Subject: Re: [WSBAPT] Domicile for estate tax purposes
From: Richard Wills <richardwills@WASHINGTON-PROBATE.COM>
Date: Thu, 8 Apr 2010 16:13:42 -0700
To: wsbapt@LISTSERV.NETHELPS.COM

Dear Lance,

I was in Court recently before Comm'r Watness on the issues of domiciliary probate & domicile, & he asked me to brief them. Here's what I wrote (& prevailed on the merits):

This *Response* addresses Commissioner Watness' concerns re **jurisdictional issues**.

B. Primary vs. Ancillary Jurisdiction

Primary vs. ancillary jurisdiction over a probate matter was addressed in *Estate of Tolson*, 89 Wn.App. 21 (1997). In *Tolson* in chronologic order:

- Decedent died in his mobile home in WA.
- Two of Decedent's daughters filed a *Petition* to probate Decedent's holographic Will in CA and stated that Decedent died a resident of CA, where he owned a home.
- The WA attorney for Decedent's son appeared in the CA matter and filed in it a *Request for Special Notice* on the son's behalf.
- The CA Court granted the *Petition* and issued *Letters* to the Public Administrator.
- The WA attorney filed a *Petition for Letters of Administration* in WA.
- The WA Court granted the *Petition* and issued *Letters of Administration* to the WA attorney.
- One of the daughters filed a *Petition for Probate of Foreign Will* in the WA matter, stating Decedent to be a WA resident and not objecting to the WA attorney's serving as PR.
- The WA Court admitted the holographic Will and confirmed the WA attorney as PR.
- The CA Public Administrator, as PR in the CA matter, filed in it a *Petition to Determine Domicile*.
- The WA attorney, as PR in the WA matter, filed in it a *Petition to Determine Validity*

of Holographic Will.

- The CA Court admitted the holographic Will to probate, found that Decedent was domiciled in CA, and set ancillary administration in WA.

- Two of Decedent's Will beneficiaries filed in the WA matter a *Motion to Dismiss* the WA attorney's *Petition re Holographic Will*, arguing that the WA Court was collaterally estopped from relitigating the issue of Decedent's domicile.

- The WA Court declined to dismiss the WA matter, ruling that collateral estoppel did not apply because the *Petition for Admission of Foreign Will* stated that Decedent was a WA resident, and that the Full Faith & Credit Clause did not apply because domicile is a jurisdictional issue.

- The WA Court held a hearing on Decedent's domicile and ordered that Decedent was domiciled in WA and revoked the admission of the foreign Will in WA.

- The two Will beneficiaries appealed the WA *Order*, arguing that the WA trial Court wrongfully refused to give collateral estoppel effect to the CA Court's *Order* finding Decedent to be domiciled in CA.

Although not exactly on point here (due to *Tolman* being a testacy), the WA Court opined (at page 31):

> The primary probate of a will generally lies with the court of the state and county in which the decedent was domiciled. *Estate of Stein*, 78 Wn. App. 251, 261 (1995). Ancillary probate may lie in any state in which property of the decedent has a situs. *Hatch v. United States*, 29 F.2d 213 (N.D.N.Y. 1928).

The Court in *Tolman* also opined as to the law respecting the distribution of assets in both probate matters (at page 31):

> In the context of a probate action, it is fundamental that the law of the domicile governs the distribution of the assets of a decedent. *Estate of Stein*, at 261-62; *Estate of Olson*, 194 Wash. 219, 227 (1938). Although the law of the domicile determines the right to succession and distribution of the personal property that has its physical situs in a foreign jurisdiction, the existence of an estate belonging to a nonresident decedent in a foreign state may make it subject to an ancillary administration under the laws of such state. *Estate of Glassford*, 114 Cal. App. 2d

181, 189 (1952). Generally speaking, courts of ancillary jurisdiction are bound by the Full Faith and Credit Clause to accept the adjudication of courts of domiciliary jurisdiction on the question of a will's validity. *Estate of Randall*, 8 Wn.2d 622, 629 (1941).

