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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

FREDERICK and JANICE GREDE,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiffs-Appellees,)	
)	
v.)	No. 10-MR-642
)	
THE ILLINOIS DEPARTMENT OF)	
REVENUE and BRIAN A. HAMER, in his)	
official capacity as Director of the Illinois)	
Department of Revenue,)	Honorable
)	Bonnie M. Wheaton,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The decision of the Director of the Illinois Department of Revenue that plaintiff Frederick Grede was an Illinois resident during the period he was employed full-time in Hong Kong was clearly erroneous. Further, Frederick was not precluded, as a matter of law, from asserting nonresident status even though he claimed a homestead exemption on property taxes and filed a joint Illinois income tax return with his wife in 2003. Therefore, we affirmed the trial court's order reversing the agency's decision.

¶ 2 Defendants, the Illinois Department of Revenue (Department) and Brian A. Hamer, in his official capacity as Director of the Illinois Department of Revenue, appeal the trial court's ruling

reversing the decision of the Director, who had accepted the recommendation of the Department's administrative law judge to affirm the Department's notice of tax deficiency (NOD) issued to plaintiffs, Frederick and Janice Grede. The NOD covered tax years 2001 through 2003 and was in the amount of \$102,079, consisting of \$79,488 for taxes due plus \$22,591 for interest. The NOD was based on the Department's determination that Frederick was an Illinois resident during the tax years in question, including the period of 2001 to June 2003, when Frederick was working full-time in Hong Kong. On review, the trial court ruled that the Director's decision was "against the manifest weight of the evidence."

¶ 3 On appeal, defendants argue that: (1) the Director's decision that Frederick had not abandoned any intent of returning to Illinois from Hong Kong in 2000 to 2003¹ was not clearly erroneous; (2) as a matter of law, Frederick is precluded from claiming that he was a Hong Kong resident from 2000 to 2003, because he continued to claim and receive the homestead property tax exemption on his Illinois residence; and (3) as a matter of law, Frederick is precluded from claiming that he was a Hong Kong resident for part of 2003, because he jointly filed his 2003 Illinois return with Janice, who was a full-time Illinois resident. We affirm the ruling of the trial court reversing the Director's decision.

¶ 4

I. BACKGROUND

¶ 5

A. Hearing

¹We note that while the arguments encompass the year 2000, the NOD pertains only to tax years 2001 to 2003.

¶ 6 The Department issued the NOD on April 27, 2007. The Gredes protested the NOD, and an administrative hearing took place on September 17, 2008. We summarize the Gredes' testimony and relevant exhibits.

¶ 7 In 1999, the Gredes had resided in Hinsdale, Illinois, with their two children, for a number of years. Frederick was the executive vice president of planning and administration of the Chicago Board of Trade, a role that he had been in for about 10 years. The only position for advancement within the organization would have been the chief executive of the exchange, but that individual had been there for 10 to 12 years and signed a new five-year contract in 2000.

¶ 8 In late 1999, a firm recruited Frederick to launch the consolidated Hong Kong Exchange (HKEX) as its deputy chief operating officer. The primary attraction to the opportunity for Frederick was that it was going to be the first exchange in the world to go public, and he was promised stock options. The HKEX extended a job offer to Frederick in January 2000. He accepted the offer and began to work in Hong Kong around April 1, 2000. The employment contract listed a term of three years, but the common practice was to renew agreements with senior officers. The position was full-time, and Frederick was required to work 9 am to 5:30 p.m. Monday through Friday and 9 a.m. to 1 p.m. on alternating Saturdays. Thus, the position required Frederick to live in Hong Kong. The contract did not list any stock options because the company could not officially structure an options program and offer the options until the company went public. However, Frederick had a general understanding through his discussions with the company about what stock options he would be given.

¶ 9 The HKEX applied for a visa on Frederick's behalf, but it did not apply for visas for Janice and the children. Frederick obtained an employment visa to work in Hong Kong; he did not know

whether a residency visa was even available. The application required him to specify the “[p]urpose of this journey,” and Frederick wrote employment at the Hong Kong Stock Exchange. For the “[d]uration of proposed stay,” he wrote, “3 yrs.” Frederick returned to the United States “fairly frequently” for business purposes; he returned to Illinois more than four to five times per year. On these trips, Frederick indicated that he was a Hong Kong resident on the American customs cards.

