

SUPREME COURT OF ARKANSAS

No. 11-166

LARRY W. WILSON; TOMMY HUNT;
JOE GRUBBS; REV. CEDRIC PRIDE;
JOHN WASHINGTON; WALTER
MORRIS, SR.; JAY HOLLOWELL;
ROBERT TUCKER; GIBSON TURLEY,
JR.; KENION WILLIAMS; REV. LEROY
WILLIAMS; I. E. HOLLAND, SR.; EMILY
GORDON; AL GORDON; BILLIE JO
MOORE; LINDA COPELAND; HENRY
JORDAN; HOWARD NEWSOME,
APPELLANTS,

VS.

PHILLIPS COUNTY ELECTION
COMMISSION; WES FREMYER,
CHAIRMAN; ALLEN MARTIN,
MEMBER; JOHNNY SUMPTER,
MEMBER; LINDA WHITE, COUNTY
CLERK OF PHILLIPS COUNTY,
ARKANSAS; AND UNKNOWN
VIOLATORS OF THE POLITICAL
PRACTICES ACT,
APPELLEES,

Opinion Delivered May 19, 2011

APPEAL FROM THE PHILLIPS
COUNTY CIRCUIT COURT, NO.
CV-10-404 ,
HON. RICHARD L. PROCTOR,
JUDGE,

DISMISSED.

ROBERT L. BROWN, Associate Justice

This one-brief appeal challenges the dismissal of a complaint contesting the election results for several positions on the Helena-West Helena City Council. The election was held on November 2, 2010. Because we hold that the complaint contesting the election results was not filed within twenty days of the election date, as required by the statute, we dismiss this appeal for lack of subject-matter jurisdiction.

The appellants, Larry W. Wilson and seventeen other citizens of Phillips County (hereinafter Wilson), reside in Helena-West Helena. Wilson filed a complaint in Phillips County Circuit Court on December 3, 2010, in which he challenged the results of the November 2, 2010 election. The complaint was filed some thirty-one days after the election. In that complaint, Wilson alleges that the Phillips County Clerk's records show that sixty-five more absentee ballots were sent to the Phillips County Election Commission than the Commission reports were received from the Clerk's office. Thirty-five of those sixty-five ballots relate to the challenged city council races. Four of the seven races were decided by a margin of ten votes or less.

The results of the November 2, 2010 election were certified by the Phillips County Election Commission on November 15, 2010. Wilson's complaint, which was brought pursuant to Arkansas Code Annotated section 7-5-807 (Repl. 2007), asserts violations of the Political Practices Act by unknown persons. Wilson's complaint further asserts that Arkansas Code Annotated sections 7-1-104(a)(8), (14), (15), and (17) (Supp. 2009), as well as Arkansas Code Annotated section 7-1-103(a)(19)(F) (Supp. 2009), were violated in the November 2, 2010 election.

Four Exhibits were attached to Wilson's complaint: (a) a sixteen-page copy of the County Clerk's Absentee Ballot Log of Phillips County; (b) a copy of a report entitled "Phillips County General Election Absentee Ballots Unavailable," with a list of the absentee ballots that were received by the County Clerk but which do not appear to have been received by the Election Commission; (c) the Helena-West Helena City council election

results; and (d) a summary sheet showing the Helena-West Helena City council election results on the left side and a Vote Difference and Ballot Unavailable Comparison on the right side.

In an order entered on December 9, 2010, the circuit court dismissed the complaint, finding that it did not meet the requirements of section 7-5-807. Specifically, the circuit court concluded that, although it was aware of the missing ballots, “there is insufficient information in the complaint to cause the Court to have an opinion that there are grounds to believe that any fraud existed. Apparently, there has been a mistake or other error but the court cannot say that there are grounds to support the allegation of fraud.” Wilson now appeals the circuit court order dismissing the complaint.

We begin our analysis by examining whether this election contest was timely filed, which is a matter of subject-matter jurisdiction. *McCastlain v. Elmore*, 340 Ark. 365, 369, 10 S.W.3d 835, 837 (2000). Failure to strictly follow the statutory time constraints for election contests will result in dismissal of the complaint with prejudice for lack of subject-matter jurisdiction. *Id.* Subject-matter jurisdiction is an issue that can and indeed must be raised by this court sua sponte. *Tissing v. Arkansas Dep’t of Human Servs.*, 2009 Ark. 166, at 5, 303 S.W.3d 446, 448, *reh’g denied*, May 7, 2009. The same rule applies in election contests. *Pederson v. Stracener*, 354 Ark. 716, 719, 128 S.W.3d 818, 819 (2003) (“We have made it clear that subject-matter jurisdiction is always open, cannot be waived, can be questioned for the first time on appeal, and can even be raised by this court.”).

The governing statute which fixes the time frame for citizens filing a complaint contesting an election is section 7-5-807(a), which provides:

(a) If ten (10) reputable citizens of any county shall file a complaint with the circuit judge within twenty (20) days after any election alleging that illegal or fraudulent votes were cast, that fraudulent returns or certifications were made, or that the Political Practices Act was violated, the circuit judge, if in his or her opinion there is good ground to believe the charges to be true, shall convene a special term at once unless the regular term is in session or will convene within thirty (30) days.

Ark. Code Ann. § 7-5-807(a) (Repl. 2007).

When reviewing issues of statutory interpretation, we are mindful that the first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Rylwell, L.L.C. v. Arkansas Dev. Fin. Auth.*, 372 Ark. 32, 36, 269 S.W.3d 797, 800 (2007). When a statute is clear, it is given its plain meaning, and we will not search for legislative intent; rather, that intent must be gathered from the plain meaning of the language used. *Id.*

On this point, Wilson contends that the circuit court properly began counting the time for filing the complaint from the date that the election was certified, November 15, 2010, rather than from the date that the election was held, which was November 2, 2010. Because the complaint was filed approximately eighteen days after the election certification, he argues that it was timely. We initially note that the circuit court made no finding that the complaint was timely filed; nor did it discuss the twenty-day requirement in its order. As a second matter, even were this court to assume that the circuit court found the complaint to be timely, subject-matter jurisdiction cannot be waived and may be addressed by this court for

the first time on appeal. *See, e.g., Pederson*, 354 Ark. 716, 128 S.W.3d 818. Finally, the statute in this case plainly states that the complaint must be filed within twenty days “after any election,” if “fraudulent returns are alleged,” not within twenty days after an election is certified. Here, Wilson filed his complaint on December 3, 2010, which was thirty-one days after the election and clearly untimely. We will not read the plain and unambiguous language of Arkansas Code Annotated section 7-5-807(a) to expand the time for filing election challenges by starting the twenty-day count from the date of certification.

In reaching this conclusion, we note additionally that a separate statute, Arkansas Code Annotated section 7-5-801, provides procedures for *candidates* to contest an election and does permit challenges to be filed “*within twenty (20) days of the certification complained of.*” Ark. Code Ann. § 7-5-801(d) (emphasis added). Had the General Assembly intended to permit citizens to file a complaint within twenty days of the election certification, rather than the election itself, then this language regarding certification as the starting point could have easily been included in section 7-5-807(a) as well.

We dismiss this appeal with prejudice because Wilson’s complaint was not filed within twenty days of the election as specifically required by Arkansas Code Annotated section 7-5-807(a), which deprives this court of subject-matter jurisdiction.

Dismissed.