

IN THE SUPREME COURT OF OHIO

THE CINCINNATI)
 INSURANCE COMPANY,)
)
 Appellant,)
)
 v.)
)
 PEGGY SPAETH, et al.,)
)
 Appellee.)

CASE NO. **12-1866**
 On Appeal from the
 Court of Appeals,
 Eighth Appellate District
 Court of Appeals Case No.: 97715
 Cuyahoga County Common Pleas

APPELLANT'S REPLY BRIEF

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LAW AND ARGUMENT

- I. Proposition of Law No. 1: A Person Has Only One Domicile: Where the Person Resides and has the Intent to Remain Permanently and Return to When Away Temporarily. (*Sturgeon v. Korte*, 34 Ohio St. 525 (1878), affirmed and restated).**
- A. Ohio Has Maintained Since 1878 That an Adult’s Presumptive Domicile is Determined by the Individual’s then Current Subjective Intent.**

Appellee, Peggy Spaeth, failed in any way to address the legal principles established by this Court in *Sturgeon v. Korte*, 34 Ohio St. 525 (1878) which held that the starting point for any domicile analysis involving a competent adult is where the subject individual indicates they are currently domiciled:

“Domicile of birth remains until another is chosen....To acquire a new residence or domicile, where one is under no disability to choose, two things must concur - - the fact of removal and an intention to remain.”

Id. at 534.

Significantly, this Court’s use of the words “chosen” and “intention” reasonably would indicate that this Court established, as the fundamental aspect of a domicile analysis, that such analysis’ starting point is where the individual states his “chosen” and/or “intended” domicile to be. In *Korte*, this Court continues by referring to the individual’s “election of the new habitation or place of abode as his place of future domicile or home.” *Id.* at 535. Upon such “choice” or “election”, “the old residence (domicile) would be gone, and the new one acquired from the point of time when the intention to adopt a new residence (domicile) was determined upon and fixed. In a strict legal sense, that is properly the domicile of a person where he has a true, fixed, permanent home...and to which...he

has the intention of returning.” (*Id.* at 535).¹ Lastly, this Court noted that an adult person is free to choose and change their domicile at their pleasure, further indicating the subjective freedom of choice, election and intent:

“Yet no one doubts the legal capacity of one so situated to change his domicile at pleasure.”

Korte, supra at 536; *see, also*, 25 Am. Jur.2d Domicil 17, *citing Bank One, N.A. v. Montle*, 946 F.2d 48 (1st Cir. 1992); *Perito v. Perito*, 756 P.2d 895 (Alaska, 1988).

It is this subjective intent and voluntary choice which makes a location the individual’s domicile. *Korte, supra*; *Gilbert v. David*, 235 U.S. 561 (1915); *City of Cleveland v. Surella*, 61 Ohio App.3d 302 (8th Dist., 1989). As this Court succinctly concluded, an individuals’ intent to make a place their “domiciliary residence * * *is known only by the individual which intention, naturally, is subject to honest change from time to time.” *Coleman v. Coleman*, 32 Ohio St.2d 155, 162 (1972). It logically follows that: “when it appears that a person has an established domicile, the presumption of fact is that such domicile continues.” *Saafeld v. Saafeld*, 86 Ohio App. 225, 226 (12th Dist., 1949).

Of significance, Spaeth does not in any way challenge these legal principles that the presumption of domicile rests in the voluntary choice, election or intent of the individual. In fact, Spaeth devotes nearly her entire responsive brief to renew her challenge to Cincinnati Insurance Company’s (“CIC”) jurisdictional arguments submitted to this Court months ago. Indeed, Spaeth makes what can only be deemed a desperate attempt to have this Court dismiss this proper appeal as improvidently allowed. Despite Spaeth’s invitation and

¹ This court stated that its use of the term “residence” was synonymous with “domicile”. *Korte, supra* at 534.

insistence otherwise, this Court properly accepted jurisdiction to determine whether the Cuyahoga County Court of Appeals failure to apply this Court's legal principles set forth in *Korte, supra*, leads Ohio's domicile jurisprudence down an irreconcilable path with those decision recognizing the presumptive importance of an individual's intent, election and choice of domicile when determining same.

