

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: The Nomination Petition of	:	
Frank Shimkus for the Office of	:	
State Representative for the 113th	:	
District	:	No. 112 M.D. 2008

Joseph Pilchesky and Joanne Pilchesky,	:	
	:	
Petitioners	:	

In Re: Nomination Petition of Frank	:	
Andrews Shimkus, Candidate for the	:	
Democratic Nomination in the	:	
General Assembly from the 113th	:	No. 142 M.D. 2008
District	:	

Kevin Murphy,	:	Heard: February 28, 2008
	:	
Petitioner	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: March 14, 2008

Joseph and Joanne Pilchesky (Pilcheskys) and Kevin Murphy (collectively, Objectors) have filed objections to the Nomination Petitions of Frank Shimkus (Candidate) for the Democratic nomination for representative in the General Assembly for the 113th Legislative District. We consolidate the two filings for the purpose of this opinion.

Objectors allege that Candidate's Affidavit (Affidavit), Statement of Financial Interests (SOFI) and Nomination Petitions are defective because Candidate indicated on all of them an address, which is not his true residence, in order to deceive the public. Specifically, Pilcheskys allege that Candidate provided a false address to deflect negative attention because Candidate, who is also a pastor, was living with his fiancée to whom he was not married.¹ Pilcheskys also allege that Candidate's SOFI is defective because Candidate intentionally failed to list his two other professions, insurance agent and pastor, and that he also failed to indicate that he is self-employed as a pastor. In opposition to the allegation that his address indicated on his Nomination Petitions, Affidavit and SOFI was a defect, Candidate contends that he indicated the correct address because he: occasionally stayed at the address in question; received mail at the address in question; notified his employer that his residence was the address in question; and changed his voter registration information to indicate his residence as the address in question. Nomination petitions are presumed to be valid, and objectors bear the heavy burden of demonstrating that a candidate's nomination petition is invalid. In re Nomination Petition of Pippy, 711 A.2d 1048, 1057 (Pa.

¹ Pilcheskys allege more specifically that Candidate provided a false address:

to deflect unwanted and controversial political attention from the fact that the Candidate/Pastor and Gabrielle Prutisto, his fiancée who is nearly thirty (30) years his junior, had purchased a lavish, expensive new home together in which to live while they were not married, and afterward, as to avoid public disgrace and humiliation, and therefore avoid the public's and church parishioner's moral and ethical scrutiny via media and internet exposure, and therefore to avoid substantial loss of voter confidence and public trust, and therefore to avoid loss of votes and serious potential of loss of election.

(Pilcheskys' Petition to Set Aside Nomination Petition of Shimkus at ¶ 51.)

Cmwth. 1998). Thus, an objector has the burden of proving that a candidate's affidavit is false with regard to statements about residency. In re Nomination Petition of Cooper, 643 A.2d 717, 720 (Pa. Cmwith. 1994).

This Court scheduled a hearing on the objections for February 28, 2008, at 10:00 a.m. Prior to the hearing, Candidate submitted to the Court answers to the objections and a memorandum of law in support of his position, and the Objectors each submitted a memorandum of law in support of their respective positions. Based on the notes taken by the Court,² five witnesses testified at the hearing: Candidate; Edward Decker; Jennifer Coar; Tony Grande; and Mr. Murphy.³

I. Testimony and Evidence Submitted at the Hearing

Candidate testified that he circulated petitions on his own behalf on January 31, 2008, February 6, 2008, and February 7, 2008, in which he indicated that his address is 2409 Boulevard Avenue, Scranton, Pennsylvania (Boulevard Address). Candidate testified that he filed his Affidavit on February 12, 2008, which also indicated the Boulevard Address. Candidate additionally acknowledged that he filed his SOFI on February 7, 2008, which identifies the Boulevard Address as his true residence. Candidate further confirmed that, in Block No. 6 of the SOFI requesting "Occupation or Profession," he only listed representative in the General Assembly. Moreover, Candidate confirmed that, in Block No. 13 requesting

² Due to the expedited nature of this case, this Court notes that it has not received the official hearing transcript.

