

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

CITY OF WARREN, OHIO,	:	OPINION
	:	
Plaintiff-Appellant,	:	CASE NO. 2011-T-0011
	:	
- vs -	:	
	:	
ERIC J. REBHAN, CO-EXECUTOR OF	:	
THE ESTATE OF JOHN C. REBHAN,	:	
DECEASED, et al.,	:	
	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Probate Division, Case No. 2010 CVA 0016.

Judgment: Affirmed.

Gregory V. Hicks, Warren City Law Director, and *James E. Sanders* and *David D. Daugherty*, Assistant Warren City Law Directors, 391 Mahoning Avenue, N.W., Warren, OH 44483 (For Plaintiff-Appellant).

Stuart A. Strasfeld, Roth, Blair, Roberts, Strasfeld & Lodge, 100 Federal Plaza East, #600, Youngstown, OH 44503-1893 (For Defendants-Appellees, Eric J. Rebhan and Regina Rebhan).

Matthew G. Vansuch, Harrington, Hoppe & Mitchell, LTD, 108 Main Avenue, S.W., #500, P.O. Box 1510, Warren, OH 44482-1510 (For Defendants-Appellees, Vienna Township and Vienna Township Trustees Jeffrey E. Dreves, Heidi Brown, and Richard Dascenzo, Jr.)

Mike DeWine, Ohio Attorney General, and *Daniel Warner Fausey*, Assistant Attorney General, 30 East Broad Street, 25th Floor, Columbus, OH 43215 (For Defendant-Appellee, Joseph W. Testa as Tax Commissioner, Ohio Department of Taxation.)

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, the city of Warren, Ohio (“Warren”), appeals from the judgment of the Trumbull County Court of Common Pleas, Probate Division, declaring Vienna Township, Ohio, the domicile of the decedent, John C. Rebhan, for purposes of estate taxation on intangible personal property pursuant to R.C. 5731.51. We affirm the trial court’s judgment.

{¶2} The decedent passed away on December 30, 2008. At the time of his death, the decedent owned four residences: a vacation home in Ft. Lauderdale, Florida; a vacation home on Lake Erie in Sandusky, Ohio; and two elaborate mansions in Trumbull County, Ohio—one in the city of Warren and the other in Vienna Township.

{¶3} The decedent’s estate was administered by the Trumbull County Probate Court in a separate case. On behalf of the estate, the decedent’s co-executors, his children Eric and Regina Rebhan, submitted payment on the estimated Ohio estate taxes and filed a tax return identifying the situs of their father’s domicile as Vienna Township. Estate taxes on real property and tangible personal property are distributed to the political subdivision where the property is located at the time of a decedent’s death. See R.C. 5731.50. Alternatively, the taxes on a decedent’s intangible personal property are distributed to the political subdivision where the decedent was domiciled at the time of death. R.C. 5731.51.

{¶4} While the Tax Commissioner of the state of Ohio was considering the correctness of the tax return, Warren filed a declaratory judgment action against Vienna Township, the members of its Board of Trustees, the co-executors of decedent’s estate, Trumbull County Auditor Adrian Biviano, and the Tax Commissioner (collectively,

“appellees”), effectively contesting the domicile of the decedent. The complaint sought a declaration that the decedent was domiciled in the city of Warren pursuant to his residence at 3625 E. Market Street, Warren, Ohio 44484. Appellees filed answers to the complaint, and the trial court set the matter for hearing.

{¶5} At the evidentiary hearing, the only issue before the trial court was whether, at the time of his death, the decedent was a domiciliary of the city of Warren pursuant to his residence at 3625 E. Market Street, Warren, Ohio (“Warren property”), or a domiciliary of Vienna Township pursuant to his residence at 5000 Creekside Boulevard, Vienna, Ohio (“Vienna property”). The following represents a summary of the facts adduced at the hearing:

{¶6} The decedent acquired 3625 E. Market Street, Warren, Ohio 44484 in the summer of 1976. At the time of the decedent’s death, he received his personal mail at the Warren property. Further, the Trumbull County Auditor’s records listed the Warren property as receiving the 2.5 percent tax reduction via the Homestead Exemption. And Ohio Department of Motor Vehicle records from 2000 through 2008 show various motor vehicle registrations identifying the decedent’s mailing address as 3625 E. Market Street, Warren, Ohio 44484. The decedent’s 2005 Chevrolet title, issued September 22, 2008, listed the decedent’s address as 3625 E. Market Street, Warren, Ohio 44484. And the decedent’s will, executed on September 2, 2004, stated the decedent’s address was 3625 E. Market Street, Warren, Ohio 44484.

