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2017 IL App (3d) 160695-U

Order filed September 6, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
JENNY M. KASPER,)	of the 13th Judicial Circuit,
)	Grundy County, Illinois.
)	
Petitioner-Appellee,)	Appeal Nos. 3-16-0695
)	3-16-0703
and)	Circuit No. 16-D-117
)	
KIRK T. KASPER,)	
)	Honorable Sheldon R. Sobol,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion when it denied respondent's motion to dismiss and/or transfer venue.

¶ 2 Respondent, Kirk T. Kasper, petitioned this court, pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Mar. 8, 2016), for leave to appeal from the circuit court's denial of his motion to dismiss and/or transfer venue. We allowed Kirk's petition. Kirk argues in this court that the circuit court abused its discretion in denying his motion. We affirm.

¶ 3 **FACTS**

¶ 4 On August 9, 2016, petitioner, Jenny M. Kasper, filed a petition for dissolution of marriage in the Grundy County circuit court. In the petition, Jenny alleged that she resided in Morris, in Grundy County, and Kirk resided in Galena, in Jo Daviess County. The petition also alleged that the parties have two marital children, and Jenny was seeking temporary and permanent parental responsibilities for the children.

¶ 5 On August 12, 2016, Kirk filed a motion to transfer venue. In his motion, Kirk alleged that Jenny left Jo Daviess County on August 9, 2016, the date the petition was filed. The children were set to begin school in Galena on August 18, 2016, and all of the parties' assets were located in Jo Daviess County. The court denied Kirk's motion to transfer venue.

¶ 6 On September 8, 2016, Kirk filed a motion to vacate and/or reconsider the court's denial of his motion to transfer venue. The motion alleged the following additional facts (1) Jenny had resided in Grundy County for only a few hours before she filed the petition for dissolution of marriage, (2) prior to the filing, Kirk and Jenny were both employed in Jo Daviess County, (3) Jenny had worked at her job in Jo Daviess County the day before she filed the petition, (4) Kirk owned a masonry business in Jo Daviess County, (5) the children had attended school in Jo Daviess County for more than six years, (6) the children's doctors were located in Jo Daviess County, (7) the marital residence was located in Jo Daviess County, (8) the parties' assets were located in Jo Daviess County, (9) Jo Daviess County is more than 50 miles from Grundy County, and (10) the parties' connections to Grundy County were limited to family members living in the county. Kirk argued that litigating the case in Grundy County would require him to close his business, stop paying rent, and wind up all activities of the marital estate. Kirk also contended that he could not play an active role in his children's lives if the case was heard in Grundy County.

¶ 7 On the same date, Kirk filed a motion to dismiss and/or transfer venue based upon *forum non conveniens*. In this motion, Kirk alleged that given the parties numerous contacts with Jo Daviess County, and the fact that neither party resided in Grundy County, Grundy County was an inconvenient forum. Kirk further contended that although Jenny may desire to change her residence to Grundy County, she had not made the change at the time she filed the petition. In a supporting affidavit, Kirk averred that he and Jenny had lived in Jo Daviess County for approximately seven years, he did not consent to the relocation of the parties' children, he was unaware that the children were transferred to a school in Morris, the children's doctors were located in or near Galena, and the children's friends and activities were located in Jo Daviess County.

¶ 8 On October 17, 2016, the court held a hearing on Kirk's motions. The court initially noted that a court reporter was not present at the hearing that preceded the denial of Kirk's previous motion to transfer venue. However, the court noted that Jenny and Kirk had testified at the hearing. At the conclusion of the unrecorded hearing, the court found Jenny to be a credible witness. The court noted:

“[I]t was clear to me based upon [Jenny's] testimony, she was very emotional, something very embarrassing had happened to her. The—what exactly it is I don't know, but it was clear from the testimony that that—and she did not feel comfortable in the community that she lived in in Galena and that she was living on a temporary basis with her brother here, but that it was her intention to live here. She had changed her driver's license and she was seeking employment. In fact, she may have had a job on that date,

and so that I did find that she was a resident here in Grundy County and denied the request to transfer venue.”

