

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

<b>ANTONIO B. NORMAN and</b>	:	<b>CIVIL ACTION</b>
<b>RACHEL NORMAN, h/w</b>	:	
	:	
<b>vs.</b>	:	
	:	
<b>CNF, INC., CNF TRANSPORTATION,</b>	:	
<b>INC., PAUL L. PAYNTER and CON-WAY</b>	:	<b>NO. 01-5677</b>
<b>TRUCKLOAD SERVICES, INC.</b>	:	

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<b>WILFREDO SANTIAGO</b>	:	<b>CIVIL ACTION</b>
	:	
<b>vs.</b>	:	
	:	
<b>PAUL L. PAYNTER, a/k/a PAUL</b>	:	
<b>PAYNTOR and CON-WAY</b>	:	<b>NO. 01-2896</b>
<b>TRUCKLOAD SERVICES, INC.</b>	:	

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**ORDER AND MEMORANDUM**

**ORDER**

**AND NOW**, this 15th day of May, 2002, upon consideration of the Motion for Remand of plaintiffs, Antonio B. Norman and Rachel Norman (Document No. 3, filed November 19, 2001), joined in by plaintiff, Wilfredo Santiago, and the related submissions of the parties (Document Nos. 5, 6, 7 and 14 (Civil Action No. 01-5677), and 16 and 17 (Civil Action No. 01-2896)), following a hearing on January 14, 2002, on the issue raised in the Motion for Remand - the domicile of the defendant, Paul L. Paynter, at the time the suits were instituted<sup>1</sup> - **IT IS ORDERED** that the Motion for Remand of plaintiffs, Antonio B. Norman and Rachel Norman,

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<sup>1</sup>The two suits were instituted in the Court of Common Pleas of Philadelphia County. The Complaint in the Norman case was filed on October 4, 2001; the Complaint in the Santiago case was filed on April 25, 2001.

joined in by plaintiff, Wilfredo Santiago, is **GRANTED** and the two cases - Civil Action No. 01-5677 and Civil Action No. 01-2896 - are **REMANDED** to the Court of Common Pleas of Philadelphia County.<sup>2</sup>

## MEMORANDUM

### **I. BACKGROUND**

These cases arise out of an automobile accident that occurred on October 19, 1999. Plaintiff, Antonio B. Norman, was the operator of a vehicle that was struck by a tractor-trailer operated by Paul L. Paynter ("Paynter"). Wilfredo Santiago ("Santiago") was a passenger in the Norman vehicle. The other defendants in the two suits were the owners and/or operators of the tractor-trailer which was being driven at the time of the accident by Paynter.

The Santiago suit was filed in the Court of Common Pleas of Philadelphia County on April 25, 2001; the Norman suit was filed in the same Court on October 4, 2001. Both Complaints identified the Normans and Santiago as citizens of Pennsylvania, and defendant Paynter as a citizen of Pennsylvania. The remaining defendants are citizens of states other than Pennsylvania.

Defendants removed the two cases to this Court by Notice of Removal filed June 12, 2001. In the Notice of Removal, defendants asserted federal jurisdiction on the basis of diversity of the citizenship of the parties. See 28 U.S.C. § 1332. Defendants claim that, at the times the

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<sup>2</sup> Plaintiffs, Antonio B. Norman and Rachel Norman, filed Plaintiffs' Motion to Compel Discovery (Document No. 17) on May 3, 2002. Defendants filed Defendants CNF, Inc., CNF Transportation, Inc. and Con-Way Truckload Services Motion to Extend the December 19, 2001 Scheduling Order (Document No. 20) on May 10, 2002. The Court will not decide either motion in view of the remand.

suits were instituted, Paynter was not a citizen of Pennsylvania and instead was a citizen of New Jersey, and that the amount in controversy exclusive of interest and costs exceeded \$75,000.

Presently before the Court is the Motion for Remand filed on November 19, 2001 by plaintiffs in the Norman case, joined in by plaintiff Santiago. That Motion is based on plaintiffs' position that defendant Paynter was a citizen of Pennsylvania at the time the two suits were instituted and that, as a result, there is no federal jurisdiction. Specifically, the dispute in the cases turns on whether defendants have presented sufficient evidence that Paynter changed his domicile from Pennsylvania to New Jersey some time before April 25, 2001 with respect to both suits and, if not, some time before October 4, 2001 with respect to the Norman suit. For the reasons set forth in this Memorandum, the Court concludes that defendants have not proffered the requisite evidence and grants the motion to remand and remands both actions to the Court of Common Pleas of Philadelphia County.

