

IN THE SUPREME COURT OF MISSISSIPPI

CURRESSIA BROWN

APPELLANT

VS.

NO. 2009-EC-00791 SCT

SHERIEL F. PERKINS

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the assigned Judge of this Court may evaluate possible disqualification or recusal:

APPELLANT

- 1. Curressia Brown**
- 2. John R. Reeves, Attorney for
for Appellant**

APPELLEE

- 1. Sheriel F. Perkins**
- 2. Willie J. Perkins, Sr., Attorney
for Appellee**
- 3. DeShandra L. Ross, Attorney
for Appellee**


**WILLIE J. PERKINS, SR.
ATTORNEY FOR APPELLEE
SHERIEL F. PERKINS**

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STATEMENT OF THE ISSUES

- I. THIS COURT LACKS JURISDICTION OF THIS APPEAL**
- II. THE LOWER COURT WAS CORRECT IN FINDING THAT APPELLANT WAS NOT A RESIDENT OF GREENWOOD, MISSISSIPPI AND IN ITS CONCLUSION OF LAW THAT SHE SHOULD BE DISQUALIFIED AS A CANDIDATE FOR MAYOR**

STANDARD OF REVIEW

In a candidate qualification challenge, the standard of review for questions of law is de novo. *Ladner v. Necaize*, 771 So.2d 353, 355 (Miss. 2000) (citing *Saliba v. Saliba*, 753 So.2d 1095, 1098 (Miss. 2000)). Further, we review findings of fact by a trial judge sitting without a jury for manifest error, including whether the findings were the product of prejudice, bias, or fraud, or manifestly against the weight of the credible evidence. *Boyd v. Tishomingo Co. Democratic Exec. Comm.*, 912 So.2d 124, 128 (Miss. 2005) (citing *Miss. Dep't of Transp. v. Johnson*, 873 So.2d 108, 111 (Miss. 2004)).

STATEMENT OF THE CASE

A. COURSE OF PROCEEDINGS AND DISPOSITION IN COURT BELOW

On April 8, 2009, Sheriel F. Perkins filed before the Greenwood Municipal Election Commission her Petition to Contest qualification of Curressia Brown as a candidate for Mayor because she did not live in the City of Greenwood. An Amended Petition was filed on April 10, 2009.

On April 15, 2009, the Greenwood Municipal Election Commission conducted a hearing on this matter and rendered its formal Order on April 16, 2009, disqualifying Curressia Brown as a candidate for Mayor of the City of Greenwood.

Curressia Brown filed on April 21, 2009, her Petition for Judicial Review per Miss. Code Annotated Section 23-15-963 in the Circuit Court of Leflore County, Mississippi.

On April 30, 2009, this Court by Order signed by Presiding Justice George C. Carlson, Jr., appointed the Honorable Andrew K. Howorth, Judge of the Third Circuit Court District, as Special Judge to preside over this matter.

Judge Howorth caused the Circuit Clerk to give notice to the parties of the date, time and place of the hearing which was Tuesday, May 12, 2009, scheduled to start at 1:00 p.m. in the Leflore County Courthouse.

The Hearing was held on May 12th, and after receiving testimony of live witnesses and admitting documentary evidence and allowing each side the opportunity to present each case, Judge Howorth issued his bench opinion setting forth finding of facts and conclusion of law. Judge Howorth found that Curressia

Brown's true, fixed and permanent domicile or home was in Leflore County, Mississippi, that she had not abandoned her home without intent to return thereto and is not a bona fide resident of Greenwood, Mississippi. Judge Howorth's conclusion of law was that Curressia Brown was disqualified to have her name placed on the ballot as a candidate for Mayor in the upcoming General Election for the City of Greenwood, Mississippi.

The bench finding and conclusion of law by Judge Howorth were memorialized in an Order dated May 13, 2009.

Six (6) calendar days after the bench ruling, on May 18, 2009, Curressia Brown attempts to appeal before this Court.

B. STATEMENT OF THE FACTS¹

Curressia Brown is an adult resident citizen of Leflore County, Mississippi. She is married to Troy Brown, Sr. and they have 4 children, two sons (ages 19 and 10) and two daughters (ages 15 and 6). (R.E. 64).

