2015 IL App (1st) 142479-U

FIFTH DIVISION
October 30, 2015

No. 1-14-2479

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
IN RE THE MARRIAGE OF: JOHN O. STAPLES,	)	Circuit Court of
	)	Cook County
Petitioner-Appellant,	)	
	)	
v.	)	No. 13 D 10334
	)	
MONIQUE A. STAPLES,	)	
	)	Honorable
Respondent-Appellee.	)	Andrea M. Schleifer,
	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Palmer concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the circuit court's dismissal of a husband's petition for dissolution of marriage based on a lack of subject matter jurisdiction, where neither party was an Illinois resident.

¶ 2 Petitioner John O. Staples (John) appeals an order of the circuit court of Cook County dismissing his petition for the dissolution of his marriage to respondent Monique A. Staples (Monique) for lack of subject matter jurisdiction. On appeal, John contends the circuit court

erred in ruling that Monique was not a resident of Illinois. For the following reasons, we affirm the circuit court.

¶ 3 BACKGROUND

¶ 4 John and Monique were married on June 22, 1991, in Las Vegas, Nevada. The parties had one child during the marriage, Desiree, who is now an emancipated adult.

¶ 5 On November 21, 2013, John filed a praecipe for summons directed to Monique in this action. On November 27, 2013, John filed his petition for the dissolution of his marriage against Monique, alleging irreconcilable differences. John also alleged that he resided in Laguna Hills, California, but Monique resided in Illinois and was an Illinois resident for more than 90 days immediately prior to John filing his petition. On December 2, 2013, Monique was served with the summons and the dissolution petition at her apartment in Evanston, Illinois.

¶ 6 On January 7, 2014, John filed a motion seeking a default judgment, due to Monique's failure to file an appearance.

¶ 7 On January 10, 2014, Monique filed a petition for the dissolution of her marriage in the superior court of Orange County, California. Monique alleged she had been a resident of California for at least six months and resided in Orange County for at least three months prior to the filing of the petition. Monique also filed a legally-required disclosure of the proceedings pending in Cook County.

¶ 8 On January 14, 2014, Monique filed her appearance in the circuit court of Cook County. On the same date, Monique filed a two-count motion to dismiss John's petition pursuant to sections 2-619 and 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2012)). In Count I, brought pursuant to section 2-619 of the Code, Monique asserted that Illinois courts lacked subject matter jurisdiction to adjudicate the parties' divorce because she was not an

Illinois resident as required by section 401(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/401(a) (West 2012)). In particular, Monique alleged she rented an apartment in Evanston to be near her daughter, but she split her time between California, New York, and Illinois, and she had not evinced the intent to establish her residence in Illinois. In Count II, Monique argued that if Illinois courts had jurisdiction over the case, it should be dismissed pursuant to section 2-615 of the Code, based upon the principles of *forum non conveniens*.

¶ 9 On January 28, 2014, John filed a petition in the circuit court for a temporary restraining order (TRO), preliminary injunction and other relief. John sought to halt Monique from proceeding on her California divorce petition. On January 30, 2014, the circuit court entered an order granting John a TRO. The circuit court subsequently extended the TRO until Monique's motion to dismiss was adjudicated.

¶ 10 On January 31, 2014, John filed a response to Monique's motion to dismiss. John noted that Monique's denial of Illinois residency was not supported by an affidavit. John characterized Monique's claims that she has a California driver's license and is registered to vote in California as "murky," and asserted that her automobile is registered in Illinois. John also observed that Monique failed to provide California or New York addresses or specify the amount of time she spent in these states. John further argued that Monique failed to establish that *forum non conveniens* could be raised under section 2-615 of the Code, and that Monique failed to demonstrate the case should be dismissed based on *forum non conveniens.* John's response was supported by his own affidavit asserting the truth of the statements in the response.

¶ 11 On February 14, 2014, Monique filed a reply in support of her motion to dismiss, supported by her own affidavit. Monique asserted she always considered the Laguna Hills,

California, house in which she, John and Desiree moved into in 1997 to be her permanent residence and her home above all others. Monique, however, also noted the family owned residences in: Dana Point, California; Park City, Utah; and Hallandale, Florida. In October 2013, Monique additionally purchased a small house in Malone, New York. Monique asserted she had no intention of ever owning property "in the Chicagoland area."

