

1999 WL 34590822 (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.
March 22, 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.

Brief on Behalf of the Attorney General

Peter Verniero, Attorney General of New Jersey, R.J. Hughes Justice Complex, P.O. Box 112, Trenton, New Jersey 08625,
(609) 292-8572.

Mary C. Jacobson, Assistant Attorney General, Of Counsel.

Donna Kelly, Senior Deputy Attorney General, On the Brief.

***i TABLE OF CONTENTS**

PROCEDURAL HISTORY	1
COUNTERSTATEMENT OF THE FACTS	1
ARGUMENT:	
<i>POINT ONE</i>	
THE CHALLENGE TO THE ELECTION BALLOTS OF THE FIVE RESIDENTS OF TRENTON PSYCHIATRIC HOSPITAL WAS UNLAWFUL UNDER THE STATUTORY CHALLENGE PROCEDURE AND SHOULD HAVE BEEN REJECTED OUTRIGHT	3
<i>POINT TWO</i>	
RESIDENCE IN A STATE PSYCHIATRIC HOSPITAL IS NOT A SUFFICIENT BASIS TO DENY AN INDIVIDUAL THE RIGHT OF FRANCHISE ON GROUNDS OF MENTAL INCOMPETENCY	6
<i>POINT THREE</i>	
SEGREGATION OF THE ABSENTEE BALLOTS OF THE TRENTON PSYCHIATRIC HOSPITAL VOTERS DID NOT CONSTITUTE A JUDICIAL DETERMINATION, AS CONTEMPLATED BY <i>N.J.S.A. 19:57-24</i>	9
CONCLUSION	11

CASES CITED

<i>Carroll v. Cobb</i> , 139 N.J. Super. 439 (App. Div. 1976).....	7-9
--	-----

NEW JERSEY STATUTES

<i>N.J.S.A.</i> 19:15-18	4, 5
<i>N.J.S.A.</i> 19:29-1	10
<i>N.J.S.A.</i> 19:4-1	3, 6
<i>N.J.S.A.</i> 19:57-24	4, 9
*ii <i>N.J.S.A.</i> 30:4-24.2(a)	7, 9
<i>N.J.S.A.</i> 30:4-24.2(c)	6

CONSTITUTIONS CITED

<i>N.J. Const.</i> Art. 2, ¶¶6 and 7	3
--	---

*1 PROCEDURAL HISTORY

On November 3, 1998, an oral application was made before the Honorable Charles Delehy, J.S.C., arising from the Mercer County Board of Elections' deadlock on the validity of five absentee ballots submitted by voters residing in Trenton Psychiatric Hospital. It was ordered that the ballots should remain unopened and be segregated, i.e., set aside, pending further order of the court. This order was entered on November 4, 1998. On December 17, 1998, a Notice of Appeal was filed on behalf of the five voters in the Superior Court of New Jersey, Appellate Division. On February 23, 1999, the Attorney General filed a Notice of Motion to Intervene.

COUNTERSTATEMENT OF THE FACTS

On November 3, 1998, the General Election was held in the State of New Jersey. Pursuant to *Title* 19, Election Laws of New Jersey, each of the 21 county boards of election is charged with the responsibility on election day to canvass for counting all duly received absentee ballots. Further pursuant to law, any such ballot may be subject to challenge as to its validity, with the board of election to decide any such dispute. On the day of the election, the Mercer County Board of Election (hereinafter referred to as the "Board") received a written challenge from a Harry Parkin, the Mercer County Republican Party Chairman (Aa7). He noted in the challenge letter that "It is my understanding that there was an organized effort to register voters that have been committed by a judge to Trenton Psychiatric Hospital" and requested *2 that any ballot received from the Trenton Psychiatric Hospital, which is located in Mercer County, be rejected. *Ibid.* The Mercer County Democratic Party, through its counsel, Arthur Sypek, Jr., joined in this challenge. (Aa9). The Board deadlocked as to the validity of the ballots. On the night of the election, counsel for the two political county committees appeared before the Honorable Charles Delehy, J.S.C., for an order to segregate the ballots. *Ibid.* Paul Prior, Esq., of New Jersey Protection and Advocacy, Inc. appeared on behalf of the voters. Deputy Attorney General Mark Holmes, who had been assigned by the Attorney General's office to Mercer County on election day to handle any election matters, as is the long-standing state-wide practice of the Attorney General, also appeared. Because the Board had deadlocked on the issue of the absentee ballots, DAG Holmes did not appear on behalf of the Board, but was present to articulate any position of the Attorney General, who was not formally a party to the action.

