

IN THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI

SPECIAL ELECTION TRIBUNAL

ANDREW POWELL

PETITIONER

VS.

Cause No. 2013-0033 et al

DOROTHY ANN GLENN and THE
GREENWOOD MUNICIPAL DEMOCRATIC
EXECUTIVE COMMITTEE

DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for trial on May 24, 2013, on the Petition of Andrew Powell, pursuant to Miss. Code Ann. §23-15-921 et. seq., for Judicial Review of the May 7, 2013 Democratic Primary Results for the Election of the Position of City Council Member, Ward 5. Summonses were served upon the three persons listed as Greenwood Municipal Election Commissioners to appear and serve as part of the Special Election Tribunal to assist the Court. All three appeared, but Shirley Cooper announced that she had resigned and asked to be excused from service. After excusing Ms. Cooper, the Court impaneled Vallrie Dorsey and Tish Goodman to serve in the tribunal.

Ms. Glenn, though counsel, moved to dismiss the Petition. The Motion was carried forward with the case and is denied for reasons set forth below.

PARTIES

1. Petitioner Andrew Powell is an adult resident citizen of Leflore County, Mississippi, residing at 425 Ash Street, Greenwood, MS 38930, which is in the 5th Ward of the municipality of Greenwood, MS. He was a candidate for City Council Member, Ward 5.

2. Defendant Dorothy Ann Glenn, also known as Dorothy Ann Nichols, is an adult resident citizen of Leflore County, Mississippi, and was the winning candidate in the party primary election for City Council Member, Ward 5. It was alleged that she resides at 301 East Percy Street, Greenwood, MS 38930, which is not within the 5th Ward of the Municipality of Greenwood, MS. She was served with process and appeared with her counsel, Mr. Willie Perkins.

3. Members of the Defendant Greenwood Municipal Democratic Executive Committee were served with process and appeared at the trial. They were not represented by counsel.

JURISDICTION

4. Jurisdiction is proper in this Court pursuant to Miss. Code Ann. §23-15-927.

FACTS

5. The Democratic Primary Election for the position of City Council Member, Ward 5, Greenwood, Mississippi, was held on May 7, 2013.

6. Andrew Powell, Dorothy Ann Glenn, and Norman Smith were running for the 5th Ward City Council Member seat. Each of their names were listed on the ballot and each received votes.

7. As a result of the May 7, 2013 Democratic Primary for the position of City Council Member, Ward 5, Greenwood, Mississippi, Dorothy Ann Glenn received 297 votes, Andrew Powell received 209 votes, Norman Smith received 24 votes, and a write-in candidate received 1 vote.

8. On Friday, May 10, 2013, three days after the Democratic Primary Election, Andrew Powell filed a Petition for Certification of the True Results of the Democratic Primary Election for City Council Member, Ward 5 with the Greenwood Municipal

Democratic Executive Committee setting forth the reasons why he believed that Dorothy Ann Glenn should not be the Democratic Party's nominee for City Council Member, Ward, pursuant to Miss. Code Ann. §23-15-921.¹

9. Andrew Powell alleged that, through counsel, he repeatedly attempted to contact Jesse Shavers, Chairman of the Greenwood Municipal Democratic Executive Committee, to inquire about the status of his contest. The matter was urgent, as any run-off election was to take place two weeks after the first primary. As of May 16, 2013, the day the Petition was filed with the Circuit Clerk, counsel for Andrew Powell had not received any response as to a hearing date and/or investigation being administered by the committee.

10. The overwhelming preponderance of the evidence received during the trial convinced the Court that Dorothy Ann Glenn is not currently a resident of the 5th Ward of Greenwood, Mississippi and was not a resident at the time that she applied to run for office. She is therefore ineligible to run for and/or represent the Democratic Party in the general election for the position of City Council Member of the 5th Ward of Greenwood, Mississippi. The cousin of Dorothy Ann Glenn, David Scott, testified that Dorothy Ann Glenn lives with his and her grandmother at 301 East Percy Street, Greenwood, Mississippi, and that Ms. Glenn was present overnight at said address on election night. He testified that he lives across the street at 302 East Percy Street, and that Ms. Glenn has lived at 301 East Percy Street for 10 to 15 years. He said that he sees her car there in the evenings after 11:30 p.m. and in the mornings he sees her at about a

¹ On May 15, 2013, Mr. Powell filed a separate contest over the handling of affidavit and absentee ballots. That contest is including in the present Petition, but is addressed by separate order of this Court.

quarter till 8. A Ward map was introduced into evidence which shows that 301 East Percy is not in Ward 5 of Greenwood, Mississippi.

