IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-EC-01673-SCT

DARRELL McQUIRTER

v.

DAVID L. ARCHIE

DATE OF JUDGMENT:	11/04/2019
TRIAL JUDGE:	HON. LAMAR PICKARD
TRIAL COURT ATTORNEYS:	SAMUEL L. BEGLEY DENNIS C. SWEET, III RAYFORD CHAMBERS HARRY ROSENTHAL SCHERRIE PRINCE DWIGHT McQUIRTER
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	SAMUEL L. BEGLEY
ATTORNEYS FOR APPELLEE:	DORSEY R. CARSON, JR. LINDSAY K. ROBERTS DENNIS C. SWEET, III
NATURE OF THE CASE:	CIVIL - ELECTION CONTEST
DISPOSITION:	AFFIRMED - 12/17/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE COLEMAN, BEAM AND ISHEE, JJ.

COLEMAN, JUSTICE, FOR THE COURT:

¶1. Following a narrow loss to David Archie in the Hinds County Board of Supervisors for District 2 Primary Election, Darrell McQuirter filed a Petition to Contest Qualifications of Archie as nominee for supervisor, claiming that Archie was not a resident of District 2 at the time of the primary election. In the Circuit Court of the First Judicial District of Hinds

County, Senior Status Judge Lamar Pickard heard the contest and found in favor of Archie. McQuirter appeals the circuit court's decision. We affirm.

FACTS AND PROCEDURAL HISTORY

¶2. On January 5, 2019, Archie submitted his Qualifying Statement of Intent to run in the Democratic Primary for the Hinds County Board of Supervisors, District 2. Archie listed his mailing address as "Post Office Box 83057 Jackson, MS 39283-3057" and his residential address as "3426 Shady Oaks St. Jackson, MS 39213." McQuirter, the incumbent, also qualified for the primary. By a narrow margin, Archie defeated McQuirter in the Democratic Party Primary runoff election. Because Archie ran uncontested during the general election, he was certified as the winner by the Hinds County Election Commission.

¶3. On September 16, 2019, McQuirter submitted a Petition to Contest Qualifications "pursuant to Miss[issippi] Code [Section] 23-15-921" to the Executive Committee of the Democratic Party in Hinds County. Then, on September 26, 2019, McQuirter timely filed a sworn petition for judicial review in accordance with Mississippi Code Section 23-15-927 (Rev. 2018). McQuirter's sole basis for his challenge is that Archie "was not a resident of District 2 at the time of the primary election and that he consequently was ineligible to run for that office." Before beginning the trial, the trial judge noted that "we have all five of the election commissioners [in attendance,]" comprising the special tribunal. On October 28, 2019, the special tribunal conducted the trial and heard from numerous witnesses, and McQuirter supplied the trial judge with ample evidence to dispute Archie's residency at Shady Oaks:

- The water was shut off for an extended period;
- The neighbors thought the house was deserted;
- Photographs exhibited the dwindling state of Shady Oaks;
- Shady Oaks was subject to multiple tax sales and later was redeemed;
- Shady Oaks was redeemed and remodeled *after* the election; and
- Archie's wife and child lived in another home.

¶4. Despite the above contentions and Archie's admitted inconsistent residency at the Shady Oaks home, Archie maintained that he considered the Shady Oaks home to be his permanent residence. Once McQuirter's complaint had been fully heard anew, the trial judge, addressing the election commissioners and trial counsel, explained:

> All right. Well, first of all, I will inform the election commissioners that I will make a decision in this case and it will be your duty to determine whether or not you agree with the court's decision or not.
>
> I will see to it that you have access to all of the evidence. You've heard the evidence. There are certain documentary evidence that has been introduced. And if you desire to look at any of that, I'll see that you have access to that.
>
> In addition, Counsel, I appreciate your findings of law and so forth for the court, and I can assure you I'm going to look at all the exhibits. I'm going to study the exhibits. I'm going to study the law and make a decision.
>
> I would ask that both sides submit to me immediately suggesting findings of fact and conclusions of law. Is that a problem?

