

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT**

CASE NO. 4D15-4527

JEFFREY EPSTEIN,

Appellant,

v.

**BRADLEY J. EDWARDS and
PAUL G. CASSELL,**

Appellees.

**APPEAL FROM THE SEVENTEENTH JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR BROWARD COUNTY**

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

Appellant Jeffrey Epstein appeals a non-final order entered by the Broward County Circuit Court. (App. 1-2). The order, which denies Epstein's motion to quash a subpoena issued in a Broward County case in which he is not a party, determines jurisdiction over his person. This Court has jurisdiction. *See* Fla. R. App. P. 9.130(a)(3)(C)(I); *see also Garfinkel v. Katzman*, 76 So. 3d 40 (Fla. 4th DCA 2011); *Allan v. Hill*, 502 So. 2d 7 (Fla. 4th DCA 1986).

Epstein and Appellee Bradley J. Edwards are opposing parties in an unrelated Palm Beach County Circuit Court case in which summary judgment was entered in favor of Epstein.¹ Epstein was ruled entitled to attorney's fees. Mediation was held in Palm Beach County in an attempt to settle the attorney's fees matter. At the mediation, Edwards served Epstein with a subpoena duces tecum to appear for a deposition and produce documents in reference to *Edwards v. Dershowitz*, a case pending in Broward County Circuit Court in which Edwards is a plaintiff. (App. 3-6). Epstein is not a party in the Broward County case which is unrelated to the Palm

¹ In granting summary judgment, the trial court ruled in pertinent part that Edwards' malicious prosecution claim against Epstein was barred by the litigation privilege pursuant to *Wolfe v. Foreman*, 128 So. 3d 67 (Fla. 3d DCA 2013). On appeal by Edwards, this Court reversed, certifying conflict with *Wolfe*. *See Edwards v. Epstein*, No. 4D14-2282, 2015 WL 7008070 (Fla. 4th DCA Nov. 12, 2015).

Beach County case. Epstein moved to quash the subpoena on the ground that as a resident of the United States Virgin Islands attending a court proceeding in Palm Beach County, he was immune from service in an unrelated Broward County case. (App. 7-26). Edwards filed no response.

At the hearing on Epstein's motion to quash held October 22, 2015, Edwards acknowledged that Epstein is "legally domiciled" in the United States Virgin Islands. (App. 34). Nevertheless, Edwards argued that Epstein was served "in a county and state in which he regularly resides, so he has not been served outside of the area of his residence." *Id.* In purported support of his argument, Edwards contended that Epstein testified in a deposition that he owns residences in various locales, including Palm Beach, and provided the trial judge with a "partial transcript" of the deposition. (App. 34, 37-8). Epstein offered to provide the court with an affidavit he recently signed stating he is a legal resident of the United States Virgin Islands. (App. 38). The trial judge responded: "I don't know. Let me take a look and I'll let you know." *Id.*

On October 27, 2015, the trial judge's judicial assistant sent an electronic communication to the parties that the motion to quash was denied on the ground of insufficient evidence of nonresidency and requesting that Epstein submit a proposed written order. (App. 40). On October 30, 2015, Epstein moved for reconsideration and

provided the trial court with documentary and testimonial proof of his residency in the United States Virgin Islands. (App. 41-63). The proof included the deposition testimony referenced by Edwards at the hearing on the motion to quash in which Epstein testified in the Palm Beach County case as follows:

Q. Would you please state your full name and your current residence address?

A. ■ Jeffrey Edward Epstein. And my residence is 6100 Red Hook Boulevard in Virgin Islands.

Q. Do you maintain any other residences presently?

A. I have vacation homes in New Mexico, Palm Beach, New York, and Paris.

(App. 55) (emphasis supplied).

Epstein also provided an affidavit attesting; he is a legal resident of the United States Virgin Islands and has been for many years; he owns vacation homes in Florida and elsewhere but his permanent residence is in the United States Virgin Islands; when he was served, he was not a resident of Palm Beach County and had no intention of making it his domicile; and his current and valid driver's license and voter registrations cards reflect his United States Virgin Islands residency. (App. 60-1). Epstein submitted his United States Individual Income Tax Returns for 2010 and 2011 (reflecting his residence as 6100 Red Hook, St. Thomas, United States Virgin Islands) (App. 56-7), voter's registration card (same) and driver's license (same) (App. 62-3), and the Final Judgment entered in the Palm Beach County case stating

his United States Virgin Islands address. (App. 58).

