Third District Court of Appeal

State of Florida

Opinion filed October 21, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-1228
Lower Tribunal No. 20-8373

Christopher Huber,
Appellant,

vs.

Amy Huber,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Ivonne Cuesta, Judge.

Bickman Law, PLLC and Joshua Bickman, for appellant.

Sandy T. Fox, P.A. and Sandy T. Fox, for appellee.

Before HENDON, MILLER and LOBREE, JJ.

LOBREE, J.

Christopher Huber (the "husband") appeals from the lower court's order transferring venue of this dissolution proceeding to Pinellas County, where Amy

Huber (the "wife") currently resides. We reverse.

The petition for dissolution alleged that the husband and wife separately resided in Miami-Dade County at the time of filing. The wife moved to transfer venue to Pinellas County, submitting an affidavit stating that she did not reside in Miami-Dade County and that the marriage was last intact in Broward County. She argued that venue should be in the county where she resides, pursuant to section 47.011, Florida Statutes (2019). The husband filed no document in opposition. The wife noticed the motion for hearing to be attended by remote, electronic conference. The day of the hearing, while the parties remotely waited for it to begin, the trial court issued a written order granting the motion without conducting any hearing. The trial court found that Broward County was where the marriage was last intact but concluded that the wife had the right to have venue transferred to the county where she resides.

The husband unsuccessfully moved for rehearing, arguing that the trial court erred in failing to conduct an evidentiary hearing and in concluding that Pinellas County was the proper venue. He conceded that Miami-Dade County was an improper venue, that Broward County was where the marriage was last intact, requested transfer of venue there, and argued that this result was not changed by section 47.011. On appeal, the husband does not challenge the trial court's finding

that Broward County is where the marriage was last intact. Instead, both parties stipulate to its correctness.

The Trial Court's Failure to Conduct an Evidentiary Hearing

The husband's due process argument against the trial court's grant of the wife's motion to transfer venue without an evidentiary hearing is without merit. The husband's verified petition alleged that the wife resided in Miami-Dade County, making a prima facie showing of jurisdiction. The wife's motion and affidavit seeking transfer of venue alleged that she resided in Pinellas County. At that point, the burden shifted back to the husband to file with the court an affidavit sufficient to create a factual dispute. See Morgan v. Morgan, 679 So. 2d 342, 346 (Fla. 2d DCA 1996). Short of the husband's satisfaction of this burden, an evidentiary hearing was not required. Id. ("Since no disputed issue of fact was created, it was not necessary to have an evidentiary hearing, and the court erred by not granting Sergeant Morgan's motion contesting the court's jurisdiction to increase child support."). Accordingly, the trial court did not err in failing to conduct a hearing.[1]

[1] Even if the hearing had been required, the trial court's error in failing to conduct it would have been harmless under these facts. As explained further below, the dispositive factual issue was stipulated to by both parties as neither challenged the trial court's finding that Broward County was where the marriage was last intact.

The Trial Court's Order Transferring Venue Was Erroneous

We review a lower court's order on a motion to transfer or dismiss for improper venue for abuse of discretion. See Dlin v. Dlin, 283 So. 3d 985, 986 (Fla. 3d DCA 2019). However, where there are no material facts in dispute and proper venue turns on a question of law, we review such an order de novo. See Dive Bimini, Inc. v. Roberts, 745 So. 2d 482, 483-84 (Fla. 1st DCA 1999).

In Florida, "[t]o protect the beneficial purposes of both the marriage dissolution legislation *and* the venue statute, we are required to look, not for the county or the scattered counties where the breach may be said to have occurred, but to the single county where the marriage last existed." Carroll v. Carroll, 341 So. 2d 771, 772 (Fla. 1977) (emphasis added). "Ordinarily the court will recognize that county naturally, as do the parties themselves, and *the venue problem will be no more difficult than finding where the marriage partners called home*." Id. (emphasis added). Here, the trial court found—and the parties stipulate—that Broward County is where the marriage was last intact. As such, given that the wife sufficiently alleged that she was not a resident of Miami-Dade County, which the husband failed to rebut, and that it was undisputed where the marriage was last intact, the trial court should have transferred the matter to Broward, rather than Pinellas County. See Dlin, 283 So. 3d at 987 (reversing order denying motion to dismiss and ordering transfer of venue to county where marriage was last intact).

The wife denies any error because, under section 47.011, her county of residence is a *permissible* venue. Section 47.011 reads:

> **Where actions may be begun.** — Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located. This section shall not apply to actions against nonresidents.

In addressing the clear mandate from Carroll that, in this context, the place where the action accrues (i.e., the county where the marriage was last intact) takes priority over the county where she resides, she asks us to create an exception in cases where, as here, neither party continues to reside where the marriage was last intact.[2]

The First District Court of Appeal long ago explained:

> Generally, the defendant's privilege of venue permits him to object to an action being maintained in a county other than the one where he resides, where the cause of action accrued, or where the property and litigation is located. If he is sued in one of these three places, he may not object on the ground of 'improper venue.' *However, in a dissolution of marriage action, the trial court is to look to the single county where 'the intact marriage was last evidenced by a continuing union of partners who intended to remain and to remain married, indefinitely if not permanently.'*

[2] The wife's reliance on Vinsand v. Vinsand, 179 So. 3d 366, 368 (Fla. 2d DCA 2015), is unavailing. There, the court held that venue was proper in the county where the respondent resided only because it was undisputed that the cause of action did not accrue in Florida, as the marriage was last intact out of state.

Crawford v. Crawford, 415 So. 2d 870, 870 (Fla. 1st DCA 1982) (emphasis added) (citations omitted); see also Goedmakers v. Goedmakers, 520 So. 2d 575, 578 (Fla. 1988) ("There can be no doubt that this is the correct construction and application of section 47.011."). Confronted with an identical argument, the First District recently held:

> [T]he trial court did not err in rejecting the former wife's venue argument. Before the final hearing, the former wife alleged that she and her children lived in St. Lucie County and that the former husband did not live in Bradford County. *But the fact that neither of the parties resided in Bradford County was not, in itself, a basis to rule that venue was improper there*. In a dissolution of marriage action, venue lies with "the single county where the intact marriage was last evidenced by a continuing union of partners who intended to remain and to remain married, indefinitely if not permanently."

Knapp v. Knapp, 266 So. 3d 224, 225-26 (Fla. 1st DCA 2019) (emphasis added) (footnote omitted). Accordingly, the trial court's application of Carroll and its reading of section 47.011 were erroneous as a matter of law. As the husband's petition was filed in the improper venue, we reverse and remand with directions that the lower court transfer the case to Broward County, Florida. See Dlin, 283 So. 3d at 987.

Reversed and remanded with directions.