

JOHN B., III and NANCY V. POSEY

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IN THE

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MARYLAND TAX COURT

vs.

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No. 08-IN-OO-1038

COMPTROLLER OF THE TREASURY

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No. 09-IN-OO-0187

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MEMORANDUM OF GROUNDS FOR DECISION

The sole issue on appeal from this case is whether the Petitioners, Dr. John B. Posey, III and Nancy V. Posey (hereinafter Dr. Posey, Mrs. Posey or collectively, the Poseys) abandoned their Maryland domicile in 2003 while establishing a new domicile in Maine. The Comptroller contends that the Poseys did not sever their domicility with Maryland until 2006, when they set up a new domicile in Louisiana. The Poseys contend that they had severed their ties with Maryland in 2003 and were domiciled in Maine for the tax years 2004 and 2005.

Though there are several cases in Maryland that discuss the legal standard for determining one's domicile, each case has been decided on its own unique facts. In the present case, the Court must determine the subjective intent of the Poseys from the collective facts. As the Court of Appeals noted in *Lenderking v. Comptroller*, 268 Md. 613 (1973):

[A] change of domicile is an exercise of the mind, the substitution of an *animus non revertendi* for an *animus manendi*, *Shenton v. Abbott*, 178 Md. 526, 534, 15 A. 2d 906 (1940), the cerebration must be supported by or at least not be at variance with extrinsic circumstance. ...

Moreover, the tests and factors used by the courts to determine domicile are instructive for this Court's analysis of the manifestation of Poseys' subjective intent.

Dr. Posey joined a neurosurgery practice in Maryland in 1978, known as Chambers, Finney & Slaughter, P.A. The practice drew heavily on patients that worked for or were family members of Bethlehem Steel. Bethlehem Steel's operations began to decline, and so did Dr. Posey's medical practice. In 2001, to supplement his income, Dr. Posey began working part-time in Augusta, Maine. In 2003, Dr. Posey was notified that his malpractice insurance policy would no longer be offering him coverage. Dr. Posey considered alternative insurance companies, but the cost for similar coverage was \$100,000 a year. Dr. Posey then decided to look for a new position. He found a position with Neurosurgery Associates, P.A. ("Associates") in Maine. He decided to close his Maryland practice and move to Maine. He signed a two year contract and had the intention of becoming a full partner with the practice. Dr. Posey notified all of his patients that he would be closing his Maryland practice and referred them to colleagues. Dr. Posey sorted through medical records and disposed of old records, while preserving the records that were required to be maintained by law. The records were stored in his home in Reisterstown, MD. Mrs. Posey joined him in Maine in June of 2004 after completing her business obligations. In the Spring of 2004, Dr. Posey began to question the direction of the practice after a change in the practice administrator. In December of 2004, Dr. Posey concluded that he would not become a partner of Associates, and he decided to find another form of employment.

He found employment at Tulane University Medical School (“Tulane”), set to begin in January 2006. Unfortunately, Hurricane Katrina devastated Tulane University and delayed his new employment for at least one year. He found a short term position at Walter Reed Army Medical Center (“WRAMC”) in Washington, D.C. Upon taking that position, Dr. Posey made it clear to WRAMC that the position would be temporary, and as soon as Tulane reopened, he would be moving to Louisiana. The Poseys returned to their home in Reisterstown, MD in January 2006. They remained there for about three months until they found an apartment to rent in Silver Spring, MD. In February 2006, the Poseys purchased a home in Louisiana. When Tulane opened in January 2007, the Poseys moved to Louisiana. The Poseys purchased a permanent residence near Tulane, where they now reside, a short distance away from their daughter.

In support of his position, the Comptroller points to certain facts: Neither Dr. Posey nor Mrs. Posey changed their driver’s licenses to Maine. Neither one registered to vote in Maine. Neither Dr. Posey nor Mrs. Posey changed the registration on any of their three cars. The Poseys maintained Maryland bank accounts throughout 2004 and 2005. The Poseys still own a home on 10 acres of land located at 13101 Dover Road, Reisterstown, in Baltimore County. The Poseys did not rent or sell this property from 2004 through 2005. The Poseys stored unused furniture and belongings at the Dover Road property. When the Poseys purchased the home in Louisiana, they listed their Reisterstown home as their address of record on the Louisiana deed. These facts support Comptroller’s position but are not determinative when considered in the context of the actual intent of the Petitioners as reflected in the other facts of this case.

Shenton v. Abbot, 178 Md. 526 (1940) created a two-prong test to establish if a change in domicile has occurred: First, it must be shown that a new residence was acquired with the intent of remaining there. *Harrison v. Comptroller of Treasury*, 1987 WL 16440, 1 (1987) citing *Shenton v. Abbot*. Second, the abandonment of the old domicile must be so permanent as to exclude the existence of an intent to return to the former place.

Whether Dr. Posey acquired Maine as his new domicile rests upon the concurrent presence of two essential elements: (1) Physical or bodily presence in the new State; and (2) the intent to adopt it as his new domicile and abandon the old State. At the same time, there must have necessarily been an intent to abandon Maryland as his domicile.

The new residence in Maine was designed to become permanent. Dr. Posey had every intention of becoming a partner in Neurosurgery Associates, P.A. in Maine. He negotiated with the office manager and set the terms of how to become a partner in the practice. They discussed business issues such as how the profits would be split and where his specific office would be located in order to be the most profitable for the partnership. Dr. Posey's formal move to Maine in 2004 occurred after he had been working on a part-time basis since 2000 with the Veterans Administration Hospital in Maine. His decision to permanently leave Maryland was due, at least in part, to his declining income and a promising business opportunity with a long-standing neurosurgery practice group. Furthermore, Dr. Posey signed a two year contract and had every intention of becoming a partner. At the time of moving to Maine, Dr. Posey did not consider his employment to be temporary. In fact, Dr. Posey closed his practice in

Maryland due to the increased malpractice premiums. He wrote letters to all of his patients, explained to them that he would no longer be practicing in Maryland, and provided them with recommendations to other neurosurgeons to provide their care. It would be illogical for a physician to abandon his practice in Maryland unless he intended to retire or to continue practicing medicine in another state. Dr. Posey clearly intended to abandon his domicile in Maryland in 2004 and establish his domicile in Maine where he intended to practice medicine permanently.

The Comptroller's assessments for 2004 and 2005 shall be reversed.