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OPINION	:	No. 84-104
of	:	JULY 10, 1984
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THE HONORABLE ROBERT PRESLEY, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

Are members of the United States Armed Forces on active duty within California and their spouses required to have California driver's licenses in order to drive upon California highways if they are domiciliaries of another state from which they have been issued valid driver's licenses?

CONCLUSION

Unless they manifest an intent to be located in California on more than a temporary basis, members of the United States Armed Forces on active duty within California and their spouses are not required to have California driver's licenses in order to drive upon California highways if they are domiciliaries of another state from which they have been issued valid driver's licenses. However, presence in the state for six months or

more in any 12-month period gives rise to a rebuttable presumption of residency. Military persons present in California for six months or more in any 12-month period must obtain a California driver's license within ten days thereafter unless they can establish evidence of non-residency which negates the presumption.

ANALYSIS

Generally speaking, a person must hold a valid California driver's license in order to operate a vehicle on the roads of this state. Vehicle Code section 12500, subdivision (a),[1] provides: "No person shall drive a motor vehicle upon a highway unless he then holds a driver's license issued under this code, except such persons as are expressly exempted under this code."

One express exemption contained in the Vehicle Code is for federal officers and employees "while operating a motor vehicle owned or controlled by the United States on the business of the United States." (§ 12501, subd. (a).)

The question presented for analysis does not involve official federal business but rather concerns members of the United States Armed Forces and their spouses who wish to drive vehicles in California for their own private purposes. Must they have California driver's licenses if they are "domiciliaries" of another state from which they have been issued valid driver's licenses? We conclude that California licenses would not be required until such persons manifest an intent to be located in California on more than a temporary basis.

The statute governing this matter is section 12502, subdivision (a):

> "A nonresident over the age of 18 years having in his or her immediate possession a valid driver's license issued by a foreign jurisdiction of which he or she is a resident may operate a motor vehicle in this state without obtaining a license under this code except as provided in Section 12505."[2]

Accordingly, the military personnel and spouses in question would not be required to have California driver's licenses if they were "nonresidents" of California and "residents" of the other state from which they received the licenses.

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[1] All references hereafter to the Vehicle Code are by section number only.

[2] Section 12505 provides special rules for minors and for those "employed for compensation by another for the purpose of driving a motor vehicle on the highway." Both of these situations are outside the scope of this opinion.

The terms "resident" and "nonresident" have varied meanings depending upon the particular context and the purposes for which they are used. (See *In re Marriage of Thornton* (1982) 135 Cal.App.3d 500, 507, 509; *Kirk* v. *Regents of University of California* (1969) 273 Cal.App.2d 430, 434-435; *Johnson* v. *Johnson* (1966) 245 Cal.App.2d 40, 44; *Whittell* v. *Franchise Tax Board* (1964) 231 Cal.App.2d 278, 284; *Briggs* v. *Superior Court* (1947) 81 Cal.App.2d 240, 245.)

In the often quoted case of *Smith* v. *Smith* (1955) 45 Cal.2d 235, 239-240, the Supreme Court discussed the terms "resident" and "domiciliary" as follows:

> "Courts and legal writers usually distinguish 'domicile' and 'residence,' so that 'domicile' is the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning, but which the law may also assign to him constructively; whereas '*residence*' *connotes any factual place of abode of some permanency*, *more than a mere temporary sojourn*. 'Domicile' normally is the more comprehensive term, in that it includes both the *act* of residence and an *intention* to remain; a person may have only one domicile at a given time, but he may have more than one physical residence separate from his domicile, and at the same time. (28 C.J.S. 'Domicile,' § 1, p. 1 et seq.; 16 Cal.Jur.2d 'Domicile,' §§ 2-3, pp. 647-649.) But statutes do not always make this distinction in the employment of those words. They frequently use 'residence' and 'resident' in the legal meaning of 'domicile' and 'domiciliary,' and at other times in the meaning of factual residence or in still other shades of meaning. (Rest., Conflict of Laws, § 9, com. e; 17 Am.Jur. 'Domicile,' § 9, p. 593.) For example, in our codes 'residence' is used as synonymous with domicile in the following statutes: sections 243 and 244 of the Government Code, giving the basic rules generally regarded as applicable to domicile (*Lowe* v. *Ruhlman*, 67 Cal.App.2d 828, 833); section 301 of the Probate Code, relating to jurisdiction for the administration of decedents' estates (*Estate of Glassford*, 114 Cal.App.2d 181, 186); and section 128 of the Civil Code, providing that a divorce must not be granted unless the plaintiff has been 'a resident' of the state for one year (*Ungemack* v. *Ungemack*, 51 Cal.App.2d 29, 36). On the other hand, 'nonresident' has a more factual meaning in contemplating an actual, as distinguished from a constructive or legal residence in the following statutes: section 537 of the Code of Civil Procedure, providing for attachment in a contract action of property of a defendant 'not residing in this State' (*Hansom* v. *Graham*, 28 Cal. 631, 633); and section 404 of the Vehicle Code, providing for substitute service on 'a nonresident' in an action arising from the operation of an