The distribution of assets in an intestate estate had already been addressed by the WA Supreme Court in *Estate of Lyons*, 175 Wash. 115 (1933). There, Decedent died intestate an AK resident but left an escheat estate of a WA bank account. The predecessor of the WA Dept. of Revenue petitioned the Court to have the account's funds distributed to the State of WA. The Court opined (at pages 119-20, emphasis added):

> The fundamental principle that the law of the domicile governs the distribution of the assets of a decedent is established beyond question. "In the administration and settlement of decedents' estates personal property is distributed by the law of the domicil of the decedent at the time of his death. This rule has been universal for so long a time that it may now be said to be a part of the jus gentium, …." 5 RCL 929. …
> "The principle is fundamental that the law of the domicil governs the distribution of the assets of a decedent. **Even when the estate is partly administered in different jurisdictions, the disposition, succession, and distribution of personal property wherever situated is governed by the law of the country of the owner's or intestate's domicil at the time of his death, and not by the conflicting laws of the various places where the property is situated.** In giving effect to a foreign will courts are governed by the law of the testator's domicil." 11 RCL 445. This court has recognized that rule expressly in *Rader v. Stubblefield*, 43 Wash. 334.

The holding in *Estate of Lyons* was distinguished by the WA Supreme Court in *Estate of Rowley* (178 Wash. 450 (1934)). There (in chronologic order):

- During her life, Decedent, a resident of IA, had brought an action in WA against Farmers State Bank.
- Decedent died testate a resident of IA, although her Will failed to name an Executor.
- Decedent left no property in IA and her Will was never admitted to probate in IA.
- Decedent left no property in WA other than her lawsuit.

- Decedent's Will was admitted to probate in WA and *Letters of Administration with Will Annexed* were issued to the PR.
- The PR substituted in as the Plaintiff in Decedent's lawsuit.
- Farmers Bank appeared in the probate proceeding and moved to vacate the *Order* admitting Decedent's Will and appointed her PR.
- The Court denied the *Motion*.
- The Bank appealed, arguing that the WA Court lacked jurisdiction to admit the Will and appoint the PR.

The Court opined (at 463):
"Generally speaking, the situs of personal property follows the domicile or person of the owner, and, undoubtedly, the law of the domicile governs the distribution of the estate of a decedent. *Ruder v. Stubblefield*, 43 Wash. 334; *Estate of Lyons*, 175 Wash. 115; 11 RCL 445." And (at 465-66, emphasis added):

> The appellant cites and relies upon the case of *Estate of Lyons*, 175 Wash. 115, as declaring a different rule. That case involved the question whether the state of Washington could escheat the proceeds of a savings-bank deposit within this state but owned by a nonresident. In the course of the opinion, it was said that the situs of the property was at the domicile of the owner, and therefore not within this state at the time of the owner's death in Alaska. It is upon this language that appellant places reliance. With reference to the administration of estates, that case merely held that the law of the domicile controlled the distribution of the estate, specifically recognizing, by extended quotation, the universal rule in that respect. The case did not touch the question of the jurisdiction of the court to appoint an administrator to administer such assets. In fact, that question does not seem to have been raised in that case at all, even though an administrator was actually appointed. …
>
> **Foreign administrators and executors have no standing, as such, beyond the jurisdiction of the state in which they are appointed**. *Barlow v. Coogan*, 1 W. T. 257; *Estate of Goss*, 73 Wash. 330; 11 RCL 447 (other citations omitted).

Lastly, *State ex rel. Brisbin v. Frater* (1 Wn.2d 13 (1939)) clarifies the phrase "Decedent's residence." There:

- Decedent died in King County leaving a Will naming her sister as Executor.

· The Will was presented for probate in King County.

