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**IN THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA**

JEAN SHANNON LANE, ALEC J. CABLE
and NOAH D. CABLE,

Respondents Below, Petitioners,

v.

**DO NOT REMOVE
FROM FILE**

No. 22-0146

ROSSANA CABLE,

Respondent Below, Respondent.

RESPONDENT'S BRIEF

**ON APPEAL FROM THE CIRCUIT COURT OF KANAWHA COUNTY,
WEST VIRGINIA**

(Civil Action No. 18-C-327)

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TABLE OF CONTENTS

I.	TABLE OF AUTHORITIES	1
II.	STATEMENT OF THE CASE	2
III.	SUMMARY OF ARGUMENT.....	9
IV.	STATEMENT REGARDING ORAL ARGUMENT	10
V.	STANDARD OF REVIEW	10
VI.	ARGUMENT	12
	A. The Circuit Court did not err in granting summary judgment finding that Scott M. Cable died a resident of California because there was no genuine issue of material fact to be decided.....	12
	1. Scott and Rossana Cable moved to California from West Virginia in May 2015 with no intention to return.....	14
	2. Any inconsistency in Rossana Cable's timeline of California residences in immaterial.....	21
VII.	CONCLUSION.....	22

I. TABLE OF AUTHORITIES

Cases

<u>Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York,</u> 148 W. Va. 160, 133 S.E.2d 770 (1963)	11
<u>Anderson v. Liberty Lobby, Inc.,</u> 477 U.S. 242, 106 S. Ct. 2505 (1986)	11, 12, 20
<u>Dent v. Fruth,</u> 192 W. Va. 506, 453 S.E.2d 340 (1994)	11
<u>Estate of Glassford,</u> 114 Cal. App. 2d 181, 249 P.2d 908 (2d Dist. Cal. App. 1952)	16, 17, 19
<u>Jividen v. Law,</u> 194 W. Va. 705, 461 S.E.2d 451 (1995)	11
<u>Johnson v. Junior Pocahontas Coal Co., Inc.,</u> 160 W. Va. 261, 234 S.E.2d 309 (1977)	11
<u>Lotz v. Atamaniuk,</u> 172 W. Va. 116, 304 S.E.2d 20 (1983)	14, 15, 16, 19
<u>Painter v. Peavy,</u> 192 W. Va. 189, 451 S.E.2d 755 (1994)	10, 11, 12, 20
<u>State ex rel. Linger v. County Court,</u> 150 W. Va. 207, 144 S.E.2d 689, (1965)	14
<u>Wirgman v. Provident Life & Trust Co.,</u> 79 W. Va. 562, 92 S.E. 415 (1917)	13

Statutes

W. Va. Code § 41-5-4	13
W. Va. Code § 44-1-4(a)	13

II. STATEMENT OF THE CASE

This case pertains to the proper jurisdiction for probate of the Estate of Scott M. Cable. Scott M. Cable died in Mexico on June 21, 2017. Scott M. Cable's Last Will and Testament left all of his property to his wife, Rossana Cable, and named her as Executrix of his estate. App. at pp. 235-238. On October 5, 2017, Rossana Cable petitioned the Superior Court of the County of Riverside, California, to admit the Will to probate. App. at pp. 226-238. By Order of Judge Thomas H. Cahraman, filed November 17, 2017, the Superior Court of the County of Riverside, California, found that Scott M. Cable was a resident of Riverside County, California, admitted Scott M. Cable's Will to Probate, and appointed Rossana Cable as Executrix of the Estate of Scott M. Cable. App. at 233-234.

Just two weeks prior on September 18, 2017, Julia Barnhart-Cable, Scott M. Cable's ex-wife, filed for probate in Kanawha County, West Virginia. App. at p. 41. Julia Barnhart-Cable represented to the Kanawha County Commission that Scott M. Cable died a resident of Mexico, without a will, and that probate in West Virginia was necessary to pass title of real estate owned by Scott M. Cable situate in West Virginia. App. at p. 40. All of these representations were false. Based on these representations, the Kanawha County Commission admitted the Estate to Probate on September 28, 2017. App. at p. 40.

