

EVERETT ASBERRY, )  
 )  
 Plaintiff/Appellee, )  
 )  
 VS. )  
 )  
 DEBORAH GARRETT, )  
 REX TOMPKINS, present mayor of the )  
 Town of Byrdstown and the TOWN )  
 ALDERMEN, and/or GOVERNING )  
 BODY OF SAID TOWN, )  
 )  
 Defendants/Appellants. )

Appeal No.  
 01-A-01-9511-CH-00515

Pickett Chancery  
 No. 1812

<p><b>FILED</b></p> <p><b>June 19, 1996</b></p> <p><b>Cecil W. Crowson</b>  <b>Appellate Court Clerk</b></p>
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COURT OF APPEALS OF TENNESSEE  
 MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE CHANCERY COURT OF PICKETT COUNTY  
 AT BYRDSTOWN, TENNESSEE

THE HONORABLE VERNON NEAL, CHANCELLOR

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AFFIRMED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:  
 TODD, P.J., M.S.  
 KOCH, J.

# OPINION

## *Introduction*

This appeal involves a contested election. On August 4, 1994, the Town of Byrdstown, Tennessee held a mayoral election which the Appellant, Deborah Garrett, won. On August 12, 1994, Everett Asberry, the Appellee, filed suit to contest the election in Chancery Court for Pickett County. Mr. Asberry claimed that Mrs. Garrett did not reside in Byrdstown as required by the Town Charter, and thus Mrs. Garrett failed to qualify as a candidate.<sup>1</sup>

The chancery court, sitting without a jury, concluded on September 27, 1994, that Mr. Asberry had proven that Ms. Garrett did not reside in Byrdstown, and thus was ineligible. The chancery court declared the election void and vacated the office of mayor. On appeal, Ms. Garrett takes issue with the chancery court's conclusions that she did not reside in Byrdstown. We have determined that the chancery court decided the case correctly, and therefore affirm its decision.

## *The Facts*

On August 4, 1994, the Town of Byrdstown, Tennessee held an election for the office of mayor. Two of the candidates for the office were Deborah Garrett, and Everett Asberry. Mrs. Garrett won the election by a clear margin. On August 12, 1994, Mr. Asberry filed a pleading styled, "Petition to Contest the Election," alleging that Mrs. Garrett did not reside within the town's corporate limits as required by the Town Charter.

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<sup>1</sup> The Charter of the Town of Byrdstown, Tennessee is found at Private Acts 1917, ch. 815, House Bill No. 1298.

Ms. Garrett was born and raised outside Byrdstown in Pickett County, Tennessee. She married her husband in 1977, and they lived in Memphis while they each finished school. In 1980, they moved to Byrdstown and purchased a downtown drug store. The store contained living quarters which the Garretts utilized until 1984, when the store burned. The Garretts then moved their business to another location within the Byrdstown corporate limits, and began living in a Byrdstown subdivision.

In 1986, the Garretts bought a farm 2.8 miles outside the corporate limits of Byrdstown. The Garretts lived in an older house on the farm until 1993 when they completed the construction of a new 3,000 square foot home. Mrs. Garrett claimed at trial that since the purchase of the farm in 1986, she had slept in the new or old farmhouse "probably over ninety percent of the time."

The pharmacy the Garretts bought after their first pharmacy burned had a living space or break room in it which Mrs. Garrett claimed as her residence at the time of the election. The pharmacy space contains two microwave ovens, but no stove or range ovens and the room has some bathroom facilities, but no tub or shower. Other amenities included televisions, a hospital bed, and an assortment of furniture. Mrs. Garrett receives her mail at the pharmacy, and lists the address of the store on her driver's license. She testified that she, her husband, and two minor sons take meals at the pharmacy quarters, as well as the new farmhouse. Mrs. Garrett also testified that she showered, dressed, and washed laundry at the farm. As to garaging the family's cars, Mrs. Garrett stated the family had 4 vehicles which her family keeps at the farmhouse and the pharmacy. Further, Mrs. Garrett testified that her children leave for school from the farm.

