IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

ROBIN WRIGHT-JONES,	)	
	)	
Respondent,	)	
	)	Appeal No. ED91368
vs.	)	
	)	
CONNIE L. JOHNSON	)	
	)	
Appellant.	)	

Appeal from the Twenty-Second Judicial Circuit
Hon. Douglas E. Long, Special Judge
Case No. 0822-CC01491
Division 1

Brief of Respondent Robin Wright-Jones

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[1] All statutory reference shall be to RSMo 2007 unless otherwise indicated.

STATEMENT OF FACTS

Respondent is dissatisfied with the accuracy or completeness of portions of Appellant's Statement of Facts and therefore asserts the following:

Appellant has abandoned her domicile at 5969 Tara Lane and now resides at 5848 Maple. Appellant's Legal File (hereinafter "L.F.") 5-9, 64 ¶ 5. After both parties had an opportunity to present evidence, the court found that the evidence presented weighed in favor of finding that Appellant was not a resident of 5969 Tara Lane and therefore did not qualify as a candidate nominee for the 5th senatorial district democratic primary election. L.F. 64-65.

ARGUMENT

STANDARD OF REVIEW

In a Rule 73.01 judge-tried case the judgment of the trial court should be upheld "unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo.banc 1976). Great deference is given to the trial court on factual issues and the judgment should only be set aside after the court has been firmly convinced that the trial court was wrong. *Landwersiek v. Dunivan*, No. 25814 (Mo. 2004). When the issue raised is purely a matter of law the case is reviewed de novo. *Reeves v. Bockman*, 101 S.W.3d 280, 281 (Mo.App. 2002).

I. Contrary to Appellant's Point I, the trial court correctly stated that section 115.531 did not apply to Respondent's petition.

The trial court was correct in asserting that the procedures set out in 115.531, authorizing a contest of the results of a primary election, were not applicable to a 115.526 contest, challenging the qualifications of a candidate for nomination. The trial court correctly noted the distinction between these two causes of action and the procedure for a 115.526 contest is not found in 115.531. L.F. 65, ¶ 6. This distinction is a critical factor when determining proper procedure in election-related cases since 115.526 procedures are different from the procedures followed in a 115.531 challenge. *Dally v. Butler*, 972 S.W.2d 603, 606-07 (Mo.App. 1998) (holding that the appropriate jurisdiction for a 115.526 suit challenging the qualifications of a candidate for a circuit judge election was found in 115.575.1 and not 115.531.1); *Reeves*, 101 S.W.3d at 284-86 (holding that the

proper jurisdiction for a suit challenging the *results* of a primary election contest is found in section 115.531 and not 115.575.1) (emphasis added); *See Chowning v. Magness*, 792 S.W.2d 438, 439 [3] (Mo.App. 1990) (judicially noting that the appropriate jurisdiction to file the 115.526 qualifications challenge was found in 115.575).

The procedures as set out in section 115.526 are meaningful and defined independent of 115.531. Statutory construction requires that the language used be considered in its plain and ordinary meaning while avoiding unreasonable, oppressive or absurd results. *Missouri ex rel. Bouchard v. Grady*, 86 S.W.3d 121, 123 (Mo.App. 2002). The entire legislative act must be construed together, harmonizing the provisions of the act if possible. *Id.* RSMo sections 115.527 to 115.601 make up the 'election contest statutes.' *State ex rel. Wilson v. Hart*, 583 S.W.2d 550, 551 (Mo.App. 1979). It is important to note that related clauses should be considered when construing particular portions of a statute. *Marre v. Reed*, 775 S.W.2d 951, 953 (Mo.banc 1989).

Appellant erroneously relies on section 115.531 to define the language of section 115.526 and to provide the procedures for a petition filed pursuant to section 115.526. Appellant argues that without section 115.531, the term "appropriate court" as used in section 115.526.1 is left undefined. However, the definition of "appropriate court" is found in later provisions of the 'election contest statutes.' Section 115.529 provides that circuit courts shall have jurisdiction to hear primary election contests. Section 115.575.2 further defines "appropriate court" as "the circuit court of any circuit, selected by the contestant, in which all or any part of the election was held…."

In addition, section 115.526 provides that procedures for a qualifications challenge shall be the same as the procedures provided in sections 115.527 to 115.601, "to the extent that it is applicable and not in conflict with the provisions of this section." RSMo §115.526. The procedures in 115.531.1 are in conflict with the procedures set out in 115.526. A petition for a section 115.526 challenge must be filed "no later than thirty days after the final date for filing for such election." RSMo §115.526.2. However, a petition for a section 115.531 challenge must be filed "[n]ot later than five days after the official announcement of the results of a primary election." RSMo §115.531.1. Compare the language of 115.531 with the language of 115.577,

> Not later than thirty days…any person…on any question provided in section 115.575 shall file a verified petition in the office of the clerk of the appropriate circuit court…The circuit court in which the petition is filed shall have exclusive jurisdiction over all matters relating to the contest….

