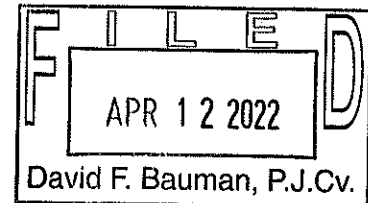


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Attorney for Plaintiffs



KATHLEEN HORGAN and KATHRYN
OKESON,

Plaintiffs,

vs.

BOROUGH OF RED BANK, ANGELA
MIRANDI, RED BANK DEMOCRATIC
MUNICIPAL COMMITTEE, EDWARD
ZIPPRICH, in his capacity as Chairman of
the Red Bank Democratic Committee,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY

Docket No.: MON-L- **542-22**

ORDER

This matter having come before the Court on the application of Plaintiffs, by and through their counsel Thaddeus R. Maciag Esq., Maciag Law LLC, for an order granting Plaintiffs' application for injunctive relief; and the Court having considered the moving papers and papers filed in opposition thereto; and the Court having heard oral argument of the parties, if any; and for good cause ^{NOT} having been shown; and for the reasons set forth ^{IN THE LETTER OPINION} ~~on the record on the return date~~ **ACCOMPANYING THIS ORDER,** ~~of this application,~~

IT IS ON THIS 12th day of APRIL, 2022;

ORDERED that the Plaintiffs' application for injunctive relief is hereby **DENIED**

and, it is

FURTHER ORDERED that Angela Mirandi is removed as a member of the Red Bank Borough Council; and it is **DENIED**

FURTHER ORDERED that the Borough of Red Bank and its officials and agents are **DENIED**

enjoined from taking any actions in furtherance of Angela Mirandi serving as a member of the Red Bank Borough Council; and it is

FURTHER ORDERED that the vacancy in Borough Council caused by the resignation of Erik Yngstrom shall remain unfilled until a councilmember is duly elected by the voters of Red Bank in the next general election; and, it is

FURTHER ORDERED that a copy of this order shall be served by Plaintiffs upon all Defendants if not already served via e-courts.


J.S.C.

Per R. 1:6(a)

☒ Opposed

☐ Unopposed

**SUPERIOR COURT OF NEW JERSEY
MONMOUTH VICINAGE**

**CHAMBERS OF
David F. Bauman
PRESIDING JUDGE CIVIL
SUPERIOR COURT JUDGE**



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April 12, 2022

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Re: Horgan, et al. v. Borough of Red Bank, et al.
Docket No.: MON-L-542-22

Dear Counsel:

On April 8, 2022, the court heard argument of counsel on the issue of whether plaintiffs Kathleen Horgan and Kathryn Okeson should be granted preliminary injunctive relief by removing defendant Angela Mirandi from her temporary appointment on the Red Bank

Borough Council, and ordering that the seat remain vacant until the general election in November 2022. Having considered the oral and written arguments of counsel, the court now renders its decision.

A. FACTS

The following facts gleaned from the Order to Show Cause record are largely undisputed. On January 19, 2022, Borough of Red Bank Council member Erik Yngstrom, a duly elected Democrat, resigned his office, causing a vacancy on the Borough Council. Neither plaintiff Kathleen Horgan, an elected member of the Red Bank Democratic Municipal Committee (“RBDMC”), nor plaintiff Kathryn Okeson, also an elected member and the appointed secretary of the RBDMC, received any notice from defendant Edward Zipprich, the Chairman of the RBDMC, regarding the Yngstrom vacancy or any invitation to any meeting of the RBDMC to discuss and present any nominees to the Borough Council to fill the vacancy.

On February 8, 2022, 20 days after the occurrence of the vacancy, defendant Zipprich, who was not only the Chairman of the RBDMC but a Red Bank Borough Council member, provided to the Mayor of Red Bank, Pasquale Menna, a letter setting forth the names of three nominees, one of whom was defendant Angela Mirandi.

