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**BILLY JOE HARRINGTON,
IN HIS OFFICIAL CAPACITY
AS DISTRICT ATTORNEY FOR
THE 10th JUDICIAL DISTRICT,
NATCHITOCHE PARISH,
LOUISIANA**

DOCKET NO.: 90856-A

VERSUS

TENTH JUDICIAL DISTRICT COURT

MOZELLA JEANETTER BELL NATCHITOCHE PARISH, LOUISIANA

JUDGMENT

THIS CAUSE COMES BEFORE THIS HONORABLE COURT on a Petition to Declare the Office of Mayor of Campti Vacant filed January 22, 2019, by Hon. Billy Joe Harrington, District Attorney of and for the Tenth Judicial District, Natchitoches Parish, Louisiana, and on a Peremptory Exception of Prescription filed February 25, 2019, by Defendant, MOZELLA JEANETTER BELL. The hearing on the exception and the trial were held on Wednesday, March 6, 2019, at which the following persons were present: Hon. Billy Joe Harrington, District Attorney, and Steven P. Mansour, Esq., Assistant District Attorney; and Defendant, MOZELLA JEANETTER BELL, represented by T. Taylor Townsend, Esq. After closing arguments, the matter was submitted to the court for discernment and judgment.

AFTER CAREFUL CONSIDERATION OF THE LAW, EVIDENCE, PLEADINGS, RECORD, TESTIMONY, AND ARGUMENTS OF LEARNED COUNSELS, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. Defendant's Peremptory Exception of Prescription be and is hereby respectfully **DENIED** finding that La.R.S. 33:146 cited by Defendant is inapplicable. The cited statute establishes a specific prescriptive period for

an election contest only. The instant action contests neither the legitimacy nor the integrity of the November 2018 election that confirmed Defendant, MOZELLA JEANETTER BELL, as Mayor of Campti, but whether present circumstances exist calling for the Office of Mayor to be declared vacant pursuant to La.R.S. 18:581(3).

2. This court rules in favor of Petitioner, BILLY JOE HARRINGTON, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY FOR THE TENTH JUDICIAL DISTRICT, NATCHITOCHE PARISH, and against Defendant, MOZELLA JEANETTER BELL, finding that defendant, MOZELLA JEANETTER BELL, does not meet and has never met the continuing dual obligation to be domiciled and actually reside within the Town of Campti in violation of La.R.S. 18:581(3).

FACTS

On January 2, 2019, the Natchitoches Parish District Attorney received the first of two written complaints from a registered voter in the Town of Campti, a municipality within Natchitoches Parish, claiming that Mozella Bell, the duly elected mayor of Campti, does not reside within the town limits of Campti as required by statute, but lives in Red River Parish.

In accordance with law, the District Attorney commenced an investigation and authored a written opinion with reasons of his findings that was subsequently published in the Natchitoches Times, the official parish journal, on January 19, 2019. The opinion concluded that:

- a. Mayor Bell listed on her Notice of Candidacy Qualifying Form that her domicile and place of residence was 3365 La. Highway 480 in Campti, an address outside the town limits of Campti.

- b. The Highway 480 residence “appears to be abandoned with windows covered by sheets of plywood and further appears uninhabited and incapable of habitation.”
- c. Mayor Bell is a registered voter in the Town of Clarence, Louisiana, and voted there in the November 6, 2018 election.
- d. Mayor Bell does not receive mail in the Town of Campti.
- e. Mayor Bell lists another residential address located in Coushatta, Red River Parish, Louisiana.

The District Attorney concluded that Mayor Bell does not meet the qualifications and continuing requirements of Mayor of the Town of Campti and thus does not qualify to hold office of Mayor of the Town of Campti.

On January 22, 2019, the District Attorney, in accordance with law, filed a petition to declare the office of mayor of Campti vacant.

LAW AND DISCUSSION

The Lawrason Act.

