

# Hurow v. Miller

Arthur HUROW v. Ruby MILLER and Frank Miller.

262 S.E.2d 287 (1980)

Court of Appeals of North Carolina.

February 5, 1980.

Epting, Hackney & Long by Robert Epting, Chapel Hill, for plaintiff-appellant.

Graham & Cheshire by D. Michael Parker, Hillsborough, for defendant-appellant.

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HILL, Judge.

This Court acknowledges that it is the right and duty of every qualified American citizen to vote. Likewise, this Court is aware that this is a mobile society which results in many American citizens changing their voting place each year. Our legislature has addressed this problem by requiring each county board of elections to establish a full-time system of registration under which the registration books, process, and records shall be open continuously for the acceptance of registration applications and for the registration of voters. G.S. 163-67. In addition, G.S. 163-69 provides that the registration certificates shall be a permanent record of registration and qualification to vote and shall not be cancelled except for specific reasons. Ample protection is provided those persons whose right to vote is questioned. See G.S. 163-89. Uniform systems of registration—including loose-leaf forms—are provided for by G.S. 163-65, and transfer to a new precinct is simple.

Because of population growth and frequent changes in domicile and residence by the electorate, the legislature has left the responsibility of policing the voting list to the voters. This is good, for it adds further dimension to our responsibility as voters in the conduct of elections. Such practice is to be commended when done within the guidelines set out by statute.

G.S. 163-85(a) provides that, "Any registered voter of the county may challenge the right of any person to register, remain registered, or vote in the county." Subsequent sections provide safeguards for the voter so challenged. A hearing is conducted at which time the voter may appear and take an oath outlining voting requirements. The voter may sign an affidavit which sets out the requirements for voting in lieu of personal appearance at the hearing. Generally, such inconvenience is a small price to pay for the right to vote.

A challenge filed pursuant to G.S. 163-85(a) cannot

deprive a challenged voter of his right to vote if he or she is qualified. Plaintiff was not denied his right to vote. Instead, as many good citizens did, he appeared at the hearing and established without apparent difficulty such right.

Here, the plaintiff contends that the challenge to his vote was one of 6000 challenges in Orange County; that such voter challenge in his case was made with malice and without probable cause; and that the defendant knew or should have known that said challenge would have caused plaintiff great trouble and expense.

Malicious prosecution will not lie in this case. Actions for malicious prosecution may be based upon civil proceedings which involve an arrest of the person, seizure of property, or the loss of a legally protected right. *Carver v. Lykes*, 262 N.C. 345, 137 S.E.2d 139 (1964). However, our courts have limited such actions based on administrative proceedings to instances where there is a type of confinement, *Fowle v. Fowle*, 263 N.C. 724, 140 S.E.2d 398 (1965), or interference with the right to earn a livelihood. *Carver*, supra. This case does not fall within the limitations so established.

Neither will the defendants' counterclaim for abuse of process lie. Abuse of process is the misuse of a legal process for an ulterior purpose. "It consists in the malicious misuse or misapplication of that process after issuance to accomplish some purpose not warranted or commanded by [262 S.E.2d 290] the writ. It is the malicious perversion of a legally issued process whereby a result not lawfully or properly obtainable under it is attempted to be secured." *Melton v. Rickman*, 225 N.C. 700, 703, 36 S.E.2d 276, 278 (1945), citing 1 Am.Jur. 176; *Stanford v. Grocery Co.*, 143 N.C. 419, 55 S.E. 815 (1906); and *Abernethy v. Burns*, 210 N.C. 636, 188 S.E. 97 (1936).

Here, defendants have not alleged that process in the suit by plaintiff was abused, misused or otherwise perverted after the suit was begun.

Admittedly, plaintiff took all necessary steps to preserve his right to vote at some expense and inconvenience to him, and he is to be commended. Defendants' action to preserve fair and adequate voting lists is of equal importance, and they should not be penalized for attempting to do so.

For the reasons set out above, the decision of the trial judge in dismissing plaintiff's complaint and defendants' counterclaim is

Affirmed.

MORRIS, C. J., and PARKER, J., concur.