³ For ease of following the facts of this case, the testimony of the witnesses is presented in an order that is different than that in which it was presented at the hearing.

“Office, Directorship or Employment in any Business,” he checked the box indicating “none.”

With regard to his residency, Candidate testified that he lived at 602 Applewood Acres, Clarks Summit, Pennsylvania (Applewood Address) for three years before moving to the Boulevard Address in October 2007. He also testified that he and his fiancée, Gabrielle A. Prutisto, purchased a new home at 310 Varsity Drive, Throop, Pennsylvania (Varsity Address) on November 1, 2007. Candidate testified that his daughter and son-in-law, Mr. and Mrs. Decker, own the home located at the Boulevard Address and that they moved out of the Boulevard Address, leaving it vacant, as of July 2007. Candidate testified that, when he initially moved out of the Applewood Address, he moved some furniture to the Varsity Address and some to the Boulevard Address. He stated that he moved a sofa, loveseat, kitchen table, television and VHS tapes to the Boulevard Address. Candidate testified, however, that over a period of time, he also began moving boxes of blankets, pillows and clothes into the Boulevard Address. Candidate explained that the mortgage and utility bills for the Boulevard Address are all in the Deckers' name. Candidate testified that he “stayed” at the Boulevard Address following his departure from the Applewood Address from October 2007 until the day before the hearing on February 27, 2008, when he moved to the Varsity Address. Candidate further testified that at no point did he pay rent or sign a lease while staying at the Boulevard Address. Instead, he stated that he was staying there to help out Mr. and Mrs. Decker by paying the utility bills. Candidate also testified that the United States Postal Service delivered mail to him at the

Boulevard Address;⁴ that he changed his mailing address on his voter registration and with his employer, the Pennsylvania House of Representatives, to reflect the Boulevard Address;⁵ and that he was served by Objectors in person at the Boulevard Address. However, he admitted that he never notified the Department of Transportation to have his driver's license reflect his residence at the Boulevard Address.

Candidate testified that he and his fiancée, Ms. Prutisto, purchased a home at the Varsity Address on November 1, 2007, for \$370,000.00, and that he was proud to make his relationship with Ms. Prutisto public information. Together, Candidate and Ms. Prutisto executed their first mortgage, in the amount of \$296,000.00, on November 2, 2007, and they executed a second mortgage, in the amount of \$64,640.00, on November 26, 2007. Candidate testified that Ms. Prutisto moved into the Varsity Address soon after purchasing it. Candidate testified that he made the decision not to live at the Varsity Address with Ms. Prutisto and, instead, stayed at the Boulevard Address because he and Ms. Prutisto were not yet married. Upon questioning with regard to Petitioner Murphy's Exhibit 8, a press release dated March 29, 2007, Candidate agreed that, at that time, Ms. Prutisto had been

⁴ We note that in support of Candidate's statement that the United States Postal Service delivers mail to him at the Boulevard Address, Candidate submitted envelopes from his bank, credit union, Pilcheskys, this Court, an insurance carrier, United Spinal Association, and the American Red Cross. (Shimkus Exs. 5, 6, 7, 9, 10, and 12.)

⁵ We note that in support of Candidate's testimony he changed his residence to the Boulevard Address, Candidate submitted tax form 1099 with Trinity Congregational Church as the payer (Shimkus Ex. 1); W-2 Wage and Tax Statement for 2007 as being employed by the House of Representatives (Shimkus Ex. 2); voter registration form (Shimkus Ex. 3-4); and Candidate's employee contact information (Shimkus Ex. 8).

working full-time for the Democratic Communications Office, but stated that she is now working for Member Services of the Democratic Caucus in Harrisburg.

