

STATE OF MICHIGAN
COURT OF APPEALS

LUKE NATHANEAL BOWMAN,
Plaintiff-Appellant,

UNPUBLISHED
November 15, 2018

v

CHELSEY ANN BOWMAN,
Defendant-Appellee.

No. 344484
Van Buren Circuit Court
LC No. 2016-065846-DM

Before: RIORDAN, P.J., and RONAYNE KRAUSE and SWARTZLE, JJ.

PER CURIAM.

In this divorce action, plaintiff, Luke Bowman, appeals as of right the circuit court's order dismissing his complaint for divorce for failure to meet the residency requirements of MCL 552.9(1). Luke¹ also challenges the circuit court's refusal to reinstate child-custody proceedings, which the circuit court had previously dismissed under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq.* We affirm.

I. BACKGROUND

The present case is a divorce action involving parties who currently reside in two different states. Luke and Chelsey Bowman married in November 2009, and they have two minor children. During their marriage, the couple moved several times. The couple began their married life in Georgia, where they met, married, and had their son. The family stayed in Georgia until June 2012, when they moved to Decatur, Michigan. According to Chelsey, the move to Michigan was always intended to be temporary, and she and Luke ultimately wanted to return to Georgia. Regardless, between 2012 and 2014, the family lived in Michigan. During this time, they moved from Decatur, to Kalamazoo, back to Decatur, and later to Menominee. The parties' daughter was born while they lived in Kalamazoo. In August or September 2014, the parties and their children moved to Wisconsin. At that time, Luke had a permanent position in Menominee, but the family chose to reside across the river in Wisconsin.

¹ Because the parties share a last name, we use first names in this opinion where appropriate.

Although the parties agree that they moved to Wisconsin in 2014, the evidence is conflicting with regard to whether they intended to remain there. Luke maintained that the move to Wisconsin was never intended to be permanent and that the family always planned to return to Michigan, where he hoped to obtain an electrician apprenticeship. In contrast, Chelsey emphasized that Luke had a permanent job, and she testified that the family “really liked” Wisconsin, that they had no intention of returning to Michigan, and that they would have stayed in Wisconsin if Luke had not eventually lost his job.

In the spring of 2015, Luke lost his job, and he began a new job in Indiana in August 2015. While the parties agree that Luke lost his job and began working in Indianapolis, there is again conflicting evidence on where the parties lived and intended to reside during this time. In particular, Luke testified that the family moved from Wisconsin back to his parents’ home in Decatur in July 2015. According to Luke, while Chelsey and the children lived in Decatur, he worked in Indiana and returned home to Decatur. He testified that he never moved to Indiana and that he wanted to reside in Michigan, where he was applying for apprenticeships. Chelsey, however, denied that she or Luke moved back to Michigan in July 2015. Chelsey maintained that she and the children continued to live in Wisconsin until October 2015 when the lease on their apartment ended. With regard to Luke’s residency after losing his job in Menominee, Chelsey asserted that Luke lived with relatives in Indiana while he worked in Indianapolis. To her knowledge, Luke did not even visit Michigan during this time; rather, if Luke had free time, he visited Chelsey and the children in Wisconsin. Chelsey testified that, after moving out of the Wisconsin apartment in October 2015, the couple placed their belongings in storage, and Chelsey and the children visited Luke’s family for a few weeks. But, according to Chelsey, she and Luke planned to move the family to Indiana. Chelsey testified that she and Luke were actively looking for a house to rent in Indiana and that they did not register their son for preschool in Michigan because the plan was to move to Indiana and enroll him in preschool there.

In November 2015, Chelsey and the children met Luke in Indianapolis, and the family flew to Georgia to visit Chelsey’s family for Thanksgiving. After the holiday, Luke returned to Indiana by himself. Chelsey and the children stayed in Georgia, and the plan was for Chelsey to buy a car and drive back to Michigan. Chelsey, however, remained in Georgia with her family and the children following a marital dispute. Chelsey and the children have now resided in Georgia for nearly three years. Luke currently lives in Michigan with his parents, and he is pursuing an apprenticeship in Battle Creek, which he began sometime in late 2015.

