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IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

ROSE MARIE PREDDY,
candidate for Circuit Court Judge,
Group 11, Seventh Judicial Circuit,

Plaintiff,

v. **Case No**: 2024-CA-653

SCOTT C. DUPONT, candidate
for Circuit Court Judge, Group 11,
Seventh Judicial Circuit, et al.

Defendants.
_____/

PLAINTIFF'S MOTION FOR FINAL JUDGMENT ON THE PLEADINGS

Plaintiff Rose Marie Preddy moves for the entry of a Final Judgment on the Pleadings in favor of Plaintiff and against Defendant Scott DuPont. Fla. R. Civ. P. 1.140(c). This case involves no disputed facts and only a single dispositive issue of law. In October 2019, the Florida Supreme Court adjudicated DuPont guilty of multiple violations of the Rules Regulating the Florida Bar and suspended him from the practice of law. Dupont's disciplinary suspension extended for more than eight months; he was not reinstated to membership in the Florida Bar until June 30, 2020. As a result of his suspension from the practice of law within the five years preceding the commencement of the term of the office he seeks, DuPont is constitutionally ineligible to the hold the office of circuit judge as a matter of law. Plaintiff is therefore entitled to declaratory and injunctive relief in her favor.

Statement of Undisputed Material Facts[1]

1. On April 12, 2004, DuPont was admitted to the Florida Bar. DuPont Answer at ¶ 17.

2. DuPont was subsequently elected to the office of circuit judge for the Seventh Judicial Circuit. DuPont Answer at ¶ 17.

3. In 2018, the Florida Supreme Court unanimously ordered DuPont's removal from the office of circuit judge for "egregious misconduct" demonstrating a "present unfitness to hold office," effective June 25, 2018. *Inquiry Concerning a Judge, No. 16-377 re: Scott C. DuPont*, 252 So. 3d 1130, 1143 (Fla. 2018). DuPont Answer at ¶ 18.

4. Following his disciplinary removal from the office of circuit judge, DuPont faced disciplinary proceedings from The Florida Bar, in which DuPont filed a Conditional Guilty Plea for Consent Judgment on June 28, 2019. DuPont Answer at ¶ 19.

5. On October 10, 2019, the Florida Supreme Court adjudicated DuPont guilty of multiple violations of the Rules Regulating the Florida Bar and suspended him from the practice of law for a period of ninety-one days as a sanction. *The Florida Bar v. Dupont*, Case No. SC19-1243, 2019 WL 5078893 (Fla. Oct. 10, 2019). DuPont Answer at ¶ 20.

[1] Cited as Facts, ¶ #, below.

6. On October 24, 2019, the Florida Supreme Court entered an order acknowledging DuPont's notification to the Florida Bar on October 21, 2019, that he was no longer practicing law. DuPont Answer at ¶ 21.

7. DuPont was suspended from the practice of law in Florida effective October 21, 2019. DuPont Answer at ¶ 21.

8. DuPont was reinstated to membership in the Florida Bar effective June 30, 2020. *Florida Bar v. DuPont*, SC20-25, 2020 WL 3525942 (Fla. June 30, 2020).

9. On April 23, 2024, DuPont paid the qualifying fee and filed other qualifying documents, including a sworn candidate oath stating that he was qualified under the Constitution and laws of Florida to hold the office of circuit judge. DuPont Answer at ¶ 27.

10. On April 23, 2024, the Department of State performed its ministerial function in reviewing the qualifying papers and qualified DuPont as a candidate for the office of circuit judge in Group 11 for the Seventh Judicial Circuit, without determining whether the contents of the qualifying papers were accurate. DuPont Answer at ¶ 28; Division of Elections Answer at ¶ 28.

11. Plaintiff Rose Marie Preddy is a resident of St. Johns County, an incumbent circuit judge in the Seventh Judicial Circuit following her appointment to office by Governor DeSantis in 2023, and a duly qualified candidate to retain the office of circuit judge in Group 11 for the Seventh Judicial Circuit in the 2024 election. DuPont Answer at ¶ 4

12. The term of office for the circuit judge elected for the Seventh Judicial Circuit, Group 11, will commence upon the conclusion of Plaintiff's current term of office on January 7, 2025. Art. V, § 11(b), Fla. Const.

