

Gosbee v. Gosbee (2014-383)

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2015 VT 82

No. 2014-383

Dain Gosbee

v.

Christina Gosbee

Supreme Court

On Appeal from  
Superior Court, Washington Unit,  
Family Division

April Term, 2015

Thomas J. Devine, J.

Harold B. Stevens of Stevens Law Office, Stowe, for Plaintiff-Appellant.

Nanci A. Smith of Nanci A. Smith, PLLC, Williston, for Defendant-Appellee.

PRESENT: Reiber, C.J., Dooley, Skoglund, Robinson and Eaton, JJ.

¶ 1. **ROBINSON, J.** This case calls upon us to consider Vermont’s statutory residency requirement for filing a divorce action. The trial court dismissed husband’s divorce complaint on the ground that the residency requirement was not satisfied. We affirm.

¶ 2. Husband, Dain Gosbee, filed a divorce action in the Superior Court, Washington Unit, Family Division, on November 1, 2013. His wife, Christina Gosbee, was living in Germany at the time with the parties’ minor child. When he filed the divorce complaint, husband also filed a motion to establish parentage and a motion for a temporary order requiring wife to facilitate his telephonic or Web-based video communication with the minor child.

¶ 3. Wife filed a motion to dismiss, arguing that the Vermont court did not have personal jurisdiction over her; that the statutory residency requirement for a divorce action in Vermont was not satisfied; and that the court did not have jurisdiction to adjudicate issues concerning the minor child.[\[1\]](#) The trial court held a hearing and granted wife’s motion at the conclusion of husband’s evidence. The court rejected wife’s argument that the court lacked personal jurisdiction, but concluded that the statutory residency requirement was not satisfied and that Vermont did not have jurisdiction concerning matters involving the minor child under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), 15 V.S.A. §§ 1061-1094. Husband appeals.

¶ 4. The trial court made the following findings. Husband was born and raised in Vermont. His father resides in Vermont, and his mother in Georgia. The parties met in 2002 and began living together in Berlin, Vermont, in 2005. Husband worked at the Vermont State Hospital, where he suffered a skull injury. This injury is the subject of an ongoing claim for workers’ compensation. In 2007, the parties bought a home in East Montpelier. In 2009, their child was born. For a short time, the parties operated a store in Waterbury.

¶ 5. In March 2010, the parties sold their East Montpelier home, put some of their furniture in storage, and moved in with wife’s parents at their home in Barre, Vermont. Later that year, wife’s parents moved to Germany, where wife’s father worked as a civilian contractor with the U.S. military. In October, the parties decided to join wife’s parents in Germany so they could “work, travel and save money.” Their hope was to return to the United States when they had saved enough money for a down payment on a house. The parties never intended to relocate to Germany or another foreign country on a permanent basis. Neither ever applied for German citizenship or a permanent work visa. It was always their intention to return to the United States. Whether they intended to return to Vermont is another matter.

¶ 6. In Germany, the parties did not live on a U.S. military base. Wife found work with a child-development center, and the parties acquired a vehicle together and opened an account at a German branch of an international bank.

¶ 7. In January 2011, the parties traveled to Vermont for several weeks for wife's graduation from Vermont College, and so husband could make some inquiries concerning his workers'-compensation claim. In September 2011, the parties traveled to Vermont for three or four weeks for their wedding and then returned to Germany.

¶ 8. In October 2011, husband surrendered his Vermont driver's license and obtained a Georgia driver's license. The trial court concluded that husband's actions reflected his intent at the time to return to Georgia when their sojourn in Germany was over. Wife maintained her Vermont driver's license throughout all relevant periods.

¶ 9. After the parties' return to Germany after their September 2011 wedding, husband found work in Germany. In June 2012, husband returned to Vermont to pursue an internship. Wife and the minor child followed a few weeks later. While they were in Vermont, the minor child was treated by a dentist. The internship did not work out, and the parties returned to Germany in early October 2012. The minor child has not been back to Vermont since that time.

¶ 10. In 2012, the parties' daughter began attending preschool in Germany. The child has received medical and dental care and has taken dance lessons in Germany.

¶ 11. At some point while the parties were in Germany, the parties asked husband's father to look at a camp that was for sale in Middlesex, Vermont. The parties eventually instructed him to buy the camp on their behalf. When husband's father followed up, he learned the camp had been sold. The court found that the parties' interest in purchasing real estate in Vermont is evidence that at that time the parties intended to return to Vermont. The court did not indicate when this happened.

¶ 12. In 2013, tensions arose in the marriage. The parties separated for several months early in the year, but then reconciled. In September, they separated for the last time. In total, the parties and their child had remained in Germany for almost four years.

