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IN THE
COURT OF APPEALS OF INDIANA

Nancy S. Allsup,
Appellant-Petitioner / Contestor,

v.

Josie Swalls-Thompson,
Appellee-Respondent / Contestee.

April 29, 2021

Court of Appeals Case No.
20A-MI-2333

Appeal from the
Vigo Circuit Court

The Honorable
Robert A. Pell, Special Judge

Trial Court Cause No.
84C01-2011-MI-5914

Kirsch, Judge.

- [1] This appeal concerns the trial court’s denial of a post-election contest petition filed by Nancy S. Allsup (“Allsup”), the incumbent candidate for the office of Vigo County Treasurer, against the winning candidate, Josie Swalls-Thompson (“Swalls-Thompson”). Allsup contends that the trial court erred in denying her post-election contest petition and raises one issue on appeal, which we restate as whether the trial court erred in concluding that Swalls-Thompson met the

constitutional and statutory residency requirements for county treasurer by reestablishing her Vigo County residency and was an eligible candidate when she ran for the treasurer's office.

[2] We affirm.

Facts and Procedural History

[3] On February 7, 2020, which was the deadline to seek the nomination of the Republican Party, Swalls-Thompson filed her declaration of candidacy to run against Allsup, the incumbent Democratic candidate, for the office of Vigo County Treasurer. *Ex. Vol. III* at 9-10. That same day, Swalls-Thompson also registered to vote in Vigo County. *Id.* at 18. On November 3, 2020, Allsup was defeated by Swalls-Thompson, in the general election. *Tr. Vol. II* at 5. Swalls-Thompson received approximately fifty-one percent of the vote, and Allsup received approximately forty-nine percent of the vote. *Id.* at 3-6. After the election, Allsup learned that Swalls-Thompson provided a Florida driver's license as proof of identification¹ to an intake clerk when she voted on election

¹ Indiana Code section 3-11-8-25.1 requires a voter to provide proof of identification to vote. In pertinent part, Indiana Code section 3-5-2-40.5, defines "proof of identification" as follows:

[A] document that satisfies all the following:

(1) The document shows the name of the individual to whom the document was issued, and the name conforms to the name in the individual's voter registration record.

(2) The document shows a photograph of the individual to whom the document was issued.

(3) The document includes an expiration date, and the document:

day. *Id.* at 7, 60. Allsup also learned that Swalls-Thompson had claimed a homestead exemption on her Florida real estate from fiscal years 2014 through 2020. *Ex. Vol. III* at 11-16; *Appellant's App. Vol. Two* at 18, 33.

[4] On November 11, 2020, Allsup timely filed her verified petition to contest the election of the Vigo County treasurer pursuant to Indiana Code section 3-12-8-5. *Appellant's App. Vol. Two* at 2-3, 17-19. On November 12, 2020, the trial court granted Allsup's motion for leave to amend, and Allsup amended her verified petition, requesting that the trial court declare her to be the elected candidate for the office of county treasurer and alleging that Swalls-Thompson was not eligible to hold office because she: (1) did not meet the residency requirements under Article 6, Section 4 of the Indiana Constitution and Indiana Code section 3-8-1-20, which require a candidate for a county office to have resided in the county for at least one year before the election; and (2) was still a Florida resident at the time of November 3, 2020 election. *Id.* at 3, 32-35.

[5] On November 16, 2020, Swalls-Thompson filed her answer to the amended verified petition and requested a change of venue from the trial court judge

(A) is not expired; or
(B) expired after the date of the most recent general election.

(4) The document was issued by the United States or the state of Indiana.

Ind. Code § 3-5-2-40.5(a).

under Indiana Trial Rule 76. *Id.* at 4, 55-58. After the appointment of the special judge, the trial court scheduled the matter for a hearing on November 30, 2020. *Id.* at 103-06. On November 25, 2020, Swalls-Thompson filed a motion requesting that the trial court enter specific findings of fact and conclusions of law. *Id.* at 6, 134.

[6] On November 30, 2020, the trial court held the hearing on Allsup’s amended verified petition to contest the election. *Id.* at 6. Allsup testified at the hearing that she was a resident of Vigo County and that no one other than Swalls-Thompson ran against her. *Tr. Vol. II* at 5, 10. She acknowledged that she had heard “hearsay” and “rumors” about Swalls-Thompson’s residency “probably around October” before the election but she “didn’t pay much attention to it” although she “knew [Swalls-Thompson] had a house down there, but I mean I just didn’t know that she lived down there, you know her and Bob went to Florida.” *Id.* at 10. Allsup did not raise the issue of Swalls-Thompson’s residency until after the election. *Id.* at 10-11.

[7] Swalls-Thompson testified that she moved from California to Terre Haute in 1976 and lived in Terre Haute until 2013. *Id.* at 38. Swalls-Thompson worked at First Financial Bank in Terre Haute until she retired after working there for thirty-two years. *Id.* at 38, 52. When Swalls-Thompson was living in Terre Haute, she met and began dating Robert Thompson (“Robert”), and in 2000, she moved in with Robert at 4977 Oakridge Court (“the Indiana Residence”) in Vigo County, which was a home that the two selected and purchased together but was owned by Robert’s trust. *Id.* at 38-39, 57. The Indiana Residence also

receives an Indiana homestead exemption. *Id.* at 66. Swalls-Thompson lived with Robert in the Indiana Residence from 2000 until the couple separated in 2013 because Swalls-Thompson was not sure if Thompson was going to marry her despite their engagement. *Id.* at 39, 41. Swalls-Thompson decided to leave Vigo County for Florida in 2013 after she and Robert separated. *Id.* at 29.