No evidence of the competency of the individual voters was presented to the court. Although the court acknowledged that segregation of the ballots might be "possibly" offensive to "innocent residents of the Trenton Psychiatric Hospital," it expressed concern that allowing the ballots to be counted could ultimately require a new election, if the initial results were close and the voters were thereafter determined to be incompetent. (Aa10). Accordingly, the court ruled that the ballots "should be segregated and that the ballots should be opened only in the event that they became determinative factor in the election." (Aa13). *3 The ballots were ordered returned to the Board office to be placed under lock. (Aa17).

On November 4, 1998, an Order was entered that the ballots remain segregated until further order of the Court. (Aa1). A Notice of Appeal was filed on behalf of the voters on December 17, 1998. The Attorney General received notice of this matter and, on February 24, 1999, filed a Notice of Motion to Intervene. In anticipation of the granting of such motion, the Attorney General files this brief in support of appellants.

ARGUMENT

POINT ONE

THE CHALLENGE TO THE ELECTION BALLOTS OF THE FIVE RESIDENTS OF TRENTON PSYCHIATRIC HOSPITAL WAS UNLAWFUL UNDER THE STATUTORY CHALLENGE PROCEDURE AND SHOULD HAVE BEEN REJECTED *OUTRIGHT*.

The right to vote in New Jersey is limited to those persons who possess specific constitutionally-mandated qualifications and no requisite disqualifications. Pursuant to Article 2, paragraph 3 of the New Jersey Constitution, an elector must be a United States citizen, at least 18 years of age and satisfy the 30 day residency requirement. Those persons, however, who are “idiots” or “insane” or who have been convicted of such crimes as designated by the Legislature, are denied the right of suffrage. *N.J. Const.* Art. 2, ¶¶6 and 7. These constitutional election prerequisites are further set forth in *Title 19, Election Laws of New Jersey, N.J.S.A. 19:4-1*.

***4** Pursuant to *Title 19*, a voter may be subject to challenge as to his or her right to vote. *N.J.S.A. 19:15-18* provides in full: *The members of the district boards and any duly authorized challenger, respectively, shall at any election challenge every person who shall claim to have a right to vote therein whom they or he shall know, suspect or believe not to be qualified or entitled to so vote, and said members of the district board or challenger shall have the power and right to ask all necessary questions which are suitable and necessary to determine such person’s right.*

No member of the district board and no duly authorized challenger shall, however, challenge, delay or prevent the right to vote of any person because of that person’s race, color, national origin, expected manner of casting a vote or residence in a particular ward, housing complex or section of a municipality or county, provided that nothing herein shall be construed to prohibit a challenge based upon the failure of the challenged voter to meet the applicable statutory residency qualification for voting in the particular election district. Any member of the district board or duly authorized challenger who violates this section is guilty of a disorderly persons offense. [N.J.S.A. 19:15-18; (emphasis added)].

This election law clearly requires that a challenge to a voter is only legitimate if it is based upon specific knowledge or belief relating to the individual voter’s electoral qualifications. Moreover, it is a criminal offense to challenge a voter based upon where they reside in a particular location of a municipality. This provision is equally applicable to challenges to voters at a polling place or to voters who submit absentee ballots. Indeed, *N.J.S.A. 19:57-24* specifically provides that:

***5** The location at which a county board of elections determines whether an absentee ballot shall be accepted or rejected shall be considered an election district for the purposes of appointment for challenges.

