

IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
APPELLATE DIVISION

FILED  
41 11 2013

SUPREME COURT  
OF THE

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KALISTUS NGIRTURONG and  
PAUL I. REKLAI,

Appellants,

v.

PALAU ELECTION COMMISSION,  
SANTOS BORJA, and  
MARINO O. NGEMAES

Appellees.  
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CIVIL APPEAL NO. 12-052  
Civil Action No. 12-156

OPINION

Decided: January <sup>R</sup> 11, 2013

Counsel for Appellants: Siegfried B. Nakamura

Counsel for Appellees:<sup>1</sup> Oldiais Ngiraikelau & Timothy S. McGillicuddy

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ROSE MARY SKEBONG,  
Associate Justice Pro Tem; and KATHERINE A. MARAMAN, Part-Time Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE,  
Associate Justice, presiding.

PER CURIAM:

This case concerns the trial court's decision that a citizen running for public office met the residency requirements found in the Constitution and in a corresponding statute. For the following reasons, the decision of the Trial Division is **AFFIRMED**.

<sup>1</sup> Although named as Appellees, neither the Palau Election Commission nor Santos Borja participated in the appeal, leaving the matter for the real party in interest, Marino O. Ngemaes.

## I. BACKGROUND

Appellee, Marino O. Ngemaes, was born in Koror State in 1966, where he has lived for most of his life. During his youth, Ngemaes attended high school abroad but returned to Palau to graduate. When he turned 18 in 1984, Ngemaes registered to vote in Aimeliik. After a few periods in which Ngemaes lived in Palau and abroad for years at a time, he returned in 2005 and has lived in Palau ever since.

Ngemaes appeared on the November 2012 ballot for the House of Delegates of the Olbiil Era Kelulau for the State of Aimeliik. Ngemaes filed his nominating petition with the Palau Election Commission (PEC) on May 12, 2012. On July 17, 2012, Plaintiffs, who are voters in Aimeliik State, filed a complaint with the PEC, alleging that Ngemaes's candidacy in Aimeliik violated Article IX section 6(4) of the Constitution of the Republic of Palau. Specifically, Plaintiffs argued that Ngemaes has not been "a resident of the district in which he wishes to run for office for not less than one (1) year preceding the election."

After a short investigation, the PEC responded on August 13, 2012, finding that Ngemaes met the Constitutional requirements to appear on the ballot. On August 20, 2012, Plaintiffs filed a second challenge with the PEC, again contesting Ngemaes's residency. The PEC reportedly intimated to Plaintiffs that it had no intention of changing its position and, thus, referred Plaintiffs back to its August 13 findings.

In response to the PEC's second refusal to find that Ngemaes failed to meet the residency requirement to appear on the ballot, Plaintiffs filed a complaint with the Trial Division, challenging the PEC's findings on September 4, 2012. Ngemaes filed a Motion to Dismiss, or a Motion for Summary Judgment in the alternative, on September 26, 2012. On October 8, 2012, the Court granted the Motion to Dismiss Plaintiffs' Complaint for relief under 23 PNC section 1107 with prejudice. But the Court allowed Plaintiffs to file an amended complaint under an alternative legal basis to section 1107.

Plaintiffs filed an Expedited Amended Petition or Complaint for Declaratory Judgment and Injunctive Relief on October 11, 2012. Ngemaes responded with another Motion for Summary Judgment on November 2, 2012. Because of its timing, the Court treated the motion as a Motion to Dismiss at a hearing it held on November 14, 2012. The Court then denied Ngemaes's motion and the case proceeded to trial on November 27, 2012. Closing arguments in the case were heard on November 30, 2012.

At trial, Plaintiffs complained that allowing Ngemaes's name on the ballot constitutes both a Constitutional and statutory violation and that it interfered with Plaintiffs' fundamental right to vote. Plaintiffs called several long-term residents of Aimeliik to testify that they had never seen Ngemaes living in Aimeliik. Included in these testimonies was that of Brian Simer's, Ngemaes's first cousin, who asserted that Ngemaes had never lived in his home or in Aimeliik at all.

