

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Rick Berg, individually in his capacity as
a resident elector of the State of North
Dakota, and as Chairman of the North
Dakota Republican Party,

Petitioner,

v.

Alvin Jaeger, in his capacity as North
Dakota's Secretary of State, and Travisia
Jonette Minor, A/K/A Travisia Martin,

Respondents.

ND Supreme Court Case No. 20200184

**ORDER REGARDING ASSIGNED
FACTUAL FINDINGS**

20200184

FILED AUGUST 14, 2020
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
STATE OF NORTH DAKOTA

INTRODUCTION

[¶1] This matter is before the Court on assignment from the North Dakota Supreme Court with instructions from that Court dated August 6, 2020. The Supreme Court directed this Court to hold an evidentiary hearing and make findings of fact concerning “whether Minor A/K/A Martin will have been a North Dakota resident for the five years preceding the 2020 general election.” The Court ordered the findings submitted no later than August 14, 2020.

[¶2] This Court held the ordered evidentiary hearing on August 12, 2020. The hearing was held through the use of reliable electronic means via the Zoom platform, per the Supreme Court's specific allowance, due to the ongoing COVID-19 pandemic. Petitioner, Rick Berg, did not appear at the hearing, but was represented by his counsel, Courtney Presthus. Respondent Alvin Jaeger did not appear but was represented by his counsel,

Matthew Sagsveen. Respondent Travisia Jonette Minor, A/K/A Travisia Martin (hereinafter identified as “Martin”), appeared and was represented by her attorneys, McLain Schneider and David Thompson.

[¶3] This Court heard testimony from the following witnesses: Harley Dale Vander Vorst, who is Martin’s fiancé, and Travisia Martin. This Court also received several exhibits into evidence, which have been marked by the parties and filed into the Supreme Court record.

[¶4] Following the hearing, this Court took the matter under advisement and now makes the following factual findings regarding the issue specifically assigned to this Court.

FACTS

[¶5] The following facts are based on the testimony heard and the exhibits received by this Court at the August 12, 2020 evidentiary hearing.

[¶6] The Respondent, Travisia Martin, is a current candidate for the office of Insurance Commissioner for the State of North Dakota. Martin testified she works as a traveling respiratory care practitioner specializing in critical care. She has worked in this occupation for many years, including all timeframes relevant to this matter, other than the period of time Martin was not working at all due to her knee injury. Her work as a traveling practitioner necessarily involves a significant amount of travel, and she is currently licensed to work as a respiratory care practitioner in seven different states.

[¶7] Martin previously owned a home and lived in Las Vegas, Nevada. It is uncontested that at various points in her life, including November 2016, Martin was a registered voter in the State of Nevada. Martin first registered to vote in Nevada in October 2004. *See* Petitioner’s Exhibit C. At some point while living in Nevada, Martin met her current

fiancé, Dale Vander Vorst, through mutual friends in Las Vegas. Mr. Vander Vorst lived in North Dakota.

[¶8] Martin testified that in January 2014, she was living in Las Vegas and suffered an injury to her knee, which prevented her from working. Shortly after the injury occurred, she received surgery and treatment in Las Vegas. In late 2014, she decided to move to North Dakota to be with Mr. Vander Vorst while she continued the rehabilitation process for her knee. She moved to live with Mr. Vander Vorst at his home, which at the time was in Mandan, ND. She testified that at the time she moved in with Mr. Vander Vorst in late 2014, she wanted to see if North Dakota was where she wanted to live.

[¶9] When asked what she did initially while she was living in North Dakota, Martin testified she was recuperating, traveling continuously to Nevada to continue her medical treatment there, and traveling recreationally with Mr. Vander Vorst. She did not work during this time. Martin testified that when she moved she had a personal vehicle that was registered in Nevada with Nevada license plates. She testified she did not bring this vehicle with her to North Dakota, but stored it at her home in Nevada. When she eventually began working in North Dakota in 2016, she drove a corporate vehicle. Her personal vehicle remained at her home in Nevada.

[¶10] In February 2015, Martin began leasing her home in Las Vegas to a friend. She continued to own the home in Las Vegas until 2018, when she sold it. She testified she decided to sell the home in 2018 because that was the time she and Mr. Vander Vorst bought their current home together in Bismarck. Martin testified that even though she continued to own the Las Vegas home, after she began renting it out in 2015, she did not ever return to live in the house.

