Matter of Ranftle
2011 NY Slip Op 34349(U)
September 14, 2011
Surrogate's Court, New York County
Docket Number: File No. 2008-4585
Judge: Kristin Booth Glen
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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of RONALD J. RANFTLE, a person interested in the Estate of

H. KENNETH RANFTLE,

File No. 2008-4585

Deceased.

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New York County Surrogate's Court
DATA ENTRY
Date: 9-14-2011

G L E N, S.

Post-Hearing Decision

A hearing was held on April 27, 2011 to determine whether decedent, H. Kenneth Ranftle (Ken), was domiciled in New York or in Florida at the date of his death, November 1, 2008 and, if in Florida, what law should apply to the issue of whether Ken's husband, J. Craig Leiby (Craig), was his sole distributee.[1] This court previously admitted Ken's will to probate, having determined that, as his surviving spouse, Craig was the sole individual entitled to citation on the probate petition and, accordingly, to object thereto (*Matter of Ranftle*, NYLJ, Feb. 3, 2009, at 27, col 1 [Sur Ct New York County]). One of Ken's brothers, Richard Ranftle, challenged that determination and, on appeal, the First Department unanimously affirmed this court's ruling (81 AD3d 566 [lst Dept 2011]). Another brother, Ronald Ranftle (Ron), has now petitioned to vacate the probate decree on the grounds that Ken was a Florida domiciliary as of his date of death. Because the facts were vigorously disputed, a hearing was required.

[1]Assuming, arguendo, that Ken was domiciled in Florida, there are two separate inquiries: what is Florida's choice of law rule, and which state had greater contacts ---or greater interest --- in the probate of Ken's will.

Legal Issue

It is uncontroverted that in 2003 Ken legally changed his domicile from New York, where he was born and raised, and where he lived for virtually his entire life, to Florida.[2] It is similarly uncontroverted that the purpose of his domicile change was tax related.[3] The contested issue is whether in 2008 he abandoned that domicile and re-established domicile in New York. In New York, domicile is defined as:

> "[a] fixed, permanent and principal home to which a person wherever temporarily located always intends to return" (SCPA § 103[15]; *Matter of Shindell*, 60 AD2d 393, 395 [lst Dept 1977]; *Matter of Brunner*, 41 NY2d 917, 918 [1977]).

Once domicile has been established, it continues until a new domicile is conclusively established (*e.g. Matter of Gadway*, 123 AD2d 83, 85-86 [3d Dept 1987]), and the party alleging a change of domicile must prove that change by clear and convincing evidence (*id., citing Matter of Newcomb*, 192 NY 238 [1908]).

The question presented to the court is, therefore, whether Craig has established, under that elevated burden of proof, that Ken changed his domicile to New York. For the reasons discussed below I find that he did.

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[2]Florida provides clear and specific requirements for establishing domicile for tax purposes. These include a Formal Declaration of Domicile; a designated mail address; registration to vote in Florida; a Florida driver's license; registration of vehicles in Florida; and using a Florida address on federal income tax returns (Fla Stat Ann, tit 14, § 196.015). Ken met each of these requirements which were the minimum necessary to comply with the statute and establish domicile.

[3]Unlike New York (and New York City, where Ken and Craig lived), Florida imposes no income taxes on its residents. In addition, there are capital gains and property tax advantages and a significant homestead exemption.

Petitioner's (Ron's) Proof

In support of his claim that Ken did *not* change his domicile, Ron proved that, as of his death, Ken had only a Florida driver's license, had his car registered in Florida, voted in Florida (by absentee ballot) in the 2008 Presidential election, and had declared his Fort Lauderdale house as his "homestead" on the Broward County Tax Appraiser's records[4] where that designation continued unchanged through 2008. While undisputably a Florida domiciliary from 2003 to 2007, Ken executed five wills (all, however, prepared by his long-time attorney in New York) in which he declared Florida to be his domicile, and that his final will, executed in August 2008 in New York, similarly contained that declaration.

Respondent's (Craig's) Proof

The extensive proof presented by Craig tells a compelling and convincing story that answers and/or overcomes Ron's arguments. The court credits the following testimony:

Although Ken owned a home in Florida,[5] he and Craig co-owned a substantial apartment in Greenwich Village where Craig lived full-time,[6] and to which Ken commuted during the years

[4]The record demonstrates that this declaration was made at or around the time that Ken established domicile in Florida and that the declaration was simply automatically carried over from year to year.

