

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TASHA S. BROOKS,	:	
ADMINISTRATRIX OF THE ESTATE	:	
OF TYRONE BATES, DECEASED,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
SUSAN BROWN GIROIS, M.D.,	:	No. 03-3260
Defendant.	:	

MEMORANDUM AND ORDER

Schiller, J.

August 11, 2003

Presently before the Court is Plaintiff's motion to remand this case to the Court of Common Pleas of Philadelphia County. For the reasons set forth below, I grant Plaintiff's motion.

I. BACKGROUND

On February 24, 2003, Plaintiff Tasha S. Brooks, as Administratrix of the Estate of Tyrone Bates, deceased, brought suit against Defendant Dr. Susan Brown Girois for medical malpractice and wrongful death under Pennsylvania law in the Court of Common Pleas of Philadelphia County. Asserting subject matter jurisdiction under 28 U.S.C. § 1332(a), Defendant removed the case to this Court on May 23, 2003.

In her notice of removal, Defendant stated that she became "a French citizen via application and is married to a French citizen." (Notice of Removal ¶ 8.) Defendant "is also a citizen of the United States and has not made any affirmative steps to renounce or relinquish her United States citizenship." (*Id.* ¶ 9.) Additionally, in her opposition to Plaintiff's motion to remand, Defendant

asserts that she has no intention of returning to the United States; has no remaining contacts in the United States; no longer pays taxes here; and has not voted in the United States since March 2001. (Def.'s Memo. of Law in Supp. of Opp. to Pl.'s Mot. to Remand at 1-2; Notice of Removal ¶ 10.) Plaintiff now moves for remand to state court, arguing that the Court lacks subject matter jurisdiction over this action.¹ Oral argument on this motion was held on July 21, 2003.

II. DISCUSSION

Tyrone Bates was a United States citizen, domiciled in Pennsylvania.² As there is no dispute regarding Defendant's status, a dual citizen of France and the United States who is domiciled in France,³ the question is whether a person who is domiciled abroad and possesses dual citizenship

¹ Plaintiff also argued in her motion to remand that Defendant's removal was untimely under to 28 U.S.C. § 1446(b). Under this statute, a party has thirty days "after receipt by the defendant, through service or otherwise, of a copy of the initial pleading" to file a notice of removal in federal court. 28 U.S.C. § 1466(b) (2003). Defendant contends that she was served by a French police officer pursuant to the Hague Convention on April 30, 2003. (Answer to Pl.'s Mot. to Remand at 2; Ex. A.) As of the filing of her motion to remand, Plaintiff had not received an official proof of service from the Central Receiving Authority in France indicating the date of service. Counsel for Plaintiff did not raise this issue again at oral argument. If, as Defendant contends, service was made on April 30, 2003, Defendant's removal was timely on May 23, 2003. Regardless, my decision to remand is not decided on this ground.

² In the Complaint filed in state court, Plaintiff alleges that she was appointed Administratrix of the Estate of Tyrone Bates "by the Register of Wills of the County of Philadelphia, Commonwealth of Pennsylvania, United States of America. . . ." (Compl. ¶ 50.) Thus, for purposes of determining subject matter jurisdiction, it is assumed that the decedent's domicile was Pennsylvania and he was an American citizen. *See* 28 U.S.C. § 1332(c)(2) (2003) (stating that decedent's residence and citizenship control citizenship for jurisdictional purposes).

³ Counsel for the parties conceded at oral argument that France was Defendant's domicile at the time of commencement of suit and at the time of removal. Similarly, it is clear from the information provided by the Defendant that France is her domicile. *See Liakakos v. Cigna Corp.*, 704 F. Supp. 583, 587 (E.D. Pa. 1982) (determining domicile by factors including where litigant exercises civil and political rights, pays taxes, owns real property, has driver's and other licenses,

in the United States and the foreign state of domicile can invoke subject matter jurisdiction under § 1332(a). Under 28 U.S.C. § 1332(a)(1), Congress conferred original jurisdiction to federal district courts in all civil cases “where the matter in controversy exceeds the sum or value of \$75,000” and is “between citizens of different States,” 28 U.S.C. § 1332(a)(1) (2003), referred to commonly as diversity jurisdiction. Similarly, Congress conferred original jurisdiction under 28 U.S.C. § 1332(a)(2) to federal district courts in all civil cases “where the matter in controversy exceeds the sum or value of \$75,000” and is between “citizens of a State and citizens or subjects of a foreign state,” 28 U.S.C. § 1332(a)(2)(2003), often termed “alienage jurisdiction.”⁴

First, a United State citizen who is not domiciled in one of the United States cannot invoke federal jurisdiction under § 1332(a)(1). *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 829 (1989) (“In order to be a citizen of a State within the meaning of the diversity statute, a natural person must both be a citizen of the United States *and* be domiciled within the State.” (*citing Robertson v. Cease*, 97 U.S. 646 (1878); *Brown v. Keene*, 8 Pet. 112, 115 (1834))); *see also Sadat*

maintains bank accounts, belongs to clubs and churches, has places of business or employment, and maintains family home) *citing Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986)); *see also* 13B CHARLES A. WRIGHT, ARTHUR R. MILLER, & EDWARD H. COOPER, FED. PRAC. & PROC. § 3612 (1984) (stating that “[f]actors frequently taken into account [in determining a person’s domicile] include: current residence; voting registration and voting practices; location of personal and real property; location of brokerage and bank accounts; membership in unions, fraternal organizations, churches, clubs, and other associations; place of employment or business; driver’s license and automobile registration; payment of taxes; as well as several others”).

⁴ Jurisdiction conferred under 28 U.S.C. § 1332(a)(2) is often referred to as alienage jurisdiction by courts and commentators alike. *See, e.g., Koehler v. Bank of Berm. (N.Y.) Ltd.*, 229 F.3d 187 (2d Cir. 2000) (stating “[f]ederal courts may, under their alienage jurisdiction, hear controversies between ‘citizens of a State and citizens or subjects of a foreign state’” (*quoting* 28 U.S.C. § 1332(a)(2) (1994))); *Coury v. Port*, 85 F.3d 244 (discussing alienage jurisdiction under § 1332(a)(2)); 13B WRIGHT-MILLER-COOPER, FEDERAL PRACTICE & PROCEDURE § 3621 (2003); 1 JAMES WM. MOORE, MOORE’S FEDERAL PRACTICE ¶ 0.75 (2d. ed. 1996) (discussing alienage jurisdiction).

v. Mertes, 615 F.2d 1176, 1180 (7th Cir. 1980) (citations omitted)); *Liakakos v. Cigna*, 704 F. Supp. 583, 586 (E.D. Pa. 1988); 15 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE §102.37[16] (noting "the term 'citizen of a state' in the diversity statute requires that the individual be a United States citizen and domiciled in one particular state" (citing *Newman-Greene*, 490 U.S. at 828; *Brady v. Brown*, 51 F.3d 810, 815 (9th Cir. 1995)). As it is undisputed that Defendant is domiciled in France, she cannot invoke diversity jurisdiction under § 1332(a)(1) because she is not domiciled in one of the United States.

The main issue thus becomes whether she can invoke alienage jurisdiction pursuant to her French citizenship despite her United States citizenship. Many courts, including the Second, Fifth, Seventh, and Ninth Circuits, have held that "for a dual national citizen, only the American citizenship is relevant for purposes of diversity under 28 U.S.C. § 1332[(a)(2)]." *Coury v. Prot*, 85 F.3d 244, 250 (5th Cir. 1996) (citing *Action S.A. v. Marc Rich & Co.*, 951 F.2d 504 (2nd Cir.), cert. denied, 503 U.S. 1006 (1992); *Mutuelles Unies v. Kroll & Linstrom*, 957 F.2d 707 (9th Cir.1992); *Sadat v. Mertes*, 615 F.2d 1176 (7th Cir. 1980); *Las Vistas Villas, S.A. v. Petersen*, 778 F. Supp. 1202 (D.C. Fla.1991), aff'd, 13 F.3d 409 (11th Cir.1994); *Liakakos*, 704 F. Supp. at 583; *Maple Island Farm, Inc. v. Bitterling*, 196 F.2d 55 (8th Cir.), cert. denied, 344 U.S. 832 (1952)); see also *Gefen v. Upjohn Co.*, 893 F. Supp. 471, 473 (E.D. Pa. 1995) (citing *Newman-Green, Inc.*, 490 U.S. 826, 829 (1989); *Action S.A.*, 951 F.2d at 507)); *Kery v. Am. Airlines, Inc.*, 962 F. Supp. 264, 265 (D.P.R. 1997) (quoting *Coury*, 85 F.3d at 250). While the Third Circuit has not ruled on this specific issue,⁵ I am particularly counseled by the Fifth Circuit's rationale in *Coury v. Port*, 85 F.3d 244, 250

