



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1979 | Issue 1

Article 19

1-1-1979

Civil Procedure; Proving Domicile

Rosalie Lazzarotto

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>

 Part of the [Legislation Commons](#)

Recommended Citation

Rosalie Lazzarotto, *Civil Procedure; Proving Domicile*, 1979 U. PAC. L. REV. (1979).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1979/iss1/19>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

that a special grant of power or a special act of the legislature takes precedence over a general grant or law on the same subject). See generally 1 C.J.S. Actions §§1 at 958 and 42 at 1093 (1936) (discussing "special proceedings").

CIVIL PROCEDURE; PROVING DOMICILE

Adds to NRS Chapter 41

SB 355 (Ashworth); STATS 1979, Ch 239

Chapter 239 provides that a person may evidence his intended domicile by filing a sworn statement in the local district court.¹ Apparently, the sworn statement may also evidence a person's residence where "residence" has been interpreted to mean "domicile."²

Under existing law, a person's place of residence coupled with his intent to make that residence his permanent home, establishes his domicile.³ Both a person's statements⁴ and conduct⁵ that manifest his intent are considered in determining his intended place of residence.

A Nevada domiciliary, with or without an out of state residence, may evidence his domicile in Nevada by filing a sworn statement that he intends his Nevada residence to be his permanent home.⁶ In addition, upon making the statement, he must declare that he is currently a bona fide resident of Nevada, listing all places where he had ever maintained a residence.⁷

A person not domiciled in Nevada, but whose acts or Nevada residence might indicate Nevada to be his intended domicile, may file a sworn statement declaring his intent to remain permanently domiciled elsewhere.⁸ This statement must identify his place of domicile, his intent to remain domiciled out of the state, and any out of state residence or the fact that he has no Nevada residence.⁹

Statements made under Chapter 239 are to be sworn to and filed with the clerk in the local district court.¹⁰

Chapter 239 is not intended to change existing law.¹¹ Apparently, filing a record of intent to prove domicile is not exclusive proof of domicile.¹² Courts may draw their conclusions from all of the circumstance in each case.¹³ Therefore, it appears that a statement made under the provisions of Chapter 239 only establishes some evidence of the declarant's intended domicile. It is well settled that both

physical residence and intent to permanently reside are factual matters for the trier of fact to decide.¹⁴

The admissibility of written statements at trial apparently still depends on the rules of evidence.¹⁵ However, it has been held that declarations of intended domicile may be considered by the court.¹⁶ Nevertheless, the statements will be only one consideration that the trial court will look to when reviewing all of the circumstances.¹⁷

Rosalie Lazzarotto

FOOTNOTES

1. 1979 Nev. Stats. ch. 239 (hereinafter "Ch. 239") §§2, 3 (adding to NRS Ch. 41).
2. See Aldabe v. Aldabe, 84 Nev. 392, 396, 441 P.2d 691, 694 (1968) (in divorce actions, "domicile" in NRS 125.020 is synonymous with "residence"); In re Estate of Fialkoff v. Nevil, 80 Nev. 232, 234, 391 P.2d 740, 741 (1964) (in probate actions, "residence" in NRS 136.010 interpreted to mean "domicile").
3. Texas v. Florida, 306 U.S. 398, 424 (1939).
4. Id. at 425.
5. Aldabe v. Aldabe, 84 Nev. at 396, 441 P.2d at 694.
6. Ch. 239, §2 (adding to NRS Ch. 41).
7. Id. §2 ¶3 (adding to NRS Ch. 41).
8. Id. §3 (adding to NRS Ch. 41).
9. Id.
10. Id. §§2, 3 (adding to NRS Ch. 41).
11. Id. §5 (adding to NRS Ch. 41).
12. NRS 54.010 (corroboration required when jurisdiction depends on residency). See also Orleans Plumbing Shop v. Morris, 181 So. 226, 228 (La. App. Ct. 1938).
13. McLaughlin v. McLaughlin, 48 Nev. 153, 164, 228 P.305, 305 (1925).
14. Boisen v. Boisen, 85 Nev. 122, 124, 451 P.2d 363, 364 (1969), citing Moore v. Moore, 75 Nev. 189, 192, 336 P.2d 1073, 1074 (1959).
15. See NRS Chs. 50, 51, and 52.
16. Hunnewell v. Hunnewell, 55 Nev. 150, 155, 27 P.2d 1062, 1064 (1934) (declaration of intended domicile admissible where declarant's whereabouts unknown).

17. McLaughlin v. McLaughlin, 48 Nev. at 164, 228 P. at 305.

CIVIL PROCEDURE; SERVICE OF PROCESS ON DISSOLVED CORPORATIONS

Amends NRS 78.750

SB 362 (Committee on Judiciary); STATS 1979, Ch 344

Chapter 344 amends NRS 78.750 to provide a method for service of process on dissolved corporations. Under NRS 78.585, dissolved corporations are continued as bodies corporate for the purposes of defending and prosecuting lawsuits and winding up their affairs.¹ Prior to Chapter 344 Nevada law did not specifically provide for serving defunct corporations. NRS 78.750 and NRCP 4(d)(1) applied to serving process upon all corporations.

Under Chapter 344, service may be accomplished by mailing copies of the process and any associated documents to (a) the Secretary of State, (b) the resident agent of the corporation, if there is one and (c) each officer and director of the corporation as named in the list last filed with the Secretary of State.² It is possible that these directors or officers terminated prior to dissolution; however, adequate notice may still be afforded to the corporation by the additional requirements of mailing notice to the Secretary of State and posting notice at the county recorder's office.³

Under NRCP 4(d)(1) a corporation is properly served by personal service upon the corporation's president, secretary, cashier, managing agent or resident agent, or if none of the above is amenable to service, upon the Secretary of State with copies posted at the county clerk's office and mailed to out-of-state officers of the corporation. As a result of the further amendment referred to in the next paragraph, these two provisions may still apply to service of process upon defunct corporations.⁴

Chapter 344 additionally amends NRS 78.750 to provide that service of process upon any corporation may be made as provided by law and rule of court.⁵ The word "may" has been substituted for the word "shall" apparently to accommodate the new procedure for serving process upon defunct corporation.

Darlyne Cassaday