



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE: § No. 08-21-00046-CV
§
ARTURO DOMINGUEZ, § AN ORIGINAL PROCEEDING
§ IN MANDAMUS
RELATOR. §
§

OPINION

Relator Arturo Dominguez has filed a petition for a writ of mandamus invoking our election supervision jurisdiction¹ in connection with the May 1, 2021, race for El Paso Independent School District (EPISD) School Board Trustee, District #1. Dominguez, a candidate for EPISD trustee for District #1, asks this Court to compel EPISD Election Official Elizabeth Carrasco to issue an administrative declaration that Dominguez's opponent Leah Audrae Wayne, a.k.a Leah Audrae Hanany,² is ineligible to run for the District #1 school board seat because she does not meet the six-month in-district residency requirements set by the Texas Election Code.

¹ See TEX.ELEC.CODE ANN. § 273.061.

² Dominguez's mandamus petition, a copy of an El Paso County Voting History Record, and her own response to the mandamus petition refer to the real party in interest by her maiden name, Leah Audrae Wayne. The candidate's election paperwork and name on the ballot state her name is Leah Hanany. We will refer to the real party in interest as Wayne unless context requires otherwise.

Because we can only grant mandamus relief directing an election official to administratively disqualify a candidate based on the existence of conclusively established proof of ineligibility, and because Dominguez has not met his burden of providing that quantum of evidence on this record, the petition for a writ of mandamus is denied.

BACKGROUND

Eligibility Requirements to Run for EPISD School Board

Section 141.001 of the Texas Election Code sets the general requirements to run for most public offices in Texas, including EPISD school board trustee. Section 141.001 requires, among other things, that a candidate:

(5) have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date:

(A) for a candidate whose name is to appear on a general primary election ballot, the date of the regular filing deadline for a candidate's application for a place on the ballot

TEX. ELEC.CODE ANN. § 141.001(5)(A).

We have interpreted the territory requirement in Section 141.001(5) to mean that a candidate is “required to both reside within and be a registered voter in the corresponding precinct” of the office sought. *See In re Perez*, 508 S.W.3d 500, 507 (Tex.App.—El Paso 2016, orig. proceeding). In this race, that means eligible candidates must have (1) resided within the territorial boundaries of EPISD District #1 for six months before the filing deadline to run for District #1 trustee, and (2) been registered to vote in District #1 as of the date of the filing deadline to run for District #1 trustee. *See id.* Dominguez concedes that Wayne timely changed her voter registration information so that she was registered to vote in District #1 by the filing deadline. However, Dominguez is contesting Wayne’s representation that she lived in District #1 for the six months prior to the filing deadline.

The deadline to file an application for a place on the general election ballot for a school board trustee position is not later than 5 p.m. of the 78th day before Election Day. TEX.EDUC.CODE ANN. § 11.055(a). The general election for EPISD District #1 is scheduled to take place on May 1, 2021. It is undisputed that per TEX.EDUC.CODE ANN. § 11.055(a), the filing deadline to run for EPISD District #1 Trustee in the May 1, 2021 general election was February 12, 2021. Consequently, to be eligible to run for EPISD District #1 trustee in the May 1, 2021 election, a candidate must have continuously resided within District #1 since August 16, 2020, which is within six months (180 days) of the February 12, 2021, filing deadline.

Wayne Files for EPISD District #1 School Board Seat;

Dominguez Questions Wayne's Residency

El Paso County Elections Department record shows that Wayne originally registered to vote in El Paso County on April 23, 2010, using the address 435 Riverside (the Riverside address), which is located outside the boundaries of District #1. On January 8, 2021, Wayne filed an address change with the Elections Department and listed her address as being 1218 Stockwell Lane (the Stockwell address), which is located within the geographical bounds of EPISD District #1.

