

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

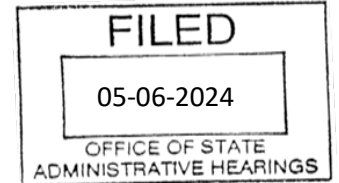
RANDOLPH FRAILS,
Petitioner,

v.

JEFFREY DAVIS,
Respondent.

**Docket No.: 2435210
2435210-OSAH-SECSTATE-CE-44-
Howells**

Agency Reference No.: 2435210



INITIAL DECISION

Petitioner Randolph Frails (“Petitioner”) filed a written complaint challenging the qualifications of Respondent Jeffrey Davis (“Respondent”) to be a candidate for the Georgia Court of Appeals. Petitioner contends that Respondent does not actually reside in Georgia and did not reside in Georgia when he submitted his Declaration of Candidacy, and therefore does not meet the residency requirement for the office. The hearing was conducted on April 30, 2024, before the Office of State Administrative Hearings (“OSAH”), a court of administrative law.¹ Petitioner was represented by Julie Oinonen, Esq. Respondent was represented by Bryan Tyson, Esq. After a review of the facts and the legal arguments, the undersigned concludes that the challenge to Respondent’s qualification to be a candidate for a Georgia Court of Appeals Judge is not ripe.

Findings of Fact

1.

On March 4, 2024, Respondent submitted to the Secretary of State his Declaration of Candidacy and Affidavit, in which he seeks to be a Georgia Court of Appeals Judge. On this document, Respondent swore that he has been a legal resident of Georgia for thirty-six (36)

¹ On May 2, 2024, Petitioner filed a motion to include additional evidence pursuant to Ga. Comp. R. & Regs. 616-1-2-.25. The undersigned concludes that the additional evidence is either irrelevant or unnecessary based on the following Findings of Fact and Conclusions of Law. For that reason, the motion is DENIED as moot.

consecutive years, a legal resident of Fulton County for one (1) consecutive year, and a legal resident of his circuit for one (1) consecutive year. He swore that his residence address was 290 Martin Luther King Jr. Dr., SE, Unit 3430, Atlanta, Georgia (the “MLK apartment”). (Ex. P-1.)

590 Montgomery Ferry Road, Atlanta, Georgia

2.

In May 2022, Respondent was registered to vote at 590 Montgomery Ferry Road, Atlanta, Georgia. Respondent’s two sons and a third roommate rented the house at 590 Montgomery Ferry Road. Respondent did not have a bedroom or a bed at that house. He did not keep clothes at that house. Nor did he park his vehicle at that house. He admitted that at that time he was in a serious relationship with his girlfriend and was living with her, at her home in Ansley Park; however, he asserted that 590 Montgomery Ferry Road was his “legal address.” (Ex. P-2; Testimony of Respondent.)²After a family tragedy, Respondent began living with his sister, in mid-2022, at a home she purchased located at 347 Tucker St., Chattanooga, Tennessee. He had a bedroom and a closet of clothes at his sister’s home.

1889 Powder Springs Circle, Flintstone Georgia

3.

In October 2022, Respondent purchased a two bedroom, one bath, A-frame house located at 1889 Powder Springs Circle, Flintstone, Georgia (the “Windsong Chalet”). The property had previously been owned by a gentleman who owned multiple rental properties in the area. It was Respondent’s intention to make the Windsong Chalet his “legal residence.” However, because he was living the majority of the time with his sister in Chattanooga, Tennessee, he rented out the

² On a March 1, 2023 lease application, Respondent stated that his previous residence was 383 Queen Mountain Rd., Highlands, North Carolina from October 15, 2019 until October 15, 2022. Respondent asserts that he put that address on the rental application because it was property that he owned. (Ex. P-5.)

property through a third-party vacation rental company called Vacasa. The Windsong Chalet was consistently rented out from October 17, 2022 through August 14, 2023, when Respondent sold it. Although he was living the majority of the time with his sister in Chattanooga, he made renovations at the Windsong Chalet and stayed there on occasion. (Exs. P-6, R-5; Testimony of Respondent.)