In December 2015, Chelsey filed a complaint regarding child custody, visitation, and child support in Georgia state court. In January 2016, while the Georgia case remained pending, Luke filed a complaint for divorce in Van Buren Circuit Court, seeking sole legal and primary physical custody of the children. In February 2016, the circuit court declined to exercise jurisdiction over the custody matter under the UCCJEA, reasoning that neither Michigan nor Georgia was the children’s home state and, considering the children’s ties to the respective states, the Georgia court should make the initial custody determination. The circuit court, however, did not dismiss the divorce action, noting in its written opinion that the divorce proceedings could continue “provided that [Luke] can show the necessary requirement for residency.”

Following the circuit court's ruling on the custody matter, Luke filed an application for leave to appeal, and a panel of this Court granted the application. On appeal, this Court affirmed much of the circuit court's analysis under the UCCJEA. Notably, the Court agreed that Georgia was not the children's home state but that the children nevertheless had significant connections to Georgia and that Georgia had jurisdiction "substantially in conformity with" the UCCJEA. *Bowman v Bowman*, unpublished per curiam opinion of the Court of Appeals, issued November 10, 2016 (Docket No. 331870) (*Bowman I*), p 3-5. This Court, however, concluded that the circuit court failed to comply with MCL 722.1206(2), and the panel remanded with instructions for the circuit court to communicate with the Georgia court and to dismiss the case if the Georgia court did not "determine that Michigan is a more appropriate forum." *Bowman I*, unsubs op at 6. Consistent with MCL 722.1206(2) and the remand instructions, the circuit court conferred with the Georgia court (which concluded that it was the appropriate forum), denied Luke's request to stay custody proceedings pending an appeal in Georgia, and again dismissed the child-custody dispute in Michigan.

On remand, the circuit court also dismissed the divorce proceedings on the basis of a footnote in *Bowman I*, which the circuit court read as resolving whether Luke met the residency requirements under MCL 552.9(1). Thereafter, Luke filed another appeal in this Court, challenging both the dismissal of the divorce action and the circuit court's refusal to stay the custody proceedings under MCL 722.1206(2). On appeal for the second time, this Court affirmed the circuit court's refusal to stay proceedings pending the outcome of the Georgia appeal, reasoning that a stay was not mandated under the UCCJEA. *Bowman v Bowman*, unpublished per curiam opinion of the Court of Appeals, issued February 13, 2018 (Docket No. 339702) (*Bowman II*), p 7. Regarding the circuit court's dismissal of the divorce proceedings, however, this Court rejected the circuit court's interpretation of the footnote in *Bowman I* and remanded with instructions to make findings of fact regarding Luke's residency. *Id.* at 5-6.

On remand, the circuit court held a second evidentiary hearing, following which the circuit court determined that Luke did not meet the residency requirements of MCL 552.9(1) because he was a resident of either Indiana or Wisconsin, not Michigan, during the relevant period. During this most recent remand, Luke also informed the circuit court that the Georgia Court of Appeals had reversed the Georgia trial court's conclusion that it had jurisdiction under the UCCJEA and ordered dismissal of Chelsey's custody case in Georgia. Luke asked the circuit court to reinstate the Michigan custody case retroactive to his filing in January 2016, but the circuit court concluded that the custody matter had been resolved and it denied Luke's motion to reinstate.

This third appeal followed.

II. ANALYSIS

Jurisdiction Over the Divorce Case. On appeal, Luke first argues that the circuit court erred by dismissing the divorce proceedings on the basis of Luke's failure to meet the residency requirements under MCL 552.9(1). In particular, Luke makes two basic arguments regarding residency. First, he claims that he has resided in Michigan since 2012, when the parties moved to Michigan from Georgia, and that his time living in Wisconsin and working in Indiana was merely a temporary absence from Michigan. Second, alternatively, Luke asserts that, even if he

became a Wisconsin resident in 2014, he reestablished Michigan residency in July 2015, after he lost his job in Menominee, at which time he claims that the parties and their children moved from Wisconsin to Luke's parents' home in Decatur. Although he worked in Indiana during this time, Luke maintains that he returned to Decatur on his free time, that the Indiana job was merely temporary, and that he intended to reside in Michigan. Deferring to the circuit court's assessment of credibility, we conclude that the circuit court did not clearly err by finding that Luke did not reside in Michigan during the 180-day period preceding his complaint for divorce in January 2016.

