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IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO
ESTELLE SHAW
CLERK OF COURTS
ASHLAND, OHIO

DEREK HAMILTON, et al.,

Case No. 08-CIV-495

Plaintiffs,

vs.

**ASHLAND COUNTY BOARD OF
ELECTIONS, et al.,**

Defendants.

JUDGMENT ENTRY

This case came before the Court for evidentiary hearing on November 10, 2008. The Plaintiffs were not present for the hearing. They were represented by Attorney Jackson and Attorney Wall. The Defendants were represented by Prosecutor Rogers and Assistant Prosecutor Donatini.

The issue before the Court is whether the Ashland County Board of Elections' decision that the Plaintiffs were not qualified electors in Ashland County was erroneous or if it should set aside for other legal reasons.

The remaining fifteen (15) Plaintiffs in this case are all adults who are currently in the legal custody of the Ohio Department of Youth Services and placed at the Mohican Juvenile Correctional Facility in Ashland County, Ohio. The Plaintiffs all timely registered to vote in Ashland County, Ohio. On October 15, 2008, a resident of Ashland County filed a challenge to the Plaintiffs' right to vote in Ashland County, Ohio. The Ashland County Board of Elections conducted a hearing on that challenge and held that the Plaintiffs were not residents of Ashland County, Ohio under Ohio's voter registration law. This Court held a hearing on election day, the day this suit was filed, on the

Plaintiffs' request a temporary injunction in this case. This Court ordered that the Plaintiffs be permitted to vote provisionally. Depending upon the ruling of this Court on the merits of this case, the provisional ballots will either be tallied or rejected.

Ohio Revised Code Section 3503.02 sets forth rules to be used to determine the residence of a voter. It is important to note that the application of these rules must be made on a case by case basis, after consideration of specific facts and the application of the rules to those facts. Ohio Revised Code Section 3503.04 sets forth a specific rule regarding "inmates of public or private institutions." That statute states that inmates of a public or private institution, who are citizens of the United States, who have lived in Ohio thirty days before the election, who are otherwise qualified as to age and residence within the county, shall have their lawful residence in the county, city, village and township in which the institution is located, UNLESS the inmate is in the institution for "temporary treatment only." If the inmate is in the institution for "temporary treatment only," the inmate's voting residence shall be the residence from which he entered such institution. The Plaintiffs argue that they are residents of Ashland County, Ohio under O.R.C. Section 3503.04 because they are not in Mohican Juvenile Correctional Facility for temporary treatment only.

The Defendants argue that O.R.C. Section 3503.04 does not apply to Plaintiffs because they are not "inmates." The term "inmate" is not defined for purposes of Ohio Revised Code Chapter 35. The Defendants argue that juvenile offenders are never referred to as "inmates." They argue that term generally applies to adult offenders in penal institutions. While the Defendants are correct regarding how the term "inmate" is generally used, it is clear that the use of that term is not that restrictive in Chapter 35. Ohio Revised Code Section 3503.03 refers to inmates of soldier's homes. That reference to "inmates" clarifies that the word "inmates" in Chapter 35 is not limited

to adult offenders in penal institutions. The term appears to be a general one referring to persons living in a public or private institution. The Court finds that the Plaintiffs are "inmates" for purposes of O.R.C. Section 3503.04.

The next question before the Court is whether the Plaintiffs fall within the exception of O.R.C. Section 3503.04 for persons in an institution for temporary treatment only. The Court held, as a matter of law, during the hearing, that the term "treatment" in the statute refers generally to the care of the person in the institution and that it was not restricted to medical or therapeutic care. There was a great deal of debate between the parties whether juveniles are in state facilities for treatment only, or for other reasons. That is because the parties interpreted the word "only" as primarily applying to the word "treatment" in the statute. The Court held that the term "only" also modified the word "temporary" in the statute and that, therefore, those persons confined in public or private institutions in the county temporarily are excluded from the class of persons entitled to voter residency in the county under O.R.C. Section 3503.04. This interpretation is consistent with O.R.C. Section 3503.02(C) which states that "a person shall not be considered to have gained a residence in any county of this state into which the person comes for temporary purposes only, without the intention of making such county the permanent place of abode."

There is no dispute in this case that the Plaintiffs are housed at Mohican Juvenile Correctional Facility involuntarily. They were committed to the legal custody of the Ohio Department of Youth Services and their location within facilities run by the Ohio Department of Youth Services is completely controlled by that agency. While the Plaintiffs are currently in Ashland County, they could be relocated at any time by ODYS to another facility outside of Ashland County.

The residence of a person involuntarily committed to an institution is not one of first impression in the State of Ohio. In **Bowers v. Baughman** (1972), 29 Ohio App. 2d 277, the Court of Appeals for Allen County held that a psychopathic offender committed to Lima State Hospital could not gain residence in Allen County for divorce purposes under Civ. R. 3(B)(9). While residence for venue purposes and voting purposes may be distinct, the rationale of the Court is instructive herein. The Allen County Court of Appeals relied upon precedent which holds that:

Residence in a place, to produce a change of domicile, must be voluntary. If therefore it be by constraint or involuntary, as arrest, imprisonment, etc., the antecedent domicile of the party remains.

Murray v. Remus (1925), 4 Ohio Law Abs. 7, motion to certify overruled, 3 Ohio Law Abs. 690, 691. Further, the Court relied upon the Ohio Supreme Court's legal quotation in **Sturgeon v. Korte** (1878), 34 Ohio St. 525, 535 that:

A person under confinement for crime can not adopt a new residence until discharged from imprisonment. Such disability is said to arise from the general principle that a person under the power and authority of another possesses no right, or is incapacitated, to choose a residence. Story's Conflict of Laws, Section 46.


"As one commentator has observed, this rule was doubtless designed to help persons who presumably would prefer to retain their old domicile in spite of enforced presence elsewhere. It is also based on the proposition that, if a person is forced to do a certain act, he cannot at the same time be doing the thing of his own free will. Intent, which is of its very nature voluntary cannot co-exist with compulsion." **Stifel v. Hopkins** (6th Cir. Ohio 1973), 477 F.2d 1116, 1121.

After fully considering the evidence in this case, the Court finds that there is no evidence that the Plaintiffs have ever expressed an intention to make Ashland County their "permanent place of abode." Further, the Plaintiffs are undeniably in Ashland County, Ohio for temporary purposes.

There is no permanency to a juvenile court commitment to ODYS because ODYS can freely move and relocate the individual committed. The commitment is involuntary and the person's physical location is entirely dependent upon the will of ODYS. Under the foregoing case law and the provisions of Ohio Revised Code Section 3503.02 and 3503.04, the Plaintiffs are not residents of Ashland County, Ohio for voting purposes and therefore the Ashland County Board of Elections decision in that regard was proper under law. The Plaintiffs residence for voting purposes was the county in which they resided prior to their commitment to ODYS. The Court further finds that there are no procedural irregularities which void the Board of Elections' decision.

It is therefore ORDERED that the Plaintiff's Complaint in this case is DISMISSED at Plaintiff's costs. It is further ORDERED that the provisional ballots cast by the Plaintiffs shall not be counted.

It is so ORDERED.


DEBORAH E. WOODWARD
Judge of the Court of Common Pleas

cc: Attorney Singleton
Prosecutor Rogers