

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2024-EC-00347-SCT

ALBERT F. BARKER, JR.

v.

***JAMES ROBERT IVORY AND VIKI EGGERS
MASON***

DATE OF JUDGMENT:	03/15/2024
TRIAL JUDGE:	HON. LARRY E. ROBERTS
COURT FROM WHICH APPEALED:	MONROE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	KAYLYN HAVRILLA McCLINTON
ATTORNEY FOR APPELLEES:	SARAH ANNE SCHNAITHMAN
NATURE OF THE CASE:	CIVIL - ELECTION CONTEST
DISPOSITION:	AFFIRMED - 04/02/2024
MOTION FOR REHEARING FILED:	

EN BANC.

GRIFFIS, JUSTICE, FOR THE COURT:

¶1. Albert F. Barker, Jr., appeals the trial court’s final judgment finding he is not a qualified candidate for the democratic nomination for Alderman of Ward 3 in Aberdeen and is therefore “not lawfully qualified to be placed on the ballot for the upcoming primary election on April 2, 2024, nor the general election ballot for May 7, 2024.” Because Barker fails to satisfy the two-year residency requirement, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2. This case challenges Barker’s qualifications as the democratic candidate for Alderman of Ward 3 in Aberdeen. Barker timely submitted his qualifying application on February 2,

2024.¹ In his qualifying application, Barker claimed to reside at 109 Marshall Street in Aberdeen.

¶3. On February 5, 2024, Viki Eggers Mason emailed a petition to some members of the Democratic Municipal Executive Committee (DMEC) of the City of Aberdeen objecting to Barker’s qualifications. In her petition, Mason asserted Barker had not resided in Aberdeen for two years preceding the election and, as a result, he did not satisfy the residency requirement under Mississippi Code Section 23-15-300 (Supp. 2023). According to Mason, during the applicable two years, Barker resided in Fayetteville, Georgia, a suburb of Atlanta.

¶4. The DMEC held a hearing on Mason’s petition on February 12, 2024. After a four-to-three vote, the DMEC found that Barker was a qualified candidate for Alderman of Ward 3.

¶5. On February 16, 2024, Mason, along with James Robert Ivory, filed a petition for judicial review in the Monroe County Circuit Court and argued Barker was not a qualified candidate for Alderman of Ward 3. The trial court agreed and granted the petition.

¶6. Based on the testimony presented at the hearing, the trial court found Barker “did not meet the Mississippi statutory mandate that he be a resident of Aberdeen Ward 3 for two years prior to the election[.]” The trial court concluded that the DMEC erred by finding Barker qualified and that Barker was “not lawfully qualified to be placed on the ballot for the upcoming primary election on April 2, 2024, nor the general election ballot for May 7, 2024.” The trial court entered a bench opinion as well as a final judgment on March 15, 2024. Barker timely appealed the trial court’s decision.

¹ The qualification deadline was 5:00 p.m. on February 2, 2024.

¶7. The Court entered a scheduling order setting an expedited schedule for filing and briefing. In addition to her brief, Mason filed a motion to dismiss and later an amended motion to dismiss and asked that the trial court’s decision be affirmed. Barker filed a response to the motions. The motion to dismiss and amended motion to dismiss are dismissed as moot.

¶8. On appeal, Barker takes issue with Mason’s petition to object, and he argues the trial court erred “when it determined [he] was not qualified to run for Alderman of Ward 3.”

STANDARD OF REVIEW

¶9. Regarding the standard of review in candidate qualification cases, we have stated:

We review candidate qualification challenges de novo as to questions of law and for manifest error as to questions of fact. *Young v. Stevens*, 968 So. 2d 1260, 1262-63 (Miss. 2007) (citing *Ladner v. Necaize*, 771 So. 2d 353, 355 (Miss. 2000); *Boyd v. Tishomingo Cnty. Democratic Exec. Comm.*, 912 So. 2d 124, 128 (Miss. 2005)). Manifest error is highly deferential to a trial court sitting as fact finder without a jury because it “hear[s] all the testimony and observe[s] the demeanor of all the witnesses firsthand.” *Meredith v. Clarksdale Democratic Exec. Comm.*, 340 So. 3d 315, 326 (Miss. 2022) (internal quotation mark omitted) (quoting *Coulter v. Dunn*, 312 So. 3d 713, 715 (Miss. 2021)). Thus, we may not interfere unless the trial court’s “findings were the product of prejudice, bias, or fraud, or manifestly against the weight of the credible evidence.” *Young*, 968 So. 2d at 1263 (citing *Boyd*, 912 So. 2d at 128). If the trial court’s decision is supported by sufficient evidence it will stand even if this Court might have made a different decision. *Meredith*, 340 So. 3d at 326-27.

