

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

KATHY JO EDDY,

Plaintiff-Appellant,

v.

CHARLES C. EDDY JR.,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 19 MA 0094

Civil Appeal from the
Court of Common Pleas, Domestic Division of Mahoning County, Ohio
Case No. 2019 DR 272

BEFORE:

Carol Ann Robb, Cheryl L. Waite, Judges and Judge Timothy P. Cannon, Judge of
the Eleventh District Court of Appeals, Sitting by Assignment.

JUDGMENT:

Reversed and Remanded.

Atty. Suzanne M. Jambe, Atty. James A. Loeb, Atty. Melissa L. Hansford, Baker Hostesler, LLP, Key Tower, 127 Public Square, Suite 2000, Cleveland, Ohio 44114, for Plaintiff-Appellant and

Atty. James L. Messenger, Atty. J. Michael Thompson, Henderson, Covington, Messenger, Newman & Thomas Co., L.P.A., 6 Federal Plaza Central, Suite 1300, Youngstown, Ohio 44503, for Defendant-Appellee.

Dated: September 28, 2020

Robb, J.

{¶1} Plaintiff-Appellant Kathy Jo Eddy (Wife) appeals the decision of Mahoning County Common Pleas Court, Domestic Division, dismissing her complaint for divorce. The trial court dismissed the complaint because Defendant-Appellee Charles C. Eddy, Jr. (Husband) had previously filed a divorce action in Florida prior to Appellant filing it in Ohio. The controlling issue in this case is whether the trial court dismissed the case based on the jurisdictional priority doctrine or the doctrine of forum non conveniens. Due to the recent determination by the Florida court that it has no personal jurisdiction over Wife, the trial court's dismissal of the action is reversed and the matter is remanded for further proceedings.

Statement of the Facts and Case

{¶2} Husband and Wife married in August 1980. At the time the divorce complaint was filed in Ohio in 2019, only one of their children was a minor. 6/3/19 Complaint for Divorce; 7/22/19 Amended Complaint for Divorce. This child was born in 2001.

{¶3} The parties separated in 2016 and entered into a Cooperative Participation Agreement that was signed and executed in September 2016. This was an agreement to arbitrate the termination of their marriage. The agreement indicated that only the allocation of parental rights was to be determined by the court. It also stated that the parties submit to the jurisdiction of the Mahoning County Court of Common Pleas, Domestic Relations Division for purposes of arbitration. 9/12/16 Cooperative Participation Agreement.

{¶4} The parties utilized the Cooperative Participation Agreement for two years even though the agreement indicated the matter would try to be resolved in 90 days. The filings in the record indicate arbitration was utilized for spousal and child support. In 2016, the arbitrator set the combined spousal and child support at \$18,000 per month. 8/1/18

Arbitrator Order attached to 6/3/19 Wife's Motion to Confirm Arbitrator's Order. This was based on income and expenses. 8/1/18 Arbitrator Order attached to 6/3/19 Wife's Motion to Confirm Arbitrator's Order. As Husband's income deteriorated, the amount was reduced to \$12,000 per month effective December 1, 2017. 8/1/18 Arbitrator Order attached to 6/3/19 Wife's Motion to Confirm Arbitrator's Order. Appellee then filed a motion to reduce the amount to \$7,500 and then in July 2018 he filed another motion to reduce the amount to \$3,000 per month. 8/1/18 Arbitrator Order attached to 6/3/19 Wife's Motion to Confirm Arbitrator's Order. The arbitrator decreased the amount to \$7,000 per month in August 2018. 8/1/18 Arbitrator Order attached to 6/3/19 Wife's Motion to Confirm Arbitrator's Order.

{¶15} In March 2019, Husband filed a motion for dissolution of marriage in Florida. Prior to the filing, he filed for bankruptcy. At the time of that filing for dissolution, the parties' owned real property in Florida which consisted of two condominiums in Orlando, Florida and a house in Naples, Florida where Husband was residing full time.

{¶16} The month after filing for a dissolution of marriage, Husband sent Wife's attorneys and the arbitrator a letter stating he was withdrawing from and formally terminating the Cooperative Participation Agreement. 7/23/19 Husband's Motion to Vacate All Arbitration Proceedings, April 16, 2019 Letter attached. That letter was sent again in May 2019. 7/23/19 Husband's Motion to Vacate All Arbitration Proceedings, May 9, 2019 Letter attached.

{¶17} Thereafter in June 2019, Wife filed a complaint for divorce in Ohio. In the complaint for divorce, Appellant asked for the court to refer the matter back to arbitration and to grant her full custody of the minor child. Wife indicated Husband had failed to pay spousal or child support for five months. 6/3/18 Wife's Motion for Referral from Arbitration.

{¶18} Husband filed a motion to dismiss stating the divorce action was filed in two jurisdictions and asked the Mahoning County Court of Common Pleas, Domestic Relations Division, to dismiss the action based on the doctrine of forum non conveniens. 7/8/19 Husband Motion to Dismiss.