"A claim that the trial court lacked jurisdiction is a question of law that this Court reviews de novo." *Berger v Berger*, 277 Mich App 700, 702; 747 NW2d 336 (2008). "Whether the requirements of MCL 552.9(1) have been satisfied is a question of fact," which is reviewed for clear error. *Kar v Nanda*, 291 Mich App 284, 286-287; 805 NW2d 609 (2011). "Questions of domicile and intent are also questions of fact." *Id.* "A finding is clearly erroneous if, on all the evidence, the Court is left with the definite and firm conviction that a mistake has been made." *Berger*, 277 Mich App at 702. "Special deference is afforded to a trial court's factual findings that are based on witness credibility." *Hodge v Parks*, 303 Mich App 552, 555; 844 NW2d 189 (2014).

At issue in this case is whether Luke satisfied the jurisdictional residency requirement contained in MCL 552.9(1), which, in relevant part, provides that 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." By its plain terms, MCL 552.9(1) requires a person to have "resided" in Michigan, and the term "resided" is understood to require "physical presence plus an intention to remain." *Kar*, 291 Mich App at 293 (cleaned up). "However, MCL 552.9(1) does not require a party's continuing physical presence in the state for the entirety of the state residency period." *Ramamoorthi v Ramamoorthi*, 323 Mich App 324, 332; ___ NW2d ___ (2018) (cleaned up). In other words, "residence must be considered in light of a person's intent. Presence, abode, property ownership and other facts are often considered, yet intent is the key factor." *Berger*, 277 Mich App at 704 (cleaned up). Consequently, "an established domicile is not destroyed by a temporary absence if the person has no intention of changing his or her domicile." *Id.*

In this case, it is undisputed that Luke was not physically present in Michigan for the entirety of the 180-day period preceding his complaint for divorce in January 2016. Still, Luke claims that his absence—while he lived in Wisconsin and worked in Indiana—was temporary and that he intended to reside in Michigan during this time. Although Luke emphasizes those facts favorable to his viewpoint, as this Court previously recognized in *Bowman II*, unpub op at 6, there is conflicting evidence regarding where Luke intended to reside. Faced with this conflicting evidence, the circuit court ultimately credited Chelsey's version of events and determined that, during the relevant time period, Luke resided in either Wisconsin or Indiana. Upon review of this evidence, we are not definitely and firmly convinced that the circuit court erred by finding that Luke and Chelsey intended to reside in Wisconsin when they left Michigan in 2014. Likewise, we are not definitely and firmly convinced that the circuit court clearly erred by finding that Luke did not reestablish Michigan residency when he lost his job in Wisconsin.

Although Luke eventually obtained an apprenticeship in Battle Creek sometime near the end of 2015, and he now apparently resides in Michigan, the relevant question is Luke's residence from July 2015, i.e., 180 days before he filed his complaint for divorce. MCL 552.9(1). Consequently, because the record supports the circuit court's conclusion that Luke did not reside in Michigan for the required residency period, the circuit court did not err by dismissing Luke's 2016 complaint for divorce.

Jurisdiction over the Child-Custody Case. Next, Luke argues on appeal that the circuit court erred by refusing to take back the child custody case after the Georgia Court of Appeals concluded that Georgia lacked jurisdiction. Luke, however, abandoned this argument by failing to brief the issue properly. Luke's appellate brief contains no statutory analysis of the UCCJEA, no citation to supporting caselaw, and ultimately no authority for the proposition that the custody case should be reinstated because the Georgia Court of Appeals reversed a jurisdictional decision of a Georgia trial court. "It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis of his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (cleaned up). By failing to brief the issue and to cite authority supporting the proposition that the circuit court was required to reinstate the custody proceedings, Luke has abandoned his argument and we need not address this issue. See *Nash v Salter*, 280 Mich App 104, 118; 760 NW2d 612 (2008). Moreover, because Luke has not shown any entitlement to a remand, we need not address his request to remand this case to a different judge.

Affirmed.

/s/ Michael J. Riordan

/s/ Brock A. Swartzle