

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Paul Wikstrom,

Case No.: 62-CV-24-7378
The Honorable Leonardo Castro

Contestant,

v.

Curtis Johnson,

**AMENDED ORDER
MOTION TO DISMISS, MOTION FOR
DEFAULT, AND MOTION *IN LIMINE***

Contestee.

¹The above-entitled matter came before the Honorable Leonardo Castro for a hearing on Contestee's Motion to Dismiss, Contestant's Motion for Default, and Contestant's Motion *in Limine* on December 3, 2024. Nicholas Morgan, Esq., appeared on behalf of Contestant. Rachel Kitze Collins, Esq., Charles Nauen, Esq., and David Zoll, Esq., appeared on behalf of Contestee. Based upon the submission of the parties, the arguments of counsel, and all the files, records, and proceedings herein, the Court issues the following Order and memorandum:

IT IS HEREBY ORDERED:

1. Contestee's Motion to Dismiss is **DENIED**.
2. Contestant's Motion for Default Judgment is **DENIED**.
3. Contestant's Motion *in Limine* is **DENIED**.
4. Contestee's Answer is deemed to be timely filed.
5. Contestee will not be precluded from introducing evidence in defense of any and all claims alleged by Contestant.
6. The attached memorandum is incorporated.

SO ORDERED.

Dated: December 7, 2024

Leonardo Castro
District Court Judge

¹ This Amended Order rectifies a scrivener's error in the original Order, issued on December 4, 2024; on page 6, a reference to "Minn. Stat. § 204B.22" has been corrected to read, "Minn. Stat. § 204B.44."

MEMORANDUM

Factual Allegations²

1. Curtis Johnson, Contestee, owns a house in Little Canada, Minnesota, where he has historically resided with his family. (Compl. ¶ 9.) That house is outside the boundaries of State House of Representatives District 40B. (*Id.*)

2. In January 2024, Mr. Johnson registered a political committee in support of his race for the Minnesota State House of Representatives for District 40B. (*Id.* ¶ 8.)

3. Mr. Johnson has stated that in March 2024, he signed a lease for Apartment 103A at Rosedale Estates, 2735 Rice Street in Roseville, MN. (Compl. ¶ 10; Contestee’s Mot. Dismiss.)³ That apartment is within the House District 40B boundary. (Compl. ¶ 10.)

4. Mr. Johnson registered to be on the Minnesota State primary ballot and filed his affidavit of candidacy under Minn. Stat. § 204B.06, subd. 1 on May 21, 2024. (*Id.* ¶ 13.)

5. While door knocking as a candidate for House District 40B, Contestant, Paul Wikstrom, “encountered former Roseville City Council Member Robert Willmus,” who claimed “that [Curtis Johnson] doesn’t live in the district and leased the Rice Street apartment in order to make it appear that he lived in the district.” (Compl. ¶ 14.)

6. In an article by the Pioneer Press on October 28, 2024, Mr. Wikstrom is quoted as saying that “he suspected since May that Johnson didn’t live in the Rice Street apartment complex on his candidacy paperwork, but decided to look into it more” upon a conversation with a voter. (Contestant’s Ex. 5 at 4.)

² For the purposes of this motion only, this Court takes the allegations of the Complaint as true. *See Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

³ The Court cites to the Contestee’s Memorandum in Support of his Motion to Dismiss generally because there are no page numbers included in the memorandum.

7. “Beginning on August 31, 2024, members of the Paul Wikstrom campaign team volunteered their time to determine Johnson’s physical whereabouts as to his residency, keeping records of Johnson’s movements.” (*Id.* ¶ 15.) The team observed “comings and goings” from Mr. Johnson’s Little Canada home and Roseville apartment, took many photographs of both locations, and conducted other various investigative endeavors over the course of many weeks. (*See id.* ¶¶ 15–44.)

8. The general election for the Minnesota House of Representatives District 40B occurred on November 5, 2024. (*See id.* ¶ 56.)

9. The canvass of the general election for House District 40B was completed on November 13, 2024. (*See id.* ¶ 56.)

10. On November 20, 2024, Mr. Wikstrom filed and served a “Notice of Election Contest Under Minnesota Statute 209.02,” along with various affidavits and exhibits. That Complaint alleges that the evidence gathered by Mr. Wikstrom’s team demonstrates that Mr. Johnson “resided every day from his filing of the affidavit of candidacy to October 15, 2024 . . . at his Little Canada home.” (Compl. ¶ 58.)

