

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2020-001232

Jeffery Wilder,

Appellant,

v.

Charleston County Bd. of Voter Registration & Elections, Charleston County Democratic Party, Dorchester County Bd. of Voter Registration & Elections, Dorchester County Democratic Party, SC Democratic Party, South Carolina Election Commission, Deon Tedder & Deon Tedder, LLC,

Respondents.

APPELLANT'S BRIEF

Tiffany R. Spann-Wilder, SC Bar #15913
SPANN WILDER LAW, LLC
P.O. BOX 70488
North Charleston, SC 29415
(843) 266-7792
Attorney for Appellant

September 28, 2020

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the lower court erred in determining Respondent Tedder was a resident of House District 109 and thus a constitutionally qualified candidate.
- II. Whether the lower court erred in finding that Tedder established his domicile at 2629 Orchid Avenue, a property in South Carolina District 109 on February 28, 2020.
- III. Whether the lower court erred in finding that Respondent Tedder was a qualified elector in House District 109 and met the qualifications of S.C. Code Ann. §§ 7-1-25(D) and 7-5-120.
- IV. Whether the lower court erred and incorrectly dismissed the declaratory action by adopting the findings of fact and conclusions of law from the order of the voter challenge appeal issued by Judge R. Markley Dennis on July 2, 2020.
- V. Whether the lower court erred in finding the matter was barred by collateral estoppel.

STATEMENT OF THE CASE

Appellant (hereinafter “Wilder”), Respondent Tedder and Elder James Johnson all appeared on the Democratic Primary ballot on June 9, 2020. Wilder finished third (3rd) in the primary. On May 29, 2020, 11 days before the election, the Charleston County Board of Elections & Registration found that Respondent Tedder’s was not a valid electorate at the address 2629 Orchid Avenue, N. Charleston, SC 29405. On June 19, 2020, appellant brought this action against respondent Deon Tedder, Deon Tedder, LLC (collectively referred to a “Tedder”), Charleston County Board of Voter Registration, Dorchester Count Board of Voter Registration, Charleston County Democratic Party, Dorchester County Democratic Party and South Carolina Election Commission seeking certain declaratory and injunctive relief related to the election of the next representative for South Carolina House District 109. Specifically, Wilder asserted that Tedder did not meet the Constitutional requirements for House District 109 on March 23, 2020 when he filed for the office. Wilder sought to have Tedder removed from the Democratic Party ballot, to have

the South Carolina Election Commission to not certify votes cast for Tedder, and to enjoin him from continuing to run for House District 109.

On June 29, 2020, Appellant filed to Intervene as a party in Respondent Tedder's appeal hearing of June 30, 2020. Judge R. Markley Dennis, Jr. granted Appellant's Motion to Intervene. On July 17, 2020 a Motion to Dismiss in Lieu of Answer was filed for Deon Tedder and Deon Tedder, LLC. On July 22, 2020, Charleston County Democratic Party filed its answer and South Carolina Democratic Party, & Dorchester County filed their answers on July 24, 2020. Respondent Tedder filed a Motion for Protective Order, Motion to Quash Subpoena and Request for Sanctions on July 31, 2020.

Respondent Tedder's motions were heard on August 25, 2020 before Judge R. Ferrell Cothran, Jr. Judge Cothran dismissed the action on the basis that that the claim was the same of the matter heard before Judge Dennis and adopted the findings of fact and conclusions of law from that July 2, 2020 order and deemed the action as collaterally estopped. The order was signed on September 1, 2020 and the Notice of Intent to Appeal was filed on September 14, 2020.

FACTS

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 on March 18, 2020.¹

On May 20, 2020, counsel for the Appellant filed a Voter Residency Challenge 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 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 Charleston, Dorchester and State Democratic Parties were on notice immediately that Respondent failed to meet the 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. Colleen

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.

Condon, Chair of the Charleston County Democratic Party and counsel for all three (3) Democratic organizations was present at the hearing. 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.

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 below² 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). 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

² 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.

Motion to Dismiss and the frivolous action and Rule 11 claims, Appellant provided an affidavit from the property manager in lieu of the deposition 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. (R.75). Judge Cothran dismissed the declaratory action on Respondent's position that the legal issues in the appeal and 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 other to the constitutional qualification of the candidate which stems from his residency. Judge Cothran ruled from the bench in favor of dismissal and incorporation of Judge Dennis' order. Appellant submitted a proposed order as well (R17) but the order of the Respondent was executed.

