

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Michael Isom,

Petitioner,

vs.

Town of Atlantic Beach Municipal Election Commission,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

C.A. No.: 2023-CP-26-01112

**ORDER DENYING PETITIONER'S
APPEAL AND AFFIRMING ORDER AND
REPORT OF TOWN OF ATLANTIC
BEACH ELECTION COMMISSION**

This matter was presented to the Court on Petitioner Michael Isom's Notice of Appeal from the February 13, 2023 Order and Report of the Town of Atlantic Beach Election Commission. The Town of Atlantic Beach Election Commission filed the transcript of the February 6, 2023 Election Protest Hearing with the Horry County Clerk of Court on February 13, 2023 together with the Order and Report.

Present at the hearing on behalf of the Petitioner were Petitioner Michael Isom and Kenneth Davis, Esquire, as counsel for Michael Isom ("Isom"). Present at the hearing on behalf of the Respondent were Joe Montgomery, Chair of the Town of Atlantic Beach Municipal Election Commission, and Amanda Bailey, Esquire, as counsel for the Town of Atlantic Beach Municipal Election Commission.

Isom filed a Notice of Appeal on February 23, 2023 alleging the Town of Atlantic Beach Municipal Election Commission ("MEC") erred in:

- a. finding that John David was a resident of the Town of Atlantic Beach, when there was evidence presented during the hearing indicating that the property served as John David's vacation rental property and John David has declared his legal residence to be in the State of Maryland;

RECEIVED

JUN 02 2023

S.C. SUPREME COURT

b. determining that John David was a resident of the Town of Atlantic Beach when John David did not enter any evidence supporting his residency to the Commission;

c. not including documents submitted along with the Notice of Appeal in the record at the same time the Notice of Appeal was entered in to the record as a part of Exhibit A to the Hearing Transcript, which is included as Attachment 2 to this Notice. The documents provided evidence that John David was not a resident of the Town of Atlantic Beach.

d. determining that John David was a resident of the Town of Atlantic Beach without identifying or finding any facts to support its determination.

In support of his appeal, Isom filed Attachments 1 and 2 to the Notice of Appeal and a Memorandum of Law on April 21, 2023.

The MEC filed a brief in opposition to the appeal on April 18, 2023 and attached a copy of transcripts and exhibits from the February 2, 2023 Provisional Ballot and Canvassing Hearing.

Pursuant to the appeal, transcripts, and documents on file, as well as the memoranda and arguments of counsel, I find as follows:

1. Joe Montgomery, Kenneth McIver, and Carolyn Gore, are appointed members of the Town of Atlantic Beach Municipal Election Commission by the Town Council for Atlantic Beach.

2. Pursuant to the February 2, 2015 Resolution and the Town of Atlantic Beach Ordinance 02-2015, the MEC noticed a Special Election to be held on January 17, 2023, by Public Notice published in The Sun News on November 9, 2022, as corrected and re-published on November 16, 2022.

3. Pursuant to the Public Notice of the Special Election, the filing period for Statements of Candidacy was open from November 11, 2022 at 12:00 noon through November 29, 2022 at 12:00 noon.

4. Four candidates filed Statements of Candidacy for the Special Election during the filing period: John David, Michael Isom, Lenny Evans, and Brian Taylor. Thereafter, Mr. Taylor removed his name from consideration.

5. The MEC held the Special Election on January 17, 2023 as set forth in the Public Notice.

6. The MEC announced the unofficial results of the election at the close of the polls on January 17, 2023.

7. The MEC held a provisional ballot and canvassing hearing on January 19, 2023 at 10:00 a.m. and because no candidate received a majority vote, a run-off was held on January 31, 2023.

8. The MEC held the run-off on January 31, 2023 as set forth in the Public Notice.

9. The MEC announced the unofficial result of the run-off at the close of the polls on January 31, 2023 and announced that a provisional ballot and canvassing hearing for the run-off for February 2, 2023 at 10:00 a.m.

