

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CARLTON MAHONE, SR.,

Petitioner,

v.

BRADFORD J. RAFFENSPERGER,

Respondent.

CIVIL ACTION FILE NO.
24CV005498

HON. ERIC K. DUNAWAY

FINAL ORDER REVERSING DECISION OF SECRETARY OF STATE

On May 15, 2024, the above referenced case came before the Court for a Final Hearing on the Petition for Judicial Review of the Final Decision disqualifying Petitioner to be a candidate for the office of State Representative for State House District 137, which was issued by the Secretary of State on April 26, 2024. After considering the Petition, the record of the proceedings below, and the arguments raised by counsel at the Hearing, the Court hereby REVERSES the Secretary's Decision pursuant to O.C.G.A. § 21-2-5 (e).

Standard of Review

“O.C.G.A. § 21-2-5 (e) provides the standard of review a superior court is to employ when reviewing a decision by the Secretary of State on a challenge to a candidate's qualifications.”

Handel v. Powell, 284 Ga. 550, 552 (2008). Under the statute, as relevant here,

[t]he ... 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. ... The 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. 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.

O.C.G.A. § 21-2-5 (e). The Georgia Supreme Court has emphasized that judicial review in cases involving O.C.G.A. § 21-2-5

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. Thus, judicial review of an administrative decision does not end with the determination that the findings of fact have evidentiary support.

Handel v. Powell, 284 Ga. at 552-53 (citation omitted).

Factual and Procedural Background

On April 12, 2024, a hearing was held before an Administrative Law Judge (“ALJ”) regarding an elector’s challenge to Petitioner’s qualifications as a candidate for Georgia State House District 137 in the general primary election being held on May 21, 2024. OSAH Record, p. 9.¹ In her written complaint, the elector asserted that Petitioner failed to meet the residency qualifications to be a candidate for the House of Representatives because he does not reside at the address he provided when he qualified to run for House District 137. OSAH Record, p. 5. At the

¹ All references to the “OSAH Record” are to the Electronic Filing of the Administrative Record filed with this Court by the Office of State Administrative Hearings on May 7, 2024.

Hearing before the ALJ, Petitioner presented his Declaration of Candidacy and Affidavit, dated March 6, 2024, on which he indicated that his residence address is “1974 Old Shiloh Road, Shiloh, Talbot City (sic), GA 31826” (“the Old Shiloh Road address”).² OSAH Record, p. 12. Petitioner further averred in the affidavit that, as of the date of the general election for House District 137, he will have been a legal resident of the State of Georgia for 26 consecutive years and a legal resident of District 137 (“the District”) for nine consecutive years. OSAH Record, p. 12.

At the Hearing, Petitioner testified that he resided at the Old Shiloh Road address, while caring for his ill father, from 2015 until December 2023, at which time the house became in disrepair. OSAH Hearing, at 7:59-9:37.³ Petitioner stated that he moved to a rental home located at 1411 Flint Hill Highway, Shiloh, Georgia 31826 (“the Flint Hill address”) around late November/December 2023. OSAH Hearing, at 24:30-24:55. Petitioner then introduced a residential lease agreement, which authorizes him to occupy the property located at the Flint Hill address from December 1, 2023 through December 1, 2026. OSAH Record, p. 44. As relevant here, the lease states that the premises at the Flint Hill address shall be used as a residential dwelling, that the home is unfurnished, and that any utilities not specifically mentioned therein “will be the responsibility of [Petitioner].” OSAH Record, p. 45, 47. The lease also specifies that Petitioner’s mailing address is the Old Shiloh Road address. OSAH Record, p. 48. Petitioner also offered into evidence the following documents: a Certificate of Change of Name and/or Address, dated March 18, 2024, pursuant to which he changed his residential address from the Old Shiloh Road address to the Flint Hill address; a Voter Registration Card, on which he changed his residential address from the Old Shiloh Road address to the Flint Hill address; his driver’s license

² The Court assumes that Petitioner intended to write “Talbot County” where he wrote “Talbot City” on the affidavit.

³ All references to “OSAH Hearing” are to the audio recording of the Hearing conducted by the ALJ on April 12, 2024, which was filed with the Court on May 7, 2024.

listing the Old Shiloh Road address; and various utility bills in his name concerning the Old Shiloh Road address. OSAH Record, p. 56-66.