automobile in this state (*Briggs* v. *Superior Court*, 81 Cal.App.2d 240, 246). As stated in the Briggs case at page 245: 'Residence, as used in the law, is a most elusive and indefinite term. It has been variously defined. . . . To determine its meaning, it is necessary to consider the purpose of the act.' (See Reese and Green, '*That Elusive Word, "Residence*,"' 6 Vanderbilt L.Rev. 651; 1 Beale, Conflict of Laws, p. 109 et seq.)" (First italics added.)

As noted in *Smith*, the Legislature has expressly defined "resident" in specific contexts. (See, e.g., Civ. Code, § 798.11; Ed. Code, § 68017; Gov. Code, § 244; Ins. Code, § 30; Rev. & Tax. Code, § 17014; Welf. & Inst. Code, § 17101.) It was not until recently, however, that it defined "resident" for purposes of the Vehicle Code. Although "nonresident" was previously defined therein, the Legislature merely declared it to be "a person who is not a resident of the state." (§ 435.)

With the enactment of chapter 409 of the Statutes of 1983, the Legislature added section 516 to the Vehicle Code. The new statute provides:

"'Resident' means any person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Presence in the state for six months or more in any twelve-month period gives rise to a rebuttable presumption of residency.

"The following are evidence of residency:

"(a) Address where registered to vote.

"(b) Location of employment or place of business.

"(c) Payment of resident tuition at a public institution of higher education.

"(d) Attendance of dependents at a primary or secondary school.

"(e) Filing a homeowner's property tax exemption.

"(f) Renting or leasing a home for use as a residence.

"(g) Declaration of residency to obtain a license or any other privilege or benefit not ordinarily extended to a nonresident.

"(h) Possession of a California driver's license.

"(i) Other acts, occurrences, or events that indicate presence in the state is more than temporary or transient."[3]

In the context of performing duties under orders in the United States Armed Forces, may one (and one's spouse) manifest "an intent to live or be located in this state on more than a temporary or transient basis"?

The usual answer to this question in the various contexts is that military personnel are residents of the state where they enlist unless they change their residences by manifesting the requisite intent. (See *In re Marriage of Thornton*, *supra*, 135 Cal.App.3d 500, 508-511; *Northwestern National Casualty Co*. v. *Davis* (1979) 90 Cal.App.3d 782, 784; *Johnson* v. *Johnson*, *supra*, 245 Cal.App.2d 40, 46; *Briggs* v. *Superior Court*, *supra*, 81 Cal.App.2d 240, 253; *Berger* v. *Superior Court*, *supra*, 79 Cal.App.2d 425, 429-430; *Mangene* v. *Diamond*, *supra*, 229 F.2d 554, 555-556.)

The Legislature appears to have adopted this general approach when determining whether California driver's licenses are to be required of military personnel. Section 12581 expressly indicates that a "nonresident" may be "a member of the armed forces of the United States on active duty within this state."[4] Accordingly, we believe that military personnel living in California may be "residents" or "nonresidents" of California depending upon the facts in each particular case.

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[3] Prior to the enactment of section 516, the courts had defined "resident" for certain purposes of the Vehicle Code as meaning one who had "a stay [in California] of such length coupled with an intention to remain long enough that the presence in the state cannot be classified as merely temporary." (*Briggs* v. *Superior Court*, *supra*, 81 Cal.App.2d 240, 246; see *Berger* v. *Superior Court* (1947) 79 Cal.App.2d 425, 429-430; *Mangene* v. *Diamond* (3d Cir. 1956) 229 F.2d 554, 555-556.)

[4] We also note the provisions of section 6701 regarding exemptions from the registration requirements for vehicles operated in this state:

"Any nonresident owner of a foreign vehicle who is a member of the armed forces of the United States on active duty within this State shall be entitled to the exemption granted under Section 6700 under the conditions therein set forth. Any member of the armed forces, whether a resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a foreign jurisdiction where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued. Such competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring his presence outside the foreign jurisdiction where such owner was regularly assigned and stationed for duty."