In the instant matter, a written challenge to the absentee ballots of Trenton Psychiatric Hospital residents was submitted to the Board of Elections. The letter however does not make any reference to any individual voter regarding his or her electoral qualifications. Having failed to make such individual challenge, it should have been rejected, in accordance with *N.J.S.A. 19:15-18*. The legitimacy of the challenge is further suspect because it could be construed to violate the 1991 amendments to

N.J.S.A. 19:15-18, which prohibit, in part, a challenge based upon the voter's "residence in a particular section of a municipality." Here, the challenge was made broadly to the ballot of any resident of the Hospital. On that additional basis, the challenge should have been summarily rejected. The 1991 amendments to *N.J.S.A.* 19:15-18 underscored the long-standing principle of our electoral process that a challenge to a voter must be individually-based and solely related to the voter's qualifications as to his or her age, residency and citizenship and/or whether the voter is constitutionally disqualified. There can be no wholesale or group challenge of a particular group of voters; that has never been sanctioned in our electoral process and as of 1991 it is now expressly prohibited. Consequently, the order segregating the five absentee ballots must be reversed.

***6 POINT TWO**

RESIDENCE IN A STATE PSYCHIATRIC HOSPITAL IS NOT A SUFFICIENT BASIS TO DENY AN INDIVIDUAL THE RIGHT OF FRANCHISE ON GROUNDS OF MENTAL INCOMPETENCY,

As noted earlier, Article 2, paragraph 6 of the New Jersey Constitution provides that "no idiot or insane person should enjoy the right of suffrage." Consistent with this constitutional mandate, *N.J.S.A.* 19:4-1 provides that the right to vote is denied for "a person who is an idiot or insane of which a court of competent jurisdiction has made such ruling." The central issue raised in this appeal is whether mere residence in a psychiatric facility in and of itself satisfies the requisite criteria for electoral disqualification. Existing statutory and judicial authority resoundly rejects any such contention. *N.J.S.A.* 30:424.2(c) expressly provides,

that no patient may be presumed to be incompetent because he has been examined or treated for mental illness, *regardless of whether such evaluation or treatment was voluntarily or involuntarily received.* [(*N.J.S.A.* 30:4-24.2(c))(emphasis added)].

As the record shows, the challenge to the ballots was based, in part, on the challenger's belief that the voters were committed involuntarily by a court to Trenton Psychiatric Hospital. Whether they were so committed or not is simply not dispositive of their rights of franchise, pursuant to *N.J.S.A.* 30:4-24.2(c).

Furthermore, the New Jersey Legislature has plainly spoken that any person committed for medical treatment does not *7 automatically lose their civil rights. *N.J.S.A.* 30:4-24.2(a) provides,

[n]o patient shall be deprived of any civil right solely by reason of his receiving treatment under the provisions of this Title nor shall such treatment modify or vary any legal or civil right of any such patient including but not limited to *the right to register and to vote at elections* [(*N.J.S.A.* 30:4-24.2(a); (emphasis added))].

Quite simply, commitment to a psychiatric hospital, whether voluntary or involuntary, does not result in denial of a person's right of franchise. To so hold, as the trial court effectively did, violates the above State constitutional provision and legislative mandates.

