

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

MALIK RASHID,
Petitioner,

v.

WESLEY HARDING,
Respondent.

Docket No.: 2222563
2222563-OSAH-SECSTATE-CE-67-
Schroer



04/13/2022

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Devin Hamilton, Legal Assistant

INITIAL DECISION

I. INTRODUCTION

Petitioner Malik Rashid challenges Respondent Wesley Harding’s qualifications to be a candidate in the general primary for Georgia State House District 102. Specifically, Petitioner contends that Respondent does not meet the residency requirements to be a candidate under the Georgia Constitution and O.C.G.A. § 28-2-1(b). On April 11, 2022, the Court conducted an evidentiary hearing in this matter. Petitioner was present, and was represented by Curt Thompson, Esq. Respondent was present and represented himself. Based on the evidence presented, the Court concludes that Respondent is qualified to be a candidate for House District 102.

II. FINDINGS OF FACT

1.

In March 2022, Respondent declared his candidacy for Georgia State House Representative in District 102. He testified that his current address is 30 South Clayton Street #7316, Lawrenceville, Georgia 30046 (“30 South Clayton Street”). 30 South Clayton Street is an apartment building located within House District 102. (Testimony of Respondent.)

2.

Respondent was married on March 27, 2021. At that time, he was teaching at Grace Christian Academy and living in his parents' home at 4310 Compton Circle, Powder Springs, Georgia, which is in Cobb County. For the first few months of his marriage, his wife, Chelsey Harding, remained in Gwinnett County, where she grew up, while Respondent stayed at his parents' home and finished out the school year at Grace Christian in Powder Springs. Shortly thereafter, on or about June 16, 2021, he and Chelsey entered into a one-year lease for the apartment at 30 South Clayton Street. They moved in on or about July 17, 2021. (Testimony of Respondent.)

3.

Respondent is now a seminary student at the Luther Rice Seminary in Lithonia, Georgia. He has been welcomed into Chelsey's large family in Lawrenceville and Lilburn, and sometime prior to October 18, 2021, he and Chelsey joined the Lawrenceville First Baptist Church. He testified that they are there "for the long term." In addition, in or around August 2021, he added Chelsey's car to his automobile insurance policy, using the 30 South Clayton Street address. Several months later, just a few days before qualifying for the House District 102 seat, on March 4, 2022, Respondent changed his voter registration from Cobb County to the 30 South Clayton Street address, and just a few days before the hearing, on April 8, 2022, Respondent testified that he changed the address on his driver's license to 30 South Clayton Street. At the hearing, he explained that he delayed changing his driver's license because he did not "look forward to" a trip to the Department of Drivers Services office, and his license was not set to expire until 2024. (Testimony of Respondent.)

4.

On March 23, 2022, Petitioner, a registered voter and eligible elector in House District 102, filed a challenge to Respondent's qualifications with the Secretary of State. The primary election for House District 102 is on May 24, 2022, and the general election will take place on November 8, 2022. (Stipulation of parties; OSAH Form 1, attachments.)¹

III. CONCLUSIONS OF LAW

1.

A candidate for State office must meet all constitutional and statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a).

2.

Pursuant to Code Section 21-2-5(b), either the Secretary of State or a qualified elector residing in a state legislative district may challenge a candidate's qualifications to hold office. In the present case, Petitioner, an elector from District 102, challenges Respondent's qualifications and contends that Respondent does not meet the constitutional and statutory residency requirements.

3.

Respondent has the burden of proving that he is qualified to be a candidate for House District 102. See Haynes v. Wells, 273 Ga. 106, 108-09 (2000). The burden of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

¹ See also Ga. Const. Art. III, § II, Para. V (members of the Georgia General Assembly are elected biennially on Tuesday after the first Monday in November).

4.

Candidates for the Georgia House of Representatives must be legal residents of the district from which elected for at least one year. Ga. Const. Art. III, Sec. II, Para. III(b); O.C.G.A. § 28-2-1(b). The Georgia Supreme Court has interpreted a one-year residency provision as requiring a candidate “to be a resident of the territory within the district for 12 months prior to the general election.” See Cox v. Barber, 275 Ga. 415, 416 (2002) (durational residency requirement for election to the Georgia Public Service Commission under O.C.G.A. § 46-2-1 held constitutional). Accordingly, Respondent must prove that he has been a resident of District 102 since November 8, 2021 in order to qualify as a candidate in this case.