4.

On November 2, 2022, Respondent changed the address on his driver's license and his voter's registration to that of the Windsong Chalet (i.e., 1889 Powder Springs Circle, Flintstone, Georgia).³ He voted in Walker County on November 2, 2022 and December 2, 2022. (Exs. R-4, P-1, P-3.)

The MLK Apartment

5.

On October 31, 2023, Respondent changed his address on his driver's license, and thereby his voter registration, to the MLK apartment (i.e., 290 Martin Luther King Jr. Dr., Unit 3430, Atlanta, Georgia).⁴ Although he signed the lease for that apartment on March 3, 2023, and sold the Windsong Chalet in August 2023, Respondent testified that he did not change his voter registration until October 31, 2023, because he was living the majority of the time with his sister.⁵ (Exs. R-3, P-2.)

³ On a document maintained by the Walker County Board of Elections, Respondent signed an affidavit on October 2, 2022, swearing under penalty of perjury that he resides at 1889 Powder Springs Circle, Flintstone, Georgia. (Ex. P-3.)

⁴ This was approximately four months prior to Respondent completing his March 4, 2024 Declaration of Candidacy and Affidavit on which he swore that he had been a resident of Fulton County for 1 consecutive year. Respondent asserted that he chose to put 1 consecutive year because he only had the choice to put 0 or 1, and because he counted 8 months from selling the Windsong Chalet in Walker County, he decided to put 1 consecutive year.

⁵ Respondent's name is also on the February 2, 2024 lease for the MLK apartment. (Exs. P-5, R-7.) Respondent took out rental insurance for the MLK apartment on February 22, 2024. (Ex. R-8.) At the hearing, Respondent's son Will testified, "my apartment" was broken into around one and a half to two months prior to March 17, 2024. He was referring to the MLK apartment as his apartment. (Testimony of Will Davis.)

6.

In the spring of 2023, Respondent became engaged to his then-girlfriend, now-wife, Mary Elizabeth Conklin (“Mary Beth”). After they became engaged, Respondent moved “a lot” of his clothes to Mary Beth’s home located at 129 Walnut Street, Unit 124, Chattanooga, Tennessee. He has an underwear drawer and some personal items there, and a bed in which he sleeps. He spends a lot of time there. (Testimony of Respondent.)

7.

Respondent and Mary Beth were married on November 1, 2023 in Atlanta, Georgia. They had their wedding celebration at the Common House in Chattanooga, Tennessee. (Exs. R-12, R-13; Testimony of Respondent.)

8.

The MLK apartment is a two-bedroom apartment in which Respondent’s adult sons reside. Respondent did not have a dedicated bedroom, bed, or underwear drawer at that location. He may have had some clothes there. The utilities are in his son’s name. He was never issued an apartment key, a mailbox key, or an access device to access the building. To enter the apartment, Respondent would have to make arrangements with one of his sons. Although he testified that he received some mail at the MLK apartment, he did not present any. Respondent’s name appeared in the guest parking at the MLK apartment one time in 2023, and five times in March 2024 on dates after his March 4, 2024 Declaration of Candidacy.⁶ Nevertheless, Respondent asserted that the MLK apartment was his “legal” residence at the time he submitted his Declaration of Candidacy and Affidavit. (Ex. P-5; Testimony of Respondent.)

⁶ Petitioner testified that he parked on the street most of the times he came to the MLK apartment.

351 W. Schmitt Road, Rossville, Georgia

9.

