

BEFORE THE MARYLAND STATE BOARD OF ELECTIONS

BARBARA OSBORN KREAMER,
Complainant

v.

HARFORD COUNTY BOARD
OF ELECTIONS,
Respondent

FINAL DETERMINATION

Statement of the Case

On February 8, 2014 and March 6, 2014¹, the State Board of Elections (the "State Board") received from Barbara Osborn Kreamer ("Ms. Kreamer" or "Complainant") an administrative complaint challenging the voter registration address of Ann C. Helton ("Ms. Helton"). According to records of the Harford County Board of Elections, Ms. Helton changed her voter registration address and domicile from 3069 Harmony Church Road to 3 South Rogers Street in Aberdeen, Maryland on January 28, 2014. Ms. Kreamer alleges that Ms. Helton falsely registered to vote at said residence and did not live there between January 28, 2014 and February, 7, 2014².

Pursuant to Code of Maryland Regulations ("COMAR") 33.01.05.06, the State Board scheduled a hearing on Ms. Kreamer's complaint on May 13, 2014. The State Administrator of Elections (the "State Administrator") designated Jared DeMarinis, Director of Candidacy and Campaign Finance, to act as hearing officer.

At the May 13, 2014 hearing, Kevin Keene and Dale Livingston, Director and Deputy Director, respectively, of the Harford County Board of Elections, Ms. Kreamer, Ms. Helton and counsel representing Ms. Helton were present. Additionally, George Harrison was called as witness in support of Ms. Helton.

This administrative procedure is governed by COMAR Chapter 33.01.05. The purpose of the administrative complaint procedure is to provide a fair hearing, if requested, and a speedy determination outside the judicial system for, *inter alia*, an individual who feels aggrieved by the action of a local board of elections regarding voter registration³. The hearing examiner is tasked with determining, under a

¹ Ms. Kreamer's March 6, 2014 complaint was substantively the same as her February 8, 2014 complaint. It was submitted to press the State Board to hold a hearing on Ms. Kreamer's earlier complaint against Ms. Helton's spouse, Art Helton, after Ms. Kreamer received a letter from the State Board clarifying that an administrative complaint hearing was not the appropriate vehicle to challenge Art Helton's residency because he was a candidate for office.

² On the complaint form dated February 8, 2014, Ms. Kreamer listed January 28 – February 7, 2014 as the date range during which the alleged violation occurred. Some of Ms. Kreamer's testimony referenced later dates, but the hearing officer elected to consider it.

³ SBE scheduled the hearing on the complaint against Ann Helton for March 7, 2014, not sooner than 10 days

preponderance of the evidence standard, whether the local board, specifically the Harford County Board of Elections, acted properly concerning the voter registration activity at issue in Ms. Kreamer's complaint.

Testimony and Exhibits

At the May 13, 2014 hearing, the Complainant testified as to her personal investigation of Ms. Helton's domicile and presented printed real estate website pages as evidence that Ms. Helton owned and was not in the process of selling her property known as 3609 Harmony Church Road in Darlington, Maryland (Complainant Exhibits 1-5). Ms. Helton testified and presented evidence, including photographs of both properties and video surveillance footage captured at 3 South Rogers Street (Helton Exhibits 1, 2, & 4). Mr. Harrison, a longtime friend of Ms. Helton's, testified on her behalf about visiting and attending a super bowl party hosted by the Heltons at 3 South Rogers Street. Mr. Keene presented evidence with respect to Ms. Helton's current voter registration. Ms. Kreamer and Ms. Helton also submitted post-hearing briefs to summarize their arguments and to address the testimony and evidence presented at the hearing. The hearing examiner took judicial notice of Ms. Helton's official voter record, including the activity log showing when her January 28, 2014 voter registration application was processed by the Harford County Board of Elections.

