

**NOT DESIGNATED FOR PUBLICATION**

**WAYNE WRIGHT AND  
LEMONA CHANDLER**

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**NO. 2015-CA-1047**

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**VERSUS**

**COURT OF APPEAL**

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**MISSKEITH PREVOST,  
EUSTIS GUILLEMET, JR. AND  
TOM SCHEDLER, IN HIS  
CAPACITY AS LOUISIANA  
SECRETARY OF STATE**

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**FOURTH CIRCUIT**

**STATE OF LOUISIANA**

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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2015-08980, DIVISION "M"  
HONORABLE PAULETTE R. IRONS, JUDGE

\* \* \* \* \*

**JAMES F. MCKAY III  
CHIEF JUDGE**

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(Court composed of Chief Judge James F. McKay III, Judge Dennis R. Bagneris, Sr., Judge Max N. Tobias, Jr., Judge Roland L. Belsome, Judge Daniel L. Dysart, Judge Madeleine M. Landrieu, Judge Joy Cossich Lobrano, Judge Rosemary Ledet, Judge Sandra Cabrina Jenkins)

**TOBIAS, J., CONCURS**

SHAUN MENA  
2661 Gravier Street  
New Orleans, Louisiana 70119  
Counsel for Plaintiffs/Appellees

EUSTIS J. GUILLEMET, JR.  
2033 Constance Street, Apt. 208  
New Orleans, Louisiana 70130  
In Proper Person/Appellant

**AFFIRMED  
SEPTEMBER 30, 2015**

On September 9, 2015, Eustis Guillemet, Jr. filed a notice of candidacy to qualify to run in the election on October 24, 2015 for the District 97 seat in the Louisiana House of Representatives.<sup>1</sup> At the time he qualified, Mr. Guillemet listed his domicile as 4501 Pauger Street, New Orleans, Louisiana 70122, but listed a mailing address of 2033 Constance Street, Apartment 208, New Orleans, Louisiana 70130.<sup>2</sup> 4501 Pauger Street is located in District 97, while 2033 Constance Street is not located in that district.

On September 17, 2015, Wayne Wright and Lemona Chandler (both of whom are qualified electors and registered voters who are domiciled in Orleans Parish and District 97) filed a petition objecting to Mr. Guillemet's candidacy and seeking to disqualify him.<sup>3</sup> In their petition, Mr. Wright and Ms. Chandler argued

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<sup>1</sup> Based on a reading of the transcript of the September 21, 2015 hearing held before the Honorable Paulette Irons, it appears that Mr. Guillemet filed a previous notice of candidacy on September 8, 2015, which listed his domicile at 2033 Constance Street, Apartment 208, New Orleans, Louisiana 70130. However, this document does not appear in the record before this Court.

<sup>2</sup> Attached to Mr. Guillemet's petition for appeal is a copy of his voter identification card, which shows his address as 4501 Pauger Street.

<sup>3</sup> The petition filed by Mr. Wright and Ms. Chandler also sought to disqualify another candidate for the District 97 seat, MissKeith Prevost. This appeal concerns only the candidacy of Mr. Guillemet.

that Mr. Guillemet was not domiciled in District 97 and therefore was not qualified to run for election for the Louisiana House of Representatives seat representing that district. On September 19, 2015, the petitioners amended their petition to disqualify Mr. Guillemet's candidacy with the additional ground that he had failed to file any state income tax returns for the previous five tax years.

On September 21, 2015, a hearing took place before the Honorable Paulette Irons. Two issues were raised at the hearing which affect Mr. Guillemet's candidacy. The first was whether he was required to file and/or pay any Louisiana income tax for the past five tax years. The second was whether he was domiciled at the 4501 Pauger Street address.

