

WAGGONER V. FOGLEMAN.

Decided April 26, 1890.

Warning order—Non-residence—Affidavit on belief.

An affidavit for a warning order upon the ground of non-residence must state the fact of defendant's non-residence, and not the belief of that fact only.

APPEAL from *Crittenden* Circuit Court in Chancery.

J. E. RIDDICK, Judge.

W. M. Randolph for appellant.

The affidavit for the warning order was upon belief only, when it should have been upon the knowledge of the affiant. Mansf. Dig., secs. 4989, 5055, etc. The judgment was void. 25 Ark., 541; Mansf. Dig., sec. 5201; 30 Ark., 718.

O. P. Lyles for appellee.

PER CURIAM. An affidavit for a warning order upon the ground of non-residence, like an affidavit for attachment, must state the fact of the defendant's non-residence, and not the belief of the fact only. *Hollman v. Fowler*, 24 Ark., 235. An order published on such affidavit may be avoided on appeal. *Sannoner v. Jacobson*, 47 Ark., 44-5.

The affidavit in this case was made upon belief only. The judgment will therefore be reversed. The appellant having entered her appearance by the appeal is now in court, and no further service is required.

Reverse.