In support of her residency challenge, the elector testified that she discovered through an internet search that the property located at the Old Shiloh Road address is currently up for sale and introduced correspondence with a realtor and photographs of the home on the property. OSAH Hearing, at 57:33-58:03. In a text message, the realtor informed the elector that the house at the Old Shiloh Road address was vacant, and the elector introduced photographs confirming that the property is unfurnished and appears to be uninhabited. OSAH Record, p. 15-20. The elector also testified that she searched the property records for Talbot, Harris, Troup, and Meriwether Counties and did not find Petitioner's name to be associated with any addresses other than the Old Shiloh Road address. OSAH Record, p. 21-28.

On April 17, 2024, the ALJ issued an Initial Decision finding that Petitioner failed to present sufficient evidence that the Flint Hill address is, in fact, his domicile. Specifically, the ALJ determined as follows:

Despite the lease stating that [Petitioner] is responsible for the utilities, he presented no evidence of power or water bills for the [Flint Hill address]. Nor did he present evidence of any mail that he received at that address. His driver's license, vehicle registration, and vehicle insurance continue to show the 1974 Old Shiloh address. Accordingly, he has failed to prove that he meets the residency qualification to run for a member of the Georgia House of Representatives for State House District 137.

OSAH Record, p. 76. On April 26, 2024, Respondent issued a Final Decision adopting and incorporating the ALJ's Findings of Fact and Conclusions of Law and determining that Petitioner is not qualified to be a candidate for State House District 137. Petition, Exhibit 2. Petitioner filed his Petition for Judicial Review with this Court on May 1, 2024.

Legal Authority and Analysis

In beginning its analysis, the Court will first address the burden of proof, which is set forth by the ALJ in her Decision as follows:

The burden of proof is entirely upon [Petitioner] to establish affirmatively his eligibility for office:

[T]he statutes place the affirmative obligation on [the challenged candidate] to establish his qualifications for office. [The challenger] is not required to disprove anything regarding [the candidate's] eligibility to run for office, as the entire burden is placed upon [the candidate] to affirmatively establish his eligibility for office.

Haynes v. Wells, 273 Ga. 106, 108-09 (2000). The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

OSAH Record, p. 74.

The Court agrees with the ALJ that the above language from Haynes v. Wells represents the current state of the law applicable to adjudication of a challenge to a candidate's qualifications for elected office. However, the Court feels compelled to note that casting the burden entirely upon a candidate to prove his qualifications for office once a mere suspicion of doubt as to those qualifications has been raised by an elector indeed appears "contrary to the traditional principles of civil procedure." Haynes v. Wells, 273 Ga. at 110 (Benham, J., dissenting), citing O.C.G.A. § 24-4-1.⁴ Nevertheless, as set forth below, the Court finds that Petitioner in this case carried the unusually high burden placed upon him by affirmatively establishing his eligibility for office, inasmuch as the entirety of the evidence in the record indicates that he meets the residency

⁴ This is particularly concerning given that the right to hold office is a right guaranteed to all citizens "without limitation" under the Georgia Code, "unless disqualified by the Constitution and laws of this state." O.C.G.A. § 1-2-6. With respect to the statutes governing electoral challenges, it would seem to this Court that, "[i]nasmuch as these statutes limit an individual's right to hold office, they [should] be construed broadly in favor of those seeking office." Jarnagin v. Harris, 138 Ga. App. 318, 318 (1976), citing Gazan v. Heery, 183 Ga. 30 (1936). See Patten v. Miller, 190 Ga. 123, 139 (1940) ("the right of a citizen to hold office is the general rule, ineligibility the exception; and therefore a citizen may not be deprived of this right without proof of some disqualification specifically declared by law").

qualifications to run for the office of the Georgia House of Representatives for State House District 137.