10. A provisional ballot and canvassing hearing for the run-off was held on February 2, 2023 at 10:00 a.m. in which the validity of the challenged ballots, including the ballot of John David, was decided. The MEC voted to the results and declare the winner.

11. Josephine Isom testified at the hearing challenging the ballots of, among other voters, John David. Ms. Isom submitted exhibits in support of the challenge, asserting John David was not a resident of the Town of Atlantic Beach.

12. John David testified at the hearing in opposition to the challenge of his ballot and provided the MEC his driver's license and his voter registration card.

13. A copy of the transcript and exhibits from the February 2, 2023 provisional ballot and canvassing hearing are filed with the Court and attached to the Respondent Town of Atlantic Beach Municipal Election Commission's Brief on Appeal, filed on April 18, 2023.

14. Following the February 2, 2023 certification, Isom timely filed a protest of election with the MEC.

15. As a result of the protest, notice and copies of the protest were served on all interested parties and a hearing was scheduled for February 6, 2013 at 4:00 p.m.

16. Mr. Isom challenged the Special Election alleging that the MEC erred for the reasons set forth above.

17. The MEC marked the following exhibits: Exhibit A, a copy of the agenda, protest letter, and service documents of the protest letter; Exhibit B, a copy of the Town of Atlantic Beach election ordinance; Exhibit C, a copy of the public notices for the Special Election; and Exhibit D, a copy of the statements of candidates for candidates in the Special Election.

18. Isom presented Josephine Isom as a witness. Josephine Isom is Michael Isom's mother and a sitting member of town council.

19. Ms. Isom did not provide additional testimony at the election protest hearing but relied upon the exhibits she presented at the provisional ballot and canvassing hearing for the run-off was held on February 2, 2023

20. Candidate John David did not present any responsive testimony at the election protest hearing.

21. A copy of the transcript of the election protest hearing was filed with the Clerk of Court pursuant to S.C. Code Ann. § 5-15-130, together with the hearing exhibits.

22. Relevant to this appeal, the MEC has the authority, pursuant to S.C. Ann. 5-15-100, to, among other things, determine the legal qualifications of electors.

23. The decision on provisional ballots by the MEC at the canvassing hearing for the run-off held on February 2, 2023 is a final decision. S.C. Code Ann. § 7-13-830.

24. Article VI, Section 1 and Article XVII, Section 1 of the South Carolina Constitution establishes that an elected official must meet the “qualifications of an elector,” or in other words, must be eligible to vote for the office they propose to hold.

25. These requirements apply to city council: “Mayors and councilmen shall be qualified electors of the municipality and, if they are elected subject to residential or ward requirements as provided in this section, they shall be qualified electors of the ward prescribed for their election qualification.” S.C. Code Ann. § 5-15-20.

26. In order to be a qualified elector in the Town of Atlantic Beach, the person must have resided within municipal limits for at least 30 days prior to an election. This requirement would be applicable also for serving as a councilmember. If the council seat represents a specific ward, then the person must have lived within that ward specifically. S.C. Code Ann. §§ 7-5-610 through -675.

27. Pursuant to S.C. Code Ann. § 7-1-25(A), “[a] persons’ residence is his domicile. ‘Domicile’ means a person’s fixed home where he has an intention of returning when he is absent. A person has only one domicile.”

28. Section 7-1-25 of the South Carolina Code sets forth the following:

- a. For voting purposes, a person has changed his domicile if he (1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place.
- b. For voting purposes, a spouse may establish a separate domicile.

c. For voting purposes, factors to consider in determining a person's intention regarding his domicile include, but are not limited to:

1. a voter's address reported on income tax returns;
2. a voter's real estate interests, including the address for which the legal residence tax assessment ratio is claimed pursuant to Section 12-43-220(c);
3. a voter's physical mailing address;
4. a voter's address on driver's license or other identification issued by the Department of Motor Vehicles;
5. a voter's address on legal and financial documents;
6. a voter's address utilized for educational purposes, such as public school assignment and determination of tuition at institutions of higher education;
7. a voter's address on an automobile registration;
8. a voter's address utilized for membership in clubs and organizations;
9. the location of a voter's personal property;
10. residence of a voter's parents, spouse, and children; and
11. whether a voter temporarily relocated due to medical care for the voter or for a member of the voter's immediate family.