STANDARD OF REVIEW

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), [SCRCP,] an appellate court applies the same standard of review as the trial court." Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "That standard requires the [c]ourt to construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" *Id.* (quoting Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001)). "If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." Spence, 368 S.C. at 116, 628 S.E.2d at 874.

"An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Clark v. Cantrell, 339

S.C. 369, 389, 529 S.E.2d 528, 539 (2000). “Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.” Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

ARGUMENT

The Court should reverse the circuit court’s grant of Respondent Tedder’s motion to dismiss because its decision was controlled by errors of law. Specifically, the circuit court (1) erred in concluding that Respondent Tedder was a resident of House District 109 and thus a constitutionally qualified candidate; (2) erred in concluding that Respondent Tedder established his domicile at 2629 Orchid Avenue on February 28, 2020; (3) erred in finding that Respondent Tedder was a qualified elector in House District 109 and met the qualifications of S.C. Code Ann. §§ 7-1-25(D) and 7-5-120; (4) erred in dismissing the declaratory action and adopting the findings of fact and conclusions of law from the order of the voter challenge appeal issued by Judge R. Markley Dennis on July 2, 2020; and (5) erred in finding the matter was barred by collateral estoppel. The lower court abused its discretion in its disposition of this matter.

- I. Whether the lower court erred in determining Respondent Tedder was a resident of House District 109 and thus a constitutionally qualified candidate.
- II. Whether the lower court erred in finding that Tedder established his domicile at 2629 Orchid Avenue, a property in South Carolina District 109 on February 28, 2020.
- III. Whether the lower court erred in finding that Respondent Tedder was a qualified elector in House District 109 and met the qualifications of S.C. Code Ann. §§ 7-1-25(D) and 7-5-120.

In the adoption of Judge R. Markley Dennis’ order, the lower court validated Respondent’s Tedder’s domicile and residency in House District 109. Domicile is defined in S.C. Code Ann. § 7-1-25 and for purposes of voting it is further detailed in subsection D.

SECTION 7-1-25. 'Domicile' defined.

(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.

(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 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;

(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.

At the hearing below from which Judge Dennis sat as the appellate court and reviewed the evidentiary submissions, Respondent Tedder did not provide information to comport with

subsections (D)(1), (D)(2), (D)(3), (D)(6), (D)(7), (D)(8), (D)(9), (D)(10) or (D)(11). Under (D)(5) Respondent Tedder submitted a SCDL which he acquired on May 14, 2020 just days before the May 29, 2020 hearing. (R. 298). Under (D)(6) he presented legal documents and a financial document; a copy of a sub-lease rental agreement at 2629 Orchid Drive, North Charleston, SC 29405 dated February 28, 2020 (r. 287) and his affidavit and he submitted a copy of a single pay stub dated March 13, 2020 from a payroll direct deposit. (R. 295).

However, contrary submissions of domiciliary far outweighed what was presented to support the same. They were as follows: Respondent's 1st Quarter Ethics Filing report where he made two (2) contributions to his campaign, one on March 23, 2020 the day he filed and the other on March 31, 2020 (both after his paycheck date) showing his home address at 1755 Central Park Rd. Charleston, SC 29412. (R.255); Mobile phone number match of (919) 699-3971 registered to Deon T. Tedder with address at 1755 Central Park Rd. Charleston, SC 29412 as of May 18, 2020 (R.253); Photo of the vehicle he drives bearing NC tags YYD 3467 (R.277); Tedder's Facebook post of May 16, 2020 congratulating his girlfriend on her graduation from dental school at the Medical University of South Carolina which contradicts statement 7 in his affidavit which implied that due to her acceptance to the University of Tennessee Dental residency in February 2020 that she immediately left town and had to obtain new housing (R.274) and University of Tennessee's residency program information detailing the start of the one year program from July 1 to June 30 (R.275); Registration of a vehicle to the home at Orchid Avenue that was not Tedder or Pasoquen, the actual tenant, but that of a woman, Alana Lipscomb as of December 2019 (R.279) which is contrary to the sublease which states that only Tedder and Pasoquen occupied the home (R.287); and February 6, 2020 Facebook post Trifecta Security congratulating Edward Pasoquen on his new baby boy and Facebook post of Alana Lipscomb announcing her baby boy on February 6, 2020 (R.281-282).

