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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SIGITAS RAULINAITIS,)	CASE NO. CV 13-2605MAN
)	
Plaintiff,)	PLAINTIFF'S RESPONSE RE
)	MOTION FOR SUMMARY
vs.)	JUDGMENT
)	
VENTURA COUNTY SHERIFFS)	
DEPARTMENT,)	
Defendants.)	
)	
)	
)	
)	

Defendant does not dispute that the Statute in question states one must be a "resident" of the county to which one applies for a concealed weapons permit, or that Plaintiff meets the definition of resident as set forth by California Supreme Court. In fact, Defendants own evidence shows that Plaintiff is also a domiciliary and sole legal resident of Ventura County due to his DMV & Voter registration status and his recorded personal interview clearly showing he moved to Ventura and declared it his fixed and permanent Domicile, not just residence. Instead, the Defendant contends that because he was observed leaving a different home one morning, he must be lying and is subject to criminal prosecution, therefore failing to meet the Sheriffs discretionary definition of apparently denying a permit to anyone observed spending a night outside of his County

1 Put simply, the Sheriffs' duty here is ministerial and he cannot supplant his
 2 own discretion or personal feelings with the clearly stated legislative intent.
 3 Moreover, had the legislature meant to say domicile, then they could have done so as
 4 the statute in question was enacted after the Supreme Court made clear that people
 5 can be residents of more than one County, though, such analysis is not necessary as
 6 Defendants own evidence establishes Plaintiff is both a resident and domiciliary of
 7 Ventura:

8
 9 The question is ultimately one of legislative intent, as "[o]ur fundamental task
 10 in construing a statute is to ascertain the intent of the lawmakers so as to
 11 effectuate the purpose of the statute." (*Day v. City of Fontana* (2001) 25
 12 Cal.4th 268, 272, 105 Cal.Rptr.2d 457, 19 P.3d 1196.) In this search for what
 13 the Legislature meant, "[t]he statutory language itself is the most reliable
 14 indicator, so we start with the statute's words, assigning them their usual and
 15 ordinary meanings, and construing them in context. If the words themselves are
 16 not ambiguous, we presume the Legislature meant what it said, and the statute's
 17 plain meaning governs.

18 Martinez v. Combs (2010) 49 Cal.4th 35, 51

19 Penal Code § 26150 was added by Stats.2010, c. 711 (S.B.1080), § 6, operative
 20 Jan. 1, 2012. Pen. Code, § 26150. Smith v. Smith, was decided in 1955 and clearly
 21 stated "whereas 'residence' connotes any factual place of abode of some permanency,
 22 more than a mere temporary sojourn." and "a person may have only one domicile at a
 23 given time, but he may have more than one physical residence separate from his
 24 domicile, and at the same time." Smith v. Smith (1955) 45 Cal.2d 235, 239.

25 Clearly, the Sheriffs' definition goes far beyond the legislative intent and the
 26 Supreme Court ruling and seeks to amend the law to serve his own purpose requiring,
 27 what is essentially, proof of domicile;

28 The County in which a person spends most of his or her time and conducts
 most of his or her activities.

1 Plaintiff submits that the Sheriffs' act of exceeding the clear statement of the
2 law violates his second amendment rights insofar that a permit granted under Penal
3 Code § 26150 is the only way Plaintiff can exercise his second amendment rights
4 outside of the home in California.

5 Defendants also clearly misread Penal Code § 26150 suggesting that all of the
6 elements are required, when a simple reading of the statute shows there are two
7 separate grounds for the issuance of a permit:

8 (3) The applicant is a resident of the county or a city within the county, or the
9 applicant's principal place of employment or business is in the county or a city
10 within the county and the applicant spends a substantial period of time in that
11 place of employment or business.