Curressia Brown and her husband own a lot and home located at 103 Eagle Street, Greenwood, Mississippi (which is in Leflore County and outside the city limits of Greenwood). (EX.14; R.E. 103). They have owned and resided in this home since May 28, 2002, and continue to reside in the home. On August 27, 1999, the appraised property value of this property was \$98,500.00. (EX.19; R.E. 101).

At the time of purchase of the above property, Curressia Brown and her husband gave a Land Deed of Trust to William A. McMillan, Sr., of Holly Springs

¹ References to the Court Record will be cited as "CR" and references to Appellant's Record of Excerpts will be cited as "RE," along with corresponding page number(s), and references to the Exhibits will be cited as "EX," along with the corresponding exhibit number.

as beneficiary in the amount of \$102,000.00, due and payable on May 28, 2033. (EX.15). They have not paid the note in full and the Land Deed of Trust is still outstanding.

Three of Curressia Brown's school age children have attended the County Public School zoned for their county address. In order for their children to attend school of the Leflore County School District, Curressia Brown and Troy Brown signed a "Declaration Legal Residence" declaring that 103 Eagle Street was their legal residence. (EX. 1,2 & 3; R.E. 65). Their children started attending private school during the 2008-2009 school year.

The Browns are a member of Providence M. B. Church which publishes an annual Church Calendar and Directory. (R.E. 103-104). For each of the years 2006-2009, the Browns' home address are listed in the directory as 103 Eagle Street. (EX.21; R.E. 123, 104).

Curressia Brown's husband became a registered voter in Leflore County on October 4, 1996, using a county address at Mississippi Valley State University. (EX. 11; R.E. 53-54). On October 10, 2005, he changed his voter registration to 103 Eagle Street. This is his current registration address. Like her husband, Curressia Brown became a registered voter of Leflore County on October 4, 1996, using their address in the county at Mississippi Valley State University. (EX. 12; R.E. 54).

Although, Curressia Brown and her family had lived at 103 Eagle Street since 2002, on September 24, 2004, Curressia Brown changed her voter registration address from the Mississippi Valley State University address to 100 Riverview Cove, Apt. #4, Greenwood, Mississippi. (EX. 12; R.E. 55).

During the 2005 City Election, Curressia Brown qualified as a Democrat to run for Mayor of Greenwood. In that race, she faced two candidates, Sheriel F. Perkins and Larry Neal. Curressia Brown and Sheriel F. Perkins faced each other in a run-off whereby Sheriel F. Perkins prevailed and later won the mayoral position. (R.E. 82).

After Curressia Brown lost in the 2005 mayoral contest, on February 16, 2007, she changed her residential address to 103 Eagle Street, her county home that she has resided in with her family since 2002. (EX. 12; R.E. 58, 82).

During the 2007 statewide and countywide election, Curressia Brown qualified as a Democrat and ran unsuccessfully for the Chancery Clerk position in the Primary Election of Leflore County. (EX. 5; R.E. 81). She stated on her qualifying papers 103 Eagle Street as her permanent residence. Also, during the 2007 statewide and countywide election, Curressia Brown's husband unsuccessfully ran against Appellee's husband and undersigned counsel for District 32 State Representative. Both Curressia Brown and Troy D. Brown, Sr., signed the Candidate Petition Single County Legislative District for Troy D. Brown, Sr., to run as an Independent for District 32, Mississippi House of Representatives and to be placed on the November 6, 2007, General Election. They stated as their permanent residence 103 Eagle Street. (R.E. 81).

During the November 4, 2008, Presidential Election, Curressia Brown, a registered voter at 103 Eagle Street went to the poll and cast her curbside vote at the County East Precinct located at East Elementary School in Leflore County. (EX. 13; R.E. 61).

On the heel of the upcoming city election, Curressia Brown caused during December 2008, electricity to be connected at 616 State Street, Apartment A, Greenwood, Mississippi. (R.E. 93). Later, she disconnected this service and requested electricity to be connected at 120 East Johnson Street, Apartment B, Greenwood, Mississippi. However, prior to this, she testified under oath during both the hearing before the Election Commission and before the lower court that she changed her voter registration from the county to the City of Greenwood swearing under oath that she lived at 616 State Street, Apartment A. (R.E. 85). She later testified that she never lived at 616 State Street, Apartment A, Greenwood, Mississippi. (R.E. 85).

After electricity was connected at 616 State Street, Apartment A, Curressia Brown on December 29, 2008, changed her voter registration from 103 Eagle Street to 616 State Street, swearing under oath that 616 State Street, Apartment A, Greenwood, was her present address and the place where she resided. (EX. 12).

