

BEFORE THE MARYLAND STATE BOARD OF ELECTIONS

BARBARA OSBORN KREAMER
and MICHAEL G. HIOB,
Complainants

v.

HARFORD COUNTY BOARD
OF ELECTIONS,
Respondent

FINAL DETERMINATION

Statement of the Case

On September 6, 2013, the State Board of Elections (the “State Board”) received from Barbara Osborn Kreamer (“Ms. Kreamer”) a challenge to the claim of Arthur Henry Helton, Jr. (“Mr. Helton”), evidenced by his voter registration, that he lived in the City of Aberdeen, Maryland. At that time, Ms. Kreamer believed that Mr. Helton had registered at, and therefore purported to reside at, a building, claimed by Ms. Kreamer to be an office, on S. Parke Street in Aberdeen. Ms. Kreamer’s complaint stated her belief that Mr. Helton, and his wife Ann, instead lived at 3069 Harmony Church Road in Darlington, Maryland. On September 12, 2013, the State Board received an amended complaint from Ms. Kreamer, correcting her September 6 complaint to indicate that Mr. Helton was in fact registered to vote at, and therefore purported to reside at, 3 S. Rogers Street in Aberdeen. Again, Ms. Kreamer asserted that this was Mr. Helton’s office and not a *bona fide* residence.¹

On September 30, 2013, the State Board received from Michael G. Hiob (“Mr. Hiob”) a similar complaint, stating Mr. Hiob’s belief that Mr. Helton had registered to vote, giving as his residence address 3 S. Rogers Street in Aberdeen, whereas Mr. Helton actually lived at 3069 Harmony Church Road in Darlington.² The State Board consolidated Ms. Kreamer’s and Mr. Hiob’s complaints and scheduled a hearing, pursuant to Code of Maryland Regulations (“COMAR”) 33.01.05.06. The hearing was initially set for October 18, 2013, at the office of the Harford County Board of Elections (the “Local Board”), and the State Administrator of Elections (the “State Administrator”) designated Judith A. Arnold, a former Counsel for Election Laws, to act as hearing officer.

Just two days before the scheduled hearing, on October 16, 2013, the State Board received from Ms. Kreamer a new complaint asserting that Ann C. Helton (“Mrs. Helton”) was also falsely registered to

¹ On September 19, 2013, Ms. Kreamer purported to update her complaint by observing that, on September 17, she had seen a posting on Facebook to the effect that Mr. Helton intended to move to Edgewood. It appears that the State Board did not receive this “update” until September 23 or later. In any event, the Facebook posting appears to have been erroneous, and there is no issue before me involving any claim of residence in Edgewood.

² Both Ms. Kreamer and Mr. Hiob claim to be residents of Aberdeen and politically active voters in the 34th Legislative District of Maryland, and no party has disputed these claims.

vote on the basis of a claim to reside at 3 S. Rogers Street in Aberdeen, whereas Mrs. Helton actually lived with her husband at 3069 Harmony Church Road in Darlington. In addition, Mr. Helton had engaged an attorney to represent him at the hearing, and the attorney requested a postponement. The new complaint regarding Mrs. Helton was consolidated with the earlier complaints concerning Mr. Helton, and the hearing in the consolidated cases was rescheduled for October 25, 2013.

At the October 25 hearing, Mr. Helton and his counsel were present, but Mrs. Helton did not appear. At the request of Mr. Helton's counsel, the hearing officer agreed to a limited reconvening of the hearing on November 18, 2013, solely to hear from Mrs. Helton and to address the issue of her *bona fide* residence. Mrs. Helton did appear and testified on November 18.

This administrative procedure is governed by COMAR Chapter 33.01.05. The purpose of the administrative complaint procedure is to provide a fair hearing, if requested, and a speedy determination outside the judicial system for, *inter alia*, an individual who feels aggrieved by the action of a local board of elections regarding voter registration.

Testimony and Exhibits

On October 25, 2013, the Complainants both testified and submitted exhibits. They also produced the testimony of Mr. Richard Marts ("Mr. Marts"), a licensed private investigator who had conducted surveillance at 3 S. Rogers Street and at 3069 Harmony Church Road from October 10 to October 24, 2013. Mr. Marts concluded that Mr. Helton used 3 S. Rogers Street during daylight hours, but that he never spent the night there; indeed, it was Mr. Marts's testimony that Mr. Helton spent every night at 3069 Harmony Church Road in Darlington. Also testifying on October 25 was Kevin Keene, Director of the Local Board, who presented the Local Board's records with respect to Mr. and Mrs. Helton's current voter registrations. Finally, Mr. Helton testified and submitted exhibits, including photographs of the interior and exterior of 3 S. Rogers Street. On October 25, all parties presented closing arguments with respect to Mr. Helton's situation.