11. The current voter profile report of Dorothy Ann Glenn, also known as Dorothy Ann Nichols, was introduced into evidence. The profile shows a mailing address of 301 East Percy Street, Greenwood, Mississippi, and also shows 116 Longino Street as her residence. 116 Longino Street is in Ward 5.

12. Joe Kates is the owner of the house at 116 Longino Street, where Dorothy Ann Glenn claimed to reside before and during the election. He lives next door to 116 Longino Street at 118 Longino Street. He seemed to be a reluctant witness, and said he did not recall whether Ms. Glenn lived at 116 Longino. He acknowledged that he provided an affidavit that states that Dorothy Ann Glenn has never lived at 116 Longino Street and he said the affidavit was accurate when he signed it, which was sometime after May 8, 2013. The election was May 7, 2013. He testified at trial that it was possible that Ms. Glenn lived there because she may come and go while he sleeps. Joe Kates testified that he rents the house to Mr. and Mrs. Eddie James Thomas, an elderly couple, and that Ms. Glenn provides assistance to Mr. and Mrs. Thomas. He testified that Dorothy Ann Glenn moved a couch into 116 Longino after he signed his affidavit.

13. Marcha "Margie" McDonald is a frequent visitor at 118 Longino Street, Greenwood, Mississippi. She is the girlfriend of Joe Kates. She received rent payments on behalf of Mr. Kates and provided receipts. She said that Dorothy Ann Glenn has never lived at 116 Longino Street, Greenwood, Mississippi. The house is a small 3 room house, with a kitchen and bathroom at the back, a bedroom in the center, and a room with two couches in the front. She testified that Mr. and Mrs. Thomas have rented the house since January of 2013 and that Ms. Glenn made rent payments on

behalf of the Thomas family and that she was requested to provide two receipts for the same payment of rent several times, one receipt in Ms. Glenn's name for the full amount of the rent and another receipt in the Thomas' name for the full amount of the rent.

14. Candidate Norman Smith testified that he personally went to the house at 116 Longino to see if Ms. Glenn lived there, and after speaking with Mrs. Thomas, he determined that Ms. Glenn did not live at 116 Longino.

15. Mr. Eddie James Thomas, an elderly gentleman who was apparently in poor health, testified that he and his wife live at 116 Longino and that Ms. Dot comes there to see about he and his wife, brings them food and sleeps on a couch in the front room. When asked who stayed in the front room, he said, "I got to think what the name of the people, Dot, she live in there, sleep in there when she come to work and until she go home and see about her Momma." T 41-42. He said that Ms. Dot pays the rent and he pays the utilities. He said that Ms. Dot has a couch, a chair, and things in a closet. He doesn't know when the couch was moved in because he was asleep. He doesn't know when she goes to see about her Momma because he is asleep. T 43. He said she leaves "before daylight" to see about her Momma daily. T 46-47.

16. Ms. Glenn testified that her residency is at 116 Longino and that she lives there with Mr. and Mrs. Thomas. She said that the arrangement was that she paid the rent and Mr. Thomas paid the utilities. She admitted that the utilities were in the name of Mr. Thomas, but said that after May 17, 2013, she had at least one utility placed in her name. She said she sleeps on a couch in the front room. She testified that she selected that address because she wanted to be a candidate in Ward 5. When asked about 301 East Percy Street, specifically:

Q – Do you have clothes there?

A – I have clothes at 116 Logino.

Q – Do you have clothes at 301 East Percy?

A – I have clothes at 116 Longino.

clothes at Q – Yes, ma'am. But is there a reason that you don't want to answer my question about whether you have 301 East Percy Street?

A – Well, I have clothes at 116 Longino.

Street? Q – Is there a reason you don't want to answer my question about whether you have clothes at 301 East Percy Street?

A – Well, as I stated I have clothes at 116 Longino.

Q – Well, can you tell me whether it's true that you keep most of your clothes at 301 East Percy Street?

A – Not most of my clothes. No I don't keep most of my clothes there.

Q – But you do keep clothes there?

A – I have clothes at 116 Longino.

T 56, line 19 – T 57, line 12.

After much prodding, she admitted that she has slept at 301 East Percy Street, but she could not remember when the last time she slept there. When asked if she slept at 301 East Percy Street this year, she said, "I don't remember." When asked if she slept there this month, she said, "I don't remember." When asked if she slept there last night, she said, "I don't remember. I did not sleep there last night."