And after addressing the election commissioners, the trial judge placed the courtroom in recess.

¶5. On November 4, 2019, the trial judge entered an order denying McQuirter's petition to contest Archie's qualifications; the record does not contain any evidence suggesting that

trial judge was not acting on behalf of the special tribunal. The trial judge's order explained that "Archie established his domicile at 3426 Shady Oaks Street, which is within Hinds County, District 2." The trial judge supported his conclusion, noting Archie's purchase of the property in 2009, his voter registration address, and the fact Archie voted in the last twenty-nine to thirty-three elections listing that address.

¶6. Further, the trial judge found that Archie was an active member of a homeowners' association in the Shady Oaks area, and the evidence demonstrated that Archie's intent was to be and remain a resident of Hinds County Supervisors District 2. The record does not indicate that the trial judge acted alone. But the trial judge's final order did not expressly mention the commissioners' concurrences, and there was no evidence of any dissent.

¶7. McQuirter asserts two issues on appeal. First, he argues that the trial judge erred by failing to allow the election commissioners to either concur or dissent on either the record or in the trial judge's order. And McQuirter asserts subissues regarding the standard of review, arguing that the proper review is de novo based on the trial judge's adopting Archie's proposed findings of fact and conclusions of law *in toto*. Secondly, McQuirter argues that the trial court erred by finding that Archie qualified as a resident of the district.

STANDARD OF REVIEW

¶8. "In an election contest, the standard of review for questions of law is de novo." ***Bryant v. Dickerson***, 236 So. 3d 28, 30 (¶ 6) (Miss. 2017) (internal quotation marks omitted) (quoting ***Garner v. Miss. Democratic Exec. Comm.***, 956 So. 2d 906, 909 (¶ 6) (Miss. 2007)). "[T]he Court reviews findings of fact by a trial court first pursuant to Mississippi Code

Section 23-15-933 . . . ." ***Id.*** "Then, should the factual findings be subject to the Court's review, the trial court's factual findings would be reviewed for 'manifest error, i.e., whether the findings were the product of prejudice, bias, or fraud, or manifestly against the weight of the credible evidence.'" ***Id.*** (quoting ***Garner***, 956 So. 2d at 909 (¶ 6)). "The word 'manifest,' . . . means 'unmistakable, clear, plain or indisputable'" ***Brennan v. Brennan***, 638 So. 2d 1320, 1323 (Miss. 1994) (quoting *Manifest*, Black's Law Dictionary (6th ed. 1990)).

DISCUSSION

¶9. McQuirter presents two arguments to support his contention that the Court should apply *de novo* review. He explains:

> The Standard of Review for this appeal should be de novo because (a) neither the trial judge's finding of facts nor the county election commissioners' concurrences or dissents were dictated into the record, as required by Miss. Code Ann. §23-15-931 and (b) the trial court adopted in toto Archie's proposed findings of fact and conclusions of law.

¶10. As for his first argument, McQuirter's admits that he "has found no legal authority directly on point . . . ." "Failure to cite relevant authority obviates the appellate court's obligation to review such issues." ***Arrington v. State***, 267 So. 3d 753, 756 (¶ 9) (Miss. 2019) (internal quotation marks omitted) (quoting ***Byrom v. State***, 863 So. 2d 863, 853 (¶ 35) (Miss. 2003)). Consequently, McQuirter's first argument is procedurally barred. The remainder of McQuirter's appeal concerns Archie's residence.

I. Archie's Residence

¶11. The trial judge, with the requisite commissioners in attendance, found that the evidence of Archie's residence at Shady Oaks was sufficient. Thus, under Sections 23-15-931 and -933, the Court's authority to review such factual finding begins with a jurisdictional question. "Subject matter jurisdiction, which is succinctly defined as the authority of a court to hear and decide a particular case, depends on the type of case at issue, and we have the primary duty, *sua sponte*, to determine whether a particular case lies within our jurisdiction." ***Common Cause of Miss. v. Smith***, 548 So. 2d 412, 414 (Miss. 1989) (citing ***Marx v. Truck Renting & Leasing Ass'n, Inc.***, 520 So. 2d 1333, 1338 (Miss. 1987), *overruled on other grounds by* ***Commonwealth Brands, Inc. v. Morgan***, 110 So. 3d 752 (Miss. 2013)). In addition, "through the record, the appellant must establish any facts underlying a claim of error." ***Ross v. State***, 603 So. 2d 857, 861 (Miss. 1992)).

