

SUPREME COURT OF NEBRASKA

Rozsnyai v. Svacek

272 Neb. 567 (2006) · No. No. S-05-876 · Decided November 9, 2006

SUMMARY

The Supreme Court of Nebraska held that the district court lacked subject matter jurisdiction over a divorce proceeding because the record did not establish that the Nebraska-resident spouse intended to make Nebraska her permanent home. The court vacated the dissolution decree and dismissed the action, declining to address personal jurisdiction.

CASE DETAILS

|                       |                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Nebraska                                                                                                                                                                               |
| WRITING FOR THE COURT | McCormack, J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.                                                                                                                    |
| JURISDICTION          | Nebraska                                                                                                                                                                                                |
| DECIDED               | November 9, 2006                                                                                                                                                                                        |
| DOCKET                | No. S-05-876                                                                                                                                                                                            |
| DISPOSITION           | vacated                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Svacek appealed a decree of dissolution of marriage entered after the district court denied his motion to dismiss for lack of personal jurisdiction and because a related action was pending in Canada. |
| STANDARD OF REVIEW    | When a jurisdictional question does not involve a factual dispute, it is a question of law reviewed independently by the appellate court.                                                               |
| PRECEDENTIAL VALUE    | Published Nebraska Supreme Court opinion                                                                                                                                                                |
| PARTIES               | Vincent Victor Svacek v. Alison J. Rozsnyai                                                                                                                                                             |

TOPICS

- dissolution of marriage
- subject matter jurisdiction
- personal jurisdiction
- immigration
- appellate procedure

PRACTICE AREAS

- family law
- civil procedure
- immigration
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Nebraska district court had subject matter jurisdiction over Rozsnyai's dissolution-of-marriage proceeding when Rozsnyai was a Canadian citizen residing in Nebraska on a visitor's visa and the evidence did not otherwise establish an intent to make Nebraska her permanent home.
2. Whether the district court had personal jurisdiction over Svacek.

## HOLDINGS

1. When both parties are foreign citizens and the party residing in Nebraska has done so on a visitor's visa, the ordinary inference that satisfaction of the divorce residency-duration requirement reflects an intent to make Nebraska a permanent home is negated; specific evidence of permanent-home intent is required. Because Rozsnyai presented no such evidence beyond the length of her residence, the district court lacked subject matter jurisdiction.
2. The court did not need to address personal jurisdiction because the lack of subject matter jurisdiction independently required vacatur and dismissal.

## KEY QUOTATIONS

*“We conclude, however, that where both parties are foreign citizens and the only party to have resided in Nebraska has done so by reason of a visitor's visa, the inference is negated and specific proof of intention is required.”* ([5])

*“Because the record does not establish Rozsnyai's intention to reside in this state permanently, we conclude the district court did not have jurisdiction over this matter.”* ([5])

## FACTUAL BACKGROUND

Rozsnyai and Svacek, both Canadian citizens, married in Nevada and lived together in British Columbia before separating. Rozsnyai moved to Nebraska in 2001 and had resided there for more than one year when she filed for dissolution, but she was present in Nebraska on a visitor's visa. At trial, the only evidence concerning her intent to make Nebraska her permanent home was her testimony about the length of her residence.

## PROCEDURAL HISTORY

Rozsnyai filed a Nebraska petition for dissolution of marriage in June 2004. The Douglas County District Court determined that it had personal and subject matter jurisdiction, conducted a bench trial, dissolved the marriage, divided marital assets and debts, and awarded Rozsnyai attorney fees. Svacek appealed, challenging both forms of jurisdiction.

## DISPOSITION

vacated

## CASES CITED

- Diversified Telecom Servs. v. Clevinger, 268 Neb. 388, 683 N.W.2d 338 (2004)
- Ptak v. Swanson, 271 Neb. 57, 709 N.W.2d 337 (2006)

- State ex rel. Storz v. Storz, 235 Neb. 368, 455 N.W.2d 182 (1990)
- Rector v. Rector, 224 Neb. 800, 401 N.W.2d 167 (1987)
- Jones v. Union P. R. Co., 141 Neb. 112, 2 N.W.2d 624 (1942)
- Alves v. Alves, 262 A.2d 111 (D.C. App. 1970)
- Weber v. Weber, 929 So. 2d 1165 (Fla. App. 2006)
- Perez v. Perez, 164 So. 2d 561 (Fla. App. 1964)
- Bustamante v. Bustamante, 645 P.2d 40 (Utah 1982)
- Gary's Implement v. Bridgeport Tractor Parts, 270 Neb. 286, 702 N.W.2d 355 (2005)