

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
In a Contested Case Hearing

The Honorable Shirley Robinson, Administrative Law Court Judge

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SC Court of Appeals

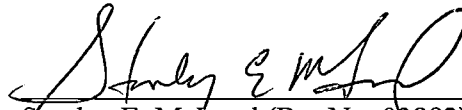
Docket No. 15-ALJ-17-0458-CC
Appellant Case No.: 2016-000766

South Carolina Department of Revenue, Appellant,

v.

Frances H. Floyd, Respondent

INITIAL BRIEF OF RESPONDENT



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ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT ERR IN HOLDING THE RESPONDENT WAS NOT SUBJECT TO SOUTH CAROLINA INCOME TAX FOR THE 2008 TAX YEAR?

STATEMENT OF THE CASE

In 2004, Frances Hunter Floyd ("Respondent") left South Carolina to attend college in Oxford, Mississippi. In December of 2007, the Respondent graduated from college and moved to Jackson, Wyoming, where she worked in the resort industry. The Respondent was employed at Jack Dennis Sports, Inc. and 3 Creek Ranch Golf Club, earning wages in Wyoming until May of 2009.

On the 2008 Form 1040 Federal Income Tax return, the Respondent indicated she was "a Wyoming Resident." The Respondent did not file a 2008 income tax return with South Carolina as she was a Wyoming resident. Upon leaving Wyoming in May of 2009, the Respondent returned to South Carolina. On June 6, 2014, the South Carolina Department of Revenue (the "Department" or "Appellant") issued the Respondent a Proposed Notice of Assessment for the 2008 Income Tax year, notifying the Respondent that she failed to file a South Carolina income tax return for the 2008 period. The Respondent has resided in South Carolina since returning in May of 2009.

On July 29, 2014, the Department received an appeal from a certified public accountant representing the Respondent named Lewis W. Haselwood ("Mr. Haselwood" the Respondent's "accountant"). Mr. Haselwood stated that the Respondent established residency in Wyoming because she lived and worked in Wyoming during the 2008 period.

On August 6, 2015, the Department issued its Determination, finding that the Respondent remained domiciled in South Carolina and was therefore liable for South Carolina income tax for the 2008 tax year. On September 4, 2015, the Respondent appealed the Department's Determination and requested a contested case hearing before the Administrative Law Court ("ALC"). On February 4, 2016, the ALC held a contested case hearing on this matter.

At the hearing, the Respondent testified that she moved to Wyoming with the intention of staying there indefinitely. Respondent testified that, "I graduated from the University of Mississippi ready to go out of the South with the intention of staying out of the South." (Transcript, p. 11 lines 20-25).

In its Final Order, dated February 11, 2016, the ALC reversed the Department's Determination and found the Respondent established domicile in Wyoming and therefore was not liable for 2008 South Carolina income tax. On February 22, 2016, pursuant to ALC Rule 29(D) and Rule 59(E), SCRCF, the Department filed a Motion for Reconsideration with the ALC. The Department's basis for the motion was twofold. First, that the ALC had incorrectly applied precedent and second, that the ALC failed to consider the Respondent's inaction in terms of establishing domicile in the State of Wyoming. On March 3, 2016, counsel for the Respondent filed a response to the Department's Motion. On March 21, 2016, the ALC issued its Order denying the Department's Motion for Reconsideration. The Appellant then filed its appeal of the ALC's Order.

ARGUMENT

THE ADMINISTRATIVE LAW COURT DID NOT ERR IN HOLDING THE RESPONDENT WAS NOT SUBJECT TO SOUTH CAROLINA INCOME TAX FOR THE 2008 TAX YEAR.