¶ 10 Frederick obtained a Hong Kong identity card, which was required for anyone over 18, and a Hong Kong driver’s license. He also kept his Illinois drivers’ license and may have renewed it while living in Hong Kong. Frederick voted by an Illinois absentee ballot in the 2000 presidential election.

¶ 11 Shortly after Frederick began working for the HKEX, the chief operating officer left, and Frederick was offered that position. He signed a new, three-year employment contract dated June 22, 2000. The two employment contracts were largely the same except for the compensation, title, and employment period. The contracts included a rental reimbursement and “Holiday Allowance” equal to 50% of the monthly salary, but the contracts stated that amounts not expended for those purposes would be treated as additional salary.

¶ 12 The HKEX went public in June 2000. Frederick signed an options contract with the HKEX dated June 20, 2000. Frederick could receive 1.2 million shares at a price of \$1 each, regardless of the actual trading price, but subject to a vesting period. Frederick had to stay until March 2002 to be vested in the initial 25%, or 300,000, options. The next 300,000 would vest in March 2003, and so on. When Frederick vested, the options were worth \$1.50 or \$2 per share. Frederick no longer owned any of the stock but estimated it was currently worth 20 times the options price.

¶ 13 Frederick opened up a bank account in Hong Kong to deposit his paychecks, which was something that the HKEX required. He also kept his Illinois brokerage and bank accounts and regularly transferred money into the bank account to provide for his family. In February 2002, Frederick opened a brokerage account in Hong Kong to handle the stock options, and he received certain employee incentives in the process.

¶ 14 The only doctor Frederick saw while in Hong Kong, other than an eye doctor, was for physicals related to employment and insurance. However, he also did not “really have a primary doctor” in Illinois, either. The HKEX initially provided health insurance, but it was difficult for the family to use because the forms were in Chinese, so Frederick subsequently purchased insurance through Blue Cross and Blue Shield of Illinois.

¶ 15 In Hong Kong, Frederick joined the American Club and the Discovery Bay Golf Club. He had been a member of the Union League Club in Chicago, and when he moved, he changed that membership to nonresident status, which decreased the dues owed; Frederick used the club for business meetings when he was in town. The family had an interim membership in the Ruth Lake Country Club in Hinsdale beginning in 1997, and the Gredes upgraded that to a full membership in 2000.

¶ 16 When Frederick left for Hong Kong, he terminated the lease on his car. Upon arriving in Hong Kong, Frederick initially moved into the apartment of the former executive of the HKEX and signed a six-month lease. He later extended the six-month lease several times, and at some point he signed a two-year lease. Frederick ended up living in the apartment the entire time he was in Hong Kong. Hong Kong was the most expensive city in the world to live in, and the two-bedroom apartment had a monthly rent of \$8,000. In contrast, Frederick’s mortgage on the Illinois home and

his summer home in Wisconsin totaled less than \$4,000 per month. Hong Kong property was generally leased out on a long-term basis rather than bought and sold. Shortly after Frederick arrived in Hong Kong, he and Janice looked at about 20 or 25 properties together, and Frederick looked at another 10 to 15 properties with a real estate agent. However, they never made an offer for another property, and Janice did not maintain contact with the Hong Kong realtor into 2001.

¶ 17 The Gredes anticipated having to sell their Hinsdale home and had some painting done on it. They were not worried about finding a buyer because the market was strong at that time, and they thought they could sell it within a week of listing it. They did not end up putting the house on the market. The utilities for the house remained in Frederick's name, and a homestead tax exemption was claimed on the house from 2001 to 2003.

¶ 18 When Janice first went to Hong Kong after Frederick started working there, Janice met with the administrators of the American School in Hong Kong to discuss the enrollment process for their children for the fall. The American School was the only school in the city where English was the primary language and that had a curriculum comparable to that of the United States. The grade level of their daughter, Jennifer, was at capacity. Therefore, Jennifer was unable to enroll at that time and remained in Illinois schools for the next academic year. There was room for their son, Jason, but he did not attend that year.

¶ 19 On October 16, 2001, the school sent an e-mail to the Gredes asking if they were still interested in enrolling their children for the second semester of that academic year. Jason enrolled for the spring semester in 2002, when he was a sophomore in high school. However, he suffered a serious head injury around March 2002 while on vacation. Jason finished the semester in Hong Kong, but his academic performance had declined significantly. Therefore, for remedial and medical

reasons, the Gredes determined that Jason should remain in Illinois to finish high school. Jennifer never enrolled in school in Hong Kong.