The language used in 115.577 parallels the language of 115.526. Section 115.531 is in conflict with section 115.526 and so may not be relied on in setting out the procedure for a 115.526 challenge. Therefore, the trial court did not err when it declared that section 115.531 is inapplicable to Respondent's petition.

Accordingly, Respondent prays this honorable Court affirm the judgment of the trial court pursuant to Rule 84.14 and provide any other relief this honorable Court deems necessary and appropriate.

II. Contrary to Appellant's Point II, the trial court had subject matter jurisdiction pursuant to sections 115.581 and 115.589 when it entered a scheduling Order on April 24, 2008.

The trial court appropriately entered a scheduling Order on April 24, 2008, setting the hearing for May 9, 2008. L.F. 15. In order for the court to maintain subject matter jurisdiction in a statutory proceeding, the court must strictly comply with the statute. *American Indus. Resources, Inc. v. T.S.E. Supply Co.*, 708 S.W.2d 806, 808 (Mo.App. 1986) (hereinafter "*American*"); *Dally* 972 S.W.2d at 608. A contest challenging the qualifications of a candidate for nomination is a statutory proceeding and so the court is strictly confined to the pertinent statutory provisions. *Id.* at 607-08.

Section 115.526 does not set out scheduling procedures. However, section 115.526.3 does provide that the procedures found in 115.527 to 115.601 are applicable so long as they are not in conflict with 115.526. As set out in Argument I above, the procedures in section 115.531 are conflicting and so do not apply to a 115.526 contest challenging the qualifications of a candidate nominee. *Dally*, 972 S.W.2d at 606-07; *Reeves*, 101 S.W.3d at 284-86; *See*, *Chowning*, 792 S.W.2d at 439[3].

Section 115.526 and 115.575 provided the court with subject matter jurisdiction to hear Respondent's petition. In addition, sections 115.581 and 115.589 continue to provide the court with subject matter jurisdiction up to and after the court filed its April 24, 2008 scheduling Order. Section 115.581 provides that the court shall proceed to try the case immediately upon the filing of a petition and answer. Section 115.589 provides that the court authorized to determine the contested election shall hear and determine the contest at the earliest opportunity. Neither section (115.581 or 115.589) required the trial

court to schedule a hearing within five days of filing the 115.526 petition. In addition, section 115.599 provides for discovery for each party which is to be completed prior to the commencement of the hearing.

The actions of the trial court were in compliance with the 'election contest statutes' at all times, including when it entered a scheduling Order on April 24, 2008 setting the hearing for May 9, 2008. Sections 115.581 and 115.589 authorized the trial court to set the hearing at such date. Therefore, the trial court had subject matter jurisdiction when it entered the April 24, 2008 scheduling Order.

Accordingly, Respondent prays this honorable Court affirm the judgment of the trial court pursuant to Rule 84.14 and provide any other relief this honorable Court deems necessary and appropriate.

III. Contrary to Appellant's Point III, the trial court had subject matter jurisdiction at all times throughout the case, including during the hearing on May 9, 2008. Therefore, the trial court properly entered a judgment on May 15, 2008.

The trial court had subject matter jurisdiction when it held the hearing on May 9, 2008, L.F. 15, and when the court entered a judgment on May 15, 2008, L.F. 58-66. Since a 115.526 contest is a statutory proceeding, the court must strictly comply with the statute to maintain subject matter jurisdiction. *American*, 708 S.W.2d at 808; *Dally*, 972 S.W.2d at 608.

The procedures for a 115.526 challenge are not found in section 115.531, but rather they are found in later provisions of the 'election contest statutes.' *Dally*, 972 S.W.2d at 606-07; *Reeves*, 101 S.W.3d at 284-86; *See, Chowning*, 792 S.W.2d at 439[3].

The court maintained subject matter jurisdiction when it held the hearing on May 9, 2008 since sections 115.581 and 115.589 set out the procedures in which the court was to follow. Section 115.581 authorizes the court to proceed to try the case immediately upon the filing of a petition and answer. Sections 115.545 and 115.589 provide that the court shall hear and determine the contest, enter its judgment based upon the issues of fact and law and submit a certified copy to the appropriate election authority and to the secretary of state. Sections 115.545 and 115.589 also instruct the secretary of state and the election authority to correct their records to conform to the judgment.