Barton v. Adams-Williams, 360 So. 3d 956, 960 (Miss. 2023) (alterations in original).

DISCUSSION

I. *Petition to Object*

¶10. Barker’s first assignment of error involves the validity of the petition objecting to his

qualifications. Under Mississippi Code Section 23-15-961 (Rev. 2018),

(1) Any person desiring to contest the qualifications of another person as a candidate for nomination in a political party primary election shall file a petition specifically setting forth the grounds of the challenge within ten (10) days after the qualifying deadline for the office in question. The petition shall be filed with the executive committee with whom the candidate in question qualified.

(2) Within ten (10) days of receipt of the petition described in subsection (1) of this section, the appropriate executive committee shall meet and rule upon the petition.

¶11. Three days after the qualifying deadline, Mason emailed a petition objecting to Barker's qualifications to some but not all members of Aberdeen's DMEC. Barker takes issue with the fact that the petition to object was "typed, undated, [and] unsigned" and that it was "not served upon each member of [Aberdeen's DMEC]." He asserts the Mississippi Rules of Civil Procedure apply to the signing, filing, and service of documents considered by the executive committee,² and he suggests sanctions against Mason should be considered. According to Barker, "if [we] were to determine that . . . Mason failed to comply with the Rules of Civil Procedure and did not properly file the petition [to object], . . . the trial court's holding [should] be reversed, and . . . he [should] be deemed a qualified candidate for Ward 3." At no time, however, was this issue raised in the trial court.

¶12. "An issue must first be presented to the trial court before it is raised to the appellate court." *Corp. Mgmt., Inc. v. Greene Cnty.*, 23 So. 3d 454, 462 (Miss. 2009) (citing *Wilburn v. Wilburn*, 991 So. 2d 1185, 1191 (Miss. 2008)). An issue "not raised [in] the trial court . . . [that] the trial court had no opportunity to rule on cannot be raised for the first time in the

² The record reflects that the Aberdeen DMEC are local volunteers.

appellate court.” *Id.* (citing *Fitch v. Valentine*, 959 So. 2d 1012, 1021 (Miss. 2007)).

¶13. While there was testimony at the hearing regarding the petition to object, Barker did not raise the issue or seek a ruling from the trial court regarding its validity. Instead, he raised the issue for the first time on appeal. Accordingly, the issue is procedurally barred.

II. Candidate Qualification

¶14. Barker argues the trial court erroneously found that he was not a qualified candidate for Alderman of Ward 3 in Aberdeen under Mississippi Code Section 23-15-300(1) (Supp. 2023). Section 23-15-300(1) provides:

Any candidate for any municipal, county or county district office shall be a resident of the municipality, county, county district or other territory that he or she seeks to represent in such office for two (2) years immediately preceding the day of election. The provisions of this section shall not apply to any municipality with less than one thousand (1,000) residents according to the latest federal decennial census.

¶15. Here, the general election is scheduled for May 7, 2024. Thus, in order to be qualified, Barker must have been an Aberdeen resident since May 7, 2022. *Id.*

¶16. “In Mississippi, for the purpose of elections, residency and domicile are synonymous.” *Simmons v. Town of Goodman*, 346 So. 3d 847, 851 (Miss. 2022) (internal quotation marks omitted) (quoting *Hale v. State Democratic Exec. Comm.*, 168 So. 3d 946, 951 (Miss. 2015)). “Domicile 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.* (quoting *Hale*, 168 So. 3d at 951).