The Lawrason Act (hereinafter, “the Act”), codified under La.R.S. 33:321, *et seq.*, is a product of the 1898 Louisiana State Legislature that permits municipalities in the state to incorporate into towns, villages, or cities without specific clearance from the legislature. The Lawrason Act sets forth the rules by which officials are elected and appointed, what the powers and duties are for each office, how ordinances and resolutions are created and passed, how courts are set up and administered, how budgets are adopted, and how taxes are levied. These laws, together with subsequent case law and Attorney General's opinions, lay the foundation and the rules by which these towns, villages, and cities are governed.

It is uncontested that the Town of Campti is a Lawrason Act municipality, and the provisions of La.R.S. 33:321, *et seq.* apply. Louisiana Revised Statutes 33:384 lists the qualifications for the office of mayor and provides:

The mayor shall be an elector of the municipality who at the time of qualification as a candidate for the office of mayor shall have been domiciled and actually resided for at least the immediately preceding year in the municipality.

Louisiana Revised Statutes 18:581(3) defines the term “vacancy” in an elective office and provides:

*“Vacancy” occurs in an elective office when the office is or will be unoccupied by reason of the death of the official who was elected to the office, or by reason of his retirement or resignation, removal from office by any means, failure to take office for any reason, or when it becomes certain that the person elected to the office will not take the office on the day when the term for which he was elected commences, **or when the person elected to or holding the office no longer meets the residence or domicile requirements of that office**, any declaration of retention of domicile to the contrary notwithstanding, or when an office is created due to a reclassification of a municipality. [Emphasis added]*

The proper procedure for declaring a public office vacant is provided for in La. R.S. 18:671-675, which provides for a judgment declaring an office vacant when a voter files a written complaint, the proper official investigates, and the official concludes that the officeholder no longer meets the residence or domicile requirements of the office.

Residence versus Domicile

Article 38 of the Louisiana Civil Code defines the domicile of a natural person as “the place of his habitual residence.” The terms “residence” and “domicile” are not synonymous. *Wilson v. Butler*, 513 So.2d 304 (La.App. 1 Cir.

1987). A natural person may reside in several places but may not have more than one domicile. La.Civ.Code art. 39.

Domicile is a person's principal domestic establishment, not a business establishment. Domicile is maintained until acquisition of a new domicile.

La.Civ.Code art. 44. A change in domicile occurs when there is a change in actual residence accompanied by an intention to make a new principal establishment or home. *Succession of Rhea*, 227 La. 214, 78 So. 838 (1995). There is a presumption against a change in domicile. *Messer v. London*, 438 So.2d 546 (La. 1983). Proof of a person's intent to establish or change domicile depends on the circumstances.

La.Civ.Code art. 45.

Domicile consists of two elements, residence and intent to remain.

McClendon v. Bel, 2000-2011 (La.App. 1 Cir. 9/7/00), 797 So.2d 700, 704. If the official has more than one residence, intention is the determinative factor in ascertaining the location of her domicile. *Id.* In establishing domicile, intent is based on the actual state of facts and not what one declares them to be. *Succession of Rhea, supra.* Various indicia have been set forth to prove, by a totality of the circumstances, whether an individual has established a domicile. Among these are where a person sleeps, takes his meals, has established his household, and surrounds himself with family and the comforts of domestic life. *Sheets v. Sheets*, 612 So.2d 842, 822 (La.App 1 Cir. 1992). In addition, courts have looked at where the person is registered to vote, where his motor vehicles are registered, where he maintains bank accounts and receives mail, where he transacts business affairs, and where he leases or owns property. *Autin v. Terrebonne*, 612 So.2d 107 (La.App. 1 Cir. 1992). Finally, courts have given great weight to a person's intent when

ascertaining the location of his domicile. *Wilson v. Shea*, 565 So.2d 1105 (La.App. 4 Cir. 1990); *Autin v. Terrebonne*, *supra*. Therefore, the issue of a local official's domicile is an issue of fact that must be determined on a case-by-case basis by looking at the totality of the circumstances. *Landiak v. Richmond*, 2005-0758 (La. 3/24/05), 899 So.2d 535, *citing Darnell v. Alcorn*, *supra*.