11. On November 27, Mr. Johnson filed and served a Notice of Motion and Motion to Dismiss the election contest.

12. Mr. Johnson moved to dismiss the election contest on two bases: first, on the basis of laches, asserting that Mr. Wikstrom waited too long to bring the contest after developing a suspicion about Mr. Johnson’s residency; and second, because a residency-based challenge is an inappropriate basis for a challenge occurring after the general election.

13. Mr. Wikstrom, in turn, moved for a default judgment based on the fact that Mr. Johnson did not file an answer required under Minn. Stat. § 209.03, subdivision 2. Mr. Wikstrom

also filed a motion *in limine* to exclude evidence “regarding Contestee maintaining residence the thirty days prior to the general election” as not relevant because the claim under Minn. Stat. § 204B.06, subd. 1(3) was waived due to a lack of an answer from Mr. Johnson.

14. At a hearing on December 3, 2024, the Court heard argument on Contestee’s Motion to Dismiss, and Contestant’s Motion for Default and Motion *in Limine*. At that hearing, the Court ordered Mr. Johnson to file both an answer and a response to Mr. Wikstrom’s motions by the end of that day. Mr. Johnson timely filed both.

I. Contestee’s Motion to Dismiss

a. Motion to Dismiss Standard

“Any eligible voter, including a candidate, may contest” the election of a person “for whom the voter had the right to vote if that person is declared nominated or elected” to a legislative office. Minn. Stat. § 209.02, subd. 1. Such a contest may be brought, among other reasons, “on the grounds of deliberate, serious, and material violations of the Minnesota Election Law.” *Id.*

“A contestee may move to dismiss under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted to challenge the legal sufficiency of the grounds on which the election contest is based.” *Bergstrom v. McEwen*, 960 N.W.2d 556, 563 (Minn. 2021) (citations omitted).

In considering a motion to dismiss pursuant to Minn. R. Civ. P. 12.02(e), the court looks only at the pleadings, accepts the facts alleged in the complaint as true, and construes all reasonable inferences from the facts alleged in favor of the nonmoving party. *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 325 (Minn. 2019). However, the court does not accept any legal conclusions included in the complaint. *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010). These general pleading standards hold true for an election contest, which must also “specify the grounds on which

the contest will be made.” *Bergstrom*, 960 N.W.2d at 563 (citing Minn. Stat. § 209.021, subd. 1).

b. Laches

Laches is an equitable doctrine, meant to “prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay.” *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002). The relevant inquiry in a laches analysis is whether there was an “unreasonable delay” in the petitioner asserting a “known right,” which in turn results in “prejudice to others.” *Id.* at 170 (quoting *Fetsch v. Holm*, 52 N.W.2d 113, 115 (Minn. 1962)).

When evaluating whether a delay was unreasonable in residency challenges, some delay in filing may be excused “because the challenger to a residency claim bears the burden of proof.” *Monaghan v. Simon*, 888 N.W.2d 324 (Minn. 2016) (citing *Moe v. Alsop*, 180 N.W.2d 255, 260 (1970)). Accordingly, in residency challenges, there is a tension between diligently avoiding unreasonable delay and taking enough time to conduct an adequate investigation. *See id.* at 330.

The crucial issue in a laches analysis is that of prejudice; if the prejudice from a delay is not substantial enough to dismiss a challenge based on laches, the court need not decide whether a delay was unreasonable. *See id.*

Minnesota Statute § 204B.13, subdivision 2, provides that:

[I]n the case of a vacancy in nomination for a partisan office that occurs after the 79th day before the general election, the general election ballot shall remain unchanged, but the county and state canvassing board must not certify the vote totals for that office from the general election, and the office must be filled with a special election.

Such a special election shall take place on the second Tuesday of the following February.

Id. at subd. 7.

The question in this case, then, is this: did Mr. Wikstrom unreasonably delay bringing a residency-based challenge—post-general election, under Minn. Stat. § 209.02, rather than pre-

general election under Minn. Stat. § 204B.44—and if so, did that delay cause prejudice to others sufficient for dismissal on the basis of laches?

In this case, the Complaint alleges that Mr. Wikstrom first initiated an investigation into Mr. Johnson’s residency only after an encounter with a voter while door knocking in the district. In his affidavit, Mr. Wikstrom states that this encounter occurs “[o]n or about September 7th, 2024.” The Complaint states that “on August 31, 2024,” Mr. Wikstrom’s team began investigating Mr. Johnson’s residency. A Pioneer Press article, published on October 28, 2024—and filed as an exhibit by Mr. Wikstrom—states that Mr. Wikstrom said that he had “suspected since May” of 2024 that Mr. Johnson did not live in District 40B, but only decided to “look into” it further upon a conversation with the voter. It is not entirely clear, therefore, when exactly Mr. Wikstrom first had a “known right.”