17. Ms. Glenn testified that she had more than one residence, but would not identify her other residence or residences until she was admonished by the Court. Then she

acknowledged 601 Broad Street as a residence, and said that address was in Ward 7.

T 70-73.

18. Ms. Glenn denied that she falsely claimed to live at 116 Longino for the sole purpose of meeting the residence requirement to run for office. She further testified that she would never make a false claim of living at an address for political purposes. T-67. She testified that she ran for public office in 2005, claiming an address of 514 East McLaurin Street, with a mailing address of 301 East Percy Street. When asked about her 2005 "Notice of Intent to Run", she said the following:

Q – And in fact you did not live at 514 East McLaurin Street, did you?

A – I won't answer that because we're not dealing with this.

Q – In fact, you went to the gentleman who lived at 514 East McLaurin Street and told him you were gonna use his address to run for office and you never lived there, isn't that right?

A – I won't answer that.

Q – And why won't you answer that?

A – I won't answer that.

Q – Pardon me?

A – I said I will not answer that.

Q – What would be your reason for not answering that question?

A – I choose not to answer that.

Q – Isn't that what you did this time?

A – No it's not.

Q – You picked an address that you did not live at just like you did in 2005, picked an address you did not live at

in
run in?

order to appear to qualify in the district you wanted to

A – Totally different.

BY THE COURT – What was your answer?

BY THE WITNESS – I told him I care not to answer it.

BY THE COURT – Do what?

BY THE WITNESS – I didn't answer it.

BY THE COURT – You did not answer it?

BY THE WITNESS – No sir.

BY THE COURT – All right.

T 69, line 4 –T 70, line 8

■ ■ ■

Q – Where were you living in 2005 when you filed your
notice of intent to run?

East

A – The address is on there. There's an address on there
when I got ready to run, and that address was 514
McLaurin.

signed

Q – Yes, ma'am, there's an address on the form, but my
question is where were you living in 2005 when you
that form?

A – At the address there.

address
2005?

Q – Well, it's two addresses on that form. Which address
were you staying at? Please tell us under oath what
were you staying at when you signed that form in

A – As stated the other residence, 601 Broad Street. I
stated that to you.

T 73, line 19 – T 74, line 8.

19. A 2005 voter profile was introduced into evidence showing Ms. Glenn's residence address to be 514 East McLaurin Street. However, the voting roll also listed Willie Wayne Gatewood at that address. Ms. Glenn denied ever living with Mr. Willie Wayne Gatewood. When asked the name of Willie Wayne Gatewood's mother, she said she did not know. Ms. Glenn was asked if she had asked Mr. Gatewood if she could use his address so that she could run for office in that district, even though she did not live there, she refused to answer. When pressed, she said, "What did Mr. Gatewood say?"

20. Willie Wayne Gatewood was called as a witness and said that he lives at 514 East McLaurin Street. He said that he has lived there since about 2005, and that his mother lived there before he did. He said his mother lived there for 20 years and he moved in when she passed. He said that Ms. Glenn never lived at that address, but that in 2005, she asked him if she could use his address as a mailing address.

21. Ms. Glenn returned to the witness stand and was asked if she ever lived with Mr. Gatewood's mother at 514 East McLaurin Street. At first, she agreed that she did not live with Willie Wayne Gatewood's mother at that address. Later she contradicted herself again saying, "I did stay there and she was around the house." T 95, T 98.

22. Ms. Glenn's testimony leads this Court to conclusively find that Ms. Glenn has no credibility as a witness. Additionally, her testimony and the evidence received proves that Ms. Glenn has a propensity to use false addresses to attempt to meet the residence requirement for candidacy for public office.

23. The Court finds that the one constant surrounding the question of Ms. Glenn's residence is that she has retained an address of 301 E. Percy Street, Greenwood, Mississippi for the previous 15 years leading up to the trial on this matter. This court

finds that Ms. Glenn's domicile, for purposes of election qualifications, is 301 E. Percy Street, which is not in the 5th Ward of the City of Greenwood.

24. Ms. Glenn also claimed that she lived at times above her shop, located on Broad Street in Greenwood. However, even if this was true, her Broad Street address is not in Ward 5. Therefore, Ms. Glenn is not qualified to run for nor hold the office of City Council Member for the 5th Ward of Greenwood, Mississippi.

