

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR GUZMAN,
Appellant,
vs.
KELLIE PERKINS,
Respondent.

No. 51134

FILED

JUL 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL

This is a proper person appeal from a district court order denying appellant's motion for a change of venue. Eighth Judicial District Court, Family Court Division, Clark County; Gerald W. Hardcastle, Judge.

On October 15, 2007, appellant Oscar Guzman was served with respondent Kellie Perkins' complaint for custody and child support. Guzman filed a timely demand for a change of venue under NRS 13.040, which Perkins opposed. Following a hearing, the district court entered an order, without findings or an explanation, denying Guzman's demand for a change of venue. This appeal followed.

Guzman argues that the district court erred in denying his request for a change of venue because he is entitled, as a matter of right under NRS 13.040, to have venue changed to the county in which he, the defendant in the underlying case, resides. Guzman contends that he is a resident of Pershing County, as he is physically present at the Lovelock Correctional Center in Pershing County and intends to remain in Pershing County since he has secured future employment upon his release from custody.

Perkins argues that she, Guzman, and their child were all residents of Clark County during all relevant times related to the custody case and, therefore, Clark County is a proper venue. Perkins also

contends that because Guzman did not voluntarily relocate to Pershing County, he does not “reside” in Pershing County for purposes of NRS 13.040.

In child custody cases, venue is controlled by NRS 13.040,¹ which states, in relevant part, that “[i]n all other cases, the action shall be tried in the county in which the defendants, or any one of them, may reside at the commencement of the action.” If a demand for change of venue is properly filed, and no defendants reside in the county in which the action was filed and that county is not otherwise a proper venue, then removal is mandatory.² A motion for change of venue based on the defendant’s residence, made pursuant to NRS 13.040, does not permit an exercise of discretion by the district court.³ Once a motion for change of venue has been made under NRS 13.040, the district court is deprived of all jurisdiction in the case, except to decide the residence of the defendant at the commencement of the action.⁴

In this case, it is unclear from the district court’s order whether the court determined that Guzman was in fact a resident of Pershing County but that Perkins’ arguments in opposition to removing

¹Stocks v. Stocks, 64 Nev. 431, 183 P.2d 617 (1947) (applying Nevada’s former venue statute, which is identical to Nevada’s current venue statute, in a child custody case).

²Washoe County v. Wildeveld, 103 Nev. 380, 382, 741 P.2d 810, 811 (1987).

³Halama v. Halama, 97 Nev. 628, 629, 637 P.2d 1221 (1981).

⁴Damus v. Avis Rent A Car, 108 Nev. 46, 48-49, 824 P.2d 283, 284 (1992) (citing Williams v. Keller, 6 Nev. 141 (1870)).

venue to Pershing County were meritorious, or if the court determined that Guzman was not a resident of Pershing County at the commencement of the action. Regardless of which determination was made, we agree with Guzman that the district court erred in denying his motion for change of venue.

If the district court determined that Guzman was a resident of Pershing County, the statute mandates that the case be removed to Pershing County. The district court may not exercise its discretion to deny Guzman's demand for change of venue, regardless of Perkins' arguments concerning Clark County's convenience.

If the district court determined that Guzman was not a resident of Pershing County, then its finding is not supported by substantial evidence.⁵ This court has held that "[r]esidence is synonymous with domicile and it is consonant with the many decisions of our court that the fact of presence together with intention comprise bona fide residence."⁶ Regardless of how Guzman came to reside in Pershing County, he is factually present in that county and was residing there at the commencement of the action on October 2, 2007, when Perkins filed her complaint for custody. Guzman also filed an affidavit with the district court stating his intention to continue his residence in Pershing County upon his release from custody. Based on this court's definition of

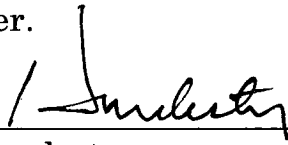
⁵Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998). See also Gepford v. Gepford, 116 Nev. 1033, 1036, 13 P.3d 47, 49 (2000).

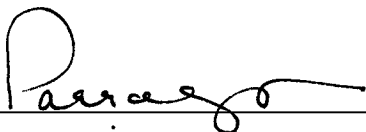
⁶Vaile v. Dist. Ct., 118 Nev. 262, 269-70, 44 P.3d 506, 511 (2002) (quoting Aldabe v. Aldabe, 84 Nev. 392, 396, 441 P.2d 691, 694 (1968)).

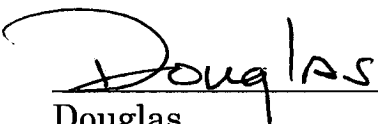
residence, Guzman is a resident of Pershing County and his motion for a change of venue to Pershing County should have been granted.

Accordingly, we

REVERSE the district court's order denying Guzman's motion for a change of venue and REMAND this case to the district court for proceedings consistent with this order.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Gerald W. Harcastle, District Judge, Family Court Division
Oscar Guzman
D. Bruce Anderson
Eighth District Court Clerk