

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

KEITH MADDUX EL, LAYMAN,

Petitioner,

v

File No. 11-28638-AH
HON. PHILIP E. RODGERS, JR.

SHIRLEE HARRY, WARDEN
PUGSLEY CORRECTIONAL FACILITY,

Defendant.

Petitioner Acting in Pro Per

ORDER OF DISMISSAL

The Defendant previously filed a Petition for Writ of Habeas Corpus with the Ingham County Civil Division. Subsequently, the Defendant was informed that he needed to file his Petition in the county in which he is incarcerated. Defendant's Petition was then sent to Grand Traverse County and was filed on July 6, 2011.

The Defendant in the above captioned case is an inmate at Pugsley Correctional Facility, located in Kingsley, Grand Traverse County, Michigan. The Defendant is currently serving a sentence of 10 to 15 years with the Michigan Department of Corrections (MDOC) pursuant offenses which occurred on May 10, 2004 in Wayne County, Michigan. Additionally, the Defendant has four inactive MDOC sentences for prior offenses occurring in Wayne County.

After reviewing the pertinent case law, this Court concludes that Defendant's Grand Traverse County case must be dismissed, albeit without prejudice, as the Thirteenth Circuit Court does not have jurisdiction to grant or deny the Defendant's Petition for Writ of Habeas Corpus.

The Defendant is not a resident of Grand Traverse County for purposes of jurisdiction. Mere presence in this county does not confer jurisdiction to Thirteenth Circuit Court. When used in a statute conferring jurisdiction, residence is interpreted to mean legal residence or

domicile. *Fowler v Fowler*, 191 Mich App 318; 576 NW2d 390 (1991). The term “resides” has two different meanings.

In its legal or technical sense, the term ‘reside’ means legal domicile as distinguished from mere residence or place of actual abode. In this sense the word ‘reside’ means legal residence; legal domicile, or the home of a person in contemplation of law; the place where a person is deemed in law to live, which may not always be the place of his actual dwelling, and thus the term may mean something different from being bodily present, and does not necessarily refer to the place of actual abode. When employed in this sense, the word “reside” includes not only physical presence in a place, but also the accompanying intent of choosing that place as a permanent residence. *Kubiak v Steen*, 51 Mich App 408, 413; 391 NW2d 476 (1974).

In its popular sense, ‘reside’ means the personal, actual or physical habitation of a person; actual residence or place of abode; and it signifies being physically present in a place and actually staying there. In this sense the term means merely residence, that is, personal residence, and does not mean legal residence or domicile. *Id.* at 414.

The issue of a person’s domicile is principally a question of intent, and is resolved by reference to all the facts and circumstances of the particular case. *Curry v Jackson Circuit Court*, 151 Mich App 754; 391 NW2d 476 (1986). Proof of domicile does not depend on any particular fact, but on whether all the facts and circumstances taken together tend to establish it. *Id.* All acts indicative of purpose must be carefully scrutinized. *Id.* Presence, abode, property ownership, and other facts are often considered, but intent is the key factor. *Leader v Leader*, 73 Mich App 276, 281; 251 NW2d 288 (1977).

Allegations of imprisonment in a county are insufficient in and of themselves to establish residence of an inmate in that county for purposes of establishing jurisdiction over action by the Court. *Curry, supra*. Furthermore, there is a presumption that a prisoner cannot establish a new domicile in the county or state in which he is imprisoned because the relocation is involuntary. *Id.* at 759.

Courts are bound to take notice of the limits of their authority. *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992); *People v Erwin*, 212 Mich App 55, 65; 536 NW2d 818 (1995). Even if the question is not raised by either party, a court should, on its own motion, recognize its lack of jurisdiction by staying the proceedings, resolving the jurisdictional question, and dismissing the case if jurisdiction is lacking. *Smith v Smith*, 218 Mich App 727,

731; 555 NW2d 271, 274 (1996) citing *Fox v Univ of Michigan Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965); *In re Estate of Fraser*, 288 Mich 392, 394 (1939).

The Defendant has provided no demonstrable evidence that he intends to establish domicile and reside in Grand Traverse County after the expiration of his prison sentence. Based on his sentencing history, it appears that the Defendant has been a resident of Wayne County since approximately 1981, if not earlier, and this Court makes the reasonable presumption that the Defendant will likely return to Wayne County upon his release. The Defendant's physical or actual presence in Kingsley is not equivalent to his residing in Kingsley and thus, this Court does not have jurisdiction to address the Defendant's Petition for Writ of Habeas Corpus.

For the reasons stated herein, the Court dismisses this case without prejudice. The Defendant may re-file his Petition with the jurisdictionally appropriate county.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____