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Amaya v. District Court In and For Pueblo County

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IN THE SUPREME COURT
OF THE

STATE OF COLORADO

Case No. ~~28513~~

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO
DEC 26 1978

David W. Bejia

GEORGE AMAYA,

Petitioner,

vs.

DISTRICT COURT IN AND FOR
THE COUNTY OF PUEBLO, THE
HONORABLE PHILLIP J. CABIBI,

Respondent.

PETITION FOR RELIEF IN THE
NATURE OF PROHIBITION UNDER C.A.R. 21

Petitioner George Amaya, pursuant to Rule 21 C.A.R., petitions this Court for relief in the nature of Prohibition directed to the District Court of Pueblo County, Honorable Phillip J. Cabibi.

AS GROUNDS FOR THIS PETITION, PETITIONER STATES:

1. This Petition is brought pursuant to Article VI, Section 3 of the Colorado Constitution and Rule 21 of the Colorado Appellate Rules, and invokes the original jurisdiction of this Court.
2. Petitioner Amaya was elected by the voters of Pueblo County to the office of County Commissioner of said county. Petitioner was unopposed at the general election held on November 7, 1978.
3. The incumbent County Commissioner William Gradishar was resoundingly defeated by Petitioner Amaya in the Democratic primary election held September 12, 1978. This primary election was a three-way contest between Mr. Amaya, the incumbent Gradishar and Mr. Buck. Mr. Amaya received 50.12 percent of the votes cast. Mr. Gradishar raised the issue of Mr. Amaya's residency throughout the campaign.
4. After being defeated in the primary election, William Gradishar filed an election contest in case no. C-2322 alleging that Mr. Amaya was not a resident of Pueblo County. That contest was dismissed by the Honorable Jack F. Seavy in the middle of trial on October 4, 1978, for failure to comply with the statutory procedures in C.R.S. '73, Section 1-10-114. No appeal from that decision was taken.
5. On November 14, 1978, William Gradishar commenced this second election contest before the Honorable Philip J. Cabibi in case no. C-2476. The basis of this contest is the same as in Case No. C-2322.

6. C.R.S. '73 Section 1-10-110(2) provides that "Before the district court is required to take jurisdiction of the contest, the contestor must file with the clerk of said court a bond, with sureties, to be approved by said judge, running to said contestee and conditioned to pay all costs of failure to maintain his contest." (Emphasis supplied.)

7. Contestor Gradishar filed his complaint alleging Mr. Amaya was not a resident of Pueblo County and posted a bond in the amount of \$250.

8. Petitioner Amaya filed an Answer and a Motion to Increase Bond to an amount not less than \$25,000.

9. At the hearing on the Motion to Increase Bond, Petitioner presented evidence that he had incurred costs in excess of \$5,000 defending the election contest in October. Petitioner also asked the Court dismiss the contest on the basis of lack of jurisdiction because the bond was insufficient. The Court ruled that attorneys' fees, travel costs, deposition costs, copying costs, document costs, and telephone costs were not included in the word "costs" and refused to increase the bond or dismiss the case.

10. Petitioner is now faced with the prospect of a second trial on the issue of residency with inadequate surety for his costs when this contest is dismissed. Petitioner Amaya has no other adequate remedy at law.

11. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900) appears to be the only Colorado case in this area. The Supreme Court ruled in that case at p. 438 that:

"The bond for costs requested by the statute in proceedings of this character should be conditioned for the payment of all costs, and not in any specified penalty."

Articles 9 and 10 of Title I of Colorado Revised Statutes deal with vote recounts and election contests. The clear intent of those articles is to require the challenger to pay all costs of a recount or contest where the contestor is not entitled as a matter of law to the recount or challenge. A disgruntled candidate should not be allowed to continue his campaign in the courts in an attempt to circumvent the political process unless he posts a bond sufficient to cover all costs incurred by the contestee.

12. The District Court is proceeding without jurisdiction in this case and is abusing its discretion in refusing to require contestor Gradishar file a bond sufficient to cover all of Mr. Amaya's probable costs including attorneys' fees, travel costs, deposition costs, copying costs, document costs, and telephone costs.

WHEREFORE, Petitioner prays this Court:

1. Enter its Order staying proceedings in the trial court.
2. Order the Clerk of this Court to issue a rule to show cause out of this Court commanding the Respondent to answer, in writing, and show cause within twenty days, if any Respondent may have, why the relief requested in this Petition should not be granted;
3. Order that the Petitioner shall have fifteen days from receipt of the answer within which to reply; and
4. Order the Clerk of this Court to serve a true copy of the Order to Show Cause together with a copy of this Petition, upon Respondent.
5. Reverse the trial court's denial of the Motion to Increase Cost Bond and remand this matter to the trial court with directions to enter an Order requiring a cost bond in an amount not less than \$25,000.

Respectfully submitted,

ROTHGERBER, APPEL & POWERS

By 

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