Here, Mayor Bell testified that she has never lived within the town limits of Campti until she moved to the Barnum Street address in February of 2019, after the filing of the instant petition:

MANSOUR: So, as I understand your testimony, you would agree with me that at no time during your life up until February of 2019 did you reside within the Town of Campti, Louisiana?

BELL: Yes, sir.

MANSOUR: You agree with that?

BELL: I do agree.

MANSOUR: Okay, and the only time, as we sit here today, that you have resided within the municipal limits of the town of Campti is when you rented this house in February of 2019.

BELL: Yes, sir.

She further testified that at the time Mayor Bell qualified for the office, in July of 2018, she knew that the address she claimed as her residence, 3365 La. Hwy. 480, was outside the town limits of Campti rendering her candidacy ineligible. She also stated that on election day, she could not vote for (or against) herself for Campti mayor because she was a registered voter with an assigned polling place in another township. She also testified that it was her understanding that if she won the election, then she could relocate into the Campti municipal limits. She won the mayoral election held in November 2018, but did not move into the town limits until after she was served with the instant petition. There was

considerable testimony given by Mayor Bell that she “considered” the Highway 480 her domicile since she graduated high school. However, no matter how she perceived this home to be her residence and domicile, it does not change the undisputed fact that the address was outside the municipal limits of Campti. On these findings alone, this court can declare a vacancy of the office because if she never resided or was domiciled in the Town of Campti, then she also “no longer meets the residence or domicile requirements of that office.”

The Irrelevancy of 3365 Louisiana Highway 480.

Although Mayor Bell’s detailed testimony concerning her perceived residence and domicile was the Highway 480 address is largely irrelevant, this court is compelled to comment that it was also largely untruthful. At most, this address was nothing more than an emotional tether to her childhood and to her family and at no time since December of 2017, at least, did she reside or intend to reside there. Photographs of the subject house taken in January of 2019, a time during which Mayor Bell claimed she was residing in the house, show a boarded-up and over-grown homestead that does not look to be inhabited by anyone. Besides the visually questionable soundness of the structure, most telling was the absence of any foot and automobile traffic on the unpaved overgrown grassy tract between the highway and the gate, beyond the gate, and to the “garage” or front door. Further, the utility bills from December of 2017 to January of 2019, totaling \$193.47 and averaging \$12.89 per month, suggests no one was living in the house, no matter how little electricity Mayor Bell claims she requires. This court finds it difficult to believe that for the “90 to 120 days a year” she claims to live at the

house, she chooses to use fans instead of the air conditioner. It is also noted that during this 14-month period, only two payments were made resulting in two disconnects for non-payment.

The credible testimony of one of the two complaining witnesses, Tarlisha Hudson, supports this finding. Besides noting these same physical conditions of the house, she stated that she passes by the subject house up to four times a day and has never seen anyone at that house for years,

It is the court's finding that all times relevant, the subject house has been unused as a residence by anyone, and that Mayor Bell admittedly used that address as a Campti address for the purposes of running for mayor. It is the court's belief that had the instant petition not been filed, she would still be living in Red River parish or staying in Shreveport with no intention to re-establish her domicile within the town limits of Campti.

However, a unique issue, and one which this court finds *res nova*, has surfaced: whether an official in Mayor Bell's circumstance can "cure" the lack of residency and domicile, both during candidacy and at the time of election, by establishing them post-election. This court finds that under these facts, one cannot.

Residency requirements serve a practical and legislative purpose.

Mayor Bell now claims that she is a resident and domiciliary of Campti because she is a renter of the house located at 275 Barnum Road within the municipal limits of Campti. With the exception of her rental lease (which curiously bares neither her name nor her signature), her driver's license, utility bills, voter registration, and bank statements reveal her name and the Barnum

Street address. She now claims that since she is now a resident and domiciliary of the Town of Campti, no harm done.

