

STATE OF MINNESOTA

IN SUPREME COURT

#C9-02-1351

Russ Lundquist,

Petitioner,

vs.

FINDINGS OF FACT

Carol Leonard, as County Auditor
of Dakota County, Minnesota,

Respondent,

Mary Kiffmeyer,
Minnesota Secretary of State,

Respondent,

Margaret J. Tilley,

Intervenor.

The above-entitled matter came on for hearing before the undersigned referee on August 19, 2002, upon the order of the Minnesota Supreme Court dated August 15, 2002, to determine facts relevant to the petition filed by Russ Lundquist in that court.

Appearances were as follows:

Tony Trimble and Matthew Haapoja, Trimble & Associates, 11700 Wayzata Blvd., Wayzata, MN 55305 (for petitioner Russ Lundquist);

Karen A. Schaffer, Assistant Dakota County Attorney, Dakota County Government Center, Hastings, MN 55033 (for respondent Carol Leonard);

Alan W. Weinblatt, 1616 Pioneer Bldg., 336 Robert St., St. Paul, MN 55101 (for intervenor Margaret J. Tilley);

Alan I. Gilbert, Solicitor General, Office of the Attorney General, 1100 NCL Tower, 445 Minnesota St., St. Paul, MN 55101, and Kenneth E. Raschke, Jr., and Christie B. Eller, Assistant Attorneys General, Suite 200, 525 Park Ave., St. Paul, MN 55103 (for Mary Kiffmeyer, Secretary of State).

Based on the affidavits, exhibits, and testimony, and all of the relevant proceedings herein, the undersigned makes the following findings of fact:

1. Petitioner Russ Lundquist, who resides at 3893 Calcite Drive, Eagan, Minnesota 55122, is an eligible voter entitled to vote in the September 10, 2002, primary and November 5, 2002, general electionS in Legislative District 38A.
2. On August 8, 2002, Lundquist filed a petition pursuant to Minn. Stat. § 204B.44 (2000), asking the Minnesota Supreme Court to direct respondent Carol Leonard, the duly qualified and acting auditor of Dakota County, Minnesota to omit the name of Margaret J. Tilley from the ballots for Minnesota State Representative from Legislative District 38A for the 2002 primary and general elections.
3. The March 19, 2002, decision of the Minnesota Special Redistricting Panel mandated use of the panel's plan or, alternatively, any constitutional legislative plan subsequently enacted by the Minnesota Legislature and the Governor of the State of Minnesota. Pursuant to Minn. R. Civ. App. P. 104.01, subd. 1, the time for appeal did not expire for 60 days after service of notice of filing.
4. Sometime after the redistricting plan issued on March 19, 2002, Tilley decided to run for the office of Minnesota House of Representatives from District 38A.
5. Lundquist alleges that Tilley has not complied with the residency requirement for legislators set out in Minn. Const. art. IV, § 6. The six-month residency period immediately preceding the November 5, 2002, general election began on May 5, 2002.
6. Intending to establish residency in District 38A, Tilley began paying monthly rent of \$350 on May 5, 2002, for two bedrooms at 3830 Alder Lane, Eagan, Minnesota, which is located in District 38A. Tilley purchased renter's insurance to cover the property, and she and her 17-year-old daughter stayed there about six nights in May.
7. Tilley amended her filing with the Campaign Finance and Public Disclosure Board to show a mailing address of 3830 Alder Lane, Eagan, Minnesota.
8. Tilley submitted a post office change-of-address form, to change her address from 1055 Wescott Road, Eagan, Minnesota to 3830 Alder Lane, Eagan, Minnesota effective May 1, 2002. Prior to May 5, 2002, Tilley told her colleagues and campaign manager of her move and that she was renting. Various bills also reflected her Alder Lane address.
9. On May 9 or 12, 2002, Tilley applied for a new driver's license with the address of 3830 Alder Lane, Eagan, Minnesota.
10. In June 2002, Tilley appeared on a cable television program and stated, "If I win, I will move." Tilley testified that this meant she would purchase a home in District 38A if she won

the election.

11. Tilley entered into a rental agreement on July 1, 2002, for a single family house at 1470 Englert Road, Eagan, Minnesota, which is located in District 38A. The terms require Tilley to pay \$200 monthly rent, pay all monthly utilities, and be responsible for lawn maintenance, snow plowing, and repainting of a kitchen wall. Robert McDonald, the owner of 1470 Englert Road, obtained Tilley's agreement to permit him to continue other remodeling work at the residence.
12. On July 11, 2002, Tilley filed with Dakota County Treasurer/Auditor Carol Leonard an affidavit of candidacy for the office of Minnesota Representative from District 38A. She gave her address as 1470 Englert Road, Eagan, which is in District 38A.
13. Tilley submitted a post office change-of-address form from 3830 Alder Lane, Eagan, MN, to 1470 Englert Road, Eagan, effective July 15, 2002. Tilley has received mail at the Englert address.
14. Tilley owns property at 1055 Wescott Road, Eagan, which is not in District 38A. Prior to May 5, 2002, Tilley had lived at the Wescott Road address for 29 years. Her college-aged daughter lived there this summer. The property was subject to a lien pursuant to her dissolution decree until sometime in April 2002. Tilley has received offers on the Wescott Road property from a neighbor-developer, but has not listed the property for sale with a realtor. Tilley does not intend to reside at the Wescott Road property, but continues to run her campaign out of that property and it still contains some of her furnishings.
15. Since May 1, 2002, Tilley has spent a few nights at the Wescott property. She often works there on her campaign during early morning and night time hours. She was served with a subpoena for this hearing on Saturday, August 17, 2002, at 8:00 a.m. at the Wescott property. The process servers thought that she appeared to be wearing a nightgown.
16. Tilley works full-time for the Minnesota Department of Transportation and campaigns in District 38A most evenings.
17. From July 1, 2002 to the time of this hearing, Tilley's neighbors at Englert Road, Michael Wolf and Margaret McCarney, have seen lights and activity only sporadically at 1470 Englert Road. From the back of their property, they view the back of 1470 Englert Road. Because the property had been empty prior to July 1, 2002 for some time, they were interested in a possible new neighbor. They have never seen Tilley at the property and have never been in the property at 1470 Englert Road.
18. The Dakota County Auditor confirmed that she ordered ballots for use during the primary, those ballots have been delivered to her offices, and they are currently in use by absentee voters. The Dakota County Auditor has made no error or omission in the performance of her duties with respect to the ballot in question.
19. Tilley has done all that is reasonably possible to establish residency in District 38A and has in fact established such residence under Minn. Stat. § 200.031 (2000).
20. Petitioner Russ Lundquist has failed to sustain his heavy burden to clearly establish that

the Dakota County Auditor should omit Margaret J. Tilley's name from the ballots for the September 10, 2002, primary election or the November 5, 2002, general election.

Dated: August 21, 2002

/s/ Edward Toussaint _____
Edward Toussaint
Referee