

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

MATTHEW CHARLES)	
CARDINALE,)	
)	Civil Action File No.:
Plaintiff,)	2019-CV-316797
)	
v.)	Judge Kelly Lee Ellerbe
)	
FORIS WEBB, III, in his Official)	
Capacity as Superintendent of)	
Elections of the City of Atlanta,)	
)	
Defendant.)	

FINAL ORDER AND JUDGMENT

This matter is before the Court on the Petition for Emergency Hearing, Emergency Stay of Candidate Disqualification, and Appeal to Overturn Candidate Disqualification Pursuant to O.C.G.A. § 21-2-6(e) filed February 20, 2019 (the “Petition”). The Petition concerns Defendant’s decision to disqualify Plaintiff as a candidate for councilman in Atlanta City Council District 3 (the “District”). After considering the Petition filed February 21, 2019 and the record and holding a hearing on February 22, 2019, the Court hereby enters the following Order.

I. STANDARD OF REVIEW

Pursuant to O.C.G.A. § 21-2-6(e),

the candidate challenged shall have the right to appeal the decision of the superintendent by filing a petition in the superior court of the county in which the candidate resides within ten days after the entry of the final decision by the superintendent. The filing of the petition shall not itself stay the decision of the superintendent; however, the

reviewing court may order a stay upon appropriate terms for good cause shown. As soon as possible after service of the petition, the superintendent shall transmit the original or a certified copy of the entire record of the proceedings under review to the reviewing court. The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the superintendent as to the weight of the evidence on questions of fact. The court may affirm the decision or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings, inferences, conclusions, or decisions of the superintendent are:

- (1) In violation of the Constitution or laws of this state;
- (2) In excess of the statutory authority of the superintendent;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

The Court notes O.C.G.A. § 21-2-6 is nearly identical to O.C.G.A. § 21-2-5 (relating to qualification of candidates and challenges for federal and state office).

In Handel v. Powell, 284 Ga. 550, 552 (2008), the Supreme Court of Georgia held that judicial review in cases involving O.C.G.A. § 21-2-5

is a two-step process: because the court reviewing an administrative decision must accept the agency's findings of fact if there is any evidence to support the findings, the court must first determine if there is evidence to support the factual findings; the court then 'is statutorily required to examine the soundness of the conclusions of law drawn from the findings of fact supported by any evidence.' Thus, judicial review of an administrative decision does not end with the determination that the findings of fact have evidentiary support.

Handel at 552-53. The Court finds this standard of review is also appropriate for cases involving O.C.G.A. § 21-2-6.

II. EVIDENCE IN THE RECORD

On January 23, 2019, Plaintiff submitted qualification documents to run for councilman in the District. On January 28, 2019, Defendant notified Plaintiff he was challenging Plaintiff's candidacy (the "Notification Letter"). Specifically,

it appears that [Plaintiff] do[es] not meet the constitutional and statutory requirements for an Atlanta City Council candidate. The reason for this challenge is due to [Plaintiff's] failure to meet the statutory requirement of the Charter of the City of Atlanta, Section 2-102(2) that requires that [Plaintiff] must be a resident of the city and of the council district from which [Plaintiff] seek[s] to qualify for at least one year immediately preceding the date of filing of notice of candidacy to seek office.

(1/28/19 Notification Ltr.)

A hearing was held on February 13, 2019 in which evidence was introduced by the parties. The evidence establishes as follows. Plaintiff entered into a 12 month lease beginning January 10, 2017 and ending January 31, 2018 for property located at 2194 Briarcliff Road, Atlanta, Georgia 30329 (the "Briarcliff Address"). (Tr., Ex. 1.) The Briarcliff Address is not located within District 3.

On December 14, 2017, Plaintiff "began communicating with Divvy Homes, a rent-to-own company, about their rent-to-own program..." (Id. 41:5-8.) On December 15, 2017, Plaintiff pre-qualified for a home budget of \$200,000 with Divvy Homes. (Id. 41:16-18, Ex. S.) On January 4, 2018, Plaintiff contacted a friend to "discuss[] the next steps to identify a possible home that [Plaintiff] might want to rent to own." (Id. 42:8-9.)