¶17. Barker claims to have “resided full-time [at 109 Marshall Street in Aberdeen] since early 2020.” Barker testified that he has paid the utility bills and property taxes on the

Aberdeen property since “about 2014,” and he produced documentation showing that he paid the electricity and water deposit in 2014, the gas bill in December 2023, and the property taxes in 2020, 2021, 2022, and 2023.

¶18. The Aberdeen residence where Barker claims to currently reside is owned by the Estate of Ruby J. Garth. Garth is Barker’s late aunt. According to Barker, Garth adopted him and his siblings as children. Barker testified that when Garth died in 2007, she “left [him] as the execut[or] of [the] estate.” But Barker was unable to produce any documentation confirming that he was in fact the executor. Regardless, Barker admitted that he does not own the Aberdeen property, that the house “technically” belongs to Garth’s husband, and that he (Barker) “make[s] all the decisions” since Garth’s husband is not “medically fit.” Barker explained that he is the one who takes care of everything related to the Aberdeen property.

¶19. While Barker does not own the Aberdeen property, he does in fact own several properties in Georgia, including a house located at 11959 Harbour Town Parkway in Fayetteville, Georgia, a suburb of Atlanta. Importantly, Barker claims a homestead exemption on the residence in Fayetteville, Georgia. “[T]here is a strong but rebuttable presumption of residency in the county where the homestead exemption is filed. The location of the homestead exemption creates this strong presumption because of the benefit in the form of tax relief one receives by filing.” *Id.* at 852 (internal quotation marks omitted) (quoting *Hinds Cnty. Election Comm’n v. Brinston*, 671 So. 2d 667, 669 (Miss. 1996)). “Our statutory scheme for homestead exemptions does not require the resident to file a new

application unless there has been an alteration in ‘the property description, ownership, use or occupancy since January 1 of the preceding year.’” *Id.* (internal quotation marks omitted) (quoting *Hale*, 168 So. 3d at 952). “Thus, a valid homestead exemption on a property persists unless the resident takes affirmative action to cancel or alter it.” *Id.* (internal quotation marks omitted) (quoting *Hale*, 168 So. 3d at 952).

¶20. Barker claimed a homestead exemption on his Georgia residence from 2012-2023. As the trial court noted, Barker “received a very significant ad valorem tax exemption in excess of some \$1800 by claiming that homestead exemption as a 100 percent service connected disability veteran.” Although Barker testified that he sought cancellation of that homestead exemption for 2024, he provided no such documentary proof. Thus, “a strong but rebuttable presumption” exists that Barker’s domicile is his residence in Fayetteville, Georgia, not Aberdeen, Mississippi. *Id.* at 852 (quoting *Brinston*, 671 So. 2d at 669).

¶21. Barker did not present sufficient evidence to rebut the homestead exemption. “[T]he foundation of domicile is intent.” *Simmons*, 346 So. 3d at 852 (internal quotation marks omitted) (quoting *Hale*, 168 So. 3d at 952)). “[E]ven where a party has two residences . . . , that will be esteemed his domicil[e] which he himself selects, or describes, or deems to be his home, or which appears to be the centre of his affairs, or where he votes or exercises the rights and duties of a citizen.” *Id.* (third alteration in original) (internal quotation marks omitted) (quoting *Hale*, 168 So. 3d at 952).

¶22. The record reflects that during the two years preceding the May 2024 general election, Barker was registered to vote and did in fact vote in Georgia, most recently in June 2022.

Barker registered to vote in Mississippi in July 2022, and he was issued a voter registration card on February 2, 2024, the final day of candidate qualification. According to the Clayton County Georgia Board of Elections and Registration, however, as of March 7, 2024, Barker remains a registered voter in Clayton County, Georgia, with a residential and mailing address listed in Fayetteville, Georgia.

¶23. Additionally, Barker was issued a Mississippi driver's license on February 1, 2024, one day before the qualification deadline. Before February 1, 2024, Barker had a Georgia-issued driver's license. Although Barker asserts he registered a vehicle in Mississippi in 2020, the record reflects that he also has vehicles registered and titled in Georgia. In fact, the record shows that the vehicle Barker drove to the hearing was registered and licensed in Georgia.