At the reconvened hearing on November 18, the hearing officer limited the evidence to Mrs. Helton's situation. The same witnesses that had testified on October 25 did so again, except that Mrs. Helton, and not her husband, testified. A number of additional exhibits were submitted. Mr. Marts had conducted additional surveillance at 3 S. Rogers Street from November 5 to November 18, 2013, and he concluded that neither Mrs. Helton, nor anyone else, was actually living at that address. Significantly, Ms. Kreamer and Mr. Hiob presented evidence that water usage at 3 S. Rogers Street was inconsistent with the Heltons' testimony and their claim of residence there. Water usage at 3 S. Rogers Street during the summer of 2013 (Helton Exhibit 7) was less than half the usage of Ms. Kreamer for the same time period (Kreamer Exhibit 30), and Ms. Kreamer lives alone. Indeed, according to Mr. Hiob's testimony, the water usage at 3 S. Rogers Street was less than half the minimum water usage billed as a matter of course by the City of Aberdeen.

Findings of Fact

1. Mr. Helton has been registered to vote since 1960 in Harford County, Maryland. For more than 10 years before 2002, he was registered at 3069 Harmony Church Road in Darlington. Since the beginning of 2002, however, his voter registration address has been changed numerous times, all or nearly all of the changes being a result of Mr. Helton's own requests. The changes were as follows:

In Jan. 2002, the address was changed from 3069 Harmony Church Road to 247 Fountain St., Apt. C, Havre de Grace.

In Nov. 2003, the address was changed from 247 Fountain St. to 119 W. Bel Air Ave., Aberdeen.

In Jan. 2006, the address was changed, pursuant to a sworn voter registration application, from 119 W. Bel Air Ave. to 8 N. Parke St., Aberdeen.

In Feb. 2006, the address was changed, again pursuant to a sworn voter registration application, from 8 N. Parke St. to 3069 Harmony Church Rd., Darlington.

In Feb. 2007, the address was once more changed, pursuant to a sworn voter registration application, from 3069 Harmony Church Rd. to 8 N. Parke St., Aberdeen.

In Dec. 2007, the address was changed as a result of the 2007 proceedings before this hearing officer to 3069 Harmony Church Rd., Darlington.

Soon after Feb. 27, 2009, the address was changed, pursuant to a sworn voter registration application, from 3069 Harmony Church Rd. to 110 Ravenswood Ct., Joppa.

On Feb. 2, 2012, the address was changed, pursuant to a sworn voter registration application (Local Board Exhibit 1) from 110 Ravenswood Ct. to 3 S. Rogers St., Aberdeen.

2. Mrs. Helton was also registered to vote at 3069 Harmony Church Rd. for more than 10 years before 2002. However, in that year, Mrs. Helton's voter registration address began to be changed in a succession of transactions, as follows:

In 2002, the address was changed, pursuant to a sworn voter registration application, to 247 Fountain St., Havre de Grace.

In 2006, Mrs. Helton's address was again changed, pursuant to a sworn voter registration application, back to the address at 3069 Harmony Church Rd. (There was testimony that Mrs. Helton ran for County Executive of Harford County in 2006.)

In June 2010, Mrs. Helton's address was changed, pursuant to a sworn voter registration application, from 3069 Harmony Church Rd. to 110 Ravenswood Ct., Joppa.

In Dec. 2012, it was again changed back to 3069 Harmony Church Rd., and it continued there until Aug. 22, 2013, when it was changed by the Local Board in response to the identical voter registration applications included in Local Board Exhibits 2 and 3, to 3 S. Rogers St., Aberdeen.

A second voter registration application to effectuate the same change (Local Board Exhibit 4) was submitted following the first hearing in these proceedings, on Oct. 28, 2013. Mrs. Helton attempted to explain this second application by saying that she thought she had not received a new voter's card as a result of the August application, but I find her explanation unpersuasive. I believe that Mrs. Helton in fact submitted Local Board Exhibit 4 because she had not prepared and signed the application in Local Board Exhibits 2 and 3; rather, her husband had.

