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# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2009

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Evan W. Smith

v.

Billie C. Burkhalter et al.

Appeal from Cherokee Circuit Court  
(CV-08-111)

On Application for Rehearing

BOLIN, Justice.

On May 15, 2009, this Court dismissed Evan W. Smith's appeal of an election contest on the basis that the circuit court was without jurisdiction to enter a judgment. On application for rehearing, candidates Jimmy Wallace, Billie C.

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Burkhalter, and Lenora McWhorter ask this Court to clarify its holding that the circuit court did not have jurisdiction to entertain an election contest from a municipal general election in a multi-candidate field when no candidate received a majority of the votes. Specifically, they ask us to clarify whether that portion of the circuit court's judgment declaring McWhorter to be the duly elected council person for district two is also void.

On September 2, 2008, the Town of Cedar Bluff certified the election results and concluded that a runoff election was necessary between Steve Lay and Ethel Sprouse for the mayoral race and between Burkhalter and Smith for the district-one council position and that Donald Sanders was elected to the district-two council position. After a contest challenging absentee ballots, the circuit court declared Burkhalter the winner of the district-one position and McWhorter the winner of the district-two position and held that there should be a runoff election in the mayor's race between Wallace and Sprouse. Smith appealed, and this Court held that the circuit court lacked subject-matter jurisdiction to entertain an election contest from a municipal general election in a multi-

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candidate field when no candidate secured a majority of the votes cast because § 11-46-69, Ala. Code 1975, provides that only the election of a person "declared elected" to a municipal office may be contested.

In the district-two council position, the Town of Cedar Bluff declared Sanders as the winner. In other words, Sanders was "declared elected" in accordance with § 11-46-69; therefore, the circuit court had subject-matter jurisdiction to entertain a contest challenging the election to the district-two council position. After the contest, the circuit court declared McWhorter the winner of the district-two race. Sanders did not appeal. Accordingly, the circuit court's judgment declaring McWhorter the winner of the district-two council position stands.

APPLICATION OVERRULED.

Cobb, C.J., and Lyons, Woodall, Stuart, Smith, Parker, Murdock, and Shaw, JJ., concur.