On January 21, 2021, Wayne timely filed her sworn application to run for EPISD District #1 trustee. On her application, Wayne stated that as of the date of her application, she had resided continuously in the State of Texas for thirty-eight years and eight months and that she had resided in the territory from which the office sought is elected for one year and nine months. Wayne listed her address as the in-district Stockwell address.

After Wayne filed to run for District #1 trustee, Dominguez's Campaign Field Manager Christopher Hernandez requested Wayne's voting history record from the El Paso County Elections Department. A copy of Wayne's voting history record appears in the mandamus

appendix before us. The voting history record, dated February 17, 2021, showed that Wayne voted in the 2020 November General Election. This record lists her residence as the in-district Stockwell address.

In an affidavit attached to the amended mandamus petition, Hernandez averred that he contacted Elizabeth Carrasco, EPISD's designated school board race official,³ via telephone on February 24, 2021, alleging that Wayne had an apparent residency discrepancy that would disqualify her from appearing on the ballot. Hernandez claimed that Carrasco "declined to review the documents" and said "she had consulted with both the Texas Secretary of State's office and with legal counsel and determined that she had to rely on the sworn affidavit and would not be removing Mrs. Hanany from the ballot" and "even if she saw the documents, she would not remove Mrs. Hanany from the ballot."⁴

On February 26, 2021, Hernandez requested Wayne's Statement of Residence⁵ for the

³ Except as otherwise provided by law, an application for a place on the ballot must be filed with the secretary of the political subdivision's governing body or, if the governing body has no secretary, with the governing body's presiding officer. TEX.ELEC.CODE ANN. § 144.004. Although Carrasco is not the EPISD board secretary or president, the Texas Secretary of State web site notes that "[f]or jurisdictions where the law says the application is filed with the secretary of the governing body, the duty is usually delegated to an employee of the political subdivision, typically the election records custodian and/or early voting clerk." See <https://www.sos.state.tx.us/elections/laws/candidacy.shtml>. (Last visited April 5, 2021).

⁴ Dominguez's initial mandamus petition did not support this statement with a citation to an affidavit or other competent evidence and was not within the personal knowledge of Dominguez's counsel. We granted leave for Dominguez to file an amended petition containing an affidavit from Hernandez attesting to this fact.

Respondent Carrasco filed a response to this mandamus action at the Court's request. In her response, Carrasco submitted an affidavit in which she denied ever seeing the items Dominguez submitted with the petition for a writ of mandamus until she was served with a copy of the mandamus petition. She stated: "We have no record of any public record being presented to us indicating that this information is incorrect. Had any public record relating to Ms. Hanany's ineligibility for office been presented to me, that record would have been retained in our offices as part of our regular practice, in the course of our regularly conducted official activities."

⁵ Under the Texas Election Code, if a voter's residence is not current because the voter has changed residence within the county, the voter may vote, if otherwise eligible, in the election precinct in which the voter is registered if the voter resides in the county in which the voter is registered, provided certain conditions are met. See TEX.ELEC.CODE ANN. § 63.0011(b). Under those circumstances, before being accepted for voting, the voter must execute a statement of residency and submit it to the election officer, who in turn must retain that statement with the voter's voter registration application. *Id.* § 63.0011(b), (e).

November 2020 General Election from the El Paso County Elections Department. The Department responded that it had no record of a Statement of Residence for Wayne from the November 2020 General Election.⁶

Mandamus Proceedings

At 4:57 p.m. on Friday, March 19, 2021, Dominguez electronically filed this mandamus petition with the Court. The petition indicates that Dominguez served this petition on respondent Carrasco and Real Party in Interest Wayne via certified mail.⁷ Because the early voting period for the May 1, 2021, election begins on April 19, 2021, the Court indicated that it would issue an expedited decision on or before April 12, 2021, and the Clerk of the Court requested responses from Carrasco and Wayne.