The Appellate Division decision in *Carroll, v. Cobb*, 139 N.J. Super. 439 (App. Div. 1976), is instructive. In *Carroll*, several residents of the then designated New Lisbon State School for the mentally retarded brought a class action suit against the Burlington County Board of Elections and the Woodland municipal clerk, for declaratory relief to require these election officers to accept voter registration applications from residents of the school. This suit arose from the defendants' refusal to accept such registration forms on the ground that the residents were "idiots," allegedly because they were residing at the New Lisbon Center. 139 N.J. Super. at 444. On appeal, the appellate court rejected the municipal clerk's contention that she had the discretion to determine mental competency of a registrant, holding that a lay person is "unequipped" to determine whether a person is *8 an "idiot" or "insane." 139 N.J. Super. at 444. The court went on to state:

We perceive no merit in the attempt to overcome this hurdle, both below and on this appeal, by asserting that a rebuttable presumption of idiocy or incompetency arises "from the determination that an individual is eligible for residential functional

services” at an institution for the mentally retarded... [139 N.J. Super. at 448; (emphasis added)]

Accordingly, the court stated:

[W]e conclude, therefore, that residence at the New Lisbon State School does not per se render one who meets all other voting requirements ineligible to vote. [139 N.J. Super. at 455].

The court, however, did recognize the right of the county board of elections to challenge the right to vote of a member of the plaintiff class, but “on an *individual* basis and for *Specifically stated reasons*.” 139 N.J. Super. at 456 (emphasis added). There are two significant lessons to be drawn from *Carroll, supra*, which are clearly applicable here. One, residence in a State institution does not establish that a person is disfranchised. Second, a challenge to a voter’s right of franchise must be specific and individually based.

Therefore, because the challenge at issue here was a wholesale challenge to the five voters solely because of their residency at Trenton Psychiatric Hospital, it should have been rejected outright by the court. Failure to do so was in clear contravention of the State Constitution and legislative mandate *9 regarding the civil rights of committed person for medical treatment, N.J.S.A. 30:4-24.2(a); *Carroll, supra*.

POINT THREE

SEGREGATION OF THE ABSENTEE BALLOTS OF THE TRENTON PSYCHIATRIC HOSPITAL VOTERS DID NOT CONSTITUTE A JUDICIAL DETERMINATION, AS *CONTEMPLATED BY* N.J.S.A. 19:57-24.

Pursuant to N.J.S.A. 19:57-24, it is the duty of a county board of election to determine the qualifications of an absentee ballot voter and whether the ballot conforms to the requirements of law. The statute further provides that:

Disputes as to the qualifications of military service or civilian absentee voters to vote as to whether or not or how any such military or civilian absentee ballot *shall be counted in such election shall be referred to Superior Court for determination*. [N.J.S.A. 19:57-24; (emphasis added)]

In this matter, the Board deadlocked 2-2 as to whether the five absentee ballots should be counted, as challenged by the Mercer County Republican Party on competency grounds. Having failed to resolve the issue as to the validity of the ballots, the question was properly referred to the Superior Court for determination. As the statute plainly reads, it was the duty of the Court to determine the validity or invalidity of the ballots. Merely segregating the ballots for a possible future disposition does not reasonably constitute determination. It is clear from the record that Judge Delehy’s resolution was premised upon his concern that the election result could be tainted if the ballots were *10 allowed to be counted, but thereafter found to have been cast by individuals who were disqualified on competency grounds. It is the Attorney General’s view that this was an inappropriate concern, particularly as the court did not have before it a scintilla of evidence that the ballots before him were cast by such disqualified voters.

Further, the electoral process, as legislatively designed, has in place a procedure whereby an election result can be subject to review to determine the true will of the electorate. Pursuant to N.J.S.A. 19:29-1, an election can be contested upon specific statutory grounds, including “when illegal votes have been received ... sufficient to change the result.” N.J.S.A. 19:20-1(e).

Therefore, the statutory scheme contemplates that there is to be an initial resolution of all submitted ballots, whether by the

county board and/or by judicial intervention, with there being a fail-safe mechanism, available, *i.e.*, the election contest procedure to review any such results. The Court's decision to segregate the ballots to be "opened only in the event that they become a determination factor in the election," contradicts this legislative scheme. This ground provides an additional basis upon which to reverse the result endorsed below.

***11 CONCLUSION**

For the foregoing reasons, the decision of the trial court should be reversed.