In an appeal from the decision of an administrative agency, the Administrative Procedures Act provides the appropriate standard of review. Olson v. S.C. Dep't of Health & Env'tl. Control, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct. App. 2008); Turner v. S.C. Dep't of Health & Env'tl. Control, 377 S.C. 540, 544, 661 S.E.2d 118, 120 (Ct. App. 2008); Clark v. Aiken County Gov't, 366 S.C. 102, 107, 620 S.E.2d 99, 101 (Ct. App. 2005). S.C. Code Ann. § 1-23-610(B) (Supp. 2013) provides the applicable standard:

(D) The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the Appellant has been prejudiced because of the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (t) arbitrary or capricious or characterized by abuse of discretion

or clearly unwarranted exercise of discretion.

Under the substantial evidence standard, a reviewing Court may reverse or modify an agency decision based on errors of law, but may only reverse or modify an agency's finding of fact if they are clearly erroneous. The Court reviewing the agency's decision should not substitute its own finding of fact for those of the agency nor should the Court substitute its judgment for that of the agency as to the weight of the evidence. Tobey v. L&P Const. Co., 296 S.C. 123, 125, 370 2d 897, 899 (Ct. App, 1988).

The Department argues that the ALC abused its discretion in finding for the Respondent failed to meet her burden of proof at the hearing by failing to offer substantial evidence to support her assertions. The Department also argues the ALC improperly applied case law and precedent in its finding that the Respondent established domicile in Wyoming for the 2008 tax year. In addition, it argues the ALC erred in its Order reversing the Department's Determination that the Respondent was a South Carolina resident, and therefore owes taxes to South Carolina, for the 2008 tax year. Respondent respectfully requests that the Court deny the appeal of the Department as there is sufficient evidence in the record to affirm the decision of the ALC.

A. The ALC's Finding That The Respondent Established Domicile In Wyoming Is Supported By The Evidence In The Record.

The Respondent did offer substantial evidence that she adopted domicile in Wyoming. At the hearing before the ALC, the Respondent testified that, "I graduated from the University of Mississippi ready to go out of the South with the intention of staying out of the South." (Transcript p.11, Lines 20-25) Respondent testified that it was her true and honest intent to stay in Wyoming. Respondent testified that she was happy and wanted to stay and "you know, was with someone there and wanted to remain and get married and have the family and have the beautiful little, you know, one tree wonderland out there." (Transcript p. 15, Lines 9-16)

S.C. Code Ann. § 12-6-510(A) (2014) of the South Carolina Income Tax Act imposes a tax on the South Carolina taxable income of individuals, estates, and certain other entities. For residents, §

12-6-560 (2014) indicates how this taxable income is to be determined. More specifically, § 12-6-560 states, "[a] resident individual's South Carolina gross income, adjusted gross income, and taxable income is computed as determined under the Internal Revenue Code" Pursuant to such Code, taxable income is simply gross income minus certain deductions and exclusions (see I.R.C. § 63). In the instant situation, the Taxpayer's income is taxable under § 12-6-510(A) if it comes within the definition of "gross income" at I.R.C. § 61. That definition defines "gross income" to include: "(a) . . . all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items[.]"

Because § 12-6-560 applies to "resident individuals," the issue becomes whether the Respondent is a resident individual. S.C. Code Ann. § 12-6-30(2) (2014) defines "resident individual" as "an individual domiciled in this State." The statute does not define "domicile." The South Carolina Supreme Court, however, assigned the following meaning to the term: ". . . 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." Ravenel v. Dekle, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975). The Court further stated that a person may have several residences or dwelling places, but may only have one domicile at a particular time, and such person maintains his domicile until he establishes a new one. *Id.* Accordingly, if the Respondent is domiciled in South Carolina, she is a resident individual subject to state income tax.

In addressing domicile, the Supreme Court in Ravenel stated: ". . . intent is a most important element in determining the domicile of an individual.

The Respondent testified that she rented a place to live in Wyoming, opened a bank account, incurred bills, was employed by two employers there and began to build a home there. (Transcript p. 45, Lines 21-25). The above clearly evidences Respondent's intent to make Wyoming her domicile. She had been out of South Carolina since 2004. Respondent had no home in South Carolina. Her parents had a house, but Respondent had graduated from college and had no permanent home or

principal established in South Carolina to return to unless she moved back in with her parents which was not discussed as an option.