Notably, the record before this Court is not contested that James Schill chose, elected and intended his domicile be in Florida beginning in 1993: :

Q All right. And so in all fairness, when you're in Florida, you consider that your primary residence?

A Absolutely.

Q And that is your residence for tax purposes, correct?

A It is my residence, period.

Q All right. Including for tax purposes, correct?

A Oh, sure.

* * *

A You and I have a problem on the definition of residence. It is my intention to stay at 16800 when I'm here. I don't believe I reside there.

Q All right. And what is it that makes you think you don't reside there?

A Because I consider residing to be a permanent location for all purposes.

Appellant's Supplement at 50.

Coupled with his stated domiciliary “election”, “choice” and “intent” were his actions in 1993 (moving and selling an Ohio home², voting registration³, financial statements, family personalty, driver’s license⁴, etc.) which resulted in Florida becoming James Schill’s presumptive domicile until, as this Court observed and treatises maintain, the “factum” (presence) and the animus (intention) again unite. *Korte, supra* at 534-535; Minor’s Conflict of Laws, §59, 114.

Contrary to these principles, the Appellate Court began its analysis ignoring James Schill’s stated election, choice and intent, instead holding that James Schill’s birth in Ohio was his presumptive domicile:

“The burden of proof of domicile rests upon the party whose right to affirmative relief depends upon establishing his domicile or the domicile of another in a given place. * * *”

* * *In this case, the burden is initially on Spaeth. Evidence was presented to demonstrate that James was born, raised, married, and worked in Ohio at least up until 1993 when his wife purchased a home in Florida. This evidence was sufficient for Spaeth to meet her initial burden of proof.”

Spaeth v. State Auto Mut. Ins. Co., 2012-Ohio-3183 (8th Dist.) at ¶24 (citations omitted).

² The sale of a dwelling is some evidence of an intention to abandon a domicile and establish another. *Gilbert v. David*, 235 U.S. 561 (1915).

³ Exercise of right to vote is evidence of domicile. Indeed, through the years, where an individual votes has had a prominent status in determining domicile. *State ex rel. Kaplan v. Kubn* (1901), 8 Ohio N.P. 197, 201; 11 Ohio Dec. 321,332. (Where a person voted shows intention to make a place his domicile); *Esker v. McCoy*, 5 Ohio Dec. Rep. 573 (C.P. 1878); *Chase v. Prudential Life Ins. Co.*, 24 Ohio Law Abs. 439 (2nd Dist. 1937) (voting is akin to the person’s declaration that he resides there); see, also *Mitchell v. U.S.*, 88 U.S. 350 (1874).

⁴ Securing a license or registering a vehicle in a state is evidence of intent to establish domicile. 25 Amer. Juris.2d Domicile §64, citing *Bank One, Texas NA v. Montle*, 964 F.2d 48 (1st Cir. 1992).

Consequently, contrary to Spaeth's assertion in her brief that CIC was fabricating the Appellate' Court's holding that Ohio born residents will be presumed domiciled in Ohio, it is clear that the Cuyahoga County Court of Appeals utilized such Ohio born presumption to reach the result desired and improperly shifted the burden from Spaeth to James Schill to prove a change of domicile. This was error and failed to follow settled Ohio law.

