

SUPREME COURT OF ARIZONA

KALIN MYERS, )  
 ) Arizona Supreme Court  
 ) No. CV-18-0166-AP/EL  
 Plaintiff/Appellee, )  
 ) Maricopa County  
 v. ) Superior Court  
 ) No. CV2018-008668  
 RAY SALAZAR, et al., )  
 ) **FILED 07/03/2018**  
 Defendants/Appellants. )  
 )  
 )  
 \_\_\_\_\_ )

**DECISION ORDER**

The Court, by a panel consisting of Chief Justice Bales and Justices Bolick, Gould, and Lopez, has considered the briefs of the parties, the record, the trial court's ruling, and the relevant statutes and case law in this expedited election matter.

Appellant/Cross-Appellee Salazar contends his partisan nomination petitions substantially complied with A.R.S. § 16-314. This Court reviews de novo whether petitions substantially comply with statutory requirements. *Kennedy v. Lodge*, 230 Ariz. 134, 135 ¶ 7 (2012). The test for substantial compliance is whether, looking at the petition as a whole, "the omission of information could confuse or mislead electors signing the petition." *Bee v. Day*, 218 Ariz. 505, 508 ¶ 13 (2008). The petitions here identified the office for which party nomination is sought as "Justice of the Peace" and the "political division from which the nomination is sought" as the West McDowell Justice Precinct. Under the criteria in *Kennedy v. Lodge*, 230 Ariz. at 136 ¶ 8, and *Moreno v. Jones*, 213 Ariz. 94, 103 ¶ 45 (2006), the electors could not be confused by Salazar's petitions and would know for which office they were nominating him.

Appellee/Cross-Appellant Myers argues that the equitable doctrine of laches should bar this appeal. We disagree. Under A.R.S. § 16-351(A), the "notice of appeal must be filed within five

days after the decision of the trial court in the action.” Although the trial court drafted its ruling on June 18, the decision was not entered until June 20. Salazar timely filed notice of appeal in trial court on June 22 and his ARCAP 10 filings in this Court on June 25. Unlike the appellant in *Lubin v. Thomas*, 213 Ariz. 496, 497-98 ¶¶ 8-11 (2006), Salazar has prosecuted his appeal diligently. Nor do we find any prejudice that warrants applying laches.

In his cross-appeal, Myers argues that because Salazar temporarily rented housing, and he referred in his testimony to the Glendale house as “home,” the trial court erred in ruling that Salazar resided in the West McDowell Justice Precinct. Residence in A.R.S. § 16-101(B) requires “actual physical presence” in the political subdivision “combined with an intent to remain.” Myers contends that Airbnb, hotel, or hostel stays do not constitute residence, but such arrangements are not at issue here.

This Court reviews the trial court’s findings of fact for an abuse of discretion, *Shooter v. Farmer*, 235 Ariz. 199, 200 ¶ 4 (2014), and views the evidence in the light most favorable to supporting the trial court’s decision. *Johnson v. Johnson*, 131 Ariz. 38, 44 (1981).

Substantial evidence supports the trial court’s conclusion that Salazar resides in the district. He has rented a room from a friend for more than six months, paying both rent and the gas bill and sleeping there most nights of the week; his wife visits him there; and he registered to vote and has opened a bank account from that address. He attends church and is active in the Knights of Columbus there. He hired a realtor and is actively searching for permanent housing. Nothing in A.R.S. § 16-101(B) requires either home ownership or a particular duration to attain “actual physical presence in the political subdivision.”

Accordingly,

**IT IS ORDERED** reversing the trial court’s order entered June 20,

2018 enjoining placement of Defendant/Appellant Salazar's name on the August 2018 primary election ballot based on the form of his nominating petitions.

**IT IS FURTHER ORDERED** that the Maricopa County Board of Supervisors and Maricopa County Recorder shall include Ray Salazar's name on the August 2018 primary election ballot for Justice of the Peace, West McDowell Justice Court Precinct.

**IT IS FURTHER ORDERED** granting Appellant Salazar's Motion for Leave to File Reply Brief. If she has not already done so, the Clerk of Court will accept and file the Reply Brief.

DATED this 3<sup>rd</sup> day of July, 2018.

\_\_\_\_/s/\_\_\_\_\_  
SCOTT BALES  
Chief Justice

TO:

James E Barton II

Saman John Golestan

Israel G Torres

Roy Herrera

Daniel A Arellano

M Colleen Connor

Talia J Offord

Hon Chris DeRose

Hon Patricia A Starr