Under section 516, something in addition to physical presence is necessary for military personnel to become residents of California, where they are "domiciliaries" of another state. What is also required is a *manifestation* of intent to live in California "on more than a temporary or transient basis." The statute makes clear that the objective manifestation of intent will control over any unarticulated views. Intent may of course be manifested in various ways in addition to those expressly specified in section 516, including the declarations of the holder of the intent.[5] As previously mentioned, what constitutes residency in any particular case depends upon all the relevant circumstances. Whether military personnel live on federal property or purchase their own homes, for example, is not determinative. (See *In re Marriage of Thornton*, *supra*, 135 Cal.App.3d 500, 509; *Johnson* v. *Johnson*, *supra*, 245 Cal.App.2d 40, 44-45.) Whether the person is an enlistee or an officer may be of some significance. (See *In re Marriage of Thornton*, *supra*, 135 Cal.App.3d 500, 508.)

Moreover, we believe that the phrase "a temporary or transient basis" cannot be reduced to any fixed period of time, especially in the context of following orders in the United States Armed Forces. Length of time located in California has not been a particularly significant factor when the courts have considered the issue with respect to

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[5] In *Briggs* v. *Superior Court*, *supra*, 81 Cal.App.2d 240, 243-244, the court observed:

"If the statement of the petitioners that they were residents of California and that they intended to live here permanently must be taken by the courts at face value, there can be no question but that they were not 'non-residents,' whatever the interpretation of that word would be. But the court is not bound to accept their statements, if the actions of the parties are inconsistent therewith. While a person's statement of his intention is a 'statement of a probative fact, about which he was qualified to testify' (*Johnson* v. *Benton*, 73 Cal.App. 565, at page 570), 'A jury or trial judge is not bound, of course, to believe the witness when he says he did not have a certain intent, and may find in the circumstances, actions, and language, an entirely different intent, but the testimony of the witness "is competent and relevant and not immaterial" (see *Walke*r v. *Chanslor*, 153 Cal. 118, 125; *Barnhart* v. *Fulkerth*, 93 Cal. 497, 499; *Kyle* v. *Craig*, 125 Cal. 107, 114; *Bertelsen* v. *Bertelsen*, 7 Cal.App. 258, 261.)' (*Fanning* v. *Green*, 156 Cal. 279, 285; see also, *Gilmour* v. *North Pasadena Land etc. Co.*, 178 Cal. 6, 9.) 'The trier of the facts is the exclusive judge of the credibility of the witnesses. (Sec. 1847, Code Civ. Proc.). . . . In addition, in passing on credibility, the trier of the facts is entitled to take into consideration the interest of the witness in the result of the case. (See cases collected 27 Cal.Jur. 180, sec. 154.) Provided the trier of facts does not act arbitrarily, he may reject *in toto* the testimony of a witness, even though the witness is uncontradicted. [Citing cases.]' (*Hicks* v. *Reis*, 21 Cal.2d 654, 659-660.) 'While practically all of the decisions say intention is the controlling factor in determining residence, this court said, in *Harrison* v. *Harrison*, *supra*, it may be more satisfactorily shown by what is done than by what is said.' (*Wagner* v. *Scurlock*, 166 Md. 284.)"

military personnel. It is true that in *Briggs* v. *Superior Court*, *supra*, 81 Cal.App.2d 240, 249 the court characterized a three-year period as "nothing temporary":

> "The situation in the Berger case was one in which the length of time of the residence in this state was important. While Berger came to California as a member of the armed forces, he had been here over three years at the time of the accident. There was nothing temporary about the length of Berger's stay in California, at the time the question of residence arose."

In *Berger* v. *Superior Court*, *supra*, 79 Cal.App.2d 425, 429-430, however, the court was faced with the three-year stay in California being *consistent* with a declaration of residency:

> "It is, of course, true that the mere fact that petitioner was stationed at Camp Beale in California as a member of the armed forces did not, of itself, make him a resident of California, but, as stated in *Johnston* v. *Benton*, *supra*, 'the fact of his being on military duty does not preclude him, if he so desires, from establishing residence where he is stationed.' If, therefore, petitioner desired to change his legal residence to California after he was stationed in California there was nothing to prevent him from doing so. He was living in California and all that was required to make him a legal resident was a decision or intention on his part to become a resident of California. His affidavit states that he became a resident of California in November, 1942, and continued to be a resident until March 9, 1946. There is nothing in the record to contradict his statement that he was a resident of California unless it can be inferred that he was a nonresident because he came to and was stationed in California as a member of the armed forces."