Later, Curressia Brown claimed she lived at 120 East Johnson Street, Apartment B and on January 30, 2009, Curressia Brown filed her Qualifying Statement of Intent Independent Candidate for the Office of Mayor of Greenwood, Mississippi, stating 120 Johnson Street as her residential street address and certifying that she meet all constitutional, statutory and other legal requirements to hold said office.

Curressia Brown testified under oath during both the hearing before the Election Commission and in the lower court that she never moved into or spent a day or night in the apartment located at 120 East Johnson Street. (R.E. 90). On

February 5, 2009, Curressia Brown amended her qualification papers by drawing a line through the 120 East Johnson Street address and inserted 201 West President Street as her street address. (EX. 27).

On February 9, 2009, Curressia Brown changed her voter registration address from 616 State Street to 201 West President Street, Greenwood, Mississippi. (EX.12).

During both the hearing before the Election Commission and the Court below, Curressia Brown testified under oath that the home in the county remains the permanent address for her husband and four children. Also, she testified at both proceedings that she spent 3 to 4 nights each week at her home in the county. (R.E. 133).

The Exhibits introduced into evidence regarding utility bills, (electric, gas, water and sewer) and testimony of representatives of the utility providers, clearly revealed usage of services consistent with a family of four at the 103 Eagle Street, county home. (EX. 4, 16-17). However, the evidence both live and documentary, reveals there was limited usage at 201 West President Street, Apartment 210, the apartment Curressia Brown claims is her permanent residence that she has lived in since February 5, 2009, and of which its lease bans any overnight guests, including her family members. (EX. 8, 25; R.E. 108, 150).

Exhibit 8, the utility bill of Greenwood Utilities for 201 West President Street, Apartment 210, admitted into evidence during the hearing before the lower court reveals electricity usage as follows:

- (1) for the period February 6 to February 18, 2009, — \$3.23;**

(2) for the period February 18 to March 19, 2009, — \$7.00
(minimum); and

(3) for the period March 19 to April 20, 2009, — \$7.00.

Curressia Brown testified that she has established 201 West President Avenue, Apartment 210 as her permanent residence based upon a leased apartment in the city with electricity where (1) the Greenwood Utilities bill (which shows minimum occupancy and usage at the apartment); (2) a change in address of a car tag from 103 Eagle Street to 201 West President Avenue, Apartment 210 on April 14, 2009, one day before her testimony before the April 15 hearing before the Greenwood Election Commission;² (3) a registered voter of the city based upon her claiming three different city addresses at apartments within a month and seven (7) days and falsely claiming to be her permanent residences, two of which she never lived in; and (4) her sworn testimony that she changed the address on her driver license from 103 Eagle Street to 201 West President Street, Apartment 210, after the Election Commission hearing on April 15th. Despite this contention, the copy of her driver license introduced into evidence during the hearing before the lower court showed an expiration date of December 26, 2009, and her address as 103 Eagle Street. (EX. 8, 26, 25, 12, 18; R.E. 99, 150, 151, 148, 70-71).

²It was noted that the owner of the car, Dr. W. M. McMillan, is a deceased person of Marshall County who has never lived at 103 Eagle Street and no explanation has been offered how Curressia Brown was able to register this car in Dr. McMillan's name during 2005 to April 14, 2009, and how she was able to change the address on the registration of the vehicle in the name of the deceased person. Testimony of the Leflore County Tax Collector's office revealed that Curressia Brown never told the office Dr. McMillan lived in Marshall County and never told the office on April 14th that Dr. McMillan was deceased. (R.E. 38-43).

The lower court found that Curressia Brown sole reason to attempt to establish residence in the City of Greenwood was to run for mayor. (R.E. 140). In addition, the lower court found that she is not trying to abandon her family. It was clear from her testimony that she is still attached to her husband and her children and it is also clear that they remain outside the city limits of Greenwood. They are not living in the city". (R.E. 140).

Further, the Court found that first rented apartments in the city by Curressia Brown were not the kind of place she would go to live and leave a happy home and a nice home in the county; that she would not come live in some low end rent house but for one purpose and that would be to run for mayor. (R.E. 140-141). (See also, EX. 22-24).

The Court found that Curressia Brown should be disqualified as a candidate for mayor because she is not a bona fide resident of the City of Greenwood. (R.E. 141).