[8] In 2013, Swalls-Thompson sold two condominiums that she had also owned in Terre Haute and bought a condominium located at 14561 Glen Cove Dr. in Fort Myers, Florida (“the Florida Condominium”). *Id.* at 17-18, 29. After Swalls-Thompson purchased the Florida Condominium, she moved to Florida to live there, filed for a homestead exemption on the Florida Condominium, and obtained a Florida driver’s license and registered her vehicle in Florida. *Id.* at 19. In 2013, Swalls-Thompson also notified the Indiana Bureau of Motor Vehicles that she was moving to Florida and that she had acquired a Florida driver’s license. *Ex. Vol. III* at 34. Upon her move to Florida, Swalls-Thompson also registered to vote in Florida, and she voted by mail in Florida in 2014, 2016, and 2018. *Tr. Vol. II* at 20; *Ex. Vol. III* at 25.

[9] Swalls-Thompson and Robert began to reconcile in 2016 while Swalls-Thompson was living in Florida, and the two married on August 6, 2017 in Salida, Colorado. *Tr. Vol. II* at 40-42; *Ex. Vol. III* at 17. On the marriage license and marriage certificate, Swalls-Thompson listed her Florida address as her residence, but under the line “Return To” only the address for the Indiana Residence was listed. *Ex. Vol. III* at 17. After her marriage to Robert, Swalls-Thompson testified that she considered Indiana her home. *Tr. Vol. II* at 48. At

some point after the marriage, Swalls-Thompson began to stay at the Indiana Residence with Robert. *Id.* at 42, 51. She also testified that she would return to Florida for the winters, spending January, February, March, and April in Florida and would also go there at other times throughout the year. *Id.* at 53, 56. After her marriage to Robert, Swalls-Thompson's daughter and granddaughter made the Florida Condominium their home. *Id.* at 23, 51.

[10] In response to whether she was “quick to move everything [she] had back up here to the state of Indiana” after her marriage, she indicated that she was not quick to do so, and she also indicated that she “had some doubts” about whether the marriage would work. *Id.* at 49. Swalls-Thompson also acknowledged that, if her marriage did not work out, she was “not ready to let go of Florida,” and considered Indiana her home as long as the marriage continued to work but wanted somewhere to go if the marriage did not work. *Id.* Swalls-Thompson also planned to use the Florida Condominium as a vacation home. *Id.* at 56. Swalls-Thompson testified that she continued to receive the homestead exemption for her Florida Condominium until the November 2020 election and did not rescind or pay back the homestead exemption until after the election. *Id.* at 21-25, 55; *Ex. Vol. III* at 86. She acknowledged that she presented her Florida driver's license to vote on November 3, 2020 and maintained her Florida driver's license until after the election. *Tr. Vol. II* at 33-34.

[11] Swalls-Thompson had taxable income in 2017, 2018, and 2019 and jointly filed federal and Indiana state income tax returns with Robert in 2017, 2018, and

2019. *Id.* at 43-44; *Ex. Vol. III* at 52-63. Swalls-Thompson listed the Indiana Residence as the address on each tax return. *Ex. Vol. III* at 52-63. Swalls-Thompson would not have paid state income tax in Florida in any of those years because Florida has no state income tax. *Tr. Vol. II* at 44.

[12] Swalls-Thompson testified that she changed her name from “Swalls” to “Thompson” on her health savings account at First Financial Bank in Terre Haute, Indiana on November 20, 2018, listing the Indiana Residence on the signature card when she changed her name. *Id.* at 50; *Ex. Vol. III* at 76-77. She also testified that she maintained a safe deposit box at First Financial Bank in Terre Haute, Indiana where she stored her valuable personal belongings that she did not bring with her to Florida. *Tr. Vol. II* at 42-43; *Ex. Vol. III* at 78-81. Swalls-Thompson acknowledged that her daughter, son, and Robert also had access to the safe deposit box and that she had maintained the safe deposit box since she started working at First Financial Bank in Terre Haute. *Id.* at 54; *Ex. Vol. III* at 78-81.

[13] Swalls-Thompson and Robert purchased a 2019 Honda Accord in Terre Haute, Indiana on November 20, 2018, listing the Indiana Residence on the purchase agreement and titling the vehicle in Indiana with the Indiana Residence listed as the address on the license plate registration. *Tr. Vol. II* at 46; *Ex. Vol. III* at 64-69. On November 30, 2019, Swalls-Thompson and Robert purchased a 2011 BMW convertible in Sarasota, Florida, listing the Indiana Residence on the purchase agreement and titling the vehicle in Indiana despite purchasing it in Florida. *Tr. Vol. II* at 47-48; *Ex. Vol. III* at 70-75. The vehicle also had

Indiana license plates, which used the Indiana Residence as the address, and the vehicle had never had Florida license plates. *Tr. Vol. II* at 48; *Ex. Vol. III* at 70-75. Swalls-Thompson also testified that she had a dog who regularly saw a veterinarian in Terre Haute, Indiana. *Tr. Vol. II* at 51-52. She maintained her dog's shot and vaccination records at the veterinarian's office in Terre Haute. *Id.*; *Ex. Vol. III* at 82-85.

