

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

10-21-2021

Senjab v. Alhulaibi, 137 Nev. Adv. Op. 64 (October 21, 2021)

Colleen C. Freedman

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

DIVORCE SUBJECT MATTER JURISDICTION: REQUIRES MERE RESIDENCE

Summary

In an opinion drafted by Justice Parraguirre, the Nevada Supreme Court re-evaluated its long holding of the definition of “residence” under Nevada’s divorce statute, NRS 125.020, requiring both physical presence in Nevada (residence) and intent to remain in Nevada. This case is an appeal of the district court’s dismissal of a divorce complaint for lack of subject-matter jurisdiction due to absence of domicile. The Supreme Court further reviewed its long holding that residence is “synonymous with domicile” for divorce jurisdiction and found its prior rulings were unsound for several reasons. First, NRS 125.020(2) simply and separately addresses “domicile[]” in its first clause and “residen[ce]” in its second clause.² Given such a construction, the Court could not interpret residence and domicile to be synonymous in NRS 125.020.³ Also, in *Park v. Barr*, the Ninth Circuit explained that the California Court of Appeals decision in which the lower court relied “conflated ‘residence’ with ‘domicile’ by describing them as ‘synonymous.’”⁴ Furthermore, under NRS 10.155, residence plainly requires only “physical [] presen[ce],” not an extra-textual intent to remain. NRS 125.010(1)(e) was satisfied as may obtain divorce in “the district court of any county... if the plaintiff resided 6 weeks in the State before suit was brought. NRS 125.020(2), residence “for a period of not less than 6 weeks preceding the commencement of the action.”

In this case, both parties had been physically present in Nevada for at least six weeks before the divorce complaint was filed. The Court found that the district court did not lack subject-matter jurisdiction under NRS 125.020, and reversed and remanded this case.

Facts and Procedural History

Appellant, Ahed Said Senjab, and respondent, Mohamad Abulhakim Alhulaibi, are Syrian citizens. They married in Saudi Arabia and have one minor child. In 2018, Alhulaibi obtained an F-1 (student) visa and moved to Las Vegas to attend the University of Nevada, Las Vegas. After obtaining F-2 (dependent) visas, Senjab and child moved to Las Vegas to live with Alhulaibi in January 2020.

In March 2020, Senjab filed for divorce. She sought spousal support, custody of the child, and child support. Alhulaibi moved to dismiss Senjab’s complaint for lack of subject-matter jurisdiction because Senjab, as a nonimmigrant, could not establish intent to remain in Nevada (domicile). He constructed his argument from caselaw in which the court explained that residence is synonymous with domicile under Nevada’s divorce-jurisdiction statute, NRS 125.020, which requires both physical presence in Nevada (residence) and intent to remain in Nevada. He also cited a recent Ninth Circuit decision and other caselaw holding that some visas preclude domicile as a matter of law by requiring the visa holder not intend to abandon his or her

¹ By Colleen C. Freedman.

² NEV. REV. STAT. 125.020(2) (2019).

³ See *Berberieh v. Bank of Am., N.A.*, 460 P.3d 440, 442 (2020) (explaining that, under the surplusage canon, no word or provision of a statute “should be ignored [or] given an interpretation that causes it to duplicate another provision or to have no consequence (internal quotation marks omitted)).

⁴ *Park v. Barr*, 946 F.3d 1096, 1100 (9th Cir. 2020) (quoting *In re Marriage of Dick*, 18 Cal. Rptr. 2d 743, 746 (Ct. App. 1993)).

foreign residence. Senjab replied that the caselaw did not apply to her F-2 visa, and the district court had subject matter jurisdiction under NRS 125.020 because she had resided in Nevada for the stated period of not less than six weeks.

The district court granted Alhulaibi's motion. The district court cited the long-standing rule that residence is synonymous with domicile under NRS 125.020. It found that both parties had been physically present in Nevada for at least six weeks before Senjab filed her complaint but neither party had established domicile in Nevada. Furthermore, the district court cited a recent Ninth Circuit decision and concluded that Alhulaibi's F-1 visa and Senjab's F-2 visa precluded them from establishing domicile as a matter of law, so it dismissed Senjab's complaint for lack of subject-matter jurisdiction.

Senjab appealed the district court's decision, arguing that "reside[nce] under NRS 125.020 simply means mere residence—not domicile. The court reviewed the rule that residence and domicile are synonymous under NRS 125.020.

