

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1299

September Term, 2014

WILLIAM J. McDERMOND, III

v.

COMPTROLLER OF THE TREASURY

Eyler, Deborah S.,
Graeff,
Berger,

JJ.

Opinion by Berger, J.

Filed: July 9, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

This appeal arises out of a memorandum opinion and order, entered by the Circuit Court for Baltimore City on July 28, 2014, affirming a decision of the Maryland Tax Court regarding the 2007 Maryland state income tax liability of William J. McDermond, III (“McDermond”). McDermond failed to file a 2007 Maryland income tax return and received written notice from the Comptroller of the Treasury (the “Comptroller”) in 2011 that he owed the state \$190,139.48 in unpaid income tax, interest, and penalties. In a written order entered on August 22, 2013, the Maryland Tax Court affirmed the Comptroller’s 2007 income tax assessment for McDermond, but waived the penalty applied, thereby reducing the amount McDermond owed to \$126,397.74.

On appeal, McDermond presents three issues¹ for our review, which we have rephrased and consolidated into the following issue:

Did the Maryland Tax Court err in determining that McDermond was domiciled in Maryland for the 2007 tax year?

For the reasons that follow, we affirm the judgment of the Circuit Court for Baltimore City.

¹ The issues, as presented by McDermond, are:

1. Did the tax court fail to apply the correct legal standard to prove domicile by disregarding factors that provided taxpayer intent?
2. Did the tax court fail to apply the correct legal standard by requiring the taxpayer to establish factors not required to prove domicile under Maryland law?
3. Were the tax court’s factual findings supported by substantial evidence in the administrative record?

FACTUAL AND PROCEDURAL BACKGROUND

McDermond began working as Director of Operations for Under Armour, Incorporated (“Under Armour”) in Baltimore, Maryland in 2000. In 2005, following its initial public stock offering, Under Armour decided to establish an office in Europe, specifically in the Netherlands. McDermond was offered the position of Director of European Operations with Under Armour’s Netherlands office. On December 22, 2005, he accepted the position by executing a long-term assignment letter (the “Assignment Letter”) with Under Armour. When executed by McDermond on December 22, 2005, the Assignment Letter provided that the “[e]xpected [l]ength of [McDermond’s] [a]ssignment” would be “[t]wo (2) years.” The letter further provided that during McDermond’s assignment in the Netherlands he would “be considered a ‘seconded’ employee from the United States of America” and would “be an at-will employee of Under Armour, Inc.” McDermond proceeded to move to the Netherlands in February of 2006.

McDermond owned a house, located at 825 South Kenwood Avenue in Baltimore, that he considered selling before moving to the Netherlands. In light of the state of the Baltimore real estate market in early 2006, however, McDermond decided to lease his Maryland house to his brother. Despite the fact that McDermond returned to Baltimore several times on business during 2006 and 2007, he did not return to his 825 South Kenwood Avenue house, instead electing to stay in hotels or temporary housing.

In preparation for his move to the Netherlands, McDermond sold his car, closed his Maryland bank accounts, and moved some of his furniture and many of his personal possessions to the Netherlands. As provided for in the Assignment Letter, Under Armour paid McDermond a one-time \$10,000 relocation allowance “to cover any incidental costs incurred from [McDermond’s] relocation[.]” Under Armour further assisted McDermond in contracting a relocation company to move his household belongings to his residence in the Netherlands. McDermond only needed to plan for his own relocation to the Netherlands, as he was unmarried and did not have any children.

McDermond was issued a fixed term employment permit by the Dutch government on December 6, 2005 to work as Director of European Operations for Under Armour. McDermond’s Dutch employment permit was valid from January 2, 2006 until January 2, 2009. The Dutch government further issued McDermond a residence permit effective from February 8, 2006 until January 2, 2009. McDermond’s Dutch residence permit provided that it was “granted under the limitation paid employment with Under Armour Europe . . . [o]ther employment is not permitted.”