{¶19} Wife filed a motion in opposition to Husband's motion to dismiss claiming among other arguments that Florida and Ohio do not have concurrent jurisdiction, so the

doctrine of forum non conveniens does not apply. 7/22/19 Wife Brief in Opposition to Motion to Dismiss.

{¶10} Husband then filed a motion to vacate all arbitration proceedings. 7/23/19 Husband's Motion. Wife filed a brief in opposition to that motion. 8/6/19 Wife's motion.

{¶11} The trial court held a hearing on July 24, 2019. Both Husband and Wife testified. Following the hearing, the trial court granted Husband's motion to dismiss:

There is no question that the Florida divorce case and the Ohio divorce action involves identical parties and identical cases. It is the Court's opinion that Plaintiff deliberately filed this duplicative action with full knowledge that a virtually identical action is pending in Florida. Under the general principle that the Court whose power is invoked first acquires jurisdiction. Defendant's motion to dismiss Plaintiff's Complaint for divorce in Ohio is granted.

8/6/19 J.E.

{¶12} In making this ruling, the trial court acknowledged the many motions filed by the parties, but determined it would rule on the motion to dismiss before all other motions. 8/6/19 J.E.

{¶13} Wife timely appealed the trial court's decision. 8/30/19 Notice of Appeal. We will address the assignments of error out of order as the second assignment of error addresses the priority of the decision to dismiss.

Second Assignment of Error

"The trial court erred in dismissing Appellant's Complaint based on the jurisdictional priority doctrine."

{¶14} The trial court granted Husband's motion to dismiss based on "the general principle that the Court whose power is invoked first acquires jurisdiction." 8/6/19 J.E.

{¶15} The arguments asserted by both parties raise the issue of what was the basis of the trial court's dismissal. Wife contends this indicates the trial court was invoking the jurisdictional priority doctrine and that doctrine does not apply between courts of different states. Husband counters arguing the trial court did not dismiss the action based

on the jurisdictional priority doctrine, but rather on the doctrine of forum non conveniens. He further asserts the trial court did not abuse its discretion in dismissing the action on that basis.

{¶16} “The jurisdictional-priority rule provides that as between state courts of concurrent jurisdiction, the tribunal whose power is first invoked acquires exclusive jurisdiction to adjudicate the whole issue and settle the rights of the parties.” *State ex rel. Vanni v. McMonagle*, 137 Ohio St.3d 568, 2013-Ohio-5187, ¶ 4. See also *State ex rel. Phillips v. Polcar*, 50 Ohio St.2d 279, 364 N.E.2d 33 (1977), syllabus; *Priconics, LLC v. Amperor, Inc.*, 12th Dist. Warren No. CA2017-07-099, 2018-Ohio-551, ¶ 9; *Zhao v. Zeng*, 1st Dist. Hamilton No. C-020131, 2003-Ohio-3060, ¶ 13-14. The court whose powers are first invoked through the initiation of an appropriate legal action acquires jurisdiction to the exclusion of all other courts. *Zhao* at ¶ 13. The jurisdictional-priority rule does not apply to actions pending in another state. *Priconics* at ¶ 10.

{¶17} The doctrine of forum non conveniens applies to actions pending in another state and under that doctrine an Ohio court “may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute.” *Chambers v. Merrell-Dow Pharmaceuticals, Inc.*, 35 Ohio St.3d 123, 126, 519 N.E.2d 370 (1988). The doctrine assumes proper jurisdiction lies in the court the plaintiff has chosen, but that there is also another forum (outside of Ohio) in which the defendant may be sued. *Id.* A court is permitted to dismiss an action to “further the ends of justice and to promote the convenience of the parties, even though jurisdiction and venue are proper in the court chosen by the plaintiff.” *Calvary Industries, Inc. v. Coral Chem. Co.*, 12th Dist. Butler No. CA2016-12-233, 2017-Ohio-7279, ¶ 16, citing *Chambers* at 125.

{¶18} When faced with a situation where a prior case is pending in another state, the court has three options: “(1) it can grant a stay in the Ohio proceedings pending the resolution of the earlier action outside of Ohio, (2) it can go forward with the action in Ohio, or (3) it can dismiss the case under the doctrine of forum non conveniens.” *Calvary Industries, Inc.* at ¶ 19, citing *In re Estate of Rush*, 12th Dist. Warren No. CA2013-10-103, 2014-Ohio-3293, ¶ 34, quoting *Walp v. Walp*, 3d Dist. Auglaize No. 2-05-10, 2005-Ohio-4181, ¶ 11.

