

SUPREME COURT OF ARIZONA

MOISES SANCHEZ, a qualified)
elector,)
)
Appellant,)
)
v.)
)
)
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.)
)
)

FILED 8/22/2022

DECISION ORDER

The Court, by a panel consisting of Vice Chief Justice Timmer, Justice Bolick, Justice Beene, and Justice Montgomery, has considered the record, the parties' briefs, the trial court's ruling following the evidentiary hearing, and the relevant legal authority in this expedited election matter.

Appellant appeals the trial court's ruling finding that Appellee, a candidate for Phoenix City Council District 6 and Appellant's opponent in the race, is a resident of District 6. Appellant argues the trial court erred in failing to apply the

"family rule" under A.R.S. § 16-593(A)(7) and Phoenix City Code § 12-214(g). He also urges the Court to conduct a de novo review of the residency issue because, after Appellant filed his notice of appeal, he discovered that the trial judge's wife allegedly signed Appellee's nomination petition, and there was no time to raise the judicial impartiality claim in the trial court.

Appellee argues that substantial evidence supported the trial court's finding that he resides in District 6, that residency is not determined by the "family rule," and that Appellant's impartiality claim and request for de novo review have been waived for not being timely raised.

At the outset, we decline Appellant's invitation to conduct a de novo review. This Court has recognized that "[a]lthough A.R.S. § 16-351(A) provides short time limits for challenges to nomination petitions, the statute does not categorically preclude the filing of [an Ariz. R. Civ. P. 60] motion" to reopen the judgment. *Moreno v. Jones*, 213 Ariz. 94, 97 ¶ 16 (2006). Accordingly, contrary to Appellant, the issue could have been raised below had he moved to reconstitute jurisdiction in the trial court, see ARCAP 3(b), and we therefore deem the issue waived, see *In re Aubuchon*, 233 Ariz. 62, 65 ¶ 8 (2013).

Applying our usual standard of review, we conclude that the trial court did not err in finding that Appellee was a resident of District 6. In an expedited election matter, this Court

"defer[s] to the trial court's findings of fact unless they are clearly erroneous." *Shooter v. Farmer*, 235 Ariz. 199, 200 ¶ 4 (2014). Thus, "[w]hen the findings of the trial court are supported by reasonable evidence or based on a reasonable conflict of evidence, they will not be disturbed on appeal." *O'Hern v. Bowling*, 109 Ariz. 90, 93 (1973).

The Arizona Constitution provides, "Every person elected or appointed to any elective office of trust or profit under the authority of the state, or any political division or any municipality thereof, shall be a qualified elector of the political division or municipality in which such person shall be elected." Ariz. Const. art. 7, § 15. For nonpartisan elections, such as for Phoenix City Council, a candidate must be a qualified elector at the time the candidate files nomination papers. A.R.S. § 16-311(B).

A qualified elector is a person who is properly registered to vote. A.R.S. § 16-121(A). Proper registration requires residency. A.R.S. § 16-101(A). Residency requires "actual physical presence in this state, or for purposes of a political subdivision *actual physical presence in the political subdivision*, combined with an intent to remain." A.R.S. § 16-101(B) (emphasis added).

"The intentions of a person are to be judged not only by his statements but also upon his conduct and the surrounding

circumstances." *O'Hern*, 109 Ariz. at 92 (affirming the disqualification of a candidate who rented a duplex on a month-to-month basis one week before filing his nomination petitions, visited the premises only occasionally, did not order utility service or telephone service, and did not sleep at the duplex or move personal effects there).

Here, the trial court found that Appellee was physically present in District 6 and intended to remain there when he filed his nomination papers on July 7, 2022. These findings were supported by Appellee's testimony that he spends most of his time at the District 6 house he rents, as well as evidence that he keeps food, clothing, family pictures, personal mail, toiletries, and his breathing machine there. Appellee also testified that he is "in it for the long haul" and intends to find a new house in District 6, both of which the trial court specifically credited. Consistent with his testimony, Appellee is registered to vote in District 6, he took out a one-year lease and renter's insurance policy, and he listed his District 6 address with the Motor Vehicle Division and his bank. See *McDowell Mountain Ranch Land Coal. v. Vizcaino*, 190 Ariz. 1, 3-4 (1997) (recognizing length of lease and bank and motor vehicle records as relevant residency factors).