[¶11] Martin testified that at the time she first came to North Dakota in 2014, she was not licensed to work as a respiratory care practitioner in the State. She became licensed in North Dakota in December 2016, after living here for some time. She explained that the process for obtaining her licensure in North Dakota was time consuming, taking at least six months.

[¶12] Once she completed her rehabilitation for her knee injury and became licensed to work in North Dakota in December 2016, Martin accepted an assignment to work at Sanford in Bismarck. She testified this employment lasted for approximately ten months, after which she traveled and worked all over North Dakota. Martin explained she has worked exclusively in North Dakota since she became licensed here in 2016, until her current assignment. Due to the pandemic, Martin currently works on assignment in St. Paul, Minnesota through September 2020. Although she is currently working in St. Paul, Martin testified she is living in a hotel there, and maintains her Bismarck home with Mr. Vander Vorst as her permanent residence.

[¶13] Martin testified that she continued to see her medical doctors in Las Vegas for her knee injury/rehabilitation through 2016. She testified and conceded that she voted in Nevada on November 8, 2016, in the general election. When asked why she voted in Nevada in 2016, Martin testified she had strong feelings about the 2016 presidential election, and she wanted to be sure her vote was cast. She testified that at that time, she was not registered to vote in North Dakota, and she did not understand the process for voting in North Dakota, including the fact that North Dakota residents do not have to register to vote in this State. Martin testified that on November 8, 2016, she was in Las Vegas visiting and she decided to vote while she was there.

[¶14] Martin testified her only intention by voting in Nevada was to make sure she voted on that particular presidential electoral process. She testified she intentionally voted in Nevada. When asked if she provided any sort of identification at the polling location in Nevada, Martin testified she showed them her passport, which listed her Las Vegas home address. At the time of her November 2016 vote, Martin testified she also still had a Las Vegas driver's license.

[¶15] At the evidentiary hearing in this matter, Martin initially testified she knew she had to be a resident of Nevada to vote in Nevada, but she later testified she did not know residency was required at the time she voted. She explained that she considered herself to be a North Dakota resident at the time she voted in Nevada, but that she was not concerned about the residency issue because she was registered to vote in Nevada. Because she was registered in Nevada, Martin thought she was qualified to vote there regardless of her belief that she was a North Dakota resident.

[¶16] Martin testified she did not obtain a North Dakota driver's license until sometime in 2018. She testified that her current passport lists her current address in Bismarck, ND, which is the home she owns with Mr. Vander Vorst. She testified she believes that she updated her passport to reflect that address in 2016, although if it contains her current address the Court notes she also testified she did not buy this home with Mr. Vander Vorst until July of 2018. When asked by this Court if she filed tax returns in 2015, Martin testified she did not because she was not working at that time.

LAW AND DECISION

[¶17] The North Dakota Constitution sets forth the requirements for holding an elective office in Article V, Section 4, which states:

To be eligible to hold an elective office established by this article, a person must be a qualified elector of this state, must be at least twenty-five years of age on the day of the election, and must have been a resident of this state for the five years preceding election to office. To be eligible to hold the office of governor or lieutenant governor, a person must be at least thirty years old on the day of the election. The attorney general must be licensed to practice law in this state.

N.D. Const. art. V, § 4 (emphasis added). The date of the 2020 general election in North Dakota is November 3, 2020, meaning any candidate seeking to hold elective office in North Dakota per the 2020 election, including Martin, must have been a North Dakota resident since November 3, 2015.

[¶18] The North Dakota Supreme Court has specifically directed this Court to determine whether Martin will have been a North Dakota resident for the required five years preceding the 2020 general election. Specifically, this requires a finding of whether Martin has been a North Dakota resident since at least November 3, 2015.

[¶19] Section 54-01-26 of the North Dakota Century Code sets forth the general rules for residency in the State as follows:

Every person has in law a residence. In determining the place of residence, the following rules must be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.
2. There can be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the supporting parent during the supporting parent's life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either

party to a marriage is not presumptive evidence of the other party's residence.

6. The residence of an unmarried minor who has a parent living cannot be changed by either that minor's own act or that of that minor's guardian.

