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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

JUL 05 2016

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley Robinson, Administrative Law Judge

Docket Number: 15-ALJ-17-0458-CC
Appellant Case No.: 2016-000766

South Carolina Department of Revenue.....Appellant,

v.

Frances H. Floyd.....Respondent.

FINAL REPLY BRIEF OF APPELLANT

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE ADMINISTRATIVE LAW COURT
In a Contested Case Hearing

The Honorable Shirley Robinson, Administrative Law Court Judge

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South Carolina Department of Revenue,.....Appellant,

v.

Frances H. Floyd,.....Respondent.

PROOF OF SERVICE

I, Jean M. O'Connor, do hereby certify that I have caused to be mailed, via United States Postal Service, postage prepaid, the South Carolina Department of Revenue's, Appellant, Final Reply Brief in the above referenced matter to Stanley E. McLeod and Tyler E. McLeod of Brown, Massey, Evans, McLeod and Haynsworth, LLC, located at 106 Williams St., P.O. Box 2464, Greenville, South Carolina, 29602, this 6th day of July 2016.



Jean M. O'Connor

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Comes now the Appellant, the South Carolina Department of Revenue, and respectfully submits the following in reply to the Respondent's brief.

ARGUMENT

The Respondent argues that she established domicile in Wyoming and is thus not subject to South Carolina income tax for the 2008 tax year. In making its argument, the Respondent relies solely upon the Respondent's statements regarding intent, but there is nothing in the record other than the Respondent's self-serving testimony to support that intent. The Respondent alleges the acts of moving to Wyoming, establishing temporary lodging and obtaining two jobs are sufficient to establish domicile. (Resp. Br. p 5) This position ignores the point of all applicable case law on domicile which consistently hold that incidental activities in another state do not equate to establishing domicile. In other words, a mere temporary move, including activities incident to the move, such as temporary employment and lodging, is not the same as abandoning a former domicile and adopting a new one. To the contrary, as explained in the Appellant's brief, South Carolina and other states have case law on point, requiring courts to examine a person's intentions and actions to determine whether they have established domicile.

The question before this Court is whether the Administrative Law Court (ALC) erred in holding the Respondent's testimony unsupported by any documentary evidence and contradicted by the Respondent's actions and other statements, is sufficient to find that the Respondent abandoned her South Carolina domicile and obtained domicile in Wyoming. To resolve that question, the Court need look no further than the ALC's misapplication of law and its abuse of discretion in finding for the Respondent despite the Respondent offering nothing more than her own self-serving statements that she

established domicile in Wyoming. As explained more fully in the Appellant's brief, such statements are not substantial evidence nor sufficient to overcome the evidence put forth by the Appellant.

The Respondent relies heavily upon, as did the ALC, the Respondent's bare assertions that she intended to establish domicile outside South Carolina, despite contradictory statements and no substantial proof of such. Instead, the Respondent appears to believe that a temporary absence from South Carolina is enough to establish domicile elsewhere simply because the Respondent worked in Wyoming while living there, before returning to South Carolina. The Respondent all but ignores the demands of Wyoming law, which the Respondent failed to follow while there, furthering the Appellants' position that the Respondent had no intention of staying in Wyoming permanently.

These facts demonstrate the Respondent did not establish domicile in Wyoming and is, therefore, subject to South Carolina income tax for the 2008 tax years. Therefore, the Appellant respectfully requests that the Court reverse the Order of the ALC.

I. The Respondent Did Not Offer Substantial Evidence She Established Domicile In Wyoming.

The Respondent acknowledges the importance of South Carolina case law on the subject of domicile, notably Ravenel v. Dekle, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975). (Resp. Br. p. 4) In Ravenel, the South Carolina Supreme Court stated that, "intent is the most important element in determining the domicile of an individual." Id. The Respondent offers little to show she established Wyoming to be her "true, fixed and permanent home", other than conditions incident to a temporary move, such as a job and

temporary lodging. Indeed, the Respondent relies solely on her testimony that she intended to make Wyoming her state of domicile. Relying on the Respondent's testimony that she establish domicile in Wyoming, without substantial evidence to prove her assertions, is repugnant to the core of Ravenel, which states, "It is...elementary...that **any expressed intent...must be evaluated in the light of [the person's] conduct which is either consistent or inconsistent with such expressed intent.**" Id. (emphasis added). Here, there are blatant contradictions between the Respondent's actions and the intent she claimed to have while testifying.

a. Incidental Activities In Another State Do Not Equate To Establishing Domicile.

