

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

TIMOTHY EADS and ELEONORE EADS,)	
)	
Plaintiffs,)	TC-MD 050687C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs have appealed Defendant’s Notice of Assessment for 2003. The issue is whether Timothy Eads (Timothy) was a full year or part year Oregon resident in 2003. For ease of reference, the parties will be referred to jointly as Plaintiffs and individually as Timothy and Eleonore.

I. STATEMENT OF FACTS

Timothy worked as an aircraft mechanic for Northwest Airlines (Northwest). He was initially employed in Minnesota, but transferred to the Portland, Oregon, terminal in August 2001. Plaintiffs at first moved into an apartment in Vancouver, Washington, but, after several months, bought a home in West Linn, Oregon, in November 2001. In January, 2003, Northwest announced its decision to close its line maintenance operations in Portland. Timothy was laid off as of February 28, 2003. Pursuant to the collective bargaining agreement, Timothy exercised the option to transfer to another mechanic position with Northwest in Anchorage, Alaska. According to the sworn testimony, Plaintiffs chose Alaska over Los Angeles, California, because they believed the cost of living was less in Anchorage and they had been to Alaska before.

///

///

Plaintiffs moved to Anchorage with their two children on or about March 7, 2003. They initially moved into a motel, but within a week, the family moved into a three bedroom home which they rented on a month-to-month basis. They signed the rental lease on March 14, 2003.

The move to Alaska required Eleonore to quit her Oregon job as a 911 operator-trainee with Clackamas County. Plaintiffs also disposed of two of the three automobiles they owned and put their home in West Linn up for sale. Plaintiffs purchased the home for \$205,000 in November 2001 and were asking \$295,000 in March 2003.

Plaintiffs moved all their household furniture and belongings to Anchorage at the time of their move in March 2003, along with one automobile (a Subaru Forester) that Plaintiffs shipped by barge from Seattle, Washington. On March 17, 2003, Timothy surrendered his Oregon driver license and obtained an Alaska driver license. Timothy also registered to vote in Alaska in March 2003. However, in November 2003, while he was still living and working in Anchorage, Timothy obtained a new Oregon driver license. Eleonore did not obtain an Alaska driver license, nor did she register to vote in Alaska. Moreover, Plaintiffs did not register their Subaru in Alaska or open any bank accounts in that state, choosing, instead, to continue banking with the Federal Credit Union in Oregon City.

According to Timothy's testimony, Eleonore was unhappy in Alaska; the weather was cold, the nights were long and dark, and Plaintiffs had no friends. Additionally, the children, both toddlers, had no playmates. Eleonore apparently wanted to leave Alaska, but Timothy needed to remain because his job was important to the family financially. Timothy testified that Eleonore suggested she go to Las Vegas with the children to visit her mother for a month

///

///

“where it was nice and warm.” Timothy agreed, and they left in late May or early June 2003. About a month later, Eleonore and the children moved back into the home in West Linn, which had not sold.¹ Plaintiffs shipped the family’s furniture and belongings back to the home in West Linn at that time, or perhaps earlier, while Eleonore was in Las Vegas. Timothy continued to live and work in Anchorage until April or May of 2004, when he was transferred back to the Portland, Oregon, terminal and moved back in with the family in West Linn.

Plaintiffs timely filed a joint Oregon part-year resident return for 2003 in February 2004, allocating 10 months of Timothy’s wages to Alaska. Defendant reviewed the return and concluded Plaintiffs were Oregon residents for the entire year. Defendant, therefore, issued a Notice of Deficiency on July 23, 2004, followed by a Notice of Assessment on March 29, 2005. Plaintiffs assert that they both abandoned their Oregon domicile in March 2003; that Eleonore reacquired her Oregon domicile in July 2003, and that Timothy subsequently reacquired his Oregon domicile in April 2004. Defendant maintains that neither of the Plaintiffs ever abandoned their Oregon domicile and were full-year Oregon residents for 2003.

II. ANALYSIS

Oregon imposes a personal income tax “on the entire taxable income of every resident of this state.” ORS 316.037(1)(a).² A “resident” is “an individual who is domiciled in this state * * *.” ORS 316.027(1)(a)(A). Although the term “resident” is defined in terms of domicile, “[domicile] is not in a legal sense synonymous with ‘residence.’ ” *Reed’s Will*, 48 Or 500, 504, 87 P 763 (1906). A person can have more than one residence, but only one

¹ Plaintiffs had received one offer which they rejected because it was about 10 percent below the \$294,900 asking price for the home.

