

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

ILENE KAPUSTIN JOHNSON,
Petitioner,

v.

ELVIA DAVILA,
Respondent.

Docket No.: 2434244
2434244-OSAH-SECSTATE-CE-67-
Schroer

INITIAL DECISION

I. INTRODUCTION

Petitioner Ilene Kapustin Johnson challenges Respondent Elvia Davila's qualifications to be a candidate in the general primary election for Georgia State House District 108. 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 1, 2024, the Court conducted an evidentiary hearing in this matter. Petitioner was present and represented by Curt Thompson, Esq. Respondent was present and represented by Bryan Tyson, Esq. Based on the evidence presented, the Court concludes that Respondent is qualified to be a candidate for House District 108.

II. FINDINGS OF FACT

1. In March 2024, Ms. Davila, who also uses the name Elvia Davila-Pelayo, declared her candidacy for Georgia State House Representative in District 108. She testified that her current address is 425 Hillcrest Road, N.W., Lilburn, Georgia 30047 ("425 Hillcrest Road"). 425 Hillcrest Road is located within House District 108.

2. Ms. Davila testified that prior to moving to 425 Hillcrest Road, she resided with her family at 738 Windsor Oak Circle, Lawrenceville, Georgia 30045 ("738 Windsor

Oak”). 738 Windsor Oak is not within House District 108. Ms. Davila testified that she moved from 738 Windsor Oak to 425 Hillcrest Road on November 1, 2023.

3. To prove the date of her move to 425 Hillcrest Road, Ms. Davila tendered Exhibit D-1, a copy of a lease dated November 1, 2023, for the premises at 425 Hillcrest Road. Maria Isabel Perez is identified as the “Landlord/Lessor/Agent” of the premises and is referred to in the lease as the “Owner.” Ms. Davila is identified as the “Tenant/Lessee” and is referred to in the lease as the “Resident.” According to the lease, Ms. Davila is obligated to pay \$800.00 per month in rent from November 1, 2023, through November 1, 2024. After November 1, 2024, the lease will become a month-to-month tenancy.

4. At the hearing, Ms. Davila testified that the premises at 425 Hillcrest Road consists of a three-bedroom house, and that she is actually only renting one bedroom. The rest of the house is occupied by Ms. Perez, who is a friend of Ms. Davila’s, as well as Ms. Perez’s husband and their three children.¹ Ms. Davila admitted at the hearing that Ms. Perez is not the owner of the premises at 425 Hillcrest Road, despite her identification as such in the lease. Rather, 425 Hillcrest Road is owned by Chung Sarah Youngsun, from whom Ms. Perez rents the premises. There is no probative evidence in the records regarding the terms of Ms. Perez’s lease with the owner of the property or whether Ms. Perez was authorized to enter into a sub-lease with Ms. Davila.

5. Ms. Davila further testified that shortly after moving, she began the process of changing her address of record to the 425 Hillcrest Road address. For example, she tendered credible evidence to prove that she submitted a change of address to the United

¹ Ms. Davila also tendered Exhibit D-2, a copy of an undated screenshot of a message from someone named Jose Lopez. Within the text of the message, Maria Isabel welcomes Ms. Davila to her new home at 425 Hillcrest Road as of November 1, 2023. The Court finds the wording, appearance, and absence of a date on Exhibit D-2 to be unusual, and without further corroborating evidence, finds that Exhibit D-2 is entitled to little weight.

States Postal Service on November 5, 2023, and that she changed the residential address on her driver's license and voter registration to 425 Hillcrest Road on November 6, 2023.² Ms. Davila also presented evidence that in February and March 2024 she began receiving mail at 425 Hillcrest Road, both forwarded mail from her old address as well as mail from her bank and other financial institutions that were mailed directly to her at 425 Hillcrest Road.

6. At the hearing, Ms. Davila explained that she began looking for a place to move after her husband was killed at their home at 738 Windsor Oak in late 2021. Following this tragedy, Ms. Davila testified that she often stayed with family members and went “back and forth” from the 738 Windsor Oak home, which she and her husband owned,³ until she found the room at 425 Hillcrest Road. Ms. Davila testified that she has no plans to move from 425 Hillcrest Road, which is closer to her office in Stone Mountain. Furthermore, in response to questioning about reports that her sixteen-year-old son, Juan Carlos Davila, still resides at the 738 Windsor Oak address, Ms. Davila testified that she left Juan Carlos at the family home to “minimize the disruption” to him and to allow him to continue to attend Grayson High School. Ms. Davila's oldest child, Aracelia Davila, who is twenty-three, still lives at 738 Windsor Oak and provides informal care for Juan Carlos, together with Ms. Davila's brother-in-law.