Notwithstanding the testimony from residents that Ngemaes has not lived in Aimeliik, counter-testimony, potential bias, and conflicting statements were also exposed during the trial. Ultimately, the trial court found that according to its interpretation of the law defining “residency” and in conjunction with its findings of fact, Ngemaes was a resident for purposes of eligibility for office. Thus, the Court concluded that the PEC’s decision to allow Ngemaes’s name to be listed on the ballot did not violate the Constitutional or statutory requirements and was not a violation of Plaintiffs’ right to vote. Plaintiffs now appeal this decision. Due to the imminency of the upcoming inaugural process, we ordered that the appeal be handled on an expedited calendar, to which the parties agreed.

## II. STANDARD OF REVIEW

On review, we are asked to determine whether the trial court properly defined the word “resident” as it is used in the Constitution of Palau and in the applicable section’s corresponding statute. Additionally, we are asked to review the trial court’s mixed findings of fact and law regarding whether or not Ngemaes’s actions and whereabouts caused him to meet the residency requirements for being listed as a candidate on the ballot. Thus, our review concerns both questions of law and fact. The trial court’s conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Factual findings of the trial court are reviewed using the

clearly erroneous standard. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002).

### III. ANALYSIS

The Constitution of Palau sets forth the requirements for eligibility for office in the OEK. The only contested requirement in this case is found in Article IX, § 6(4), that the person has been “a resident of the district in which he wishes to run for office for not less than one (1) year immediately preceding the election.” The identically worded enabling legislation is found in 23 PNC § 1102.

The first question we must address is a legal one—one of interpretation. That question concerns the meaning of the word “resident” as it is used in the Constitution and its corresponding statute. “[T]his Court [is] the ultimate interpreter of the meaning of the age, residency and citizenship requirements set forth in Article IX, Section 6.” *Francisco v. Chin*, 10 ROP 44, 50 (2003). When interpreting a word or phrase in the Constitution, we always attempt to find a plain meaning for the word or words and refrain from using other interpretive tools where there is no ambiguity. *See Seventh Koror State Legislature v. Borja*, 12 ROP 206, 207 (Tr. Div. 2005) (explaining that a court only looks to other canons after it first determines that there is an ambiguity).

We have addressed this question on prior occasions. In *Nicholas v. Palau Election Commission*, we reiterated that a person is not required to “live continuously within the

jurisdiction to maintain the status of resident.” 16 ROP 235, 238 (2009) (internal quotation marks and citation omitted). We also held, however, that the word “resident” as it is used in Article IX, section 6, is to be interpreted equivalently with the word “domicile.” *Id.* at 242. This declaration has caused some confusion and we seek to clarify its meaning further here.

Some problems surface in equating the word “resident” with “domicile.” Primarily, it is difficult to define “domicile” without resorting back to the word “resident.” This task of interpreting “resident,” then, becomes circular without more direction. In *Nicholas*, we had cause to review various sources that provide a concrete definition for “domicile.” *Id.* We also reviewed our own case law that interpreted the word “resident” in Article IX, § 6, and we noted that those interpretations are consistent with the common definitions for “domicile.” *Id.* Domicile, we held, is a place in which a person dwells and which that person intends to make his or her permanent home. *Id.* See also *Kasiano v. Palau Election Comm’n*, 18 ROP 10, 14 (Tr. Div. 2010) (explaining that domicile “is where a person has (1) an actual residence and (2) an intention to make a permanent home in the jurisdiction”). While the definition chosen in *Nicholas* sought to clarify the meaning of resident through a better understanding of domiciliary requirements, it is clear that there is still some confusion regarding what it means to *actually* reside in a place for purposes of Article IX, § 6.

One description of “domicile” used in *Nicholas* that most accurately captures the spirit of the *Nicholas* analysis and our prior case law comes from the Restatement. That is that a domicile is where a person’s home is, or, “the place where a person dwells and which is the *center of his domestic, social and civil life.*” Restatement (Second) of Conflict of Laws § 11, cmt. a, 12 (emphasis added). In *Nicholas*, we then went on to discuss Nicholas’s “domicile” using more considerations than merely where he has a home. *Nicholas*, 16 ROP at 242. We explained that the conclusion that Nicholas did not meet the residency requirement was based on the analysis of where his “home, work, and family life t[ook] place.” *Id.*

This sort of analysis contemplates that what really matters in reviewing the residency requirements of Article IX, § 6, is the *contacts* that the person has with the relevant area. The existence of a permanent family home may be one helpful factor in establishing these contacts, but they may also be proven a number of other ways, including through the person’s involvement in the jurisdiction, the family ties that person has, the amount of time that person has spent in the area, the level of participation in community and civic activities, and so on.