In her response, Wayne maintains that her home address has been the in-district Stockwell address since April 8, 2019, consistent with her sworn representation in her candidate application. She attached copies of El Paso County Central Appraisal District property records showing that “Wayne, Leah A. & Hanany, Mickael C.” have been listed as owners of the property at the Stockwell address in the past 2019 and 2020 tax rolls, and will be listed again in the 2021 rolls. Wayne conceded that she did vote in the November 2020 elections, and that at the time, she had not updated her voter registration address to reflect she was residing at the Stockwell address. She attested that she voted at an early voting site located at the University of Texas at El Paso, where

⁶ Neither Dominguez in his petition nor Hernandez in his affidavit contend that this record showing the lack of a statement of residence for Wayne for the November 2020 election was ever presented to Carrasco for her review.

⁷ At or before the time of a document’s filing, the filing party must serve a copy on all parties to the proceeding. TEX.R.APP.P. 9.5(a). Service on a party represented by counsel must be made on that party’s lead counsel. *Id.* Attorneys are required to eFile all civil cases in this Court. Likewise, a document filed electronically under Rule 9.2 must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. TEX.R.APP.P. 9.5(b)(1). If the email address of the party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney in person, by mail, by commercial delivery service, by fax, or by email. TEX.R.APP.P. 9.5.(b)(1), (2).

she presented her identification but was not questioned about the apparent address discrepancy and was permitted to vote. She further attested that it was only as she was preparing her paperwork to run for District #1 that she noticed her voter registration information was out-of-date and that the address was not current, which she said she remedied by submitting a change of address form to the Election Department on January 8, 2021.

DISCUSSION

The central question in this mandamus action is whether Dominguez presented Election Official Carrasco with evidence conclusively contradicting Wayne's representation that she met the eligibility requirements to run for EPSID District #1 trustee. We conclude that Dominguez has not met his burden of conclusively establishing that Wayne failed to continuously reside within EPISD District #1 between August 16, 2020 and the present.

Standard of Review and Applicable Law

We have original jurisdiction to issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer. TEX.ELEC.CODE ANN. § 273.061.

As with any other type of writ of mandamus issued by this Court, the burden to obtain mandamus relief against an election is a high one. While the law provides various avenues of redress for Election Code violations, *see In re Cercone*, 323 S.W.3d 293, 298 (Tex.App.—Dallas 2010, orig. proceeding)(outlining types of remedies such as injunctions and standards needed to obtain them), a writ of mandamus from the court of appeals may only issue to compel public officials to perform ministerial acts, or to correct a clear abuse of discretion by a public official. *In re Williams*, 470 S.W.3d 819, 821 (Tex. 2015).

An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion. *Id.* An otherwise discretionary act becomes ministerial when the facts and circumstances dictate but one rational decision. *In re Flores*, No. 08-06-00079-CR, 2006 WL 958597, at *1 (Tex.App.—El Paso Apr. 13, 2006, orig. proceeding)(not designated for publication). To obtain the writ, a relator bears the burden of showing he has a clear legal right to the performance of the act he seeks to compel, and the duty of the officer sought to be compelled must be one clearly fixed and required by the law. *See In re Cercone*, 323 S.W.3d at 298. In addition to showing that an election official had a legal duty to perform a non-discretionary act, a relator must also show he made a demand for performance on the election official and the election official refused to perform. *Id.* at 297.

Sections of the Election Code dealing with candidacy for political office are mandatory and are to be strictly enforced, and an election official has a ministerial duty to declare a candidate ineligible if presented with public records conclusively showing that the candidate is ineligible. *In re Walker*, 595 S.W.3d 841, 842-43 (Tex.App.—Houston [14th Dist.] 2020, orig. proceeding). That said, appellate courts are not authorized to resolve factual disputes in a mandamus proceeding. *In re Perez*, 508 S.W.3d at 503. Thus, the existence of disputed facts defeats an Election Code mandamus action in the court of appeals. *See In re Woodfill*, 470 S.W.3d 473, 478 (Tex. 2015).

