

STATE OF INDIANA

IN THE VIGO CIRCUIT COURT

SS:

COUNTY OF VIGO

CAUSE NUMBER: 84C01-2211-MI-7065

IN RE: THE PETITION TO CONTEST
ELECTION BOARD OF VIGO COUNTY
SCHOOL BOARD DISTRICT 1

CAREY LABELLA,
Petitioner

v.

ERIC GRAVES,
Respondent

ORDER

On January 9, 2023, Petitioner, Carey Labella (LaBella), appeared with counsel, Christopher Gambill, and Respondent, Eric Graves (Graves), appeared self-represented.

FACTS

1. A seat for the Vigo County School Board was up for the 2022 election.
2. Both LaBella and Graves filed for this seat.
3. The seat is for District 1 of the Vigo County School Board.
4. The candidate for the school board must live in the specific district of the school for at least one (1) year prior to election. See I.C. 3-8-1-34.

5. A school board corporation that has districts must have the above residency requirements for each of its board members. (see Petitioner's Exhibit 1). Representative #1 must live in district 1, representative #2 must live in district 2, and so on).

6. Respondent signed residency documents that show he lives at 41 Timberlane Turn, Terre Haute, Indiana, which is in the Lost Creek Township, which is in District 4 of the school corporation. He now lives (at least temporarily) at 321 Barton Avenue, Terre Haute, Indiana - which is in District 1 of the school board (see Petitioner's Exhibit 1).

7. LaBella lives in District 1.

8. Graves (and LaBella) has known since at least September of 2022, that his residency has been called into question.

9. Graves asked a Vigo County Clerk's Office employee, around October 18th, about guidelines for appointing school board candidates (see Petitioner's Exhibit 5).

10. Graves won the election by about a 60/40 margin, and LaBella is the only other candidate (see Petitioner's Exhibit 7).

ANALYSIS

Article 3 of the Indiana Code is specific about elections. Chapter 1 concerns Qualification of Candidates, and section 34 is specifically for school board offices.

(a) A candidate for school board office must have resided in the school corporation [boundary] for at least one (1) year.

Graves meets this requirement.

(b) This subsection applies to a candidate for school board seeking to represent an election district that consists of less than the entire school corporation. The candidate must have resided in the election district for at least one (1) year before the election (emphasis added).

Here the Vigo County School Board is this type of school district. Graves did not live in District 1 for the required year before the election, as he lived at 41 Timberlane turn, Terre Haute, which is in school board district 4. For Graves, or anyone, to be an eligible candidate, he/she would have had to live in this district at least 365 days prior to the election. Also see *Kite v. Curlin*, 139 N.E.3d 1113 (Ind. 2009).

Graves points out that he now lives within District 1 - but that's just not what the statute's clear reading states.

This court acknowledges that residency requirements are different for different candidates. For instance, a residency requirement for a Circuit Court Judge is that the person must live in the county when sworn in would qualify him/her. Other offices are similar.

However, for some reason, the Indiana Legislation made an additional requirement of prior residency, not present residency for school board's members. This court must follow the written law unless clearly unconstitutional, which this law is not (or at least so challenged).

LaBella's petition is that even though she didn't win the election, she should be declared the winner because Graves is ineligible due to the residency. Graves argues that both he and LaBella knew of the concern regarding his residency - since September. He acknowledges that he did

not do anything to rectify or amend his petition or his residence. He believes that it is the clerk's office voter registration's responsibility to have him file in the right district. He believes that since this was a known issue through media outlets that it was just up to the voters.

Graves makes a gallant effort to his position. However, it is up to the candidate to meet the filing requirements - not the county clerk staff member. As clerk voter registration employee, Jackson Kensell testified, he is not the "candidate police". However, he opined that someone can call voter registration, and the person in that office can direct a candidate to the right district. Graves admitted he did not ask this question. A person must be responsible for his/her own actions. To follow Graves' reasoning and taking it further, someone from Illinois could run for an elected position in Indiana as long as the Indiana voters are aware of this residency issue. That is clearly not the intent of the law. The intent of school board residency is simple: have members from throughout the different districts to be on the board. It allows for a broad base to be represented. It is no different than county council seats to be from different areas of the represented geographic area (except, of course, at large seats).

Graves further urges the court to follow I.C. 20-23-4-30(2)(d), wherein a school board member does not have to resign his seat if, while a Board member, he/she moves to a different district within the school's map. The key difference in that case and in the instance, the person

was already on the Board. Graves has never been duly sworn-in to the board prior to this dispute. Furthermore, in such a case, the moving school board member, he/she would not be able to be a candidate in that district at the next election due to the change in his/her residency.

Lastly, apparently Graves even acknowledges his mistake in one of the media outlet report - "mistakes happen. Its unfortunate that nothing can be done about it. I'm still going to campaign...." (see Graves' exhibit 3)

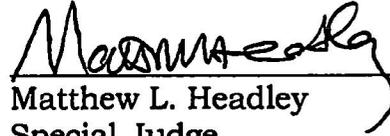
CONCLUSION

Graves did not live in the school district for which he ran. He can not blame others for his own mistake. It is unknown to this court if the District 4 school board seat was even open for which he would have qualified. He is not eligible to be elected to the position of school board District 1 of Vigo County School Corporation due to I.C. 3-8-1-34. As an aside, it is refreshing for members of the community to want to be on the community driven boards - and none are more important than the board that shapes policy for the young minds. Unfortunately, as Graves concedes, "mistakes happen". However, the law must be followed.

Court grants LaBella's petition to declare Graves can not legally be sworn in as a Vigo County School Board member, District 1 representative. Since LaBella was the only other candidate, and she lives in District 1, she is, by default, declared the winner, and shall assume

the position of school board member District 1, Vigo County School Corporation.

Dated: January 9, 2023.


Matthew L. Headley
Special Judge
Vigo Circuit Court

