

SUPREME COURT OF ARIZONA

MOISES SANCHEZ, a qualified elector;

Appellant/Plaintiff,

vs.

KEVIN ROBINSON, candidate and real party in interest; DENISE ARCHIBALD, in her official capacity as the City Clerk for the City of Phoenix; BILL GATES, CLINT HICKMAN, JACK SELLERS, THOMAS GALVIN, and STEVE GALLARDO, in their official capacities as members of the Maricopa County Board of Supervisors; STEVEN RICHER, in his official capacity as Maricopa County Recorder;

Appellees/Defendants.

**Arizona Supreme Court Case No.
CV-22-0196-AP/EL**

**Maricopa County Superior Court
Case No. CV2022-009450**

REPLY BRIEF

(Expedited Election Matter)

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1. **The “Rules of residence,” including the “family rule,” govern candidate residency challenges**

The “Rules of residence,” including the “family rule,” specifically govern the determination of whether a voter is eligible to vote. A.R.S. § 16-593(A). But a candidate for office is subject to the same requirement; they must be a “qualified elector of the political division or municipality in which such person shall be elected.” A.R.S. Const. Art. 7 § 15. Because a candidate for office must also be a qualified voter, then the rules that govern the determination of a voter’s residence must be one and the same as the rules that govern a candidate’s residence.

The “Rules of residence” do not offer a “choice” in whether they are to be applied: A.R.S. § 16-593(A) provides that “[t]he election board, in determining the place of residence of a person, *shall be governed* by the following rules, so far as applicable...” A.R.S. § 16-593(A) (emphasis added); *compare with* Phoenix City Code Sec. 12-214 (“The Election Board *shall use* the following rules to determine a person’s place of residence...”)(emphasis added). In fact, this Court has gone so far as to say that the Rules of residence should be applied in *any* case where residency is at issue, not just voter cases, including property tax cases and probate proceedings. *See McIntosh v. Maricopa Cnty.*, 73 Ariz. 366, 369, 241 P.2d 801, 803 (1952)(applying A.R.S. § 16-593’s “family rule” to the determination of residency in a property tax case); *Hiatt v. Lee*, 48 Ariz. 320, 323, 61 P.2d 401, 402 (1936)(applying A.R.S. § 16-593 to determine whether the decedent in a probate case was an Arizona resident at the time of his death). A.R.S. § 16-593 “gives certain rules for determining residence, and while these rules apply specifically only to

voters, yet we think they also set forth the general rule for determining residence whenever that may be an issue.” *McIntosh*, 73 Ariz. at 369, 241 P.2d at 803 (quoting *Hiatt*, 48 Ariz. at 323, 61 P.2d at 402; also specifically referencing the rule that “[t]he place where a man’s family permanently resides is his residence, unless he be separated therefrom”). Because this Court has said that the Rules of residence should be applied in all cases, not just voter cases, then the Rules certainly *must* be applied in cases like the one at bar, where the issue is whether a candidate is also a qualified voter based on his residency. To the extent that the Court of Appeals’ commentary in *Parker v. City of Tucson*¹ implied that a trial court can choose not to apply the Rules of residence in determining a voter or candidate’s residence, then it must be overruled. If a trial court were free not to apply A.R.S. § 16-593 to the determination of a voter or candidate’s residency, then it would render the law’s “shall be governed by” (and “shall use,” in the case of the City Code) language superfluous, and negate any meaningful effect to the laws. The trial court was bound to apply the Rules of residence, in particular the “family rule,” to determine the candidate’s residency.

2. In View of the “Family Rule,” The Trial Court’s Ruling was not Supported by Substantial Evidence

For his argument that the trial court’s ruling was supported by substantial evidence, Robinson recites the trial court’s findings that he changed his driver’s license and voter registration to the rented house in Phoenix (then voted while registered there); that he had “at least some mail” delivered there and kept toiletries, food and clothing there; that his personal checks showed the Phoenix address; that

¹ 233 Ariz. 422, 436, 314 P.3d 100, 114 (Ct. App. 2013).

he used to live and work in District 6 years ago before moving to Scottsdale; and that he testified that he “was in it for the long haul” when he executed a one-year lease for the Phoenix house, for which he paid rent and obtained insurance. (Answering Brief, p. 7.) But even when viewed in a light most favorable, such evidence does not establish Robinson’s residency in light of the “family rule” and other uncontroverted evidence in the case. Robinson does not dispute his own testimony that his wife “resides at our residence” in Scottsdale, that she has never slept at the Phoenix house, and that she cannot live at the house in Phoenix; that he continues to spend up to half his time with her at the Scottsdale house; that he is not separated from his spouse; or that he rented the house just to establish residency for his candidacy, among other uncontroverted evidence.

