

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-009450

08/02/2022

HONORABLE M. SCOTT MCCOY

CLERK OF THE COURT
T. DeRaddo
Deputy

MOISES SANCHEZ

DENNIS I WILENCHIK

v.

KEVIN ROBINSON, et al.

DANIEL A ARELLANO

DERYCK R LAVELLE
CHARLES E TRULLINGER
JANE W AHERN
JOHN DOUGLAS WILENCHIK
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE MCCOY

UNDER ADVISEMENT RULING

Defendant Kevin Robinson is a candidate for the Phoenix City Council, District 6 (“District 6”) in the November 8, 2022 election. Plaintiff Moises Sanchez on July 25, 2022 filed a Verified Complaint alleging Robinson does not meet the residency requirement to hold that office. Following an evidentiary hearing on August 1, 2022, the Court now rules.

I. Conclusions of Law

1. Under A.R.S. § 16-351 (B), “[a]ny elector may challenge a candidate for any reason relating to qualifications for the office sought as prescribed by law, including . . . residency.”

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2. The Arizona Constitution requires: “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. VII, § 15.
3. The City of Phoenix’s Charter contains a similar residency requirement: “Each candidate for one of the eight Council seats shall at the time of his nomination and during his tenure maintain his permanent residence within the district from which he is nominated.” City of Phoenix Charter, Chapter III, § 1(C) (emphasis added). A city charter is “effectively, a local constitution.” *City of Tucson v. State*, 229 Ariz. 172, 174, ¶ 10, 273 P.3d 624, 626 (2012) (citing Ariz. Const. art. 13, § 2).
4. To be placed on the ballot, the City of Phoenix Code requires candidates to file nomination papers. City of Phoenix Code, § 12-1102(a) (“To become a candidate for any office, a qualified elector must file a nomination paper . . .”).
5. The residency requirement begins when the candidate files nominating papers. *See* City of Phoenix Charter, Chapter III, § 1(C) (requiring permanent residence within the relevant district “*at the time of . . . nomination.*”) (emphasis added); *see also*, City of Phoenix Code, § 12-1102(e) (“*At the time of filing a nomination paper, a City Council candidate must maintain the candidate’s permanent residence within the district from which the candidate is nominated.*”) (emphasis added).
6. Plaintiff contends that Robinson must have been a resident of District 6 since January 21, 2022, the date on which Robinson filed a “Candidate Notice of Candidacy” (the “Notice”) with the City Clerk to run as a candidate for City Council member in District 6. This is incorrect.
7. By filing the Notice, Robinson merely became eligible to collect signatures on nomination petitions. *See* A.R.S. § 16-311(H) (“Not later than the date of the first petition signature on a nomination petition, a person who may be a candidate for office pursuant to this section shall file a statement of interest with the appropriate filing officer for that office.”).
8. To determine the residency of voters, the City of Phoenix Code sets forth a number of rules. City of Phoenix Code, § 12-214. Such rules apply in this context as well. *See McIntosh v. Maricopa Cnty.*, 73 Ariz. 366, 369, 241 P.2d 801, 803 (1952) (holding that the “rules apply[ing] to [voters’ residency]. . . also set forth the general rule for determining residence whenever that may be an issue.”)

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9. Cases involving determinations of “domicile” are helpful as well. *See id.* “Domicile of choice is entirely a question of residence and intention, or, as it is frequently put, of factum and animus. To constitute such a domicile, or to effect a change of domicile, there must appear both an actual residence in a particular locality and an intention to remain there or to make it one's home. [] As soon as a point of time is reached when residence and intent concur, the domicile is obtained.” *Id.* at 370, 241 P.2d at 803. COP Code 12-214 says:
 - h. If a person’s family resides in one place and the person does business in another, the former is the person’s place of residence. However, a person whose family resides in one place, but who has moved to another place with the intention of remaining there, shall be regarded as a resident of the place to where the person has moved.
10. City of Phoenix Code § 12-214 requires the city’s Election Boards to use the following rules, among others, to determine a [voter’s] place of residence:
 - h. If a person’s family resides in one place and the person does business in another, the former is the person’s place of residence. However, a person whose family resides in one place, but who has moved to another place with the intention of remaining there, shall be regarded as a resident of the place to where the person has moved.