[5]After his retirement, Ken continued to engage in a pattern of purchasing, rehabbing, selling, or renting properties. At his death he owned a house in Fort Lauderdale, rental properties in Fire Island, and an apartment in Montreal, which he and Craig had just finished renovating after having sold a prior, smaller Montreal residence. Ownership of any of these properties is not dispositive of the issue of domicile.

[6]Craig's domicile had always been in New York; he and Ken lived together first in a co-op that Ken owned, then in an apartment on Gay Street that they purchased jointly, and finally a jointly-owned co-op at 345 West 13th Street. Craig continued working after Ken's retirement, and started a new job at the Federal Reserve in New York in January 2008.

2003 to2007.[7] Despite his uncontroverted establishment of Florida domicile in 2003, Ken maintained many connections with New York where, for example, he had concert and theater subscriptions,[8] made his charitable contributions, had his financial advisor, and where all his doctors and other health care professionals were located.

In March 2008, Ken was diagnosed with advanced, terminal lung cancer with metastasis to his brain.[9] From that time on, both for his medical treatments and for the extensive social life he pursued until his death, he never returned to Florida, but rather lived with Craig in their apartment, except for brief visits to Montreal and California.[10]

On May 14, 2008, after Ken's diagnosis, then-Governor Paterson issued an Executive Directive requiring state agencies to recognize same-sex marriages validly contracted elsewhere (*see Golden v Paterson*, 23 Misc 3d 641[Sup Ct Bronx County 2008] [upholding the Governor's authority]). Thrilled at this development Ken proposed to Craig, and shortly thereafter they were married at their apartment in Montreal. In preparation for their marriage they consulted with

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[7]Ken kept calendars of his days spent in Florida during those years to substantiate the representation, necessary for resident tax treatment, that he spent 183 days, or more than half the year, in that state. It is significant that when he returned to New York for his final stay, his 2008 calendars shows that he spent virtually all of that year in New York, and only 13 days in Florida, all prior to his diagnosis.

[8]Ken had no such regularized cultural activities in Florida.

[9]Ironically, this was discovered as he prepared for long-delayed heart surgery at Columbia Presbyterian Hospital.

[10]Ron argues that Ken's return to New York and his continued presence there until his death was due to medical reasons, and therefore did not constitute an intention to change his domicile (*see In re Selzer*, 237 NYS2d 484 [Sur Ct Nassau County 1963]). To the contrary, the credible evidence demonstrates that, far from a frail and resigned patient, Ken was, to the end, a vibrant man who enjoyed life to its fullest and who lived where he did, and with whom, by his own clear choice, not because of medical necessity.

counsel in Canada about wills disposing of their Canadian property. On May 18, 2008 they both executed wills referring (somewhat prematurely) to each other as his "spouse," and explicitly reciting their domicile as 345 West 13th Street, New York, New York. On June 5th, at a meeting with the minister who would marry them, they signed a "Dispensation of Publication of Marriage" which stated they both resided in New York.

The marriage was performed on June 7th;[11] at that time two official documents were executed: (1) a Certificate of Marriage signed by the minister and the witnesses to the marriage, certifying that "Craig Leiby of New York, New York USA and Kenneth Ranftle of New York, New York USA were by me united in marriage on the 7th day of June, 2008 at Montreal, Quebec"; and (2) a Declaration of Marriage, signed by the minister, Ken, Craig, and the two witnesses, which, among other things, declared that the "address of the spouses' domicile after the marriage" [underlined in original] would be "345 West 13th Street, #1H, New York, New York, USA 10014." On the basis of the Declaration of Marriage, the Province of Quebec issued an official document, dated July 3, 2008, entitled "Copy of an Act of Marriage, Document No. F081310077-01" which reflected that the "addresses of the spouses' domicile" was their New York apartment.

There were a number of post-marriage acts in which Ken also affirmatively demonstrated his decision to abandon his Florida residence and re-establish his domicile in New York. These

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[11]As Craig testified, the marriage was a significant legal and emotional event for Ken, sealing their relationship and further protecting Ken's choice of Craig as his primary beneficiary. In addition, however, it re-enforced Ken's decision to change his domicile as he was aware of Florida's "mini-DOMA" statute, Fla Stat Ann, tit 43, § 741.212, which precluded any recognition of the marriage there.

included applying for Social Security and Medicare[12] from his New York address, causing his car to be shipped from Florida, and changing the addresses of record on the Fidelity accounts relating to his IBM pension and health plan.[13] In addition to changing virtually the last of his tax records to reflect his New York address, Ken also met with, and then retained a New York accountant to prepare his tax returns, with the clear intention of filing as a New York resident.[14]

