

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Tiffany R. Spann-Wilder)
)
 Challenger,)
)
 v.)
)
 Deon Tedder,)
)
 Respondent.)
 _____)

**BOARD OF VOTER REGISTRATION
 AND ELECTIONS FOR CHARLESTON
 COUNTY**

FINAL ORDER

BACKGROUND AND JURISDICTION

On May 20, 2020, the Board of Voter Registration and Elections of Charleston County (the “Election Board”) received a written challenge to the qualifications of Deon Tedder (“Tedder”) to run in the Democratic Party Primary Election for the State House seat for District 109 from Tiffany R. Spann-Wilder (“Spann-Wilder”), a registered voter in Charleston County. The challenge lays out the accusation that Tedder is not a resident of State House District 109, although Tedder is on the Democratic Party Primary ballot as a candidate for House District 109 in the June 9, 2020 Primary Election. Spann-Wilder brought the challenge pursuant to S.C. Code Section 2-1-40, and the requested relief was a determination that Tedder was not a qualified candidate for House District 109.

On May 29, 2020, a pre-hearing conference was conducted by the Election Board by means of a zoom conference, with the Election Board Chairman, Executive Director, Deputy Executive Director, and attorney, and the attorneys or parties to the voter registration challenge in attendance. At the pre-hearing conference, the Election Board, by its attorney, declared that State law provides no mechanism for a hearing to be conducted by the Election Board regarding the qualifications of Tedder as a candidate for the Democratic Party nomination for House District 109. In fact, the Election Board has no rôle in the determination of candidate qualifications. That rôle is exclusively within the province of the political parties, in this instance, the South Carolina State Democratic Party Executive Committee. See Section 7-13-40, S.C. Code Ann. (Cum. Supp. 2015). (“Political parties nominating candidates by party primary must verify the qualifications of those candidates prior to certification to the appropriate election

commission of the names of candidates to be placed on primary ballots.”) Consequently, the Election Board advised the parties at the pre-hearing conference that the challenge was to be heard by the Election Board pursuant to Section 7-5-230, S.C. Code Ann. (Cum. Supp. 2015) as solely a challenge to Tedder’s voter registration qualifications.

Subsequently, on May 28, 2020, Spann-Wilder submitted by email an Amended Challenge, which was further amended the same day, more directly challenging Tedder’s voter registration qualifications under S.C. Code Sections 7-5-120 and 7-5-230. Tedder, through his attorney, objected on May 28, 2020, and again at the beginning of the challenge hearing, to the Election Board hearing the amended challenge the morning following receipt of the amended challenges from Spann-Wilder.

Section 7-5-230 provides as follows:

Legal qualifications; challenges; proof of residency or domicile; appeals.

(A) The county boards of voter registration and elections to be appointed under Section 7-5-10 shall be the judges of the legal qualifications of all applicants for registration. The board is empowered to require proof of these qualifications as it considers necessary.

Once a person is registered, challenges of the qualifications of any elector, except for challenges issued at the polls pursuant to Sections 7-13-810, 7-13-820, and 7-15-420 must be made in writing to the county board of voter registration and elections in the county of registration. The board must, within ten days following the challenge and after first giving notice to the elector and the challenger, hold a hearing, accept evidence, and rule upon whether the elector meets or fails to meet the qualifications set forth in Section 7-5-120.

(B) When a challenge is made regarding the residence or domicile of an elector, the board must consider the provisions of Section 7-1-25(D).

(C) Any person denied registration or restoration of his name on the registration books shall have the right of appeal from the decision of the county board of voter registration and elections denying him registration or such restoration to the court of common pleas of the county or any judge thereof and subsequently to the Supreme Court.

It is clear from this statute that the Election Board has sole jurisdiction to determine in the first instance the legal qualifications for registered voters. The Election Board has a statutory duty to conduct the hearing within 10 days of receipt of the challenge.