On March 26, 2018, Julia Barnhart-Cable filed a Petition for Declaratory Relief seeking a declaratory judgment that, inter alia, Scott M. Cable was a resident of Kanawha County, West Virginia at the time of his death and the estate of Scott M. Cable is to be

administered in Kanawha County, West Virginia, in accordance with West Virginia law. App. at pp. 1-11. This, despite Julia Barnhart-Cable's previous representation to the Kanawha County Commission that Scott died a resident of Mexico. Petitioners herein, Jean Shannon Lane, Alec J. Cable, and Noah D. Cable were respondents to the Petition for Declaratory Relief.¹

On August 8, 2011, Scott M. Cable and Rossana Cable were married in Kanawha County, West Virginia. App. at p. 111. The couple resided in Kanawha County until spring of 2015, when they moved to California. Documentary evidence and testimony of Rossana Cable shows that the couple actually moved to California in May 2015 and intended to make California their home.

Prior to their move to California, Scott M. Cable owned a West Virginia limited liability company, S&E Properties, LLC, which owned commercial real estate in Nitro, West Virginia. App. at pp. 310-312. In November 2014, S&E Properties, LLC, entered into an agreement to sell its commercial building to Providence Holdings, LLC. App. at pp. 310-312. Providence Holdings paid for the building, at least in part, with a promissory note. App. at pp. 310-312. After the sale of this building in April 2015, Scott Cable owned no real estate in West Virginia. App. at pp. 335-336. After liquidating his physical assets in West Virginia, Scott and Rossana Cable moved to California in May, 2015. App. at p. 124.

Upon moving to California, they stayed in an apartment

¹ Only Jean Shannon Lane (and her children) filed a response in opposition to the motion for summary judgment, and no other party, including the petitioner in the circuit court action, filed an appeal.

owned by Scott's sister, Judy Cable, at 5601 Orange Thrope, Anaheim, California; and also with a friend, David Cohenshad, in his house at 340 Miracle Street, Chula Vista, California. App. at pp. 134-137. Beginning in November 2015, and through Scott's death, they leased a house from Robert Was at 3192 Corona Avenue, Norco, California 92860. App. at pp. 137-139.

On July 31, 2015, Scott M. Cable emailed his brother Greg Cable stating that he was living in Baja California, Mexico, where his art department and print factories were located. App. at p. 315. In a follow-up email to Greg Cable, on August 6, 2015, Scott says his and Rossana's "initial intentions were to move to San Diego... but it was so expensive." App. at p. 314. It is important to note that Scott did not tell his brother that he did not move to California at all, only that the city of San Diego was too expensive.

Despite the email to his brother that he was living in Mexico in late July and early August 2015, evidence shows that after moving away from West Virginia, Scott M. Cable became a resident of California. In July 2015, consistent with their residency in California, Scott obtained a California Identification Card (No. Y3024551) and Rossana obtained a California Driver's License (No. Y2843254), both with the same address of P.O. Box 3490, Chula Vista, California. App. at pp. 161-162. A person must be a resident of California to obtain such identification cards. Scott also later filed a resident California income tax return for tax year 2016. App. at pp. 45-49.

Scott M. Cable had established a company called "Loco Swagg

LLC" in West Virginia in 2014, and Scott later changed the address of the company with the West Virginia Secretary of State to Coronado, California. App. at pp. 166-168. Scott M. Cable is named as the only member of the company and his address is listed as P.O. Box 3490, Chula Vista, California. App. at pp. 166-168. In May 2015, Scott and Rossana Cable changed the address to which their Chase Bank business checking account (account 7521) statements were mailed to their Chula Vista, California address. App. at pp. 172-174. Scott M. Cable hired a California attorney to register a trademark for this business, and which trademark was registered on October 18, 2016, and such correspondence was mailed to his Chula Vista, California address. App. at pp. 169-171.

While traveling in Mexico for his business "Loco Swagg" in late 2015, Scott M. Cable suffered severe injuries from a horrific automobile crash. App. at p. 124. After the crash, Scott required continuous therapy and treatment and decided to receive that treatment in Mexico because the medical costs were vastly less expensive than they would have been in the United States. App. at p. 124. Scott and Rossana Cable later leased a house in Bajamar, Mexico from March 1, 2016, through Scott's death in June 2017. App. at pp. 142, 327-328. Despite spending significant amounts of time in Mexico, they never gave up their Norco, California house or their California residency. App. at pp. 142-143.

