

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAREY J. NUYEN,
Appellant,
vs.
OLENA SERGIYIVNA MARENYCH,
Respondent.

No. 40364

FILED

JUN 2 2004

WANNETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying Carey Nuyen's annulment petition.

In December 2001, Olena Marenych filed for divorce from Nuyen in their home state of Illinois, alleging domestic abuse. Thereafter, Nuyen traveled to Nevada, and resided in Las Vegas intermittently. On March 11, 2002, Nuyen filed a petition for annulment in Clark County District Court. Following a hearing, the district court concluded that Nuyen was not a resident of Nevada for six weeks prior to filing his petition, as required for jurisdiction over an annulment of an out-of-state marriage. In addition, the district court concluded that Nuyen failed to demonstrate cause for an annulment. We agree.

NRS 125.370(2) states that no court in this state has the authority to annul a marriage contracted, performed, or entered into outside the state unless one of the parties has resided in the state for six weeks prior to filing for annulment. In addition, NRS 10.155 states that the legal residence of a person with reference to his right to maintain a lawsuit is that place where he has been physically present within the state for the time during which he claims residency. We have observed that "NRS 10.155 encompasses not simply an intent to reside in Nevada for an indefinite period of time, but actual, physical presence in this state for six

weeks prior to the filing of the complaint.”¹ Further, we have observed that the word “resided” does not mean living in one state while claiming a home in Nevada.² The only exception to the residency requirement is if a complainant absents himself from the state with a good faith intention of returning without delay.³

In this instance, the district court found that Nuyen arrived in northern Nevada on December 30, 2001, traveled to Clark County in early January 2002, and stayed there for a few days before returning to Illinois. Nuyen then returned to Las Vegas on several occasions, staying from February 6 until April 9, May 20 through May 29, June 6 through June 9, and September 22 until just prior to the hearing. Throughout this time, Nuyen never obtained employment or a permanent residence in Las Vegas. Instead, he often returned to Illinois to conduct his business. Although Nuyen was in Las Vegas from February 6, 2002, through April 9, 2002, during which time he filed his petition for annulment, we conclude that the district court did not err in concluding that Nevada was not his legal residence.⁴

Additionally, we conclude that Nuyen failed to show good cause for annulment. NRS 125.300 provides that a marriage is voidable

¹Vaile v. Dist. Ct., 118 Nev. 262, 269, 44 P.3d 506, 511 (2002).

²Id.

³Id.

⁴See id. at 269-70, 44 P.3d at 512 (observing that “[r]esidence is synonymous with domicile and it is consonant with the many decisions of our court that the fact of presence together with intention comprise bona fide residence for divorce jurisdiction.”) (quoting Aldabe v. Aldabe, 84 Nev. 392, 396, 441 P.2d 691, 694 (1968)).

and may be annulled for any of the causes provided in NRS 125.320 to NRS 125.350, which include lack of parental consent, want of understanding, fraud, and any grounds for declaring a contract void in equity.

Under NRS 125.340, a marriage can be annulled if consent to marriage was obtained by fraud and fraud has been proven, unless the parties voluntarily cohabit after receiving knowledge of the fraud.⁵ We conclude that Nuyen's marriage cannot be annulled on the basis of fraud because he failed to prove that he consented to the marriage based on fraud. Moreover, even if Nuyen's allegation that the marriage was obtained by fraud is taken as true, Nuyen continued to cohabit with Marenych after discovering the alleged fraud. Thus, Nuyen is precluded from raising a fraud argument.⁶

NRS 125.350 provides that a marriage may be annulled for any cause which is grounds for declaring a contract void in a court of equity. Nuyen argues that the marriage should be declared void on the basis of failure to fulfill a condition precedent because certain procedural requirements of Ukrainian marriage law were not followed. Having failed to prove that the alleged procedural requirements were conditions precedent for a valid marriage, we conclude that Nuyen's argument lacks merit. Nuyen also argues that the marriage should be annulled on the grounds of mutual mistake. Although a contract can be declared void on the grounds of mutual mistake, we conclude that Nuyen failed to

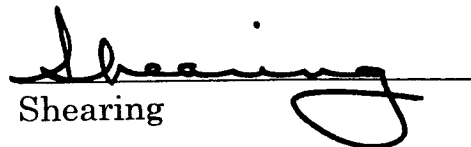
⁵See NRS 125.340(1)-(2).

⁶See NRS 125.340(2).


demonstrate that he and Marenych shared a misconception about a vital fact upon which they based their contract of marriage.⁷

Because Nuyen failed to satisfy the residency requirements for obtaining an annulment of an out-of-state marriage and failed to show cause for an annulment, we

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Shearing

 _____, J.
Rose

 _____, J.
Maupin

cc: Hon. T. Arthur Ritchie, District Judge, Family Court Division
Michael R. Pontoni
Hansen & Hansen
Clark County Clerk

⁷Gramanz v. Gramanz, 113 Nev. 1, 8, 930 P.2d 753, 759 (1992).