¶ 20 Around March 2003, Frederick had discussions with Casey Kwong, the HKEX's Chief Executive, about renewing his contract. However, shortly thereafter, Kwong announced that he was leaving. Kwong's successor told Frederick that his contract would not be renewed. Frederick met with the recruiting firm that had brought him to Hong Kong, but he could not find a comparable position. He ended up forming a consulting company in Hong Kong with other individuals. However, given the high cost of living in Hong Kong, Frederick decided to return to the United States.

¶ 21 Frederick filed his 2001 Illinois income tax return as married, filing separately, and as a nonresident. He did not file an Illinois return for 2002. Janice filed her 2001 and 2002 returns as married, filing separately. Frederick and Janice filed a joint 2003 return as part-year residents for June 15 to December 31, 2003, representing the period after Frederick returned from Hong Kong.

¶ 22 **B. Agency Decision**

¶ 23 The Department's administrative law judge issued his recommendation for disposition on August 3, 2009. On August 5, 2009, the Director accepted the recommendation as his final administrative decision, thereby finding as follows.

¶ 24 The Department's NOD was *prima facie* proof that Frederick was an Illinois resident for the tax years at issue. Plaintiffs therefore had the burden of production and persuasion to show, by a preponderance of the evidence, that the determination was incorrect.

¶ 25 The evidence did not show that Frederick changed his domicile from Illinois to Hong Kong when he moved there. Specifically, Frederick kept and maintained ownership of the Hinsdale home

and claimed and obtained the homestead tax exemption. He further continued to return to the home during the tax years at issue and returned there when his employment contract was terminated.

¶ 26 Even though Frederick remained an Illinois domiciliary, he could still be considered a nonresident for tax purposes if he was absent from Illinois for other than a temporary or transitory purpose from 2001 to 2003. Frederick credibly testified that he hoped that his Hong Kong employment might last as long as the 10-year period specified in the options agreement,² but the three-year employment contracts provided better evidence that the employment would not last indefinitely or permanently. Also, the length of time that Frederick was absent from Illinois was roughly comparable to the length of time required to obtain a college degree or to serve a stint in the armed services.

¶ 27 Moreover, the manner in which the Gredes filed their 2003 Illinois return had a preclusive effect on their ability to challenge the alleged deficiency for that year. That is, under section 502(c)(3) of the Illinois Income Tax Act (Tax Act) (35 ILCS 5/502(c) (West 2002)), the only way for the Gredes to have their Illinois income tax liabilities calculated separately was to file their return as married, filing separately. However, for 2003, the Gredes filed their return as married, filing jointly, as part-year residents of Illinois. Since it was undisputed that Janice was actually a full-year resident of Illinois during 2003, the Gredes waived their right to have Frederick's 2003 income treated as if he were a part-year resident of the state.

¶ 28 C. Trial Court Decision

²The options agreement stated that Frederick would be vested in 100% of the options “[f]rom March 6th, 2005 up to and including 30th May, 2010.”

¶ 29 The Gredes sought administrative review of the Department’s decision in the trial court. The trial court reversed the Department’s decision as “against the manifest weight of the evidence.” It found as follows. The main focus of the case was Frederick’s intent at the time he filed the returns. The clear weight of the evidence showed that his intent was to go to Hong Kong on a permanent basis; he had a three-year contract with the possibility of ten-year options. Although he did not end up staying more than three years, his testimony was credible that he intended to permanently reside in Hong Kong when he filed the returns. The Department’s decision was “somewhat chauvinistic in its implied stand that one party in a marriage [could not] change domicile while the other remains in the previous domicile.”

¶ 30 Defendants timely appealed.

¶ 31 II. ANALYSIS

¶ 32 We begin by setting forth the applicable standard of review. In an appeal to the appellate court following the decision by a circuit court on administrative review, we review the decision of the administrative agency rather than the circuit court’s judgment. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). When the parties dispute an administrative agency’s factual findings, we apply a manifest weight of the evidence standard. *Id.* at 387. Where the dispute is an agency’s conclusion on a point of law, we review the agency’s decision *de novo*. *Id.* An intermediate standard applies for mixed questions of law and fact, which occur where, as here, the dispute pertains to the legal effects of a set of facts. More specifically, a mixed question of law and fact is present “where the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard.” *Id.* We review mixed questions of law and fact for clear error. *Id.* An agency’s decision is clearly erroneous

where the reviewing court, after reviewing the entirety of the record, is left with a definite and firm conviction that the agency committed a mistake. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 393 (2001). The clearly erroneous standard provides some deference based on the agency's experience and expertise, and the standard falls between the *de novo* and manifest-weight standards of review. *Lambert v. Downers Grove Fire Department Pension Board*, 2013 IL App (2d) 110824, ¶ 23.

