

IN THE COURT OF APPEALS OF IOWA

No. 2-583 / 12-0100
Filed September 19, 2012

**JAMES G. SCHMITZ and VICKIE J.
SCHMITZ, Husband and Wife,**
Petitioners-Appellants,

vs.

IOWA DEPARTMENT OF REVENUE,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, David F. Staudt, Judge.

Petitioners appeal the decision of the district court affirming the Iowa Department of Revenue decision that James Schmitz was a resident of Iowa and was required to pay Iowa income taxes from 2001 through 2005. **AFFIRMED.**

Brian J. Kane of Kane, Norby & Reddick, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, and James D. Miller, Assistant Attorney General, for appellee.

Considered by Vogel, P.J., Tabor, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.**I. Background Facts & Proceedings.**

James and Vickie Schmitz and their three children were long-time residents of Iowa. In 1989 both James and Vickie signed an application for a homestead credit in Iowa for their residence on Heritage Drive in Cedar Falls. James was the chief operating officer of the IBP, Inc. plant in Waterloo. The parties' children attended school in Iowa.

In February 2000, James was offered the position of vice president in charge of pork operations with IBP at their corporate offices in Dakota Dunes, South Dakota.¹ James accepted the position. Vickie informed him she and the children were going to stay in Cedar Falls. In August 2000, James moved to an apartment in Dakota Dunes. James travelled to Cedar Falls to stay with Vickie and the children about forty weekends and some holidays each year. James provided the financial support for the family, and he and Vickie have a joint bank account in Iowa.

James continued to be registered to vote in Iowa. He requested an absentee ballot in Iowa in 2004, but testified he did not believe he turned it in. He had an Iowa driver's license, which he renewed in Iowa in 2004. The family owned four or five vehicles, all of which were registered in Iowa. James had personalized Iowa license plates on his vehicle.

In 2005, James and Vickie built a new home on Stratford Court in Cedar Falls, and they are co-owners of this home. A note on the 1989 homestead tax

¹ IBP was later purchased by Tyson Foods, and James's employer became Tyson Foods. Dakota Dunes is near the intersection of Iowa, Nebraska, and South Dakota.

credit application states James Schmitz called on May 15, 2006, stating he and Vickie both lived at the Stratford Court address, and so the homestead tax credit on the Heritage Road home should be discontinued. On June 16, 2006, James signed an application for a homestead tax credit for the Stratford Court home. This application includes the statement, "I declare residency in Iowa for purposes of income taxation and no other application for homestead credit has been filed on other property."

The Iowa Department of Revenue sent residence questionnaires to James and Vickie. Based on their answers, the Department sent them a statement showing they owed \$290,472.19 in taxes, penalties, and interest for the years of 2001 through 2005 due to James's failure to pay Iowa income taxes. James and Vickie protested the assessment, stating James was not a resident of Iowa.

An administrative hearing was held on February 3, 2010. James testified that he considered his residency to be in South Dakota. He noted he received mail in South Dakota, had an individual bank account there, participated in South Dakota charities, and received personal services, like doctor visits, there. James stated that due to the hours he worked it was not convenient for him to change his voter registration, driver's license, or vehicle registration to reflect his South Dakota address.² He testified he did not remember signing the homestead credit application for the Stratford Court home, but admitted it was his signature.

An administrative law judge (ALJ) issued a proposed decision that determined James had never legally changed his domicile from Iowa to South

² There was evidence that after he received the residence questionnaire in 2006 James changed his voter registration, driver's license, and vehicle registration.

Dakota during the time period of 2001 through 2005. The ALJ noted once residency was established in Iowa, it was retained until residency was established in another state. James was clearly a resident of Iowa in 2000. In 2006, he signed a document stating he was a resident of Iowa. The ALJ concluded this showed James never established residency in South Dakota. The ALJ also found James had not relinquished the rights and privileges of residency in Iowa due to the fact he retained his Iowa voter's registration, driver's license, and vehicle registration. The director of the Iowa Department of Revenue affirmed the ALJ's decision.