SUMMARY OF THE ARGUMENT

Appellee contends that this Court lacks jurisdiction of this appeal. Section 23-15-963(6) allows an appeal to this Court within three (3) days after judgment is rendered by the Circuit Court. The Special Circuit Court rendered its judgment on May 12, 2009 and the deadline to appeal expired on May 15, 2009. Appellant did not file her appeal until May 8, 2009, and thus it is untimely. The failure to timely file an appeal under the election statutes are both mandatory and jurisdictional. Also, Section 23-15-963(6) requires giving a cost bond in the sum of three hundred dollars. No cost bond was given by appellant to the clerk of this court. The failure to meet the cost bond provision of the statute is jurisdictional.

Next, appellee contends that the lower court was correct in its finding that appellant was not a resident of Greenwood and in its conclusion of law that she should be disqualified as a candidate for mayor. Appellants true, fixed, permanent and long established domicile is at 103 Eagle Street, which is in Leflore County. Appellant has never had a permanent resident in Greenwood. Further, the mere declaration of her intent to rent an apartment in the City of Greenwood during an election year does not establish a resident in the city nor prove an abandonment of her very nice and expensive home in the County.

The lower court, after considering all evidence make certain factual findings which are not manifestly wrong or error nor were they the product of prejudice, bias, or fraud, or manifestly against the weight of the credible evidence. Further, the lower court did not error in its application of the law to facts. Therefore, the decision of the lower court should not be disturbed on appeal.

LEGAL ARGUMENTS AND AUTHORITIES

I. THE COURT LACKS JURISDICTION OF THIS APPEAL

This appeal is purported to be brought pursuant to Section 23-15-963. Section 23-15-963(6) allows an appeal to the Supreme Court within three (3) days after judgment is rendered by the Circuit Court.

On May 12, 2009, Special Circuit Judge Andrew K. Howorth, rendered his judgment in this matter finding that Curressia Brown did not intend to abandon her domicile outside the city limits of Greenwood; that she should be disqualified as a candidate for mayor because she is not a bona fide resident of the City of Greenwood.

The lower court made it clear that its bench findings and ruling on May 12th was the judgment rendered by the court. The court stated, “. . . there is a short time frame in . . . which this can be appealed because it is an expedited matter . . . so, if you choose to [appeal]. . . you don’t have to wait on a record and you certainly don’t have to wait on any findings, other than the ones the court is making in its bench ruling here today.” (R.E. 142). (MY EMPHASIS ADDED).

The lower court further instructed undersigned counsel to prepare an Order that simply recites the result rather than any findings. Such an Order was presented and signed on May 13, 2009, by the lower court.

On May 19, 2009, the Clerk of this Court received Appellant’s Notice of Appeal, Bill of Exceptions, Brief of Appellant and Appellants Record Excerpts and stamped filed them on May 18, 2009, because these documents and pleadings were received by the night guard prior to midnight on May 18, 2009.

Appellee contends that pursuant to Section 23-15-963(a) the judgment was rendered on May 12th and the three days to appeal expired on Friday, May 15, 2009. After the three days had elapsed from the judgment rendered on May 12th there was no way that the appeal could be perfected. In *Turner v. Simmons*, 99 Miss. 28, 54 So. 658 (1911), this Court held:

Statutes limiting the time within which appeals shall be taken are both mandatory and jurisdictional, and must be strictly complied with. The court is without power to ingraft any exception on the statute. When the statute is not complied with, the Supreme Court is without jurisdiction of the cause, which will be dismissed, either on motion of appellee or by this court of its own motion. This court is *without power to make any other order*. [Emphasis added] 99 Miss. at 29, 54 So. 658. Also, *Dependents of Townsend v. Dyer Woodturnings*, 459 So.2d 300 (Miss. 1984).

Pursuant to Rule 81(a)(4), the Miss. Rules of Civil Procedure are subject to limited application in proceedings pertaining to election contests. In *Pearson v. Parsons*, 541 So.2d 447, this Court held that “MRCP 81(a) clearly states that the procedural rules have limited applicability to election contests and would defer to the statute where the rules conflict with the statutory scheme. *Id.* at 450-451. Here, the statute is clear as to the time allotted for an appeal. This case involves an expedited matter and the lower court made that clear to appellant when it rendered the judgment on May 12, 2009. Any rules regarding computation of time and entry of judgment attempting to grant additional days for this appeal would directly conflict with the statute.