Candidate testified that November and December of 2007 were busy months for members of the General Assembly. Candidate testified that he spent a good portion of time working in Harrisburg and living out of the trunk of his car and various Harrisburg area hotel rooms. When questioned as to how often he stayed at the Boulevard Address, Candidate initially testified that he stayed there a couple times a week and later testified that he stayed there once a week. Candidate could not remember exactly where he was on specific dates when questioned. Candidate did testify, however, that in mid-December 2007, he was injured while he was shoveling snow when he fell and hurt his knee and head, causing a concussion and sinus problems. Candidate testified that one week after this fall, while working on his new home at the Varsity Address, he fell again and sustained a second concussion. Candidate went on to testify that he was hospitalized for four days and, once released, could not stay by himself because he was a fall risk. Candidate testified that, because of his condition, he moved to his home at the Varsity Address with Ms. Prutisto for four to six weeks from December 17, 2007 until nearly the end of January. Candidate testified that, during the last week of January, he was away from the area on a week long retreat. Candidate testified that upon returning from the retreat, he moved into the Boulevard Address just for the month of February and had always intended to return to the Boulevard Address.

Candidate testified that he moved from the Boulevard Address to the Varsity Address on February 27, 2008, even though he was not yet married to Ms. Prutisto.

When questioned as to why he moved to the Varsity Address, thereby reversing his intention not to live with Ms. Prutisto before being married, Candidate testified that he moved to the Varsity Address to protect his children from political machinations and alleged attacks upon him and his family, and that he would "let them take their best shot."⁶

Candidate also submitted testimony regarding Pilcheskys' assertion that Candidate's SOFI is defective for failing to list other professions and the fact that he was self-employed. Candidate testified that Block No. 6, requesting occupation or profession, only reflected that he is a member of the General Assembly. However, Candidate admitted that he is also a pastor for Trinity Congregational Church, a duty which he performs on a part-time basis. Candidate stated that, although he did not indicate he was a pastor, he did indicate that Trinity Congregational Church was a source of income in Block No. 10. Candidate testified that he did not indicate in Block No. 6 that he was a licensed insurance agent because he did not consider his license to be active. He also testified that he did not consider an insurance agent to be his profession because he did not use his insurance license in 2007. Finally, with regard to Block No. 13, requesting employment in any other business, Candidate testified that he was not self-employed as a pastor because Trinity Congregational Church was his employer. Candidate explained that a 1099/W2 tax form was not attached to the SOFI reflecting his income from Trinity Congregational Church because an employee at

⁶ Specifically, Candidate testified that, recently, unknown individuals have been spying at the Boulevard Address and the Varsity Address and that a window was broken at the Varsity Address from the inside of the home.

the Ethics Commission detached the form and gave it back to Candidate indicating that it did not need to be submitted.

Candidate's son-in-law, Mr. Decker, also testified regarding Candidate's residency. Mr. Decker testified that Candidate "sometimes stayed" at the Boulevard Address.⁷ Although Candidate never signed a lease for, or paid rent on, the Boulevard Address, Mr. Decker claimed that Candidate did pay utility bills, which were in Mr. Decker's name. Upon being questioned, Mr. Decker was unable to remember which utilities were still turned on at the Boulevard address. Mr. Decker testified that he and his wife moved out of the Boulevard Address sometime in July 2007 and put the home up for sale at that time. The home was under contract in October 2007, pending sale, when the sale fell through. Subsequently, the home went back up for sale in October 2007. Mr. Decker testified that when the home went back up for sale, the contract for sale with the listing agent stated that the listing agent must give 24 hours' notice before showing the home. According to Mr. Decker, this was done to give sufficient notice to Candidate. Mr. Decker testified that, in mid-January 2008, he signed a one-year lease agreement with Ms. Coar, which was to begin on March 1, 2008. Ms. Coar gave him a down payment in January, which Mr. Decker accepted and deposited. Mr. Decker gave Ms. Coar the combination to the lockbox for the home at the Boulevard Address, in mid-January, so that she could enter the home at will to

⁷ We note that although Candidate's attorney attempted during questioning to get Mr. Decker to say that Candidate "resided" at the Boulevard Address, Mr. Decker had trouble saying "reside" and appeared more comfortable saying that Candidate "stayed" at the Boulevard Address.