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FILED

09/19/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 23-0115

DA 23-0115

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 173

DARLA DOWNS,

Contentant and Appellee,

v.

FRANK PIOCOS,

Contestee and Appellant.

FILED

SEP 19 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPEAL FROM: District Court of the Fifteenth Judicial District,
In and For the County of Roosevelt, Cause No. DV-2023-4
Honorable Katherine M. Bidegaray, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Phillip J. DeFelice, Law Office of Phillip J. DeFelice, St Marie,
Montana

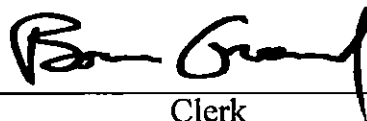
For Appellee:

Darla Downs, Self-Represented, Wolf Point, Montana

Submitted on Briefs: August 23, 2023

Decided: September 19, 2023

Filed:



Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Frank Pioscos (Pioscos) appeals from a February 3, 2023 judgment of the Fifteenth Judicial District Court. The District Court found Pioscos did not reside in Roosevelt County for at least 30 days before the election, and he therefore was not eligible to be a candidate for Roosevelt County Attorney. We affirm.

¶2 We restate the issues on appeal as follows:

Issue One: Whether the residency requirements for a person seeking election as County Attorney are found in § 1-1-215, MCA, or §§ 13-1-111 through -113, MCA.

Issue Two: Whether the District Court erred when it made no finding of fact as to where Pioscos resided in the 30 days prior to the election.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Prior to January 31, 2018, Pioscos was an attorney that practiced law and resided in Valley County, just west of Roosevelt County, though he spent about half his time in Yellowstone County. Pioscos became Deputy County Attorney in Roosevelt County on March 1, 2018. He continued in that position until he was appointed County Attorney after Austin Knudsen, then County Attorney, was elected as Attorney General. Pioscos filed as a candidate for County Attorney in January 2022, and was elected on November 8, 2022.

¶4 When Pioscos realized he would be running unopposed, he sold his house in Billings and planned to buy a house in Roosevelt County, though he continued splitting his time between Yellowstone County and Valley County. However, at no time prior to his election did Pioscos—in his own words—“ever, ever fe[el] secure enough with [his] employment

with Roosevelt County for any significant amount of time to lay down roots.” He continued to maintain a home in Valley County.

¶5 On January 20, 2023, Darla Downs (Contestant) filed a complaint in the District Court challenging Picos’s eligibility for County Attorney based on residency grounds. The court held a hearing on February 3, 2023, and issued a ruling that same day. The court determined the election was void because Picos was not a qualified elector of Roosevelt County at the time of the election. Picos claims residency within Roosevelt County and contends on appeal that the District Court erred.

STANDARD OF REVIEW

¶6 The interpretation and construction of a statute is a matter of law, and we review de novo whether the district court interpreted and applied a statute correctly. *State v. Triplett*, 2008 MT 360, ¶ 13, 346 Mont. 383, 195 P.3d 819.

¶7 In statutory interpretation, we are to determine the Legislature’s intent by looking first to the plain meaning of words in statutes. *See State v. Wolf*, 2020 MT 24, ¶ 15, 398 Mont. 403, 457 P.3d 218. When searching for plain meaning, we reasonably and logically interpret the language and give words their usual and ordinary meaning. *Wolf*, ¶ 15.

¶8 We review a district court’s findings of fact for clear error. *Roland v. Davis*, 2013 MT 148, ¶ 21, 370 Mont. 327, 302 P.3d 91. Clear error exists if substantial, credible evidence fails to support the findings of fact, if the district court misapprehended the evidence’s effect, or if we have a definite and firm conviction that the district court made a mistake. *Roland*, ¶ 21.

