

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Southwest Regional Tax	:	
Bureau,	:	
Appellant	:	
	:	
v.	:	No. 2038 C.D. 2011
	:	Argued: June 4, 2012
William B. Kania and	:	
Eleanor R. Kania, his wife	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION
BY JUDGE LEAVITT

FILED: July 26, 2012

Southwest Regional Tax Bureau (Bureau) appeals an order of the Court of Common Pleas of Fayette County (trial court) denying the Bureau’s request that William B. Kania be ordered to pay income taxes to North Union Township and the Laurel Highlands School District.¹ The trial court held that Kania, who owns homes in Pennsylvania and Florida, is domiciled in Florida. Because local income taxes, such as those at issue here, may be imposed only on those domiciled in Pennsylvania, the trial court ruled against the Bureau. Discerning no error, we affirm.

On April 3, 2008, the Bureau filed a tax collection action against Kania for non-payment of income taxes under authority of the Local Tax Enabling

¹ Kania’s wife was also named in the complaint, but the parties later stipulated that she did not have any earned income for the tax years at issue and the trial court dismissed the action against her. Reproduced Record at 119a (R.R. __).

Act.² The Bureau sought payment of taxes, interest, penalties, attorney fees and costs for a total of \$25,000. Kania answered that he was not obligated to pay the tax, and the trial court conducted a non-jury trial.

At trial, Kania, who is 80 years old, testified. He explained that he has owned a home in Pennsylvania for the past 46 years, and in 1982 he bought a home in Florida. Since 1982, continuing to the present, it has been Kania's practice to spend part of the year in Florida and part in Pennsylvania. However, in 1998 he changed his state of domicile to Florida. In 2002, Kania notified the Bureau, in writing, that because he had become a Florida resident, he was no longer required to file local income taxes in Pennsylvania. In that letter, he requested a refund of the 2000 local income taxes he paid. At the trial, Kania offered both testimony and documentary evidence to prove that he had changed his state of domicile from Pennsylvania to Florida.

Kania offered a copy of his Florida voter registration card, which was dated June 13, 1998, and testified that he has voted in every election in Florida since 1998. He has not voted in Pennsylvania since 1997. Kania testified that he

² Act of December 31, 1965, P.L. 1257, *as amended*, 53 P.S. §§6924.101-6924.901, formerly 53 P.S. §§6901-6924. Specifically, Section 705(a) of the Act permits a suit to be brought for the non-payment of income tax, and states, in relevant part, as follows:

Each taxing district or person, public employe or private agency designated by the taxing district under Chapter 3 and each tax officer under Chapter 5 shall have power to collect unpaid taxes from the persons owing such taxes by suit in assumpsit or other appropriate remedy.

53 P.S. §6924.705(a).

has two vehicles that are registered in Florida; has a Florida driver's license; uses his Florida address on tax filings; and maintains his bank accounts in Florida.³

Kania is a certified public accountant, and he holds a 52 percent ownership interest in the accounting firm of W.B. Kania & Associates, which is located in Pennsylvania. He works for the firm from Florida, which is the address shown on his business cards, and he has been a member of the Florida Institute of Certified Public Accountants since 2001. Kania acknowledged that although he did not pay the local income taxes demanded by the Bureau, he did pay state income taxes owed to the Commonwealth of Pennsylvania on his distribution of firm profits. State income taxes are triggered by distribution of a Pennsylvania partnership's profits regardless of the partner's state of domicile.⁴

Kania explained that he serves on numerous professional, political and charitable boards in Florida, and he has done so since 1998. By contrast, he has resigned from the boards of numerous Pennsylvania authorities, including the North Fayette County Municipal Authority, the Airport Authority, the North Union Township Sewage Authority, the Fayette County Industrial Development Authority, and the North Union Township Planning Authority. These resignations were all effected by 1999.

³ Kania did retain a Pennsylvania driver's license for at least part of the time period in question. He was unsure when he obtained a Florida license. He offered his current Florida driver's license into evidence, and it was issued in 2008.

⁴ Under state law, income received by a nonresident is taxable as personal income, pursuant to Department of Revenue regulation, if it is derived from "[a] trade, profession or occupation" that is carried on by a "partnership or association of which he is a member" located in the Commonwealth. 61 Pa. Code §101.8.(d). Accordingly, Kania filed earned income taxes with the Pennsylvania Department of Revenue.

Finally, Kania explained that he spends 55 percent of the year in Florida, 35 percent in Pennsylvania and 10 percent traveling, both for business and pleasure. Generally, he and his wife go to Florida in October and remain there until the following May. However, they return to Pennsylvania for Thanksgiving and Christmas to spend time with their family. Between June and October, they go back and forth between Florida and Pennsylvania, and they also travel for vacation and for business.

Bernadette Nemick, office manager for the Bureau, testified. She explained the Bureau's audits of Kania's earned income and how the Bureau calculated his local income tax obligations. The total income tax amount owed for tax years 2001-2005 was \$14,352.22; with accrued penalties, the tax owing was \$31,011.16. However, Nemick explained the Bureau agreed to cap its income tax demand at \$25,000.00.