Analysis

The Election Code's grant of mandamus jurisdiction to this Court is limited and does not empower us to simply declare a candidate ineligible and order election officials to do whatever is necessary to remove the candidate from the ballot. *In re Cullar*, 320 S.W.3d 560, 566 (Tex.App.—Dallas 2010, orig. proceeding). Instead, we only review the propriety of administrative actions taken by election officials. *Id.* We may only grant mandamus here if the relator can show us that

both that the election official respondent had no choice but to administratively declare a candidate ineligible based on the evidence presented to that election official, and that the election official has nevertheless refused to declare the candidate ineligible. *Id.*

A candidate may be declared ineligible only if (1) the information on the candidate's application for a place on the ballot indicates that the candidate is ineligible for the office, or (2) facts indicating that the candidate is ineligible are conclusively established by another public record. TEX.ELEC.CODE ANN. §§ 145.003(f)(1)-(2). Wayne's application on its face indicates that she is eligible to run for District #1. Thus, in order to have her administratively ejected from the ballot, Dominguez must show that facts indicating that Wayne is ineligible are conclusively established by another public record. Such a record must be presented to the appropriate authority, who shall promptly review the record. *Id.* § 145.003(g). If the authority determines that the record establishes ineligibility, the authority shall declare the candidate ineligible. *Id.*

As a threshold matter, both Carrasco and Wayne contend that Dominguez failed to meet the demand-and-refusal prerequisite to obtaining mandamus relief in this Court. *See In re Vela*, 399 S.W.3d 265, 266 (Tex.App.—San Antonio 2012, orig. proceeding). Carrasco asserts that Dominguez never presented her with the documents he asserts show Wayne is ineligible. Dominguez claims in his mandamus petition that his campaign manager Chris Hernandez did present Carrasco with these records and that she determined she could not remove Wayne from the ballot. Wayne contends that Dominguez's assertion in his mandamus petition that he brought this issue to Carrasco's attention is not supported by any sworn evidence as required by TEX.R.APP.P. 52.8. *Cf. In re Vela*, 399 S.W.3d at 266 (identifying letters from an election official refusing to place a candidate on the ballot as proof that the election official refused to act following a demand for action).

We need not dive into the minutiae of the demand-and-refusal aspect of the dispute. Assuming for the sake of argument that Dominguez did present the records attached to his mandamus petition to Carrasco for her review, these public records do not conclusively establish that Wayne lived outside of District #1 for the six months preceding the filing deadline such that Carrasco had a ministerial duty to declare Wayne was ineligible to run for District #1.

Five years ago, this Court interpreted the Texas Election Code's residency requirements in a similar election mandamus involving incumbent El Paso County Commissioner Vince Perez, who sought to have his opponent David Quintanilla removed from the ballot based on alleged failures to reside in the county precinct for six months and for failing to timely register to vote in the county precinct by the Texas Election Code's deadline. *See In re Perez*, 508 S.W.3d at 504-05. In that case, we ultimately granted Perez mandamus relief because Perez conclusively showed that Quintanilla failed to register to vote in the precinct in time to run for county commissioner. *Id.* at 508.

However, before reaching the voter registration issue, we first analyzed the evidence Perez provided surrounding the residency requirement and held that, for mandamus purposes, Perez could *not* conclusively establish Quintanilla's ineligibility under residency requirements simply by contradicting Quintanilla's sworn statements he lived in the precinct with election records showing Quintanilla had not changed his voter registration address until a later date. We wrote:

[T]he records available to Respondents do not conclusively prove that Quintanilla was not a resident of Precinct 3 for the six month period preceding the filing deadline. Different inferences can be drawn from the evidence presented to Respondents. One inference is that Quintanilla moved to Precinct 3 on or about December 7, 2015, the date he submitted his address change form. An equally plausible inference is that Quintanilla resided in Precinct 3 for six months or more before the filing deadline and he simply failed to submit an address change form until December 7, 2015. We must adhere to the well-established rule that an appellate court is not permitted to resolve fact questions in a mandamus proceeding.

