

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001828-EL

JANICE MARLENE MCCOMAS

APPELLANT

APPEAL FROM GRANT CIRCUIT COURT
v. HONORABLE GREGORY M. BARTLETT, SPECIAL JUDGE
ACTION NO. 14-CI-00313

R. LESLIE KNIGHT, ET AL.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KRAMER¹, LAMBERT, AND TAYLOR, JUDGES.

KRAMER, JUDGE: Appellant, Janice Marlene McComas, appeals from an order of the Grant Circuit Court denying her motion to disqualify Appellee, R. Leslie Knight, as a *bona fide* candidate for the office of circuit court judge. McComas argues that Knight is not a *bona fide* candidate because: (1) she allegedly has no

¹ Judge Joy A. Kramer, formerly Judge Joy A. Moore.

fixed residence; and (2) she allegedly made a false material statement concerning the location of her residence in her petition for nomination. We affirm.

On October 8, 2014, McComas filed a motion pursuant to Kentucky Revised Statutes (KRS) 118.176 in Grant Circuit Court to disqualify Knight as a candidate for Circuit Judge of the 15th Judicial Circuit. McComas alleged that Knight was not a *bona fide* candidate because Knight made a false statement under oath regarding the location of her actual residence. In her petition for nomination, Knight stated that her residence is located at 26 Broadway, Dry Ridge, Grant County, Kentucky. McComas alleged that Knight did not actually reside at that address. Following a hearing, the trial court determined that Knight resided in Grant County and that there was sufficient evidence to establish that Knight's actual residence was located at 26 Broadway in Dry Ridge despite the fact that she spent a significant amount of time elsewhere. The trial court denied the motion to disqualify in an order entered on October 30, 2014. Knight was subsequently elected to the office of circuit court judge. This appeal followed.

McComas first argues that Knight is not a *bona fide* candidate because she allegedly has no fixed residence and merely "camps out" at the residences of friends and family. We disagree.

Section 122 of the Kentucky Constitution states:

To be eligible to serve as a justice of the Supreme Court or a judge of the Court of Appeals, Circuit Court or District Court *a person must be a citizen of the United States, licensed to practice law in the courts of this*

Commonwealth, and have been a resident of this Commonwealth and of the district from which he is elected for two years next preceding his taking office. In addition, to be eligible to serve as a justice of the Supreme Court or judge of the Court of Appeals or Circuit Court a person must have been a licensed attorney for at least eight years. No district judge shall serve who has not been a licensed attorney for at least two years.

(Emphasis added). KRS 118A.060(3) states that a candidate for office in the Kentucky Court of Justice must file a petition for nomination that includes a sworn declaration that the candidate “possesses all the constitutional and statutory requirements of the office for which the candidate has filed.” KRS 118.015(7) states that the word “resident,” in the context of candidacy for election, “shall mean actual resident, without regard to the residence of the spouse of the candidate.” Our Supreme Court determined that actual residence means an abode where a person “actually lives” as opposed to “a mere naked legal residence.” *Mobley v. Armstrong*, 978 S.W.2d 307, 310 (Ky. 1998).

The determination of a candidate’s residency is a question of fact. *Id.* In determining residency, a court must consider the actions and intention of the purported resident because neither is controlling. *Id.* “[T]he findings of fact of a trial judge will not be disturbed on appeal unless found to be clearly erroneous.” *Id.* Decisions involving the weight of evidence and the credibility of witnesses are committed to the province of the fact-finder. *Truman v. Lillard*, 404 S.W.2d 863, 868 (Ky. 2012). This Court may not substitute its judgment for the trial court upon conflicting evidence. *Id.* at 868-69.

Knight testified that she moved to Dry Ridge in Grant County in 1973 and has resided there to the present day. Knight and Paul E. Rogers purchased the property at 26 Broadway in Dry Ridge in 1997 as joint tenants for the purpose of operating a law firm at that location. The property was built as a single-family residence, which is currently located in the central business district of Dry Ridge. Knight and Rogers married after the purchase of the property and are currently divorced. The property has not yet been divided. Knight closed her law office in 2003. Knight's brother and sister subsequently used the property as a business location. Rogers then rented the property to a friend for several years as a residence. Knight testified that she took possession of the property as her residence in March 2012. Knight stated that she regularly slept at the property in 2012 and several times a week during 2013. She testified from late 2013 to the present, she often spent the night at her sister's residence, her daughter's residence, or a friend's residence and only spent the night at the property occasionally. Knight's sister, daughter, and friend all reside in Grant County. Knight additionally stated that she keeps her personal belongings and frequently bathed at the property. Knight testified that she keeps a bedroom for her grandson at the property. She further testified that she entertained guests at the property from time to time.

In support of her argument, McComas points to other evidence of record. Zoning official and maintenance supervisor, Bobby Robbins, testified that any personal residence at the property would be in violation of the Dry Ridge zoning

ordinances. Robbins testified that, in October 2013, he asked Knight if she was living at the property and that she told him she lived there. Robbins further stated that he orally informed her that she was not allowed to live there unless she lived upstairs with a separate entrance to the outside. He stated that there was no separate entrance to the outside. McComas also points to evidence that the water was shut off at the property for a period of time for non-payment. McComas presented the testimony of a neighboring couple concerning their observations and opinions as to the extent of Knight's occupation of the property. Two garbage collectors testified that they did not collect any trash from the residence for a period of several months. Knight's filing papers indicate that she receives her mail at a post office box. Further, a traffic citation issued to Knight in 2013 did not list 26 Broadway as her address.

It is undisputed that Knight has resided in Grant County for at least two years preceding her candidacy as required by Section 122 of the Kentucky Constitution. Further, Knight demonstrated more than "a mere naked legal residence" at the property. While McComas presents conflicting evidence, we cannot conclude that the trial court clearly erred by finding that Knight's actual residence was located at 26 Broadway in Dry Ridge. There was opinion testimony that a personal residence at the property would violate the zoning ordinances and that Knight was orally informed that she was not in compliance. The evidence of an alleged zoning violation did not demonstrate that Knight actually resided elsewhere. Moreover, there was no evidence in the record of an official finding

that Knight's residence at the property violated the zoning ordinances either at present or at the time she filed her petition for nomination. Therefore, we conclude that the trial court's finding that Knight resided at 26 Broadway in Dry Ridge was supported by substantial evidence.

McComas next argues that Knight is not a *bona fide* candidate because she allegedly made a materially false statement regarding the location of her residence on her petition for nomination. We disagree.

As stated above, substantial evidence supported the trial court's finding that Knight resided at 26 Broadway in Dry Ridge. Therefore, McComas failed to prove that Knight made a false statement on her petition for nomination.

Accordingly, the order of the Grant Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Sam Manly
Louisville, Kentucky

BRIEF FOR APPELLEE:

John A. Berger
Covington, Kentucky