

FILED

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JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

MARY BETH CONLON,)	
Plaintiff,)	
)	Case No. 07 CC - 002292
vs.)	
)	Division 9
MICHAEL T. SCHNEIDER,)	
Defendant.)	

ORDER AND JUDGMENT

This matter comes before the Court on the Motion of Defendant at the close of Plaintiff's evidence pursuant to Missouri Supreme Court Rule 72.01(a). Plaintiff Mary Beth Conlon (hereinafter Ms. Conlon) filed a two count Verified Petition To Disqualify Candidate For Election on June 5, 2007, alleging that pursuant to §77.230 RSMo (2000) Defendant Michael T. Schneider (hereinafter Mr. Schneider) was not qualified to declare for candidacy for the Mayor of the City of Overland, Missouri, because he had not been a resident for two years preceding the election, and, in the alternative, alleging that pursuant to §115.346 RSMo (2000), Defendant was not qualified to be certified as a candidate because he was in arrears for personal property taxes for the tax year 2006 as of the last day to file a declaration of candidacy for the office.

Testimonial Facts

A hearing on Ms. Conlon's petition was held on June 22, 2007. Also, the parties stipulated that the "residency issue" was moot. Ms. Conlon presented two witnesses; the Plaintiff, Mary Beth Conlon, and Timothy A. Lee, an Assistant Collector of Revenue of St. Louis County, Missouri.

Ms. Conlon testified that she was a candidate for the office of Mayor of the City of Overland, Missouri, in St. Louis County, and that she was familiar with Mr. Schneider, who is also a candidate. The election is set for August 7, 2007. The last day to file a declaration of candidacy for the filing for office was May 22, 2007. Ms. Conlon said that she was aware in April of 2006 that Mr. Schneider was driving a vehicle with Minnesota license plates and that she suggested to him during that time that he needed to register his vehicle in Missouri.

Mr. Lee testified that it is the procedure of the Collector's office to ask a person to register a vehicle previously registered in another state when they enter the State of Missouri. It is also the Collector's practice to request and review the Certificate of Title for the vehicle from the "foreign state." The records of the Collector show that someone came to the Collector's office on April 17, 2006 and requested a waiver of tax for 2005 and 2006 for Michael T. Schneider and Jerri Schneider. The office recorded that the person stated he or she had moved from Minnesota in February of 2006. Mr. Lee also testified that the Collector's practice would have been to review the Minnesota title in question before issuing the waiver. A waiver was issued for 2005 and 2006 tax years for personal property tax for Michael T. Schneider and his wife, Jerri Schneider.

It should be noted that there was no evidence presented during the court hearing as to who made the above mentioned statements, and Mr. Schneider has affirmatively stated in legal documents that he was not the person who appeared at the Collector's office at that time.

Mr. Lee received a subpoena from Ms. Conlon's attorney, asking for records of the Collector concerning Mr. Schneider's tax record. Mr. Lee states that he did an investigation, but admits that he did nothing except examine his own records. After this case was filed and Mr. Schneider voluntarily responded in shortened time to Requests to Produce Documents and

Requests for Admission, Ms. Conlon's attorney presented Mr. Lee with the Answers to the Requests for Admission which stated that Mr. Schneider admitted he was a resident of Overland from March of 2005, and that: "Defendant was not required to obtain a Missouri title for the 2003 GMC Yukon, VIN # 3GKFK16Z43G327828 in 2005, as he did not own the vehicle in 2005, and therefore had no occasion to do so." (Plaintiff's Exhibit 4) Mr. Lee, upon examining these statements and the title to the vehicle in question (Plaintiff's Exhibit 2), which showed "Lakewood Party Sales, Inc." as purchaser and "Schneider, Michael Thomas" as "additional purchaser," made no further inquiry. He did not contact Mr. Schneider for additional information and performed no further investigation. Based on his interpretation of the title to the vehicle, and Mr. Schneider's selective admissions, Mr. Lee issued a letter on June 20, 2007 to Mr. Schneider that the tax waiver for 2006 was "issued in error" and a personal property tax for 2006 was being assessed for \$806.22 due no later than July 13, 2007 (hereinafter 2006 tax assessment). (Exhibit A to Defendant's Answer) The evidence also showed that the personal property tax assessed against Mr. Schneider included "city taxes."

