

COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



TYRONE BROOKS, JR.,

Petitioner,

vs.

BRIAN KEMP,

Respondent.

CIVIL ACTION FILE NO. 2015CV261898

HON. KIMBERLY M. ESMOND ADAMS

FINAL ORDER DENYING PETITION FOR JUDICIAL REVIEW

The above-styled matter came before the Court for a hearing on June 15, 2015 on Petitioner Brooks's Petition for Judicial Review of Respondent's Final Decision to disqualify him as a candidate for election after Respondent determined Petitioner had not been a resident of the House District for which he sought election for one year prior to the June 16, 2015 Special Election as required by statute. Upon consideration of the record, applicable authority, and arguments of counsel, the Petition is **DENIED**, and Respondent's Final Decision is **AFFIRMED** as discussed more fully below.

PROCEDURAL HISTORY

The record shows that on April 28, 2015, Petitioner in this case, Tyrone Brooks Jr., filed his Notice of Candidacy and Affidavit for the June 16, 2015 Special Election attesting that he had been a legal resident of State House District 55 for three (3) consecutive years. On May 20, 2015, Dorothy Hart filed a challenge to Petitioner's qualification for candidacy for State House District 55 contending Petitioner did not meet the one-year residency requirement.

An evidentiary hearing was held before an Administrative Law Judge ("ALJ") on June 2, 2015 wherein Petitioner presented evidence and testimony attempting to show he met the

residency requirement and had, in fact, resided in House District 55 since June 16, 2014. Petitioner's driver's license issued April 29, 2014 reflected his father's address of 1890 Childress Drive, which is in District 55. Petitioner testified he had lived at his father's address temporarily since 2012 while searching for permanent housing. Petitioner further asserted he has resided at 3100 Mangum Lane in District 55 since July 25, 2014. Moreover, Petitioner changed his voter registration from his mother's home at 1315 Beecher Street, which is in District 57, to the Mangum Lane address on April 28, 2015.

The ALJ in his Initial Decision issued June 8 found that Petitioner has lived at 3100 Mangum Lane since July 25, 2014, but that Petitioner failed to produce any evidence other than his own testimony and driver's license connecting him to 1890 Childress Drive.¹ Petitioner also admitted he voted in District 57 as late as November 2014. Moreover, he listed 1315 Beecher Street on his 2013 tax return, and his campaign website also listed the Beecher Street address as the contact address. The ALJ concluded Petitioner failed to meet his burden to show he was a resident of District 55 from June 16, 2014 to July 24, 2014 and disqualified him from candidacy.

Respondent in this case, Secretary of State Brian Kemp, issued his Final Decision on June 8 formally adopting the ALJ's findings of fact and conclusions of law and deciding that because there was insufficient time to strike Petitioner Brooks's name and reprint the ballots, "a prominent notice shall be placed at each affected polling place advising voters of the disqualification of [Brooks] and all votes cast for [Brooks] shall be void and shall not be counted." On June 10, Petitioner filed his Complaint for Injunctive Relief and Declaratory Judgment. On June 11, this Court issued an Amended Rule Nisi staying the Final Decision of Respondent and scheduling a hearing for June 19, the earliest possible date given the five-day

¹ The ALJ also denied Petitioner Brooks's Motion for Summary Judgement and Motion to Quash Subpoena and Impose Sanctions.

notice to which the Secretary of State is legally entitled. See O.C.G.A. §§ 21-2-5(e) (“the reviewing court may order a stay upon appropriate terms for good cause shown”); 9-10-2 (2014). Upon receipt of Respondent’s written waiver of the five-day notice requirement, the Court moved the hearing up to June 15 in order to consider the matter prior to the June 16 Special Election. Petitioner filed his Petition for Judicial Review on June 15 before the hearing commenced and expressly abandoned his original claims for mandamus, declaratory judgment, and injunction during oral argument.

STANDARD OF REVIEW

Under Georgia law, “[a]ny person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter.” O.C.G.A. § 50-13-19(a) (2014). With regard to a candidate who has been disqualified, “the candidate challenged shall have the right to appeal the decision of the Secretary of State by filing a petition in the Superior Court of Fulton County within ten days after the entry of the final decision by the Secretary of State.” O.C.G.A. § 21-2-5(e) (2014). “[L]itigants in election contests have a duty to expedite resolution of the dispute before the . . . election is held.” Jordan v. Cook, 277 Ga. 155, 155 (2003).²

The judicial 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 Secretary of State as to the weight of the evidence on questions of fact.” Id.

² The Court notes, contrary to Respondent’s contention, that Petitioner filed his pleading in this Court at nearly the earliest opportunity that he could. Indeed, election statutes establishing procedures for contesting elections are founded upon the underlying policy that election-related appeals must be timely considered, and the justification therefor is to prevent the unnecessary expense in holding more than one election, to ensure the finality of election results, and to resolve challenges to a candidate’s qualifications prior to the time that voters exercise their constitutional right to vote. Jordan, 277 Ga. at 156. In this case, the challenge was filed on May 20, 2015, and the evidentiary hearing was held June 2. The ALJ issued his decision on June 8, and Respondent also issued his final decision on the same day. Petitioner received the Final Decision on June 9, and he filed his complaint on June 10. The Court does not find Petitioner was dilatory.

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 Secretary of State are: (1) In violation of the Constitution or laws of this state; (2) In excess of the statutory authority of the Secretary of State; (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.

Id. Furthermore,

judicial review of an administrative decision 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."

