

L.D., on behalf of minor child, J.D., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF WEST ORANGE,
 ESSEX COUNTY, :
 RESPONDENT. :

SYNOPSIS

Pro se petitioner appealed the determination of the respondent Board that her child, J.D., was not eligible to attend the respondent Board’s school district during the 2015-2016 year. Petitioner contended that J.D. was residing with his grandmother, T.D., in West Orange because of financial hardship, and that his grandmother had joint legal custody and primary residential custody of J.D. The Board maintained that J.D. and his mother reside at an address in Orange, and sought payment of tuition for the period from September 3, 2015 to November 30, 2015. The matter was transmitted to the Office of Administrative Law as a contested case.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a), New Jersey schools are free to students between the ages of five and twenty who are domiciled within the school district; a child’s domicile is that of the parent or guardian with legal custody, or the parent with whom the child resides in the absence of a formal custody agreement; in the instant case, petitioner was a resident of West Orange until July 15, 2016, when she moved to an apartment in Orange; and prior to the November 30, 2015 application for a court order to establish joint custody with T.D., the residence of L.D. was the determining factor as far as the issue of domicile was concerned. Accordingly, the ALJ concluded that from July 15 until November 30, 2015, L.D. and J.D. were domiciled in Orange; accordingly, J.D. was not qualified to attend West Orange Schools free of charge for the period from September 3, 2015 – the first day of the school year – until November 30, 2015, the date of the application for joint custody. The ALJ ordered petitioner to pay the Board \$4,683.25, representing reimbursement of tuition for the period of J.D.’s ineligible attendance in West Orange schools.

Upon review of the record in this matter, the Commissioner concurred with the ALJ’s findings and conclusion. The Initial Decision was adopted as the final decision in this matter, and the petitioner was ordered to reimburse the Board for tuition in the amount of \$4,683.25; the petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

November 1, 2018

OAL DKT. NO. EDU 5628-16
AGENCY DKT. NO. 101-4/16

L.D., on behalf of minor child, J.D., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF WEST ORANGE,
ESSEX COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, L.D., and the West Orange Board of Education’s (Board) reply thereto.

Upon a review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons stated in the Initial Decision – that J.D. was ineligible to attend school in the West Orange School District between September 3, 2015 and November 30, 2015. The Commissioner finds the petitioner’s exceptions unpersuasive, largely reflecting arguments previously raised before the ALJ and taken into account by him in weighing the testimony and in concluding that J.D. resided with his mother in Orange, New Jersey during the period in question. The Commissioner also finds no basis in the record to reject the ALJ’s determinations of witness credibility. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before him, and made findings of fact based upon their testimony.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The petitioner shall pay the Board \$4,683.25 in tuition costs for J.D.'s ineligible enrollment in the District between September 3, 2015 and November 30, 2015.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: November 1, 2018

Date of Mailing: November 1, 2018

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 05628-16

AGENCY DKT. NO. 101-4/16

L.D. ON BEHALF OF MINOR CHILD, J.D.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF WEST ORANGE, ESSEX COUNTY**

Respondent.

L.D. on behalf of minor child, J.D., appearing pro se

Frances Febres, Esq, for respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC,
attorney)

Record Closed: November 13, 2017

Decided: September 18, 2018

BEFORE **JEFFREY A. GERSON, ALJ/** (Ret., on recall):

STATEMENT OF FACTS AND PROCEDURAL HISTORY

This is a residency matter in which the Township of West Orange contends that J.D., the child of L.D. attended school in the Township of West Orange when the mother and child both resided in the City of Orange. The matter was heard on October 24, 2017 to conclusion. The record closed on November 13, 2017.

TESTIMONY

Only two witnesses testified in this matter. The first was Michael Zarro, an Investigator for the Township of West Orange. The second was L.D., the parent of J.D.

Zarro's testimony in this matter was rather straightforward. The actual investigation conducted by Zarro was focused primarily on documents which he identified at the hearing and which were placed in evidence.

Zarro testified that in July 2014, L.D. registered her kindergartner for entry into the Township of West Orange School System from the address of 142 Randolph Place in West Orange.

Zarro, the Residency Investigator Officer for the Township, testified that he received information from a school which indicated that a student had told a substitute teacher that he was living in East Orange with his cousin. As a result of this information, Zarro conducted a 1-day surveillance, on November 23, 2015, and did not see the student exit the Randolph Place address and get onto the bus. After the 1-day surveillance, Zarro conducted a computer search focused on L.D. and determined that her address was 203 Oakwood Avenue in Orange.