{¶19} The determination of whether dismissal on the basis of the doctrine of forum non conveniens is proper requires consideration of the facts of each case, balancing the private interest of the litigant and the public interest involving the courts and citizens of the forum state. *Calvary Industries, Inc.* at ¶ 20, citing *Chambers*, 35 Ohio St.3d at 126-128. “Important private interests include (1) the relative ease of access to sources of proof, (2) availability of compulsory process for attendance of unwilling witnesses, (3) the cost of obtaining attendance of unwilling witnesses, (4) the possibility of a view of the premises, if appropriate, and (5) all other practical problems that make trial of a case easy, expeditious, and inexpensive.” *Calvary* citing *Chambers*. “Important public interests include (1) the administrative difficulties and delay to other litigants caused by congested court calendars, (2) the imposition of jury duty upon the citizens of a community that has very little relation to the litigation, (3) a local interest in having localized controversies decided at home, and (4) the appropriateness of litigating a case in a forum familiar with the applicable law.” *Calvary* citing *Chambers*.

{¶20} Considering the definitions of the two doctrines, the jurisdictional priority doctrine is not applicable in the case before us because it only applies to intrastate concurrent jurisdiction issues. Thus, the doctrine available to the trial court in deciding the motion to dismiss was forum non conveniens. However, we do not have to determine whether the language of the trial court used in the dismissal entry indicates it was applying the forum non conveniens. On July 8, 2020 Wife filed a notice of supplement to the record and attached the June 25, 2020 decision from the Florida Court presiding over dissolution action filed by Husband in Florida. In that decision the Florida Court determined it does not have personal jurisdiction over Wife. While there is in rem jurisdiction in Florida, there is no personal jurisdiction over Wife. Consequently, the decision to dismiss the action because it was first filed in Florida is reversed and the matter is remanded to the trial court for proceedings in Ohio.

{¶21} The second assignment of error has merit.

First Assignment of Error

“The trial court erred in not confirming the Arbitrator’s orders and failing to refer the matter back to arbitration thus effectively vacating the Ohio Arbitration awards and proceedings.”

{¶22} Wife argues the trial court erred in failing to confirm the arbitrator's order and in failing to refer the matter back to the arbitration. She contends the trial court's ruling effectively terminated arbitration and such decision was incorrect because arbitration cannot be unilaterally terminated.

{¶23} Husband argues the issue raised in this assignment of error is not ripe for review, the arbitration agreement is unenforceable, and Wife waived the right to arbitrate by filing motions in the Florida case without asking to stay the Florida proceedings.

{¶24} As this court is reversing and remanding on the second assignment of error, this assignment of error is moot. The trial court's dismissal of the action was not a ruling on arbitration. Rather, the trial court dismissed the action because it was first filed in Florida. Our reversal of the dismissal order and remanding the case for further proceedings will require that the issues of arbitration be considered by the trial court. Thus, this assignment of error is moot by this court's resolution of the second assignment of error.

Third Assignment of Error

"The trial court abused its discretion in holding that Appellee has been a resident of Florida since 2016."

{¶25} In the judgment entry, the trial court stated, "Defendant, likewise has been a resident of the State of Ohio until sometime in the year 2016 when he moved to Florida." 8/6/19 J.E. Wife argues this is an incorrect statement and that Husband's testimony indicated he did not become a full-time resident of Florida until September of 2018.

{¶26} A trial court's findings of fact must be given due deference if supported by competent, credible evidence. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶8; *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). We agree the record does not support the factual finding made with regard to residency.

{¶27} Husband testified at the hearing that he began residing in Florida full-time in September 2018. Tr. 15. He stated he started residing in Florida part-time in July 2016. Tr. 15. It has been explained that residence and domicile are different and while a person may have two residences, he can only have one domicile. *State v. Beech*, 9th Dist. Summit No. 29036, 2019-Ohio-120, ¶ 9. The Ninth Appellate District explained:

Black's Law Dictionary defines "residence" as "1. [t]he act or fact of living in a given place for some time * * * 2. [t]he place where one actually lives, as distinguished from a domicile[.]" Black's Law Dictionary (10th ed.2014). It also provides that "residence" usually "just means bodily presence as an inhabitant in a given place" whereas domicile usually "requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile." *Id.*

Id.

{¶28} Given the trial court's statement and the law, it is unclear to this court whether the trial court was making a finding of residence or domicile. That uncertainty in conjunction with our resolution of the second assignment of error requires the finding to be vacated. This assignment of error has merit.

Conclusion

{¶29} The second and third assignments of error have merit. Resolution of the second assignment of error renders the first assignment of error moot. The trial court's dismissal of the Ohio action is reversed and the matter is remanded to proceed in Ohio. Upon remand, arbitration arguments will be ripe for the trial court to decide. The trial court's residence/domicile finding is vacated.

Waite, P.J., concurs.

Cannon, J., concurs.

For the reasons stated in the Opinion rendered herein, it is the final judgment and order of this Court that the trial court's dismissal of the Ohio action is reversed. We hereby remand this matter to proceed in Ohio. Upon remand, arbitration arguments will be ripe for the trial court to decide. The trial court's residence/domicile finding is vacated. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.