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Two other sisters of Decedent objected to the Will's admission to probate on the grounds that:

- Decedent was not a resident of either King County or WA.
- Left no property in either King County or WA.
- Decedent's domicile had always been in MT.
- Decedent was an invalid and mentally incompetent.
- Decedent had merely been living with her sister in Seattle and had not established permanent residency in WA.

The Court opined (at pages 15-16):

> There are two well recognized prerequisites to the jurisdiction of a court to issue letters testamentary or of administration. The first, of course, is death of the person on whose estate letters are to be granted. The second is an alternative: (a) The person must at the time of death reside within the territorial jurisdiction of the court, or (b) leave property therein upon which administration may be had. [Numerous citations omitted.] Under these authorities, the word "residence," as used in the statute [providing jurisdiction to the Court for the issuance of *Letters*], is construed to mean domicile.

Summary:

1. Primary probate of a Will lies in the state of the Decedent's domicile. *Estate of Tolman*; *Estate of Stein*.

2. Ancillary probate may lie in any state in which the Decedent owned property. *Estate of Tolman*; *Hatch v. United States*.

3. The law of the Decedent's domicile governs the distribution of the Decedent's assets. *Estate of Tolman* (testacy); *Estate of Lyons* (intestacy).

4. The PR of an ancillary probate has no standing beyond the jurisdiction of the state in which the ancillary PR is appointed. *Estate of Rowley*.

5. For purposes of the issuance of *Letters*, a Decedent's "residence" is his or her domicile. *State ex rel. Brisbin v. Frater*.

C. A Decedent's Domicile

The foregoing cases demonstrate that the issue of Primary vs. Ancillary Jurisdiction turns on the Decedent's domicile.

Although I was unable to find a clear definition of "domicile" in WA probate case law or statutes, several family law cases in WA, regarding "multi-state divorces" may shed light. In *Mapes v. Mapes*, 24 Wn.2d 743 (1946):

. Husband filed a dissolution action against his wife, alleging that she had become infatuated with another man, had left WA with him, and written him that she was going to live a life of her own and would never return.

. Wife answered that she had established a home in NV, where she had obtained a divorce and married the other man.

. Husband contended that the NV divorce was invalid, as the NV Court lacked jurisdiction because the wife was not a resident of NV when she filed her divorce action.

The Court, raising the Full Faith & Credit Clause, opined that, despite that clause, the jurisdiction of a foreign Court is subject to collateral attack in a dissolution proceedings based on one party's not having been domiciled in that jurisdiction, and that (at page 754-55, emphasis added):

Appellant and her new found sweetheart enjoyed a pre-honeymoon trip to Nevada. Arriving in that state, appellant stayed in an auto camp. Ruff went to Los Angeles, California, with the evident purpose of preparing a home. Just as soon as she had been in Las Vegas six weeks, appellant filed her action for divorce and went to Los Angeles, where she stayed until her divorce case was ready for trial and then, on the same day that she received her decree, married Ruff. As soon as they were married, they went to Los Angeles. Her statement that she went to Nevada to find work and get a divorce, is only true in part. She did go there to secure a divorce, but there is no evidence that she attempted to secure work in that state. In any event, her statement, if true, did not evidence an intention to make a home in Nevada.

Domicile has a larger meaning than an expressed desire to find work and get a divorce. That this is true is clear from the definitions of domicile as approved by this court in the Dormitzer case. There it is written (*Carpenter v. Carpenter*, 30 Kan. 717, 712)):

"`The difficulty of defining accurately the term "domicile" is generally conceded by both the courts and the text writers. The following definition, framed by an eminent authority, has, however, been frequently approved, and is probably the best that can be given. "**In a strict and legal sense, that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.**"' 10 Am. & Eng. Enc. Law (2d ed.), 7, and cases cited.

"And in note, Kent's definition:

"`**The place where a man carries on his established business or professional occupation, and has a home and permanent residence, is his domicile**.' 2 Kent, Commentaries, 431.