Mr. Johnson asserts that the Minnesota Supreme Court’s decision in *Monaghan v. Simon* established that a petitioner’s “known right” to challenge a candidate’s eligibility based on residency begins upon the candidate’s filing of an affidavit of candidacy; this assertion misreads *Monaghan v. Simon*. 888 N.W.2d 324 (Minn. 2016).

In *Monaghan*, the court stated that there “*could not be* a known right” to challenge the contestant’s residency until the affidavit of residency was filed. *Id.* at 330 (emphasis added). This analysis was in the context of suspicion surrounding the candidate’s residency that allegedly arose *before* the relevant candidate had filed an affidavit of candidacy. *See id.* Therefore, rather than establishing—as Mr. Johnson contends—that a timer on any potential petitioner’s right to a residency-based claim begins counting down upon a contestant’s affidavit of candidacy, the court in *Monaghan* established that if a petitioner had knowledge of a potential residency-based challenge prior to the affidavit of candidacy being filed, their known right to challenge that

contestant's eligibility only begins upon the filing of the affidavit. *See id.*

In this case, if Mr. Wikstrom had reason to suspect Mr. Johnson did not live in the district prior to Mr. Johnson filed his affidavit of candidacy on May 21, 2024, his known right to bring a residency-based challenge would have begun on May 21, 2024, upon Mr. Johnson's filing.

Under the Minnesota Supreme Court's analysis in *Monaghan*, this Court struggles to see how Mr. Wikstrom's case—or any other residency-based challenge, for that matter—could be dismissed on the basis of laches.

The petitioner in *Monaghan* “waited approximately 2 months” after the date the relevant candidate filed their affidavit of candidacy on May 31, 2016, to bring a petition under Minn. Stat. § 204B.44. *Id.* at 330. The court reasoned that “some of that delay may be excused because the challenger to a residency claim bears the burden of proof,” but also acknowledged that a lack of investigation in June on the petitioner's part could be unreasonable. *See id.* Nevertheless, the court refused to decide whether the petitioner's delay was unreasonable because the court's determination on the contestant's eligibility came down on September 8, 2016, within the 79-day period outlined in 204B.13 which therefore triggered the remedy of a special February election. *Id.* The court concluded that “[e]ven if the petitioner unreasonably delayed in bringing the petition, the availability of the remedy [of a February special election] in Minn. Stat. § 204B.13 mitigates any prejudice,” and declined to dismiss the challenge on the basis of laches. *Id.* at 331.

The petitioner in *Monaghan* brought a challenge under 204B.13 significantly sooner than Mr. Wikstrom would have in this case (considering that his investigation spanned from August 31, 2024 to October 2024), and the court in that case still declined to evaluate unreasonableness because the applicable remedy under Minn. Stat. § 204B.13 eliminated prejudice to others. This was true even though, within the timeline of *Monaghan*, the petitioner's challenge and the

evidentiary hearing occurred *outside* of the 79-day period leading up to the general election, because the Minnesota Supreme Court’s determination of the candidate’s ineligibility occurred within that 79-day period.

Even if, *arguendo*, Mr. Wikstrom had a suspicion about Mr. Johnson’s residency upon the latter’s filing of his affidavit of candidacy on May 21, 2024—and therefore would have had a known right to bring the challenge— it is impossible to say with certainty whether an appropriate investigative period, an evidentiary hearing based on a 204B.44 claim, *and* a determination from the Minnesota Supreme Court could have occurred before that 79-day period began on August 18, 2024.

Therefore, even when viewing the facts in the light most favorable to Mr. Johnson—which is the opposite of this Court’s duty at the motion to dismiss stage—it seems impossible that a laches claim could succeed in this case. Whether Mr. Wikstrom’s delay was reasonable or unreasonable, the remedy under a Section 204B.44 challenge in this case would have been the same as the remedy under his Section 209.02 challenge: a special election in February of 2025. Like in *Monaghan*, the remedy provided in Minn. Stat. § 204B.13 mitigates any prejudice resulting from Mr. Wikstrom’s delay in bringing a residency-based challenge. Therefore, this Court declines to dismiss the challenge on the basis of laches.

c. Jurisdiction

Mr. Johnson also contends that the contest should be dismissed because the eligibility of a candidate is an “improper basis for an election contest.” (Contestee’s Mem. Mot. Dismiss.) His argument, in sum, is this: because Minnesota Statute section 204B.44 provides an avenue by which petitioners can challenge the ineligibility of candidates, and because there is no caselaw dealing

with a challenge under Minnesota Statute 209.02 based on residency, such a challenge is improper.

