

SUPREME COURT OF ARIZONA

BRENT BACKUS, individually,) Arizona Supreme Court
) No. CV-18-0152-AP/EL
Plaintiff/Appellant,)
) Maricopa County
v.) Superior Court
) No. CV2018-008627
DONALD SHOOTER, individually,)
Real Party in Interest; ADRIAN)
FONTES, in his official capacity)
as Maricopa County Recorder;)
DENNY BARNEY, in his official)
capacity as Maricopa County)
Supervisor, CLINT HICKMAN, in)
his official capacity as)
Maricopa County Supervisor, BILL)
GATES, in his official capacity)
as Maricopa County Supervisor,)
STEVE CHUCRI, in his official) **FILED 06/27/2018**
capacity as Maricopa County)
Supervisor, STEVE GALLARDO, in)
his official capacity as)
Maricopa County Supervisor,)
MARTIN PORCHAS, in his official)
capacity as Yuma County)
Supervisor, DARREN SIMMONS, in)
his official capacity as Yuma)
County Supervisor, LYNNE)
PANCRAZI, in her official)
capacity as Yuma County)
Supervisor, RUSSELL MCCLOUD, in)
his official capacity as Yuma)
County Supervisor, MARCO A.)
REYES, in his official capacity)
as Yuma County Supervisor, ROBYN)
STALLWORTH POUQUETTE, in her)
official capacity as Yuma County)
Supervisor, RANDY GARRISON, in)
his official capacity as Yavapai)
County Supervisor, ROWLE P.)
SIMMONS, in his official)
capacity as Yavapai County)
Supervisor, a public entity;)

JACK R. SMITH, in his official)
capacity as Yavapai County)
Supervisor, THOMAS THURMAN, in)
his official capacity as Yavapai)
County Supervisor, LESLIE M.)
HOFFMAN, in her official)
capacity as Yavapai County)
Recorder, MICHELE REAGAN, in her)
official capacity as Arizona)
Secretary of State,)
)
Defendants/Appellees.)
)
_____)

DECISION ORDER

The Court, by a panel consisting of Vice Chief Justice Brutinel, Justice Pelander, Justice Timmer, and Justice Lopez, has considered the parties' briefs, the record, the trial court's minute entry order, and the relevant statutes and case law in this expedited election matter.

Following an evidentiary hearing, the trial court determined that candidate Donald Shooter's primary residence is in Yuma, that he is a resident of Yuma and Legislative District 13, and that he therefore meets the qualifications to run for the Arizona State Senate in Legislative District 13, which includes parts of Yuma, Maricopa and Yavapai Counties. Challenger Brent Backus appealed.

We review the trial court's findings of fact for an abuse of discretion and will leave them undisturbed unless they are clearly

erroneous. *Shooter v. Farmer*, 235 Ariz. 199, 200 ¶ 4 (2014); see also Ariz. R. Civ. P. 52(a)(6) ("Findings of fact . . . must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the credibility of witnesses."). The trial court made the following findings. Shooter lived in a Yuma apartment within Legislative District 13 for five years before filing his nomination paper. (In his briefing, Shooter asserts that the Yuma property is a condominium, not an apartment.) The Yuma property is not Shooter's only property, however, as he has an ownership interest in a Phoenix-area home, which is not located within Legislative District 13, and which is his wife's primary residence. Shooter lived there this year while the legislature was in session and after his expulsion from the legislature in February 2018. Other than a two-week period from April 30 to May 14, 2018, when he was registered to vote in Maricopa County, at all pertinent times Shooter has been registered to vote in Yuma County and was so registered when he filed his nomination petition.

We must view the evidence in the light most favorable to supporting the trial court's decision. *Johnson v. Johnson*, 131 Ariz. 38, 44 (1981). So viewed, the record supports the court's factual finding that Shooter resides and intends to remain in Yuma: the Yuma address is listed on his driver's license, voter registration, vehicle registration, and tax returns; he continues to receive mail at the Yuma address; he continues to pay rent for the Yuma property; the Yuma

property remains furnished; he receives visitors at the Yuma property; and he has voted in Yuma County since September 2006.

