No. C-6914-13-G

LETICIA LOPEZ	§	IN THE DISTRICT COURT
Contestant,	§	
	§	
v.	§	370TH JUDICIAL DISTRICT
	§	
LUPE RIVERA	§	
Contestee	§	OF HIDALGO COUNTY, TEXAS

CONTESTANT'S MOTION FOR JUDGMENT WITHOUT ORAL HEARING

TO THE HONORABLE DISTRICT COURT JUDGE:

Contestant LETICIA LOPEZ files this motion for judgment without oral hearing and, in support, respectfully shows the court the following:

Factual Summary

The timeline in this case has been as follows:

November 5, 2013	Date of election at issue (now declared void for illegal voting)
November 19, 2013	Contestant's Original Petition filed
March 24-27, 2014	Trial
April 25, 2014	Closing argument
June 12, 2014	Judgment announced from bench
June 18, 2014	Proposed final judgment filed by Contestant Lopez
June 19, 2014	Lopez's Motion for Expedited Briefing on Appeal
June 19, 2014	Rivera's Objection to Contestant's Proposed Judgment

On June 18, 2014, contestant Lopez filed a Proposed Final Judgment which incorporated an abbreviated period for filing notice of appeal and appellate briefs. The next day, Contestee Rivera's counsel filed an objection to the proposed judgment and has requested an oral hearing. Contestee Rivera raises two objections to Lopez's proposed judgment.

First, Rivera *acknowledges* that the Court has the discretion to accelerate the appeal of a general election contest, both by requiring notice to be filed within five days and expediting the briefing schedule. *See* Rivera's Objection to Proposed Judg. at 2 ("Therefore the Trial Court has the discretion [to] accelerate the appeal as the Court deems appropriate."). The only purpose of the objection appears to be to inform the court that it is not *required* to accelerate the notice or briefing period.

Second, Rivera complains that "[t]he proposed judgment…fails to include a provision suspending the execution of the judgment pending the disposition of the appeal without the necessity for a supersedeas bond upon the perfecting of the appeal as provided in Tex. Elec. Code § 232.016."[1] Id. at 3. There is no further information or argument provided in Rivera's objection.

Lastly, Rivera's counsel has informed the Court that the earliest date he is available for a hearing on his as-yet unexplained objections is July 28, more than six weeks after the judgment was announced.

Argument & Authorities

I. The need for a speedy resolution to this election contest

This Court stated on June 12 that the new election for District 5 commissioner shall be held "as soon as possible." The date for the new election must—per the Election Code—be set by the district court. Tex. Elec. Code § 231.007(a). However, the court cannot set the date until after judgment is signed and becomes final. *See id.* ("As soon as practicable after the judgment becomes final, the district court shall set the date for the new election."). In order to hold an

[1] Texas Election Code § 232.016 provides in full: "The perfecting of an appeal in an election contest suspends the execution of the district court's judgment pending the disposition of the appeal without the necessity for a supersedeas bond."

election as soon as possible, the appellate period must either run or any appeal—if filed—must be disposed.

Time is of the essence in an election contest,[2] and "[t]here are compelling state interests to promptly resolve the disputed issues in order to put into office the duly elected candidate." *Goodman v. Wise*, 620 S.W.2d 857, 860 (Tex. Civ. App.—Corpus Christi 1981, writ ref'd n.r.e.); *see also Wendover v. Tobin*, 261 S.W. 434, 438 (Tex. Civ. App.—San Antonio 1924) ("public welfare…demand[s] a swift and expeditious disposal" of election contests).

This case required extensive briefing even before closing argument—which occurred a month after trial—due to the nature of the dispute and the requirement for careful consideration of facts surrounding each challenged voter. Both sides have already thoroughly examined the facts and briefed the law. Essentially, both sides have already researched and briefed the meat of the issues that would be presented on any appeal. Then, in announcing judgment June 12, the Court already recited specific findings of fact on the record. There is no question about how the Court ruled on any given voter at issue. If Rivera plans an appeal, he has had all the information he needs since June 12 at least, and he should have been working on his brief since that day.

Given this, there is every reason to expedite the appeal, and no reason to delay the final resolution of this case. As explained in *Contestant Lopez's Motion for Expedited Briefing on Appeal* (filed Jun. 19, 2014), which is incorporated herein by reference, it is within the Court's sound discretion to expedite, and Contestant requests that the appeal be expedited as proposed in the proposed final judgment.