[14] At the conclusion of the hearing, the trial court ordered the parties to submit findings of fact and conclusions of law, case citations, and any briefs before December 4, 2020. *Tr. Vol. II* at 91; *Appellant's App. Vol. Two* at 135. On December 10, 2020, the trial court issued its order denying the petition, with its findings of fact and conclusions of law. *Appellant's App. Vol. Two* at 9-16. Under the heading titled "Law," the trial court cited Article 6, Section 4 of Indiana Constitution, Indiana Code section 3-8-1-20, and the Indiana Supreme Court's opinion in *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), which addressed the Indiana Constitution's five-year residency requirement for the office of governor as the legal authority it was applying to evaluate Allsup's post-election contest to Swalls-Thompson's residency. *Id.* at 13. Based on its findings and in light of those authorities, the trial court concluded as follows:

69. The question before the Court is whether [Swalls-Thompson] was a resident or domiciled in Terre Haute, Vigo County, Indiana by November 3, 2019.

70. If [Swalls-Thompson] was not a resident of Vigo County, Indiana before November 3, 2019, she is ineligible to hold the office of Treasurer of Vigo County. Ind. Code § 3-8-1-20.

71. If [Swalls-Thompson] is ineligible, Allsup will become the Treasurer of Vigo County by having received the next highest number of votes at the 2020 general election. Ind. Code § 3-12-8-[17(c)].

72. [Swalls-Thompson] became a Florida resident after her separation from Robert in 2013.

73. [Swalls-Thompson's] marriage to Robert in 2017 and [Swalls-Thompson's] actions thereafter form the real basis of the dispute before the Court.

74. Allsup contends that [Swalls-Thompson] is ineligible because she did not establish residency in Vigo County, Indiana by November 3, 2019. In support, Allsup relies primarily on:

A. [Swalls-Thompson's] failure to relinquish the Florida homestead exemption on the [Florida Condominium];

B. [Swalls-Thompson's] use of a Florida driver's license when she voted in the 2020 general election.

75. [Swalls-Thompson] stated she intended to become a resident of Vigo County, Indiana after her marriage to Robert in 2017. [Swalls-Thompson] contends that she expressed her intention by:

A. Filing federal and Indiana personal income tax returns in 2017, 2018, and 2019, listing [the Indiana Residence] as her residence, and paying state income taxes to the State of Indiana when she otherwise would not have paid state income taxes to the State of Florida;

B. Purchasing a car on November 20, 2018 listing the [Indiana Residence] on the bill of sale, titling the car in Indiana, and obtaining Indiana license plates for the vehicle;

C. Purchasing a car on November 30, 2019 listing the [Indiana Residence] on the bill of sale, titling the car in Indiana, and obtaining Indiana license plates for the vehicle;

D. Changing her name on her health savings account on November 20, 2018 and listing the [Indiana Residence as the] address on the signature card;

E. Maintaining a safe deposit box in Terre Haute where she kept her important personal papers; and

F. Maintaining Kobe's veterinary and vaccination records in Indiana.

G. Living with her husband in his house in Vigo County.

76. [Swalls-Thompson] intended to make Vigo County, Indiana her home after her marriage to Robert in 2017. [Swalls-Thompson's] subjective intent cannot resolve this case in her favor if not supported by objective facts supporting her intention to make Indiana her home. The parties dispute whether her actions objectively support that intention.

77. [Swalls-Thompson] may well have been ineligible to continue receiving a Florida homestead exemption on the [Florida Condominium]. However, that does not disqualify Thompson.

78. Likewise, Indiana law provides that an individual must obtain an Indiana driver's license within sixty (60) days of

becoming a resident. *See* Ind. Code §§ 9-24-1-1 and -7. However, failing to obtain a valid driver’s license does not mean an individual is not a resident of Indiana. Rather, it means only that had she been stopped she would be driving without a valid license, a Class C infraction, I.C. 9-24-1-1.

Id. at 14-15.

[15] Under the heading titled “Discussion,” the trial court further explained that Robert and Swalls-Thompson had “reached a point in life where they have acquired assets” and that “[Robert’s] trust owns the house in which they live” while Swalls-Thompson owns the Florida Condominium, observing that “[t]his is not an unusual situation.” *Id.* at 16. The trial court reasoned that “[t]he issue is whether or not she resided in Vigo County[,] Indiana one year prior to the election.” *Id.* As to her homestead exemption on the Florida Condominium and failure to obtain an Indiana driver’s license until after the election, it observed that:

It may be that [Swalls-Thompson] owes back property taxes to Lee County, Florida. Had she been stopped while driving she may have been driving without a valid license. The actual date on which she became a resident of Vigo County, Indiana need not be determined here. The evidence is undisputed that she moved back to Vigo County after her marriage in August 2017 and has resided here ever since with her husband in his house. The court finds that whether or not she voted in a Florida election in 2018, she resided in Vigo County, Indiana for one year prior to the November 3, 2020 election.

Id. The trial court determined that Swalls-Thompson’s “intention was to make Vigo County, Indiana her residence and that her actions taken to implement that intent was sufficient to establish her residency, I.C. 3-5-5-2.” *Id.* Allsup now appeals.