In re Perez, 508 S.W.3d at 507.

As in *In re Perez*, we find ourselves here with a conflicting inference problem created by a discrepancy between a candidate's sworn representations on her candidate filing application and the county's voter registration records indicating she may have voted at her former address during the residency period. And as in *In re Perez*, we recognize that these conflicting inferences requiring factual resolution preclude us from granting mandamus relief, as we are not a fact-finding court; we may only issue a writ of mandamus when the evidence presented and the outcome required are both truly clear. *Id.*

Other courts facing the same situation as this one have concluded that records showing a candidate voted out-of-district during a residency period are insufficient to conclusively establish that the candidate was not an in-district resident. For example, in *In re Jackson*, the Tenth Court of Appeals was faced with a mandamus action in which a candidate for the Waco city council represented on her candidate application that she had been a city resident for more than a year, but public records showed she had voted in a precinct outside of Waco city limits during the period in which the city charter required her to be a city resident. *See In re Jackson*, 14 S.W.3d 843, 847 (Tex.App.—Waco 2000, orig. proceeding). The candidate's opponent successfully argued to the city secretary that the secretary was required to "presume" that the candidate resided outside of Waco city limits based on her voting record and thus declare the candidate ineligible to run for city council. *Id.* The candidate brought a mandamus action against the city secretary, arguing that the quantum of evidence provided to the city secretary did not rise to the level of "conclusively establish[ing]" that the candidate resided outside city limits, particularly in light of the candidate's own representations of proper residency. *Id.*

Our sister court held that in the face of the candidate's residency representation on her candidate application form, the candidate's out-of-district voting record did not conclusively

establish the candidate's ineligibility under the residency requirement because the Election Code permits a voter to cast a ballot in her former precinct. *Id.* Because of this, the fact that the candidate voted in her former precinct outside city limits did not conclusively establish that the candidate's situs of residency was outside city limits. *Id.* at 848. And because the opponent had failed to *conclusively* contradict the candidate's prima facie statements of eligibility as required by TEX.ELEC.CODE ANN. § 145.003(f), the city secretary erred by administratively declaring the candidate to be ineligible to run for Waco city council, and the Tenth Court of Appeals granted mandamus and directed the city secretary to reinstate the candidate on the ballot. *Id.*

Likewise, the Fourth Court of Appeals held in *In re Vela* that the city secretary of the City of Rio Bravo lacked the authority to administratively declare a candidate ineligible to run for mayor where the candidate asserted he met the residency requirement and public records did not conclusively refute his assertion. *See In re Vela*, 399 S.W.3d at 265. In that case, the city secretary relied on (1) an April 17, 1995, application for a homestead exemption for the candidate's property in Laredo; (2) the fact that the candidate was registered to vote in Laredo; (3) the candidate's claimed residential address in Rio Bravo was a commercial property being taxed as such and not eligible for the homestead exemption; and (4) the property the candidate owned in Rio Bravo was a commercial property that was not eligible for a homestead exemption. *Id.* at 265. The Fourth Court of Appeals held that these records were not sufficiently clear to establish that the candidate lived outside the City of Rio Bravo during the residency period; as such, the city secretary had a ministerial duty to declare him eligible because his opponent had not met the burden of establishing ineligibility. *Id.*

On this bare record consisting only of the candidate's attestation of residency on a date certain and county records showing that the candidate updated her voter registration at a later date

and may have inadvertently voted while being listed in county records at her previous address, Dominguez cannot conclusively establish that Wayne resided outside District #1. *See In re Perez*, 508 S.W.3d at 507; *In re Jackson*, 14 S.W.3d at 847.

CONCLUSION

The petition for a writ of mandamus is denied.

April 6, 2021

PER CURIAM

Before Rodriguez, C.J., Palafox, and Alley, JJ.