

1999 WL 34590821 (N.J.Super.A.D.) (Appellate Brief)
Superior Court of New Jersey, Appellate Division.

In the matter of ABSENTEE BALLOTS CAST BY RESIDENTS OF TRENTON PSYCHIATRIC HOSPITAL.

No. A-2188-98T2.
April 5, 1999.

Civil Action
On Appeal from a Final Judgment of Superior Court, Law Division, Mercer County
Sat Below: Hon. Charles A. Delehey P.J.Cr.P.

Brief on Behalf of Respondent, the Mercer County Republican Party

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***1 PROCEDURAL HISTORY**

During an election of November 3, 1998, an application was made before the Honorable Charles A. Delehey, P.J.Cr.P. to segregate five (5) absentee ballots received from the Trenton Psychiatric Hospital. T2-1 to 6. This application was brought to Judge Delehey by the Mercer County Republican Committee and Mercer County Democratic Committee, since the Mercer County Board of Elections deadlocked on determining the validity of those ballots. New Jersey Protection and Advocacy, Inc. opposed that application. T2-7 to T3-9. Judge Delehey, by order dated November 4, 1998. decided that the ballots should be segregated and not counted and opened only upon further order of the Court. Aa1. New Jersey Protection and Advocacy, Inc. filed a notice of appeal on December 17, 1999. Aa2. The New Jersey Attorney General sought leave to intervene for the purpose of filing a brief and appear at argument by way of motion, which was granted on March 19, 1999.

COUNTERSTATEMENT OF FACTS

On November 3, 1998, a general election was held in the State of New Jersey. During the course of that election it was determined that seven (7) absentee ballots were received from the Trenton Psychiatric Hospital located in Ewing Township, Mercer County, New Jersey. Upon review of the ballots by the Mercer County Board of Elections (the “Board”), it was unanimously determined that two (2) of those ballots should be rejected. The Board deadlocked on the issue of whether the remaining five (5) ballots were valid. T2-1 to 15. Harry G. Parkin, Esq., attorney for the Mercer County Republican Party, challenged the acceptance of votes received from Trenton Psychiatric Hospital by memorandum to the Chairman of the Board, Dominic Magnolo. Aa7. The attorney for the Mercer County Democratic Committee, Arthur R. Sypek, Jr., Esq., ultimately joined in the application that the ballots be segregated. T2-1 to 4. The New Jersey *2 Attorney General’s office, serving in an advisory capacity to the Board, advised the Board that absent an adjudication of insanity or other documentary evidence of insanity or incompetency, the ballots should be counted. T2-25 to T3-3. New Jersey Protection and Advocacy, Inc. opposed the rejection or segregation of the ballots as urged by the political committees. T3-4 to 9.

After considering the arguments and discussing the matter among themselves, the Board members were deadlocked on the issue of whether the ballots should be accepted or rejected. T2-7 to 9. The matter was then brought before the Hon. Charles A. Delehey, P.J.Cr.P. who was assigned to hear election day applications and appeals. After considering the arguments of the parties. Judge Delehey ruled that the five (5) absentee ballots should be segregated and opened only upon further order of the Court (in the event that they became a determinative factor in the election). T6-1 1 to 14.

It is not disputed that the ballots were received from residents of the Trenton Psychiatric Hospital. It is also undisputed that there is no evidence whether these residents were voluntarily or involuntarily committed to the hospital nor any evidence of the nature or gravity of their mental illness.

ARGUMENT

POINT ONE

THE CHALLENGE OF THE ABSENTEE BALLOTS FROM THE FIVE RESIDENTS OF THE TRENTON PSYCHIATRIC HOSPITAL WAS LAWFUL AND THE SEGREGATION OF THE BALLOTS WAS APPROPRIATE UNDER THE CIRCUMSTANCES PRESENTED

The Mercer County Republican Party does not seek to disenfranchise any voter legally permitted to cast a ballot. However, if an individual is not permitted to vote by reason of *3 “insanity” or “idiocy”, they must be prohibited from doing so in order to maintain the integrity of the electoral process.

N.J.S.A. 19:4-1 provides, in pertinent part:

Except as provided in sections 19:4-2 and 19:4-3 of this Title, every person possessing the qualifications required by Article 11, paragraph 3, of the Constitution of the State of New Jersey and having none of the disqualifications hereinafter stated and being duly registered as required by this Title, shall have the right of suffrage and shall be entitled to vote in the polling place assigned to the election district in which he actually resides, and not elsewhere.

No person shall have the right of suffrage-

(1) Who is an idiot or is insane

N.J.S.A. 19:4-1. See also *N.J. Const. Art.2, ¶ 6*. Unfortunately we are guided by the archaic language contained in the statute and must determine what is meant by the terms “an idiot” or “insane”, as they are not defined in the statute.

Appellant relies heavily on *Carroll v. Cobb*, 139 N.J. Super. 439 (App. Div. 1976) to support its position. Appellant is correct in asserting that *Carroll* holds that mere residence in a particular state institution (the New Lisbon State School), without more, does not render a person ineligible to vote. In the *Carroll* case, five (5) residents of a state institution were denied the right to register to vote by the Clerk of the Township of Woodland and the Burlington County Board of Elections.