¶ 33 A. Whether Frederick was an Illinois Resident

¶ 34 Defendants argue that the Director's decision that Frederick remained a resident of Illinois during 2001 to 2003 was not clearly erroneous because: (1) there was evidence that he did not abandon all intent of returning to his Illinois domicile; and (2) his connections to Illinois were stronger than his connections to Hong Kong.

¶ 35 Our analysis of these issues requires a detailed examination of relevant statutes and regulations. Section 201(a) of the Tax Act imposes an income tax "on the privilege of earning or receiving income in or as a resident of this State." 35 ILCS 5/201(a) (West 2000). Section 1501(a)(20)(A) of the Tax Act defines "resident" as:

"an individual (i) who is in this State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year." 35 ILCS 5/1501(a)(20)(A) (West 2000).

Defendants do not argue that subsection (i) applies. Under section (ii), it appears that a nonresident could include someone who is domiciled in Illinois but absent from the State for *other than a* temporary or transitory purpose during the taxable year.

¶ 36 The Tax Act defines “part-year resident” as:

“an individual who became a resident during the taxable year or ceased to be a resident during the taxable year. Under Section 1501(a)(20)(A)(i) residence commences with presence in this State for other than a temporary or transitory purpose and ceases with absence from this State for other than a temporary or transitory purpose. Under Section 1501(a)(20)(A)(ii) residence commences with the establishment of domicile in this State and ceases with the establishment of domicile in another State.” 35 ILCS 5/1501(a)(17) (West 2000).

Thus, unlike section 1501(a)(20)(A)(ii), section 1501(a)(17)(ii) emphasizes the individual’s domicile in determining residency.

¶ 37 Still, we are not left with just these two statutory subsections in determining the definition of a “resident.” Section 1401 of the Tax Act (35 ILCS 5/1401 (West 2000)) authorizes the Department to promulgate rules and regulations relating to the administration and enforcement of the Tax Act’s provisions. While the Tax Act uses the term “domicile” in its definition of “resident” without defining the former term the Department’s regulations define “domicile” as follows:

“Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, the place to which he intends to return whenever he is absent. It is the place in which an individual *has voluntarily fixed the habitation of himself and family*, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. Another definition of “domicile” consistent with the above is the place where an individual has fixed his habitation and has

a permanent residence without any present intention of permanently removing therefrom. *An individual can at any one time have but one domicile.* If an individual has acquired a domicile at one place, he retains that domicile until he acquires another elsewhere. Thus, if an individual, who has acquired a domicile in California, for example, comes to Illinois for a rest or vacation or on business or for some other purpose, but intends either to return to California or to go elsewhere as soon as his purpose in Illinois is achieved, he retains his domicile in California and does not acquire a domicile in Illinois. Likewise, an individual who is domiciled in Illinois and who leaves the state retains his Illinois domicile as long as he has the definite intention of returning to Illinois. On the other hand, an individual, domiciled in California, who comes to Illinois with the intention of remaining indefinitely and with no fixed intention of returning to California loses his California domicile and acquires an Illinois domicile the moment he enters the state. *Similarly, an individual domiciled in Illinois loses his Illinois domicile:*

1) by locating elsewhere with the intention of establishing the new location as his domicile, *and*

2) by abandoning any intention of returning to Illinois.” (Emphases added.) 86 Ill.

Admin. Code 100.3020(d).

¶ 38 Defendants cite *Maksym v. Board of Election Commissioners*, 242 Ill. 2d 303 (2011), where our supreme court examined whether Rahm Emanuel had abandoned his Illinois residence when he moved to Washington, D.C. to serve in the Obama administration. We summarize the pertinent analysis from that case. The legal meaning of “residence” was well-settled in almost every setting where the court had construed a legal residence requirement. *Id.* at 321. Establishing a residency

requires both a physical presence and an intent to remain in the place as a permanent home. *Id.* at 319. Once a person has established a residence, he can be absent for months or years without abandoning it. *Id.* “Only when abandonment is proven is residence lost.” *Id.* at 327. A party’s intent is controlling on the question of abandonment, and that intent is determined by both a person’s declarations and his acts. *Id.* Once a residence is established it is presumed to continue, and the party claiming a change in residence has the burden of proof. *Id.*

