

Y.E. on behalf of minor child E.E., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, ESSEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner appealed the determination of the respondent Board that her son, E.E., was not eligible for a free public education in the Newark school district during the period from January through June of 2006. The respondent contended that E.E. lived with petitioner in East Orange during the time period in question, and counterclaimed for tuition in the amount of \$4,478.88. This matter addressed on remand the final remaining issue in a controversy that began with the filing of a petition in September 2006.

The ALJ found that: petitioner owned property in East Orange from which she operated a business; petitioner resided in a unit in one of the houses her company was renovating in East Orange prior to moving to Newark; petitioner provided proofs regarding her residence in Newark, including, *inter alia*, a lease agreement dated July 26, 2005, a notarized statement from her landlord dated September 24, 2006, and a driver's license bearing the Newark address; respondent's evidence indicated that petitioner had a day to day physical presence in East Orange, while petitioner's evidence pointed to a home address in Newark. The ALJ concluded that, on remand, the petitioner met her burden to prove that she was domiciled in Newark during the period in question; therefore, E.E. was eligible to receive a free public education in Newark schools from January through June of 2006.

Upon a full and independent review, the Commissioner concurred with the ALJ and adopted the Initial Decision as the final decision in this matter. Petitioner's claim for relief was granted and respondent's counterclaim for tuition was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

May 4, 2010

OAL DKT. NO. EDU 9238-08
(EDU 10085-06 ON REMAND)
AGENCY DKT. NO. 322-9/06

Y.E. on behalf of minor child E.E., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, ESSEX :
COUNTY, :
RESPONDENT. :

The Commissioner has reviewed the record of this matter,¹ and the Initial Decision of the Office of Administrative Law (OAL). Said decision adjudicates the residual issue in a controversy that began in 2006 when respondent sent notice to petitioner that it had found petitioner’s minor child ineligible to receive a free public education in Newark – based upon the district’s conclusion that the child lived with petitioner in East Orange. The focus of this final segment of the case is the location of petitioner’s domicile from January through June of 2006.²

As the Administrative Law Judge (ALJ) stated in the Initial Decision, the party seeking relief in an administrative proceeding has the burden to establish her claim by a preponderance of the credible evidence. *Atkinson v. Parsekian*, 37 N.J. 143 (1962); *In re Polk*,

¹ The record contains no transcripts of a February 11, 2009 hearing which was held in this matter.

² Respondent has submitted exceptions that are 18 days past the regulatory time period for filing same. Although counsel alleges that he did not receive the Initial Decision at the time it was issued, he has not provided a certification to establish this contention.

90 *N.J.* 550 (1982). The evidence presented by the parties in the instant case conflicted on a number of salient facts; however, the ALJ noted the following:

Petitioner produced several documents connecting her to a residence [on South 10th Street] in Newark. These included a lease agreement dated July 26, 2005 (P-12), a notarized signature of Frank Hodges dated September 24, 2006 (P-13), a driver's license bearing the Newark address (P-20), correspondence to petitioner from the property's new owners (P-14), mortgage applications to purchase the property (P-15; P-16; P-17), and eviction papers for non-payment of rent (P-19). (Initial Decision at 7)

Turning to the law regarding domicile, the ALJ observed that:

A person has the right to choose her own domicile, and her motive in doing so is immaterial. A very short period of residence in a given place may be sufficient to show domicile, but mere residence, regardless of its length, is not sufficient. *Lyon v. Glaser*, [60 N.J. 259](#), 264 (1972). Determination of domicile requires an evaluation of all the facts and circumstances of the case. *Id.* at 265. When there is more than one residence, a court should consider numerous factors in determining domicile, including “the physical characteristics of each, the time spent and the things done in each place, the other persons found there, the person’s mental attitude toward each place, and whether there is or is not an intention, when absent, to return.” *Mercadante v. City of Paterson*, [111 N.J. Super. 35](#), 39–40 (Ch. Div. 1970) (citation omitted). (Initial Decision at 8)

In light of the foregoing, the ALJ concluded that the evidence as a whole showed 1) an intent by petitioner to reside in Newark, 2) physical use of the South 10th Street address, and 3) a totality of circumstances sufficient to support a finding of domicile. While the ALJ made no express credibility determinations, the Commissioner finds that a credibility assessment of petitioner is implicit in the ALJ’s ultimate findings.

Because there is evidence supporting petitioner’s version of the material facts, and because deference is owed to the ALJ’s credibility assessments, *see, e.g. D.L. and Z.Y. on behalf of T.L. and K.L. v Board of Education of the Princeton Regional School District*, 366 *N.J. Super.*

269, 273 (App. Div. 2004) and *N.J.S.A. 52:14B-10(c)*, the Commissioner adopts the Initial Decision.³ Petitioner's claim for relief is granted and respondent's counterclaim is dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: May 4, 2010

Date of Mailing: May 4, 2010

³ While the Commissioner may reject an ALJ's factual findings and credibility determinations if they are distinctly contrary to the record, the absence of a hearing transcript makes such an analysis unavailable to the Commissioner in the instant case.

⁴ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.