

IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS

SELMA ESPINOZA

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 02-MCA-2820

OPINION

Appellant appeals her conviction for not having a valid Texas driver's license. A fine of \$50.00 was assessed.

She contends that she is a resident of the State of Arizona, and was only in El Paso because she had been referred to a doctor in El Paso for treatment of a job related injury, and was staying with her mother only temporarily for that purpose. She has since returned to Arizona.

Section 521.029 of the Transportation Code requires a new resident of Texas to obtain a driver's license within thirty (30) days of entering the state. Establishing residency is a matter of intent on the part of a person to become a resident and is not established if the person is here only temporarily. The mere fact that a person has been physically present in Texas over thirty (30) days is not conclusive on the issue of residency. When evidence is introduced that the person was only in the State of Texas temporarily and had no intention of establishing residency in this state, it appears to this court, that one is unable to challenge a person's assertion that they do not intend to be a resident of the State of Texas, particularly, if their reason for being in Texas is transitory as with medical treatment.

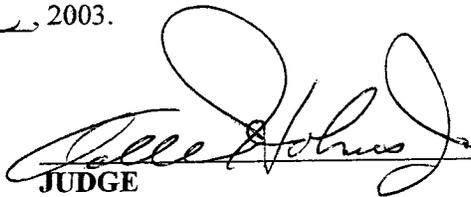
This court is mindful of the State's argument that the question of residency raises a fact issue, and as this court has repeatedly held, the Trial Court is the fact finder in a Bench Trial, and that decision should not be disturbed on appeal. This court perceives, however, that the issue to be decided is not a factual dispute but a legal question because the provisions of Section 521.029 appear to be somewhat

inconsistent. That section allows a person who enters this state as a "new resident", to operate a motor vehicle for no more than thirty (30) days after the date on which the person enters this state if they are sixteen years of age or older and have a driver's license issued by their state or county of previous residence. That section then goes on to shift the burden of proof to a person who is cited under this section to prove by a preponderance of the evidence that the person has not resided in this state for more than thirty (30) days. As stated above, physical presence in the state is not the determining criteria but the person's intention to establish residency in this state. It is only in deference to the fact finding prerogative of the Trial Court that this matter is remanded to it, because this court is inclined to have rendered a decision in Appellant's favor but does not want to exceed it's authority in doing so. Therefore, from what this court has stated above, this case is hereby reversed and remanded for further consideration by both the prosecution, and if tried again, the Trial Court.

The prosecutor will need to make a decision whether this particular case justifies re-trial. Although it would be a burden for Appellant to have to appear in a Texas court again on this same case, she should be prepared to establish why she was in El Paso, and that she is a resident of another state because the law places the burden of proof on her to show she was not a resident of Texas. In passing, it is interesting to note that she did produce a driver's license issued by the State of Arizona, and unless she had become a resident of the State of Texas, the Full Faith and Credit Clause of the United States Constitution would recognize the validity of the Arizona license in Texas.

For the reasons stated, this case is hereby reversed and remanded to the Trial Court.

SIGNED this 3 day of March, 2003.


JUDGE

JUDGMENT

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, it is ORDERED, ADJUDGED and DECREED by the Court that the case be reversed and remanded to the Trial Court for re-trial.

SIGNED this 3 day of March, 2003.


JUDGE