

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020004868

04/30/2020

HONORABLE M. SCOTT MCCOY

CLERK OF THE COURT
T. DeRaddo
Deputy

JUDITH K. LOHR

JAMES E BARTON II

v.

SHAWNNA BOLICK

THOMAS J. BASILE

KYLE ROBERT CUMMINGS
JOSEPH EDWARD LA RUE
KORY A LANGHOFER

JUDGE MCCOY
COURT ADMIN-CIVIL-ARB DESK
COURT ADMIN-CIVIL-CCC
DOCKET-CIVIL-CCC

UNDER ADVISEMENT RULING

1. Plaintiff Judith K. Lohr is a qualified elector within Legislative District 20. Stipulated Facts, ¶ 1.
2. Defendant Shawna Bolick resides within the area covered by U.S. Postal Zip Code 85022. *Id.*, ¶ 2.
3. Ms. Bolick listed the address 610 E. Bell Road, #2-142, Phoenix, AZ 85022 on her nomination papers as her residence address. *Id.*, ¶ 3, Exh. A.
4. Ms. Bolick listed the address 610 E. Bell Road, #2-142, Phoenix, AZ 85022 on her nomination petitions as the address at which she resides for the 2020 election. *Id.*, ¶ 4, Exh. B.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020004868



04/30/2020

5. Ms. Bolick listed the address 610 E. Bell Road, #2-142, Phoenix, AZ 85022 on the circulator verification as her actual residence address when verifying her E-Qual signatures. *Id.*, ¶ 5, Exh. C.
6. Ms. Bolick used the address 610 E. Bell Road, #2-142, Phoenix, AZ 85022 in 2018 on her nomination papers, petitions, and circulator verifications without legal challenge. *Id.*, ¶ 6.
7. On February 21, 2017, the Honorable Janet E. Barton entered an Order to Restrict Public Access to Address and Telephone Numbers in Specified Public Records. *Id.*, ¶ 7, Exh. D.
8. The address 610 E. Bell Road, #2-142, Phoenix, AZ 85022 is the address of a UPS Store. *Id.*, ¶ 8.
9. The address of the UPS Store is contained within Legislative District 20. *Id.*, ¶ 9.
10. Ms. Bolick's residence is in the same state, county, legislative district, municipality, and zip code as the UPS Store. *Id.*, ¶ 10.
11. Ms. Bolick is prepared to testify that she is, and at all times relevant has been, a resident and qualified elector of Legislative District 20, and Plaintiff does not allege otherwise. *Id.*, ¶ 11.
12. Zip code 85022 includes portions of Legislative District 20 and Legislative District 28. *Id.*, ¶
13. In 2014, Ms. Bolick ran for office from Legislative District 28. *Id.*, ¶ 13.
14. This court has jurisdiction under Ariz. Rev. Stat. (A.R.S.) § 16-351.
15. Persons running for office must file nomination papers, which by statute shall "giv[e] the person's *actual residence address* or description of place of residence and post office address." A.R.S. § 16-311(A) (emphasis added).
16. Nominating petitions "shall" include the address of the person being nominated. A.R.S. § 16-314(C) (requiring nominating petitions be "in substantially the following form: I, the undersigned, a qualified elector of [the political party and relevant political division or district] hereby nominate _____ *who resides at* _____") (emphasis added).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020004868

04/30/2020

17. Ms. Bolick signed a number of petitions as the circulator. Arizona law requires persons circulating petitions include certain information, including their “actual residence address.” A.R.S. § 16-315(B).
18. Thus, Ms. Bolick’s nomination papers, petitions and circulator verifications did not strictly comply with three separate statutory provisions, respectively: A.R.S. §§ A.R.S. § 16-311(A), -314(C) and -315(B).
19. Arizona courts, however, “do not remove candidates from the ballot for mere technical departures’ from the statutorily required forms.”  *Dedolph v. McDermott*, 230 Ariz. 130, 131 ¶ 3, 281 P.3d 484, 485 (2012), quoting *Bee v. Day*, 218 Ariz. 505, 507, ¶¶ 9-10, 189 P.3d 1078, 1080 (2008).
20. Instead, courts “assess whether nominating papers substantially comply with the statutory requirements.”  *Dedolph*, 230 Ariz. at 131, ¶ 3, 281 P.3d at 485 (citing *Bee*) (reversing trial court’s order striking from ballot candidate who incorrectly identified her surname in nomination paper as “Cheuvront-McDermott” rather than “McDermott”).
21. Applying the rule more than sixty years ago, the Arizona Supreme Court reasoned that “the paramount right to propose a nominee is of such gravity as to outweigh purely technical departures from nominating form.” *Adams v. Bolin*, 77 Ariz. 316, 322, 271 P.2d 472, 475–76 (1954).
22. “The essence of the nominating procedure is that qualified persons sign the petitions; the exact form of the sheet on which they sign is relatively unimportant.” *Adams*, 77 Ariz. at 321, 271 P.2d at 475.
23. Accordingly, the Arizona Supreme Court has instructed trial courts to “focus[] on whether the omission of information could confuse or mislead electors signing the petition.” *Moreno v. Jones*, 213 Ariz. 94, 102, ¶ 42, 139 P.3d 612, 620 (2006) (citation omitted) (holding that petitions specifying the year, but not specific date, of primary election were not confusing because “there was only one primary that year for” the relevant legislative office).
24. In very similar circumstances, the Arizona Supreme Court affirmed the trial court’s finding that a candidate substantially complied with statutory requirements. There, the candidate listed a UPS facility address instead of the physical address of his residence. The Court stated:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020004868

