

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002305-MR

STEPHANIE J. BRADFORD

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOAN L. BYER, JUDGE
ACTION NO. 04-CI-500047

JOHN D. DIGGS

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: TAYLOR AND VANMETER, JUDGES; EMBERTON,¹ SENIOR JUDGE.

EMBERTON, SENIOR JUDGE: Stephanie Bradford appeals from a decree of dissolution of marriage alleging that the trial court did not have subject matter jurisdiction over the proceeding because neither party resided in this state for 180 days prior to the filing of the petition for dissolution. We find that John D. Diggs, a member of the United States Army who at the time the petition was filed was stationed in Korea, was a

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

resident of Kentucky and that the court had proper jurisdiction to enter the decree under KRS 403.140.²

Stephanie and John were married on June 18, 2001, in Las Vegas, Nevada and separated on June 10, 2003. There were no children born from the marriage. At the time the petition was filed on January 7, 2004, Stephanie was a resident of Hawaii and John was stationed in Korea. However, John's parents were Kentucky residents and he used their Kentucky address as his home address.

Service was attempted by warning order attorney but was returned "refused". Subsequently, John filed a written deposition with the court stating that although stationed in Korea, Kentucky had been his legal residence since August 1985, and attached a statement from Captain Mason S. Weiss stating that the Army recognized Kentucky as John's "home of record." In June 2004, a decree of dissolution was entered and in that decree the court specifically found that Kentucky had been the residence of at least one of the parties in excess of 180 days prior to the filing of the petition. The decree dissolved the marriage and provided that each party would retain any personalty in their possession. The parties did not own any real property.

² Kentucky Revised Statutes.

On August 11, 2004, Stephanie filed a motion to vacate the decree asserting that because she was constructively served through a warning order attorney, the court did not have personal jurisdiction to divide the parties' property. She conceded that assuming all other jurisdictional requirements were met the court had authority to dissolve the marriage. The court agreed and set aside the decree; the court subsequently, however, reinstated the decree dissolving the marriage and held that all other issues would be resolved by a court having jurisdiction over both parties.

The court only dissolved the marriage and made no determination as to any remaining issues raised. KRS 22A.020 provides that notwithstanding any other provision, there is no appellate review of an order or decree of a circuit court dissolving a marriage. In Elswick v. Elswick³ the court held that a decree dissolving a marriage will not be set aside unless it is demonstrated that it is void. And where jurisdictional residence is raised, the appellate court defers strongly to the lower court.

Where the question of jurisdiction in a divorce action has been raised in the lower court, and there is any evidence to show the jurisdictional residence of the parties, the lower court's judgment granting a divorce based on a determination that it has jurisdiction is not void and cannot be

³ 322 S.W.2d 129 (Ky. 1959); See also Clements v. Harris, 89 S.W.3d 403 (Ky. 2002).

questioned on appeal regardless of the fact that the determination may be against the overwhelming weight of the evidence and be clearly erroneous.⁴

Although Stephanie failed to raise the issue of jurisdiction over the action in the circuit court, John submitted un rebutted evidence of his Kentucky residence. Military personnel are required to be transient and, as a consequence, often have no permanent home. For purposes of jurisdiction under KRS 403.140, the courts have recognized that the nature of military service demands that those in the military leave their native state involuntarily. Unless an individual in the military manifests an intent to do otherwise, the individual will maintain residence from the state he has left "since he has no choice as to where he goes, the time he can remain, or when he shall return."⁵ There was more than sufficient evidence that when the decree was entered John considered Kentucky to be his state of residence and intended to return to this state either upon completion of his service or when permitted to do so by the Army.

Stephanie's allegation that John and his counsel perpetrated a fraud on the court is specious. There is no

⁴ Elswick, *supra* at 131.

⁵ Weintraub v. Murphy, 244 S.W.2d 454, 455 (Ky. 1951).

evidence that there was any false information given the court
and certainly nothing to suggest fraud.

The decree of dissolution is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stephanie J. Bradford, Pro Se
Honolulu, Hawaii

BRIEF FOR APPELLEE:

Rocco J. Celebrezze
Jeffery L. Parrish
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Louisville, Kentucky