

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JUDY A., JULIE A.
AND MARK A.

:

Appellant,

:

v.

:

CASE NO. 1983-6

COBB COUNTY BOARD OF
EDUCATION,

:

Appellee.

:

O R D E R

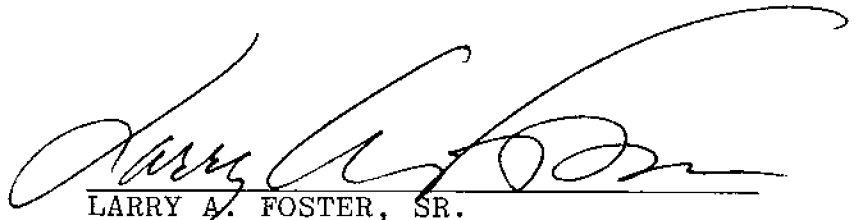
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Cobb County Board of Education herein appealed from is hereby sustained.

Mr. McClung was not present.

This 12th day of May, 1983.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JUDY AKIN, JULIE ALBRIGHT)	
AND MARK LEROY ALBRIGHT,)	
)	
Appellants,)	
)	CASE NO. 1983-6
v.)	
)	
COBB COUNTY BOARD OF EDUCATION,)	REPORT OF
)	HEARING OFFICER
Appellee.)	

This is an appeal from a decision by the Cobb County Board of Education (hereinafter "Local Board") by Judy Akin (hereinafter "Akin") and her children, Julie and Mark Albright (hereinafter "children"). On January 5, 1983, the Local Board decided that Akin was domiciled in Bartow County rather than Cobb County and the children, therefore, could not attend the Cobb County Public Schools. The decision followed a hearing held on January 5, 1983. The appeal was made on the grounds the Local Board's decision was erroneous as a matter of law and fact in that Akin had never intended to make Bartow County her domicile, and the facts produced at the hearing did not establish that she was domiciled in Bartow County. The Hearing Officer recommends that that the decision of the Local Board be sustained.

Seven years ago, Akin obtained and lived in an apartment on North Main Street in Cobb County. She had always lived in and been domiciled in Cobb County. At some later date, she married and her husband gave her a house in Bartow County. The Bartow

house was approximately seven miles distant from the North Main apartment. Akin, however, continued to maintain the apartment and her children attended the Cobb County Public Schools.

The Cobb County Public Schools received information in August, 1982, that Akin was not living in Cobb County, but was living in Bartow County. An investigation was made and the Cobb County School System decided that Akin was no longer using the North Main Street apartment but was living in the Bartow County house. This determination was made on the basis that the North Main apartment appeared to be vacant on each occasion it was observed by the investigators, the children were observed riding to school in a car that came from Bartow County, and the car was observed parked in front of the Bartow County house.

During the hearing, there was additional evidence presented that during the period October and November, 1982, there was no gas used in the North Main apartment, but electricity was used in the Bartow County house. Akin maintained a telephone in both the North Main apartment and in the Bartow County house. The Bartow County house was considered to be a better place to live than the North Main apartment. Akin had placed a sign on her Bartow County property which complained that the raising of dogs by a neighbor would depreciate the value of "my home". Akin and the children were observed at the Bartow County home on several occasions by friends and neighbors during the September, 1982 through December, 1982 period, but they were only infrequently observed at the North Main apartment during the same time.

Akin testified that during the September-December, 1982 period, she had a number of medical operations and was confined to the hospital for varying lengths of time. As a result, she had other people take care of her children. She testified that she had always been domiciled in Cobb County and did not intend to change her domicile; the Bartow County house was a "summer home" where they spent weekends, holidays, and summers. The license tags for her cars were purchased in Cobb County, she served as a Cobb County juror, and she had denied she was a resident of Bartow County and admitted she was a Cobb County resident in a declaratory judgment action which had been filed in the federal district court.

On appeal, Akin points to the provisions of Official Code of Georgia, § 19-2-2 (Ga. Code Ann. § 79-402), which states in part:

If a person resides indifferently at two or more places in this state, the person shall have the privilege of electing which of such places shall be his domicile. If the election is made known generally among those with whom the person transacts business in this state, the place chosen shall be the person's domicile.

She maintains that she has continuously elected Cobb County as her domicile and had made such election generally known among those with whom she transacted business in the State.

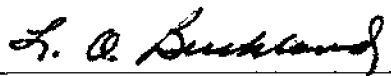
The Local Board maintains that the only issue to be decided by the State Board of Education is whether there is any evidence to support the Local Board's conclusion that Akin had

not expressed a bona fide intent to be domiciled in Cobb County. According to the Local Board, the question of whether a person has established a domicile in a particular locality is a question of law and fact which the trier of fact must decide, and in the instant case, there was evidence presented which supports the decision of the Local Board, as the trier of fact, that Akin had not elected to be domiciled in Cobb County. Additionally, the Local Board argues that a party cannot rely on simple declarations of intent in order to establish domicile, but the trier of fact must also consider the living arrangements of the party in order to determine if there is a good faith domiciliary status. Based upon these arguments, the Local Board maintains that the evidence presented showed that Akin and the children were not living in Cobb County during the Fall of 1982, but were living in and were domiciled in Bartow County.

The State Board of Education follows the rule that if there is any evidence to support the decision of a local board of education, then the decision will not be disturbed upon review. See, Ransum v. Chattooga County Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Ed., Case No. 1976-11. The provisions of O.C.G. § 19-2-2 do not require a finding of domicile based upon mere expression of intent, but a factual determination must be made of the expression. In the instant case, there are facts which would support a determination of domicile in either county. Since the Local Board was charged with determining the facts, the Hearing Officer

concludes that there was evidence to support the decision of the Local Board.

Based upon the foregoing findings and conclusions, the record submitted, and the briefs of counsel, the Hearing Officer is of the opinion that the question of domicile is one of law and fact and the facts have to be determined by the Local Board, and there was evidence in the record to support the Local Board's determination that Akin was domiciled in Bartow County. The Hearing Officer, therefore, recommends that the decision of the Local Board be sustained.



L. O. BUCKLAND
Hearing Officer