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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JAYANTI PATEL,

Petitioner and Respondent,

v.

BEENA SHAH,

Intervener and Appellant.

G033741

(Super. Ct. No. 03CC14003)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Andrew P. Banks, Judge. Affirmed.

Kouretchian Law Group, Seyamack Kouretchian, Nossaman, Guthner, Knox & Elliott, and Daniel H. Willick for Intervener and Appellant.

Cron, Israels & Stark, Edward C. Stark, Andrew O. Smith, and Dana C. Reimus for Petitioner and Respondent.

* * *

Jayanti Patel, M.D., petitioned the superior court for a writ of mandate to direct Western Medical Center to install him as chief of staff of its medical staff, claiming the medical staff executive committee wrongly invalidated his election. Beena Shah, M.D., intervened in the proceedings, claiming Patel's election was invalid and her subsequent election as chief of staff was valid. The superior court found Patel's election was valid and ordered Western Medical Center to allow him to take his place as chief of staff. Shah appeals; we affirm.

FACTS

Both Patel and Shah are doctors on the medical staff of Western Medical Center. Both of them sought election as the chief of staff for the two-year term of 2004 and 2005. Pursuant to the bylaws of the medical staff, the voting was by secret written ballot. The ballots were mailed to the active staff members in late October 2003, and the members had two weeks to send them back in accordance with the bylaws: "[T]he mail ballots shall be returned in an unmarked envelope, which shall be placed inside a properly identified return envelope on which the Medical Staff Member has printed and signed his name." The bylaws direct the secretary/treasurer of the medical staff to count "only one ballot . . . for each Member eligible to vote."

The bylaws further provide that "[a] nominee shall be elected by a simple majority received in the Medical Staff Office two weeks from the date the ballots were mailed If no candidate receives a majority vote on the first ballot, a runoff election shall be held promptly between the two candidates receiving the highest number of votes. In the case of a tie on the second ballot, the majority vote of the Medical Executive Committee at its next meeting or a special meeting called for that purpose shall decide the election. . . . Announcement of the elected Medical Staff Officers shall be made at the Annual General Staff Meeting."

The election concluded at 4:00 p.m. on November 12, 2003, the day of the annual general staff meeting and dinner. The ballots were counted by Raj P. Rajani,

M.D., who was the secretary/treasurer of the medical staff. Rajani was assisted by Sridhara Iyengar, M.D., and Scott Jacobs, M.D., both of who had been appointed to serve with Rajani as the election committee. The election committee received 81 ballots in envelopes plus one loose ballot without an inner or outer envelope to identify the voter. In a sworn statement, Rajani explained that earlier that afternoon, before the election ended and the counting began, Harmo Hinder Gogia, M.D., had told Rajani that “he had accidentally voted twice; his second vote being done by placing a loose ballot into the ballot box without an envelope. This loose ballot was therefore rejected.” Rajani continued, “Of the 81 ballots in envelopes, two ballots were determined to have been cast by ineligible, — i.e., non-Active Staff — voters. Another ballot was disqualified because the outer envelope contained the name, but no voter signature.”¹

The election committee was thus left with 78 envelopes to open. “[T]wo ballots were rejected as having been voted by the same voter I did not consider counting one of these two ballots and rejecting the other – I simply rejected both. I do not know which candidate this member voted for on the two ballots.” One of the remaining 76 ballots was rejected because the voter “had voted for both candidates on one ballot.” Of the 75 remaining ballots, Patel received 38 votes and Shah received 37.

Rajani placed the 76 ballots in a sealed manilla envelope and gave it to the medical staff coordinator for safekeeping. “Those ballots which we rejected were torn up and placed in a wastebasket. We did not keep any record of why we rejected those ballots, nor did we keep a record of which candidate had been voted for on each of the rejected ballots. I did not personally examine all of the rejected ballots and therefore do not know which candidates were marked on the rejected ballots.”

Rajani announced the results of the election at the annual general staff meeting and dinner, which was held “almost immediately” after the ballot count. Patel

¹ Jacobs declared that ballot was disqualified because “the outer envelope (containing the name and signature of the voter) was opened and its contents empty.”

gave his acceptance speech to the members of the medical staff who were present, numbering more than 100, and considered himself installed as the next chief of staff for the term beginning January 1, 2004.

