

MEMORANDUM

TO: Professor
FROM: Student
RE: Motion to dismiss for lack of diversity jurisdiction in Johnson v. Kramer
DATE: October 4, 2002

QUESTION PRESENTED

1. Is Sara Johnston a resident of Massachusetts because she intends on working in this state for an indeterminate period of time after finishing school?
2. Is minor Keith Johnston's domicile Massachusetts, the same as that of his mother, thereby satisfying diversity jurisdiction?

BRIEF ANSWER

1. Yes. The domicile of Sara Johnston is determined by her intent to make Massachusetts her new home for an indefinite period of time.
2. Yes. Keith Johnston's domicile is Massachusetts because a minor's legal residence is determined by the domicile of his surviving parent therefore, under the present facts, diversity jurisdiction is satisfied.

STATEMENT OF FACTS

Keith Johnston is a minor presently living with his grandparents in New York. His father died three years ago. Sara Johnston lived with her parents and her son until she moved to Massachusetts to obtain an M.B.A. two years ago. She opened checking and savings accounts, changed her driver's license, and purchased a condominium while in Massachusetts. However, her voting registration is in New York as is her car registration. She visits her son regularly, attends major parent-teacher conferences, takes Keith to regular medical appointments, and supports him

financially. Last spring Keith was injured while playing with a neighborhood friend who is a New York resident. He subsequently moved to Massachusetts in September to live with his mother until March of this year. Although Sara Johnston originally intended on returning to New York after finishing school, she has now been offered a job in Massachusetts which she cannot refuse.

DISCUSSION

A motion to dismiss for lack of diversity jurisdiction would be denied in the Southern District of New York in this suit by Keith Johnston against the defendant Kramer. The citizenship of the plaintiff at the time of the filing of the suit is the controlling factor in determining diversity jurisdiction. A person's intent to remain in a state for an indefinite period of time acquires him residency in that state. Gordon v. Steele, 376 F. Supp.,575 (1974). Sara Johnston, Keith's mother is attending school in Massachusetts and will reside there for an indefinite period of time, thereby making her a resident of Massachusetts. The domicile of a minor is the same as that of his surviving parent. Ziady v. Curley, 396 F.2nd 873 (1968). Although Keith is not presently living with his mother, this no less diminishes the fact that she remains his primary caretaker and that his domicile is Massachusetts.

To determine whether there is diversity, where diversity is questioned, the burden of proof rests on the plaintiff, as in Gordon v. Steele. In Gordon, a college student was found to have citizenship in the state that she attended school for the purposes of diversity jurisdiction. The federal court in this case considered the fact that the student had rented an apartment in Idaho, and determined that the possibility of the student eventually living elsewhere or even returning to her original state does not defeat the fact that her domicile is in Idaho. Similar to the facts in Gordon, Sara Johnston attends school and owns real property in Massachusetts. The federal court also considered the subjective intent of the student of not returning to Pennsylvania relevant in determining diversity. Here, Sara Johnston intends on accepting a job offer in Massachusetts and not returning to New York in the foreseeable future. Therefore, it can be concluded that Sara Johnston's domicile is in Massachusetts for the purposes of diversity jurisdiction in Keith's suit. The defendant may claim, however, that the plaintiff is still a resident of New York because she has retained her voting rights as well as her car registration in this state. In Gordon, the court found that this did not weight as heavily as the plaintiff's intent to remain in the new state for an indefinite period of time. Therefore, Sara Johnston's domicile is

Massachusetts.

A minor's domicile is the same as that of his widowed mother or father.

In Ziady v. Curley, an infant plaintiff sued a defendant who was a citizen of North Carolina: The plaintiff was born and raised there, but upon his parents divorce and his father's death, the infant lived with his mother in New Jersey. Similarly, Keith resided with his mother until she went to attend school in Massachusetts. However, she stays in regular contact with him, attends parent-teacher conferences and supports him financially. Thereby supporting the claim that Keith's domicile under the Ziady rule, is the same as that of his mother. The defendant may counter that Keith's domicile is New York because in another factually similar case, Elliot v. Krear, 466 F. Supp. 444 (1979), the domicile of a minor was determined to be that of his grandparents with whom the minor was actually residing. But Keith's case is readily distinguishable from Elliot. In Elliot, the mother had not been exercising control as a parent and had not be providing support. The grandparents of the minor had been acting in loco parentis: However, unlike the aforementioned case, Keith's mother had never relinquished her responsibilities. Therefore, it can be concluded from thses facts that Keith's case is more factually similar to Ziady v. Curley.

CONCLUSION

Diversity jurisdiction in this case is satisfied. Sara Johnston's residence can be determined to be Massachusetts because she intends to remain there for an indefinite and unforeseeable period of time. Keith's domicile is the same as his mother because she is his surviving parent and because she has remained his primary caretaker even while he remained with his grandparents-: Keith can file suit immediately following his mother's acceptance of her job offer in Massachusetts.