



Vince Ryan
Harris County Attorney

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DATE: Wednesday, July 30, 2014

TO: Keith Gross
Attorney at Law

FROM: Melissa Spinks
Managing Attorney, Litigation
HARRIS COUNTY ATTORNEY'S OFFICE

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RE: No. 2013-75695; *State of Texas v David B. Wilson*; in the 151st District Court of Harris County, Texas.

DOCUMENT: Notice of Hearing; Plaintiff's Motion for Judgment Non Obstante Verdicto; and proposed Order.

TOTAL NUMBER OF PAGES: 10

Thank you.
Elizabeth Bomser, Paralegal for
MELISSA L. SPINKS

NO. 2013-75695

STATE OF TEXAS

vs.

DAVID B. WILSON

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

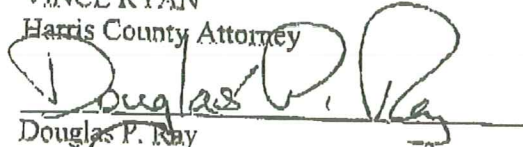
151ST JUDICIAL DISTRICT

NOTICE OF ORAL HEARING

TO: Defendant David B. Wilson by and through Keith A. Cross, Attorney of record, at 250 Park Ave. League City, Texas 77573.

You will please take notice that an oral hearing will be held on Plaintiff's Motion for Judgment *Non Obstante Verdicto* at 9:00 a.m., on Monday, August 18, 2014 at the 151st Judicial District Court of Harris County, Texas.

VINCE RYAN
Harris County Attorney



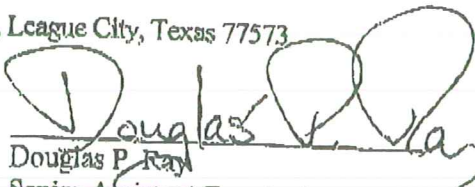
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Attorneys for the Plaintiff, State of Texas

CERTIFICATE OF SERVICE

I certify that on July 30, 2014, a true and correct copy of the above and foregoing Notice of Oral Hearing, Plaintiff's Motion for Judgment *Non Obstante Verdicto* and proposed Order were delivered by certified mail, return receipt requested and/or facsimile to:

Keith A. Gross, Attorney at Law, 250 Park Ave., League City, Texas 77573


Douglas P. Ray
Senior Assistant County Attorney

CAUSE NO. 2013-75695

STATE OF TEXAS

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IN THE DISTRICT COURT

v.

151st DISTRICT COURT

DAVID B. WILSON

HARRIS COUNTY, TEXAS

PLAINTIFF'S MOTION FOR JUDGMENT NON OBSTANTE VERDICTO

COMES NOW, the State of Texas, Plaintiff, and files this Motion for Judgment *Non Obstante Verdicto*, asking that judgment be entered against David B. Wilson, Defendant, despite the answer given to a question returned by the jury, and in support thereof would show the following:

1. FACTS

Following a trial, the Court submitted this case to the jury, asking for the response to a single question:

Do you find by a preponderance of the evidence that David B. Wilson was *not* a resident of Houston Community College (HCC) District II as of November 5, 2013?

Following its deliberation, the jury returned indicating:

David B. Wilson was a resident of HCC District II as of November 5, 2013.

During the trial of the case, two sets of facts were undisputed and were established as a matter of law:

1. David B. Wilson is married and has been married since 1984. During the course of this marriage, he acquired a residential property (7307 Lake Lane) which is held solely in the name of his spouse, C.J. Wilson, but which he acknowledges as his community property and which he treats as his own property, including filing a suit against Harris County in his own name as owner to recover damages for

alleged injuries to the property. A residential homestead exemption is claimed on this property.

2. David B. Wilson claims as his own residence a location different from 7307 Lake Lane (5600 W. 34th Street). He has registered to vote at 5600 W. 34th street and maintains that this residence qualifies him to hold office as HCC District II Trustee. 5600 W. 34th Street is an industrial building for which there is no permit issued by the City of Houston in order to occupy it as a residence. The City has cited the use of 5600 W. 34th as a residence as a non-permitted use. Continuing to use 5600 W. 34th as a residence without such a permit may subject the owner to a fine.

