

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the 3rd day of February, two thousand twenty.

Present: GUIDO CALABRESI,
ROSEMARY S. POOLER,
SUSAN L. CARNEY,
Circuit Judges.

ELIJAH W. RATCLIFF,

Appellant,

v.

19-109

GREYHOUND BUS LINES, INC. dba GREYHOUND BUS LINES,

Appellee.

Appearing for Appellant: Elijah W. Ratcliff, pro se, Livingston, TX.

Appearing for Appellee: Nicholas M. Cardascia, Cullen & Dykman LLP, Garden City, N.Y.
Vito A. Cannavo, Jr., Frank J. Wenick (Glenn A. Kaminska, *on the brief*), Ahmuty, Demers & McManus, New York, N.Y.

Appeal from the United States District Court for the Southern District of New York (Stanton, J.).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED**.

Appellant Elijah W. Ratcliff, pro se, appeals from the November 20, 2018 judgment of the United States District Court for the Southern District of New York (Stanton, J.) dismissing his claim for lack of subject-matter jurisdiction. We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

We review factual findings in dismissals for lack of subject matter jurisdiction for clear error and legal conclusions de novo. *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). Federal courts have jurisdiction to hear cases between diverse parties "where the matter in controversy exceeds the sum or value of \$75,000." 28 U.S.C. § 1332(a). Section 1332 requires "complete diversity," meaning that "all plaintiffs must be citizens of states diverse from those of all defendants." *Pa. Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co., Inc.*, 772 F.3d 111, 118 (2d Cir. 2014) (internal quotation marks omitted). "An individual's citizenship, within the meaning of the diversity statute, is determined by his domicile . . . [in other words] the place where a person has his true fixed home and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Van Buskirk v. United Grp. of Cos., Inc.*, 935 F.3d 49, 53 (2d Cir. 2019) (internal quotation marks and citation omitted) (alterations in original). A person can only have one domicile at any given moment. *Id.*

Ratcliff did not demonstrate that he was domiciled in New York. Notwithstanding his statement that he lived in Manhattan, Ratcliff's complaint and address of record contradicted this allegation. His mailing address of record was in Livingston, Texas, and he signed the verification of his complaint there. His complaint alleged that he was traveling from Texas to New York to visit a doctor and that the luggage was stolen on the trip *back to Texas from* New York. Ratcliff argued in his motion for reconsideration that voter registration and tax returns showed that he was domiciled in New York, but he did not offer any evidence supporting this claim. *See Herrick Co. v. SCS Commc'ns, Inc.*, 251 F.3d 315, 322–23 (2d Cir. 2001) ("[T]he party seeking to invoke jurisdiction under 28 U.S.C. § 1332 bears the burden of demonstrating that the grounds for diversity exist and that diversity is complete." (internal quotation marks and citation omitted)). Finally, Ratcliff concedes on appeal that he committed to being served in Texas for the purposes of this case, which further supports the conclusion that he was domiciled there when he filed the complaint. Therefore, even if Ratcliff had a residence in New York, he was not domiciled here since the complaint and his conduct showed that he was principally based in Texas. *See Van Buskirk*, 935 F.3d at 53. The district court did not clearly err in dismissing for lack of diversity jurisdiction.

Although the district court did not grant Ratcliff leave to amend his complaint, it did not err in failing to do so. A pro se plaintiff should be afforded leave to amend following dismissal "when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (internal quotation marks omitted). However, amendment would have been futile because the parties were not diverse. Therefore, the district court properly dismissed the complaint.

Finally, we lack jurisdiction to consider the denial of Ratcliff's motion for a default judgment because he did not file a notice of appeal from the denial, which occurred after he filed his original notice. Fed. R. App. P. 4(a)(4)(B)(ii); *see also Swatch Grp. Mgmt. Servs. Ltd. v. Bloomberg L.P.*, 756 F.3d 73, 93 (2d Cir. 2014) (declining to construe notice of appeal to include order issued after notice was filed).

We have considered the remainder of Ratcliff's arguments and find them to be without merit. Accordingly, the order of the district court hereby is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk