Professional Formation Readings– Fall 2014

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U.S. CONST. art. III, § 2

> The judicial Power shall extend . . . to Controversies between . . . Citizens of different States . . . and between . . . the Citizens [of a State], and foreign States, Citizens or Subjects.

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28 U.S.C. § 1332

Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subjection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State; [and]

(3) citizens of different States and in which citizens or subjects of a foreign State are additional parties[.]

. . .

(b) Except where express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

. . .

(e) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

(June 25, 1948, as amended, December 7, 2011.)

MAS V. PERRY
489 F.2d 1396 (5th Cir. 1974)

AINSWORTH, Circuit Judge.

This case presents questions pertaining to federal diversity jurisdiction under 28 U.S.C. § 1332, which, pursuant to Article III, Section 2 of the Constitution, provides for original jurisdiction in federal district courts of all civil actions that are between, *inter alia*, citizens of different States or citizens of a State and citizens of foreign states and in which the amount in controversy is more than $10,000.*

Appellees Jean Paul Mas, a citizen of France, and Judy Mas were married at her home in Jackson, Mississippi. Prior to their marriage, Mr. and Mrs. Mas were graduate assistants, pursuing coursework as well as performing teaching duties, for approximately nine months and one year, respectively, at Louisiana State University in Baton Rouge, Louisiana. Shortly after their marriage, they returned to Baton Rouge to resume their duties as graduate assistants at LSU. They remained in Baton Rouge for approximately two more years, after which they moved to Park Ridge, Illinois. At the time of the trial in this case, it was their intention to return to Baton Rouge while Mr. Mas finished his studies for the degree of Doctor of Philosophy. Mr. and Mrs. Mas were undecided as to where they would reside after that.

Upon their return to Baton Rouge after their marriage, appellees rented an apartment from appellant Oliver H. Perry, a citizen of Louisiana. This appeal arises from a final judgment entered on a jury verdict awarding $5,000 to Mr. Mas and $15,000 to Mrs. Mas for damages incurred by them as a result of the discovery that their bedroom and bathroom contained 'two-way' mirrors and that they had been watched through them by the appellant during three of the first four months of their marriage.

At the close of the appellees' case at trial, appellant made an oral motion to dismiss for lack of jurisdiction. The motion was denied by the district court. Before this Court, appellant challenges the final judgment below solely on jurisdictional grounds, contending that appellees failed to prove diversity of citizenship among the parties and that the requisite jurisdictional amount is lacking with respect to Mr. Mas. Finding no merit to these contentions, we affirm. Under Section 1332(a)(2), the federal judicial power extends to the claim of Mr. Mas, a citizen of France, against the appellant, a citizen of Louisiana. Since we conclude that Mrs. Mas is a citizen of Mississippi for

* [Editor's note: from 1958 to 1988, the amount in controversy requirement was $10,000; today, it is $75,000. *See supra*.]

diversity purposes, the district court also properly had jurisdiction under Section 1332(a)(1) of her claim.

It has long been the general rule that complete diversity of parties is required in order that diversity jurisdiction obtain; that is, no party on one side may be a citizen of the same State as any party on the other side. *Strawbridge v. Curtiss*, 7 U.S. 267 (1806). This determination of one's State Citizenship for diversity purposes is controlled by federal law, not by the law of any State. As is the case in other areas of federal jurisdiction, the diverse citizenship among adverse parties must be present at the time the complaint is filed. Jurisdiction is unaffected by subsequent changes in the citizenship of the parties. The burden of pleading the diverse citizenship is upon the party invoking federal jurisdiction; and if the diversity jurisdiction is properly challenged, that party also bears the burden of proof.

To be a citizen of a State within the meaning of Section 1332, a natural person must be both a citizen of the United States and a domiciliary of that State. For diversity purposes, citizenship means domicile; mere residence in the State is not sufficient.

A person's domicile is the place of "his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom . . . ." A change of domicile may be effected only by a combination of two elements: (a) taking up residence in a different domicile with (b) the intention to remain there.

It is clear that at the time of her marriage, Mrs. Mas was a domiciliary of the State of Mississippi. While it is generally the case that the domicile of the wife—and, consequently, her State citizenship for purposes of diversity jurisdiction—is deemed to be that of her husband, we find no precedent for extending this concept to the situation here, in which the husband is a citizen of a foreign state but resides in the United States. Indeed, such a fiction would work absurd results on the facts before us. If Mr. Mas were considered a domiciliary of France—as he would be since he had lived in Louisiana as a student-teaching assistant prior to filing this suit—then Mrs. Mas would also be deemed a domiciliary, and thus, fictionally at least, a citizen of France. She would not be a citizen of any State and could not sue in a federal court on that basis; nor could she invoke the alienage jurisdiction to bring her claim in federal court, since she is not an alien. On the other hand, if Mrs. Mas's domicile were Louisiana, she would become a Louisiana citizen for diversity purposes and could not bring suit with her husband against appellant, also a Louisiana citizen, on the basis of diversity jurisdiction. These are curious results under a rule arising from the theoretical identity of person and interest of the married couple.

An American woman is not deemed to have lost her United States citizenship solely by reason of her marriage to an alien. Similarly, we conclude that for diversity purposes a woman does not have her domicile or State Citizenship changed solely by reason of her marriage to an alien.

