

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HARVEY LEE SULLIVAN,
Appellant,
vs.
LESLIE A. SULLIVAN,
Respondent.

No. 80499-COA

FILED

FEB 24 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Harvey Lee Sullivan appeals from a district court's decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; Lisa M. Brown, Judge.

Harvey Lee Sullivan ("Lee") and Leslie Sullivan ("Leslie") married in Arizona and later divorced in Nevada.¹ Prior to marriage, they entered into a premarital agreement, which stated in part that Arizona law would govern the agreement. While married, both parties owned property in Nevada, Arizona, Panama, and Saint Kitts and Nevis ("Nevis"), a small island country in the Caribbean Sea. Lee and Leslie moved to Las Vegas in 2016. After their move, the couple continued traveling outside of Nevada.

Leslie filed a complaint for divorce on August 10, 2018, alleging that she was a resident of Nevada for six weeks prior to filing her complaint. Lee moved to quash and dismiss the complaint for lack of subject matter jurisdiction, alleging that neither he nor Leslie were Nevada residents. The district court denied his motion, finding that Leslie was a resident of Nevada because she established her residency, obtained a Nevada Real ID driver's license, registered to vote in Nevada and voted in the 2018 midterm elections, and filed her tax returns as a Nevada resident. Before trial, Lee's

¹We do not recount the facts except as necessary to our disposition.

counsel moved to withdraw as his attorney, and the district court granted the motion. Thus, Lee represented himself at trial. During trial, the court marshal prohibited Lee from bringing his notes with him to the stand to testify. However, Lee did not object to the marshal's actions. After a one-day trial, the district court granted the parties a divorce decree, found their premarital agreement valid and enforceable, and split the parties' assets into separate and community property.

Lee now appeals. Lee first argues that the district court did not have subject matter jurisdiction over the divorce proceeding because neither Lee nor Leslie are residents of Nevada pursuant to NRS 125.020 or NRS 10.155. Second, Lee avers the district court erred when it did not apply Arizona law when it interpreted the parties' premarital agreement.² We disagree.

Regarding subject matter jurisdiction, Lee avers that Leslie did not satisfy the residency requirements of NRS 125.020 because she was not physically in Nevada for six weeks prior to filing her complaint. Lee maintains that ample evidence contradicts Leslie's claim of being a resident,

²Lee makes two additional arguments: (1) that the district court abused its discretion by failing to override the court marshal's decision to prohibit Lee from accessing his notes while testifying and (2) that the trial was unfair because racial bias against him tainted the divorce proceeding. However, this court will not consider these arguments because Lee waived them by failing to raise them in the district court. See *In re J.D.N.*, 128 Nev. 462, 468, 283 P.3d 842, 846 (2012) (“[W]hen a party fails to make a specific objection before the district court, the party fails to preserve the issue for appeal.”); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).

including that Leslie owned homes outside of Nevada, possessed a Nevis passport, signed her complaint for divorce in Wisconsin, failed to obtain a hyperbolic chamber in Nevada to help treat her serious health issues, and failed to provide evidence that she voted in Nevada prior to filing her complaint.³

This court applies a de novo standard of review to “a district court’s decision regarding subject matter jurisdiction.” *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (citing *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009)). Further, this court reviews questions of statutory construction de novo. *In re Estate of Prestie*, 122 Nev. 807, 812, 138 P.3d 520, 523 (2006). However, “[t]he question of plaintiff’s residence in a divorce action is one of fact to be determined by the trial court.” *Woodruff v. Woodruff*, 94 Nev. 1, 3, 573 P.2d 206, 207 (1978). This court will uphold those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa*, 125 Nev. at 668, 221 P.3d at 704. Substantial evidence “is evidence that a reasonable person may accept as adequate to sustain a judgment.” *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Additionally, it is not

³In response, Leslie asserts that the doctrines of laches and judicial estoppel bar Lee from arguing that the district court lacked subject matter jurisdiction. Leslie does not offer legal authority for the proposition that laches applies when the opposing party does not reassert a jurisdictional challenge that the district court has already denied. Therefore, this court will not consider Leslie’s laches claim. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider claims that are not cogently argued or supported by relevant authority). Additionally, Leslie did not offer evidence below to support her claim that Lee swore under oath he was a Nevada resident. Because Leslie failed to cogently argue her claim of judicial estoppel, this court will not consider it. *See id.*

within this court's purview to reweigh conflicting evidence or witness credibility. *See id.* at 152, 161 P.3d at 244.

