

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2021 CA 0432

SHEENA LEWIS

VERSUS

REGINALD C. MARCOTTE

JUDGMENT RENDERED: DEC 22 2021

Appealed from
The Twenty-First Judicial District Court
Parish of Tangipahoa • State of Louisiana
Docket Number 2020-0001875 • Division J

The Honorable Jeffrey Cashe, Presiding Judge

Emily Jones
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COUNSEL FOR APPELLANT
PLAINTIFF—Sheena Lewis

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COUNSEL FOR APPELLEE
DEFENDANT—Reginald
Marcotte

BEFORE: MCCLENDON, WELCH, AND THERIOT, JJ.

JEW
PMC by JEW
mt.

WELCH, J.

In this custody proceeding between the parents of a minor child that originated in Jefferson Parish, the plaintiff, Sheena Lewis, appeals a judgment sustaining an objection to venue in Tangipahoa Parish and dismissing, without prejudice, her suit seeking a modification of custody. We amend the judgment to order that Ms. Lewis's suit be transferred to Jefferson Parish and, as amended, affirm the judgment.

On July 21, 2020, Ms. Lewis filed a petition in the 21st Judicial District Court for the Parish of Tangipahoa, Louisiana, seeking to make several child custody judgments rendered in the proceedings entitled "Reginald C. Marcotte v. Sheena Lewis," number 732,754 on the docket of the 24th Judicial District Court for the Parish of Jefferson, Louisiana, executory in Tangipahoa Parish, where she was a resident.¹ The Jefferson Parish judgments that Ms. Lewis sought to make executory were dated May 9, 2014, August 7, 2015, September 16, 2016, and June 20, 2019.

The May 9, 2014 judgment was a considered decree, and it awarded the parties joint custody of their minor child, designated Ms. Lewis as the child's domiciliary parent, and allocated Mr. Marcotte physical custodial periods² with the child every other weekend from Friday through Sunday and every Wednesday until Thursday morning. By consent of the parties, the May 9, 2014 judgment was

¹ Ms. Lewis sought to make the judgments executory pursuant to La. C.C.P. art. 2541 and La. R.S. 13:4241, *et seq.* However, we note that by its terms, La. C.C.P. art. 2541 and La. R.S. 13:4241, *et seq.* provide for the recognition and execution of foreign judgments in Louisiana courts-not judgments from other parishes within Louisiana. The procedure for making judgments of Louisiana courts executory in another parish are set forth in La. C.C.P. arts. 2781, *et seq.* and the procedure for making support orders executory for enforcement and/or modification in another parish are set forth in La. C.C.P. arts. 2785, *et seq.*

² The Jefferson Parish judgments provided that the parties were awarded joint custody of their minor child; however, the judgments use the term "visitation" with reference to Mr. Marcotte's physical custodial time. "Visitation," as provided for in La. C.C. art. 136, applies only when a parent does not have custody or joint custody. The time that parents with joint legal custody share with their children is more properly described as physical custody allocation of a joint custody plan, rather than as visitation. La. R.S. 9:335; **Cedotal v. Cedotal**, 2005-1524 (La. App. 1st Cir. 11/4/05), 927 So.2d 433, 436; *see* **Evans v. Lungrin**, 97-0541 (La. 2/6/98), 708 So.2d 731, 737.

modified by the August 7, 2015 judgment, which extended Mr. Marcotte's physical custodial time every other weekend from Sunday to Monday morning. Again by consent of the parties, the August 7, 2015 judgment was modified by the September 16, 2016 judgment to provide that the parties would share physical custody on an equal or 50/50 basis, *i.e.* Mr. Marcotte would have physical custody every Wednesday and Thursday, plus every other weekend from Friday morning or after school through Monday morning at 8 a.m. or to school that Monday morning. The June 20, 2019 judgment was a considered decree, and it provided that the minor child would remain in school at St. Rosalie, a Catholic School located in Harvey (Jefferson Parish), Louisiana.