Robinson also points to the trial court’s finding that he “testified credibly that he hopes to find a different residence within District 6 which, like the couple’s former residence (the one sold in 2020), would allow his Wife to be present at the Mayo Hospital within 30 minutes.” However, this finding was wholly unsupported by any evidence in the record, nor does Defendant point to any. Robinson’s actual testimony on this subject, contained on page 83 of the trial transcript, was simply that “[m]y wife and I are currently looking for possibly a location to buy or to long-term rent in District 6.” At no point did he testify (or offer any other evidence to support) that he was looking for a residence that would allow his wife to be present at the hospital within 30 minutes, or that she would join him “as circumstances permit.” But even if he had offered such evidence, it would only have established that he had a speculative plan to move his family into the District but had not actually

done so. Like the candidate in *Hanssens* who had “no definite idea when his family could move,” this would still be legally insufficient to establish that he had a fixed “family home” in the District. *In re Hanssens*, 821 A.2d 1247, 1252 (Pa. Commw. Ct. 2003), as amended (May 20, 2003).

Robinson’s offhanded argument that his spouse’s residency could just as well be assigned to the house in Phoenix of course holds no weight, since Robinson and his spouse historically resided in the Scottsdale home, he continues to live there with her, and she has never lived in the Phoenix home. The application of the “family rule” to these facts is mandatory and clear—Robinson and his spouse’s fixed “family home” is in Scottsdale, not Phoenix. They are not separated, and they have not moved into (or “taken up...abode”) in the Phoenix home, either together or separated.

The fact that Robinson changed his voter registration also does not control over the “family rule.” In fact, changing voter registration (and driver’s license information) is such an obvious and self-serving thing for a candidate to do in order to try to establish residency, that the law accords it very little weight. The rule that “registration in a given state or even the voting therein, is not conclusive evidence upon the point of domicile” is “sustained by a practically unanimous line of authorities.” *Hiatt*, 48 Ariz. at 326, 61 P.2d at 404. Moreover, the Rules of residence make no reference to the voter’s registration or voting history (or driver’s license address), while they do explicitly provide that the place where a person’s family resides is their home as a matter of law.

The *Spangler* and *Hanssens* cases held that the same things which the Defendant points to in support of his residency – keeping clothing and food at the leased property, receiving mail there, sleeping at the property when not with his spouse, changing his voter registration and driver’s license, etc. – were insufficient to establish residency because of the “family rule,” even when viewed in a light most favorable to the defendant. This is because the “family rule” supplies a bright-line rule that trial courts are obligated to follow: residency is where the family is. Not applying or following the rule results in unpredictable – and frankly unjustifiable – results like the one at bar, where someone openly admits to living with his family outside the district and attempting to establish residency just to run for office, but he can be arbitrarily deemed a resident in spite of those facts. Here, the fact that Robinson admits to renting the house in Phoenix just to establish residency for his campaign is important, because it means that his intent to live in the district is contingent on his running for office – if he loses his race, then he loses his reason to live in the District. But his intent to live with his family is unconditional. The “family rule” acknowledges these obvious principles and policies, and takes the guesswork out of applying them, by mandating that the defendant’s residency is with his family as a matter of law. In doing so, it provides for clearer and more predictable, consistent, and common-sense answers on the question of residency, not to mention that it discourages “carpetbagging” and thinly-veiled attempts to create artificial residency.

3. There is no Waiver on the Issue of the Trial Court's Impartiality

Finally, under the circumstances there can be no waiver of the issue with respect to the trial court's impartiality. Plaintiff did not choose to undertake some kind of investigation after the trial – a third party first contacted and informed Plaintiff of the issue after trial. Further, election challenges are expedited matters – in fact, this action was originally set for trial only two days after the filing of the Complaint – and there should not be a burden on litigants to spend their limited time trying to investigate matters like this, which are uniquely within the trial court's purview to identify or disclose. Nor should this issue be trivialized as mere “civic activity of the trial judge's spouse” without any bearing on the litigation. There are roughly one-and-a-half million people in the City of Phoenix, and the judge's spouse happened to be one of only three hundred ninety-nine who signed the Defendant's nomination papers. Under the circumstances, Plaintiff urges the Court to apply greater than usual scrutiny to the actual evidence in the record and to whether the law was properly applied in this case.

Conclusion

The “family rule” supplies a bright-line rule for determining residency, which the lower court was obligated to apply and follow. It abused its discretion in failing to do so, and its ruling that Defendant is a resident of District 6 must be reversed.

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RESPECTFULLY SUBMITTED on August 17, 2022.

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