

NOTICE

Decision filed 03/25/25. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2025 IL App (5th) 250098-U

NO. 5-25-0098

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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DEMARKO MOSLEY,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	St. Clair County.
	)	
v.	)	No. 24-MR-285
	)	
THOMAS HOLBROOK, in His Capacity as	)	
Chairman and County Clerk, JAMES GOMRIC,	)	
in His Capacity as State's Attorney and Member,	)	
KINNIS WILLIAMS SR., in His Capacity as	)	
Circuit Clerk and Member, THE ELECTORAL	)	
BOARD OF ST. CLAIR COUNTY, IL, and	)	
WILLIE B. RAY,	)	Honorable
	)	Leah A. Captain,
Respondents-Appellees,	)	Judge, presiding.

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JUSTICE VAUGHAN delivered the judgment of the court.  
Justices Barberis and Sholar concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* We vacate the trial court's decision on the merits where petitioner failed to adhere to the statutory requirements for requesting judicial review of an electoral board decision necessary to provide subject matter jurisdiction to the circuit court.
- ¶ 2 This is an expedited appeal stemming from the December 3, 2024, dismissal of petitioner, Demarko Mosley's, objection before the St. Clair County Election Board. For the following reasons, we dismiss the appeal.

¶ 3

## I. BACKGROUND

¶ 4 On November 12, 2024, respondent, Willie B. Ray, filed a statement of candidacy for the position of School Board Member—East St. Louis School District No. 189. Therein, Ray affirmed that her listed address in East St. Louis, Illinois, 62201, was her residence. The statement of candidacy was accompanied by a loyalty oath, and 24 verified petitions for nomination containing a total of 240 signatures.<sup>1</sup>

¶ 5 On November 25, 2024, petitioner Demarko Mosley filed an objection to Ray's nominating papers. Mosley provided his address in East St. Louis and alleged that he was a resident and registered voter living at that address, which was located in the East St. Louis School District No. 189 territory. Mosley further alleged that the address set forth on Ray's nominating papers was incorrect and claimed that Ray's residence was actually in Blackjack, Missouri, which was not within the East St. Louis School District No. 189 territory. Mosley's objection contended that Ray was ineligible to be a member of the East St. Louis school board because Ray did not reside in the school district territory and her name could not appear as a candidate on the ballot for that position for the April 1, 2025, election. Petitioner requested the board sustain his objection to Ray's nominating papers, rule that Ray was ineligible to appear as a candidate for the school board position for the April 1, 2025, election, and strike Ray's name from the ballot.

¶ 6 A hearing was held before the St. Clair County Electoral Board on December 3, 2024. At that time, Ray's counsel moved to dismiss Mosley's objection.<sup>2</sup> Ray's counsel argued that Mosley's objection was invalid because it failed to provide the required information pursuant to

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<sup>1</sup>The submission included pages numbered 1-7 and 9-25. No page 8 is found in the record.

<sup>2</sup>The motion to dismiss included in the record does not contain any file mark by the St. Clair County Clerk. The record reveals that copies of the motion were provided to the Board at the hearing. Although no request to file the pleading is found in the record, no objection to the inclusion of the pleading was made by appellant, either here or before the circuit court.

10 ILCS 5/10-8 (West 2024) that required the objector's name, residence address, the nature of the objection, the interest of the objector, and the relief requested of the electoral board. Ray's counsel contended, pursuant to *Pochie v. Cook County Officers Electoral Board*, 289 Ill. App. 3d 585 (1997), that Mosley's objection failed to contain his "interest" and therefore the objection should be dismissed for a lack of standing.

¶ 7 In response, Mosley's counsel argued that the objection indicated that Mosley's residence was within the school district and any resident of the school district had the right to object. He further argued that although he had not had time to review the case law contained in Ray's motion because it was handed to him 10 minutes earlier, he doubted that any of the cases stated that the failure to list the interest of the objector disqualified the objection. Ray's counsel concurred that he did not find a case on point to that effect. Mosley's counsel further argued that "the fact that the objector is a resident, in this case, the school district, is sufficient interest."