The Respondent alleges that temporary lodging, opening a bank account, incurring bills and obtaining employment is determinative of her intent and is conclusive of her establishing domicile in Wyoming. (Resp. Br. p. 4) These actions are not enough for the Respondent to establish a Wyoming domicile because simply living and working in a temporary place of residence does not abandon one state of domicile or adopt another. Case law is clear on this issue. In Gasque v. Gasque, the South Carolina Supreme Court heralded the primary distinction in the determination of domicile: generally, temporary absence from one's state of domicile solely because of employment does not change domicile, without clear proof of intent to abandon the old domicile and adopt a new one. Unless a taxpayer is able to show clear proof of intent of a change of domicile, merely moving out of the state for temporary employment does not equate to abandoning a domicile and adopting a new one. Gasque v. Gasque, 246 S.C. 423, 143 S.E.2d 811 (1965). In Sample v. Bedenbaugh, the South Carolina Supreme Court stated

“It has been well settled in this state, as elsewhere, that place of residence is a question of fact and depends upon the intention of the party as evidenced by his acts and declarations...” Sample v. Bedenbaugh, 158 S.C. 496, 155 S.E. 828 (1930).

In Gasque and Sample, the South Carolina Supreme Court has made clear that conduct and actions are required to show a person intends to establish domicile. The Respondent alleges that the acts of acquiring temporary lodging, obtaining a job and opening a bank account settle the issue of whether she established domicile. However, these are activities that are meant to support the Respondent during her temporary stay and have no indicia of permanence. These facts alone do not indicate any “true, fixed, and permanent home”. Ravenel. Here, the Respondent is able to show only temporary connection to the State of Wyoming. The Respondent took no steps to establish a permanent residence in Wyoming and, in fact, avoided certain actions that would have certainly established Wyoming as her state of domicile. Such demonstrates she did not establish domicile in Wyoming.

The Respondent’s activities in Wyoming were merely incidental to the Respondent’s stay in Wyoming. The seasonal, temporary and transient nature of the Respondent’s actions show nothing more than her desire to maintain her life and lifestyle while in Wyoming, but make no determinative basis for the duration of her stay. In fact, the temporary nature of her accommodations shows an unwillingness to establish a permanent home in Wyoming. The fact that the Respondent ultimately returned to South Carolina undermines any allegation that the aforementioned activities were meant to be permanent. Furthermore, the acts of obtaining a temporary job and rental housing is not sufficient to establish domicile in light of the fact that the Respondent did not sever her

ties with South Carolina. The uncontroverted evidence shows the Respondent continued to utilize a South Carolina post office box, a South Carolina driver's license, and a South Carolina car registration. The Respondent's continued use of these South Carolina connections show that she intended to return and remain in South Carolina. The Respondent's return to South Carolina the following year further evidences this fact.

b. The Respondent Failed To Explain Why She Avoided Activities That Tend To Show She Wished To Permanently Remain In Wyoming.

As explained more fully in its brief, the Appellant asserts that the Respondent's intent to remain permanently in Wyoming must be shown by more than the Respondent's self-serving statements. More specifically, the Respondent's assertions must be evaluated in light of her actions or inaction. The Appellant set forth numerous examples of inaction or contradictory actions taken by the Respondent. The Respondent's brief fails to explain these inactions and inconsistencies.

The Respondent cites Mitchell v. U.S. to support her position that she was engaged in overt acts that prove her intention was to establish domicile in Wyoming. Mitchell v. U.S., 88 U.S. 1874. (Resp. Br. p. 5) In Mitchell, the United States Supreme Court noted that for domicile "[t]o be established it must be proved. Among the circumstances usually relied upon to establish the [intention to remain] are: Declarations of the party; the exercise of political rights; the payment of personal taxes; a house of residence, and a place of business." The Respondent claims that she met some of these factors on a temporary basis, namely, obtaining seasonal jobs and renting a house. But the Respondent only had temporary rental housing and seasonal jobs which do not indicate any level of permanence. (Resp. Br. p. 5) Moreover, the Respondent failed to

establish her meeting other factors that could have shown that she intended her stay in Wyoming to be permanent. For example, the Respondent admits in her brief that she did not vote or register to vote in Wyoming. (Resp. Br. p. 7) The Respondent failed to put forth any evidence at the hearing as to why she did not register to vote. The Respondent's refusal to register to vote is consistent with her other actions in Wyoming, all of which show a lack of desire to make Wyoming her true, fixed and permanent home.

The Respondent asserts that her opening a bank account was sufficient to establish domicile in Wyoming. The Respondent failed to offer any evidence as to when this account was opened or what address she used in setting up the account. Moreover, the Respondent failed to offer any evidence that she closed her South Carolina bank accounts. Closing a prior account would indicate a desire to sever at least part of one's connection with a previous residence. The Respondent failed to offer any such evidence.