Both *Briggs* and *Berger* were analyzed in *Mangene* v. *Diamond*, *supra*, 229 F.2d 554, 556, which held that California residency was not established by a 15-month military stay in the state:

> "California law makes the question of intent vitally important. Appellant argues that there is some lack of clarity in the decisions of that state between residence and domicile. We find none but if there were that would not touch what is a primary requisite of residency under California's Motor Vehicle Code, namely, the intention to remain long enough to eliminate classification of the stay as temporary. In this case appellee never had the intention of remaining one moment longer in California than he was compelled to do by reason of his service commitment. His stay there was merely for the period he was obligated to stay under his duty assignment. It was never his purpose to remain on so that, as was said in *Briggs* v. *Superior*

> *Court of Alameda County*, 1947, 81 Cal.App.2d 240, 183 P.2d 758, 763, his '. . . presence in the state cannot be classified as merely temporary.' After considering whether he and his folks should stay he reached the definite decision not to continue on in California after his discharge when he, for the first time since his advent there, would be free to leave that state. In the Berger opinion, *Berger* v. *Superior Court*, 1947, 79 Cal.App.2d 425, 179 P.2d 600, 602, the principle laid down that 'The mere fact that a person coming from another state is stationed at a military camp in California as a member of the armed forces does not make him a resident of California' has never been contradicted. It is today sound California law and it was appellee's exact position at the time of the involved accident. *Johnston* v. *Benton*, 73 Cal.App. 565, 569, 239 P. 60, 62, presents the full picture of the service man based away from home with the court saying: 'True, the fact of his being on military duty does not preclude him, if he so desires, from establishing residence where he is stationed . . .; but the uncontradicted evidence here is that such was not Benton's desire—that he never had any intention of doing so. The question of whether a person has changed his residence from one place to another must depend largely upon his intention, and that intention is often manifested by the purpose that impelled him in taking up a new place of abode.'"

In *Johnson* v. *Johnson*, *supra*, 245 Cal.App.2d 40, 45, the Court of Appeal found that a nine-year military stay plus purchase of a home did not establish a change of "residence" where it meant "domicile." (See also *Rhodes* v. *Rhodes* (1947) 80 Cal.App.2d 723, 725.)

We recognize that section 516 creates a rebuttable presumption where there is a "[p]resence in the state for six months or more in any twelve-month period."[6] Once the existence of residency is assumed under the presumption, evidence must be "introduced which would support a finding of its nonexistence" so that the trier of fact would then be required to "determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption." (Evid. Code, § 604.)

All of these considerations would of course be equally applicable to the spouse of a member of the United States Armed Forces. Normally the spouse would have the same intent and residence, but the facts of each case must be examined individually.

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[6] "A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action." (Evid. Code, § 600, subd. (a).)

Finally, we note that where the requisite manifestation of intent to become a California resident is found, the person has 10 days from the date of establishing residency to obtain a California driver's license. (§ 12505, subd. (a).)

In summary, then, the Legislature has recognized that some military personnel living in California are to be considered residents and some are to be considered nonresidents for various purposes of the Vehicle Code. While section 516 gives guidance in the residency determination,[7] each case must be decided on its own merits.

In answer to the question presented, therefore, we conclude that unless they manifest an intent to be located in California on more than a temporary basis, members of the United States Armed Forces on active duty within California and their spouses are not required to have California driver's licenses in order to drive upon California highways if they are domiciliaries of another state from which they have been issued valid driver's licenses. However, presence in the state for six months or more in any 12-month period gives rise to a rebuttable presumption of residency. Military persons present in California for six months or more in any 12-month period must obtain a California driver's license within ten days thereafter unless they can establish evidence of non-residency which negates the presumption.

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[7] Understandably, the courts have found some difficulty in placing military personnel within general residency statutory definitions due to the involuntary aspects of following military orders. It is also to be observed that the legislative intent in enacting section 516 was to generate registration and license plate revenues and was unrelated to the issue of when a California driver's license should be required of foreign domiciliaries. Section 1 of chapter 409 of the Statutes of 1983 provides:

> "The Legislature finds and declares that numerous residents of California and others living in the state operate vehicles that are based in California, but are registered with foreign license plates. These vehicles and their operators regularly use the highways of California, but do not contribute their fair share of registration fees, license fees, and other payments incidental to the operation of vehicles in California."

With such purpose in mind, the provisions of section 6701 exempting military personnel from the payment of registration fees becomes particularly noteworthy.