

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



JUN 8 2015

**DOROTHY HART,**  
  
**Challenger/Petitioner,**

v.

**TYRONE BROOKS, JR.,**  
  
**Candidate/Respondent.**

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**Docket No.:**  
**OSAH-SECSTATE-CE-1555803-60-Malihi**

*R. Westray*  
Kevin Westray, Legal Assistant

Kristie D. Hornsby, Esq.,  
For Challenger/Petitioner

Marvin Arrington, Jr., Esq.,  
For Candidate/Respondent.

**INITIAL DECISION**

**I. INTRODUCTION**

This matter comes before this Court on a complaint filed by Dorothy Hart (hereinafter "Petitioner") pursuant to O.C.G.A. § 21-2-5(b) challenging the qualifications of Tyrone Brooks, Jr. (hereinafter "Respondent") to be a candidate for the 55<sup>th</sup> District of the Georgia House of Representatives ("House District 55"). The court has jurisdiction to hear this matter pursuant to Article 2 of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." For the reasons indicated below, it is the determination of the Court that Respondent is not qualified to be a candidate for House District 55.<sup>1</sup>

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<sup>1</sup> Respondent filed a Motion for Summary Determination with the Court on June 2, 2015, mere hours before commencement of the evidentiary hearing. The timeliness of Respondent's motion notwithstanding, the exhibits and supporting affidavits attached to Respondent's Motion merely establish his residence at 3100 Mangum Lane in Atlanta, Georgia, which, as discussed *infra*, is insufficient to demonstrate that he meets constitutional residency requirements. Respondent therefore failed to establish that there is no genuine issue of material fact for determination. Accordingly, his Motion is hereby **DENIED**.

During the evidentiary hearing, Respondent filed a motion to quash subpoenas issued by Petitioner to Dominique Naar and therein moved that the Court impose sanctions against counsel for Petitioner due to her alleged

## II. FINDINGS OF FACT

1.

Petitioner challenges Respondent's qualifications to seek office in House District 55. More specifically, Petitioner asserts that Respondent has not been a resident of the territory embraced by House District 55 for one year as required by the Georgia Constitution.

2.

In order to participate in the June 16, 2015 Special Election, Respondent must show that he has been a legal resident of House District 55 since June 16, 2014, one year immediately preceding the date of the election as required by Article III, Section II, Paragraph III (b) of the Georgia Constitution.

3.

On April 28, 2015, Respondent filed a sworn Declaration of Candidacy and Affidavit, seeking the office of State Representative for House District 55. In the document, Respondent listed his residence address as 3100 Mangum Lane, SW in Atlanta, Georgia (hereinafter "the Mangum Lane address"), and swore that he had been a resident of House District 55 for 3 years. (Exhibit A).

4.

The Mangum Lane address was located within House District 55 at all times relevant to this Decision. (Respondent's Exhibits 5, 6).

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failure to serve copies of those subpoenas on Respondent. Pretermitted whether Respondent's motions were timely, the documents that are the subject of Petitioner's subpoena are not in evidence, and Mr. Naar's testimony served only to support Respondent's assertion that he resided in House District 55 beginning on July 25, 2014. Accordingly, having read and considered Respondent's motion, it is **DENIED**.

5.

Respondent claims, and the Court finds, that he moved to the Mangum Lane address, and thus within House District 55, on July 25, 2014. This finding is based on Respondent's testimony to the effect that he and his fiancé moved to that address on that date, which was corroborated by the testimony of Mr. Dominique Naar, the owner of the property at the Mangum Lane address,<sup>2</sup> and supported by documentary evidence.<sup>3</sup> (Testimony of Tyrone Brooks, Jr.; Testimony of Dominique Naar; Respondent's Exhibits 1, 2, 5, 6, 9).

6.

Having determined that Respondent was a legal resident of House District 55 since July 25, 2014, the Court must now determine whether Respondent was a legal resident of the district from June 16 to July 25, 2014.

7.

Respondent testified that he moved into his father's home at 1890 Childress Drive in Atlanta, Georgia (hereinafter "the Childress Drive address") in 2012. This address was at that time, and remains, located in House District 55. According to Respondent, he moved to his father's house temporarily while he searched for a suitable permanent residence. In support of his testimony, Respondent submitted a copy of his driver's license, issued April 29, 2014, which

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<sup>2</sup> Mr. Naar recalled a telephone conversation with Respondent in August 2014 concerning yardwork at the property. Though he was uncertain of the precise date on which Respondent moved to the Mangum Lane address, he testified that he had personally met with Respondent at the property twice, and that the landscaper and repairman reported to him that they had seen Respondent at the property. (Testimony of Dominique Naar).