Finally, Section 23-15-963(6) requires giving a cost bond in the sum of three hundred dollars (\$300.00). Based upon Appellee’s conversation with the Clerk of this Court, no cost bond was given by Appellant for this appeal.

In *Sumner v. City of Como Democratic Exec. Comm. & Mayor Lewers*, (2006-EC02096 Sct. Jan. 17, 2008) this Court in addressing whether a cash bond, satisfied the language in Section 23-15-927 regarding giving a cost bond of \$300.00 with two or more sufficient sureties, noted that the failure to give cost bond is jurisdictional. The court held that “[l]ike other provisions in Miss. Code Annotated Section 23-15-927 which have been deemed jurisdictional, this Court finds that the cost-bond provision also is jurisdictional. *Id.*

Since Appellant failed to give the \$300.00 cost bond at the time of the appeal, this matter should be dismissed for want of jurisdiction.

II. THE LOWER COURT WAS CORRECT IN FINDING THAT APPELLANT WAS NOT A RESIDENT OF GREENWOOD, MISSISSIPPI AND IN ITS CONCLUSION OF LAW THAT SHE SHOULD BE DISQUALIFIED AS A CANDIDATE FOR MAYOR³

A. WEIGHT OF ELECTION COMMISSION

The lower court similar, to the Election Commission, disqualified Curressia Brown as a candidate because she does not live in Greenwood. Section 23-15-963(a) places a great deal of weight on the decision of the Election Commission because it provides in essence that even if the Special Judge in this matter had ruled in favor of Curressia Brown, an appeal automatically suspend the decision of the Circuit Court and the appropriate election officials are entitled to proceed based upon their decision unless and until the Supreme Court stays further proceedings.

In *Power v. Forrest Co. Election Commission*, 163 So. 2d 656, 249 Miss. 757 (M. Sct.1964), the Court held that the “[Election] Commission is quasi judicial

³ Appellee makes this argument without waiving or conceiving the issue of want of jurisdiction.

administrative agent of the State, and as such, has authority to determine whether or not a person is qualified as a candidate for public office, and such duty is not a ministerial act but is a determination and finding of fact by an administrative agency.” (*Id.* At 765).

In the case sub judice, both the Commission and the Special Judge got it right.

B. REQUIREMENTS TO ESTABLISH RESIDENCY

Under Miss. Law for election purposes, “residency and domicile are synonymous...” Gadd v. Thompson, 517 So.2d 576, 578 (Miss. 1987); Hubbard v. McKey, 193 So.2d 129, 132 (Miss. 1966). To establish a bona fide residence the following elements must be shown:

- (1) The establishment of “an actual residence voluntarily established”; and
- (2) “with the bona fide intentions of remaining there, if not permanently, at least indefinitely.” *Id.*

A person may have more than one resident but only one domicile at a time. McLeod v. Allstate Ins., Co., 789 So.2d 806, 810 (Miss. 2001). “Once established, a person’s domicile remains intact absent a clear indication of intent to abandon the existing domicile and to establish another.” *Id.* “A residency is more flexible concept, than a domicile and permanency is not a requirement for residency. Even a temporary and transient place of dwelling can qualify as a residence.” *Id.*

“A person’s domicile is the place of his true fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom.” Brown v. Mutual of New York Life Insurance, 213 F. Supp.

2d 667, 669 (S.P. Ms. 2002). “Domicile is, however, more than where the party resides — it is the place a person calls home. Thus, when determining a party’s domicile, a court looks to such factors as where the person resides, where he works, goes to school, pays his taxes is registered to vote, the place of his driver’s license, and the location of his family among others.” *Id.* Once a person has established a domicile it continues to exist unless a new one is acquired or the domicile is clearly abandoned. To establish a change of domicile the person asserting it must establish two elements: (a) The taking up of a residence in a different domicile; and (b) the intention to remain there. *Id.*

Other factors include where the person owns person and real property, banks, attends church, has memberships in clubs or organizations, maintains a mail box, phone number. *Id.*, 213 F. Supp. at 670-71.

Under Miss. Law, “courts consider all available evidence to determine the residency of a person, evidence such as whether there is a manifested intent to abandon an old domicile and assume another, coupled with the whereabouts of one’s physical presence and the permanency or indefiniteness of the stay.” *McLaughlin v. City of Canton, et al.*, 947 F. Supp. 954, 962 (S. D. Miss. 1995).