¶24. Barker works for Delta Airlines and travels "all over the country" for work. Barker explained that Atlanta is a "hub" for Delta Airlines and that when he is in the Atlanta area, he will stay at his residence in Fayetteville. Barker admits that he "purchased the Georgia home *because of the length of time he was there*, although it was always his intention to return to Aberdeen." According to Barker, he spends most of his time, or about two hundred days per year, at 109 Marshall Street in Aberdeen. But Barker provided no proof of this assertion other than his own statement.

¶25. Barker testified that despite his employment with Delta Airlines and his travels with the military, he "make[s] a point in trying to make [his] way back to Aberdeen to lay [his] head at that particular location." Barker explained:

The act of where you lay your head, the act of where you pay your bills, the act of where you socialize and have a religious—religious functions, where you intend and trust businesses, where you work, those—these are things—pay bills and pay taxes. . . .

Now, we can state that I do that in two or three places. Right? But what distinguish one from the other, that is where I live, where I say I live. Now, . . . [I’m] military as well. I can be in Alaska on a tour and I can be there 20 years—right?—but never claim that place as my place of where I live. Right? I left to come back [to Aberdeen] even when I was gone. Right? I never left [Aberdeen] in my heart and where I live.

What I’m gathering here is this . . . I have claimed my hometown all my life that [Aberdeen] is where I live.

¶26. Although Barker may have “never left [Aberdeen] in [his] heart,” during the two years preceding the election, Barker elected to claim a homestead exemption in Georgia, exercised his right to vote in Georgia, carried a Georgia-issued driver’s license, and had vehicles registered in Georgia. Simply because Barker considers Aberdeen his hometown does not equate to domicile.

¶27. As previously noted, “even where a party has two residences . . . , that will be esteemed his domicil[e] which he himself selects, or describes, or deems to be his home, or which appears to be the centre of his affairs, or where he votes or exercises the rights and duties of a citizen.” *Simmons*, 346 So. 3d at 852 (second alteration in original) (internal quotation marks omitted) (quoting *Hale*, 168 So. 3d at 952). While Barker “deems” his home to be 109 Marshall Street in Aberdeen, it appears that Georgia was “the centre of [Barker’s] affairs, or where he votes or exercises the rights and duties of a citizen” during the two years preceding the May 2024 general election. *Id.* (quoting *Hale*, 168 So. 3d at 952). Barker voted in Georgia from 1998 to June 2022, claimed a homestead exemption on

his Georgia residence until at least 2023,³ had vehicles registered in Georgia in 2023, and had a Georgia-issued driver’s license until February 1, 2024, one day before the candidate-qualification deadline.

¶28. We agree with the trial court that Barker failed to satisfy the two-year residency requirement under Section 23-15-300(1). Nothing in the record suggests that the trial court’s “findings were the product of prejudice, bias, or fraud, or manifestly against the weight of the credible evidence.” *Barton*, 360 So. 3d at 960 (internal quotation marks omitted) (quoting *Young*, 968 So. 2d at 1263). Instead, “the trial court’s decision is supported by sufficient evidence” in the record. *Id.* (citing *Meredith*, 340 So. 3d at 326-27). Accordingly, the trial court’s decision “will stand even if this Court might have made a different decision.” *Id.* (citing *Meredith*, 340 So. 3d at 326-27).

CONCLUSION

¶29. Barker’s asserted issues regarding Mason’s petition to object are procedurally barred. The trial court’s decision regarding Barker’s candidate qualification under Section 23-15-300(1) is supported by sufficient evidence in the record. As a result, the trial court’s final judgment is affirmed.

³ Barker asserts he is unable to claim a homestead exemption on the Aberdeen property since he does not own the property. It is true that Barker cannot claim a homestead exemption on property he does not own. But he did not have to claim a homestead exemption on the Georgia property—he elected to. Barker elected to claim a homestead exemption on the Georgia property, asserting that the Georgia property was his primary residence since 2012, and he has reaped the benefits of this tax exemption for more than ten years.

¶30. No motion for rehearing is permitted. The Clerk of this Court shall immediately issue the Court's mandate.

¶31. **AFFIRMED.**

RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL, BEAM, CHAMBERLIN AND ISHEE, JJ., CONCUR.