On March 13, 2024, Respondent entered into a Purchase and Sale Agreement for a 1920s farmhouse located at 351 W. Schmitt Road, Rossville, Georgia. He closed on the property on April 8, 2024. The previous owner used the property as a rental property. The Purchase and Sale Agreement included a special stipulation that Respondent honor Airbnb bookings made before his purchase of the property for dates that would occur after the purchase. Respondent testified that there were initially four reservations, but two of the reservations backed out. He honored the first reservation in April and has one more to honor for May. He testified that he started moving into the property on April 8, 2024 and has stayed at the house numerous times since. He and his wife will spend time at the farmhouse and at her home in Chattanooga. Respondent does not intend to rent the farmhouse after the May reservation, and he does not intend to move anywhere else. (Ex. R-9; Testimony of Respondent.)

10.

On April 9, 2024, Respondent changed the address on his driver's license to the 351 W. Schmitt Rd., Rossville, Georgia address. As a result, his voter's registration was also changed to that address, as of April 9, 2024. Respondent is admitted to practice law in Georgia and has paid Georgia income taxes for the 2022 and 2023 tax years. (Exs. R-2, P-3, R-14, R-15.)

The Challenger

11.

Petitioner Randolph Frails is an elector eligible to vote in the May 21, 2024 Nonpartisan Election. On March 22, 2024, at approximately 4:45 p.m., he challenged Respondent's qualifications to run as a candidate for judge on the Georgia Court of Appeals. He filed the

challenge because he heard that Respondent may live in Tennessee. (Stipulation of the Parties; OSAH Form 1, attachments; Testimony of Petitioner.)

Conclusions of Law

1.

The Georgia Election Code (the “Code”) mandates that “[e]very candidate for federal and state office who is certified by the state executive committee of a political party or who files a notice of candidacy shall meet the constitutional and statutory qualifications for holding the office being sought.” O.C.G.A. § 21-2-5(a).

2.

Both the Secretary of State and the electors of Georgia are granted the authority to challenge the qualifications of a candidate. The challenge procedures are defined in Code Section 21-2-5(b) and authorize any elector who is eligible to vote for a candidate to challenge the qualifications of the candidate by filing a written complaint with the Secretary of State within two weeks after the deadline for qualifying. O.C.G.A. § 21-2-5(b).⁷

3.

Candidates for the office of Judge of the Court of Appeals are required to file a notice of candidacy and affidavit stating, among other things: the candidate’s full name, residence, profession, name of precinct, that he is an elector of the county of his residence and eligible to vote in the election in which he is a candidate, the name of the office he is seeking, and that he is eligible to hold such office. O.C.G.A. § 21-2-132(c), (f). A person who knowingly makes a false statement on his notice of candidacy is guilty of false swearing. O.C.G.A. § 21-2-565(a).

⁷ After the election, within five days of the votes being certified, a candidate may contest the results of an election on the grounds that the person elected was ineligible for the office. O.C.G.A. §§ 21-2-520, -521, -522, -524.

4.

Court of Appeals judges are elected in the nonpartisan election. O.C.G.A. § 21-2-9(b); Ga. Const. art. VI, § VII, para. I(a). The upcoming nonpartisan election is scheduled for May 21, 2024.

5.

The constitutional residency requirement for judges, including appellate judges is as follows: “All judges shall reside in the geographical area in which they are selected to serve.” Ga. Const. art. VI, § VII, para. II(d). Court of Appeals judges are selected to serve the entire State of Georgia. *See* O.C.G.A. § 15-2-1 (the jurisdiction of the Georgia Supreme Court is the entire state); *see* O.C.G.A. § 15-3-4(a) (judges for the Georgia Court of Appeals are elected “in the same manner” as justices of the Georgia Supreme Court); *see also* O.C.G.A. § 15-3-3.1(a)(6) (the jurisdiction of the Court of Appeals includes appellate jurisdiction not reserved to the Georgia Supreme Court).

6.

Unlike other public offices, there is no corresponding statutory residency requirement, or durational residency requirement. *See, e.g.*, O.C.G.A. § 28-2-2(b) (requiring members of the Georgia Senate to have been a resident of the district they represent for at least one year prior to election.)