Findings of Fact

1. On January 28, 2014, Ms. Helton visited the Harford County Board of Elections and submitted a voter registration application to change her residence address from 3069 Harmony Church Road in Darlington to 3 South Rogers Street in Aberdeen. Her voter registration application was accompanied by sworn affidavits wherein each affiant attests to his or her belief that 3 South Rogers Street is Ms. Helton's primary residence.
2. The home address listed on Ms. Helton's 2011 federal tax return is 3 South Rogers Street in Aberdeen.
3. The home address listed on Ms. Helton's 2012 federal tax return is 3 South Rogers Street in Aberdeen.
4. Ms. Helton received a Homestead Tax Credit application from the Department of Assessments and Taxation for 3 South Rogers Street. The mailing date listed on the application is November 13, 2013.
5. The address on Ms. Helton's PNC Bank checking account statement is 3 South Rogers Street.
6. On November 15, 2013, the Motor Vehicle Administration issued a correction attachment for Ms. Helton's Maryland driver's license reflecting a change of address to 3 South Rogers Street. Ms. Helton's driver's license issued on February 22, 2010 shows her address is 3069 Harmony Church Road in Darlington.
7. The address 3 South Rogers Street is listed as the owner's address on State Farm insurance documents for two vehicles co-owned by Ms. Helton.

and not later than 30 days after SBE received the complaint in accordance with the Administrative Complaint Procedure outlined in COMAR Chapter 33.01.05. Ann Helton notified SBE of a schedule conflict on this date and requested that the hearing be rescheduled. Ms. Kreamer requested that SBE postpone the hearing on her complaint against Ann Helton while the Anne Arundel Circuit Court considered her petition to compel SBE to hold an administrative hearing on Art Helton's residency. Scheduling conflicts for both parties delayed the hearing on Ann Helton until May 13, 2014.

8. On February 2, 2014, Mr. Harrison attended a super bowl party at 3 South Rogers Street hosted by the Heltons.
9. On January 30, 2014, Ms. Kreamer observed both of the Heltons' vehicles parked at 3 South Rogers Street.
10. On February 7, 2014, the Harford County Board of Elections changed Ms. Helton's address in Maryland's voter registration database from 3069 Harmony Church Road to 3 South Rogers Street.
11. On February 7, 2014, the Harford County Board of Elections mailed a Voter Notification Card indicating a change of address to Ms. Helton at 3 South Rogers Street following her voter registration address change on January 28, 2014. The Voter Notification Card was not returned as undeliverable.
12. On or around February 11, 2014, Ms. Kreamer observed Ms. Helton at a grocery store in Aberdeen and shortly thereafter observed Mr. Helton assisting Ms. Helton with groceries at 3 South Rogers Street.
13. On April 18, 2014, Ms. Kreamer observed Mr. Helton exiting 3 South Rogers Street at 8:50am.

Conclusions of Law

A person eligible to vote must be registered in the ward or election district in which the person resides. Md. Const., Article I, § 1. For purposes of voter registration, courts in Maryland have interpreted residence to mean "domicile." *See Robert v. Lakin*, 340 Md. 147, 153 (1995). The Court of Appeals has defined "domicile" as follows:

Domicile has been defined as the place with which an individual has a settled connection for legal purposes and the place where a person has his time, fixed, permanent home, habitation and principal establishment, without any present intervention of removing them from and to which place he has, whenever he is absent, the intention of returning.

Oglesby v. Williams, 372 Md. 360, 372-75 (2002) (quoting cases). The primary factor in determining an individual's domicile is the individual's intent. *Id.* at 373. To discern an individual's intent, evidence of what a person does may carry more weight than what a person says. *Id.* Among the factors that a court will consider in determining an individual's intent are things such as property ownership, tax returns, where mail is received, statements of residency in contracts or other legal documents, and addresses on bank accounts. *See, e.g., Blount v. Boston*, 351 Md. 360, 369 (1998). The place where the individual actually spends time is also a primary factor. *Id.*; *see also 69 Opinions of the Attorney General* 238 (1984) (identifying 20 factors derived from cases relevant to deciding domicile). Once an individual's domicile is established in a particular place, a presumption exists that such place remains the person's domicile unless there is affirmative evidence demonstrating that the individual has abandoned the established domicile and adopted a new one. *Oglesby*, 372 Md. at 373. Adopting a new domicile requires "an actual removal to another habitation, coupled with an intention." *Id.* at 374.