¶ 39 The supreme court concluded that the decision of the Board of Election Commissioners, that the preponderance of the evidence showed that Emanuel did not intend to abandon his Chicago residence, was not clearly erroneous. *Id.* at 328. The court noted that not only did Emanuel testify that his intent was not to abandon his Chicago residence, his acts fully supported and confirmed that intent, as he: continued to own real estate and pay property taxes on it; stored valuable personal property of kinds that a reasonable person would store at his permanent residence; leased property in Washington, D.C.; told people he intended to return to Chicago; maintained an Illinois driver’s licence; registered his car in Illinois; paid income tax in Illinois in addition to Washington, D.C.; registered to vote in Illinois; and did his banking in Illinois. *Id.* at 328-29.

¶ 40 The Gredes argue that although the Department regulation states that a domicile is the voluntary fixed place of habitation of an individual and his family, a reasonable interpretation of the regulation should not require unreasonable action on the part of those subject to the regulation. They maintain that their decision not to immediately move their children to a foreign country and enroll them in schools where Chinese is the only language should not be viewed as a failure to abandon Illinois as a domicile, as common sense dictates that moving to Hong Kong is not like moving to Iowa. They argue that although they could afford Frederick’s residence in Hong Kong without first

having to sell their Hinsdale home, their fortunate financial position, which allowed them to make the right choices for their children, should not be automatically seen as a failure to acquire Hong Kong as a new domicile.

¶ 41 The Gredes also cite *Cain v. Hammer*, 2012 IL App (1st) 112833, where the issue was whether the plaintiffs, Tyler and Talbot Cain, were Illinois residents for tax purposes. The Cains lived in Illinois for many decades. *Id.* ¶ 3. However, in November 1995, they filed a declaration renouncing their Illinois residency and declaring themselves residents of Florida. The Cains obtained permanent-resident identification cards in Florida, held Florida drivers' licences, voted in Florida, and purchased burial plots in Florida. Tyler also had a Florida firearm license and had a cell phone number with a Florida area code. *Id.* ¶ 4. The Cains spent about equal amount of time in Illinois and Florida, had doctors and legal advisors in both states, and were members of clubs and organizations in both states. *Id.* ¶¶ 5-7.

¶ 42 In examining whether the Cains had changed their domicile to Florida, the court stated that because the Cains had split their time about equally between the two states, they maintained an intent to return to both locations. However, since individuals could have only one domicile, and neither party advocated that the Cains' domicile alternated between the two states, the concept of " 'intent to return' " could not govern the result. *Id.* ¶ 19. Instead, the court relied on the concept of domicile as an intended permanent home and the concept of return as a permanent, indefinite, or lengthy return. *Id.* The court stated that given that the Cains changed their voter registration to Florida, paid Florida income taxes, obtained Florida residency cards and drivers' licenses, and filed a declaration of their Florida residency, their intent to establish Florida as their permanent residence in 1995 was "quite clear." *Id.*

¶ 43 Here, the Director found that Frederick did not change his domicile from Illinois to Hong Kong when he moved there. According to Department regulations, Frederick could lose his Illinois domicile only if he abandoned any intent of returning to Illinois. 86 Ill. Admin. Code 100.302(d). We recognize that the *Cain* court did not apply this factor because the evidence there showed that the Cains split their time almost evenly between Illinois and Florida. However, that is not the situation here, so the abandonment consideration remains relevant, as its application in *Maksym* confirms.

¶ 44 We conclude that the Director's determination that Frederick's domicile was Illinois rather than Hong Kong is not clearly erroneous. The evidence showed that Frederick kept his name on the Hinsdale house and utilities, where his wife and children continued to live; after 2000, the Gredes took, at best, limited steps toward having the entire family move to Hong Kong; the Gredes claimed the homestead tax exemption for their house; Frederick kept his Illinois bank accounts; Frederick remained a member of the Union League Club in Chicago (albeit at nonresident status); the family upgraded their interim membership at Ruth Lake Country Club to a full membership; Frederick kept his Illinois drivers' license and may have renewed it while in Hong Kong; and Frederick returned to his Illinois home four to five times per year and when his employment contract was terminated. As such, there was ample evidence that Frederick had not abandoned "any" intention of returning to Illinois.