In *McLaughlin* the Court noted that: “Plaintiff has maintained throughout this litigation that his residence is Canton. He yet votes in Canton and, indeed, yet lives in a house there. The Court is not persuaded that the act alone of leasing an apartment as a temporary abode in Ridgeland changes the status of his residence as a City of Canton elector.”

Here, Curressia Brown's domicile or true fixed and permanent home is 103 Eagle Street which is not located in the City of Greenwood. In 2005, she claimed to live in Greenwood for the sole purpose of running for Mayor of the City of Greenwood. As soon as she lost the election she claimed the 103 Eagle Street as her home. Curressia and her husband both ran for offices in 2007, using 103 Eagle Street as their permanent home. Curressia Brown voted in the November 2008 Presidential Election at the County Precinct for the 103 Eagle Street address. Her children attended the county school zoned for her 103 Eagle Street address and she and/or her husband signed a Declaration of Legal Residence stating 103 Eagle Street was their permanent home.

During the hearing before the lower court, Curressia Brown testified under oath that she changed her voter registration from the County to the City of Greenwood using as her resident an address at 616 State Street, Apt. A, Greenwood, Mississippi. She further testified that she never lived in the apartment located at this address but was still living at 103 Eagle Street. Also, Curressia Brown testified under oath at the hearing that she qualified to run for Mayor on January 30, 2009, using 120 Johnson Street, Apt. B, as her residential street address and certified that she meet all constitutional, statutory and other legal requirements to hold the office of Mayor. She later testified under oath that she never stayed in the apartment located at 120 East Johnson Street, Apt. B and was still living at 103 Eagle Street, which is located in the County.

The evidence is clear as a whistle that Curressia Brown has never had a permanent resident or domicile in the City of Greenwood. Her home at 103 Eagle

Street is valued over \$100,000.00. Curressia Brown is fraudulently claiming to be a resident of Greenwood for the sole purpose of running for the office of Mayor.

There is absolute no evidence to indicate an abandonment of her permanent and fixed residence at 103 Eagle Street. "Once established, a person's domicile remains intact absent a clear indication of intent to abandon the existing domicile and to establish another." *McLeod v. Allstate Ins. Co.*, 789 So.2d 806, 810 (Miss. 2001).

During the hearing, Curressia Brown testified that she stayed at the 103 Eagle Street 3 of 4 nights a week. She also testified that the 103 Eagle Street home would continue to be the home of her husband and four children.

The lower court correctly found that Curressia Brown had no intention of abandoning her true, permanent and fixed resident at 103 Eagle Street. The lower court found that the first houses that she rented are not the kind of places that she would go and live and leave a happy home and a nice home.

The findings of fact by the lower court was not a manifest error, nor were they the product of prejudice, bias, or fraud, or manifestly against the weight of the credible evidence. See *Boyd v. Tishomingo Co. Democ. Exec. Committee, supra*. Therefore, this Court should uphold all findings of the lower court. *Young v. Stevens*, 968 So.2d 1260 (MS 2007).

The standard of review for questions of law is de novo. *Ladner v. Necaise, supra*.

Three cases govern this matter on appeal, namely *Garnder v. Democ. Executive Committee*, 956 So.2d 906 (Miss. 2007); *Edward v. Stevens*, 963 So.2d 1108 (Miss. 2007); and *Young v. Stevens*, 968 So.2d 1260 (Miss. 2007).

In *Garner, supra*, McNair qualified to run for the office of the District Attorney for the 13th Circuit Court District in the August 2007 democratic primary. The Democratic Committee rejected the objection to McNair's candidacy by Garner who filed a Petition for Judicial Review. The Special Judge found that McNair was a resident of the district and qualified to run.

This Court reversed the trial court and found it erred in its finding because the proof overwhelmingly evinced that McNair resided in Hinds County and had not established residency in Covington County.

The pertinent facts in *Garner supra* are similar to facts in the case subjudice. McNair and his wife owned a house in Jackson since 1994. His wife taught school in Jackson. McNair stated that he spend the night in Jackson because it was closer to their employment locations. He was an assistant district attorney in the 21st Judicial District (which included Yazoo, Humphreys and Holmes Counties.) When his residency was challenged, McNair started spending weekends at a family owned house in Collins. He attended church in Jackson. McNair resided in his Jackson house until 2002 when he withdrew his homestead exemption. Also, in 2002, he became a registered voter in Covington County, which was the county he was from and grew up as a child. Also, after the challenge to his residency, McNair changed his driver's license address from Jackson to a post office box in Collins. McNair's mom transferred 1/4 interest in a tenant house to him. He signed a lease with the

tenant and stated he and his wife were co-tenants and lived in the property with the highway patrol tenant.