7. The residence can be changed only by the union of act and intent.

N.D.C.C. § 54-01-26.

[¶20] “[A] new residence can only be established by the union of act and intent; that is, there must be an actual change of residence, together with an intention to make such change.” *State ex rel. Sathre v. Moodie*, 65 N.D. 340, 258 N.W. 558, 563 (1935) “[N]otwithstanding one may testify that his intention was to make his home in a certain place, if his acts are of a character to negative his declaration or inconsistent with it, it is clear that the court cannot be governed by his testimony as to intention.” *Id.* “While registering and voting in a particular place is not conclusive, it is strong circumstantial proof of residence. . . . The fact of voting is not conclusive, but it is a strong circumstance which indicates the intention of the voter to cast a legal vote.” *Id.* at 563-64.

[¶21] The Court first notes that the question of whether or not Martin has been a North Dakota resident since at least November 3, 2015, is a difficult finding to make. “The difficulties which are met with in connection with this question are due not so much to any obscurity or uncertainty in the law as to the infinite variety of facts and circumstances which have to be considered in its application to individual cases.” *Moodie*, 258 N.W. at 564. The Supreme Court’s requested finding is far less clear cut than either of the parties suggest it to be, and this Court is left with limited time to make the requested finding.

[¶22] In considering the testimony from Martin, the Court is also left with evidence and testimony that her actions and intentions regarding her residency often conflicted at various

times during the relevant timeframe. However, the Court does specifically find that Martin was a credible witness. She appeared truthful and candid, and nothing in her testimony suggested any ill will or intent both in her current testimony or in her actions throughout the timeframe relevant to this matter.

[¶23] There is no doubt that at the time in late 2014 when Martin initially decided to move to North Dakota to “see if it was where [she] wanted to live,” she was a legal resident of Las Vegas, Nevada. At that time, she moved in to her then-partner, Dale Vander Vorst’s, home in Mandan, ND. She did not own a home in North Dakota at that time, but kept her home in Las Vegas and continued to store her personal vehicle at the Vegas home. She continued to visit Las Vegas regularly for her medical appointments and follow-up care regarding her knee injury. From the period of 2014 through December 2016, Martin testified she did not work because of her injury. Therefore, she was not employed in North Dakota until she became licensed in December 2016.

[¶24] After she moved to North Dakota, Martin did not obtain a North Dakota driver’s license until 2018. Therefore, until 2018, her driver’s license reflected her Nevada address. Her personal vehicle remained in Las Vegas at her home and it was registered in Nevada. Her passport also reflected her Nevada address until she updated it, which she testified was in December 2016. While not conclusive, this testimony regarding her driver’s license, vehicle registration, and passport is evidence of Martin’s intent in the 2015-2016 timeframe.

[¶25] On November 8, 2016, Martin exercised her right to vote in Nevada. She testified that her intention in voting in Nevada was simply to cast her vote where she was registered to vote. She voted in-person at a polling location in Las Vegas, Nevada. She identified

herself at the polling location by showing her passport, which contained her Las Vegas address.

[¶26] Given all the evidence and testimony, this Court specifically finds that Martin was not a North Dakota resident at the time she cast her vote in the November 2016 election. While Martin had, in part, acted as though she was a North Dakota resident by physically moving to North Dakota, and while she likely had begun the intention of changing domiciles, she had not fully abandoned her former Nevada domicile, and she did not yet have a bona fide intention to change and remain in North Dakota permanently. This finding is based on numerous factors, some of which are more persuasive than others, but none of which are conclusive. Taken together, the facts indicate that Martin did not have union of act and intent to change her residence at least through November 8, 2016.

[¶27] Prior to casting her 2016 vote in Nevada, the Court recognizes that Martin had physically moved to North Dakota and she began renting out her Nevada home. However, the rental agreement for Martin's Nevada home indicated a month-to-month term, leaving Martin free at any time to provide 30-day's notice to her tenant to move out. *See* Respondent's Exhibit 2; Appellate Appendix at p.22. The rental agreement also stated it was intended "to promote household harmony by clarifying the responsibilities and expectations of the Owner and Tenant while sharing the home." (emphasis added). This language itself suggests that Martin, in executing the document, intended to remain as part of the "household" and to "share" the home. This is further evidenced by the fact that Martin kept her personal vehicle at the home.