Unless the statute specifically says so, it defies logic to say that by creating one avenue for a particular challenge, the Legislature meant to exclude all other avenues. It is true that Mr. Wikstrom could have challenged Mr. Johnson's eligibility based on residency under a Minn. Stat. § 244B.44 claim. It is also true that Minn. Stat. § 209.02 allows election contests based on "the grounds of deliberate, serious, and material violations of Minnesota Election Law."

The Minnesota Constitution requires that "representatives shall be qualified voters of the state, and shall have resided . . . six months immediately preceding the election in the district from which elected." Minn. Const. art. IV, § 6. Minnesota election law also requires a candidate to confirm that they ". . . will have maintained residence in the district from which the candidate seeks election for 30 days before the general election." Minn. Stat. § 204B.06, subd. 1(3).

Mr. Wikstrom alleges that Mr. Johnson did not live in his Roseville Apartment for the six months leading up to the election. Mr. Wikstrom's claim is therefore based not only on a violation of statutory election law, but also of a constitutional requirement. If substantiated by evidence, this claim means that Mr. Johnson intentionally deceived the voters of House District 40B and disregarded the integrity of the democratic process. This no doubt qualifies as a "deliberate, serious, and material violation[] of Minnesota Election Law" under Minn. Stat. § 209.02. The fact that Mr. Wikstrom *could have* brought the claim under Minn. Stat. § 204B.44 prior to the general election does not preclude him from bringing it under Minn. Stat. § 209.02 now.

Therefore, Mr. Johnson's motion to dismiss the contest for lack of jurisdiction is denied.

II. Contestant's Motion for Default Judgment & Motion *in Limine*

On December 2, 2024, Mr. Wikstrom filed a Motion for Default Judgment and a Motion

in Limine. The motions were heard on December 3, 2024. Mr. Wikstrom argued that Mr. Johnson's failure to file an Answer to the Notice of Election Contest as required by Minn. Stat. § 209.03, was fatal to Mr. Johnson's defense because the statutory mandate has no exceptions and requires that default judgment be entered in Mr. Wikstrom's favor. In the alternative, Mr. Wikstrom moved this Court for a partial default judgment, arguing that because Mr. Johnson did not address the alleged violation and claim under Minn. Stat. § 204B.06, subd. 1(3), in his Motion to Dismiss, Mr. Johnson has waived any challenge to the claim.

In his Motion *in Limine*, Mr. Wikstrom argues that if the default judgment is denied, Mr. Johnson should be prohibited from filing an Answer and prohibited from introducing any other evidence seeking to challenge Mr. Wikstrom's claims regarding violations of Minn. Stat. § 204B.06, subd. 1(3). Instead, the hearing should solely focus on Mr. Wikstrom's claim, as the Contestant, that Mr. Johnson violated Minn. Stat. § 204B.06, subd. 4a(4), limiting Mr. Johnson to addressing that single claim.

At the conclusion of the hearing, this Court requested that Mr. Johnson file, by the end of the day, his response to Mr. Wikstrom's Motion for Default Judgment and Motion *in Limine*. Additionally, the Court requested that Mr. Johnson file his Answer to the Notice of Election Contest by end of day. Mr. Johnson complied with the Court's requests, and timely filed the responses and Answer.

a. Default Judgment

Default judgements under Minnesota Rule of Civil Procedure 55 are permitted, "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute." The Minnesota Court of Appeals has held that "otherwise defend" includes filing a Rule 12 or other defensive motion.

Black v. Rimmer, 700 N.W.2d 521, 525 (Minn. Ct. App. 2005).

Under Minn. Stat. § 209.03 subd. 2:

For all other election contests⁴ the contestee’s answer to the notice of contest must be filed and served on the contestant. The answer must so far as practicable conform to the rules for pleading in civil actions . . . If the contest relates to a general or special election, service of the answer must be made within seven days after service of the notice of contest. The contestee’s answer must be served in the same manner as the answer in a civil action or in the manner the court may order. Any other notices must be served in the manner and within the times the court may order.