Following the two-step process set forth by the Supreme Court, this Court will first determine if there is evidence in the record to support the factual findings made by the ALJ. In assessing the challenge to Petitioner's residency, the ALJ first determined, based upon Petitioner's testimony and the documents presented, that he resided at the Old Shiloh Road address, which is located within the District, from 2015 until December 1, 2023. OSAH Record, p. 70. The ALJ further found that Petitioner's lease for the Flint Hill address commenced on December 1, 2023, and that the Flint Hill address is also located within the District. OSAH Record, p. 71. However, the ALJ also concluded that Petitioner tendered no power or water bills reflecting the Flint Hill address, nor evidence of any mail that he received at that address. OSAH Record, p. 71. The ALJ found that Petitioner's driver's license, which was issued on November 16, 2018, shows his address as being the Old Shiloh Road address, and that other documents tendered by Petitioner indicate that the Old Shiloh Road address continues to serve as his mailing address. OSAH Record, p. 72. Affording due deference to the Secretary of State as to the weight of the evidence on questions of fact, the Court finds that there is evidence in the record to support the foregoing factual findings by the ALJ. See O.C.G.A. § 21-2-5 (e); Handel v. Powell, 284 Ga. at 552.

Turning then to the second step of the analysis, the Court "is statutorily required to examine the soundness of the conclusions of law drawn from the findings of fact." Handel v. Powell, 284 Ga. at 552 (citation omitted). Here, the ALJ concluded, as a matter of law, that Petitioner failed to present sufficient evidence that the Flint Hill address is, in fact, his domicile. Pursuant to O.C.G.A. § 28-2-1 (b), "[a] member of the House of Representatives shall be a resident of the district which

such member represents and at the time of such member's election shall have been a resident of the territory embraced within such district for at least one year preceding such time.”

While ‘domicile’ and ‘residence’ have different meanings, with ‘domicile’ denoting a permanent place of abode and ‘residence’ not necessarily being permanent (Avery v. Bower, 170 Ga. 202 (1930) (‘There must be a concurrence of actual residence and the intention to remain, to acquire a domicile’), the residency requirement for a candidate for, or holder of, public office refers to domicile. Clark v. Hammock, 228 Ga. 157 (1971). See also Dozier v. Baker, 283 Ga. 543 (2008). O.C.G.A. § 21-2-217 (a) sets out fifteen rules to be followed, so far as they are applicable, in determining the residency of a person desiring to qualify to run for elective office, and O.C.G.A. § 21-2-2 (32) defines ‘residence’ as used in Chapter 2 of Title 21, as meaning ‘domicile.’

Handel v. Powell, 284 Ga. at 550.

In rendering her decision in this case, the ALJ states that she found the following rules of O.C.G.A. § 21-2-217 to be applicable: “whether after a person moves to another place he intends to make that place his domicile or remain there indefinitely, whether a person leaves his home temporarily with the intention to return, where a person has declared a homestead exemption, where a person receives significant mail, or ‘any other evidence that indicates where the person resides.’” OSAH Record, p. 75. “A statute must be construed ‘to give sensible and intelligent effect to all [its] provisions and to refrain from any interpretation which renders any part of the statute meaningless.’” Handel v. Powell, 284 Ga. at 554, quoting R. D. Brown Contractors v. Bd. of Ed. of Columbia County, 280 Ga. 210, 212 (2006). Therefore, the Supreme Court has underscored that each of the rules set forth in O.C.G.A. § 21-2-217 are to be afforded equal significance, so far as they are applicable to a particular case, and that none of the rules should be elevated above the remaining rules contained therein. See Handel v. Powell, 284 Ga. at 554.

Here, the record contains evidence of a lease agreement authorizing Petitioner to occupy the property located at the Flint Hill address from December 1, 2023 through December 1, 2026

as a residential dwelling. OSAH Record, p. 45-46. While the lease states that the home is unfurnished, Petitioner testified that he “moved [his] stuff in [the] same week” that he signed the lease, thus indicating that he brought his own furnishings. OSAH Hearing, at 24:23-49. With respect to utilities, the lease states that any utility bills not specifically mentioned therein “will be the responsibility of [Petitioner].” OSAH Record, p. 47. Because Petitioner did not produce evidence of utility bills for the Flint Road address, the ALJ appears to have concluded that the lack of such evidence indicates that Petitioner is not domiciled there. OSAH Record, p. 76. However, neither the ALJ nor the elector inquired about utilities at the Flint Hill address, and there is no other evidence in the record with respect to that issue. The ALJ appears to have reached the same conclusion with respect to the fact that Petitioner did not introduce any “significant mail” that he received at the Flint Hill address. OSAH Record, p. 76. However, the lease specifically states that that Petitioner’s mailing address will remain the Old Shiloh Road address. OSAH Record, p. 48. Indeed, Petitioner introduced various bills and other mail that he continues to receive in his name at the Old Shiloh Road address. OSAH Record, p. 56-66. In sum, the Court finds that the ALJ improperly elevated the rule regarding where “personal bills” and “significant mail” are received above the other rules contained in O.C.G.A. § 21-2-217. See Handel v. Powell, 284 Ga. at 554.