¶ 45 In reaching this conclusion, we do not apply, as the trial court imputed to the administrative ruling, a "chauvinistic" view that a husband and wife cannot be domiciled in different locations. However, the location of one's immediate family, including minor children, is a significant consideration, especially where, as here, the Gredes assert that all of them intended to permanently

move to Hong Kong. Moreover, as an examination of the facts here shows, Frederick himself maintained virtually all of his connections with this state while away, which shows an intent contrary to that of abandonment. While reasonable minds could arguably reach different conclusions on the issue of domicile here in the first instance, we must afford some deference to the administrative determination, and that determination cannot be labeled as clearly erroneous under the facts of this case.

¶ 46 The Gredes argue that even if it were established that Frederick was domiciled in Illinois, domicile is not dispositive of an individual's residency. We agree. As discussed, section 1501(a)(20)(A)(ii) of the Tax Act appears to indicate that an individual who is domiciled in Illinois but is absent from the state for other than a temporary or transitory purpose would qualify as a nonresident. See 35 ILCS 5/1501(a)(20)(A)(ii) (West 2000). Department regulations confirm this understanding, as they state that “[i]f an individual is domiciled in Illinois, he remains a resident unless he is outside Illinois for other than temporary or transitory purposes.” 86 Ill. Admin. Code 100.3020(b).³

¶ 47 Department regulations further expound on the concept of “temporary or transitory purpose”:
“Whether or not the purpose for which an individual is in Illinois will be considered temporary or transitory in character will depend upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through Illinois on his way to another state, or is here for a brief rest or vacation, or to

³Regulations also note that the term “resident” may be defined differently for different purposes, so an individual may be a “resident” for Illinois income tax purposes but not a “resident” eligible to vote. 86 Ill. Admin. Code 100.3020(I).

complete a particular transaction, or *perform a particular contract*, or fulfill a particular engagement, which will require his presence in Illinois for but a short period, he is in Illinois for temporary or transitory purposes, and will not be a resident by virtue of his presence here. If, however, an individual is in Illinois to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for *business purposes which will require a long or indefinite period to accomplish*, or is *employed in a position that may last permanently or indefinitely*, or has retired from business and moved to Illinois with no definite intention of leaving shortly thereafter, he is in Illinois for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may also maintain an abode in some other state.” (Emphases added.) 86 Ill. Admin. Code 100.3020(c).

¶ 48 The regulation includes three examples. In the first example, an individual who has lived in Alaska for decades moves to Illinois for medical reasons, while still keeping his Alaskan home. He spends three or four months out of the year in Alaska and the rest of the time in Illinois. The regulation states that the man is a resident of Illinois because his stay in Illinois is not temporary or transitory. The regulation further states that if the facts are reversed so that Illinois is the state of the original domicile, the man is not a resident of Illinois because he is absent from Illinois for other than a temporary or transitory purpose. 86 Ill. Admin. Code 100.3020(c)(1).

¶ 49 In the second example, a long-time Illinois resident decides to declare himself to be domiciled in Nevada, where he has a summer home, to avoid the Illinois income tax. The man spends three or four months in Nevada and six or seven months at his home in Illinois, and the rest of the time traveling. The man continues his social club and business connections in Illinois. The

regulation states that the man is an Illinois resident for tax purposes because his time in Illinois is not for a temporary or transitory purpose. If the facts are reversed so that Nevada is the state of his original domicile, the man is not a resident of Illinois because he is absent from Illinois for other than temporary or transitory purposes. 86 Ill. Admin. Code 100.3020(c)(2).

¶ 50 In the third example, a couple is domiciled in Minnesota, where they maintain their family home. They come to Illinois each November and stay until mid-March. They originally stayed in rental property during their time in Illinois but purchased a home here three years ago. The husband has retired from active control of his Minnesota business but still has some involvement. He does not have any business interests in Illinois. He belongs to clubs in Minnesota but not in Illinois. The wife has no relatives in Illinois and little social life here. The regulations stated that neither the husband or wife is a resident of Illinois, because their connection to Minnesota is stronger than that to Illinois, and their presence here is for temporary or transitory purposes. If the facts were reversed and the couple were domiciled in Illinois and visitors to Minnesota, they would be considered Illinois residents. 86 Ill. Admin. Code 100.3020(c)(3).

¶ 51 In analyzing these examples, the *Cain* court stated that they make clear that a person's several-month stays in Illinois do not render his presence here other than temporary or transitory, notwithstanding ownership of a home in Illinois, as the examples consider factors regarding intent as controlling. *Cain*, 2012 IL App (1st) 112833, ¶ 22.