II. The Court is not required to hold an oral hearing *even on a motion for summary judgment,* and no oral hearing should be granted here if Rivera's counsel is not available for a timely hearing.

[2] *See* 31B Tex. Jur. 3d Elections § 385.

As recited in the factual summary above, Rivera has raised two very minor objections to the proposed judgment, but he has not offered any explanation or argument. There is no explanation as to why an expedited notice and briefing schedule would work any hardship. Even if there were, the nature of an election contest is that it must move quickly, and Rivera has already had extra time to prepare an appeal. The only purpose of the objection appears to be to inform the Court that it is not *required* to expedite the appeal, but *may* in its discretion.

There is no need to devote judicial resources to a hearing for Rivera to inform the court of what is recited in the statute. Even if Rivera had a substantive objection, an oral hearing is not required for the Court to rule on it. A district court judge has discretion to decide whether to grant an oral hearing unless the applicable rule of civil procedure requires an oral hearing be held. *See Gulf Coast Inv. Corp. v. Nasa I Business Cntr.,* 754 S.W.2d 152 (Tex. 1988) ("Unless required by the express language or the context of the particular rule, therefore, the term 'hearing' does not necessarily contemplate either a personal appearance before the court or an oral presentation to the court."); *Adamo v. State Farm Lloyds Co.*, 853 S.W.2d 673, 677 (Tex. App.–Houston [14th Dist.] 1993, writ denied) ("It was entirely within the trial court's discretion to allow or dispense with oral argument. Even if oral argument might have been interesting and helpful, we cannot mandate that trial courts must hear it."). *See also Bosch v. Armstrong*, No. 01-08-00847-CV, 2009 WL 1635318 (Tex. App.–Houston [1st Dist.] June 11, 2009, pet. denied) (holding that a trial court's granting of a motion for summary judgment without an oral hearing did not violate the defendant's due process rights "as long as he received a reasonable opportunity to present his written response and evidence"). Given that the Court has already announced its judgment in this case, Contestee's right to an opportunity to be heard would be even less burdened than in a summary judgment proceeding.

An oral hearing would not be helpful or beneficial to the resolution of Contestee's objections, and would only serve to prolong this case and increase its expense. But even if the Court deems argument on the acceleration issue to be helpful, it can be done in writing or by teleconference. *See* Tex. R. Judicial Admin. 7(a)(6)(b) (authorizing courts to "utilize methods to expedite the disposition of cases on the docket…including . . . the use of telephone or mail in lieu of personal appearance by attorneys for motion hearings . . . ."). Ruling on Contestee's objection based on written submissions would better follow the guidance of this rule, and if Contestee wishes to make an oral presentation to the Court, he can do so over the telephone.

III. Election Code § 232.016 is self-executing and does not need to be recited in a judgment.

Rivera's second objection is even less substantial than the first. The judgment does not need to recite a fact that is self-executing under the plain statutory language of section 232.016. *See supra* at 2 n. 1 (reciting statutory language). However, if the Court wishes to include a reference to this statute in the judgment, Lopez does not object, and there is no reason to delay judgment for any argument on this point.

Conclusion

Rivera wanted to hurry this case along as fast as possible during discovery, but now that judgment has been ordered against him, rather than expeditiously appealing, he seeks to delay its resolution. One reason may be that even if he were to be unsuccessful on appeal, the longer Rivera can delay the new election, the longer he can hold office, and vote on city business, pursuant to the void November 2013 election. If Contestee has justifiable objections to Contestant's proposed judgment, he should explain them in writing or by phone. Delaying the signing of the judgment until a hearing can be held July 28 is not justified in the context of this case. Moreover, expediting the appeal, and preventing any further delay, may at least permit the

new election to be held before or concurrently with the November 2014 elections, which will already feature other Weslaco offices.

Lopez respectfully requests this Court rule on Contestee's objection to Contestant's proposed judgment based on written submissions without an oral hearing; that the Court sign Contestant's Proposed Judgment; and that the Court accelerate any appeal of this contest.

Respectfully submitted:

By: _____

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been forwarded to all counsel of record in this cause on July 10, 2014, as follows:

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