

MARILYN LANDIAK * NO. 2005-CA-0385
VERSUS * COURT OF APPEAL
CEDRIC L. RICHMOND, FOX * FOURTH CIRCUIT
MCKEITHEN, SECRETARY * STATE OF LOUISIANA
OF STATE OF LOUISIANA, *
AND KIMBERLY *
WILLIAMSON BUTLER, *
CLERK OF CRIMINAL *
COURT OF ORLEANS PARISH *

CONSOLIDATED WITH: CONSOLIDATED WITH:
MARILYN LANDIAK NO. 2005-CA-0386

VERSUS

CEDRIC L. RICHMOND, FOX
MCKEITHEN, SECRETARY
OF STATE OF LOUISIANA,
KIMBERLY WILLIAMSON
BUTLER, CLERK OF
CRIMINAL COURT OF
ORLEANS PARISH

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NOS. 2005-2097 C/W 2005-2621, DIVISION "D-16"
Honorable Lloyd J. Medley, Judge

Judge Edwin A. Lombard

(Court composed of Judge Michael E. Kirby, Judge Max N. Tobias Jr.,
Judge Edwin A. Lombard, Judge Leon A. Cannizzaro Jr., Judge Roland L.
Belsome)

(KIRBY, J., DISSENTS FOR THE REASONS ASSIGNED BY J.

BELSOME)
(BELSOME, J., DISSENTS WITH REASONS)

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AFFIRMED

The plaintiff, Marilyn Landiak, brought suit to disqualify Cedric Richmond as a candidate for the New Orleans City Council on the grounds that he had not been domiciled in District D of the City of New Orleans at least two

years as required by law. The trial court held that Mr. Richmond was domiciled in District D for a period of two years prior to the upcoming April 2, 2005 primary election and could, therefore, qualify as a candidate for the District D seat on the City Council. The plaintiff is appealing that decision.

FACTS AND PROCEDURAL HISTORY

The plaintiff originally filed suit in the trial court, but the trial court found that the suit was not timely filed and dismissed the suit. This Court affirmed the trial court, but the Louisiana Supreme Court reversed this Court and the trial court and remanded the case for a trial on the merits.

A trial was held, and in a written judgment rendered on March 11, 2005, the trial court found that Mr. Richmond was domiciled at 8701 Lomond Road, which is in District D of the City of New Orleans, and that he had been domiciled there for the requisite two years required to qualify him to run for the District D seat on the City Council.

The plaintiff in this case contends that Mr. Richmond has been domiciled at 8701 Lomond Road, which is in District D of the City of New Orleans, for less than two years. She also contends that Mr. Richmond was previously domiciled at 4809 Eastview Drive, which is outside District D of the City of New Orleans, prior to changing his domicile to 8701 Lomond Road.

At trial the following facts were uncontested.

1. Mr. Richmond was elected as a Louisiana State representative from Louisiana House District 101, an office that he currently holds and has held since 1999.
2. Mr. Richmond's childhood home was located on Lomond Road, and he lived there until he left home to attend college. He then returned to his family home where his mother and stepfather had continued to live.
3. In 1996, Mr. Richmond and his brother, Sidney Richmond, acquired the property located on Eastview Drive.
4. Mr. Richmond has claimed the homestead exemption for the Eastview Drive property.
5. Mr. Richmond changed his voter registration from Lomond Road to Eastview Drive in 1997, and he changed it back to Lomond Road in December of 2004.
6. Mr. Richmond attested on notices of candidacy in 1997, 1999, 2000, and 2003, that his domicile was located on Eastview Drive.
7. Both of Mr. Richmond's vehicles are registered at the Eastview Drive address.

At the trial, Mr. Richmond's mother testified that he returned to the

family home on Lomond Road in January of 2003, to assist her in caring for his stepfather, who was ill. Mr. Richmond's brother testified that Mr. Richmond has lived on Lomond Road for over two years. There was also testimony that Mr. Richmond and his brother considered the Eastview Drive property to be investment property and that Mr. Richmond never intended to permanently reside there.

Mr. Richmond testified that it was always his intent for the Lomond Road address to be his domicile. In August of 2003, Mr. Richmond executed a sworn notice of candidacy for state representative for House District 101 of Louisiana. This sworn notice showed his domicile as the property on Eastview Drive.

When questioned at trial about the use of the Eastview Road address as his domiciliary address, Mr. Richmond testified that he really had not noticed that the address required on the form was the address of the candidate's domicile. He said that he gave the address where he voted and that he did not read the "small print about domicile." Additionally, Mr. Richmond and his brother both testified that Mr. Richmond was not residing at the Eastview Drive address at the time the form was signed.

DISCUSSION

The New Orleans City Charter sets forth in Section 3-104 the law

regarding the residency requirements a candidate must meet to run for a seat on the City Council. The relevant portions of section 3-104 read as follows:

A councilmember shall be a citizen of the United States and a qualified elector of and domiciled in the City Candidates for councilmember-at-large shall have been domiciled in the City for two years immediately preceding their election. . . . [C]andidates for district councilmember shall have been domiciled in the district from which elected for at least two years immediately preceding their election.