James and Vickie filed a petition for judicial review. The district court concluded there was substantial evidence in the record to support the decision of the Department. The court found James was domiciled in Iowa in 2000 and he never abandoned his domicile in Iowa. The court affirmed the decision of the Department. James and Vickie appeal.

II. Standard of Review.

Our review of decisions of the Iowa Department of Revenue are governed by the Iowa Administrative Procedure Act (IAPA). Iowa Code § 422.29 (2007); *KFC Corp. v. Iowa Dep't of Revenue*, 792 N.W.2d 308, 312 (Iowa 2010). Under the IAPA, we "give appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(11)(c). Section 422.68(1) gives the director of the Department "the power and authority to prescribe all rules not inconsistent with the provisions of this chapter, necessary and advisable for its detailed administration and to effectuate its purposes." Consequently, we will uphold the

Department's decision unless its interpretation is irrational, illogical, or wholly unjustifiable. See *id.* § 17A.19(10)(l); *City of Marion v. Iowa Dep't of Revenue*, 643 N.W.2d 205, 207 (Iowa 2002).

If a determination of fact has clearly been vested by a provision of law in the discretion of an agency, we will affirm if the agency's decision is supported by substantial evidence in the record, when that record is viewed as a whole. Iowa Code § 17A.19(10)(f); *Clark v. Iowa Dep't of Revenue*, 644 N.W.2d 310, 315 (Iowa 2002). The term "substantial evidence" means "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1). We consider evidence that detracts from, as well as supports, the agency's findings, and give "deference to the credibility determinations of the presiding officer." *Id.* § 17A.19(10)(f)(3); *Lange v. Iowa Dep't of Revenue*, 710 N.W.2d 242, 247 (Iowa 2006).

III. Merits.

Under Iowa Code section 422.5(1) every resident of Iowa is required to pay income taxes in Iowa on taxable income as defined in that chapter. The term "resident" is defined as "any individual domiciled in the state, and any other individual who maintains a permanent place of abode within the state." Iowa Code § 422.4(15).

Pursuant to its rulemaking authority, Iowa Code § 422.68(1), the Department has issued a rule interpreting the term "resident" to mean a person who maintains a permanent place of abode in Iowa, or who is domiciled in Iowa.

Iowa Admin. Code r. 701-38.17. A permanent place of abode in Iowa generally involves spending more than 183 days in this state, and that situation is not present here. See *id.* r. 701-38.17(1).

The State has claimed James was domiciled in Iowa. The term “domiciled” means “the individual intends to permanently or indefinitely reside in Iowa whenever the individual may be absent from this state.” *Id.* r. 701-38.17(2).

The rule further provides:

Every person has one and only one domicile. Domicile, for purposes of determining when an individual is “domiciled in the state,” is largely a matter of intention which must be freely and voluntarily exercised. The intention to change one’s domicile must be present and fixed and not dependent upon the happening of some future or contingent event. Because it is essentially a matter of intent, precedents are of slight assistance and the determination of the place of domicile depends upon all the facts and circumstances in each case.

Once an individual is domiciled in Iowa, that status is retained until such time as the individual takes positive action to become domiciled in another state or country, relinquishes the rights and privileges of residency in Iowa, and meets the criteria set forth in *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d 329, 331 (1963). The director may require an individual claiming domicile outside the state of Iowa to provide documentation supporting establishment of another domicile. Absence from the state for 183 days of the tax year or for any other extended period of time does not alone show abandonment of an Iowa domicile.

a. There is a rebuttable presumption that an individual is domiciled in Iowa if the individual meets the following factors:

- (1) Maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the tax year and either
- (2) Claims a homestead credit or military tax exemption on a home in Iowa, or
- (3) Is registered to vote in Iowa, or
- (4) Maintains an Iowa driver’s license, or
- (5) Does not reside in an abode in any other state for more days of the tax year than the individual resides in Iowa.

Id.

