

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIRGINIA RIDGWAY AND WILLIAM E.  
SCHAEFFER,  
Appellants,  
vs.  
TODD M. LEVENTHAL,  
Respondent.

No. 48281

**FILED**

**DEC 21 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order that denied a petition for declaratory relief challenging respondent's eligibility to run for and hold the office of district attorney. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On May 1, 2006, respondent Todd M. Leventhal filed a declaration of candidacy to appear on the Esmeralda County election ballot as a Republican candidate for the office of District Attorney of Esmeralda County. Thereafter, on July 3, 2006, appellants Virginia Ridgway and William E. Schaeffer, Esmeralda County's current district attorney, who was running for reelection, instituted a petition for declaratory relief in the district court, seeking to prohibit Leventhal's name from appearing on the ballot, or if he was elected, to prevent him from holding office. Appellants' petition expressly provided that they sought relief under NRS 281.050, which concerns only statutory residence requirements to hold office. Nevertheless, appellants' petition also

challenged, among other things, Leventhal's qualified elector status<sup>1</sup> and compliance with statutory party affiliation requirements.<sup>2</sup>

At the district court evidentiary hearing on appellants' petition, Leventhal objected to appellants making allegations and presenting evidence unrelated to his residence, since the statute under which they filed their petition, NRS 281.050, pertains exclusively to challenges based on residence. Although the district court overruled Leventhal's objection, the district court ultimately entered an order denying appellants' petition. In the order, the district court concluded that Leventhal satisfied residence and party affiliation requirements, and determined that Leventhal was a qualified elector who may remain on Esmeralda County's election ballot. This appeal followed.<sup>3</sup>

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<sup>1</sup>See NRS 281.040; Nev. Const. art. 15, § 3(1); see also Nev. Const. art. 2, § 1.

<sup>2</sup>See NRS 293.176; NRS 293.200.

<sup>3</sup>This court, noting that, by the time the appeal was filed, Esmeralda County election ballots already had been printed and absentee ballots already had been distributed, all of which included Leventhal's name as a Republican candidate for Esmeralda County District Attorney—indeed, Esmeralda County voters have elected Leventhal to serve as their district attorney—directed the parties to address, in addition to the other issues raised by this appeal, whether a justiciable controversy remained in terms of this court's power to provide effectual relief. See University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) (citing NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981)).

After reviewing the parties' responses to this court's directive, we conclude that this court has the authority to provide effectual relief, if necessary, and that this matter, as a result, remains justiciable. Specifically, "[t]he language of NRS 281.050 is clear and unmistakable—a party may bring a declaratory action to challenge the claimed residency of

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On appeal, Leventhal has renewed his objection to the scope of issues permissibly considered by the district court, as raised in the underlying petition. Whether the district court properly considered appellants' challenges unrelated to Leventhal's residency turns on the allowable scope of the underlying petition for declaratory judgment. Two statutes provide methods for resolving challenges to a candidate's qualifications before an election; they differ in scope. First, NRS 281.050 allows, at any time, the filing of declaratory relief actions relating to actual residence for purposes of eligibility for office. That statute specifically provides that "[t]he residence of a person with reference to his eligibility to office is his actual residence within the State,"<sup>4</sup> and in subsection three it gives "[t]he district court . . . jurisdiction to determine the question of residence in an action for declaratory judgment."<sup>5</sup>

Second, in contrast to NRS 281.050's narrow provisions relating to residence, NRS 293.182 broadly governs written pre-election

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a candidate at any time." DeStefano v. Berkus, 121 Nev. 627, 630, 119 P.3d 1238, 1240 (2005). While this language could be interpreted as providing solely for a declaration of whether a candidate, even once elected, maintains an actual residence in Nevada, to expressly allow a party to bring a declaratory action at any time, without intending to provide the court authority to affect the matter, would be unreasonable. Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (noting that a statute's language "should not be read to produce absurd or unreasonable results" (quoting Glover v. Concerned Citizens for Fuji Park, 118 Nev. 488, 492, 50 P.3d 546, 548 (2002), overruled in part by Garvin v. Dist. Ct., 118 Nev. 749, 59 P.3d 1180 (2002))).

<sup>4</sup>NRS 281.050(1).

<sup>5</sup>NRS 281.050(3).

challenges to a person's candidacy, providing that "an elector may file . . . a written challenge of the [candidate] on the grounds that the [candidate] fails to meet any qualification required for the office."<sup>6</sup> But the written NRS 293.182 challenge must be filed with the filing officer, not in the district court, and must be filed within five days after the last day a candidate may withdraw his candidacy.<sup>7</sup>

Here, because appellants expressly brought the underlying petition under NRS 281.050, and because they failed to comply with NRS 293.182's additional procedural requirements,<sup>8</sup> the petition, and the district court's consideration thereof, should have been limited to questions of Leventhal's actual residence. As appellants' challenges to Leventhal's qualified elector status and party affiliation exceeded NRS 281.050's narrow scope, they should not have been decided in the underlying matter. Instead, those issues could have been challenged, pre-

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<sup>6</sup>NRS 293.182(1).