Legal Standard

"After the pleadings are closed, but within such a time as not to delay the trial, any party may move for judgment on the pleadings." Fla. R. Civ. P. 1.140. "The purpose of a motion for judgment on the pleadings is to test the legal sufficiency of a cause of action or defense where there is no dispute as to the facts." *Miller v. Finizio & Finizio, P.A.*, 226 So. 3d 979, 982 (Fla. 4th DCA 2017). Motions for judgment on the pleadings "raise[] only questions of law arising out of the pleadings." *Venditti-Siravo, Inc. v. City of Hollywood, Fla.*, 418 So. 2d 1251, 1253 (Fla. 4th DCA 1982). "Judgment on the pleadings may be granted only if, on admitted facts, the moving party is clearly entitled to judgment as a matter of law." *Krieger v. Ocean Properties, Ltd.*, 387 So. 2d 1012, 1014 (Fla. 4th DCA 1980) (citing *Williams v. Howard*, 329 So.2d 277 (Fla.1976)).

Argument

I. Plaintiff is entitled to a declaratory judgment that Defendant DuPont is constitutionally ineligible as a matter of law to hold the office of Circuit Judge for the Seventh Judicial Circuit.

A. Defendant DuPont is constitutionally ineligible to serve as Circuit Judge.

The Florida Constitution provides that "[n]o person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida." Art. V, § 8, Fla. Const. Defendant DuPont was reinstated to membership in The Florida Bar by the Florida Supreme Court less

than four years ago, on June 30, 2020, after a disciplinary suspension that extended for more than eight months. Under the plain language of the Florida Constitution as authoritatively construed by both the Florida Supreme Court and the First District Court of Appeal, DuPont is currently ineligible for the office of circuit judge and will remain ineligible when the term of the office he seeks begins in January 2025. Plaintiff is entitled to declaratory relief from this Court regarding DuPont's constitutional ineligibility.

The Florida Supreme Court's approach to interpreting the constitution "reflects a commitment to the supremacy-of-text principle, recognizing that "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.' " *Planned Parenthood of SW and Cent. Fla. v. State*, 49 Fla. L. Weekly S73, 2024 WL 1363525 at *6 (Fla. Apr. 1, 2024) (quoting *Coates v. R.J. Reynolds Tobacco Co.*, 365 So. 3d 353, 354 (Fla. 2023)) (cleaned up); *see also Advisory Op. to Governor re Implementation of Amend. 4, The Voting Restoration Amend. (Amendment 4)*, 288 So. 3d 1070, 1081 (Fla. 2020) (interpreting constitutional text). The goal of this approach is to "ascertain the original, public meaning of a constitutional provision—in other words, the meaning as understood by its ratifiers at the time of its adoption." *Planned Parenthood*, 2024 WL 1363525 at *6; *see also Ham v. Portfolio Recovery Associates, LLC*, 308 So. 3d 942, 947 (Fla. 2020) ("[T]he goal of interpretation is to arrive at a 'fair reading' of the text by 'determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.' ") (quoting

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012)).

This case involves a single dispositive question of constitutional interpretation: whether an attorney who was reinstated to membership in the Florida Bar following a disciplinary suspension less than five years before the date he would assume office has been a "member of the bar of Florida" for the preceding five years under article V, section 8, of the Florida Constitution. A careful examination of the constitutional text, context, and the authoritative interpretations of both the Florida Supreme Court and the First District all require this question to be answered in the negative.

The Florida Supreme Court has addressed the precise issue presented here: "whether suspended lawyers are 'member[s] of the bar of Florida' for the purpose of satisfying the eligibility requirements for circuit court judge" under article V, section 8, of the Florida Constitution. *In re Adv. Op. to Gov. re Comm'n of Elected Judge*, 17 So. 3d 265, 267 (Fla. 2009) ("*Commission of Elected Judge*"). The question in *Commission of Elected Judge* arose in the context of a request for an advisory opinion[2] by the governor regarding his authority to commission