The party contesting the qualifications of a candidate has the burden of proof. LSA R.S. 18:492; Russell v. Goldsby, 2000-2595 (La. 9/22/00), 780 So.2d 1048; Dixon v. Hughes, 587 So.2d 679 (La. 1991); Messer v. London, 438 So.2d 546 (La. 1983). Where a particular domicile is required for candidacy, the party objecting to the candidacy must prove a lack of domicile of the candidate. Pattan v. Fields, 95-2375 (La. 9/28/95), 661 So.2d 1320. Any doubt as to the qualifications of a candidate should be resolved in favor of the candidate. Russell, 00-2595 at p. 4, 780 So.2d at 1051; Dixon, 587 So.2d at 680.

Louisiana law allows a person to have more than one residence. However, a person can only have one domicile. La. C.C. art. 38; Messer, 438 So.2d at 547; Villane v. Azar, 566 So.2d 645 (La.App.4 Cir.), writ denied,

567 So.2d 1108 (La. 1990). Cases resolving conflicts of domicile have found that there are two elements necessary to establish a person's domicile, namely, residence and intent to remain in the place. Becker v. Dean, 03-2493 (La. 9/18/03), 854 So.2d 864; Hammett v. Knight, 99-1048 (La.App. 5 Cir. 9/24/99), 744 So.2d 202, writ denied, 747 So.2d 1130 (La. 1999); Veillon v. Veillon, 517 So.2d 936 (La.App.3 Cir.), writ denied, 519 So.2d 105 (La.1987). The proof of intent to change domicile depends upon the facts and circumstances of the case. Steinhardt v. Batt, 00-0328 (La.App. 4 Cir. 2/11/00), 753 So.2d 928; Villane, supra.

The plaintiff maintains that the trial court committed legal error in applying the law applicable to this case. We disagree, however. We do not find that the law was incorrectly applied. The inquiry we are required to make is whether the trial court's factual findings in this case are correct, because they are determinative of the outcome. Unless the trial court's findings of fact are clearly wrong or manifestly erroneous, we must affirm the trial court judgment. See Rosell v. ESCO, 549 So.2d 840 (La. 1989).

The essential question is whether or not Mr. Richmond intended to have his domicile at his family home on Lomond Road. His intent must be determined from the factual circumstances of this case.

In the current case, the trial judge found that there was uncontroverted

testimony by Mr. Richmond that he intended for Lomond Road to be his domicile.

Mr. Richmond testified that it was always his intent for 8701 Lomond Road to be his domicile. His mother testified that he had lived on Lomond Road since January of 2003, and his brother corroborated this testimony. Mr. Richmond's brother also confirmed that he and Mr. Richmond considered the Eastview Drive property to be investment property. The fact that Mr. Richmond's voter registration, his homestead exemption, and his drivers' license listed Eastview Drive as his address is not determinative of his intent to be domiciled at his family home. The only countervailing evidence to support the plaintiff's position that Mr. Richmond was domiciled on Eastview Drive was the sworn notice of candidacy. Mr. Richmond, however, testified that he did not notice that the address required on the notice was the address of his domicile. In any event, there is no reason to believe that the trial court judge did not consider this document in determining whether Mr. Richmond intended to be domiciled on Lomond Road.

In Dixon v. Hughes, 587 So.2d 689 (La. 1991), the facts were similar to the facts in the instant case regarding a sworn statement of

the candidate's address. The candidate in that case, Ms. Hughes, testified that she "thought the law was that you could qualify, that you could use an address as long as it was not fraudulent, that that was an address that was related to you." 587 So.2d at 681. In response to this, the Louisiana Supreme Court stated as follows:

While Ms. Hughes' sworn declaration of domicile in connection with her candidacy for Criminal District Court should not be dismissed lightly, she has set forth a plausible explanation that she made a good faith mistake in listing her business address rather than her home address.

Id. In the instant case, we find that Mr. Richmond has given a plausible explanation why he did not list the Lomond Road address as his address of domicile on the sworn statement.

In Cade v. Lombard, 99-0184 (La. App. 4 Cir. 1/23/99), 727 So.2d 1221, this Court found that "Mr. Cade's intent to be domiciled at an address in District 3 may have been motivated by his desire to vote or be a candidate in that district." 99-0184, p. 4, 727 So.2d 1223. This Court, nevertheless, found and that his desire did not "vitiating that intent." Id. Thus, the intent of the candidate, not his motive, is controlling in determining a candidate's domicile.

Because any doubt regarding whether a candidate is qualified to run for elective office is to be decided in favor of the candidate, we

find that the plaintiff failed to carry the burden of proof required to show that Mr.

Richmond is not domiciled on Lomond Road. We find that the factual findings of the trial court were not manifestly erroneous or clearly wrong.

CONCLUSION

For the reasons discussed, we find no error in the trial court's judgment. Therefore, the judgment of the trial court holding that Mr. Richmond is duly qualified as a candidate for the special primary election to be held on April 2, 2005, for councilmember District D of the City of New Orleans is affirmed.

AFFIRMED