

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 2, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

Nos. 98-3302, 98-3303

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDREW D. WIELUNSKI,

DEFENDANT-APPELLANT.

APPEALS from judgments of the circuit court for Langlade County:
JAMES P. JANSEN, Judge. *Affirmed.*

CANE, C.J. Andrew Wielunski appeals judgments finding him guilty of obtaining a license by fraud and falsifying a hunter's choice application contrary to §§ 29.642(1), STATS.¹ He makes two arguments for reversal: (1) he

¹ Wielunski's violations occurred July 17, 1996, and July 19, 1997. Because the parties rely on the 1995-96 statutes, so does this court. Since then, § 29.642(1) has been renumbered § 29.961(1), STATS., by 1997 WIS. ACT 248 § 685, effective January 1, 1999.

took no "overt acts to change his residency" from Wisconsin to Illinois, and in any event, the circuit court erred by relying solely on his income tax returns to determine that he was an Illinois resident; and (2) the trial court erroneously excluded evidence about his divorce, which he claims is relevant to his domiciliary intent.² This court disagrees and affirms the judgments.

I. BACKGROUND

In March 1998, the Department of Natural Resources sent Wielunski two citations charging him with fraud in obtaining a license in July 1997 and falsifying a hunter's choice application in July 1996. The basis for the charges was that Wielunski was not a Wisconsin resident.

Wielunski's 1995 and 1996 Wisconsin tax returns indicate that for all of 1995 and 1996, he was a nonresident of Wisconsin, but an Illinois resident.³ In 1997, he lived at his 350-acre Langlade County farm approximately 100 days and in Illinois for the remaining 265 days. Additionally, a January 1997 complaint Wielunski filed for breach of contract and conversion in another matter indicates that he is an "adult resident of Illinois."

² Wielunski also contends that the trial court's finding that he was a Wisconsin resident for farm, hunting, and fishing purposes is sufficient as a matter of law to "acquit" him. The argument is undeveloped and without citation to authority or to the record. Thus, this court will not address it. See *Barakat v. DHSS*, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995).

³ At trial, Wielunski testified that he did not know if he had ever paid Wisconsin income tax. When he was asked again where he pays state income taxes, Wielunski answered, "Where my accountant directs it." The court then asked him if he signs his tax return, and after Wielunski replied affirmatively, the court stated, "Then you'd better answer the question now or I'm going to find you in contempt and throw you in jail for the weekend." Wielunski then testified that he paid income tax in both Illinois and Wisconsin.

Following a bench trial at which Wielunski and a DNR conservation warden testified, the circuit court issued a decision making the following findings. It first determined that Wielunski is "not a clear resident" of either Wisconsin or Illinois, but had elements of residency with both states. On the one hand, the court noted that Wielunski owns farm land in Wisconsin and that his driver's license, checking account, savings account, and automobile titles are all from Wisconsin. On the other hand, the court found that Wielunski's wife and children live in Illinois, and that he is employed full-time in Illinois, pays income tax in Illinois as a resident, and files a nonresidency certificate with Wisconsin in order to not pay Wisconsin income tax. While he indeed resided in Wisconsin "full time" from 1988 to 1991, he relocated to Illinois because he could not find gainful employment in Wisconsin. The court further noted that Wielunski considers himself a Wisconsin resident for hunting and fishing purposes and a nonresident for Illinois fishing purposes. Thus, he purchased a nonresident Illinois fishing license.

While noting that there was no underlying factual dispute, the court stated the case presented a question of intent and the application of the law to the facts. The court concluded that Wielunski has a "dual residency": Wisconsin residency for the farming, hunting, and fishing purposes; and Illinois residency for job and family purposes. Although a person's dwelling, driver's license and income tax filings are major indications of a person's intent to reside, the court explained, it concluded that in Wisconsin, dual residency is "not sufficient for DNR residency." Accordingly, the circuit court held that Wielunski was an Illinois resident and therefore found him guilty. Wielunski then filed this appeal.