As the Twelfth District Court of Appeals noted in 1949, "when it appears that a person has an established domicile, the presumption of fact is that such domicile continues." *Saafeld v. Saafeld*, 86 Ohio App. 225,226 (12th Dist. 1949). Here, as the Appellate Court even appears to directly acknowledge, from its choice of language that "James was * * *in Ohio at least up until 1993 * * *", James Schill established a new domicile as of 1993. *Spaeth, supra* at ¶24. That is the presumption and starting point particularly given Schill's stated intent and election. This Court has previously noted that the failure to follow an individual's stated intent in a similar residency determination was improper:

"Second, the secretary of state failed to accord proper weight to Husted's intent that his Kettering home remain his permanent residence for purposes of voting. R.C. 3505.02" provides that the person's intent is of great import," *State ex rel. Stine v. Brown Cty. Bd. Of Elections*, 101 Ohio St.3d 252, 2004-Ohio-771, 803 N.E.2d 415, ¶15, and thus "emphasizes the person's intent to make a place a fixed or permanent place of abode." *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 115 Ohio St.3d 405, 2007-Ohio-5346, 875 N.E.2d 578, ¶11. The secretary of state conceded that "Senator Husted's undisputed testimony repeatedly emphasized his intent to return to Montgomery County on a full-time basis when his public service is completed," but she ultimately discounted this uncontroverted evidence.

State Ex Rel. Husted v. Brunner, 123 Ohio St.3d 288, 2009-Ohio-5327 at ¶30.

Accordingly, the starting point for any domicile analysis should have been that James Schill, in 1993, as *Korte, supra* provides, “chose”, “elected” and “intended” Florida to be his domicile.

B. This Court’s Jurisdictional Ruling In The Matter of *In Re Hutson*, 165 Ohio St. 115 (1956) Neither Addressed this Court’s Domicile Principles Set Forth In *Sturgeon v. Korte* Nor Is The Ruling An Actual Analytical Opinion By This Court.

Spaeth, in her jurisdictional memorandum as well as throughout her Appellee’s Brief, attempts to argue that jurisdiction is improper in this case because Spaeth contends this Court has addressed the issue of domicile more recently, in the case of *In Re Estate of Hutson*, 165 Ohio St. 115 (1956). Spaeth’s contention should be rejected for two reasons. First, a simple review of the *Hutson* ruling establishes that there was absolutely no mention or analysis undertaken by this Court as to the principles set forth in *Korte*. In fact, there is not a single citation to any Ohio law or any legal decisions in the entire ruling. As such, it is respectfully asserted that the *Hutson* ruling provides no precedential value on the issue of domicile.

Secondly, in reaching its jurisdictional decision, this Court simply quoted the trial court’s opinion with regard to the evidence presented. After that lengthy quote, and arguably in accord with deference being provided a trial court in a declaratory judgment action, stated:

“Thus it is apparent that there was evidence on which the trial court could well base the conclusion that the decedent did not intend to change his domicile. Hence, it is not the province of this court to disturb the judgment.”

Hutson, supra at 119.

For these reasons, this Court should reject Spaeth’s continued insistence that *Hutson* sets forth this Court’s legal opinion as to the proper domicile analysis and, instead, apply

this Court's stated legal principles in *Korte, supra*. See, also, *Saafeld v. Saafeld*, 86 Ohio App. 225,226 (12th Dist. 1949).

C. Domicile Has One Reasonable Definition: The Location that an Individual Intends, Elects and Chooses as His or Her Fixed, Permanent Home to Which He or She Returns After Being Away.

Spaeth continues to maintain, although without filing any cross-appeal since the Cuyahoga County Court of Appeals rejected her proposition, that the term "domicile" was ambiguous and allegedly susceptible to more than one reasonable interpretation. Spaeth is incorrect.

It is settled that the terms or words utilized in any insurance contract, or legal instrument for that matter, are to be given their plain and ordinary meaning. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 219, 2003-Ohio-5849 citing *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241 (1978), ¶2 of the syllabus; *Golmolka v. State Auto Mut. Ins. Co.*, 70 Ohio St.2d 166, 167-168 (1982). In *Korte, supra*, this Court adopted Story's Conflict of Laws definition for the legal term, "domicile", and stated: "In a strict legal sense, that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Korte, supra* at 535 quoting *Story's Conflict of Laws*, §41. This definition has never been altered by any Ohio court and actually was accepted by the Appellate Court in the case *sub judice*. See, *Spaeth v. State Auto Mut. Ins. Co.*, 2012-Ohio-3183 (8th Dist.) at ¶¶22-23.