¶ 13. Husband returned to Vermont on October 7, 2013, five days after wife had begun German divorce proceedings, and moved in with his father. On October 9, 2013, husband applied for a Vermont driver's license. The court found that this action demonstrated some intent to remain in Vermont.

¶ 14. After returning to the United States, husband arranged for his father to give wife a mailing address for husband in Georgia, in care of his mother. Husband instructed that any divorce papers or other communications from wife should be sent to that address. Husband explained that he chose the Georgia mailing address because he was thinking at that time of going to Georgia to see his mother for an extended visit. The trial court did not find husband entirely credible on this point. The court noted that insofar as husband had until very recently held a Georgia driver's license, the purported visit might become a move. The court also noted

some suggestion that husband provided wife the Georgia mailing address as a ruse to avoid service of German court documents. The court found that husband's decision to use a Georgia mailing address demonstrated uncertainty about his long-range plans.

¶ 15. Husband has not bought property or signed a lease since returning to Vermont. He has not found full-time work. Husband expressed uncertainty about where he would reside after the divorce, and indicated that he might return to Germany if that is the only way to maintain regular contact with the child.

¶ 16. Based on these facts, the trial court concluded that husband was not a resident of Vermont at the time he filed the divorce. The court dismissed the divorce complaint on this basis. The court further concluded that even if it had jurisdiction to adjudicate the divorce, it lacked subject-matter jurisdiction to determine child-custody issues under the UCCJEA because Vermont was not the minor child's home state, and the child's absence from Vermont for three and a half years was not a "temporary absence" under the UCCJEA. The court found that the parents' length of stay in Germany was indefinite, and that the vast majority of evidence concerning the child's well-being was in Germany.

¶ 17. On appeal, husband argues that the residency requirement was satisfied because both parties remained domiciled in Vermont throughout their time in Germany. With respect to the UCCJEA argument, husband argues that Germany cannot be the child's home state, and that Vermont must be the home state. In particular, husband argues that the UCCJEA must be applied in a way that is consistent with the federal Parental Kidnapping Prevention Act, which he contends does not recognize foreign countries as home states.

¶ 18. On appeal, we accept the trial court's findings of fact unless they are clearly erroneous. Conley v. Crisafulli, 2010 VT 38, ¶ 3, 188 Vt. 11, 999 A.2d 677. We review the trial court's legal conclusions de novo. Meyncke v. Meyncke, 2009 VT 84, ¶ 6, 186 Vt. 571, 980 A.2d 799.

¶ 19. We begin with the question of whether the trial court erred in concluding that the residency requirement was not satisfied in this case. Vermont's residency requirement for divorce actions provides as follows:

A complaint for divorce or annulment of civil marriage may be brought if either party to the marriage has resided within the State for a period of six months or more. . . . Temporary absence from the State because of illness, employment without the State, service as a member of the Armed Forces of the United States, or other legitimate and bona fide cause shall not affect the six months' period . . . provided the person has otherwise retained residence in this State.

¶ 20. For purposes of divorce jurisdiction, residency is synonymous with domicile. Conley, 2010 VT 38, ¶ 5 (quoting Duval v. Duval, 149 Vt. 506, 509, 546 A.2d 1357, 1360 (1988), overruled on other grounds by Shute v. Shute, 158 Vt. 242, 607 A.2d 890 (1992)). Domicile is the “place where a person lives or has his home, to which, when absent, he intends to return and from which he has no present purpose to depart.” Id. ¶ 6 (quotation omitted). “To change domicile, there must be a relocation to the new residence and continued dwelling there, coupled with an intention of remaining there indefinitely; neither physical presence alone nor intention alone is sufficient to effectuate a change of domicile.” Id. (quotation omitted). If a person relocates to another state with an intention to remain there for an indefinite time as a fixed place of abode, a change of residence is effective even if the person has “a nebulous or floating intention of returning at some future time.” Duval, 149 Vt. at 511, 546 A.2d at 1361 (quotation omitted).

¶ 21. The trial court had jurisdiction over the divorce only if husband or wife (or both) were Vermont residents for the six months preceding the date that husband filed the divorce complaint, meaning they remained domiciled in Vermont during the time they lived in Germany. If they did not, then even if husband was domiciled in Vermont for three weeks upon his return from Germany, he could not satisfy the statutory residency requirement. Husband argues that the parties did maintain their Vermont domicile, emphasizing that their time in Germany was merely a temporary absence, that the parties never intended to live in Germany forever, and that the parties did intend to return to Vermont someday. His argument fails for two reasons, one factual, and one legal.

