

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MICHAEL F. THOMPSON)	
and TERESA A. GAMBLE-THOMPSON,)	
)	
Plaintiffs,)	TC-MD 050825B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs have appealed Defendant’s Notices of Assessment for tax years 2001 and 2002. The issue is whether Michael F. Thompson (Michael)¹ was an Oregon resident during those two years. For ease of reference, the parties will be referred to jointly as Plaintiffs and individually as Michael and Teresa.

A trial was convened on May 15, 2006. Carol Zettel, Licensed Tax Consultant, represented Plaintiffs. Michael F. Thompson provided sworn testimony. Ron Graham participated for Defendant. Subsequently, written arguments were submitted. The record closed July 5, 2006.

I. STATEMENT OF FACTS

Michael has worked nearly twenty years for Columbia River Log Scaling & Grading Bureau. In the early 1990's, his lack of seniority compelled him to relocate to the Central Oregon satellite office. During the first part of 1997, he rented and lived there in a home owned by his

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¹ When referring to a party in a written decision, it is customary for the court to use the party’s last name. However, in this case, the court’s Decision recites facts and refers to two individuals with very similar last names. To avoid confusion, the court will use the first name of the party being referenced.

mother; it was located at 16505 Beaver Drive, Bend. When Crown Pacific closed its mills in that area, Michael's satellite office closed. He began a diligent search for other work opportunities.

Michael's job alternatives were limited by his lack of seniority. He was looking for a location that would provide stability to him and his family. One option included employment in a remote part of Alaska. He testified about investigating the options and opportunities provided in that state. He especially was concerned about meeting the needs of Teresa and the household's four children. He focused on such elements as adequate schools, housing, food sources (all flown in), diesel fuel for heating and a qualified EMT being nearby. Michael negotiated a 35 percent increase in salary and also insured that he would not be required to pay for house rent and fuel. He stated he did not want to lose money with the transfer and have his family do without certain basic necessities.

Prior to the family's relocation, they owned no real property in Oregon. In May of 1997, Michael moved to Icy Bay, Alaska. Teresa and the children followed the next month. There is no main roadway into the area. All household possessions were transferred there, either by barge or truck. Michael had negotiated that his employer would pay all of those relocation costs. During that summer, both spouses secured driver's licenses² and registered to vote.

Because of his union contract, Michael gave up his vested right to work in Central Oregon when he left for Alaska. That, he maintains, is strong evidence of his abandonment of Oregon as his domicile and his full and long-term commitment to the Alaska site. He testified he had "no anticipation of any future moves" based on his evaluation of mill closures and employment opportunities. He stated there "was no real likelihood of any potential Oregon jobs"

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² Michael's Oregon driver's license expired June 15, 1998.

with his employer in the future. That employer had recently acquired a large Alaska timber tract that was expected to provide job security for a minimum of 15 years.

Later, on December 26, 1997, Plaintiffs purchased the Beaver Drive house in Bend from Michael's mother. He testified it was acquired as an investment property to be sold within five years. He did not intend to reside there in the near future. At the time, they considered renting to others as a vacation site; that plan proved unfeasible. It was later sold to other family members in April of 2005.

There was a local school in Icy Bay, Alaska, that had been operating since the 1970's. That was one of the primary needs identified as a necessity prior to the move. However, in January of 1999, that school ceased operations because the enrollment fell to less than ten students; at the end there were only six students. Teresa attempted to home school the children during that subsequent winter but believed they were not reaching their potential and needed public education. That was especially true for the youngest child who has a learning disability. Plaintiffs were faced with the difficult decision as to how to properly educate their four children. They investigated other potential alternatives, including other Alaska locations such as Juneau and Yakutat.

In August of 1999, Teresa and the children moved back to the Beaver Drive property in Bend. Michael testified that was intended to be a short-term solution, as indications were that the Icy bay student population would increase and the school would soon reopen. That did not happen. Michael testified that but for the school closure, Teresa and the children would have not returned to Oregon.