Indeed, the Appellate Court cited, approvingly, its previous decision in *Senn v. Cleveland*, 2005-Ohio-765 (8th Dist.). In *Senn*, the Appellate Court utilized the definition of "domicile," set forth in Black's Law Dictionary, which provides: "[o]ne's domicile is 'a

person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere". *Id.* at ¶38, *quoting* Black's Law Dictionary (7 Ed. Rev. 1999) 1310, 510. Notably, this definition is indistinguishable from the one this Court adopted in *Korte, supra*.

In sum, Spaeth's contention, that the term "domicile" is ambiguous, has no merit substantively even if this Court were to consider same despite Spaeth's failure to file an appeal on that issue.⁵

D. R.C. §5747.24 Governs Whether An Individual Owes Ohio Income Tax, Not Whether An Individual Is An Ohio Domiciliary.

Next, Spaeth improperly argues that R.C. §5747.24, and its language relative to when an individual is subject to Ohio taxation, determines the domicile issue in Spaeth's favor. This argument is a proverbial *red herring*.⁶ The Ohio General Assembly stated that "this section is to be applied solely for the purposes of Chapters 5747. and 5748. of the Revised Code." R.C. §5747.24. Accordingly, as the Ohio General Assembly has so limited, the Statute's domicile tests and presumptions, only apply to Ohio taxation issues. Indeed, the Statute does not contain any language relative to a person's domiciliary subjective intent or

⁵ Of significance, even if this Court were to consider the term domicile ambiguous, any ambiguity would be construed in favor of James Schill, the policyholder, not Spaeth as she contends. See, *Westfield Ins. Co. v. Galatis* (2003), 100 Ohio St. 3d 216, 224, citing *Inland Rivers Serv. Corp. v. Hartford Fire Ins. Co.* (1981), 66 Ohio St.2d 32, 34.

⁶ As was pointed out to the Court of Appeals, Spaeth never even made this argument in either the Trial Court or the Appellate Court until her Appellate reply brief. As this Court has acknowledged, arguments which were not raised in the proceedings in the Trial Court may not be considered on any subsequent appeal. *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207 (1982); *Kalish v. Trans World Airlines*, 50 Ohio St.2d 73 (1977).

does it analyze the other objective domicile factors discussed in Ohio's domicile jurisprudence. Consequently the Statute's language is violative of Ohio domicile law, as well as that of other states. The universal domicile test requires that both the fact of one's domicile unite with an individual's stated domicile election and intention before a domicile is fixed. *Korte, supra* at 534-535; *Minor's Conflict of Laws*, §59, 114.

Next, the Statute's limited factual analysis for a taxation domicile, if one exists, actually supports James Schill's position, not Spaeths' position. The Statute concludes that a person is presumed to be not domiciled in Ohio if they are in the State of Ohio less than 182 days. R.C. §5747.24(B)(1). Schill acknowledges that the Statute continues and provides that such presumption will not be provided unless the individual files a form, with the State of Ohio Department of Taxation, attesting to the fact that they were not in the state 182 days or more. While it is, at best, questionable as to whether such a requirement is constitutional, given its impact on out of state domiciliaries and residents like Schill, the Statute's burdensome requirement does not alter the undeniable fact that James Schill was not in Ohio long enough to be considered an Ohio domiciliary even for tax purposes.⁷

Finally, even if this Court were to glean some importance from this taxation statute, it is notable that even the failure to file a form, with the Ohio Department of Taxation, does

