

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

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

The narrow issue presented by this appeal is whether Mr. Bernadas, whom the trial court found was involuntarily displaced from his residence in St. Bernard Parish by effects of Hurricane Katrina, is qualified for the office of Sheriff of St. Bernard Parish, a position that has both a residency and a domicile requirement.<sup>1</sup>

The trial court found that because Mr. Bernardas's involuntary displacement became an intentional voluntary act, he was disqualified as a candidate for Sheriff. The majority would affirm that decision. I respectfully disagree.

There is no question that Mr. Bernadas, who lived in St. Bernard Parish from the age of two until August 29, 2005, was involuntarily displaced from his residence and domicile in that parish due to the effects of Hurricane Katrina, a gubernatorially declared state of emergency.

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<sup>1</sup>La. R.S. 18:451.2 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.

La. R.S. 18:451.3, which became effective June 8, 2006, 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 the 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.

Pursuant to the statute, once it was established that Mr. Bernardas was involuntarily displaced by Katrina, it was incumbent upon the party seeking his disqualification to prove that he either had established a new domicile outside St. Bernard Parish or had changed his voter registration from St. Bernard Parish. However, the trial court failed to make a factual finding that either of those exceptions applied.

Despite the fact that La. R.S. 18:451.3 became effective prior to Mr. Bernadas's filing of his notification of candidacy, the trial court found that the statute did not apply to him. The court reasoned that Mr. Bernadas' involuntary displacement "became an intentional voluntary act" when Mr. Bernadas sold his pre-Katrina St. Bernard residence prior to the effective date of the statute. This reasoning ignores the plain language of the statute, which does not include a requirement that the "involuntarily displaced" person must continue to own a residence and/or property in the parish where he resided prior to his displacement.

In my opinion the trial court committed legal error in its application of La. R.S. 18:451.3 by ignoring the plain words of the statute and by imposing a temporal limitation, not contained in the statute, on its applicability.

Mr. Bernadas's situation uncontrovertibly falls within the ambit of the statute. Before Katrina he was domiciled in St. Bernard Parish. Like thousands of others, he was forced to flee the wrath of Hurricane Katrina. He was displaced by the effects of that storm, living with his family in East Baton Rouge, St. Tammany and Orleans Parishes. Therefore, unless he has established a new domicile or has registered to vote outside the Parish he cannot be considered to have vacated his domicile or residence for purposes of qualifying for the Office of Sheriff of St. Bernard Parish.

It is undisputed that Mr. Bernadas has not registered to vote in any parish other than St. Bernard. Therefore, absent proof by the party questioning his candidacy that he has established a domicile outside St. Bernard Parish he cannot be disqualified for having vacated his domicile or residence.

The applicable principles in determining whether an individual has changed his domicile were enunciated by the Louisiana Supreme Court in *Landiak v. Richmond*, 05-0758, pp. 9-11 (La. 3/24/05), 899 So.2d 535, 542-44:

Louisiana case law has traditionally held that domicile consists of two elements, residence and intent to remain. When a party has not declared his intention in the manner prescribed by La. Civ.Code art. 42, proof of a person's intention regarding domicile "shall depend upon circumstances." La. Civ.Code art. 43. Thus, 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. "The expressed intent of the party may be at variance with the intent as evidenced by conduct." "Each case is unique and the courts attempt to arrive at the true intent, whether express or implied."

Every person has a domicile of origin that he retains until he acquires another. Because the case law recognizes a legal presumption against change of domicile, a party seeking to show that domicile has been changed must overcome that presumption by presenting "positive and

satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile." Of course, because domicile and residence are two different legal concepts the facts could indicate that one has "abandoned the former domicile" in favor of a new domicile even if the person continues to have a place of residence at the former domicile.

The case law regarding domicile reveals that Louisiana courts commonly consider a number of different factors when trying to determine domicile in fact. Since domicile is generally defined as residence plus intent to remain, a party's uncontroverted testimony regarding his intent may be sufficient to establish domicile, in the absence of any documentary or other objective evidence to the contrary. The same might be said when a person specifically declares his intent pursuant to La. Civ.Code art. 42. However, in the absence of a formal declaration, when documentary or other objective evidence casts doubt on a person's statements regarding intent, it is incumbent on courts to weigh the evidence presented in order to determine domicile in fact. Otherwise, the legal concept of domicile is meaningless and every person would be considered legally domiciled wherever he says he is domiciled. Some of the types of documentary evidence commonly considered by courts to determine domicile in fact include such things as voter registration, homestead exemptions, vehicle registration records, driver's license address, statements in notarial acts, and evidence that most of the person's property is housed at that location. Obviously, the more of these items presented by a party opposing candidacy in a given case to show lack of domicile in the district, the more difficult it will be for the candidate to overcome the plaintiff's evidence.

*Id.*

Applying those principles, the Supreme Court has indicated that certain common types of documentary evidence are relevant to this inquiry.

In *Landiak*, the Court considered the following documents:

(i) *voter registration*

Mr. Bernadas has never registered to vote anywhere other than St. Bernard Parish<sup>2</sup>.

(ii) *homestead exemption*

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<sup>2</sup> In August 2007, however, he changed the address on his voter's registration from 2408 Etienne Drive to 3000 Riverland Drive as part of his renewal of his driver's license, which had expired.

Mr. Bernadas has not taken a homestead exemption for the property in Orleans Parish in which he and his family presently live.

*(iii) vehicle registration records*

Mr. Bernadas owns five vehicles, only one of which he owned before Katrina. This vehicle is registered in St. Bernard Parish, at his Etienne Drive address. The remaining vehicles were bought to replace vehicles lost as a result of the storm. These newly purchased vehicles are registered at 19143 Playmakers Drive in Covington, a piece of property he had purchased for investment before Katrina. He testified the vehicles were registered there because there was no mail service in St. Bernard Parish when he purchased them.

*(iv) driver's license address*

Mr. Bernadas has never used an address outside of St. Bernard Parish as his address on his driver's license.

*(iii) statements in notarial acts*

Post-Katrina, Mr. Bernadas executed three acts of sale. In these acts of sale, the notary included a recital that Mr. Bernadas and his wife are “residents of and domiciled in the Parish of St. Tammany.” At trial, Mr. Bernadas explained that this was an error that he did not catch until he reviewed those notarial acts in connection with this suit. He further explained that the notary incorrectly relied on his mailing address—19143 Playmakers Drive in Covington—in drafting those acts. When Mr. Bernadas realized the error, he executed Acts of Correction, which he

attempted to introduce at trial. The trial court refused to allow him to introduce those documents, and they were proffered.<sup>3</sup>

*(iv) evidence that most of the person's property is housed at that location.*

This factor does not apply to this situation as Mr. Bernadas acknowledged that he has not lived in St. Bernard Parish since the storm.

The applicable factors, therefore, support the conclusion that Mr. Bernadas has not established a domicile in any parish other than St. Bernard. All parties and the trial court acknowledged that doubt with regard to a candidate's domicile "must be resolved in favor of allowing the candidate to run." *Landiak*, 05-0758 at p. 1, 899 So. 2d at 538.

As La. R.S. 8:451.3 is applicable to Mr. Bernadas, and the party opposing his qualification for Sheriff has not shown that he changed his voter registration from that parish or established a domicile in another parish, I respectfully dissent from the majority's affirmation of the trial court's judgment disqualifying him.

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<sup>3</sup> Clearly, the error in the notarial acts was inadvertent. The evidence is undisputed that Mr. Bernadas never lived at the Covington address. As explained above, he used that address only to facilitate receiving his mail during the post-Katrina period.

