

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

IN THE MATTER OF CONTEST OF THE)
CANDIDACY OF NATALIE NHU MAI)
FOR THE OFFICE OF STATE) CAUSE NO. 2018-09
REPRESENTATIVE, DISTRICT 7, OFFICE 5)

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 Chris Sloan appeared, represented by Courtney Powell, Counsel. Contestee Natalie Nhu Mai appeared, represented by Denise Lawson and Cara Rodriguez, Counsel.

The Petition was filed and Notice of Hearing issued on April 17, 2018, at 2:45 p.m. The Board received proof of personal service made on Contestee by the Oklahoma County Sheriff on April 18, 2018, at 7:40 a.m., 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. Sloan filed with the Board a Declaration of Candidacy for the office of District Judge, District 7, Office 5, during the filing period of April 11-13, 2018.
2. Ms. Mai filed with the Board a Declaration of Candidacy for the office of District Judge, District 7, Office 5, during the filing period of April 11-13, 2018.
3. The Board received proof of personal service made on Contestee within 24 hours of setting the Petition for hearing, as required by 26 O.S. § 5-124.
4. Mr. Sloan's Petition alleges, as a basis for the contest, that Ms. Mai was not a resident of Oklahoma County but owns a home and actually resides [REDACTED].

5. Title 20 O.S. § 92.8a provides in pertinent part:

Beginning January 11, 1999, District Court Judicial District No. 7 shall have fifteen (15) district judges. For elections held after 1994, district judges shall be nominated and elected as follows: candidates for office...Nos. 5, 6, 7, 8, 13 and 14 shall be nominated and elected at large.

4. Title 20 O.S. § 92.i provides in pertinent part:

To file as a candidate for the office of district judge or associate district judge, one must have been a registered voter and actual resident of the appropriate county for at least six (6) months prior to the first day of the filing period.

5. The filing period began on April 11, 2018 pursuant to 26 O.S. § 5-110. Consequently, Ms. Mai was required to have been a resident of the district and registered to vote in the district on or before October 10, 2017.
6. Title 26 O.S. § 5-130 provides that the burden of proof shall be upon the Petitioner to sustain the allegations in his petition.
7. Mr. Sloan called Ms. Mai as his first witness. Ms. Mai testified that she began residing at and considered her domicile to be [REDACTED]. She further testified that during various periods during 2009, 2011, 2012 and 2013, she physically stayed with her parents at their address [REDACTED] when the [REDACTED] condominium was uninhabitable due to water damage.
8. Ms. Mai indicated that she purchased the property at [REDACTED] from her parents in 2015 because they could no longer afford it. Her parents continue to reside in the home.
9. Ms. Mai testified that although she considers [REDACTED] to be her permanent residence, she regularly visits and periodically spends overnights and extended periods of time with her parents at their home as her mother serves as her daughter's caregiver. Ms. Mai's father in law periodically resides at the [REDACTED] condominium with Ms. Mai and her husband and daughter. Ms. Mai testified that this these arrangements are not unusual in Asian families.
10. Ms. Mai explained further that she receives mail at the [REDACTED] address as it is more convenient than receipt at the Oklahoma County condo. Her mother can receive the mail or have it in a standard versus small multi-family mailbox at the condominium, and she is frequently present at her parents' home to visit so mail pick up is convenient.

11. Mr. Sloan called private investigator Mr. Yager as a witness who testified that he conducted physical surveillance of both the Cleveland County and Oklahoma County addresses from March 22 to April 14, 2018. He indicated all activity seen occurred at the [REDACTED] address. He indicated he saw Contestee multiple times at the Cleveland County address with grocery bags. Upon cross examination by Contestee's counsel, Yager admitted garage access at Oklahoma County address blocks the view of all potential entry and exit of occupants to the residence, making it unlikely Yager could have noted Contestee's activities there.
12. Counsel for Contestee elicited testimony from Ms. Mai that her voter registration was in Oklahoma County as of August 20, 2017 and that Ms. Mai was served a copy of the Petition at the Oklahoma County address.
13. In *Bixby v. Bixby*, 261 P.2d 1075, 1076 (Okla. 1961), the Oklahoma Supreme Court stated that the word "resident" contemplates an actual residence with substantially the same attributes as are included when the word "domicile" is used.
14. In *Suglove v. Oklahoma Tax Commission*, 605 P.2d 1315, 1317-18 (Okla. 1979), the Oklahoma Supreme Court held:

Over the years certain principles have evolved in connection with the determination of domicile which harken back to the courts' earlier reluctance to allow a change of domicile. First, a person may have only one domicile at a time. Second, domicile, once fixed, is presumed to continue until a new one is established. Third, to 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. One's intent with respect to domicile presents a question of fact.

15. In *Moore v. Hayes*, 1987 OK 82, ¶ 9, the Oklahoma Supreme Court held:

A person's intention as to residence is a question of fact to be determined by the trier of facts, and is conclusive on appeal unless shown to be clearly against the weight of the evidence. One's place of present abode is only one of the factors which may be considered, but it cannot be regarded as conclusive. A temporary absence, even if it extends for a period of years will not effect a change of residence. Nor is the

maintenance of a separate home inconsistent with the continuance of a person's legal residence in but one locality. Other factors which have been recognized as persuasive in determining intent are the holding of local office, the exercise of the right to vote in local elections, business and domestic relations, community activities, personal habits, and other objective facts ordinarily manifesting the existence of intent.

16. The weight of the evidence presented indicates Ms. Mai has been domiciled in Oklahoma County since 2008 and certainly for more than six months immediately preceding the filing period of April 11-13, 2018.
17. Mr. Sloan has failed to sustain his burden of proving Ms. Mai has not been a resident of Oklahoma County for the requisite period.
18. Because Petitioner failed to sustain his burden of proving Ms. Mai did not reside in Oklahoma County on or before October 10, 2017, Mr. Sloan's petition is therefore denied, and Ms. Mai's name will appear on the ballot as a candidate for the office of District Judge, District 7, Office 5.
19. Costs are assessed against Mr. Sloan, 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

