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Coffee County, Chancery Court

IN THE CHANCERY COURT FOR COFFEE COUNTY TENNESSEE AT MANCHESTER, TENNESSEE

STATE OF TENNESSEE,	)	
***ex rel*. Scott Van Velsor et al.,**	)	
Petitioner	)	
	)	
vs.	)	**Case No. 22CV-311**
	)	
JENNA RENEE AMACHER	)	
Respondent	)	

ORDER

THIS CAUSE came on for hearing before the Court upon the Motion for Summary Judgement and Response thereto filed by the respective parties. The Court has reviewed the motion, the response, the attached affidavits, deposition responses and exhibits, as well as hearing the arguments of counsel all from which the COURT FINDS:

1. This is a Quo Warranto action filed by the "relator" against sitting Tullahoma City Alderman "Amacher", the Respondent, in October 2022.

2. Tullahoma City Charter requires certain residential qualifications to maintain office. The Alderman must be a "bona fide" resident of the town of Tullahoma. The charter further provides that "any alderman, after his election removing from the city, thereby vacates his said office."

3. The relator's theory of suit is that Amacher ceases to be a bona fide resident of the town, because she did in fact remove herself from the town and thereby vacated her office by selling her home located in the Macon Manor subdivision in January 2021.

4. Amacher has defended her status by contending that although she did sell her home in Macon Manor in January 2021, she shortly thereafter took steps to acquire 20 acres on Ledford Mill Road in (Tullahoma), and that when viewed under the relevant case law defining residency, she has always intended that the Ledford Mill property to be her lawful residence and she has always been a bona-fide resident for the purposes of Alderman qualifications, and that her temporary occupation of her fathers house in Blue Creek Estates (Franklin County) is just that—a temporary site of visitation and not her permanent residence.

5. On January 6th, 2023, Amacher filed this Motion pursuant to Rule 56. Tenn. Rules Civ. Proc. contending that she is entitled to summary judgement on the residency issue. She included, her declaration as well as the declarations of her father and aunt that corroborated her declaration. In essence, Amacher contended that although she sold her Macon Manor property in January 2021, she entered into a contract in April 2021 to buy the Ledford Mill Property which had 2 barns on it "and a 34 foot camper to live in while [Respondents] home was under construction, and that this contract is evidence of her intent to treat this property as her permanent residence."

6. Amacher contended that between January 2021 and August 2021, she "stayed"[1] with her mother, her father, her father's home in Florida, South Carolina, and the Food Lion parking lot. The rest of the time, she contends that she has lived in a camper on the Ledford Mill property, and that her construction efforts on Ledford Mill as well as listing this address for her children's school, her drivers license, voter registration and so forth are evidence of her intent to establish this property and domicile as her residence.

7. Relator has filed responsive pleadings challenging Amacher's assertions that Ledford Mill is her permanent residence. Relator has cited alleged inconsistencies in the Amacher's depositions as well as provided the affidavits of Investigator Jason Kennedy, utility records, UPS deliveries, the alleged bill of sale dated January 8th, 2022, and the city of Tullahoma building permit dated 11-9-2022.

[1] There is no legal accepted legal definition of the word "stay" in everyday parlance. However, the term implies transitory or almost nomadic state. It certainly does not confer any particular legal status.

8. In order to prevail on a Motion for Summary Judgement, the moving party must show that there are no material facts in dispute and that the moving party is entitled to judgement as a matter of law, *Byrd v.Hall*, 847 S.W. 2d 208 (Tenn. 1993).

9. Assuming the moving party makes a properly supported motion, then the non-moving party is required to produce evidence of specific facts establishing that there is a genuine issue of disputed material fact, *Byrd* at 215. The non-moving party may satisfy its burden of proof by: (1) pointing to evidence establishing material factual disputes that were overlooked or ignored by the moving party; (2) rehabilitating the evidence attacked by the moving party; (3) producing additional evidence establishing the existence of a genuine issue for trial or (4) submitting an affidavit explaining the necessity for further discovery pursuant to Tenn. R. Civil Proc. Rule 56.06 *McCarley v. West Quality Food Service*., 960 S.W. 2d 585, 588 (Tenn. 1998)."

The central issue in this case can be stated as follows: when Alderman Amacher sold her house in Macon Manor in January 2021, what became her new residence? If it was 1422 Ledford Mill Road as she contends, she is and has a bona-fide resident for the purposes of holding office. If, however, her residence is found to be 622 Blue Creek Road, then she has forfeited/vacated her authority to hold office.

Residence and domicile are interpreted to be synonymous of each other. Regarding domicile, to create a domicile in Tennessee, a person ordinarily must not only intend to establish a personal home in this state, but must also act consistently with this intention. *Barnett v. Barnett*, 1998 WL 787043 @ 3 (Tenn. App. 1998).

The issue of one's domicile and residence is a question of fact *Huskey v.*

Crisp, 865 S.W. 2d 451, 454 (Tenn. 1993); *Asbury v. Garrett*, 1996 WL 334366, at *2 (Tenn. App. 1996). Although an older case, *Sturdavant v. Sturdavant*, 28 Tenn. App. 273, 189 S.W. 2d 410 (Tenn. App. 1945) is helpful.

> Before a new domicile can be acquired a home must be actually established with the intention to remain. No change of domicile can be affected by a mere statement of an intention not accompanied by some act in accord with this intention. There must be a concurrence of actual change of residence and the intention to abandon the old and acquire a new domicile. *Sturdavant*, at 411.

Thus, after applying the legal standard set out in Rule 56 to the issue and the facts as proffered by Amacher and the Relator, it is clear that this residency issue is an inherently fact specific one. Amacher has made declarations that she intended Ledford Mill to be her permanent residence and domicile and that she was only a casual guest at Blue Creek. She has supplied depositions and affidavits that corroborate her declarations. The allegations are conclusory in nature and other than dates, contain very little factual information but do contain some specific factual corroborations.

Relator has responded with the affidavits of an investigator as well as additional facts that would, if accredited tends to refute her assertions. At the end of the day, in order to properly resolve this dispute, the trier of fact must analyze the facts and weigh these testimonies. This is the function of a trial court and not appropriate for summary judgement. This Motion is accordingly DENIED.

Case Title: State Of Tennessee vs Jenna Renee Amacher

Case Number: 22CV-311

Type: ORDER

It is so ordered.

/S/ Robert Carter, Circuit Judge Sitting as Chancellor