{¶7} Notwithstanding these uncontested points, the evidence revealed the decedent had not lived in the Warren property for some time and, in recent years, had been using the residence exclusively as an office and a storage facility for his valuable

antique collection. It was also uncontroverted that the residence on the Warren property required some maintenance and many of its outdoor fixtures, including its pool, were dilapidated and no longer operational.

{¶8} With respect to the Vienna property, evidence showed the decedent acquired the home at 5000 Creekside, Vienna, Ohio 44473 in October 1996. The decedent's Florida death certificate reported the Vienna property was the decedent's residence at the time of his death. Moreover, the decedent's individual income tax returns from the years 2002 through 2008 listed the decedent's home address as 5000 Creekside, Vienna, Ohio 44473. Similarly, the decedent's W-2 wage and tax statement for the same years show the decedent as an employee of Warren Fabricating Corp., whose address was 5000 Creekside, Vienna, Ohio 44473. And the decedent's Bank One checking account listed 5000 Creekside, Vienna, Ohio 44473 as the decedent's address.

{¶9} The testimony of the decedent's children, ex-wife, close friends, and business associates demonstrated that the decedent had lived at the Vienna property from approximately 2000 or 2001 until the date of his death. The uncontroverted evidence also showed that, for at least five years before the decedent's death, family and holiday gatherings were held at the Vienna property. Alternatively, no such gatherings had been held at the Warren property since 1995, the date of Regina's wedding. Moreover, the evidence revealed that, prior to the decedent's death, the Vienna property was the residence at which the decedent ate, "unwound," slept, and ultimately, was the place he could be found, if needed. In light of these points, the

decedent's children, ex-wife, friends, and close business associates testified the decedent, as far as they were aware, "lived" at the residence on the Vienna property.

{¶10} Based upon the foregoing evidence, the trial court concluded that, as early as 2002, the decedent intentionally changed his domicile from the Warren property to the Vienna property and accompanied such intention with acts indicating a selection of a new domicile. The court stated:

{¶11} "Over the years from 1996 through 2002, [the decedent] made the 'Warren Property' less habitable as a home and the 'Vienna Property' more habitable as a home. His intent to make a house a home is evidenced by his utilization of the 'Vienna property' and in contrast to convert the 'Warren Property' from a domicile/residence to an office and sanctuary for his valuable antique collections.

{¶12} ****

{¶13} "Therefore, this Court finds by the preponderance of the evidence that [the decedent] abandoned his domicile at the 'Warren Property' sometime in 2002 and acquired a new domicile in the 'Vienna Property' at that time, and continued to maintain the 'Vienna Property' as his domicile up until his death."

{¶14} From the foregoing final judgment, Warren filed a notice of appeal and now assigns two errors for our review. Its first assignment of error provides:

{¶15} "[The] Trial Court erred to the prejudice of the Appellant by imposing the burden of proof of change of domicile on the Appellant."

{¶16} Under this assignment of error, Warren asserts that because the decedent was domiciled in the city of Warren upon his purchase of the Warren property in 1976, the burden of proving a change in domicile was on the responding parties. We agree

with Warren's construction of the law; however, there is nothing in the record that would indicate the trial court placed the burden upon Warren to establish a change in domicile.

{¶17} The trial court, in its judgment entry, stated: “[t]he burden of proof of domicile rests upon the party whose right to affirmative relief depends upon establishing his domicile or the domicile of another in a given place. In this case, that is the City.” This statement is consistent with the law of domicile. The law in this area is well-established: “a person is presumed to continue his old domicile until it is clearly shown that he has acquired a new one.” *Springfield v. Betts* (1996), 114 Ohio App.3d 70, 73, quoting 36 Ohio Jurisprudence 3d (1982), Domicile, Section 19. In this case, evidence was presented to demonstrate that the decedent purchased the Warren property in 1976 and established his domicile at that property. This evidence was sufficient for Warren to meet its initial burden of proof. *E. Cleveland v. Landingham* (1994), 97 Ohio App.3d 385, 391. The trial court acknowledged this point where, in its judgment entry, it found: “*** the collective testimony of the witnesses demonstrated that [the decedent's] original domicile and residence was the ‘Warren Property’ that he acquired in 1976.”