Discussion and Decision

[16] Allsup argues that the trial court’s denial of her petition to contest the election on the basis of Swalls-Thompson’s constitutional and statutory ineligibility was clearly erroneous. Pursuant to Indiana Code section 3-12-8-1, an Indiana election contest action permits a post-election challenge to the winning candidate. The post-election remedy is available if the winning candidate “was ineligible.” Ind. Code § 3-12-8-2(1). As relevant to this action, an election contest petition must state that the person elected “does not comply with a specific constitutional or statutory requirement set forth in the petition that is applicable to a candidate for the office.” Ind. Code § 3-12-8-6(a)(3)(A). A trial court, after hearing a petition “alleging that a candidate is ineligible,” must declare as elected “the qualified candidate who received the highest number of votes and render judgment accordingly.” Ind. Code § 3-12-8-17(c). Article 6, Section 4 of the Indiana Constitution addresses qualifications for county officers and provides that “[n]o person shall be elected, or appointed, as a county officer, who is not an elector of the county and who has not been an inhabitant of the county one year next preceding his election or appointment.” The constitutional provision requiring county officers to be an inhabitant of the county one year before election or appointment to office is also codified in

statute with the requirement that a “candidate for the office of county auditor, recorder, treasurer, sheriff, coroner, or surveyor must have resided in the county for at least one (1) year before the election, as provided in Article 6, Section 4 of the Constitution of the State of Indiana.” Ind. Code § 3-8-1-20. We have explained that “failure to meet a residency requirement is not a mere formal or technical objection.” *Kite v. Curlin*, 139 N.E.3d 1113, 1124 (Ind. Ct. App. 2019), *trans. denied*.

[17] Swalls-Thompson requested that the trial court issue findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A), and the trial court ordered the parties to submit findings and conclusions. Where a trial court enters specific findings and conclusions, we apply a two-tier standard of review: we first determine whether the evidence supports the findings, and then we determine whether the findings support the judgment. *Marion Cnty. Auditor v. Sawmill Creek, LLC*, 964 N.E.2d 213, 216 (Ind. 2012). We will “not set aside the findings or judgment unless clearly erroneous.” *Id.* (quoting Ind. Trial Rule 52(A)). We review the trial court’s legal conclusions de novo. *Id.* at 217.

[18] Allsup contends that the trial court “misapplied and misinterpreted the domicile test in *Bayh* and solely applied a test of physical presence by examining whether Swalls-Thompson resided in Vigo County, Indiana by November 3, 2019 rather than determin[ing] if she was a resident of Indiana.” *Appellant’s Br.* at 12. Allsup argues that the trial court “demonstrated a misunderstanding of the law” when it concluded that “[t]he words ‘inhabitant,’ ‘resident,’ ‘reside,’ ‘resided,’ and ‘domicile’ are synonymous. [*Bayh*, 521 N.E.2d at 1317]. They are used

interchangeably throughout this order.” *Appellant’s Br.* at 12 (quoting *Appellant’s App. Vol. Two* at 13). Allsup argues that the trial court’s statement of the issue as whether Swalls-Thompson “resided in Vigo County Indiana one year prior to the election” led it to the erroneous conclusion that “the actual date on which [Swalls-Thompson] became a resident of Vigo County, Indiana need not be determined here.” *Appellant’s App. Vol. Two* at 14, 16. She contends that the trial court’s support for this conclusion was that:

The evidence is undisputed that she moved back to Vigo County after her marriage in August 2017 and has resided ever since with her husband in his house. The court finds that whether or not she voted in a Florida election in 2018, she resided in Vigo County for one year prior to the November 3, 2020 election.

Id. at 16. Allsup asserts that the trial court’s characterization of the evidence as undisputed that she moved back to Vigo County after her August 2017 marriage is “contradicted” by the trial court’s other findings of fact, which found that Swalls-Thompson “kept the [Florida Condominium] as a vacation home and as a safety net if the marriage to Robert did not work out” and that she “typically stays in Florida from January through April” because those findings do not support a conclusion that she moved back to Vigo County after the marriage. *Appellant’s Br.* at 13 (quoting *Appellant’s App. Vol. Two* at 11). Allsup thus maintains that the trial court’s decision was clearly erroneous because it misapplied *Bayh* as a test of physical presence alone.

[19] In *Bayh*, the Indiana Supreme Court addressed the gubernatorial residency requirement in Article 5, Section 7 of the Indiana Constitution. 521 N.E.2d at

1315. In pertinent part, Article 5, Section 7 of the Indiana Constitution provides that “[n]o person shall be eligible to the office of Governor . . . who shall not have been five years a citizen of the United States, and also a resident of the State of Indiana during the five years next preceding his election”

In reviewing the history of that constitutional provision, the Indiana Supreme Court construed the phrase “resident of the State” to mean domiciliary. *Id.* at

1316. The Court explained that in other contexts it had interpreted residence to mean domicile and stated as follows:

In construing residency under the provisions of the tax assessment law, we noted, “The word ‘domicil’ is not used in our constitution.” *Culbertson v. Board of Commissioners of Floyd County* (1876), 52 Ind. 361, 366. We examined the constitutional residency requirements for voters and office holders, including the office of Governor, and concluded: “The words ‘inhabitant’ and ‘resident,’ ‘reside’ and ‘resided,’ are used as synonymous [sic].” *Id.* at 366.