7.

The residency requirement for candidates refers to domicile. O.C.G.A. § 21-2-2 (32); *Handel v. Powell*, 284 Ga. 550 (2008). Domicile denotes “a permanent place of abode.” *Handel*, 284 Ga. at 550. To acquire a domicile, an individual must actually reside there with the intention to remain permanently or for an indefinite amount of time. *Kean v. Marshall*, 294 Ga. App. 459,

461 (2008) (considering domicile for child support purposes); *Handel*, 284 Ga. at 550 (citing *Avery v. Bower*, 170 Ga. 202 (1930)).

8.

The burden of proof is entirely upon Respondent 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).

9.

The challenge presented here raises the following question: By which date must a candidate for the Georgia Court of Appeals meet the residency requirement in Ga. Const. Art. VI, § VII, Para. II(d)?

10.

Petitioner asserts that the date the residency requirement must be met is at the time of the filing of the Declaration of Candidacy and Affidavit. Petitioner reasons that to use a subsequent date would render the Declaration of Candidacy invalid and the sworn affidavit requirement would become obsolete. Additionally, Petitioner argues that in the affidavit the candidate is required to swear or affirm that he is currently eligible to hold the office he seeks. Petitioner contends that if a candidate could meet the residency requirement after the qualifying period, an elector would lose her right to challenge a candidate's qualification pursuant to O.C.G.A. § 21-2-5(b) and it would

render O.C.G.A. § 21-2-565(a) meaningless.⁸ Petitioner also cites *Haynes v. Wells*, 273 Ga. 106 (2000) for the proposition that the candidate must be eligible as of the date of his Declaration of Candidacy.⁹

11.

On the other hand, Respondent asserts that the operative date is the date of the election. Respondent further asserts that, even if the operative date is the date he declared his candidacy, he is qualified to run for Court of Appeals judge.¹⁰

12.

Georgia Code Section 21-2-217 provides a list of factors to consider when determining the residence (*i.e.*, domicile) of a candidate. Those factors include, among other things, 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.” O.C.G.A. § 21-2-217(a)(1)-(15).

⁸ As noted above, a person who knowingly makes a false statement on his notice of candidacy commits the offense of false swearing. O.C.G.A. § 21-2-565(a).

⁹ *Haynes v. Wells* involved an election contest after Haynes received the majority of the votes in the primary for a seat on a county school board. *Id.* The issue in the case was the candidate’s eligibility to vote in the election for which he was a candidate. The Georgia Supreme Court affirmed the trial court’s ruling, which it described as follows: “[T]he trial court issued a judgment . . . ruling that Haynes was not an eligible voter of the fifth district **at the time of the primary.**” *Id.* (emphasis added). Haynes asserted that because he completed the change of address, prior to his qualification, he should have been considered eligible to vote on primary day. *Id.* The court then stated, “Haynes must bear complete responsibility for his ineligibility to vote **in the July 2000 primary.**” *Id.* at 107 (emphasis added). The court then discusses Haynes’ Declaration of Candidacy and appears to conclude that he was required to be eligible to vote as of the date of his declaration. The court’s description of the trial court’s ruling as “Haynes was not an eligible voter . . . at the time of the primary,” and its subsequent discussion of the Declaration of Candidacy, make its holding far from clear. Furthermore, the court did not rule on the issue of whether the constitutional provisions were the only permissible qualification limitations that may be imposed on a candidate for a county school board. *Id.* at 108. For these reasons, the undersigned concludes that the court’s discussion of the Declaration of Candidacy has limited application here.

¹⁰ Respondent also argued that Petitioner’s challenge was untimely because it was filed at 4:45 p.m. on April 22, 2024, which is beyond two weeks from the qualifying deadline of April 8, 2024, before 12:00 p.m. Respondent cited O.C.G.A. § 21-2-5(b) which requires challenges to be filed “[w]ithin two weeks after the deadline for qualifying.” However, Respondent cited no authority to support the proposition that the challenge must be filed prior to 12:00 p.m. on the fourteenth day after the qualification date.