The 2013 administrative complaint against the Heltons' change of residence to 3 South Rogers Street was resolved against the Heltons primarily because the evidence did not show "an actual removal" to

the new address, despite evidence of an intention to establish a new domicile. By contrast, on the record presented to me in this case, there is evidence of an intent to establish a new domicile, coupled with facts tending to show that Ms. Helton has in fact relocated to the new address. Because that evidence was not successfully rebutted by Ms. Kreamer, the record supports a conclusion that Ms. Helton has satisfied the legal requirements necessary to establish a new domicile and therefore that the Harford County Board of Elections acted properly in accepting her change of voter registration. Even if Ms. Helton was motivated to change her domicile solely to support her or Arthur Helton's run for political office in Legislative District 34, that motive is "entirely legitimate," *Blount*, 351 Md. at 382, and does not oblige Ms. Helton to prove that she has severed all connection to the Harmony Church Road address. See, e.g., *Stevenson v. Steele*, 352 Md. 60, 66 (1998) (where circuit court found that a candidate had established domicile in a new election district even though she continued to own the property where she had resided for many years).

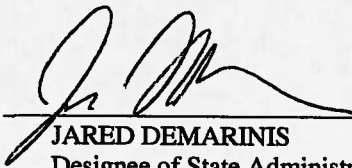
Pursuant to Election Law Article §3-304, Ms. Helton notified the Harford County Board of Elections of her intent to change her voter registration address to 3 South Rogers Street in Aberdeen when she submitted a sworn voter registration application on January 28, 2014. Following the process and procedures required under Title 3 of the Election Law Article and the Final Determination Order from *Kreamer and Hiob v. Harford County Board of Elections* (dated December 10, 2013), Harford County Board of Elections staff changed her address in Maryland's voter registration database. At the May 13 hearing, Mr. Keene of the Harford County Board of Elections presented the documentary evidence submitted to justify the change in voter registration, including Ms. Helton's sworn voter registration application, affidavits, and copies of documents listing 3 South Rogers Street as Ms. Helton's address. That evidence amply supported Ms. Helton's intent to establish a new domicile. In addition, evidence was produced by *both* parties tending to show that Ms. Helton had actually relocated to the Rogers Street address and was living there as of the time she sought to change her voter registration address. For example, there was testimony that Ms. Kreamer observed Ms. Helton in the early mornings at 3 South Rogers Street house and never at the prior location. In Ms. Helton's defense, Mr. Harrison testified that Ms. Helton lives at 3 South Rogers Street, and he used his observation of a fully stocked kitchen prior to the Super Bowl party as an indication of her intent to remain. Additionally, the evidence submitted by the defense included surveillance camera footage documenting Ms. Helton's comings and goings at 3 South Rogers Street, tax returns, filed with the IRS, listing 3 South Rogers Street as her home, and a police report of a broken window at 3 South Rogers Street.

On the other hand, much of the evidence presented by Ms. Kreamer sought to show that 3069 Harmony Church Road, Ms. Helton's most recent address, is not for sale despite Ms. Helton's sworn testimony that the property is for sale on Craigslist coupled with evidence of its actual listing. However, while this evidence may be relevant to Ms. Helton's credibility, the sale of one's previous home is not required in order to establish that the residence has been "abandoned" for purposes of domicile. Furthermore, Ms. Kreamer relied exclusively on hearsay evidence without any supporting affidavits from the observers that Ms. Helton still resided at Harmony Church Road. This testimony of Ms. Kreamer was found not to be persuasive.

Disposition

In my judgment, there is sufficient "affirmative evidence" of Ms. Helton's change of residence to support the decision of the Harford County Board of Elections to accept her application to change her voter registration address. At the same time, Ms. Kremer has not offered credible evidence showing that Ms. Helton intends to maintain her domicile at Harmony Church Road or that Ms. Helton, in fact, continues to reside at the farm property. Therefore, I conclude that the Harford County board's decision was correct and I dismiss Ms. Kremer's complaint.

Date:
October 7, 2014



JARED DEMARINIS
Designee of State Administrator

APPEAL RIGHTS

Under §3-602(c)(2) of the Election Law Article, a final determination regarding the eligibility of an individual to register to vote or remain registered to vote is subject to judicial review. A petition for judicial review must be filed with the Circuit Court for Anne Arundel County, no later than the third Tuesday preceding the next succeeding election (in this case, the gubernatorial general on November 4, 2014) -- that is, by October 14, 2014.