CONCLUSIONS OF LAW

25. According to Miss. Code Ann. §21-8-7(4)(a), in a mayor-council form of government, each:

council member shall be elected from each ward by the voters of that ward. Council members elected to represent wards must be residents of their wards at the time of qualification for election, and any council member who removes the member's residence from the municipality or from the ward from which elected shall vacate that office.

26. A person might have multiple residences yet only one domicile. However, "[r]esidence and domicile under our election laws are synonymous." *Hubbard v. McKey*, 193 So.2d 129, 132 (Miss. 1966) (citing *Jones v. State*, 42 So.2d 123 (1949)²; *Smith v. Deere*, 16 So.2d 33(1943)). For purposes of elections, a person may have only one residence, its domicile. Therefore, it is paramount to this challenge to determine Ms. Glenn's domicile. "Our definition of domicile was handed down in 1943. In order to be an actual bona fide resident of a county³, 'there must have been (1) an actual residence

² '[R]esidence, for political purposes, means the place of the fixed present domicil; that the word 'residence', used in election statutes and constitutional provisions relating to elections, means domicil; and that the word 'residence', as employed in election laws, is synonymous with 'home', and means a fixed or permanent abode or habitation."

³ Or in this case, a Ward.

voluntarily established in said county⁴, (2) with the bona fide intention of remaining there, if not permanently, at least indefinitely.” *Gadd v. Thompson*, 517 So.2d 576, 578 (Miss. 1987) (citing *Smith v. Smith* 12 So.2d 428,429 (1943)). Further, “once established, a person’s domicile remains stationary absent a clear indication of intent to abandon the existing domicile and establish another.” *Johnson v. Preferred Risk Auto. Ins. Co.*, 659 So.2d 866, 873 (Miss. 1995). This Court finds that prior to the primary election Ms. Glenn’s domicile was 301 E. Percy Street. The question remains: where was Ms. Glenn’s domicile at the time of qualification. While testimony shows that Ms. Glenn did move a couch into the living area at 116 Longino at some point in time, that in and of itself does not establish her intent to remain at 116 Longino indefinitely or that she is abandoning her existing domicile (301 E. Percy Street). Further, given Ms. Glenn’s history of manipulating residence qualifications for the purpose of running for public offices, this Court cannot truly believe that she intends to live on the couch at 116 Longino permanently or indefinitely. It is apparent that Ms. Glenn’s residence, or domicile, is currently 301 E. Percy Street, Greenwood, Mississippi, which is located in the 6th Ward of Greenwood. Accordingly, Ms. Glenn is legally unqualified to represent the 5th ward.

27. Accordingly, Dorothy Ann Glenn is not qualified for the position of City Council Member for the 5th Ward of Greenwood, Mississippi.

28. Dorothy Ann Glenn received the most votes in the Democratic Primary Election thus apparently becoming the Democratic Party Nominee for City Council Member,

⁴ Ward.

Ward 5. There were no Independent or Republican Candidates in the General Election, so hers was the only name on the ballot for the General Election.

SECTION 1 – REVIEW OF STATUTES

29. There are several statutes that provide avenues to challenge the qualifications of a candidate and/or nominee of a political party in municipal elections. Challenges can be made at various stages, including before a primary, after a primary and before and after a general election. The specific language of the statutes controls the timing and method of making a challenge to a candidate, a nominee or to an office holder.

30. A “candidate” is defined by Webster’s New World Dictionary as “a person who seeks, or had been proposed for, an office, an award, etc.” A nominee is defined as “a person who is nominated, especially a candidate for election.” *Id.* There is a difference between a “candidate” and a “nominee.” There can be several “candidates” seeking a particular office or nomination, however there can only be one “nominee” from each party. An individual transforms from a “candidate for nomination” to a “nominee” when that person wins the party primary, or is otherwise lawfully selected as a party nominee. Thus, the governing statutes must be strictly read and applied to the point in time that an individual is a “candidate for nomination” versus that point in time when an individual is an apparent or actual “nominee.”

31. Miss. Code Ann. §23-15-961(1) states “[A]ny person desiring to contest the qualifications of another person as a *candidate for nomination* in a political primary election shall file a petition specifically setting forth the grounds of the challenge within

ten (10) days after the qualifying deadline...”⁵ (*emphasis added*). The challenge is made to the party executive committee in charge of conducting the primary election and printing the ballots. The executive committee needs an appropriate amount of time to both conduct its business and consider any challenge. Therefore, all challenges to the executive committee must be made in a relatively short time so that the executive committee has the time to both consider the challenge and perform its function of conducting the primary election.

