Spouses Registered in Different Precincts

Bell v. Marinko (James G. Carr, N.D. Ohio 3:02-cv-7204)

With a primary election eighteen days away, a voter filed a federal complaint seeking injunctive relief against the county's hearing a challenge to his voter registration on residency grounds. The district court determined that challenge procedures did not violate the National Voter Registration Act, but there was a probable equal-protection violation by a statutory provision raising a question of residence for spouses not separated and not registered in the same precinct. The court temporarily enjoined application of that statutory provision. After the election, the court heard summary-judgment motions on an amended complaint adding plaintiffs whose residency challenges were successful; the original plaintiff prevailed in his challenge. The district court dismissed the action, and the court of appeals affirmed the dismissal.

Subject: Nullifying registrations. *Topics:* Registration challenges; equal protection; National Voter Registration Act; primary election.

On April 19, 2002, an Ohio voter filed a federal complaint in the Northern District of Ohio's Toledo courthouse against Erie County's board of elections and its members, claiming a violation of the National Voter Registration Act—commonly referred to as the Motor Voter Act—and other laws in the board's pursuing a challenge to the residency of the plaintiff and eighty-eight others, including an investigation of private household matters.[1] The plaintiff claimed that he and his wife were each registered to vote in the family residence nearer each spouse's place of employment.[2] Three days later, the plaintiff moved for a temporary restraining order and a preliminary injunction.[3]

Judge James G. Carr held a teleconference with the parties and learned that action on the challenge to the plaintiff's voter registration could happen either before or after the upcoming May primary election.[4] On April 25, Judge Carr determined, "There certainly is nothing specific in the [Motor Voter Act] that either bars or prescribes restrictions on a state's ability to consider a claim, such as that made by the challenge in this case, that a voter is not a resident."[5] Judge Carr, however, found a probably valid equal-protection challenge to an Ohio statute providing,

1. Complaint, Bell v. Marinko, No. 3:02-cv-7204 (N.D. Ohio Apr. 19, 2002), D.E. 1; Bell v. Marinko, 235 F. Supp. 2d 772, 774 (N.D. Ohio 2002); *see* Pub. L. No. 103-31, 107 Stat. 77 (1993), *as amended*, 52 U.S.C. §§ 20501–20511. *See generally* Robert Timothy Reagan, Motor Voter: The National Voter Registration Act (Federal Judicial Center 2014).

2. Opinion at 2, *Bell*, No. 3:02-cv-7204 (N.D. Ohio Apr. 25, 2002), D.E. 9 [hereinafter Apr. 25, 2002, Opinion]; Ex. 3, Complaint, *supra* note 1.

3. Motion, *Bell*, No. 3:02-cv-7204 (N.D. Ohio Apr. 22, 2002), D.E. 6; *Bell*, 235 F. Supp. 2d at 774.

4. Apr. 25, 2002, Opinion, *supra* note 2, at 2.

5. *Id.* at 6.

> The place where the family of a married man or woman resides shall be considered to be his or her place of residence; except that when the husband or wife have separated and live apart, the place where he or she resides the length of time required to entitle a person to vote shall be considered to be his or her place of residence.[6]

As a result, Judge Carr issued a temporary restraining order forbidding the board

> from considering or adjudicating the pending challenge to plaintiff's entitlement to remain a registered voter in the Kelleys Island, Ohio, precinct on the basis of that portion of such challenge that asserts that plaintiff's wife works in another city outside of commuting range; and votes in another precinct, and their children go to school in another precinct.[7]

After an April 29 pretrial conference, Judge Carr ordered provisional voting in the May 7 primary election for thirty-one persons whose registration challenges were successful.[8]

The original plaintiff's claims became moot when the election board determined that he was properly registered.[9]

Reviewing summary-judgment motions on a second amended complaint with seven plaintiffs,[10] Judge Carr, on October 22, dismissed the action.[11] Judge Carr did not reach the constitutionality of Ohio's marital-residency statute because that statute did not determine the outcome in any of the plaintiffs' residency challenges.[12]

On March 12, 2004, the court of appeals affirmed the dismissal.[13] As to the constitutionality of Ohio's married-voter residency statute, the court determined that it did not violate equal protection because it did not create an irrebuttable presumption.[14]

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6. *Id.* at 7 (quoting Ohio Rev. Code § 3503.02(D)).

Ohio's voter residency statute was later revised to provide the following:

> The place where the family of a married person resides shall be considered to be the person's place of residence; except that when the spouses have separated and live apart, the place where such a spouse resides the length of time required to entitle a person to vote shall be considered to be the spouse's place of residence.

Ohio Rev. Code § 3503.02(D).

7. Apr. 25, 2002, Opinion, *supra* note 2, at 9; *Bell*, 235 F. Supp. 2d at 774.

8. Order, *Bell*, No. 3:02-cv-7204 (N.D. Ohio May 2, 2002), D.E. 14.

9. Bell v. Marinko, 367 F.3d 588, 590–91 & n.3 (6th Cir. 2004); *Bell*, 235 F. Supp. 2d at 774.

10. Second Amended Complaint, *Bell*, No. 3:02-cv-7204 (N.D. Ohio July 16, 2002), D.E. 28; *see* First Amended Complaint, *id.* (May 15, 2002), D.E. 16.

11. *Bell*, 235 F. Supp. 2d 772.

12. *Id.* at 779–82

13. *Bell*, 367 F.3d 588.

14. *Id.* at 593–94.