

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Civil Action No. 2020-CP-10-2720
Appellate Case No: 2020-001209

Deon Tedder,

Respondent,

v.

Board of Voter Registration & Elections for
Charleston County and Jeffery Wilder,

Of Whom Jeffery Wilder, is the

Appellant.

**APPELLANT JEFFERY WILDER'S RETURN TO RESPONDENT TEDDER'S
MOTION TO DISMISS**

Appellant Jeffery W. Wilder, pursuant to Rule 240(e), SCACR, responds to Respondent's Motion Dismiss and respectfully asks of this court to deny the motion. The Appellant has standing to bring this action as a resident of House District 109 and as a candidate for the South Carolina House District 109 seat and this Court has appellate jurisdiction in this matter as outlined in Rule 203(d)(1)(A)(iv), SCACR as it is an appeal of a final judgment from the circuit court pertaining to an election and election procedure. Appellant will show unto this court that this matter is a viable claim and should remain pending final disposition of the court. Appellant asserts the following in support of the same.

BACKGROUND

Appellant Wilder sought the Democratic Party's nomination for the office of South Carolina House of Representatives District 109. He filed for this office on March 17, 2020 using his home address since 2007 of 6977 Dorchester Road, North Charleston, SC 29418. Respondent Tedder (a member of the South Carolina Bar Association) sought the Democratic Party's nomination for the office of South Carolina House of Representatives District 109. On or about March 17, 2020, Defendant Tedder changed his voting address from 215 Promenade Vista St., Apt 4004, Charleston, SC 29412 (James Island section of the Lowcountry) to 2629 Orchid Avenue, North Charleston, SC 29405. He then filed to run for House District 109 on March 23, 2020 using the North Charleston address of 2629 Orchid Avenue, North Charleston, SC 29405. Respondent Tedder still possessed a North Carolina Driver's license at the time of his address change and filing. Elder James Johnson also sought Democratic Party's nomination for the office of South Carolina House of Representatives District 109. He changed his address from 2676 Tillman Street, North Charleston, SC 29406 to 2931 Baker Avenue, North Charleston, SC 29405 and filed for House District 109 all March 18, 2020.¹

On May 20, 2020, counsel for the Appellant filed a Voter Residency Challenge² as to the validity of Respondent Tedder's address, thus the Constitutionality of his run for office as SC Constitution Article III, Section 7 states in part that **"A candidate for the Senate or House of Representatives must be a legal resident of the district in which**

¹ The Charleston County Board of Voter Registration found that Johnson was a valid registrant at Baker Avenue, a home that he owned in the District.

² Counsel for the Respondent continues to make "red-herring" references in the litigation to the undersigned's relationship to the Appellant, that being his wife and to the undersigned's position as a part-time magistrate judge. As a part-time magistrate the practice of law is still permissible for any client whether they be a relative or not. However, prior to engaging in the representation of the campaign, a judicial advisory opinion was sought. On May 15, 2020, Advisory Opinion 7-2020 was issued. The Voter Residency Challenge was filed on May 20, 2020. Never was the part-time magistrate position or title raised by the undersigned in the matter; nor were the resources of the court used. There is no Judicial Canon violation and the reference to Canon 5 (A)(1)(b) is without merit.

he is a candidate at the time he files for the office.” On May 29, 2020, The Charleston County Board of Voter Registration and Elections held a voter challenge hearing regarding Tedder’s status as a qualified elector at 2629 Orchid Avenue, North Charleston, SC 29405. Tedder did not appear for the hearing, however, he was represented by counsel and submitted an affidavit and various documents.

The Charleston County Board of Voter Registration and Elections found 2629 Orchid Avenue, North Charleston, SC 29205 was not Defendant Tedder’s domicile/residence as defined in S.C. Code §7-1-25 for purposes of qualifying that location for a change of his voter registration address as set forth in S.C. Code §7-5-120. This decision was rendered orally on the morning of May 29, 2020. The formal order was issued on June 11, 2020, two (2) days post the primary and Respondent appealed that same day. However, Respondent and the Democratic Party were on notice that Respondent failed to meet yet another requirement of the State Constitution Article III, Section 7 wherein it states “[N]o person is eligible for a seat in the Senate or House of Representatives who, at the time of his election, is not a duly qualified elector under this Constitution in the district in which he may be chosen. Respondent and Candidate Johnson went on to a run-off election on June 23, 2020 at which time Respondent had been removed from the election rolls by the South Carolina Election Commission. (See Mot. Ex. A).

