NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA07-1215

	Opinion Delivered November 19, 2008
NOELINE MARY CATES APPELLANT	APPEAL FROM THE SALINE COUNTY CIRCUIT COURT
V.	[NO. DR-06-1003-1]
	HONORABLE ROBERT W. GARRETT, JUDGE
DON EDWIN CATES APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Chief Judge

Appellant, Noeline Cates, brings this appeal contending that appellee, Don Cates, failed to sufficiently corroborate his residency in Arkansas or his grounds for divorce, and that the trial court erred in not setting aside the divorce on account of an asserted mutual mistake of fact pertaining to the parties' property settlement. We affirm.

This divorce case was commenced by the filing of appellee's complaint on August 30, 2006. The parties subsequently reached an agreement whereby grounds for divorce were to be changed from general indignities to eighteen-months' separation, and a property-settlement agreement was to be read into the record. The trial judge stated, after an unrecorded conference, that he had been presented with evidence that the parties had in fact been separated eighteen months. The affidavit of a third person was presented as corroboration. The affidavit stated that the affiant had personal knowledge that appellee had been a resident of Arkansas for more than sixty days prior to the commencement of the action and was still

a resident of Arkansas. It also stated that the parties had lived separate and apart since they separated on September 7, 2005. The affidavit was dated May 23, 2007. The hearing at which the agreement was reached was held on July 2, 2007. Appellant's attorney later learned, by reading responses to appellee's attorney's question regarding the divisibility of military retirement that were posted to an online forum, that he had been mistaken about his client's eligibility for a portion of appellee's military retirement benefits. Appellant's attorney then filed a motion for a new trial, alleging that the property agreement was invalid because of mutual mistake, and that the divorce was invalid because there was insufficient corroboration of residency and grounds. The motion for new trial was denied, and this appeal followed.

A motion for new trial is addressed to the sound discretion of the trial court, and the trial court's refusal to grant it will not be reversed on appeal unless an abuse of discretion is shown. *Jones v. Double "D" Properties, Inc.*, 352 Ark. 39, 98 S.W.3d 405 (2003). Abuse of discretion means a discretion improvidently exercised, *i.e.*, exercised thoughtlessly and without due consideration. *Id.*

Arkansas Code Annotated section 9-12-307(a)(1)(A) (Repl. 2008) requires that, to obtain a divorce, the plaintiff must prove "a residence in the state by either the plaintiff or defendant for sixty (60) days next before the commencement of the action and a residence in the state for three (3) full months before the final judgment granting the decree of divorce." Proof of residence must be corroborated. Ark. Code Ann. § 9-12-306(c) (Repl. 2008). Appellant asserts that corroboration of residency was inadequate because the affidavit of the

corroborating witness was dated May 23, 2007, and the hearing was held on July 2, 2007 (leaving open the possibility that appellee may have left Arkansas for parts unknown during the interim), and argues that the trial court therefore lacked jurisdiction to grant the divorce. Appellant is mistaken. We have expressly held that, so long as one of the parties resides in Arkansas for the sixty days immediately preceding the commencement of the action and for three months total before entry of a divorce decree, the party need not remain in Arkansas until entry of the decree; Ark. Code Ann. § 9-12-307(a) does not require that the full three months' residency immediately precede entry of the decree. *Roberts v. Yang*, 102 Ark. App. 384, ___ S.W.3d ___ (2008). Here, the affiant stated that appellee had been a resident of Arkansas for more than sixty days prior to August 3, 2006, and was still a resident of Arkansas as of May 23, 2007.

Appellant further argues that the corroboration of appellee's grounds for divorce, separation for eighteen months without cohabitation, was insufficient. We do not agree. Where it is plain that a divorce is not collusive, corroboration of grounds may be relatively slight. *Russell v. Russell*, 275 Ark. 197, 628 S.W.2d 315 (1982). Here, the affiant stated that the parties had lived separate and apart for more than twenty continuous months, a period in excess of that required by Ark. Code Ann. § 9-12-301(b)(5) (Repl. 2008). We think that the affiant's statement is sufficient corroboration of a material fact that would lead an impartial and reasonable mind to believe that the stipulated eighteen-month separation was true, *see id.*, and we cannot say that the trial court abused its discretion by failing to grant a new trial on this basis.

Appellant finally asserts that the trial court erred in failing to grant relief under Ark. R. Civ. P. 60(a) to prevent a "miscarriage of justice" based on a "mutual mistake of fact" pertaining to the property-settlement agreement, *i.e.*, appellant's mistaken belief that the military retirement was not divisible in the divorce proceeding. We find no error. An agreement is subject to reformation where there is a mutual mistake of fact or where there is a mistake of fact on one side and fraud or inequitable conduct on the other. *See, e.g.*, *Mitchell v. First National Bank*, 293 Ark. 558, 739 S.W.2d 682 (1987); *Roach v. Concord Boat Corp.*, 317 Ark. 474, 880 S.W.2d 305 (1994). Here, however, we have neither: the mistake alleged is clearly one of law, and, in the absence of fraud or undue influence, rescission will not lie for a mistake of law. *Hubbard v. Elam*, 238 Ark. 976, 385 S.W.2d 925 (1965); *see also Bishop v. Bishop*, 60 Ark. App. 164, 961 S.W.2d 770 (1998).

Affirmed.

GRIFFEN, J., agrees.

HART, J., concurs.