¶ 52 Defendants emphasize Frederick's continuing connections in Illinois and his family's continuing stay in Illinois, despite their financial ability to move to Hong Kong. They also argue that his move to Hong Kong was "to perform a particular contract" rather than because of being "employed in a position that may last permanently or indefinitely." 86 Ill. Admin. Code

100.3020(c). Defendants argue that the contracts for Frederick's initial and promoted positions were for a three-year term, and the contracts did not contain any renewal provisions. Defendants maintain that although Frederick testified that becoming vested under the stock-options agreement was a major factor in his decision to accept the position, he would have been fully vested in any options received in March 2005. Defendants also note that when Frederick applied for a visa, he stated that the purpose of his journey was employment at the HKEX, and he listed the duration of his proposed stay as three years. Defendants contend that these facts, when considered in light of Frederick's decisions to not move his family and to maintain his Illinois residence, drivers' license, voter registration, clubs, bank accounts, and health insurance, further support the conclusion that Frederick was in Hong Kong for a temporary or transitory purpose, given the highly uncertain prospect of continuing employment there.

¶ 53 The Gredes argue as follows. The evidence showed that Frederick was in Hong Kong for other than temporary or transitory purposes, and thus he was not an Illinois resident. The potential profit Frederick could have realized from fully vesting in all options over the 10-year period of the vesting schedule could have netted him over \$20 million. Thus, it is clear that he had a tremendous incentive to continue his employment in Hong Kong until at least 2005, which was two years after the initial term of his employment agreement, and "preferably" for the full 10-year vesting period. The evidence showed that Frederick moved to Hong Kong primarily because of these long-term incentives. It was against the manifest weight of the evidence for the Director to find that even though Frederick credibly testified that he hoped his Hong Kong employment might last as long as ten years, the three-year contracts provided better evidence that the employment would not last indefinitely or permanently. It was not the language of the contract that controlled, but rather

Frederick's intent. Moreover, the fact that Frederick was given options lasting up to ten years indicated that the HKEX likewise expected more than a three-year term of employment. Frederick also chose to stay in Hong Kong after his job was terminated in an effort to find other employment there.

¶ 54 The Gredes further argue that unlike a college student, a comparison made by the Director, Frederick's life-altering decision to move himself and his family to Hong Kong was of a greater magnitude than the decision of where to go to college, as college students often return to their home state for holidays and upon graduation. Also, Frederick's presence in Hong Kong and his intention for him and his family to reside there was partly evidenced by Jason's enrollment in a Hong Kong school. Jason continued at the school after his head injury until the Gredes determined that it would be best for him to return to the United States for medical treatment and observation. While this unexpected event caused a disruption in the time frame for the family to move to Hong Kong, it never caused Frederick to quit his post and return to Illinois. Just as Department regulations state that it is not a temporary or transitory purpose for a former Alaskan resident to remain in Illinois for a yearly sojourn for medical reasons, Frederick's stay in Hong Kong for financial reasons was similarly more than a yearly sojourn in Hong Kong, and therefore was not temporary or transitory.

¶ 55 We agree with the Gredes that it was clearly erroneous for the Director to find that Frederick was in Hong Kong for a temporary or transitory purpose. While defendants emphasize that Frederick's employment contract was for a defined three-year period, Frederick testified that the common practice was to renew agreements with senior officers. Indeed, when one officer left shortly after Frederick arrived, Frederick was offered, and accepted, that position. Also, Frederick testified that around March 2003, he had discussions with the HKEX's Chief Executive Casey Kwong about

renewing his contract. However, Kwong announced his resignation shortly thereafter, and Kwong's successor was not interested in renewing the contract. Moreover, Frederick testified that his main incentive for accepting the job was the stock options, and the options contract showed that to be fully vested in the initial offerings, Frederick would have had to stay for at least five years. The agency decision itself found that Frederick credibly testified that he hoped that his Hong Kong employment might last as long as the 10-year period specified in the options. Even when Frederick's contract was not renewed, he did not immediately return to Illinois but instead looked for other employment in Hong Kong and ended up forming a consulting company with other individuals there. Thus, rather than a stay for a defined period of time, the evidence clearly showed that Frederick intended to be in Hong Kong for an unspecified period of time. Department regulations label "business purposes which will require a long or indefinite period to accomplish" or employment "in a position that may last permanently or indefinitely" as other than a temporary or transitory purpose, which the facts of this case fall into.