Although an election contest is a “special proceeding,” the Rules of Civil Procedure govern unless those rules are inconsistent with the procedures in the statute. *Bergstrom v. McEwen*, 960 N.W.2d 556, 563 (Minn. 2021) (quoting *Franson v. Carlson*, 137 N.W.2d 835, 839 (Minn 1965)). Mr. Wikstrom argues that because the statute requires the filing of an answer within seven days, the rules pertaining to filing a motion to dismiss in lieu of answer cannot apply. This Court disagrees. Mr. Johnson filed a motion to dismiss Mr. Wikstrom’s election contest on the basis that it was barred by laches and improper under the election contest laws. The Minnesota Supreme Court has specifically stated that contestees may move to dismiss to challenge the legal sufficiency of an election contest. *Bergstrom v. McEwen*, 960 N.W.2d 556, 562–63 (Minn. 2021). The distinction between the rule and the statute, as it relates to service of an answer, is simply the expedited procedure contained in the Statute, i.e., 7 days vs. 21 days. *See* Rule of Civil Procedure 12.01. The rules of civil procedure and the statute are not inconsistent as it relates to filing a motion to dismiss in lieu of an answer. Mr. Wikstrom’s argument that Chapter 209’s use of the word “answer” forecloses the ability of a contestee to move to dismiss in lieu of an answer and prohibits the Court from deciding threshold issues prior to an evidentiary hearing, has no basis in the law. To accept this as true, this Court would have to conclude that only the procedural rules contained

⁴ Refers to “all other contests” other than vote count. *See* Minn. Stat. § 209.03 subd.1.

in the statute apply to election cases, which, as previously noted, is inconsistent with prior precedent. *See Bergstrom*, 960 N.W.2d at 563.

Mr. Johnson filed his motion to dismiss seven days after the Notice of Election Contest was filed and included with the motion a detailed declaration that responded to the substance of the factual allegations made in the Contest, putting Mr. Wikstrom on notice of Mr. Johnson's defenses in this matter.

Although the declaration does not serve as a substitute for an answer, this Court finds no prejudice to Mr. Wikstrom because the declaration contains substantially more factual information than an answer would have produced. Additionally, Mr. Wikstrom's argument that failing to file an answer deprived him of Mr. Johnson's witnesses and exhibits is flawed. That information would not have been provided in an answer. Moreover, this Court ordered that witness and exhibit lists would be exchanged no later than December 3, 2024; Mr. Wikstrom did not object to this timeline. In short, Mr. Johnson has "otherwise defended" this action and there is no prejudice to Mr. Wikstrom. Therefore, the motion for a default judgment is denied in its entirety.

b. Motion in Limine

Mr. Wikstrom moves this Court to grant his Motion *in Limine* requesting that at the evidentiary hearing to be held on thursday, December 5, 2024, Mr. Johnson be prohibited from introducing any evidence seeking to challenge Mr. Wikstrom's claims regarding violations of Minn. Stat. § 204B.06, subd. 1(3). He argues that any evidence produced by Mr. Johnson that he maintained residence in the district in the thirty days leading up to the general election is not relevant to the evidentiary hearing because the claim was waived due to a lack of answer. Mr. Wikstrom suggests the hearing should solely focus on his claim that Mr. Johnson violated Minn.

Stat. § 204B.06, subd. 4a(4), limiting Mr. Johnson to addressing that single claim.

The question of whether to admit or exclude evidence is within the district court's discretion. *In re Conservatorship of Smith*, 655 N.W.2d 814, 820 (Minn. Ct. App. 2003) (Citing *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn.1997)). “Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Minn. R. Evid. 403.

Mr. Wikstrom must prove by clear and convincing evidence that Mr. Johnson failed to reside in the district for the six months preceding the election. *See Monaghan v. Simon*, 888 N.W.2d 324, 331 (Minn. 2016); Minn. Stat. § 204B.06, subd. 4a(4). Mr. Wikstrom's motion *in limine* seeks to prevent the admission of evidence regarding Mr. Johnson's residency status during the 30 days prior to the general election, because Mr. Johnson's motion to dismiss did not specifically cite Minn. Stat. § 204B.06, subd. 1(3). Chapter 204B.06, subd. 1(3) prescribes the form that the affidavit of candidacy shall take, including the statement that the candidate “will have maintained residence in the district from which the candidate seeks election for 30 days before the general election.”

Review of Mr. Johnson's motion to dismiss and declaration clearly show that he addressed his residency status during the entire six-month period prior to the general election. The six-months prior to the general election requirement is the constitutional period of time that a prospective legislator must maintain residency in the district they seek to represent. *See Minn.*

Const. Art. IV, § 6. As counsel for Mr. Johnson argued at the hearing, the thirty days mentioned in the affidavit of candidacy are subsumed within those six months.

This Court finds no logical, procedural, or evidentiary reason to exclude evidence regarding the last 30 days before the general election. It is clearly relevant to the claims being made and there is no chance that the Court will be confused by the inclusion of such evidence. To grant such a motion would be akin to granting Mr. Wikstrom a partial default, which this Court has already rejected. The evidence is relevant to demonstrating that Mr. Johnson resided in the district throughout the entire six-month period prior to the general election. Therefore, the motion *in limine* is denied.

LC