On November 2, 2015, the trial judge entered a written order denying the motion to quash “due to insufficient proof that Mr. Epstein is a non-resident.” (App. 1-2). On November 9, 2015, the trial court entered a written order summarily denying Epstein’s motion for reconsideration without stating any reason. (App. 64-5). Epstein timely filed his notice of appeal on November 23, 2015.

SUMMARY OF THE ARGUMENT

The undisputed evidence establishes that Epstein’s permanent residence and domicile is in the United States Virgin Islands. The undisputed evidence also establishes that Epstein was served with a subpoena duces tecum to testify and provide evidence in a case in Broward County in which he is not a party, and that service was effected while Epstein was attending mediation in an unrelated Palm Beach County Circuit Court case. Service was invalid pursuant to the nonresident immunity rule which provides that a nonresident who enters the jurisdiction to attend a judicial proceeding either as a party or witness is immune from service of process while attending the proceeding and for a reasonable time before and after going to the proceeding and in returning to his home. Reversal of the denial of Epstein’s motion to quash is therefore warranted.

ARGUMENT

THE TRIAL COURT SHOULD HAVE QUASHED THE SUBPOENA SERVED UPON EPSTEIN BASED UPON THE NONRESIDENT IMMUNITY RULE; ALTERNATIVELY, THE MATTER SHOULD BE REMANDED FOR AN EVIDENTIARY HEARING.²

The well-settled nonresident immunity rule is that a nonresident who enters the jurisdiction to attend court either as a party or witness is immune from service of process while attending court and for a reasonable time before and after going to court and in returning to his home. *Stokes v. Bell*, 441 So. 2d 146 (Fla. 1983); *State ex rel. Cox v. Adams*, 148 Fla. 426, 4 So.2d 457 (1941); *Rorick v. Chancey*, 130 Fla. 442, 178 So. 112 (1937), *vacated on other grounds on rehearing*, 142 Fla. 298, 195 So. 422 (1939); *Lawson v. Benson*, 136 So. 2d 353 (Fla. 3d DCA 1962). The rule applies to attendance at an alternative dispute resolution proceeding, *see, e.g., Lee v. Stevens of Florida, Inc.*, 578 So. 2d 867 (Fla. 2d DCA 1991), service of a subpoena duces tecum, *see, e.g., Allan v. Hill, supra*, and service of an investigative subpoena, *see, e.g., Munsell v. Bludworth*, 474 So. 2d 1286 (Fla. 4th DCA 1985).³

² Standard of Review: *See Talton v. CU Members Mortg.*, 126 So. 3d 446, 446 (Fla. 4th DCA 2013) (“A trial court’s ruling on a motion to quash service of process is a question of law subject to the de novo standard of review.”)

³ An exception to the rule allows service of process in litigation incidental or correlated with subject matter of the proceeding at which the nonresident is served. *Munsell*, 474 So. 2d at 1286. “This exception is strictly limited, however,

Epstein was attending a mediation in connection with the Palm Beach County case wherein Epstein and Edwards are parties when Edwards served him with a subpoena duces tecum in connection with *Edwards v. Dershowitz*, an unrelated case pending in Broward County Circuit Court in which Epstein is not a party. Epstein moved to quash the subpoena on the ground that he is a resident of the United States Virgin Islands and therefore immune from service under the nonresident immunity rule. At the hearing on the motion to quash, Edwards correctly stated that Epstein's domicile was in the United States Virgin Islands, but incorrectly argued that Epstein was properly served at the mediation because Epstein testified at a deposition that he owns a "residence" in Palm Beach. Epstein offered to provide to the trial judge proof of his permanent residency in the United States Virgin Islands. The trial judge indicated he would "take a look" and reserved ruling. Shortly thereafter, the judge's judicial assistant emailed the parties that the judge was denying the motion based upon insufficient evidence of Epstein's nonresidency and requested a proposed written order from Epstein.

Epstein filed a motion for reconsideration and submitted his tax returns, voter's

to instances in which there is an identity of parties and issues between the two proceedings." *Id.* The exception does not apply here. Epstein is not a party to the Broward County case. Moreover, the claims and issues in that case and those in the Palm Beach County case are fundamentally different.

registration card, affidavit, and driver's license, all reflecting that he is a resident of the United States Virgin Islands. Epstein also provided his deposition testimony in which he explained that he resides in the United States Virgin Islands but maintains vacation homes (and not "residences" as claimed by Edwards) in Palm Beach and elsewhere. The trial court thereafter entered a written order denying Epstein's motion to quash based upon insufficient evidence of nonresidency, followed by a written order denying the motion for reconsideration without stating any reason.⁴ Reversal is warranted because the record establishes that Epstein's permanent legal residence and domicile is the United States Virgin Islands. Epstein was therefore immune from service in the Broward County case in which he is not a party, while attending mediation in the unrelated Palm Beach County case.