II. ANALYSIS

The principal issue is whether Wielunski was a Wisconsin or Illinois resident when he applied for his Wisconsin hunting and fishing licenses. The parties set forth different standards of review. Wielunski argues that this court's review is de novo because a question of law is presented. The State argues that because this court is reviewing the sufficiency of the evidence, the trial court's credibility determination regarding Wielunski's testimony deserves deference and that this court may not set aside the trial court's findings of fact unless they are clearly erroneous. *See* § 805.17(2), STATS. This court agrees with the State. The trial court's conclusion that Wielunski is an Illinois resident is based on its finding of fact regarding Wielunski's domiciliary intent, and the circuit court's finding of fact is not clearly erroneous.

Section 29.01(12), STATS., defines a "resident" as

a person who has maintained his or her place of permanent abode in this state for a period of 30 days immediately preceding his or her application for an approval. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in this state. Mere ownership of property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitation, the location where the person votes, pays personal income taxes or obtains a driver's license. (Emphasis added.)

Wielunski contends that under § 29.01(12), STATS., the circuit court erred by relying solely on his income tax returns as evidence of his domiciliary intent. He points out that the statutory list regarding domiciliary intent is listed in the disjunctive and that a trial court need not find every item in the list. That may be true, but it is for the trial court to determine what weight it should place on these factors. Section 805.17(2), STATS. Here, the trial court reasonably placed

more weight on the fact that Wielunski worked full-time in Illinois and spent two-thirds of his time in Illinois where he resided with his family and filed a nonresidency certificate with Wisconsin in order to not pay Wisconsin income taxes.

Wielunski himself indicated that he was an Illinois resident, both in his income tax returns and in the complaint for breach of contract and conversion he filed in another matter. He further testified at trial that he spends two-thirds of his time in Illinois and only one-third of his time in Wisconsin. The record does contain evidence to support Wielunski's contention that he was a Wisconsin resident when he applied for his licenses, but the trial court, which observed Wielunski's demeanor and evasiveness (even instructing him to answer questions about his tax returns or risk being held in contempt) rejected that evidence. We defer to the trial court's credibility assessments. Section 805.17(2), STATS. Because the trial court's finding of his domiciliary intent is not clearly erroneous, this court discerns no basis for reversal.

Nevertheless, Wielunski maintains that because he took no "overt steps" to change his Wisconsin residency, he remained a Wisconsin resident. He cites no Wisconsin authority to support his assertion that "overt steps" are required. Rather, he cites a Missouri case indicating that unless he manifests some act abandoning his Wisconsin residence, his Wisconsin residency continues. That is not the law in Wisconsin, and this court discerns no basis to apply that rule here.

Next, Wielunski contends that the trial court erroneously excluded evidence of his domiciliary intent when it refused to hear testimony about the reason for his impending divorce. He suggests that he and his wife were getting a divorce because he was "in Wisconsin so much of the time with an intent to

continue doing so." He further contends that because this evidence is "on point" regarding his domiciliary intent, it should have been admitted. The State responds that this evidence is irrelevant to Wielunski's domiciliary intent because he laid no foundation regarding whether divorce proceedings had been commenced when he applied for his licenses.

Evidentiary rulings are within the trial court's discretion. *State v. Pepin*, 110 Wis.2d 431, 435, 328 N.W.2d 898, 900 (Ct. App. 1982). When reviewing a discretionary decision, this court examines the record to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *State v. Keith*, 216 Wis.2d 61, 69, 573 N.W.2d 888, 892-93 (Ct. App. 1997). Here, the circuit court offered no reason for excluding the evidence except, "I don't want to hear the grounds for the divorce." If a trial court fails to adequately set forth its reasoning in reaching a discretionary decision, this court will search the record for reasons to sustain the trial court's exercise of discretion. *See Long v. Long*, 196 Wis.2d 691, 698, 539 N.W.2d 462, 465 (Ct. App. 1995).

This court concludes that the circuit court appropriately exercised its discretion when it excluded the purported reason for Wielunski's divorce. Although Wielunski correctly notes that § 29.01(12), STATS., specifically allows evidence of domiciliary intent "without limitation," irrelevant evidence is not admissible. *See* § 904.02, STATS. Evidence is relevant if it makes the existence of a fact that is of consequence to the determination more or less probable than it would be without the evidence. Section 904.01, STATS. Because Wielunski failed to demonstrate that divorce was an issue when he applied for the licenses, evidence about the divorce is irrelevant to show his domiciliary intent at that time.

Thus, the trial court appropriately exercised its discretion by excluding the evidence.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

