

ROP v. Pedro, 6 ROP Intrm. 185 (1997)
REPUBLIC OF PALAU,
Defendant-Appellant,

v.

LOUISA PEDRO,
Plaintiff-Appellee.

CIVIL APPEAL NO. 31-96
Civil Action No. 391-96

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: June 27, 1997

Counsel for Appellant: Thomas H. Howlett

Counsel for Appellee: Mark Doran

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
and R. BARRIE MICHELSEN, Associate Justice.

MILLER, Justice:

The Election Commission rejected Louisa Pedro's application to vote in the November 1996 general election as a resident of Sonsorol State. She filed suit and obtained a judgment requiring the Election Commission to accept her application and permit her to vote. The Republic of Palau appeals from that judgment. We affirm.

BACKGROUND

The pertinent facts are undisputed and can be briefly stated. Following her birth in the hospital in Koror in 1970, appellee Louisa Pedro lived with her family in Sonsorol until she was fifteen years old. She then moved to Koror, where she attended high school for four years, moved to Guam for a year to attend the University of Guam, and then moved back to Koror briefly to work. In 1991, Ms. Pedro moved to Saipan, where she continues to live and work. Ms. Pedro has stated, however, and the trial court found, that it has been and is her intent to **1186** establish her permanent home in Sonsorol, and not in Saipan or anywhere else.

In July 1996, Ms. Pedro filled out an application and an affidavit to register to vote in the national election as a resident of Sonsorol. ¹ The rejection of that application -- on the ground

¹ The trial court found that Pedro had made previous efforts to register in 1992 and earlier. Although the Republic disputes these findings, it suggests -- and we agree -- that they

that Ms. Pedro had failed to meet the residency requirements of Palau's election laws -- led to this litigation.

DISCUSSION

In its appeal, the Republic argues forcefully that "unambiguous statutory provisions must be enforced as written, and language in a statute cannot be deleted or revised by a court." Appellant's Brief at 12. We agree with the principle that it is not the job of the courts to rewrite statutes, but we do not believe that the trial court's judgment does violence to that principle. Rather, we believe that a straightforward and consistent reading of Palau's election laws supports its conclusion.

We begin, as the Republic suggests, with 23 PNC § 1408, which provides:

In any national election, an individual may register or re-register to vote in the political jurisdiction in which he has been a resident for at least thirty days preceding the date of registration or re-registration.

The Republic argues, and we agree, that Pedro was not entitled to register as a voter of Sonsorol unless she was a resident of Sonsorol for at least thirty days prior to the day of registration. We further agree that the only sensible way to read this statute is to refer to the thirty-day period just prior to that date. Thus, it is not enough for her to have been a resident of Sonsorol for any thirty-day period in her life unless she were still (or again) a resident on the day (and for the thirty days before) she applied to register.

¶187 Where we part company with the Republic is with its assertion that "Ms. Pedro admittedly had been residing in Saipan, rather than Sonsorol, during most of the 30-day time period immediately prior to registration." Appellant's Brief at 2. The Republic is correct that in ordinary parlance we would say that one resides in the place that one lives, and that Ms. Pedro, as we have said, was living and working in Saipan in the days and indeed years preceding her attempt to register. *E.g.*, *The American Heritage Dictionary*, p.1051 (2d ed. 1985) (defining "reside" as "to live in a place for an extended or permanent period of time"). But, as one court has stated, "residence . . . has an evasive way about it, with as many colors as Joseph's coat." *Weible v. United States*, 244 F.2d 158, 163 (9th Cir. 1957). This Court "must determine residence in light of congressional intent". *Jones v. Commissioner*, 927 F.2d 849, 853 (5th Cir. 1991). The question, therefore, is not one of ordinary parlance, but of statutory meaning. Was Ms. Pedro a "resident" of Saipan or of Sonsorol in July 1996 as that word is used in Palau's election laws?

Since neither 23 PNC § 1408 nor any of the other provisions in that chapter defines "resident", we turn, as the trial court did, to the definitions contained in 23 PNC §§ 103 and 107. It is a "normal rule of statutory construction," and we do not understand the Republic to suggest otherwise,² "that identical words used in different parts of the same act are intended to have the

were and are not material to the resolution of the legal issue presented.

² The Republic does argue that the trial court erred in looking to § 107(c), suggesting that

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same meaning.” *Commissioner v. Lundy*, 116 S.Ct. 647, 655 (1996).

¶188 Section 103(g) defines “Resident” as “an individual who has established residency” and 103(i), which defines “Residency”, sends us, in turn, to the definition of “Residence” contained in § 103(h):

“Residence” means a political jurisdiction in which an individual has been physically present on a reasonably continuous basis within a 30 day period with the intent to establish his permanent home therein.

Section 107(c) provides further guidance, declaring that “Residence and residency shall be determined for the purpose of national elections according to the following guidelines”:

(1) Once residence is established it is maintained unless the individual is physically present in another political jurisdiction on a reasonably continuous basis within a minimum 30 day period with the intent to establish his permanent home therein.