32. The qualifying deadline for the Ward 5 Council Member position was March 8, 2013. Therefore, pursuant to Miss. Code Ann. §23-15-961(1), any person that desired to contest Ms. Glenn’s qualifications as a “candidate for nomination” must have done so by March 18, 2013.

33. On or around April 23, 2013, Andrew Powell filed an untimely challenge, pursuant to Miss. Code Ann. §23-15-961(1), contesting the qualifications of Dorothy Ann Glenn as a candidate for nomination. His pre-primary challenge was properly denied by the Greenwood Municipal Democratic Executive Committee. However, the examination of her lawful qualifications to run for or hold office does not end there.

34. In addressing the method of challenging a *candidate for nomination* as listed above, Miss. Code Ann. §23-15-961(7) provides that “[T]he procedure set forth above (Miss. Code Ann §23-15-961(1)-(6)) shall be the sole and only manner in which the qualifications of a *candidate* seeking public office as a party *nominee* may be

⁵ The qualifying deadline was March 8, 2013. Andrew Powell did not discover that Dorothy Ann Glenn was a non-resident of Ward 5 until sometime after the qualifying deadline. On or around April 23, 2013, Andrew Powell filed a challenge with the Greenwood Municipal Democratic Executive Committee, pursuant to Miss. Code Ann. §23-15-961. Said challenge was rejected by the Greenwood Municipal Democratic Executive Committee as it did not meet the 10 day statute of limitation requirement for challenges to the qualifications of a candidate for nomination, as set forth in Miss. Code Ann. §23-15-961. Therefore, Dorothy Ann Glenn remained on the ballot for the position of City Council Member, Ward 5, Greenwood, Mississippi, and as a result of the May 7, 2013 Primary Election, received the most votes of any candidate appearing on the ballot for said position.

challenged *prior to the time of his nomination or election.*” (emphasis added). Any challenge made prior to the primary election must be made under 23-15-961. After the Primary on May 7, 2013, Dorothy Ann Glenn transformed from a “candidate for nomination” to an apparent or actual “nominee.” Once Dorothy Ann Glenn transformed into a nominee, Miss. Code Ann. §23-15-961(1) no longer applies. The legislature has enacted a separate statute governing challenges of a party nominee, Miss. Code Ann. §23-15-921, which provides:

Except as otherwise provided by Section 23-15-961, a person desiring to contest the election of another person *returned as the nominee of the party* to any county or county district office⁶ ... may, within twenty (20) days after the primary election, file a petition with the secretary, or any member of the county executive committee⁷ in the county in which the election was held, setting forth the grounds upon which the primary election is contested...

Miss. Code Ann. §23-15-921 (emphasis added).

Thus, on May 10, 2013, Andrew Powell timely filed a lawful contest, under §23-15-921, to the Greenwood Municipal Democratic Executive Committee setting forth the grounds upon which he contested the election of another person, Ms. Glenn, who was returned after the primary election as the nominee of the party.⁸

⁶ Miss. Code Ann. §23-15-171(1) provides that in municipal primary elections the “municipal executive committee shall perform the same duties as are specified by law and performed by members of the county executive committee with regard to state and county primary elections.” Also, Miss. Code Ann. §23-15-171(3) states that “all primary elections in municipalities shall be held and conducted in the same manner as is provided by law for state and county primary elections.”

⁷ Id.

⁸ Contest was styled “Petition for Certification of the True Results of the Democratic Primary Election for City Council, Ward 5” and was entered into evidence at trial.

35. Upon receipt of the petition by the appropriate committee, Miss. Code Ann. §23-15-921 provides that it shall then:

be the duty of the executive committee to assemble by call of the chairman or three (3) members of said committee, notice of which contest shall be served five (5) days before said meeting, and after notifying all parties concerned proceed to investigate the grounds upon which the election is contested and, by majority vote of members present, declare the true results of such primary.