II. Findings of Fact

1. A retired City of Phoenix police officer, Robinson’s “beat” for many years was located within District 6.
2. Robinson and his wife lived in District 6 for a number of years. In 2020, they sold their approximately 4800 square foot residence there because they were downsizing after all of their children were out of the home.
3. Robinson and his wife then began residing at a residence in Scottsdale (the “Scottsdale Home”). The Scottsdale Home is not within the boundaries of District 6.
4. The location of the Scottsdale Home allows Robinson’s wife, a physician employed at the Mayo Hospital in Scottsdale, to be available at the hospital within 30 minutes, as her job requires. The couple’s former residence within District 6 also permitted her to be at Mayo Hospital within 30 minutes.
5. On or near September 25, 2021, Robinson executed a lease for a furnished residence located within District 6, at 4625 E. Winston Drive (the “Winston Drive Residence”). Robinson pays \$2,750 per month for rent.

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6. Robinson decided that he wanted to run for office in District 6 in approximately September of 2021. Housing inventory in the area was low and property values high at the time, so he entered into a one-year lease because, he testified credibly, he “was in it for the long haul.”
7. Robinson is not separated from his wife, but she does not spend the night at the Winston Drive Residence, which is situated more than 30 minutes from the Mayo Hospital.
8. Robinson purchased renter’s insurance for the Winston Drive Residence. Evidence indicates he receives at least some mail there, including his voter ID Card. Photographs reflect that Robinson keeps his required CPAP machine at the Winston Drive Residence. He also has toiletries, some food, and keeps quite a bit of men’s clothing there. Robinson’s address with the Department of Motor Vehicles is listed as the Winston Drive Residence. It is also the address on his personal checks.
9. Robinson is registered to vote at the Winston Drive Residence and has voted there in two elections recently. *Kauzlarich v. Bd. of Trustees of Oak Creek Sch. Dist. No. 16*, 78 Ariz. 267, 270–71, 278 P.2d 888, 891 (1955) (“The law is well settled in this state that the statement in an affidavit of [voter] registration as to place of residence is not conclusive [but] must be construed as strong proof of the correctness of [someone’s] residence.”)
10. Robinson’s lease for the Winston Drive Residence expires on September 30, 2022, before the election. He testified that he initially hoped to renew the lease and persuade his landlord to revise the lease to permit the couple’s pets.
11. Now, however, Robinson admittedly intends to find a new residence within District 6 because: (a) he believes his landlord is a friend of Plaintiff; (b) Plaintiff is also one of Robinson’s opponents in this race; and (c) Robinson believes the landlord has not respected his privacy.
12. Robinson’s testimony is highly plausible on this point. From the outset, the Verified Complaint (at ¶¶ 16-19) refers to data from a “Ring” video doorbell, a “Nest” thermostat, and utilities bills, all data within his landlord’s control.
13. Robinson 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.

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14. Less convincing was Robinson's explanation for his relatively few appearances on the "Ring" camera and for the propensity of the "Nest" thermostat to be set at relatively high temperatures at the Winston Drive Residence.
15. On the whole, however, the greater weight of the evidence reflects that Robinson has moved to District 6 and intends (and intended, at the relevant time) to reside permanently in that District. His wife ultimately will join him there as circumstances permit.

Accordingly,

THE COURT FINDS that Robinson is a resident of District 6 and was at the time his nominating petitions were filed.

THE COURT FURTHER FINDS that Robinson meets all residence requirements to stand for election in District 6.

IT IS THEREFORE ORDERED denying the application for injunction and dismissing Plaintiff's Verified Complaint with prejudice.

IT IS FURTHER ORDERED, as a housekeeping matter, granting the motion to quash the subpoena issued to Robinson's wife.

No further matters remain pending and this judgment is entered under Ariz. R. Civ. P. 54(c).

The parties are notified that, under A.R.S. § 16-351(A), any notice of appeal must be filed within five calendar days after the superior court's decision in a challenge to the nomination of a candidate. See *Bohart v. Hanna*, 213 Ariz. 480, 143 P.3d 1021 (2006). An appeal that is belatedly prosecuted, such as one filed on the last day of the statutory deadline, may be dismissed on grounds of laches even if timely filed. See *McClung v. Bennett*, 225 Ariz. 154, 235 P.3d 1037 (2010). Special procedural rules govern expedited appeals in election cases. Ariz. R. Civ. App. P. 10.

/s/ HONORABLE M. SCOTT MCCOY

08/02/2022
DATE

HONORABLE M. SCOTT MCCOY
JUDICIAL OFFICER OF THE SUPERIOR COURT