

**FILED**

January 14, 2022

**Hon. Thomas Daniel McCloskey, J.S.C.**

## **The Hon. Thomas Daniel McCloskey, J.S.C.**

Superior Court of New Jersey  
Law Division, Middlesex County  
Middlesex County Courthouse  
56 Paterson Street, 3<sup>rd</sup> Floor - Chambers 305  
New Brunswick, New Jersey 07903-0864

**PREPARED BY THE COURT:**

**THIS MATTER**, having come before the Court on January 14, 2022 for hearing of the application (“Motion”) of Daniel Antonelli, Esq. of the law firm of Antonelli Kantor, P.C., attorneys for and on behalf of the Respondent, **Jill DeCaro** (“Respondent DeCaro”), in the above-captioned matter seeking an Order pursuant to R. 2:9-5(b) for a stay of the Court’s Order for Judgment entered on December 29, 2021 pending appeal; and, W. Timothy Howes, Esq., attorney for **Mark Razzoli** (“Petitioner” or “Mr. Razzoli”), appearing in opposition thereto; and, in the further presence of Andrew J. Bruck, Acting Attorney General of New Jersey (Debra A. Allen, Deputy Attorney General, appearing), attorneys for and appearing on behalf of the Respondent, **Middlesex County Board of Elections** (“Respondent” or “Board of Elections”), and Niki

Athanasiopolous, Esq., First Deputy Counsel, County of Middlesex, attorneys for and appearing on behalf of for the Respondent,, **Nancy J. Pinkin, County Clerk, County of Middlesex** (“Respondent” or “County Clerk”);

**AND THE COURT**, having reviewed and considered the moving papers, those submitted in opposition thereto, those submitted in reply, having heard the oral argument counsel on this the short return date set by the Court for hearing on the Motion; and for good cause having been shown:

**IT IS** on this 14<sup>th</sup> day of **JANUARY 2022, ADJUDGED AND ORDERED** that the Motion of the Respondent DeCaro seeking an Order pursuant to R. 2:9-5(b) for a stay of the Court’s Order for Judgment entered on December 29, 2021 in this matter pending her appeal of the same to the Superior Court, Appellate Division, be, and the same hereby is, **DENIED**; and

**IT IS FURTHER ORDERED**, that a copy of this Order shall be deemed served on all counsel of record and the parties hereto upon its posting by the Court to the eCourts case jacket for this matter.

SO ORDERED:



**HON. THOMAS DANIEL McCLOSKEY, J.S.C.**

(X) Opposed.

**Pursuant to R. 1:6-2(f), the Court’s Statement of Reasons was set forth on the record at the conclusion of the hearing of this date and is further amplified by the “SUPPLEMENT” attached hereto and made a part hereof.**

**SUPPLEMENT TO THE COURT'S ORDER OF JANUARY 14, 2022**

[Supplemental Statement of Reasons – R. 1:6-2(f)]

In denying the Motion of the Respondent DeCaro for a stay of the Court's Order for Judgment of December 29, 2021 ("December 29<sup>th</sup> Judgment"), the Court supplements the reasons set forth on the record on this date, as follows. Pursuant to the Appellate Division's decision in In re Comm'r of Ins. Deferring Certain Claim Payments by N.J. Auto. Full Ins., Underwriting Ass'n, 256 N.J. Super. 553, 560 (App. Div. 1992), the standard and factors for injunctive relief applicable to a motion for stay are those set forth by our Supreme Court in Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). With respect to the relief specifically sought by the Respondent-movant here - *i.e.*, a stay of the December 29<sup>th</sup> Judgment pending appeal – applying the Crowe factors the Court finds and succinctly states, as follows:

(1) any harm or "irreparable" harm claimed by the Respondent DeCaro, as a single candidate, in the absence of a stay is far outweighed by the actual irreparable harm that will befall all registered voters in the Fourth Ward if a stay were imposed, and with it the indefinite and avoidable delay to follow in filling the vacancy declared in the Fourth Ward Township Council seat, including (i) those who voted for the Petitioner, (ii) those 27 voters registered to vote residing on the even-numbered side of Cymbeline Drive who were erroneously directed to vote, and provided with ballots to vote, in the Second Ward as opposed to the Fourth Ward, and especially (iii) the 17 identified voters of those 27 who actually voted in the November 2, 2021 General Election, but who were disenfranchised of their right to vote in this election for the reasons detailed in the Court's written opinion of December 29, 2021;