<sup>3</sup> Respondent introduced into evidence a billing history from SCANA Energy indicating that he put the power bill for the Mangum Lane address in his name on August 11, 2014 and made payments through May 11, 2015. Respondent also submitted an "E-vite" to a baby shower he and his fiancé hosted at the Mangum Lane address on January 25, 2015. Respondent further testified that he listed the Mangum Lane address on his 2014 tax return, though a copy of this tax return was not produced at the hearing. As discussed *infra*, Respondent updated his voter registration to reflect the Mangum Lane address as his residence on April 28, 2015. (Respondent's Exhibits 1, 2, 5, 6, 9).

bears the Childress Drive address.<sup>4</sup> (Testimony of Tyrone Brooks, Jr.; Respondent's Exhibits 3, 7).

8.

Respondent produced no other documents or testimony that would connect him to the Childress Drive address or elsewhere in House District 55 from June 16 to July 25, 2014. There is nothing in the evidentiary record to indicate that Respondent ever received mail, paid utility bills, purchased property, registered a vehicle, voted, registered to vote, served on a jury, or claimed a homestead exemption anywhere in House District 55 prior to July 25, 2014.<sup>5</sup>

9.

Respondent admits that, as late as November 2014, he voted outside of House District 55—in House District 57. He remained registered to vote in House District 57 until April 28, 2015. (Testimony of Tyrone Brooks, Jr.; Respondent's Exhibits 5, 6).

10.

Respondent testified that he listed the Beecher Street address—outside of House District 55—as his residence on his 2013 tax return.<sup>6</sup> (Testimony of Tyrone Brooks, Jr.).

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<sup>4</sup> Respondent cited O.C.G.A. § 21-2-221 in an "Amended Motion for Summary Judgment" filed with the Court after the evidentiary hearing. This Code Section provides in pertinent part that "[a]ny change of address submitted to the Department of Driver Services for the purpose of changing the information contained on a driver's license . . . shall serve as a notification of change of address for voter registration unless the registrant states that at the time of submitting the change of address that the change of address is not for voter registration purposes." O.C.G.A. § 21-2-221(d) (2014). As the circumstances underlying Respondent's change of address are entirely unknown, it is unclear whether a change of address for voter registration should have been effected. However, even if the DDS should have automatically changed Respondent's address, the Court is unpersuaded that an automatic change in Respondent's voter registration address incident to a change in driver's license information would evince an intent to effectuate a change in legal residence, especially in light of the fact that Respondent continued to vote in House District 57 after he changed his driver's license address.

<sup>5</sup> See O.C.G.A. § 21-2-217 (2014).

<sup>6</sup> Respondent's 2013 tax return was not introduced into evidence.

11.

Respondent's campaign website for the upcoming June 16, 2015 special election shows the Beecher Street address in House District 57 as the contact information for the "Committee to Elect Tyrone Brooks, Jr." (Petitioner's Exhibit 1).

### III. CONCLUSIONS OF LAW

1.

Every candidate for state office must meet all the constitutional and statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a) (2014). One such requirement is that at the time of their election, members of the Georgia House of Representatives must "have been legal residents of the territory embraced within the district from which elected for at least one year." Ga. Const., art. III, § II, para. III(b); O.C.G.A. 28-2-1(b) (2014). The Georgia Election Code provides that a qualified elector from the district in which the candidate is seeking election may challenge the candidate's qualifications to hold office. O.C.G.A. § 21-2-5(b) (2014).

2.

Here, Petitioner, a qualified elector in House District 55, contends that Respondent has not been a resident of House District 55 for one year.

3.

Respondent bears the burden of proof to establish his eligibility for office. *Haynes v. Wells*, 273 Ga. 106, 108–09 (2000). It is Respondent's burden to establish that the two residency requirements expressed in the Georgia Constitution have been met, not Petitioner's burden to disprove Respondent's residency. *Id.* Therefore, Respondent must prove both (a) that he has been a citizen of the state of Georgia since at least June 16, 2013 and (b) that he has been a

resident of House District 55 since at least June 16, 2014 in order to be qualified to run for the Georgia House of Representatives. *Id.*; *see* Ga. Const., art. III, § II, para. III(b); O.C.G.A. 28-2-1(b) (2014). The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

4.

The first residency requirement is not at issue. The parties are in agreement that Respondent has been a citizen of the state of Georgia since at least June 16, 2013. At issue is whether Respondent has been a resident of House District 55 for one year. In resolving this issue, the Court looks to both statutory and common law regarding residency.

5.

Georgia Code section 21-2-217(a)(1) defines “residence” as “that place in which such person’s habitation is fixed, without any present intention of removing therefrom.” Georgia courts have agreed that the term “residence” is interchangeable with the concept of “domicile.” O.C.G.A. § 21-2-2(32); *Dozier v. Baker*, 283 Ga. 543, 543–44 (2008); *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999). To establish residency or domicile, parties must demonstrate a physical presence and an intention to remain permanently. *Mayo v. Ivan Allen-Marshall Company*, 51 Ga. App. 250 (1935); *see also Smiley v. Davenport*, 139 Ga. App. 753, 757–58 (1976). The Georgia General Assembly established a series of rules for determining residency for qualifying as a candidate for public office. O.C.G.A. 21-2-217(a) *et seq.* The rules define a person’s residence as the place where the person lives and intends to remain. O.C.G.A. 21-2-217(a)(1). The mere intention to acquire a new residence without moving is not enough to establish residency or domicile, nor is moving with no intention to acquire a new residence. O.C.G.A. § 21-2-217(a)(9).