3. Since 1989, Mr. and Mrs. Helton have owned a farm property at 3069 Harmony Church Road in Darlington. They continue to own and maintain the farm and spend significant amounts of time there. They keep an in-ground pool at the farm property and consistently use the farm to entertain family and friends. They admitted at the hearing that they keep many of their clothes and personal possessions at the farm and that they often spend the night there.³ They testified that they have a number of domestic employees at the farm. Ever since they initially filed for Homestead Property Tax benefits in 2008, and until these proceedings, the Heltons have continuously claimed that 3069 Harmony Church Road is their principal residence.⁴

4. Mr. Helton is in the business of “commercial revitalization” and owns numerous properties, both residential and commercial, throughout Harford County, Maryland.⁵ While he and Mrs. Helton have consistently owned and maintained their farm in Darlington, they have changed their voter registrations, driver’s licenses, and other public indicia of residence, *frequently under oath*, to the addresses of other properties they own as a consequence of Mr. Helton’s real estate business.

5. The reason for the Heltons’ claims to reside at addresses other than 3069 Harmony Church Road has for years been and continues to be so that they -- especially Mr. Helton -- can run for public office in a jurisdiction other than the one where Harmony Church Road is located. Whereas the Heltons’ Harmony Church Road farm and residence is in Legislative District 35, the various other addresses claimed by the Heltons -- of particular relevance here, the 3 S. Rogers Street address -- are, or at pertinent times were, in Legislative District 34, where Mr. Helton has run for public office in the past and has clearly acknowledged that he wishes to run for public office in 2014.

6. There is a history of legal challenges to Mr. Helton’s claims of residence for voter registration purposes, beginning at least as early as 2007. Some of these have been successful, and some have not.⁶ Ms. Kreamer, Mr. Hiob, and other *bona fide* residents of the 34th Legislative District have been required, at significant personal expense and inconvenience, to institute and pursue these legal proceedings against Mr. Helton.

7. Even though Mr. and Mrs. Helton have gone to considerable lengths to establish a paper record

³ In response to Mr. Marts’s surveillance findings, the Heltons attempted to explain their absence from 3 S. Rogers Street and their frequent presence at the farm during October and November of 2013 as being necessitated by a “bumper crop” of new lambs being born this fall. I find this explanation unpersuasive.

⁴ Under Tax-Property Article, §9-105(a)(5) and (d), a homeowner may claim the Homeowner’s Property Tax Credit for only one dwelling, at which the homeowner actually resides or expects to reside for more than 6 months per year, and which is his or her principal residence. I find it incredible that Mr. Helton, who has served in the Maryland State Senate and whose business is real estate and “commercial revitalization,” did not appreciate the significance of this designation. I also find it unpersuasive that the Heltons filed for a change in the designation of their primary residence for Homestead Property Tax Credit purposes on November 13, 2013. See Exhibit L to the Heltons’ Brief and Memorandum.

⁵ Some of these properties are apparently owned by both of the Heltons, as tenants by the entirety.

⁶ Two cases were brought in the Circuit Court for Harford County in 2010, when Mr. Helton ran for the State Senate from Legislative District 34. One of the cases was brought by Rovall Washington, and another by Ms. Kreamer. The Washington case was decided by the Circuit Court in Mr. Helton’s favor, without a written decision. An appeal to the Court of Special Appeals was dismissed for Mr. Washington’s failure to file an information report. The case brought by Ms. Kreamer was dismissed by the Circuit Court as untimely. Ms. Kreamer’s appeals of that dismissal were ultimately denied as moot, since Mr. Helton had lost the 2010 election.

supporting their claim of residence at 3 S. Rogers Street in Aberdeen -- changing their voter registrations, driver's licenses, and mailing addresses for income tax, Medicare, banking, and other purposes -- the evidence does not indicate that the Heltons actually reside there. Indeed, Mr. Marts's surveillance, water bills, and photographs of the interior of the Rogers Street building submitted by Mr. Helton all contradict the Heltons' claims.⁷ Furthermore, an on-line database of rental properties available in Aberdeen in connection with BRAC (the federal Base Realignment and Closure program), on October 25, 2013, listed 3 S. Rogers Street, Aberdeen, as "turn key office space" available for rent. <http://www.aberdeenofficelocators.com/id27.html>.

8. There is evidence to suggest that Mr. Helton has fraudulently signed his wife's name on voter registration applications and other legal documents.⁸ Furthermore, there is a significant amount of objective evidence that Mr. and Mrs. Helton both lied under oath about their residence when they testified in these proceedings.