* * *

(4) When an individual no longer maintains physical presence on a reasonably continuous basis in a political jurisdiction, whether that individual continues to have the intent to establish his permanent home within that political jurisdiction will be determined by an examination of the connection of that individual to the political jurisdiction. Factors to be considered include:

(A) the amount of time the individual is physically present within the political jurisdiction;

(B) whether the individual maintains a home within the political jurisdiction;

(C) the existence, and maintenance, of close ties with family, relatives, and friends who are physically present on a reasonably continuous basis within the political jurisdiction;

its provisions “pertain to the maintenance of residency by voters and candidates, rather than a person’s eligibility for voter registration . . .” Appellant’s Brief at 19 n.11 (emphasis in original); *see also* Appellant’s Reply Brief at 6 n.2 (suggesting that only registered voters “are statutorily permitted to leave their state of residence for indefinite periods so long as they do not have an intent to make another jurisdiction their permanent home”). We fail to discern any such limitation in the general language of § 107(c) (“Residence and residency shall be determined . . . according to the following guidelines”), and we believe the government’s position is untenable in light of the preceding language of § 107(a), which refers expressly to voter registration: “A citizen of the Republic 18 years of age or older may register and vote . . . provided he has satisfied the minimum periods of residency established by law . . .”

(D) the conduct of business in, and the maintenance of business contacts with persons who are physically present on a reasonably continuous basis within the political jurisdiction;

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(E) the degree of personal involvement in the social, political, cultural, governmental, traditional, and religious affairs of, and organizations and institutions operating within, the political jurisdiction;

(F) the ownership of property within the political jurisdiction;

(G) other indicia of the connection of an individual with a political jurisdiction;

(H) the foregoing factors as applied to establish the connection of an individual with another political jurisdiction;

(I) the attempt to register to vote in, or file nomination papers as a candidate for office in or from, another political jurisdiction; and

(J) whether another political jurisdiction could be established as a residence.

With these definitions and guidelines in mind, we turn then to the question posed earlier: “Was Ms. Pedro a resident of Sonsorol in the thirty days preceding her application to register in July 1996?” We think the answer, on the facts presented to us, is plainly yes. Looking first to §103(h), Ms. Pedro was obviously “physically present [in Sonsorol] on a reasonably continuous basis within a 30 day period” and indeed for the first fifteen years of her life and had the requisite “intent to establish [her] permanent home therein.” Thus, at the time she first moved away from Sonsorol at the age of 15, she had “established residency” and was, therefore, a “resident” of Sonsorol.

Looking next to § 107(c)(1), there has been no contention that Ms. Pedro, although physically present in various other jurisdictions (*i.e.*, Koror, Guam, Saipan), has ever intended “to establish [her] permanent home” in any of them,³ and the trial ¶190 court, having applied the multifactor analysis dictated by § 107(c)(4), found explicitly that it remains her intention to do so in Sonsorol. On this analysis, therefore, Ms. Pedro’s status as a resident of Sonsorol has never changed.

Our reading of this language is, we believe, fully in accord with the intentions of the

³ It is theoretically possible that a person could form an intent to make her permanent home in another jurisdiction and then, later on, re-form her intent to return to her original home. In such circumstances, reliance on § 107(c)(1) would be unwarranted and it appears that a new period of physical presence would be required to re-establish residency. Here, however, there has been no contention that her intent was ever otherwise than as found by the trial court.

legislators who drafted it. As they saw it:

“[T]he definition [of residence] complies with the trend toward requiring some sort of physical presence within the jurisdiction of claimed residence by establishing a minimum period (30 days) of reasonably continuous presence in a jurisdiction before an individual can claim that jurisdiction as his or her residence Once residence is established, however, continuous physical presence in the jurisdiction is not required as long as the individual continues to possess the intent to make that jurisdiction his or her permanent home.”

Standing Committee Report No. 383, Committee on Judiciary and Governmental Affairs, August 20, 1984, at p. 2. ⁴ The lawmakers recognized that “the definition and guidelines for residence” were “novel”, but they clearly intended to provide “flexibility” in circumstances “where economic realities have precluded the choice of physical presence.” *Id.* at p.3. Thus, although the conclusion that a person who has not lived regularly in a state for more than ten years is nevertheless a resident of that state appears incongruous in light of our ordinary usage of the word “resident”, we believe that it accurately reflects legislative intent.

We conclude, therefore, that, on the plain language of the statute and in light of its legislative history, Ms. Pedro was a “resident” of Sonzorol “for at least thirty days preceding” **¶191** her application for registration in July 1996 and that the trial court was correct in directing the Election Commission to so register her. Its judgment is accordingly AFFIRMED.⁵

⁴ As with the statutory language, *see* n.2 *supra*, we see no basis in this discussion for the Republic’s assertion that this expanded notion of residency should not apply at the time a person registers to vote.

⁵ Although we reject the Republic’s position, the novelty and importance of the question presented militate against any conclusion that it should not have sought a definitive resolution in this Court or that its appeal should be deemed frivolous. We accordingly deny appellee’s motion for attorney’s fees pursuant to ROP App. Pro. R. 38.