Mr. Guillemet testified that he retired from Amtrak in 2007 and that his only income was from Social Security and his Amtrak pension. Vanessa LaFleur, the Director of Policy and Administrative Services and Director of Public Records at the Louisiana Department of Revenue, testified that there was no record of Mr. Guillemet having filed a Louisiana tax return for the past five years. This was followed by some discussion between the court and Ms. LaFleur regarding whether Mr. Guillemet was required to file a state tax return.<sup>4</sup>

Mr. Guillemet testified that he currently lives at 2033 Constance Street and has not lived at 4501 Pauger Street since before 2005. Mr. Guillemet testified that the house at 4501 Pauger Street had been his parents' home and had been his

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<sup>4</sup> Based on the transcript of the September 21, 2015 hearing, this issue appeared far from settled. However, based on the trial court's reasons of judgment, it appears that the trial court's judgment was based entirely on the domicile issue.

domicile where he stayed when he came home from the road. He also testified that after his parents passed away, he and his niece had each been left a 50% interest in the property; he subsequently sold his interest to his niece. He further testified that although he was not paying any taxes or utilities at the Pauger Street address, he was currently paying his niece rent in anticipation of moving back to the property.

At the hearing, the trial court also heard the testimony of Alexandra Conlay.<sup>5</sup> Ms. Conlay testified that she was familiar with the property at 4501 Pauger Street and had hired a private investigator to investigate that address. Ms. Conlay testified that the private investigator drove out to 4501 Pauger Street and took pictures of what appeared to be an abandoned house. In support of her testimony, Ms. Conlay provided photographs of the property taken by the investigator to the trial court. Ms. Conlay also testified that she contacted Entergy and was informed that there were no utilities servicing the building.

Following the hearing, the trial court took the matter under advisement. On September 22, 2015, at 9:52 a.m., the trial court ordered that the petitioners' objection to Mr. Guillemet's candidacy and their petition to disqualify him be granted. Based on a reading of the trial court's reasons for judgment (we are mindful of the fact that reasons for judgment are not part of the judgment), it is evident that Mr. Guillemet was disqualified because of the domicile issue and not

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<sup>5</sup> Based on a review of the record, it is not possible to determine exactly how Ms. Conlay is related to this case.

because of any tax issue. Mr. Guillemet filed his petition for appeal later that same day.<sup>6</sup>

An appellate court reviews legal issues *de novo* but will not upset a trial court's finding of fact unless that finding is manifestly erroneous or clearly wrong. Brewer v. J.B. Hunt Transport, Inc., 2009-1408, p. 9 (La. 3/16/10), 35 So.3d 230, 237. The district court's factual findings regarding domicile are subject to the manifest error review. Landiak v. Richmond, 2005-0758, p. 19 (La. 3/24/05), 899 So.2d 535, 548-549. In order to reverse a trial court's determination of a fact, an appellate court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding, and (2) further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. Bonin v. Ferrellgas, 2003-3024, pp. 6-7 (La. 7/2/04), 877 So.2d 89, 94-95; Stobart v. State, 617 So.2d 880, 882 (La. 1983). Reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. Stobart v. State, *supra*.

The qualifications for legislative candidacy in Louisiana are set forth in the Louisiana Constitution Article III, § 4(A), which provides:

An elector who at the time of qualification as a candidate has attained the age of eighteen years, resided in the state for the preceding two years, and been actually domiciled for the preceding year in the legislative district from which he seeks election is eligible for membership in the legislature.

A candidate sets out his qualifications in the initial filing of his notice of candidacy subject to La. R.S.18:461. When the qualifications include a length of

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<sup>6</sup> On September 23, 2015, Mr. Guillemet's petition for appeal was signed by Judge Christopher

domicile requirement, the candidate shall meet that qualification notwithstanding any other provision of law to the contrary. La. R.S. 18:451. A candidate's qualifications are subject to challenge. La. R.S. 18:1401 (A).

