

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

7-2-2022

Aguirre v. Elko County Sheriff's Office, 138 Nev, Adv. Op. 32 (May 5, 2022)

Servando Martinez

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



Part of the [Law Commons](#)

Recommended Citation

Martinez, Servando, "Aguirre v. Elko County Sheriff's Office, 138 Nev, Adv. Op. 32 (May 5, 2022)" (2022).
Nevada Supreme Court Summaries. 1502.
<https://scholars.law.unlv.edu/nvscs/1502>

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.

**APPLICABILITY OF THE HOMESTEAD EXEMPTION IN FORFEITURE CLAIMS
WHERE THE DECLARANT IS INCARCERATED**

Summary

In an opinion drafted by Justice Cadish, the Court considered whether Nevada's homestead exemption protects real property from civil forfeiture and whether an incarcerated individual who records a homestead declaration while serving their prison sentence qualifies as a bona fide resident of the homestead property. Aguirre asserted that he recorded his homestead declaration before any final process occurred in the forfeiture cause of action against him, thus having his declaration preempt the forfeiture. The district court dismissed the appellant's argument, rationalizing that the appellant did not comply with the residency requirement because he made his homestead declarations while he was incarcerated. However, the Court held that there is no forfeiture exception to the homestead exemption, stating that incarcerated individuals may still qualify as residents for purposes of the homestead exemption. Here, the Court concluded that the appellant's declaration complied with NRS 115.020, finding that the district court erred in entering a judgment of forfeiture.

Facts and Procedural History

This opinion comes from an appeal from an Eighth Judicial District Court order issuing a judgment of forfeiture against the appellant. In 2016, Aguirre was conveyed a home and real property in Nevada. In October 2017, Aguirre was arrested for trafficking-controlled substances after a search of the property revealed over 80 grams of heroin. In the following month, the Sheriff's Office filed a complaint for forfeiture of the property as the proceedings were halted

¹ By Servando Martinez

pending resolution of Aguirre's criminal charges. While incarcerated, Aguirre stated his intent to claim the property as a homestead, but in August 2018, the court accepted Aguirre's guilty plea. The Sheriff then moved for summary judgment on the forfeiture claim, claiming that Aguirre's declaration was invalid since Aguirre did not physically reside at the property himself when he made it. Aguirre argued that by excluding his allodial title would indicate that the Legislature intended for homestead protections to preempt forfeiture of real property held under other forms of title. The district court denied both parties' motions for summary judgment. The district court concluded that Aguirre did not "substantially comply" with NRS 115.010's requirements because he was incarcerated, finding that forfeiture was proper because Aguirre committed a drug offense at the property and awarding the Sheriff a judgment of forfeiture.

Discussion

The Nevada Constitution provides that "[a] homestead as provided by law, shall be exempt from forced sale under any process of law."² The Constitution creates two specific exceptions to the homestead exemption: (1) that "no property shall be exempt from sale for [1] taxes or [2] for the payment of obligations contracted for the purchase of said premises, or (2) for the erection of improvements thereon."³ The Court details that NRS 115.010(1) codifies the general rule exempting homesteads from any "forced sale on execution or any final process from any court," while NRS115.010(3) codifies the constitutional exceptions to the homestead exemption.

² NEV. CONST. art. 4, § 30.

³ *Id.*

A valid homestead is exempt from civil forfeiture

The Sheriff argues that the Property would be subject to forfeiture regardless of any declarations because it was used in connection to a drug trafficking crime. It also asserts that public policy warrants creating a forfeiture exception to the homestead exemption thus thwarting the goal of the homestead exemption.⁴ However, the Court strikes down this sentiment by clarifying that in *Breedlove*, the homesteader invoked the exemption to avoid paying a child-support judgment and that the homesteader acted in bad faith consistently. The Court further clarifies that although they do not condone drug crimes, the case at hands revolves around the homestead statute, which is meant to protect families against homelessness.⁵ Despite the Sheriff's arguments, the Court continues to rationalize that the exemption protects against "calamitous circumstances," which likely included protecting the homestead when the declarant is arrested as it also protects the declarant's family. The Court rejected the Sheriff's argument, reversing.

Aguirre satisfied NRS 115.020, and thus, the Property is a constitutionally protected homestead

The Sheriff further contended that Aguirre failed to satisfy NRS 115.020(2)(b), which requires a homestead declarant to state that they are residing on the premises, relying on *Nilsson*. Aguirre, however, argued that the Property is his bona fide residence and that he intended to continue residing there before and after his incarceration. The Court further stated that because Aguirre's incarceration is a temporary absence, the residency requirement was satisfied for the exemption.⁶ With this said, his use of the Property for a commercial purpose does not preclude

⁴ See *Breedlove v. Breedlove*, 100 Nev. 606, 691 P.2d 426 (1984); See also *Maki v. Chong*, 119 Nev. 390, 75 P.3d 376 (2003).

⁵ See *Maroun v. Deutsche Bank Nat'l Tr. Co.*, 109 A.3d 203, 207 (N.H. 2014).

⁶ See NEV. REV. STAT. § 115.020(2)(b).

homestead protection. The Court also clarifies that, under NRS 115.020(2)(a) and (c), a single declarant must state that he or she is a householder and that he or she intends to use and claim the property as a homestead, finding that Aguirre did, in fact, declare his intention to reside in the homestead in a “timely and established” manner qualifying his declaration as homestead exemption that protects the Property from forfeiture.

Conclusion

The Court concludes their opinion by reemphasizing that “[p]ublic policy does not warrant creating a civil forfeiture exception to the homestead exemption” and that “incarcerated individuals may still be deemed residents for purposes of the homestead exemption.” Therefore, the Court held that Aguirre’s amended declaration established that he qualified as a bona fide resident of the Property since he lived there before his incarceration and intended to live there upon his release, thus complying with NRS 115.020, entitling him to the protection of the exemption. Thereafter, the Court reversed the district court’s judgment of forfeiture.