{¶18} Once Warren established the decedent's domicile in the city of Warren, the burden *then* shifted to Appellee-Vienna “only because a person is presumed to continue in his own domicile until clearly shown that he has acquired a new one.” *Id.* Accord *Holtz v. Holtz*, 2d Dist. No. 2005-CA-43, 2006-Ohio-1812, at ¶19; *Betts*, *supra*.

{¶19} Here, Warren met this *prima facie* burden of demonstrating the decedent was a domiciliary of the city of Warren; by necessary implication, the burden of proof then shifted to the responding parties to demonstrate the decedent acquired a new

domicile in Vienna Township.¹ Simply because the trial court did not expressly state that the burden of establishing a domiciliary change shifted to the responding parties, does not imply the court erred in drawing its legal conclusion. Rather, the trial court, in entering judgment against Warren, determined the responding parties met their reciprocal burden of proof and established, by a preponderance of the evidence, that the decedent changed his domicile from the Warren property to the Vienna property.² There is nothing in the record to indicate the trial court required Warren to establish a change in the decedent's domicile. We therefore discern no problem in the manner the trial court allocated the relative burdens of proof or the way in which it analyzed the case.

{¶20} Warren's first assignment of error is without merit.

{¶21} For its second assignment of error, Warren alleges:

{¶22} "The trial court's decision is against the manifest weight of the evidence."

{¶23} The underlying action sought a declaration that the decedent was a domiciliary of the city of Warren. "The granting or denying of declaratory relief is a matter for judicial discretion, and where a court determines that a controversy is so

1. Appellee-Vienna asserts that Warren still bore the burden of establishing a change in domicile because the estate tax return identified the Vienna property as the decedent's domicile. Even though the co-executors listed the Vienna property as the decedent's domicile at the time of his death, this was merely a legal conclusion that was uncontested until Warren filed the underlying declaratory judgment action. The validity of the co-executors' blank declaration on the estate tax return was the basic subject of Warren's complaint. In essence, Warren asserted, for purposes of claiming estate taxes on the decedent's intangible property, that despite the co-executors' statement on the estate tax return, the Warren property, as the decedent's original domicile, had never changed. We therefore disagree with Appellee-Vienna's position that the co-executors' conclusory statement on the estate tax return was sufficient to require Warren to prove that the decedent changed his domicile from Vienna Township to the city of Warren.

2. We recognize that Warren commingles procedural and substantive issues under the argument portion of its first assignment of error. Because, however, Warren's first assignment of error specifically challenges only a procedural error, we will address the entirety of its substantive arguments in our analysis of Warren's second assignment of error, which challenges the evidential weight of the trial court's decision.

contingent that declaratory relief does not lie, this court will not reverse unless the lower court's determination is clearly unreasonable." *Bilyeu v. Motorists Mut. Ins. Co.* (1973), 36 Ohio St.2d 35, syllabus; reaffirmed by *Mid-Am. Fire & Cas. Co. v. Heasley*, 113 Ohio St.3d 133, 2007-Ohio-1248, at ¶14. In ruling that the Vienna property was the decedent's domicile at his death, the trial court denied Warren the relief it sought. At issue, therefore, is whether the trial court's ruling was reasonable in light of the evidence presented at the evidentiary hearing.

{¶24} It is a fundamental principle of law that a person must have a domicile. *Senn v. Cleveland*, 8th Dist. No. 84598, 2005-Ohio-765, at ¶38. That domicile, in the words of Justice Holmes, is a person's "pre-eminent headquarters." *Williamson v. Osenton* (1914), 232 U.S. 619, 625. This court has similarly observed that "[t]he domicile of a person is the place where he has his true, fixed, permanent home and principal establishment. It is the place to which he intends to return whenever he is absent, and from which he has no present intent to move." *In re Estate of Mallory*, 11th Dist. No. 2005-T-0028, 2006-Ohio-1265, at ¶16, quoting 36 Ohio Jurisprudence 3d (1982), Domicile, Section 2. It therefore follows that, while a person may have multiple residences, he may have only one domicile at any one time. See, e.g., *State ex rel. Klink v. Eyrich* (1952), 157 Ohio St. 338, 343.