## **II. LEGAL STANDARD**

The party asserting federal jurisdiction bears the burden of proving it exists. See Walls v. Ahmed, 832 F. Supp. 940, 941 n. 3 (E.D. Pa. 1993). In a motion for remand, the defendant bears the burden of proof in establishing subject matter jurisdiction. Steel Valley Auth. v. Union Switch & Signal Div., Inc., 809 F.2d 1006, 1010 (3d Cir. 1987). All doubts are to be resolved in favor of remand. See id. (citations omitted).

This Court has diversity jurisdiction only if each plaintiff is a citizen of a different state than each defendant. 28 U.S.C. § 1332. The relevant time for determining the status of a party's citizenship for the purpose of diversity jurisdiction is the time the suit is filed. Texas v. Florida, 306 U.S. 398 (1939).

Citizenship for purposes of diversity jurisdiction is synonymous with domicile. Krasnov v. Dinan, 465 F.2d 1298, 1300 (3d Cir. 1972). A state is one's domicile if one (1) resides in the state and (2) intends to remain there indefinitely. Id. at 1300-01. “Because both physical presence and intent to remain are required to establish domicile, domicile is not synonymous with residence and a person can reside in one state and be domiciled in another.” Doe v. Ross, Civ. A. 94-6572, 1995 WL 329042, \*2 (E.D. Pa. May 26, 1995) (citing Miss. Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 48 (1988)). “The intent requirement for domicile has been described as the intent to remain indefinitely or to make a home in the place of domicile. In cases where a party claims to have acquired a new domicile, the intent requirement has been described as the absence of an intention to go elsewhere.” Id. (citations omitted).

There is no minimum period of presence required in order to establish domicile. Walls, 832 F. Supp. at 942. Once a party satisfies the requirements of physical presence in a state and intent to remain there indefinitely, a person immediately becomes domiciled in that state. Id.

There is a presumption that, once acquired, domicile continues until it is shown to have changed. Korn v. Korn, 398 F.2d 689, 691 n.4 (3d Cir. 1968). “It is ... well settled that there is a presumption in favor of an original or former domicile as opposed to an acquired one.” Coggins v. Carpenter, 468 F.Supp. 270, 276 (E.D. Pa. 1979) (citing Herzog v. Herzog, 333 F. Supp. 477, 478 (W.D. Pa. 1971)). “Where the proponent of diversity contends that there has been change of citizenship of one of the litigants, the effect of the presumption in favor of the former domicile is to raise the standard of proof that the proponent must bear. Avins v. Hannum, 497 F. Supp. 930 (E.D. Pa. 1980). The proponent must then prove that the change of citizenship by clear and convincing proof.” Walls, 832 F.Supp. at 942, n.5 (quoting Avins, 497 F. Supp. 930 (citing

Herzog, 333 F. Supp. at 478)); see also Biomagnetics, Ltd. v. Spooner, No. CIV. A. 96-6477, 1997 WL 197283, \* 1 (E.D. Pa. Apr. 18, 1997); Doe, 1995 WL 329042 at \*2; Shaw v. Pottsville Hospital-Warne Clinic, Civ. A. No. 88-4444, 1991 WL 117390, \*5 (E.D. Pa. June 24, 1991).

An analysis to determine domicile is necessarily case specific. In determining the domicile of a party, courts have looked to certain factors including the establishment of one's home, place of employment, location of assets, and generally, the centering of one's business, domestic, social, and civic life in a jurisdiction—including voting registration, driver's license, the residence claimed for tax purposes, and the location of professional and personal attachments. Juvelis v. Snider, 68 F.3d 648, 654 (3d Cir. 1995); see also 13B Charles Alan Wright, Arthur R. Miller, Edward H. Cooper, Federal Practices and Procedures § 3612, at 530-31 (1984); Krasnov, 465 F.2d at 1301. A party's own declaration concerning his domicile, like any other "self-serving" statement, is subject to judicial skepticism, and is to be accorded little weight when in conflict with objective facts. See Korn, 398 F.2d at 691.

### **III. DISCUSSION**

There was ample evidence before the Court to establish that Paynter was a long-standing domiciliary of Pennsylvania. The question raised by the remand motion is whether defendants, as proponents of jurisdiction and advocates of a change in domicile, have presented clear and convincing proof that Paynter changed his domicile from Pennsylvania to New Jersey some time before April 25, 2001 with respect to both suits and, if not, some time before October 4, 2001 with respect to the Norman suit. In an attempt to meet their burden, defendants argue that Paynter has resided in New Jersey, at a minimum, since 1999 and that his employment, establishment of a home, location of his assets, and centering of his domestic, social, and civil

life in New Jersey prior to April 25, 2001, demonstrate his intention to remain indefinitely in New Jersey prior to that date. After considering the evidence in the record and the arguments of counsel, the Court concludes that defendants have not met their burden of establishing by clear and convincing evidence (or, for that matter, a preponderance of the evidence) that Paynter changed his domicile to New Jersey before the suits were filed.