Handel v. Powell, 284 Ga. 550, 552-53 (2008) (emphasis added) (superior court properly reversed the Secretary of State's decision to disqualify a candidate where she determined the candidate's homestead exemption on property outside the district alone was sufficient to determine the candidate did not reside in the district but failed to apply the other rules of residency under O.C.G.A. § 21-2-217) (*quoting* Pruitt Corp. v. Georgia Dep't of Cmty. Health, 284 Ga. 158, 161 (2008)).

CONCLUSIONS OF LAW

Contrary to Petitioner's oral argument, the Court finds that there is evidence in the record to support the factual findings in this case. The record shows that Respondent considered Petitioner's testimony, the 3100 Mangum Lane property owner's testimony, and other documentary evidence to establish that Petitioner has resided in District 55 since July 25, 2014. As to Petitioner's residence prior to July 25, Respondent not only considered Petitioner's testimony, qualifying affidavit, and driver's license showing the Childress Drive address but also

considered the lack of mail, utility bills, voter registration, vehicle registration, property purchase, or other forms of evidence which could have supported Petitioner's argument that he resided in District 55. Respondent admitted he listed the Beecher Street address on his 2013 tax return, did not change his voter registration to District 55 until April 28, 2015, and voted outside the district as late as November 2014. Therefore, the Court finds Respondent's factual findings are supported by evidence in the record. Moreover, although Petitioner urged the Court to consider three (3) affidavits filed with his complaint, judicial review is confined to the record made at the proceeding below. O.C.G.A. § 21-2-5(e) (2014). Consequently, the Court lacks authority to consider the affidavits and any other matters outside of the record below.

Second, the Court finds the conclusions of law based on the findings of fact are legally sound. Georgia law requires any member of its House of Representatives to be a resident of the district the member represents for at least one year preceding the time of such member's election. O.C.G.A. § 28-2-1(b) (2014). O.C.G.A. § 21-2-217 provides a number of rules to determine the residency of a person desiring to run for elective office. For example, a person's residence "shall be held to be in that place in which such person's habitation is fixed, without any present intention of removing therefrom," and "evidence of where the person receives significant mail such as personal bills and any other evidence that indicates where the person resides" may also be considered. O.C.G.A. § 21-2-217(a) (2014).

Contrary to the Secretary of State's decision in Handel and Petitioner's argument that Respondent relied on only one factor, the record shows Respondent applied and weighed a number of the statutory indicators before concluding that Petitioner established residency in District 55 beginning July 25, 2014 but, ultimately, failed to establish residency from June 16 to July 24, 2014. Respondent found Petitioner's driver's license and testimony of his intent to

reside and remain in District 55 contradicted his testimony regarding his 2013 tax return and voter registration which both reflected the Beecher Street address in District 57. Respondent similarly found that mail, personal bills, property purchase, voter registration, or vehicle registration that would be probative of Petitioner's intention to reside in District 55 were not produced at the hearing.

Petitioner argued that Respondent erred when he failed to conclude Petitioner's change of address on his driver's license on April 29, 2014, which also should have changed his voter registration, was conclusive of his intent to reside in District 55. A person's change of address

submitted to the Department of Driver Services for the purpose of changing the information contained on a driver's license . . . shall serve as a notification of change of address for voter registration **unless the registrant states that at the time of submitting the change of address that the change of address is not for voter registration purposes.**

O.C.G.A. § 21-2-221(d) (2014) (emphasis added). Here, there is no evidence in the record surrounding the circumstances at the time Petitioner submitted his change of address on his driver's license for this Court to consider in determining Petitioner's intent to change his voter registration at the same time. In fact, Petitioner's admission that his voter registration was not changed would support the conclusion that he intended for it not to be changed when he submitted the change of address for his driver's license. Despite Petitioner's argument that he only voted in District 57 in the general races in the November 2014 election and did not cast votes in the local legislative races, Petitioner failed to present any evidence at the proceeding below to support his argument. Inasmuch as the record is devoid of any evidence for the Court's consideration as to this argument, the Court is unable to conclude that there was an error of law and declines to do so.

Petitioner also contended that Respondent incorrectly concluded he did not intend to change his domicile when he moved to District 55 in 2012. With respect to voting, "[w]herever

a form of the word ‘reside’ occurs either in the statutes or in the constitution of Georgia . . . it should be construed to mean ‘domicile.’” Dozier v. Baker, 283 Ga. 543, 543-44 (2008) (*quoting* Holton v. Hollingsworth, 270 Ga. 591, 593 (1999)). The proper question is not a candidate’s motive for his actions, but rather his intent to establish legal residency in a county. Dozier, 283 Ga. at 545.

In this case, Respondent reviewed the evidence offered by Petitioner to establish his residency in District 55 along with the contradicting evidence and concluded he did not live and intend to remain in District 55 prior to July 25, 2014. Therefore, the Court finds Respondent’s conclusion that Petitioner failed to meet his burden to establish residency for an entire year prior to the June 16, 2015 Special Election is supported by the record evidence. Furthermore, the Court finds Respondent’s determination that Petitioner is not qualified to be a candidate for House District 55 based upon his failure to meet the residency requirement is supported by the evidence in the record. Accordingly, the Court does not find that substantial rights of Petitioner have been prejudiced and further finds no basis upon which to remand, reverse, or modify Respondent’s Final Decision. Therefore, the Petition for Judicial Review is hereby **DENIED**, and Respondent’s Final Decision is hereby **AFFIRMED**.

SO ORDERED this 15th day of June, 2015.


HONORABLE KIMBERLY M. ESMOND ADAMS
JUDGE, SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

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