

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

LAURA K. ROSSI ET AL.,

Plaintiffs-Appellees,

v.

MICHAEL T. ROSSI ET AL.,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0086

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2018 CV 1855

BEFORE:

Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed

Atty. Joshua Cohen, Cohen Rosenthal & Kramer, LLP, One Clinton Place, 3208 Clinton Avenue, Cleveland, Ohio 44113, and *Atty. Joshua Fuchs*, The Fuchs Firm, LLC, 14717 South Woodland Road, Cleveland, Ohio 44120, for Plaintiffs-Appellees, and

Atty. Douglas Ross, Daniel Daniluk, LLC, 1129 Niles-Cortland Road, S.E., Warren, Ohio 44484, for Defendant-Appellant.

Dated:
June 22, 2021

Donofrio, J.

{¶1} Defendant-appellant, Michael T. Rossi (Michael), appeals from a Mahoning County Common Pleas Court judgment denying his motion to dismiss the amended complaint of his ex-wife, appellee Laura K. Rossi (Laura), based on the jurisdictional priority of the Mahoning County Domestic Relations Court.

{¶2} Laura and Michael married in 1986 and divorced in December 2014 in the Mahoning County Domestic Relations Court (domestic relations court). During the marriage, they jointly owned Medallion, a closely-held company engaged in varying aspects of insurance. As part of the divorce settlement, Michael and Medallion agreed to redeem Laura's 50 shares of stock in Medallion and pay her on or before 5 years from the initial payment to Laura. The Stock Redemption Agreement (Agreement) indicated that Laura owned 50 shares of Medallion common stock which was 50% of its total shares. The Agreement provided that Laura would be paid \$1 million when the separation agreement was executed and she would relinquish 20 shares of stock. The Agreement further provided that Laura would be paid the remaining \$1.5 million in \$300,000 installments over 5 years, and Laura would place her remaining 30 shares of stock in escrow and release 6 shares each year that she received an installment payment. A promissory note was executed and Michael executed a personal guaranty (Guaranty) of Medallion's obligation to pay Laura. The Guaranty provided that if an installment payment was not made, the entire remaining amount would come due immediately.

{¶3} The separation agreement further provided that:

Article 16. WAIVER OF SPOUSAL SUPPORT AND WAIVER OF THE COURT MAINTAINING CONTINUING JURISDICTION SUBJECT TO FAILURE OF HUSBAND TO PAY ANY OBLIGATION ASSUMED BY HUSBAND THEREIN THEREBY ALLOWING WIFE TO PETITION THE COURT FOR SPOUSAL SUPPORT AND THEREBY GRANTING TO THE COURT JURISDICTION TO HEAR

THE SPOUSAL SUPPORT ARGUMENTS OF WIFE AT WIFE'S OPTION.

{¶4} Article 16 also provided that Laura and Michael agreed that spousal support was not warranted and was waived. However, it also stated that:

The Court shall not maintain continuing jurisdiction over the issue of spousal support except if HUSBAND fails to pay any of the obligation required pursuant to this Separation Agreement, Wife, at her option, is permitted to file for spousal support, attorney's fees, and litigation support fees to cause this court to exercise the jurisdiction to determine an amount of spousal support and the terms thereof to be paid by Husband. Wife is not bound by the above as her only option to enforce the obligations of Husband. Specifically, the Court granting the divorce to Husband and Wife shall retain jurisdiction to determine the amount and term of Spousal Support to be paid by Husband in the event of non-compliance by Husband relating to any financial obligation required of Husband for the benefit of the Wife in this Separation Agreement or documents executed for the purpose of carrying out any specific term of any obligation of Husband.

Exhibit A to appellant's motion to dismiss.