2. MOTION

Plaintiff moves the Court to grant its Motion on the following bases:

1. A married couple may not maintain two different domiciles in such a way that one spouse derives benefits from both. Defendant obtains a benefit from the family homestead exemption claimed for 7307 Lake Lane while also claiming eligibility to hold public office in another jurisdiction by the establishment of a separate residence at 5600 W. 34th Street. Claiming one domicile for one purpose (tax exemption) precludes, as a matter of law, simultaneously claiming a second domicile for a different purpose (qualification for public office).
2. A person cannot claim as a domicile a structure for which he has obtained no permit to occupy the structure as a residence, for which occupancy for a residence is illegal and for which that person could be subject to a fine for such occupancy.

3. ARGUMENT

1. Defendant may not enjoy the benefit of two domiciles as a matter of law.

Defendant has been married since 1984 to C.J. Wilson. Title to 7307 Lake Lane is held

in the name of C.J. Wilson since 1999. Plaintiff's Exhibit 7. A residential homestead exemption is claimed on 7307 Lake Lane for its entire value without any fractional reduction. Plaintiff's Exhibit 12. Defendant admitted during his testimony that he had an ownership interest in 7307 Lake Lane as community property. In addition, Defendant filed suit against Harris County in 2006 seeking damages for an alleged taking of 7307 Lake Lane, Plaintiff's Exhibit 17, and filed an affidavit swearing that he was the owner of 7307 Lake Lane. Plaintiff's Exhibit 16.

The Texas Tax Code entitles either "a single person or a family" to claim a tax exemption for a residential homestead. Tex. Tax Code §11.13(a). In addition, Tax Code specifically prohibits a person from receiving a residential homestead exemption for more than one property in any tax year. Tex. Tax Code §11.13(h).

The definition of what qualifies as a residential homestead is found in Tex. Tax Code §11.13(j)(1). This section specifically defines a residential homestead as a property that is "occupied as the individual's principal residence. . ."

It is undisputed that both the Defendant and his wife are not single persons. The only exemption to which either is entitled under Tex. Tax Code §11.13(a) would be as a family. Therefore, the claim of a residential homestead exemption on 7307 Lake Lane would prohibit either of them from claiming a residential homestead exemption on any other property in the same year, unless each claim were only to the fraction of the interest held by the individual claimant. Tex. Tax Code §11.13(h). There has been no fractional reduction in the value of the exemption claimed by Defendant or his spouse, which would be required if Defendant were to claim that only his spouse is claiming the exemption as an eligible person and not himself. Tex. Tax Code §11.41(a), *Martinez v. Dallas Central Appraisal District*, 339 S.W. 3d 184 (Tex. App.—Dallas 2011, no writ). Finally, Defendant also submitted evidence that he has obtained a

Texas driver's license listing 5600 W. 34th Street as his residence, Defendant's Exhibit 2, an act which should have rendered a claim to a residential homestead exemption at a different address invalid. Tex. Tax Code §11.41(n).

Despite the fact that Defendant enjoys the benefit to his community interest in the 7307 Lake Lane property by the claiming of the residential homestead exemption, he claims to have established a different domicile elsewhere. Such a practice should be prohibited. Once a principal place of residence has been established by the claiming of a residential homestead exemption as to one property, a person should not be allowed to establish a second domicile under the Texas Election Code or other applicable statutes in order to register to vote or run for elective office. Since Defendant's does not dispute that this is exactly what he has done, then judgment that he is not eligible to hold the office of Trustee of HCC District II should be entered as a matter of law.