¶ 22. The factual problem with husband’s argument is that it depends on the claim that the parties not only intended to return to the United States someday, but that they had a fixed intention to return to Vermont after their time in Germany. Although the evidence cited by husband may have supported that conclusion, other evidence suggested—and the court found—otherwise. In particular, the court pointed to evidence that in 2011, while the parties were living in Germany, husband surrendered his Vermont driver’s license and secured a Georgia driver’s license, as evidence of an intention, at that time, to return to Georgia after the parties’ time in Germany. This evidence was sufficient to support the court’s finding that, although the parties intended to return to the United States at some point, the parties did not intend to return specifically to Vermont. To the extent that husband’s appeal rests on his claim that the parties maintained a fixed intention to return to Vermont when they relocated to Germany, and thereafter until husband returned, it relies on an understanding of the facts that is at odds with the trial court’s findings. Those findings were, in turn, supported by the evidence.

¶ 23. The legal problem with husband’s argument is that it conflates the concepts of living someplace indefinitely and living someplace permanently.<sup>[2]</sup> Husband emphasizes that the parties never intended to make Germany their permanent residence, and the evidence supports the trial court’s finding on this point. But the record also clearly supports the trial court’s finding that the parties relocated to Germany indefinitely. “Indefinitely” does not necessarily mean permanently. The ordinary meaning of “indefinitely” is “[w]ithout definition or limitation to a particular thing, case, time, etc.” 7 Oxford English Dictionary 842 (2d ed. 1989); accord American Heritage Dictionary of the English Language 892 (5th ed. 2011) (“[I]acking precise

limits” or “[u]ncertain; undecided”); Random House Webster’s Unabridged Dictionary 970 (2d ed. 2001) (“not clearly defined or determined; not precise or exact”).

¶ 24. In order to change one’s domicile, one “must intend to reside [at the new location] indefinitely with no present or fixed intent to move on upon the happening of a reasonably certain event.” Holmes v. Sopuch, 639 F.2d 431, 433-34 (8th Cir. 1981); see also Liberty Mut. Ins. Co. v. Craddock, 338 A.2d 363, 367 (Md. Ct. Spec. App. 1975) (“[D]omicile could be established by showing that a person moved to a new home with a present intention of remaining there indefinitely or for an unlimited time.”).

¶ 25. Although husband offered evidence that the parties’ relocation to Germany was not permanent, he offered no evidence that the family moved for a definite period, limited either in duration or by the occurrence of specific events, such as graduation from an educational program in Germany or completion of a specific undertaking. Although he argues that the family’s travel to Germany was a temporary absence because they intended to return to Vermont someday, this Court has already recognized that “a nebulous or floating intention of returning at some future time” is an insufficient tie to maintain one’s domicile upon physically relocating to another place “with an intention . . . of remaining there for an indefinite time as a fixed place of abode.” Duval, 149 Vt. at 511, 546 A.2d at 1361 (quotation omitted).<sup>[3]</sup>

¶ 26. For these reasons, we conclude that the trial court’s conclusion that husband could not satisfy the statutory residency requirement for filing a divorce was not clearly erroneous, and we affirm the trial court’s dismissal of his complaint on that ground.<sup>[4]</sup> Because we affirm the trial court’s dismissal of husband’s divorce action on this ground, we need not reach the UCCJEA questions raised in husband’s appeal.

Affirmed.

FOR THE COURT:

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Associate Justice

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<sup>[1]</sup> Wife had filed a divorce action in Germany in early October, but had not successfully served husband before he filed the Vermont divorce action.

<sup>[2]</sup> Abulqasim v. Mahmoud, 49 A.3d 828, 835 (D.C. 2012) (“The ‘intent’ aspect of domicile is generally spelled out in terms indicating an intent to remain for an indefinite future time or, as sometimes stated in the negative, the absence of any intention to go elsewhere, but does not

require an affirmative intent to remain permanently in the new domicile.”) (alterations and citations omitted).

[3] For this reason, husband’s testimony that he did not believe that wife planned to stay in Germany for the rest of her life does not show that Vermont remained wife’s domicile. Husband’s testimony that wife voted in the United States presidential election in 2012 does not compel the conclusion that wife did not give up her Vermont domicile. First, husband testified that wife voted through a mechanism made available through the United States military. It is not clear from husband’s testimony, however, whether wife cast an absentee ballot as a Vermont resident. Second, although voting in Vermont could be a significant factor supporting a finding of domicile, in the context of the totality of the evidence, the trial court was not compelled to find that wife retained her Vermont domicile on account of husband’s testimony.

[4] We do not address the trial court’s conclusion that husband was not a Vermont domiciliary at the time he filed the divorce. We may affirm the judgment of the trial court if there is “any legal ground for justifying the result,” since the trial court “can achieve the right result for the wrong reason.” Gilwee v. Town of Barre, 138 Vt. 109, 111, 412 A.2d 300, 301 (1980).