DISCUSSION

¶9 *Issue One: Whether the residency requirements for a person seeking election as County Attorney are found in § 1-1-215, MCA, or §§ 13-1-111 through -113, MCA.*

¶10 Article IV, Section 2, of the Montana Constitution requires citizens to meet the registration and residence requirements provided by law to be a qualified elector. A general requirement for county officers, which includes a County Attorney, is that they must be an elector of the county (i.e., eligible to vote there) at the time of the election. Section 7-4-2201(3), MCA. To be eligible to vote in a county, that individual must be a resident of that county for at least 30 days unless an exception not at issue here applies. Section 13-1-111(1)(c), MCA. Thus, for Piosos to be eligible as a candidate for Roosevelt County Attorney, he must have been a resident of Roosevelt County for at least 30 days prior to November 8, 2022.

¶11 The District Court relied on § 1-1-215, MCA, to determine Piosos was not a resident of Roosevelt County for 30 days prior to the election. This section lists general rules for determining residence and provides that “[i]f a person claims a residence within Montana for any purpose, then that location is the person’s residence for all purposes *unless there is a specific statutory exception.*” Section 1-1-215(2), MCA (emphasis added). We must first determine whether § 1-1-215, MCA, applies in this case.

¶12 In interpreting statutes, a specific statute will prevail over a general statute. *State v. Berdahl*, 2017 MT 26, ¶ 20, 386 Mont. 281, 389 P.3d 254. And we have held that § 1-1-215, MCA, “sounds a clear warning that other residency requirements or definitions

may apply to particular circumstances,” such as for determining residency relating to voter registration. *State v. Britton*, 2001 MT 141, ¶¶ 9, 11–12, 306 Mont. 24, 30 P.3d 337.

¶13 The rules for determining residency for voting are found within § 13-1-112, MCA. Piocos had to be eligible to vote in Roosevelt County to seek the office of County Attorney there. Sections 7-4-2201, 13-1-111(1)(c), MCA. Because Piocos’s qualification for County Attorney depended on being a resident of Roosevelt County for at least 30 days prior to the election, and because § 13-1-112, MCA, is the more specific statute, the District Court should have evaluated Piocos’s residency under § 13-1-112, MCA, rather than § 1-1-215, MCA.

¶14 Piocos relies on *Lima School Dist. No. 12.v. Simonsen*, 210 Mont. 100, 683 P.2d 471 (1984), which dealt with parents’ residency in a school district to determine their eligibility under a transportation contract. That case is not on point. In *Lima*, § 20-10-105, MCA, was at issue, which specifically directed the Court to § 1-1-215, MCA, to determine residency. *See* § 20-10-105, MCA (declaring residence must be determined according to § 1-1-215 when in controversy). As explained above, §§ 13-1-111 through -113, MCA, are the appropriate statutes to determine Piocos’s residence for voting purposes, not § 1-1-215, MCA.¹

¶15 Section 13-1-113, MCA, directs that a person may only have one residence for purposes of voting. Section 13-1-112, MCA, lists specific rules for determining residency

¹ We do not decide whether the facts of this case would be enough to change Piocos’s residence for purposes of § 1-1-215, MCA.

for voting purposes. In the case now before us, two subsections of § 13-1-112, MCA, are relevant:

(1) The residence of an individual is where the individual's *habitation* is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place.²

(Emphasis added.) We must now decide what the legislature intended by using the word “habitation” in § 13-1-112, MCA, as opposed to “residence” generally used throughout § 1-1-215, MCA.

¶16 The word *habitation* is commonly understood to mean, and is defined as, a dwelling-house, a place of abode, a residence. *See, e.g., Black's Law Dictionary* 839 (Henry C. Black ed., 4th ed. 1951). This definition is consistent with the plain meaning of *habitation* as it appears elsewhere in the Code. *See, e.g.,* § 20-25-501(1)(a), MCA (“‘Domicile’ means a person’s true, fixed, and permanent home and place of habitation.”); § 18-2-401(1)(a), MCA (“‘Bona fide Montana resident’ means an individual who . . . has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the individual’s past habitation in this state has been coupled with an intention to make this state the individual’s home.”).

² This statutory language has not changed in substance since it was enacted in 1969. *See* § 23-3022(1), (8), RCM (1969).