We determined that for purposes of “the enjoyment of a privilege, or the exercise of a franchise, . . . domicile and residence are deemed to be equivalent or synonymous, i.e. that the word residence is deemed to mean domicile.” *Board of Medical Registration and Examination v. Turner* (1960), 241 Ind. 73, 79, 168 N.E.2d 193, 196 (construing licensing statute). We have interpreted residence to mean domicile in a variety of other circumstances. *State ex rel. Flaughner v. Rogers* (1948), 226 Ind. 32, 77 N.E.2d 594 (school admission); *Croop v. Walton* (1927), 199 Ind. 262, 157 N.E. 275 (taxpayer residency); *State ex rel. White v. Scott* (1908), 171 Ind. 349, 86 N.E. 409 (eligibility of county office holders); *Maddox v. State* (1869), 32 Ind. 111 (voter eligibility).

Id. at 1317.

[20] In discussing the meaning of domicile, the Court stated it is “the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning,” which can be obtained by origin or birth, choice, or operation of law. *Id.* (citations omitted).² Domicile is presumed to continue because “every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place.” *Id.* (citation omitted). The establishment of a new residence or domicile terminates the former domicile, and a change of domicile requires an actual moving with an intent to go to a given place and remain there. *Id.* The Court observed that a change of domicile “must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.” *Id.* (citation omitted).

[21] Residency requires a definite intention and “evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable.” *Id.* at 1318 (citation omitted). A self-serving statement of intent is

² Several of the Indiana Code’s election law provisions codify the definitions of residence, domicile, and inhabitant discussed in *Bayh* and the standards for determining residency. See Ind. Code 3-5-2-42.5 (defining “residence” as “the place: (1) where a person has the person’s true, fixed, and permanent home and principal establishment; and (2) to which the person has, whenever absent, the intention of returning”); Ind. Code 3-5-2-16.4 (defining “domicile” as “residence, as determined under IC 3-5-5”); Ind. Code § 3-5-2-26.4 (defining “inhabitant” for purposes of (1) Article 4, Section 7 of the Constitution of the State of Indiana; and (2) Article 6, Section 4 of the Constitution of the State of Indiana” as “a person who resides at a location, as determined under IC 3-5-5”); Ind. Code 3-5-5 (establishing standards for determining residency).

not sufficient to find that a new residence has been established. *Id.* (citation omitted). Critically, “[i]ntent and conduct must converge to establish a new domicile.” *Id.* Finally, the Indiana Supreme Court explained that the matter of an individual’s residence is “a contextual determination to be made by a court upon a consideration of the individual facts of any case” and that “[p]hysical presence in a place is only one circumstance in determining domicile.” *Id.* (citations omitted).

[22] First, as to the trial court’s “interchangeable” use of the words inhabitant, resident, reside, resided, and domicile, the constitutional provision applicable to the durational residency of a county officer uses the phrase “inhabitant of” and our statutory provision uses the phrase “resided in the county” to refer to a county officer’s residency. Ind. Const. art. 6, § 4; Ind. Code § 3-8-1-20; *Appellant’s App. Vol. Two* at 13. In addition, the Indiana Supreme Court explained in *Bayh* that in construing the constitutional residency requirements for governor, the “words ‘inhabitant’ and ‘resident,’ ‘reside’ and ‘resided,’ are used as synonymous [sic]” and had previously determined that for purposes of “the enjoyment of a privilege, or the exercise of a franchise, . . . domicile and residence are deemed to be equivalent or synonymous, i.e. that the word residence is deemed to mean domicile.” 521 N.E.2d at 1317 (citations omitted). The trial court correctly identified this language from *Bayh* and reasonably concluded that the terms inhabitant, resident, reside, resided, and domicile are equivalent or synonymous for purposes of the constitutional and statutory requirements for county officer residency. *Appellant’s App. Vol. Two* at

13. The core question before the trial court was whether Swalls-Thompson reestablished her Vigo County residency and had been a resident of the county for one year before the November 3, 2020 election, which it correctly addressed and answered. As stated in *Bayh*, ‘resided’ has an equivalent meaning to domicile and because domicile means residence, stating the issue as whether Swalls-Thompson was a resident of Vigo County one year before the election or whether Swalls-Thompson resided in Vigo County one year before the election did not misstate the issue of where she was domiciled.

[23] Allsup does not specifically challenge any of the trial court’s findings but contends that it should not have concluded that the evidence was undisputed that she returned to Vigo County after her marriage. Here, Allsup overlooks that the trial court also specifically found that:

25. In 2017, shortly after her marriage, Thompson returned to Vigo County, Indiana to live with Robert at the Oakridge Court residence.

26. Thompson considered Indiana her home after her marriage to Robert.

27. Thompson retained the Fort Myers residence after her marriage to Robert.

Appellant’s App. Vol. Two at 11. Viewed as a whole, the trial court’s findings support its conclusion that “the evidence is undisputed that she moved back to Vigo County after her marriage in August 2017 and has resided here ever since with her husband in his house.” *Id.* at 16. The trial court could conclude that

the evidence was not in dispute that Swalls-Thompson had returned to Vigo County after the marriage despite keeping the Florida Condominium as a vacation home and safety net and going to Florida from January through April and other times during the year. Moreover, Allsup's contention that the trial court's failure to determine a specific date on which she reestablished her status as a resident of Vigo County overlooks the other factors that the trial court considered in applying *Bayh* and arriving at its conclusion. Despite Allsup's assertions to the contrary, the trial court's order did not misapply *Bayh* as a test of physical presence alone. As discussed more fully below, the trial court's order addressed Swalls-Thompson's actions after her 2017 marriage to Robert in addition to other actions that she took to demonstrate both her subjective and objective intent to reestablish her residency in Vigo County.³

