

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-385

SEPTEMBER TERM, 2004

In re Deborah S. Albrecht

}	APPEALED FROM:
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}	Bennington Superior Court
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}	Trial Judge: Karen R. Carroll
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In the above-entitled cause, the Clerk will enter:

Deborah Albrecht appeals from a superior court order affirming the Town of Manchester's decision to remove her from the voter checklist. The undisputed facts, as set forth in Albrecht's sworn affidavit, may be briefly summarized. Albrecht owns a home in Manchester Center and until recently voted there. Since the latter part of 2001, she has lived principally in Pennsylvania caring for her eighty-nine year old sister, who has Alzheimer's disease and cannot be left alone. Albrecht continues to bank in Manchester, and maintains her Vermont driver's license and motor vehicle registration. Three of Albrecht's children continue to reside in the Manchester home. Albrecht states that she " fully intend[s] to return to my home in Vt. when I am no longer needed to care for my sister."

The Town determined that Albrecht was no longer a resident for voting purposes and removed her name from the voter checklist. Albrecht appealed the decision to the Bennington Superior Court. See 17 V.S.A. § 2148 (any person whose name has been removed from checklist may appeal to superior or district court in county or district where applicant claims residence). Following a hearing, in which Albrecht and the Manchester Town Clerk appeared by phone, the court issued a written decision, affirming the Town's ruling. The court's decision was based on an interpretation of the voting requirements set forth in 17 V.S.A. § 2122(b), which provides generally that "[a] person may have his or her name on the checklist only in the town of which the person is a resident," and defines " resident," in pertinent part, as follows:

For the purpose of this chapter, " resident" shall mean a person who is domiciled in the town as evidenced by an intent to maintain a principal dwelling place in the town indefinitely and to return there if temporarily absent, coupled with an act or acts consistent with that intent. If a person removes to another town with the intention of remaining there indefinitely, that person shall be considered to have lost residence in the town in which the person originally resided even though the person intends to return at some future time.

Applying this definition to the facts as set forth in Albrecht's affidavit, the court concluded that Albrecht had " lost residence in the town," based on its finding that " although [Albrecht] may intend to return to the Town of Manchester sometime in the future, this date is not definite and cannot even be predicted at this time and, therefore, her stay in Pennsylvania is on an indefinite basis." This appeal followed.

No challenge is made to the State's authority to impose a bona fide residency requirement for voting purposes, or to the validity of the requirement in question. See Martinez v. Bynum, 461 U.S. 321, 326 (1983) (states have the power to require that persons be bona fide residents to vote in the relevant political subdivision). The issue here turns solely on the application of the statutory definition to the facts. In this regard, we note that the trial court's factual findings will

not be disturbed on appeal unless clearly erroneous, while its conclusions as to issues of law will be reviewed de novo. Catamount Slate Prods., Inc. v. Sheldon, 2003 VT 112, & 14, 845 A.2d 324 (although we will not set aside trial court's factual findings unless clearly erroneous, our review of issues of law is nondeferential and plenary); Elkins v. Microsoft Corp., 174 Vt. 328, 330 (2002) (" To the extent that our review of the trial court's decision involves questions of statutory construction, and thus questions of law, it is nondeferential and plenary." ).

Applying these standards, we reach a different conclusion from the trial court based on our reading of the relevant statutory language and the pertinent, undisputed facts. It is axiomatic that statutory language should be interpreted accorded to its plain, ordinary meaning. In re Woodford Packers, Inc., 2003 VT 60, & 12, 830 A.2d 100 (mem.) (we presume the Legislature intends the plain, ordinary meaning of its statutory language). Here, as noted, the statute provides that a person shall be considered to have lost his or her residence for voting purposes if the person "removes to another town with the intention of remaining there indefinitely," notwithstanding an intent to return in the future. 17 V.S.A. § 2122(b) (emphasis added). The trial court found that Albrecht's intention was to stay in Pennsylvania indefinitely - despite her intent to return to her home in Manchester - because she could not specify a date certain for her return. The ordinary meaning of " indefinitely," however, is " [w]ithout definition or limitation to a particular thing, case, time, etc." 7 The Oxford English Dictionary 842 (2d ed. 1989). " Indefinite" is similarly understood to mean " [u]ndefined, unlimited." Id. at 841; see also Liberty Mut. Ins. Co. v. Craddock, 338 A.2d 363, 367 (Md. Ct. Spec. App. 1975) (domicile generally established by showing that person intends to remain there " indefinitely or for an unlimited time" ); City of Cleveland v. Surella, 572 N.E.2d 763, 765 (Ohio Ct. App. 1989) (taxpayer's domicile is residence that taxpayer intends to use for " an indefinite or unlimited period" ); In re Estate of Daniels, 193 N.W.2d 847, 849 (Wis. 1972) (domicile generally regarded as place where one intends to reside for " an unlimited or indefinite period" ). Although Albrecht's plan to return to Manchester is not tied to a specific date, it is plainly linked to a specific and defined occurrence - the point at which she is no longer required to care for her elderly, infirm sister. This, in our view, provides a sufficient " definition or limitation" to her stay in Pennsylvania to negate a finding that her intention is to remain " indefinitely" within the meaning of the statute.

Furthermore, Albrecht has expressed a clear and unequivocal intent to return to Vermont when no longer required to care for her sister, an intent manifested by the maintenance of her Manchester residence, and consistent with her continuing to vote in Vermont, her continuing use of a Vermont bank, and the maintenance of her Vermont driver's license and motor vehicle registration. See 17 V.S.A. § 2122(b) (residence established by domicile in town as evidenced by maintenance of principal residence and intent to return if temporarily absent, coupled with acts consistent with that intent). Accordingly, the trial court's conclusion that Albrecht lost her Manchester residence for voting purposes must be reversed.

The superior court judgment is reversed, and the Manchester Town Clerk is directed to add Deborah S. Albrecht's name to the Town's voter checklist, and to provide an absentee ballot, in time for her to vote in the September 14, 2004, primary election.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Paul L. Reiber, Associate Justice