2. Defendant may not establish a residency in a structure where residential occupancy is prohibited by law.

Defendant claims that he occupies 5600 W. 34th Street as his residence. However, the undisputed testimony is that the City of Houston has not issued a certificate of occupancy to allow 5600 W. 34th to be occupied as a residence. Defendant admitted that he has not obtained such a permit and that this occupancy violates City building codes. The testimony of Sheila Blake from the City of Houston Office of Code Enforcement established that Defendant has attempted to obtain such permit, but the City has found that the building is deficient in many ways for such occupancy and has rejected the application. The building was tagged as violating such prohibition, but such deficiency has never been cured. Plaintiff's Exhibit 13. Undisputed testimony from Blake also established that to continue to occupy 5600 W. 34th as a residence

could subject the owner to a fine.

Consequently, Defendant could not claim any part of 5600 W. 34th as a residential homestead. Tex. Tax Code §11.13(j)(1) requires that a residential homestead be both a place “used as a residence,” Tex. Tax Code §11.13(j)(1)(C), and “designed or adapted for a human residence,” Tex. Tax Code §11.13(j)(1)(B). Although Defendant may insist he intends to use 5600 W. 34th as a residence, it is, as a matter of law, *not* designed or adapted for a human residence. Since 5600 W. 34th could not legally qualify as a residence either under City of Houston ordinances nor under the Texas Tax Code as a residence, then the court should hold that such property could not serve legally as a residence for purposes of qualification of office, either.

In order to be eligible to run for office in Texas, a candidate must have resided continuously in the territory from which the office is elected for six months prior to the filing deadline. Tex. Elec. Code §141.001(a)(5).

In the absence of a structure which may be legally occupied as a home, Defendant's contention that he may claim 5600 W. 34th as his residence must fail. “. . . [A] permanent residence in Texas requires *a home and fixed place of habitation to which a person intends to return when away.* Cf. TEX. ELEC. CODE § 1.015.” *Owens Corning v. Carter*, 997 S.W. 2d 560 (Tex. 1999). (emphasis added) Since 5600 W. 34th cannot legally be used legally as a “home and fixed place of habitation,” it does not qualify as a location for which residency may be claimed under the Texas Election Code.

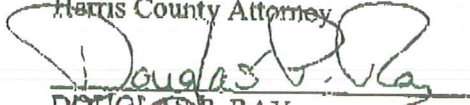
PRAYER

Plaintiff prays that the Court grant the foregoing Motion for Judgment *Non Obstante Verdicto* and enter judgment in favor of the Plaintiff that Defendant is not qualified to hold the

office Trustee of HCC District II, order his immediate removal from that office, and for such other and further relief to which the Plaintiff may show itself justly entitled.

VINCE RYAN

Harris County Attorney



DOUGLAS P. RAY

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ATTORNEY FOR PLAINTIFF
STATE OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of July, 2014, in accordance with the Texas Rules of Civil Procedure, a true and correct copy of the foregoing motion was delivered to the following by facsimile transmission and email:

Keith A. Gross
Attorney at Law
250 Park Ave.
League City, TX 77573



DOUGLAS H. RAY

CAUSE NO. 2013-75695

STATE OF TEXAS

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IN THE DISTRICT COURT

v.

151st DISTRICT COURT

DAVID B. WILSON

HARRIS COUNTY, TEXAS

**ORDER GRANTING
PLAINTIFF'S MOTION FOR JUDGMENT *NON OBSTANTE VERDICTO***

On this _____ day of _____, 2014, the Court considered the Plaintiff's Motion for Judgment *Non Obstante Verdicto*. After reviewing the Motion and hearing the argument of Counsel for Plaintiff and Defendant, the Court is of the opinion that the Motion is well taken and should be granted based on the grounds set forth therein.

It is, therefore,

ORDERED that the Plaintiff's Motion for Judgment *Non Obstante Verdicto* is hereby granted, that Judgment be entered that the Defendant, David B. Wilson, is not eligible to continue to hold the office of Trustee of HCC District Two, and is hereby removed from such office.

All costs are to be taxed against the party incurring same.

SIGNED this _____ day of _____, 2014.

JUDGE PRESIDING