¶17 For purposes of voting under § 13-1-112, MCA, the Legislature’s intent was for a person to have a place of abode in the county to which, even when the person is absent, they intend to return.

¶18 Piocos argues that under this “narrow statutory interpretation, a potential candidate . . . could simply sleep in a county . . . prior to the election to establish residency and become an elector and thus a candidate for office.” However, merely sleeping in that county would not be enough to establish residency under § 13-1-112(8), MCA. That potential candidate would have to show both an act of removal from the old county plus an intent to remain in the new county.

¶19 Piocos further contends this rule will disenfranchise college students, members of the military, or traveling workers. To the contrary, an analysis of facts in those cases would not necessarily demonstrate an intent to remain in another place.

¶20 Each case is highly fact dependent, and the question of a candidate’s intention to establish a legal residence must be determined by an analysis of the pertinent facts.

¶21 *Issue Two: Whether the District Court erred when it made no finding of fact as to where Piocos resided in the 30 days prior to the election.*

¶22 Piocos contends the District Court erred when it found that he did not reside in Roosevelt County, without making a factual finding of where he did reside. The court found that:

Piocos . . . had registered to vote in Roosevelt County, Montana, but did not have a residence in Roosevelt County, Montana. While he had rented a commercial space in [Roosevelt County], Piocos never used the space in any way. At the time of the election, when his workday ended, he would return to Valley County, Montana, to sleep.

¶23 A district court need only set forth adequate findings and conclusions so that we do not have to speculate as to its reasoning—the essential and determining factors of its conclusions are sufficient. *In re Seizure of \$23,619.00*, 273 Mont. 474, 483, 905 P.2d 148, 154 (1995).

¶24 The District Court did not clearly err in finding that Pioscos did not reside in Roosevelt County for purposes of voting. Before the election, Pioscos split his time between Yellowstone County and Valley County. At the time of the election, Pioscos was returning each night from his work in Roosevelt County to Valley County where he had an abode. Although he had rented commercial space in Roosevelt County, he never moved anything in, stayed there, or spent a night.

¶25 Pioscos relied on *Luckey v. Brown*, COPP-2020-CFP-037, below. We find it distinguishable and helpful to articulate the rule we set forth today. In *Luckey*, Brown was a Dillon resident while growing up there, but he lost his Dillon residency in 2013 when he relocated to Helena for several years. He then regained his Dillon residency when—although he continued to maintain a residence and a law office in Helena—he *moved back* to Dillon for a majority of his time, received his personal mail there, registered to vote there, listed his Dillon address in his passport, and registered his vehicle there. Pioscos points out many of the same things he does in Roosevelt County: banking, working, getting his car fixed. The key difference is that Pioscos never made his dwelling, abode, or habitation in Roosevelt County. The facts Pioscos points to would be instrumental in determining whether Yellowstone County or Valley County were his residence, as in

Luckey. But these facts do not matter for Roosevelt County because Picos never chose to dwell there.

¶26 Regardless of where his residence for voting purposes was—Yellowstone County or Valley County—prior to the election, Picos never made an “act of removal joined with intent to remain in another place.” Section 13-1-112(8), MCA. Picos testified that he sold his house in Billings with the intention of buying a house in Roosevelt County. This might, in some circumstances, constitute an act of removal sufficient to satisfy § 13-1-112(8), MCA. However, here, the court did not clearly err in finding that Picos had not sufficiently shown an intent to remain in Roosevelt County following the sale of his house in Billings: he continued to split his time between Billings and Valley County in the four months following the sale; never spent a night in Roosevelt County; and never put a down payment on a house there.

CONCLUSION

¶27 Sections 13-1-111 through -113, MCA, are the appropriate statutes to evaluate residency for qualifications of a county office under § 7-4-2201(3), MCA. The District Court had substantial, credible evidence to support a finding that Picos was not a resident of Roosevelt County for voting purposes on November 8, 2022.

¶28 Affirmed.


Chief Justice

We Concur:

Justices