Again, despite spending much of their time in Mexico, Scott M. Cable continued to hold himself out as a California resident. On February 9-10, 2016, Scott M. Cable emailed Connie M. Carr, Circuit

Clerk of Pocahontas County, West Virginia, to verify his Chula Vista, California address for written communications stating that "I now have my own address in Chula Vista, CA..." App. at pp. 164-165. Scott M. Cable and Rossana Cable also owned a vehicle that was registered in the State of California. App. at p. 140.

On April 17, 2017, Scott M. Cable filed a California Resident income tax return in California for 2016 and listed his Coronado, California address. App. at pp. 45-49. Above Scott M. Cable's signature on the California Resident income tax return, it states "Under penalties of perjury, I declare that I have examined this tax return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete." App. at pp. 45-49. By signing the California resident income tax return, Scott M. Cable declared himself a resident of California under penalty of perjury.²

Scott M. Cable received his mail in California which is further evidence of his California residency. Scott M. Cable's personal Chase Bank checking account (account 9899) statements were mailed to his Coronado, California address in October, 2016 (and likely prior), and continued through the date of his death. App. at pp. 239-306. The State of California Franchise Tax Board mailed a notice of income tax due to Scott M. Cable on December 12, 2016, to

² The State of California Franchise Tax Board defines resident for state income tax purposes as either "Present in California for other than a temporary or transitory purpose" or "Domiciled in California, but outside California for a temporary or transitory purpose." <https://www.ftb.ca.gov/file/personal/residency-status/index.html> (accessed July 1, 2022).

his Chula Vista, California address. App. at p. 203. On January 2, 2017, the Department of the Treasury Internal Revenue Service mailed a notice of unpaid taxes for year 2015 to Scott M. Cable to his Coronado, California address. App. at p. 209. The Bureau for Child Support Enforcement mailed a Statement of Support Obligation to Scott M. Cable at his Coronado, California address on April 8, 2017. App. at p. 44. A Final Order Regarding Decretal Judgment in the Family Court of Kanawha County filed on May 19, 2017, was mailed to Scott M. Cable at his Coronado, California address. App. at pp. 212-218. Scott M. Cable's attorney, Scott E. Elswick, mailed an invoice to Scott on October 5, 2017, to his Coronado, California address. App. at p. 211.

All evidence that Scott M. Cable maintained a West Virginia residency predates his move away from West Virginia in May 2015. Scott M. Cable's West Virginia voter's registration card bearing a registration date of March 10, 1996, predates his move by almost 20 years. App. at p. 307. Scott M. Cable's passport renewal application lists his address as P.O. Box 489, Nitro, West Virginia, and was submitted June 26, 2013, prior to his move from West Virginia. App. at pp. 308-309. Finally, the U.S. Department of State *Report of Death of a U.S. Citizen or U.S. Non-Citizen National Abroad* dated July 10, 2017, reports Scott M. Cable's "Address in U.S.A." as P.O. Box 489, Nitro, West Virginia, together with other identifying information such as date and place of birth, social security number, and passport number, which was all pulled directly from his passport issued on January 31, 2013, which predates his move to California in May 2015. App. at p. 220.

Scott M. Cable owned no real estate and maintained no mailing address in West Virginia at the time of his death. App. at pp. 335-336. All of his tangible personal property was located in California and Mexico. App. at pp. 133, 143. Scott M. Cable owned intangible property such as a note receivable from Providence Holdings, LLC, and bank accounts at Chase Bank. App. at pp. 131-132. Providence Holdings, LLC made payments by direct deposit to Scott M. Cable's Chase Bank account. App. at pp. 131-132, 239-302. Chase Bank is a national bank based in New York doing business in many states, but Scott's account statements were mailed to his California address. App. at pp. 239-306.

