I. DIVORCE

A. JURISDICTION & VENUE

1. Subject Matter Jurisdiction

a. Statutes and Court Rules

The Nevada district courts' constitutional mandate is set forth in Article VI, Section 6 of the Nevada Constitution, and authorizes the district courts to hear any matter not within the jurisdiction of the justice courts. Amendments to the Nevada Constitution in 1992 enabled the Legislature to establish "family court" divisions within the judicial districts for Clark and Washoe Counties. Nev. Const. Art. 6, § 6(2)(b).

The courts of this state have jurisdiction over a cause of action for divorce[1] for any of three causes under NRS 125.010:

1. Insanity existing for two years prior to commencement of the action.
2. Separation for one year or longer without cohabitation.
3. Incompatibility.

Under NRS 125.020(1), a particular district court for a county has jurisdiction over such a case if the complaint is brought in the county:

1. In which the cause of action accrued;
2. Where the defendant resides or can be found;
3. Where the plaintiff resides;
4. Where the parties last cohabited; or
5. Where the plaintiff has resided for at least six weeks prior to the filing of the complaint.

Subsection 125.020(2) differentiates among those grounds by specifying that: "Unless the cause of action accrued within the county while the plaintiff and defendant were actually domiciled therein, no court has jurisdiction to grant a divorce unless either the plaintiff or the defendant has been resident of the state for a period of not less than 6 weeks preceding the commencement of the action."

b. Cases

The bases of jurisdiction are set out in the alternative. Case law has fleshed out some of the terms used in the statutes. The Defendant "may be found" in the county where process can successfully be served upon him or her. *Tiedemann v. Tiedemann*, 36 Nev. 494, 137 P. 824 (1913).

The cases do not say so in so many words exactly how a "cause accrues" for divorce, so it

[1] Separate Maintenance and Annulment have their own jurisdictional rules, which are dealt with below in their own respective sections.

is uncertain ***where*** a cause accrues. It could be argued that it is the county in which the couple was married, or perhaps where they became, or continued to be, incompatible. *See Blakeslee v. Blakeslee*, 41 Nev. 235, 168 P. 950 (1917). In that case, the court found legislative intent to allow divorce here irrespective of where the cause of action might have arisen (the desertion and acts of cruelty had occurred in Illinois, but a Nevada resident still had recourse to the courts of this state for the purpose of obtaining a divorce). This result was required because the state has a legitimate interest regarding the status of its residents, and divorce affects the "status" of a party.

Interpreting what is now NRS 125.010(2), the Nevada Supreme Court concluded that the six week residency requirement is mandatory, even where the plaintiff asserts that the cause of action accrued in this state. *State v. District Court*, 68 Nev. 333, 232 P.2d 397 (1951). In other words, the durational residency requirement must be satisfied prior to the filing of the suit, and non-residents of Nevada are apparently unable to litigate a divorce action in this state on the sole basis that under NRS 125.020(1)(a) or (d) they were entitled to access to our courts because they were married here (and thus the "cause accrued" here) or because they last cohabited here.

Residential intent has been defined as the intent to remain in Nevada permanently, or to make it home for at least an indefinite time. *Lamb v. Lamb*, 57 Nev. 421, 430, 65 P.2d 872, 875 (1937); *see also Latterner v. Latterner*, 51 Nev. 285, 290, 274 P. 194, 195 (1929).

The question raised is why both subsections (c) and (e) of NRS 125.020 should exist, since if a plaintiff has resided in Nevada for 6 weeks, he or she also would appear to "reside" here. The answer appears to be historical, more than logical. In a frank discussion of the origins of changes to the divorce statutes, the Nevada Supreme Court noted that the limitations of Subsection 125.020(2), now requiring residence for 6 weeks in the state,[2] expressed the legislative intent that the use of the word "resided" means that those who came to this state to take advantage of Nevada's divorce laws have "not only good faith," but also "actual corporeal presence" for the full time required:

> Those of us who resided in the state at the time of the passage of the 1911 act [the divorce statute] recall the reasons for its adoption. They need not be stated here, save to say that one purpose was to compel an actual, corporeal presence in the county for a period [of] six months prior to the institution of a divorce action by those who came to the state to establish a residence for the purpose of instituting divorce proceedings.

Lewis v. Lewis, 50 Nev. 419, 425, 264 P. 981, 982 (1928).

The Court noted in *Lewis* that in a ***prior*** opinion, it had construed the divorce laws such that "actual corporeal presence was necessary to the establishment of such a residence as would give a court jurisdiction to grant a divorce," and that the Nevada Legislature had re-enacted the law using the same language after the Court had so held, and therefore had "legislatively adopted" the Court's

---

[2] The legislature has modified the time required from six months to six weeks, and changed the place of necessary residence from the county to the state, but the statute is otherwise nearly identical, word for word, as it has been for the past century.

construction.[3] *Id*. at 426. Since the *Lewis* decision, the legislature has "re-enacted" the same statute another three times, thus apparently "legislatively adopting" the holding quoted above.

Subject matter jurisdiction over the marriage itself is present as long as the court has personal jurisdiction over ***either*** of the parties to the marriage, and every state is required under the Full Faith and Credit clause of the United States Constitution to recognize decrees entered by other states if the other states had such personal jurisdiction over one party and afforded notice in accordance with procedural due process. *Williams v. North Carolina*, 317 U.S. 287 (1942); *see also Sherrer v. Sherrer*, 334 U.S. 343 (1947); *Coe v. Coe*, 334 U.S. 378 (1947).

The Court tempered that holding, however, by adopting the principle of "divisible divorce," whereby jurisdiction to dissolve the marriage does not necessarily carry with it jurisdiction to alter every legal incident of marriage. *Estin v. Estin*, 334 U.S. 541 (1948). There, the wife had obtained a New York separate maintenance award, and the husband subsequently sought a Nevada divorce to terminate the marriage that had been denied him in New York. Entry of a divorce decree was affirmed, but the Court added that if the divorce proceeded *ex parte*, the Nevada court could only terminate the marriage. The resulting decree would not prevent a court of another state with jurisdiction over the parties from adjudicating the remaining incidents of the marriage.

c. Discussion

In practical terms, NRS 125.010(1)-(2) may be surplusage in modern practice, since either the insanity of a party or the parties' separation for over one year would presumably provide grounds under subsection three ("incompatibility"), the assertion of which is effectively non-rebuttable. There is little case law that remains relevant to those first two stated causes for divorce. The degree of "insanity" requisite to plead and prove this cause is not clearly set out. It is unknown whether it matches the level of insanity required for civil commitment (that the person be mentally ill and that "as a result of mental illness the person is likely to harm himself or others"). NRS 433A.200. On the other hand, the requisite degree of insanity might be that which would classify the individual as a "mentally ill person" under NRS 433A.115(1). *See also* 24 A.L.R. 2d 873 (noting cases dealing with insanity as grounds for divorce).

