

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-017915

06/18/2010

HON. EDWARD O. BURKE

CLERK OF THE COURT

L. Nixon

Deputy

JUAN MENDEZ

CRAIG A MORGAN

v.

AUGUSTUS SHAW, et al.

JAMES R HUNTWORK

BARBARA A BAILEY

MARY JO FOSTER

COLLEEN CONNOR

MINUTE ENTRY

The court has had plaintiff's complaint for special action and injunctive relief pursuant to A.R.S. § 16-351 challenging Augustus H. Shaw IV's ("SHAW") nominating petitions to run for the Republican nomination for the Arizona House of Representatives for Legislative District 17 under advisement and enters the following rulings.

Plaintiff's request for injunctive relief is GRANTED.

Facts

The following facts were established at the hearing:

1. For more than three years, SHAW has owned a house at 7920 S. Stephanie Lane, Tempe, Arizona with his wife, Andrada Shaw which is in Legislative District 20. (the "District 20 House").
2. SHAW's father-in-law, Peter Bergsneider and his mother-in-law own a house at 5088 E. Laguna Drive, Tempe, Arizona which is in Legislative District 17 (the "District 17 House"). The two houses are 10 to 15 miles apart.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-017915

06/18/2010

3. On June 5, 6, and 7, 2010, Brian Kidd, a private investigator conducted a surveillance of SHAW and presented a DVD of portions of his surveillance which was received in evidence as Exhibit 2. The DVD shows that SHAW spent the weekend coming and going from the District 20 House. Mr. Kidd reported that during the entire surveillance he never saw SHAW enter or leave the District 17 House on Laguna Drive.
4. SHAW's District 20 House is not now and has never been placed on the market for sale.
5. On Monday, June 7, 2010, at 9:00 p.m. Mr. Kidd called the District 20 House and asked to speak to SHAW who was called to and came to the phone identifying himself as "Augustus." This testimony was not challenged.
6. Andrada Shaw and SHAW have been married for 10 years and have two children, ages 6 and 3. They are not legally separated and there are no divorce proceedings pending.
7. Mrs. Shaw testified that SHAW is at home with her at the District 20 House four to five days a week when they are not at their cabin and that he sleeps at the District 20 House five to seven nights a week.
8. The Shaws' 2008 joint income tax return was filed using the District 20 House address.
9. The parties stipulated that SHAW's business address at Shaw & Lines, LLC is 7920 S. Stephanie Lane, Tempe, Arizona, the District 20 House and further stipulated that all utilities for the District 20 House are addressed to and paid by SHAW.
10. Mr. Bergsneider testified that a couple of weeks before SHAW decided to run for the State House of Representatives; SHAW asked him if he could use his house as a legal residence to run for office from. He testified in part:

"THE COURT:

... do you consider Mr. Shaw a resident of your home?

THE WITNESS: Yes.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-017915

06/18/2010

THE COURT: How long has he been a resident?

THE WITNESS: Since right before he decided to run for office.

THE COURT: Which office?

THE COURT: For – he was thinking of running for state house of representatives.

THE COURT: This election that we're involved with?

THE WITNESS: Yes.

THE COURT: How much before he decided to run?

THE WITNESS: He – it was probably a couple of weeks.

THE COURT: How long ago was that, sir?

THE WITNESS: I don't remember. I just remember that he was thinking of running and asked me about you know running for office.

THE COURT: What did he say about it?

THE WITNESS: He said that he wanted to run for office and he wanted to represent my district.

THE COURT: And?

THE WITNESS: And asked me if he could use my house for his legal residence and I told him that I already thought that he resided there as family. When he moved back from Omaha, my daughter and him moved into my house for close to two months while they were looking for a place and at that time he got all his mail there also, so –

THE COURT: How many nights a week does Mr. Shaw spend at your house?

THE WITNESS: A couple of nights. He comes and goes. I don't pay attention to him as he has a lot different – I know he works late. I normally go to bed at

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-017915

06/18/2010

10:30 so I don't pay much attention to his comings and goings. He has a key.”  
(trial transcript: p. 59, l. 21 to p. 59, l. 21).

Conclusions of Law

The court finds that SHAW is a resident of the District 20 House and not a qualified elector in District 17. Therefore defendants are enjoined from allowing SHAW's name to appear on the Republican Party primary ballot for the State House of Representatives for Legislative District 17.

A.R.S. § 16-101(B) defines a “resident” as:

“... an individual who has actual physical presence in this state, or for the purpose of a political subdivision actual physical presence in the political subdivision, combined with intent to remain.”

A person's statement as to his place of residence in an affidavit of registration to vote is not conclusive, but constitutes strong proof of the correctness of the residence and post office address given therein. Kauzlarich v. Board of Trustees of Oak Creek School District Number 16, Yavapai County, 78 Ariz. 267, 270-271, 278 P.2d 888 (1955).

A.R.S. § 16-593(A) states:

“The election board, in determining the place of residence of a person, shall be governed by the following rules, so far as applicable:

1. The residence of a person is that place in which his habitation is fixed and to which he has the intention of returning when absent.
7. The place where a person's family permanently resides is his residence, unless he is separated from his family, but if it is a place of temporary establishment for his family, or for transient purposes, it is otherwise.”

The above rules have been interpreted by the Attorney General as being the general rule for determining residence where ever that may be an issue, even though the rules in that section apply specifically only to voters. Op. Att. Gen. No. 71-15-L.

In reaching its decision, the court reasons as follows.

SHAW's testimony regarding the reason for staying at his in-laws' house i.e. his son's condition was compelling. Because it was so compelling, the court would think that his father-

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-017915

06/18/2010

in-law would have known of this reason and have been able to articulate it while on the stand when asked by the court. He did not.

The testimony of Mrs. Shaw that SHAW slept at their home five to seven nights a week was very persuasive and indicates that the District 20 House is the residence to which SHAW intends to and regularly returns when absent.

The mere fact of a voter's registration and driver's license addresses, although strong, does not alone compel the court to rule for SHAW. *id.* Kauzlarich.

For the above reasons the court finds for plaintiff.

Plaintiff's Amended Complaint also raised the issue that SHAW failed to qualify for the Republican Primary because he collected his signatures before forming a candidate campaign committee in violation of A.R.S. § 16-903, which was neither argued nor was any evidence presented concerning it.

Had such evidence been presented, the court believes that A.R.S. § 16-903(G) provides the remedy for a violation of that section i.e. a civil penalty. Compare that with A.R.S. § 19-114 which states:

“...no person other than a person who is qualified to register to vote ... may circulate an initiative or referendum petition and all signatures verified by any such person shall be void and shall not be counted ...”

This section indicates that the legislature, had it wanted to, could have provided in § 16-903 that any signatures collected before a candidate campaign committee was formed were void. Because the legislature did not do so, the court would probably not have found that SHAW's petitions were invalid for that reason had the question been presented to the court.

/ s / HON. EDWARD O. BURKE

---

JUDICIAL OFFICER OF THE SUPERIOR COURT