NRS 125.020 governs subject matter jurisdiction over a petition for divorce. *See Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 268-69, 44 P.3d 506, 511 (2002) (analyzing NRS 125.020(2) in considering whether the district court lacked jurisdiction to enter a divorce decree). NRS 125.020(2) states, in relevant part, that "no court has jurisdiction to grant a divorce unless either the plaintiff or defendant has been resident of the State for a period of not less than 6 weeks preceding the commencement of the action."

Additionally, a person must be physically present in Nevada "during 'all of the period' for which residency is claimed" in order to maintain his or her divorce suit. *Vaile*, 118 Nev. at 269, 44 P.3d at 511 (quoting NRS 10.155). The statute carves out an exception, however, for periods during which a party is absent from Nevada "with a good faith intention of returning without delay." *Id.* Also, the district court must require corroborative evidence of residency when its jurisdiction relies upon either party's residency. *Id.* (citing NRS 54.010).

Here, substantial evidence supports the district court's finding that Leslie was a resident of Nevada for the requisite six-week statutory period. The district court's finding is supported by Leslie's claims that she had established residency in Nevada, obtained a Nevada Real ID driver's license, filed her federal tax returns as a Nevada resident, and registered to vote in Nevada. Further, Leslie provided the district court with a verified complaint and declaration, which we address in turn. Leslie's verified complaint for divorce, in which she alleged that she was a resident of Nevada for the six-week statutory period, tends to show a basis for

jurisdiction if coupled with other evidence. *See Vaile*, 118 Nev. at 272, 44 P.3d at 513.

Some evidence in the record suggests that Leslie did not remain continuously in Nevada during the entire six-week period. For example, Leslie signed her verified complaint in Wisconsin as evidenced by the State of Wisconsin notary public stamp on her verification. Additionally, Leslie admitted in other documents that she traveled in and out of Nevada prior to filing her divorce complaint. But continuous presence within the state is not required so long as the person has a good faith intention to return to the state and live there. Here, Leslie claimed below, under penalty of perjury, that she intended to return to Nevada, and the district court was entitled to find this credible. Though there is evidence to the contrary, including different statements by Leslie at different times, weighing and sorting out competing evidence is the function of the district court. A reasonable person could accept the evidence in the record as adequate to sustain the district court's finding that she intended to return to Nevada and make it her permanent residence.

Lee next argues that the district court erred when it applied Nevada law instead of Arizona law to interpret the parties' premarital agreement. Lee maintains that Nevada law allows parties to determine which state's law governs the construction of the agreement and that Arizona law applies here because a provision in the agreement dictates as much. Lee further argues applying Arizona law would have entitled him "to all or most of the vehicles, . . . at least half of the business, . . . and all of the equipment" because this property would be considered gifts and his separate property under Arizona law.

This court analyzes choice-of-law questions using the substantial relationship test. *Hermanson v. Hermanson*, 110 Nev. 1400, 1403, 887 P.2d 1241, 1244 (1994). “It is well settled that the expressed intention of the parties as to the applicable law in the construction of a contract is controlling if the parties acted in good faith and not to evade the law of the real situs of the contract.” *Ferdie Sievers & Lake Tahoe Land Co. v. Diversified Mortg. Inv’rs*, 95 Nev. 811, 815, 603 P.2d 270, 273 (1979). Courts grant parties broad permission “to choose the law that will determine the validity and effect of their contract” as long as the State whose law is applied has “a substantial relation with the transaction” and the agreement does not contravene Nevada public policy. *Id.*


Here, Arizona clearly has a substantial relationship with Lee and Leslie’s premarital agreement because they were married there and both resided there at the time of the marriage. Nonetheless, even though the district court should therefore have applied Arizona law, “prejudice must be established in order to reverse a district court judgment; it is not presumed and is established by providing record evidence showing that, but for the error, a different result might have been reached.” *Cook v. Sunrise Hosp. & Med. Ctr., LLC*, 124 Nev. 997, 1006, 194 P.3d 1214, 1219 (2008). Here, Lee fails to explain how the elements of a gift under Arizona law differ from the elements of a gift under Nevada law. In fact, the elements of a gift in both states appear to be virtually identical. *Compare In re Irrevocable Tr. Agreement of 1979*, 130 Nev. 597, 603, 331 P.3d 881, 885 (2014), with *O’Hair v. O’Hair*, 508 P.2d 66, 69 (Ariz. 1973). Accordingly, Lee failed to explain why the district court necessarily would have awarded him the property described above if it had applied Arizona law instead of Nevada law when the laws of both states appear to generate extremely similar

results. As a result, even if the district court had applied Arizona law, it likely would have reached the same result.

For these reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Hon. Rebecca L. Burton, District Judge, Family Court Division
Hutchison & Steffen, LLC/Las Vegas
Jones & LoBello
Eighth District Court Clerk