¶ 12 Monique further averred that Desiree has been her primary focus in life and that she became immersed in Desiree's ambition to pursue a life in theater. Throughout Desiree's life, Monique helped produce, prepare and otherwise assist Desiree in her theatrical career. In September 2009, Desiree commenced her college education in musical theater while attending Northwestern University (Northwestern) in Evanston, Illinois. Desiree was 17 years old when she entered college.

¶ 13 Although Desiree was assigned a dormitory room at Northwestern, Monique rented a safe, appropriate apartment in Evanston, in which Desiree and her friends often stayed. By her sophomore year, Desiree and her roommates wanted an apartment "free from [Monique] showing up periodically." In 2010, Desiree and her roommates commenced residing in the apartment, while Monique leased another unit in the same building for her many visits to Chicago. According to Monique, the lease on the original apartment was scheduled to expire in June 2014, concurrent to Desiree's graduation, while Monique had a month-to-month lease for the second unit. Monique additionally averred that in March 2014, Desiree was scheduled to perform for casting agents in New York City. The results of Desiree's performance in the auditions would dictate whether Monique would continue to retain the apartments in Chicago.

¶ 14 Monique did not spend a significant amount of time in Laguna Hills during the summers of 2011 and 2012 because Desiree was in "summer stock" theater at Northwestern, but she and

Desiree went to their California home over the Fourth of July holidays. Monique rented an apartment in New York City during the summer of 2013, when Desiree was attending a theater conservatory in that city. An unsigned copy of the New York City lease was attached to Monique's reply. According to Monique, because she had been living in New York on the date John filed his petition for dissolution of marriage, she had not been living in Illinois for the preceding 90 days. Moreover, Monique averred that she and Desiree had been in California on a number of occasions in June, August, September and December 2013.

¶ 15 Monique further claimed that John interfered with her residence in Laguna Hills insofar as she had no way to know whether John and his current paramour would be present. Monique stated that she would rent an apartment in New York or Chicago after Desiree graduated, but also would resume her "primary base" in Laguna Hills, so long as she was assured that John and his paramour would not have unfettered access to that house. Monique added that she continued to pay for the gardener at the Laguna Hills residence. She hosted an annual New Year's Eve party at the Laguna Hills home, except in 2013, due to John's interference. Monique added that her two cats also lived in Laguna Hills.

¶ 16 Monique further stated that since she moved, she has only voted in California. Monique attached a copy of her most recent voter registration renewal, listing the Laguna Hills home as her address. Monique received jury duty notices in Laguna Hills. Monique maintained a California driver's license, but asserted her automobile (insured with a California insurance card) "would never make it back to California for the required air quality test." Monique's Costco, American Express, and Bloomingdale's credit cards, as well as some of her other credit cards, were directed to her Laguna Hills address. According to Monique, some of her credit cards were directed to her Evanston address because John was reading her mail and not forwarding it to her

on a timely basis.

¶ 17 Monique's individual retirement account (IRA), trust account for Desiree, and employee savings plan were addressed to her home in Laguna Hills. Monique's California health insurance, issued through John's employer, was renewed in November 2013. Her dentist, gynecologist and oncologist were located in California. She received medical treatment in Illinois once on an emergency basis.

¶ 18 During the prior six years, Monique had attended fundraisers and luncheons to support a hospital in Mission Viejo, California. Monique was unable to attend these events in 2013 and 2014, due to conflicts with Desiree's theatrical activities. She was also a "sustainer" in the National Charity League of Laguna Hills, and remained active in the parents' alumni association for Desiree's high school in San Juan, Capistrano, in California. Monique was a financial donor to Northwestern University as well.

¶ 19 Monique replied in support of her *forum non conveniens* argument that John suffered no prejudice as a result of the designation under section 2-615 of the Code. She also reiterated that the relevant factors to a *forum non conveniens* analysis supported dismissal in this case.

