

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Small Claims

Income Tax

GARY M. COOKE,)	
)	
Plaintiff,)	No. 000706F
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION AND JUDGMENT

Plaintiff appealed from a Notice of Assessment issued by defendant. This appeal involves plaintiff's personal income tax return for tax year 1998. A telephone trial was held on September 11, 2000. Gary Cooke appeared for himself. Steve Campbell and Sandra King appeared as witnesses. Linda Wiley appeared for defendant. The sole issue to be determined at trial was whether Gary Cooke was domiciled in Oregon during the year in question.

STATEMENT OF FACTS

Mr. Cooke lived in Klamath Falls with his wife and children. He and his wife divorced. Sometime after his divorce, plaintiff filed for chapter 7 bankruptcy. A debtor filing chapter 7 bankruptcy is required to liquidate all his non-exempt assets. The amount received is then used to pay the debtor's creditors. With limited exceptions, any debt not paid is discharged. Thus, the debtor is able to obtain a fresh start.¹ A debtor need not

¹ Chapter 13 bankruptcy, on the other hand, requires the debtor to set up a court-approved payment schedule to pay all or part of his or her debts. The payment schedule lasts from three to five years. The payments are made through a bankruptcy trustee. After the successful completion of the payment schedule, the debts not repaid are

have an ongoing source of income in order to file a chapter 7 bankruptcy.

Plaintiff decided to obtain his fresh start by moving to Australia. His father, Allan Cooke, is an Australian citizen who lives in Perth, Australia. Allan Cooke owns his own business. The thought was that plaintiff could work at his father's business. With that thought in mind, plaintiff liquidated his remaining assets except his truck. He kept nothing in storage. He contacted Sandra King, his former wife, to make arrangements for paying child support for their children. While waiting for his father to send him an airline ticket to Perth, plaintiff moved in with his mother. His mother, Lisa Cooke, lives in Olympia, Washington. Plaintiff left Oregon in June 1997. While staying with his mother, plaintiff worked full-time. He also opened a bank account. He set up a month to month internet account.

Plaintiff testified that his father had some difficulty securing funds for the airfare. Allan Cooke eventually sent his son an airline ticket. Plaintiff sold his truck and left for Perth in late August or early September 1997. Prior to leaving for Australia, however, he renewed his Oregon Driver license. He testified that he needed a license in order to be able to drive in Australia.

Plaintiff testified that the only visa for Australia that he could obtain was a six month visa that would not allow him to work; presumably it was a tourist visa. His hope was that because his father was a citizen of Australia with his own business, that after plaintiff's arrival in Australia, plaintiff would be able to obtain a visa that would allow him to work. Unfortunately, Allan Cooke's business started to fail and he was unable to offer his son work. Plaintiff was unable to obtain other work because of his visa status. His father

discharged. Chapter 13 bankruptcy is generally considered appropriate for a debtor with an ongoing source of income.

was unable to support him any longer. Plaintiff returned to his mother's home in late February or early March 1998.

After returning to his mother's home in Washington, plaintiff looked for work in the Olympia area. He worked at a temporary assignment at a medical office. He later worked at a medical clinic. He left the medical clinic position after three months. (Ltr of Lisa Cooke at 2.) In the fall of 1998, he secured a position with a company located in Portland. He commuted daily from his mother's home in Olympia to Portland until January 1999. In January 1999, he moved to Portland.

Defendant argued that while plaintiff may have had the intent to change domiciles, his intent was contingent on events that did not happen.

COURT'S ANALYSIS

Oregon imposes an income tax on the taxable income of all of its residents. ORS 316.027(1)(a) (1997) defines resident as:

"Resident' or 'resident of this state' means:

“(a) An individual who is domiciled in this state unless the individual:

“(A) Maintains no permanent place of abode in this state;

“(B) Does maintain a permanent place of abode elsewhere; and

“(C) Spends in the aggregate not more than 30 days in the taxable year in this state[.]”

It is clear that before June 1997 and after January 1999, Mr. Cooke was domiciled in Oregon. He contends that selling all his possessions, seeking and securing employment in Washington and seeking employment in Australia are sufficient to constitute a change in domicile.

A person may have only one domicile at a time. *Davis v. Dept. of Rev.*, 13 OTR 260, 264 (1995) (citing *Zimmerman v. Zimmerman*, 175 Or 585, 591, 155 P2d 293 (1945)). Once domicile is established in a particular place it remains until a new domicile is established. To change domicile, "an individual must not only establish a residence in the new place but have an intention to abandon the old domicile and acquire a new one." *Davis* at 264 (citing *In Re Noyes' Estate*, 182 Or 1, 185 P2d 555 (1947)). See also *White v. Dept. of Rev.*, 14 OTR 319, 321 (1998).

The facts in this case are somewhat similar to the facts in *Bianche v. Dept. of Rev.*, No. 4367, 1999 WL 417281 (Or Tax Ct June 10, 1999). In *Bianche*, plaintiff's wife of 20 years divorced him. He found life difficult after his divorce. He decided to leave Oregon for "a new life." *Id.* at *2. He drove to Alaska with his son. He got a job, rented an apartment, opened a bank account, attended church, surrendered his Oregon Driver License, obtained an Alaska Driver License and his son started school. Plaintiff's son was very unhappy and wanted to return to Oregon. Not wanting to lose his son, plaintiff returned to Oregon. *Id.* at *1. The court found that plaintiff,

“* * *took most of the steps one would expect of a person in his circumstances to establish domicile in Alaska. He rented an apartment, became employed, registered his son in school, obtained a driver license, opened a bank account, and attended church. Nothing in the facts suggests that taxpayer viewed his move to Alaska as temporary or contingent.”

Id. at *2.

The court concluded that plaintiff was domiciled in Alaska during the time he was there.

The steps that plaintiff took are very different from the steps plaintiff took in *Bianche*. As noted above, the plaintiff in *Bianche* got a job, rented an apartment, opened a

bank account, attended church, surrendered his Oregon Driver License, obtained an Alaska Driver License and his son started school. Plaintiff cut his ties with Oregon.

Plaintiff in the present case could not obtain a job because of Australia's immigration laws. He lived with his father. There is no evidence that he opened a bank account or attended church in Australia. Plaintiff did some of those things while staying with his mother such as obtaining a job and opening a bank account. However, he apparently left one job in Washington voluntarily. (See Ltr of Lisa Cooke at 2.) He maintained no permanent place of abode in either Washington or Australia. Additionally, he **renewed** his Oregon Driver License while he was staying with his mother. An Oregon Driver License requires an Oregon address. Plaintiff did not cut his ties with Oregon.

CONCLUSION

Plaintiff's intent to establish a domicile in Australia was contingent on being able to support himself. Because of the downturn in his father's business and Australia's strict immigration laws, that contingency was never realized. Any intent plaintiff had to establish a domicile in Washington was also contingent on being able to support himself. Nor was that contingency realized. The court finds that plaintiff was domiciled in Oregon in 1998. Now, therefore;

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IT IS HEREBY ADJUDGED AND DECREED that plaintiff's appeal is denied.

Dated this _____ day of October, 2000.

SALLY L. KIMSEY
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON OCTOBER 27, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 27, 2000.