Pursuant to the terms of the Assignment Letter, Under Armour paid McDermond a housing allowance in addition to his annual salary “to provide an amount necessary to obtain rental housing” in the Netherlands. McDermond used this housing allowance to rent a furnished apartment in Amsterdam into which he moved much of his furniture and personal possessions from his 825 Kenwood Avenue house. Under Armour further provided

McDermond with an auto allowance of \$1,200 per month during his tenure in the Netherlands. McDermond used this allowance to purchase an automobile that he used while in Europe. Once in the Netherlands, McDermond applied for and received a Dutch driver's license.

After moving to the Netherlands in February 2006, McDermond spent much of his time working to establish Under Armour's operations in Europe. Prior to his relocation to the Netherlands, McDermond spent some time attempting to learn Dutch on his own, with the assistance of educational books and CDs. He abandoned his language studies soon after arriving in the Netherlands, however, after determining that he was able to effectively conduct all of his business and personal affairs in English.

Before moving to the Netherlands, McDermond occasionally attended religious services at a Baltimore church. After relocating to the Netherlands in February 2006, McDermond occasionally attended religious services at a church in Amsterdam, to which he made some charitable contributions. When McDermond would travel back to the United States on business during his assignment in the Netherlands, he would occasionally attend services at the Baltimore church he attended before his move. McDermond further continued to make charitable contributions to his Baltimore church while living in the Netherlands.

In early 2006, after moving to the Netherlands, McDermond received a jury summons from the Jury Commissioner for Baltimore City. McDermond notified the Jury Commissioner that he was a "non-city resident" and listed his address as 171-1 Kaizergracht

in Amsterdam. The Baltimore City Clerk of Court notified the Baltimore City Board of Elections of McDermond's new "non-city resident" status, resulting in the cancellation of McDermond's Maryland voter registration on May 15, 2007. McDermond did not renew his Maryland voter registration until February 2008.

In the spring of 2006, McDermond sought tax advice from accountant Joseph O'Neill ("O'Neill") of Parente Randolph, LLC ("Parente"). An email from O'Neill to McDermond, dated June 28, 2006, referenced a meeting that McDermond had with various professionals from Parente on June 15, 2006 concerning McDermond's interest in "building [his] case for Maryland nonresident status" so that he would be exempt from Maryland income tax liability for 2007. In his email, O'Neill provided McDermond with a list of actions to undertake to bolster McDermond's case for Maryland nonresident status for the 2007 tax year. On June 16, 2006, one day after the purported meeting between McDermond and O'Neill, Under Armour and McDermond amended the Assignment Letter such that McDermond's "[e]xpected [l]ength of [a]ssignment" was changed to "[i]ndefinite." O'Neill's June 28, 2006 email to McDermond further referenced the fact that McDermond "had the assignment contract amended to be open-ended, rather than for the current two-year period[.]"

On October 9, 2006, while still residing in the Netherlands, McDermond renewed his Maryland driver's license, which he had held since 2001. McDermond believed that it was necessary for him to maintain a current Maryland driver's license so that he could legally drive during his frequent business trips back to Baltimore. In order to renew his Maryland

driver's license in 2006, McDermond signed an application by which he "certif[ied] under penalties of perjury [that he was] a permanent resident of the State of Maryland and [that] the statements made on [his] application [were] true and correct to the best of my knowledge, information and belief." McDermond's Maryland driver's license listed his address as 825 South Kenwood Avenue, Baltimore, Maryland.

The president of Under Armour's European operations resigned in late 2007, and Under Armour decided to replace him with a European national. As a result of this personnel change, Under Armour determined that it no longer needed McDermond to work in the Netherlands. McDermond returned to Maryland in December of 2007, having leased an apartment located at 1001 Aliceanna Street in Baltimore for a thirty day term beginning on December 20, 2007. Ultimately, in 2007, McDermond spent ninety nine (99) days in the United States, forty (40) of which were spent working in Baltimore. McDermond further spent fifty nine (59) non-working days in the United States and seventy two (72) non-working days in the Netherlands in 2007.