[2] Although the Supreme Court's advisory opinions "are not strictly binding precedent in the most technical sense," the Court has stated that "only under *extraordinary* circumstances will we revisit an issue decided in our earlier advisory opinions." *Ray v. Mortham*, 742 So. 2d 1276, 1285 (Fla. 1999) (emphasis in original); *see also Barley v. S. Florida Water Mgmt. Dist.*, 823 So. 2d 73, 82 (Fla. 2002) (noting that Court has "consistently stated" that "[w]hile advisory opinions to the Governor are not binding judicial precedents, they are frequently very persuasive and usually adhered to") (quoting *Lee v. Dowda*, 19 So.2d 570, 572 (Fla. 1944)).

a circuit judge-elect who had been suspended from the practice of law by the Supreme Court *after* his election but *before* the date he was to take office. *Id.* at 265. Construing the same constitutional eligibility provision at issue here, the Court held that the phrase "a member of the bar of Florida" refers to "a member with the privilege to practice law." *Id.* at 266-67. A lawyer who is suspended from the practice of law lacks the privilege to practice law and therefore "fails to satisfy the constitutional eligibility requirements for a circuit court judgeship." *Id.* at 267.

The Supreme Court noted that its holding was consistent with the decisions of other states construing similar provisions of their own constitutions. *Id.* at 266-67 (citing *State ex rel. Willis v. Monfort*, 159 P. 889, 891 (Wash. 1916); *Johnson v. State Bar of Cal.*, 73 P.2d 1191, 1193 (Cal. 1937); *Hanson v. Cornell*, 12 P.2d 802, 804 (Kan. 1932); *Cornett v. Judicial Ret. & Removal Comm'n*, 625 S.W.2d 564 (Ky. 1981)). These cases reflect the "common sense understanding" that, where Bar membership is an eligibility requirement for judicial office, "one may not be a judge in a court in which one's own practice as a lawyer would be disallowed." *Commission of Elected Judge*, 17 So. 3d at 266. The same principle applies here, where the Florida Constitution requires Bar membership as an eligibility requirement both the time a candidate would take judicial office and also for "the preceding five years." Art. V, § 8, Fla. Const. DuPont's eight-month disciplinary suspension from the practice of law less than five years ago renders him constitutionally ineligible for the office of circuit judge in this year's election cycle.

In addition to the Supreme Court's advisory opinion in *Commission of Elected Judge*, the First District has also construed the constitutional phrase "member of the bar of Florida." *McCallum v. Kramer*, 299 So. 3d 630 (Fla. 1st DCA 2020). The decision in *McCallum* arose in the same posture as this case: post-qualifying litigation over candidate eligibility. A circuit judge from this court entered final judgment declaring candidate Beverly McCallum constitutionally ineligible for the office of state attorney and enjoined the relevant elections officials from placing her name on the ballot. *Id.* The First District affirmed, holding that "[b]ecause McCallum was suspended from the practice of law for a period of fifteen days in 2019, McCallum does not meet the eligibility requirements for the office of State Attorney provided under article V, section 17 of the Florida Constitution, namely that a person 'be and have been a member of the bar of Florida for the preceding five years.' " *McCallum*, 299 So. 3d at 631. The appellate court's decision cited *Commission of Elected Judge*, 17 So. 3d at 267, which construed the same operative language ("member of the bar of Florida") in article V, section 8. *Id.*

By construing the constitutional phrase "member of bar of Florida" to exclude attorneys who are unable to practice law as the result of a disciplinary suspension, both *Commission of Elected Judge* and *McCallum* adopt a "fair reading" aligned with how its ratifiers would have understood the text at the time of its adoption. *Ham*, 308 So. 3d at 947. And this interpretation is consistent with the context of a constitutional provision imposing eligibility restrictions on those entitled to serve in judicial office. *Cf.* Scalia & Garner, *Reading Law* at 167

("Context is a primary determinant of meaning"). A contrary interpretation would lead to the anomalous conclusion that a suspended attorney unable to represent clients in a circuit court would be eligible to serve as a circuit judge in that same court.

