

STATE OF MICHIGAN

COURT OF APPEALS

SANDRA M. KNUTH,

UNPUBLISHED

December 3, 2002

Plaintiff-Appellee,

v

No. 231167

Macomb Circuit Court

LC No. 98-002111-DM

THOMAS E. KNUTH,

Defendant-Appellant.

Before: Murphy, P.J., and Markey and R. S. Gribbs*, JJ.

PER CURIAM.

Defendant appeals from a judgment of divorce and the trial court's grant of physical custody of the parties' minor child to plaintiff. This case was remanded to this Court by the Michigan Supreme Court for reinstatement after defendant's appeal was dismissed for failure to file a brief. We affirm.

First, defendant argues that the trial court erred in determining that it had subject-matter jurisdiction over the divorce proceedings pursuant to MCL 552.9. We disagree. Whether a court has subject-matter jurisdiction is a question of law. *Smith v Smith*, 218 Mich App 727, 729; 555 NW2d 271 (1996). A trial court's determination regarding the existence of subject-matter jurisdiction is a question of law that this Court reviews de novo. *Trudeau v Martin*, 237 Mich App 253, 255; 602 NW2d 630 (1999).

When there is a lack of jurisdiction over the parties or the subject matter, no matter what action may have been taken by the trial court, the action is void. *Altman v Nelson*, 197 Mich App 467, 472-473; 495 NW2d 826 (1992). MCL 552.9 provides:

A judgment of divorce shall not be granted by a court in this state in an action for divorce unless the complainant or defendant has resided in this state for 180 days immediately preceding the filing of the complaint and . . . the complainant or defendant has resided in the county in which the complaint is filed for 10 days immediately preceding the filing of the complaint.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The residency and waiting period requirements of this statute are jurisdictional. *Smith, supra* at 730. Consequently, if these requirements are not met, the court cannot grant a judgment of divorce and must dismiss the case. *Id.*

When used in statutes conferring jurisdiction, residence is interpreted to mean legal residence or domicile. *Smith, supra* at 730. The issue of legal residency is principally one of intent. *Id.* Presence, abode, property ownership, and other facts are often considered, but intent is the key factor. *Id.* at 730-731. In *Curry v Jackson Circuit Court*, 151 Mich App 754, 757-758; 391 NW2d 476 (1986), this Court discussed the legal definition of the term “reside” and concluded that “legal domicile” must be distinguished from mere residence or place of actual abode. A person’s legal residence may not always be the place of his actual dwelling, and includes not only physical presence in a place, but also the accompanying intent of choosing that place as a permanent residence. *Id.* Here, plaintiff filed for divorce in 1998 after moving back to Michigan. The fact that the parties were buying a home in Tennessee, as they had done in other states where defendant was stationed, is not dispositive of plaintiff’s residence. Although both parties moved frequently during the marriage because of defendant’s military commitment, plaintiff contended that she always intended to reside in Michigan, she frequently visited Michigan, she had a Michigan driver’s license, she paid dues to the local branch of a fitness club, and she reregistered to vote in Michigan in 1992. On these facts, the trial court did not err in finding that plaintiff was a Michigan resident, *Smith, supra* at 730, and in finding subject matter jurisdiction under MCL 552.9.

Defendant also argues that the trial court erred when it determined that it had subject-matter jurisdiction over the custody dispute in this case. We do not agree. While the determination whether to decline jurisdiction under the Uniform Child Custody Jurisdiction Act, 28 USCS 1738(A)(2), is within the discretion of the trial court, *Brown v Brown*, 181 Mich App 61, 71; 448 NW2d 745 (1989), and will not be reversed absent an abuse of that discretion, *Braden v Braden*, 217 Mich App 331, 338-339; 551 NW2d 467 (1996), the question whether a court has subject matter jurisdiction to hear a particular claim is a question of law which this Court reviews de novo. *Genesis Center PLC v Financial & Ins Services Comm’r*, 246 Mich App 531, 540; 633 NW2d 834 (2001).

In the instant case, defendant filed for divorce in Tennessee. The Tennessee court indicated its willingness to decline jurisdiction in the custody dispute. The Michigan trial court determined that it had jurisdiction over the custody matter pursuant to MCL 600.653(1)(b). The parties’ minor child had significant connections with the state of Michigan because his mother had moved back to Michigan, several of his maternal relatives reside in Michigan, and there was substantial evidence available in Michigan regarding the minor child’s present and future care. The trial court also noted that plaintiff’s Michigan complaint for divorce was filed prior to defendant’s complaint for divorce in Tennessee. We find no error.

Finally, defendant argues that the trial court abused its discretion when it denied defendant an adjournment. There is no merit to this claim. The trial court was liberal in granting defendant’s motions, adjourning this matter at least three times. The trial court gave defendant forty days to obtain substitute counsel. We find no abuse of discretion in the trial court’s

decision to deny yet another adjournment. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996).

We affirm.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Roman S. Gribbs