There is clear evidence James was domiciled in Iowa prior to 2000, when he was asked to take a position with IBP in South Dakota. That domicile in Iowa continued unless a new domicile was perfected. See *State ex rel. Palmer v. Hancock Cnty.*, 443 N.W.2d 690, 693 (Iowa 1989). A new domicile is perfected by: (1) a definite abandonment of the former domicile; (2) actual removal to, and physical presence in the new domicile; and (3) a bona fide intention to change and to remain in the new domicile permanently or indefinitely. *Julson*, 122 N.W.2d at 331.

There is substantial evidence in the record to support a finding that James never abandoned his domicile in Iowa. Under the rule, there is a rebuttable presumption that James's domicile was in Iowa because he maintained a residence in Cedar Falls with his family, claimed a homestead credit in Iowa,³ was registered to vote in Iowa, and maintained an Iowa driver's license.⁴ See Iowa Admin. Code r. 701-38.17(2)(a); see also *Swanson v. Iowa Dep't of Revenue*, 414 N.W.2d 670, 671-72 (Iowa Ct. App. 1987) ("Unless shown to the contrary, an individual will be presumed 'domiciled in the state' within the meaning of resident if the individual exercises the rights of citizenship in Iowa by meeting the requirements as a voter, or who enjoys the benefits of the

³ On appeal, James claims we should not consider the 2006 application for homestead credit because this was after the tax years in question, 2001 through 2005. This issue was not addressed at the agency level or by the district court. We conclude it has not been preserved for our review. See *Soo Line Ry. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994) (noting our review is generally limited to issues raised at the agency hearing). We additionally note James signed the 1989 application for homestead credit and that credit was not revoked until 2006. Thus, he was receiving a homestead credit in Iowa during the time period in question.

⁴ In fact, a rebuttable presumption would be created if James maintained an Iowa residence and had one additional factor, such as claiming a homestead credit, being registered to vote in Iowa, or maintaining an Iowa driver's license. Here, he met three of the four possible additional factors.

homestead credit, or military exemption, or who otherwise exercises the rights or privileges of suffrage in the state.”).

James claims he was able to rebut the presumption that his domicile was in Iowa based on a nonexclusive list of factors to consider in determining whether an individual is a resident of Iowa, which are set forth in rule 701-38.17(2)(c), as follows:

- (1) Maintains a place of abode in Iowa, whether owned, rented, or occupied.
- (2) Maintains an Iowa driver’s license.
- (3) Maintains active membership in an Iowa church, club, or professional organization and participates as a result of such membership.
- (4) Documents, such as tax forms, legal documents, and correspondence, initiated during tax periods, use an Iowa address. Legal documents could include wills, deeds, or other contracts.
- (5) Immediate family members residing in Iowa who are claimed as dependents or rely, in whole or in part, on the taxpayer for their support.
- (6) Vehicles registered in Iowa.
- (7) Location of employment or active participation in a business within Iowa.
- (8) Active checking or savings accounts or use of safe deposit boxes located in Iowa.
- (9) Claims a benefit on the federal income tax return based upon an Iowa home being the principal place of residence. Examples include mortgage interest on principal residence and travel expenses while away from the principal place of residence.
- (10) Receives a number of services in Iowa from doctors, dentists, attorneys, CPAs or other professionals.

As the ALJ noted, some of these factors favor James, while others do not. James testified that in South Dakota he had joined a church and charitable organizations; received mail, including legal documents; was employed; had a bank account; and received professional services, such as doctor appointments. On the other hand, some factors justify a finding that his residence remained in Iowa—he had a house in Cedar Falls, maintained an Iowa driver’s license, his

dependents resided in Iowa, his vehicles were registered in Iowa, and he had a joint bank account in Iowa. We are unable to find the agency's decision is not supported by substantial evidence when the record is viewed as a whole.

The director of the Iowa Department of Revenue found, "He and his family availed themselves of the rights and privileges provided to residents of Iowa. There was no abandonment of his domicile in Iowa." We affirm the decision of the district court finding there was substantial evidence in the record to support the decision of the Department.

AFFIRMED.