¶ 20 On February 25, 2014, John filed a motion to strike Monique's response to the petition for a TRO or, in the alternative, for partial summary judgment on Monique's motion to dismiss. John asserted that the parties had been estranged since 1996 and that Monique had not lived in the marital residence since 2009. John sought to strike Monique's response, contending that: (1) Monique's support of Desiree's theatrical career did not concern the court's subject matter jurisdiction; and (2) the references to John's paramour were merely an attempt to portray John as a philanderer and thereby distract the court from the issue of residency. John argued that he was entitled to partial summary judgment on the issue of jurisdiction because Monique's response

admitted she lived in an apartment in Evanston for most of the prior four years.

¶ 21 On March 27, 2014, Monique filed a response to John's motion for partial summary judgment, arguing that John had admitted the residency issue was not ripe for summary adjudication. On April 8, 2014, John filed a reply in support of his motion for summary judgment, contending that Monique had not specifically denied any of his allegations or submitted any evidence that would establish that she was not an Illinois resident.

¶ 22 On April 24, 2014, the circuit court entered an agreed order that in relevant part set John's summary judgment motion for hearing on April 29, 2014. At the outset of the hearing on April 29, 2014, the circuit court heard argument, denied John's motion for summary judgment, and proceeded to an evidentiary hearing on Monique's motion to dismiss. The circuit court heard testimony on both April 29, 2014, and June 13, 2014.

¶ 23 John testified that he is a California resident, but filed for divorce in Illinois because that was where Monique was living. John did not think Monique could be served in California because she was virtually never there. According to John, Monique spent a week or two annually in California. John also testified that Monique last stayed in the marital residence for one or two evenings during Christmas of 2012.

¶ 24 John further testified that he and Monique discussed her move to Illinois in 2009. According to John, Monique stated that she was following Desiree to Chicago. John was amenable to her move because the parties had not been living as husband and wife for four to five years at that time. Monique did not indicate that she planned to return to California.

¶ 25 John additionally testified that before Monique moved, the parties arranged for her to receive a monthly income in Evanston. John denied opening Monique's mail, except by accident, testifying that he forwarded the mail weekly or biweekly to Monique via Federal

Express. John changed the mailing address for Monique's annuity checks at her direction because she complained that she was not receiving the funds in a timely manner.

¶ 26 After John filed for divorce, Monique sent him an email requesting that he "put the house on the market." Monique also requested that John discharge the domestic staff working at the marital residence.

¶ 27 Monique testified that she saw herself as Desiree's "momagur [sic]," assisting her daughter with every aspect of a planned career in entertainment. She described her role as that of "mom, manager, advisor, props, [and] sorcerer [sic]." She arranged auditions, and secured hairdressers and stylists for Desiree.

¶ 28 Monique accompanied Desiree to Northwestern to ensure her daughter "fully launched" her career. Monique was also concerned about sending Desiree to a distant college without friends or family, given her daughter's relative youth and maturity level. According to Monique, she intended to return to California after Desiree commenced her career. Monique further testified that she moved back to California in April 2014, prior to Desiree's anticipated graduation in June.

¶ 29 Monique testified regarding the two apartments she leased in Evanston. The first apartment Monique rented was near Northwestern's theater department. John also stayed in this apartment several times during the 2009-10 scholastic year in order to attend Desiree's performances. Desiree moved into this apartment with roommates during her sophomore year of college. At that time, Monique leased a second unit in the same building in order to assist Desiree and attend her performances. According to Monique, the lease on this second unit changed to a month-to-month tenancy in November 2013, prior to John filing for divorce.

¶ 30 In May 2010, Monique was informed that her mother, who lived in New York, was

diagnosed with terminal cancer. Monique traveled to New York often while her mother was ill until her mother passed away in October 2011. In addition, during the summer of 2010, Monique accompanied Desiree to New York City while Desiree interned at a casting agency. Monique remained in Illinois during the summers of 2011 and 2012 because Desiree was cast in Northwestern-sponsored theatrical productions.