{¶5} On July 9, 2018, Laura filed a complaint in the Mahoning County Common Pleas General Division (trial court) against Michael, Medallion, and Advisors Equity Group, LLC (Advisors). She thereafter filed an amended complaint asserting breach of contract and fiduciary duty, usurpation of corporate opportunities, and minority shareholder derivative claims on behalf of Medallion. She alleged that Medallion paid her \$300,000 in December 2015, but failed to make any payment in the following years. She averred that pursuant to the Guaranty, Michael was liable for the full amount owed her upon default in payment. She also alleged that Michael breached his heightened fiduciary duty of good faith to her as a minority shareholder by his operation of Medallion. She further alleged that Michael usurped Medallion's lucrative business arrangement with another company by transferring it to Advisors, a company created primarily to take over

that business. Laura later voluntarily dismissed her claim against Advisors, leaving Michael and Medallion remaining as defendants.

{¶6} After discovery began, Michael and Medallion filed motions to dismiss Laura's amended complaint in the trial court pursuant to Civ. R. 12(B)(1), asserting that domestic relations court had jurisdictional priority. They contended that Laura's claims in the trial court arose from the divorce case, which was litigated and concluded by final judgment entry and order in domestic relations court in 2014 in Case No. 2014 DR 76. Michael and Medallion submitted that the separation agreement incorporated into the domestic relations court's judgment entry contained the terms of the transaction at issue. They further asserted that the parties were the same in both cases and the parties were subject to the domestic relations court's final judgment entry, which was the divorce decree. They also pointed out that Laura reopened the domestic relations case on September 4, 2019 and filed a motion to show cause/for determination, with a request for an award of spousal support and other relief, which was the same payment of money that she was seeking in the trial court.

{¶7} The trial court overruled the motions to dismiss, finding that the jurisdictional-priority rule did not apply. It held that in the domestic relations case, Laura was seeking an order finding Michael in contempt of the divorce decree for failing to make timely payments for stock redemption as outlined in the separation agreement. The court reasoned that this would trigger a spousal support award upon default and would not require payments for the stock redemption. The trial court further held that Laura was seeking a money judgment for breach of the agreement and the Guaranty in the trial court, which were remedies not available in domestic relations court. The court held that remedies from domestic relations court were separate from those before it and Laura could avail herself of multiple, but different, remedies under the law.

{¶8} Laura filed a motion for partial summary judgment on her breach of contract claims in the trial court. She asserted that no genuine issue of material fact existed that Michael and Medallion agreed to pay her \$2.5 million in exchange for her Medallion stock, they had not paid the full amount, Michael had personally guaranteed the obligation, and he failed to make up the unpaid \$1.2 million. The trial court held a hearing and granted Laura's motion, awarding her \$1.2 million against Michael and Medallion, jointly and

severally. The parties consented to an agreed judgment entry and Laura withdrew her remaining claims. The agreed judgment entry became a final appealable order.

{¶9} Michael filed a motion for relief from judgment under Civ. R. 60(B)(5) in the trial court. He pointed out that the domestic relations court magistrate granted Laura’s motion to show cause in that case and found Michael and Medallion in contempt for failing to pay the property division payment of \$1.2 million as set forth in the divorce decree. He indicated that one of the sanctions was that the magistrate sentenced him to 30 days in jail, stayed upon Michael and Medallion paying Laura \$5,500 a month in spousal support until the property division was paid in full with interest. Michael argued that this decision was based on the payment to Laura of the \$1.2 million and the jurisdictional-priority rule therefore applied because the domestic relations court and the trial court had concurrent jurisdiction and the trial court’s ruling on the breach of contract produced overlapping and conflicting results with the magistrate’s decision in the domestic relations case.

{¶10} Michael also filed the instant appeal to this Court. He asserts the following sole assignment of error:

The trial court erred in denying Defendant-Appellant’s Motion to Dismiss asserting the jurisdictional priority rule.