Appellant filed a declaratory action on June 19, 2020 on order to bring in all parties who had or would have a roll in the final determination in the House District 109 race. On June 29, 2020, Appellant filed to Intervene as a party in Respondent’s Appeal hearing of June 30, 2020 on the basis that the state and local Democratic Party failed to take the required action in vetting Respondent and he if becomes the Democratic Party Nominee in the general election he could be disqualified by his Libertarian opponent if he wins for

his failure to meet the Constitutional requirements of the office and it would lead to his ultimate removal and thousands of Democratic District 109 voters being disenfranchised. Judge R. Markley Dennis, Jr. granted Appellant's Motion to Intervene. Judge Dennis heard the matter on review of the submissions from below³ and found in the Respondent's favor executing his order on July 2, 2020. On July 11, 2020, Appellant timely filed a Motion to Reconsider pursuant to Rule 59 SCRPC and alternatively under Rule 60 (b)(2) SCRPC (Newly Discovered Evidence). (See Mot. Ex. B).⁴

While awaiting a ruling as to the Rule 59 and 60 Motions, Appellant sought to depose a corporate representative of the property owner at the home in which Respondent contends to reside. Respondent moved for a Protective Order from Discovery, to dismiss the Declaratory Action and for Rule 11 and Frivolous Claim Sanctions. Prior to the hearing on August 25, 2020 which was heard by Judge R. Ferrell Cothran, Jr., Appellant cancelled the deposition. In defense of the Motion to Dismiss and the frivolous action and Rule 11 claims, Appellant provided an affidavit from the property manager which stated that Respondent was not the tenant nor a listed occupant at 2629 Orchid Drive, North Charleston, SC 29405 and the tenant therein had no authority to extend occupancy without their express approval. (See Mot. Ex. C). Judge Cothran dismissed the declaratory action on Respondent's position that the legal issues in the appeal declaratory action and were the same. Appellant asserted that while the matters were tied to common facts, they were in fact different matters of law – one as to the validity of the electorate and the to the other to the constitutional qualification of the candidate which stems from his residency.

³ Judge Dennis DID NOT hear the matter De Novo. Tedder was not present at the original hearing and with no further testimony or submissions accepted, Judge Dennis reversed the Charleston County Board of Voter Registration's Panel.

⁴ The Motion to Reconsider has three (3) Exhibits. Exhibits A & C are presented in full. Exhibit B is a lengthy document and only page 1-4 are presented herein for purposes of this motion to give the reviewer an overview of the content.

On August 25, 2020, Appellant filed an Amended Motion to Reconsider adding in Rule 60(b)(3) utilizing the affidavit of the property manager as further confirmation of the Charleston County Board of Voter Registration's initial decision to find that Tedder was not validly registered at Orchid Street and of his ongoing misrepresentation to the tribunals and voters of South Carolina House District 109. On August 28, 2020, Judge Dennis denied both the Motion to Reconsider and Amended Motion to Reconsider without a hearing. This appeal followed.

LEGAL ISSUES IN SUPPORT OF DENYING THE MOTION TO DISMISS

1. Respondent asserts that the Appellant lacks standing to move forward in this matter and relies on *Gantt v. Selph*, 423 S.C. 333, 814 S.E.2d 523 (2018). However, that reliance is misguided. The circuit court ruled Appellant Kim Murphy was not qualified to be a candidate for election to a Richland County seat on the District 5 Richland-Lexington School Board of Trustees (School Board). The circuit court based this ruling on its conclusion that Murphy resided in Lexington County. Upon review, the South Carolina Supreme Court first found the circuit court had subject matter jurisdiction over Respondents' declaratory judgment action challenging Murphy's qualifications. Second, the Court held there was probative evidence in the record supporting the circuit court's conclusion that Murphy resided in Lexington County. Therefore, the Court affirmed the circuit court's ruling that Murphy was not qualified to be a candidate for election to a Richland County seat on the School Board.