[24] Allsup further argues that the trial court misapplied *Bayh* because Swalls-Thompson failed to reestablish residency in Vigo County one year before the November 3, 2020 election after she became a Florida resident. Here, the parties agree that Swalls-Thompson was an Indiana resident until 2013 when she changed her residency and became a resident of Florida. Swalls-Thompson herself acknowledges that she manifested her intention to change her domicile from Indiana to Florida in 2013 by: (1) purchasing real estate in Florida; (2)

³ In her reply brief, Allsup contends that Swalls-Thompson did not respond to this argument, and that we should conclude that the trial court's legal conclusions are clearly erroneous. We are satisfied that Swalls-Thompson's appellee's brief has addressed Allsup's contentions about the use of synonyms for domicile, the issue before the trial court, and the application of *Bayh* as involving a contextual determination, and we decline Allsup's request to conclude otherwise.

selling her real estate in Indiana; (3) obtaining a Florida driver's license; and (4) registering to vote in Florida. *Appellee's Br.* at 15. Thus, the trial court was faced with the question of whether Swalls-Thompson reestablished her residency in Vigo County after her 2017 marriage to Robert to meet the requirement that she was a resident of Vigo County for at least one year before the election.

[25] Swalls-Thompson testified, and the trial court found, that she considered Vigo County her home after her August 6, 2017 marriage to Robert.⁴ *Appellant's App. Vol. Two* at 11. An individual's subjective intent is one aspect of determining residency, but there must also be "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." *Bayh*, 521 N.E.2d at 1318 (citation omitted). A self-serving statement of intent is not sufficient to find that a new residence has been established. *Id.* (citation omitted). Critically, "[i]ntent and conduct must converge to establish a new domicile." *Id.* Therefore, we address the objective evidence relevant to Swalls-Thompson's intent to reestablish her residency in Vigo County.

[26] Allsup contends that Swalls-Thompson's actions after her marriage did not demonstrate that she intended to reestablish her residency in Vigo County. In

⁴ We note that one of the statutory factors in the Indiana Code's election law provisions for determining residency involves the location of the person's immediate family, which is defined in that chapter as inclusive of "the *spouse*, children, stepchildren, parents, or grandparents of the individual." Ind. Code § 3-5-5-0.5 (emphasis added). Under Indiana Code section 3-5-5-11, "[t]he place where a person's immediate family resides is the person's residence, unless the family's residence is: (1) a temporary location for the person's immediate family; or (2) for transient purposes."

particular, she argues that Swalls-Thompson was still receiving a homestead exemption⁵ on the Florida Condominium at the time of the November 3, 2020 election and that her retention of the homestead exemption should be given “significant weight in determining her domicile.” *Appellant’s Br.* at 16. She acknowledges that Swalls-Thompson canceled the homestead exemption on the Florida Condominium after the November 3, 2020 election but did not seek to retroactively rescind the homestead exemption for 2019, 2018, and 2017. She maintains that Swalls-Thompson’s testimony that she would return to Florida if her marriage to Robert did not work out suggested that she did not have the requisite intent to make Vigo County her residence. Allsup also argues that Swalls-Thompson’s failure to obtain an Indiana driver’s license until a week after the election and failure to register to vote until the deadline to file a declaration of candidacy should also be given “significant weight” in whether she reestablished her domicile. *Id.* at 19. Allsup further contends that Swalls-Thompson’s testimony that she considered Indiana her residence is self-serving,

⁵ Florida law allows for a homestead exemption on a property owner’s permanent residence that operates to reduce the owner’s property taxes. *See* Fla. Stat. § 196.031; Fla. Const. art 7, sec. 6. Florida law defines “permanent residence” as follows:

that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

Fla. Stat. § 196.012.

and her actions do not show that her intent was to reestablish residency in Vigo County.

[27] Allsup correctly cites *Bayh* for the proposition that a person's domicile is presumed to continue, and a person does not lose domicile until gaining residence in another place. Our courts have also addressed questions of an individual's residency arising in other contexts such as divorce and estate administration. For example, in *Blair v. Blair*, a husband and wife who lived in Illinois were seeking to commence dissolution proceedings in Indiana because they owned an Indiana home, made significant improvements to it, lived there on weekends, received mail there, and registered a boat in Indiana. 643 N.E.2d 933, 934-36 (Ind. Ct. App. 1994). Even after the wife⁶ was locked out of her Illinois home by her husband, moved to the Indiana home, and had her real estate license transferred to Indiana, those factors were insufficient to show an intent to terminate residency in Illinois and allow an Indiana court to assume subject matter jurisdiction over the petition for dissolution, as she continued to hold an Illinois driver's license, her car was registered in Illinois, she filed Illinois tax returns, and she voted in the November 1992 election in Illinois. *Id.* at 935-36. In contrast, in *Carter v. Estate of Davis*, this court determined that administration of the decedent's estate should occur in Indiana because the decedent was domiciled in Indiana at the time of his death even though the

⁶ The husband's physical presence at the parties' Indiana home on weekends was insufficient to establish Indiana residency for purposes of an Indiana court exercising jurisdiction over the parties' petition for dissolution. *Blair v. Blair*, 643 N.E.2d 933, 935-36 (Ind. Ct. App. 1994).

decedent spent more than half of each year in Florida, died there, paid a Florida intangible property tax on property he possessed by way of a ninety-year lease on which he maintained a trailer home, voted, and maintained a driver's license in Florida. 813 N.E.2d 1209, 1215 (Ind. Ct. App. 2004), *trans. denied*. The court noted that this was not the “first time [it had] been asked to consider the legal domicile of a ‘snowbird’ who split his time between Indiana and Florida and eventually died in Florida[,]” explaining that despite his ties to Florida, the decedent was born, raised, and married in Indiana, worked his entire career in Indiana, owned real property in Indiana until late in his life, referred to Indiana as his home and continued to rent an apartment in Indiana, left his will and other important documents at a bank in Indiana, and executed a codicil shortly before his death describing himself as an Indiana resident. *Id.* at 1214-15.