This Court found that the steps taken by McNair were to circumvent the election, homestead and voting laws of this state. This Court further found that McNair had not abandoned his established Hinds County domicile. The Court found that the little evidence by McNair to support a change in domicile such as changing his voting registration, purchasing his car tag in Covington County and changing his driver's license from Jackson to Covington County was not enough to show abandonment and to establish a claim of residency in Covington County.

McNair argued that the determination of his residency was premature and should not be judged until the time of the election. This Court, citing *Grist v. Farese*, 860 So.2d 1182 (Miss 2003) ruled that the statutory framework for determining a candidate's qualification requires that the determination be made upon filing for office and not at the time of the election.

Next, in *Edwards v. Stevens, supra*, Representative Mary Stevens filed a Petition For Judicial Review, *inter alia*, challenging Edwards certification as a candidate for House District 48 on the ground he did not live in the district. The lower court ruled that Edwards had not lived in the district for two years prior to the election and ordered that his name be removed from the ballot. Edwards testified that he always intended to return to establish a permanent residence in District 48, but this Court was unpersuasive of this argument.

In August 2003, Edwards purchased a home in Lexington which was not in District 48. He married in 2003 and his wife moved into the home with him.

Edwards got a divorce in 2006 in Holmes County, where he claimed the Lexington home as the marital residence.

Edwards claimed he abandoned the marital home in April 2006. He testified that he was registered to vote in District 48 and intended to buy a house and lot in District 48 but had not done so. He registered his car at his parents' home in District 48 but kept them in Lexington. He filed in January 2007 an application claiming homestead exemption for the Lexington property but later sought to withdraw the exemption claim two days after his residency qualification was challenged. This Court rejects all contentions of Edwards that he lived in District 48.

Likewise we encourage this Court, for some of the same and similar reasons advanced by Appellant, to reject all of her contentions that she has abandoned her home at 103 Eagle Street and has established residency in the City of Greenwood.

Lastly, *Young v. Stevens supra*, was referred to by the lower court in its conclusion of law. Young was disqualified by the lower court to run for Beat 2 Supervisor of Humphreys County. The Beat 2 incumbent Supervisor Stevens filed an objection to Young's candidacy on the basis he was not a resident of the county. The Democratic Executive Committee certified Young as a candidate and Stevens filed a Petition For Judicial Review.

Young went to Jackson State University in 1980 and relocated to Jackson, but he still used his parents' address. He purchased several homes in Jackson. He became a registered voter in Hinds County after 1980. In 1995, he changed his voter registration to Humphrey County. He was purged in 2002, but voted affidavit

and was placed back on the registration. Young purchased a house in Clinton in 1996, which was the house he and his ex-wife separated from and a divorce was granted in Hinds County.

Since 1996, Young purchased two or three other homes in Hinds County and his vehicle tag showed the Clinton address.

In December 2001, he purchased a home in Jackson and continued to reside with his wife and three children.

In 2007, Young changed the address on his driver's license to his parents' residence in Humphreys County and in April 2007, he had the utilities in his parents' home transferred into his name. Young was employed at ITS in Jackson and his wife worked in Ridgeland.

He claimed he lived in a shed next to his parents' home which was uninhabitable.

This Court found that Young resident was at his home in Jackson; that the proof did not show that he maintains a permanent residence in Humphreys County and that the special judge was not manifestly wrong in determining that Young is a Hinds County resident.

Similar to the facts in *Young; Edward v. Stevens* and *Garner*, above, Curressia Brown has taken steps to circumvent the election and voting laws of this state. The meager evidence of an alleged change in driver license address, maintaining usage of utilities at a rented apartment, a change of vote residence to qualify as a candidate, the change of the address of a deceased person vehicle, and a mere declaration of intent is just not enough to prove abandonment of her true,

permanent, fixed resident in the county and to prove establishment of a new resident in the county.

