No. 101410-4

Court of Appeals No. 82473-2-I

SUPREME COURT
OF THE STATE OF WASHINGTON

Marriage of

DOMINIKA RIETSCHIN,

Respondent,

v.

AXEL RIETSCHIN,

Petitioner.

ANSWER TO PETITION FOR REVIEW

MASTERS LAW GROUP, P.L.L.C.
Kenneth W. Masters, WSBA 22278
Shelby R. Frost Lemmel, WSBA 33099
Mail: 321 High School Road NE, D-3 #362
Office: 241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com
shelby@appeal-law.com

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

To establish domicile in Washington State, Respondent Dominika Rietschin need only show that she had the present intent to make Washington her home. She plainly did so: the parties, who have lived here since 2014, rented a home, registered their cars, worked, enrolled their children in public schools and activities, established medical and dental care, and engaged in community and social activities. After the divorce, Dominika planned to remain in Washington with the parties' children, her then finance (now husband), and their baby.

In an unpublished opinion, the appellate court correctly rejected Axel's argument that Dominika necessarily lacked the requisite intent for domicile because her visa status was that of a temporary nonimmigrant. As the court correctly held, domicile is not dependent on citizenship or lawful status. This Court should deny review of this correct decision and award Dominika fees.

RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Where the parties have lived in Washington since 2014, and where Dominika presented substantial evidence of her present intent to make Washington her home, did the appellate court correctly hold that her immigration status does not negate her Washington domicile such that the trial court has subject matter jurisdiction over the parties' dissolution?

FACTS RELEVANT TO ANSWER

This Answer takes the facts from the appellate decision, with which Axel does not disagree:

> Dominika, a Polish citizen, and Axel, a Swiss citizen, married in Switzerland in 2012. In 2014, Dominika, Axel, and their two children moved to Washington for Axel's work. They rented a house and shipped their belongings from Switzerland. They enrolled the children in local public schools and got them involved in after-school activities and summer camps, established medical care, engaged in cultural and community activities, and registered their vehicles in Washington. They both held jobs in Washington. They borrowed money toward the purchase of a home here, though the purchase fell through due to inspections.

Dominika and Axel separated in October 2018, and Dominika filed for dissolution in April 2019. Axel contested the court's jurisdiction over the dissolution proceedings, arguing that because he was in Washington on a "temporary" work visa, he and his dependents were not domiciled here. At trial, Dominika testified that Axel's job was a permanent position—an opportunity for him to make his career—and that the parties had no concrete plans or date to return to Switzerland. She recounted that she viewed the family's 2014 relocation to Washington as "a new beginning." She further stated that her personal intent was to remain permanently in Washington with her two children she had with Axel, her fiancé, and her new baby. Axel characterized his status as a temporary worker as "like a tourist in this country." He testified that the plan was always to return to Switzerland, and the only thing that changed was the anticipated date of return. Axel kept his apartment in Geneva and rented it to students.

The trial court determined that the domicile requirement was met and that it had jurisdiction to dissolve the parties' marriage. After finding it had jurisdiction, the court then dissolved the parties' marriage and divided property according to the parties' Swiss marital contract. The court also awarded Dominika custody and primary decision-making authority over the children and ordered Axel to pay child support. Further, the court awarded Dominika attorney fees based on the parties' need and ability to pay and imposed sanctions and civil penalties against Axel for repeated failure to comply with court orders.

Marriage of Rietschin, Unpublished, No. 82473-2-I at 2-3 (2002) *with* Pet. 6.

REASONS THIS COURT SHOULD DENY REVIEW

A. The appellate court correctly held that the trial court had subject matter jurisdiction based on Dominika's domicile in Washington. Pet. 13-17.

Our trial courts have subject matter jurisdiction over dissolution petitions so long as one of the parties is a Washington resident, meaning they are domiciled here. Domicile means simply residence in Washington with the present intent to make Washington one's home. The appellate court correctly held that Dominika met this standard. This Court should deny review.

The appellate court correctly stated the law:

> RCW 26.09.030 requires that in order for a party to file a petition for dissolution in Washington, either the petitioner or the petitioner's spouse must be a resident of the state. Residence, in this context, means "domicile." … "The indispensable elements of domicile are residence in fact coupled with the intent to make a place of residence one's home."