At a meeting of the Borough Council on February 9, 2022, at which the Borough Attorney was present, the Mayor of Red Bank announced to the Council that “I was favored with a letter of recommendation by the Chairman, Councilman Zipprich,” which “provided the names of three individuals who are all residents and well considered in our community.” The Mayor nominated one person from the list, Stephen Hecht, whom plaintiff Horgan endorsed and moved to approve. Mr. Hecht’s nomination failed because Ms. Horgan’s motion was not seconded. Councilman Michael Ballard then nominated defendant Mirandi, who was also on the list. That nomination was approved by majority vote. Plaintiff Horgan did not vote in favor

of defendant Mirandi. Following the vote, plaintiff Horgan questioned why neither she nor another councilwoman (and member of the RBDMC), Kate Triggiano, were provided “full information” about two of the nominees, including defendant Mirandi. Defendant Zipprich stated that he had, as Chairman of the RBDMC, “under the bylaws of the Municipal Committee, appointed an ad hoc committee, which was chaired by former Mayor McKenna and included members of the governing body, members of the Municipal Committee who, along with the Chair and the Vice Chair, who [sic] collected information on the candidates, reviewed their professional backgrounds... and put them through a vetting process...” Defendant Zipprich also stated that “[a]s Chair of the party in compliance with the state statute, I have fulfilled my fiduciary responsibility as Democratic Chair in accordance with the [sic] 40(a), which [the Borough Attorney] referenced earlier... [t]he nominees have been put forward in compliance with the state statute.”

B. CONTENTION OF THE PARTIES

1. Plaintiffs’ Contentions

Plaintiffs allege that they are entitled to preliminary injunctive relief of removing defendant Mirandi as Councilwoman and keeping the vacancy left by Mr. Yngstrom’s resignation open until the general election in November. Plaintiffs assert that they have demonstrated a likelihood of success on the merits of their underlying claims because, they assert, the process by which the vacancy was filled was a violation of law. They claim that they, both members of the Red Bank Democratic Municipal Committee, were not notified by defendant Zipprich, the Chair of the RBDMC, of any meeting of that committee to consider and present nominees to the Borough Council to fill the vacancy; and that, because they were excluded from that process, “the municipal committee of the political party of which the incumbent was the nominee” did not discharge and could not have discharged its statutory

duty under N.J.S.A. 40A:16-11 to, “no later than 15 days after the occurrence of the vacancy, present to the governing body the names of three nominees for the selection of a successor to fill the vacancy.” Plaintiffs further claim that defendant Zipprich “induced” the Borough Council into accepting the legality of the list presented to it by representing that the list had been lawfully compiled by an ad hoc committee defendant Zipprich created, consisting of elected and non-elected members of the RBDMC, pursuant to by-laws which plaintiff Okeson, the Secretary of the RBDMC, asserts the RBDMC “does not maintain... whatsoever.”

Plaintiffs argue that the court “should not condone such conduct, nor should this court set a precedent that would allow future Municipal Chairs throughout New Jersey to unilaterally act as monarchs and self-select the ‘three nominees’ as set forth in the Municipal Vacancy Law, while deliberately failing to notice a meeting for their elected Municipal Committee members to even review, consider, and vote on nominees for municipal governing body vacancies.”

Plaintiffs further argue that the legal right underlying their claims -- the invalidation of Miranda’s appointment, her removal from office, and keeping the seat vacant until the general election -- is settled. They point to precedent in which courts found governing body appointments to be invalid and enjoined the invalidly appointed member from holding office, based on the time restrictions under N.J.S.A. 40A:16-11. For example, plaintiffs cite Zimmer v. Castellano, 432 N.J. Super. 412, 415 (App. Div. 2013) where the court granted an emergency application for a stay and enjoined an appointed council member from taking office, ruling that the statutory N.J.S.A. 40A:16-11 30-day deadline could not be extended. Plaintiffs argue that because the Borough Council did not make a legally valid appointment within the 30-day period from the day the vacancy arose, N.J.S.A. 40A:16-11 requires that “the office shall remain vacant for the remainder of the term or until the election and

qualification of a successor.”

