

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-002059-MR

WILLIAM CLARENCE GUINN, III

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE KELLY MARK EASTON, JUDGE  
ACTION NO. 00-CI-00465

DOROTHY ELIZABETH GUINN

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: JOHNSON, KNOPF, AND MILLER, JUDGES.

MILLER, JUDGE: William Clarence Guinn, III, brings this appeal from a June 27, 2000, order of the Hardin Circuit Court. We affirm.

William Clarence Guinn, III (William) and Dorothy Elizabeth Guinn (Dorothy) were married May 23, 1987, in South Carolina. In 1994, William retired from the United States Army. At that time, the parties moved to Radcliff, Kentucky. After William's retirement from the military, Dorothy retained a civil service position with the United States Department of Defense at Fort Knox, Kentucky. Around July 1997, Dorothy's employer transferred her to Japan. The parties then sold their home and

Dorothy moved to Japan with the expectation that William would join her later. William traveled to Louisiana and stayed with his step-daughter until he was able to join Dorothy in Japan some four months later. In December 1997, William also obtained civilian employment in Japan. The parties have not filed Kentucky State income tax returns since 1997. William has claimed Florida, where he owns real property, as his residence for taxation purposes.

The parties separated on or about December 17, 1999. On March 24, 2000, William filed a petition for dissolution of marriage in the Hardin Circuit Court. On April 14, 2000, Dorothy filed a motion to dismiss the action for lack of jurisdiction due to the fact that neither party was a resident of Kentucky for the statutorily required one hundred eighty days next preceding the filing of the petition. On June 27, 2000, the commissioner filed a report recommending dismissal for lack of jurisdiction. On July 7, 2000, William filed exceptions to the commissioner's report. On August 3, 2000, after reviewing the commissioner's report, affidavits, pleadings, and other evidence, the Hardin Circuit Court adopted the report of the commissioner and dismissed the action. Ky. R. Civ. P. (CR) 53.06. This appeal follows.

William's sole assignment of error is that the Hardin Circuit Court erred by dismissing the petition of dissolution. In support of his contention, William relies on Kentucky Revised Statute (KRS) 403.140(1)(a), which reads;

- (1) The Circuit Court shall enter a decree of dissolution of marriage if:

- (a) The court finds that one (1) of the parties, at the time the action was commenced, resided in this state, or was stationed in this state while a member of the armed services, and that the residence or military presence has been maintained for 180 days next preceding the filing of the petition;

Our standard of review is whether the circuit court's findings of fact were clearly erroneous or the court abused its discretion. CR 52.01; see Cherry v. Cherry, Ky., 634 S.W.2d 423 (1982).

William does not contend that he has maintained actual residence in Kentucky for one hundred eighty days preceding the filing of the petition; rather, he claims to fall within an exception to that requirement. A party who can demonstrate legal residence in Kentucky and a temporary absence does not need to show the one hundred eighty days actual residence preceding the filing of a divorce petition. See McGowan, v. McGowan, Ky. App., 663 S.W.2d 219 (1983). William claims his absence from Kentucky was temporary. William relies on the fact that he had a Kentucky driver's license and was registered to vote in Hardin County. He asserts that these two facts evidence an intention to return to Kentucky and thus prove his absence was temporary.

In applying McGowan to the instant case, the circuit court was unable to find sufficient evidence to prove that the absence was temporary. The court pointed out that William had renewed his license in October 1999, two years after he left Kentucky. It also noted that on the license application, William gave his original address in Radcliff, by then occupied by

unrelated parties. Further, the circuit court noted that the absentee ballot request made by William was made after the petition for dissolution was filed. Finally, the court observed that William lists his last day of residency in Kentucky as July 31, 1997. The circuit court found that William was attempting to improperly set up Kentucky for jurisdictional purposes. Simply put, we are of the opinion that William's absence from Kentucky was not "temporary." Hence, we do not think Kentucky had jurisdiction over William's petition for dissolution and, thus, affirm the dismissal of same.

Upon the whole, we do not believe the findings of fact are clearly erroneous, nor do we perceive there to be an abuse of discretion of the circuit court.

For the foregoing reasons, the order of the Hardin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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