Separation for one year requires proof that there was not only a physical separation, but also the intent, on the part of at least one of the parties, to discontinue the marital relationship. *Pearson v. Pearson*, 77 Nev. 76, 80, 359 P.2d 386, 387-88 (1961). A married couple is separate when "the marital association is severed or when married persons intend to live apart because of their mutual purpose to do so, or because one of the parties, with or without the acquiescence of the other, intends to disrupt the marriage relationship." *Caye v. Caye*, 66 Nev. 78, 83, 211 P.2d 252, 254 (1949).

Most litigation as to jurisdiction has involved not the "causes" authorizing suits for divorce, but the requisites for filing a complaint under NRS 125.020. What appears to cause confusion in some quarters is the seeming blurring of tests for subject matter jurisdiction, on the one hand, and

---

[3] As noted above, the permitted durational time has been reduced, while the territory of residence has been expanded from county to state.

personal jurisdiction, on the other. They are distinct, but the Nevada divorce statute makes it necessary for at least one party to be a bona fide resident of this state (which incidentally gives the court personal jurisdiction over that person), for the court to have ***subject matter jurisdiction*** to entertain the divorce. *See Plunkett v. Plunkett*, 71 Nev. 159, 283 P.2d 255 (1955).

In some courts, great deference is given to a prior determination of subject matter jurisdiction, barring later collateral attack. *See*, *e.g.*, *American Sur. Co. v. Baldwin*, 287 U.S. 156, 166 (1932) ("the principles of res judicata apply to questions of jurisdiction as well as to other issues"); cited in *Underwriters Nat. Assur. v. North Carolina Life & Accident, Etc.* 455 U.S. 691, 707 (1982). However, even these cases note that the later attack on the jurisdiction of the original court is limited to those cases in which the court's jurisdiction was "fully and fairly litigated" in the original court. *Durfee v. Duke*, 375 U.S. 106, 111 (1963).

The Nevada Supreme Court has gone further, holding that a failure of subject matter jurisdiction "cannot be waived," that even when a party does not raise the question, the court is to do so *sua sponte*, and that the question can be raised for the first time on appeal. *Swan v. Swan*, 106 Nev. 464, 468, 796 P.2d 221, 224 (1990).

Every Complaint for Divorce should include an assertion of the basis for a finding of subject matter jurisdiction, by means of reciting a ground for divorce and setting out jurisdiction over at least one of the parties. Examples of such provisions are set out in Form 1 of Appendix A.

d. Local Rules

There should not be any special local treatments of subject matter jurisdiction.

2. Personal Jurisdiction

a. Statutes and Court Rules

The Nevada courts have jurisdiction over the person of any party who subjects himself or herself to the jurisdiction of the court by seeking relief from that court. If the statutory restrictions as to residency are met, the court has subject matter jurisdiction as to the divorce.

The legal definition of "residence," which was unchanged for 71 years until 1981, is found in NRS 10.155:

> Unless otherwise provided by specific statute, the legal residence of a person with reference to his right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, is that place where he has been physically present within the state or county, as the case may be, during all of the period for which residence is claimed by him. Should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without delay and continue his residence, the time of such absence is not considered in determining the fact of residence.

In any civil action requiring proof of residency, such as an action for divorce, residency is

a question of fact and must be supported by corroborating evidence. NRS 54.010.

Practitioners should be aware of the statutory procedure added in 1979 whereby a person can declare Nevada to be his or her domicile, despite maintenance of a physical residence elsewhere.[4] NRS 41.191 provides:

> 1. Any person who has established his domicile in this state may manifest and evidence his domicile by filing in the office of the clerk for the district court for the county in which he resides, a sworn statement showing that he resides in and maintains a residence in that county, which he recognizes and intends to maintain as his permanent home.
> 2. Any person who has established a domicile in this state, but who maintains another residence in some other state, may manifest and evidence his domicile in this state by filing in the office of the clerk of the district court for the county in which he resides, a sworn statement that his residence in Nevada constitutes his predominant and principal home, and that he intends to continue it permanently as his predominant and principal home.
> 3. A sworn statement filed pursuant to this section must contain, in addition to the declaration required in subsection 1 or 2, a declaration that the person making the statement is at the time of making the statement a bona fide resident of the state, and it must set forth his place of residence, the city, county and state in which he formerly resided, and all other places, if any, in which he maintains a residence.

The legislative history of NRS 41.191 indicates that the statute was intended to provide "an evidentiary method of establishing intent" that was to be "rebuttable, and not presumed"[5]; it also appears that the sponsors of the legislation were not very well informed as to the niceties of jurisdiction, and did not specifically contemplate divorce actions in their brief deliberations.[6] Nothing in chapter 41 precludes other proof of residency. *See* NRS 41.197.

There has not been a published decision indicating the impact of this provision on the pre-existing statutory and case law specifying the jurisdictional requirements of residency for divorce purposes. The question is whether it provides a substitute for, or only a means of memorializing, the establishment of residence for divorce purposes.

In addition to the residential means of establishing personal jurisdiction set out above, Nevada's "long-arm" statute subjects a person to the personal jurisdiction of Nevada's courts in certain circumstances. In 1993, the Nevada Legislature replaced a much larger provision with a simple statement maximizing the reach of the Nevada courts:

---

[4] It is the opinion of the Nevada Attorney General's Office that "residency" in this state means the same thing as "domicile." Op. Atty. Gen. No. 26 (Mar. 21, 1955).

[5] Minutes of Nevada State Legislature, Senate Judiciary Committee, April 2, 1979, at 8.

[6] The entire legislative history is only about a page long, and indicates that some of those present considered residence and domicile to be different things. Apparently, at least one sponsor of the new statute was concerned primarily with inheritance, and explained that the statute was not intended to "establish a domicile per se," but would still require an individual to "live in Nevada for a period of time, vote in this state, license his car in the state, and have his children go to school in the state." Minutes of Nevada State Legislature, Assembly Judiciary Committee, April 17, 1979, at 1.

> A court of this state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the constitution of this state or the Constitution of the United States.

NRS 14.065(1).

Previously, the courts had given attention to the various subsections setting out the grounds for exercising long-arm jurisdiction in different circumstances. The section most affecting domestic cases was former NRS 14.065(2), which provided in part:

> Any person who, in person or through an agent or instrumentality, does any of the acts enumerated in this subsection thereby submits himself and, if a natural person, his personal representative to the jurisdiction of the courts of this state as to any cause of action which arises from:
>
> . . . .
>
> (e) Living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising for alimony, child support or property settlement, if the other party to the marital relationship continues to reside in this state.

Substantial case law addressed this earlier provision. The stated intent of the 1993 amendment was to expand the reach of the Nevada courts to the greatest extent. Thus, the earlier case law is still relevant, although the cases should probably be read as the minimum extent to which jurisdiction might be found to extend under the current law.

b. Cases

Where the traditional ground of residence is the basis of personal jurisdiction, the courts (especially when Nevada's jurisdictional residency requirements were a great deal more liberal than those of other states) stated repeatedly that the question of residence is a factual question requiring proof by clear and convincing evidence. *McKim v. Second Judicial District Court*, 33 Nev. 44, 110 P. 4 (1910); *Patel v. Patel*, 96 Nev. 51, 604 P.2d 816 (1980).