In Ms. Lewis's petition, she also sought a modification of the custodial arrangements set forth in the Jefferson Parish judgments. More specifically, she claimed that the current schedule was no longer in the child's best interest, was disruptive to the child's routine, and required a lot of travel time. Therefore, Ms. Lewis sought to decrease Mr. Marcotte's physical custodial time from 50/50 to every other weekend, plus specific holidays and time during the summer. She also sought an order allowing the child to attend school in Tangipahoa Parish rather than Jefferson Parish.

In response to Ms. Lewis's petition, Mr. Marcotte filed a declinatory exception raising the objection of improper venue and an objection to the transfer of venue, a peremptory exception raising the objections of *res judicata* and no cause of action, and a motion for sanctions. With respect to venue and *res judicata*, Mr. Marcotte, alleged that the custody matter had been pending on the docket of the 24th Judicial District Court and that the issues raised by Ms. Lewis's new petition had been litigated a year ago in Jefferson Parish, resulting in the June 20, 2019 judgment. Mr. Marcotte further asserted that the proper procedure for the transfer of venue from Jefferson Parish to Tangipahoa Parish was pursuant to La.

C.C.P. art. 123, that Ms. Lewis had failed to comply with those provisions, and that he objected to any change in venue from Jefferson Parish to Tangipahoa Parish. With respect to no cause of action, Mr. Marcotte contended that Ms. Lewis failed to allege facts warranting a modification of custody under the applicable burden of proof. Lastly, with respect to sanctions, Mr. Marcotte alleged that Ms. Lewis was forum shopping and that she had urged this action without any cause or basis, as she had just been denied the relief she sought a year ago in the original court of proper venue. Therefore, Mr. Marcotte sought sanctions from her and the assessment of court costs and attorney fees.

After a hearing, the trial court rendered judgment sustaining Mr. Marcotte's objections to venue and the transfer of venue. In doing so, the trial court noted that the issue of the child's school had just been litigated in Jefferson Parish, resulting in the June 20, 2019 judgment and that the parties' living arrangements had not changed since that litigation and resulting judgment, in that Mr. Marcotte was still residing in Jefferson Parish and that Ms. Lewis had been residing in Tangipahoa Parish at the time of that judgment. The trial court also noted that the trial judge in the Jefferson Parish proceedings was already familiar with the parties and their custodial arrangement. Therefore, the trial court found that the issues raised in Ms. Lewis's petition "need[ed] to go back to the place ... they initially sued," *i.e.* Jefferson Parish. A judgment in accordance with the trial court's ruling, which also dismissed Ms. Lewis's suit without prejudice, was signed on December 1, 2020.³ From this judgment, Ms. Lewis has appealed, arguing that the trial court erred in sustaining Mr. Marcotte's objections to venue and in dismissing her suit without prejudice because Tangipahoa Parish is a parish of proper venue under La.

³ The trial court's judgment does not address Mr. Marcotte's objections of *res judicata* and no cause of action or his motion for sanctions. Generally, silence in a judgment of the trial court as to any issue, claim, or demand placed before the court is deemed a rejection of the claim and the relief sought is presumed to be denied. **Schoolhouse, Inc. v. Fanguy**, 2010-2238 (La. App. 1 Cir. 6/10/11), 69 So.3d 658, 664.

C.C.P. art. 74.2.

Louisiana Code of Civil Procedure article 74.2 provides, in pertinent part, as follows:

B. A proceeding for change of custody may be brought in the parish where the person awarded custody is domiciled or in the parish where the custody decree was rendered. If the person awarded custody is no longer domiciled in the state, the proceeding for change of custody may be brought in the parish where the person seeking a change of custody is domiciled or in the parish where the custody decree was rendered.

* * *

E. For the convenience of the parties and the witnesses and in the interest of justice, a court, upon contradictory motion or upon its own motion after notice and hearing, may transfer the custody or support proceeding to another court where the proceeding might have been brought.