Plaintiffs further contend that they have shown irreparable harm will result if preliminary injunctive relief is not granted. They assert that if defendant Mirandi is not removed “given the flawed process surrounding her appointment, Red Bank’s municipal government will be functioning with a member whose votes and actions may prove pivotal today but be invalidated at a later date.” Conversely, balancing the relative hardships, plaintiffs assert that neither Red Bank nor its residents will be irreparably harmed if Mirandi is removed because “her temporary appointment was optional and discretionary in the first place,” and leaving the seat open will allow it to “be filled by voters at the next general election.”

2. Defendants’ Contentions

Defendants Red Bank Democratic Municipal Committee and Zipprich contend that there was no statutory requirement that all members of the RBDMC meet and confer to vet and submit names for the vacancy in question. They further assert that plaintiff Horgan should be estopped from arguing the invalidity of the list generated without her participation as an elected member of the RBDMC because she endorsed the first candidate from that list nominated by the Mayor of Red Bank to fill the vacancy. The RBDMC defendants point out that only after plaintiff Horgan’s preferred candidate failed nomination did she take issue with the entire process.

All defendants join in the argument that the appointment of defendant Mirandi to fill the vacancy was lawful even if the list of three nominees was not valid. They argue that the Red Bank Borough Council selected a successor from the same political party as the person who resigned the position within 15 days after the expiration of the 15-day deadline by which the RBDMC was to submit the names of nominees to the governing body. They contend that the Municipal Vacancy Law does not provide any guidance or specific instructions for filling a

vacancy if the municipal committee list is not submitted within the 15-day period following the vacancy. Nor, they contend, does that law limit a governing body from considering proposed nominees from any source, even from a list submitted out of time, as long as the nominee is of the same political party, and as long as the governing body acts on that nominee within the statutory 15-day period from the date the municipal committee was to have provided those names to the governing body.

Defendant Red Bank's argument, in which the RBDMC defendants join, is that "whether the Governing Body violated the Municipal Vacancy Law because it reasonably believed it was limited to the three names submitted by the RBDMC appears to be an issue of first impression." All defendants deny that the legal right underlying plaintiffs' claims is settled. All defendants assert that plaintiffs have failed to demonstrate irreparable harm because the harm plaintiffs assert is speculative, and that balancing the relative hardships works in favor of maintaining the status quo given the absence of any showing of irreparable harm, the absence of any likelihood of success on the merits of plaintiffs' claims, and given the RBDMC's claim that the controversy is an "intra-party dispute" into which courts should not inject themselves.

C. DISCUSSION

1. The Legal Standard

New Jersey has long recognized the power of the courts to grant injunctive relief to prevent some threatening, irreparable harm, which should be averted until opportunity is afforded for full and deliberate investigation of the case, in order to preserve the subject matter and the status quo. Crowe v. DeGioia, 90 N.J. 126, 132 (1982). "Indeed, the point of temporary relief is to maintain the parties in substantially the same condition when the final decree is entered as they were when the litigation began." Id. at 134, quoting Peters v. Public

Service Corp. of N.J., 132 N.J. Eq. 500 (Ch. 1942), aff'd o.b., 133 N.J. Eq. 283 (E.&A. 1943).

In Crowe, the Supreme Court outlined the factors to be considered in determining whether a preliminary injunction should be granted. The Court held that an injunction should issue when: (1) the injunction is necessary to prevent irreparable harm; (2) the legal right underlying the applicant's claim is settled; (3) the plaintiff has made a preliminary showing of reasonable probability of ultimate success on the merits; and (4) the relative hardships to the parties have been considered by the Court and favor the granting of temporary relief to maintain the status quo. See Crowe, 90 N.J. at 132-34. Such an "extraordinary remedy" should be entered only on a showing of entitlement to such relief by clear and convincing evidence.