Therefore, an investigation and hearing on the merits may take place on 5 days' notice. Since a successful challenge would result in the necessity of a run-off election two weeks after the first primary, time was of the essence. Since the Greenwood Municipal Democratic Executive Committee did not notify Mr. Powell of a hearing within 5 days and the date for the second primary was fast approaching, Mr. Powell, on May 16, 2013 filed a "Petition for Judicial Review of the Democratic Primary Results for the Election of the Position of City Councilman, Ward 5" with the Leflore County Circuit Court. Said Petition was lawfully filed pursuant to Miss. Code Ann. §23-15-927, which provides:

When and after any contest has been filed with the county executive committee⁹ ... and the said executive committee shall fail to promptly meet or having met shall fail or unreasonably delay to fully act upon the contest or complaint, or shall fail to give with reasonable promptness the full relief required by the facts and the law, the contestant shall have *the right forthwith* to file in the circuit court of the county wherein the irregularities are charge to have occurred ... a sworn copy of his said protest or complaint, together with a sworn petition, setting forth with particularity wherein the executive committee has wrongfully failed to act or to full or promptly investigate or has wrongfully denied the relief prayed by said contest, with a prayer for judicial review thereof.

Miss. Code Ann. §23-15-927 (*emphasis added*).¹⁰

⁹ For city election, the appropriate committee is the Municipal Election Committee for the City. See Miss. Code Ann. 23-15-171.

¹⁰ Miss. Code Ann. §23-15-927 sets forth other requirements that should accompany the Complainant's Petition for Judicial Review, all of which were complied with by the Petitioner, Andrew Powell.

36. Three days after the democratic primary election (May 10, 2013), Andrew Powell filed a lawful §23-15-921 contest with the Greenwood Municipal Democratic Executive Committee setting forth the reasons why Dorothy Ann Glenn should not be the Democratic Party's nominee for City Council Member, Ward 5.

37. In accordance with Miss. Code Ann. §23-15-921, the Greenwood Municipal Democratic Executive Committee should have timely investigated the grounds for which Andrew Powell brought his challenge, and upon investigation and finding, the Executive Committee should have certified that Dorothy Ann Glenn was an ineligible candidate, and that a run-off election should have been conducted for the two eligible candidates receiving the most votes, Andrew Powell and Norman Smith.

38. As of Wednesday, May 15, 2013, the Greenwood Municipal Democratic Executive Committee had not investigated the grounds for challenge set forth by Andrew Powell's Petition, had not notified the parties concerned with Andrew Powell's Petition, and had not taken a vote or declared the true results of the democratic primary for the position of City Council Member, Ward 5, as set forth in Miss. Code Ann. §23-15-921. As such, the Greenwood Municipal Democratic Executive Committee failed to act or to fully and promptly investigate the Petition filed by Andrew Powell, and therefore, Andrew Powell properly filed his §23-15-927 Petition for Judicial Review of the Democratic Primary Results for the Election of the Position of City Council Member, Ward 5 with the Leflore County Circuit Court on May 16, 2013.

SECTION 2 – REVIEW OF CASE LAW

39. Ms. Glenn challenged the Special Tribunal's authority to consider her resident qualification and moved to dismiss the Petition, citing *McKenzie v. Thompson*, 191 So. 487 (1939). In *McKenzie*, a party nominee's qualifications were contested under the

Corrupt Practices Act (Chapter 19, Laws of 1935, Ex.Sess.). The *McKenzie* the Petitioner alleged that the nominee was not a qualified elector of the county, therefore he was not qualified to run for county office. The *McKenzie* Court held that “[T]he special tribunal set up by the Corrupt Practices Act has no authority to go beyond ascertaining the will of the qualified electors participating in the party primary.” *McKenzie* at 488. Therefore, the Court had no authority to address the qualifications of a party nominee under the Corrupt Practices Act. Under *McKenzie*, Mr. Powell’s Petition would be barred. However, Mr. Powell did not file his suit under the Corrupt Practices Act in effect in 1939. He points to the more recent case, *Gadd v. Thompson*, 517 So.2d 576 (Miss. 1997) that overturns the *McKenzie* ruling and allows any person to challenge the qualifications of a party nominee after a primary election. Like this case, *Gadd* was based upon §23-15-921 and 23-15 927.