The trial court held that Kania had changed his state of domicile from Pennsylvania to Florida prior to the 2001 tax year. The trial court credited Kania's testimony that he intended to make Florida his permanent domicile and found that Kania's actions since 1998 all confirmed an intention to change his state of domicile.

The Bureau appealed.⁵ The Bureau lists seven issues for our review, but they can be reduced to two discrete issues. First, the Bureau contends that the trial court erred as a matter of law in concluding that Kania was domiciled in

⁵ Our scope of review from a judgment following a non-jury trial is to determine whether the trial court's findings are supported by competent evidence and whether an error of law was committed. *Commonwealth v. Hoffman*, 938 A.2d 1157, 1160 n.10 (Pa. Cmwlth. 2007). In so doing, we may not reweigh the evidence or substitute our judgment for that of the trial court. *Id.* Further, the trial court "is free to believe all, part or none of the evidence presented." *Id.*

Florida because the record demonstrated that it is his practice to return to his home in Pennsylvania after his absences. Second, Kania's evidence, by contrast, did not prove a change in his state of domicile.⁶

We begin with a review of the Local Tax Enabling Act. Section 504 allows townships and school districts to tax the earned income of persons who are domiciled within their borders. 53 P.S. §6924.504.⁷ Section 501 of the Act defines "domicile" as the place where a person "has a permanent home and to

⁶ In its statement in lieu of opinion, the trial court suggests that the Bureau's appeal was untimely. It was filed on October 24, 2011, which was 31 days after the trial court's September 23, 2011, order denying the post-trial motions. The Bureau counters that case law establishes that orders denying post-trial motions are not appealable. *Cauthorn v. Owens Corning Fiberglas Corp.*, 840 A.2d 1028, 1030 n.1 (Pa. Super. 2004). Instead, it is the judgment that is appealable. *Id.* See also *Taxin v. Shoemaker*, 799 A.2d 859 (Pa. Super. 2002) (order denying post-trial motions is not appealable until order is reduced to judgment). Here, judgment was not entered by the trial court until October 5, 2011, making the October 24, 2011, appeal well within the prescribed 30-day appeal period.

The Bureau is correct that the trial court's order denying the post-trial motions does not contain an order of judgment. R.R. 244a. Hence, the order of judgment was filed on October 5, 2011. Therefore, we agree with the Bureau that the appeal is timely.

⁷ Section 504 was added by the Act of July 2, 2008, P.L. 197. Section 504(a) states, in relevant part, as follows:

A tax collection district is established in each county, except a county of the second class, for purposes of collecting income taxes. The geographic boundaries of a tax collection district shall be coterminous with the county in which it is created, except as provided in this section. A school district located in more than one county shall be included in the tax collection district with the greatest share of the school district's population based on the 2000 Federal Decennial Census. A municipality shall be included in the tax collection district in which its school district is located.

53 P.S. §6924.504(a).

which the person has the intention of returning whenever absent.” 53 P.S. §6924.501.⁸ In relevant part, Section 501 states as follows:

The place where a person lives and has a permanent home and to which the person has the intention of returning whenever absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce the person to adopt some other permanent home. In the case of a business, domicile is that place considered as the center of business affairs and the place where its functions are discharged.

53 P.S. §6924.501 (emphasis added).⁹ In an election case, where a candidate’s eligibility for public office was at issue, our Supreme Court considered the meaning of the term “domicile” and explained as follows:

A domicile is the place at which an individual has fixed his family home and principal establishment for an indefinite period of time. A domicile once acquired is presumed to continue until it is shown to have been changed and where a change is alleged, the burden of proving it rests upon whoever makes the allegation. A new domicile can be acquired only by physical presence at a new residence plus intent to make that new residence the principal home. Intent is the actual state of facts, not what one declares them to be.

⁸ The Earned Income Tax Ordinance of the Township of North Union, Fayette County, Pennsylvania, provides an almost identical definition of “domicile.” See Ordinance No. 1-1990, Article II, R.R. 214a.

⁹ Section 501 was added by the Act of July 2, 2008, P.L. 197.

In re Prendergast, 543 Pa. 498, 506, 673 A.2d 324, 327-28 (1996) (internal citations omitted).

A recent holding of this Court, *Hvizdak v. Commonwealth*, ___ A.3d ___ (Pa. Cmwlth., No. 833 F.R. 2008, filed April 24, 2012), is also instructive on the meaning of domicile and how it is proved. In *Hvizdak*, the taxpayer disputed his obligation to pay state income taxes, claiming that he was not domiciled in Pennsylvania. The undisputed evidence showed that the taxpayer was born in Pennsylvania; was married in Pennsylvania; and maintained a home for his wife and family in Pennsylvania, where his two minor children attended school. The taxpayer claimed that in 2003 he changed his domicile to Florida, where he also owned a home. The taxpayer was not separated or divorced from his wife, and he acknowledged that he “provided the entire support” for his wife and children. *Id.*, slip op. at 2. Nevertheless, the taxpayer claimed to be domiciled in Florida because he owned a house in Florida; held a Florida driver’s license; had registered to vote in Florida; and had joined a number of social organizations in Florida. The taxpayer’s reportable income for tax year 2004 was \$24,452,778.