On January 6, 2018, Plaintiff made a 31 day reservation for 16th Street Northwest, Atlanta, Georgia 30363 (the “16th Street Address”) through Airbnb for January 14, 2018 through February 14, 2018. (Id. 43:20:22, Ex. 3.) The 16th Street Address is located within District 3. According to Plaintiff, he decided to move to the 16th Street Address due to issues he was having with the Briarcliff Address, including lack of heat after numerous repair requests. (Id. 21:8-24, Exs. AG, AJ.)

On January 11, 2018, Plaintiff viewed property located at 1326 Bernard Street, N.W., Atlanta, Georgia 30314 (the “Bernard Street Address”). (Id. 42:25-43:2.) The Bernard Street Address is located within District 3. It was at that time Plaintiff decided to pursue a lease-to-own agreement on that home. (Id. 43:4-5.) On January 12, Plaintiff wired earnest funds to Divvy Homes. (Id. 43:5-7; Ex. U.)

On January 14, 2018, Plaintiff moved from the Briarcliff Address to the 16th Street Address. (Id. 16:8-13.)

On January 15, 2018, Plaintiff changed his address with the United States Postal Service from the Briarcliff Address to P.O. Box 94973, Atlanta, Georgia. (Id. 25:23-26:9, Ex. A.)

On January 29, 2018, Plaintiff sent a five page letter to Divvy Homes “outlining [his] concerns about the proposed lease” and “[t]he deal almost fell apart...” (Id. Ex. AG ¶ 13.)

On February 1, 2018, Plaintiff signed a lease with Divvy Homes for the Bernard Street Address. (Id. 13:1-4, Ex. 2.)

On February 14, 2018, Plaintiff moved to the Bernard Street Address where he currently resides. (Id. 51:13-16.)

On February 18, 2019, Defendant issued his decision (the “Final Decision”). In the Final Decision, Defendant held Plaintiff “established residency in the [District] on February 14, 2018 when [Plaintiff] moved into the Bernard Street address.” Because Plaintiff had not established residency for one year prior to January 23, 2019, Defendant disqualified Plaintiff pursuant to O.C.G.A. § 21-2-6(c).

III. CONCLUSIONS OF LAW

As explained by the Georgia Supreme Court,

[w]hile ‘domicile’ and ‘residence’ have different meanings, with ‘domicile’ denoting a permanent place of abode and ‘residence’ not necessarily being permanent (Avery v. Bower, 170 Ga. 202 (1930) (‘There must be a concurrence of actual residence and the intention to remain, to acquire a domicile’), the residency requirement for a candidate for, or holder of, public office refers to domicile. O.C.G.A. § 21-2-217(a) sets out fifteen rules to be followed, so far as they are applicable, in determining the residency of a person desiring to qualify to run for elective office, and O.C.G.A. § 21-2-2(32) defines ‘residence’ as used in Chapter 2 of Title 21, as meaning ‘domicile.’

Handel at 550. “[A] person may have several residences, though only one domicile.” Cook v. Board of Regs. of Randolph Cnty, 320 Ga. App. 447, 452 (2013) (citation omitted). “If a person actually removes to another place, with the intention of remaining there for an indefinite time as a place of fixed domicile, such place becomes his domicile.” Williams v. Williams, 226 Ga. 734, 736 (1970).

“When the issue is the residence of a person desiring to qualify to run for elective office, O.C.G.A. § 21-2-217(a) directs that the rules contained therein are to be followed ‘so far as they are applicable.’” Handel at 554. Additionally, the decision on residency should not “elevate” one of the rules above all others. Id. “The determination as to domicile is a mixed question of law and fact normally for the factfinder, but it may become a question of law in plain and palpable cases.” Cook v. Board of Registrars of Randolph Cnty., 320 Ga. App. 447, 449 (2013).

As noted in the Final Decision, “the only pertinent question, is whether or not [Plaintiff] had established residency within [the District] as of January 23, 2018.” (Final Dec. 5.) The Final Decision goes on to state “for this purpose, [Defendant] find[s] that [Plaintiff] did, in fact, occupy the premises of [the 16th Street Address] between the dates of January 23, 2018 and February 14, 2018.” (Id.) Defendant also found the 16th Street Address was located within the District.

Defendant found the following rules of O.C.G.A. § 21-2-217(a) applicable.

