

**PETRINA IMBRAGUGLIO** \* **NO. 2007-CA-1220**  
**VERSUS** \* **COURT OF APPEAL**  
**BARRY C. BERNADAS,** \* **FOURTH CIRCUIT**  
**INDIVIDUALLY AND IN HIS** \* **STATE OF LOUISIANA**  
**CAPACITY AS CANDIDATE** \*  
**FOR THE OFFICE OF**  
**SHERIFF, ST. BERNARD** \* \* \* \* \*  
**PARISH, AND LENA R.**  
**TORRES, IN HER CAPACITY**  
**AS**  
**CLERK OF COURT FOR THE**  
**THIRTY-FOURTH JUDICIAL**  
**DISTRICT COURT FOR THE**  
**PARISH OF ST. BERNARD,**  
**STATE OF LOUISIANA**

APPEAL FROM  
ST. BERNARD 34TH JUDICIAL DISTRICT COURT  
NO. 110-716, DIVISION "B"  
HONORABLE MANUEL A. FERNANDEZ, JUDGE  
\* \* \* \* \*  
**JAMES F. MCKAY III**  
**JUDGE**  
\* \* \* \* \*

(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay III,  
Judge Michael E. Kirby, Judge David S. Gorbaty, Judge Edwin A. Lombard)

**MURRAY, J., DISSENTS WITH REASONS**

**KIRBY, J., DISSENTS FOR THE REASONS ASSIGNED BY J. MURRAY**

**GORBATY, J., CONCURS, WITH REASONS.**

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-and-  
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**AFFIRMED**

The defendant, Barry C. Bernadas, appeals the trial court's judgment disqualifying him as a candidate for the office of Sheriff of St. Bernard Parish. We affirm

### **Facts and Procedural History**

Prior to Hurricane Katrina, Barry Bernadas resided at 2408 Etienne Drive in St. Bernard Parish. After the hurricane, Mr. Bernadas lived in Folsom, Louisiana until August 31, 2006. Mr. Bernadas sold his home on Etienne Drive on February 23, 2006. Since August 31, 2006, Mr. Bernadas has lived with his family at a home he purchased at 7011 General Haig Street in New Orleans. Over one year later, on September 4, 2007, Mr. Bernadas filed a "Notice of Candidacy" for the office of Sheriff of St. Bernard Parish. On that sworn notarized form, Mr. Bernadas indicate that his domicile is 3000 Riverland Drive in Chalmette, Louisiana, his childhood home and the home of his parents until Hurricane Katrina and the Murphy Oil spill made it uninhabitable. Mr. Bernadas has not lived at

3000 Riverland Drive since 1985, in fact no one has lived at the home since Hurricane Katrina.

On September 13, 2007, the plaintiff, Petrina Imbraguglio, a resident and qualified voter in St. Bernard Parish, filed a petition objecting to the candidacy of Mr. Bernadas. The trial on this matter took place on September 17, 2007. The trial court found in favor of the plaintiff and against the defendant and disqualified him from the race. It is from this judgment that the defendant now appeals.

## **DISCUSSION**

There are two issues in this appeal: (1) whether the trial court's conclusion that the defendant, Barry Bernadas, could not avail himself of the provisions of La. R.S. 18:451.3 because he had voluntarily sold his residence in St. Bernard prior to the effective date of the statute was reasonable; and (2) whether the defendant, Barry Bernadas, had established a new domicile for the purposes of La. R.S. 18:451.3 by voluntarily selling his home, the only property he owned in St. Bernard Parish, and moving to New Orleans without residing anywhere in St. Bernard Parish for two years preceding the date he filed his notice of candidacy to run for Sheriff.

Longstanding Louisiana jurisprudence demands that courts of appeal give great deference to a trier of fact's factual findings based on credibility judgments. *See Rosell v. ESCO*, 549 So.2d 840, 845 (La. 1989). Determinations of domicile made in the district courts are subject to the manifest error rule. Thus, it is of no consequence how the appellate court might have ruled had it been sitting as the trier

of fact, but rather whether a reasonable trier of fact could have reached the result that he did. See Aguillard v. Barney, 05-466 (La.App. 5 Cir. 5/4/05), 904 So.2d 751.

