

# CLOSING NEVADA'S COURTHOUSE DOORS: A CRITICAL EXAMINATION OF *DOGRA V. LILES*

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Unlike their colleagues on the United States Supreme Court, the seven justices of the Supreme Court of Nevada rarely produce close (4-3) split decisions. What makes the outcome in Nevada's *Dogra v. Liles* even more notable, however, is that the swing vote, and majority opinion, was provided not by one of the justices but rather by a Nevada District Court Judge who was temporarily filling a vacancy created by the recusal of Justice Michael Douglas.<sup>1</sup> So, what issue was at stake to create such a unique split vote? Nothing less than the rights of Nevada citizens to seek justice in their own court system against out-of-state defendants.

Dean Chemerinsky has often remarked on the trend in the federal court system of interpreting jurisdictional and standing doctrines in an unduly restrictive manner, which effectively closes the doors of the courthouse to the public and denies litigants access to justice.<sup>2</sup> The *Dogra* decision carries this trend into the Nevada state court system by using a restrictive interpretation of the case law surrounding the doctrine of personal jurisdiction to bar Nevada citizens from seeking justice in their home courts.

The fact pattern in *Dogra* is relatively simple and straightforward. Jane Liles, a resident of California, purchased a car for her daughter, Susan, to use while she attended college at Cal Poly University in San Louis Obispo, California.<sup>3</sup> The car was registered and insured in Jane's name; however Susan was listed as the primary driver on the policy.<sup>4</sup> Jane admitted in deposition testimony that she placed no restrictions on Susan's use of the vehicle.<sup>5</sup> On August 22, 2008, while driving on Interstate 15 towards Las Vegas to attend a friend's birthday party, Susan lost control of the vehicle causing it to swerve into an adjoining lane.<sup>6</sup> In an attempt to avoid a collision with Susan, the driver in that

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<sup>1</sup> See *Dogra v. Liles*, 314 P.3d 952, 954, n.1 (Nev. 2013). Pursuant to article 6, section 4 of the Constitution of the State of Nevada, in the event of the disqualification of a justice, the Governor is empowered to appoint a Nevada district court judge to replace him or her. NEV. CONST. art. 6, § 4.

<sup>2</sup> Erwin Chemerinsky, *Closing the Courthouse Doors: October Term 2010*, 14 GREEN BAG 2d 375 (2011). See also Erwin Chemerinsky, *Closing the Courthouse Doors to Civil Rights Litigants*, 5 U. PA. J. CONST. L. 537, 539 (2003); Jim Hellegaard, *Closing the Courthouse Doors*, GA. ST. U.C. OF L. (Feb. 15, 2012), <http://law.gsu.edu/7602.html>.

<sup>3</sup> Appellant's Opening Brief at 6, *Dogra v. Liles*, 314 P.3d 952 (Nev. 2013) (No. 59381).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 7, 11.

<sup>6</sup> *Id.* at 4.

lane swerved and instead crashed into the center median.<sup>7</sup> The vehicle then flipped over and landed on top of a vehicle occupied by Melinda and Jagdish Dogra that had been traveling in the opposite direction.<sup>8</sup> Mrs. Dogra was severely injured as a result of the accident and nearly died.<sup>9</sup> She was transported by helicopter to a local trauma center where she remained for almost two months.<sup>10</sup> Her injuries resulted in ongoing cognitive and neurological deficiencies, and she will need continuing medical care for the remainder of her life.<sup>11</sup> As of the date of the appeal, Mrs. Dogra's direct medical expenses totaled nearly one million dollars.<sup>12</sup>

In all, four plaintiffs made claims for damages against the Liles' insurance carrier.<sup>13</sup> Given that the damages far exceeded the insurance policy limits, the insurance company initiated an interpleader action in Nevada's Eighth Judicial District Court, naming each of the claimants as parties.<sup>14</sup> Given that the interplead funds were insufficient to compensate Mrs. Dogra for her injuries, on August 17, 2010, the Dogras filed a separate complaint against both Susan and Jane asserting claims of negligence against Susan and negligent entrustment against Jane.<sup>15</sup> Upon receiving service of summons, Jane immediately filed a special appearance and moved to dismiss the complaint against her for lack of personal jurisdiction pursuant to NRCP 12(b)(2).<sup>16</sup> The District Court granted the motion, finding that the Dogras had failed to provide evidence that Jane "had 'substantial' or 'continuous and systemic' contacts with Nevada."<sup>17</sup> The Dogras appealed.<sup>18</sup>

