

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

STEVE MEISMAN,
Appellant/Cross-Appellee,

v.

ALVARO "AL" HERNANDEZ, as a candidate for member of the Pasco
County School Board District 1,

Appellee/Cross-Appellant,

and

BRIAN CORLEY, in his official capacity as Supervisor of Elections of
Pasco County; and JAMES WASHINGTON, as a candidate for
member of the Pasco County School Board District 1,

Appellees.

No. 2D22-3425

November 4, 2022

Appeal from the Circuit Court for Pasco County; Susan G. Barthle,
Judge.

Charles B. Kelly of Charles Kelly Law PLLC, Valrico, for
Appellant/Cross-Appellee.

Christopher B. Lunny and Melissa R. Hedrick of Radey Law Firm, Tallahassee; and Richard Coates of Coates Law Firm, PL, Tallahassee, for Appellee/Cross-Appellant Alvaro "Al" Hernandez.

Andy Bardos of GrayRobinson, P.A., Tallahassee, for Appellee Brian Corley, in his official capacity as Supervisor of Elections for Pasco County.

No appearance for Appellee James Washington.

PER CURIAM.

Steve Meisman appeals from the declaratory judgment disqualifying Alvaro "Al" Hernandez from the Pasco County School Board District One election. Mr. Hernandez cross-appeals.

Because the trial court erred in disqualifying Mr. Hernandez, we reverse. Our reversal renders Mr. Meisman's issues moot.

Mr. Meisman, Mr. Hernandez, and James Washington were candidates for District One of the Pasco County School Board and appeared on the August 23, 2022, primary election ballot. Prior to the primary election, Mr. Meisman filed a complaint challenging Mr. Hernandez's candidacy on the basis that he did not meet the residency requirement during the qualifying period of June 13-17,

2022.¹ The trial court did not resolve the complaint prior to the primary election. Because no candidate received a majority of the votes, the race would proceed to a runoff election between Mr. Washington and Mr. Hernandez, who both appear on the November 8, 2022, general election ballot.

Mr. Meisman's complaint was heard at a nonjury trial on October 11, 2022. Mr. Hernandez testified that he previously resided in an Odessa home, outside of District One. In March 2022, he contracted to buy a home in Zephyrhills, inside District One, with the intention of making it his legal residence. He closed on the Zephyrhills home on April 8, 2022. Prior to the qualifying period, Mr. Hernandez spent the night in the Zephyrhills home, but found the home to be inhospitable due to moisture or mold issues.

In May, Mr. Hernandez updated his driver's license and voter's registration to reflect that the Zephyrhills home was his residence. He submitted his paperwork to the supervisor of elections on May 31, 2022, and listed his Zephyrhills address as his residence.

¹ The complaint also challenged Mr. Washington's candidacy due to lack of residency but that claim was dismissed.

Similarly, he filed an application to transfer his homestead exemption to the Zephyrhills home.

Mr. Hernandez decided to renovate the home and entered into a May 21, 2022, agreement with a contractor. The renovations began the next day. He ordered new appliances for the home and contacted his internet service provider to transfer services in early June. During the qualifying period of June 13-17, Mr. Hernandez did not sleep at the home. Due to the lack of fixtures and renovation work being done, the home was not habitable during the qualifying period. However, he visited the home every day to supervise the renovations.

Following the bench trial, the trial court ruled that Mr. Hernandez did not meet the residency requirement. The court reasoned that section 1001.361, Florida Statutes (2022), required that a candidate for school board reside within the district at the time of qualifying for office rather than at some subsequent time. The court found that during the qualifying period Mr. Hernandez neither vacated his Odessa home nor moved into the Zephyrhills home. The court reasoned that while Mr. Hernandez "had all the intention in the world . . . you got to have the first step of—of

moving in." The court reasoned that Mr. Hernandez had not established his residency because he was not "living" at the Zephyrhills home. Accordingly, the trial court disqualified Mr. Hernandez and directed the supervisor of elections to issue a notice to the voters of Pasco County stating that Mr. Hernandez had been disqualified and that Mr. Washington would be running unopposed.

Mr. Meisman appealed from the order. On appeal, he insists the court afforded the wrong remedy. Mr. Meisman argues that instead of declaring that Mr. Washington would run unopposed, the court should have determined that Mr. Meisman was a replacement candidate for Mr. Hernandez and should have directed the supervisor of elections to issue a notice to the voters that a vote for Mr. Hernandez would be counted as a vote for Mr. Meisman.

Mr. Hernandez cross-appeals, arguing that he should not have been disqualified because the court erred in determining that he had not established residency in District One. By prior order, we stayed the trial court's order and expedited this appeal. We agree with Mr. Hernandez that the trial court erred in disqualifying him from the election. Accordingly, we do not reach the issue raised by Mr. Meisman.

Section 1001.361 provides in pertinent part: "Each candidate for district school board member shall, at the time she or he qualifies, be a resident of the district school board member residence area from which the candidate seeks election."

The rule is well settled that the terms "residence," "residing," or equivalent terms, when used in statutes, or actions, or suits relating to taxation, right of suffrage, divorce, limitations of actions, and the like, are used in the sense of "legal residence"; that is to say, the place of domicile or permanent abode, as distinguished from temporary residence.