First and foremost, the Lawrason Act and its residency and domicile requirements for a mayor are a deliberate expression of the Louisiana Legislature and thus of the citizenry of this state. A primary rationale for residency requirements for local governments has to do with ensuring that candidates understand the needs and problems of their constituents. The assumption is that a candidate who lives in the district for a longer period of time will be more knowledgeable about that district's issues and its constituents' needs. "The purpose of residency statutes is to ensure that governmental officials are sufficiently connected to their constituents to serve them with sensitivity and understanding." *Lewis v. Gibbons*, 80 S.W.3d 461, 466 (Mo. 2002). Other courts have determined that candidates should have the opportunity to "know the customs and mores of the people," (*State ex rel. Brown v. Summit City. Bd. of Elections*, 545 N.E.2d 1256, 1259 (Ohio 1989)) to "understand all the local problems ... [and] know the people of the community" (*Bolanowski v. Raich*, 330 F.Supp. 724, 730 (E.D. Mich. 1971)). In short, such qualifications allow a candidate "the opportunity to become familiar with the issues and concerns that are important to the people he or she seeks to represent." *Robertson v. Bartels*, 150 F.Supp. 2d 691, 696 (D. N.J. 2001).

Further, residency requirements provide voters with more information about the candidate. Such requirements give voters, as the Alaska Supreme Court put it, "a period in which they may become familiar with the character, habits and reputation of candidates for political office." *Gilbert v. State*, 526 P.2d 1131, 1135 (Alaska 1974). Although this justification concerns educating voters, it well-

expresses the need for having a durational residency requirement that restricts candidates.

From a more local-government perspective as the subject mayoralty, these requirements keep “frivolous” candidates off the ballot and they work to ensure geographic representation. The requirement that a person has to live in a certain municipality for a set period of time and during their term of office works to better ensure that the municipality’s needs receive adequate representation and its character preserved.

Here, the residents of Campti voted for Ms. Bell to be the leader of their town, to live among them, to witness their concerns and, above all, to be accessible, something the residents of the Town of Campti have not had in a mayor since Ms. Bell was sworn in. The residents of Campti voted for a mayor, not a proxy from a neighboring parish. To allow for an official to “cure” the lack of residency requirement by moving post-election into the proper geographic jurisdiction of the office, and perform the perfunctory hoop-jumping to claim legitimacy of residence and domicile, disregards, and thus undermines, these statutory protections and impermissibly rewards the less-than-forthright official by keeping the authority and remuneration that the office provides. To legitimate this practice would morph our practical democracy in a mere façade of one as geo-political movements could be orchestrated and accomplished by a remote few independent of the will of their respective constituencies.

The Point of No Return.

It must be remembered that Mayor Bell did not attempt to become a resident within the municipal limits of Campti until after she was sued. Had she “cured” her residency defects before that time, such a material fact could tip the scale on this issue. Here, she did not do so. It is this court’s opinion that but for the two complainants, Mayor Bell would have resided indefinitely in Red River Parish or with family in Shreveport. Additionally, and most significant to this analysis, Mayor Bell was *never a resident and domiciliary* within the municipal limits of Campti thus *failing* to qualify as a bona fide candidate, *ab initio*. Therefore, since the purported “cure” would have never occurred without a judicial demand prompted by a whistle-blowing voter, it is not unreasonable that the date of that judicial demand, January 22, 2019, serves as the deciding benchmark for the purposes of the vacancy statute in this instance.


THEREFORE, BASED ON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. Defendant, MOZELLA JEANETTER BELL, is declared **DISQUALIFIED** from holding the Office of Mayor of the Town of Campti pursuant to La.R.S. 18:581(3);
2. The Office of Mayor for the Town of Campti be and is hereby declared **VACANT** and that this vacancy be filled in accordance with the provisions of Louisiana Revised Statutes and the Lawrason Act; and

IT IS FURTHER ORDERED that Defendant, MOZELLA JEANETTER BELL, be cast will all costs of these proceedings; and

IT IS FURTHER ORDERED that the Clerk of Court notify the parties of the signing of this Judgment in the manner prescribed by law.

THUS DONE AND SIGNED in Chambers, in the City and Parish of Natchitoches, State of Louisiana, on this, the 14th day of March, 2019


HON. DESIREE DUHON DYESS
DISTRICT COURT JUDGE
DIVISION A