On January 24, 2008, McDermond received a letter from Under Armour providing that Under Armour was "very excited to extend [an] offer to [McDermond] and have [McDermond] continue [his] success as part of the Under Armour® team!" The letter further provided that Under Armour offered McDermond employment as its Senior Director of Operations, beginning January 1, 2008, at the same salary he had previously received.

McDermond filed Dutch tax returns as a Dutch partial non-resident taxpayer in 2006 and 2007. He further filed a part-year Maryland resident income tax return for 2006. In 2007, McDermond filed a federal income tax return and a Connecticut income tax return on which he listed a Maryland address. McDermond allegedly decided not to file a 2007 Maryland resident income tax return based on the advice of his professional accountants who advised him that he was not domiciled in Maryland in 2007.

On April 28, 2011, McDermond received a Notice of Estimated Income Tax Assessment (the “Assessment”) from the Comptroller. The Assessment provided that the Comptroller had determined that McDermond owed the state \$126,397.74 in unpaid income tax from 2007, in addition to \$51,101.97 in interest and \$12,639.77 in penalties. In total, the Comptroller assessed that McDermond owed the state \$190,139.48 as a result of his failure to file a Maryland resident income tax return in 2007. Upon receiving the Assessment, McDermond timely requested a hearing with the Comptroller. At the hearing, held in September of 2011, the Comptroller affirmed the amount of unpaid tax, interest, and penalties it asserted in the Assessment. McDermond subsequently filed a timely petition of appeal to the Maryland Tax Court.

On July 24, 2013, after an evidentiary hearing lasting three days, the Maryland Tax Court affirmed the Comptroller’s 2007 income tax assessment for McDermond in the amount of \$126,397.74. The Maryland Tax Court affirmed the Comptroller’s assessment regarding McDermond’s unpaid taxes and interest, but waived the \$12,639.77 in penalties that the

Comptroller had assessed against McDermond. The Maryland Tax Court concluded that the penalties assessed against McDermond were inappropriate because McDermond had declined to file a 2007 Maryland resident income tax return on the advice of his professional accountants. On August 22, 2013, the Maryland Tax Court entered an order affirming the Comptroller’s assessment of taxes and interest against McDermond but waiving the Comptroller’s assessment of penalties against McDermond for the 2007 tax year.

McDermond timely filed a petition for judicial review of the Maryland Tax Court’s decision with the Circuit Court for Baltimore City, alleging that the Maryland Tax Court had erred by applying an incorrect legal standard and disregarding material evidence. On July 28, 2014, the Circuit Court for Baltimore City filed a memorandum opinion and order affirming the Maryland Tax Court’s August 22, 2013 order. This timely appeal followed.

DISCUSSION

I. Standard of Review

“It is a settled principle that judicial review of a decision by the Maryland Tax Court is severely limited.” *Genie & Co. v. Comptroller of Treasury*, 107 Md. App. 551, 563 (1995). Indeed, “[t]he inquiry in this Court on appeal is not whether the circuit court erred, but rather whether the administrative agency erred.” *Comptroller of the Treasury v. Clise Coal, Inc.*, 173 Md. App. 689, 697 (2007) (citing *Consumer Prot. Div. v. Morgan*, 387 Md. 125, 160 (2005)).

We set forth the scope of review governing appeals from the Maryland Tax Court to our Court as follows:

Our review is narrow and is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. It is not our job to substitute our judgment for that of the Tax Court.

We are not bound by the Tax Court's interpretation of the law. We review the Tax Court's conclusions of law *de novo* for correctness. Determining whether an agency's “conclusions of law” are correct is always, on judicial review, the court's prerogative, although we ordinarily respect the agency's expertise and give weight to its interpretation of a statute that it administers.