¶ 31 During the autumn of 2012, Monique rented another apartment for herself in the Streeterville neighborhood of Chicago, explaining that it would be available for Desiree's use when auditioning in Chicago and that the apartment in Evanston was a "glorified dormitory" not suited to a woman aged 59 or 60 years old. Monique also contemplated that Desiree might move into the Streeterville apartment if she commenced her career in Chicago.

¶ 32 Monique both rented furniture and purchased rental furniture for the apartments in Illinois. Monique did not move furniture from the marital residence to the apartments in Illinois. Monique testified that she did not keep food in the Illinois apartments, choosing to eat her meals at restaurants. On April 16, 2013, Monique threw a bridal shower for 120 guests for the daughter of the building's maintenance man at the apartment she rented in Streeterville. On September 4, 2013, Monique made arrangements with the management of the building in Streeterville to host a birthday party for 100 guests for the handyman's daughter.

¶ 33 Monique additionally testified that she spent one or two weeks in California in January 2013, but upon reviewing her travel records during cross-examination, she acknowledged she spent four days in California during this period. Monique also acknowledged that she spent 19 days in California during five trips in 2013, accompanying Desiree for a rehearsal and performance, as well as for her Christmas vacation that year. Monique testified that she maintained a large circle of friends in Laguna Hills. Monique acknowledged on cross-

examination that she was unaware one of her cats and both of her dogs had gone missing and that one of the cats had passed away in California.

¶ 34 Monique further acknowledged that during the summer of 2013, when she rented an apartment in New York, Desiree occupied the apartment, while she lived at the Empire Hotel. Monique also took trips back to Chicago during this period, purportedly to obtain clothes. She admitted spending 69 of the 90 days prior to John filing for divorce in Chicago. Monique could not recall spending a night at the marital residence in Laguna Hills since 2009. Rather, she lived at the St. Regis Hotel in Monarch Beach, California.

¶ 35 Monique also testified she returned to California to vote in every election during the prior five years, excepting one occasion where she cast an absentee ballot because she was in Australia. On cross-examination, Monique acknowledged that she did not recall whether she voted in the 2012 presidential election.[1] She further testified her voter registration listed the Laguna Hills address. Monique received jury notices from Orange County, California and from no other state since 1987. Her most recent jury notice was sent to her Laguna Hills address. Monique's most recent federal tax return listed her Laguna Hills address. Monique's most recent state tax return was filed in California and listed her Laguna Hills address.

¶ 36 Monique additionally testified, consistent with her affidavit, that her automobile was registered in Illinois to avoid having to drive the vehicle, which already had been driven more than 100,000 miles, to California and back to Illinois for an emissions test. According to Monique, she retained a California driver's license and the automobile was insured in California.

¶ 37 Monique testified that she never ordered checks bearing her Evanston address. When confronted with checks bearing her Evanston address, Monique testified that the address was a

[1] Monique's debit card records indicated she purchased items in Evanston on November 5 and 7, 2012.

"misprint."

¶ 38 Monique also testified that she maintained a Costco membership in California and received a gift certificate at her Laguna Hills address in October 2013. She further testified she did not usually shop at Costco outside California. Costco/American Express TrueEarnings Card statements sent to the Laguna Hills address and introduced into evidence by John indicated that she made a purchase at the Costco in Orland Park, Illinois in 2013 and last made a purchase at the Costco in California on December 31, 2012.

¶ 39 In addition to the checks and the automobile, jury, tax and Costco records, the parties introduced volumes of additional financial records into evidence. These records indicate that Monique's American Express and Bloomingdale's credit card bills were consistently sent to the Laguna Hills address, as were statements for her IRA and a trust account for Desiree that named Monique as the custodian. Monique also received annuity checks from Wells Fargo, which were initially sent to the Laguna Hills address, but were sent directly to Monique in Illinois beginning in 2011, bearing both addresses. Other annuity checks issued by MetLife, Genworth, and Nationwide Annuities also were sent directly to Monique in Illinois beginning in July and August 2011. The statements for Monique's Chase credit card were sent to Illinois commencing in October 2009. The statements for Monique's Neiman-Marcus credit card were sent to Illinois commencing in November 2009. The statements for Monique's Capitol One credit card were sent to Illinois commencing in March 2010. Monique had four credit card accounts issued through the Bank of America; the statements were forwarded to Illinois commencing in November 2009, July 2010, September 2010, and May 2012, respectively.

