

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNGDO DAVID HONG,
Appellant,
vs.
JUNGSUN HONG,
Respondent.

No. 48089

FILED

FEB 14 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

This is an appeal from a district court order dismissing a divorce action for lack of subject matter jurisdiction. Second Judicial District Court, Family Court Division, Washoe County; Frances Doherty, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Appellant Sungdo David Hong (David) and Respondent Jungsun Hong (Janis) are married United States citizens who currently reside in South Korea. South Korean law requires that both spouses consent to a divorce, and Janis will not consent.

While the district court initially determined it had jurisdiction, it later questioned that earlier determination. A court has the duty to raise and decide the issue of subject matter jurisdiction sua sponte, if doubt as to such jurisdiction exists.¹ NRS 10.155,² NRS

¹Phillips v. Welch, 11 Nev. 187, 188 (1876). We note that the parties stipulated to subject matter jurisdiction in this matter. However, “[p]arties may not confer jurisdiction upon the court by their consent when jurisdiction does not otherwise exist.” Vaile v. Dist. Ct., 118 Nev. 262, 275, 44 P.3d 506, 515 (2002).

²NRS 10.155 states: “Unless otherwise provided by specific statute, the legal residence of a person . . . is that place where he has been

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125.020(2), and NRS 54.010 together govern the residency requirements for filing for divorce in Nevada. For a Nevada court to have subject matter jurisdiction over a divorce action, at least one of the parties must demonstrate he was a resident of Nevada for at least six weeks prior to filing the action.³ That party must prove residency by clear and convincing evidence,⁴ demonstrating both actual physical presence and intent to reside indefinitely and permanently in Nevada.⁵ Locating to the state for the sole purpose of obtaining a divorce does not confer jurisdiction.⁶

Residency is a question of fact to be determined by the district court, and this court will not set aside a district court's finding of residency if it is supported by substantial evidence.⁷ "Substantial evidence is that evidence which a reasonable mind might accept as

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physically present within the State . . . during all of the period for which residence is claimed by him." Absence with good faith intent to return will not defeat residency. Id.

³NRS 125.020(2).

⁴McKim v. District Court, 33 Nev. 44, 52, 110 P. 4, 5 (1910); NRS 54.010 ("where the jurisdiction of the court depends upon the residence of one of the parties to the action, the court shall require corroboration of the evidence").


⁵Vaile, 118 Nev. at 269, 44 P.3d at 511.

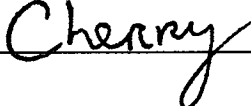
⁶Presson v. Presson, 38 Nev. 203, 207, 211-12, 147 P. 1081, 1082-83 (1915) (coming to Nevada without intent to become a bona fide resident, but simply to obtain divorce and return to the party's home state, does not confer jurisdiction).


⁷Patel v. Patel, 96 Nev. 51, 52, 604 P.2d 816, 817 (1980).

adequate to support a conclusion.”⁸ On March 5, 2005, David moved to Reno, Nevada, to establish residency in order to obtain a divorce. He rented an apartment, established telephone and internet service, and opened a checking account in Reno. However, David did not quit but merely took a paid leave of absence from his job as a child psychiatrist and medical professor at Samsung Medical Center at SungKyunKwan University in Seoul, South Korea. Additionally, David moved back to South Korea after filing his divorce complaint in Reno on April 21, 2005. We conclude that substantial evidence supports the district court’s finding that David “did not have the required intent to remain in Nevada permanently” and that David did not establish his residency by clear and convincing evidence.⁹ Therefore, the district court’s conclusion that it lacked subject matter jurisdiction was not in error. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

⁸Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999).

⁹We note that a new action for divorce could be filed should Mr. or Mrs. Hong return to Nevada and establish bona fide residency in compliance with Nevada statutes and case law.

cc: Hon. Frances Doherty, District Judge, Family Court Division
Lansford W. Levitt, Settlement Judge
Richard F. Cornell
Lemons Grundy & Eisenberg
Washoe District Court Clerk