SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION : FOURTH JUDICIAL DEPARTMENT

DECISION FILED

OCTOBER 20, 2017

HON. GERALD J. WHALEN, PRESIDING JUSTICE

HON. NANCY E. SMITH

HON. JOHN V. CENTRA

HON. ERIN M. PERADOTTO

HON. EDWARD D. CARNI

HON. STEPHEN K. LINDLEY

HON. BRIAN F. DEJOSEPH

HON. PATRICK H. NEMOYER

HON. JOHN M. CURRAN

HON. SHIRLEY TROUTMAN

HON. JOANNE M. WINSLOW, ASSOCIATE JUSTICES

MARK W. BENNETT, CLERK

ELECTION LAW CASES

Counsel for any party interested in pursuing an appeal to the Court of Appeals should contact the Court of Appeals immediately upon receipt of this Court's decision.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1267.1

CAE 17-01781

PRESENT: CARNI, J.P., LINDLEY, DEJOSEPH, TROUTMAN, AND WINSLOW, JJ.

IN THE MATTER OF IRENE RILEY, CITIZEN OBJECTOR,
PETITIONER-APPELLANT,

V MEMORANDUM AND ORDER

ANTHONY M. NEDDO, CANDIDATE FOR WATERTOWN CITY COURT JUDGE UPON INDEPENDENT NOMINATING PETITION FOR THE LAW AND ORDER PARTY FILED AUGUST 16, 2017, AND JUDE R. SEYMOUR AND BABETTE M. HALL, COMMISSIONERS OF AND CONSTITUTING THE JEFFERSON COUNTY BOARD OF ELECTIONS, RESPONDENTS-RESPONDENTS.

DOUGLAS WALTER DRAZEN, BINGHAMTON, FOR PETITIONER-APPELLANT.

YOUNG LAW OFFICE, PLLC, LOWVILLE (MICHAEL F. YOUNG OF COUNSEL), FOR RESPONDENT-RESPONDENT ANTHONY M. NEDDO, CANDIDATE FOR WATERTOWN CITY COURT JUDGE UPON INDEPENDENT NOMINATING PETITION FOR THE LAW AND ORDER PARTY FILED AUGUST 16, 2017.

DAVID J. PAULSEN, COUNTY ATTORNEY, WATERTOWN, FOR RESPONDENTS-RESPONDENTS JUDE R. SEYMOUR AND BABETTE M. HALL, COMMISSIONERS OF AND CONSTITUTING THE JEFFERSON COUNTY BOARD OF ELECTIONS.

Appeal from an order of the Supreme Court, Jefferson County (James P. McClusky, J.), entered October 2, 2017 in a proceeding pursuant to the Election Law. The order dismissed the petition and directed the Jefferson County Board of Elections to place respondent Anthony M. Neddo on the November ballot under the Law and Order Party designation for the office of Watertown City Court Judge.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this proceeding pursuant to Election Law article 16 seeking to invalidate the independent nominating petition for Anthony M. Neddo (respondent) for the office of Watertown City Court Judge. On August 16, 2017, respondent filed his independent nominating petition as a candidate for that office on behalf of the Law and Order Party with the Jefferson County Board of Elections. Insofar as relevant to this appeal, petitioner sought to invalidate respondent's independent nominating petition on the ground that respondent himself had improperly witnessed the vast majority of

signatures thereon because he had previously signed his own Republican designating petition naming him as a candidate for that same office. Supreme Court denied petitioner's requested relief and determined that respondent could properly sign as a witness his "Law and Order Party petition[] after he signed his own Republican Party petition." We affirm.

Election Law § 6-140 (1) (b) provides that "[t]here shall be appended at the bottom of each sheet [of the independent nominating petition] a signed statement of a witness *who is a duly qualified voter of the state*" (emphasis added). Contrary to petitioner's contention, the statute does not contain any prohibition against respondent signing as a witness his own independent nominating petition after he had previously signed his own Republican designating petition. We see no reason to " 'resort to extrinsic material' " to interpret the statute inasmuch as the wording of the statute itself is clear and unambiguous (*Matter of Harris v Seneca Promotions, Inc.*, 149 AD3d 1508, 1510 [4th Dept 2017]; *see Matter of Rochester Community Sav. Bank v Board of Assessors of City of Rochester*, 248 AD2d 949, 950 [4th Dept 1998], *lv denied* 92 NY2d 811 [1998]; *see also* McKinney's Cons Laws of NY, Book 1, Statutes § 76).

Petitioner's reliance on *Matter of Rue v Hill* (287 AD2d 781 [3d Dept 2001], *lv denied* 97 NY2d 602 [2001]) is misplaced. *Rue* was decided before Election Law § 6-140 (1) (b) was amended in 2009 and, given the nature of the amendment, we conclude that the holding of *Rue* is not applicable to the case before us.

We have considered petitioner's remaining contentions and conclude that they are without merit.

Entered: October 20, 2017

Mark W. Bennett
Clerk of the Court