the violation of the Code, regardless of the severity of the damages incurred. Thus, the Plaintiff's assertion that the number of views the Defendant's video had received had damaged his campaign was beyond the scope of the Commission to consider in the imposition of sanctions. As such, any consideration of the damages done by the Defendant's violation is immaterial.

In the Complaint from Polvado v. Dickerson, there was no mention of the video's views, and the Defendant's objection to the discussion of views in testimony was based on that fact. In the Court's Original Procedure Manual, Rule 6.B.4.i states, "A piece of evidence must contribute to the truth or falsehood of a fact related to the case." According to the Petitioner, because there was no mention of views in the Complaint, there could be no mention made of views in the case itself, which might contribute to deliberations, as the Defendant was not given an opportunity to prepare for the full facts of the case.

CONCLUSION

Therefore, the Court finds that the Commission did not err in interpreting §3.2.8.1 of the Code and took proper action in sanctioning Dickerson's campaign. Subsequently, the Court finds no reason to overrule the Commission on the grounds that Dickerson's campaign did not meet its duty required by the Code to receive approval of campaign material.

Even though the Commission erred in overruling the Defendant's objection, the Court finds that it was immaterial and did not alter the Commission's ruling.

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

In light of the facts of the case and arguments presented by the Petitioner and Respondent, I join with the answers that the Court provides to questions A and B, as well as the Conclusion reached by the Court in light of these answers. However, I am not in complete agreement with the reasoning used to justify the Court's answer to question B. The Constitution and the Code are in clear agreement regarding the jurisdiction of the Electoral Commission. As the Court has said, the Commission's jurisdiction regarding the penalization of candidates extends no further than to enforcement of the Code, and that as such it is beyond the scope of the Commission's mandate to consider or redress any damages caused to a candidate by the actions of another candidate, campaign or person. It is precisely for this reason that I find it not only unnecessary, but counterproductive for the Court to introduce the procedural argument that includes reference to Original Procedure Manual, Rule 6.B.4.i. By using this rule to find error with the Commission's decision to overrule the objection raised by Defendant, the Court is ignoring the future possibility that a Complaint could be presented to the Commission that did contain mention of damages. In such a future case, the Court's interpretation of the Constitution and the Code in its answer to question B might not be interpreted as forbidding the Commission from considering a question that I deem not within the Commission's jurisdiction. Because this ambiguity opens the door for further error on the part of the Commission, it has the potential to result in unjust and irreparable damage to future candidates.

In short, I agree that the actions of the Petitioner were in violation of the Code, and that as such, the sanction imposed upon her campaign is just. I do, however, respectfully disagree with the judgment used by the Court in determining that the Commission did, in fact, err. That said, I find that the Commission's error, in this case, does not mitigate or pollute the correctness of their resulting decision and sanction.

Concurrence delivered by Luke Calvert.