The word "residence" has been construed as requiring actual "corporeal" presence in addition to a good faith belief or intent to make a particular place a place of residence. *Fleming v. Fleming*, 36 Nev. 135, 134 P. 445 (1913); *see Presson v. Presson*, 38 Nev. 203, 147 P. 1081 (1915); *Merritt v. Merritt*, 40 Nev. 385, 160 P. 22, *on rehearing*, 40 Nev. 392, 164 P. 644 (1917); *Blakeslee v. Blakeslee*, 41 Nev. 235, 243, 168 P. 950 (1917); *Walker v. Walker*, 45 Nev. 105, 108, 198 P. 433, 434 (1921); *Confer v. District Court*, 49 Nev. 18, 30, 234 P. 688, 689 (1925); *Lewis v. Lewis*, 50 Nev. 419, 424, 264 P. 981, 982 (1928); *Latterner v. Latterner*, 51 Nev. 285, 290, 274 P. 194, 195 (1929); *Blouin v. Blouin*, 67 Nev. 314, 316, 218 P.2d 937, 938 (1950); *Aldabe v. Aldabe*, 84 Nev. 392, 396, 441 P.2d 691, 694 (1968); *Boisen v. Boisen*, 85 Nev. 122, 124, 451 P.2d 363, 364 (1969); *Woodruff v. Woodruff*, 94 Nev. 1, 573 P.2d 206 (1978); *distinguished*, *Tiedemann v. Tiedemann*, 36 Nev. 494, 497, 137 P. 824, 826 (1913).

Nothing impugns the legitimacy of Nevada residency which is obtained specifically for the

purpose of obtaining a divorce here:

> [There is] no rule of law which prevents one from changing his domicile in order to facilitate his obtaining a divorce or to secure other advantages he may think the law of the new domicile may afford him.

Walker v. Walker, 45 Nev. 105, 198 P. 433 (1921); *see also Confer v. District Court*, 49 Nev. 18, 234 P. 688 (1925). However, the change of domicile must be *bona fide* and in good faith, *id*., and the question of whether the plaintiff has established residency in Nevada is a question of fact. *Blakeslee v. Blakeslee*, 41 Nev. 235, 168 P. 950 (1917). If there is a dispute as to residency, the plaintiff must prove good faith residency in Nevada. *Kelley v. Kelley*, 85 Nev. 317, 454 P.2d 85 (1969). The fact of physical presence with the intent to establish a residence comprise bona fide residence for divorce jurisdiction. *Aldabe v. Aldabe*, 84 Nev. 392, 441 P.2d 691, 694 (1968).

There is a question as to whether a party's temporary absence from the state ***during*** the six weeks that residency is being established invalidates that establishment of residency. In *Fleming v. Fleming*, 36 Nev. 135, 134 P. 445 (1913), the Court stated both that physical residence required "permanency as well as continuity," ***and*** that it recognized that a person seeking residency might have to "go into another state or another county, called by emergency," which practice it apparently would have permitted as long as the individual, when leaving, had a specific and certain return planned. The Court distinguished that scenario from one in which a would-be plaintiff might be absent for a length of time that was "wholly uncertain"; in the case before it, the Court found that where the individual was in fact absent "for some months . . . it is manifest that it was not his intention to return without delay as the statute requires."

In the context of a convoluted procedural case that was actually decided on the ground that an affected party had not received notice, the Court indicated in dicta that residence ***might*** be established where an individual had come to Nevada and made it his home, even where he was absent from the state several times because of business, so long as "the aggregate of the periods of his corporeal presence within the state before the verification and filing of his complaint was more than six weeks." *Moore v. Moore*, 75 Nev. 189, 336 P.2d 1073 (1959).

Courts have sometimes taken the stand that jurisdiction cannot be conferred by the agreement of the spouses. *See generally* 27C C.J.S. Divorce 781 (1986). Where the court is convinced it has subject matter jurisdiction, however, the lack of personal jurisdiction can be waived. *Grant v. Grant*, 38 Nev. 185, 187-88, 147 P.2d 451, 452 (1915) (where party "who in the first instance invoked the power of the court" later sought to challenge the jurisdiction over him he had asserted to exist when he filed the action, the Court stated in dicta that a party invoking the personal jurisdiction of the court over himself by filing an action should not be permitted to challenge that jurisdiction). *See also Morse v. Morse*, 99 Nev. 387, 663 P.2d 349 (1983) (rejecting 60(b) motion seeking to claim a lack of subject matter jurisdiction by the Plaintiff who filed a petition for adoption, holding that filing of the petition granted ostensible subject matter jurisdiction, and that the challenge was to personal jurisdiction, and failed); *Boisen v. Boisen*, 85 Nev. 122, 451 P.2d 363 (1969) (where there was no doubt that the court had subject matter jurisdiction, intent to reside permanently could be inferred); *Vaile v. District Court*, 118 Nev. ___, 44 P.3d 506 (Adv. Opn. No. 27, Apr. 11, 2002) (finding that divorce decree stood, as to status, as a matter of "judicial estoppel" against defendant wife who had

signed proper person answer, notwithstanding court's lack of subject matter jurisdiction for divorce, or personal jurisdiction over either party, and while voiding all orders relating to custody of the parties' children for lack of jurisdiction over custody matters, because a "colorable case for jurisdiction" had been made out, and the decree was therefore only "voidable," not "void").

The prior Nevada long-arm statute as a whole has survived constitutional scrutiny in the federal courts. In *Mirage Casino-Hotel v. Caram*, 762 F. Supp. 286 (D. Nev. 1991), the court applied the Ninth Circuit's three-part test for determining whether the constitutional standards of *in personam* jurisdiction are met: the non-resident defendant must do some act or consummate some transaction with the forum or purposefully avail himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; the claim must arise out of or result from the defendant's forum-related activities; and the exercise of jurisdiction must be reasonable. Factors in determining "reasonableness" include the burden on the defendant, the existence of an alternative forum, the convenience and effectiveness of relief for the plaintiff, the state's interest in the controversy, efficiency, the defendant's purposeful interjection into the activities of the state, and conflicts with sovereignty.

The "living in the marital relationship" portion of the prior long-arm statute was not often used, but at least one federal court opinion has approved it. In *Lewis v. Lewis*, 695 F. Supp. 1089 (D. Nev. 1988), the court approved an action for partition of omitted property under Nevada's then-current military retirement benefits partition law, NRS 125.161, finding in part that the state's long-arm statute adequately put the non-resident former spouse on notice of liability for suits for the division of such property. The Nevada Supreme Court issued a contrary opinion at about the same time, *see Messner v. District Court*, 104 Nev. 759, 766 P.2d 1320 (1988), but this opinion was based on the court's perception of a federal statute as limiting the state's personal jurisdiction, whereas the federal court had perceived the federal statute as going to subject matter jurisdiction only.

