

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: The Nomination Petition of :
Stephen Kinsey as a Democratic :
Candidate for State Representative :
in the 201st Legislative District :
: No. 150 M.D. 2022
Objection of: Tonya Diane Bah, :
Bernadette Corbin, Sherrie Joyce :
Cohen, and Laura S. Richlin :

PER CURIAM

AMENDING ORDER

AND NOW, this 8th day of April, 2022, the Opinion in the above-captioned matter filed on April 7, 2022, designated **MEMORANDUM AND ORDER** shall now be designated **MEMORANDUM OPINION**.

In all other respects the April 7, 2022 opinion remains the same.

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In Re: The Nomination Petition of :
Stephen Kinsey as a Democratic :
Candidate for State Representative :
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: No. 150 M.D. 2022
Objection of: Tonya Diane Bah, : Heard: April 6, 2022
Bernadette Corbin, Sherrie Joyce :
Cohen, and Laura S. Richlin :

BEFORE: HONORABLE LORI A. DUMAS, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE DUMAS

FILED: April 7, 2022

Objectors Tonya Diane Bah, Bernadette Corbin, Sherrie Joyce Cohen, and Laura S. Richlin (Objectors)¹ have filed a petition to set aside the nominating petition of Stephen Kinsey (Candidate) as a Democratic Candidate for State Representative in the 201st Legislative District, alleging that Candidate is domiciled outside of the District.² Following an evidentiary hearing, we deny Objectors' petition.

¹ Neither party raised the issue of Objectors' standing, and therefore this Court did not address it.

² Article 2, Section 5 of the Pennsylvania Constitution establishes eligibility requirements for the office of State Representative, which include that the candidate "shall have been" an inhabitant "of their respective districts one year next before their election (unless absent on the public business of the United States or of this State), and shall reside in their respective districts during their terms of service." Pa. Const. art. 2, § 5. Under Article 2, Section 5, a candidate must have a "domicile" in the respective district, *i.e.*, a "place at which an individual has fixed his family home and principal establishment for an indefinite period of time. . . . A new domicile can be acquired only by physical presence at a new residence plus intent to make that new residence the principal home." *In re Shimkus*, 946 A.2d 139, 148 (Pa. Cmwlth. 2008) (citation omitted).

Briefly, Objectors alleged that Candidate falsely averred that he is domiciled at 813 Haines Street, Philadelphia, PA (Haines Street), which lies within the 201st District and is owned and occupied by James and Laverne Jackson. Objectors claim that Candidate is actually domiciled at 1403 Cardeza Street, Philadelphia, PA 19150 (Cardeza Street), which is outside of the 201st District.

Pursuant to this Court's scheduling order of April 2, 2022, an evidentiary hearing occurred on April 6, 2022, at which seven witnesses, including Candidate, testified.³ Candidate testified that between 2009 or 2010 and early 2021, he was domiciled in a home on Sherman Street, also located within the 201st District. When the Sherman Street home was sold in March 2021, Candidate testified that he moved to Haines Street with the intent to live there indefinitely. *See In re Nomination Pet. of Driscoll*, 847 A.2d 44, 50 (Pa. 2004) (stating domicile established when person moves to a new residence with the intent to live there permanently); *In re Prendergast*, 673 A.2d 324, 328 (Pa. 1996) (same); *In re Lesker*, 105 A.2d 376, 380 (Pa. 1954) (concluding that record established that home that candidate moved to was candidate's domicile); *Shimkus*, 946 A.2d at 149 (holding that record established that after moving out, the candidate moved to a new home, which was his domicile). Objectors presented testimony of a private investigation team that relied on documents which this Court found lacked credibility.

During the hearing, Objectors introduced video footage filmed on March 31, 2022, from 6:44 a.m. to 9:45 a.m., which depicted Candidate leaving Cardeza Street that morning. Objectors also referenced documents⁴ that in their

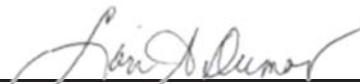
³ During their case-in-chief, the parties presented the testimony of seven witnesses, including some called as adverse witnesses in order to expedite resolution of Objectors' petition.

⁴ Many of these documents were not admitted into evidence due to hearsay and unreliability.

view, established that Candidate was domiciled at Cardeza Street. In contrast, Candidate presented overwhelming evidence that he is domiciled at Haines Street. We find the evidence presented on behalf of Candidate to be credible.

In *In re Stack*, 184 A.3d 591 (Pa. Cmwlth. 2018), this Court quoted Section 704 of the Election Code, 25 P.S. § 2814,⁵ which sets forth several factors for determining a person’s “domicile” for purposes of determining a candidate’s eligibility to serve. *Stack*, 184 A.3d at 594; *see also* 25 P.S. § 2870. In reviewing objections, we liberally construe the Election Code to “not deprive an individual of the right to run for office” *Stack*, 184 A.3d at 595. Further, an objector has the burden of proving that a candidate is not domiciled at the listed address. *Id.*; *In re Shimkus*, 946 A.2d 139, 149 (Pa. Cmwlth. 2008). Finally, this Court, as fact-finder, determines credibility. *See Shimkus*, 946 A.2d at 146.

Instantly, based upon the testimony and evidence presented at the hearing, this Court holds that Objectors failed to overcome the presumption that Candidate is domiciled at Haines Street. *See Stack*, 184 A.3d at 594; *see also In re Driscoll*, 847 A.2d 44 (Pa. 2004); *In re Hanssens*, 821 A.2d 1247 (Pa. Cmwlth. 2003). For these reasons, we deny Objectors’ petition to set aside Candidate’s nominating petition.



LORI A. DUMAS, Judge

⁵ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

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Cohen, and Laura S. Richlin :

ORDER

AND NOW, this 7th day of April, 2022, we deny the petition filed by Objectors Tonya Diane Bah, Bernadette Corbin, Sherrie Joyce Cohen, and Laura S. Richlin, to set aside the nomination petition of Stephen Kinsey as a candidate for the office of State Representative in the 201st Legislative District.

The Secretary of the Commonwealth is directed to place on the ballot the name of Stephen Kinsey as a Democratic Candidate for the office of State Representative in the 201st Legislative District for the general primary election to be held on May 17, 2022.

Objectors shall bear the cost of the stenographer. Otherwise, each party shall bear their own costs.

The Prothonotary shall notify the parties hereto and their counsel of this order and shall also certify a copy hereof to the Secretary of the Commonwealth of Pennsylvania forthwith.



LORI A. DUMAS, Judge