

What Determines Domicil - *Gaver v. County Commissioners for Frederick County. In the Matter of Charles Delmar*

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>



Part of the [Tax Law Commons](#)

Recommended Citation

What Determines Domicil - Gaver v. County Commissioners for Frederick County. In the Matter of Charles Delmar, 4 Md. L. Rev. 98 (1939)
Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol4/iss1/9>

This Casenotes and Comments is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

WHAT DETERMINES DOMICIL

*Gaver v. County Commissioners For Frederick County. In the Matter of Charles Delmar*¹

This is an appeal taken by the Supervisor of Assessments for Frederick County to the State Tax Commission from the failure of the County Commissioners for that county to assess the intangible property tax on some \$300,000 of securities for the years 1936, 1937 and 1938, reported as being owned by Charles Delmar, a registered voter of Frederick County. There was no written record of the proceedings and the Tax Commission assumed that the County Commissioners refused to enter an assessment on the basis that Mr. Delmar was not a resident of Frederick County.

The undisputed evidence showed that Charles Delmar was born in New York. For many years prior to 1924 he was a resident of Maryland, but in that year he left the State and resided in New York until 1927 when he moved to Washington, D. C. In 1931 Mr. Delmar married and afterward resided in a home in Washington, which was reputed to be worth much more than the assessed value of \$62,000. Mr. Delmar maintained offices in Washington and was the principal owner of eight or nine financial enterprises. The home telephone was listed in Mrs. Delmar's name. Three automobiles were licensed by the Dis-

¹ Baltimore Daily Record, January 23, 1939 (Md. St. Tax Comm. 1939).

trict of Columbia and one, used principally in Frederick County, was registered in Maryland. His passport, issued in 1937, gave Washington as his residence as did his will, executed in 1937. When traveling Mr. Delmar gave Washington as his residence. He had paid intangible property taxes in Washington for many years. His step-children attended preparatory school in Washington.

In May, 1935, Mr. Delmar purchased a 115 acre farm containing a dwelling house and outbuildings in Petersville or Knoxville, Frederick County. The property was assessed at \$30,000. The farm was leased on shares to tenants who worked it. Mr. Delmar and his family used the farm for week-ends from about April to November when it was closed for the winter. Altogether the farm was used about thirty days out of the year. A staff of servants was maintained at the Washington home, only a few of which were occasionally needed at the farm. By comparison, on the other hand, the Washington house was kept open the entire year and Mr. Delmar's step-son made his home there at all times. In 1935 Mr. Delmar filed his declaration of intention of becoming a citizen of Maryland, and he voted in Maryland in the Congressional election of 1936 and in the general election of 1938. *Held*: Charles Delmar was domiciled in Washington, D. C.

The Maryland tax law defines resident as ". . . every person domiciled in this state on the last day of the taxable year, and every other person who, for more than six months of the taxable year, maintained his place of abode within this state, whether domiciled in this state or not. . . ." ² Since Mr. Delmar did not live in Maryland for six months or more in the taxable year, the question decided at the hearing was whether he was domiciled in Maryland. ³

To all intents Charles Delmar was a resident of Washington; his year-round home was there, always open; his business was there; his step-children attended school there;

² Md. Laws (Sp. Session) 1937, Ch. 11, Sec. 8 (215h).

³ In the light of recent Supreme Court cases (*Curry v. McCannless*, 307 U. S. 357, 83 L. Ed. 865, 59 S. Ct. 900 (1939); *Graves v. Elliott*, 307 U. S. 383, 83 L. Ed. 880, 59 S. Ct. 913 (1939); *Schuykill Trust Company v. Commonwealth of Pennsylvania*, 302 U. S. 506, 82 L. Ed. 392, 58 S. Ct. 295 (1937); *First Bank Stock Corporation v. State of Minnesota*, 301 U. S. 234, 81 L. Ed. 1061, 57 S. Ct. 677 (1936); *Wheeling Steel Corporation v. Fox*, 298 U. S. 193, 80 L. Ed. 1143, 56 S. Ct. 773 (1936); *First National Bank of Boston v. State of Maine*, 284 U. S. 312, 76 L. Ed. 313, 52 S. Ct. 174 (1932)), involving double taxation, the importance of domicile as one of the focal points of taxation is apparent.