B. The ALC Did Not Abuse Its Discretion in Evaluating Testimony and Credibility.

The ALC based its Order on the evidence presented at the hearing, including the testimony of Respondent as to her intent to be a Wyoming resident, the rental of a home, the opening of a bank account, the obtaining of two (2) jobs, and the search for other opportunities there. (Transcript p. 45, Lines 21 – 25, p. 46, Lines 1-2). Respondent's testimony clearly reflected her intent to be a Wyoming resident and also reflected on her 2008 Federal tax return.

In Mitchell v. U.S., 88 U.S. 1874, 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." Here, the Respondent rented a house and got two (2) jobs and searched for others. Respondent graduated from the University of Mississippi ready to go out of the South with the intention of staying out of the South. Respondent testified it was her true and honest intent to stay in Wyoming.

The Appellant argues that the establishment of domicile must be accompanied with proof of an intention to remain in the adopted domicile for an unlimited time and that proof must be more than a "bare assertion." The Respondent's testimony along with her rental of a home, the opening of a bank account, obtaining two (2) jobs and search for other opportunities was clearly sufficient to the ALC to prove that she intended to establish her domicile in Wyoming. She testified in no uncertain terms that she wanted to move out of the South and establish a home in Wyoming. Appellant argues that Respondent's intentions are unaccompanied by any proof of intent to abandon her South Carolina domicile. That is simply untrue as the ALC found. Respondent rented a home, set up bank accounts, got two (2) jobs and looked for other opportunities and would have stated in Wyoming if she had found the right job. Respondent testified she wanted to be a Wyoming resident and put that on her

Federal tax return. Appellant refuses for some reason to acknowledge that Respondent just got out of college in Mississippi and chose to move to Wyoming to get out of the South and establish a home in Wyoming. She rented a home, set up a bank accounts got two jobs, and filed a Federal tax return setting forth she wanted to be a Wyoming resident and not a South Carolina resident.

C. The ALC Erred In Its Ruling By Failing To Correctly Apply Case Law And Precedent.

Among applicable South Carolina case law addressing domicile, Ravenel does not stand alone. In determining domicile, the South Carolina Supreme Court stated that "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). (Emphasis added). Because intent is at the root of a change in domicile, the determination of whether one has changed domicile requires an examination of a person's actions.

In this case, there is no dispute the Respondent lived in Wyoming from December, 2007, until May, 2009. What is at issue, according to the Appellant, is whether the Respondent took steps to abandon her South Carolina domicile and adopt Wyoming as her state of domicile. When Respondent filed her Federal return and put on it "Wyoming Resident," that was an overt act to abandon South Carolina as her domicile. The Department looks to overt acts by a taxpayer in abandoning their South Carolina domicile to ensure the change is legitimate. Here the Respondent did take the overt step to change her domicile and in fact her acts show she desired to be a Wyoming resident.

The Appellant agrees that certain cases support their position. In one case so cited, Blount v. Boston, the Court of Appeals of Maryland addressed the issue of domicile, extensively, stating "Intent is best shown by objective factors" and also that:

The two most significant objective factors evidencing a person's intent regarding domicile are where the person lives and where he or she votes or is registered to vote. Ballwin, 272 Md. at 498, 325 A.2d at 397 ("the two most important elements in determining domicile are where a person actually lives and where he votes"). Our cases have characterized the place of voting as "the highest evidence of domicile."

Blount v. Boston, 351 Md. 360, 718 A.2d 1111 (1998). The Respondent lived in Wyoming and had chosen not to register to vote yet in South Carolina nor Wyoming.