The Court's determination is based on the following:

Paynter has been employed as an over-the-road truck driver with Dabco Trucking, Incorporated ("Dabco"), located in Tuckerton, New Jersey since December 2000. See Hearing Tr. at 28. Although this evidence supports defendants' argument, it alone is insufficient to establish that defendant intended to change his domicile to New Jersey prior to October 4, 2001. See Biomagnetics, 1997 WL 197283 at \* 3.

On the other hand, Paynter has at no time at issue in this motion either owned or leased real property in New Jersey and there is a paucity of evidence that he established a home in New Jersey prior to October 4, 2001. Paynter testified that he rented an apartment located at 358 Hector Street in Conshohocken, Pennsylvania until late 1997 or early 1998 when he gave up the apartment and began living out of the truck that he drove for a living.<sup>3</sup> See id. at 36-37, 59. When not on the road, he stayed with relatives, including his uncle and sister, who lived in New Jersey.<sup>4</sup> See id. at 50, 65-66. Paynter characterized his stays with his uncle and sister as

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<sup>3</sup> In fact, Paynter testified that he gave up his apartment in Conshohocken, Pennsylvania because his job required him to spend so much time on the road that "there was no need for [him] to have an apartment." Id. at 37. At this point he began "staying in [his] truck." Id.

<sup>4</sup> Beginning in 1999, Paynter stayed with his sister, who lives in Sicklerville, New Jersey, on a temporary basis for approximately one year. In 2000, Paynter stayed with his uncle, who lives in Woodbury, New Jersey, on a temporary basis for approximately six months. See id. at

temporary in nature. See id. at 65-66.

In February 2001, when not on the road, Paynter began living with girlfriend, Carolyn Chambers, in her apartment located in Paulsboro, New Jersey. See id. at 3-4. Defendants assert that Paynter established a home at this apartment prior to April 25, 2001 and, in support of this contention, offer the testimony of Paynter and Carolyn Chambers that since February 2001 Paynter has: (1) spent approximately 11 days per month at the apartment, see id. at 21; (2) contributed \$500 per month for rent—100 percent of the monthly rent, see id. at 4-5; (3) kept all of his belongings at the apartment, see id. at 5-6; and (4) engaged in household chores, including taking out the trash and cleaning the yard, and cooking. See id. at 5. They also offer a letter dated January 21, 2002 from D. Samuel Wilkinson at Dabco stating that “Paul Paynter has given me permission to release his primary residence address as of 2/01/01 as 124 [W]est [B]road [S]treet in Paulsboro, New Jersey.” See Supplemental Memo. of Law in Support of Defs.’ Response to Pls.’ Mot. for Remand, Def.’s Ex. B. The Court notes that this letter was written after the issue was raised at the January 14, 2002 hearing on this motion. Moreover, the letter says nothing about Paynter’s address as set forth in Dabco’s records.

That this evidence establishes anything more than Paynter intended to temporarily stay at his girlfriend’s apartment when not on the road for his job, as he did with his sister and uncle, is significantly undermined by objective evidence to the contrary: (1) Paynter has never received any mail at this address and instead had everything sent to his post office box in Clarksboro, New Jersey, see id. at 9; (2) his name is not on the lease for the apartment nor are any of the utility bills in his name, see id. at 16-17; (3) he has never used the Paulsboro address on an official

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35-36, 65-66.

document such as a driver's license, tax return, or voter's registration, see id. at 15-17, 48-52; (4) he has not provided his employer with any form or document, such as a driver's license, identifying his residence as Paulsboro, New Jersey, see Aff. of Wilkinson, Jan. 31, 2002.; and (5) subsequent to the hearing in this case, plaintiffs' counsel sent a certified letter to Paynter at his professed current address in Paulsboro, New Jersey; the United States Post Office returned the letter to counsel as undeliverable. See Pls.' Supplemental Memo. of Law in Support of Mot. for Remand, Ex. F.

