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The Docket: The Prisoner's Homestead

August 18, 2022

The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee that reviews significant court rulings and other legal developments, and explains the relevance to the title insurance industry.

Lance Pomerantz reviews a recent Nevada case of first impression that addressed whether an incarcerated prisoner could claim a homestead exemption in a property that was the target of a civil forfeiture proceeding. Pomerantz is a New York-based sole practitioner who provides expert testimony, litigation consulting and strategic advice in land title disputes. He can be reached at lance@landtitlelaw.com.

Citation: *Aguirre v. Elko County Sheriff's Office*, 138 Nev. Adv. Op. 32, (Sup. Ct., May 5, 2022).

Facts: In 2016, Aguirre's parents conveyed to him a home and real property located in Spring Creek, Nev. In October 2017, heroin was found at the property and Aguirre was arrested for heroin trafficking. On Nov. 2, 2017, the Elko County Sheriff's Office filed a complaint for forfeiture of the property, pending the disposition of the criminal case. On Nov. 21, 2017, while in jail, Aguirre recorded his Declaration of Homestead, which stated his intent to claim and use the property as a homestead. Following a plea bargain, the court entered a judgment of conviction, and, in October 2018, sentenced Aguirre to a term of incarceration of four-to-10 years.

In March 2020, the sheriff moved for summary judgment in the civil forfeiture action, arguing, *inter alia*, that Aguirre's declaration of homestead was invalid because he did not reside at the property when he recorded it. Aguirre opposed the motion, arguing that because he recorded his homestead declaration before any final process in the forfeiture action, his declaration preempted the forfeiture.

In September 2020, after a bench trial, the lower court concluded that Aguirre did not "substantially comply" with the statutory requirements for a homestead exemption because he filed his declaration of homestead while incarcerated and, thus, did not have actual possession of the property for homesteading purposes.

Holding: The Nevada Supreme Court first determined that, with certain judge-made exceptions, a valid homestead declaration insulates property from a forfeiture sale. One of those exceptions involves property that is purchased with the proceeds of the criminal enterprise that led to the conviction, but there was no evidence that Aguirre used drug-trafficking monies to obtain the home from his parents.

The sheriff contended that Aguirre failed to satisfy the statutory requirement that a homestead declarant state that he or she is "residing" on the premises, rendering the declaration defective. Aguirre argued that the property is his *bona fide* residence because he lived there and intended to continue residing there before his incarceration, and he intends to return to living there after his incarceration. The Supreme Court agreed, holding that an individual's incarceration is a "temporary absence" for homestead purposes. The court relied on the statutory definition of "legal residence" and its provision that says:

"[s]hould any person absent himself or herself from the jurisdiction of his or her residence with the intention in good faith to return without delay and continue his or her residence, the time of such absence is not considered in determining the fact of residence..."

The court also relied on cases from several other jurisdictions addressing the same or similar issues. Query: would the same result obtain were the prisoner serving life without possibility of parole?

Relevance to the Title Industry: Civil forfeiture proceedings can be a headache for title underwriters. Notice and procedural differences can vary greatly among jurisdictions. The overlay of homestead protections, which themselves come with jurisdiction-based nuances, only further complicate matters. From a claims perspective, civil forfeitures, especially under federal statutes, can give rise to claims that demand attention (and resources) regardless of their underlying merits or any substantive defenses that may exist.

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