¶12. Here, McQuirter bore the burden of supplying the Court with evidence through the record that establishes his claim of error. McQuirter fails to do so, and "th[e] Court cannot rely on assertions of fact in an appellant's brief." ***Id.*** (citing ***Collins v. State***, 594 So. 2d 29 (Miss. 1992)).

¶13. Mississippi Code Section 23-15-931 states that the special tribunal "*shall* make a finding dictated to the reporter covering all controverted material issues of fact*, together with any dissents of any commissioner* . . . ." Miss. Code Ann. § 23-15-931 (Rev. 2018) (emphasis added). Further, "[i]f the findings of fact have been concurred in by all the commissioners in attendance, provided as many as three (3) commissioners are and have been in attendance, the facts shall not be subject to appellate review." Miss. Code Ann. § 23-

15-933 (Rev. 2018). "[I]f not so many as three (3) of the commissioners are or have been in attendance, or if one or more commissioners dissent, upon review, the Supreme Court may make such findings as the evidence requires." *Id.*

¶14. Together, the statutes produce a clear, unambiguous directive. If the requisite number of election commissioners attend and none dissent, the "facts shall not be subject to appellate review." *Id.* And despite the dissent's contention that the trial judge erred, the relevant code section does not indicate that a trial judge cannot speak on behalf of the special tribunal. Thus what occurred in the present matter adheres to the above directive: The trial judge, with the commissioners in attendance, comprising the special tribunal, dictated findings on the controverted matters without any dissents from the attending commissioners.

¶15. McQuirter and the dissent argue, and the Court acknowledges, that the trial judge did not dictate the commissioners' concurrences along with the findings to the reporter. Yet the statute only requires the trial judge to dictate the commissioners' dissents. In alignment with the statute, the special tribunal was merely required to state the findings of fact on "controverted material issues of fact, together with any dissents of any commissioner . . . ." Miss. Code Ann. § 23-15-931. The trial judge explained, with the requisite commissioners in attendance comprising the special tribunal:

> This Court finds that David Archie established his domicile at 3426 Shady Oaks Street, which is within Hinds Count, District 2. . . . He registered to vote at the Shady Oaks address and has voted in the last 29 to 33 elections with that address, . . . running for the current position in dispute sub judice, Supervisor Hinds County, District 2, in 2011, 2013, 2015, and 2019, wherein the last three time Petitioner, McQuirter, was also a Candidate, but never previously filed a contest relating to Mr. Archie's residency. . . . *The evidence clearly shows and this Court finds that Mr. Archie has shown that his intent was to be and*

remain a resident of Hinds County Supervisors District 2 and that the evidence herein has failed to show otherwise.

(Emphasis added.)

¶16. The dissent quotes part of Section 23-15-933, "the findings of fact have been concurred in by all of the commissioners," and reads into it a requirement that concurrences be placed in the record. Diss. Op. ¶ 28 (emphasis omitted). However, no such requirement can be found in the text of the statute.

¶17. In ***Bryant v. Dickerson***, among other issues, the appellant argued the Court should review the factual findings "because a close reading of [Section] 23-15-933 demands that the trial court dictate his findings of fact into the record and the Election Commissioners, then and there, declare whether they concur with the trial court's findings." ***Bryant v. Dickerson*** 236 So. 3d 28, 31 n.1 (¶ 7) (Miss. 2017) (internal quotation mark omitted). In response, the Court held that "Section 23-15-933 contains no such requirements." ***Id.*** While the issue in ***Bryant*** was whether the commissioners complied with the attendance requirement in an election contest, the point above remains: Together, Sections 23-15-931 and -933 bar appellate review of the factual findings without evidence of any commissioner's dissent or lack of attendance, not concurrence. Here, the commissioners were in attendance, and none dissented.

