

CE-20-084

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Deborah Clark, Clerk
Lanier County, Georgia

**IN THE SUPERIOR COURT OF LANIER COUNTY
STATE OF GEORGIA**

**BARBARA ANNE DANIELS,
Petitioner,**

Vs.

**LANIER COUNTY BOARD of
REGISTRARS AND/OR BOARD of
ELECTIONS**

Defendant,

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CASE NO: CE-20-0084

ORDER

On March 6, 2020 Barbara Anne Daniels, Petitioner, executed an affidavit for Clerk of Superior Court in Lanier County, Georgia, paid her qualifying fee, and qualified to run for Clerk of Superior Court. The affidavit referenced O.C.G.A. § 15-6-50 which sets out the qualifications an individual must have in order to run for the position of Clerk of Superior Court. Paragraph F of the affidavit restates O.C.G.A. § 15-6-50(f):

“Has not been convicted of a felony or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States.”

On March 12, 2020, within the time allowed by O.C.G.A. § 21-2-6(b), Deborah Anne Clark (Challenger), the incumbent clerk, properly filed a challenge to Barbara Anne Daniels' qualifications to run for clerk citing O.C.G.A. § 45-2-1(3) alleging that Ms. Daniels is a convicted felon. The challenge further referenced a "conviction" for Felony Deposit Account Fraud (FDAF) pursuant to O.C.G.A. § 16-9-20(b)(3).

In accordance with O.C.G.A. § 21-2-6(b), a hearing was held on March 30, 2020. At the hearing before the Lanier County Board of Registration and/or Board of Elections, Ms. Clark was represented by counsel, Mr. Danny Studstill. Ms. Daniels appeared Pro Se.

After opening remarks, Challenger introduced as Exhibit 1 a copy of O.C.G.A. § 21-2-6, the election code applicable to the challenge and hearing.

Challenger Exhibit 2 was a copy of O.C.G.A. § 15-6-50 outlining the qualifications of any person to qualify for and serve as Clerk of Court.

Challenger's Exhibit 3 was a compilation of documents:

1) A copy of a letter from Floyd Moon dated 09-27-2007 to Ms. Barbara Anne Daniels which notified her of a dishonored check she had written, the check, and the USPS Certified mail receipt signed by Ms. Daniels dated 09-28-2007.

2) A warrant application by the Moon Law Firm in the Magistrate Court of Lowndes County dated 12-03-2007.

3) Warrant #CW0086284 issued by the Magistrate Court of Lowndes County alleging that Barbara Anne Daniels committed the offense of FDAF by writing a check to the Moon Law Firm on 09-19-2007 and a copy of the check stamped "not sufficient funds."

4) A Notice of Arraignment for Barbara Anne Daniels for FDAF which included 6 dates to appear.

5) A “For Cash Appearance Bond” receipt number 346895 dated 03-12-2008 for cash bond in the amount of \$225.00

6) A Lowndes County Superior Court Cash Bond Forfeiture Order dated 04-18-2008 signed by Superior Court Judge James E. Hardy of the Southern Judicial Circuit that references Barbara Anne Daniels.

Challenger offered Exhibit 4 which was an affidavit for the Alapaha Circuit Assistant District Attorney, J. Allen Lawson, recounting his experience while preparing for a trial and picking a jury in Lanier County on 12-16-2019. It related the fact that while reviewing the jury list before trial and checking criminal histories, he had obtained an official criminal history on Barbara Anne Daniels that showed she had a Bond Forfeiture/Conviction for FDAF in violation of O.C.G.A. §16-9-20.

Exhibit 4a introduced by Challenger was the Affidavit for Clerk of Court signed by Ms. Daniels on March 6, 2020.

Exhibit 5, the final exhibit offered by Challenger, was a photostatic copy of the case **Carruth v. Brown**, 202 Ga. App. 656, 415 S.E.2d 470 (1992).

At the hearing both Challenger, Deborah Clark, and the potential candidate, Barbara Anne Daniels, were sworn and testified.

Ms. Clark’s testimony dealt with admission of the various exhibits including the December 2019 jury selection and discovery that Ms. Daniels had a FDAF Bond Forfeiture Conviction.