Following the court’s summarization of the prior hearing, it heard arguments on Kirk’s motions to reconsider and dismiss and/or transfer venue based upon *forum non conveniens*.

¶ 9 In his argument, Kirk reasserted several of the statements from his written motion and emphasized that Jenny had unilaterally relocated with the children to Grundy County and had not informed Kirk that the children would be attending school in Morris in the fall of 2016. Kirk argued that Jenny admitted these facts by failing to file a counter-affidavit. Kirk contended that Jenny’s move was suspect as it did not occur until the night before the petition was filed.

¶ 10 Jenny opposed the motion, arguing that Kirk presented no new evidence to warrant reconsideration of the court’s ruling. Jenny refuted the allegation that she had not informed Kirk of the children’s change of school. Jenny argued that she planned to stay in Grundy County as she had changed her address with the Department of Motor Vehicles, temporarily lived with a relative in the county, and made plans to stay in the county. Jenny noted that she had a support group in Grundy County and she was then employed in the county.

¶ 11 The court found that no new evidence had been presented to require reconsideration of its prior rulings that Jenny was a resident of Grundy County and venue was proper. The court denied Kirk’s motion to reconsider.

¶ 12 The court then heard arguments on Kirk’s motion to dismiss and/or transfer venue based upon *forum non conveniens*. Kirk initially argued the following facts made venue more convenient in Jo Daviess County: the children had exclusively attended school in Jo Daviess County until 2016, the children’s doctors and dentist were located near Galena, the children’s friends resided in Jo Daviess County, Kirk’s masonry business was located in the county, and the

parties had lived in a rental home in Jo Daviess County for the past six years. Kirk argued that the parties had never lived in Grundy County as a married couple and calling witnesses to testify would be more convenient in Jo Daviess County because the parties' contacts and acquaintances were located there. Kirk reasserted that none of these points were refuted by a counter-affidavit.

¶ 13 Jenny argued that the parties owned no real estate in Jo Daviess County and Kirk's mother lived in Grundy County. Jenny contended that the only significant tie to Jo Daviess County was the fact that Kirk lived there.

¶ 14 After hearing the arguments of the parties, the court considered the *forum non conveniens* factors. The court found (1) both courts were able to provide a fair trial, (2) Jenny would be inconvenienced if the case were transferred to Jo Daviess County, and Kirk would be inconvenienced if the case remained in Grundy County, (3) access to the source of proof regarding the valuation of Kirk's business would not be needlessly complicated by holding the proceedings in Grundy County, (4) no evidence was presented that the children had medical issues that would require their doctors from Jo Daviess County to testify, (5) evidence from the children's teachers in Galena mitigated in favor of venue in Jo Daviess County, (6) the court was unaware of the court congestion in Jo Daviess County, and (7) the availability of process for the attendance of unwilling witnesses was similar in the two counties. The court concluded that Jenny's choice of venue, as plaintiff, was entitled to priority, and the factors did not strongly support a transfer of venue. The court denied Kirk's motion to dismiss and/or transfer venue based upon *forum non conveniens*. Kirk then filed a petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Mar. 8, 2016) in this court. We allowed Kirk's petition.

¶ 15

ANALYSIS

¶ 16 Kirk argues that the court abused its discretion when it denied his motion to dismiss and/or transfer venue based upon *forum non conveniens*. We find that the court did not abuse its discretion as it afforded proper deference to Jenny’s choice of forum and reasonably considered the *forum non conveniens* factors when it denied Kirk’s motion.