Practitioners should note as a matter of strategy that the courts' jurisdiction over a person who is personally served within the borders of the state is ***not*** limited by any kind of "minimum contacts" analysis. The long-arm statute is inapplicable in such a case, and the court has full jurisdiction over the parties and all incidents of their marriage. *Cariaga v. District Court*, 104 Nev. 544, 762 P.2d 886 (1988); *see also Burnham v. Superior Court of California*, 495 U.S. 604 (1990) (same ruling in case arising in California). It seems possible that an inveigled and served defendant ***might*** have a protest recognized under the doctrine of *forum non conveniens*, but that is an unenviable defense to be forced to assert. *See Cariaga*, *supra*; *Martin v. DeMauro Constr. Corp.*, 104 Nev. 506, 761 P.2d 848 (1988) (insufficient showing that Hong Kong more convenient than Nevada).

In *Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000), the Nevada Supreme Court abrogated the doctrine of distinguishing special from general appearances in light of the 1998 amendments to NRCP 12(b) and several of its recent decisions, stating that from that time forward, a defendant could move to dismiss for lack of personal jurisdiction prior to filing a responsive pleading such as an answer, or the defendant could raise that defense in a responsive pleading. Objections to personal jurisdiction, process, or service of process are waived, however, if not made in a timely motion or not included in a responsive pleading such as an answer.

In prior practice, an additional basis for the assertion of jurisdiction over a party was the general appearance of that party by the making of a request for any affirmative relief. In *Barnato v. Dist. Court*, 76 Nev. 335, 353 P.2d 1103 (1960), the Defendant moved to dismiss the complaint for divorce in addition to moving to quash service of the summons and complaint. The court held that "a defendant who requests relief additional to that necessary to protect him from defective service of process renders his appearance general." *Id*., 76 Nev. at 340. Merely making reference to a legal separation decree previously rendered in another state was held to not constitute a request for affirmative relief in *Simpson v. O'Donnell*, 98 Nev. 518, 654 P.2d 1009 (1982). Entering into negotiations between counsel was likewise held insufficient to give the Nevada courts jurisdiction. *Milton v. Gesler*, 107 Nev. 767, 819 P.2d 245 (1991). An action as slight as requesting an extension of time to make an appearance or to answer could be held to constitute the making of a general appearance. *City of Los Angeles v. Eighth Judicial District Court*, 58 Nev. 1, 67 P.2d 1019 (1937).

Some fallout from the line of cases detailing when a party has "requested affirmative relief" and therefore subjected himself or herself to the jurisdiction of the court remains relevant even after the abrogation of the special appearance doctrine. In *Dobson v. Dobson*, 108 Nev. 346, 830 P.2d 1336 (1992), the Court considered an appeal from an order granting a motion to quash service of process, and voiding a decree of divorce. The default decree was set aside by the district court due to the alleged fraud by the husband, who sent notice to a wrong address in Germany, despite knowing the wife's correct address, and despite the fact that the husband had appeared in the ongoing German divorce proceedings before moving to Nevada and starting another divorce action.

On appeal, the Court held that NRCP 60(b)(3) was the proper avenue for attacking a void judgment, citing *Doyle v. Jorgensen*, 82 Nev. 196, 201, 414 P.2d 707, 710 (1966) (a judgment that is not supported by proper service is void). Expanding on that holding three years later, the Court held that "the filing of a motion to set aside a void judgment previously entered against the movant shall not constitute a general appearance." *Gassett v. Snappy Car Rental*, 111 Nev. 1416, 1421, 906 P.2d 258, 262 (1995).

c. Discussion

The statutory enactment permitting the filing of a written declaration of domicile, NRS 41.191, appears to cast some doubt on the continuing vitality of the older cases purporting to require actual "corporeal" presence on a continuous basis prior to a finding of residency, and thus personal jurisdiction. In two other contexts, the Attorney General's Office has issued opinions indicating that absence from Nevada by virtue of military service does not interfere with residence for the purpose of claiming the veteran's tax exemption, Op. Atty. Gen. No. 340 (Jul. 12, 1954), or exercising the right to vote in Nevada. Op. Atty. Gen. No. 78 (Apr. 27, 1972).

It is uncertain how a court would rule if an individual came to Nevada, established residence, filed a declaration of domicile, and then left for an extended period before filing for divorce, since those facts would cause a collision of the cases and statutes noted above. There is a line of mainly older cases requiring proof of intent to "remain permanently" as an ***element*** of proving residency. *See Presson v. Presson*, 38 Nev. 203, 147 P. 1081 (1915); *Merritt v. Merritt*, 40 Nev. 385, 160 P. 22, 164 P. 644 (1917). The later cases added "or at least indefinitely." *Latterner v. Latterner*, 51

Nev. 285, 274 P. 194 (1929). One modern case, however, quoted the holdings in *Fleming*, *supra*, and *Aldabe*, *supra*, and noted as part of its basis for determining that the plaintiff was not a resident when he filed for divorce that he had "never resided in Nevada at any other, prior point in time." *Vaile v. District Court*, 118 Nev. ___, 44 P.3d 506 (Adv. Opn. No. 27, Apr. 11, 2002).

If a plaintiff leaves the jurisdiction ***after*** a divorce, there is no automatic impact on the validity of the divorce since there is no statutory requirement of continuing residence in the state for any specified length of time after the divorce. *Confer v. District Court*, 49 Nev. 18, 234 P. 688 (1925). The above-cited older cases and their somewhat strained logic might legitimately be re-examined in light of the modern reality of serial residence in a variety of jurisdictions, and the modern statutory context specifically contemplating physical presence in a variety of jurisdictions while maintaining Nevada domicile.

Still, those cases have not been expressly overruled, and the practitioner must be prepared for the possibility of a collateral attack on a decree obtained whenever there is a possible question as to residency, including a question as to "residential intent." Courts in other states have been somewhat hostile to the practice of persons moving to Nevada for the purpose of obtaining divorces. In one Texas case, the court held that the husband's residence in Nevada for seven weeks, where he made occasional day trips to California, and he left Nevada after filing his complaint but before his decree was issued, was sufficient to rebut the husband's claim of residential intent (apparently, despite a Nevada decree to the contrary), and allowed a collateral attack on the validity of the decree in Texas. *Callicoatte v. Callicoatte*, 324 S.W.2d 81 (Tex. Ct. App. 1959).

Presumably due to the liberalization of divorce laws in other states, the number of persons coming to Nevada specifically for the purpose of seeking an easier divorce is believed to have declined, but a practitioner may still be contacted by a resident of another state who desires to obtain a divorce in Nevada. In light of the case law, the potential client should be informed, preferably in writing, of both the physical presence requirement and the question of fact as to residential intent. The client who has moved to Nevada to obtain a divorce should establish a relationship with at least one Nevada resident sufficient to allow that person to act as a residency witness (or must develop other corroboration). Contact with the residency witness should be regular, preferably daily, throughout the six week period.