Of course, Appellant was able to marshal evidence to the contrary, including a doorbell camera log showing Appellee

entered the front door of the District 6 house only six times in July, testimony from Appellee's landlord that the temperature of the District 6 house is around 86 degrees when she checks, testimony from the landlord that Appellee's electric bill was "a little lower" than her other tenants, evidence that Appellee's tax return listed the Scottsdale house where his wife currently resides, a video of Appellant at the Scottsdale house, Appellee's testimony that he is not separated from his wife and that she has not slept at the District 6 house, and Appellee's testimony that he moved to District 6 from the Scottsdale house to establish residency for his candidacy.

Some of this evidence, however, was qualified by other evidence. For example, Appellee's wife must reside thirty minutes from the hospital where she is employed, and the District 6 house is over thirty minutes away. Appellee also testified that he typically enters the District 6 house through the back door. Although the trial court found this less convincing than his other testimony, it nevertheless found Appellee's privacy concern about surveillance by his landlord highly plausible, which Appellee claimed motivated his circuitous route. Further, Appellee had worked in District 6 for most of his law enforcement career and lived there with his wife before they purchased the Scottsdale house to downsize, which was only a year before Appellee began renting in District 6.

In view of the reasonably conflicting evidence before the trial court, we cannot say that its residency finding was clearly erroneous. See *O'Hern*, 109 Ariz. at 93. Appellant nevertheless contends that the trial court abused its discretion by failing to apply the "family rule" provided in A.R.S. § 16-593(A)(7) and Phoenix City Code § 12-214(g), which he acknowledges are identical in substance.

Assuming without deciding that the trial court was required to consider and apply the rule, its ruling was still legally correct. See *Clayton v. West*, 251 Ariz. 226, 229 ¶ 11 (2021). The "family rule" does not apply where the person is "separated" from his family, or the family resides at a place that is "temporary" or for "transient purposes." A.R.S. § 16-593(A)(7); Phx., Ariz., Code ch. 12, art. 3, § 12-214(g).

The trial court found that Appellee's "wife ultimately will join him [in District 6] as the circumstances permit," which supports a conclusion that Appellee's family's house in Scottsdale house is "temporary" or for "transient purposes," meeting an exception to the "family rule" under A.R.S. § 16-593(A)(7). See also *State ex rel. Spangler v. Bd. of Elections of Cuyahoga Cnty.*, 455 N.E.2d 1009, 1010 (1983) (observing family rule did not apply to husband voting in Ohio where "wife temporarily lived in Union City, Indiana due to a housing shortage, having the intention of joining her husband as soon as

accommodations could be located”).

And substantial circumstantial evidence supported the trial court’s finding concerning Appellee’s wife’s intention to join him. Appellee testified that, in considering a return to District 6, “my wife and I talked about buying us a different place inside of District 6, but it was easier just to be able to move in, be at home, do the things that I needed to do in [a] furnished apartment.” He added, “with the prices as high as they were, we wanted to wait until the market settled down a little bit.” Further, during Appellant’s cross examination, Appellee testified, “My wife and I are currently looking for possibly a location to buy or to longterm rent in District 6,” adding that there are houses in District 6 that are within thirty minutes of his wife’s work, as required.

We also find Appellant’s reliance on *In re Hanssens*, 821 A.2d 1247 (Pa. Commw. Ct. 2003), misplaced. There, the Pennsylvania court reasoned that the absence of a definitive idea of when the candidate’s family would move supported the trial court’s finding that the candidate had not established a new, in-district domicile under Pennsylvania law, which is notably distinct from residency under Arizona law. Compare *Hanssens*, 821 A.2d at 1252 (“A domicile is the place at which an individual *has fixed the family home* and principal establishment for an indefinite period of time.” (emphasis added)), *with*

A.R.S. § 16-101 ``resident' means . . . actual physical presence in the political subdivision, combined with an intent to remain"). Thus, *Hanssens* does not support the proposition that, as a matter of Arizona law, Appellee is not a resident if there is no date-certain for Appellant's wife's return.

In sum, despite the "family rule," the trial court did not abuse its discretion in finding that Appellee is a resident of District 6 based on his physical presence there combined with his intent to remain See A.R.S. § 16-101(B). Therefore,

IT IS ORDERED that the trial court's ruling is affirmed.

IT IS FURTHER ORDERED that the Clerk of Court issue the mandate in this matter immediately.

DATED this 22nd day of August, 2022.

_____/s/_____
ANN A. SCOTT TIMMER
Vice Chief Justice

TO:

Dennis I Wilenchik
John D Wilenchik
Jordan C Wolff
Deryck Lavelle
Roy Herrera
Jane Ahern
Daniel A Arellano
Charles E Trullinger III
Jack O'Connor
Hon. M Scott McCoy
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