The next day, Shah demanded a recount. Patel refused to agree. Ernesto Gidaya, M.D., the outgoing chief of staff, presented the problem at the next meeting of the medical executive committee, on November 20, and asked Rajani to report on the election process. He did so, explaining that although 81 ballots were received, only 75 complied with the voting requirements. Because he had destroyed the rejected ballots, no recount was possible. Gidaya explained that the members of the medical executive committee reviewed the bylaws and determined they did “not address the issue of how to attribute rejected ballots.” Consequently, the medical executive committee consulted Robert’s Rules of Order and concluded the voters who cast the rejected ballots should have been counted for purposes of determining a majority. “Therefore, the denominator should have been 79, rather than the 75 which Dr. Rajani and the volunteers settled on.” The medical executive committee voted to have a run-off election, which was conducted by an independent consulting company in January 2004. The results were 41 votes for Shah and 35 for Patel.

Patel filed a petition for writ of mandamus against Western Medical Center and Gidaya, “individually and as Chief of the Medical Staff and Chairman of the Medical Executive Committee,” seeking to invalidate the run-off election and reinstate himself as chief of staff. Shah was granted leave to intervene; she argued the medical executive committee’s decision to invalidate the November election was an “internal decision” that should not be disturbed by the trial court.

Patel requested testimony, and a hearing was held on March 5, 2004. Rajani testified it was customary to have the annual staff meeting one week after the election. “[I]n . . . past elections[,] as soon as the results are tabulated, the winner and the loser are informed of the results at that time.” This time, however, the meeting was held

“almost immediately” after the ballots were counted, so Rajani’s announcement of the winners at the annual staff meeting was the first notice anyone had of the results. Rajani testified neither the bylaws nor the medical executive committee gave him any guidance about how to count the ballots. Accordingly, he and the other two members of the elections committee agreed to rules at the outset about dealing with “ballots which shouldn’t be counted.” All three doctors agreed that the rejected votes should not be counted, and all three doctors agreed that the rejected votes should be destroyed. When Rajani announced the results at the annual staff meeting, he believed the election committee had conducted the vote counting “fairly” and had been “reasonable in determining which votes were to be counted and which votes were to be rejected.” In hindsight, however, Rajani believed they should have taken the questioned ballots to the medical executive committee “for a decision as to whether those ballots should have been counted.”

The trial court issued the writ. “The court determines that Dr. Patel obtained a simple majority as required under section 11.1.4 [of the bylaws]. Dr. Rajani was vested with the authority to count the ballots based on the language in the bylaws [¶] He was given the authority to determine which ballots could and should be counted because he had the obligation to count them. [¶] . . . [¶] As to the destruction or the throwing away of those ballots, while Dr. Rajani may feel today that if he ever does this again, he won’t do that, it was not unreasonable under the situation. . . . [¶] [T]he three people involved in this decision [felt that all] proper ballots to be counted were counted. [¶] . . . Robert’s Rules of Order[] . . . specifically states that its definition of majority is only applicable when the word majority is not qualified as it is here in the bylaws by the term simple majority”

The written order directed Western Medical Center, “by and through its medical staff and by and through the Medical Executive Committee,” to validate the

November election and permit Patel to assume the position of chief of staff. The order designated the writ petition as one pursuant to Code of Civil Procedure section 1094.5.

DISCUSSION

Shah first contends the trial court lacked jurisdiction to issue a writ directing the medical staff and the medical executive committee to do certain things because they are separate legal entities and were not specifically named in the writ petition. She argues these entities are indispensable parties to the proceedings, and Patel's failure to join them renders the judgment void. We disagree.

An indispensable party is one whose absence will prevent the court from issuing an effective judgment between the existing parties. (*Welch v. Bodeman* (1986) 176 Cal.App.3d 833, 837; *Writers Guild of America, West, Inc. v. Screen Gems, Inc.* (1969) 274 Cal.App.2d 367, 375; Code Civ. Proc., § 389, subd. (b).) A hospital having five or more physicians must have an organized medical staff association, which "shall be self-governing with respect to the professional work performed in the hospital. . . ." (Bus. & Prof. Code, § 2282, subd. (c); *Hongsatharji v. Queen of Angels, Etc. Medical Center* (1998) 62 Cal.App.4th 1123, 1130, fn.2.) In other areas, the medical executive committee acts under the authority of the hospital's governing board. The court's order was directed to Western Medical Center, which has the power to compel its staff and the medical executive committee to comply.