The one discordant note in this narrative is Ken's execution of his final will in New York on August 12, 2008. That will recited Florida as his domicile. This fact, inconsistent with changed domicile was, however, explained as a scrivener's error by Ken's long-time attorney. She testified that she was experiencing some personal problems at the time, that Ken was anxious to sign a new will which made some different provisions than his prior will (and which also now reflected the new legal status of his and Craig's relationship). Instead of drafting an entirely new will she employed the word processor equivalent of "cut and paste," paying no attention to anything except the dispositional changes Ken had requested. At execution Ken also attended only to those changes, and the issue of domicile passed unnoticed. The attorney's testimony was highly credible, consistent with other facts, and persuasive that the inclusion of the Florida domicile was her error, unnoticed by Ken, and which did not reflect his intent.

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[12]Ken turned 65 on July 30, 2008.

[13]He already had arranged for most of his tax reporting documents to be mailed to his New York address, so there was no need to change them. At his death only one account, at State Street Bank, still reported a Florida address on his 1099 form.

[14]The accountant, Barbara Morea, testified that she would not prepare his returns otherwise, since he had already (on August 11) lived in New York for more than the maximum allowable days. Ken understood and assented. Sadly, he died before the returns were actually filed.

Based on the testimony of the witnesses, especially Craig, Ken's accountant, and Ken's attorney, I find by clear and convincing evidence that some time in 2008, probably at or around the time of his terminal diagnosis, but no later than his marriage, Ken formed the intent to abandon his Florida domicile and to re-establish his domicile in New York where his friends, family and beloved spouse were located. He did so for two reasons: to be with those he loved, in the city where he had lived and prospered, in the commodious apartment he and his husband owned together, and had lived in since 1999; and because New York, unlike Florida, had expressed its willingness to recognize and respect his relationship with -- and marriage to -- Craig. It is significant that, following his diagnosis, Ken never returned to Florida, even while taking steps to protect Craig's interest in the only property he owned there.[15]

In so finding, I discount the majority of Ron's proof, which simply demonstrates passive inaction with regard to steps Ken had taken earlier to establish Florida domicile (driver's license, homestead exemption, etc.). As to the only two post-April 2008 *actions* inconsistent with re-establishment of New York domicile, I find that one, signing a will that recited Florida domicile, was a scrivener's error, unnoticed by Ken, and that the other, voting by Florida absentee ballot, is an anomaly insufficient to overcome the otherwise compelling evidence that Ken chose to become, became, and died a domiciliary of New York.

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[15]In April 2008, as a part of getting his effects in order, Ken retained a Fort Lauderdale attorney to prepare a trust agreement to transfer his Florida house to a revocable trust with Craig as beneficiary. The purpose of the trust was to avoid any need for probate in Florida to convey the Fort Lauderdale house, Ken's only asset in that state (excepting his car, which was later shipped to New York) to Craig on Ken's demise. The trust agreement and deed were, however, signed in the office of his New York attorney. Contrary to Ron's assertions, Ken did *not* sign an affidavit that he was a Florida domiciliary in connection with the trust, although the "Declaration of Trust" recites, "I, Kenneth Ranftle of Broward County, Florida," hardly, under the circumstances, a clear declaration of domicile.

These findings are made within the framework established by New York courts to make a legal determination of domicile within the textured factual ground of an individual's life and intentions. To begin, "it is well settled that domicile is established by *physical presence* in a particular locality coupled with the *intent to remain*" (*Kartiganer v Koenig,* 194 AD2d 879, 880 [3d Dept 1993] [emphasis added], *citing Matter of Newcomb,* 192 NY2d at 250; *Larkin v Herbert*, 185 AD2d 607 [3d Dept 1992]). Here, of course, there is no question as to physical presence; Ken lived almost continuously (except for visits to Montreal, and a trip to California, for the wedding of friends) in New York after his diagnosis in March 2008, and he never returned to Florida.