The ALC found the Respondent abandoned her South Carolina domicile. The ALC's Order states that the Respondent's conduct shows she intended to adopt Wyoming as her state of domicile. In Ravenel "expressed intent . . . must be evaluated in the light of [the person's] conduct which is either consistent or inconsistent with such expressed intent," the facts do support the finding that the Respondent showed she intended to be domiciled in Wyoming. Respondent testified that she intended to make Wyoming her domicile and she rented a home, set up a bank account and got two jobs in Wyoming and searched for other opportunities.

Respondent did not get a new driver's license as her old one had not expired. She did not register to vote as she had never registered to vote. She did not change the vehicle registration as it was her father's vehicle. However, everything else shows she was to be a resident of Wyoming and not South Carolina.

D. The ALC's Order Will Not Cause Harmful Effects.

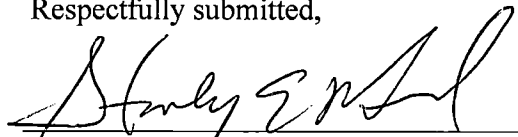
The Appellant argues that given the ALC's reasoning, anyone can temporarily move from the State of South Carolina in order to forgo the payment of income taxes simply by alleging domicile elsewhere. Per the ALC's Order, a taxpayer need only move out of state, take no action to set up a "home," establish a bank account nor get a new job, then can allege an intention to stay in another state to be absolved from income taxes for that period. This argument is an exaggeration and not likely an occurrence if the ALC's Order remains. Such an argument as made by the Appellant is absurd. Not many people who live in South Carolina and work in South Carolina can simply move out of state to get around paying South Carolina taxes. They would have to sell their homes and quit their jobs here.

The Appellant then argues the basis of domicile is permanence. Appellant also argues a temporary change in residence, as well as having multiple residences, is not the same as a change in domicile. Appellant then sets for that the primary indicators of a change in domicile are the acts a person takes to manifest their intention to abandon their previous place of domicile and adopt a new one. The Appellant is so concerned that everyone in South Carolina will sell their homes and quit their jobs and move out of South Carolina to not pay South Carolina taxes that they fail to see the facts in the present case are different. Appellant moved to Wyoming after college in Mississippi to find the job she desired. Appellant stayed in Wyoming for over a year and a half. She intended to remain there. She opened a bank account, rented a home and found two (2) jobs and searched for others. She had no home in South Carolina. Her parents did, however. She would have stayed in Wyoming if she could have found her desired job.

CONCLUSION

The Administrative Law Court found the Respondent was not liable for South Carolina Income Tax for the 2008 Tax Year as she established Wyoming as her residence. The ALC's Order is supported by sufficient evidence of this case. For all the forgoing reasons the Respondent asks that this Court affirm the ALC's Order.

Respectfully submitted,



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June 23, 2016

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
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SC Court of Appeals

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Appellant Case No.: 2016-000766

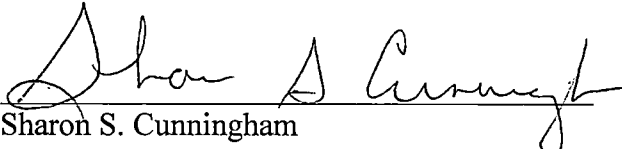
South Carolina Department of Revenue, Appellant,

v.

Frances H. Floyd, Respondent

PROOF OF SERVICE

I, Sharon S. Cunningham, do hereby certify that I have caused to be mailed, via United States Postal Service, postage prepaid, Frances H. Floyd's, Respondent, Initial Brief and Designation of Matter in the above referenced matter to Sean G. Ryan, Esquire, P. O. Box 12265, Columbia, SC 29211, this 23 day of June 2016.


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June 23, 2016

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SC Court of Appeals

Re: Frances H. Floyd v. South Carolina Department of Revenue
Docket No. 15-LJ-17-0458-CC
Appellant Case Number: 2016-000766

Dear Ms. Kitchings:

Enclosed please find Respondent's Initial Brief and Designation of Matter in the above referenced action.

If you have any questions, please don't hesitate to telephone.

Yours very truly,

BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC


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SEM/sc

Enclosure

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SC Court of Appeals

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