{¶11} Michael contends that domestic relations court has jurisdictional priority over the trial court because it issued the divorce decree upon which Laura’s civil lawsuit is based and Laura’s rights derive from the divorce decree. He asserts that jurisdictional priority dictates that between courts having concurrent jurisdiction, the court that invokes its power first acquires exclusive jurisdiction to determine the entire issue and settle the rights of the parties. *State ex rel Vanni v. McMonagle*, 137 Ohio St.3d 568, 2013-Ohio-5187, 2 N.E.3d 243, ¶ 4, citing *State ex rel Dunalp v. Sarko*, 135 Ohio St.3d 171, 2013-Ohio-67, ¶ 9.

{¶12} Citing *Holmes County Board of Commissioners v. McDowell*, 169 Ohio App.3d 120, 2006-Ohio-5017, 862 N.E.2d 136, ¶ 25-26 (5th Dist.), Michael states that a two-part test determines which concurrent court should adjudicate the whole issue and which should dismiss the claims based upon a lack of subject-matter jurisdiction. The first part of the test requires that cases are pending in two different courts of concurrent

jurisdiction between substantially the same parties. *Id.* The second part of the test requires that the ruling of the court subsequently acquiring jurisdiction may affect or interfere with the resolution of the issue in the court where the suit was originally commenced. *Id.* Michael contends that when Laura filed the motion to show cause in domestic relations court, two cases were pending before courts of concurrent jurisdiction involving the same parties, as she had already begun her case before the trial court. He further asserts that Laura is seeking the same remedy in her motion to show cause as in her breach of contract action: the payment of money which arose from the divorce documents of the Agreement, promissory note, and the Guaranty. He contends that the lawsuits before both courts are part of the same whole issue, even if the causes of action and relief requested are not the same.

{¶13} Michael relies on *Buckingham v. Buckingham*, 2018-Ohio-2038, 113 N.E.3d 1093 (2d Dist.) as analogous to the instant case. While acknowledging that the appellate court did not apply the jurisdictional-priority rule in that case to affirm the trial court's decision, he relies on its dicta in which the court agreed that if concurrent jurisdiction existed, the jurisdictional-priority rule would favor the domestic relations court. In *Buckingham*, Nancy Buckingham sued Jay, her ex-husband, in the Greene County Common Pleas Court in 2016 for fraudulent concealment and spoliation of evidence. She alleged that he hid assets from her during their 2013 divorce case. The trial court held that the jurisdictional-priority rule required Nancy to bring the tort claims in the domestic relations court because that court had invoked its power first and Ohio domestic relations statutes specifically and exclusively vested jurisdiction in the domestic relations court.

{¶14} The Second District Court of Appeals affirmed the trial court's decision, but did not base its decision on jurisdictional priority. Rather, the court held that the domestic relations court had exclusive jurisdiction over hidden funds and property division pursuant to Ohio statutes. The court held that it was not required to address the jurisdictional-priority rule because of the exclusive statutory jurisdiction. The appellate court stated in dicta that if concurrent jurisdiction had existed, domestic relations court would have jurisdictional priority because the same parties were involved in both cases, and even though Nancy's claims were not the same in both cases, they did not have to be exactly the same as long as they were part of the same "whole issue," as the Ohio Supreme

Court had held. *Buckingham*, 2018-Ohio-2038, 113 N.E.3d 1093 (2d Dist), citing *State ex rel. Otten v. Henderson*, 129 Ohio St.3d 453, 2011-Ohio-4082, 953 N.E.2d 809, ¶ 29. The appellate court found that the Ohio domestic relations statutes made it clear that domestic relations court had jurisdictional priority over Nancy's tort claims because the claims involved assets hidden and not disclosed in the divorce which would affect the marital property division.

{¶15} Michael also asserts that the trial court erred by not dismissing Laura's case under the jurisdictional-priority rule after she moved to reopen the domestic relations case in September of 2019 with a motion to show cause. He contends that dismissal of the trial court case would not be a harsh result because Laura still had the opportunity to resolve the issue before the domestic relations court. He points out that this issue is still pending before the domestic relations court as the magistrate in domestic relations court issued a decision on June 2, 2020, before the instant appeal was perfected. The magistrate's decision found Michael and Medallion in contempt for failing to pay the \$1.2 million to Laura and ordered them to pay her \$5,500 per month as spousal support until the \$1.2 million was paid in full. Appellant contends that this is the same issue before the trial court in this case.