Respondent complied with the election statutes at all times, including when she requested a hearing set for May 9, 2008. Section 115.599 provided time for discovery. Sections 115.581 and 115.589 authorized the trial court to set the hearing at such date. Therefore, the trial court had subject matter jurisdiction to hold the hearing on May 9, 2008 and subsequently enter its judgment on May 15, 2008.

Accordingly, Respondent prays this honorable Court affirm the judgment of the trial court pursuant to Rule 84.14 and provide any other relief this honorable Court deems necessary and appropriate.

IV. Contrary to Appellant's Point IV, the appellant's counterclaims were moot once the trial court entered the May 15, 2008 judgment and therefore the trial court correctly dismissed Appellant's counterclaims as moot.

Once the trial court entered its judgment on May 15, 2008, Appellant's counterclaims were moot. Pursuant to sections 115.526, 115.575, 115.577, 115.581, 115.589 and 115.599, the trial court properly scheduled the May 9, 2008 hearing, L.F. 15, held the hearing on May 9, 2008, L.F. 58, and entered its judgment on May 15, 2008

finding that Appellant was not a resident of the 5th senatorial district and therefore did not meet the qualifications of a candidate nominee as required in MO Const. art. III, section 6 and RSMo section 21.070, L.F. 65. Further, the trial court properly dismissed Appellant's counterclaims as moot. L.F. 65.

Appellant's first contention is that that trial court erred when it severed Appellant's counterclaims from the original suit since she was required to bring her counterclaims under Rule 55.32(a) as compulsory counterclaims. Even if Appellant was required to bring her counterclaims pursuant to Rule 55.32(a), Rule 66.02 provides the court with discretion to sever counterclaims for a separate trial "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy." A trial court has the discretion to grant a separate trial and such decision should be disturbed only if that discretion is abused. *Union Elec. Co. v. Mansion House Center North Redevelopment Co.*, 494 S.W.2d 309, 312 (Mo. 1973). There is nothing in this case to suggest that the trial court abused its discretion and so the ruling should be affirmed.

Second, Appellant argues that the trial court erred when it dismissed her counterclaims as moot. A case is moot and should be dismissed when an event occurs that makes a court's decision unnecessary. *Elton v. Davis*, No. 61987, 6 (Mo.App. 2003). The trial court in *Elton* dismissed the defendant's adverse possession counterclaim as moot after the trial court reformed a legal description in a deed which provided the defendants title to the land they were claiming by adverse possession. *Id*. at 5-6.

Similarly, Appellant's counterclaim seeking a declaratory judgment to qualify Appellant as a "candidate for the 5th senatorial district in accordance with both MO Const. art. III, § 6 and §21.070 RSMo," L.F. 30-31, was rendered moot after the trial court entered its judgment that Appellant did not meet the qualifications for candidate nominee for such office, L.F. 64-65. In addition, Appellant's counterclaim alleging a violation of her procedural due process rights, L.F. 32, was rendered moot when the trial court concluded that Respondent's challenge was brought pursuant to RSMo section 115.526 and that 115.531 is wholly inapplicable to a 115.526 contest, L.F. 65, ¶ 6.

Since the trial court had already ruled on the issues in Appellant's counterclaims, the court's decision on those counterclaims was unnecessary. Therefore, the court properly dismissed Appellant's counterclaims as moot. *Elton*, No. 61987 at 6.

Accordingly, Respondent prays this honorable Court affirm the judgment of the trial court pursuant to Rule 84.14 and provide any other relief this honorable Court deems necessary and appropriate.

V. Contrary to Appellants Point V, the trial court had authority to enter the May 15, 2008 judgment since the trial court was authorized to enter the April 24 scheduling order setting the hearing for May 9, 2008. Therefore, the May 15, 2008 judgment is fully enforceable.

The trial court was authorized to enter the May 15, 2008 judgment finding that Appellant did not meet the qualifications for a candidate nominee pursuant to 115.526 and later provisions in the 'election contest statutes.' Since a 115.526 contest is a statutory proceeding, the court must strictly comply with the statute to maintain subject matter jurisdiction. *American*, 708 S.W.2d at 808; *Dally*, 972 S.W.2d at 608.