In Landiak v. Richmond, the Louisiana Supreme Court explained the general principles employed in deciding a challenge to qualification to candidacy:

Because election laws must be interpreted to give the electorate the widest possible choice of candidates, a person objecting to candidacy bears the burden of proving that the candidate is disqualified. See Becker v. Dean, 03-2493, p. 7 (La. 9/18/03), 854 So.2d 864, 869; Russell v. Goldsby, 00-2595, p. 4 (La. 9/22/00), 780 So.2d 1048, 1051; Dixon v. Hughes, 587 So.2d 679, 680 (La. 1991); Messer v. London, 483 So.2d 546 (La. 1983). It follows that, when a particular domicile is required for candidacy, the burden of showing lack of domicile rests on the party objecting to the candidacy. Becker, 03-2493 at p. 7, 854 So.2d at 869; Pattan v. Fields, 95-2375 (La. 9/28/95), 661 So.2d 1320. Further, a court determining whether the person objecting to candidacy has carried his burden of proof must liberally construe the laws governing the conduct of elections "so as to promote rather than defeat candidacy." Becker, 03-2493 at p. 7, 854 So.2d at 869; Russell, 00-2595 at p. 4, 780 So.2d at 1051; Dixon, 587 So.2d at 680. Any doubt concerning the qualifications of a candidate should be resolved in favor of allowing the candidate to run for public office. Becker, 03-0293 at p. 7, 854 So.2d at 869; Russell, 00-2595 at p. 4, 780 So.2d at 1051; Dixon, 587 So.2d at 680.

In spite of the fact that a person challenging a candidate's qualifications bears the burden of proving that the candidate fails to meet the requirements, once the party bearing the burden of proof has established a prima facie case, the burden then shifts to the opposing party to present sufficient evidence to overcome the other party's prima facie case. Landiak, *supra*; see also Morton v. Hicks, 46,991, p. 8 (La.App. 2 Cir. 9/28/11), 74 So.3d 268, 273.

A person's domicile is the place of his habitual residence. La. C.C. art. 38. According to La. C.C. art. 44: "Domicile is maintained until acquisition of a new domicile. A natural person changes domicile when he moves to make that location

his habitual residence.” According to La. C.C. art. 45, “[p]roof of one’s intent to establish or change domicile depends on the circumstances.” Determination of a party’s intent to change his or her domicile must be based on the actual state of the facts, not simply on what the person declares them to be. Davis v. Glen Eagle Ship Mangement Corp., 97-0878, p. 2 (La.App. 4 Cir. 8/27/97), 700 So.2d 228, 230.

In the instant case, Mr. Guillemet claims that his domicile is at 4501 Pauger Street. The petitioners have introduced evidence, such as the testimony of Ms. Conlay and the photographs of 4501 Pauger Street taken by the private investigator that she hired, which indicate that Mr. Guillemet is not domiciled on Pauger Street. The property is in a state of general disrepair with no utility service, and for all practical purposes appears abandoned. Futhermore, by his own testimony, Mr. Guillemet admits that he lives on Constance Street and has not lived at the Pauger Street address since before 2005.<sup>7</sup> The only thing evinced by his testimony is a vague desire to return to the 4501 Pauger Street property, which is presently owned by his niece. He has offered no evidence that the house is being repaired or that his niece would allow his return to the property if it were made habitable.

The trial court considered the law, the evidence before it, and the arguments of the parties before it disqualified Mr. Guillemet’s candidacy for the District 97

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<sup>7</sup> In Ogden v. Gray, 2012-1314 (La.App. 4 Cir. 9/11/12), 99 So.3d 1088, this Court examined the applicability of La. R.S. 18:451.3. That statute (as amended in 2010) states:

If the qualifications for an office include a residency or domiciliary requirement, any person who is seeking election to such office and who has been involuntarily displaced from his residence or domicile by the effects of a gubernatorially declared state of emergency shall not be considered to have vacated his domicile or residency for purposes of qualifying for and subsequently holding office, unless any of the following is true:

- 1) He has established a new domicile.
- 2) He has changed his registration to an address outside the voting district in which he seeks election.
- 3) One year has passed since the end of the declared emergency.

seat. Based on the record before this Court, a reasonable factual basis exists for the trial court's findings. Therefore, the trial court's disqualification of Mr. Guillemet's candidacy was not clearly wrong or manifestly erroneous.

Accordingly, we affirm the judgment of the trial court.

**AFFIRMED**