29. A voter's residence requires the person's intent to reside there.

30. John David submitted a statement of candidacy to the MEC received on November 18, 2022, whereby he affirmed, among other things, that "I meet, or will meet by the time of the General or Special Election or as otherwise required by law, the qualifications to hold this office. I the undersigned certify that I am a legal resident and a registered voter of the Town of Atlantic Beach, South Carolina."

31. Mr. Davis' vote at the run-off election was decided at the provisional ballot and canvassing hearing for the run-off on February 2, 2023.

32. As a result, and in consideration of the evidence presented by the candidates at the election protest hearing, Kenneth McIver moved that John David does meet the qualifications to be a candidate for council and to vote in the election. Joe Montgomery seconded the motion. Kenneth McIver and Joe Montgomery voted in favor of the motion and Caroline Gore voted against the motion. The motion carried by majority vote.

33. Therefore, the MEC denied the election protest filed by Isom.

34. The decision of the municipal election commission may be appealed to the court of common pleas within ten days after a party receives notice of it. S.C. Code Ann. § 5-15-140 (2004).

35. The circuit court, sitting in an appellate capacity, does not conduct a *de novo* hearing or take testimony. The circuit court must examine the decision for errors of law, but it must accept the factual findings of the commission unless they are wholly unsupported by the evidence. Taylor v. Town of Atl. Beach Election Comm'n, 363 S.C. 8, 14-15, 609 S.E.2d 500, 503 (2005).

36. In the present case, this Court is sitting in an appellate capacity reviewing the election protest filed by Isom.

37. “There are two prerequisites to maintaining an election contest in South Carolina: (1) the contest notice must allege irregularities or illegalities; and (2) the alleged irregularities or illegalities must have changed or rendered doubtful the result of the election in the absence of fraud, a constitutional violation, [or] a statute providing that such irregularity or illegality shall invalidate the election.” Id.

38. The residence of John David is an alleged irregularity that, if proven, would change the result of the election.

39. Notwithstanding, even considering the evidence presented by Josephine Isom at the provisional ballot and canvassing hearing to challenge John David’s qualification as a voter, the record supports the MEC’s denial of the election protest.

40. Specifically, Mr. David provided the MEC his original driver’s license and voter registration card for examination at the February 2, 2023 provisional ballot and canvassing hearing.

41. Further, Mr. David testified on February 2, 2023 that he was in the district for more than 30 days prior to registering to vote, that Atlantic Beach is his domicile, that he intends to be in Atlantic Beach, and intends to return every time he leaves.

42. The MEC also received and reviewed the documents submitted by Josephine Isom at the provisional ballot and canvassing hearing for the run-off on February 2, 2023, determined the weight and credibility of Ms. Isom and the documents she submitted and, nonetheless, determined that the record supported the MEC's determination at the February 2, 2023 hearing and election protest.

43. As a result, I must accept the factual findings of the MEC as they are supported by the evidence. Id.

44. Moreover, the Appellant does not assert, nor do I find, any error of law to warrant a reversal of the election.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the February 13, 2023, Order and Report of the Town of Atlantic Beach Election Commission is AFFIRMED.

IT IS SO ORDERED.



Horry Common Pleas

Case Caption: Michael Isom VS Town Of Atlantic Beach Municipal Election Commission
Case Number: 2023CP2601112
Type: Order/Other

So Ordered

Debra R. McCaslin

Electronically signed on 2023-05-12 11:36:47 page 9 of 9

RECEIVED

JUN 02 2023

S.C. SUPREME COURT