⁷ R.C. §5747.24's language requiring a non-resident to perform certain acts to be entitled to a factual presumption is discriminatory, as well as unduly burdens interstate commerce in violation of the privileges and immunities clause, U.S. Const. Art. IV, §2, Cl. 1, and the Commerce Clause, U.S. Const. Art. I, §8, Cl. 3. *See, e.g., Sioux Remedy Co. v. Cope*, 235 U.S. 197; 135 S. Ct. 57; 59 L.Ed. 193 (1914); and *Georgia Assoc. of Relators, Inc.*, 748 F.Supp. 1487 (Ala. M.D. 1990) (State regulations and statutes which burden interstate commerce or discriminate are unconstitutional).

not change the indisputable fact that, since 1993, James Schill has chosen, and intended subjectively and through his actions, to be a Florida domiciliary. *See, e.g. Gifford v. Zaino*, 2003 Ohio Tax LEXIS 1887, *5-7, BTA. No.: 2002-G-1222 (December 12, 2003).

E. The Record Contains No Evidence That James Schill Ever Intended, Since 1993, To Change His Presumptive Florida Domicile To Ohio.

The presumptive domicile of an individual will not change until the factum (location) and animus (intent) unite or concur. *Korte, supra* at 534-535; Minor's Conflict of Laws, §59, 114. Since 1993, James Schill maintained emphatically that he "intended", "chose" and "elected" Florida to be his permanent residence and domicile. Appellant's Supplement at 31; 50; 79-80; 99.

Indeed, from 1993 to the present, whenever James Schill has traveled from Florida to Ohio or elsewhere, he always intended to return to his home in Florida:

Q When you're up in Ohio on business and staying at your, the Orange Lane house, is it always your intention to return to your home in Bonita Springs, Florida when your business in Ohio is completed?

* * *

A Absolutely, That's where I live.

Q So when you're in Ohio on business or in another state on business, it is ultimately your intention when that business is completed to return home to your Bonita Springs, Florida residence, is that correct?

* * *

A That is correct.

Appellant's Supplement at 80.

Q All right. And so in all fairness, when you're in Florida, you consider that your primary residence?

A Absolutely.

Q And that is your residence for tax purposes, correct?

A It is my residence, period.

Q All right. Including for tax purposes, correct?

A Oh, sure.

* * *

A You and I have a problem on the definition of residence. It is my intention to stay at 16800 when I'm here. I don't believe I reside there.

Q All right. And what is it that makes you think you don't reside there?

A Because I consider residing to be a permanent location for all purposes.

Appellant's Supplement at 50.

Further, since 1993, James Schill has done all things consistent with this "election", "choice" and "intent" to be domiciled in Florida:

- In 1993, James Schill moved from Spruce Trail in Ohio to Florida with his wife Jean. (Appellant's Appellant's Supplement at 20, J. Schill Depo. at p. 12, lines 7-14);
- James Schill applied for the Homestead Exemption on their Florida residence (Appellant's Appellant's Supplement at 82, J. Schill Depo. at p. 17, lines 12-17);
- James Schill owns two vehicles that are titled solely in his name and titled and registered in Florida (Appellant's Appellant's Supplement at 80-81, J. Schill Depo. p. 12, lines 19-25; p. 13, lines 20-22);
- When James Schill files his federal tax return, he uses a P.O. Box address in Bonita Springs, Florida and considers his Bonita Springs address to be his residence and domicile for tax purposes (Appellant's Appellant's Supplement at 80, J. Schill Depo. at p. 10, lines 5-11, 18-21);