By all accounts in the record Mrs. Garrett is a publicly minded citizen and has been very active in Byrdstown's civic, cultural, and religious affairs since moving there in 1980.

### ***Legal Analysis***

The form of the disposition below dictates this Court's review on appeal. The chancery court decided this case after a non-jury trial. Thus, this Court reviews the chancery court's findings of fact *de novo* upon the record, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn.R.App.P. 13(d). However, review of the chancery court's legal determinations are *de novo*, without any presumption of correctness. *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

The Town of Byrdstown, Tennessee was created by Chapter 815, House Bill 1298 of the Private Acts of Tennessee entitled "CHARTER OF THE TOWN OF BYRDSTOWN, TENNESSEE." The bill passed the Tennessee Legislature on April 6, 1917, and Governor Tom C. Rye approved it on April 17, 1917. Sections 2 and 3 of the Charter are material to this appeal. Section 2 provides:

Be it further enacted, That the governing body of said town shall be vested in a Mayor, Recorder, who shall be ex officio an Alderman; two Aldermen and a Marshall; the Mayor; Recorder and Alderman shall be citizens and residents within the corporate limits of said Town and shall be chosen every four years by the qualified voters of the Town . . . .

Section 3 states:

Be it further enacted, That no person shall be elected to any of the aforesaid offices of the town who is not a resident of the town and who does not possess the requisite qualification of a voter for the election of said officials.

This case presents two issues, one legal and one factual. Legally, the question is what the incorporators of Byrdstown intended by the phrase "resident within the corporate limits." The issue of one's residence is a question of fact. *Huskey v. Crisp*, 865 S.W.2d 451, 454 (Tenn. 1993). Thus the factual issue on

appeal can be stated as follows: how does the evidence preponderate against the finding that Ms. Garrett lives outside the city limits?

The Town Charter does not define the word “resident,” and unfortunately there is no legislative history to guide our interpretation of the term. The legal definition of residence varies with the context in which it is found. *Id.* A residence may refer to one’s “actual residence” and “place of abode.” When referring to a person’s place of abode, the term residence does not require that the person intend to remain at that particular place. *In re Conservatorship of Clayton*, 914 S.W.2d 84, 89 (Tenn. Ct. App. 1995). When the word residence refers to a person’s “domicile” or “legal residence,” the term indicates a dwelling where one has a permanent home with the concurrent intention to remain or to ultimately return. *Denny v. Sumner County*, 134 Tenn. 468, 473-74, 184 S.W. 14, 16 (1915). A person may have two or more actual residences, but only one domicile, or legal residence. *Snodgrass v. Snodgrass*, 357 S.W.2d 829, 831 (Tenn. Ct. App. 1961).

Tennessee Courts have defined “domicile” as “where a person has his principal home and a place of enjoyment of his fortunes; which he does not expect to leave except for a purpose. . . .” *Tyborowski v. Tyborowski*, 192 S.W.2d 231, 232 (Tenn.Ct.App. 1946); *Snodgrass v. Snodgrass*, 357 S.W.2d at 831. To change a domicile or legal residence, a person must: (1) actually change his or her address to a new place; (2) intend to abandon his or her old domicile; and (3) intend to establish a new domicile at the new residence. *Denny v. Sumner Co.*, 134 Tenn. at 474, 184 S.W. at 16. The mere intention to relocate in the future or upon an uncertain event is not sufficient intent to change a domicile. *Bernardi v. Bernardi*, 302 S.W.2d 63, 67, (Tenn. Ct. App. 1956). Thus, self-serving declarations of intent are insufficient to indicate a change of domicile. *Id. citing Sturdavant v. Sturdavant*, 189 S.W.2d 410, 411 (Tenn. Ct. App. 1944). Stated differently, no change of domicile can be effected

by a mere statement of an intention unaccompanied by an act in accord with the intent. *Id.*