In light of *Moore*, *supra*, the safest course would be to not count any days the client is not physically within the state toward the six weeks required, but the effect of filing a declaration of residency has not been tested. Since the older cases indicating that an intent to "remain indefinitely" may still be required, a prospective divorce plaintiff can best shield a decree from collateral attack by doing those things that tend to objectively demonstrate the legitimacy of residence here, such as obtaining housing, having mail forwarded to the Nevada address, registering to vote, obtaining a Nevada driver's license, and registering vehicles in the state. Obtaining employment in the state is also evidence of a good faith intent to make Nevada the client's legal residence.

Because residency is a question of fact, the practitioner must be prepared to present evidence of specific facts demonstrating residency rather than merely stating the legal conclusion that the client has been a resident for the six week period.

It is common for attorneys to have their clients note for the record the fact of their residence in Nevada at the time of ***trial*** of a divorce, as well as prior to filing of the action. This practice does not appear to have a firm basis in the statutes. From the statute's own terms, residence (or satisfaction of another of the statutory grounds) at the time the action is ***filed*** appears to be sufficient, although presumably continued residence at the time of divorce is relevant to the assertion of intent to make Nevada an intended home for at least an indefinite period, and thus the legitimacy of residency at the time of filing.

In *Latterner*, *supra*, however, it can be inferred that the Plaintiff relocated from the jurisdiction of the court after proceedings were commenced, but before judgment was rendered. On appeal, the Court reversed, not on the theory that this proved a lack of intent to remain indefinitely, but because the district court had not made an express finding as to the good faith of residency one way or the other, even though the defendant had apparently tried to place the matter into issue.

Every Complaint for Divorce should include an assertion of the basis for a finding of personal jurisdiction over at least one of the parties. As specified in greater detail in the next sections, there should be a basis for exercise of the court's jurisdiction over the defendant where division of property, alimony, or other monetary issues are present in the case. Examples are set out in Form 1 in Appendix A.

The case law establishing that a plaintiff must exercise due diligence to actually serve a defendant before taking default (discussed below in subsection B(2)(b) regarding service of process) has remained relevant longer than the "special appearance" cases in which the discussion of that requirement is most often found. Where a plaintiff has not properly served a defendant (including situations where a plaintiff deliberately does not serve a defendant in order to procure an unopposed default judgment), the defendant may, upon discovery of the fraudulent divorce, move to set it aside as void without fear of making a "general appearance." This conclusion was made more certain by the abrogation of the special appearance doctrine in *Hansen*, *supra*.

d. Local Rules

There should not be any special local treatments of personal jurisdiction.

3. Custody Jurisdiction

a. Statutes and Court Rules

The law concerning the jurisdiction of courts in custody matters has been greatly altered in recent years by passage of uniform laws and by Congressional mandate. As set out in greater detail in a later section dealing with the law of child custody, the Uniform Child Custody Jurisdiction Act ("UCCJA"), NRS 125A.010 *et seq.*, and Parental Kidnaping Prevention Act ("PKPA"), 28 U.S.C. § 1738A, provide an entirely separate means by which the courts of this state can acquire or lose jurisdiction to enter orders relating to children, and which in certain circumstances can conflict with

traditional common law jurisdictional rules.[7]

For the purpose of this section of this chapter, however, the focus is on the jurisdiction of the courts of this state to enter custody orders in relation to jurisdiction over the subject matter of the marriage and the parties thereto.

A Nevada court with personal jurisdiction over both parties to the action acquires jurisdiction to determine the custodial arrangement for their children, whether or not the children are within the physical boundaries of the state. The statutes generally give the court broad powers over custody. NRS 125.510(1) provides that:

> In determining custody of a minor child in an action brought under this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS:
>
> (a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest . . . .

On their face, the statutes mandate a custody and support determination in every case involving children. NRS 125.450(1) provides that:

> No court may grant a divorce, separate maintenance or annulment pursuant to this chapter, if there are one or more minor children residing in this state who are the issue of the relationship, without first providing for the medical and other care, support, education and maintenance of those children as required by chapter 125B of NRS.

The statutes granting jurisdiction to make certain interim orders appear to have originally contemplated the situation in which one of the parties removes a child from the jurisdiction prior to filing, although NRS 125.470(1) was modified to explicitly permit the court to enter the same type of orders either before or after a "final order" is granted:

> If, during any proceeding brought under this chapter, either before or after the entry of a final order concerning the custody of a minor child, it appears to the court that any child of either party has been, or is likely to be, taken or removed out of this state or concealed within this state, the court shall forthwith order such child to be produced before it and make such disposition of the child's custody as appears most advantageous to and in the best interest of the child and most likely to secure to him the benefit of the final order or the modification or termination of the final order to be made in his behalf.

The court has continuing jurisdiction to modify child custody awards after entry of a decree, irrespective of any express statement of continuing jurisdiction, under the above statute and NRS

---

[7] The PKPA is similar to the UCCJA, but not identical. The amendments constituting the UCCJEA came much closer to the federal act. To the extent of any dispute between the federal statute and the UCCJA, federal supremacy requires preemption of the state act. The interrelationship of the UCCJA and the PKPA are addressed more fully in Section C(1) of this Chapter.

125.510 (permitting a determination of custody during the pendency of an action, at the final hearing, or any time thereafter during the child's minority, and permitting modification or the vacating of any such order, "even if the divorce was obtained by default with an appearance in the action by one of the parties," but providing that the person seeking such an order "shall submit to the jurisdiction of the court.")

b. Cases

While the court retains jurisdiction to modify custody post divorce, the statute does not guarantee a hearing on a motion to modify a custody ruling. The court may deny a motion to modify custody without hearing if the movant does not demonstrate adequate cause for holding a hearing. *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993).

In earlier years, the courts of other states expressed varying degrees of willingness to give full faith and credit to Nevada custody determinations, apparently looking with disdain upon Nevada's then comparatively lax divorce requirements. Massachusetts and New Jersey determined that the Nevada courts had jurisdiction to rule that even the temporary presence of children within the state gives Nevada courts jurisdiction to determine custody matters. *Heard v. Heard*, 82 N.E.2d 219 (Mass. 1948); *Casteel v. Casteel*, 132 A.2d 529 (N.J. App. Div. 1957). The New Jersey and Maryland courts, however, refused to give full faith and credit to the Nevada custody rulings, the former on the basis of New Jersey's *parens patriae* interest in the children, and the latter on the basis that the presence of the children was of less importance than their domicile in the other state. *Casteel, supra*; *Naylor v. Naylor*, 143 A.2d 604 (Md. 1958). The Texas courts decided that Nevada custody determinations were entitled to full faith and credit where Nevada had personal jurisdiction over both parties, but that modification jurisdiction was not exclusive to Nevada. *Dowden v. Fischer*, 338 S.W.2d 534 (Tex. Civ. App. 1960). The uniform act, and federal jurisdictional statute discussed below presumably relegate these cases to the category of historical oddities.