5.

In Cox v. Barber, the Georgia Supreme Court discussed the “important state interest” of residency requirements:

Residency requirements for candidates serve the important state interest of supporting our representative form of government. Requiring candidates to live in a district for a reasonable period of time before the election encourages them to become familiar with the problems, needs, and concerns of the people they seek to represent; it also exposes voters to the character, experience, and views of the individuals who seek to represent them. In addition, it ensures voters that their elected representatives will have at least a minimum amount of ties to the community. Arrayed against the state’s legitimate interest in having informed voters and candidates is the individual voter’s interest in having a choice at the ballot and the candidate’s interest in the continued availability of political opportunity.

275 Ga. at 418 (citations omitted).

6.

In this case, Petitioner asserted that Respondent did not meet his burden of proving that he has been a legal resident of House District 102 since November 8, 2021.

In considering this question, the Court is guided by both case law on residency and domicile, as well as the statutory provisions regarding the determination of residency for candidates.

7.

As an initial matter, “[w]herever a form of ‘the word “reside” occurs either in the statutes or in the constitution of Georgia with respect to voting, it should be construed to mean “domicile.”’ Dozier v. Baker, 283 Ga. 543, 543-44 (2008) (citations omitted); see also Handel v. Powell, 284 Ga. 550 (2008); O.C.G.A. § 21-2-2(32). Although a person may have several residences, he or she may have only one place of domicile. Kean v. Marshall, 294 Ga. App. 459, 461 (2008) (considering domicile for child support purposes). “To acquire a domicile in a particular jurisdiction, one must actually reside there with the intention of remaining permanently or for an indefinite time, and a domicile once established continues until a new domicile is acquired. One cannot acquire a new domicile simply by a change of residence; it must instead be with the intention of abandoning the old residence and of remaining permanently or for an indefinite time in the new.” Id. (citation omitted).

8.

In addition to these general principles regarding residency and domicile, the Georgia Legislature has established a series of rules for determining residency for purposes of registering to vote or qualifying for elective office. See O.C.G.A. § 21-2-217. The Georgia Supreme Court, in interpreting this Code section, has held that no one rule is determinative of the issue of residency; rather, this Court must consider all the

rules “so far as they are applicable.” See Handel v. Powell, 284 Ga. at 553-54 (citing O.C.G.A. § 21-2-217(a)).

9.

Having considered the statutory rules and the applicable case law, the Court concludes that Respondent, through his credible and unrebutted testimony, made a prima facie case that he has been a legal resident of District 102 since before November 8, 2021. Specifically, although Respondent did not present overwhelming evidence of his move to 30 South Clayton Street in July 2021,² the Court carefully observed his demeanor and appearance while testifying at the hearing and found him to be a candid and forthright witness. In addition, the Court has weighed the evidence of Respondent’s delay in changing his address on his driver’s license and voter’s registration against his testimony regarding his March 2021 marriage, his commitment to fulfilling his teaching contract in Cobb County through the end of the school year, and his July 2021 move to 30 South Clayton Street to begin his married life in his wife’s hometown. On balance, the probative evidence in the record preponderates toward the conclusion that Respondent changed his residence to 30 South Clayton Street in July 2021 with the intent to remain there indefinitely. Moreover, the Court does not consider his lack of urgency in updating his official records as casting doubt on his intent to make Lawrenceville is new home. Rather, the Court credits his explanation for the timing of those actions and concludes that Respondent proved by a preponderance of the evidence that he became a

²² As Petitioner pointed out in his closing argument, Respondent, who was not represented by counsel, did not move to admit his exhibits into evidence at the hearing, although he testified extensively about the contents of the documents, both in his case in chief and on cross examination, without objection. O.C.G.A. § 24-8-802 (hearsay may be admitted as legal evidence under Georgia’s civil evidence rules if the opposing party does not object). Consequently, the Court has relied on Respondent’s unrebutted testimony in reaching this decision, rather than Petitioner’s exhibits.

resident of House District 102 prior to November 8, 2021, with an intent to remain there indefinitely.

IV. DECISION

Accordingly, based upon the above Findings of Facts and Conclusions of Law, Respondent is qualified to be a candidate for State House District 102.

SO ORDERED this 13th day of April, 2022.

Kimberly W. Schroer

KIMBERLY W. SCHROER
Administrative Law Judge