- James Schill does not file a State of Ohio income tax return (Appellant's Appellant's Supplement at 80, J. Schill Depo. at p. 11, lines 6-7);
- When filling out applications or other documents for any governmental entity or business, James Schill lists his address as Bonita Springs, Florida (Appellant's Appellant's Supplement at 82, J. Schill Depo. at p. 20, lines 17-22);
- James Schill has been registered to vote in Florida since 1993 and has not voted in Ohio since he registered in Florida (Appellant's Appellant's Supplement at 80-81, J. Schill Depo. at p. 12, lines 12-16; p. 14, lines 23-25);
- James Schill holds a Florida driver's license⁸ and has done so since 1993 and has never attempted to renew his previous Ohio driver's license since he moved to Florida (Appellant's Appellant's Supplement at 81, J. Schill Depo. at p. 14, lines 3-7, 14-17);
- James Schill receives Social Security benefits directly deposited into his Florida bank account (Appellant's Appellant's Supplement at 81, J. Schill Depo. at p. 16, lines 13-16);
- James Schill maintains his personal checking and savings accounts in Bonita Springs, Florida (Appellant's Appellant's Supplement at 81, J. Schill Depo. at p. 15, lines 4-6);
- James Schill receives his personal credit card bills at his Florida address (Appellant's Appellant's Supplement at 82, J. Schill Depo. at p. 19, lines 13-16);
- Since 1993, and until about 2009, James Schill maintained a safety deposit box in the State of Florida (Appellant's Appellant's Supplement at 82, J. Schill Depo. at p. 18, lines 20-25);

⁸ In her brief at page 5, Spaeth claims that the only evidence in the record regarding whether James Schill had an Ohio Driver's License is an "Auto Work Sheet" attached to the 2007-2008 CIC Auto Policy issued to James Schill. However, Spaeth's claim ignores the fact that James Schill testified under oath that he let his Ohio driver's license naturally expire and only had a Florida driver's license following his move to Florida in 1993. Moreover, the "Auto Work Sheet" is not a certified record from the BMV and is not, by itself, evidence of a valid Ohio license.

- James and Jean Schill are registered parishioners of a Catholic church in Bonita Springs, Florida (Appellant's Appellant's Supplement at 81, J. Schill Depo. at p. 15, lines 7-10);
- James Schill's family doctor is located in Florida, and his former dentist (before he received dentures) was located in Florida (Appellant's Appellant's Supplement at 81, J. Schill Depo. at p. 15, lines 14-25; p. 16, lines 1-2);
- All of the Schill family heirlooms, antiques, treasures, and dear personal property are located in Florida (Appellant's Appellant's Supplement at 82, J. Schill Depo. at, p. 20, lines 11-16).

There was simply no evidence that, after 1993, James intended any place other than Florida to be his home and domicile.

F. Spaeth's Various Assertions That CIC has Misstated the Record Are Completely Without Merit.

In her brief, under the guise as a "Statement of Facts", Spaeth makes several false and/or misleading factual statements concerning the CIC policies, which are apparently intended as legal arguments to distract this Court away from the limited proposition of law that it has accepted for review. These arguments have all been previously addressed and rebutted by CIC in great detail. (See CIC's Reply Brief in Support of Motion for Summary Judgment.)

Specifically, Spaeth has gone to great lengths to accuse CIC of misleading this Court by accusing CIC of concealing pages of its policy and misconstruing James Schill's testimony.⁹ However, it is Spaeth, and not CIC, who has taken liberties with the facts.

⁹ Any such omission is denied by CIC, and to the extent a page was omitted, it was done inadvertently, and the full-text of all policies is properly part of the record of this case. Furthermore, James Schill's testimony speaks for itself, and CIC has accurately quoted the same.

While CIC will not take the bait and address all of the arguments made by Spaeth regarding the policies, CIC will, for the sake of clarity, briefly address several of the falsities.

Most troubling is Spaeth's labeling of the CIC policies as "the Ohio policies"; her labeling of James Schill as an "Ohio named insured"; and her statement that the umbrella policy "only insures occurrences involving the Ohio home". (Appellee's Brief at 6-8.) These "factual statements" have no basis in actual fact and are patently false and misleading.

The CIC umbrella policy specifically defines "coverage territory" to mean "anywhere." Additionally, an umbrella policy, unlike a homeowner's policy, is not tied to a certain property. By its very nature and its terms, James Schill's CIC personal umbrella liability policy provides him with umbrella liability coverage, for any covered liabilities, anywhere in the world. Nowhere in the CIC umbrella policy is there language to suggest that coverage is limited to Ohio or to Robert Schill's Burton, Ohio Orange Lane address. Spaeth's argument that a mailing address listed on the policy constitutes a "legal residence of domicile" is meant to distract this Court away from the fact that "domicile" is a concise legal term that has been defined and construed by this Court consistently for over 100 years.