A half century ago, the Nevada Supreme Court held that where both parties have subjected themselves to the personal jurisdiction of the court, the presence of a child within the territorial boundaries of the state is not necessary for the court to determine custody of the child. *Wilson v. Wilson*, 66 Nev. 405, 212 P.2d 1066 (1949). While never overruled, the case may be of questionable vitality in light of Nevada's adoption of the UCCJA and its jurisdictional rules.

c. Discussion

The position of the United States Supreme Court on the jurisdiction over both parents necessary to enter a custody order is open to some speculation. *May v. Anderson*, 345 U.S. 528 (1953) was decided by a plurality decision in which the primary opinion indicated that any custody decree entered without personal jurisdiction over the parent losing custody was as a matter of due process not entitled to full faith and credit by other states. Justice Frankfurter's concurrence, however, was necessary to the outcome of the case, and stressed that the states have a duty to the children within their borders which outweighs the national unity interest, and that such *ex parte* custody decrees therefore should be granted full faith and credit. This has led some commentators to conclude that child custody determinations do not require personal jurisdiction over the affected

parent. *See* Monica J. Allen, *Child-State Jurisdiction: A Due Process Invitation to Reconsider Some Basic Family Law Assumptions*, 26 Fam. L. Q. 293, 296 (A.B.A. 1992) (citing other sources).

There are few appellate holdings in this area, but most trial court judges have concluded that the permissive and mandatory provisions of NRS 125.510 and NRS 125.450 come into play only *after* the constitutional mandates of subject matter and personal jurisdiction. Accordingly, in the absence of jurisdiction over a spouse and any children, the courts have granted divorces and ignored the mandate of NRS 125.450(1). The only apparent alternative to this interpretation would be that the courts of this state are barred from granting a divorce at all unless the court acquires personal jurisdiction over both parties sufficient to enter an order as to child custody. Since the latter option would run afoul of case law indicating that the court can sever the marital relationship if it has jurisdiction over either party, the courts' interpretation seems most reasonable.

Where only one party to a marriage moves to this state, and the spouse and children remain elsewhere, Nevada acquires no jurisdiction to determine issues of custody absent some act by the spouse that would give the court personal jurisdiction over him or her. Presumably, such an act would include being present in Nevada long enough to be served with process. In *Cariaga v. District Court*, 104 Nev. 544, 762 P.2d 886 (1988), the court found that the minimum contacts analysis need only be performed if the long-arm statute (NRS 14.065) is used, not when the out-of-state Defendant is served in Nevada. While *Cariaga* was a personal injury case, one of the cases cited in support of the court's holding was a divorce action. *See In re Marriage of Pridemore*, 497 N.E.2d 818 (Ill. App. Ct. 1986).

The holdings appear to create the opportunity for conflict between statutory and case law in a situation where a child's home state under the UCCJA is agreed to be elsewhere, but the noncustodial parent lives in Nevada and succeeds in serving the custodial parent with process in this state.

There is a question of what is meant in NRS 125.450(1) by use of the words "minor children residing in this state." The statute itself is mandatory, but on its face, it appears that the statute could be circumvented by simply changing the physical residence of the children prior to filing. This facial simplicity is probably misleading, in view of the traditional common law rule that children have the legal "residence" of their parents, or primary custodian. *See St. Joseph's Hosp. and Medical Center v. Maricopa County*, 688 P.2d 986 (Ariz. 1984); *Bowen v. Graham*, 684 P.2d 165 (Ariz. Ct. App. 1984); *Gomez v. Snyder Ranch*, 678 P.2d 219 (N.M. Ct. App. 1983). Additionally, nothing in the statute states that the court ***cannot*** enter orders when the children are outside the state; such orders are merely not mandatory under those circumstances.

Many of the interstate conflicts that gave rise to the cases between 1940 and 1970 have been ameliorated by widespread adoption of the Uniform Child Custody Jurisdiction Act. The point has now been reached that the initial subject matter jurisdiction analysis is performed under the requirements of that act and not under the traditional, constitutionally-based jurisdictional tests. *See Swan v. Swan*, 106 Nev. 464, 796 P.2d 221 (1990).

d. Local Rules

There should not be any special local treatments of custody jurisdiction.

4. Alimony, Spousal Support, and Child Support Jurisdiction

a. Statutes and Court Rules

The jurisdiction of the court to enter an order granting child or spousal support to a party is derived from a finding of subject matter and personal jurisdiction, and presumes personal jurisdiction over the party ordered to pay.

The court has express continuing jurisdiction to modify child support awards after entry of a decree, irrespective of any express statement of continuing jurisdiction. NRS 125.510.

The court has the power to award sums to be paid by one party to the other prior to trial. NRS 125.040(1) provides in part that the divorce court may:

> require either party to pay moneys necessary to assist the other party in accomplishing one or more of the following:
>
> (a) To provide temporary maintenance for the other party;
> (b) To provide temporary support for children of the parties . . . .

The court has jurisdiction to award "such alimony to the wife or to the husband, in a specified principal sum or as specified periodic payments . . . as appears just and equitable . . . . NRS 125.150(1)(a).

The court has no jurisdiction to modify an award of alimony payable in installments, as to installments that have accrued. Payments that have not yet accrued, if called for under a decree entered on or after July 1, 1975, may be modified upon motion of either party upon a showing of changed circumstances, regardless of whether the court expressly reserved jurisdiction for that purpose. NRS 125.150(7).

The court has jurisdiction to invade the payor's separate property for the support of a spouse or child in such portion "as is deemed just and equitable." NRS 125.150(4).

The prior long-arm statute, NRS 14.065(2)(e)[8], specifically provided for the court's jurisdiction over a party who leaves the jurisdiction after living in the marital relationship here, as to all obligations arising for alimony and child support, if the other party remained in Nevada. This interpretation presumably applies to the current, broadened long-arm statute as well.

[8] Set out above in section B of chapter I, on page 6.

b. Cases

The United States Supreme Court requires a state to have personal jurisdiction over an obligor parent before a duty to pay child support may be imposed. *Kulko v. Superior Court of California*, 436 U.S. 84 (1978). Where the non-custodial parent moved to this state, the Nevada Supreme Court held that the trial court could dissolve the marriage, but could not adjudicate any rights as to alimony, child support, or child custody without obtaining personal jurisdiction over both parties. *Simpson v. O'Donnell*, 98 Nev. 516, 645 P.2d 1020 (1982). However, *Kulko* was pre-UCCJA, and some courts have elected to treat the uniform statute as a basis of expanded jurisdiction. *See*, *e.g.*, *McCaffery v. Green*, 931 P.2d 407 (Alaska 1997) (where all parties moved out of state issuing original support order, home state of child, in the process of resolving visitation dispute, may also rule on child support).