[28] Here, the trial court found that “[i]n 2017, shortly after her marriage, [Swalls-Thompson] returned to Vigo County, Indiana to live with Robert at the [Indiana Residence].” *Appellant’s App. Vol. Two* at 11. It also found that after the marriage she retained the Florida Condominium. *Id.* Swalls-Thompson, like the decedent in *Carter*, is also a “snowbird” who spends winters in Florida where she plays golf and pickleball. *Carter*, 813 N.E.2d at 1214; *Tr. Vol. II* at 52-53. The trial court also found that Swalls-Thompson’s daughter and granddaughter now reside in the Florida Condominium. *Appellant’s App. Vol. Two* at 11. As noted, physical presence alone “is only one circumstance in determining domicile,” and we must look at the facts in context to determine whether a person’s intent and conduct converge as to domicile. *Bayh*, 521

N.E.2d at 1318. In addition, an individual is not required to sever all ties to reestablish residency. *See In re Eward*, 263 Ind. 435, 442, 333 N.E.2d 765, 769 (1975) (“To require a person in respondent’s position to have sold his house in Virginia and acquired one in Tell City, given up his employment abruptly and entirely, moved his wife’s children from their school to Indiana, obtained an Indiana driver’s license, and accomplished all such other odds and ends as would have severed completely all connections with Virginia and the Washington area, as a condition of establishing a residence in Indiana, would be unreasonable.”)

[29] There is no dispute that Swalls-Thompson maintained the homestead exemption on the Florida Condominium, and she acknowledges that she may have violated Florida law by claiming an entitlement to the exemption on the Florida Condominium after her marriage to Robert. Indeed, the trial court concluded as much, observing that Swalls-Thompson “may well have been ineligible to continue receiving a Florida homestead exemption on the [Florida Condominium]” and that she may “owe[] back property taxes to Lee County, Florida” for claiming the homestead exemption but concluded that alone did not disqualify her from being a candidate and assuming office. *Appellant’s App. Vol. Two* at 15, 16.

[30] As previously discussed, the trial court could conclude based on its factual findings that Swalls-Thompson had returned to Vigo County to reside with Robert at the Indiana Residence despite her retention of the Florida Condominium as a vacation home after her 2017 marriage. Similarly, Allsup’s

contentions that Swalls-Thompson's failure to obtain an Indiana driver's license and present it to vote at the November 3, 2020 election do show inattention toward reestablishing residency; however, as the trial court concluded, Swalls-Thompson's failure to "obtain a valid driver's license does not mean an individual is not a resident of Indiana. Rather it means only that had she been stopped she would be driving without a valid license, a Class C infraction, I.C. 9-24-1-1." *Appellant's App. Vol. Two* at 15. While Swalls-Thompson did not apply for an Indiana driver's license until after the election, there was no evidence presented as to the expiration date of Swalls-Thompson's Florida license or that she had previously renewed her Florida license. *See Eppard*, 263 Ind. at 442, 333 N.E.2d at 769 (noting that obtaining an Indiana driver's license is not a requirement of establishing residency in all circumstances).

[31] As opposed to her failure to rescind the homestead exemption on the Florida Condominium and apply for an Indiana driver's license, Swalls-Thompson's decision to vote in Florida in the 2018 midterm elections does demonstrate an intent that runs counter to her statement that she considered Indiana her home after her marriage to Robert. However, we agree with the trial court that, regardless of her decision to cast a ballot in the 2018 election, such action did not conclusively negate her intent to change her residence from Florida to Indiana or that she resided in Vigo County for one year prior to the November 3, 2020 election. *Appellant's App. Vol. Two* at 16. There was also no evidence presented that she voted in any "purely local-level Florida elections" after her marriage to Robert. *See Carter*, 813 N.E.2d at 1215 (reasoning that the "fact

that Davis voted in Florida should not necessarily be dispositive evidence that he had changed his domicile to Florida; with elections being in November when he would have already returned to Florida for the winter, it simply would have been more convenient for Davis to vote directly in Florida rather than filing an absentee Indiana vote. Additionally, Davis did not vote in any purely local-level Florida elections.”)

[32] Allsup maintains that Swalls-Thompson’s reliance on the acts she took to establish domicile in Florida (selling her Indiana real estate, acquiring property, obtaining a homestead exemption, obtaining a Florida driver’s license, and registering to vote in Florida) and failure to take such action when returning to Indiana as a result of “inattention or ignorance” is unavailing. *Appellant’s Reply Br.* at 11 (quoting *Appellee’s Br.* at 16, 17). She contends that Swalls-Thompson’s actions that the trial court relied on as manifestations of her intent to reestablish residency in Vigo County are insufficient to show that her actions aligned with her stated intent of considering Indiana her home after her marriage to Robert.

