

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

GEORGE W. REID

PLAINTIFF

v.

CIVIL ACTION NO. 3:00CV-799-S

FRANKFORT PUBLISHING CO., L.L.C.
d/b/a THE STATE JOURNAL, et al.

DEFENDANTS

MEMORANDUM OPINION

This matter is before the court on motions filed separately by the defendants, Frankfort Publishing Co., L.L.C. d/b/a The State Journal (“the State Journal”), and Andrew Villalon (“Villalon”). The State Journal has moved to dismiss the plaintiff’s Complaint, or in the alternative, to transfer it, for improper venue pursuant to Fed. R. Civ. P. 12 (b) (3) and 28 U.S.C. § 1406. *See* DN 6. Villalon has moved to dismiss the plaintiff’s Complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12 (b) (2). *See* DN 3. For the reasons set forth below, we decline to address either of the defendants’ motions at this time because it appears that complete diversity is absent and that the court’s jurisdiction on that basis is lacking.

BACKGROUND

The plaintiff, George W. Reid (“Reid”) alleges that the conduct of both the State Journal, a daily newspaper published in Frankfort, Kentucky, and Villalon, Reid’s former colleague, constitutes “libel and defamation and false light invasion of privacy . . . pursuant to Kentucky common law[.]” Compl. at ¶ 4. Reid’s sole basis for this court’s exercise of subject matter jurisdiction is diversity of citizenship pursuant to 28 U.S.C. § 1332. *See* Compl. at ¶ 4. Having asserted the complete diversity of the parties, Reid bears the burden of establishing that jurisdiction is proper under 28 U.S.C. § 1332. *See Certain Interested Underwriters at Lloyd's, London, England v. Layne*, 26 F.3d 39, 41 (6th Cir. 1994) (citations omitted).

The only facts which have been established are also undisputed. They are:

(1) Reid “is, and at all times relevant hereto has been a resident of Frankfort, Franklin County, Kentucky.” Compl. at ¶ 1; State Journal’s Answer (DN 7) at ¶ 1.

(2) The State Journal is a Delaware corporation whose principal place of business is Kentucky. *See* Compl. at ¶ 2; State Journal’s Mot., Ex. A., Affidavit of Ann Maenza, at ¶ 2.

(3) Villalon “is, and at all times relevant hereto has been a resident of Cincinnati, Ohio.” *See* Compl. at ¶ 3.

DISCUSSION

Pursuant to Fed. R. Civ. P. 12 (h) (3), the district court may, *sua sponte*, dismiss an action “[w]hen it appears . . . that the court lacks jurisdiction of the subject matter . . .” *See McLaughlin v. Cotner*, 193 F.3d 410, 412 (6th Cir. 1999); *Von Dunser v. Aronoff*, 915 F.2d 1071, 1074 (6th Cir. 1990). Here, the plaintiff has failed to demonstrate the diversity of citizenship of the parties. Reid alleges that he is a resident of Kentucky and that Villalon is resident of Ohio. *See* Compl. at ¶¶ 1, 3. However, an individual party’s citizenship, for the purposes of 28 U.S.C. § 1332, is the equivalent of *domicile*, not residency. *See Safeco Ins. Co. of America v. City of White House, Tenn.*, 36 F.3d 540, 544 (6th Cir. 1994). Residency is only one aspect of an individual’s domicile. In addition, a plaintiff must demonstrate “an intent to remain in a particular state permanently, or at least indefinitely” on the part of each party. *Stifel v. Hopkins*, 477 F.2d 1116, 1120 (6th Cir.1973).

Even assuming that the plaintiff can sufficiently demonstrate that his domicile is in Kentucky and that Villalon is domiciled in Ohio, diversity of citizenship would still be defeated by the undisputed fact that the State Journal is a citizen of both Delaware and Kentucky. *See Schwartz v. Electronic Data Systems, Inc.*, 913 F.2d 279, 284 (6th Cir. 1990) (“[A] corporation must be treated as a citizen both of its state of incorporation and of the state of its principal place of business.”). Given that the State Journal is a citizen of Kentucky, and assuming Reid is also a citizen of Kentucky, diversity would still be lacking since “[d]iversity jurisdiction attaches only when all parties on one side of the litigation are of a different citizenship from all parties on the other side of the litigation.” *See SHR*

Ltd. Partnership v. Braun, 888 F.2d 455, 456 (6th Cir.1989). Because Reid has failed to demonstrate the requisite diversity of citizenship between the parties, he will be ordered to show cause why his Complaint should not be dismissed pursuant to Fed. R. Civ. P. 12 (h) (3) for lack of subject matter jurisdiction.

CONCLUSION

For the reasons set forth above, the plaintiff will be ordered to show cause why his Complaint should not be dismissed without prejudice for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12 (h) (3). A separate order will be entered this date in accordance with this opinion.

This ____ day of _____, 2001.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

The plaintiff is **HEREBY ORDERED TO SHOW CAUSE**, on or before June 4, 2001, why his Complaint should not be dismissed without prejudice for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12 (h) (3).

IT IS FURTHER ORDERED AND ADJUDGED that the motions of the defendants, *see* DNs 3 and 6, are **REMANDED**.

IT IS SO ORDERED this ____ day of _____, 2001.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record