In any event, Dr. Gidaya, as chief of staff, was named as a party and fully litigated the staff's interests. The same counsel, who argued that the medical executive committee had the power and the authority to interpret the bylaws and to invalidate the November election, represented both him and Western Medical Center. Thus, the staff and the medical executive committee suffered no prejudice from the failure to join them as parties. (*Citizens Assoc. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 161-162.)

Shah next contends the trial court should have deferred to the medical executive committee's interpretation of its own bylaws, which was not unreasonable or arbitrary. She contends the facts are not in dispute and urges us to conduct a de novo review of the medical executive committee's actions.

Although the writ issued by the trial court was designated as pursuant to Code of Civil Procedure section 1094.5, known as administrative mandate, the nature of the proceedings called for review by ordinary mandate pursuant to Code of Civil Procedure section 1085. "Administrative mandate is available 'only if the decision[] resulted from a "proceeding in which *by law*: 1) *a hearing is required to be given*, 2) evidence is required to be taken, and 3) discretion in the determination of facts is vested in the agency.'" [Citations.]" (*McGill v. Regents* (1996) 44 Cal.App.4th 1776, 1785.) No hearing was required by the medical staff bylaws.

In proceedings for ordinary mandate, the trial court's review of the agency's action is "limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support." (*McGill v. Regents, supra*, 44 Cal.App.4th at p. 1786.) On appeal from an ordinary mandate proceeding, "[w]e apply the substantial evidence test to the trial court's factual findings, but exercise independent judgment on legal issues such as the interpretation of statutes." (*Johnston v. Sonoma County Agricultural Preservation* (2002) 100 Cal.App.4th 973, 984.) Accordingly, we independently interpret the medical staff bylaws.

Our independent review of the medical staff bylaws leads us to conclude that the original election of Patel was valid. The bylaws specify "only one ballot shall be counted by the Secretary/Treasurer of the Medical Staff, for each Member eligible to vote." Eligibility to vote is restricted to "Active Staff Members," and a nominee is elected by a "simple majority received in the Medical Staff Office" The bylaws direct that an announcement of the elected Medical Staff Officers is to be made at the

Annual General Staff meeting. The bylaws contain no information about the disqualification of ballots, nor do they define “simple majority.”

After listening to Rajani’s testimony, the trial court determined that all three members of the election committee agreed on the procedures to be followed before the ballots were counted; they felt the procedures were fair and reasonable at the time. The results were announced at the annual meeting, and Patel accepted the position. The bylaws gave Rajani the authority to count the ballots, which, in the absence of any direction on the subject, necessarily included the authority to make reasonable rules to accomplish the task. The bylaws did not give the medical executive committee authority to change Rajani’s procedures after the votes were counted or invalidate a completed election that was conducted in conformance with the bylaws.

Shah argues the runoff election was justified because Patel did not receive a simple majority; she points to Robert’s Rules of Order, which the medical executive committee consulted when invalidating the election. Robert’s Rules of Order states, “[W]hen the term “majority vote” is used without qualification – as in the case of the basic requirement – it means more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting at which a quorum is present.” Illegal votes cast by legal voters are counted for purposes of determining the majority. Ballots cast by ineligible voters are excluded.

The medical executive committee had no authority to consult Robert’s Rules of Order for the definition of *majority*. The bylaws do not refer to Robert’s Rules of Order; furthermore, the bylaws qualify the term “majority” with the word “simple.” As the parties conceded below, the term “simple majority” has myriad meanings to organizations all over the world. The trial court pointed out that Patel received more votes for than against of the votes that were counted. This meets a definition of “simple majority.” (See, e.g., *Wikipedia, the Free Encyclopedia* (<http://en.wikipedia.org>).

DISPOSITION

The order of the superior court issuing the writ of mandate is affirmed.
Respondent is entitled to costs on appeal.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

IKOLA, J.