In *Keveloh v. Carter*, 699 So. 2d 285 (Fla. 5th DCA 1997), a father obtained a temporary custody order in Florida. The mother, a resident of Illinois, moved to quash the order and dismiss the father's proceeding for lack of personal and subject matter jurisdiction. When the mother appeared at the courthouse in Florida to attend

⁴ The original nonfinal order denying the motion to quash and the order denying reconsideration are both properly before this Court for review as both were filed within 30 days of the trial court's original nonfinal order. See *Panama City Gen'l Partnership v. Godfrey Panama City Investment, LLC*, 109 So. 3d 291 (Fla. 1st DCA 2013).

an evidentiary hearing on her motion, she was served with process. The trial court denied her motion and entered an order determining paternity and custody.

On appeal by the mother, the Fifth District, citing the nonresident immunity rule, held that because the mother appeared specially in Florida to contest the jurisdiction of the Florida courts, “it would be incongruous to allow service of process during this time.” *Id.* at 288. In determining the mother was not a Florida resident, the Fifth District engaged in the following analysis:

A person may have several temporary local residences but can have only one legal residence. *Walker v. Harris*, 398 So. 2d 955 (Fla. 4th DCA 1981). A legal residence or “domicile” is the place where a person has fixed an abode with the present intention of making it his or her permanent home. *Minick v. Minick*, 111 Fla. 469, 149 So. 483 (1933); *Latta v. Latta*, 654 So. 2d 1043 (Fla. 1st DCA 1995); *Walker*. Once established, a domicile continues until it is superseded by a new one. A domicile is presumed to continue, and the burden of proof ordinarily rests on the party asserting the abandonment of one domicile to demonstrate the acquisition of another. *Texas v. Florida*, 306 U.S. 398, 59 S.Ct. 563, 83 L.Ed. 817 (1939); *McDougald v. Jenson*, 786 F.2d 1465 (11th Cir.), cert. denied, 479 U.S. 860, 107 S.Ct. 207, 93 L.Ed.2d 137 (1986).

Keveloh, 699 So. 2d at 288. Finding that the record evidence showed the mother was an Illinois resident, which evidence included her Illinois driver’s license, the Fifth District concluded that the father failed to show that the mother “changed her domicile to Florida” or that her visits to Florida “prove[d] a settled intention to make Florida her permanent home.” *Id.* at 289.

Similarly here, for the purpose of determining personal jurisdiction, Epstein can have only one legal residence or domicile, defined by where he has fixed an abode with the present intention of making it his permanent home. Edwards was correct in stating that Epstein is domiciled in the United States Virgin Islands. That Epstein maintains vacation homes in Palm Beach and elsewhere fails to show that he changed his domicile to Florida or that he has a settled intention to make Florida his permanent home, thereby rendering service invalid under the nonresident immunity rule. *Keveloh*.⁵

Alternatively, in the event this Court determines there is a good faith dispute as to any material fact, the order under review should be reversed and the cause remanded with directions to conduct an evidentiary hearing.

⁵ *Keveloh* was quoted with approval in *Snyder v. McLeod*, 971 So. 2d 166 (Fla. 5th DCA 2007) in which the court observed: “The issue of residency most often arises in divorce cases because section 61.021, Florida Statutes, requires that one of the parties must reside in Florida for six months before a dissolution petition can be filed. The analysis in dissolution cases is therefore instructive. Under section 61.021, Florida residency is defined as an ‘actual presence in Florida coupled with an intention at that time to make Florida the residence. Thus, temporarily residing in Florida without a present intention to make Florida one’s legal residence is not sufficient to establish Florida residency. *E.g.*, *Curran v. Curran*, 362 So. 2d 1042 (Fla. 4th DCA 1978). Additionally, section 61.052(2) provides that proof of a valid Florida driver’s license and voter registration may be used to corroborate the Florida residency requirement in section 61.021.” *Id.* at 169. Epstein’s driver’s license and voter registration card list the United States Virgin Islands as his place of residence.

CONCLUSION

Epstein requests reversal of the order under review and remand with directions to quash the subpoena duces tecum. Alternatively, Epstein requests reversal and remand with directions to conduct an evidentiary hearing.

Respectfully submitted,

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