No 82473-2-I at 3-4. Axel agrees. Pet. 14-15.

The appellate court correctly held that Dominika met this standard:

> Here, the undisputed evidence of Dominika's years lived in Washington, combined with the testimony regarding her subjective intention to remain and make a permanent home here support the trial court's finding that she is domiciled in the state.

No. 82473-2-I at 4. As the court noted, this is amply supported by Dominika's testimony that "she sought a divorce in Washington rather than Switzerland "[b]ecause I live in United States" and that "she did not want to return to Switzerland or Poland because 'I live here currently, I have three children, and I am in a happy relationship. I don't have reason, frankly, to go back to Europe.'" *Id*. at 4-5.

Much more supports the holding that Dominika had the present intent to make Washington her home:

- When the parties moved to Washington, they rented a home and made plans to purchase. RP 72, 345
- They shipped their furniture and other belongings, and registered their cars here. RP 73, 345.

- Their children attend public schools, and the family has doctors, dentists, and the like. RP 65, 72-73, 189, 344, 523.
- Dominika and the children have friendships and social connections. RP 75, 296-97, 513-15, 523.
- Dominika intends to remain in Washington with her then fiancée, now husband, and her three children, and to obtain a Green Card. RP 311, 438.

Axel mistakenly focuses on his own intentions, or on his professed belief about Dominika's intentions. Pet. 15-16. Axel's intentions are irrelevant, as Washington law requires only that Dominka intended to make Washington her home. RCW 26.09.030.

Axel next argues that Dominika's intent to reside here is "illusory," where she cannot establish domicile without remaining married to Axel:

> Respondent's "intent" to reside in Washington was illusory. She never had the ability to establish a domicile in Washington independent of her marriage to Petitioner and the dependent visa she received being his spouse …

Pet. 17. The appellate court correctly rejected this argument too (No. 82473-2-I):

> Axel argued that Dominika's intent was illusory, as her immigration status was linked to his and she had no legal right to remain in the country without him. … Axel presented no legal support for his argument that the trial court cannot adjudicate a divorce if the parties are present in the U.S. on temporary nonimmigrant visas.
>
> We reject Axel's argument based on immigration status and future intent. Neither U.S. citizenship nor U.S. legal status is required to establish domicile for purposes of a dissolution proceeding; Washington's statute, RCW 26.09.030, requires only residency.

Finally, Axel claims that the appellate court erroneously failed to reverse the trial courts "rulings on custody, support, and distribution" as well. Pet. 17. He omits that he conceded the point (No. 82473-2-I at 6 n.4):

> Axel conceded in his reply brief and at oral argument that the trial court had personal jurisdiction over him as well as subject matter jurisdiction to make child custody determinations under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Chap. 26.27 RCW. As such, we need not separately address the trial court's authority or jurisdiction to decide property distribution, child support, and parenting/visitation rights.

This Court should deny review of the appellate court's correct decision.

B. The appellate decision is consistent with persuasive authority from other states upon which it relies. Pet. 18-20.

In stating that Washington's domicile statute requires only residency, not citizenship or legal status, the appellate court relied on persuasive authority from other states:

> Other jurisdictions that have addressed the issue have held that a person with a nonimmigrant visa may still establish domicile for purposes of a residency requirement for dissolution. *See, e.g.,* ***Maghu v. Singh***, 2018 VT 2, 206 Vt. 413, 181 A.3d 518; ***In re Marriage of Dick***, Cal. App. 4th 144, 156, 18 Cal. Rptr. 2d 743 (1993); ***Bustamante v. Bustamante***, 645 P.2d 40, 42 (Utah 1982); ***Abou-Issa v. Abou-Issa***, 229 Ga. 77, 79, 189 S.E.2d 443 (1972); ***Alves v. Alves***, 262 A.2d 111, 115 (D.C. 1970). Further, under ER 413(b), evidence of a party's immigration status is inadmissible unless it is essential to proving an element of a cause of action.

No. 82473-2-I at 5 n.3. Axel ignores the court's reliance on ***Abou-Issa*** and ***Alves*** for obvious reason. Pet. 18-20.

Abou-Issa plainly holds that the husband's contention that the wife "lacked the legal capacity to establish a domicile in the United States because she was here on a temporary visa is without merit." 229 Ga. at 79.