¶18. That said, we return to McQuirter's duty to supply a record that supports his claim of error. In ***Pegram v. Bailey***, the record indicated that the trial judge dictated in his order that the "commissioners did not agree with the Court's determination . . . ." ***Pegram v. Bailey***, 694 So. 2d 664, 667 (Miss. 1997) (internal quotation marks omitted). There, the election

commissioners' disagreement with the trial judge was "*detailed in a formal dissent filed in the court below* under the provisions of Miss. Code Ann. § 23-15-933." ***Id.*** (emphasis added). And the dissents in ***Pegram*** were in the record. ***Id.***

¶19. On that basis, if actual dissents existed, McQuirter had a duty to supply the Court with a record that evidences a dissent or the inability to provide record of a dissent; the trial judge's lack of indicating the commissioners' concurrence does not suggest that one or more had dissented.

¶20. Moreover, "[i]n the absence of anything in the record appearing to the contrary, this Court will presume the trial court acted properly . . . ." ***Bryant***, 236 So. 3d at 31 (¶ 8) (quoting ***Vinson v. Johnson***, 493 So. 2d 947, 949 (Miss. 1986)). While making a sound argument that the special tribunal *should* have stated the commissioners' concurrences or allowed them to dictate their own thoughts into the record, McQuirter has not shown that the trial judge acted improperly. And even though thoroughness could have eliminated the confusion today, the trial judge, acting on behalf of the special tribunal, complied with the scope of Sections 23-15-931 and -933.

¶21. As a result, the Court lacks subject matter jurisdiction to review Archie's residence because "the question of whether a candidate meets the residency requirement clearly involves questions of fact." ***Id.*** (internal quotation mark omitted) (quoting ***Bryant v. Westbrooks***, 99 So. 3d 128, 134 (¶ 17) (Miss. 2012)); *see also* Miss. Code Ann. § 23-15-933.

CONCLUSION

¶22. Sections 23-15-931 and -933 are applicable here. The presence of any election commissioner's dissent is absent from the record, and the trial judge's actions were proper. Therefore, our review of Archie's residence is precluded. Accordingly, we affirm.

¶23. **AFFIRMED.**

BEAM, CHAMBERLIN AND ISHEE, JJ., CONCUR. GRIFFIS, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY RANDOLPH, C.J., AND MAXWELL, J. KITCHENS AND KING, P.JJ., NOT PARTICIPATING.

GRIFFIS, JUSTICE, DISSENTING:

¶24. The proper procedure for this election contest is governed by Mississippi Code Section 23-15-931 (Rev. 2018):

> When the day for the hearing has been set, the circuit clerk . . . shall also issue a summons to each of the five (5) election commissioners of the county . . . requiring them to attend the hearing, throughout which the commissioners shall sit with the judge as advisors or assistants in the trial and determination of the facts . . . . The judge is, however, the controlling judge both of the facts and the law, and has all the power in every respect of a circuit judge in termtime. . . . The special tribunal so constituted shall fully hear the contest or complaint de novo, and the original contestant before the party executive committee shall have the burden of proof and the burden of going forward with the evidence in the hearing before the special tribunal. The special tribunal, after the contest or complaint has been fully heard anew, shall make a finding dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner, and thereupon, the trial judge shall enter the judgment which the county executive committee should have entered, of which the election commissioners shall take judicial notice . . . .

¶25. There are four controlling directives. First, "the commissioners shall sit with the judge as advisors or assistants in the trial and determination of the fact[s]." *Id.* Second, "[t]he judge is, however, the controlling judge both of the facts and the law, and has all the power in every respect of a circuit judge in termtime." *Id.* Third, "[t]he *special tribunal so*

constituted shall fully hear the contest or complaint de novo . . . ." *Id.* (emphasis added). Fourth, "[t]he *special tribunal*, after the contest or complaint has been fully heard anew, ***shall make a finding*** *dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner*, and thereupon, the trial judge shall enter the judgment . . . ." *Id.* (emphasis added).

