

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.
CIVIL ACTION

SUPERIOR COURT
No. 04-1300B

WILLIAM G. STEVENS,
Plaintiff

vs.

THE TOWN CLERK OF BRIDGEWATER,
Defendant

MEMORANDUM OF DECISION ON A JURY-WAIVED TRIAL
HELD BEFORE THE COURT ON JULY 8TH, 2008

BACKGROUND

The plaintiff is involuntarily civilly committed at the Massachusetts Treatment Center in Bridgewater pursuant to G.L. c.123A. Although the plaintiff was serving time for a felony conviction, that sentence was completed on January 31, 2004.

On March 13th of 2004, while civilly committed, the plaintiff sent a letter to the Town Clerk of Bridgewater attempting to register to vote. The Town Clerk of Bridgewater would not register the plaintiff to vote on two grounds: (1) that the plaintiff was ineligible to vote because of his civil commitment; (2) that the plaintiff was not a resident of the Town of Bridgewater for voting purposes. The plaintiff brought this action seeking to compel the Town Clerk of Bridgewater to register him to vote.

DISCUSSION

The case presents two issues: first, whether a person subject to involuntary civil commitment loses voting rights under G.L. c.51, §1, and second, whether a person civilly

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committed to the Massachusetts Treatment Center can claim a domicile in Bridgewater.

Massachusetts law is clear that “any infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” In re Guardianship of Hurley, 304 Mass. 554, 559 (1985) (quoting Kramer v. Union Free Sch. Dist., 395 U.S. 621, 626 (1969)); see generally O’Brien v. Election Comm’rs of Boston, 257 Mass. 332, 338 (1926) (“Of course the right to vote is a sacred privilege. Every rational intendment is to be made in favor of its rightful exercise.”) Thus, the defendant’s contention that “[t]he [p]laintiff’s current voting status in the Bridgewater Treatment Center (“MTC”) has yet to be determined by statute or common law” militates in favor of holding that Stevens is not subject to disenfranchisement under G. L. c. 51, § 1 insofar as courts give the benefit of the doubt to the person asserting voting rights. Cf., e.g., Boyd v. Bd. of Registrars of Voters of Belchertown, 368 Mass. 631, 637 (1975) (narrowly construing limitations on voting rights, such as being “under guardianship” pursuant to G. L. c. 51, § 1).

Furthermore, G. L. c. 51, § 1 on its face does not apply to persons civilly committed for sexual dangerousness. The statute reads, in pertinent part, “[e]very citizen eighteen years of age or older, not being a person under guardianship or incarcerated in a correctional facility due to a felony conviction . . . may have his name entered on the list of voters” The parties have agreed that Stevens is not incarcerated in a correctional facility due to a felony conviction. Additionally, the law is clear that “the fact that treatment for committed persons is provided at a treatment center operated under the auspices of the department of correction does not render the commitment penal in nature.” Commonwealth v. Bruno, 432 Mass. 489, 502 (2000); see also Robinson v. California, 370 U.S. 660, 676 (1962). Therefore, the town of Bridgewater’s (“the town”) argument that Stevens’ civil commitment should be treated as incarceration for a felony

crime for the purposes of G. L. c. 51, § 1 is without merit.

The town further argues that Stevens is “under guardianship” to the extent that his civil commitment as a sexually dangerous person is evidence that he is “of unsound mind and unable to manage his estate.” Such an contention is misplaced.¹ The town conflates the prerequisites for guardianship with the prerequisites for civil commitment as a sexually dangerous person. Guardianship follows court proceedings “in which the . . . person of unsound mind was declared incompetent to manage himself or his estate,” Boyd, 368 Mass. at 635, while civil commitment as a sexually dangerous person follows court proceedings in which the respondent was found to have been convicted of a sexual offense, and to suffer from a mental abnormality or personality disorder which makes the respondent likely to engage in sexual offenses if not confined to a secure facility. G. L. c. 123, § 1. Moreover, “incompetence to manage one’s affairs or one’s estate, which could lead to the appointment of a guardian, was never equated with commitment or admission to a mental health facility.” Boyd, 368 Mass. at 635-636. Thus, even if the town had tried to provide support for its position that Stevens should be treated as “under guardianship,” its argument would nevertheless fail.

C. Domicile

Massachusetts law requires a voter to be “a resident in the city or town where he claims the right to vote” G. L. c. 51, § 1. In that context, status as a resident is construed to require that the voter have his domicile in the appropriate city or town. Hershkoff v. Bd. of Registrars of Voters of Worcester, 366 Mass. 570, 576 (1974). “A person’s domicile is usually the place

¹ The lack of concerted legal argument and citations supporting this point raises a question about the town’s compliance with Superior Court Rule 9A(a)(1).

where he has his home. Home is the place where a person dwells and which is the center of his domestic, social and civil life.” Id. (internal citations omitted); see also Black’s Law Dictionary (8th ed. 2004). Courts identify domicile as “the place of one’s actual residence with intention to remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode.” Coulombre v. Bd. of Registrars of Voters of Worcester, 3 Mass. App. Ct. 206, 208 (1975) (quoting Hershkoff, 366 Mass. at 578).

Persons involuntarily confined to a location may choose that location as their domicile. See Dane v. Bd. of Registrars of Voters of Concord, 374 Mass. 152, 165-166 (1977) (quoting Hershkoff, 366 Mass. at 578) (“We think the capacity of prisoners to change their domicile for voting purposes is implicit in their eligibility to vote.”); Coulombre, 3 Mass. App. Ct. at 208. However, “involuntary presence” in a location operates “as a presumption [of not having chosen that location as a domicile] ordinarily requiring more than unsubstantiated declarations to rebut.” Dane, 374 Mass. at 165 (citing Coulombre, 3 Mass. App. Ct. at 209).

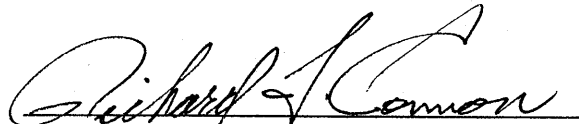
Here, Stevens has solemnly averred in his Verified Complaint that he calls the MTC in Bridgewater his home and that he intends to remain there “for the time at least.” His declaration is substantiated inasmuch as the MTC is the center, and indeed the entirety, of his domestic, social, and civil life. Unlike prisoners confined to a correctional facility for a specific period, Stevens is confined to the MTC for a period of one day to life, in other words, an “indefinite time” as required by Coulombre.

Furthermore, the possibility of release from the MTC is irrelevant to Stevens’ intent to remain in Bridgewater for the indefinite future. In Hershkoff, 366 Mass. at 579, students living in college were not prevented from claiming their college town as their domicile, even where

they were obligated to leave after graduation to perform military service. Thus, if college students can claim domicile in a location even when they are obligated to leave at a definite point in the future, so may Stevens claim domicile in Bridgewater, even though he may leave at some indefinite point in the future.

Moreover, Stevens has stated that he has no plans to return to his former place of abode in Harwich, and does not have any connection to any other area in Massachusetts besides Bridgewater. Given his inability to own property, keep a driver's license, have a family, or establish any other conventional ties to Bridgewater, Stevens has done all that he possibly can to evidence his intent to remain there. Thus, in the absence of any issue of credibility, Stevens is domiciled in Bridgewater by virtue of actually residing there with intention to make it his permanent residence for the time at least. See *id.* at 580.

For the above-stated reasons, the court directs a finding for the plaintiff and enters an order requiring the Town Clerk of Bridgewater to register the plaintiff William G. Stevens to vote. **SO ORDERED.**


Richard F. Connon
Justice of the Superior Court

DATED: August 1, 2008