The potential candidate, Barbara Anne Daniels did not deny that she wrote the check and the fact that it was dishonored by the bank. She testified that “When all this happened, I was very...I got very sick...I was in the hospital for numerous times in Emory in Atlanta.” She

further testified that she did not go to court and did not know she was considered a convicted felon.

She further testified that during the 12-16-2019 jury selection she told the Judge she did not know anything was on her record or she would not have appeared for jury duty. When the Judge told her she needed to find out what was going on she went that day to Lowndes County. Further she stated that when she filled out the affidavit on 03-06-2019 nothing was on her record. Further she presented as her Exhibit 1 a letter from Sandy Hooks, a Quality Assurance Specialist with the Georgia Bureau of Investigation, dated 1-27-2020 reflecting that her 9-20-2008 arrest had been expunged. Exhibit 2 was a Georgia Criminal Information Center printout dated 03-17-2020 reflecting that Ms. Daniels had no record. She further stated on transcript page 14 at line 23, "It's dismissed," though no documentation of that was offered at the 03-30-2020 hearing. (After the appeal was filed, Ms. Daniels, on 04-15-2020 presented a Dismissal and other documents to the court but those documents were not considered by the court in this ruling.)

At the close of the hearing, the Lanier County Board of Elections held that Barbara Anne Daniels was not qualified to run for Clerk of Superior Court.

From this decision Barbara Anne Daniels appealed to the Superior Court.

RULING

The review of the Board's decision is controlled by O.C.G.A § 21-2-6(e). The review is confined to the evidence in the record.

Initially, the right of a citizen to hold office is the general rule and ineligibility is the exception. O.C.G.A. § 1-2-6(5). A citizen may not be deprived of the right to hold office without

proof of some disqualification specifically declared by the constitution or statutory law.

McLendon v. Everett, 205 Ga. 713, 55 S.E.2d 119 (1949).

The right of Deborah Clark to challenge the candidacy of Barbara Anne Daniels is not questioned.

The fact that there were proceedings in the Lowndes County Magistrate and Superior Courts is not denied. The evidence shows that Barbara Anne Daniels wrote a check for \$1,249.00 that was not honored by the bank. She paid \$225.00 as a Bond Amount and something was forfeited on April 18, 2008 as no amount is reflected in the order. However, according to her testimony and based on the evidence, it is uncontested that Barbara Anne Daniels never stood before a judge who informed her of her constitutional rights, asked her if she understood those rights and if she did understand those rights whether she voluntarily and freely waived those rights.

The primary concern of the court is whether the potential candidate, Barbara Anne Daniels, has been **convicted** of a felony or any offense involving moral turpitude that disqualifies her from seeking the office of clerk of superior court. Multiple code sections define the word “conviction” as delineated below.

The general rule for cash bond forfeitures in non-traffic cases is found in O.C.G.A. § 17-6-2. Under this statute, bond forfeiture does not result in a “conviction”, despite the litany of options listed as available to the court. The only instances when a cash bond forfeiture can result in a “conviction” are found under the traffic code in O.C.G.A § 40-13-58 and the DAF statute O.C.G.A. § 16-9-20(f)(2).

More precisely, O.C.G.A. § 16-9-20(f)(2) has the following qualifier to its definitions “*As used in this Code section:*” *emphasis added*. Then the code section defines a “conviction” by stating:

“Conviction” shall include the entering of a guilty plea, the entering of a plea of nolo contendere, or the forfeiting of bail.”

There are three methods of being “convicted” of DAF as outlined in the above code section. The distinctions and differences in what constitutes a “conviction” are significant when considering whether a person is qualified to run for the office of Clerk of Superior Court.

First, if Ms. Daniels had stood in front of a judge and entered **plea of guilty** after having been advised of her rights and having acknowledged those rights and freely and voluntarily waived those rights, she would NOT be qualified to run for office.

Second, and conversely, if she had stood in front of the judge and under the same scenario above and entered a **plea of nolo contendere**, she would be qualified to run. **Hardin v. Brookins**, 275 Ga 477, 569 S.E. 2d 511, (2002), **Spillers v. State**, 299 Ga. App. 854, 683 S.E.2d 903, (2009), and O.C.G.A. § 17-7-95.

The question remains as to Ms. Daniels’ qualifications to run for clerk of court based on the third method of being “convicted” of FDAF, specifically a Bond Forfeiture “Conviction.” A “conviction” by a Bond Forfeiture is not used, referenced or mentioned in the statutes reciting qualifications to run for office. O.C.G.A. § 45-2-1 and O.C.G.A. § 15-6-50(f). These statutes simply use the word “convicted” without any additional distinction.

Challenger contends that a bond forfeiture pursuant to O.C.G.A. § 16-9-20(f)(2) as stated above and as applied to O.C.G.A. § 15-6-50(f) is a disqualifying “conviction” for the purposes of an election. Neither Challenger or the potential candidate provided any precedent for a bond forfeiture disqualifying a candidate from running for office. The **Carruth** case relied upon by

Challenger is not applicable because it involved impeachment of a witness based on a conviction by a **plea of guilty**, rather than a DAF Bond Forfeiture Conviction. No precedent was presented where a person “convicted” of DAF by Bond Forfeiture whether misdemeanor or felony was disqualified from running for election or was impeached in court as was the situation in **Carruth**.

Without any specific statutes or cases defining the impact of a FADF Bond Forfeiture Conviction on a candidate’s qualifications to run for the office of clerk of superior court, this court must search the cases and statutes for rules of construction and legislative intent. This Court recognizes that the General Assembly may, within constitutional limitations, establish qualifications for public office. **Rogers v. Medical Ass’n of Georgia**, 244 Ga. 151, 259 S.E. 2d 85 (1979).

Statutes limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified. **Weems v. Glenn**, 199 Ga. 388, 391, 34 S.E. 2d 511 (1945).

Additionally, where definitions are restricted to a particular article or title, courts do not engraft their definitions into other parts of the code. **Thogerson v. State**, 224 Ga. App. 76, 77, 479 S.E. 2d 463 (1996) and **Beneke v. Parker**, 293 Ga. App. 186, 667 S.E. 2d 97 (2008), “rev’d in part on other grounds at 285 Ga. 733, 684 S.E.2d 243 (2009).”

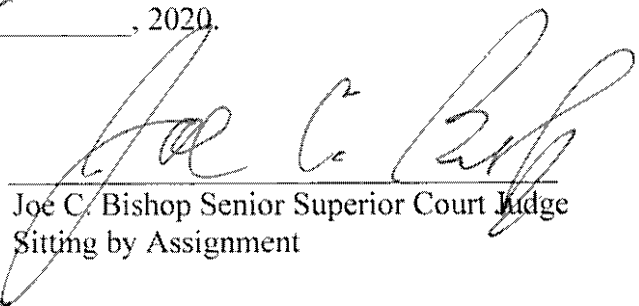
“In para materia” is an elementary rule of statutory construction that requires a statute be construed in relation to other statutes of which it is a part and all statutes relating to the same subject matter. Courts must construe such statutes together and harmonize them whenever

possible, so as to ascertain the legislative intent and give effect to that intent. Ryan v. Comm'rs of Chatham County, 203 Ga. 730, 48 S.E. 2d 86 (1948).

Using these rules of construction and applying them to O.C.G.A. § 15-6-50, § 17-7-95, § 45-1-2, and § 16-9-20, if the legislature had intended for a Bond Forfeiture “conviction” to be a disqualifying election “conviction” it would have so stated.

THEREFORE, this court finds that Ms. Barbara Anne Daniels was not “convicted” of FDAC in a method that would disqualify her from running for clerk of superior court and pursuant to O.C.G.A. § 21-2-6(e) that the substantial rights of Barbara Anne Daniels have been prejudiced. The decision of the Lanier County Board of Elections is reversed as the decision was in violation of the laws of this state, affected by an error of law and clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Ms. Barbara Anne Daniels is legally qualified to run for Clerk of Superior of Lanier County and the Board of Elections is instructed to place her name on the ballot for the upcoming election.

SO ORDERED, this 1st day of May, 2020.



Joe C. Bishop Senior Superior Court Judge
Sitting by Assignment