

IN RE: ESTATE OF MARGARET A. DAUGAARD
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
Orphans' Court No. 44–2006 RW

Jurisdiction of Register of Wills – Grant of Letters and Probate – Domicile

1. When the original administration of a decedent's estate is in issue, domicile is a jurisdictional prerequisite to a grant of letters and the probate of a will.
2. The domicile of a person is the place where he has voluntarily fixed his habitation with a present intention to make it either his permanent home or his home for the indefinite future.
3. Once a person acquires domicile, it is presumed to continue until clear and convincing evidence confirms that the individual's domicile has changed.
4. Change of domicile requires proof of two elements: (1) physical presence in the place where the new domicile is alleged to have been acquired and (2) the intention to make it one's home without any fixed or certain purpose to return to the former place of abode.
5. The intent to make a home involves a fact-intensive inquiry in which the Court analyzes, in general terms, the quantity and the quality of the decedent's ties to the various states.
6. When determining if the element of intention is met, some of the factors upon which courts have relied are as follows: the decedent's expressions of desire, her conduct, the location of real and personal property, the location of household furnishings, the duration of time she spent at the competing locations, and the person's likely motivation for being present in the new state.
7. For the original administration of a will, the register of wills lacks jurisdiction to grant letters testamentary and probate a will when the decedent is domiciled in another state.

Appearances:

Thomas J. Finucane, Esq., *Counsel for Petitioner*

Karl E. Rominger, Esq., *Counsel for Respondent*

OPINION

Walsh, J., October 29, 2008

Facts

On March 7, 2006, at the age of 76, Margaret A. Daugaard died a natural death at The Village of Laurel Run, Adams County, Pennsylvania. On June 16, 2006, the decedent's daughter, Miquela Strait, filed a Petition for Probate and Grant of Letters, seeking her appointment as executor and offering Margaret Daugaard's March 26, 2004 Last Will and Testament for probate. On the same day, the Fulton County, Pennsylvania, Register of Wills issued a Decree of Probate and Grant of Letters, granting Letters Testamentary to Miquela Strait and probating the March 26, 2004 will.

On January 10, 2007, the decedent's son, Adrian Daugaard, filed an Amended Notice of Appeal with the Register of Wills, challenging the Register's jurisdiction based on the decedent's alleged domicile in Colorado, and this Court issued a citation upon Miquela Strait to show cause why the appeal should not be allowed. On June 1, 2007, Miquela Strait filed an answer and new matter denying that the decedent was domiciled in Colorado at the time of her death and reasserting that she was domiciled in Fulton County, Pennsylvania. The Court held hearings on August 26, 2008 and on September 4, 2008, and the parties filed written closing arguments. The case is now ready for decision.

Discussion

20 P.S. §3151 governs the conditions under which the register of wills may grant letters testamentary. If the decedent is domiciled in Pennsylvania, then letters "shall be granted only by the Register of the county where the decedent had his last family or principal residence." 20 P.S. §3151. However, where the decedent is domiciled outside of Pennsylvania, "the register of any county wherein property of the estate shall be located" may grant letters. *Id.* Yet, whenever the original "administration of a decedent's estate is in issue, domicile is a jurisdictional prerequisite" to a grant of letters and the probate of a will. *Pusey's Estate*, 184 A. 844, 853 (Pa. 1936). Here, the original administration of Margaret Daugaard's estate is in issue, so the Court must determine her domicile in order to evaluate the register's jurisdiction to grant letters.

"The domicile of a person is the place where he has voluntarily fixed his habitation with a present intention to make it either his permanent home or his home for the indefinite future." *McKinley's Estate*, 337 A.2d 851, 853 (Pa. 1975). "A domicile once acquired is presumed to continue until it is shown to have been changed." *Id.* at 854. Additionally, a party alleging a change of domicile has the burden of proving that change through clear and convincing evidence. *Id.* at 854-855. A change of domicile requires proof of two elements: (1) "physical presence in the place where the new domicile is alleged to have been acquired" and (2) "the intention to make it one's home without any fixed or certain purpose to return to the former place of abode." *Id.* at 853.

At the hearings, the uncontested evidence proved that Margaret Daugaard was domiciled in Colorado prior to October 2003, when she first came to Pennsylvania for an extended stay. So, Colorado is the decedent's presumed domicile, unless Strait can prove, by clear and convincing evidence, that Margaret changed her domicile to Pennsylvania. Here, the element of physical presence in Pennsylvania is easily established since the decedent arrived in Fulton County, Pennsylvania in October 2003 and died in Adams County, Pennsylvania in 2006.