Dolan v. DeCapua, 16 N.J. 599, 614 (1954).

N.J.S.A. 40A:16-11, titled "Appointment to fill vacancy where incumbent was a nominee of a political party; time to fill vacancy," provides:

If the incumbent whose office has become vacant was elected to office as the nominee of a political party, the municipal committee of the political party of which the incumbent was the nominee shall, no later than 15 days after the occurrence of the vacancy, present to the governing body the names of three nominees for the selection of a successor to fill the vacancy. The governing body shall, within 30 days after the occurrence of the vacancy, appoint one of the nominees as the successor to fill the vacancy. If the governing body fails to appoint one of the nominees within the time prescribed herein, the municipal committee that named the three nominees shall, within the next 15 days, appoint one of the nominees as the successor to fill the vacancy, and such person shall be sworn in immediately. If the municipal committee which nominated the incumbent fails to submit the names of the nominees within the time prescribed herein, the governing body may, within the next 15 days, fill the vacancy by the appointment of a successor from the same political party which had nominated the incumbent whose office has become vacant.

If, on the effective date of this act, the governing body had previously received from the municipal committee the names of three nominees to fill any such vacancy and had not filled the vacancy, the governing body, within 30 days after the effective date of this act, shall appoint one of the nominees as the successor to fill the vacancy.

N.J.S.A. 19:5-2, titled "Membership and organization of municipal committees, provides, in pertinent part:

The members of the municipal committees of political parties shall consist of the elected members of the county committee resident in the respective municipalities. The

members of the municipal committee shall take office by the third Saturday following the certification of the results of their election as members of the county committee, on which day the terms of all members of such committees theretofore elected shall terminate. The annual meeting of each municipal committee shall be held by the third Saturday following the certification of the results of the primary election for the general election, at an hour and place to be designated in a notice to be given by the chairperson to each member and member-elect. The members of each committee shall elect some suitable person who shall be a resident of such municipality as chairperson. The municipal committee shall have power to adopt a constitution and bylaws for its proper government. The chairperson shall preside at all meetings of the committee, and shall perform all duties required by law and the constitution and bylaws of such committee.

2. Analysis

The court has applied the Crowe factors to the factual and statutory backdrop developed on this Order to Show Cause record and concludes as follows.

At this early stage of the case, plaintiffs have not demonstrated a reasonable likelihood of success on the merits of their claims. It is un rebutted that neither plaintiff received notice from the Chairman of the RBDMC, defendant Zipprich, of any meeting to discuss candidates to fill the Borough Council vacancy, and that neither plaintiff was consulted or was in any way involved in selecting the three nominees presented to the governing body. However, the questions of whether defendant Zipprich “induced” the Borough Council into accepting the list as lawfully derived from a municipal committee when in fact it was not, whether the list was rendered untimely by the actions or inactions of defendant Zipprich and perhaps others, and/or whether defendants should be estopped to assert that the list was untimely* require a fact-sensitive inquiry to include an assessment of credibility, which is best left for a finder of fact to resolve at a trial.

Nor have plaintiffs demonstrated that their legal right to the relief they seek is settled. It is not settled what statutory or other legal remedy is available to a member of a municipal committee who is denied any opportunity to participate in the nominating process, or what nomination source a

* Defendants assert that plaintiff Horgan should be estopped to deny the legality of the list in question because she endorsed one of the nominees from that list. That estoppel argument would not and could not apply to Plaintiff Okeson because the OTSC record does not indicate that she endorsed any candidate off any list or was even present

governing body must or may consider in the event a list of nominees is submitted outside the time frame of N.J.S.A. 40A:16-11. No case squarely addressing these issues has been presented to the court; indeed, this appears to be a case of first impression in this state.