12 Pen. Code, § 26150 (Emphasis added)

13 For the first category, Plaintiff need only be a resident of the County. The
14 Second category does not require residency, but does require proof of the criteria set
15 forth therein. Defendant admits this fact at Page 2, line 9, stating that the applicant
16 need only be a resident of the County, though Defendant's analysis of Plaintiff's
17 residency is through the prism of the second basis (employment/business) , not the
18 first (simple residency). Defendant mistakenly asserts that the first category requires
19 some calculus of time spent within the county, whereas only the second category
20 requires this, the first category simply requires "residency" . Regardless, Plaintiff
21 does not assert the second exception for the simple reason that under California law,
22 he is a resident and domiciliary of the County and the observation of a Deputy
23 regarding where he was seen at any particular time does not change the law, or make
24 the Sheriffs' decision any less arbitrary. Smith v. Smith (1955) 45 Cal.2d 235, 239.

1 Moreover, the law is a little confusing, because Government Code Section 244
2 says residence, but the Courts have actually determined that as used therein, it refers
3 to Domicile, not Residence:

4 Because the term “residence” in section 244 has for many years been construed
5 by the courts of this state to mean domicile and because the rules set forth in
6 section 244 are basic rules generally recognized for determining domicile, even
7 if the trial court *had* specifically relied upon section 244 it still would have
8 interpreted “residing” in Government Code section 61200 to mean
9 “domiciled.”

10 Fenton v. Board of Directors (1984) 156 Cal.App.3d 1107, 1114

11 Plaintiff claims to be a resident of only one County, Ventura, and he meets the
12 legal definition of residency as set forth by the Supreme Court. Defendant has not
13 disputed any of the facts contained in their own interview or in Plaintiffs’ declaration
14 submitted with the instant motion. As such, even taking into account Government
15 Code section 244, Plaintiff has clearly declared that once he moved to Ventura, he
16 opted to designate Ventura as his residence and thereafter sought to exercise his
17 fundamental constitutional rights as a citizen of the United States, a domiciliary of
18 California and a resident of Ventura County.

19 Arguendo, it would be an interesting defense for the Plaintiff to refuse to serve
20 on a Ventura County jury based on the Defendant’s residency analysis. Surely such a
21 defense would not succeed as the Plaintiff has availed himself of the protections and
22 civic duties that run with his declared residency. Further, in a situation such as the
23 Plaintiff’s, wherein he owns, maintains, and frequents residential properties in 3
24 counties, one cannot envision a scheme where anyone but the Plaintiff himself can
25 decide which county he shall designate as the county of his “residence”.

26 A scenario under which the Plaintiff would need to plead his case to two or
27 more county governments; and given the various attitudes those governments could
28 have on this issue, the possibility could exist where no county accepts the Plaintiffs
choice as his county of residence or perhaps all of them would accept it. Would then
the plaintiff be subject to jury duty service in all of those counties? The only scenario

1 that operates with any finality is that the Plaintiff is the only party that can possibly
 2 make this choice where one utilizes homes in multiple counties as mandated by
 3 California law

4 As shown from defendants own exhibits, Plaintiff has moved to his new home
 5 in Ventura with his wife staying in Santa Clarita while that property is being worked
 6 on and prepared for rental and then she will move to Ventura with him also becoming
 7 a resident. (Exhibit C, Page 19). Plaintiffs two children have recently moved out and
 8 gone to college thus prompting a change in living arrangements and needs, leading to
 9 their decision to downsize and move to Ventura and rent out the Santa Clarita home
 10 after one of their sons completes his studies at CSUCI and moves out from the shared
 11 Oxnard home. All of these actions are consistent with Plaintiffs move and his
 12 decision to register to vote and declaring Ventura not only his residence, but also his
 13 domicile, when he changed his permanent and legal address to Ventura County with
 14 the department of motor vehicles. (Exhibit C at Page 22).