The second element required for a change of domicile, the intention to make a home in Pennsylvania, is, however, problematic for Strait because the evidence is, at best, equivocal that Margaret intended to make her home in Fulton County. The intent to make a home has been heavily litigated and involves a fact intensive inquiry in which the Court analyzes, in general terms, the quantity and the quality of the decedent's ties to the various states. Obici's Estate, 97 A.2d 49 (Pa. 1953). Some of the factors upon which courts have relied are as follows: the decedent's expressions of desire, her conduct, the location of real and personal property, the location of household furnishings, the duration of time she spent at the competing locations, and the person's likely motivation for being present in the new state. Dorrance's Estate, 163 A. 303, 308 (Pa. 1932); Dalrymple's Estate, 64 A. 554 (Pa. 1906); Dorrance's Estate at 310; Loudenslager's Estate, 240 A.2d 477, 481 (Pa. 1968). With these indicia in mind and with an eye to Miquela Strait's burden of proof, the Court will now determine if Margaret Daugaard intended to make a home in Fulton County, Pennsylvania.

Here, Strait has managed to produce no more than equivocal evidence that the decedent intended to make a home in Fulton County. Beginning in October 2003, the decedent spent winters in Fulton County and summers in Colorado, while, prior to 2003, she spent virtually all of her time in Colorado. Although Margaret's will indicated that she lived in Fulton County, the evidentiary value of this recital was seriously diminished by a mountain of contrary evidence. For instance, the decedent owned a ranch in Colorado and no real property in Pennsylvania. Also, testimony and several advertisements found in Margaret's home indicated that she intended to build a cabin on her Colorado ranch. Indeed, she had staked out the cabin's proposed site. Moreover, the Airstream trailer, in which she stayed in Colorado, contained all of her furniture and most of her personal property. ^[1] The quantum of time spent between Pennsylvania seemed to be fairly equal, but this symmetry cuts against a finding that she changed her domicile from Colorado to Pennsylvania. Furthermore, Margaret came to Pennsylvania to be with her daughter's family and to obtain more convenient access to health care than she could in Colorado. ^[2] So, the desire to establish a home in Pennsylvania does not seem to have motivated her stays in Pennsylvania. Additionally, Margaret retained her Colorado ID card and kept her Colorado post office box, although some mail was forwarded to Pennsylvania. Furthermore, she voted twice in Colorado after her initial arrival in Pennsylvania and her execution of her will. Although Margaret received public assistance while in Pennsylvania, the Court gives this evidence little weight since there was no proof offered that she applied for it herself. Finally, Margaret had deep family roots in Colorado, ^[3] extending back to the area's initial European exploration, and she was buried on her ranch in accord with her wishes. This litany of facts reveals that Miquela Strait has failed to prove by clear and convincing evidence that Margaret Daugaard changed her domicile to Pennsylvania. Thus, the register of wills had no jurisdiction to grant letters testamentary and to probate the will.

Conclusion

In conclusion, the Fulton County Register of Wills lacks jurisdiction to grant letters testamentary and probate the

will. Domicile is a jurisdictional prerequisite for the original administration of a will, as is the case here. The decedent was initially domiciled in Colorado, and Miquela Strait has the burden of proving a change of domicile to Pennsylvania. Although she has proven the decedent's physical presence in Pennsylvania, she has failed to prove by clear and convincing evidence that Margaret Daugaard intended to make a home in Pennsylvania. Thus, Margaret's domicile remained in Colorado until her death, and the Court will grant the amended probate appeal and revoke the register's June 16, 2006 Decree granting letters testamentary to Miquela Strait and probating Margaret Daugaard's Last Will and Testament.

ORDER OF COURT

October 29, 2008, upon consideration of the record, the amended probate appeal and the Petition for Citation, the briefs of the parties, the evidence, and the law, it is ordered that the appeal is granted. The June 16, 2006 Decree of the Fulton County Register of Wills granting Letters Testamentary to Miquela Strait and probating Margaret Daugaard's Last Will and Testament is revoked.

[1] Some of the personal property still in the Airstream trailer consisted of Margaret's walking stick and many images and objects associated with her deeply held religious beliefs. Margaret did have some clothing in Fulton County, Pennsylvania, but she apparently retained a full wardrobe in Colorado as well.

[2] The decedent had serious health problems and access to treatment proved much easier in Pennsylvania than in the mountains of Colorado where her ranch was.

[3] Her maiden name was Archuleta, and she lived in Archuleta County, Colorado, which was named for her ancestors.