

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

WILLIAM DAN HARMOND	)	
and STEPHANIE J. HARMOND,	)	
	)	
Plaintiffs,	)	TC-MD 070041E
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal Defendant’s 2002 Notice of Deficiency Assessment, dated October 26, 2006. After audit, Defendant concluded Stephanie J. Harmond (Stephanie) was an Oregon domiciliary and required to pay income tax to the State of Oregon. Plaintiffs appeal Defendant’s determination, arguing Stephanie was domiciled in the State of Washington in 2002. A telephone trial in the matter was held October 29, 2007. Paul Kingsland, Certified Public Accountant, appeared and testified on behalf of Plaintiffs. Also testifying for Plaintiffs was William Dan Harmond (William). Stephanie did not appear or testify at trial. Leah Hinton (Hinton), Auditor, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

Prior to the year 2000, Plaintiffs agree Stephanie was an Oregon resident and domiciliary. Plaintiffs lived together in their 3,234 square foot home in Portland, Oregon. (Def’s Ex D.) In 1999, Plaintiffs purchased a home in Washington on Lake Cushman, with the closest town being Hoodspert, which is 13 miles away. The Lake Cushman home has 1,256 square feet. (Def’s Ex E.) Plaintiffs own the home but lease the land.

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In 1999, Plaintiffs had their first child. William testified that, in 2000, Stephanie decided to move to Washington and make the Lake Cushman home her permanent residence. The Lake Cushman home is approximately two and one-half hours from their home in Oregon. William explained that he works for Regence Blue Cross Blue Shield and travels a lot for his job. As a result, he is away from home during the week. His largest sales territory is in Washington so, he testified, he would travel up there to see his wife during the week. William testified that both his parents and Stephanie's parents live in Washington, and Stephanie was raised in Washington. They believed it would be better for Stephanie to live in Washington to be closer to family. William testified that one set of parents lives one hour from the Lake Cushman home and the other set lives one and one-half hours away. William further testified that his mother had cancer during that time and Stephanie visited her frequently to care for her.

On April 2, 2002, Plaintiffs had another child. The child was born at a hospital in Portland, Oregon. When asked why the baby was born in Portland and not in Washington, William testified that he works in the healthcare industry and has a greater trust for the hospitals in Portland. He testified that, about 10 days after the second child was born, Stephanie moved back to Washington. Although living in Washington, Stephanie used Portland doctors for the children's doctor appointments. William testified that, for urgent matters, Stephanie would take the children to Washington doctors.

William testified that he and Stephanie kept their finances separate. He submitted 2002 records for his bank card and credit card showing occasional purchases in Washington. (Ptf's Exs 1, 2, 3, 12.) He testified those purchases prove he was in Washington visiting his family. He also submitted a statement from West Coast Bank, Salem, Oregon, showing a wire  
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transfer to an account with Stephanie's name on it. The address listed for Stephanie is a post office box in Hoodspport, Washington.

William testified that Stephanie obtained a Washington driver's license and submitted a copy of it to the court. (Ptf's Ex 8.) William also testified that Stephanie registered to vote in Washington, although no documentation was provided to support that statement.

Although he would have preferred to also move to Washington, William explained that Plaintiffs' home in Oregon was the subject of a siding dispute with the builder. As a result, he could not leave it. In 2005, Plaintiffs eventually filed suit against the builder. (Def's Exs G, H, I.)

Hinton testified that bills for the Lake Cushman home were sent to the Portland address. Hinton submitted a document showing the statements for the property's lease fee and tax were to be sent to Plaintiffs at their Oregon address. (Def's Exs E, F.) She also testified that the property's electrical statements are sent to Portland and that a credit report search for Stephanie shows only the Portland address for her, although Hinton provided no documents to support that testimony.

Plaintiffs provided 2002 utility records for the Lake Cushman home. The statement shows the following amounts billed and paid:

<u>Date Billed</u>	<u>Amount</u>
1-28-02	\$151.71
2-28-02	\$183.63
3-29-02	\$154.29
4-29-02	\$102.22
5-30-02	\$ 98.25
6-27-02	\$ 51.63
7-30-02	\$ 81.56
8-27-02	\$ 47.77
9-27-02	\$ 40.39

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11-27-02	\$113.54
12-30-02	\$153.70

(Def's Ex 5 at 2.)

Plaintiffs began filing married separate returns with Oregon in 2001, reporting only William's income. William testified that, in 2005, Stephanie and the children moved back to the Portland home. He explained they were concerned about the quality of education their children would receive in the Hoodspout area and decided to move the family back to Portland. In 2006, they started filing married joint returns again with the State of Oregon.