¶ 8 Ray's counsel argued that the statute required a statement of interest and therefore, listing the address was insufficient. Mosley responded that such interpretation was "glorifying form over substance" stating,

"To suggest that an objector is required to set forth something this is essentially *pro forma*, and suggest that the failure to list that specific aspect disqualifies the objection renders the rest of the Election Code pertaining to objections nugatory. It just cannot be the intent of the legislature to require somebody to do something \*\*\* essentially unnecessary and meaningless."

Mosley again pointed to the fact that no Illinois case had ever ruled that the failure to list someone's interest disqualified an objection.

¶ 9 Mosley’s counsel was asked by Electoral Board Member Christopher G. Allen if he could point to any portion of Mosley’s objection that satisfied the interest of the objection requirement. Mosley’s counsel responded by stating,

“I cannot tell you, Mr. Allen, that the language that specifically says this is the interest of the petitioner. Frankly, it seems to me that someone being a resident of the district is enough. What other interest is necessary? Any person who is a resident of a political district has the right to file an objection. They don’t need a specific cause. They don’t need to represent a specific body. Anyone can do that. That’s clearly got to mean something.”

¶ 10 Mr. Allen then stated,

“Section 10-8, as previously read, states, Shall state the interest of the objector as part of their pleading. From the standard rulings by the Illinois Electoral Board’s manual, 2020-3.8.6, failure to state any interest, it is recommended that boards—if no interest, whatever is stated, a motion to dismiss an objector’s petition on that basis should be granted. The pleading requirements of the motion to—or of the objection—\*\*\*.”

Mosley’s counsel interjected and requested the Board allow them to amend the petition by interlineation, “given the fact that I was just served with the motion to dismiss about ten minutes ago.” Mr. Allen denied the request, stating it was his understanding of Illinois law, pursuant to *Stein v. Cook County Officers Electoral Board*, 264 Ill. App. 3d 447 (1994), that the time for amending objections was limited to the time for filing of objections, and “any action by the Electoral Board recognizing a material amendment should be void.”

¶ 11 Thereafter, Mr. Allen moved the Board to grant Ray’s motion to dismiss the objection. The motion was seconded by Chief Deputy Clerk, Cassie Voelkel. Ms. Voelkel and Mr. Allen voted

“aye” on the motion to dismiss along with Chairman and County Clerk Thomas Holbrook. Thereafter, Mosley was advised that he could appeal the ruling.

¶ 12 On December 9, 2024, Mosley filed a petition for judicial review of the Electoral Board decision with the St. Clair County circuit clerk. The petition alleged that the Board’s ruling granting Ray’s motion to dismiss was “clearly erroneous and was arbitrary and capricious in that the Petition did set forth information establishing his status; no further information was required.” The petition contained a certificate of service certifying that a copy of the foregoing pleading “was sent by certified mail, return receipt requested, addressed to” the listed recipients including Mr. Holbrook, James Gomric, Kinnis Williams Sr., Willie Ray, and the clerk of the Electoral Board of St. Clair County.

¶ 13 On December 19, 2024, the St. Clair County State’s Attorney entered his appearance through Assistant State’s Attorney Christopher G. Allen and moved for leave, pursuant to 10 ILCS 5/10-10.1(a), to file the record of proceedings from the Electoral Board meeting with the court. On December 27, 2024, the circuit court issued an order setting the case for hearing on January 3, 2025. On January 3, 2025, the circuit court issued a written order granting respondents’ motion for leave to file record of proceedings. What is purported to be a photograph of an envelope addressed to Mr. Gomric from Mathis Marifian & Richter LTD, which is the law firm of Mosley’s counsel, was also filed on January 3, 2025. No transcript from the January 3, 2025, hearing was included in the record.

¶ 14 On January 21, 2025, the circuit court issued an order finding it did not have subject matter jurisdiction to hear the appeal because Mosley failed to send certified copies of his petition for judicial review to the parties as required by 10 ILCS 5/10-10.1 (West 2024). Thereafter, the trial court also addressed the merits of Mosley’s appeal and found the Board’s dismissal of Mosley’s

objection was not clearly erroneous and therefore, “in the alternative” affirmed the Board’s decision. Mosley timely appealed the decision.

¶ 15

## II. ANALYSIS

¶ 16 Before we address the merits of the appeal, we first address the circuit court’s finding that it lacked jurisdiction to consider the appeal and dismissal of Mosley’s petition for review. “Review of the granting of a motion to dismiss for lack of subject matter jurisdiction is *de novo*.” *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 12 (citing *People v. Phillip Morris, Inc.*, 198 Ill. 2d 87, 94 (2001)).