(a) In determining the residence of a person desiring to register to vote or to qualify to run for elective office, the following rules shall be followed so far as they are applicable:

(1) The residence of any person shall be held to be in that place in which such person's habitation is fixed, without any present intention of removing therefrom;

....

(3) A person shall not be considered to have gained a residence in any county or municipality of this state into which such person has come for temporary purposes only without the intention of making such county or municipality such person's permanent place of abode;

...

(9) The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention;

...

(15) For voter registration purposes, the board of registrars and, for candidacy residency purposes, the Secretary of State, election superintendent, or hearing officer may consider evidence of where the person receives significant mail such as personal bills and any other evidence that indicates where the person resides.

(Final Dec. 5.) The Court also finds applicable O.C.G.A. § 21-2-217(a)(6) which states:

(6) If a person removes to another county or municipality within this state with the intention of remaining there an indefinite time and making such other county or municipality such person's place of residence, such person shall be considered to have lost such person's residence in the former county or municipality, notwithstanding that such person may intend to return at some indefinite future period...

The Final Decision goes on to conclude Plaintiff “did not know where the [Divvy Homes’] home would eventually be located *prior to making [the] reservation at the Airbnb.*” (Final Dec. 6) (emphasis added). However, Defendant also concludes the following

in accordance O.C.G.A. § 21-2-217(a)(3), [Plaintiff] did not gain residence in [the District] on or prior to January 23, 2018, as [Plaintiff] occupied the 16th Street [Address] for temporary lodging purposes only without the intention of making that residence, or [the District], his permanent place of abode.

(Final Dec. 6.)

The Court finds this conclusion of law contains two separate conclusions.

The first conclusion is that Plaintiff “did not gain residence in [the District]

on or prior to January 23, 2018, as [Plaintiff] occupied the 16th Street [Address] for temporary lodging purposes only without the intention of making that residence, ~~or [the District]~~, his permanent place of abode.” However, the Court finds the only pertinent question, as the Final Order previously identified, is whether or not Plaintiff established residency in *the District* as of January 23, 2019. Additionally, according to the rules of O.C.G.A. § 21-2-217(a), the question is whether a person gained residence in a particular political subdivision (i.e., a state, county, municipality, or city council district) not in a particular place (i.e. a fixed address).

The second conclusion is that Plaintiff “did not gain residence in [the District] on or prior to January 23, 2018, as [Plaintiff] occupied the 16th Street [Address] for temporary lodging purposes only without the intention of making ~~that residence, or [the District]~~, his permanent place of abode.” The Court finds this conclusion unsupported by the evidence. On January 11, 2018, Plaintiff viewed the Bernard Street Address, located within the District, and on January 12, 2018, Plaintiff sent the earnest money to Divvy Homes to begin the process of securing the Bernard Street Address. On January 14, 2018, Plaintiff moved into the 16th Street Address, located within the District. On January 15, 2018, Plaintiff changed his mailing address with the United States Postal Service to be within District 3. In late January 2018, Plaintiff negotiated with Divvy Homes concerning the Bernard Street Address and on February 1, 2018, Plaintiff entered into a

contract with Divvy Homes. On February 12, 2018, Plaintiff obtained the keys to the Bernard Street Address and on February 14, 2018, Plaintiff moved into the Bernard Street Address. Therefore, the undisputed evidence is Plaintiff had tendered earnest money on a rent-to-own lease on the Bernard Street Address located in the District and that Plaintiff physically moved into the 16th Street Address also located in the District as of January 23, 2018. There is no evidence in the record to support the finding that Defendant was temporarily in the District as of January 23, 2018 or that he had the intention of removing himself from the District. The Court finds Defendant's conclusion that Plaintiff "did not gain residence in [the District] on or prior to January 23, 2018, as you occupied the 16th Street [Address] for temporary lodging purposes only without the intention of making that residence, or [the District], his permanent place of abode" to be erroneous in view of the "reliable, probative, and substantial evidence on the whole record" and this decision was "arbitrary and capricious." See O.C.G.A. § 21-2-6(e)(5), (6).

For these reasons, the Court hereby **REVERSES** Defendant's Final Decision.

SO ORDERED, this 22nd day of February, 2019.



Kelly Lee Ellerbe, Judge
Superior Court of Fulton County
Atlanta Judicial Circuit