Other evidence could support a contrary finding: mail sent to the Yuma address was returned with a forwarding address to the Phoenix property; the electricity for the Yuma property was discontinued in February 2018; Shooter's wife resides at the Phoenix home and rarely visits Yuma; the Phoenix home is listed as a "primary residence" for property tax purposes; the lease on Shooter's Yuma property is month-to-month; and he does not own real property in Yuma.

The trial court resolved the conflicts in the evidence and competing inferences therefrom by finding, among other things, that "the Yuma Apartment has been and still is Shooter's primary residence, and that the Phoenix House is [his] temporary residence." The court further found that "Shooter [was] a resident of Legislative District 13 at the time the nominating petition was filed."

The trial court's factual findings are not clearly erroneous. Viewed in the light most favorable to upholding the court's decision, the record supports those findings, and we must accept them. Ariz. R. Civ. P. 52(a)(6). Thus, we have no basis for overturning the trial court's ruling unless it is legally incorrect, an issue we review de novo. See *City of Phoenix v. Glenayre Elecs., Inc.*, 242 Ariz. 139, 142 ¶ 9 (2017) (we review legal issues de novo).

Article 7, section 10, of the Arizona Constitution authorizes the legislature to enact "a direct primary election law . . .

provid[ing] for the nomination of candidates for all elective State . . . offices." Pursuant to that authority, the legislature enacted A.R.S. § 16-311(A), providing that "a candidate for public office shall be a qualified elector at the time of filing and shall reside in the county, district or precinct that the person proposes to represent." Because it is undisputed that Shooter was a qualified elector at the time of filing, A.R.S. § 16-121(A), the issue is whether he resided in Legislative District 13 when he filed his nomination paper.

Pertinent here is A.R.S. § 16-101(B), which states that "resident" for title 16 purposes "means an individual who has actual physical presence in this state, or for purposes of a political subdivision actual physical presence in the political subdivision, combined with an intent to remain." As the trial court noted, this provision contains no durational requirement for "actual physical presence in the political subdivision," and the court's factual findings support the conclusion that Shooter was physically present in Yuma when he filed his nomination paper. The record also supports the trial court's finding that Shooter intends to remain in Yuma County.

To the extent Backus argues that Shooter's voter registration and time spent in Maricopa County necessarily suggest otherwise, we disagree. That Shooter, after two weeks of being registered to vote in Maricopa County, reestablished his registration in Yuma County, where he has continuously voted since 2006, is "strong proof" that he resides

in Yuma County. *Kauzlarich v. Bd. of Trs. of Oak Creek Sch. Dist. No. 16*, 78 Ariz. 267, 270 (1955); see also A.R.S. § 16-101(B) (stating that "temporary absence does not result in a loss of residence if the individual has an intent to return"). In sum, the trial court did not abuse its discretion in concluding that Shooter is a resident of Yuma with actual physical presence there combined with an intent to remain under A.R.S. § 16-101(B). Therefore,

IT IS ORDERED affirming the trial court's decision.

IT IS FURTHER ORDERED that the Maricopa County Board of Supervisors and County Recorder, Yavapai County Board of Supervisors and County Recorder, Yuma County Board of Supervisors and County Recorder and Secretary of State shall leave Donald Shooter's name on the Republican ballot for the office of state senator for Legislative District 13 for the August 28, 2018, primary election.

Dated this 27th day of June, 2018.

_____/s/_____
ROBERT M. BRUTINEL
Vice Chief Justice

TO:

Timothy A LaSota

Timothy A Nelson

M Colleen Connor

Eric H Spencer

William J Kerekes

Kara Karlson

Thomas M Stoxen

Kara Karlson

Joseph Eugene La Rue

William A Kunisch

Hon Rosa Mroz

Hon Chris DeRose