The taxpayer acknowledged his family lived in Pennsylvania and that he was *not* estranged from his wife and family. We held that the taxpayer did not prove an intention to change his domicile from Pennsylvania to Florida.

With the above principles in mind, we turn to the Bureau’s argument that the trial court erred in holding that Kania was domiciled in Florida because, it contends, Kania acknowledged that he had an “intention of returning [to his Pennsylvania home] whenever absent.” 53 P.S. §6924.501. The Bureau argues that the evidence showed that Kania’s Florida home is simply a winter residence. Further, in his 2002 letter to the Bureau, Kania used the word “residency,” not

“domicile,” to refer to his time in Florida, and he repeated this terminology in his testimony. This evidence, the Bureau argues, directly undermines the trial court’s holding that Kania is domiciled in Florida.

The Bureau’s argument mischaracterizes the evidence. Kania did not state that he had an intention to “return” to Pennsylvania after each “absence.” Rather, Kania testified that he and his wife live in Florida throughout the year, not only in the winter months. Indeed, Kania testified that they spend three weeks for the Thanksgiving and Christmas holidays in Pennsylvania. They spend time in Pennsylvania for a few weeks in the summer, but they also spend much of the summer in Florida, where Kania works. It is impossible to infer from this testimony whether Kania is “returning” to Pennsylvania or “returning” to Florida when he moves between his two homes. Likewise, Kania did not “admit” that his Florida home was a mere “residency.”

Domicile and residence are not interchangeable terms, but one must establish a new residence in order to prove a change in domicile. As the Supreme Court has explained, a “new domicile can be acquired only by physical presence at a new residence plus intent to make that new residence the principal home.” *In re Prendergast*, 543 Pa. at 506, 673 A.2d at 328. It was appropriate for Kania to refer to his Florida “residence” in his 2002 letter to the Bureau, and there is no reason to infer that he used the word in a technical and legal sense that would exclude domicile. Indeed, it is clear that the purpose of Kania’s letter was to inform the Bureau that he was *not* domiciled in Pennsylvania.

In short, we reject the Bureau’s argument that Kania’s evidence conflicts with the trial court’s holding that Kania is domiciled in Florida.

In its second allegation of error, the Bureau lodges a series of challenges to Kania's evidence. It believes, accordingly, that Kania's evidence was inadequate to meet his burden of proof that he had changed his state of domicile from Pennsylvania to Florida.

The Bureau first notes that Kania's documentary evidence does not cover each year between 2001 and 2005. These documents include Kania's 1998 voter registration card, a 2005 sample bank statement, his 2008 Florida driver's license, and a 2008 dues invoice from the Florida Institute of Certified Public Accountants. The Bureau believes that Kania should have produced these documents for each of the tax years in question. Stated otherwise, the Bureau contends that Kania's oral testimony is not sufficient to prove factual findings. We disagree.

Kania offered these documents to substantiate his testimony in a general way. The Bureau offers no authority to support its contention that testimony must be corroborated by documentary evidence in order to have probative value. To the contrary, case law provides otherwise. *See Nelson v. State Board of Veterinary Medicine*, 938 A.2d 1163, 1171 (Pa. Cmwlth. 2007) (oral testimony alone is sufficient to support a finding of fact, and documentary evidence is required only where the contents of a writing are at issue). The trial court is the finder-of-fact and credibility, and it chose to believe Kania. *Commonwealth v. Hoffman*, 938 A.2d 1157, 1160 n.10 (Pa. Cmwlth. 2007).

The Bureau places great significance on the fact that Kania filed Pennsylvania state tax returns for the tax years 2001 through 2005. Kania explained that he was required to pay this tax because he was a partner in a

Pennsylvania firm from which distributions were made. He would owe these taxes even if he never set foot in Pennsylvania. 61 Pa. Code §101.8.(d).

The Bureau then makes much of the fact that Kania's Pennsylvania state income tax returns used a local residency code. Kania explained that he does not prepare his own taxes and simply had not noticed the local tax code on the returns. In any case, those returns also list his home address as being located in Florida. The Bureau believes, apparently, that the local residency code trumps the Florida address and shows, conclusively, that Kania is domiciled in Pennsylvania. However, it does not support this belief with any legal authority. If relevant at all, the use of the code was one, of many factors, to consider. The trial court did not assign the code much weight, and it is not the job of appellate courts to re-weigh the evidence.

The Bureau's challenges to Kania's evidence are unavailing. Kania's testimony and documentary evidence amply support the trial court's finding that Kania changed his state of domicile from Pennsylvania to Florida. Kania proved that he lived in Florida the majority of the time; changed his voter registration to Florida in 1998; voted in every Florida election since 1998; resigned from the boards of numerous Pennsylvania authorities; and became active in a number of Florida organizations. Unlike the taxpayer in *Hvizdak*, Kania and his wife live together in Florida.

For these reasons, we affirm the trial court.

MARY HANNAH LEAVITT, Judge

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ORDER

AND NOW, this 26th day of July, 2012, the order of the Court of Common Pleas of Fayette County dated October 5, 2011 in the above-captioned matter, is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge