## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY E. MURPHY, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
JORDAN S. MILLER	:	NO. 04-2466

## MEMORANDUM

Bartle, J.

February 8, 2005

This is an action for personal injuries arising out of a watercraft accident that occurred in Pennsylvania on July 25, 2002. Before the court is the motion of the defendant to dismiss for lack of subject matter jurisdiction on the ground that there is no diversity of citizenship between the parties.

At the time of the accident, both the plaintiffs and the defendant were living in Pennsylvania. By the time the complaint was filed, on June 7, 2004, the defendant had moved to California to attend a one-year program at a racing driver's school. The defendant submits that despite this move, diversity is lacking because he remains a citizen of Pennsylvania.

Diversity of citizenship is to be determined by the status of the parties at the time the lawsuit is filed. <u>Dole</u> <u>Food Co. v. Patrickson</u>, 538 U.S. 468, 478 (2003). Defendant will be considered a citizen of California if, at the time the complaint was filed, it was to be his "home for an indefinite period of time." <u>Gallagher v. Philadelphia Transp. Co.</u>, 185 F.2d 543, 546 (3d Cir. 1950).

Looking at the factors that have been analyzed time and time again in this district, we find that the defendant intended to remain in California for an indefinite period of time. See Avins v. Hannum, 497 F. Supp. 930, 937 (E.D. Pa. 1980). Although he is attending a one-year school program in California while his mother continues to live in Pennsylvania, he was 23 years old when he left and had already completed two years of college in Pennsylvania. Upon his move, he took the majority of his belongings, including vehicles and furniture. Shortly after his arrival in California, he opened up a bank account, purchased a new car and a new motorcycle, registered and insured these vehicles in California, and applied for a California driver's license. One of his vehicles is still registered in Pennsylvania, he has a bank account in Pennsylvania, and he remains registered to vote in the Commonwealth although he has not voted at all while in California. At his deposition, he testified that ultimately, whether he would remain in California would depend upon where he finds a job after graduation.

Based on the totality of the evidence, we find that, at the time the complaint was filed, the defendant had given up his domicile in Pennsylvania and intended to remain in California indefinitely. It is of no import that he may have contemplated a "vague possibility of eventually going elsewhere, or even of returning whence he came." <u>Gallagher</u>, 185 F.2d at 546.

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## <u>ORDER</u>

AND NOW, this 8th day of February, 2005, it is hereby ORDERED that the motion of defendant to dismiss for lack of subject matter jurisdiction (Doc. # 10) is DENIED.

BY THE COURT:

<u>/s/ Harvey Bartle III</u>

J.