Moreover, an administrative agency may be affirmed only on the basis of the grounds on which it decided the case.

Finally, recognizing that the agency's decision is *prima facie* correct and presumed valid, we must review the agency's decision in the light most favorable to it.

Comptroller of Treasury v. Gore Enter. Holdings, Inc., 209 Md. App. 524, 535 *cert. granted sub nom. Gore Enter. Holdings v. Comptroller of the Treasury*, 431 Md. 444 (2013) and *aff'd*, 437 Md. 492 (2014) (internal citations and quotation marks omitted).

II. Analysis

By statute, every Maryland resident who is required to file a federal income tax return must file a Maryland income tax return and pay the tax calculated as due on their Maryland income tax return. *See* Md. Code (1988, 2010 Repl.Vol.), § 10-805(a) of the Tax-General

Article; *and* Md. Code (1988, 2010 Repl.Vol.), § 10-901 of the Tax-General Article. An individual is considered a Maryland resident for tax purposes if they are “domiciled in [the] State on the last day of the taxable year; or . . . for more than 6 months of the taxable year, maintained a place of abode in [the] State, whether domiciled in [the] State or not[.]” Md. Code (1988, 2010 Repl.Vol.), § 10-101(k)(1) of the Tax-General Article.

Under Maryland law, domicile “is well defined as that place where a man has his true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.” *Shenton v. Abbott*, 178 Md. 526, 530 (1940). Furthermore, “[w]hile a person may have several residences, he can have only one domicil[e] at a time.” *Id.* Accordingly, “in order to establish a change of domicil[e], it must be shown not only that a new residence was acquired with the intention of remaining there, but also an abandonment of the old domicil[e] so permanent as to exclude the existence of an intention to return to the former place.” *Id.* at 534.

On appeal, McDermond argues that the Maryland Tax Court erred in finding that he was domiciled in Maryland during the 2007 tax year and, therefore, was required to pay Maryland state income tax. McDermond contends that the Maryland Tax Court applied an incorrect legal standard to his case. McDermond argues that the alleged use of this incorrect standard caused the Maryland Tax Court to ignore certain factors indicating that McDermond had established a new domicile in the Netherlands in 2007. McDermond further asserts that

the Maryland Tax Court erred by requiring him to prove factors that are allegedly not required to establish domicile under Maryland law. Finally, McDermond avers that the Maryland Tax Court lacked substantial evidence to support its finding that McDermond remained domiciled in Maryland in 2007.

The Court of Appeals described the factors that a court must take into consideration when determining where an individual is domiciled for a given year in its decision in *Comptroller of the Treasury, Income Tax Div. v. Haskin*, 298 Md. 681 (1984). “The controlling factor in determining a person's domicile is his intent.” *Id.* at 691 (citing *Dorf v. Skolnik*, 280 Md. 101, 116 (1977)). More specifically, does the individual have the “intention of remaining there permanently or at least for an unlimited time[?]” *Id.* at 690. The intent factor used in determining where an individual is domiciled can be broken down into two elements as follows:

First, the person must intend to abandon his or her former domicile. Second, the new place of habitation must be intended by the person to be the new domicile. Both factors must be firmly established together to fulfill the intent requirement.

Oglesby v. Williams, 372 Md. 360, 375 (2002).

In examining an individual's intent with respect to his or her domicile, courts may consider both subjective factors, in the form of the individual's testimony, and objective factors. The Court of Appeals “has indicated that the two most important elements in determining domicile are where a person actually lives and where he votes.” *Bainum v. Kalen*, 272 Md. 490, 498 (1974). “In other words, the law presumes that where a person

actually lives and votes is that person's domicile, unless special circumstances explain and rebut the presumption.” *Oglesby, supra*, 372 Md. at 374. Other objective factors that may be considered in determining where an individual is domiciled include the following:

[T]he paying of taxes and statements on tax returns; the ownership of property; where the person's children attend school; the address at which one receives mail; statements as to residency contained in contracts or other documents; statements on licenses or governmental documents; where furniture and other personal belongings are kept; which jurisdiction's banks are utilized; membership in professional, fraternal, religious or social organizations; where one's regular physicians and dentists are located; where one maintains charge accounts; and any other facts revealing contact with one or the other jurisdiction.