Indeed, the husband conceded "that this contention is contrary to the prevailing view in other jurisdictions." *Id*.

Alves similarly holds that a party's "entrance into the United States on a nonimmigrant visa … has little relevance to the question of domicile." 262 A.2d at 115. There, wife claimed that husband lacked the legal capacity to establish domicile in the District of Columbia because he was present in the United States on a nonimmigrant visa. *Id*. at 114. She argued too that husband must be admitted to the United States "as a permanent resident before he can become domiciled …." *Id*. The court rejected both contentions (*id*. at 115):

> Nor do we think that the fact appellee did not apply for permanent residence in the United States forecloses the possibility of his being domiciled in the District of Columbia. Under the Immigration and Nationality Laws it is possible, for a variety of reasons, for an alien to remain in the United States for many years, as appellee has done, without applying for permanent residence. Furthermore, to impose such a requirement would have the effect of denying appellee access to our courts without regard to the period of time he has resided in the District of

> Columbia, his intentions in moving into the District of Columbia and other relevant factors. Just as aliens are subject to the jurisdiction of our courts, they should be entitled to invoke the jurisdiction of the courts for their own benefit.
>
> Similar reasoning underlies any discussion of appellee's entrance into the United States on a nonimmigrant visa, renewable every two years, to work for the I.M.F. and its bearing on the issue of domicile. … A visa is a document of entry required of aliens by the United States Government and is a matter under the control of the Government. It has little relevance to the question of domicile. The fact that appellee entered the United States on a nonimmigrant visa to work for the I.M.F. does not preclude a finding that appellee could become domiciled in the District of Columbia.

Ignoring these two cases that directly contradict his claims, Axel faults the appellate court's reliance on the other cases cited. Pet. 18-20. He claims that ***Maghu*** is distinguishable because the husband's steps to "secure permanent-resident status supported a conclusion that the [he] intended to reside in the state indefinitely." Pet. 19. He argues that Dominika, by contrast, cannot "secure her permanent residency in Washington due to her temporary nonimmigrant visa status." *Id*.

Axel omits that ***Maghu*** expressly rejects wife's argument that husband could not intend to remain in the Unites States for purposes of establishing domicile, where his "temporary nonimmigrant visa has a set end date …" 206 Vt. at 420. While a temporary visa might allow an inference that husband originally intended to return to his home country, "it does not prevent him from subsequently forming a bona fide intent to remain in Vermont indefinitely." *Id*. For this reason, Vermont joined a number of states allowing domicile "despite a party's presence in the state on a temporary nonimmigrant visa." *Id*. (collecting cases).

Axel next attempts to distinguish ***Marriage of Dick*** on the basis that the "finding" "that the husband's nonimmigrant status did not preclude a finding of residence … was supported by distinguishable facts where one party was a U.S. Citizen." Pet 19-20 (citing 15 Cal. App. 4th at 152). But wife's U.S. citizenship does not appear to have

affected the court's decision that "husband's nonimmigrant status does not preclude a finding of residence under California law for purposes of obtaining a dissolution of marriage." *Id*. at 154. Among the many reasons for this correct conclusion, the court explained that immigration status and residency are not the same thing (*id*. at 155):

> This conclusion is buttressed by the different aims and purposes of immigration and dissolution law; "there is no rational ground for intermingling these two distinct areas of law . . .." (***Williams v. Williams***, … 328 F.Supp. [1380,] 1383 [(D.V.I. 1971)].) It is not necessary for the courts of this state to carry out immigration policy by denying nonimmigrant aliens a judicial forum when they otherwise meet domiciliary requirements and when they are subject to the courts of this state for other purposes.

Finally, Axel criticizes the appellate court's "questionable" reliance on ***Bustamante***, in which the court remanded with instructions to determine whether wife established residency without opining on the ultimate outcome of that question. Pet. 20. The appellate court's reason for citing ***Bustamante*** is not questionable at all,

where it explains at length the many reasons one's immigration status is not dispositive of the residency requirement for jurisdiction over a dissolution. 645 P.2d at 41-42. Among those, the court explained that residency is a matter of state law, not federal immigrant law:

> A state must determine who qualifies as a resident under its own laws, and need not assist the Federal Government in enforcing the immigration and naturalization laws. Numerous cases have held that nonimmigrating aliens may form the requisite intent to establish a permanent residence necessary for divorce jurisdiction.