Conclusion of Law

Both Mr. and Mrs. Helton maintain their *bona fide* residence or domicile at 3069 Harmony Church Road in Darlington, and that is where Maryland's Constitution (Article I, §1) and election law require that they be registered and vote. That is, as well, where either of them may legally run for public office.

Discussion

The concept of residence or domicile is, as the Maryland Court of Appeals has declared, "somewhat elusive," particularly since the Court's decision in *Blount v. Boston, supra*. There, the Court explained that one's domicile need not necessarily be, but is ordinarily, where the person and his family actually live. In any event, it must be a place of a fixed and permanent nature, to which the person, whenever absent, intends to return. While the controlling factor in determining domicile is intent, an ordinarily *subjective* state of mind, the Court has stated that the relevant intent is to be determined after a weighing of *objective* factors, including where the person actually lives, where mail is received, where personal belongings are kept, the address given on licenses and other government documents, and so forth. In *Blount*, the Court declared that there is a rebuttable presumption that one's actual place of abode is his domicile, although in *Blount* the Court found the presumption rebutted by evidence explaining why Senator Blount's *bona fide* domicile continued, on an ongoing basis, in Baltimore City, notwithstanding his wife's

⁷ The Helton case is essentially like the "mail drop" situation from which the Court of Appeals, in *Blount v. Boston*, 351 Md. 360 (1998), distinguished Senator Blount's situation. In *Blount*, the Court said, "[t]his is not a case where someone desires to run for office in an area where he or she has not lived, and does not wish to live, but merely establishes a 'mail drop' in that area and lists the 'mail drop' as his or her address for various official and unofficial purposes. Such person has no bona fide intent to be domiciled where the 'mail drop' is established." *Id.* at 387. While Mr. Helton's purported new domicile at 3 S. Rogers Street is his office, and thus more than a mere mail drop, he nevertheless has no *bona fide* intent to be domiciled there.

⁸ In this regard, it seems clear to the hearing officer that Local Board Exhibits 2 and 3, the August 21, 2013 voter registration application submitted on behalf of Mrs. Helton, was in fact completed and signed by Mr. Helton. Mrs. Helton stated at the hearing that she has authorized her husband to sign legal documents on her behalf, but the signing

home, and his own frequent living arrangements, in Baltimore County.

An additional, well-established principle is pertinent here. By Constitution and statute, as well as by case law, there is a presumption that an individual who has acquired a residence in one locality retains that residence until it is affirmatively shown that the individual has acquired a new residence elsewhere. Maryland Constitution, Art. I, §1; Election Law Article §3-602(b); *Blount*, 351 Md. at 371 and cases there cited.

As elusive as these principles may have made the legal concept of domicile, they do not support a claim by one who clearly continues to maintain a longstanding, fixed, and permanent place of abode to have changed his or her legal domicile to another place where he or she does not actually reside, but where he or she merely expresses an inchoate “intent” to reside. In *Blount*, the Court of Appeals significantly stated that “[i]n order to effect a change of domicile, there must be an actual removal to another habitation, coupled with an intention” (internal quotation marks omitted) and that “[t]he mere intention to acquire a new domicil without the fact of an actual removal avails nothing,” 351 Md. at 372, citing several earlier cases. See also *Oglesby v. Williams*, 372 Md. 360, 376 (2002) (intent to change domicile cannot be perfected until there is an actual removal to the new location).

While changing one’s actual residence for the purpose of running for political office from the new address has been recognized as “entirely legitimate,” *Blount*, 351 Md. at 382, quoting *Roberts v. Lakin*, 340 Md. 147, 155 n.5 (1995), the prospective candidate must actually have changed his or her place of abode.⁹ Otherwise, the presumption requiring affirmative abandonment of a previously established domicile controls.¹⁰

Disposition

In the 2007 proceeding before me, in which Ms. Kreamer likewise challenged Mr. Helton’s attempt to move his voter registration from Harmony Church Road to an Aberdeen address, I concluded that Mr. Helton’s voter registration activity since the 1998 *Blount* decision evidenced “a sincere belief that he is free to shift his voter registration at will among properties that he owns,” and I stated my belief that Mr. Helton was mistaken as a matter of law. Because I did not there find any reason to question the sincerity of Mr. Helton’s mistaken beliefs, I concluded that Election Law Article §§16-101(a)(3) and

of a personal oath or affirmation cannot be delegated.

