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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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Rajnish Sahu

v.

Anshul Sahu

Appeal from Montgomery Circuit Court
(DR-16-900470)

EDWARDS, Judge.

In June 2016, Rajnish Sahu ("the husband") filed in the Montgomery Circuit Court ("the trial court") a complaint seeking a divorce from Anshul Sahu ("the wife"), who had returned to the parties' country of origin, India. In February 2019, the trial court held a hearing at which the

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husband testified regarding whether he was domiciled in Alabama, as required by Ala. Code 1975, § 30-2-5. After the brief hearing, the trial court entered a judgment on March 25, 2019, determining that it lacked jurisdiction to divorce the parties. After his postjudgment motion was denied, the husband filed a timely notice of appeal to this court. The sole issue on appeal is whether the trial court properly determined that the husband had failed to establish that he is domiciled in Alabama.

The record reveals the following. The parties were married in India in 2009. The parties originally came to the United States so that the husband could pursue an education. Upon completion of that education, the husband secured a visa permitting him to live and work in the United States. In January 2015, the husband and the wife began living in Montgomery. The husband is employed by Alabama State University, where he conducts an unspecified type of research; he is also pursuing further education in conjunction with his employment.

The husband explained that, initially, he had been working in Alabama pursuant to what he called an "H-1B1" visa,

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which, he said, permitted him to live and work in the United States for one year. He testified that his visa had been renewed several times. According to the husband, at the time of the February 2019 hearing, he had applied for a "green card," or legal permanent-resident status. He explained that a green card would permit him to live and work in the United States for a 10-year period and that it, too, could be renewed. Although the husband explained that he had not yet received word that he had been awarded a green card, he said that he had a "green card work permit" that permitted him to continue to live and work in the United States pending the processing of his green-card" application, which, he indicated, could take significant time.¹

When asked why he had moved to Montgomery, the husband responded: "Because my intention is to stay here." He further testified that he enjoyed his employment, that he desired to continue that employment, and that, as far as he

¹See the excellent discussion in Adusumelli v. Steiner, 740 F. Supp. 2d 582 (S.D. N.Y. 2010), regarding work visas, green cards, and "Employment Authorization Documents," which "extend the work permissions of aliens awaiting green card determinations who are not eligible for further visa extensions." 740 F. Supp. 2d at 587.

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knew, his employer desired to continue his employment. He specifically stated: "I like my job. And I intend to do the research all the time." When asked if he had any plans to move to another city or another state, the husband answered: "No, not yet."

The husband further admitted that he had not yet decided whether he would seek United States citizenship. He indicated that he had to have held a green card for four or five years before he could seek United States citizenship. See 8 U.S.C. § 1427(a) (explaining that a prerequisite to seeking naturalization is living in the United States for five years "after being lawfully admitted for permanent residence"). At no point was the husband asked about, nor did he volunteer any information regarding, any plans he might have had to return to India.

The trial court's judgment dismissing the husband's divorce action contains a summary of much of the information discussed above. However, the trial court makes much of the fact that the husband did not present documentary evidence, like his application for a green card or his "work permit," to bolster his uncontroverted testimony that he intended to

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permanently or indefinitely stay in Alabama. The judgment also appears to rely on the fact that the husband did not yet know whether he would seek United States citizenship. The trial court further commented that "[t]he husband's intent to return to India or elsewhere is not clear to the undersigned."

When the defendant in a divorce case is not a resident of the State of Alabama, the plaintiff must establish that he or she is a "bona fide resident" of Alabama in order for an Alabama court to have jurisdiction over the divorce action. Weith v. Weith, 263 So. 3d 715 (Ala. Civ. App. 2018). Specifically, § 30-2-5 provides: "When the defendant is a nonresident, the other party to the marriage must have been a bona fide resident of this state for six months next before the filing of the complaint, which must be alleged in the complaint and proved."

"'Our courts have no jurisdiction over the marital res where the residence requirement is not met.' Chavis v. Chavis, 394 So. 2d 54, 55 (Ala. Civ. App. 1981). When the trial court hears oral testimony regarding residence under [Ala. Code 1975,] § 30-2-5, 'the judgment of the court is presumed correct and will not be set aside on appeal unless so contrary to the great weight of the evidence as to be palpably wrong.' Id.; see also Andrews v. Andrews, 697 So. 2d 54 (Ala. Civ. App. 1997); Seymour v. Seymour, 597 So. 2d 1368 (Ala. Civ. App. 1992). However, no presumption of correctness

applies 'when the trial court has misapplied the law to its findings of fact.' Andrews, 697 So. 2d at 56.