² Unless noted otherwise, all references to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are to 2003.

domicile. See *Zimmerman v. Zimmerman*, 175 Or 585, 591, 155 P2d 293 (1945). And, a person always has one, and only one, domicile, wherever it is found to be. *Id.* Domicile is a common law concept comprised of two elements: “a fixed habitation or abode in a particular place, and an intention to remain there permanently or indefinitely.” *dela Rosa v. Dept. of Rev.*, 313 Or 284, 289, 832 P2d 1228, 1231 (1992) (citation omitted); see also OAR 150-316.027(1)(a) (“[I]t is the place a person intends to return to after an absence.”)

Once domicile is established in a particular location, it remains there until the person establishes a new domicile. See *Doyle v. Doyle*, 17 Or App 529, 532, 522 P2d 906 (1974). An individual must meet three requirements to establish a new domicile: (1) establishment of a residence in another place; (2) intent to abandon the old domicile; and (3) intent to acquire a new domicile. See *Davis v. Dept. of Rev.*, 13 OTR 260, 264 (1995); OAR 150-316.027(1)(a). The determination of intent is made by all the facts and circumstances at the particular time at issue. *dela Rosa*, 313 Or at 289-90. “[T]riers of the fact of domicile rely heavily upon the overt acts of the individual as true indicators of his state of mind.” *Hudspeth v. Dept. of Revenue.*, 4 OTR 296, 298 (1971). Plaintiffs have the burden of proving by a preponderance of the evidence that Timothy was not an Oregon domiciliary in 2003. See ORS 305.427 (providing that a preponderance of the evidence suffices to sustain the burden of proof in the Tax Court and that “[t]he burden of proof shall fall upon the party seeking affirmative relief * * *”); *Reed’s Will*, 48 Or at 505 (“the burden of proof is upon the party who asserts the change [in domicile]”).

The first requirement, establishment of residence in another place, is not at issue in this case because there is no question that Plaintiffs had a dwelling place or abode in Alaska when

///

///

they moved to Anchorage in March 2003. *See Ramsey v. Dept. of Rev.*, 7 OTR 478, 481 (1978) (stating that residence in the three-part test is synonymous with abode or dwelling place and that an abode is a building or shelter where the person dwells). Plaintiffs arrived in Anchorage on or about March 7, 2003, and rented a room in a motel for a week while they looked for housing. On March 14, 2003, they moved into a rented three-bedroom ranch home. The outcome of the case, therefore, turns on the remaining two elements: namely, whether Plaintiffs intended to abandon their Oregon domicile and acquire a new domicile in Alaska. Moreover, because Timothy is the only wage earner with non-Oregon source income, only his status is of concern to the court. Nonetheless, Eleonore's actions are relevant to the extent that they shed light on Timothy's intent.

Timothy's intent is difficult to ascertain. Certain facts strongly suggest he intended to abandon Oregon and acquire a domicile in Alaska. For example, Plaintiffs put their house up for sale, sold two of their three automobiles, and moved all of their household belongings to Alaska. Eleonore quit her job to make the move. Within two weeks of his arrival, Timothy acquired an Alaska driver license and registered to vote in that state. In February 2004, Plaintiffs filed a part-year Oregon resident return, allocating 10 months of Timothy's wages to Alaska.

Other facts suggest just as strongly that Timothy did not intend to acquire an Alaska domicile. Plaintiffs did not register their car in Alaska or establish a local bank account. Eleonore did not get an Alaska driver license or register to vote in Alaska. Those facts were raised by Defendant but not addressed by Plaintiffs. Timothy testified that they had been to Alaska before the move and "thought they could handle it." That is not a particularly strong