<sup>7</sup>Id.

<sup>8</sup>Even construing appellants' petition as a NRS 293.182 challenge, see, e.g., NRCP 8(f), it appears untimely and there is no indication that appellants first filed their petition with the filing officer.

election, only under NRS 293.182.<sup>9</sup> Thus, on appeal, this court's review is confined to the residence issue under NRS 281.050.<sup>10</sup>

With respect, then, to the district court's determination that Leventhal's actual residence is Nevada, we note that the question of actual residence presents a mixed question of law and fact.<sup>11</sup> This court will give deference to a trial court's factual findings if they are not clearly wrong and are supported by substantial evidence,<sup>12</sup> which has been defined as evidence that "a reasonable mind might accept as adequate to support a conclusion."<sup>13</sup> We review questions of law de novo.<sup>14</sup>

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<sup>9</sup>Indeed, it appears from the documents before this court that appellants instituted a NRS 293.182 challenge before the primary election similarly attempting to preclude Leventhal's name from the Esmeralda County election ballot. And if so, it appears that the doctrine of res judicata could bar some, if not all, of appellants' claims raised in the underlying petition. Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 834-35, 963 P.2d 465, 473 (1998). But we decline to make such a determination without sufficient documentation before this court.

<sup>10</sup>In any event, we note that appellants have indicated that they are attempting to challenge Leventhal's general eligibility to office, ostensibly for the third time, through a NRS 293.410 election contest that they filed in the district court on November 21, 2006. And appellants' December 19, 2006 motion requesting that we delay our resolution of this appeal until that election contest is resolved is denied.

<sup>11</sup>See Noble v. Franchise Tax Bd., 13 Cal. Rptr. 3d 363, 368 (Ct. App. 2004).

<sup>12</sup>See NOLM, LLC v. County of Clark, 120 Nev. 736, 100 P.3d 658 (2004); Lader v. Warden, 121 Nev. 682, 120 P.3d 1164 (2005).

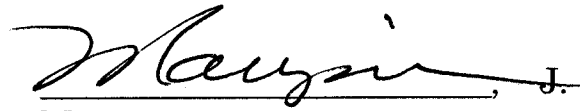
<sup>13</sup>First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (internal quotations omitted).

<sup>14</sup>SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

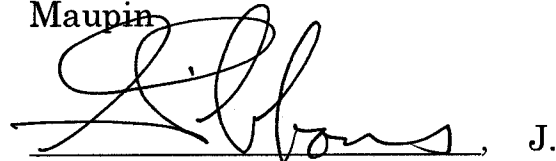
After reviewing the record and the parties' briefs, we conclude that the evidence Leventhal presented to demonstrate that he actually resides in Las Vegas, Nevada, and his explanation of appellants' evidence, appear adequate to support the district court's conclusion that Leventhal's actual residence is Las Vegas, Nevada. We therefore conclude that, to the extent that appellants' declaratory relief action challenged Leventhal's eligibility to office with respect to his actual residence, the district court did not err when it denied appellants' petition for declaratory judgment.

Accordingly, we affirm the judgment of the district court.

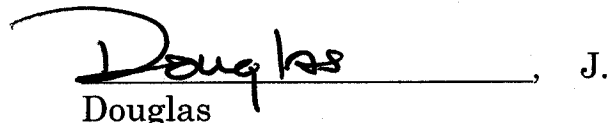
It is so ORDERED.<sup>15</sup>

 J.

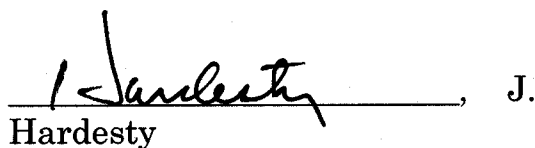
Maupin

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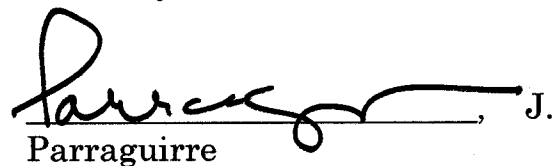
Gibbons

 J.

Douglas

 J.

Hardesty

 J.

Parraguirre

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<sup>15</sup>The Honorable Robert E. Rose, Chief Justice, and the Honorable Nancy A. Becker, Justice, did not participate in the decision of this matter.

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Janalee M. Murray  
William E. Schaeffer  
Flangas Law Office  
Clark County Clerk