Using these types of considerations is consistent with the Restatement, which offers that a person’s true home for domiciliary or residency purposes may be identified by considering seven factors:

1. [The home’s] physical characteristics;
2. The time [the candidate] spends therein;
3. The things [the candidate] does therein;
4. The persons

and things therein; 5. [The candidate's] mental attitude toward the place; 6. [The candidate's] intention when absent to return to the place; [and] 7. Other dwelling places of the person concerned, and similar factors concerning them.

Restatement (Second) of Conflicts of Law §12, cmt. c. In this way, the test employed to determine residency for purposes of Article IX is one of totality of circumstances. Here, the trial court interpreted “resident” in the manner similar to that just described, and thus, it defined “resident” in the context of Article IX properly. The trial court’s conclusion of law was not in error.

We next turn to the trial court’s factual determinations regarding Ngemaes’s residency according to the definition articulated above. The court made several findings and concluded that Ngemaes met the residency requirement by establishing his continuous contacts with Aimeliik. The court determined that the evidence clearly showed Ngemaes’s intent for Aimeliik to be his permanent residence. The court made this determination after considering Ngemaes’s voter registration in the state, voting history, family history and their property ownership, and Ngemaes’s other actions that indicate that he considers Aimeliik to be his home.

Further, the Court’s analysis focused on whether Ngemaes “spent enough time in Aimeliik to meet the one year residency requirement.” The court discussed Ngemaes’s whereabouts and noted that Ngemaes has lived in Koror, on and off, since childhood. The court also noted that Ngemaes currently stays in Koror on the second floor of his parents’ house. In their brief, appellants argue that this court’s analysis in *Nicholas* on



this point should lead us to conclude that because Ngemaes lives in Koror, he is not a resident of Aimeliik. This is because in *Nicholas*, the court determined that the person in question was not a resident of Palau, in part, because he had no permanent home in *any* state. *Nicholas*, 16 ROP at 243.

Nicholas lived in Saipan, outside of Palau, and stayed in hotels when he visited. *Id.* It is true that Ngemaes and his family do not stay in Aimeliik on a daily basis. However, Ngemaes does not occasionally visit his home state and stay in hotels as Nicholas did. Ngemaes and his wife and children frequently stay in homes of close relatives in Aimeliik. Further, when Ngemaes has stayed outside of Aimeliik, he has still remained geographically close to Aimeliik, which has aided in his ability to maintain close contacts with the state. This is a far cry from the situation in *Nicholas* where the candidate lived in another country entirely and could not reasonably associate face-to-face with his constituents in their home territory on a regular basis. *Id.*

It appears that Ngemaes has no permanent abode outside of the state in which he has sought office. Considering this, and in conjunction with the close contacts that Ngemaes has maintained with Aimeliik, the trial court determined that Ngemaes met the residency requirements for purposes of having his name on the ballot for Aimeliik. These close contacts include his long voter history in Aimeliik, his family's civic involvement in Aimeliik over the years, testimony of other Aimeliik residents that Ngemaes has stayed in Aimeliik and has been in attendance in community events, and

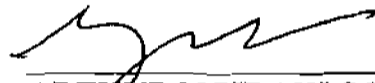
other evidence that the trial court referred to as “overwhelming” proof of Ngemaes’s residency. We are not inclined to disagree with this determination and hold that it is not clearly erroneous. *See Dilubech Clan*, 9 ROP at 164.

Time spent outside of one’s “home” state for the convenience of a job or other obligations cannot alone be a disqualification for candidacy for office in the OEK. The Constitution does not mandate this, and we hold that the trial court did not err in its decision that Ngemaes met the Constitutional and statutory requirements to be certified as a candidate for delegate of Aimeliik in the OEK.

#### IV. CONCLUSION

For the foregoing reasons, the decision of the Trial Division is **AFFIRMED**.

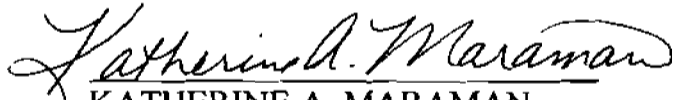
SO ORDERED, this <sup>12</sup>11 day of January, 2013.



ARTHUR NGIRAKLSONG  
Chief Justice



ROSE MARY SKEBONG  
Associate Justice Pro Tem



KATHERINE A. MARAMAN  
Part-Time Justice