04/30/2020

Appellee Saban did not strictly comply . . . by listing a United Parcel Service facility address in the blank following the phrase ‘resides at’ on his nomination petition sheets. But by providing accurate information as to the city, county, state and zip code matching those of his actual physical residence, his petition sheets were unlikely to cause confusion or to mislead electors”

Baker v. Saban, No. CV-16-0140-AP/EL, Ariz. Supr. Ct., Decision Order dated June 29, 2016. See Response to Application for Preliminary and Permanent Injunction., Appendix 1.

25. Plaintiff attempts to distinguish *Baker*, arguing that the candidate there, unlike Ms. Bolick:

- a. provided his physical address on his nomination paper declaring his candidacy, and
- b. provided a zip code on petitions “wholly contained in . . . the relevant voting district.” The zip code Ms. Bolick provided “crosses two Legislative Districts, 20 and 28” postulated as something “likely to lead to voter confusion” given that Ms. Bolick ran for office in Legislative District 28” in 2014.

Reply in Support of Application for Preliminary and Permanent Injunction, at 3, 5. See also, *id.*, Exh. 1 (copy of nomination form in *Baker*). The Court finds these distinctions unpersuasive.

26. Nor is the Court persuaded that this case differs from *Baker* or other election cases because Ms. Bolick assertedly “concealed the truth” (Reply at 2) or “was intentionally deceptive.” *Id.* at 3. First, a member of Ms. Bolick’s family in 2017 took legal measures to protect the family’s physical address from disclosure in certain public records. See Stipulated Facts, ¶ 7, Exh. D (Judge Barton’s order). That order does not exempt Ms. Bolick from the election laws at issue here, but security is a legitimate concern for public officials. Second, given that Ms. Bolick undisputedly lives in the district in which she seeks office and is otherwise qualified to hold that office, no material deception or concealment has occurred.

27. With all statutes, it is: “the intent and purpose of the law, not the letter, that must control.” *Jenkins v. Hale*, 218 Ariz. 561, 564, ¶ 19, 190 P.3d 175, 178 (2008) (internal quotation omitted).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020004868

04/30/2020

28. The purpose of the nomination process at bar is to “[weed] out the cranks, the publicity seekers, the frivolous candidates who have no intention of going through with the campaign [from the] bona-fide office seeker[s] [who] have a reasonable number of supporters.” *Adams*, 77 Ariz. at 320, 271 P.2d at 475.
29. Striking from the ballot Ms. Bolick, “a bona-fide office seeker . . . with a reasonable number of supporters” does not, in the court’s estimation, serve that purpose.
30. Because voters are unlikely to have been confused or misled by the technical errors at issue, Ms. Bolick has substantially complied with applicable elections laws.

For the foregoing reasons,

IT IS ORDERED granting Ms. Bolick’s oral motion for judgment as a matter of law.

IT IS FURTHER ORDERED denying Plaintiff’s cross motion for judgment as a matter of law.

IT IS FURTHER ORDERED denying Plaintiff’s Application for Preliminary and Permanent Injunction.

IT IS FURTHER ORDERED dismissing the complaint with prejudice.

No matters remain pending in this case. This is a final judgment under Ariz. R. Civ. P. 54(c).

/ s / M. Scott McCoy

M. SCOTT MCCOY
JUDGE OF THE SUPERIOR COURT

The parties are notified that, under A.R.S. § 16-351(A), any notice of appeal must be filed within five calendar days after the superior court’s decision in a challenge to the nomination of a candidate. See *Bohart v. Hanna*, 213 Ariz. 480, 143 P.3d 1021 (2006). An appeal that is belatedly prosecuted, such as one filed on the last day of the statutory deadline, may be dismissed on grounds of laches even if timely filed. See *McClung v.*

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020004868

04/30/2020

Bennett, 225 Ariz. 154, 235 P.3d 1037 (2010). Special procedural rules govern expedited appeals in election cases. Ariz. R. Civ. App. P. 10