

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MARK A. KING
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

DAVID W. STONE IV
Stone Law Office & Legal Research
Anderson, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ANTONY BIBBS,

Appellant-Petitioner,

vs.

MADISON COUNTY CLERK,

Appellee-Respondent.

)
)
)
)
)
)
)
)
)
)

No. 48A02-0707-CV-613

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause Nos. 48C01-0705-MI-518, -519

January 23, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Antony Bibbs appeals the trial court's dismissal of his petitions requesting a recount of the May 8, 2007, Anderson City Counsel at Large primary election. Bibbs was a candidate in that election, and Indiana Code section 3-12-6-2(a) requires that a candidate seeking a recount must file a verified petition within fourteen days of the election. Although Bibbs's petitions were timely, they were not verified. As the trial court observed, "[n]owhere can the words 'sworn' or 'oath' or 'affirmed' or 'perjury' be found in Bibbs' petitions." Appellant's App. p. 2. Thus, the petitions did not comply with the statute.

On June 5, 2007, Bibbs filed a motion to amend his petitions and the trial court eventually denied the motion and dismissed the petitions. Indiana Code section 3-12-6-7(b) explicitly states that the court may not allow a petition to be amended following the deadline for filing the petition if the original pleading failed to comply with the rules set forth in Indiana Code chapter 3-12-6. Inasmuch as Bibbs's petitions did not comply with the requirement that they be verified, the trial court was without discretion to permit him to amend them. Thus, the trial court properly dismissed Bibbs's petitions for failure to comply with the relevant statutes.

Moreover, the 2007 general election has come and gone. Thus, there is no practical relief to be given to Bibbs and this appeal is moot. See Krochta v. State, 175 Ind. App. 436, 443, 372 N.E.2d 475, 479 (1978) (ordering that an election dispute be dismissed as moot because "[t]he disputed election has been held and the relief sought on appeal will not alter its outcome").

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and ROBB, J., concur.