The challenge was initially purported to be brought under S.C. Code Section 2-1-40. The Election Board, however, has no authority to adjudicate challenges to candidates or officeholders under that Code section. Nor does it have authority to adjudicate challenges to candidates or officeholders under any other statute. Accordingly, the Election Board treated the initial challenge and the subsequent amended challenges as a challenge of Tedder's qualifications for registration under S.C. Code Section 7-5-230. Because the Election Board made its intention clear during the pre-hearing conference that it would treat Spann-Wilder's challenge as one under S.C. Code Section 7-5-230 regardless of the code section cited in the initial challenge, the Chairman overruled Tedder's objection.

S.C. Code Section 7-5-230 expressly limits the Election Board to decide on whether the voter currently meets or fails to meet the voter registration qualifications set forth in S.C. Code Section 7-5-120. The Election Board does not have authority to provide opinions as to the voter registration status of Tedder as of any date other than the date of the hearing. The Election Board also notes that S.C. Code Section 7-5-240 allows an appeal from an adverse decision of the Election Board to the State Circuit Court only by the voter; the challenger has no right to appeal an adverse decision by the Election Board.

The Election Board's authority and jurisdiction is controlled by the recent decision of the State Supreme Court in Gantt, et al. v. Selph, et al., 423 S.C. 333, 814 S.E.2d 523 (S.C. 2018). The Election Board knows of no provision of State law granting authority to the Election Board to investigate and determine the qualifications of a candidate for election to the State House of Representatives. As the Supreme Court noted in Gantt, in the absence of such authority, it appears that the challenger must pursue the requested relief pursuant to the Declaratory Judgments Act in State Circuit Court.

HEARING

In compliance with that statutory duty, the Election Board conducted the hearing beginning at 10:00 a.m. on Friday, May 29, 2020, at its offices located at 4367 Headquarters Road, North Charleston, South Carolina. The Chairman of the Election Board presided over the

hearing and a quorum of the Election Board was present during the entire hearing. Samuel W. Howell, Esq., served as counsel to the Election Board.

Spann-Wilder, who is an attorney was also represented by co-counsel Yolanda Fair O'Neill, Esq. Tedder was represented by Mark A. Peper, Esq. and co-counsel Brenna Wiles, Esq. After hearing opening statements from the parties, the Chairman asked challenger Spann-Wilder if she desired to testify or otherwise introduce evidence. Spann-Wilder responded in the affirmative and then proceeded to present direct testimony under oath and introduced various documents as evidence in the hearing. Spann-Wilder was subjected to cross-examination by Mr. Peper and the Election Board.

Spann-Wilder's testimony and documentary evidence were primarily to the effect that:

1. Tedder's voter registration records indicate a change of residence for Tedder from 215 Promenade Vista, Charleston (the "Promenade Vista Residence"), to 2629 Orchid Avenue, North Charleston (the "Orchid Avenue Residence"), a property located within House District 109. The Promenade Vista Residence is not located in House District 109.
2. Property and utility records regarding various individuals at the Promenade Vista Residence and the Orchid Avenue Residence. None of the records is in Tedder's name.
3. The property tax records for 1755 Central Park Road, Unit 6209, Charleston, SC 29412-2850 (the "Central Park Residence") demonstrating that one of the owners of the property is Mr. Tedder's girlfriend, Jillian Broughton. The Central Park Residence is not located in House District 109.
4. Tedder's sublease agreement of the Orchid Avenue Residence with Edward Pasoquen was not signed by the landlord of the property, Conrex Properties.
5. South Carolina Department of Motor Vehicles records indicate that the Toyota Sequoia owned by Alana Lipscomb, Pasoquen's partner, is registered at the Orchid Avenue Residence.
6. Facebook post, including those made by Lipscomb announcing the birth of her son, Edward Pasoquen, III, on February 5, 2020.
7. North Carolina Division of Motor Vehicles records dated May 20, 2020 indicate that Tedder was a resident of Durham, North Carolina with a North Carolina

Drivers License issued on April 25, 2017, and an expiration date of April 26, 2025.