"Residence, for purposes of § 30-2-5, is the same thing as domicile.' Chavis, 394 So. 2d at 55; see Yates v. Yates, 607 So. 2d 207 (Ala. Civ. App. 1991). As has been noted before, domicile is an abstract concept. See, e.g., Rabren v. Mudd, 285 Ala. 531, 535, 234 So. 2d 549, 553 (1970). Alabama decisions hold that domicile requires two elements: (1) one's physical presence in the chosen place of residence, and (2) an accompanying intent to remain there, either permanently or for an indefinite length of time. Id.; Basiouny v. Basiouny, 445 So. 2d 916, 919 (Ala. Civ. App. 1984). It has been said that 'domicile' is that place to which, whenever one is absent, he or she has an intent to return. State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 138, 239 So. 2d 206, 209 (Civ. App. 1970). When a party physically resides in one location, "[t]he intention to return [to another location] is usually of controlling importance in the determination of the whole question [of domicile]." Andrews v. Andrews, 697 So. 2d 54, 56 (Ala. Civ. App. 1997) (quoting Jacobs v. Ryals, 401 So. 2d 776, 778 (Ala. 1981))."

Livermore v. Livermore, 822 So. 2d 437, 441-42 (Ala. Civ. App. 2001).

The fact that the husband is present in Alabama on a visa or work permit as he awaits anticipated approval of his green-card application does not prevent him from establishing domicile in this state. As we recognized in Alsaikhan v. Alakel, 173 So. 3d 925, 930 (Ala. Civ. App. 2015), because "those persons already in the United States on visas ... may

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seek to apply for permanent-resident status, ... a person holding a visa might form an intent to change his or her domicile to the United States." Other states considering the issue whether a person may be considered to be domiciled in a particular state when he or she is in the United States on a visa have similarly concluded that a person's status as a visa holder does not preclude the formation of an intent to make a particular state his or her domicile. See, e.g., Salvatierra v. Calderon, 836 So. 2d 149 (La. Ct. App. 2002); Das v. Das, 254 N.J. Super. 194, 603 A.2d 139 (Ch. Div. 1992); Nicholas v. Nicholas, 444 So. 2d 1118 (Fla. Dist. Ct. App. 1984); Alves v. Alves, 262 A.2d 111 (D.C. 1970); and Gosschalk v. Gosschalk, 48 N.J. Super. 566, 138 A.2d 774 (App. Div. 1958); see also Williams v. Williams, 328 F. Supp. 1380 (D.V.I. 1971). As we concluded in Alsaikhan, a visa holder might form an intent to change his or her domicile to Alabama, but that person must present evidence indicating that he or she has chosen to make Alabama his or her domicile and that he or she intends to remain in Alabama permanently or indefinitely. 173 So. 3d at 931. Our sister states have considered a person's repeated visa extensions, his or her intent to continue his or her

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employment or profession, or steps taken to secure permanent residency as being indicative of an intent to establish a domicile in a particular state and to remain there indefinitely. See Alves, 262 A.2d at 115 (stating that a husband's several visa renewals indicated "his intent to remain in the United States for an indefinite period of time" and that his intent to remain in his employment, coupled with his moving to a location close to his employment, indicated his intent to remain in the District of Columbia indefinitely); Maghu v. Singh, 206 Vt. 413, 422, 181 A.3d 518, 525 (2018) (indicating that the husband's taking steps to secure permanent-resident status supported a conclusion that the husband intended to reside in the state indefinitely).

Our review of the husband's testimony, which was not disputed or controverted, does not support the trial court's conclusion that the husband failed to establish that he intends to permanently, or at least indefinitely, reside in Alabama. The husband has resided in Alabama since 2015, where he has been, and remains, employed as a research assistant at Alabama State University; he desires to continue his research and his employment, as is evidenced by his having renewed his

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visa several times and by his having applied for a green card. Although the husband indicated that he had not yet determined whether he would seek to become a naturalized citizen, he also indicated that any such decision would be premature, because he had not yet received his green card, much less held it for the requisite period to seek citizenship in the United States. The husband did not indicate an intent to return to India or to move to any other state or country.

Thus, the overall tenor of the husband's testimony was that he desired and intended to remain in Montgomery indefinitely to continue in his current employment and associated research at Alabama State University, even to the point of seeking to become a legal permanent resident. The fact that he has not announced plans to seek to become a naturalized citizen does not preclude him from establishing Alabama as his domicile. Accordingly, we reverse the judgment of the trial court, and we remand the cause with instructions to the trial court to reinstate the husband's divorce action.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ.,
concur.