⁵ One Third Circuit case, *Pemberton v. Colonna*, 290 F.2d 220 (3d Cir. 1961), indirectly sheds light on this issue. In *Pemberton*, the district court held there was no subject matter jurisdiction under § 1332 where an American citizen was domiciled in Mexico. The Third

(5th Cir. 1996). In *Coury*, the Fifth Circuit reasoned that:

[T]he major purpose of alienage jurisdiction [under 28 U.S.C. § 1332(a)(2)] is to promote international relations by assuring other countries that litigation involving their nationals will be treated at the national level, and alienage jurisdiction is also intended to allow foreign subjects to avoid real or perceived bias in the state courts - - a justification that should not be available to the dual citizen who is an American.

85 F.3d at 250 (*citing* 13B WRIGHT-MILLER-COOPER § 3621 (1984) and 1 MOORE’S FEDERAL PRACTICE § 0.74[4] (1996)); *see also* *Liakakos*, 704 F. Supp. at 584-586 (outlining factors against permitting dual citizens to invoke alienage jurisdiction).

Although adopting this rationale would leave Defendant - - as well as all similarly situated parties - - unable to be sued in federal court under § 1332(a)(1), as she is a United States citizen domiciled abroad, *Newman-Greene*, 490 U.S. at 829, or, under § 1332(a)(2), as her United States citizenship controls, *Coury*, 85 F.3d at 250, and there is no complete diversity between the parties as Plaintiff is also a United States citizen, *Strawbridge v. Curtiss*, 7 U.S. 267 (1806), this anomaly

Circuit affirmed, stating:

A citizen of the United States is a citizen of the state in which he is domiciled. That is clear. But a citizen abroad is not a citizen of the country where he makes his home. To do that he must renounce his United States citizenship and acquire citizenship in the foreign country. We think that section (a)(2) “citizens of a State, and foreign states or citizens or subjects thereof” means what it says. The plaintiff even if no longer a citizen of Pennsylvania is a citizen of the United States and not a citizen of Mexico under the admitted facts.”

Pemberton, 290 F.2d at 220. Although, in the present case, Defendant has acquired French citizenship, *Pemberton* impliedly suggests that Defendant would have to also renounce her American citizenship in order to invoke section 1332(a)(2) for jurisdictional purposes. Defendant has not renounced her United States citizenship. I am, thus, persuaded by this factor in my decision that her United States citizenship must govern under § 1332(a)(2).

must be rectified by Congress, not by the Court. Therefore, as subject matter is lacking, I remand this case to the Court of Common Pleas of Philadelphia County. An appropriate Order follows.

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TASHA S. BROOKS,	:	
ADMINISTRATRIX OF THE ESTATE	:	
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Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
SUSAN BROWN GIROIS, M.D.,	:	No. 03-3260
Defendant.	:	

ORDER

AND NOW, this **11th** day of **August, 2003**, upon consideration of Plaintiff's Motion to Remand, Defendant's response thereto, and oral argument thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

Plaintiff's Motion to Remand (Document No. 3) is **GRANTED**. This matter is **REMANDED** to the Court of Common Pleas of Philadelphia County.

BY THE COURT:

Berle M. Schiller, J.