8. South Carolina Department of Motor Vehicles records indicate that Tedder was a resident of the Orchid Avenue Residence with a South Carolina Drivers License issued on May 14, 2020, and an expiration date of May 14, 2028. These records also indicate that Tedder surrendered a North Carolina Drivers License on May 14, 2020.
9. Cingular Wireless billing records for Tedder showing the Central Park Residence as his billing address through the period ended May 4, 2020.
10. In Tedder's initial Candidate Campaign Disclosure Report filed with the State Ethics Commission and dated April 10, 2020, Tedder disclosed that he made two contributions to his campaign; one on March 23, 2020, and the other on March 31, 2020. In this Report, he gives his address as the Central Park Residence for both contributions.
11. Spann-Wilder also testified as to the criminal record of Edward John Pasoquen, Jr., which includes documentation that Pasoquen pled guilty to financial transaction fraud, a crime of moral turpitude, as well as several charges and convictions for possession of illegal drugs. A copy of the history was introduced into evidence as Exhibit 11. This report states the Orchid Avenue Residence as one of Edward John Pasoquen's addresses.

On cross-examination by Tedder's attorney, Spann-Wilder admitted that she is the spouse of a candidate running in the Democratic Party Primary Election for State House of Representatives District 109. Spann-Wilder also testified on examination from the Board that Tedder received a financial remuneration from his earlier work with her law firm when Tedder was employed by her law firm. This remuneration was paid in January 2020 to Tedder at the Central Park Residence address.

Tedder did not attend the hearing. The sole evidence presented on behalf of Tedder was his Affidavit dated May 28, 2020. Tedder's Affidavit and attached documentary evidence was primarily to the effect that:

1. In August 2016, Tedder accepted employment in Charleston and moved from Columbia, South Carolina to the Promenade Vista Residence.

2. In November, 2017, Tedder moved in with his girlfriend at the Central Park Residence.
3. On February 28, 2020, Tedder moved to the Orchid Avenue Residence and entered into a sublease at that address with Edward Pasoquen.
4. On or about March 1, 2020, Tedder notified his employer that his primary residence had changed to the Orchid Avenue Residence.
5. Tedder's payroll statement for the period ended March 13, 2020, states the Orchid Avenue Residence as an address for Tedder.
6. On March 17, 2020, Tedder changed his voter registration residence address to the Orchid Avenue Residence.
7. On March 23, 2020, Tedder filed a Statement of Intention of Candidacy and Party Pledge for State House of Representatives District 109, using his office address of 3844 Leeds Avenue, North Charleston, SC 29405 as his address.
8. On May 14, 2020, Tedder obtained a South Carolina Drivers License showing the Orchid Avenue Residence as his residence.
9. Tedder does not own any real or personal property.

APPLICABLE LAW

S.C. Code Section 7-1-25 provides the statutory definition of "domicile" for purposes of voter registration. That section provides as follows:

(A) A person's 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. (B) 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. (C) For voting purposes, a spouse may establish a separate domicile.

S.C. Code Section 7-5-230(B) requires that "when a challenge is made regarding the residence or domicile of an elector, the board must consider the provisions of Section 7-1-25(D)." Section 7-1-25(D) provides as follows:

(D) 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 education 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 memberships 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.

CONCLUSION

The Board has considered all of the provisions of S.C. Code Section 7-1-25(D), as well as the other paragraphs of Section 7-1-25, in light of all the testimony and documentary evidence given during the hearing. The Board, however, finds that there is no testimony or other evidence regarding the basic definition of "domicile" as set forth in S.C. Code Section 7-1-25(A) and (B) as applied to Tedder. In particular, there is no testimony that Tedder considers the Orchid Avenue Residence his "domicile" where "he has the intention of returning when he is absent." Moreover, there is no testimony that when Tedder changed his voter registration address from the Promenade Vista Residence to the Orchid Avenue Residence that he abandoned the Promenade Vista Residence or the Central Park Residence and established the Orchid Avenue Residence as his new home, having a present intention to make the Orchid Avenue Residence his domicile with no present intention to leave the Orchid Avenue Residence. Consequently, the Board determines that the Orchid Avenue Residence is not Tedder's "domicile" in light of the conflicting evidence regarding his use of the Promenade Vista Residence, the Orchid Avenue Residence, and the Central Park Residence, and that Tedder fails to meet the qualifications set

forth in S.C. Code Section 7-5-120 for his change of voter registration address.

We Approve.

Patricia C. Vannado
Dan H. H. H. H.
Mary Ann H. H. H.
Cassidy E. Lecque

Charleston, South Carolina
June 11, 2020