Furthermore, although the ALJ cited the rules regarding whether, after a person moves to another place, he intends to make that place his domicile or remain there indefinitely, and whether a person leaves his home temporarily with the intention to return, she conducted no analysis regarding these provisions and did not apply them to the facts in the record. The ALJ specifically found that Petitioner resided at the Old Shiloh Road address from 2015 until December 1, 2023, and that Petitioner’s lease for the Flint Hill address commenced on December 1, 2023. OSAH Record, p. 70-71. The Court notes that the lease provided by Petitioner is for a three-year term,

and there was no evidence presented at the Hearing before the ALJ, nor can the Court discern any evidence from the record, that Petitioner does not intend to remain at the Flint Hill address indefinitely. See O.C.G.A. § 21-2-217 (a) (1). Additionally, although the ALJ referenced the rule regarding where a person has declared a homestead exemption, there is no evidence in the record that Petitioner has declared a homestead exemption on any property, and, in any event, the Supreme Court has made clear that that rule is not a dispositive factor in the residence/domicile analysis. See Handel v. Powell, 284 Ga. at 554-555.

Considering all of the foregoing, affording due deference to the ALJ's findings of fact, and examining the soundness of her conclusions of law, the Court finds Respondent's Final Decision adopting said findings and conclusions to be "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record" and "[a]rbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion." O.C.G.A. § 21-2-5 (e) (5), (6). Specifically, the Court finds that the evidence in the record affirmatively proves that Petitioner has continuously resided within the District from 2015 to the present, first at the Old Shiloh Road address and then at the Flint Hill address, beginning December 1, 2023. Petitioner's establishment of the Flint Hill address as his domicile is evidenced by the lease agreement, his own testimony, and his Certificate of Change of Name and/or Address, dated March 18, 2024.⁵ There is simply no evidence in the record to contradict that evidence, nor is there anything to indicate that Petitioner

⁵ In her Decision, the ALJ apparently discounts the March 18, 2024 Certificate of Change of Name and/or Address because Petitioner completed the same after the elector challenged his residency qualifications. The ALJ does not cite any legal authority nor offer any explanation for why she found Petitioner's "post hoc" change of address on March 18, 2024 to be of no evidentiary value. To the extent the ALJ found Petitioner's testimony and/or the evidence he presented to be lacking in credibility, she did not state that she had cause to disbelieve Petitioner as a witness. While it is certainly within the ALJ's purview to question a witness's credibility, and this Court "is not authorized to substitute its judgment as to weight and credibility of the witnesses" (Oconee Area Home Care Servs. v. Burton, 275 Ga. App. 784, 786 (2005) (citations omitted)), it is the duty of this Court "to examine the soundness of the conclusions of law drawn from the findings of fact." Handel v. Powell, 284 Ga. at 552. That analysis becomes untenable when an ALJ's finding is made with no explanation or basis in the record.

does not reside within the District. Accordingly, the conclusion that Petitioner failed to prove that he meets the residency qualification to run for a member of the Georgia House of Representatives for State House District 137 was in error and must be reversed.

Conclusion

In accordance with the foregoing, the Court hereby REVERSES the Final Decision disqualifying Petitioner to be a candidate for the office of State Representative for State House District 137, as issued by the Secretary of State on April 26, 2024.

SO ORDERED, this 16th day of May, 2024.

Eric K. Dunaway

Honorable Eric K. Dunaway
Judge, Fulton County Superior Court
Atlanta Judicial Circuit

Filed and served electronically via Odyssey eFileGA