¶ 40 Following the evidentiary hearing, the circuit court directed the parties to submit written closing arguments and proposed findings of fact. The parties both did so on July 15, 2014.

Three days later, Monique filed objections to John's proposed findings of fact. On July 29, 2014, John filed a response to Monique's objections.

¶ 41 On August 15, 2014, the circuit court entered an order granting Monique's motion to dismiss John's petition for dissolution of marriage, and denying John's oral motion for a stay of the order, "[f]or the reasons stated in the court's oral pronouncement." In the transcript of proceedings for this date, the circuit court initially struck two exhibits included in John's closing argument, insofar as they had not been introduced into evidence or subjected to cross-examination.

¶ 42 The circuit court then recounted much of the evidence adduced at the hearing, although the judge added that her failure to refer to any particular testimony or other evidence did not mean that it was not considered. The court found that both parties testified sufficiently to determine their credibility. John's testimony was "starched and direct," but his testimony did not indicate that Monique had told him she was never returning to California. The court found Monique's testimony was often inconsistent. The court also found Monique's personality was "spontaneous, flamboyant and lacking in attention to detail." According to the court, Monique was "dramatic" and reminded the court of "Auntie Mame." In the court's opinion, Monique's personality explained why she was unable to recall the timing and details of her many travels. Monique appeared to be an "extremely involved, perhaps overly involved helicopter mom driven in large part by emotion, impulse and a commitment to the career of [Desiree]." The circuit court also found that Monique often did not understand questions, but she appeared to be forthright, noting that "[h]ad she shown greater self-interest and commitment to her case, she would have been more calculated in her answers." In particular, the court found Monique very credible on the issue of her intent. The court found Monique never demonstrated the intent to

move her residence from California.

¶ 43 The circuit court additionally found that the parties owned real estate in several jurisdictions, but not in Illinois. The court observed that Monique did not transfer her possessions from California to Illinois. The court also observed that Monique did not file an Illinois tax return or obtain an Illinois driver's license. When Monique received a California jury notice, she did not indicate she was not a California resident, but sought and received a continuance. The court found it credible that some of Monique's checks bore her Evanston address by mistake, both because Monique's Evanston address was her mailing address and because it could be difficult to cash a check with the Evanston address and a California driver's license. The circuit court noted that Monique received mail in Illinois, but noted that the evidence indicated this was due to her complaints that she was not timely receiving her mail from John.

¶ 44 The circuit court observed that Monique spent a relatively small amount of time in California between 2009 and the date she was served in this matter. The court, however, analogized Monique's move to a college student matriculating at an out-of-state institution. The court reasoned that such a move did not demonstrate the intent to become a resident of the state where she attended college. Monique may have spent time and money in Illinois, but she only intended to remain with Desiree until she "got her own wings." Accordingly, the circuit court granted Monique's section 2-619(a) motion to dismiss and denied John's oral motion to stay the order pending appeal. John filed a notice of appeal to this court on the same date.

¶ 45 ANALYSIS

¶ 46 On appeal, John argues that the circuit court erred in dismissing his petition for dissolution of marriage based on a lack of subject matter jurisdiction pursuant to section 2-619 of

the Code. Section 2-619(a)(1) of the Code provides for dismissal on the ground "[t]hat the court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer of the case to a court having jurisdiction." 735 ILCS 5/2-619(a)(1) (West 2012).