Mrs. Mas's Mississippi domicile was disturbed neither by her year in Louisiana prior to her marriage nor as a result of the time she and her husband spent at LSU after their marriage, since for both periods she was a graduate assistant at LSU. Though she testified that after her marriage she had no intention of returning to her parents' home in Mississippi, Mrs. Mas did not effect a change of domicile since she and Mr. Mas were in Louisiana only as students and lacked the requisite intention to remain there. Until she acquires a new domicile, she remains a domiciliary, and thus a citizen, of Mississippi.[2]

Appellant also contends that Mr. Mas's claim should have been dismissed for failure to establish the requisite jurisdictional amount for diversity cases of more than $10,000. In their complaint Mr. and Mrs. Mas alleged that they had each been damaged in the amount of $100,000. As we have noted, Mr. Mas ultimately recovered $5,000.

It is well settled that the amount in controversy is determined by the amount claimed by the plaintiff in good faith. Federal jurisdiction is not lost because a judgment of less than the jurisdictional amount is awarded. That Mr. Mas recovered only $5,000 is, therefore, not compelling. As the Supreme Court stated in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283 (1938):

> [T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith.
>
> It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal. The inability of the plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction. . . .

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[2] The original complaint in this case was filed within several days of Mr. and Mrs. Mas's realization that they had been watched through the mirrors, quite some time before they moved to Park Ridge, Illinois. Because the district court's jurisdiction is not affected by actions of the parties subsequent to the commencement of the suit, the testimony concerning Mr. and Mrs. Mas's moves after that time is not determinative of the issue of diverse citizenship, though it is of interest insofar as it supports their lack of intent to remain permanently in Louisiana.

> . . . His good faith in choosing the federal forum is open to challenge not only by resort to the face of his complaint, but by the facts disclosed at trial, and if from either source it is clear that his claim never could have amounted to the sum necessary to give jurisdiction there is no injustice in dismissing the suit.

Having heard the evidence presented at the trial, the district court concluded that the appellees properly met the requirements of Section 1332 with respect to jurisdictional amount. Upon examination of the record in this case, we are also satisfied that the requisite amount was in controversy.

. . .

Affirmed.

WISDOM, Circuit Judge.

. . .

John Payne, a nine year old boy, was crossing a street in Covington, Louisiana, when he was hit by an automobile driven by Ashiel Duturich. John's father, Clarence Payne, as natural tutor of his minor son, sued State Farm Mutual Automobile Insurance Company, Duturich's insurer . . . . Payne claimed $50,000 for personal injuries to his son and $865.68 for medical expenses. State Farm Mutual Automobile Insurance Company moved to dismiss the complaint on the ground that its liability was limited to $10,000 for personal injuries. Payne then filed an amended complaint in which he asked for property damages in the amount of $15 for damages to the child's clothing, hoping thereby to overcome the jurisdictional barrier.[1] The district court dismissed the suit on the ground that the matter in controversy did not exceed $10,000, the required jurisdictional amount in diversity cases. We affirm.

I

The sum a plaintiff claims usually controls the jurisdictional amount. If, however, it appears to a legal certainty that the claim is for less than the jurisdictional amount, the complaint should be dismissed. . . .

. . .

As pointed out in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283 (1938): "The intent of Congress drastically to restrict federal jurisdiction in controversies between different states has always been rigorously enforced by the courts . . . . If, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed . . . the suit will be dismissed."

If there is one situation where the amount of a claim can be determined with legal certainty, it is in a case when a claim is asserted on an insurance policy limiting liability. . . .

. . .

[1] The policy also contained a provision insuring for property damage up to $5,000.

The injury to the Payne child might warrant recovery from Duturich of damages greatly in excess of $10,000, but the action was brought against State Farm only. It is a legal certainty, apparent on the face of the papers, that the claim against the insurer for the child's personal injuries does not meet the jurisdictional amount.

II

Payne argues that the amended complaint brings the amount in controversy up to $10,015. That depends on whether the claim for $15 for damage to the child's clothing was properly a claim by the father individually or by the father in a representative capacity for his son. We think that the cause of action was in the father.

A boy of nine may own the marbles he buys with his allowance, but clothing furnished a child by his father under a parent's duty to support his children remains the property of the father. Any member of a large family can testify that this is a working rule of no small practical convenience as well as a principle of law. "Articles given to a child by the parent by way of support and maintenance, in keeping with its condition in life, remain the property of the parent, and do not become the property of a child, although the child may have the possession of them and a special property in them, and as to all the world, except the parent, has the exclusive right to them." Thus it is the parent, not the child, who has a cause of action against a third person who causes the loss or destruction of the clothing. . . .

When a father sues in his own behalf and in behalf of his minor child each claim, the claim of the father and the claim of the child, must satisfy the requirement of jurisdictional amount.† Here we have the child's claim against the insurer that legally cannot exceed $10,000 under the policy, and the father's claim for $15.[3] Neither claim meets the test.

The judgment is

Affirmed.

† [Editor's note: Congress later changed this rule, but in a different statute—the rule remains valid for 28 U.S.C. § 1332(a).]

[3] Plus the claim for medical expenses.