Authority to make an award of alimony is "incidental to divorce" and the parties need not specifically plead it to give the Court jurisdiction to make an alimony award. *Woodruff v. Woodruff*, 94 Nev. 1, 573 P.2d 206 (1978).

Where a Nevada divorce court failed to obtain personal jurisdiction over the defendant spouse, the court's order purporting to terminate a duty of support under a New York statute was void to the extent that it sought to terminate that duty. *Estin v. Estin*, 334 U.S. 541 (1948); *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957). Presumably, the same rule applies to initiating, rather than terminating, such a duty of support.

Where a court has jurisdiction to make an award of preliminary support, it has jurisdiction to "increase or diminish" that award during the pendency of the case as circumstances require. *Kapp v. District Court*, 31 Nev. 444, 103 P. 235 (1909).

The statute giving the court the power to make preliminary orders concerning property of "pecuniary interests" has been held to permit the court to enforce temporary spousal support orders by requiring the posting of bonds or the arrest of the spouse ordered to make payments, as necessary to enforce the temporary order, or the anticipated final order of the court. *See Summers v. District Court*, 68 Nev. 99, 227 P.2d 201 (1951).

c. Discussion

Even when one parent moves from the jurisdiction with a child prior to filing, the remaining parent can still invoke the jurisdiction of the court under the terms of the long-arm statute. The reverse is, however, apparently not permitted; a parent moving here with children would apparently not be able to invoke the power of the court to obtain support from a non-custodian who remained in another jurisdiction. Much of the discussion in the preceding section concerning the mandatory language of NRS 125.450(1) is also applicable here. While the language of the statute appears to mandate a support award in every case involving children, applicability of the statute is probably dependent upon a finding of jurisdiction over the obligor parent.

For many years, where there was no existing custody award, primary custodial parents could

remove themselves and the children to another state, and invoke the new state's jurisdiction over the children within the state to force the left-behind parent to litigate child custody in the new state. Once the left-behind parent appeared, the moving parent could demand litigation of all issues, invoking both "judicial economy" and the "general appearance" made by the left-behind parent who was attempting to ensure access to the children in the new state. This tactic may not work reliably in modern cases, however. Some courts have ruled that it would defeat the purpose of the UCCJA to put the left-behind parent on the horns of the dilemma of choosing "to relinquish participation in the custody determination or to waive his or her jurisdictional objection to the resolution of monetary issues." *See Taylor v. Jarrett*, 959 P.2d 807 (Ariz. Ct. App. 1998); *In re Fitzgerald and King*, 46 Cal. Rptr. 2d 558 (Ct. App. 1995). Those courts have allowed the out-of-state parent to fully litigate custody issues without any finding that the parent made a general appearance (and were therefore subject to monetary orders).

Nevada statutes and cases use the terms "maintenance," "spousal support," and "temporary alimony" somewhat inconsistently, but it appears to be generally appropriate to distinguish "alimony," as post-divorce payments for the support of a former spouse, from "spousal support" or "maintenance," which have taken on the meaning of payments to a current spouse during the pendency of a divorce action. There is more than one type of alimony.[9]

Given the limiting date of July 1, 1975, in NRS 125.150(7), it appears that the court lacks jurisdiction to modify any awards of alimony in decrees, or decrees ratifying property settlement agreements, entered prior to that date, unless the court expressly reserved jurisdiction for the purpose of such modification.

The court's power to treat separate property as a resource for providing support has been broadly interpreted in older cases to include the power to provide whatever level of "necessities and luxuries" the court determined was proper. *Lake v. Bender*, 18 Nev. 361, 4 P. 711, 7 P. 74 (1884). The test on appeal appears to be abuse of discretion. *Id.*; *Jacobs v. Jacobs*, 83 Nev. 73, 422 P.2d 1005 (1967).

d. Local Rules

There should not be any special local treatments of jurisdiction to award alimony, spousal support, or child support.

5. Property Jurisdiction

a. Statutes and Court Rules

The court is granted broad power to take such actions as are necessary to preserve property or economic interests during the pendency of an action. NRS 125.050 provides that:

If, after the filing of the complaint, it is made to appear probable to the court that either party

[9] *See* section E of this chapter.

> is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning the property or pecuniary interests, the court shall make such restraining order or other order as appears necessary to prevent the act or conduct and preserve the status quo pending final determination of the cause.

The court has jurisdiction in granting a divorce to divide both community property and joint tenancy property. NRS 125.150(1)(b), 125.150(2).

As noted in the preceding section, the court has statutory jurisdiction to "set apart" the separate property of one spouse for the support of the other, or of their children, essentially using such separate property as a resource for lump-sum alimony and/or child support. NRS 125.150(4).

b. Cases

Where a Nevada divorce court failed to obtain personal jurisdiction over the defendant spouse, the court's order purporting to dispose of the property interests of that spouse were held to be void. *Estin v. Estin*, 334 U.S. 541 (1948).

c. Discussion

The jurisdiction of the courts to consider actions for partition of property omitted from decrees of divorce, or correct mis-distributions of property so as to equalize property distributions, is open to some question, although the modern trend is clearly to allow such divisions, by motion or independent action. The Nevada Supreme Court has indicated that the courts ***do*** have such jurisdiction. *See Bank v. Wolff*, 66 Nev. 51, 202 P.2d 878 (1949); *Amie v. Amie*, 106 Nev. 541, 796 P.2d 233 (1990); *Williams v. Waldman*, 108 Nev. 466, 836 P.2d 614 (1992); *Carlson v. Carlson,* 108 Nev. 358, 832 P.2d 380 (1992); *Blanchard v. Blanchard*, 108 Nev. 908, 839 P.2d 1320 (1992); *Cook v. Cook*, 112 Nev. 179, 912 P.2d 264 (1996); *Gramanz v. Gramanz*, 113 Nev. 1, 930 P.2d 753 (1997). The court has also indicated that the courts do ***not*** have such jurisdiction. *McCarroll v. McCarroll*, 96 Nev. 455, 611 P.2d 105 (1980); *Tomlinson v. Tomlinson*, 102 Nev. 652, 729 P.2d 1363 (1986); *Taylor v. Taylor*, 105 Nev. 384, 775 P.2d 703 (1989). This subject is dealt with in detail below.[10]

The family courts have jurisdiction to resolve issues that fall outside their constitutional jurisdiction when necessary for the resolution of those claims over which jurisdiction is properly exercised, or "where family law issues are implicated," and likewise the general jurisdiction court could reach a family law "issue" where necessary to resolve a claim "that would ordinarily fall within its jurisdiction, such as reformation or rescission." *Barelli v. Barelli*, 113 Nev. 873, 944 P.2d 246 (1997). In practice, this has led to the consolidation of cases, either in the civil/criminal division or (more commonly) in the family division, where actions between the same parties, or implicating the same nexus of rights and responsibilities, are pending in both courts.