In yet another proverbial *red-herring*, Spaeth argues that a condition in the CIC umbrella policy concerning "underlying insurance" is somehow a grant of coverage that defines all of James and Jean Schill's relatives as "insureds". CIC has previously addressed this argument at length but, suffice it to say, in order for Robert Schill's personal auto policy with State Auto to be "underlying insurance", to James Schill's CIC umbrella policy, Robert Schill would have to be an "insured", under his Florida resident father's CIC personal umbrella liability policy, as CIC's umbrella policy defines that term. Robert Schill is simply

not an “insured” under James Schill’s CIC personal umbrella policy. A policy condition, pertaining to “underlying insurance”, like the one found in the CIC umbrella policy, does not expand coverage and does not serve to define a policy term. Insurance policy conditions neither create insurance coverage nor do they define who is a policy “insured.”

Accepting Spaeth’s argument concerning this policy condition would greatly expand an insurer’s liability and exposure under an insurance contract – much as the *Scott-Pontzer* line of cases did for a short while before this Court limited such judicial expansion of an insurance contract. See, *Westfield Ins. Co. v. Galatis* (2003), 100 Ohio St.3d 216, 221.

Finally, despite Spaeth’s assertion at page 10 of her brief, CIC did not “concede” that Robert Schill’s personal auto policy qualified as “underlying insurance” to the CIC umbrella policy. Rather, CIC succinctly pointed out, consistent with the above, that even if Robert Schill’s personal auto policy satisfied a *condition for coverage* under the CIC umbrella policy, Spaeth could not use that to argue that Robert Schill was a defined “insured” under that policy. (CIC’s Court of Appeals Brief at 15.) The fact remains that Robert Schill is only an “insured” under James Schill’s CIC umbrella policy if Robert Schill and James Schill share the same legal residence of *domicile*, which is widely accepted and well defined principle under Ohio law. Once the court has made the determination that a party seeking coverage is not an “insured”, the coverage inquiry is at an end. See, *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St. 3d 660, 662 (“If we find [the claimant] was not an insured under the policies, then our inquiry is at an end.”)

CONCLUSION

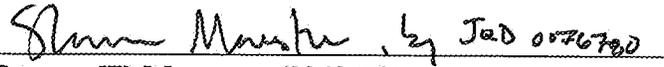
For these reasons, as well as those set forth in the Appellant's initial Merit Brief, the Cuyahoga County Court of Appeals erred in failing to determine that James Schill's subjective intent and voluntary decision to choose Florida as his domicile in 1993 was and remains his presumptive domicile since that time. That error set in motion an improper domicile analysis by the Appellate Court. Contrary to Spaeth's contention, and consistent with longstanding Ohio law – a person can only have one domicile - and not a separate domicile for insurance coverage purposes as Spaeth advocated here.

CIC submits that this Court needs to clearly address the domicile analysis to be undertaken by Ohio courts and further hold that the uncontroverted evidence in this matter establishes that James Schill, through his intent and actions, became a Florida domiciliary in 1993 and because his election, choice and intent never changed, he remained domiciled in Florida in 2007 at the time of his son's auto accident up in Ohio.

Consequently his son, Robert Schill, is not an "insured" under CIC's personal umbrella liability policy issued to James Schill because they simply did not share the same

domicile, a prerequisite for Robert Schill to have umbrella liability coverage under his father's CIC personal umbrella liability policy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing instrument was made by mailing true and correct copies thereof, in sealed envelopes, postage fully prepaid and by depositing same in the U.S. mail on this 18th day of July, 2013, to the following:

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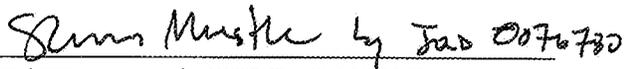
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