Id. at 42 (collecting cases).

In sum, the appellate decision that immigration status is not dispositive of residency is consistent with numerous other states. This Court should deny review.

C. Axel still provides no authority for his assertion that under "federal law" a temporary nonimmigrant cannot be lawfully domiciled in the United States. Pet. 21-27.

As the appellate court correctly held, "Axel presented no legal support for his argument that the trial court cannot adjudicate a divorce if the parties are present in the U.S.

on temporary nonimmigrant visas." No. 82473-2-I at 5. He still fails to do so. Pet. 21-27. Indeed, Axel's argument is just one long assertion that L visa status is temporary by nature, so prevents a party from establishing domicile. *Id*. This is plainly incorrect for the exact same reasons addressed immediately above: one's nonimmigrant visa status has little to do with domicile, a matter of state law. This Court should deny review.

Axel provides a lengthy discussion of L visa status, very little of which is supported by any citation to the record or legal authority. *Id*. This culminates in his admission that while L visa status is temporary, L visa holders can seek permanent residency in the United States. Pet. 22-23. Thus, his point is merely that "L-1 or L-2 status *by itself* does not provide authorization to remain in the United States on a permanent basis." Pet. 23 (emphasis added). That is true, but irrelevant.

As the appellate court correctly held, RCW 26.09.030 requires only residency, not citizenship or legal status. No. 82473-2-I at 5. Simply stated, Dominika does not have to prove to Axel's satisfaction that she has a plan to change her legal status to permanent resident. *Id*.; *supra*, Argument §B. Instead, she must meet the domicile requirements of Washington State, and did so. *Id*.

This is consistent with the many cases cited by the appellate court, and many more addressed therein. *Id*. These cases directly address and reject the premise underpinning Axel's argument that Dominika cannot possess the requisite intent for domicile because her legal immigration status is temporary, not permanent:

- Husband's contention that the wife "lacked the legal capacity to establish a domicile in the United States because she was here on a temporary visa is without merit." ***Abou-Issa***, 229 Ga. at 79.
- "A visa is a document of entry required of aliens by the United States Government and is a matter under the control of the Government. It has little relevance to the question of domicile." ***Alves***, 262 A.2d at 115.

- "Although husband's status may support the inference that at the time he accepted the nonimmigrant visa he intended to return to his home country, it does not prevent him from subsequently forming a bona fide intent to remain in Vermont indefinitely. For this reason, we join those jurisdictions that allow for domicile despite a party's presence in the state on a temporary nonimmigrant visa." ***Maghu***, 206 Vt. at 420.
- "[N]onimmigrant status does not preclude a finding of residence under California law for purposes of obtaining a dissolution of marriage. … a nonimmigrant alien in the United States on a renewable visa may have the dual intention of remaining in this country indefinitely by whatever means including renewal of a visa and of returning to his or her home country if so compelled. ***Marriage of Dick***, 15 Cal. App. 4th at 154.
- "Numerous cases have held that nonimmigrating aliens may form the requisite intent to establish a permanent residence necessary for divorce jurisdiction." ***Bustamante***, 645 P.2d at 42.

Compare Pet. 21-27.

Ignoring all of this, Axel presses on that Dominika never "attempted to secure permanent residency" so cannot establish domicile. Pet. 27. As addressed above, that is legally incorrect. It also omits much.

During trial, Dominika and the parties' two children were living with Dominika's partner, Gzregorz Kostrya, and their 14-month-old daughter in Seattle's Magnolia neighborhood. RP 62, 311. Dominika and Kostrya were engaged to be married and married after the trial. RP 311, 438. Dominika plainly stated her intent to change her legal status and obtain a Green Card (*id*. at 438):

> A. Right now I need a divorce. I need to divorce first to be able to change my status. I have plans to marry my partner and at that point I would apply for a Green Card and I would be able to work.
>
> Q. Okay. And while not usually relevant, I think for this purpose it is, what is your fiancé's status?
>
> A. He has American nationality.

In sum, the appellate court correctly held that Axel's claims are without legal support. This Court should deny review.