///

///

statement of attachment to the state where Timothy claims to have established domicile. Domicile is “the place an individual considers to be the individual’s true, fixed, permanent home” and “the place a person intends to return to after an absence.” OAR 150-316.027(1); *see also Ott v. Dept. of Rev.*, 16 OTR 102, 110 (2002). Additionally, although the couple owned a home in Oregon, they rented a house in Alaska, and did so on a month-to-month basis. There may have been practical reasons for that arrangement, but they were not shared with the court. Moreover, Eleonore and the children left Alaska and moved back into the family’s home in West Linn, Oregon, after just a few months. In order for the family to return to Oregon, Plaintiffs took their home in West Linn off the real estate market and spent nearly \$4,000 to have their furniture shipped back to Oregon. There was no testimony on what, if any, furniture Timothy used in Alaska after that time. However, an August 8, 2004, letter Plaintiffs sent Defendant during the audit suggests that Timothy ceased renting the three-bedroom home after Eleonore and the children returned to Oregon. In that letter, Plaintiffs explained that the house was not selling and “so the family decided rather than support a mortgage *and rent*, Eleonore and the children moved back to Portland while Tim stayed and worked in Alaska.” (Def’s Ex E-1.) (Emphasis added.)³ Then there is Defendant’s residency questionnaire, which Plaintiffs completed in July 2004, during the audit. On that form, both Timothy and Eleonore indicated that they considered themselves residents of Oregon from “Aug 2001 – current.” (Def’s Ex D-4.) The only explanation for that statement came from Plaintiffs’ representative, who pointed out that Plaintiffs were not represented at that time. The court’s response to that statement is “precisely.”

///

///

³ The implication is that Timothy’s rent in Alaska ended after the rest of the family returned to Oregon. Certainly, Timothy no longer needed a three-bedroom home.

The case is admittedly close. What is lacking is the kind of persuasive testimony proffered by the plaintiffs in *Hudspeth*. The Hudspeths were lifelong Oregon residents. They left Oregon for business reasons and returned to their home in Prineville after only 16 months in New Mexico and Colorado, where they lived in rented quarters. *See Hudspeth*, 4 OTR at 299. The Hudspeths, like Plaintiffs in the instant appeal, tried to sell their home but found no buyer. *Id.* at 300. Plaintiff-husband Ronald continued paying dues at an Oregon golf club and a fraternal lodge and retained his Oregon voter registration and banking. *Id.* at 299. In finding that the plaintiffs legally changed their domicile for the relevant periods, the court stated “[e]ach of the acts of the plaintiffs which, in the aggregate, led to the defendant’s determination to tax, has been adequately explained.” *Id.*, at 301. Ronald testified “[h]is Oregon Elks Lodge membership and his dues at the local golf club were paid as a matter of routine by the Prineville comptroller of the family [business] operations”; that his “voting registration had not had time to expire * * * and he did not vote by absentee ballot during his absence”; and that he also “had bank accounts in Albuquerque and in Pagosa Springs.” *Id.* at 300. That type of logical, detailed explanation is wholly lacking here.

This case highlights the relevance and significance of the third prong in the three-part test for a change of domicile; namely, the intent to acquire a new domicile. It is true that Plaintiffs moved all their belongings to Alaska and listed their Oregon home for sale. However, with the closure of the Oregon line maintenance operations, Plaintiffs had no reasonable expectation of returning to Oregon, a state they had lived in for little more than one year. It was therefore a logical decision to move their belongings and sell the home. However, the court does not believe Plaintiffs ever intended to make Alaska their home. Rather, it appears they moved there on an interim basis out of practical necessity. Their plans in terms of a new domicile were contingent

upon Timothy finding work elsewhere within the lower contiguous 48 states. A person does not legally abandon an existing domicile until they acquire a new one. As the court discussed in *Doyle*, once domicile has been established in a particular location, it remains there until the person establishes a new domicile.” *See Doyle*, 17 Or App at 532. Eleonore could not even bear to remain in Alaska until another job opened up for Timothy. The tenuous attachment to Alaska is revealed in Plaintiffs’ letter to Defendant, where they state that:

“[s]ince Tim’s job was union, we eventually looked forward to positions opening up in the lower 48 states and the chance that Tim would find work in Seattle, WA or elsewhere. The family would at that time make the decision to move to wherever Tim’s job would take him * * *. So the family sat and waited here in Portland for a position to open up somewhere in the lower 48 states for Tim.” (Def’s Ex E-1.)

As this court has previously stated, “[t]he intent to change domicile or to acquire a new domicile must be a present intent and not conditioned upon some future event or contingent event.” *Davis*, 13 OTR at 264. Accordingly, although Plaintiffs took some steps consistent with abandoning Oregon, there is insufficient evidence of an intent to acquire a domicile in Alaska.

III. CONCLUSION

The preponderance of the evidence leads the court to conclude that Timothy did not abandon his Oregon domicile. Plaintiffs are, therefore, Oregon residents subject to Oregon income tax. Now, therefore,

///

///

///

///

///

///

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied and Defendant's assessment of the tax for tax year 2003 is upheld.

Dated this _____ day of May 2006.

DAN ROBINSON
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Dan Robinson on May 11, 2006. The Court filed and entered this document on May 11, 2006.