Additionally, the Respondent failed to explain why she chose not to follow Wyoming law in registering her vehicle in Wyoming. Wyoming statute 31-2-101 clearly states that "...every owner of a vehicle which will be operated on Wyoming highways...shall apply for a certificate of title at the office of a county clerk." (Department's Br. p. 9) The Respondent merely states she utilized her father's vehicle while in Wyoming. (Resp. Br. p. 7) This explanation does not explain why the Respondent failed to follow Wyoming law. To the contrary, continuing to utilize her father's car and not properly registering that vehicle is proof she did not intend to remain in Wyoming permanently. Likewise, the Respondent alleges that she did not obtain a Wyoming driver's license because her South Carolina driver's license had not expired. (Resp. Br. p. 7) Had the Respondent intended to stay in Wyoming permanently, the

expiration date of her South Carolina driver's license should be irrelevant. The Respondent's failure to make the changes in her vehicle registration and driver's license show she did not intend to abandon South Carolina as her State of domicile.

Lastly, the Respondent has failed to explain why she maintained and utilized a South Carolina post office box while she lived in Wyoming. The Respondent asserts that her writing "A Wyoming Resident" on her 2008 return is an affirmative act supporting her position. This statement is contradicted by the return itself which utilized a South Carolina address. The Respondent's 2008 Form 1040 lists her address as a South Carolina post office box, a full year after the Respondent went to Wyoming. (Appellant's Br. p. 14) The Respondent offered no explanation why she not only maintained a South Carolina post office box, but moreover used that post office box while alleging domicile in Wyoming.

Simply stated, the Respondent avoided activities that would establish domicile in Wyoming. The facts in this case run contrary to the Respondent's assertions that she wished to remain in Wyoming permanently. Further, the Respondent has offered no substantial evidence at the ALC or in its initial brief to explain why she avoided some activities that would be determinative of domicile.

c. The Respondent Did Not Address Her Contradictory Statements Regarding Her Temporary Stay In Wyoming.

The Respondent's initial brief fails to explain her contradictory statements made before the ALC. The Respondent stated both at the ALC and in its brief that she had "every intention of staying out of the South". (Resp. Br. p. 3) Yet South Carolina, the Respondent's home, is the very place she returned to when she left Wyoming. The

Respondent makes no attempt to explain the discrepancy in her statements that she desired to abandon South Carolina as her state of domicile in 2008, yet returned to South Carolina in 2009 and has been here since.

The Respondent has failed to explain how her testimony at the ALC shows she intended to stay in Wyoming permanently, such as when she stated she was “just getting by and having a little too much fun out there too, and to be honest, I needed to figure out a career”. (Appellant’s Br. p. 11) At the ALC, the Respondent also stated, “It just wasn’t – I couldn’t, honestly I couldn’t afford to do it and it was just time to kind of grow up a little bit and – pursue a career...At the time then, there just wasn’t anything to facilitate what I needed to do in order, again, to grow up.” (Appellant’s Br. p. 12) The Respondent offered nothing in her brief to show how these statements show her desire to establish domicile in Wyoming. To the contrary, these statements stand in opposition to the Respondent’s assertions that she intended to establish domicile in Wyoming or that her time in Wyoming was anything but temporary. These uncontroverted statements show the Respondent knew her stay in Wyoming was temporary.

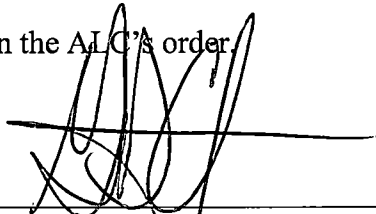
II. The ALC’s Order Will Cause Harmful Effects.

Following the ALC’s Order, anyone who moves out of South Carolina temporarily can simply allege an intention of establishing domicile elsewhere, then move back to South Carolina, free of income tax liability during their absence. The Respondent stated in her brief that, “The Appellant argues that given the ALC’s reasoning, anyone can temporarily move from the State of South Carolina in order to forgo the payment of income taxes simply by alleging domicile elsewhere.” (Resp. Br. p. 7) That is exactly what the Respondent did in this matter. If the ALC’s Order is allowed to stand, other

taxpayers will have an avenue to avoid South Carolina income tax. It is not difficult to image the effects of an order, like this one, which lowers the standard that a taxpayer must meet in order to prove they have established domicile in another state. While the Respondent attempts to downplay the harmful effects asserted by the Appellant, such effects are inevitable if the ALC's ruling remains. Allowing self-serving testimony not supported by substantial evidence to constitute sufficient grounds to change one's domicile will drastically impact the Appellant's ability to enforce the income tax laws of the state.

CONCLUSION

The Administrative Law Court erred in holding the Respondent was not liable for South Carolina income tax for the 2008 tax year. The ALC's Order was arbitrary and constitutes an abuse of discretion. Moreover, the order is clearly erroneous in view of reliable probative and substantial evidence in the record. For all the forgoing reasons the Department asks that this Court overturn the ALC's order.



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