{¶25} A person's domicile will persist and remain the same until he or she acquires a new one. *Landingham*, supra, at 390. "A person abandons his old domicile and acquires a new one only when he chooses a new domicile, establishes an actual residence in the chosen domicile, and demonstrates a clear intent that the new domicile become his primary and permanent residence." *Holtz*, supra, at ¶18. The acquisition of

a new domicile requires two elements: the factum, or residence, and the animus, or an intention to remain. *Landingham*, supra, citing *Anderson v. May* (1951), 91 Ohio App. 557, reversed on separate grounds. The Supreme Court of Ohio, quoting an eloquent judgment entry from the Clermont County Probate Court, has consequently emphasized:

{¶26} “When a person’s legal residence is once fixed *** it requires both fact and intention to change it. In other words, to effect a change of domicile from one locality, country, or state to another, there must be an actual abandonment of the first domicile, coupled with an intention not to return to it, and there must be a new domicile acquired by actual residence in another place, with the intention of making the last acquired residence a permanent home. The acts of the person must correspond with such purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual and to the fact of residence there must be added the animus manendi, which means the mind to remain.” *In re Estate of Hutson* (1956), 165 Ohio St. 115, 119.

{¶27} Pursuant to *Hutson*, therefore, the abandonment of a former domicile and the acquisition of a new one happens only by the concurrence of both the fact of a new residence and the intent to remain in that residence.

{¶28} Under its second assignment of error, Warren asserts the trial court’s ruling was unreasonable because the decedent did not intend to legally abandon his original domicile at the Warren property. We do not agree.

{¶29} Initially, Warren conflates the abandonment of *property* with the abandonment of *one’s domicile*. Warren is correct that “abandoned property” is

“property over which the owner has relinquished all right, title, claim, and possession with the intention of not reclaiming it or resuming its ownership, possession or enjoyment.” *Doughman v. Long* (1987), 42 Ohio App.3d 17, 21. At issue in this case, however, is not whether the decedent abandoned the Warren property. Clearly, he did not. The relevant inquiry, rather, is whether the decedent intended to abandon his domicile in the city of Warren in favor of acquiring a new domicile in Vienna Township.

{¶30} As discussed above, abandonment of one’s domicile requires the selection of a new actual domicile coupled with an intention for the new residence to be one’s principal and permanent home. See *Landingham*, supra, at 390. Here, the trial court found that the decedent abandoned his domicile at the Warren property in favor of the Vienna property based upon the evidence of the decedent’s intention that could be gleaned from his actions and the testimony of those closest to him. Warren contends, however, the trial court erred in drawing this conclusion. In Warren’s view, the decedent never abandoned the property because he visited it regularly and maintained it as his “bachelor pad.”

{¶31} We must initially emphasize that there was absolutely no testimony or evidence to indicate the decedent treated the Warren property as a “bachelor pad.” While it was uncontroverted that the decedent frequently, if not daily, visited the Warren property, the entirety of the evidence on this issue revealed that the nature of the decedent’s activities at the Warren property related to his antique collecting business.

{¶32} The testimony was clear that the interior of the Warren property was completely full of expensive and rare antiques. Multiple witnesses, including Eric and Regina, the decedent’s ex-wife Susan Rebhan, the decedent’s close friend John

Senoyuit, and his primary carpenter at the Vienna property, Brian Crain, stated the Warren property was difficult to even walk through because of the volume of antiques stored in every room of the house. In particular, Eric and Regina testified the kitchen, hallways, bedrooms, and even the basement were scattered, albeit systematically, with the decedent's vast collection. According to Eric, Regina, and Susan, one could not effectively walk through or even sit in a chair, let alone cook, sleep, or eat at the Warren property. Thus, the overwhelming weight of the evidence demonstrated that the Warren property, while utilized and visited by the decedent on a near daily basis, was not his principal residence, but was used for the sole purpose of his antique collecting avocation.