La. R.S. 18:451.2, dealing with the qualifications of candidates for Sheriff provides:

At the time he files his notice of candidacy, a candidate for sheriff, tax assessor, or clerk of court shall have resided in the state for the preceding two years and shall have been actually domiciled for the preceding year in the parish from which he seeks election. The provisions of this Section shall not affect persons holding office on August 15, 1999.

In seeking to run for the office of Sheriff, Mr. Bernadas seeks to avail himself of the provisions of La.R.S. 18:451:3 which provides:

In the event the qualifications for an office include a residency or domicile requirement, any person seeking election to such office who has been involuntarily displaced from his place of residence or domicile by effects of a gubernatorially declared state of emergency shall not be considered to have vacated his domicile or residence for purposes of qualifying for or holding office, unless he has either established a new domicile or has changed his registration to an address outside the voting district in which he seeks election.

At the time he filed his notice of candidacy, Mr. Bernadas had not spent any time at all, not even a single night, at 3000 Riverland Drive for the one year period before he executed the Notice of Candidacy Qualifying Form. In fact, the defendant had not resided at 3000 Riverland Drive since he got married in 1985. He had sold his former residence in St. Bernard Parish on February 23, 2006 and in the notarial act of sale declared his domicile and residence to be St. Tammany Parish. Then on August 31, 2006 when he purchased a new home and lots in New Orleans he again claimed his residence and domicile to be in St. Tammany Parish.

An Act of Mortgage on the property on General Haig Street also shows his domicile to be in St. Tammany Parish.

Mr. Bernadas has at no time made any attempt to return to St. Bernard Parish since both the sale of his former home and the purchase and mortgage of the new home in Orleans Parish. The trial court's conclusion that the defendant could not avail himself of the provisions of La.R.S. 18.451.3 because he had voluntarily sold his residence in St. Bernard Parish and verified by two notarial acts subsequent that his domicile had changed to St. Tammany Parish prior to the effective date of the statute was reasonable.<sup>1</sup> Once the defendant voluntarily sold 2408 Etienne Street in February 23, 2006, he was no longer involuntarily displaced from that residence. Accordingly, Mr. Bernadas definitely lost his domicile in St. Bernard Parish at the time of the first act of sale and was by his own admission a resident and domiciliary of St. Tammany Parish.

We also find no error in the trial court's finding that the defendant established a new domicile for purposes of La. R.S. 18:451.3 (which took effect on June 8, 2006) by voluntarily selling his home, the only property owned in St. Bernard Parish, and moving to New Orleans without residing anywhere in St. Bernard Parish for two years preceding the date he filed his notice of candidacy to run for sheriff. The home the defendant purchased in New Orleans is approximately 6000 square feet and was renovated by the defendant. The defendant's minor children are all attending schools in New Orleans.

The home at 3000 Riverland Drive is between 1200 to 1300 square feet. The idea of Mr. Bernadas, his wife, and their six children moving from a 6000

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<sup>1</sup> These four Acts of Correction were not done until September 17, 2007 during the trial on Mr. Bernadas's qualification to run for Sheriff.

square foot renovated home to a 1300 square foot unrepaired home defies logic. It is also suspect that the defendant only changed his voter registration to Riverland Drive shortly before qualifying to run for Sheriff. A change in domicile requires the physical presence of the individual in the new domicile coupled with a present intent to permanently reside in the new domicile. Blackwell v. Blackwell, 606 So.2d 1358 (La.App. 2 Cir. 1992). Based on Mr. Bernadas's acts and current status he could not be domiciled on Riverland Drive under any circumstances and by all reasonable criteria is now be domiciled in Orleans Parish.

**DECREE**

For the foregoing reasons, the judgment of the trial court disqualifying Mr. Bernardas from running for Sheriff if St. Bernard Parish is affirmed.

**AFFIRMED**