D. This Court should disregard Axel's unsupported argument that Dominika is not "governed" within the meaning of Washington's constitution. Pet. 28-30.

Axel next argues that since Dominika is not a citizen or a lawful permanent resident, she is not part of the "governed" within the meaning of Washington's Constitution Article 1, Section 1: "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights." Pet. 28-30. This, according to Axel, means that Washington courts have no jurisdiction over her. *Id*.

Axel offers no legal support for this assertion, so this Court should disregard it. RAP 10.3(a)(6); *see* ***Crystal Ridge Homeowners Ass'n v. City of Bothell***, 182 Wn.2d 665, 679, 343 P.3d 746 (2015) ("'[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.'" (quoting ***In re Rosier***, 105

Wn.2d 606, 616, 717 P.2d 1353 (1986) (quoting ***United States v. Phillips***, 433 F.2d 1364, 1366 (8th Cir. 1970))). In any event, this argument is at odds with the numerous cases addressed above that temporary nonimmigrants may establish domicile necessary to subject matter jurisdiction in a divorce proceeding. *Supra*, Argument § B.

E. This Court should award Dominika fees for responding to this petition.

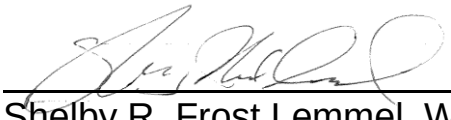
The appellate court awarded Dominika fees on appeal under RCW 26.09.140, based on the merits of the case and the parties' respective resources. No. 82473-2-I at 6. This Court should deny Axel's petition and award Dominika fees and costs incurred in responding to Axel's petition. RAP 18.1(j).

CONCLUSION

This Court should deny review and award Dominika costs and fees.

RESPECTFULLY SUBMITTED this 21st day of December 2022.

MASTERS LAW GROUP, P.L.L.C.

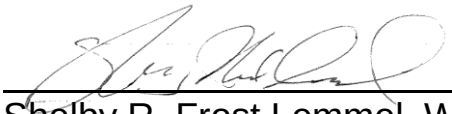


Shelby R. Frost Lemmel, WSBA 33099
Kenneth W. Masters, WSBA 22278
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
shelby@appeal-law.com
ken@appeal-law.com

Attorneys for Respondent

CERTIFICATE OF COMPLIANCE

The undersigned certifies that pursuant to RAP 18.17, the foregoing **ANSWER TO PETITION FOR REVIEW** was produced using word processing software and the number of words contained in the document, exclusive of words contained in any appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images (*e.g.,* photographs, maps, diagrams, and exhibits) is 3,387.



Shelby R. Frost Lemmel, WSBA 33099
Attorney for Respondent

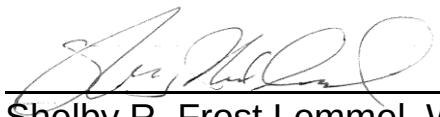
CERTIFICATE OF SERVICE

I certify that I caused to be filed and served a copy of the foregoing **ANSWER TO PETITION FOR REVIEW** on the 21st day of December 2022 as follows:

Counsel for Petitioner

The Appellate Law Firm
Gregg A. Myers
300 Lenora Street, Suite 900
Seattle, WA 98121
aaron@mltalaw.com
renee@mltlaw.com

___ U.S. Mail
_x_ E-Service
___ Facsimile



Shelby R. Frost Lemmel, WSBA 33099
Attorney for Respondent

MASTERS LAW GROUP PLLC

December 21, 2022 - 11:00 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,410-4
Appellate Court Case Title:	In the Matter of the Marriage of: Axel Rietschin and Dominika Rietschin

The following documents have been uploaded:

- 1014104_Answer_Reply_20221221105601SC668205_9899.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- aaron@mltalaw.com
- ken@appeal-law.com
- renee@mltalaw.com

Comments:

Sender Name: Coleen Turner - Email: office@appeal-law.com
Filing on Behalf of: Shelby R Frost Lemmel - Email: shelby@appeal-law.com (Alternate Email: office@appeal-law.com)

Address:
241 Madison Ave. North
Bainbridge Island, WA, 98110
Phone: (206) 780-5033

Note: The Filing Id is 20221221105601SC668205