{¶33} Despite these points, Warren argues that the evidence demonstrated that the decedent's (1) receipt of his mail at the Warren property and (2) listing of the Warren property as his address on various legal certifications and registrations render the trial court's decision unreasonable. We do not agree.

{¶34} Eric and Regina testified the decedent received his mail at the Warren property for both personal and business reasons. Each testified their father was an intensely private individual and, as a result, preferred that strangers not know that he actually lived in Vienna Township. By listing the Warren property as his mailing address, he could avoid potentially bothersome attention he might otherwise receive by having all of his mail delivered to the Vienna property. Furthermore, Eric and Regina also indicated that the decedent kept an office at the Warren property that he regularly visited at the end of each work day. By retaining the Warren property as his mailing address, the decedent could attend to his mail at an office rather than having it clutter

his home. The decedent's decision to receive mail at the Warren property, in light of the foregoing evidence, is not inconsistent with the trial court's determination.

{¶35} Moreover, even though the decedent's driver's license, various motor vehicle registrations, and his will included the city of Warren address, these documents simply indicate that the Warren property was a residence of the decedent. And, using the city of Warren address would be consistent with Eric's and Regina's testimony that, as much as possible, the decedent valued his personal privacy. Regardless, appellees submitted various exhibits demonstrating the decedent utilized the Vienna property's address on separate official documents, e.g., the decedent's tax returns from 2002-2008, the decedent's W-2s from 2002-2008, the decedent's death certificate, and the decedent's bank account. In any event, the issue of domicile is not a "battle of forms." While the legal documents admitted into evidence are relevant to the inquiry, they cannot be considered dispositive of whether the decedent had an intention to acquire a new domicile.

{¶36} With this in mind, we acknowledge that it is difficult to ascertain what a person's intentions are at any given time; this is particularly so when the individual in question is not available to provide some insight into his or her thoughts and desires. In a case such as this, a court must therefore draw its conclusions from the facts and circumstances surrounding the case as developed by testimony and other evidence.

{¶37} With respect to the decedent's intent to change his domicile, it is uncontested that the Vienna property was habitable around 2000 or 2001. Eric testified the decedent actually moved into the Vienna property in 2000, after his bedroom was furnished. After this date, the decedent continued to make improvements on the Vienna

property, pouring significant time and resources into the home. While doing so, the evidence revealed the decedent allowed the Warren property to fall into relative disrepair and turned it into a warehouse for his expansive collection of antiques.

{¶38} The evidence demonstrated that the decedent's grandchildren only visited him at the Vienna property. The evidence further demonstrated that the decedent ate, slept, and held family functions and holiday gatherings at the Vienna property. Alternatively, there was no indication that the decedent met socially with friends or family at the Warren property; to the contrary, Eric, Regina, and Susan all testified the last social gathering held at the Warren property was in 1995 for Regina's wedding.

{¶39} The decedent's family and friends testified that when they wished to reach him, they would first try his cell phone, then try the Vienna property. When Regina prepared food for the decedent, she brought it to him at the Vienna property. When he went to dinner or functions with his friends, they would pick him up at the Vienna property. Finally, the decedent's family and friends unanimously testified that the decedent lived at the Vienna property and, in their view, it was his true home. Given the evidence, the only reasonable conclusion was that the Vienna property was the decedent's "preeminent headquarters" at which he made his home.

{¶40} While Warren offered sufficient evidence to establish the Warren property was the decedent's first domicile, the evidence was uncontroverted that the decedent, between 2000 and 2002, selected a new domicile at 5000 Creekside Boulevard, Vienna, Ohio 44473. And this selection was accompanied by a bona fide intention, evidenced by the decedent's actions, that the Vienna property became his new

domicile. We therefore hold the trial court's judgment declaring the Vienna property the decedent's domicile was a sound and reasonable exercise of its discretion.

{¶41} Warren's second assignment of error is without merit.

{¶42} For the reasons discussed in this opinion, the judgment of the Trumbull County Court of Common Pleas, Probate Division, is hereby affirmed.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.