¶26. From the order entered by the trial judge, it appears that the first three directives of Section 23-15-931 were followed here. The record contains the transcript of the trial. At the conclusion of the hearing, the trial judge took this matter under advisement and advised the parties he would allow them to submit proposed findings of fact and conclusions of law. But there is a question as to whether the fourth directive was followed.

¶27. The majority states that the "trial judge" shall make the required findings. Maj. Op. ¶ 14. This is incorrect. Section 23-15-931 requires that "[t]he *special tribunal*, after the contest or complaint has been fully heard anew, ***shall make a finding*** *dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner*, and thereupon, the trial judge shall enter the judgment . . . ." (Emphasis added.) Under Section 23-15-931, the final judgment may not be entered by the trial judge until "the special tribunal . . . shall make a finding dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner." *Id.* This statutory requirement was not followed by the trial judge. While the judgment includes the trial judge's findings, there is no indication that the trial judge's findings were the special tribunal's findings. The use of the word "shall" makes *mandatory* the directive that the

"special tribunal . . . shall make a finding dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner." *Id.* Thus, what has been appealed here, the trial judge's order, was not the required judgment under Section 23-15-931.

¶28. Mississippi Code Section 23-15-933 (Rev. 2018), in relevant part, provides:

> The contestant or contestee, or both, may file an appeal in the Supreme Court within the time and under such conditions and procedures as are established by the Supreme Court for other appeals. *If the findings of fact have been concurred in by all the commissioners in attendance, provided as many as three (3) commissioners are and have been in attendance, the facts shall not be subject to appellate review. But if not so many as three (3) of the commissioners are or have been in attendance, or if one or more commissioners dissent, upon review, the Supreme Court may make such findings as the evidence requires.*

(Emphasis added.) This section includes an affirmative requirement that "[i]f the findings of fact have been *concurred in by all the commissioners in attendance*, provided as many as three (3) commissioners are and have been in attendance, the facts shall not be subject to appellate review."[1] *Id.* (emphasis added). This statute requires that the special tribunal's

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[1] Although not challenged here, the legislative direction that limits appellate review is certainly contrary to separation of powers and ***Newell v. State***:

> This leaves no room for a division of authority between the judiciary and the legislature as to the power to promulgate rules necessary to accomplish the judiciary's constitutional purpose.
>
> . . . .
>
> We conclude that Mississippi Code Annotated sections 11-7-155 and 99-17-35 (1972) contravene the constitutional mandates imposed upon the judiciary for the fair administration of justice since such administration is thwarted by the terms of the statute, "at the request of either party" which prohibits a judge from instructing a jury as to the applicable law of the case

decision indicate whether "the findings of fact have been concurred in by all of the commissioners." *Id.* This statement is mandatory and must be in the record. Under this statutory scheme, the decision of the special tribunal is to be appealed and is subject to appellate review. The trial court's order does not comply with these statutes because it does not indicate the votes of the commissioners.

¶29. In ***Bryant v. Dickerson***, 236 So. 3d 28, 31 (Miss. 2017), this Court clearly noted that "[t]he circuit court's order explicitly stated that it consulted with all five commissioners, and all five agreed with the circuit court's order." Then, in the conclusion, the Court once again stated, "Section 23-15-933 is applicable to the present case because all five commissioners concurred with the circuit court's order[.]" ***Id.*** at 31.

¶30. Here, the special tribunal's decision, under Section 23-15-931, is not in the record. Section 23-15-931 required "*[t]he special tribunal*, after the contest or complaint has been fully heard anew, *[to] make a finding dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner*." *Id.* (emphasis added). Instead, the record only contains the trial judge's findings and makes no reference to the commissioners findings, whether they concurred or dissented.

> when he has the sworn duty to administer justice and uphold the law. We are of the opinion that the framers of our constitution never intended that a judge be so shackled by legislative statute that he become totally dependent upon the requests of litigants so that he might perform his constitutional duty.