6.

“One may, for purposes of convenience, maintain a residence at a place not intended as a permanent abode without affecting any change in legal domicile.” *Haggard v. Graham*, 142 Ga. App. 498, 501. “If a person leaves the place of his domicile temporarily, or for a particular purpose, and does not take up an actual residence elsewhere *with the avowed intention of making a change in his domicile*, he will not be considered as having changed his domicile.” *Id.* (emphasis in original) (quoting *Williams v. Williams*, 226 Ga. 734 (1970)).

7.

There are a number of indicators a court may consider in determining whether a candidate has established residency in a district. A Court may consider evidence of where the person receives significant personal mail and any other evidence that indicates where the individual resides. O.C.G.A. § 21-2-217(a)(15). For example, courts may consider a candidate’s voter registration, voting history, driver’s license, homestead exemption, vehicle registrations, purchase of property, payment of property taxes, service on a jury, income tax returns, campaign disclosure reports, qualifying affidavit to run for office, where the candidate receives personal and business mail, and church attendance. *Dozier*, 283 Ga. at 544.

8.

In the present case, Respondent established that he resided in House District 55 beginning on July 25, 2014, when he and his fiancé moved to the Mangum Lane address. However, Respondent failed to meet his burden to demonstrate that he has resided in House District 55 since June 16, 2014, one year preceding the date of the forthcoming election.

9.

Respondent introduced insufficient evidence to support his contention that he lived and intended to remain in House District 55 prior to July 25, 2014. Other than his driver’s license

and his own testimony, there is no evidence on record to demonstrate that Respondent established residency at Childress Drive, or anywhere else in House District 55, on or before June 16, 2014. Respondent introduced no evidence that he received mail, paid rent or utility bills, served on a jury, registered a vehicle, or purchased property anywhere in House District 55 prior to July 25, 2014. Respondent did not register to vote in House District 55 until April 28, 2015. The evidence presented by Respondent falls far short of that which is required for a showing of residency. *See, e.g., Boedekker v. Roberts*, Docket No. OSAH-SECSTATE-CE-1238691-60-Miller (July 9, 2012) (finding residency based on evidence that candidate maintained and furnished a home, paid utilities, received mail, registered vehicle, and voted in the district for which she sought office). Accordingly, the Court concludes that Respondent has failed to meet his burden to establish that he meets the one-year residency requirement. To hold otherwise would suggest that a candidate could establish residency through (1) personal testimony and (2) a change of address on a driver's license.<sup>7</sup>

10.

Moreover, there is considerable evidence on record that contradicts Respondent's testimony that he moved to House District 55 with the intention of changing his domicile in 2012. Respondent remained registered to vote in House District 57 until April 28, 2015 and voted in that district as recently as November 2014. *See Dozier*, 283 Ga. at 544 (address used by an individual for voting purposes is particularly persuasive evidence of domicile). Further,

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<sup>7</sup> At the hearing on this matter, Respondent cited this Court's decision in *Jamieson v. Laughridge* in support of his argument that legal residency may be found even where the candidate receives mail, is registered to vote, and votes outside of the district for which he seeks office. *Jamieson v. Laughridge*, Docket No. OSAH-SECSTATE-CE-1411739-8-Malihi (October 17, 2013). However, *Laughridge* is distinguishable from the present case. In *Laughridge*, the challenger acknowledged that the candidate had been living on a houseboat within the district in which he sought office, but asserted that his residence on a houseboat was illegal, and therefore insufficient to establish legal residency. *Id.* at 6 n.2.



Respondent testified that he listed an address within House District 57 on his 2013 tax return. The Beecher Street address remains the point of contact for Respondent's campaign.

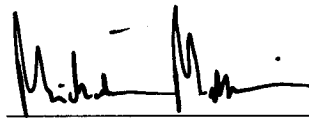
11.

The Court finds Respondent's failure to produce competent evidence of his residency in House District 55 prior to July 25, 2014 dispositive in concluding that he does not meet constitutional and statutory residency qualifications to be a candidate for House District 55. Accordingly,

**IV. DECISION**

**IT IS HEREBY ORDERED THAT** Respondent Tyrone Brooks, Jr. is not qualified to be a candidate for House District 55, and his name shall be removed from the ballot.

**SO ORDERED, this the 8<sup>th</sup> day of June, 2015.**



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MICHAEL MALIHI, Judge