---

[10] *See* section F(6) of this chapter. For a review of the jurisdictional conflicts among these cases, *see* Willick, *Partition of Omitted Assets After Amie: Nevada Comes (Almost) Full Circle*, 7 Nev. Fam. L. Rep., Spr. 1992, at 8.

d. Local Rules

There should not be any special local treatments of jurisdiction to divide property.

6. Miscellaneous Jurisdictional Matters

a. Statutes and Court Rules

The court has jurisdiction to entertain an action for separate maintenance whenever the plaintiff has a cause of action for divorce or has been deserted for 90 days. NRS 125.190. Generally, the procedure and practice in such actions "must be the same, as nearly as may be, as those provided in actions for divorce." NRS 125.250. The same provision, however, appears to limit the subject matter jurisdiction of the court, by providing that: "Suit may be brought in the county in which either party resides at the time the suit is commenced, or in the county in which the spouse may be found." The additional bases of subject matter jurisdiction in NRS 125.020 are apparently unavailable.

While separately stated in NRS 125.190-125.280, and in different language than in the divorce statutes, the court apparently is given jurisdiction to grant to a plaintiff in a separate maintenance action any of the relief concerning child custody, child support, spousal support, alimony, and property division, that the court could grant to a party to a divorce action. The one apparent exception is that in a separate maintenance action, NRS 125.210(4) expressly states that: "No order of decree is effective beyond the joint lives of the husband and wife" whereas NRS 125.150(5) provides that alimony payments ordered in a decree of divorce "must cease" upon the death of either party "unless it was otherwise ordered by the court." Thus, the court appears to have jurisdiction to enter orders effective beyond the death of a party in divorce actions, but not in separate maintenance actions.

Additionally, the child support statutes directly contradict the lifetime limitation expressed in NRS 125.210(4). NRS 125B.010 states that the child support statutes apply to "all parents of all children," and NRS 125B.130 provides that the court may enforce an obligation of support against a parent's estate.

Special jurisdictional rules apply to actions for annulment. If the marriage was "contracted, performed or entered into within the State of Nevada," our courts have subject matter jurisdiction to annul the marriage irrespective of the residence of the parties. NRS 125.360. For marriages "contracted, performed or entered into without the State of Nevada," however, the court has subject matter jurisdiction only if the plaintiff has been a resident for six weeks, and only if that is the county in which: (1) the defendant resides or can be found; or (2) the plaintiff resides and is the county in which the parties last cohabited. NRS 125.370(1).

Once before a district court, the parties are apparently free to jointly elect to have the action heard in a different district court. NRS 1.050(4) provides:

The parties to an action in a district court may stipulate, with the approval of the

court, that the action may be tried, or any proceeding related to the action may be had, before that court at any other place in this state where a district court is regularly held.

b. Cases

In the area of criminal non-support, under NRS 201.020 and NRS 194.020, our courts have jurisdiction over a defendant even if the obligor was outside of Nevada during period in question, since the failure to pay support was inaction constituting a criminal act here. *Epp v. State*, 107 Nev. 510, 814 P.2d 1011 (1991). The statutes have survived constitutional attack. *Sheriff v. Vlasak*, 111 Nev. 59, 888 P.2d 441 (1995).

c. Discussion

It is difficult to resolve the conflict between the post-death limit of NRS 125.210(4) and NRS 125B.130, which allows the court to hold a parent's estate liable. Both statutes are derived from much older statutory provisions, and both have been amended in the past several years, at which time the legislature could have resolved the conflict if it had been noticed. Public policy would probably militate toward resolving the question in favor of finding jurisdiction to hold a parent's estate liable for support, but the matter has apparently never been addressed in a published opinion.

d. Local Rules

There should not be any special local treatments of jurisdiction over the matters discussed in this section.

7. Venue[11]

a. Statutes and Court Rules

Even if the court in which a divorce action has been filed has jurisdiction to hear the matter, a defendant has a right to change the place of trial to his or her residence. NRS 13.040 provides, that in the absence of a specific statutory direction of venue:

> the action shall be tried in the county in which the defendants, or any one of them, may reside at the commencement of the action; or, if none of the defendants reside in the state, or if residing in the state the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if any defendant, or defendants, may be about to depart from the state, such action may be tried in any county where either of the parties may reside or service be had, subject, however, to the power of the court to change the place of trial as provided in this chapter.

The action may, however, be tried where the plaintiff files the action, unless the defendant files a

[11] This section does not purport to be a complete general treatment of venue matters. The practitioner is directed to Nev. Civ. Prac. Manual §§ 601-624 (Michie 4th ed. 1998).

written demand to change venue within the time allowed for filing an Answer to the complaint. NRS 13.050(1).

The court also has discretion to change venue upon motion of a party when the county designated in the complaint "is not the proper county," "when there is reason to believe that an impartial trial cannot be had therein," or "when the convenience of the witnesses and the ends of justice would be promoted by the change." NRS 13.050(2).

b. Cases

A defendant in a divorce action is entitled to a change in the place of trial to his or her residence, providing he or she complies with the procedural requirements of making a written demand, and all further proceedings in the case may only be had in the county of the defendant's residence. *Stocks v. Stocks*, 64 Nev. 431, 183 P.2d 617 (1947); *see also Duffill v. Bartlett*, 53 Nev. 228, 297 P. 504 (1931). Presuming compliance with the procedural prerequisites, a motion under NRS 13.040 based on the defendant's residence does not permit an exercise of discretion by the district court. *Halama v. Halama*, 97 Nev. 628, 637 P.2d 1221 (1981).

If the defendant has grounds to demand a change of venue as a matter of right, only the court to which the action is moved can consider a motion to move the venue of the case back to the original jurisdiction on the discretionary bases now set out in NRS 13.050(2). *Stocks v. Stocks*, 64 Nev. 431, 183 P.2d 617 (1947).

c. Discussion

Since the right of the defendant to demand a change of venue is dependent upon his or her residence on the date of commencement of the divorce complaint, many of the factors examined in the preceding sections may be of use in determining where the defendant is a "resident." All of the older cases dealing with physical presence being coupled with an intention to remain for at least an indefinite period would presumably be applicable. *See*, *e.g., Aldabe v. Aldabe*, 84 Nev. 392, 441 P.2d 691 (1968); NRS 10.155 (defining "legal residence"); *Fleming v. Fleming*, 36 Nev. 135, 134 P. 445 (1913).

Certain kinds of family law cases, such as terminations of parental rights[12] and parentage actions,[13] have their own specialized venue rules. Those rules are discussed in the substantive sections concerning the subject matter.

d. Local Rules

---

[12] Under NRS 128.030, there are three potential county venues for a termination of parental rights: where the child is found, where the acts complained of occurred, or where the child resides.

[13] Under NRS 126.091(3), a parentage action may be brought in the county in which the child, the mother or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced. The court has jurisdiction whether or not the plaintiff resides in this state.

There should not be any special local treatments of venue. The passage of any local or special laws providing for changing the venue in civil cases is specifically prohibited by the Nevada Constitution. *See* Nev. Const., Art. 4, § 20.