

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGARDO SALVARINI,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
CHERYL MOSS, DISTRICT JUDGE,  
FAMILY COURT DIVISION,

Respondents,

and

KIMBERLY CASE,  
Real Party in Interest.

No. 39489

**FILED**

MAY 15 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER DENYING PETITION OF WRIT OF PROHIBITION

This is a petition for a writ of prohibition challenging the district court's determination that it had subject matter jurisdiction over the divorce proceeding. Petitioner Edgardo Salvarini and real party in interest Kimberly Case were married on or about May 18, 1998, in Chicago, Illinois, where they lived for most of their marriage. In April 2001, Kimberly moved to Nevada. She signed a lease for her apartment on April 15, 2001. On June 11, 2001, Kimberly filed a complaint for divorce in Clark County, Nevada.

At the time Kimberly filed for divorce, she was employed as a flight attendant. Due to her job, Kimberly had to travel out of the state regularly. Consequently, at the time of her divorce action, she had not been physically present in Nevada for six continuous weeks. Thus, Edgardo moved the district court to dismiss the divorce action based on a

lack of subject matter jurisdiction.<sup>1</sup> Edgardo further contended that Kimberly failed to offer sufficient evidence to corroborate her testimony that she resided in Nevada for six weeks.<sup>2</sup> Following an evidentiary hearing to determine whether the district court had subject matter jurisdiction to hear the divorce action, the district court determined that it had jurisdiction. This petition for a writ of prohibition ensued.

Edgardo asks this court to issue a writ of prohibition to arrest the proceedings of the district court and direct the district court to dismiss this case. This court may issue a writ of prohibition to arrest the proceedings of a district court, when such proceedings exceed the district court's jurisdiction.<sup>3</sup> "Its object is to restrain inferior courts from acting without authority of law in cases where wrong, damage and injustice are likely to follow from such action."<sup>4</sup> A petition for writ of prohibition is addressed to the sound discretion of this court.<sup>5</sup>

Under NRS 125.020(2), "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

---

<sup>1</sup>NRS 125.020(2) (requiring a party to reside in Nevada for six weeks before filing for divorce).

<sup>2</sup>NRS 54.010 (providing that "[i]n all civil cases where the jurisdiction of the court depends upon the residence of one of the parties to the action, the court shall require corroboration of the evidence").

<sup>3</sup>NRS 34.320.

<sup>4</sup>Olsen Family Trust v. District Court, 110 Nev. 548, 552, 874 P.2d 778, 781 (1994).

<sup>5</sup>Harvey L. Lerer, Inc. v. District Court, 111 Nev. 1165, 1168, 901 P.2d 643, 645 (1995).

the action.” The party attempting to establish residency must offer corroboration of the evidence of her residency.<sup>6</sup> However, residency is a question of fact to be determined by the district court.<sup>7</sup> This court will not set aside a district court’s finding of residency if it is supported by substantial evidence.<sup>8</sup> “Substantial evidence is that evidence which a reasonable mind might accept as adequate to support a conclusion.”<sup>9</sup>

Here, the district court found that on April 15, 2001, Kimberly entered a lease to rent an apartment in Henderson, Nevada. It further found that Kimberly obtained a Nevada driver’s license and registered to vote in Nevada.<sup>10</sup> The record shows that the reason Kimberly frequently left Nevada prior to filing her complaint for divorce was because of her job.<sup>11</sup> The district court also found that Kimberly’s lease corroborated her residency. As the record reflects that Kimberly moved to Nevada with intent to remain indefinitely, resided here for six weeks, and offered a lease to corroborate her residency, we conclude that substantial evidence

---

<sup>6</sup>See NRS 54.010.

<sup>7</sup>Patel v. Patel, 96 Nev. 51, 52, 604 P.2d 816, 817 (1980).

<sup>8</sup>Id.

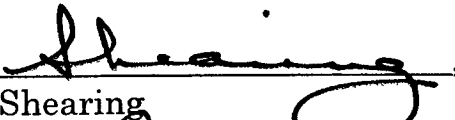
<sup>9</sup>Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999).

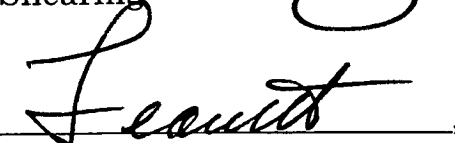
<sup>10</sup>See Aldabe v. Aldabe, 84 Nev. 392, 397, 441 P.2d 691, 694 (1968) (noting that the place where one is registered to vote and has a driver’s license is indicia of intention to make that place her home).

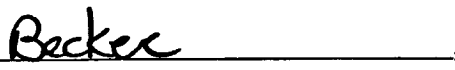
<sup>11</sup>See NRS 10.155 (providing that if a person leaves Nevada with a good faith intention “to return without delay and continue his residence, the time of such absence is not considered in determining the fact of residence”).

supports the district court's determination that Kimberly was a Nevada resident at the time she filed the complaint for divorce. Accordingly, we conclude that extraordinary relief is not warranted and we deny the petition.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Cheryl B. Moss, District Judge,  
Family Court Division  
James P. Kemp  
Frederick A. Santacroce  
Clark County Clerk