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SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Frances H. Floyd,	)	Docket No.: 15-ALJ-17-0458-CC
	)	
Petitioner,	)	
vs.	)	
	)	<b>ORDER DENYING MOTION</b>
South Carolina Department of Revenue,	)	<b>FOR RECONSIDERATION</b>
	)	
Respondent.	)	
	)	

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to a contested case hearing requested by Frances H. Floyd (“Petitioner”) challenging a Department Determination issued by the South Carolina Department of Revenue (“Respondent” or “the Department”) on August 6, 2015. In its determination, the Department found that Petitioner was a South Carolina resident for the 2008 tax year, and as such, Petitioner has a tax liability for income she earned in 2008. A hearing on the matter took place before this Court on February 4, 2016. On February 11, 2016, the Court issued a Final Decision and Order reversing the Department Determination. Thereafter, on February 22, 2016, the Department filed a motion requesting that the Court reconsider, alter, or amend its Final Decision and Order. A response in opposition to the Department’s motion was filed by Petitioner on March 3, 2016.

The Department alleges in its motion that this Court incorrectly applied the domicile standard and did not sufficiently consider Petitioner’s inaction in its decision. Specifically, the Department argues this Court did not give sufficient weight to Petitioner’s inaction on matters such as obtaining a driver’s license, voter registration, or vehicle registration in the state of Wyoming. All of which the Department contends evinces Petitioner did not have the requisite intent to become a Wyoming resident and was still domiciled in South Carolina for the tax year in dispute. Respondent also contends Petitioner’s 2008 Form 1040 reflected a South Carolina address, which is further evidence, per Respondent, that Petitioner was a South Carolina resident. It is Respondent’s contention that Petitioner’s testimony regarding her conduct is not sufficient evidence of her intent. More specifically, Respondent believes the Court should have required Petitioner’s testimony be corroborated by documented evidence of her efforts to change her residence from South Carolina to Wyoming.

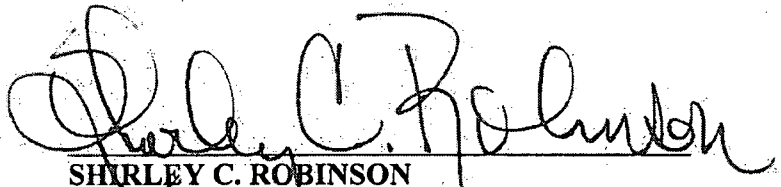
The domicile standard is outlined by the South Carolina Supreme Court in Ravenel v. Dekle, 265 S.C. 364, 218 S.E.2d 521 (1975). In that case, the Court defined domicile as “the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning.” Id., 265 S.C. at 379, 218 S.E.2d at 528 (quoting Gasque v. Gasque, 246 S.C. 423, 143 S.E.2d 811 (1965)). The Court further stated, “intent is a most important element in determining the domicile of any individual. It is also elementary, however, that any expressed intent on the part of a person must be evaluated in the light of his conduct which is either consistent or inconsistent with such expressed intent.” Id. In addition, “the act and intent as to domicil[e], and not the duration of residence, are the determining factors.” Holden v. Cribb, 349 S.C. 132, 140, 561 S.E.2d 634, 639 (Ct. App. 2002) (internal quotations and citation omitted). Also, see State of Texas v. State of Florida, 306 U.S. 398, 425, 59 S.Ct. 563, 576 (1939) (a case amongst several states in the United States Supreme Court’s original jurisdiction deciding residency and domicile of a wealthy decedent for estate tax purposes).

The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass’n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992) (citation omitted). A trial judge who observes a witness is in the best position to judge the witness’ demeanor and veracity and to evaluate the credibility of his testimony. See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996) (citations omitted); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990) (citing Thompson v. Brunson, 283 S.C. 221, 321 S.E.2d 622 (Ct. App. 1984)). The standard of proof in a contested case is a preponderance of the evidence unless otherwise specified. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2015); Anonymous v. State Bd. of Med. Exam’rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988) (citation omitted). “A ‘preponderance of the evidence’ is evidence which convinces as to its truth.” Gorecki v. Gorecki, 387 S.C. 626, 633, 693 S.E.2d 419 (Ct. App. 2010) (citing DuBose v. DuBose, 259 S.C. 418 424, 192 S.E.2d 329, 331 (1972)). Furthermore, because this Court hears a contested case de novo as the fact-finder, it is not bound by the Department’s determination. See Engaging & Guarding Laurens County’s Environment (EAGLE) v. S.C. Dept. of Health & Env’tl. Control, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (citations omitted).

After applying the above stated domicile standard to the evidence presented, this Court found that Petitioner demonstrated the necessary intent and conduct to be a domiciliary of Wyoming for the time in question. Although the Department would prefer more tangible evidence in the form of a driver's license, vehicle or voter registration, I find Petitioner's credible testimony as to her intent upon moving to Wyoming, as well as her efforts to remain in the State after moving, are sufficient to satisfy the domicile standard. Arguments raised in Respondent's motion were raised during the contested hearing, and have been addressed by this Court, and Respondent has brought to light nothing that causes the Court to change its final decision in this matter.

**THEREFORE, IT IS HEREBY ORDERED** that the Department's Motion for Reconsideration is **DENIED**.

**AND IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
South Carolina Administrative Law Judge

March 21, 2016  
Columbia, South Carolina

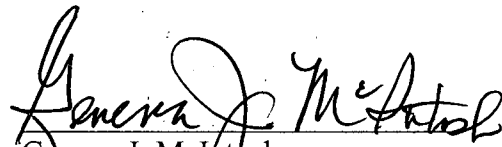
BY THE DATE OF DEPT. OF  
This is to certify that the undersigned has read and  
served this order, and has advised the petitioner and  
parties to this cause by depositing a copy thereof,  
in the United States mail postage paid or in the Agency  
Mail Service addressed to the party (ies) or their attorney(s).

This 21 day of March 2016  
By: Shirley C. Robinson  
Secretary

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Frances H. Floyd,	)	DOCKET NO. 15-ALJ-17-0458-CC
	)	
Respondent,	)	
	)	
vs.	)	<b>PROOF OF SERVICE</b>
	)	
South Carolina Department of	)	
Revenue,	)	
	)	
Appellant.	)	
_____	)	

I, Geneva J. McIntosh, do hereby certify that I have caused to be mailed, via United States Postal Service, postage prepaid, South Carolina Department of Revenue's Notice of Appeal, copy of the Final Decision and Order, and copy of the Order Denying Motion For Reconsideration re: Frances H. Floyd vs. South Carolina Department of Revenue, Docket Number: 15-ALJ-17-0458-CC to S.C. Court Administration, 1015 Sumter Street, Suite 200, Columbia, SC 29201, The Honorable Shirley C. Robinson, Administrative Law Judge, 1205 Pendleton Street, Suite 224, Columbia, SC 29201 and Stanley E. McLeod, Esquire, Brown Massey Evans McLeod & Haynsworth, LLC, P. O. Box 2464, Greenville, SC 29602 on this 1st day of April, 2016.

  
Geneva J. McIntosh