this is where he returned after traveling abroad, where he entertained his friends and where they in turn considered him to live. On the other hand, certain factors were urged as making him a resident of Maryland, i. e. his declaration of 1937 to the tax authorities of the District of Columbia that he was a resident of Maryland; his Maryland Income Tax return for 1937 giving Knoxville as his residence; his voting in Maryland; his acceptance of an appointment as Regent of the University of Maryland (an office limited by statute to citizens of Maryland); and his close affiliation with local political activity.

Domicil has been defined in various ways. The Maryland Court in *Brafman v. Brafman*⁴ quoted the definition given in *Mitchell v. United States*: “. . . a residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.”

In discussing, in another case, whether a party to the suit had been served in the proper place the Maryland Court said:⁵

“The statute contemplates the permanent fixed home of the party, whither when the objects of temporary absence . . . were accomplished the person turned for social life; where his family, if he had one, usually dwelt; to which his mind turns when away, and where he has the present purpose of returning and remaining. It is not the place where a man happens to be temporarily residing, even though it be with his family; for a man may for convenience sake, have a temporary residence and quasi-home, which is not his home and residence proper; and unless he has abandoned the latter for the former, with intention of permanently remaining from it, the newly chosen residence is not his domicile.”

The Restatement of Conflict of Laws says⁶ “domicil is the place with which a person has a settled connection for certain legal purposes, either because his home is there, or because that place is assigned to him by the law,” but in later sections it indicates that man’s home, in the nor-

⁴ *Brafman v. Brafman*, 144 Md. 413, 414, 125 A. 161 (1924); Restatement, Conflict of Laws, Md. Annot. (1936) Sec. 9.

⁵ *Tyler v. Murray*, 57 Md. 418, 442 (1881); Restatement, Conflict of Laws, Md. Annot. (1936) Sec. 9.

⁶ Restatement, Conflict of Laws (1934) Sec. 9.

mal sense of the word, is usually determinative of domicil.⁷

Observing the facts in this case in the light of the above definitions it is evident that Washington and not Maryland was the domicil of Mr. Delmar, at least prior to 1935, and nothing happened after 1935 to change this domicil in the light of recognized principles of law. Two things are necessary to change one's domicil: (1) the acquisition of a new residence (in the sense of physical presence in the new jurisdiction), and (2) the intention of making the last-acquired residence a permanent home.⁸

Let us consider the acquisition of the farm in Frederick County in the light of the above factors. It was purchased with the intent to use it only for week-ends during a few months of the year. On the other hand, the Washington establishment was never closed, one member of the family always resided there, and there was no indication of an intent to make the Frederick County place a permanent home. Even if Mr. Delmar intended to remove his domicil to Maryland, he had not done so as he had not abandoned his former domicil in Washington.

Statements and declarations made by Mr. Delmar to the effect that he intended to have a Maryland domicil would not be conclusive.⁹ For certain purposes Mr. Delmar, so far as the District of Columbia was concerned, wished it to appear that he was domiciled in Maryland. He did everything in his power to this end. This is borne out by his statement to the various tax authorities and by his voting in that state. But, Maryland cases and cases from other jurisdictions have indicated that actions speak louder than words with reference to determining his intention to acquire a new domicil, and that voting residence is not conclusive of domicil.

In the recent case of *Wagner v. Scurlock*¹⁰ a winter home was maintained in Washington while the family moved to Maryland for the summer. The franchise right was exercised in Maryland after suitable declarations had been made. The Court, in holding Washington to be the

⁷ *Ibid.*, Secs. 12-13, 18-19, 24; and *Ibid.*, Md. Annot. (1936). Cf. *Hill v. Board of Registry*, 171 Md. 653, 187 A. 869 (1937).

⁸ Restatement, Conflict of Laws, Md. Annot. (1936) Sec. 15.