¶ 17 “Circuit courts may exercise jurisdiction over election cases only as provided by statute.” *Id.* ¶ 14. The procedure for obtaining judicial review of an electoral board decision is provided in section 10-10.1(a) of the Election Code. *Id.* ¶ 15. That section states where the review must be sought, when the review must be sought, who must be served with the petition for review, and how those parties must be served. See 10 ILCS 5/10-10.1(a) (West 2024).

¶ 18 Here, the issue involves how the parties must be served. Pursuant to section 10-10.1(a), “The party seeking judicial review must serve a copy of the petition upon each of the respondents named in the petition for judicial review *by registered or certified mail* within 5 days after service of the decision of the electoral board as provided in Section 10-10.” (Emphasis added.) *Id.* The statute further requires the petitioner to “file proof of service with the clerk of the court” within the same time frame as set forth above. *Id.*

¶ 19 The Illinois Supreme Court has consistently held “that strict compliance with section 10-10.1(a) is required.” *Bettis*, 2014 IL 117050, ¶ 16 (citing *Fredman Brothers Furniture Co. v. Department of Revenue*, 109 Ill. 2d 202, 210 (1985)). As shown above, service by registered or certified mail is required. While the certificate of service attached to Mosley’s petition for review stated that the pleading was sent by registered or certified mail, the circuit court’s order reveals

that Mosley’s alleged failure to follow the statutory requirements was addressed at the January 3, 2025, hearing.

¶ 20 The circuit court’s order noted the following:

“That at the hearing, Assistant State’s Attorney Christopher Allen on behalf of the St. Clair County Electoral Board made an *Oral Motion to Dismiss* for failing to strictly comply with the service requirements under the statute which would deprive this Court of jurisdiction. Specifically, Attorney Allen argued that the statute requires that service must be had on all parties via certified or registered mail. Attorney Allen presented the envelope addressed to James Gomric, St. Clair County Courthouse, Belleville, IL 62220. It appears from a review of the document that the notice was sent via regular mail, not by certified mail or registered mail. The postmark on the envelope is December 10, 2024. Said envelope was placed in the court file and file-stamped January 3, 2025.”

The order further stated that Mosley relied on “several cases for the proposition that the manner and method of service is not mandatory \*\*\*.”

¶ 21 The language in the circuit court’s order creates an inference that it is unlikely that Mosley’s counsel followed the statutory directive regarding how the petition was served despite the language in the certificate of service. We note again, however, that no transcript or bystander’s report from the January 3, 2025, hearing was included in the record on appeal, and therefore, rely on Illinois Supreme Court case law to address the issue.

¶ 22 “[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual

basis.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Id.* at 392.

¶ 23 The statutory requirements for jurisdiction require service by registered or certified mail. 10 ILCS 5/10-10.1(a). While Mosley’s petition contended that the petition for review was served via registered or certified mail, the Assistant State’s Attorney asserted that Mosley’s service was only via regular mail and provided a copy of the envelope that purportedly contained Mosley’s petition for review. The envelope contains none of the customary postal service markings indicative of registered or certified mail and the court’s order reveals that Mosley’s responsive argument contended that strict compliance was unnecessary as to the mailing requirement. Since neither a transcript nor a bystander report were provided with the actual arguments presented, we interpret these facts as indicative of Mosley’s failure to serve the petition as required by statute.

¶ 24 The Illinois Supreme Court requires strict compliance with section 10-10.1(a). *Bettis*, 2014 IL 117050, ¶ 16. Section 10-10.1(a) is neither ambiguous nor unclear in the requirement that the petition for review be served “by registered or certified mail.” 10 ILCS 5/10-10.1(a). Mosley’s petition failed to adhere to the statutory requirements that provide a circuit court with jurisdiction to entertain his appeal. Accordingly, we hold that the circuit court did not have subject matter jurisdiction and dismiss Mosley’s appeal.

¶ 25 III. CONCLUSION

¶ 26 For the above-stated reasons, we affirm the circuit court’s dismissal of Mosley’s petition for review, vacate the circuit court’s order on the merits of Mosley’s petition, and affirm the decision of the St. Clair County Electoral Board.

¶ 27 Affirmed in part, vacated in part.