Judge Dennis took no other testimony and accepted no other evidence from any of the parties. However, during the declaratory proceeding, the lower court also had before it the property tax records confirming the owner of the home at 2629 Orchid Avenue (Conrex Property Mgmt) (R.78), the sublease agreement between Tedder and Pasoquen, a Conrex lease (R.91) and the Affidavit of Kenneth Barnes, the Conrex Property Manager (R.75) for the home and the reconciling of these documents should not have leadcaused the court to reach an adopted conclusion. The Affidavit clearly establishes that Tedder cannot be considered a legal resident at this address. Key excerpts are as follows (emphasis added):

5. In the Residential Lease Agreement for the Premises, Mr. Deon Tedder is not listed either as a tenant or as other occupant of the Premises.

6. Under the Residential Lease Agreement, the only person(s) permitted to live in the Premises are the tenant and the other occupants listed at the signing of the Residential Lease Agreement. Any change in occupancy at the Premises desired by the tenant requires the written consent of the landlord, which must be documented in an amendment to the Residential Lease Agreement, signed by the tenant and the landlord. No such amendment regarding occupancy has been executed by the tenant and the landlord regarding the Premises.

7. Under the Residential Lease Agreement, the tenant agrees not to transfer or assign the lease or sublease, license or permit the occupancy of others (including through services like AirBNB) of any part of the Premises without the landlord's prior written consent. No such prior written consent to sublease or to permit the occupancy of others has been provided by the landlord regarding the Premises.

Judge Cothran's adoption was an abuse of his discretion as this factual conclusion was without full evidentiary support. Further, as this was the interpretation of a statute and thus a question of law, the lower court should have reviewed de novo. A de novo review in light of the Affidavit should not have made it possible that any conclusion could be reached, but that 2629 Orchid was not Respondent Tedder's domicile as the lawful owner's agent clearly outlined that his presence there (if at all) is not legal.

In Gasque v. Gasque, this Court defined domicile to be the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning. 246 S.C. 423, 143 S.E.2d 811 (1965). The Court expounds on the definition in Ravenel v. Dekle, that intent is the most important element in determining domicile. In Ravenel, Charles Ravenel sought the Democratic nomination for Governor of the State of South Carolina. He was challenged for not meeting the State's constitutional requirement of being domiciled for five (5) years to run for the Office of Governor. "It is also elementary, however, that any expressed intent on the part of a person must be evaluated in the light of his conduct which is either consistent or inconsistent with such expressed intent. Other elementary propositions which require no citation of authority are that a person can have only one domicile at a time; one maintains his prior domicile until he establishes or acquires a new one. A person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment." 265 S.C. 364, 377, 218 S.E.2d 521, 528 (S.C. 1975).

Respondent Tedder did not appear at the hearing regarding his voter registration status, he submitted testimony via affidavit and no where in that document does he express his intent to make 2629 Orchid his domicile and that he had abandoned his prior domicile. Additional information submitted for review was the extensive criminal history of the gentleman he alleges to sub-let from. While Appellant supports and advocates for opportunities for changing ones life around, however, the conduct of Respondent Tedder as a young, single lawyer does not square off with the likelihood of having a roommate with numerous felony convictions and also residing in the home with the roommate girlfriend and newborn baby. (R.264). Respondent's conduct in having been in Charleston since 2016 and still operating a vehicle with North Carolina tags and possessing a North Carolina driver's license at the time of filing for the office and only changing it days before

the challenge hearing do not align with having established a domicile. His conduct does not align with the Ravenel Court.

Judge Dennis did not hear the appeal de novo and Judge Cothran did not hear any testimony of Tedder or any other witness to gain any new information to rectify the ambiguities from below. There was nothing in the court's wheelhouse to support its ruling.

- IV. Whether the lower court erred and incorrectly dismissed the declaratory action by adopting the findings of fact and conclusions of law from the order of the voter challenge appeal issued by Judge R. Markley Dennis on July 2, 2020.
- V. Whether the lower court erred in finding the matter was barred by collateral estoppel.

In Palmer v. State, 427 S.C. 36, 42-23, 82 S.E.2d 255, 259 (S.C. App. 2019) this Court opined that "[U]nder Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint." Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim. Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 826 S.E.2d 585 (S.C. 2019).