In *Carroll* the Appellate Division specifically recognized that a lay person is “unequipped” to determine whether a person is an “idiot” or is “insane” and believed that those terms may even be troublesome to experts in the fields of psychiatry or psychology. 139 N.J. Super. at 444. The court further stated that a voter could be challenged on “an individual basis and for specifically stated reasons.” 139 N.J. Super. at 456. In *Carroll*, the assistant *4 superintendent of the New Lisbon State School testified that all the residents who sought to register to vote were all New Jersey residents, none had court appointed guardians, all were competent to manage their own affairs and none could be considered an idiot. 139 N.J. Super at 451. Here, we do not have the benefit of that knowledge regarding the competence of those submitting ballots from the Trenton Psychiatric Hospital. As Judge Delehey recognized below, we do not know if the voters have been adjudicated incompetent or are simply being treated for depression or other emotional problem. T6-18 to 24. Furthermore, in *Carroll* both the trial judge, by implication, and the Appellate Division, expressly, found that the voters in that matter were not so mentally deficient as to be disenfranchised. 139 N.J. Super. at 452. It is impossible to make that determination here.

There must be some mechanism by which the county board of elections is apprised of the competency of residents of a psychiatric hospital in order to determine if they are eligible to vote. While residence at a psychiatric facility may not, in and of itself, create a presumption of “idiocy” or “insanity”, it should permit further inquiry and there should be a procedure to facilitate that inquiry when absentee ballots are involved. If an individual is involuntarily committed there must have been some judicial review and psychiatric evaluation. See N.J.S.A. 30:4-27.10. Perhaps a specific finding by the reviewing judge in those circumstances, relying upon the psychiatrist’s assessment, regarding the patient’s competency to vote could be made. If not, a certification from a staff psychiatrist at the institution stating that the person is not an “idiot” or “insane” within the meaning of N.J.S.A. 19:4-1 could be required.

Although not specifically addressed below, a significant distinction in this matter from the *Carroll* case is that we are dealing here with absentee ballots, which demand a heightened level of scrutiny. In dealing with absentee ballots, the deterrence of fraud and the maintenance *5 of the integrity of the elective process is one of the primary legislative concerns. See *Application of Langbaum*, 201 N.J. Super. 484, 490 (App. Div. 1985) and *Petition of Battle* 190 N.J. Super. 232, 236-237

(App. Div. 1983). modified on other grounds, 96 N.J. 63 (1984). The statutory right to vote as an absentee is not an absolute right and is subject to proper legislative exception and limitation. See *Battle*, 190 N.J. Super. at 236. *Battle* involved absentee votes from a nursing home where the court specifically noted that “ballots come from voters who reside in nursing homes and who may indeed be vulnerable to influences and pressures because they are often alone, isolated from the rest of the community and perhaps ill and infirm ...”. *Battle*, 190 N.J. Super. at 242. The same concerns should exist with respect to absentee ballots received from psychiatric hospitals. Discussing the legislative concerns, the Appellate Division in *Battle* stated:

Fraud, in particular, is difficult to prove. The purpose of our statutes is to prevent fraud and preserve secrecy through strict procedural controls. A violation of these procedures, therefore, becomes very significant. * * * In short, two of the vital concerns of the Legislature in enacting absentee voting legislation - preservation of the secrecy of ballot and prevention of fraud - were placed in jeopardy by the procedure adopted in these cases. The importance of vindicating these interests outweighs any countervailing concern over disenfranchisement of voters.

Battle 190 N.J. Super. at (citation omitted).

Hypothetically, an incompetent individual residing at a psychiatric hospital could submit an application for an absentee ballot, receive the ballot in the mail or by messenger and return the ballot via mail or messenger. The county clerk’s office has no basis to determine if that individual is competent to vote. Absentee ballots received from state institutions, much like those received from nursing homes, are particularly vulnerable to fraud given the potential mental infirmities of the absentee voters upon which the unscrupulous might prey and, therefore, *6 demand stricter scrutiny.

POINT TWO

THE CHALLENGE TO THE ABSENTEE BALLOTS RECEIVED FROM THE TRENTON PSYCHIATRIC HOSPITAL DID NOT VIOLATE THE PROVISIONS OF N.J.S.A. 19:15-18

Challenging absentee ballots from the Trenton Psychiatric Hospital does not violate the provisions of N.J.S.A. 19:15-18. While the Appellant is correct in recognizing that this statute was enacted to prevent discrimination by suppressing votes from a particular ward, housing complex or section of municipality or county that traditionally votes in a certain manner or for a certain political party, the Mercer County Republican Party’s concern was clearly with the mental competency of the voters casting the ballots, not the geographic area from which the absentee ballot was received. See Aa9 to 11. In fact, Mr. Parkin’s memo to the Board specifically states his concern to be his understanding that individuals who had been committed by a judge to the psychiatric hospital were then registered to vote. Implicit in reference to that concern is that a judicial determination had been made as to an individual’s commitment, and a finding of some degree of incompetence must have been made. The valid question remained whether that incompetence rose to the level of idiocy or insanity. It is not disputed that an incompetent may be able to vote, but an “idiot” or one who is “insane” may not. See N.J.S.A. 30:4-24.2(a); N.J.S.A. 19:4-1. Since this challenge was based upon the reasonable concern of the voters’ competency and not simply upon their geographic location, it did not violate the provisions of N.J.S.A. 19:15-18.

CONCLUSION

It is respectfully submitted that Judge Delehey’s order below should be affirmed and it declared that the Mercer County Republican Party’s challenge to the absentee ballots was legal. *7 The position of the Mercer County Republican Party is not to seek a general disqualification of residents of psychiatric facilities from voting, but seeks to ensure that when absentee ballots are received from such an institution, that a determination be made that those casting ballots are not “idiots” or

“insane” and thereby precluded from voting. The Mercer County Republican Party recognizes that voting is a fundamental right, however, the maintenance of the integrity of the elective process is paramount and must be preserved.