Walker v. Harris, 398 So. 2d 955, 958 (Fla. 4th DCA 1981) (quoting *Herron v. Passailaigue*, 110 So. 539, 543 (Fla. 1926)). "A person may have several temporary local residences, but can have only one legal residence. A legal residence, or domicile, is the place where a person has fixed an abode with the present intention of making it their permanent home." *Id.* (citing *Minick v. Minick*, 149 So. 483, 487 (Fla. 1933)). A good faith intention "coupled with an actual removal evidenced by positive overt acts" accomplishes a change of residence. *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955). "[E]stablishment of one's residence will usually depend on a variety of acts or declarations all of which must be weighed in the particular case as evidence would be weighed upon

any other subject." *Id.* at 369. An individual's intent is subjective, and "the best proof of one's domicile is where [the person] says it is." *Perez v. Marti*, 770 So. 2d 176, 178 (Fla. 3d DCA 2000) (alteration in original) (quoting *Ogden v. Ogden*, 33 So. 2d 870, 873 (Fla. 1947)). A temporary absence of one's residence "with the specific clear-cut bona fide intention of returning will not destroy" one's residency. *Bloomfield*, 82 So. 2d at 369.

In analyzing a candidate's qualifications for political office, we must consider and give deference to the rights of the voters. See *Perez*, 770 So. 2d at 178 ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964))). "[T]he primary consideration in an election contest is whether the will of the people has been effected." *Id.* (quoting *Boardman v. Esteva*, 323 So. 2d 259, 269 (Fla. 1975)). Accordingly, if there are any doubts or ambiguities as to a political candidate's qualification for office, we resolve them in favor of the candidate. *Id.* (quoting *Smith v. Crawford*, 645 So. 2d 513, 520 (Fla. 1st DCA 1994)). We review the trial court's determination of a candidate's qualification

for competent substantial evidence. *Butterworth v. Espey*, 565 So. 2d 398, 398 (Fla. 2d DCA 1990); *Perez v. Marti*, 770 So. 2d 284, 286 (Fla. 3d DCA 2000) (*Perez II*). But we review the trial court's application of law de novo. See *Matheson v. City of Miami*, 306 So. 3d 1028, 1030 (Fla. 3d DCA 2020).

The trial court erred in disqualifying Mr. Hernandez from the election. Although the court found that Hernandez's actions established his intent to become a resident of District One, it misapplied the law when it failed to consider whether those same actions established a removal. The court overemphasized the fact that Mr. Hernandez had not moved into the Zephyrhills residence or regularly spent the night there before or during the qualifying period. Cf. *Perez*, 770 So. 2d at 178 (determining that the trial court's ruling that "[r]esidence is not a place to sleep a couple of nights and qualify for political office" was an incorrect legal conclusion (alteration in original)).

Prior to and during the qualifying time, Mr. Hernandez took several positive overt acts to become a resident of District One. He purchased the Zephyrhills home with the undisputed intent of making it his permanent residence and began renovating it. He

updated his driver's license, voter's registration, and homestead exemption to indicate that the Zephyrhills home was his residence. He also began the process of transferring his internet service to the Zephyrhills home. All of these actions were relevant considerations in determining whether Mr. Hernandez accomplished a removal. *See Bloomfield*, 82 So. 2d at 369 (considering the sale of a prior home, acquisition of a new home, the transfer of bank accounts, filing of tax returns, and maintenance of new residence as establishing the fact and intent of residence); *Perez II*, 770 So. 2d at 290 (examining whether a candidate undertook sufficient overt acts to establish a residence by considering whether he updated his voter registration, his familiarity with the new residence, whether he updated his address on any accounts, whether he installed a telephone or mailbox, and whether candidate had moved his personal belongings into the home); *cf. Weiler v. Weiler*, 861 So. 2d 472, 477 n.10 (Fla. 5th DCA 2003) ("Evidence of domicile includes, *inter alia*: income and other tax returns; homestead exemptions; voting registration; driver's license; place of business affairs; use of 'residence'; and number of days in the state." (citation omitted)); *Hunter v. Hunter*, 736 So. 2d 801, 801-02 (Fla. 1st DCA 1999)

(reasoning that residence requirement for purposes of dissolution of marriage petition could be corroborated by driver's license or voter registration information).

Although Mr. Hernandez was not spending the night at the Zephyrhills home prior to or during the qualifying period, he had spent the night there on at least one occasion prior to the qualifying period. And during the qualifying period he spent between one and five hours at the Zephyrhills residence each day to supervise the renovation work. His inability to spend the night at the Zephyrhills home due to its condition and the renovation work was a temporary absence coupled "with the specific clear-cut bona fide intention of returning." *See Bloomfield*, 82 So. 2d at 369. To the extent that the evidence was ambiguous or the court had doubts, such ambiguity or doubts should have been resolved in favor of Mr. Hernandez's candidacy. *See Perez*, 770 So. 2d at 178.

Mr. Meisman urges this court to affirm the disqualification of Mr. Hernandez because Mr. Hernandez did not abandon his Odessa residence. However, Mr. Hernandez is permitted to retain multiple residences, and his retention of the Odessa home did not preclude

him from establishing the Zephyrhills home as his legal residence. *See Walker*, 398 So. 2d at 958.

Accordingly, we reverse the trial court's declaratory judgment granting disqualification of Mr. Hernandez and remand with instructions to reinstate his candidacy. In so concluding, we emphasize that we are called upon to address only whether Mr. Hernandez qualifies as a candidate as a matter of law; whether he otherwise has sufficient ties to or roots in the district is for the voters to decide, not the judiciary. *See Perez*, 770 So. 2d at 178. We do not reach Mr. Meisman's arguments on appeal; our disposition of the cross-appeal renders those issues moot. Due to the exigency of this appeal, this opinion is to take effect immediately. This court's mandate shall issue simultaneously with this opinion, and no rehearing motion shall be entertained.

Reversed and remanded.

VILLANTI, BLACK, and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion subject to revision prior to official publication.