Moreover, even if, for the sake of argument, plaintiffs established a reasonable likelihood of success on their claim that defendant Zipprich induced or misled the Borough Council into believing that the list from which defendant Mirandi was nominated and appointed was lawfully derived when it in fact was not, it is not a settled question of law that a “municipal committee” must consist of all elected members of that committee, or cannot consist of non-elected members, as plaintiffs suggest. What constitutes a “municipal committee” is not clearly defined either in N.J.S.A. 40A:16-11 or N.J.S.A. 19:5-2, or by any decisional law presented to this court. In the absence of settled precedent as to this issue, the court is disinclined, on an application for preliminary injunctive relief, to engraft onto the statute what the Legislature may or may not have omitted from or intended by the language it drafted. As our Supreme Court has counselled, courts “should not read into the statute restrictions on party organization and procedures not specifically imposed by the Legislature. To do so would plunge the courts deep into the business of resolving intra-party controversies and factional strife, contrary to the established principle of judicial restraint in this area.” Deamer v. Jones, 42 N.J. 516, 521 (1964). As such, whether or not RBDMC by-laws exist by which defendant Zipprich claimed he was authorized to form an ad hoc committee may be relevant only to the extent that a “municipal committee” under N.J.S.A. 40A:16-11 must be composed of only the entirety of its elected membership.

The fact that plaintiffs urge this court not to set a precedent by condoning the alleged machinations of defendant Zipprich further underscores that the legal right underlying plaintiffs’ prayers for relief is not settled. A case at its early stage in the litigation process should not serve as

at the Borough Council meeting on February 9, 2022.

its own precedent to justify the drastic remedy of a preliminary injunction.

Because plaintiffs have not shown by clear and convincing evidence a reasonable likelihood of success on their claims that defendant Mirandi's appointment was illegal, or that the legal right underlying their claim is settled, they have not shown and cannot show that defendant Mirandi will cause irreparable harm if she is not removed from office. That "Red Bank's municipal government will be functioning with a member whose votes and actions may prove pivotal," as plaintiffs argue, does not necessarily mean that such votes and actions will cause harm, let alone irreparable harm. Indeed, plaintiff Horgan praised defendant Mirandi's qualifications at the February 9, 2022 Borough Council session. In any event, that defendant Mirandi's votes "may prove pivotal" is too speculative to warrant the drastic remedy of removing her from office. It should be noted that there is no evidence on this record that defendant Mirandi herself was in any way involved in any of defendant Zipprich's alleged activities or in lobbying any of the voting Borough Council members to vote for her. As for any irreparable harm to the Borough of Red Bank or its residents that may be caused by defendant Mirandi's appointment, the people can undo whatever harm Mirandi's appointment may cause with their votes, either at the primary or the general election, further underscoring that any harm that may be caused by her appointment is not irreparable.

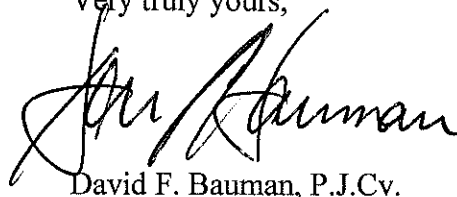
Finally, balancing the relative harm if preliminary restraints are or are not granted tips in favor of the defendants. Not only do plaintiffs demand defendant Mirandi's removal; they demand that the Borough Council keep that seat vacant until the general election in November. Plaintiffs argue that defendant Mirandi's removal would not cause irreparable harm to the Borough Council because her temporary appointment was optional and discretionary, and that the Borough Council need not have appointed her in the first place. However, the Borough Council did vote to fill the vacancy with defendant Mirandi, and that action enjoys the presumption of validity especially where, as here, plaintiffs have not shown, at this juncture, a reasonable likelihood of success on their claims,

that the legal right underlying those claims are settled, or that maintaining the status quo would cause irreparable injury, either to the plaintiffs, the governing body, or the Borough of Red Bank and its residents.

Conclusion

For all of these reasons, plaintiffs' application for preliminary injunctive relief is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "David F. Bauman", written over the typed name.

David F. Bauman, P.J.Cv.

DFB/bf