¶ 17 The *forum non conveniens* “doctrine allows a trial court to decline jurisdiction when trial in another forum ‘would better serve the ends of justice.’ ” *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 441 (2006) (quoting *Vinson v. Allstate*, 144 Ill. 2d 306, 310 (1991)). This doctrine vests a court with broad “discretionary power that should be exercised *only in exceptional circumstances* when the interests of justice require a trial in a more convenient forum.” (Emphasis in original.) *Id.* at 442. The circuit court’s exercise of discretion is subject to reversal only if the moving party shows that the court abused its discretion in balancing the relevant factors. *Id.* That is, no reasonable person would take the view adopted by the court. *Id.*

¶ 18 The plaintiff’s choice of forum is a substantial factor in deciding a *forum non conveniens* motion. *In re Marriage of Mather*, 408 Ill. App. 3d 853, 858 (2011). However, less deference is accorded to a plaintiff’s choice of a forum that is not her place of residence. *Id.* Therefore, we must first determine the amount of deference accorded to Jenny’s choice of forum in Grundy County.

¶ 19 The record indicates that Jenny moved to Grundy County on the date that she filed the petition for dissolution of marriage. According to the circuit court’s summary of Jenny’s testimony, Jenny moved to Grundy County because she had a support system in the area and did not feel comfortable in Jo Daviess County. At the time of the hearing, Jenny was living with a family member and exhibited an intent to live in Grundy County. Jenny changed the address on file with the Department of Motor Vehicles and sought employment in Grundy County. Kirk

cites to nothing in the record that refutes these facts. Instead, Kirk argues that Jenny's choice of forum is conspicuous or an attempt to seize parenting rights. Kirk contends that in subsequent custody proceedings, Jenny's move has effectively shifted the burden to Kirk to establish that the children should reside with him. See 750 ILCS 5/609.2 (West 2016). Kirk's parenting concerns are not implicated in this proceeding, which is focused on determining if the case must be transferred to a different forum. Moreover, Kirk's contention does not refute the evidence from the prior hearing that Jenny's move was motivated by her emotional concerns and the need for a support system. Therefore, for the purpose of this *forum non conveniens* analysis, we conclude that the circuit court reasonably considered Jenny to be a resident of Grundy County. As a resident, Jenny's choice of forum in Grundy County is entitled to significant deference. *Mather*, 408 Ill. App. 3d at 858.

¶ 20 Next, we must determine if Jenny's choice of forum as the plaintiff in this action is outweighed by the private and public interest factors. The *forum non conveniens* analysis requires the court to weigh the private and public interest factors. *Id.* The relevant private interest factors include: "the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure attendance of unwilling witnesses; the cost to obtain attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical considerations that make a trial easy, expeditious, and inexpensive." *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 15 (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947)). The public interest factors include: "the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; the unfairness of imposing jury duty upon residents of a community with no connection to the litigation; and the interest in having local

controversies decided locally.” *Id.* ¶ 16. After considering these factors, a circuit court should not disturb a plaintiff’s choice of forum unless “the factors weigh strongly in favor of transfer or dismissal.” *Id.* ¶ 18.

¶ 21 Here, the circuit court found that the private interest factors almost exclusively favored venue in Grundy County. Only two private interest factors favored a transfer of venue to Jo Daviess County (1) Kirk would be less inconvenienced by conducting the proceedings in Jo Daviess County and (2) testimony from the children’s prior teachers would be easier to obtain in Jo Daviess County. The circuit court further found that the public interest factors did not favor a transfer of venue. Specifically, the circuit court was unaware of the level of court congestion in Jo Daviess County. The remaining public interest factors were not implicated as Jenny expressed an intent to reside in Grundy County and Kirk intended to remain in Jo Daviess County. Therefore, the parties’ dispute became local to each forum.

¶ 22 After reviewing the record, we find that the circuit court’s ruling that the private and public interest factors weighed in favor of venue in Grundy County was reasonable. Therefore, considering Jenny’s residence, choice of forum as plaintiff, and the *forum non conveniens* factors, we conclude that the court did not abuse its discretion in denying Kirk’s motion to dismiss and/or transfer venue based upon *forum non conveniens*.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Grundy County.

¶ 25 Affirmed.