Moreover, Paynter's testimony at the hearing with regard to his intention to reside indefinitely at this apartment in New Jersey was equivocal at best. At the hearing, Paynter acknowledged when he moved into the Paulsboro apartment in February 2001 he and Carolyn Chambers were not yet engaged, but "were seeing how things would work out." Hearing Tr. at 67. At one point during the hearing, Paynter testified that he became engaged after April 25, 2001, the date on which the Santiago Complaint was filed, but at another time he testified that he made up his mind to become engaged in March or April, before April 25, 2001. See id. at 66-68. On this point, Carolyn Chambers did not testify with respect to when she and Paynter became engaged, and Paynter admitted that he has not given a ring to Carolyn Chambers. See id. at 67.

To further complicate this issue, Paynter submitted an affidavit in opposition to this motion on December 6, 2001 in which he stated that he currently resided at 24 Packard Avenue, Woodbury, New Jersey and had resided at that residence on April 25, 2001 and October 4, 2001. See Aff. of Paul Paynter, at ¶ 5-7. At the hearing, Paynter admitted that these statements were false and testified that since February 2001 he had lived at 124 West Broad Street in Paulsboro, New Jersey with Carolyn Chambers. See Hearing Tr., at 27-28, 56. Considering that there is no

objective evidence with respect to when Paynter and Chambers became engaged and that Paynter has provided inconsistent evidence with respect to his residence, Paynter's testimony on these points is entitled to little weight.

In addition, although there is some evidence that prior to the filing of the suits Paynter began to develop ties with New Jersey—filing a New Jersey State Tax Return for the year 2000 in March 2001, having New Jersey taxes deducted from his Dabco paychecks as early as May 2001, receiving all his mail at a post office box located in New Jersey since October 2000, and occasionally dining out, visiting relatives, and shopping in New Jersey—the record does not establish that Paynter generally centered his life in New Jersey prior to October 4, 2001. Paynter spends approximately 20 days per month on the road for his job as an over-the-road truck driver. See id. at 21. At all times at issue in this motion, and at present, he has been licensed to drive in Pennsylvania.<sup>5</sup> See id. at 37, 48-50. He has a Commercial Driver's License issued by the Commonwealth of Pennsylvania on February 11, 2000 listing his address as 358 East Hector Street, Conshohocken, Pennsylvania, 19428. See Pl.'s Ex. 2; Hearing Tr. at 48. He has never applied for a New Jersey driver's license—a requirement for his job as a truck driver—despite the fact that he gave up his apartment in Pennsylvania over four years ago and claims to have established a home in Paulsboro, New Jersey. See Hearing Tr. at 37, 48-50. And Paynter declared himself a Pennsylvania resident in December 2000 when he listed Conshohocken, Pennsylvania as his place of residence on his Dabco employment application. See Aff. of

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<sup>5</sup> At all times at issue in this motion and at present Paynter has been registered to vote in Pennsylvania; however, this evidence provides little guidance on the issue whether he intended to change his domicile prior to the filing of the suits because Paynter has not exercised this right since 1996.

Wilkinson, Jan. 31, 2001, Ex. A.

Finally, prior to October 4, 2001, Paynter had not established any financial ties—bank accounts or brokerage accounts—to New Jersey,<sup>6</sup> see Hearing Tr. at 42-44, or joined any social or religious organizations located in New Jersey,<sup>7</sup> see id. at 24, although Carolyn Chambers testified that he began attending church in New Jersey six months (Paynter said twelve months) prior to the hearing on January 14, 2002. See id. at 7-8, 34.

Based on the evidence and the record, the Court concludes that defendants failed to produce sufficient evidence to meet their burden that Paynter intended to reside indefinitely or permanently in New Jersey prior to October 4, 2001 - they have failed to establish by clear and convincing evidence or, for that matter, a preponderance of the evidence, that Paynter intended to change his domicile from Pennsylvania to New Jersey before that date. Thus, the Court concludes that Paynter remained a Pennsylvania domiciliary as of October 4, 2001.

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<sup>6</sup> Although Paynter eventually opened a bank account at Commerce Bank in Woodbury, New Jersey, he did not do so until after the dates on which the suits were filed. See id. at 42-44.

<sup>7</sup> Paynter joined Bethel A.M.E. Church in Paulsboro, New Jersey in November 2001. See id. at 24.

#### **IV. CONCLUSION**

For all of the foregoing reasons, the Court concludes that on the dates on which the suits were filed—April 25, 2001 and October 4, 2001—all three plaintiffs and defendant Paynter were citizens of Pennsylvania. Thus, there is no diversity of citizenship jurisdiction and there is no other basis of federal jurisdiction. For that reason, the cases must be remanded to the Court of Common Pleas of Philadelphia County.

**BY THE COURT:**

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**JAN E. DuBOIS, J.**