Bainum, supra, 272 Md. at 499. Nevertheless, “[n]o single circumstance has ever been deemed conclusive.” *Haskin, supra*, 298 Md. at 691.

In reaching its decision affirming the Comptroller’s assessment of McDermond’s unpaid Maryland income tax and accompanying interest, the Maryland Tax Court explicitly referenced the elements of intent described in the *Haskin* case. In interpreting the factors described in *Haskin*, the Maryland Tax Court reasoned that “[i]n determining someone’s intent, you have to look at what they actually do, not just what they tell you they intended to do.” This statement by the Maryland Tax Court highlights the fact that it weighed McDermond’s subjective testimony regarding his intent to establish a new domicile in the Netherlands against other objective indicia suggesting that McDermond never abandoned his Maryland domicile. This sort of balancing of factors regarding intent is exactly the legal standard that the Court of Appeals set forth in *Haskin*. We, therefore, hold that the Maryland

Tax Court did not err in applying an incorrect legal standard to the facts of McDermond's tax case.

Having held that the Maryland Tax Court did not reach erroneous conclusions of law, we must now assess whether there existed substantial evidence in the case record to support the Maryland Tax Court's finding that McDermond was domiciled in Maryland in 2007. "Substantial evidence means 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Haskin, supra*, 298 Md. at 693 (citations omitted). McDermond argues that the Maryland Tax Court lacked substantial evidence to find that he was domiciled in Maryland in 2007 and ignored McDermond's allegedly uncontroverted evidence that he established a new domicile in the Netherlands in 2007. This, however, is an inaccurate characterization of the Maryland Tax Court's analysis. Rather, the Maryland Tax Court accepted the evidence presented by McDermond, which it mentions in its oral decision, but found that it was outweighed by the existence of contrary evidence.

During the evidentiary hearing held by the Maryland Tax Court, McDermond testified "that he physically arrived in the Netherlands on either February 7 or February 8, 2006 with the intent to live there indefinitely." Nevertheless, the Maryland Tax Court found that McDermond was "an at-will employee of Under Armour" who had agreed to a work assignment in the Netherlands "for an expected length of assignment for [sic] two years." The Maryland Tax Court gave little weight to the amendment of the Assignment Letter on June 16, 2006 that purported to alter the expected length of McDermond's assignment in the

Netherlands from two years to “[i]ndefinite.” The Maryland Tax Court found that, “[a]s a result of this change, Under Armour . . . didn’t make any changes to [McDermond’s] employment contract . . . [and] didn’t make any changes to any agreements with the Netherlands for work permits or other purposes.”

Indeed, McDermond’s Dutch work and residence permits were only effective until January 2, 2009 and restricted him to exclusive employment with Under Armour. The Maryland Tax Court concluded that “there was nothing about [the amended Assignment Letter] that would give anybody the impression that [McDermond] was going to change the amount of time he was going to stay as an employee or change the amount of time that he was going to be in the Netherlands[.]” The Maryland Tax Court’s conclusion is further buttressed by the fact that, despite the amendment to the Assignment Letter, McDermond ultimately only resided in the Netherlands for approximately twenty two (22) months, just short of two years. We hold, therefore, that there was substantial evidence in the case record to support the Maryland Tax Court’s finding that McDermond did not abandon his Maryland domicile in 2007, despite McDermond’s testimony to the contrary.