{¶16} Laura disagrees. Citing *State ex rel Vanni v. McMonagle*, 137 Ohio St.3d 568, 2013-Ohio-5187, ¶ 8, she asserts that the jurisdictional-priority rule requires that two cases in concurrent courts be pending and the rule does not apply if the original action has ended by the time that the second action begins. Laura contends that when her lawsuit began in the trial court in July of 2018, the domestic relations court had no claim or motion pending before it against Michael or Medallion for their failure to pay Laura what she was owed for the Medallion stock. Laura also asserts that her claims before the trial court were different from those she pursued in domestic relations court. She contends that she sued for breach of contract in the trial court and requested that the court compel Michael and Medallion to pay the principal or interest owed under the Agreement or the Guaranty, while in domestic relations court, she asked only for the remedy of contempt and spousal support due to Michael's failure to pay his obligations under the separation agreement.

{¶17} Laura also emphasizes that the Second District Court of Appeals’ discussion of the jurisdictional-priority rule in *Buckingham* is dicta. She further differentiates the instant case from *Buckingham*, submitting that she is not seeking the relief that the Ohio statutes make expressly available in divorce actions, she is not litigating an issue previously raised in domestic relations court, and she did not accuse Michael of undermining their divorce proceedings by violating his statutory obligation to pay her.

{¶18} Lastly, Laura asserts that the magistrate’s ruling on her motion for spousal support in domestic relations court does not affirm that court’s jurisdictional priority. She submits that the magistrate found Michael in contempt for failing to pay her the \$1.2 million for the stock and ordered him to pay her \$5,500 per month in spousal support until the entire obligation was paid. Laura contends that this determination has nothing to do with her actions before the trial court for breach of contract for Michael and Medallion’s failure to pay the agreed-to amount for her shares in Medallion. She also asserts that the trial court first addressed the failure to pay the full price for the stocks and had entered partial summary judgment in her favor by the time that the magistrate made the ruling in the domestic relations court case.

{¶19} This Court’s standard of review for a dismissal under Civ. R. 12(B)(1) for lack of subject matter jurisdiction is de novo. A de novo review requires that this Court independently consider the trial court’s judgment without any deference to the trial court’s determination. *In re J.R.P.*, 2018-Ohio-3938, 120 N.E.3d 83, ¶ 24 (7th Dist), citing *Matasy v. Youngstown Ohio Hosp. Co.*, 2017-Ohio-7159, 95 N.E.3d 744, ¶ 17 (7th Dist.), citing *Mayhew v. Massey*, 2017-Ohio-1016, 86 N.E.3d 758, ¶ 12 (7th Dist.).

{¶20} The jurisdictional-priority rule states 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.” *Eddy v. Eddy*, 7th Dist. Mahoning No 19 MA 0094, 2020-Ohio-5020, citing *State ex rel. Vanni v. McMonagle*, 137 Ohio St.3d 568, 2013-Ohio-5187, ¶ 4; *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; and *Zhao v. Zeng*, 1st Dist. Hamilton No. C-020131, 2003-Ohio-3060, ¶ 13-14. The court which invoked its powers

first through initiating an appropriate legal action acquires jurisdiction to the exclusion of all other courts. *Zhao* at ¶ 13.

{¶21} Both parties agree that the jurisdictional-priority rule requires that two cases must be pending before courts of concurrent jurisdiction and it does not apply if the original action terminated before the second action begins. Appellant Br. at 6-7, *citing Holmes County Board of Commissioners v. McDowell*, 169 Ohio App.3d 120, 2006-Ohio-5017, 862 N.E.2d 136, ¶ 25-26 (5th Dist.); Appellee Br. at 10, *citing State ex rel Vanni v. McMonagle*, 137 Ohio St.3d 568, 2013-Ohio-5187, ¶ 8, 137 Ohio St.3d 568, 2013-Ohio-5187, ¶ 4. However, the parties dispute whether the trial court or the domestic relations court in this case has jurisdiction under the jurisdiction-priority rule.

