

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION**

CHRISTOPHER GLEASON,

Plaintiff,

vs.

Case No.: 24-003995-CI

JULIE MARCUS, in her official capacity
as Pinellas County Supervisor of Elections;
et. al.,

Defendants.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

THIS MATTER is before the Court on Defendant, JULIE MARCUS's non-evidentiary Motion to Dismiss Plaintiff's [Un]verified Complaint ("Motion") dated September 18, 2024. Having considered the Motion, the case file, the applicable law, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

I. Procedural History

On September 6, 2024, Plaintiff initiated the instant lawsuit pursuant to section 102.168, Fla. Stat. seeking to contest the results of the August 20, 2024 Republican primary election for Pinellas County Supervisor of Elections. On September 18, 2024, Defendant, JULIE MARCUS ("Defendant") moved to dismiss the instant case arguing, *inter alia*, that Plaintiff's Complaint was untimely. On October 3, 2024, Defendant filed her Notice of Request for Court to Consider Motion Based on Written Submissions without Hearing ("Written Submissions Notice") pursuant to Administrative Order No. 2020-012 PA/PI-CIR. In accordance with Administrative Order No. 2020-012 PA/PI-CIR, the Deadline to file any opposition to Plaintiff's Motion or otherwise request a hearing was Friday, October 18, 2024. Plaintiff did not respond to Defendant's Written

Submissions Notice or otherwise seek a hearing on Defendant's Motion. As such, Defendant's Motion is ripe for resolution by the Court without a hearing.

II. Analysis

In *Kinzel v. City of North Miami*, the Third District stated the following:

The general proposition that when a statutory action is availed of the provisions for its exercise must be strictly followed is especially applicable here, as we are dealing in this instance with a statutory action for an election contest. As to this type [of] litigation there is a public interest in promptness and finality of decision. In apparent recognition thereof the legislature, in granting the privilege of contest by suit in equity, sought to secure promptness by requiring that such actions be filed within 10 days after canvass, and required the contest to be submitted by a sworn complaint, setting forth the grounds relied upon and addressed to designated defendants. *Jurisdiction of the trial court to entertain an election contest under that statute depends upon the filing of a complaint thereunder within the time and in the form and content as directed in the statute.*

Kinzel v. City of N. Miami, 212 So. 2d 327, 328 (Fla. 3d DCA 1968) (emphasis added).

Section 102.168(2), Fla. Stat. states the following: “[A] contestant [of an election] shall file a complaint, together with the fees prescribed in chapter 28, with the clerk of the circuit court *within 10 days* after midnight of the date the last board responsible for certifying the results officially certifies the results of the election being contested.” (Emphasis added). By Plaintiff's own admission, the contested election relevant to the instant case was officially certified on August 23, 2024. In this regard, Plaintiff's Complaint states the following:

7. The vote results aggregating votes made on the election day, early vote and vote-by-mail purportedly show Marcus defeating Gleason by 133,141 to 24,937 votes.

8. The Canvassing Board met *on August 23, 2024* and confirmed this final vote tally. On this basis, the Canvassing Board *certified* Marcus as the winner of the Seat, and upon information and belief, issued a certificate to Marcus under § 102.155, Fla. Stat, that certifies Marcus as the winner of the seat.

Pl.'s Compl. at 4 (emphasis added). Further buttressing this allegation is a document attached as an exhibit to Plaintiff's Complaint which includes an email exchange between Plaintiff and Dustin Chase, the Deputy Supervisor of Elections. Mr. Chase states in the email that election results "were lawfully certified around 11:00 a.m., today August 23, 2024." Docket No. 2 at 104. Accordingly, the deadline for Plaintiff to initiate the instant action was September 3, 2024 pursuant to section 102.168(2).¹ However, Plaintiff did not initiate the instant lawsuit until September 6, 2024. Plaintiff's lawsuit is therefore untimely pursuant to section 102.168(2). Because the instant lawsuit is untimely, the Court is without jurisdiction to consider it and the Complaint must be dismissed.

Next, the Court must consider whether an opportunity to amend the Complaint should be afforded. "Unless it is clear from the face of a complaint that amendment would be futile, failure to grant a plaintiff at least one opportunity to amend his complaint constitutes an abuse of discretion." *Posey v. Magill*, 530 So. 2d 985, 986 (Fla. 1st DCA 1988) (citation omitted). "A dismissal with prejudice should not be ordered without giving the party offering the pleading an opportunity to amend unless it appears that the privilege to amend has been abused or it is clear that the pleading cannot be amended to state a cause of action." *Kapley v. Borchers*, 714 So. 2d 1217, 1218 (Fla. 2d DCA 1998). Dismissal with prejudice in a contest of election action is appropriate where "the complaint as filed could not vest jurisdiction in the trial court" and "the defect could not be cured by supplemental proceedings." *Bailey v. Davis*, 273 So. 2d 422, 423 (Fla. 1st DCA 1973).

Here, it is clear from the face of the Complaint and its attachments that amendment of the Complaint would be futile as Plaintiff clearly filed the Complaint more than ten days after midnight

¹ The filing deadline transferred to Tuesday, September 3, 2024 from Monday, September 2, 2024, which was Labor Day. See Fla. R. Jud. Admin. 2.514.


of the day the election results were certified. As filed, the Complaint does not vest the Court with jurisdiction, and an amended Complaint could not cure this defect. Plaintiff is unable to comply with the jurisdictional filing deadline provided by section 102.168(2) and therefore would not be able to state a cause of action even if afforded the opportunity to amend his Complaint.

Accordingly, it is

ORDERED and ADJUDGED:

1. Defendant's Motion is **GRANTED**.
2. Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**.

DONE and ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida this ___ day of October, 2024.


24-003995-CJ-10/22/2024 11:10:18 AM
Circuit Judge Patricia A. Muscarella
Honorably Retired
24-003995-CJ-10/22/2024 11:10:18 AM
Circuit Civil Judge

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