40. In *Gadd*, Jack Gadd submitted qualifying papers to run for office. A fellow candidate, John A. Thompson, filed a petition with the party executive committee for the de-certification of Gadd, alleging that he did not live in the district. The executive committee denied the petition. Gadd won the primary and was elected as the Democratic Party nominee. Thompson, believing that Gadd was not qualified to run for the office since he did not live in the district, filed a Petition for Judicial Review pursuant to Miss. Code Ann. §23-15-927, et seq. The trial court, after convening a special tribunal, found that Gadd was not a qualified party nominee because he did not live in the district and de-certified Gadd as said party nominee. The trial judge then ordered a new primary election, with any necessary run off to take place two weeks later. The trial court found that it had jurisdiction to consider the qualifications of the nominee after the primary pursuant to Miss. Code Ann. §23-15-927. See *Gadd v. Thompson*, 517 So.2d

576, 577-578 (Miss. 1987). The Supreme Court affirmed the decision of the trial Court, overturning *McKenzie*.¹¹

41. A year later in *Foster v. Harden et al.*, 536 So.2d 905 (Miss. 1988), the Supreme Court recognized that *Gadd* stands for the proposition that the qualifications of a nominee can be challenged under 23-15-927. Foster, in a Mississippi senate race, filed a petition with the Democratic Executive Committee the day before the primary contesting the residency requirements of two candidates for nomination. The Democratic Executive Committee denied Foster's petition. After the election, Foster filed a §23-15-927 Petition for Judicial Review. The Court distinguished *Foster* from *Gadd*, by pointing out that because Foster's challenge involved a Senate election it was governed by Section 38 of the Mississippi Constitution which grants to the Senate exclusive jurisdiction to settle its own election disputes. The Court stated that "[T]o the extent that *Gadd* may be construed to be inconsistent with Section 38 of the Constitution, it is overruled." *Foster* at 907. Thus, *Gadd* remains the applicable case law on petitions for post primary judicial review of the qualification of candidates pursuant to Miss. Code Ann. §23-15-927, except in the specific instance of a Senate race. The matter at hand is a post primary challenge of a municipal election; therefore this Court is bound by the ruling in *Gadd*. This Court rules, pursuant to statutory (Miss. Code Ann. §23-15-927) and case law (*Gadd v. Thompson*, 517 So.2d 576 (Miss. 1987)), that it has subject matter jurisdiction over the qualification of Ms. Glenn to run for or hold office.

42. Ms. Glenn also cites *Gourlay v. Williams*, 874 So.2d 987 (Miss. 2004). Gourlay filed a petition to the Democratic Executive Committee contesting the qualification of a rival candidate for the office of Bolivar County Supervisor. The petition was denied by

¹¹ The dissent in *Foster, supra*, pointed out that *Gadd* overturned *McKenzie, sub silento*.

the Committee, and Gourlay filed a Petition with the Circuit Court pursuant to Miss. Code Ann. §23-15-963. The respondent, Williams, moved to dismiss stating that any election contesting the qualifications of a party nominee must be brought pursuant to Miss. Code Ann. §23-15-961. The trial court agreed and dismissed the Petition and the Supreme Court affirmed. Of importance in that case is that Gourlay relied upon the wrong statute. Gourlay did not follow the requirements of §23-15-921 and §23-15-927, and the Court was not asked to consider §921, §927 or *Gadd*. When reviewing the case law and statutes in context, it becomes clear that Miss. Code Ann. §23-15-961(7) (which provides that “The procedure set forth above (§961 (1)-(6)) shall be the sole and only manner in which the qualifications of a candidate seeking public office as a party nominee may be challenged prior to the time of his nomination or election,”) applies to challenges prior to nomination, or election at a party primary. §921 by its language applies to challenges after a primary. It specifically says that a person desiring to contest the election of another person returned as the nominee of the party must first file a petition with the party executive committee. Clearly, this is a post primary statutory procedure, not a post general election procedure. Gourlay did not avail himself of this procedure and the Court did not consider sections 921 and 927, so the ruling in *Gourlay* is inapplicable here. The Supreme Court focused its opinion on an analysis of Miss. Code Ann. §23-15-961 versus Miss. Code Ann. §23-15-963 and never mentioned §921 or §927.

43. Furthermore since, Miss. Code Ann. §25-13-963 specifically does not apply to municipal elections¹² a discussion of that statute would be irrelevant in the present matter.

44. This Court finds that *Gourlay* is inapplicable to the present matter, as it does not address the specific statutes (Miss. Code Ann. §23-15-921 and §23-15-927) through which an election contest may be brought *after nomination*. Therefore Ms. Glenn's motion to dismiss is denied.

CONCLUSION – SPECIAL RUN-OFF ELECTION

45. Because a significant number of votes were cast for an ineligible candidate (56%), this Court finds that it is impossible to discern the "will of the voters" and hereby orders that a special run-off election shall take place between Andrew Powell and Norman Smith, the remaining qualified candidates for the Democratic Party Nominee for the Office of City Council Member, Ward 5.