7. Aracelia Davila testified next at the hearing. She confirmed that she still lives at 738 Windsor Oak, and that her mother moved to 425 Hillcrest Road at the beginning of November last year. She testified that her brother, who is a junior in high school, lives

² According to Exhibit D-9, Ms. Davila left her mailing address as 738 Windsor Oak for purposes of her driver's license and voter registration. At the hearing, she testified that this was an oversight.

³ She has not claimed a homestead exemption on the 425 Hillcrest Road property.

with her, but that she does not have legal guardianship of him. She further testified that she contributes to the bills relating to 738 Windsor Oak “sometimes,” and that Ms. Davila also “helps” with the bills. According to Aracelia, her Uncle Miguel, her father’s brother, helps her around the house and with her brother. She testified that she has visited her mother at the 425 Hillcrest Road home, and that her mother lives there alone.⁴

8. Miguel Davila testified at the hearing after Aracelia. He too confirmed that Ms. Davila, his sister-in-law, moved to Lilburn in early November 2023, although he has never visited the 425 Hillcrest Road address. Mr. Davila testified that he and his other brothers have helped a lot with Ms. Davila’s children since their brother was killed, and that he is “always” at the 738 Windsor Oak home. When Mr. Davila was asked to identify the children still residing at 738 Windsor Oak, Mr. Davila identified Aracelia and Juan Carlos, but also testified that Ms. Davila’s third child, fourteen-year-old Daniel, and Aracelia’s young child also reside in the home.⁵ Daniel rides the bus to the local middle school, but Mr. Davila provides transportation when needed. The Court finds Mr. Davila to be a credible witness regarding Ms. Davila’s absence from the family home at 738 Windsor Oak beginning in November 2023.

9. Ms. Davila was recalled to the stand, and she testified that she did not mention Daniel or her grandchild as living in the 738 Windsor Oak home because she had only been asked questions about Juan Carlos. She testified that since she moved she spends time with her children at church and on other occasions, and she maintained that she

⁴ The Court has considered the testimony of Aracelia Davila, including both her manner of testifying, which the Court did not find to be forthright, and the inconsistencies and omissions in her statements, and finds that she was not a wholly reliable witness.

⁵ Neither Ms. Davila nor Aracelia mentioned these other two children during their testimony.

intends to live apart from them, presumably because of the trauma associated with her husband's death at the address where all her children still reside. Ms. Davila testified that she is running for House District 108 because she believes that the person who killed her husband was not brought to justice, and she is motivated to help victims of crime and their families.

10. On March 14, 2024, Petitioner, a registered voter and eligible elector in House District 108, filed a challenge to Ms. Davila's qualifications with the Secretary of State. The primary election for House District 108 is on May 21, 2024, and the general election will take place on November 5, 2024.⁶

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 108, 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 she is qualified to be a candidate for House District 108. 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).
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.

⁶ 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).

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, Ms. Davila must prove that she has been a resident of District 108 since November 5, 2023, 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 (citation omitted).

6. In this case, Petitioner asserted that Ms. Davila did not meet her burden of proving that she has been a legal resident of House District 108 since November 5, 2023. 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)).

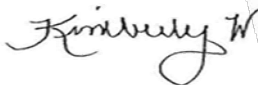

9. Having considered the statutory rules and the applicable case law, the Court concludes that Ms. Davila proved by a preponderance of evidence that she “removed” herself from her family residence at 738 Windsor Oak and relocated to 425 Hillcrest Road, with the intent to live there indefinitely. Although the Court is troubled by the lack of full disclosure by Ms. Davila, the Court relies on the highly credible testimony of Miguel Davila that he and his brothers have stepped in to provide substantial assistance to

Juan Carlos and Daniel because Ms. Davila has moved out of the family home and no longer provides primary physical care for her two minor children. As to the date of her removal, the Court finds that the evidence, while not overwhelming, proves that it is more likely than not that Ms. Davila moved to 425 Hillcrest Road prior to November 5, 2023. Specifically, although the lease may not be a legally binding document, the weight of the evidence, including the evidence of Ms. Davila's efforts shortly after November 1, 2023, to change her address with the post office, her bank, her voter registration, and her driver's license, as well as Mr. Davila's testimony that Ms. Davila moved to Lilburn in November 2023, preponderates toward the conclusion that Ms. Davila removed to 425 Hillcrest Road prior to November 5, 2023. The Court therefore concludes that Ms. Davila proved by a preponderance of the evidence that she became a resident of House District 108 before November 5, 2023, with an intent to remain there indefinitely.

IV. DECISION

Based upon the above Findings of Facts and Conclusions of Law, Respondent is qualified to be a candidate for State House District 108.

SO ORDERED this 4th day of April, 2024.



KIMBERLY W. SCHROER
Administrative Law Judge