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Michael remained in Alaska after his family left. He was able to arrange visits to Oregon on a limited basis; those visits totaled over 30, but less than 200, days in 2001. Teresa and the children visited Alaska during the summer months.

Later, on August 1, 2002, Michael left Alaska and moved to the Beaver Drive location in Oregon. He stated this was done when someone “with 12 years seniority suddenly quit. I was then able to transfer back to the Central Oregon area.” (Def’s Ex W.)

Defendant’s representative pointed to certain factors that he believed showed continued ties to Oregon since the 1997 move. These included the addresses of certain other relatives, some hunting activity, and a voter’s registration application. However, that latter registration occurred on August 2, 2002, not during the Alaska period relevant herein.

Michael filed a nonresident Oregon return for 2001. For 2002, he filed as a part-year resident, in recognition of the August reunion with his family. Defendant reviewed the returns and concluded Michael was an Oregon resident for all of both years. Defendant then issued Notices of Deficiency, followed by Notices of Assessment. Michael asserts that he abandoned his Oregon domicile in May 1997 and that he subsequently reacquired³ his Oregon domicile in August 2002. At trial, Defendant argued that neither of the Plaintiffs ever abandoned their Oregon domicile and were full-year Oregon residents for 2001 and 2002.

II. ANALYSIS

Oregon imposes a personal income tax “on the entire taxable income of every resident of this state.” ORS 316.037(1)(a).⁴ A “resident” is “[a]n individual who is domiciled in this state * * *.” ORS 316.027(1)(a)(A). Although the term “resident” is defined in terms of

³ Michael filed as a full-year Oregon resident in 2003.

⁴ Unless noted otherwise, all references to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are to 2001.

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 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 composed 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 (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); *see also* 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]rials 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).

In these cases, Plaintiffs have the burden of proving by a preponderance of the evidence that Michael was not an Oregon domiciliary in 2001 and 2002. *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 * * *”); *see also Reed’s Will*, 48 Or at 505 (“the burden of proof is upon the party who asserts the change [in domicile]”).

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Here there is no question that Plaintiffs had a dwelling place or abode in Alaska when they moved to Icy Bay in 1997. *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).

The key issue in this case is whether Plaintiffs intended to abandon their Oregon domicile and acquire a new domicile in Alaska upon their 1997 relocation.

Michael's intent is not difficult to ascertain. Certain facts strongly indicate he intended to abandon Oregon and acquire a domicile in Alaska. He was a highly credible witness, both as to recollection of details and the clear sincerity over the welfare of his family.

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).

Critical to the resolution of this case is the straight-forward, credible testimony offered by Michael. This is similar to the strong effective 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. 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.

The critical focus here is on the intent to acquire a new domicile. Plaintiffs moved all their belongings to Alaska. At that time, they owned no Oregon real property. With the closure of the Oregon job opportunities and the comprehensive evaluation of options both as to

employment and family needs, Plaintiffs had no reasonable expectation of returning to Oregon. The court finds Plaintiffs did intend, in 1997, to make Alaska their home. The subsequent Beaver Drive house acquisition is not, by itself, determinative. The court finds that, except for the closure of the Icy Bay school, Teresa and the children would have remained in Alaska with Michael as a unified family. Michael did stay there until unforeseen circumstances (a colleague's retirement) lured him to the Central Oregon job location.

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. Here, Plaintiffs took all necessary steps consistent with abandoning Oregon, with the requisite intent to acquire a domicile in Alaska.

III. CONCLUSION

The preponderance of the evidence leads the court to conclude that Michael clearly did abandon his Oregon domicile in 1997. He is not, therefore, a full year Oregon resident for tax years 2001 and 2002. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is granted.

Dated this _____ day of January 2007.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on January 4, 2007.
The Court filed and entered this document on January 4, 2007.***