[¶28] Prior to casting her 2016 vote in Nevada, Martin also had not changed any of her addresses on any of her government-issued identification cards. Her driver's license still

reflected her Nevada address, as did her passport. She did not work in North Dakota prior to voting in 2016, mainly due to her injury. She did not obtain her professional license in North Dakota until December 2016, although she had started the process before that time. She did not own a home in North Dakota, but lived with her partner in his home in Mandan. She continued her medical care with her medical providers in Nevada through 2016.

[¶29] And the Court certainly cannot ignore the fact that Martin voted in Las Vegas, Nevada on November 8, 2016. In doing so, she specifically chose not to avail herself of the rights of citizenship in North Dakota, but instead to avail herself of the rights of citizenship in Nevada. She did this in-person by physically appearing at the polling location in Nevada. She identified herself with her passport, which contained her Nevada address. In doing so, Martin consciously availed herself of that Nevada address in order to cast her vote. Her intent was clearly to cast a legal vote. And in doing so, she did not intend to exercise any rights of citizenship in North Dakota, but intended to exercise them in Nevada.

[¶30] “When you intend the facts to which the law attaches a consequence, you must abide the consequence whether you intend it or not.” *Moodie*, 258 N.W. 558 at 566 (quoting *Dickinson v. Brookline*, 181 Mass. at 196). Martin intended to cast a legal vote in Nevada, and she was a registered voter in Nevada with a valid Nevada address at the time she cast her vote. By showing her passport as valid identification and proof of residency, Martin indicated that her Nevada address was intended by her to be her legal residence for the purpose of voting and enjoying all the civil rights and privileges that come therewith.

[¶31] At the hearing in this matter, counsel for Martin continuously argued that voting

and registering in a particular place is not conclusive proof of residence. This Court agrees, and that is what the law states. However, by voting in Nevada and availing herself of the rights of citizenship in Nevada, Martin removed any doubt this Court may have had regarding her intended residency in 2016.

[¶32] Other than physically living in North Dakota, most of Martin's other actions suggested an intention to retain her legal residence in Nevada, including maintaining her home, driver's license, passport, and vehicle registration all in Nevada. She continued to receive medical care in Nevada, travelled there often, and kept her personal vehicle there. "[N]otwithstanding one may testify that his intention was to make his home in a certain place, if his acts are of a character to negative his declaration or inconsistent with it, it is clear that the court cannot be governed by his testimony as to intention." *Moodie*, 258 N.W. 558 at 563. This Court finds that although Martin testified that she intended North Dakota to be her residence in 2015-16, the vast majority of her actions in that timeframe are inconsistent with such an intention.

[¶33] To the extent the Court had any doubts that Martin had not yet formed act and intent to change her domicile to North Dakota after hearing the testimony regarding her actions up until November 8, 2016, this doubt was removed by the testimony regarding Martin's decision to cast her vote in Nevada and to avail herself of the rights of citizenship there. "The fact of voting is not conclusive, but it is a strong circumstance which indicates the intention of the voter to cast a legal vote." *Id.* at 564.

[¶34] This Court has no doubt that Martin fully formed the intent to make North Dakota her legal residence at some point after 2016. After that time, she began working exclusively in North Dakota, she bought a home with her partner in North Dakota, and she

sold her home in Nevada. She has also since changed all of her government-issued identification documents to reflect her North Dakota address, including her passport.

[¶35] However, all of the evidence and testimony presented to this Court regarding Martin's intent and her actions, both prior-to and up until her vote in 2016, suggest she had not fully abandoned her Nevada domicile and residency, and she continued to avail herself of the rights of being a citizen of Nevada. She availed herself of these rights specifically to the exclusion of exercising many of those rights in North Dakota, including the right to vote.

[¶36] Because there has not been a showing that during the necessary timeframe Martin had a union of both act and intent to change her residence from Las Vegas, Nevada, and establish it in North Dakota, the Court finds Martin was not a North Dakota resident until sometime after November 2016. Therefore, this Court specifically finds that Martin will not have been a North Dakota resident for the five years preceding the 2020 general election.

Dated this 14th day of August, 2020.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Thomas Schneider", is written over a horizontal line.

Thomas Schneider, District Judge
South Central Judicial District