Mr. Lee acknowledged that Mr. Schneider received the notice of the 2006 tax assessment, which was promptly paid by Mr. Schneider on June 22, 2007 under protest and immediately before the hearing. Under further examination, Mr. Lee admitted that if someone had walked into his office on May 22, 2007, the last day to file for candidacy, and asked, based on the Collector's records, if Mr. Schneider was in arrears on any taxes on that particular day, his answer would have been that Mr. Schneider was not in arrears. He additionally stated that if there was no bill, there was no arrearage.

Mr. Lee also stated that Mr. Schneider has the option to meet with him if Mr. Schneider feels that the information used in the issuance of the 2006 tax assessment was either incorrect or

incomplete. He further stated that Mr. Schneider has requested such a meeting and that it is “possible” for the 2006 tax assessment to be amended or reversed as a result of the subsequent meeting.

Ms. Conlon rested her case after Mr. Lee’s testimony and Mr. Schneider’s attorney made a motion for a directed verdict at the close of the Ms. Conlon’s evidence. The Court recessed the hearing and took the matter under submission on Mr. Schneider’s motion.

Conclusions of Law

Under Missouri law, “no person shall be certified as a candidate for a municipal office, nor shall such person's name appear on the ballot as a candidate for such office, who shall be in arrears for any unpaid city taxes or municipal user fees on the last day to file a declaration of candidacy for the office.” §115.346, RSMo. As ruled upon by the Missouri Supreme Court in *State ex rel. Brown v. Shaw*, 129 S.W.3d 372, 373-374 (Mo.banc 2004), “[w]hile §115.346 appears to impose absolute liability on the taxpayer seeking public office, statutes imposing qualifications for filing for office have previously been interpreted to allow for an exception. See, e.g., *State ex rel. Haller v. Arnold*, 277 Mo. 474, 210 S.W. 374 (Mo.banc 1919), and *State ex rel. Neu v. Waechter*, 332 Mo. 574, 58 S.W.2d 971 (Mo.banc 1933). [Also,] [s]tatutes that regulate access to the ballot are to be construed, if possible, to prevent disqualification of candidates. *State ex inf. Mitchell v. Heath*, 345 Mo. 226, 132 S.W.2d 1001, 1004 (1939).”

In using the statutory interpretation as set forth by the Missouri Supreme Court, this Court finds that Mr. Schneider was not in arrears May 22, 2007, which was the last day to file a declaration of candidacy for the Office of the Mayor of the City of Overland, Missouri. From the evidence adduced during the hearing of this matter, it is obviously clear from Mr. Lee’s testimony that on May 22, 2007 there were no unpaid taxes for which Mr. Schneider was in

arrears. Therefore, Mr. Schneider is not disqualified as a candidate pursuant to §115.346, RSMo. (2000).


During the court hearing, Ms. Conlon's attorney stated in legal argument that the adjusted 2006 tax assessment, as of June 20, 2007, is retroactive to January 1, 2007, making Mr. Schneider "technically" in arrears on May 22, 2007. However, this argument ignores the fact that Mr. Schneider paid the 2006 tax assessment under protest within 48 hours of it being issued, and does not address the effect of that payment and whether the payment is retroactive. Also ignored is the possibility that the 2006 tax assessment may be amended or reversed after a subsequent review by the Collector's Office. This Court declines to accept counsel's argument, which appears to be wholly inconsistent with the "legal" statutory interpretation of §115.346 RSMo. and Mr. Lee's trial testimony.

Order and Judgment

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Defendant's motion for a directed verdict at the close of the Plaintiff's evidence is GRANTED AND SUSTAINED, and further that judgment is entered in favor of Defendant Michael T. Schneider and against Plaintiff Mary Beth Conlon on Plaintiff's Verified Petition To Disqualify Candidate For Election. Plaintiff shall pay the costs of this action.

SO ORDERED.

Dated: June 25, 2007


Hon. DAVID LEE VINCENT, III
Judge of the Circuit Court of St. Louis County
Division Number 9

Copies to Counsel of Record