No party introduced any evidence that any person has challenged Scott M. Cable's will in California. Indeed, Petitioner Jean Shannon Lane is involved in litigation in the California probate over an estate claim, but she has not challenged the validity of the will or the propriety of probate in California in that jurisdiction.

Whether or not Scott M. Cable was living in Mexico at the time of his death, it is clear that he gave up his West Virginia residency and established residency in California in May 2015. He changed his address to California, obtained a California Identification Card, filed a Resident tax return in California, received mail in California, banked in California, owned tangible property in California, and lived at least some of the time in California. No evidence has been presented that Scott Cable had an ongoing presence in West Virginia after May 2015 or intended to ever return to West Virginia after moving away.

Rossana Cable filed a Motion for Summary Judgment and Memorandum of Law on April 21, 2021. App. at pp. 89-316. The Circuit Court below held a hearing on summary judgment on October 14, 2021. App. at pp. 367-459. Consistent with the evidence, the Circuit Court below granted summary judgment and found that there was no disputed issue of material fact, that Scott M. Cable was not a resident of West Virginia when he died, and probate is appropriate in California and not West Virginia. App. at pp. 468-470.

III. SUMMARY OF ARGUMENT

There is no genuine dispute of fact that Scott M. Cable permanently moved away from West Virginia in May 2015 and became a permanent resident of California. Scott M. Cable sold his West Virginia real estate prior to moving and did not maintain a mailing address in West Virginia after moving away. Evidence shows that Scott M. Cable moved to California in May 2015 where he maintained a California mailing address, obtained a California Identification Card, filed a California Resident income tax return, banked in California, and owned tangible property in California. Scott M. Cable's Last Will and Testament has been probated by the Superior Court of the County of Riverside, California and it has not been challenged. The Superior Court of the County of Riverside, California found that Scott M. Cable was a resident of California.

All of the evidence of Scott M. Cable's West Virginia residency is older and further removed in time than the evidence of his residency in California. Petitioners present no more than a scintilla of evidence that Scott M. Cable never became a resident of

the State of California by showing that he also spent time living in Mexico. Petitioners have presented no evidence that Scott M. Cable ever intended to return to West Virginia and no evidence that he maintained any indicia of residency in West Virginia. A jury could not find that Scott M. Cable was a resident of West Virginia upon his death for the probate of his estate based on these facts. Therefore, the intestate probate of the Estate of Scott M. Cable in Kanawha County, West Virginia is erroneous. The Circuit Court did not err in finding that Scott M. Cable was a resident of California.

IV. STATEMENT REGARDING ORAL ARGUMENT

Respondent Rossana Cable does not believe oral argument is necessary in this case because the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument.

V. STANDARD OF REVIEW

"A circuit court's entry of summary judgment is reviewed de novo." Syl. Pt. 1, Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994). "A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Id. at Syl. Pt. 2.

"A party who moves for summary judgment has the burden of showing that there is no genuine issue of fact and any doubt as to the existence of such issue is resolved against the movant for such judgment." Syl. Pt. 1, Johnson v. Junior Pocahontas Coal Co., Inc.,

160 W. Va. 261, 234 S.E.2d 309 (1977). "A party is not entitled to summary judgment unless the facts established show a right to judgment with such clarity as to leave no room for controversy and show affirmatively that the adverse party cannot prevail under any circumstances." Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 171, 133 S.E.2d 770, 777 (1963).

"A genuine issue or dispute is simply one "about which reasonable minds could differ." Dent v. Fruth, 192 W. Va. 506, 510, 453 S.E.2d 340, 344 (1994). "A material fact is one that has the capacity to sway the outcome of the litigation under the applicable law." Syl. Pt. 5, Jividen v. Law, 194 W. Va. 705, 461 S.E.2d 451 (1995).

"The party opposing summary judgment must satisfy the burden of proof by offering more than a mere "scintilla of evidence," and must produce evidence sufficient for a reasonable jury to find in a nonmoving party's favor." Painter v. Peavy, 192 W. Va. at 192-193 quoting, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2512 (1986). "Summary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." Syl. Pt. 4, Painter v. Peavy, 192 W. Va. 189..