No other interpretative tools compel a different conclusion. Although Rule 3-5.1(e) of the Rules Regulating the Florida Bar characterizes a suspended lawyer as a "member of The Florida Bar . . . without the privilege of practicing," the Supreme Court in *Commission of Elected Judge* stated explicitly that its rules governing lawyer regulation and disciplinary cases were not intended to define the phrase "a member of the bar of Florida" as used in article V, section 8, of the Florida Constitution. *Commission of Elected Judge*. 17 So. 3d at 266; *see also* R. Regulating Fla. Bar 3-5.1(e) (providing that an attorney suspended for more than 90 days must provide "proof of rehabilitation" and remains suspended until the Supreme Court "enters an order *reinstating the respondent to membership* in The Florida Bar") (emphasis added).

DuPont may invoke the "canon against surplusage" by noting that the parallel constitutional eligibility requirement for rural county court judges refers to a "member in good standing of the bar of Florida" rather than a "member of the bar of Florida." Art. V, § 8, Fla. Const. But the canon against surplusage is not "an absolute rule" *Tsuji v. Fleet*, 366 So. 3d 1020, 1030 (Fla. 2023) (citing *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013)). An interpretation of the Florida Constitution that would permit suspended lawyers to serve as supreme court justices but not rural county court judges fails to reasonably harmonize

the whole text. *Cf. Thompson v. DeSantis*, 301 So. 3d 180, 187 (Fla. 2020) (adopting "reasonable interpretation" of Article V that "honors the whole text and 'furthers rather than obstructs the document's purpose.' ") (quoting Scalia & Garner, *Reading Law* at 63); *see also Thompson*, 301 So. 3d at 187 ("After all, 'our role [is] to make sense rather than nonsense out of the *corpus juris*.' " (quoting *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 101 (1991)); *Heyman v. Cooper*, 31 F.4th 1315, 1321-22 (11th Cir. 2022) ("[O]ur obligation is to the text and not the canons per se."). Nothing in the text, context, or history of the rural-county-judge-eligibility provision[3] suggests that it would have most reasonably been understood to prohibit suspended lawyers from serving as county judges in counties with a population of 40,000 or less while allowing suspended lawyers to serve in all other judicial offices. And neither the Supreme Court in *Commission of Elected Judge* nor the First District in *McCallum* suggested that the "good standing" language in article V, section 8, should affect the most reasonable interpretation of "member of the bar of Florida" applicable to circuit judges.

Under article V, section 8, a candidate for office who has been suspended from the practice of law is not a "member of the bar of Florida" during the period of suspension for purposes of eligibility to hold an office requiring Florida Bar

[3] *See* Fla. HJR 37 (1984) (proposed Fla. Const. art. V, § 8) (revising county judge eligibility requirements from simple membership in the Florida Bar to five years of membership in the Florida Bar); *cf.* Art. V, § 20(d)(7), Fla. Const. (schedule to implementation of 1972 Article V revisions providing for service of county judges who are not members of the bar of Florida).

membership for a prescribed period of time. DuPont's disciplinary suspension less than five years ago renders him ineligible to hold the office of circuit judge for the Seventh Judicial Circuit as a matter of law.

B. Plaintiff is entitled to a declaratory judgment regarding Defendant DuPont's ineligibility.

Under Florida law, individuals seeking declaratory relief must allege that:

> there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interest are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991) (quoting *May v. Holley,* 59 So. 2d 636, 639 (Fla. 1952)). Plaintiff has established each of these elements based upon the undisputed material facts and is entitled to a declaratory judgment as a matter of law regarding her rights with respect to DuPont's ineligibility.

Notwithstanding his ineligibility to serve in the office of circuit judge for a term beginning in January 2025, DuPont has filed a sworn candidate oath with the Department of State, Division of Elections, claiming that he is qualified to hold the office of Circuit Court Judge under the Constitution and Laws of Florida. *See* Facts, ¶ 8. Plaintiff Rose Marie Preddy, a candidate for the same judicial seat, has been placed in doubt regarding her own rights with respect to the

candidacy of DuPont. Plaintiff has a bona fide, actual, present, and practical need for a declaration at this time in light of Florida law recognizing circumstances under which a post-election challenge to a candidate's eligibility or qualifications may be barred or estopped, rendering it important for this dispute to be resolved "before the ballots [are] cast and results announced." *Republican Party of Miami-Dade Cnty. v. Davis*, 18 So. 3d 1112, 1118 (Fla. 3d DCA 2009).