"And in note:

"`The Roman codes described domicile as follows: "**In whatever place an individual has set up his household goods and made the chief seat of his affairs and interests; from which, without some special avocation, he has no intention of departing; from which, when he has departed, he is considered to be from home; and to which, when he has returned, he is considered to have returned home – in this place there is no doubt whatever he has his domicile**."' *White v. Brown*, 1 Wall. Jr. 262."

In *Marcus v. Marcus*, 3 Wn.App. 370 (1970):

- In 1959, the couple married in RI, and in 1966, they filed separate divorce actions in RI.
- He abandoned his action.
- Her action resulted in an *Interlocutory Decree of Separate Maintenance* entered in 1966.
- In January, 1967, the husband, a Lieutenant Commander in the Navy, was transferred to CA; the wife continued to reside in RI.
- In March, 1967, the husband was ordered to transfer to WA for five months, after which he returned to CA.
- In April, 1968, the husband filed his dissolution action in WA.
- At trial, the wife challenged the WA Court's jurisdiction on the grounds that her husband had not been a WA resident for the required one-year period before filing his action.
- The WA Court overruled her objection and granted the divorce.
- The wife appealed, based on lack of jurisdiction.

The WA Court opined (at page 371, emphasis added):

The term "residence" as used in RCW 26.08.030 has been construed to mean domicile. *Mapes v. Mapes*, 24 Wn.2d 743 (1946). In order to establish a new domicile,
physical presence in a state must coincide with an intention to make a permanent home in that state. ….

We cannot say that the trial court's finding is not supported by substantial evidence. Respondent testified that within 3 weeks after his arrival in Washington he intended to make this state his home and place of residence. Although respondent never lived off of the military base at Oak Harbor, **he did register his car in Washington** in April of 1967 and during his 5-month continuous stay in this state **acquired a commercial airplane pilot's license giving Washington as his place of residence**. **Respondent has not returned to Rhode Island** since he left in January of 1967. These acts are consistent with and

lend support to his intent to abandon his previous residence in Rhode Island and to establish Washington as his place of residence and domicile.

After returning to California in September of 1967, respondent used his military leave to visit a Miss Johnson in Oak Harbor, Washington, whom he had met while there. In December of 1967 he had navy personnel **change his mailing address** to that of the home of Miss Johnson's mother who lives in Coupeville, Washington. He **registered to vote** in Washington in June of 1968. These actions indicate that respondent had no intention of making California his place of permanent residence and adds credence to his declaration that he intended to make Washington his place of residence. **Respondent's absence from Washington**
in obedience to military orders and the renting of an apartment off of the base in Alameda, as long as he had no intention of making California his permanent place of residence, do not dislodge his Washington domicile.
Sasse v. Sasse, 41 Wn.2d 363 (1952).

Summary:

a.
A person's domicile is where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. *Mapes v. Mapes*.

b.
To establish a new domicile, physical presence in a state must coincide with an intention to make a permanent home in that state. *Marcus v. Marcus*. Factors to consider:

a. Home ownership.

b. Car registration.

c. Business license registration.

d. Returning to prior domicile.

e. Change of mailing address.

f. Voter registration.

Sincerely,

Richard Wills

Losey, Lance wrote:

> I confess to some confusion regarding "residency" for purposes of WA estate tax. I have been cited several use
> tax cases as authority for the test to be applied to determine whether an individual is a resident for estate tax purposes. These cases give a very fact-intensive analysis for determining residency and include the rule that a person may be a resident in more than one state for use tax purposes. These same use tax cases state that you can have several residences but only one "domicile."
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> RCW 83.100.020 defines "resident" as a decedent "domiciled" in Washington. Does this mean then that for estate tax purposes, an individual can have only one domicile, and by extension that the use tax definition of residency is inapplicable? If so, I can't seem to find any clear definition of "domicile" and how that is determined.
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> Any guidance is appreciated.
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> Lance
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