"While the underlying facts and all inferences are viewed in the light most favorable to the nonmoving party, the nonmoving party must nonetheless offer some "concrete evidence from which a

reasonable . . . [finder of fact] could return a verdict in . . . [its] favor" or other "significant probative evidence tending to support the complaint." Id. at 193 *quoting, Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 256.

VI. ARGUMENT

A. The Circuit Court did not err in granting summary judgment finding that Scott M. Cable died a resident of California because there was no genuine issue of material fact to be decided.

Petitioners contend that the Circuit Court erred in granting summary judgment because there is a genuine issue of material fact in dispute whether Scott M. Cable gave up his West Virginia residency when he moved away in May 2015. Petitioners' position is that Scott M. Cable did not give up his West Virginia residency when he moved away and therefore probate of his estate is appropriate in West Virginia. The Circuit Court did not err in finding that there was no genuine issue of material fact in dispute that could lead a jury to find that Scott M. Cable was still a resident of West Virginia after he moved away in May 2015.

The county [commissions] have jurisdiction of the probate of wills according to the following rules:

(a) In the county wherein the testator, at the time of his death, had a mansion house or known place of residence; or

(b) If he had no such house or place of residence, then in the county wherein any real estate devised thereby is situated; or

(c) If there be no real estate devised thereby, and the testator had no such house or place of residence, then in the county wherein he died, or in any county wherein he had any property at the time of his death; or

(d) If he died out of this State, his will or an authenticated copy thereof, may be admitted to probate in any county in this State, wherein there is property devised or bequeathed thereby.³

W. Va. Code § 41-5-4. A county commission likewise has jurisdiction over an intestate estate as it would a testate estate. W. Va. Code § 44-1-4(a).

Scott M. Cable had no "mansion house or known place of residence" in West Virginia, nor any other real estate, at the time of his death. There is no evidence in the record that Scott M. Cable owned or leased any real property situate in West Virginia. Scott M. Cable did not die in West Virginia. App. at p. 220. Scott M. Cable owned no personal property situate in West Virginia: his tangible property was located in California and Mexico (App. at pp. 133, 143); and he owned intangible assets being deposits in bank accounts and a promissory note, payments on which were direct deposited in his Chase Bank checking account and such account statements were mailed to his address in California (App. at pp. 131-132, 239-302).

Notwithstanding the county commission's jurisdiction for probate, "The courts of this state have no jurisdiction or power to control, regulate or supervise the administration of personal property of the estate of a deceased person, held in another state by his personal representatives, under letters testamentary there granted." Syl. Pt. 2, Wirgman v. Provident Life & Trust Co., 79 W. Va. 562, 92 S.E. 415 (1917). Upon Rossana Cable's appointment as Executrix in

3 Petitioners herein filed the only response in opposition to Rossana Cable's Motion for Summary Judgment in Circuit Court and did not address Rossana Cable's assertion that no other basis for probate of Scott M. Cable's will in West Virginia existed and does not do so here. App. at pp. 317-324.

California, the right to all authority to administer Scott M. Cable's personal property vested in her as no personal property was situate in any county in West Virginia. West Virginia simply has no jurisdiction over the Estate of Scott M. Cable under the statute. Petitioners argue that Scott was still a resident of West Virginia despite not having any known place of residence in West Virginia because he never relinquished his domicile in West Virginia.

"In cases involving the settlement and distribution of the personal estate of a decedent, ...domicile and residence are regarded as synonymous." State ex rel. Linger v. County Court, 150 W. Va. 207, 228, 144 S.E.2d 689, 703 (1965). "A [decedent's] domicile controls which state law applies to [his or] her will of personal property." Syl. Pt. 1, Lotz v. Atamaniuk, 172 W. Va. 116, 304 S.E.2d 20 (1983). "Domicile is a combination of residence (or presence) and an intention of remaining." Id. at Syl. Pt. 2. A person loses a residence when that person leaves the place of residence with no intention of returning; A person gains a new residence by remaining in the new place with the intent to remain for an indefinite time. State ex rel. Linger v. County Court, 150 W. Va. at 227-228.