On the following day, Zarro went to the address and found that it was the Orange Housing Authority and was able to determine that L.D. had leased an apartment with the Orange Housing Authority as of July 1, 2015.

Based on the lease agreement which was confirmed by the Orange Housing Authority, Zarro reported his findings to the West Orange Board of Education which then issued a hearing letter setting forth a date and time for the hearing to be conducted.

Zarro attempted to deliver the letter at the Orange address but was unable to do so because there was no response at that address. He subsequently went to the Randolph Place address in West Orange which he now knew was the grandmother's residence to deliver the letter to the grandmother. He hand-delivered the letter to the

grandmother and in addition saw the child there. He concluded that though the child was at the Randolph Place address, the mother could have just dropped him off.

At that time, the grandmother showed him custody papers which indicated that the grandmother had applied for custody on November 30, 2015. Thus, when on December 10, 2015 Zarro went to the grandmother's house to provide the notice for the forthcoming hearing, it should not have been surprising that the child was with the grandmother. According to Zarro this was the first notice that he had received that an application for custody had been filed.

Despite the fact that an application for custody was filed by the grandmother on November 30, 2015, the Township continued with its residency hearing on December 16, 2015 and issued a removal letter dated December 17, 2015. The removal letter indicated that tuition in the amount of \$4,683.25 was due for the period from September 3, 2015 through November 30, 2015 when J.D. attended the West Orange School System but was ineligible to do so.

According to Zarro, September 3, 2015 was the first day of that school year and the date of November 30, 2015 was the date that L.D. and T.D. (grandmother) first applied for Joint custody. The Final Order was signed on December 23, 2015 and indicated that L.D. and T.D. shall have joint legal custody of J.D. with primary residential custody going to T.D., the grandmother.

According to Zarro, from September 3rd to December 23rd, there was a total of 72 school days for which J.D. was ineligible and the per diem rate of \$81.15 resulted in an amount of \$6,346.80 being due and owing. This amount was different from the initial letter sent on December 17, 2015 because the days between the application date, November 30th and the Final Order of December 23, 2015, were now included in the amount due and owing.

L.D. and her mother, T.D. have been long term residents of the Township of West Orange. L.D. in fact graduated from high school in the Township. She has two children, J.D. being the younger of the two. J.D. and her mother moved to Randolph

Place at the time she was giving birth to her daughter and they needed more room for the three of them. When J.D. was born, they moved to a second address on Randolph Place which is the current address of the grandmother.

J.D. disputed little of the documentation testimony of Zarro. She did however indicate that though she moved into the Orange apartment in July 2015, J.D. did not move in with her but remained at the West Orange address with his grandmother. According to L.D., it was a combination of employment opportunities and the Housing Authority of Orange apartment opportunity which led to her move to Orange, but in the absence of a permanent job offer, she was unable to meet the requirements of her employment opportunities and balance them with her parental responsibilities.

L.D. indicated that she moved into the Orange Housing Authority rental unit because it gave her the security of knowing that even if she became unemployed or her income was reduced, the housing authority also would reduce the rent. This was an opportunity she could not pass up.

Knowing that the Board of Education of the Township of West Orange was seeking to prevent J.D. from attending the West Orange School System, she applied with her mother to the Superior Court for joint custody of J.D. since he was primarily residing in the West Orange address. According to L.D., J.D. did not actually move into the Orange address with her until April 2016.

THE LAW

New Jersey schools are free to person over age five and under 20 domiciled within the district. N.J.S.A. 18A:38-1(a). With respect to domicile, the traditional construct that a child's domicile is the same as that of her father has recently been altered to accommodate more modern arrangements and a minor child's domicile is for the most part that of the parent in whom legal custody is vested or if there is no fixing of custody, the child's domicile is that of the parent with whom the child resides. Gunther v. Board of Education of the Borough of Bayhead, 1978 S.L.D. 771.