⁹ Although Mr. Helton asserted at the hearing that he changed his voter registration address in February of 2012 from 110 Ravenswood Ct., Joppa, to 3 S. Rogers St., Aberdeen, without knowing that the Joppa address would be moved out of the 34th Legislative District by the redistricting that followed the 2010 Census, the Complainants produced evidence that the likely results of the redistricting -- placing the Ravenswood Ct. property in the 7th District -- were available to the public by December of 2011 (Kreamer Exhibit 29), and that the Governor’s redistricting plan was formally submitted to the General Assembly on January 11, 2012 (Kreamer Exhibit 28). They also produced evidence that, in August 2011, Mr. Helton had recommended to the Redistricting Commission a mapping plan that would have included 3069 Harmony Church Rd. in the 34th Legislative District (Kreamer Exhibit 27). Mr. Helton’s recommendation was not adopted, leaving Mr. Helton’s *bona fide* domicile in the 35th Legislative District.

¹⁰ Although Mr. Helton emphasizes evidence that he has affirmatively abandoned his once-claimed domicile at 110 Ravenswood Ct. in Joppa, I do not believe that the Heltons ever maintained a *bona fide* residence at that address. I believe that, since 1989, the Heltons have continuously maintained their *bona fide* domicile at 3069 Harmony Church Road in Darlington. There is no credible evidence that they have abandoned that domicile.

16-201(a)(4), which define as criminal misdemeanors the willful and knowing falsification of residence in an attempt to register or to vote in the wrong election district or precinct, were not called into question. Unfortunately, I cannot reach the same conclusion here.

In my considered judgment, there is substantial reason here to believe that Mr. Helton has falsely signed legal documents, including a sworn voter registration application, in his wife's name, and that both Mr. and Mrs. Helton have deliberately misled the Local Board and this forum and have lied under oath with respect to their actual residence. For that reason, I recommend that the State Board or the State Administrator refer the matter of Mr. and Mrs. Helton's false claims of residence to the State Prosecutor for further appropriate action.¹¹

Order

There has been some dispute in this case as to the Local Board's obligation when it receives a sworn voter registration application seeking a change of address. Counsel for the Local Board argues that the Local Board has no discretion when it receives such a sworn application, and that Election Law Article §§3-304 and 3-502(b) require it automatically to make the requested change, as long as it determines that the request is from the voter in question. Ms. Kreamer argues that the Local Board has a greater responsibility, at least in the unusual case where, as here, there is reason to question the legitimacy of a particular voter's change of address request. I agree with Ms. Kreamer.

In the case of Mr. or Mrs. Helton, I believe that it would be consistent with the Local Board's proper function for it to hold any future requests from them for change of voter registration address pending some investigation regarding the *bona fides* of any claim to a new domicile. In assessing any change request from Mr. or Mrs. Helton, the Local Board should not only determine whether the request comes from the voter, as required by Election Law Article §3-304, but it should also be mindful of Election Law Article §3-602(b) and the underlying Constitutional provision and case law, which require an affirmative showing before a new voter registration domicile can replace a previously established one.

For the reasons stated above, the Harford County Board of Elections is hereby ORDERED promptly to change the voter registrations of Arthur Henry Helton, Jr. and Ann C. Helton to their *bona fide* residence address at 3069 Harmony Church Road in Darlington. Any future application for a change in either Mr. or Mrs. Helton's voter registration address should be supported by affirmative evidence of a *bona fide* intent to abandon their Harmony Church Road domicile and to take up a fixed, permanent residence at a different location.

Date: December 10, 2013

JUDITH A. ARMOLD
Designee of State Administrator

¹¹ In her post-hearing Brief, Ms. Kreamer asks that this hearing officer remove the Heltons from the list of registered voters in Maryland. I do not have the legal authority to take such action.

APPEAL RIGHTS

Under §3-602(c)(2) of the Election Law Article, a final determination regarding the eligibility of an individual to register to vote or remain registered to vote is subject to judicial review.¹² A petition for judicial review must be filed with the Circuit Court for Anne Arundel County, no later than the third Tuesday preceding the next succeeding election (in this case, the gubernatorial primary on June 24, 2014) -- that is, by June 3, 2014.

¹² I assume, without deciding, that this is such a final determination, even though it does not relate to the eligibility of the Heltons to register or remain registered to vote *per se*, but only to the address at which they may do so.