Three issues were briefed and argued in the appeal.<sup>19</sup> The first and most central issue was whether Jane, as a nonresident defendant, was subject to personal jurisdiction in Nevada by virtue of her allowing Susan unrestricted use of the car.<sup>20</sup> The second and third issues were collateral to the first and had to do with whether Jane waived her right to object to the court's exercise of jurisdiction when she joined in the motion to consolidate the cases and/or when her insurance company filed the interpleader action.<sup>21</sup> With respect to the first

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<sup>7</sup> *Id.* at 4–5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Respondent's Answering Brief at 1, *Dogra v. Liles*, 314 P.3d 952 (Nev. 2013) (No. 59381).

<sup>14</sup> Appellant's Opening Brief, *supra* note 3, at 5.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.*

<sup>17</sup> Respondent's Answering Brief, *supra* note 13, at 2.

<sup>18</sup> *See* Appellant's Opening Brief, *supra* note 3. When the other claimants also brought suit against both Jane and Susan, the Liles subsequently filed a motion to consolidate all four cases arising from the accident. Respondent's Answering Brief, *supra* note 13, at 2. At the time of the motion only Susan was still a party to the Dogra's lawsuit. *See id.* However, since both she and Jane were named parties in the suits filed by the other claimants, they filed the motion to consolidate jointly. *Id.* The motion was subsequently granted. *Id.* at 3.

<sup>19</sup> *Dogra*, 314 P.3d at 955.

<sup>20</sup> *Id.* at 954–955.

<sup>21</sup> *Id.* at 954.

question, the majority opinion held that “a nonresident defendant is not subject to personal jurisdiction in Nevada when the sole basis asserted is his or her adult child’s unilateral act of driving the defendant’s vehicle in Nevada.”<sup>22</sup> The court also found, in deciding the second issue, that the filing of the consolidation motion did not act as a waiver of Jane’s right to assert a jurisdictional defense since it did not “implicate the parties’ substantive legal rights”.<sup>23</sup> Finally, with regards to the third issue, the Court remanded the case for a factual determination of whether, when the insurance company filed the interpleader, it was acting as Jane’s agent, thereby waiving her jurisdictional defense.<sup>24</sup> It is the first of these three holdings that raises the most concern in terms of closing access to Nevada courts and, thus, this Note will focus exclusively on that issue.

Nevada’s long-arm statute provides that a Nevada court’s jurisdiction over non-residents extends to the limits allowed by the U.S. Constitution.<sup>25</sup> The seminal case of *International Shoe v. Washington* firmly established that to satisfy the Due Process Clause of the U.S. Constitution, a court must determine whether a nonresident defendant has “minimum contacts” with the forum jurisdiction such that “maintenance of the suit does not offend traditional notions of fair play and substantial justice.”<sup>26</sup> Applying this test in *Budget Rent-A-Car v. Eighth Judicial District Court*, the Supreme Court of Nevada held that, where a rental agreement specifically provided that the renter could not drive a vehicle outside of California without Budget’s written permission, and where such permission was neither sought or granted, a Nevada court could not exercise personal jurisdiction over Budget.<sup>27</sup> The question raised in *Dogra*, by contrast, is whether Jane’s unrestricted grant of use of her car to Susan provided sufficient minimum contact with Nevada to establish personal jurisdiction.

In answering this question the Court looked for guidance to two cases from other jurisdictions: *Tavoularis v. Womer*, 462 A.2d 110 (N.H. 1983), and *Stevenson v. Brosdal*, 813 So. 2d 1046 (Fla. Dist. Ct. App. 2002).<sup>28</sup> In *Tavoularis*, the New Hampshire Supreme Court held that a New Hampshire court’s exercise of personal jurisdiction over a nonresident defendant was proper where the defendant “specifically authorized” a friend to use his vehicle in New Hampshire.<sup>29</sup> Likewise, in *Stevenson*, a Florida appeals court held that a nonresident defendant established sufficient minimum contacts with Florida when he loaned his son a car with specific knowledge that the son would regularly use the car there.<sup>30</sup> The primary difference between the majority and minority opinions in *Dogra* was in how broadly these decisions were construed.