“In a strict legal sense, the domicile of a person is the place where he has his true fixed, permanent home and principle establishment, and to which whenever he is absent, he has the intention of returning and from which he has no present intention of moving”. Matter of Unanue, 255 N.J. Super 362, 374 (1991) (citing Kurilla v. Roth, 132 N.J.L. 213, 215 (Sup. Ct. 1944). Thus, domicile is what is regarded as an individual’s true and permanent home. In Re Jaffe, 74 N.J. 86, 90-91 (1977). A child’s domicile is equated with the domicile of the parent or guardian “having legal control of the child” Mansfield Twp. V. State Bd. of Education, 101 N.J.L. 474, 478 (Supp. Ct. 1925).

The question of domicile is one of fact and must be determined on a case by case basis Lea v. Lea, 18 N.J. 1 (1955). Intent is the touchstone of domicile and the manifestation of a person’s intent converts residence from a mere place in which a person lives to a domicile. State v. Benny, 20 N.J. 238, 251 (1955). A person may have multiple residences but, may have only one domicile at a time; as such, the residence may coincide with domicile, but does not alone determine domicile. Id. Thus, “the concept of ‘domicile’ may have different content and shades of meanings depending on the context in which it is used. In re Estate of Gilmore, 101 N.J. Super 77 cert. denied, 52 N.J. 175 (1968).

DISCUSSION

From a factual standpoint, there is little in dispute with regards to this matter.

Up and until July 15, 2016, L.D. and therefore J.D. were residents of the Township of West Orange. There is little doubt from L.D.’s testimony that she had every intention of making the Orange address her domicile. She did in fact concede that not only was it her intention to move in the Orange property, it was also her intention to at least bring one child, probably both, to the Orange address. What stood in the way however was finalizing her employment obligations which apparently precluded her from devoting the time necessary to attending to J.D.’s needs. She was fortunate however and quite thankful, that her mother was able to provide some of the needs of J.D. while she was attempting to finalize her permanent employment.

The question to be resolved is what was the status of J.D. from July 15, 2015 when L.D. moved into the Orange apartment and November 30, 2015, the date she and T.D. applied for joint custody. Since that application resulted in an Order which indicated that T.D. would be the primary residential custody location, it is conceded by the Township that the time between September 3, 2015 and November 30, 2015 is the only time period in dispute.

Up until the point that the Order was applied for and signed, the domicile of L.D. was the determining factor as far as the issue of domicile was concerned. There is no doubt from L.D.'s testimony that she not only intended to physically occupy the Orange residence, but she actually intended it to be her domicile.

L.D. also testified that she provided financial support to her mother with respect to expenses related to J.D. and thus her mother was not providing residence to J.D. *gratis*.

CONCLUSION

Prior to the application for a court order establishing joint custody, it was L.D.'s domicile that would determine whether or not J.D. qualified for schooling in the Township of West Orange. On or about July 15, 2015, L.D.'s domicile became the apartment in Orange provided by the housing authority and thus, the domicile of J.D. The initial letter from the Township of West Orange did in fact indicate that tuition would be required for the time period between September 3, 2015 and November 30, 2015, the date of application for joint custody. From July 15, 2015 until November 30, 2015, L.D. was domiciled in Orange and as a result, J.D. was also domiciled in Orange and not qualified to attend West Orange Schools.

ORDER

It is **ORDERED** that L.D. remit to the West Orange Board of Education the amount of \$4,683.25 representing the tuition for J.D.'s ineligible attendance in the West Orange School System.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 18, 2018



DATE

JEFFREY A. GERSON, ALJ (Ret., on recall)

Date Received at Agency:

September 18, 2018

Date Mailed to Parties:

sej

APPENDIX

WITNESSES:

For Petitioner

L.D., pro se

For Respondent

Michael Zarro, Investigator

EXHIBITS:

For Petitioner

None

For Respondent

- R-1 New Student Registration Form
- R-2 Certificate of Residency
- R-3 Statement of Landlord
- R-4 Bates stamped documents R-17 through R-23
- R-5 Student/Guardian Information
- R-6 Investigation Report
- R-7 E-mail Correspondence with Orange Housing Authority, 11/30/15
- R-8 Letter from Michael Zarro to Housing Authority, 12/1/15
- R-9 E-mail from Housing Authority, 12/1/15
- R-10 Lease attachment to 12/1/15 – email
- R-11 Residency Hearing Notice
- R-12 Removal Letter, 12/17/15
- R-13 Application for Custody, 11/30/15
- R-14 Custody Order, 12/23/15
- R-15 Public Schools of West Orange Record Release Form
- R-16 Transfer Information Screen