DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MICHAEL SCHMOKER,

Appellant,

v.

MONICA SCHMOKER,

Appellee.

No. 2D20-3276

November 3, 2021

Appeal from the Circuit Court for Hillsborough County; Lawrence M. Lefler, Judge.

J. Stanford Lifsey, Tampa, for Appellant.

Monica Schmoker, pro se.

NORTHCUTT, Judge.

The circuit court dismissed Michael Schmoker's petition to dissolve his marriage with Monica Schmoker based on its conclusion that the present status of the parties' Maryland

dissolution action prevented it from assuming jurisdiction in the matter. This was incorrect, and we reverse the dismissal.

In 2009, Schmoker filed a petition for dissolution of marriage in Maryland state court, and that court awarded his wife temporary alimony during the pendency of the proceeding. Schmoker eventually voluntarily dismissed his petition, but he had accrued over $40,000 in arrearages on temporary support and attorney's fees awards. Those arrearages were reduced to judgments.

Schmoker eventually moved to Florida. In 2017, he initiated a new dissolution proceeding in Hillsborough County. During the litigation, the Florida court learned of the Maryland proceeding and became concerned about its jurisdiction. The Florida court apparently believed that the Maryland case was a conflicting action that precluded another court from assuming jurisdiction over the parties' dissolution. The court also observed that Monica Schmoker appeared to be concurrently attempting to enforce her Maryland judgments in the Florida action as well. It sua sponte dismissed the Florida case for lack of jurisdiction.

The circuit court's concerns were misplaced, and its ruling was erroneous for several reasons. First, to the extent that it

questioned its personal jurisdiction over the parties, we note that a court must have personal jurisdiction only over the filing spouse. *See Cleveland v. Cleveland*, 692 So. 2d 304, 305 (Fla. 4th DCA 1997) ("If the trial court has subject matter and personal jurisdiction over the filing spouse, it can dissolve the marital relationship even if it lacks personal jurisdiction over the other spouse." (citing *Orbe v. Orbe*, 651 So. 2d 1295, 1297 (Fla. 5th DCA 1995))). In any event, in this case both parties submitted to the court's personal jurisdiction: Schmoker by filing the petition for dissolution, and his wife by expressly "submitting herself to the jurisdiction of this Court" in one of her pleadings.

As for the circuit court's subject-matter jurisdiction, section 61.021, Florida Statutes (2016), provides that a court has jurisdiction over a dissolution if one of the parties has resided in the state for more than six months prior to the filing of the petition. *Lande v. Lande*, 2 So. 3d 378, 380 (Fla. 4th DCA 2008). Schmoker alleged in his petition that he had satisfied that requirement, and his wife has made no attempt to rebut that assertion. The court therefore appears to have had subject-matter jurisdiction over the dissolution.

To the extent that the circuit court was concerned about ongoing litigation over temporary support and attorneys fee arrearages, those issues have no bearing on the court's jurisdiction to dissolve the parties' marriage. *See In re Marriage of Mostow*, 420 N.E.2d 731, 733 (Ill. App. Ct. 1981) ("[P]reliminary issues of temporary maintenance, support, and fees . . . d[o] not relate to the issues of the dissolution action itself."). The possibility that there may be ongoing, ancillary proceedings regarding the enforcement of prior money judgments would not affect the disposition of Schmoker's new dissolution petition when the Maryland case has been voluntarily dismissed and the new Florida petition is the only petition pending. In other words, the core dissolution action is at issue only in Florida; the dispute over arrearages is a nonconflicting, ancillary issue that would not affect the dissolution. There was therefore no reason to dismiss the Florida action in deference to the Maryland proceeding.

Although it is possible that under Maryland law Schmoker's notice of voluntary dismissal might not have been sufficient on its own to effect a dismissal if his wife had already filed an answer and had not stipulated to the dismissal, *see* Md. Rule 2-506, there is

nothing in the record suggesting that such a scenario occurred. Based on the record, there is no reason to doubt that the case was dismissed in accordance with Schmoker's notice of voluntary dismissal. Thus, the Florida court would have had exclusive jurisdiction over the parties' dissolution.

Moreover, even if there were an active dissolution petition in another state, a second state is not necessarily required to dismiss a second petition in deference to the first state's priority position. This is particularly so where, as here, the second state appears to be the more appropriate venue and both parties desire to litigate the case in the second state. *See Sanchez Vicario v. Santacana Blanch*, 306 So. 3d 1098, 1101–02 (Fla. 3d DCA 2020) (discussing the application of the principles of comity and priority to concurrent dissolution proceedings and noting that a second proceeding can continue, irrespective of the first proceeding's priority, when the parties, residences, property, and children are located in the state of the second proceeding or when the first proceeding has been unduly delayed).

Additionally, the support and attorney's fee judgments that the court was concerned about could in fact be enforced in Florida if

properly recorded. *See* § 55.503, Fla. Stat. (2016). And even if the judgments were not recorded and not yet enforceable in Florida, Monica Schmoker's prior ineffective attempts to enforce them would have no bearing on the core dissolution action. *See Mostow*, 420 N.E.2d at 733.

For the foregoing reasons, the court below had jurisdiction of this dissolution proceeding, and its order dismissing it was in error. We therefore reverse the court's order and remand for further proceedings.

Reversed and remanded.

KELLY and STARGEL, JJ., Concur.

Opinion subject to revision prior to official publication.