¶ 47 In this case, the circuit court ruled it lacked subject matter jurisdiction, based upon its finding that Monique was not a resident of Illinois. The circuit court's finding on the issue of residency will not be overturned unless it is against the manifest weight of the evidence. See *In re Marriage of Passiales*, 144 Ill. App. 3d 629, 634-35 (1986) (citing *Rosenshine v. Rosenshine*, 60 Ill. App. 3d 514, 517 (1978)). Moreover, the circuit court found Monique was not a resident of Illinois after conducting an evidentiary hearing on the 2-619 motion to dismiss. "Where, as here, the trial court grants a section 2-619 motion to dismiss following an evidentiary hearing, 'the reviewing court must review not only the law but also the facts, and may reverse the trial court order if it is incorrect in law or against the manifest weight of the evidence.' " *Hernandez v. New Rogers Pontiac, Inc.*, 332 Ill. App. 3d 461, 464 (2002) (quoting *Kirby v. Jarrett*, 190 Ill. App. 3d 8, 13 (1989)). "Accordingly, we review whether the trial court's findings of fact are against the manifest weight of the evidence while reviewing the questions of law *de novo*." *Law Offices of Nye & Associates, Ltd. v. Boado*, 2012 IL App (2d) 110804, ¶ 12. Findings of fact are " 'against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence.' " *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (2010) (quoting *In re Marriage of Bhati*, 397 Ill. App. 3d 53, 61 (2009)). We apply this deferential standard of review to findings of fact because the circuit court is in a superior position to observe the demeanor of the witnesses, judge their credibility, and weigh the evidence. See, *e.g.*, *In re Marriage of Sturm*, 2012 IL App (4th)

110559, ¶ 6. To the extent that a section 2-619 dismissal depends on determining a legal question, however, this court conducts an independent review and is not required to defer to the circuit court's reasoning. See, *e.g.*, *In re Marriage of Sullivan*, 342 Ill. App. 3d 560, 563 (2003).

¶ 48 The jurisdictional question in this case arises from section 401(a) of the Act, which provides in part:

> "The court shall enter a judgment of dissolution of marriage if at the time the action was commenced one of the spouses was a resident of this State or was stationed in this State while a member of the armed services, and the residence or military presence had been maintained for 90 days next preceding the commencement of the action or the making of the finding." 750 ILCS 5/401(a) (West 2012).

In a divorce case, residence is necessary to confer subject matter jurisdiction on the court. *Passiales*, 144 Ill. App. 3d at 634. "The term 'residence' as used in the [Act] is not synonymous with domicile, but denotes a 'permanent abode' or the place one considers as home. Of greatest significance in determining whether a place is one's residence is that person's intent to make the place his permanent home." *Id.* (citing *Rosenshine*, 60 Ill. App. 3d at 517). "Intent is determined primarily from a person's acts, and conduct may negate declarations of intent." *Passiales*, 144 Ill. App. 3d at 635 (citing *Rosenshine*, 60 Ill. App. 3d at 517). "Whether a party has abandoned one residence in favor of another in a different jurisdiction is a question of fact." *Id.* Affirmative acts of abandonment of a residence must be proved to sustain a claim of abandonment. See *id.*

¶ 49 John first asserts that the circuit court erred as a matter of law by applying the incorrect legal definition of residence to this case, conflating residence with domicile. In particular, John contends that while an individual may have only one domicile, she may have more than one

residence. John relies upon *In re Marriage of Weiss*, 87 Ill. App. 3d 643 (1980), in which the appellate court observed that "[a] person can have only one domicile, and once he establishes a domicile or permanent residence he retains it until a new one is established." *Id*. at 647. John also relies upon Black's Law Dictionary, which defines "residence" as: "The place where one actually lives, as distinguished from a domicile *** [. Residence] usu[ally] requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. *** A house or other fixed abode; a dwelling ***." Black's Law Dictionary 1423 (9th ed. 2009). "The circuit court is presumed to know the law and apply it properly, absent an affirmative showing to the contrary in the record." *In re N.B.*, 191 Ill. 2d 338, 345 (2000).

¶ 50 In this case, John relies on a portion of the transcript of proceedings containing the circuit court's oral ruling, in which the court stated:

> "And, again, residence has been used in this case, bandied about. As [John's counsel] indicated, he had residences in Illinois and a residence I believe in Florida. This [c]ourt has a residence in Illinois and a residence in Wisconsin. But that is not the determinative factor under this particular statute."

The court then found "that it was never the intent of Monique Staples to relocate to Illinois."