The Maryland Tax Court further supported its conclusion that McDermond was domiciled in Maryland in 2007 by referencing four additional factors: (1) the retention and renewal of McDermond’s Maryland driver’s license; (2) McDermond’s failure to make any social, civil, or other connections in the Netherlands; (3) McDermond’s continued attendance

at a Baltimore church when he was present in Maryland for business; and (4) McDermond's failure to affirmatively cancel his Maryland voter registration.

Although the Maryland Tax Court accepted McDermond's assertion that he had applied for and obtained a Dutch driver's license while living in the Netherlands, it did not consider this a sufficient indicator of McDermond's abandonment of his Maryland domicile. Rather, the Maryland Tax Court highlighted the fact that McDermond "kept his Maryland driver's license and, in fact, renewed it while he was living in the Netherlands." As previously stated, McDermond renewed his Maryland driver's license by signing an application in which he certified, under penalty of perjury, that he was "a permanent resident of the State of Maryland." McDermond claimed that he thought maintenance of his Maryland driver's license was necessary so that he could operate an automobile during his frequent business trips back to Baltimore. The Maryland Tax Court, however, did not think that maintenance of a Maryland driver's license was necessitated by McDermond's circumstances.

The Maryland Tax Court further highlighted the fact that McDermond failed to join any "social, civic, or other organizations in the Netherlands." McDermond testified that he occasionally attended religious services at a church located near his apartment in Amsterdam, but that he never officially became a member of this church. Moreover, the Maryland Tax Court found that McDermond "continue[d] to attend church in Baltimore when he was in Maryland for work and, in fact, made some donations to [that] church." McDermond's

failure to learn Dutch was also used to support the Maryland Tax Court’s conclusion that McDermond failed to establish a new domicile in the Netherlands in 2007. In its oral decision, the Maryland Tax Court explicitly mentions the fact that the Court of Appeals in *Haskin* highlighted the importance of “whether or not the taxpayer made any ties to the local communities” in which they were working. Having found that McDermond lacked these ties to the local Dutch community in which he resided, the Maryland Tax Court concluded that “[i]t seems hard to say that he was attempting to make [his move to the Netherlands] a permanent decision.”

Finally, the Maryland Tax Court specified that it found that McDermond “did not attempt to cancel his voting registration in Maryland, even though he was given a letter that all he needed to do was sign and mail.” As previously described, the two most important objective indicators of an individual’s intent with respect to their domicile are where they live and where they vote. It is undisputed that McDermond spent much of 2007 living in the Netherlands. McDermond, however, never attempted to register to vote in the Netherlands. Although O’Neill, one of McDermond’s professional accountants, prepared a letter that McDermond could have signed and mailed to Maryland to affirmatively revoke his Maryland voter’s registration, McDermond neglected to so do. Rather, McDermond’s voter registration was cancelled by default on May 15, 2007, due to McDermond’s request for an exemption from Baltimore City jury duty due to his new status as a “non-city resident” in 2007. Upon renewing his Maryland voter’s registration in February 2008, McDermond listed

that he was a permanent Maryland resident and listed his address as 825 South Kenwood Avenue in Baltimore, the same address that he purportedly abandoned when moving to the Netherlands.

In light of the foregoing analysis, we hold that the Maryland Tax Court did not err in determining that McDermond was domiciled in Maryland in 2007. The Maryland Tax Court appropriately evaluated whether McDermond moved to the Netherlands in 2006 with the intent to remain there indefinitely, using the factors identified by the Court of Appeals in *Haskin* and *Bainum*. After employing its discretion to determine the credibility of McDermond's testimony concerning his intent to establish a new domicile in the Netherlands, the Maryland Tax Court concluded that the four objective factors previously discussed outweighed McDermond's testimony. Consequently, there was substantial evidence in the record to support the Maryland Tax Court's determination that McDermond was domiciled in Maryland for the 2007 tax year.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY AFFIRMED. COSTS TO BE
PAID BY THE APPELLANT.**