

**BEFORE THE STATE ELECTION BOARD OF THE
STATE OF OKLAHOMA**

IN THE MATTER OF CONTEST OF THE)
CANDIDACY OF **KEVIN McDUGLE**)
FOR THE OFFICE OF STATE) CAUSE NO. 2018-06
REPRESENTATIVE, DISTRICT 12.)

FINDINGS AND ORDER

The above-styled cause was heard by the Election Board of the State of Oklahoma on April 23, 2018, meeting pursuant to lawful notice.

The following members of the State Election Board ("Board") were present: Steve Curry, Chair; Tom Montgomery, Vice-Chair; and Dr. Tim Mauldin, Member. Also present were Paul Ziriak, Secretary; and counsel for the State Election Board, Lyn Martin-Diehl, Assistant Attorney General; and Rachel Rogers, Assistant Attorney General. Also present, but not participating were Jerry Buchanan, Alternate Member; and Debi Thompson, Alternate Member.

Petitioner Nick Mahoney appeared in person with counsel Jim Cosby. Contestee Kevin McDugle appeared in person without counsel.

The Petition was filed and Notice of Hearing issued on April 17, 2018, at 11:05 a.m. The Board received proof from the Petitioner that the Wagoner County Sheriff served the Contestee within 24 hours of setting the Petition for hearing, as required by 26 O.S. § 5-124.

Contestee submitted a cashier's or certified check in the amount of \$250.00, as required by 26 O.S. § 5-129.

The Board made the following findings of fact and conclusions of law:

1. Mr. Mahoney filed with the Board a Declaration of Candidacy for the office of State Representative, District 12, during the filing period of April 11-13, 2018.
2. Mr. McDugle filed with the Board a Declaration of Candidacy for the office of State Representative, District 12, during the filing period of April 11-13, 2018.
3. The Board received proof of personal service made on Mr. McDugle within 24 hours of setting the Petition for hearing, as required by 26 O.S. § 5-124.
4. Mr. McDugle submitted the proper cashier's check or certified check in the amount of \$250.00, as required by 26 O.S. § 5-129.

5. 26 O.S. § 5-130 provides: "The burden of proof shall be upon the petitioner to sustain the allegations in his petition."

6. Mr. Mahoney's Petition alleges, as the basis for the contest:

Mr. McDugle has not lived in House District 12 at the address given of 29521 E. 65th St., Broken Arrow, Oklahoma 74014 for six months as required by Title 14 O.S. Section 108.

7. Title 14 O.S. § 108 provides in pertinent part:

To file as a candidate for the House of Representatives in any representative district, a person must have been a registered voter in such district and a resident residing within such district for at least six (6) months immediately preceding the filing period prescribed by law.

8. The filing period began on April 11, 2018, pursuant to 26 O.S. § 5-110. Consequently, Mr. McDugle was required to be a legal resident of House District 12 since October 10, 2017.

9. The evidence presented showed Mr. McDugle is currently in the middle of a contested divorce. Petitioner admitted the following evidence into the record:

Exhibit 1 – Petition for Divorce listing Mr. McDugle as the Respondent.

10. Mr. McDugle verified that, as the Divorce Petition stated, their minor children had been living at their marital home at 29521 E. 65th St. S, Broken Arrow, Oklahoma with Mrs. McDugle from April 2017 until now, while he resided elsewhere. However, Mr. McDugle also testified that he still had personal belongings at that Broken Arrow home and intended to return to the home when divorce is final. Because the divorce is still pending, he would still have the ability to return to that Broken Arrow home depending on the outcome of the divorce proceedings. Mr. McDugle also testified he had another home in the district as well as one in Oklahoma County.

11. In *Stevens v. Union Graded School Dist. No. 2 of Canadian County*, 275 P. 1056 (Okla. 1929), for election purposes, the Oklahoma Supreme Court equated the requirement that a voter be a "resident" with that of "domicile", finding, although the voters and their children had lived outside the school district for over a year, they remained "residents" of the school district. The court said:

"The meaning of the term 'residence' for voting purposes as used in a state Constitution cannot be made a matter of legislative construction, it is purely a judicial question,*** *there can be no absolute criterion by which to determine where a person actually resides. Each case must depend on its particular fact or circumstances. *** While bodily presence ordinarily is essential* in effecting a domicile in the first instance, *** *the most important factor being the intent to establish a new domicile, coupled with acts evincing such intent.*"

275 P. At 1057 (emphasis added)(citation omitted).

12. Similarly, in *Moore v. Hayes*, 744 P.2d 934, 937 (Okla. 1987), the court said the question of voter's residence is synonymous with domicile and involves a factual inquiry into the place where one is habitually present, and to which, when he departs, he intends to return. *See also, Bixby v. Bixby*, 261 P.2d 1075, 1076 (Okla. 1961) (the word "resident" contemplates an actual residence with substantially the same attributes as are included when the word "domicile" is used).
13. In *Box v. State Election Board*, 526 P.2d 936, 940 (Okla. 1974), the court said the most important factor in effecting a change in domicile is intent to establish a new domicile, coupled with acts evincing such intent, saying:

"The controlling fact to be considered is the fact of intent and to determine this fact*** may take into consideration all the movements, transactions, and attending circumstances of the party or parties involved in the question."

Id., quoting *Pope v. Pope*, 243 P. 962, syl. of the court (Okla. 1926).

14. More recently, in *Suglove v. Oklahoma Tax Commission*, 605 P.2d1315, 1317-18 (Okla. 1979), the court said:

[T]o effect a change of domicile, there must be (a) actual abandonment of the first domicile coupled with (b) the intention not to return to it and (c) actual residence in another place with intention of making it a permanent home. Indicia of a changed domicile are to be found in the habits of the person, his business and domestic relations, declarations, exercise of political rights, community activities and other pertinent objective facts ordinarily manifesting the existence of requisite intent. As a general principle, Oklahoma domicile, once established, is presumed to continue unless an individual can show that a change has occurred.

15. The weight of the evidence presented indicates that Mr. McDugle has neither abandoned his domicile at 29521 E. 65th St. S., Broken Arrow, Oklahoma, with the intention not to return to it, nor he has taken up an actual residence elsewhere with intention of making another residence his permanent home.
16. The Board finds Petitioner has not sustained his burden of proving Mr. McDugle has not been a legal resident of House District 12 for the requisite six months preceding the filing period.
17. Mr. Mahoney's Petition is denied, and therefore, Mr. McDugle's name will appear on the ballot as a candidate for the office of State Representative, District 12.
18. Costs are assessed against Mr. Mahoney, pursuant to 26 O.S. § 5-131.

Done this 23rd day of April, 2018, by a unanimous vote of the Election Board of the State of Oklahoma.

OKLAHOMA STATE ELECTION BOARD



STEVE CURRY, Chairman