1. Scott and Rossana Cable moved to California from West Virginia in May 2015 with no intention to return.

Scott M. Cable had been a long-time West Virginia resident and had owned a successful screen-printing clothing business in West Virginia. Sometime prior to 2015, that business had ceased. In April 2015, Scott M. Cable sold all of his real estate in West Virginia. App. at pp. 335-336. In May 2015, Scott and Rossana moved to

California with no intention to return to West Virginia. App. at p. 124. They became residents of California, obtained California identification cards (App. at pp. 161-162), filed a California resident income tax return (App. at pp. 45-49), changed their business and mailing address to California (App. at pp. 166-168), banked in California (App. at pp. 172-174), and owned tangible property in California including a vehicle that was registered in California (App. at p. 140). They lived in Anaheim, Chula Vista, and finally Norco, California. App. at pp. 134-139. At the time they moved to California, they had intended to stay in California. App. at p. 124. Upon their arrival in California with the intent to stay, they became residents of California and California became their domicile.

Petitioners assert that Scott M. Cable never established domicile in California or Mexico because he was only traveling to those locations or staying there temporarily. Petitioners cite to several cases for determining domicile of the decedent for the probate of an estate in which the decedent had left his or her domicile temporarily. Those cases actually support the proposition that Scott M. Cable's domicile was California rather than West Virginia.

In Lotz v. Atamaniuk, 172 W. Va. 116, 304 S.E.2d 20 (1983), Linda and Michael Atamaniuk were married and had been living in Marshall County, West Virginia for several years. After six years of marriage, they separated and Linda then leased an apartment in St. Clairsville, Ohio and lived there. However, Linda had not completely cut ties with West Virginia. Though she was living in Ohio and banked in Ohio, her vehicle was still registered in West Virginia, she had a

West Virginia driver's license, she was actively seeking an apartment in Wheeling, West Virginia, and she told people that she planned on returning to West Virginia. Linda also filed pleadings in the divorce action against her husband swearing she was a Marshall County, West Virginia resident. Linda died while living in Ohio. The Court found that Linda never relinquished her intention of returning to West Virginia and that West Virginia was her domicile. Id. at 121.

In Estate of Glassford, 114 Cal. App. 2d 181, 249 P.2d 908 (2d Dist. Cal. App. 1952), a case cited favorably in Lotz, Grace Glassford was a widow that had long lived in New York City and had decided to travel west to live for a year. She lived in a hotel in Denver for approximately three months, then traveled further west to Los Angeles where she opened a bank account and stayed in various hotels for approximately three months. Shortly after arriving in Los Angeles, Ms. Glassford wrote a letter to a hotel manager stating that she had intended to stay out west for a year, but her urge to return to New York was strong. After living in Los Angeles for two months, she was admitted to a hospital where a doctor diagnosed her with terminal cancer with only a few weeks to live. She decided there was no reason for her to return to New York only to die and stayed in Los Angeles until her death two months after her diagnosis. During her remaining life in Los Angeles she purchased U.S. government bonds, rented a safe deposit box, and stored her fur coat at a shop, giving her hotel address for these transactions. The court found that these transactions, and listing her local address at the hotel, were "simply a matter of convenience" or expediency. Estate of Glassford, 114 Cal.

App. 2d at 186-187. Though Ms. Glassford was resigned to the fact she was not able to return home to New York on account of illness, the court found that did not extinguish her domicile in New York. Id. at 187. "Knowledge that one will never again be able, on account of illness, to return home does not necessarily establish a change of domicile." Id.

These cases can easily be distinguished from the circumstances of Scott M. Cable's move from West Virginia to California. When Scott moved away from West Virginia he had no intention of returning. This is evident from his actions and his words. No evidence was produced that Scott M. Cable told any person that he intended to return to West Virginia. His actions are consistent with those of a person obtaining a new domicile: He sold his West Virginia home (App. at pp. 335-336), he moved to California with his wife Rossana with the intent to permanently stay in California (App. at p. 124), he and Rossana both obtained California identification cards (App. at pp. 161-162), he changed his mailing address to California (App. at pp. 166-168), he changed his West Virginia limited liability company's address to California (App. at pp. 166-168), he filed a California *resident* income tax return in California (App. at pp. 45-49), he used a California based attorney to register his business trademark (App. at pp. 169-171), he registered his vehicle in California (App. at p. 140), he notified a West Virginia court that his new address was in California (App. at pp. 164-165), and he banked in California (App. at pp. 172-174).