13.

As an initial matter, the undersigned concludes that Respondent was not domiciled at the MLK apartment on March 4, 2024, when he submitted his Declaration of Candidacy and Affidavit. While he did have his name on the March 3, 2023 lease, along with his two adult sons, he did not purport to make the apartment his residence until October 31, 2023, when he changed his address on his driver's license and consequently his voter's registration. Thus, having his name on the lease does not necessarily mean it was where he was domiciled. Respondent presented very little evidence of actual presence at the apartment. He admitted that he did not have a dedicated bedroom or bed. He did not have an underwear drawer, but he may have had some clothes there. He presented no mail received at that address. The utilities are in his son's name. Most tellingly, he did not have a key to the apartment, a mailbox key, or a device to access the building. To get into the apartment, he had to make arrangements with one of his sons. If an individual actually resides at an address with an intent to remain permanently or indefinitely, surely he must have a key to the residence to come and go as he pleases. In light of the evidence presented, Respondent failed to prove that he actually resided at the MLK apartment with an intention to remain permanently or indefinitely. To conclude otherwise strains credulity.

14.

Notwithstanding, the undersigned concludes that the operative date to determine the residency qualification for a Court of Appeals Judge in Ga. Const. Art. VI, § VII, Para. II(d) is the date of the election. The constitutional provision states that to be qualified to be a Court of Appeals Judge, the judge, among other qualifications, "shall reside in the geographical area in which they are selected to serve." The phrase "selected to serve" is a reference to election. In *Poythress v. Moses*, 250 Ga. 452 (1983), the Georgia Supreme Court interpreted a constitutional provision

requiring district attorneys to have been members of the State Bar of Georgia for three years immediately preceding their election. The court concluded that the word “election” meant the date the voters made their choice by casting their ballots (*i.e.*, the date of the election), not the date the election results were certified. *Id.* at 453. Additionally, the court reiterated its holding in *Hulgan v. Thornton*, 205 Ga. 753, 757 (1949), in which it stated “[a]s to the time at which a person’s eligibility for public office is determined, this court has consistently fixed it at the date of the election.” *Id.*

15.

As noted above, Petitioner argues that to find the operative date to be anything other than the date of the Declaration of Candidacy and Affidavit would render the Declaration of Candidacy and Affidavit invalid or obsolete, would render O.C.G.A. § 21-2-565(a) meaningless, and would cause an elector to lose their right to challenge a candidate’s qualification pursuant to O.C.G.A. § 21-2-5(b). These arguments are not entirely accurate. First, if a candidate knowingly makes a false statement on their Declaration of Candidacy and Affidavit, they have committed the offense of false swearing on the date they signed the affidavit. A candidate who changes his or her residence between the date of declaration and the date of the election does not cure the fact that he or she falsely swore on the affidavit. Furthermore, there are many offices with durational residency requirements. For those offices, an elector may challenge a candidate’s qualification pursuant to O.C.G.A. § 21-2-5(b). For candidates whose residency qualification is determined as of the date of the election, the winning candidate’s eligibility for the office may be challenged within five days of the votes being certified pursuant to O.C.G.A. §§ 21-2-520, -521, -522, -524.

16.

The focus of this election challenge is the residency qualification for a judicial candidate

for the Georgia Court of Appeals. It is not whether a candidate was truthful on his Declaration of Candidacy and Affidavit. Because the undersigned has concluded that the candidate must meet the residency qualification as of the date of his election, the issue of Respondent's residency is not ripe.

Decision

IT IS HEREBY ORDERED THAT the challenge to Respondent's qualification to be a candidate for Court of Appeals Judge is not ripe.

SO ORDERED, this 6th day of May, 2024.


Stephanie M. Howells
Administrative Law Judge

