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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

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Ex parte Cymone Alexandria Stroup

PETITION FOR WRIT OF MANDAMUS

(In re: Jacob Aaron Weaver

v.

Cymone Alexandria Stroup)

(Dallas Circuit Court, DR-20-900105)

FRIDY, Judge.

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Cymone Alexandria Stroup ("the wife") petitions this court for a writ of mandamus directing the Dallas Circuit Court ("the trial court") to vacate its order denying her motion to change the venue of the divorce action commenced by Jacob Aaron Weaver ("the husband") to Autauga County and to enter an order granting that motion. For the reasons discussed herein, we deny the wife's petition.

On November 24, 2020, the husband commenced the divorce action against the wife in the trial court. The husband's complaint alleged that the wife had been a resident of Dallas County for more than six months next preceding the filing of the complaint. On December 14, 2020, the wife filed a motion to change venue to Autauga County. She supported that motion with her affidavit, in which she stated:

"Contrary to the allegations of my husband's divorce complaint, I am not a resident of Dallas County, Alabama, nor was I a resident of Dallas County for more than six (6) months next preceding the filing of my husband's complaint in Dallas County, Alabama. Both myself and [the parties' child] are permanent residents of Autauga County, Alabama."

On December 16, 2020, the husband filed a response to the wife's motion to change venue in which he asserted, among other things, that

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"on or about October 17, 2020, when both parties were living in Dallas County, [the wife] decided to leave the marriage and marital residence located [in] Dallas County."

Subsequently, after the wife had filed two motions requesting a ruling on her motion to change venue, the trial court entered an order denying the wife's motion on June 17, 2021.

The wife petitioned this court for a writ of mandamus on July 28, 2021. After a preliminary review, this court called for an answer to the petition. The husband filed an answer to the petition on August 26, 2021.

The proper method for obtaining review of a denial of a motion for a change of venue in a civil action is to petition for a writ of mandamus. See Ex parte Pike Fabrication, Inc., 859 So. 2d 1089, 1091 (Ala. 2002). Mandamus is a drastic and extraordinary writ, to be issued only when there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court. See Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). The burden of proving improper venue is on the

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party raising the issue, and, on review of an order refusing to transfer an action, a writ of mandamus will issue only if the petitioner makes a clear showing of error on the part of the trial judge. See Ex parte Pike Fabrication, Inc., 859 So. 2d at 1091.

The venue statute applicable to divorce actions provides:

"Complaints for divorce may be filed in the circuit court of the county in which the defendant resides, or in the circuit court of the county in which the parties resided when the separation occurred, or if the defendant is a nonresident, then in the circuit court of the county in which the other party to the marriage resides."

§ 30-2-4, Ala. Code 1975 (emphasis added). The wife's affidavit stated that she was a resident of Autauga County when she signed the affidavit and that she had not been a resident of Dallas County for more than six months next preceding the filing of the husband's divorce complaint. However, her affidavit did not state that the parties had not been residing in Dallas County when they separated. Because the wife bore the burden of proving that Dallas County was an improper venue and because her affidavit did not negate one of the possibilities that would make Dallas County a proper venue, i.e., the possibility that the parties had resided in

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Dallas County when they separated, the wife has not made a clear showing of error on the part of the trial court. Therefore, we deny the wife's petition.

PETITION DENIED.

Thompson, P.J., and Moore, Edwards, and Hanson, JJ., concur.