These actions are not things a person would do if he or she was living in a place temporarily. Scott M. Cable did not move to California for any temporary reason such as college, a temporary job assignment, or vacation. A person does not obtain a new state identification card, file a resident income tax return, change his or her mailing address, or register a vehicle in the new state as a matter of convenience. Any person who has ever moved knows how inconvenient and troublesome doing these things can be.

Petitioners claim all of this evidence of Scott's California residency was merely "out of expediency given his living arrangements in Mexico." Petitioners fail to indicate how it was more expedient for Scott M. Cable to receive his mail in California rather than Mexico if he was living in Mexico at the time. Petitioners also fail to explain why it was expedient for Scott M. Cable to obtain a California state identification card, register his vehicle in California, and file a California resident income tax return because of his living arrangements in Mexico. Certainly, California is geographically closer to Mexico than West Virginia, but there is no logical reason why Scott M. Cable would do all these things consistent with California residency if he moved straight from West Virginia to Mexico or only stayed in California for a matter of a few weeks. If he were merely visiting California, it would seem more expedient to keep his West Virginia identification card, leave his vehicle registered in West Virginia, and continue filing income tax returns in West Virginia.

While in Mexico in December 2015, Scott was in a bad automobile crash that necessitated a lengthy stay in the hospital there. App. at p. 124. Scott elected to stay in Mexico for further medical care and rehabilitation due to the much lower cost of medical services in Mexico. App. at p. 124. Scott M. Cable's stay in Mexico did not abolish his domicile in California because he continued to hold himself out as a California resident and intended to return to California. See Lotz; See also Estate of Glassford. Despite living in Mexico for much of 2016 and 2017, Scott told the Pocahontas County Circuit Court in February 2016 that his address was in California (App. at pp. 164-165); he continued to receive mail in California throughout 2016 and 2017 (App. at pp. 239-306); and he filed a California resident tax return for year 2016 in April 2017 and listed a Coronado, California address (App. at pp. 45-49).

Petitioners point to an email that Scott M. Cable sent to his brother Greg Cable dated July 31, 2015, for the proposition that Scott did not move to California in May 2015, but moved straight to Mexico or was living in Mexico in May 2015. This email is allegedly a material fact that could sway the opinion of the jury on the matter of Scott M. Cable's domicile in West Virginia at his death. In that email dated July 31, 2015, Scott tells Greg he is living near his factory in Mexico. App. at p. 314. Scott goes on to say in an August 6, 2015, email that their "initial intentions were to move to San Diego... but it was so expensive." App. at p. 315. It should be noted that San Diego is but one city in California. Evidence shows that Scott M. Cable briefly lived in Chula Vista, a town in San Diego, and also lived in

areas of California outside of San Diego, namely Anaheim and Norco. App. at pp. 134-139.

These emails were sent months after Scott and Rossana moved to California in May 2015 and after they obtained California resident identification cards. These emails do not show "Scott M. Cable never established a domicile in California" as Petitioners suggest. The emails do not speak to Scott M. Cable's intent to stay, or not stay, in California when he moved to California in May 2015. These emails do not show that Scott M. Cable moved straight to Mexico or was living in Mexico in May 2015. These emails were produced through discovery by Julia Barnhart-Cable, petitioner below. After three years of litigation, no May 2015 email was ever produced that shows Scott M. Cable moved straight to Mexico or was living in Mexico in May 2015. In fact, there is no evidence in the record whatsoever that shows Scott M. Cable moved directly to Mexico or was living in Mexico in May 2015.

"The party opposing summary judgment must satisfy the burden of proof by offering more than a mere "scintilla of evidence," and must produce evidence sufficient for a reasonable jury to find in a nonmoving party's favor." Painter v. Peavy, 192 W. Va. at 192-193 quoting, Anderson v. Liberty Lobby, Inc., 477 U.S. at 252.