Newell v. State, 308 So. 2d 71, 77–78 (Miss. 1975). Likewise, I do not believe that the framers of our constitution intended that this Court's appellate review would be limited based on the filing of a dissent by an election commissioner.

¶31. In my opinion, the record before us does not support a finding that the trial judge's findings were in fact the findings of the special tribunal. Moreover, the record does not indicate whether the commissioners were given a copy of the trial court's findings, whether they were given an opportunity to "make a finding dictated to the reporter covering all controverted material issues of fact," *id.*, or whether they were even provided an opportunity to concur or dissent. At the hearing, the trial court asked for proposed findings of facts and conclusions of law. But the record is silent as to whether the commissioners concurred or dissented or were even given an opportunity to do so. The trial court's order cannot be said to be the required findings by the special tribunal.

¶32. I disagree with the majority's conclusion that there is no evidence that the trial judge acted improperly. As set forth above, the trial court failed to comply with Sections 23-15-931 and -933. In essence, the majority finds McQuirter had the duty to supply the court with the record of a dissent. Neither Section 23-15-931 or -933 requires such. It is up to the special tribunal and the trial judge to ensure the compliance with Sections 23-15-931 and -933, not McQuirter.

¶33. I move to the essential question, which is rather simple. Did David Archie actually reside in his supervisor district? The evidence presented does not support the trial court's conclusion.

¶34. The trial court's opinion answered this question based solely on intent. Residency requires more than intent. The trial court could have cited facts that showed Archie actually lived at the residence he owned in the supervisor district. Instead, the trial court's factual

finding simply concluded that Archie *intended* to live there and found that that was good enough. The trial court ruled:

> This Court finds that David Archie established his domicile at 3426 Shady Oaks Street, which is within Hinds County, District 2. David Archie purchased the Shady Oaks property in 2009. He registered to vote at the Shady Oaks address and has voted in the last 29 to 33 elections with that address. His driver's license lists the Shady Oaks address, he had a vehicle registered at the Shady Oaks address for the past 7 years, he has been a qualified candidate from the Shady Oaks address, running for City of Jackson Counsel, Ward 3 in 2010, and running for the current position in dispute sub judice, Supervisor Hinds County, District 2, in 2011, 2013, 2015, and 2019, wherein the last three times Petitioner, McQuirter, was also a Candidate, but never previously filed a contest relating to Mr. Archie's residency. The court further finds that Mr. Archie was an active member of a homeowner's association in the Shady Oaks area. The evidence clearly shows and this Court finds that Mr. Archie has shown that his intent was to be and remain a resident of Hinds County Supervisors District 2 and that the evidence herein has failed to show otherwise.
>
> This Court finds that while Mr. Archie maintains the utility bills at a house on Clubview Drive where his wife and children reside and that his wife filed Homestead Exemption on the Clubview property, that Mr. Archie and his wife lived separately, with her maintaining the property on Clubview Drive for her and their children, nonetheless, Mr. Archie's domicile was, and has remained 3426 Shady Oaks Drive in Hinds County, District 2.

¶35. It is worthy of note that the trial court did not find Archie actually resided at the Shady Oaks Drive property when he qualified to run for supervisor.

¶36. Mississippi Code Section 19-3-3 and article 16, section 176, of the Mississippi Constitution require a candidate for a board of supervisors seat to be a resident of the district for which the candidate is chosen. Mississippi applies the well-established definition of "domicile" to determine residency for election purposes. ***Hale v. State***, 168 So. 3d 946, 951 (Miss. 2015) (citing ***Hubbard v. McKey***, 193 So. 2d 129, 132 (Miss. 1966)). This definition

requires that "there must have been (1) an actual residence voluntarily established in said county, (2) with the *bona fide* intention of remaining there, if not permanently, at least indefinitely." ***Id.*** (internal quotation marks omitted) (citing ***Smith v. Smith***, 194 Miss. 431, 12 So. 2d 428, 429 (Miss. 1943)). "[W]e review findings of fact by a trial judge sitting without a jury for manifest error, including whether the findings were . . . manifestly against the weight of credible evidence." ***Young v. Stevens***, 968 So. 2d 1260, 1262 (Miss. 2007) (citing ***Boyd v. Tishomingo Co. Democratic Exec. Comm.***, 912 So. 2d 124, 128 (Miss. 2005)).

