

ONKEN *v.* ONKEN.

4-7677

187 S. W. 2d 892

Opinion delivered June 4, 1945.

DIVORCE—RESIDENCE REQUIRED.—Proof that appellant, a member of the armed forces, moved into the Goldman Hotel at Ft. Smith on November 5, 1944, and checked out on January 4, 1945, is insufficient to prove that he had been a resident of this state for three months as required by § 4386, Pope's Dig., at the time of trial.

Appeal from Sebastian Chancery Court, Fort Smith District; *C. M. Wofford*, Chancellor; affirmed.

*Sid White*, for appellant.

McHANEY, J. Appellant, a sergeant in the U. S. Army, brought this action for divorce against his wife, appellee. On a trial the court dismissed the complaint for want of equity because appellant had not proved residence in this state for three months next before final judgment and a residence of two months next before the commencement of the action, as required by the first sub-

section of § 4386 of Pope's Digest, and that he failed to prove a cause of action for divorce.

Appellant moved into the Goldman Hotel at Fort Smith on November 5, 1944, and checked out January 4, 1945. He brought this action on January 10, 1945. The appellee is a nonresident and service was had by warning order and an attorney *ad litem* was appointed who notified her of the pendency of the suit and sent her a copy of the complaint. She made no defense to the action and the case was tried on February 13, 1945.

Assuming without deciding that a member of the armed forces of the United States, who is not a resident of this state, may thus acquire a residence, we think the proof wholly fails to show that appellant had been a resident for three months at the date of trial as required by the statute above cited. He did not live in the hotel after January 4, 1945, which was one day less than two months residence therein, and there is no sufficient showing of his whereabouts between January 4th and February 13, 1945. Appellant did not testify, but his verified complaint was considered by the court. It alleged that he is a resident of Fort Smith, Arkansas, and has so resided for the statutory period. His proof of residence, as above stated, failed to show he had been a resident for a sufficient length of time to give the court jurisdiction. See *Barth v. Barth*, 204 Ark. 151, 161 S. W. 2d 393.

Affirmed.

---