¶ 51 This portion of the transcript, however, follows the circuit court's application of both *Passiales* and *Rosenshine* to this case, including a recitation of the definition of residence in the context of the Act. *Rosenshine* defines residence not only as an individual's intent to make a place her permanent home, but also in terms of abandoning one residence in favor of another. *Rosenshine*, 60 Ill. App. 3d at 517; see also *Anderson v. Pifer*, 315 Ill. 164, 167 (1924) (The question of a permanent abode at the place one attends college is a question of fact and "[o]ne

cannot have a residence in two places at the same time."). It is thus clear that the concept of residence embodied in the Act is not synonymous with the definition provided in Black's Law Dictionary. Accordingly, the circuit court's comments regarding the Act, which do not mention domicile, accurately reflect Illinois law.

¶ 52 John contends in the alternative that the circuit court's factual determination regarding Monique's residence was against the manifest weight of the evidence. John observes that Monique's testimony was impeached on a number of subjects, from the amount of time Monique spent in California, New York and Chicago, to her knowledge regarding the status of her pets. The circuit court acknowledged that Monique's testimony was often inconsistent, but found Monique very credible on the issue of her intent and also found that Monique never demonstrated the intent to move her residence from California. John argues that this finding (contrary to *Passiales*) relied on Monique's subjective declarations, rather than her actions.

¶ 53 The record, however, establishes that Monique did not merely assert that she intended to maintain California as her permanent abode. Monique testified that she accompanied Desiree to Evanston to assist in launching Desiree's career in entertainment. She also testified that she arranged auditions, and secured hairdressers, stylists, makeup and costumes for Desiree. Monique further testified that she lived in Illinois in part because of her concerns for a young woman of Desiree's maturity matriculating at a university distant from family and friends. She additionally testified regarding her travels to New York and California in support of Desiree's theatrical endeavors. Moreover, Monique left her furniture in California. Monique's testimony regarding her actions was consistent with her stated intent. The circuit court is in a superior position to observe the demeanor of the witnesses, judge their credibility, and weigh the evidence. See *Sturm*, 2012 IL App (4th) 110559, ¶ 6. John has failed to identify any testimony

or evidence that would warrant overturning the circuit court's assessment of Monique's credibility on the issue of intent.

¶ 54 John nevertheless argues that the circuit court erred in determining Monique was not an Illinois resident because she spent the bulk of her time and money in Illinois during the period prior to his filing of the petition for dissolution of marriage. The circuit court compared Monique to a college student because the record established Monique came to Illinois for the purpose of assisting her daughter while Desiree matriculated at Northwestern. Illinois courts have long held that a student in a college town is presumed not to have changed her residence to the town in which she is attending school. *People ex rel. Madigan v. Baumgartner*, 355 Ill. App. 3d 842, 848 (2005) (and cases cited therein); see also *Schwalbach v. Millikin Kappa Sigma Corp*., 363 Ill. App. 3d 926, 932 (2005) (rejecting a claim of residence in the county where the decedent matriculated, using a definition of "resident" encompassing the intent to establish a permanent abode). Given the record on appeal, including the testimony already summarized regarding Monique's purpose in accompanying Desiree to Illinois, the circuit court's analogy was a reasonable one. Accordingly, the fact that Monique spent the bulk of her time and money in Illinois prior to John filing the petition for dissolution of marriage does not render the circuit court's finding against the manifest weight of the evidence. [2]

¶ 55 Of course, when reviewing the issue of residence under the Act, this court has considered not only the state where a party has spent time or money, but the totality of the circumstances, including the state where a party: maintains the majority of his or her possessions; purchases

[2] John's appellate brief contains an analysis of Monique's expenditures from 2010 through March 2014 in order to establish that the bulk of her spending occurred in Illinois and that only 5.58% occurred in California. The fact that Monique made the bulk of her expenditures where she was living at any given time, however, does not render the circuit court's comparison of Monique to a college student unreasonable.

furnishings; maintains insurance policies; files tax returns; purchases an automobile; maintains a driver's license; establishes a business, or enrolls in school. See *Passiales*, 144 Ill. App. 3d at 635; *Rosenshine*, 60 Ill. App. 3d at 517-18. In this case, Monique did not purchase real estate or furnishings in Illinois. Her furnishings remained in the marital residence in Laguna Hills. Monique's health insurance was issued in California. Monique's dentist, gynecologist, and oncologist were located in California. She filed a California tax return. She also maintained her voter registration in California. Monique did not establish a business in Illinois. Monique did not enroll in a school in Illinois, although she lived near a university in Illinois in support of a college student. She did not deny California residency in response to a California jury notice.