Kartiganer also provides additional assistance in ascertaining intent, in its holding that intent may be gleaned from whether "the place of habitation is the permanent home of a person, with the range of *sentiment, feeling and permanent association with it*" (*Kartiganer,* 194 AD2d at 881 [emphasis added], *quoting Bodfish v Gallman*, 50 AD2d 457, 458 [3d Dept 1976]). In making a determination of intended domicile, "[a]ll the acts, declarations, and conduct of a person, the manner of living, connections, associations, and interests must be considered, from which intention may be ascertained" (49 NY Jur 2d, Domicil and Residence § 50, *citing*, *inter alia*, *Chappelle v Beacon Communications Corp.*, 863 F Supp 179, 181 [SD NY 1994] ["[A] court must examine the entire course of a person's conduct in order to draw the necessary inferences as to the relevant intent"(internal quotation marks/citation omitted)]). Since the context of each domicile case is different, the "[p]articular elements to be considered may be accorded greater force and effect in one case than in another, in light of the nature or special significance of other conditions and circumstances in the case" (49 NY Jur 2d, Domicil and

Residence § 50).

Here, the "range of sentiment and feeling" for New York is demonstrated by the presence of Ken's family, friends, and most of all, his beloved husband, Craig, in New York; the "permanent association" is shown by Ken's life long connection to this state, interrupted for legitimate tax purposes from 2003 to 2007 (*see Matter of Appleby*, 106 NYS2d 294 [Sur Ct New York County 1951]), but re-established in the face of his mortality and, more happily, by New York's recognition of his right to marry the man he loved[16] (*see also Matter of Eisenberg*, 177 Misc 655 [Sur Ct New York County 1941]).[17]

In considering the "association and interests" (49 NY Jur 2d, Domicil and Residence, § 50, *supra*), there is one additional compelling fact. Ken was a proud gay man who treasured -- and sought in every way available to protect -- his husband Craig, and Craig's rights upon his

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[16]Sadly, Ken did not live to see New York's recognition, not only of same sex marriages validly contracted elsewhere, but of the equal right of same sex couples to marry in this state (*see* DRL 10-a, 10-b [NY Marriage Equality Act, as added by L2011, ch 95, signed July 24, 2011]).

[17]In that case, decedent was domiciled in New York for many years before taking up residence in Florida for tax purposes. The Surrogate there found that decedent had changed his domicile to Florida, but re-established New York domicile at the end of his life when he returned to New York "to take up domicile with his wife in New York County permanently" even though he was immediately hospitalized and died twenty days later (177 Misc at 662). The Court found that his purpose in returning to New York was "in no sense . . .inspired by an exclusive desire to obtain medical and hospital treatment here" (*id.*), and that his intent to re-establish New York domicile could be ascertained from the facts, similar to those here, that he had previously been domiciled here for a period of forty-five years, most of his close relations were in New York and none in Florida, his charitable donations and religious activities were all focused on New York institutions, and his principal business and financial affairs, bank accounts and even personal financial records were all centered in New York (*id.* at 665).

death.[18] He named Craig executor of his will, and it was obviously his intent that Craig should not only be the primary beneficiary of his estate,[19] but also that he be permitted "[t]o serve as a fiduciary [because to do so] is one of the last services a family member can perform for a loved one who has passed away" (*Matter of Toribio,* 24 Misc 3d 1024, 1029 [Sur Ct New York County 2009]).

Had Ken died a domiciliary of Florida, under Florida law Craig could not have served as his executor. Florida law requires that only a spouse, certain close relations or a Florida resident may serve as personal representative (Fla Stat Ann, tit 42, § 733.304) and since, as Ken well knew, Florida would not recognize his marriage (and of course, Craig was clearly *not* a Florida resident) failing to change his domicile would have "thwart[ed] [his] wish" to have Craig serve as his executor (*see Matter of Gadway*, 123 AD2d 83, 87 [3d Dept 1987]).

All these factors, in addition to Ken's clear declaration of New York domicile in his Canadian will, on all the official documents surrounding his marriage, his application for Social Security and Medicare, and his preliminary efforts to file income tax returns as a New York resident, compel the conclusion that respondent Craig has met his burden of demonstrating a change of domicile by clear and convincing evidence. Having determined that Ken died a domiciliary of New York, it is unnecessary to decide other issues raised by Craig.

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[18]Significantly he named his best friend (and, with his domestic partner, witness to their wedding) Dominick Viola, as successor executor, rather than an any member of his birth family who might have -- and indeed did --- attempt to undermine Craig's rights and status.

[19]As already noted, Ken changed the title of his only real estate in Florida to give Craig possession at his death and to avoid Florida probate, and he caused his primary non-real estate asset, his car, to be shipped from Florida to New York prior to his death.

The petition to vacate the probate decree is, accordingly, dismissed.

This constitutes the order of the court.

SURROGATE

Dated: September 14, 2011