15 One's intent can be determined by one's acts. (*Chapman v. Superior Court*
 16 (1958) 162 Cal.App.2d 421, 426, 328 P.2d 23.) It is also clear, however, that
 17 the declarations of the party involved must be taken into consideration when
 18 the issue of domicile is involved. (*In re Marriage of Leff* (1972) 25 Cal.App.3d
 19 630, 642, 102 Cal.Rptr. 195; *Estate of Phillips, supra*, 269 Cal.App.2d 656,
 20 659, 75 Cal.Rptr. 301.) It is also established that the application of these factors
 21 in determining “ [t]he question of residence or domicile is a mixed question of
 22 law and fact, and the determination of the trial court, upon conflicting
 23 evidence, is conclusive upon this court. [Citations.]’ [Citations.]” (*Estate of*
 24 *Phillips, supra*, 269 Cal.App.2d at pp. 659–660, 75 Cal.Rptr. 301.) Therefore,
 25 the issue raised by appellant is in reality a substantial evidence question.
 26 In the instant case, there is ample evidence to support the trial court's
 27 conclusion on this issue. The evidence clearly established that when respondent
 28 moved to Big Oak Flat in 1949 it became her domicile. Thereafter, her intent
 which was manifested by her declarations at trial, and her actions as manifested
 by her consistent listing of the Big Oak Flat address as her residence, and the
 fact that she consistently returned to the property *1118 to check on its **396
 welfare all support the trial court's conclusion that respondent's domicile was in
 fact her Big Oak Flat residence. There being substantial evidence to support the
 trial court's conclusion on this issue, appellant's contentions must fail.
Fenton v. Board of Directors (1984) 156 Cal.App.3d 1107, 1117-18

1 More time is not needed to consider the application because Defendants have
2 conducted a detailed background investigation, and have had all of the information
3 necessary to make a determination if Plaintiff failed to meet any other criteria for an
4 application for a permit. Deputy Gonzalez, who claims to have budget problems
5 arranged for two full days of surveillance and his attorney had ample time to present
6 any alternative grounds to the Court upon which the denial could be based.

7 There is no forfeiture because the Defendant has not even made a minimal
8 effort at showing there could be an alternative basis for denial, or explained what they
9 would do that they have not already done that would prohibit Plaintiff from being
10 issued a concealed weapons permit. Defendant has used up the allotted statutory
11 time; denied the application in violation of Plaintiff rights, and then stipulated to
12 present this matter to the Court. If there were a genuine alternative basis to deny the
13 motion, then defendants could have conducted discovery, or even simply offered
14 some good faith representation as to a concern or basis they had for denial of the
15 application other than residency.

16 It is that failure to exercise due care that brings them here today as there is no
17 doubt Plaintiff, a licensed attorney, County resident and lawful gun owner is not a
18 recently released armed robber as defendant suggests. In fact, a review of the
19 interview conducted and attached shows that a detailed background investigation was
20 conducted into both issues of good cause and moral character and as Defendant urges
21 common sense analysis in lieu of clearly legal analysis, common sense dictates that
22 Defendants have had ample time and opportunity to make even a simple offer of
23 proof that they had some concern about either. Additionally, Plaintiff has submitted
24 to the fingerprinting process that is a part of the Defendant's procedure for approving
25 applications and has ostensibly passed the D.O.J. background check evidenced by the
26 fact that all of Defendant's communications heretofore are silent on this issue, nor
27 was Plaintiff's application denied on this basis.

1 Defendants own evidence shows that Plaintiff is a resident of Ventura County,
2 is registered to vote in Ventura County and his legal address with the state of
3 California according to the DMV is in Ventura County. Because Plaintiff owns
4 residences in which he spends time in other counties, travels, or sleeps elsewhere
5 does not change the law or his legal status, despite Defendants threat of criminal
6 prosecution designed to discourage Plaintiff from exercising his fundamental rights.
7 (Exhibit C at Page 23).

8 Therefore Plaintiff prays for the courts declaration that he is in fact a resident
9 of Ventura County for the purposes of his CCW application and that Defendants
10 denial of his permit application was a violation of his fundamental Constitutional
11 Rights under the Second Amendment.

12 June 19, 2013

/s/

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14 Jonathan W. Birdt
15 Counsel for Plaintiff
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