Plaintiffs appeal Defendant's assessment for 2002, claiming Stephanie became a Washington domiciliary in 2000 and remained so until 2005. William argues that, in 2001, Defendant reviewed Plaintiffs' situation and accepted it. He is frustrated Defendant has "gone back on its decision." Defendant claims that, although Stephanie may have spent time in Washington during the subject years, she never abandoned Oregon as her domicile.

## II. ANALYSIS

ORS 305.427 (2005) provides that, in proceedings before the Tax Court, "[t]he burden of proof shall fall upon the party seeking affirmative relief." Because Plaintiffs are seeking relief in this case, they have the burden of proof. That means Plaintiffs must establish their claim "by a preponderance of the evidence, or the more convincing or greater weight of evidence." *Schaefer v. Dept. of Rev.*, TC No 4530 (July 12, 2001) (citing *Feves v. Dept. of Revenue*, 4 OTR 302 (1971)).

Oregon imposes a personal income tax "on the entire taxable income of every resident of this state." ORS 316.037(1)(a).<sup>1</sup> A "resident" is defined as "[a]n individual who is domiciled in

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<sup>1</sup> Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are to 2001.

this state.” ORS 316.027(1)(a)(A). “Domicile” is defined in the Oregon Administrative Rules as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. OAR 150-316.027.

Although an individual can have many residences at one time, she can have only one domicile. *de la Rosa v. Dept. of Rev.*, 11 OTR 201, 203 (1989), *aff’d*, 313 Or 284, 832 P2d 1228 (1992).

Once domicile is established in a particular location, it remains there until a person establishes a new domicile. *Davis v. Dept. of Rev.*, 13 OTR 260, 264 (1995). A person’s domicile is changed when they establish three things: (1) residence in another place, (2) an intention to abandon the old domicile, and (3) an intention to acquire a new domicile. OAR 150-316.027(1)(a). “The determination of domicile, however, is difficult because it is so heavily steeped in the subjective view of the individual at issue. Due to the self-serving nature of statements of intent, heavy reliance is placed on an individual’s overt acts to discern state of mind.” *Ott v. Dept. of Rev.*, 16 OTR 102, 111 (2002) (citing *Hudspeth v. Dept. of Revenue*, 4 OTR 296 (1971)).

The parties agree that, in 1999, Stephanie was domiciled in Oregon. Plaintiffs claim, however, that in 2000, she abandoned Oregon as her domicile and acquired Washington as her new domicile. It is clear that Stephanie had two residences in 2002, one in Portland and one at Lake Cushman. The court also believes that she and William spent time at the Lake Cushman home. The question is whether Stephanie truly intended to abandon Oregon as her domicile. The court concludes she did not.

Although the issue before the court is whether Stephanie changed domiciles, she neither appeared nor testified at trial. Furthermore, Plaintiffs offered very little evidence to show Stephanie’s time spent in Washington. The only substantive evidence suggesting a change in

domicile was the acquisition of a Washington driver's license. However, that is not enough to persuade the court that Stephanie intended to abandon Oregon as her domicile. In 2002, she had her baby in a Portland hospital and their pediatrician was in Portland, although Seattle was a closer alternative. Her home in Portland is much larger than the home on Lake Cushman. The home in Lake Cushman is in a remote, vacation area 13 miles from the closest town. Although a nice place to visit and vacation, there is no evidence to persuade the court that Stephanie intended to make the home her permanent residence.

Plaintiffs offered William's bank statements to show he was in Washington visiting Stephanie and the children. First, the records were sporadic, showing no consistent pattern. Second, William admittedly worked in Washington so there is little doubt he was in Washington. Those records do little to show *Stephanie's* intention of abandoning Oregon as her domicile. The court questioned William why Stephanie's records were not submitted. William testified, with frustration, that it was too far back for the banks to provide that information.

Plaintiffs further argue that they are not motivated by tax avoidance. As proof of their statement, William testified that, in 2003, Plaintiffs paid a higher state tax by filing married separate. He was not able to say the same thing, however, for 2001, 2002, 2004, and 2005.

As stated above, the burden of proof falls upon Plaintiffs to show Stephanie intended to abandon Oregon as her domicile. The evidence is simply lacking. The court finds, therefore, that, although Stephanie likely stayed at the Lake Cushman home during periods of 2002, she did not intend to abandon Oregon as her domicile.

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### III. CONCLUSION

The court concludes Plaintiffs failed to show that Stephanie intended to abandon Oregon as her domicile. Now, therefore,

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

Dated this \_\_\_\_\_ day of December 2007.

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COYREEN R. WEIDNER  
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 Coyreen R. Weidner on December 28, 2007. The Court filed and entered this document on December 28, 2007.***