It is clear that Petitioners cannot offer anything more than "a mere scintilla of evidence" that Scott M. Cable did not give up his West Virginia domicile when he moved away in May 2015, or that he moved to Mexico in May 2015 and not California. After a long recitation of facts, the circuit court below concluded that

the facts as whole do not reveal a genuine issue of material fact. The facts as a whole, in the Court's opinion, could not

lead a rational trier of fact to find for the non-moving party. The Court finds compelling that Scott and Rossana Cable moved from West Virginia to California 2015, albeit in different residences. Scott Cable acquired a California identification card in July of 2015. After establishing a company called "Loco Swagg" in West Virginia in 2014, he later changed the address of the company with the West Virginia Secretary of State to California. He filed a California Resident income tax return in California for 2016.

The Circuit Court below did not err in finding that there was no genuine issue of material fact in contention that Scott M. Cable was a resident of California and not a resident of West Virginia at the time of his death and that probate was inappropriate in West Virginia.

2. Any inconsistency in Rossana Cable's timeline of California residences is immaterial.

Petitioners contend that the testimony of Rossana Cable is contradictory and not credible in regards to the timeline of their residences in California in 2015. Rossana Cable submitted an affidavit stating that they moved to Riverside County, California in the spring of 2015. App. at pp. 123-126. However, in response to interrogatories, Rossana Cable stated that their first two residences in California were located in the cities of Chula Vista and Anaheim, neither of which are in Riverside County; she further stated they later moved to Norco, Riverside County, California in November of 2015. App. at pp. 134-139. Petitioners also state that Rossana Cable's testimony on the length of time it would have taken to drive to Bajamar, Mexico from Norco, California is incorrect. None of this testimony has any bearing on Scott M. Cable's California domicile or lack of domicile in West Virginia. All of Rossana Cable's testimony confirms that they moved to

California in May 2015 and gained domicile there regardless whether her timeline of their residences in California were somewhat inconsistent between her affidavit and her responses to interrogatories. These inconsistencies are immaterial and can further be explained by the fact that English is not Rossana Cable's native language. App. at p. 123. Rossana Cable is originally from Peru and her native language is Spanish. App. at p. 123.

These inconsistencies in her testimony do not raise a material dispute of fact. Rossana's testimony is consistent with the evidence that they moved to California in May 2015 and gained domicile in California: she and Scott both obtained California identification cards in July 2015, Scott changed his mailing address to California, Scott changed his West Virginia limited liability company's address to California, Scott filed a California resident income tax return in California for year 2016, Scott and Rossana registered their vehicle in California, Scott told the Pocahontas County Circuit Court that his new address was in California, Scott filed a trademark while in California, and Scott banked in California.

VII. CONCLUSION

The Circuit Court below granted summary judgment to Respondent Rossana Cable finding that there were no genuine issues of material fact in dispute regarding Scott M. Cable's domicile at the time of his death. The Circuit Court did not err because Petitioners failed to offer anything more than a "mere scintilla of evidence" that Scott M. Cable did not become a domiciliary resident of California when he moved there in May 2015. No genuine issue of material fact is

in dispute that could lead a rational trier of fact to find that Scott M. Cable was a domiciliary resident of West Virginia at the time of his death, and therefore summary judgment on the matter was appropriate. Probate of Scott M. Cable's Will is ongoing in California and Rossana Cable is the properly appointed Executrix as selected by Scott M. Cable in his Will. The administration of Scott M. Cable's estate in West Virginia is improper and not necessary because he was not a resident of West Virginia and owned no property in West Virginia. The Circuit Court order granting summary judgment to Rossana Cable should be affirmed.

ROSSANA CABLE,

By Counsel

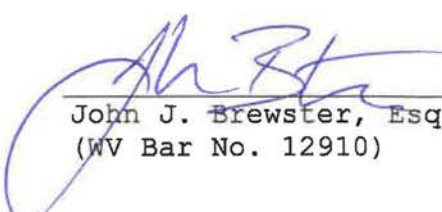


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CERTIFICATE OF SERVICE

The undersigned counsel for Respondent Rossana Cable certifies that on July 7, 2022 service of the foregoing "**Respondent's Brief**" was served upon the parties via U.S. Mail, postage prepaid, to the following counsel of record:

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