

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK

AEtna National Bank v. Kramer

142 A.D. 444 (N.Y. Ct. App. 1911) · Decided January 20, 1911

SUMMARY

The court considered whether the defendant’s testatrix had changed her domicile from New Jersey to New York before a warrant of attachment was granted. It held that she changed her domicile when she left New Jersey with the intent to abandon it and took up residence temporarily in Brooklyn while intending to establish a permanent home there. The attachment was therefore vacated, and the order was reversed.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York
WRITING FOR THE COURT	Miller, J.; Ingraham, P.J.; Clarke, J.; Scott, J.; Laughlin, J.
JURISDICTION	New York
DECIDED	January 20, 1911
DISPOSITION	reversed
PROCEDURAL POSTURE	The defendant appealed from an order of the New York Supreme Court, Special Term, denying her motion to vacate a warrant of attachment issued on the ground that the defendant's testatrix was a nonresident of New York.
STANDARD OF REVIEW	Review of the Special Term's determination on the motion to vacate the attachment, including whether the established facts demonstrated a change of domicile.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Catherine A. Kramer, as executrix v. AEtna National Bank

TOPICS

- civil procedure
- probate procedure
- estate litigation

PRACTICE AREAS

- civil procedure
- attachment
- domicile

QUESTIONS PRESENTED

1. Whether the testatrix had changed her domicile from New Jersey to New York before the warrant of attachment was issued on April 7, 1910.
2. Whether a temporary stay in another Brooklyn residence and retention of the former New Jersey lease prevented a change of domicile.

HOLDINGS

1. The testatrix changed her domicile from New Jersey to New York on April 3, when she left her former domicile with the intention of abandoning it and went to Brooklyn intending to make New York her permanent domicile.
2. Retention of the leased New Jersey premises until the termination of the lease did not preclude the testatrix's change of domicile.

KEY QUOTATIONS

“No doubt, to effect a change of domicile, there must be an actual change of residence, coupled with an intention to abandon the former domicile and to acquire another.” (446)

“When she abandoned her domicile in New Jersey, and went to reside in Brooklyn, with the intention of making that her permanent domicile, she acquired a domicile there, and the mere fact that her first residence was a temporary one is of no consequence in view of the fact that there was an actual change of residence with the necessary intention of effecting a change of domicile.” (446)

FACTUAL BACKGROUND

The testatrix had long resided in Oradell, New Jersey, but on April 3, 1910, left that residence with the intention of abandoning New Jersey and living with the defendant in Brooklyn. She temporarily stayed at the defendant's sister's Brooklyn home while the defendant's home was prepared, and some of her furniture was moved from New Jersey to Brooklyn on April 6. Although the testatrix retained the New Jersey lease until its expiration and made an equivocal statement that she expected to return to Oradell, she moved into the Brooklyn home on April 10 and died there the next day.

PROCEDURAL HISTORY

A warrant of attachment was issued on April 7, 1910, based on an affidavit asserting that the testatrix remained a resident of New Jersey. The Special Term denied the defendant's motion to vacate the attachment, finding that the testatrix did not change her domicile until she moved into her permanent Brooklyn home on April 10. The Appellate Division reversed, granted the motion, and awarded costs.

DISPOSITION

reversed

CASES CITED

- Dupuy v. Wurtz, 83 N.Y. 556

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