¶ 56 Although Monique registered her automobile in Illinois, she maintained a California driver's license. John notes that Illinois required vehicle registration applications include the "domicile address" of the applicant. 625 ILCS 5/3-405(a)(1) (West 2008). John also notes that an application for a certificate of title for a vehicle in Illinois is to be made on a form including the applicant's "Illinois address." 625 ILCS 5/3-104(a)(1) (West 2008). We additionally note that a vehicle registration application shall include an affirmation by the applicant that all information set forth is true and correct. 625 ILCS 5/3-405(a)(5) (West 2008).

¶ 57 Monique's vehicle registration could be considered an admission. The issue is whether the registration constitutes a judicial admission or an evidentiary admission. Judicial admissions are "deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998). Judicial admissions can include statements by parties or their attorneys made in open court, discovery answers, stipulations, and pleadings. *Kovac v. Barron*, 2014 IL App (2d) 121100, ¶ 60. Admissions made during the course of other court proceedings constitute evidentiary admissions, not judicial

admissions. *Green by Fritz v. Jackson*, 289 Ill. App. 3d 1001, 1008 (1997) (and cases cited therein). Judicial admissions are binding upon the party who made them, "dispensing with proof of a fact claimed to be true, and are used as a substitute for legal evidence at trial." *Dremco, Inc. v. Hartz Construction Co.*, 261 Ill. App. 3d 531, 535-36 (1994). The purposes of the doctrine of judicial admissions are to remove the temptation to commit perjury and to hold a party to its waiver of proof on a factual issue at trial. *Herman v. Power Maintenance & Constructors, LLC,* 388 Ill. App. 3d 352, 361 (2009). "Because penalizing confusion or an honest mistake is not among the purposes of the doctrine of judicial admissions, it must appear that the party making the statement had no reasonable possibility of being mistaken in order for the statement to qualify as a judicial admission." *Id.* The binding nature of judicial admissions distinguishes them from ordinary evidentiary admissions, which may be contradicted or explained at trial. See *Rennick*, 181 Ill. 2d at 406.

¶ 58 In this case, any address Monique affirmed in registering her vehicle was provided outside these judicial proceedings. Accordingly, if Monique's vehicle registration contains admissions, we consider them evidentiary admissions rather than judicial admissions. See *Green*, 289 Ill. App. 3d at 1008. Thus, Monique was free to contradict or explain those admissions. In this case, Monique explained that she registered her vehicle in Illinois to avoid driving the vehicle to California for an emissions test.

¶ 59 John asserts that, similar to the jury notice, California law permitted Monique to seek a temporary exemption from the California emissions test. John, however, first presented this assertion during his closing argument, supported by the exhibits that were stricken by the circuit court because they were not introduced as evidence during the hearing and therefore were not the subject of cross-examination. On appeal, John presented no argument that the circuit court's

exclusion of these exhibits was improper. Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) requires that the argument section of the appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Where a party does not comply with Rule 341(h)(7) by failing to make reasoned argument and failing to provide citations to authority, that party forfeits review of the argument. *Vancura v. Katris*, 238 Ill. 2d 352, 369-70 (2010). Thus, John has failed to demonstrate that the circuit court erred in accepting Monique's explanation.

¶ 60 In sum, the circuit court's findings do not appear to be unreasonable, arbitrary, or not based on evidence. *Nord*, 402 Ill. App. 3d at 294. Accordingly, the circuit court's conclusion that Monique was not an Illinois resident for the purposes of section 401(a) of the Act was not against the manifest weight of the evidence. See *id*. Thus, the circuit court did not err in dismissing John's petition for dissolution of marriage based on a lack of subject matter jurisdiction.

¶ 61 CONCLUSION

¶ 62 For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 63 Affirmed.