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> NEV. REV. STAT. § 14.065 (2013).

<sup>26</sup> *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945). *See also* NEV. REV. STAT. § 14.065, *supra* note 25 (providing for jurisdiction to the limits of what is allowed by the U.S. Constitution).

<sup>27</sup> *Budget Rent-A-Car v. Eighth Jud. Dist. Ct.*, 835 P.2d 17, 20 (Nev. 1992).

<sup>28</sup> *Dogra*, 314 P.3d at 956.

<sup>29</sup> *Tavoularis v. Womer*, 462 A.2d 110, 114 (N.H. 1983).

<sup>30</sup> *Stevenson v. Brosdal*, 813 So. 2d 1046, 1049 (Fla. Dist. Ct. App. 2002)

The majority opted for a restrictive approach, interpreting *Tavoularis* and *Stevenson* as placing the burden on a plaintiff to prove either (1) that a nonresident defendant gave specific authorization to use their car in the forum state, or (2) that they had specific knowledge of the driver's use of the vehicle in that state.<sup>31</sup> Referring to *World-Wide Volkswagon v. Woodsen*, 444 U.S. 286 (1980), Judge Flanagan reasoned that interpreting Jane's no-restrictions policy as specifically authorizing Susan's use of the car in Nevada would, in effect, appoint the vehicle as Jane's agent for service of process.<sup>32</sup> In his view, such an interpretation "would be unreasonable and would offend due process." Since Susan's driving of the car in Nevada was a "unilateral act unsanctioned by Jane and of which Jane had no specific knowledge," the majority held that Nevada has no personal jurisdiction over Jane.<sup>33</sup>

Justice Gibbons' dissent, joined by Justices Cherry and Saitta, favored a broader reading of the *Tavoularis* and *Stevenson* decisions. The dissent reasoned that Jane implicitly consented to Susan's use of car in Nevada when she failed to impose any restrictions on it.<sup>34</sup> They noted that in her deposition Jane did not deny actual knowledge of her daughter's trip to Las Vegas (a trip that had been planned for five months), but instead stated that she could not remember whether she knew about it or not.<sup>35</sup> Since, in deciding a motion to dismiss, every inference is to be made in favor of the non-moving party, the dissent reasoned that Jane's knowledge of the trip should be inferred.<sup>36</sup> Furthermore, Justice Gibbons pointed out that it was entirely foreseeable that Susan, a college student in southern California, would potentially drive the car to Las Vegas absent explicit instructions to the contrary.<sup>37</sup> Therefore, considering the close proximity of Las Vegas to southern California, the factual inference that must be drawn regarding Jane's knowledge of the trip, and Jane's failure to explicitly prohibit Susan from driving to Nevada, the dissent determined that Jane could reasonably expect to find herself becoming a defendant in Nevada for an accident arising from Susan's use of the car.<sup>38</sup>

While Jane may yet find herself subjected to Nevada's jurisdiction based on her insurance company's filing of the interpleader action, the central jurisdictional holding of *Dogra* raises significant concerns regarding access to justice. As Dean Chemerinsky has noted, even if decisions of this type simply reflect the pro-business leanings of conservative jurists, they fail to "recognize that civil suits for monetary damages . . . are essential to ensure that injured individuals gain recovery and that future misconduct is deterred."<sup>39</sup> A denial of access to the courthouse often results in a denial of justice to injured parties. In *Dogra*, the majority's decision to narrowly circumscribe jurisdictional rules

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<sup>31</sup> See *Dogra*, 314 P.3d at 956.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 960 (Gibbons, J. dissenting in part).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Chemerinsky, *supra* note 2, at 389–90.

means that Nevada citizens, injured by the actions of out-of-state defendants, can be denied access to the very courthouses supported by their tax dollars. It is a result that was both unnecessary and unjust.