

NO. A08-2281

State of Minnesota
In Supreme Court

Gerónimo and Kathleen Sanchez,
Petitioners-Relators,

v.

Commissioner of Revenue,
Respondent.

PETITIONERS-RELATORS SANCHEZES' REPLY BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
SUMMARY OF THE ARGUMENT	1
ARGUMENT	2
A. The Sanchezes' Continued "Residency" in Minnesota Did Not Alter Their Domicile in South Dakota	2
B. The Sanchezes Were Not Required to Return to South Dakota Following the Closing on Their Minnesota Property.	4
CONCLUSION	6

TABLE OF AUTHORITIES

	Page(s)
CASES	
<u>Chapman v. Davis,</u> 45 N.W.2d 822 (Minn. 1951).....	2
<u>Comm’r of Revenue v. Stamp,</u> 296 N.W.2d 867 (Minn. 1980).....	3
<u>In re Quale,</u> 213 Minn. 421, 7 N.W.2d 153 (Minn. 1942).....	3
<u>Marcotte v. Comm’r of Revenue,</u> Docket No. 4541, 1987 WL 10252 (Minn. Tax 1987)	5
<u>Miller’s Estate v. The Comm’r of Taxation,</u> 240 Minn. 18, 59 N.W. 2d 925 (1953).....	5
<u>Minn. Mining & Mfg. Co. v. Kirkevold,</u> 87 F.R.D. 317 (D. Minn. 1980).....	6
<u>Mut. Serv. Cas. Ins. Co. v. Olson,</u> 402 N.W.2d 621 (Minn. Ct. App. 1987).....	2
<u>Schossow v. First Nat. Ins. Co. of Am.,</u> 730 N.W.2d 556 (Minn. Ct. App. 2007).....	3
<u>St. Onge v. McNeilus Truck & Mfg., Inc.,</u> 645 F. Supp. 280 (D. Minn. 1986).....	5
<u>Wright v. Comm’r of Revenue,</u> Docket No. 2620, 1980 WL 1207 (Minn. Tax 1980)	5

SUMMARY OF THE ARGUMENT

The Minnesota Department of Revenue (“the Department”) is correct in framing this case as one of timing. However, the Department improperly analyzes the issues in an irrelevant time period. Geronimo and Kathleen Sanchez intended to and did change their domiciliary status from Minnesota to South Dakota in May 2004. Their actions and intentions during that month are determinative of their domiciliary change. No additional analysis is required.

The Department recasts the facts and attempts to shift the focus to the post-June 18, 2004 time period. In doing so, the Department improperly equates “residency” with “domicile,” focusing primarily on the nature, implications, and consequences of the Sanchezes’ Minnesota property. Respondent’s Brief at 10-12. A person may be a resident in more than one state. However, that person may have only one domicile. To be domiciled, the taxpayer must both be a resident of the state and have the requisite intent to return or remain there. The Sanchezes fulfilled those requirements in South Dakota. Contrary to what the Department urges, the Sanchezes were not required to immediately return to South Dakota upon the closing of their Minnesota property. The Department’s suggestion that such a trip was required emphasizes form over substance, and imposes requirements on the Sanchezes for which there is no legal support.

The Sanchezes do not dispute that they did not return to South Dakota during the 2004 tax year. Therefore, the relevant time period under scrutiny is not the period after the closing on their Apple Valley property, but rather the time period leading up to and including the Sanchezes’ closing on their Minnesota property. The question is whether

the Sanchezes were physically present in South Dakota during the 2004 tax period with the intent to return and remain there permanently. That answer is yes. Consequently, the Department was without jurisdiction to impose full-year taxes on the Sanchezes, who were domiciled in Minnesota for only part of the 2004 tax year.

ARGUMENT

The Department argues that the Sanchezes' actions and intentions to domicile in South Dakota were contradictory, and not "credible," because the Sanchezes recognized their Minnesota residency at the time of their domiciliary change to South Dakota, and did not immediately return to South Dakota following the closing on their Minnesota property. The Department both confuses the legal questions and ignores the undisputed facts of this case.

A. The Sanchezes' Continued "Residency" in Minnesota Did Not Alter Their Domicile in South Dakota

The Sanchezes have conceded that they were residents of Minnesota up to and including June 18, 2004, the day they formally closed on their already-sold house. This concession does not alter the domiciliary change to South Dakota. In arguing that it does, the Department inappropriately equates "residency" with "domicile."

It is well-settled that a person may have more than one residence; however that person still will have only one domicile. Chapman v. Davis, 45 N.W.2d 822 (Minn. 1951) (one may have a residence in one state and his domicile in another); Mut. Serv. Cas. Ins. Co. v. Olson, 402 N.W.2d 621, 624 (Minn. Ct. App. 1987) (stating that, as a general rule, while a person can have only one domicile, he can have more than one

residence); Schossow v. First Nat. Ins. Co. of Am., 730 N.W.2d 556 (Minn. Ct. App. 2007) (while a person can have only one domicile, the person can have more than one residence). As this Court has explained, “[r]esidence without intention, or intention without residence, is of no avail. Mere change of residence, although continued for a long time, does not effect a change of domicile, while a change of residence even for a short time, with the intention in good faith to change the domicile, has that effect.” In re Quale, 213 Minn. 421, 424, 7 N.W.2d 153, 155 (Minn. 1942) (citation omitted).

The Sanchezes do not dispute that they held residency in Minnesota and South Dakota for a brief period in May and early June. A. App. at 0017. This is not a concession of domicile. Nor it is a reflection of intent to remain, return, or stay in Minnesota. If anything, the status of the Minnesota property reflects the Sanchezes’ intent to leave. The Sanchezes’ Apple Valley house already had been sold and was awaiting formal closure when they domiciled in South Dakota. A. App. at 0016. It was no longer their “resident home.” The Sanchezes already had established their clear intent to abandon the residence prior to their transition to South Dakota. A. App. at 0014-0018. Contrary to the Department’s assertion that the Sanchezes argue for “retroactive” domicile, the Sanchezes simply assert that the closing date on their house was the last tie they had to Minnesota. See R. Br. at 18. They did not have to close on the sale of their Minnesota property for the domicile to be complete. This was simply the final step in severing all ties to Minnesota.

Unlike the taxpayers in Comm’r of Revenue v. Stamp, 296 N.W.2d 867, 870 (Minn. 1980), as cited by the Department, the Sanchezes maintained no ties to

Minnesota. They returned to Minnesota for only a handful of days for the sole purpose of legally closing on a property that already had been sold. In stark contrast to the facts of Stamp, the Sanchezes have never returned to Minnesota and they had begun severing all ties with Minnesota at the time they established themselves in South Dakota. The Sanchezes have no ties in Minnesota. They do not visit family there. There are absolutely no connections to Minnesota. A. App. at 0014-0018.

The Department improperly equates “residency” with “domicile” in arguing to bind the Sanchezes to Minnesota for the 2004 tax year. The Sanchezes were domiciled in South Dakota for the later portion of 2004. Their concession that they were “residents” in Minnesota for a brief period of time pending the formal closing on an already-sold property does not alter the result. The effect of their actions in South Dakota in May 2004 changed their domicile from Minnesota, where they no longer intended to reside, to South Dakota, where they did intend to reside. Nothing further was required of them.

B. The Sanchezes Were Not Required to Return to South Dakota Following the Closing on Their Minnesota Property.

The Department argues that the Sanchezes did not effectively change their domicile to South Dakota because they did not return to South Dakota after the closing on their former house. R. Br. at 18-24. The Sanchezes were domiciled in South Dakota at that point. The mere ownership of a house in Minnesota for approximately three weeks pending the formal closing is not enough to bind the Sanchezes to Minnesota when all other relevant considerations showed presence, coupled with an intent to return to and remain in South Dakota.

The Sanchezes do not dispute that they did not return to South Dakota after the closing on their property during the 2004 tax year. However, their actions and declarations in May 2004, as indicative of their intent, coupled with their physical presence in South Dakota, altered their domiciliary status regardless of the fact that they technically still held title to property in Minnesota. The Department points to no authority that would require the Sanchezes to return to South Dakota after having established domicile in that state. No immediate return to South Dakota was required.

The Sanchezes can not logically be expected to have severed every tie with Minnesota before establishing themselves in a new jurisdiction, nor is such severance required by law. See Marcotte v. Comm'r of Revenue, Docket No. 4541, 1987 WL 10252, 2 (Minn. Tax 1987). Therefore, waiting for the formal closing does not hinder the domiciliary change. See Miller's Estate v. The Comm'r of Taxation, 240 Minn. 18, 59 N.W. 2d 925 (1953) (ownership of a home in a certain state not determinative of domicile); see also Wright v. Comm'r of Revenue, Docket No. 2620, 1980 WL 1207, 7 (Minn. Tax 1980) (“[m]erely because Wright owned a house in Minnesota . . . is not of any significance”).

The Department suggests that the Sanchezes needed to travel west across the South Dakota border again before heading east for their personal trip to establish domicile in South Dakota. Again, this requirement favors form over substance and is completely unsupported by the law. To be domiciled in South Dakota, the Sanchezes were required to be physically present in South Dakota with the intent to remain there. St. Onge v. McNeilus Truck & Mfg., Inc., 645 F. Supp. 280, 282 (D. Minn. 1986). When

those factors coincide, the domicile changes instantaneously. Minn. Mining & Mfg. Co. v. Kirkevold, 87 F.R.D. 317, 320 (D. Minn. 1980).

The Sanchezes satisfied the domiciliary requirements in May, regardless of the temporary ownership of their Minnesota house. They were not required to continually return to South Dakota to “complete” their domicile. The change was instantaneous.

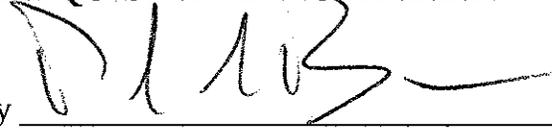
CONCLUSION

The Department has tried to diminish the credibility of the Sanchezes’ actions and intent by recasting the facts surrounding the Minnesota property in an attempt to show continued domicile in Minnesota. Long before they closed on their Apple Valley property, the Sanchezes established their intent to abandon Minnesota and to transition to South Dakota. They carried that intent with them to South Dakota, where they became residents and domiciliaries in May. Simply returning to Minnesota to close out their affairs in that state does not reflect an intent to remain there. By that time, the domiciliary change was complete. Therefore, the Sanchezes were Minnesota residents for only part of the 2004 tax year, and the Department is without jurisdiction to collect taxes from the Sanchezes for the entire 2004 tax year.

DATED: 4/13/9

Respectfully submitted,

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