¶37. Archie listed his residence at 3426 Shady Oaks Street, Jackson, Mississippi. McQuirter introduced evidence showing that the Shady Oaks residence had not had power since 2015; had no water flowing through the city of Jackson's water meter for more than six months before May 4, 2019, dating back to October 2016; had its gas meter removed; and was in an uninhabitable state, supported by next door neighbors' testimony and photographs. Additionally, Archie married and moved to 5852 Clubview Drive, Jackson, Mississippi, where he claimed homestead exception and remained until 2009, according to Archie. Archie concedes that he maintains partial ownership of the home.

¶38. This Court has held that "[t]he foundation of domicile is intent." ***Stubbs v. Stubbs***, 211 So. 2d 821, 825 (Miss. 1968); *see also* ***Hairston v. Hairston***, 27 Miss. 704, 719 (1854) (providing that domicile is where a person has "his true, fixed, permanent home and principal establishments, and to which whenever he is absent, he has the intention of returning" (internal quotation mark omitted) (quoting Joseph Story, *Conflict of Laws* § 41)). Archie

testifies almost exclusively regarding his intent to maintain his residence at Shady Oaks. He provides that the Shady Oaks community means a lot to him, testifying about his childhood connections with the community and his consistent involvement in the Shady Oaks homeowner association. He also testifies that he changed his voter registration shortly after receiving the deed to the home in 2009.

¶39. While intent may be of great importance when determining domicile, action is required. The question is whether Archie resided in the district. No evidence in the record supports a finding that Archie resided at the Shady Oaks home. For years, the home has gone without water, gas, or electricity, and while Archie testified that he spent nights at Shady Oaks, Clubview Drive, and his family home located on Flora Drive, the evidence clearly indicated that the Shady Oaks home was virtually unlivable until 2019, after the election. Archie testified that the state of the Shady Oaks home was due to various family tragedies and economic hardships. But during these times, he maintained bills, tax payments, and other payments at the Clubview Drive home.

¶40. To hold that Archie established his residence at Shady Oaks by simply purchasing the home and saying he will live there someday would be to allow any candidate to run for a board of supervisors seat in any county by buying a home in the appropriate district and saying that he will eventually live there, absent any proof of an actual living situation. This stretches the meaning of intent and eviscerats the residency requirement.

¶41. In ***Hale***, this Court held that intent was foundational and found that the appellee had proved his intent through actions such as claiming homestead exemption in the county in

which he ran, cancelling his homestead exemption at his previous residence, having some energy usage in the home within the appropriate county, and altering other "major aspects of his life." ***Hale***, 168 So. 3d at 951-52, 954.

¶42. As to his actions involving the Shady Oaks residence itself, Archie has only his own testimony that he plans to live there indefinitely. His intentions, though a strong consideration, should not outweigh the overwhelming evidence presented against him. Therefore, the judgment of the trial court was manifestly erroneous when placed against the great weight of evidence supporting McQuirter's contest.

¶43. Because this Court has appellate review of the factual findings of the trial court under Section 23-15-933 and because the trial court manifestly erred by finding in favor of Archie, I would reverse the trial court's judgment and find that Archie is not a resident of Hinds County Supervisor District 2 and is therefore not a qualified candidate for the party nomination for the office of Hinds County Supervisor District 2.

¶44. In my opinion, the majority's decision is an outrage to the administration of justice. In essence, this Court has allowed the residency requirement for elected officials to be erased under Mississippi law. I cannot agree to this injustice. I would reverse and render this case and would remand the case to the special tribunal to order a new election.

RANDOLPH, C.J., AND MAXWELL, J., JOIN THIS OPINION.