¶ 56 We further agree with the Gredes that Frederick's situation is similar to the Department's regulation involving an individual from Alaska. Under the counter-scenario expressed by that example, an individual who keeps his Illinois home and stays here for three or four months of the year but spends eight or nine months in Alaska for medical reasons is not an Illinois resident, because the man is absent from Illinois for other than a temporary or transitory purpose. See 86 Ill. Admin. Code 100.3020(c)(1). Similarly, Frederick kept his Illinois home and stayed there at times throughout the year but spent significantly more time in Hong Kong for employment that could have lasted for an indeterminate amount of time, making Frederick's stay other than for a temporary or

transitory purpose. Therefore, under the Tax Act and Department regulations, Frederick was not an Illinois resident for income tax purposes during his employment in Hong Kong.

¶ 57 B. Effect of Claiming Homestead Property Tax Exemption

¶ 58 Defendants next argue that the Gredes may not claim that Frederick was a nonresident for tax purposes, because the Gredes both claimed the homestead exemption on their property tax bills from 2001 to 2003. Defendants cite cases for the proposition that a taxpayer may not claim a legal status to obtain a government benefit and then claim to not have that status to avoid paying taxes. Defendants also argue that the homestead exemption requires that the owners occupy the property as their principal dwelling place, and a person who occupies an Illinois home as his principal dwelling place is necessarily domiciled in this state.

¶ 59 Defendants' argument is not persuasive. Janice co-owned the house, and her name also appears on the tax bills. It is clear from the testimony that Janice continued to live in the home as her primary residence during the tax years in question, making her eligible to claim the homestead exemption on her own. Therefore, the Gredes did not obtain an additional government benefit from the fact that Frederick's name remained on the tax bill. Moreover, even though Frederick's name on the tax bills is consistent with a finding that he was domiciled in Illinois, as discussed, the tax laws allow a person domiciled in Illinois to still be considered a nonresident if he is out of the state for other than a temporary or transitory purpose, which occurred here.

¶ 60 C. Effect of Filing Joint 2003 Tax Return

¶ 61 Last, defendants alternatively argue that Frederick is precluded from claiming nonresident status for 2003, because he filed his return jointly with Janice, a full-time resident, for that tax year. The Director found that "the manner in which [the Gredes] filed their Illinois return for 2003 has a

preclusive effect on their ability to challenge the Department’s determinations regarding their joint deficiency for that year.” As this issue raises a question of law, we apply *de novo* review. *Provena Covenant Medical Center*, 236 Ill. 2d at 387.

¶ 62 Defendants note that section 502(c)(3) of the Tax Act requires that spouses who file joint federal income taxes file joint Illinois returns. 35 ILCS 5/502(c)(1) (2002). However, the following exception exists:

“If either husband or wife is a *resident and the other is a nonresident*, they shall file separate returns in this State on such forms as may be required by the Department in which event their tax liabilities shall be separate; but they may elect to determine their joint net income and file a joint return as *if both were residents* and in such case, their liabilities shall be joint and several.” (Emphases added.) 35 ILCS 5/502(c)(3) (2002).

Defendants argue that under section 502(c)(3), Frederick could only file jointly with Janice “as if both were residents” for the full year, making their tax liabilities “joint and several.” Defendants argue that Frederick was therefore precluded from claiming nonresident status for 2003.

¶ 63 In construing a statute, our primary goal is to ascertain and give effect to the legislature’s intent, which is best indicated by the plain and ordinary meaning of the statute’s language. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11. Where the statute’s language is clear and unambiguous, we must apply it without resorting to other statutory construction aids. *Id.* Here, section 502(c)(1) requires spouses who file a joint federal income tax return (which the Gredes did in 2003) to file a joint Illinois income tax return. The only exception listed is if one spouse “is a resident and the other is a nonresident.” 35 ILCS 5/502(c)(3) (2002). However, in 2003 Frederick was neither entirely a resident nor a nonresident of Illinois, but rather a part-year resident, a distinct

status clearly recognized by the Tax Act (see 35 ILCS 5/1501(a)(17) (West 2002) (defining “part-year resident”). Therefore, the exception listed in section 502(c)(3) is simply inapplicable to this situation and does not preclude Frederick from claiming part-year residential status for 2003, contrary to the Director’s reasoning.

¶ 64

III. CONCLUSION

¶ 65 For the reasons stated, we affirm the judgment of the Du Page County circuit court, which reversed the Department’s final administrative decision.

¶ 66 Affirmed.