46. The Greenwood Municipal Democratic Executive Committee failed to *promptly* investigate the relief prayed for in Andrew Powell's Petition, therefore Andrew Powell properly filed this Petition with the Circuit Clerk for Judicial Review pursuant to Miss. Code Ann. §23-15-927.

47. The Court finds as a matter of fact and law that the Petitioner, Andrew Powell, has met the burden of proof of showing that Dorothy Ann Glenn is not now and was not domiciled in the 5th Ward of Greenwood, Mississippi when she filed her application to run for office. Therefore, Ms. Glenn is not qualified as a party nominee and is not

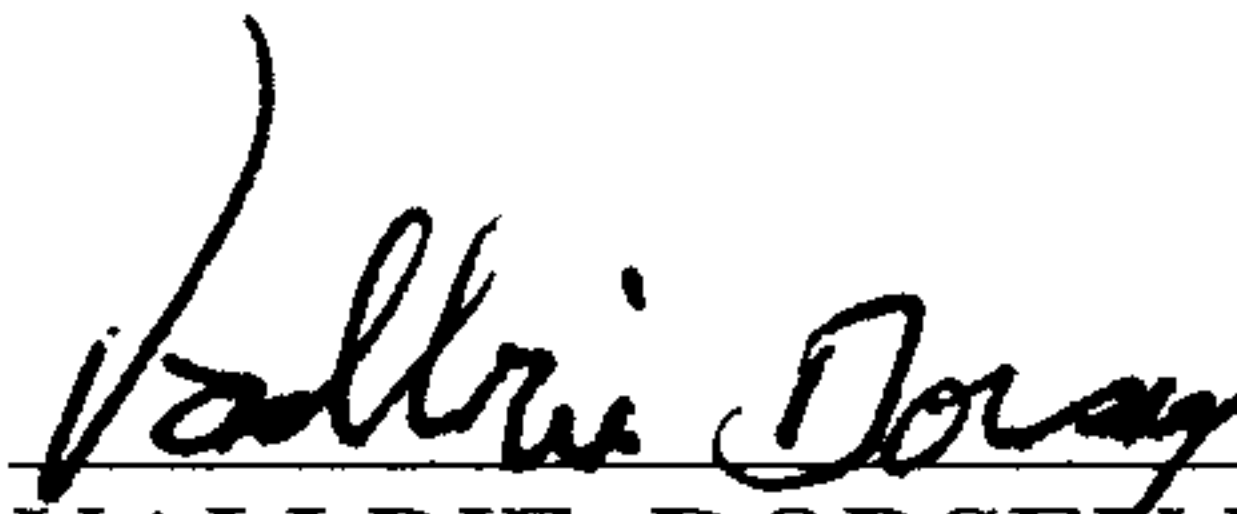
¹² See §23-15-963(1), "Any person desiring to contest the election of another person who has qualified pursuant to the Provisions of §23-15-329, ..." and see Miss. Code Ann. §23-15-329(6), "the provisions of this section shall not apply to municipal elections...".

qualified to hold the seat of City Council Member for the 5th Ward of Greenwood, Mississippi, and her nomination in the Primary Election is set aside and held for naught.

48. While this case was pending, the general election took place and Dorothy Ann Glenn was on the ballot unopposed. Because this case was pending when the general election occurred, this Special Tribunal has jurisdiction over the outcome of the general election and over the right of Mrs. Glenn to assume and hold office if elected at the general election. Because Ms. Glenn is not qualified to hold the office of Greenwood Municipal Council Member, Ward 5, the result of the general election for that position is set aside and held for naught. If Ms. Glenn has assumed office by the time this order is made final, then she is by Order of this Court removed from office.

49. The Special Tribunal hereby declares that the actual lawful result of the Democratic Primary held on May 7, 2013, for the position of Greenwood City Council Member, Ward 5, was that the two lawful candidates who received the most votes were Andrew Powell and Norman Smith. Neither lawful candidate received a majority of the votes cast. Therefore a special primary run-off election is ordered by this Court to take place on the first Tuesday after two weeks after the entry of this Order.

SO ORDERED AND APPROVED WITH THE UNANIMOUS CONSENT OF THE MEMBERS OF THE SPECIAL TRIBUNAL ON THIS THE 27TH DAY OF JULY, 2013


VALLRIE DORSEY BY HENRY L. LACKEY
WITH PERMISSION


HENRY L. LACKEY SPECIAL JUDGE


TISH GOODMAN BY HENRY L. LACKEY, WITH PERMISSION