Murphy argued that S.C. Code Ann. § 7-5-230 precluded the Court from issuing a finding regarding her qualifications for office. In rejecting this argument, the Court held that the instant dispute did not center upon Murphy's application for voter registration; rather, the dispute centered upon her qualifications to be a candidate for the election; therefore S.C. Code Ann. § 7-5-230 did not apply to the dispute.

Similarly, in this case, the dispute centers not upon Respondent Tedder's application for voter registration, but rather upon his qualifications to be a candidate for the election. Accordingly, S.C. Code Ann. § 7-5-230 does not apply in this case.

2. Respondent's assertions as to Appellant's standing and ability to be aggrieved are also misplaced. Being aggrieved is not tied to Respondent's voter registration – the broader picture of what Respondent sought to do with that registration is the issue at hand – to seek elected office upon the basis of misrepresentation of his residence. Appellant has been denied the opportunity to participate in a political race with a constitutionally qualified candidate as afforded by Article III, Section 7 of the South Carolina Constitution.

3. Appellant asks that in light of this analysis that the Respondent's argument for dismissal based on lack of standing be denied.

4. Respondent argues alternatively that this Court lacks appellate jurisdiction as Appellant did fully comply with Rule 59. Motion Exhibit B shows that the matter was filed timely. Further, Appellant asserts that in having timely filed the same that Rule 59(g) SCRPC was complied with. Alternatively, if the Court were to find that there was procedural error in the original Motion to Reconsider, Appellants filing on August 25, 2020 added in and sought relief under Rule 60 (b)(3) which affords an opportunity to address the court not more than one year after the judgment, order or proceeding was entered or taken. (See Mot. Ex. D).⁵ Thus, the presentation of the affidavit from the actual agent for the owner of the home showing Respondent's misrepresentation and repeated fraudulent presentation to the election board, circuit court and general public, Judge Dennis' denial placed it squarely in the wheelhouse for appellate review as that is the final decision in the case.

⁵ Amended Motion to Reconsider is presented without exhibits as A-C are the same as in Motion Ex. B and the Affidavit which was newly introduced in the Amended Motion has been presented herein as Motion Ex. C.


5. The Respondents argue that this claim is frivolous and seek sanctions because Tedder prevailed on his appeal regarding the Charleston County Board of Voter Registration's decision that Tedder was not a valid elector at 2629 Orchid Avenue. The fact that the decision was reversed does not in and of itself establish that this claim is frivolous. Motion Ex. C clearly establishes that the Appellant's continued pursuit of the matter to the State's High Court is a legitimate pursuit of justice wherein the candidate is not able to establish a legitimate residence in the district. Additionally, both times in which Respondent presented to the public for a vote his electorate status was not valid. On June 9, 2020 he was on notice that his address on Orchid Street was not valid and he remained on the ballot and voted; then in the June 23 primary he was totally removed from the SC voter system and remained on the ballot. This matter is not solely about an election and a win or loss, but about public trust in elections and compliance to constitutional application. The allegations regarding Respondent's actions are not frivolous, but fraudulent and that is the part to this claim which should be sanctioned, not the Appellant's pursuit of justice.

Respondent Tedder nor any candidate for elected office should be allowed to run for office and especially not serve in office if they do not first meet the requirements of the office. The requirements of the SC Constitution are clear on their face and when residency/domicile are invalidated the certifying body should take steps to protect the general public from a candidate who cannot legally fulfill the office. Motion Exhibit C was signed on August 3, 2020 which confirms that Respondent is yet to meet the qualified elector in the district component of the Constitution and if he was not valid on August 3, 2020 he was not valid on March 23, 2020 when he filed for office and again would not meet the requirement that he be a resident of the district at the time of filing. This constitutional matter should warrant the Court's intervention.

WHEREFORE, having addressed Respondent's allegations in full, Appellant moves for this honorable court to deny the motion to dismiss and to allow for a full adjudication of the claim in the interest of justice and public trust.

Respectfully submitted,

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