The matter was not reviewed under Rule 12(b)(6). The pleadings on their face and the exhibits to the complaint and additional information in the opposition memorandum. In fact, the order is void of any reference to the motion for which it was heard and simply assumes the legal issues of a matter that were still pending and similarly situated in the facts, but not the legal issues. S.C. Code Ann. §15-53-20 gives the lower court the authority to make declarations regarding the constitutionality of Respondent Tedder's candidacy. The lower court failed to directly address this,

but in its adoption of Judge Dennis' order rendered a ruling on Respondent Tedder's status as an elector.

The South Carolina Constitution Article III, § 7 provides the basis for qualifications to run for the South Carolina Senate and House of Representatives. A candidate for the Senate or House of Representatives must be a legal resident of the district in which he is a candidate *at the time* he files for the office. (emphasis added). The Constitution also requires that to be eligible to hold the seat in the Senate or House of Representatives that the person must be a duly qualified elector in the district in which he may be chosen.

A cardinal rule as to the construction of constitutional provisions is, we think, well stated at 16.Am.Jur. (2d) 244, Constitutional Law, section 67, as follows: 'An elementary rule of a construction is that if possible, effect should be given to every part and every word of a constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous. A court should avoid a construction which renders any constitutional provision meaningless or inoperative, and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory.' Ravenel v. Dekle, 265 S.C. 364, 376, 218 S.E.2d 521, 527 (S.C. 1975).

As this Court has recognized, when it is "not asked to judge a disputed . . . election but rather to interpret a statute," it has the power to hear the case because "[t]he construction of a statute is a judicial function and responsibility." Anderson v. S.C. Election Comm'n, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012) (per curiam). Appellant merely sought a declaration that Respondent Tedder does not meet the statutory qualifications to run for or serve as District 109's Representative. The matters hold different issues of law at hand and so collateral estoppel is not an appropriate determination based on the prior Court's order. The Appellant sought constitutional

review of Respondent Tedder's qualification as a candidate and not only statutory construction of whether he met the requirements to have Orchid Avenue deemed his domicile.

Respondent Tedder was not valid elector on June 9 or June 23 after the decision of the Charleston County Board of Voter Registration on May 29, 2020 and the subsequent removal from the voter database by the South Carolina Election Commission. Respondent Tedder should have not been allowed to proceed on the initial primary ballot nor the run-off primary. Assuming arguendo that the electorate status was be cured, by Judge Dennis' ruling, based upon the Affidavit of Kenneth Barnes, Respondent still cannot meet the "legal resident" requirement and move forward on the November 2020 ballot. As of August 3, 2020 when that Affidavit was penned – Tedder could not be construed to have a legal claim to living at 2629 Orchid Avenue. If he could not meet that on August 3, 2020, likewise he did not meet it on March 23, 2020 when he filed for office. Unlike other political races, this cannot be cured. Respondent Tedder is not constitutionally qualified to hold the office of SC House of Representatives District 109 because he was not and still is not a resident of South Carolina House District 109.

CONCLUSION

Based upon the foregoing, the Court should reverse the circuit court's grant of Respondent Tedder's motion to dismiss and declare that Tedder did not timely meet the constitutional requirements of the office. Further, that the Court require a new primary of the candidates who were constitutionally qualified for the office as of March 30, 2020 when the filing period ended. Appellant and the other candidate for House District 109 deserve the opportunity to run against another constitutionally qualified candidate. Equity must always be at work when there are matters of public trust. Respondent Tedder desires to serve our state – but hasn't proven himself to be resident of District 109. The Doctrine of unclean hands requires that he who seeks equity must do

equity. The documents provided by Respondent Tedder as to his domicile in the matter below do not comport with the affidavit of the Conrex Management Company who unequivocally establish that Respondent Tedder is unable to claim 2629 Orchid Avenue, North Charleston, SC 29405 as his legal residence. This affidavit alone supports that there has been a misrepresentation to the court and the residents of House District 109. The sublease agreement presented to the court is not legally binding. Any and all attempts to promote the same are disingenuous and fraud on this Court.

Respectfully submitted,

SPANN WILDER LAW, LLC

By:  _____

Tiffany R. Spann-Wilder, SC Bar No. 15913
2131 Dorchester Road
Post Office Box 70488
Charleston, South Carolina 29415
tiffany@spannwilder.com
(843) 266-7792
Attorney for Appellant Jeffery Wilder

September 28, 2020