

Judge Stewart's Dissent, filed  
September 11, 2002, to follow opinion  
rendered September 11, 2002.

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EN BANC  
\* \* \* \* \*

No. 36,837-CA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

TERRY R. REEVES

Plaintiff-Appellee

Versus

LAURA J. JOHNSON A/K/A  
LAURA JO JOHNSON AND  
HON. DONALD E. KELLEY, IN HIS  
OFFICIAL CAPACITY AS CLERK OF  
COURT OF WINN PARISH, LOUISIANA

Defendants-Appellants

\* \* \* \* \*

Appealed from the  
Eighth Judicial District Court for the  
Parish of Winn, Louisiana  
Trial Court No. 37,371-02

Honorable John R. Joyce, Judge Ad Hoc

\* \* \* \* \*

CHRIS J. ROY, JR.  
JACQUES M. ROY

Counsel for  
Appellants

CULPEPPER & ASSOCIATES  
By: Bobby L. Culpepper

Counsel for  
Appellee

JAMES E. LEWIS

KERMIT M. SIMMONS

\* \* \* \* \*

Before BROWN, WILLIAMS, STEWART, GASKINS, CARAWAY,  
PEATROSS, KOSTELKA, DREW, and HARRISON (Pro Tempore), JJ.

CARAWAY, J., concurs with written reasons.  
WILLIAMS, J., concurs without written reasons.  
STEWART, J., dissents with reasons to follow.  
STEWART, J. dissenting

I must respectfully dissent. The majority fails to consider a threshold issue by affirming the trial court, that is the burden of proof. Without a proper analysis of the burden of proof, one cannot adequately resolve the matter before the court. The trial court determined that Johnson had established residency in Winn Parish in 1999. Consequently, it was the burden of Reeves to demonstrate that was forfeited or lost. It appears that the majority has impermissibly placed the onus on Johnson to demonstrate that she never intended to give up her residence. The evidence clearly shows that Johnson evidenced her subjective intent to continue to maintain Winn parish as a residence.

In addition, the majority's interpretation of the word "resides" is inconsistent with the legislative history and jurisprudence regarding the residency requirement for an aspirant for public office. The fact that a residence, of which a person may have many, is maintained for political purposes does not itself prevent a residence from being bona fide. *See McClendon v. Bel*, 00-2011 (La. App. 1 Cir. 9/7/00), 797 So.2d 700. It is axiomatic that one may establish residence purely for political purposes.

A person may maintain more than one residence and the fact that one is maintained for political purposes does not itself prevent the residence from being actual and bona fide. Intent to maintain a residence is an important factor, but intent alone does not establish a bona fide residence. There must be actual, physical use or occupation of quarters for living purposes before residence is established.

*Soileau v. Bd. of Supervisors St. Martin Parish*, 361 So.2d 319 (La. App. 3d Cir. 1978). To establish residency, the threshold merely requires actual physical use of some type of occupation for living purposes; a place of abode is all that is needed. *McClendon, supra; Williford v. Grady*, 96-1040 (La. App. 3d Cir. 8/5/96), 688 So.2d 1072. Even a temporary absence from a

place of residence does not necessarily mean that a person ceases to be a resident. *Williford, supra*. The rationale is that residency is not lost as long as residence exists in fact with the requisite intent. Again, it is undisputed that residence was established in 1999. The only issue is whether it was somehow lost despite her obvious intent to maintain Winn Parish as a residence.

Because of the presumption for the benefit for the challenged person that exists for residency must be overcome. The majority erroneously bootstraps the supreme court's interpretation of the phrase "actual bona fide resident" under Article 197 of the Louisiana Constitution of 1913 to the meaning of "resides" under Article 5 of the Louisiana Constitution and Title 16 of the Louisiana Revised Statutes. We refer the majority to the supreme court's decision in *Melerine v. Democratic Parish Exec. Committee*, 114 So. 711 (La. 1927) where the court defined residency in an election case stating:

The 'residence' necessary to constitute a qualified voter has thus been defined by this court: The term, 'actual bona fide resident,' cannot reasonably be interpreted to mean that, in order to acquire, and still less, to retain, such status, one must remain continuously in the town, or upon the premises of the residence, and the status described is not therefore affected by temporary absences, *occasioned by considerations of duty*, business, *health*, or pleasure, unless being voluntary, they extend beyond prescribed periods, or are accompanied by the acquisition of residence elsewhere.

(Emphasis added).

The evidence clearly shows that the sole reason Johnson left her home in Winn parish and went to Natchitoches was to take care of her terminally ill mother. The decision that she would be the one to move to Natchitoches was a family decision made after conferring with her brother and sister. Her intent to never leave Winn Parish is established by the fact that she returned there

almost immediately after her mother's death earlier this year, staying only to allow her children to finish the school year in their respective schools. I believe that the plaintiff failed to meet his burden of proof in demonstrating that Johnson lost her residence status in Winn Parish; therefore, I would reverse and render in favor of the defendant.