[33] Here, Swalls-Thompson had taken other steps to reestablish her residency in Vigo County. Beginning with her marriage to Robert in 2017, Swalls-Thompson and Robert jointly filed and paid federal and Indiana personal income taxes for tax years 2017, 2018, and 2019, listing the Indiana Residence on each of the returns. *Ex. Vol. III* at 62-63; *Appellant’s App. Vol. Two* at 14. Florida does not impose a personal income tax, and Swalls-Thompson filed Indiana income tax returns where she would not have been required to do so

had she intended to remain a Florida resident. On November 20, 2018, Swalls-Thompson and Robert jointly purchased a 2019 Honda Accord, which they titled in Indiana and obtained a license plate for the vehicle that was tied to the Indiana Residence. *Ex. Vol. III* at 64-69; *Appellant's App. Vol. Two* at 15. On November 20, 2018, Swalls-Thompson also formally changed her name from "Swalls" to "Thompson" on her Health Savings Account at First Financial Bank in Terre Haute, Indiana. *Ex. Vol. III* at 76-77. The act of changing her name and listing the Indiana Residence on the signature card does not evidence an intent to remain a Florida resident. *Id.*; *Appellant's App. Vol. Two* at 15. Both of these actions, which occurred after Swalls-Thompson cast a ballot in Florida in the 2018 midterm election, objectively manifested her stated intent of making Indiana her home. In addition, Swalls-Thompson purchased another vehicle with Robert on November 30, 2019, in Sarasota, Florida, listed the Indiana Residence as the address on the purchase agreement, titled the vehicle in Indiana, and obtained a license plate tied to the Indiana Residence. *Ex. Vol. III* at 70-75; *Appellant's App. Vol. Two* at 15. Swalls-Thompson also maintained a safe deposit box in Vigo County and not in Florida. *See Carter*, 813 N.E.2d at 1215 (observing that maintenance of safe deposit box in Indiana was a factor demonstrating an objective manifestation of domicile). Swalls-Thompson also took her dog to see a veterinarian in Terre Haute. Allsup maintains that concluding these acts undertaken jointly with Robert in the case of her tax filings and vehicle purchase and her maintenance of the safe deposit box and taking her dog to the veterinarian in Terre Haute "suggest that she does not need to sever any ties with the State of Florida and can establish residency in

Indiana” though actions that are not indicative of her intent to reestablish her residency in Vigo County. *Appellant’s Reply Br.* at 12. While Allsup places more weight on some of the factors considered by the trial court than others, this does not make the decision of the trial court clearly erroneous nor does it lead us to conclude that the trial court misapplied controlling precedent in reaching its conclusion that Swalls-Thompson was a resident of Vigo County one year before the election.

[34] Swalls-Thompson acknowledges that she “certainly invited a challenge to her residency by failing to relinquish her homestead exemption, failing to obtain an Indiana driver’s license, and casting a single ballot in Florida after her marriage to Robert.” *Appellee’s Br.* at 19. These failures may be probative in assessing an individual’s domicile; however, no one factor is dispositive of an individual’s domicile as it is a contextual determination. *See Bayh*, 521 N.E.2d at 1318, *Evrard*, 263 Ind. at 440-42, 333 N.E.2d at 768-69. We cannot say the trial court’s decision was clearly erroneous.

[35] In her reply brief, Allsup also contends that our precedent regarding respect for the will of the voters should not be given more consideration than the residency requirements for county officers embodied in our constitution and code. Indeed, the Indiana Supreme Court has held that our law “strongly disfavors” post-election challenges, preferring to avoid overturning free and fair elections and the will of the voters. *White v. Ind. Democratic Party ex rel. Parker*, 963 N.E.2d 481, 486 (Ind. 2012). *See also Pahey v. Patrick*, 816 N.E.2d 1138, 1148 (Ind. 2004); *Oviatt v. Behme*, 147 N.E.2d 897, 900 (Ind. 1958).

[36] Despite this preference, Allsup correctly observes and cites precedent for overturning the results of an election where the winning candidate was not nominated in accordance with statutory timelines applicable to filling vacancies. *See Wilhite v. Mohr*, 485 N.E.2d 131, 132 (Ind. Ct. App. 1985) (concluding that, where the Clay County Republican Central Committee failed to comply with the statute in effect at the time applicable to filling a vacancy in the office of county recorder on the general election ballot, such failure to comply with those statutory time frames rendered the Republican candidate's nomination void "because the candidacy never existed in the eyes of the law in the first instance" and declared the Democratic candidate the duly elected county recorder).

[37] Allsup also correctly cites precedent that residency is not a mere formal or technical requirement for office, and we have also explained that in the context of a school board election in which a winning candidate lived outside of the district that she was elected to represent that her "failure to meet a residency requirement is not a mere formal or technical objection." *Kite*, 139 N.E.3d at 1124. And despite our "strong disinclination to overturn the results of an election after the fact," we reversed the trial court's dismissal of the losing candidate's post-election contest petition because the winning candidate remained ineligible for the seat she held because she did not live in the district and remanded for further proceedings. *Id.* at 1127. While the circumstances before us present a close question as to Swalls-Thompson's ineligibility on the basis of her residency and reasonable minds could draw conflicting inferences

from the facts and circumstances demonstrating her reestablished residency, we decline to overturn the will of the voters because we cannot say that the trial court's decision denying Allsup's post-election contest petition was clearly erroneous.

[38] Affirmed.

Altice, J., and Weissmann, J., concur.