All parties with potentially adverse or antagonistic interests have been brought before the Court by proper process: DuPont and the elections officials responsible for candidate qualifying and the conduct of the election. DuPont's answer does not assert that some other party with an interest adverse to the Plaintiff on the relevant questions of law is absent. And because Plaintiff seeks both declaratory and injunctive relief with respect to DuPont's ineligibility in a race in which she is herself a candidate, Plaintiff's request does not seek the giving of legal advice by the courts or the answer to questions propounded from curiosity, but seeks judicial relief to bar a constitutionally ineligible candidate from appearing on the ballot to the detriment of Plaintiff's own interests as a candidate and to the public interest.

Under the undisputed material facts, Plaintiff is entitled as a matter of law to a declaratory judgment regarding DuPont's ineligibility for the office of circuit judge for the Seventh Judicial Circuit for the term beginning in January 2025.

II. Plaintiff is entitled to the injunctive relief requested with respect to Defendant DuPont's candidacy as a matter of law.

To establish entitlement to permanent injunctive relief, a party must demonstrate a "clear legal right, an inadequate remedy at law[], and that irreparable harm will arise absent injunctive relief. *See, e.g., Liberty Counsel v. Florida Bar Bd. of Governors,* 12 So. 3d 183, 186 n. 7 (Fla. 2009). Plaintiff has established each of these elements based upon the undisputed material facts and is entitled as a matter of law to permanent injunctive relief supplemental to the declaratory judgment with respect to DuPont's ineligibility. *See* § 86.061, Fla. Stat.

For the reasons stated above, Plaintiff has established a clear legal right to a declaratory judgment finding Defendant DuPont constitutionally ineligible as a matter of law to hold the office of Circuit Court Judge for the Seventh Judicial Circuit. But in the absence of further supplemental injunctive relief, the Defendant Supervisors of Elections and the Division of Elections will continue to act upon DuPont's candidacy as though he were an eligible and qualified candidate for the office of circuit judge. These actions may include, but are not limited to, certification of DuPont as a duly qualified candidate; listing DuPont as a candidate on ballots printed for the General Election; and tabulating, reporting, and certifying votes cast for DuPont. Injunctive relief is necessary because Plaintiff has no adequate remedy at law to prevent the Defendant Supervisors of Elections and the Division of Elections from engaging in these election activities with respect to a candidate who is ineligible to serve in the office of circuit judge. The harm to the Plaintiff in being required to contend in

an election with an ineligible candidate cannot be redressed by money damages and is therefore irreparable. *See*, *e.g.*, *Hoover v. Mobley*, 253 So. 3d 89 (Fla. 2018) (affirming trial court order granting declaratory and injunctive relief requiring elections officials to decertify and remove opposing candidate's name from ballot upon finding that candidate had not properly and timely qualified).

Under the undisputed material facts, Plaintiff is entitled as a matter of law to a permanent injunction directed to the Defendant Supervisors of Elections and the Division of Elections, and all those acting in concert with them, precluding them from: a) certifying DuPont as a duly qualified candidate for Circuit Court Judge for the Seventh Judicial Circuit; b) including DuPont as a candidate on any ballots that are printed for the General Election; and c) tabulating, reporting, or certifying any votes cast for DuPont.

Conclusion

The Court should grant final judgment on the pleadings in favor of Plaintiff: 1) declaring that Scott C. DuPont is constitutionally ineligible to hold the office of Circuit Court Judge for the Seventh Judicial Circuit for a term beginning in January 2025; and 2) as a result of DuPont's ineligibility, permanently enjoining the Defendant Supervisors of Elections and the Division of Elections and all those acting in concert with them from: a) certifying Defendant DuPont as a duly qualified candidate for State Attorney for the Seventh Judicial Circuit; b) including DuPont as a candidate on any ballots that are printed for the General Election; and c) tabulating, reporting, or certifying any votes cast for DuPont.

Respectfully submitted,

/s/ Daniel Nordby

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 15, 2024, a copy of the foregoing was filed via electronic means through the Florida Courts E-Filing portal and was served via electronic mail on all counsel of record.

/s/ Daniel Nordby
DANIEL NORDBY