The procedures for a 115.526 challenge are not found in section 115.531, but rather they are found in later provisions of the 'election contest statutes.' *Dally*, 972 S.W.2d at 606-07; *Reeves*, 101 S.W.3d at 284-86; *See, Chowning*, 792 S.W.2d at 439[3]. The trial court had jurisdiction to hear Respondent's Petition pursuant to sections 115.526, 115.575 and 115.577. In addition, the trial court maintained jurisdiction when it entered the April 24, 2008 scheduling Order pursuant to 115.526, 115.581, 115.589 and 115.599. Further, the trial court had jurisdiction to hear the case on May 9, 2008 pursuant to 15.526, 115.581 and 115.589. Finally, the court was authorized to enter the May 15, 2008 judgment pursuant to sections 115.526 (providing statutory action), 115.545 (the court shall render its judgment based upon the issues of law and fact at the end of the case and a copy of the judgment shall be sent to the appropriate election authorities as well as the secretary of state), and 115.589 (the court shall be authorized to determine contested elections cases and when the court delivers its judgment, a copy of the judgment shall be delivered to the appropriate election authorities and the secretary of state).

Since the court maintained jurisdiction from the time Respondent filed her petition up to May 15, 2008 when the court entered its judgment, the judgment of the trial court was authorized and is fully enforceable.

Accordingly, Respondent prays this honorable Court affirm the judgment of the trial court pursuant to Rule 84.14 and provide any other relief this honorable Court deems necessary and appropriate.

VI. Contrary to Appellant's Point VI, the evidence in the record supports the trial court's May 15, 2008 judgment. Accordingly, the trial court's judgment should be affirmed.

The evidence presented at the May 9, 2008 hearing supports the trial court's judgment. The question of residence is one of fact. *State ex rel. King v. Walsh*, 484 S.W.2d 641, 644 (Mo. 1972). Since this point on appeal turns on a question of fact, the judgment of the trial court should be sustained "unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Murphy*, 536 S.W.2d at 32. The evidence and resulting reasonable inferences in favor of the prevailing party should be accepted as true and the contrary evidence should be disregarded. *Landwersiek*, No. 25814 (citing *Evan v. Werle*, 31 S.W.3d 489, 491 (Mo.App. 2000)). The decision of the trial court should only be set aside when there is a firm belief that the judgment is wrong. *Landwersiek*, No. 25814 (citing *Waldroup v. Dravenstott*, 972 S.W.2d 346, 368 (Mo.App. 1998)).

The finding of the trial court, that Appellant was not a resident of the 5th senatorial district for one year prior to one day before the day of the general election as required in MO Const. art.III, section 6 and RSMo section 21.070, is supported by substantial evidence and is not against the weight of the evidence. The trial court made the following findings of fact: Appellant leased her property at 5969 Tara Lane for a term of one year, beginning October 1, 2007, L.F. 60, ¶ 7; the utilities of the house at 5969 Tara Lane were put in the names of the tenants, L.F. 60, ¶ 8; William Keys, a 5969 Tara Lane tenant, provided credible testimony that Appellant did not stay at the 5969 Tara Lane

address, L.F. 60, ¶ 9; Appellant's testimony that she slept at the 5969 Tara Lane while she leased the property was not credible, L.F. 60, ¶ 9; Contestee filed a change of address with the Post Office to have her mail delivered to the 5848 Maple address, L.F. 61, ¶ 10; Contestee remained at the 5848 Maple address throughout the months of October, November and December of 2007, L.F. 61, ¶ 11; Appellant's checks from her employer are directly deposited into a bank account that has the 5848 Maple address listed as account owner's address, L.F. 62, ¶ 15; and a report filed by a campaign committee with the Missouri Ethics Commission recorded Appellant's address as 5848 Maple, L.F. 63, ¶ 17.

Additionally, the May 15, 2008 judgment does not erroneously declare the law nor does it erroneously apply the law. Section 21.070 requires a state senator to have been a resident of the district which she represents for one year the day before the day of her election. After receiving evidence from both parties, the trial court concluded that Appellant was not a resident of the 5th senatorial district as required by 21.070. The words "residence" and "domicile" may be used interchangeably. *King*, 484 S.W.2d at 644. There was not an erroneous declaration or application of the law since the trial court found Appellant to be a resident of the 5848 Maple address.

Accordingly, Respondent prays this honorable Court affirm the judgment of the trial court pursuant to Rule 84.14 and provide any other relief this honorable Court deems necessary and appropriate.

CONCLUSION

WHEREFORE, for the forgoing reasons, Respondent prays that this honorable Court affirm the judgment of the trial court that Appellant does not meet the qualifications for a candidate nominee, affirm the order of the trial court dismissing the Appellant's counterclaims as moot, and award any other relief this honorable Court deems necessary and appropriate under the circumstances.

RULE 84.06(c) CERTIFICATION

Pursuant to Rule 84.06(c), I hereby certify that the foregoing complies with Rule 55.03, complies with the limitations contained in Rule 84.06(b) and contains 267 Lines, 3,213 Words. A virus-free, true and accurate copy of the same was delivered by hand and e-mail in Word 2003 format on this __ day of June, 2008, to the following:

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