(2) the rights of those 17 disenfranchised voters and all voters in the Fourth Ward are settled as a matter of law - the Court having found that under N.J.S.A. 19:28-1(e), by clear and convincing evidence (well beyond the required preponderance standard) that the 17 votes of those registered voters, who, through no fault of their own, were issued ballots for the wrong ward *ab initio*, were legal votes that had been wrongfully rejected and in a sufficient amount in excess of the 11-vote margin of the declared winner such that had at least 12 or more of those 17 - or all of them - voted for the Petitioner it would have altered the outcome of the election;

(3) the Court, as a result, could not find who was duly elected and, therefore, while characterized by the Respondent-movant as "extraordinary" the relief imposed is precisely what is mandated by the statute, N.J.S.A. 19:29-9, in this specific instance;

(4) there is, in this Court's view, no probability or reasonable likelihood of the Respondent DeCaro succeeding on the merits of her appeal to warrant a stay or any further unnecessary and avoidable delay in conducting the special election that has been ordered; and

(5) that, in balancing the equities, given the public importance of the matter and especially the fatal flaw occasioned by the erroneous information contained in the Statewide Voter Registration System in respect of not only those 17 voters who actually voted in the 2021 General

Election, but also all 27 registered voters residing on the even-numbered side of Cymbeline Drive in the Fourth Ward, far more harm would befall all voters in the entire Fourth Ward of Old Bridge than would befall the Respondent by granting a stay abiding the outcome of her appeal of the determination made nullifying the results of the 2021 election for the Fourth Ward Township Council seat, declaring a vacancy in that seat, and ordering a special election forthwith.

There simply is no compelling reason presented for maintaining the status quo; or, as the Respondent-movant would have it, restoring the matter to the status *ante quo* such that Ms. DeCaro be permitted to take office for a seat on the Old Bridge governing body that has been legally declared vacant. Simply put, the Respondent-movant has failed to prove each of the Crowe factors “clearly and convincingly” to warrant a stay. Waste Mgmt. of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008). In granting the Petitioner the relief sought in the underlying Amended Petition, for the reasons detailed in the Court’s December 29<sup>th</sup> Opinion, the proofs demonstrated otherwise.

Moreover, in considering the relief sought here by the Respondent DeCaro in the form of a stay, critically, as here, “when a case presents an issue of significant public importance”, this Court has indeed taken into consideration “the public interest in addition to the traditional Crowe factors.” Garden State Equal. v. Dow, 216 N.J. 314, 321 (2013) (quoting McNeil v. Legis. Apportionment Comm’n, 176 N.J. 484(2003)). *See also N.J. Election Law v. DiVincenzo*, 445 N.J. Super. 187, 196, 202-206 (App. Div. 2016) (denying stay after giving due consideration to all factors including public interest). Once again, as the Supreme Court in In re Petition of Gray-Sadler, 164 N.J. 468, 482 (2000) stated, and as cited to by this Court at p. 20 of its Opinion of December 29<sup>th</sup> and re-iterated here:

“Simple deviance from statutory election procedures, absent fraud or misconduct, will not vitiate an election unless those contesting it can show that as a result of irregularities ‘the free expression of the popular will in all human likelihood has been thwarted.’”

164 N.J., supra, at 482 (emphasis added); and, in furtherance thereof, as the Appellate Division most recently stated in In re Election for Atl. Cty. Freeholder Dist. 3 2020 Election, 468 N.J. Super. 341 (App. Div. 2021), and similarly cited to by this Court at p. 16 of its December 29<sup>th</sup>: Opinion and re-iterated especially:

As a general proposition, “election laws are to be liberally construed to the end that voters are permitted to exercise the franchise and that the will of the people as expressed through an election is heard.” [citation omitted]. “A citizen’s constitutional right to vote for the candidate of his or her choice necessarily includes the corollary right to have that vote counted ‘at full value without dilution or discount.’ “[citation omitted. “The fundamental purpose of an election contest is ‘to ascertain the true will of the electorate.’” [citation omitted].

“Our election laws provide . . . the framework within which our Legislature has directed an election contest must proceed,” including “both the grounds on which an election may be contested, and the manner in which the contest may be brought and decided.” [citation omitted]. A judge hearing a contest petition, following a trial “similar to those in a civil action so far as practicable . . . under the control and direction of the court,” must pronounce judgment whether the incumbent or any contestant was duly elected.” N.J.S.A. 19:29-5; N.J.S.A. 19:29-8. “**If the judge finds that no person was duly elected, the judgment shall be that the election be set aside.**” N.J.S.A. 19:29-9. \* \* \*

468 N.J. Super., supra, at 353 (emphasis added).

To the foregoing ends, a special election here is mandated, has been ordered pursuant to statute, and it is time to get on with planning and conducting it on March 22, 2022 **for the benefit of both candidates and of all registered and enfranchised voters** of the Fourth Ward in Old Bridge Township.

SO ORDERED.