⁹ Restatement, Conflict of Laws (1934) Sec. 19; and *Ibid.*, Md. Annot. (1936).

¹⁰ *Wagner v. Scurlock*, 166 Md. 284, 170 A. 539 (1934). See also, on the question of domicil under the non-resident motorists statute, Judge Chesnut's opinion in *Suit v. Shaler, et al.*, 18 Fed. Supp. 568 (D. C. Md. 1937).

domicil (for the purpose of asserting jurisdiction through service under the non-resident motorists statute), said: "While the exercise of the elective franchise is of importance in determining domicil, it is not conclusive, and when overbalanced by other circumstances it may be of slight importance." Later the Court in discussing the declarations as to residence in Maryland said: "While intention is the controlling factor in determining domicile, this may be more satisfactorily shown by what is done than by what is said."

The Maryland Court of Appeals has also said: "In questions of residence the intention of the party with regard to maintaining his right to vote is admissible though not conclusive."¹¹ To hold otherwise would be to allow one actually to live (for all practical purposes) in X State and, because Y State is more advantageous from the tax standpoint, to make certain declarations for his own purposes and vote accordingly and by this voting be taxed in Y State and not in X State, which is actually his domicil. To change one's domicil, a desire to make a home in fact must exist and not merely the wish to have the advantage of the legal consequences of the new place.¹²

This point was discussed in 1935 by the New York Court of Appeals.¹³ Mr. Trowbridge, although he owned residential property in New York City, actually lived with his family in Connecticut. For reasons known to himself he wished to be classified as a resident of New York. He sought legal advice and was told, ". . . that it is mainly a matter of intention of the man himself, and that the first thing to do was to describe himself in writings and instruments as a resident of the State of New York." Mr. Trowbridge followed his attorney's advice religiously, giving New York as his residence in his will, making declarations to the taxing authorities of both Connecticut and New York, and voting in New York. Notwithstanding all of this, the Court of Appeals of New York in a dispute between New York and Connecticut as to which should tax the estate for death tax purposes held that Mr. Trowbridge was domiciled in Connecticut.

In another case the taxpayer had moved with his family from New Jersey to Pennsylvania but still wished to be

¹¹ *Harrison v. Harrison*, 117 Md. 607, 84 A. 57 (1912).

¹² *Restatement, Conflict of Laws* (1934) Sec. 19; and *Ibid.*, Md. Annot. (1936).

¹³ *In re Trowbridge's Estate*, 266 N. Y. 283, 194 N. E. 756 (1935).

considered as domiciled in New Jersey for tax purposes and accordingly made declarations to that effect. The Pennsylvania court in holding him domiciled in Pennsylvania said: "Apart from possible exceptions a man cannot retain a domicile in one place when he has moved to another and intends to reside there for the rest of his life, by any wish, declaration or intent inconsistent with the dominant facts of where he actually lives and what he actually means to do. . . . Every person must have a domicile somewhere and a man cannot elect to make his home in one place for the general purposes of life, and in another place for the purpose of taxation."¹⁴

It is evident, therefore, that the courts will look behind declarations and the place of suffrage to the facts, and decide the question of domicil not on what is said by the taxpayer to suit his own purposes but on what he actually does. The same reasoning is equally sound in the question of the public office held by Mr. Delmar in Maryland. Although it is evidence of domicil, it is not conclusive, and, just as in the case of declarations and suffrage, the Court will seek to find the permanent and actual home.

The Restatement says that where X has the capacity to acquire two homes the earlier one is his domicil unless he considers the later one his principal home.¹⁵ Maryland is in accord with this in a group of cases involving a winter residence in Washington and a summer residence in Maryland.¹⁶ The instant ruling seems only to have followed these correct principles of domicil.

¹⁴ In re Dorrance's Estate, 309 Pa. 151, 163 A. 303 (1932).

¹⁵ Restatement, Conflict of Laws (1934) Sec. 24.

¹⁶ *Ibid.*, and *Ibid.*, Md. Annot. (1936).