Discussion

Standard of Review

The court reviews subject-matter jurisdiction and statutory-interpretation issues de novo, and interprets a statute by its plain meaning unless some exception applies.⁵ The court did not supply an argument on a party's behalf but review only the issues the parties presented.⁶

Departure from NRS 125.020 Definition of "residence"

NRS 125.020(1) provides several bases for subject-matter jurisdiction of a divorce complaint, including either party's "residen[ce]" in the county in which the plaintiff files the complaint. NRS 125.020(2) further provides that, "[u]nless the cause of action accrued within the county while the plaintiff and defendant were actually domiciled therein, no court has jurisdiction to grant a divorce unless either the plaintiff or defendant has been resident of the State for a period of not less than 6 weeks preceding the commencement of the action."

Residence and domicile are generally distinct concepts in other areas in law, this court has long considered residence "synonymous with domicile" for divorce jurisdiction.⁷ However, this court departed from the rule for several reasons.

1) NRS 125.020. NRS 125.020(2) simply and separately addresses "domicile[]" in its first clause and "residen[ce]" in its second clause. Given such a construction, the court could not interpret residence and domicile to be synonymous in NRS 125.020.⁸

⁵ Ogawa v. Ogawa, 221 P.3d 699, 704 (2009); Young v. Nev. Gaming Control Bd., 473 P.3d 1034, 1036 (2020).

⁶ Pelkola v. Pelkola, 137 Nev., Adv. Op. 24, 487 P.3d 807, 809 (2021).

⁷ See, e.g., BLACK'S LAW DICTIONARY (11th ed. 2019) (defining residence as "[t]he place where one actually lives, as distinguished from a domicile," and domicile as "[t]he place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere), we have long considered residence "synonymous with domicile for divorce jurisdiction, Vaile, 44 P.3d at 511 (quoting *Aldabe*, 441 P.2d at 694).

⁸ See *Bank of Am., N.A.*, 460 P.3d 440, 442 (2020). (explaining that, under the surplusage canon, no word or provision of a statute "should be ignored [or] given an interpretation that causes it to duplicate another provision or to have no consequence (internal quotation marks omitted)).

2) In *Park v. Barr*, the Ninth Circuit explained that the California Court of Appeals decision on which the lower court relied "conflated 'residence with 'domicile' by describing them as "synonymous." ⁹

3) The Legislature supplied an applicable definition of residence under NRS 10.155, which provides that, [u]nless otherwise provided by specific statute, the legal residence of a person with reference to the person's right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, is that place where the person has been physically present within the State or county, as the case may be, during all of the period for which residence is claimed by the person. No relevant statute provides an alternative definition, so NRS 10.155 applied. Under the NRS 10.155 definition, residence under NRS 125.020 plainly requires only "physical [] presen[ce]" —not an extra-textual intent to remain.¹⁰

Here, the district court found that Senjab and Alhulaibi had been physically present in Nevada for at least six weeks before Senjab filed her complaint. Under a plain-meaning interpretation of "reside [nce]," that finding satisfies NRS 125.020(1)(e), which provides that a plaintiff may obtain divorce in "the district court of any county . . . [i]f plaintiff resided 6 weeks in the State before suit was brought." It also satisfies NRS 125.020(2), which requires residence "for a period of not less than 6 weeks preceding the commencement of the action." With that finding and the plain-meaning interpretation of "residen [ce]" that the court now acknowledges, the district court did not lack subject-matter jurisdiction under NRS 125.020.

Conclusion

Under NRS 125.020, "residen[ce]" means mere residence—not domicile—and NRS 10.155 defines residence as "physical [] presen[ce]." Because the district court found that Senjab had been physically present in Nevada for at least six weeks before she filed her divorce complaint, this court concluded that it had subject-matter jurisdiction under NRS 125.020. This court reversed and remanded to the district court for further proceedings consistent to this opinion.

⁹ *Park v. Barr*, 946 F.3d 1096, 1100 (9th Cir. 2020) (quoting *In re Marriage of Dick*, 18 Cal. Rptr. 2d 743, 746 (Ct. App. 1993)).

¹⁰ NEV. REV. STAT. 10.155; *see also* *ASAP Storage*, 173 P.3d at 744 ("Statutes should be given their plain meaning whenever possible; otherwise, as we have explained, the constitutional separation-of-powers doctrine is implicated.").