{¶22} We find that Michael's reliance on *Buckingham* is misplaced. The appellate court's discussion of the jurisdictional-priority rule in that case is pure dicta. Further, any holding in the case is persuasive authority only. Lastly, the issue in *Buckingham* was more clearly a part of the jurisdiction of the domestic relations court since the Ohio domestic relations statutes directly addressed the issues of concealed assets during a divorce, that court's power to specifically compensate an ex-spouse for non-disclosure of assets, and a failure of an ex-spouse to disclose assets.

{¶23} In this case, Laura's lawsuit before the trial court concerned a breach of contract for not fully paying her for the shares of Medallion that Michael and Medallion promised to pay. She did not accuse Michael of hiding assets. Further, Laura did not seek the same relief in the trial court that she sought in domestic relations court. In the trial court, Laura sought damages for breach of contract for Michael and Medallion's failure to fully pay her for Medallion stock. Before the domestic relations court, Laura filed a motion for cause and motion for spousal support because of Michael's failure to fully pay her as required in the divorce decree.

{¶24} Here, Article 16 of the separation agreement, which was incorporated into the divorce decree, determines the jurisdictional issue. Article 16 specifically provides that Laura waived spousal support and waived the continuing jurisdiction of the domestic relations court, subject to Michael's failure to pay on any obligation. If Michael failed to pay on any obligation in the separation agreement, Laura could then petition the domestic relations court for spousal support, which would then grant that court jurisdiction to hear

arguments concerning that issue. Article 16 also expressly states that the domestic relations court would not maintain continuing jurisdiction over the issue of spousal support unless Michael failed to pay his obligations.

{¶25} Most importantly, Article 16 provides that: “Wife is not bound by the above as her only option to enforce the obligations of Husband.” It specifically states that the domestic relations court “shall retain jurisdiction to determine the amount and term of Spousal Support to be paid by Husband in the event of non-compliance by Husband relating to any financial obligation required of Husband for the benefit of the Wife in this Separation Agreement or documents executed for the purpose of carrying out any specific term of any obligation of Husband.”

{¶26} Thus, according to the separation agreement incorporated by domestic relations court into the divorce decree, the domestic relations court did not have jurisdiction when Laura filed her lawsuit in the trial court for breach of contract and fiduciary duty. That court was divested of jurisdiction after the divorce decree was filed as per agreement of the parties and it did not reacquire jurisdiction until Laura filed the motion for cause and spousal support. Further, upon reacquiring jurisdiction, and as per agreement of the parties, the domestic relations court was limited solely to determining whether Michael was in contempt for failure to pay his obligations and whether Laura was entitled to spousal support as a result of Michael’s failure to pay his obligations.

{¶27} While Michael asserts that the agreement to pay Laura for her shares of the Medallion stock emanated from the separation agreement and divorce decree, the agreement to pay Laura actually came from the Agreement, promissory note and Guaranty documents. The fact that they were incorporated into the divorce decree does not foreclose Laura from suing on those documents in a separate action, which she did. Article 16 itself specifically provides that Laura was not limited to the remedy of spousal support, litigation support fees, and attorney fees to enforce Michael’s obligations under the separation agreement and divorce decree. The remedy in domestic relations court was that of a contempt finding and order of spousal support, as indicated by Article 16. The remedy in the trial court for the breach of contract is the payment to Laura by Michael and Medallion as per the Agreement, promissory note and Guaranty for the stocks that they agreed to purchase and failed to do so.

{¶28} Accordingly, we find that appellant’s sole assignment of error is without merit and is overruled. The trial court’s judgment is affirmed.

Waite, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

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.