The inherent ambiguity in the phrase “resident within the corporate limits” prevents us from knowing what the incorporators of the Byrdstown charter meant when they wrote Sections 2 and 3. However, legal residence is often implicit when residence is used as a qualification for a privilege, franchise, or in connection with domestic policy in general. *Brown v. Brown*, 150 Tenn. 89, 92, 261 S.W. 959, 960 (1923) *quoting* 19 Corpus Juris 397. Nevertheless, the facts of this case do not obligate us to determine whether the incorporators intended “actual” or “legal” residence. The living space in the pharmacy simply does not have the attributes of either a “legal” or “actual” residence. Thus, Mrs. Garrett cannot claim it as her residence. Additionally we find, as the chancery court did, that Mrs. Garrett and her family legally reside in their new farm home, 2.8 miles outside of Byrdstown.

We believe the room in the pharmacy to be more akin to a workplace break room than a residence. To support our conclusion that the pharmacy room is not a residence we note that Mrs. Garrett does not sleep or bathe there. The pharmacy room also has no stove or range. The amenities found at the pharmacy are similar to those found in many workplaces in Tennessee. To conclude that these workplace comforts enable one to reside there would significantly alter settled tenets of Tennessee law regarding one’s residence. Finding that Mrs. Garrett resides at her pharmacy would mean that many in Byrdstown and other Tennessee cities maintain a residence at their place of work.

Mrs. Garrett also argues the Tenn. Code Ann. §§ 2-2-107 and 2-2-122 provide us with a means to find Mrs. Garrett to be a resident of Byrdstown. We disagree. Tenn. Code Ann. § 2-2-107 and 2-2-122 both fall within a chapter of the

Code regulating voter registration in Tennessee, not candidate eligibility. Thus, they are inapplicable to this appeal.

Finally, Mrs. Garrett argues that she and her family never intended to leave Byrdstown, and thus could not have changed their legal residence since they lacked the intent to do so. In 1991, the Garretts began building a home in which they now sleep, bathe, and eat. Their children leave for school from this house and Mrs. Garrett does some laundry there. Regardless of the Garrett's subjective intent to remain in Byrdstown, objectively they have changed their domicile.

The Supreme Court of Tennessee addressed the issue of one's intent in acquiring a new domicile and stated:

This intention, it is true, may be inferred, from circumstances, and the residence may be of such a character and accompanied by such indices of a permanent home that the law will apply to the facts a result contrary to the actual intention of the party. Thus one cannot make a permanent, fixed commercial residence with all the surroundings of a permanent home in one place and a domicile in another by a mere mental act. . . .

*Denny v. Sumner Co.*, 134 Tenn. at 479, 184 S.W. at 17, *quoting Pickering v. Winch*, 48 Or. 500, *Still v. Woodville*, 38 Miss. 646, *Ayer v. Weeks* 65 N.H. 248, 18 Alt. 1108.

Our Supreme Court has also said that:

In determining whether or not a change of domicile has been made, it is proper to consider, along with the statement of the party of his intent in the matter, his conduct and declarations, and all other facts that throw light upon the subject.

*Sparks v. Sparks*, 114 Tenn. 666, 669, 88 S.W.173, 174 (1905).

Therefore, despite Mrs. Garrett's insistence that she and her family never intended to leave Byrdstown, we find that her conduct indicates otherwise. While Mrs. Garrett's social, civic, and emotional home is Byrdstown, her legal residence is not.

***Conclusion***

We affirm the judgment of the chancery court and remand the case for entry of an order consistent with this opinion. We also tax the costs of the appeal to the appellant Deborah Garrett.

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BEN H. CANTRELL, JUDGE

CONCUR:

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HENRY F. TODD, PRESIDING JUDGE  
MIDDLE SECTION

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WILLIAM C. KOCH, JR., JUDGE