Here, Curressia Brown merely declared her intent to abandon her very expensive county home and declared that a rented apartment at 201 West President Avenue was her permanent domicile. This Court, confronted with this bare bone contention in *Young* held as follows:

The Court recently considered a very similar residency qualification contest in which the candidate in question claimed that for the preceding two years, he had been a resident of a Holmes County legislative district despite overwhelming evidence that he had actually resided elsewhere. He claimed that it was his intent to return to the district. We held that the candidate had not shown that he was resident of the district and his candidacy was prohibited. *Edwards v. Stevens*, 963 So.2d 1108 (Miss. 2007) (mandate issued, June 6, 2007). In the case *sub judice*, we find that Young's claims that he has always considered himself to be a resident of Humphreys County are not sufficient to overcome the overwhelming proof that he lives in Jackson, Hinds County, Mississippi. The determination of a person's "permanent home and principal establishment" turns on actual proof of a person's living arrangements. It is not satisfied with a simple declaration that one intends to be a resident of a particular county when the overwhelming proof shows that he actually resides elsewhere. It is not enough that Young considers himself an official resident of Humphreys County. He must actually reside there permanently. 968 So.2d at 1264. (Emphasis added).

Finally, at page 6 of her brief, Curressia Brown claims that no homestead exemption was filed by she and her husband at any location and that there is no presumption as to her residency. This same argument was advanced in *Young* and rejected by this Court. It was held as follows:

This Court recently held that a potential candidate's decision to forego homestead exemption in the county of his apparent residence is not definitive for purposes of determining his legal residence. In *Garner v. State Democratic Executive Comm.*, 956 So.2d 906 (Miss. 2007) (mandate issued, June 14, 2007), we held that even though a candidate had declined to file for homestead in Hinds County, he was still a resident of Hinds County, given the overwhelming proof of his actual living arrangements. This Court has

never held that a decision to forego homestead negates the otherwise obvious establishment of a domicile. We decline to do so today.
968 So.2d at 1264 (Emphasis added).

C. DOMICILE OR RESIDENCE OF THE WIFE

During the hearing before the lower court, Curressia Brown testified under oath that the 103 Eagle Street was the permanent residence or home of her husband, Troy Brown, Sr., her four children ages 6, 10, 15 and 19. However, she claims her home is now a two-bedroom apartment located at 201 West President Avenue, Apt. 210 in the City of Greenwood, Mississippi. The lease she presented at the hearing banned any overnight stay for anyone other than herself. Curressia Brown also testified that she and her husband, Troy Brown, were still married and he was away for his job; but the 103 Eagle Street was his permanent residence.

In Miss. “When a woman marries, her domicile and therefore her legal residence, becomes that of the husband.” *Bilbo v. Bilbo*, 177 So. 772, 776 (Miss. 1938). “When a domicile is once acquired, it is presumed to continue, and the burden of proving the contrary is upon the party alleging it” *Id.* In the final analysis, “the” husband has the right to choose and establish the matrimonial domicile, and it is the duty of the wife to acquiesce in his selection and follow him to the domicile of this choice unless the choice has been unreasonably and arbitrarily exercised, or where the comfort, health, and general well being of the wife would not be jeopardized by such change of domicile.”

There is absolutely no issue that the domicile of Curressia Brown’s husband is 103 Eagle Street.

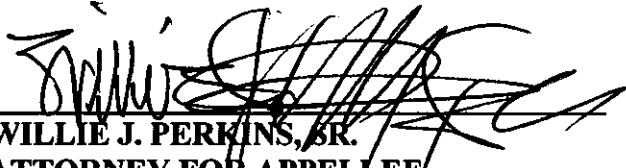
CONCLUSION

In view of the foregoing arguments, principles and authorities, this Court should enter its Order upholding the decision of the lower court that Curressia Brown's permanent residence and home is 103 Eagle Street which is not in the City of Greenwood and thus she is disqualified for running for Mayor of the City of Greenwood, Mississippi. Further, this Court should assess all costs and fees against Appellant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Willie J. Perkins, Sr., attorney of record for Appellee Sheriel F. Perkins, do hereby certify that I have this day caused to be mailed, via U. S. Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee unto:

**John R. Reeves, Esquire
355 South State Street
Jackson, MS 39201; and**

**Honorable Andrew K. Howorth
Special Circuit Judge
1 Courthouse Square, Suite 101
Oxford, MS 38655**

This the 20th day of May 2009.


WILLIE J. PERKINS, SR.