Thus, under La. C.C.P. art. 74.2(B), a proceeding for change of custody may be brought in the parish where the person awarded custody is domiciled or in the parish where the custody decree was rendered. Comment (c) of the 1983 comments to this article provides: "Venue for a proceeding for change of custody would be the parish where the person awarded custody is domiciled or where the original decree was rendered because both courts would be familiar with the circumstances of the case and could rule in the best interest of the minor." When there is joint custody, the "parish where the person awarded custody is domiciled" means the parish where the domiciliary parent is domiciled. See St. Amant v. St. Amant, 564 So.2d 1312, 1315 (La. App. 1st Cir.), writ denied, 567 So.2d 622 (La. 1990).

At the time Ms. Lewis filed her petition to make the judgments executory and to modify custody, there had been several custody decrees rendered in Jefferson Parish. In addition, the parties had joint custody of the child, and Ms. Lewis, who was domiciled in Tangipahoa Parish, was designated as the child's

domiciliary parent. Thus, a plain reading of La. C.C.P. art. 74.2(B) indicates that, under the facts of this case, venue for a modification of custody would be proper in either Jefferson Parish or Tangipahoa Parish.

Notably, however, La. C.C.P. art. 74.2(E) provides a defendant with a procedure to challenge a venue that may be appropriate under that article. In evaluating such a challenge, the district court has great discretion to decide which of the proper venues is more appropriate when considering the convenience of the parties and the witnesses and the interest of justice. **Pinegar v. Harris**, 2006-2489 (La. App. 1st Cir. 5/4/07), 961 So. 2d 1246, 1251; see **Edwards v. Edwards**, 99-0994 (La. App. 3rd Cir. 12/22/99), 755 So.2d 331, 335; **Addington v. McGehee**, 29,729 (La. App. 2nd Cir. 8/20/97), 698 So.2d 702, 705. When exercising its discretion under La. C.C.P. art. 74.2(E), the court always should be mindful of whether it has access to the relevant information pertinent to a determination of the overriding concern in all child custody disputes—the best interest of the child. **Pinegar**, 961 So.2d at 1251; see **Addington**, 698 So.2d at 705.

Based on our review of the record, we find no abuse of the trial court's discretion in its determination that, pursuant to La. C.C.P. art. 74.2(E), Jefferson Parish was the more appropriate venue to hear Ms. Lewis's petition seeking a modification of custody. Although Ms. Lewis resides in Tangipahoa Parish and is the domiciliary parent of the child, the parties share physical custody of the child on a 50/50 basis, the child attends school in Jefferson Parish, and Mr. Marcotte is domiciled in Jefferson Parish. The court in Jefferson Parish has presided over the custody proceedings between the parties since inception, has rendered a considered decree on the issue of custody, has approved several consent judgments pertaining to custody, and has held a trial on the issue of where the child should attend school less than a year prior to Ms. Lewis filing the instant petition raising the same issue. Thus, we cannot say that the trial court's conclusion that this matter should be

heard in Jefferson Parish, where the court is familiar with the circumstances of the case and has better access to information relevant to the determination of the child's best interest, was an abuse of its discretion. See Labostrie v. Labostrie, 605 So.2d 187 (La.1992) (*per curiam*); **Addington**, 698 So.2d at 705.

While we find no abuse of the trial court's discretion with respect to its determination that, under La. C.C.P. art. 74.2(E), Jefferson Parish was the more appropriate venue for the relief sought by Ms. Lewis, we note that inherent in such determination is that an order be issued for the actual transfer to that more appropriate venue or court. See La. C.C.P. art. 74.2(E); **Labostrie**, 605 So.2d at 187. Herein, while the trial court stated in its oral reasons for judgment that the matter "need[ed] to go back to the place that ...they initially sued," *i.e.* transferred to Jefferson Parish, the judgment signed by the trial court only sustained Mr. Marcotte's objections to venue—it did not actually transfer the proceeding back to Jefferson Parish. Therefore, we amend the trial court's judgment to order that this matter—Ms. Lewis's petition for modification of custody—be transferred to the 24th Judicial District Court for the Parish of Jefferson. As amended, the December 1, 2020 judgment of the trial court is affirmed.

All costs of this appeal are assessed to the plaintiff/appellant, Sheena Lewis. This memorandum opinion is issued in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

AMENDED AND AFFIRMED AS AMENDED.