Third District Court of Appeal

State of Florida

Opinion filed November 20, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1042
Lower Tribunal No. 19-2950

Juan Pablo Dlin,
Appellant,

vs.

Nayibe Dlin,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Valerie R. Manno Schurr, Judge.

Carlos A. Ivanor (Orlando), for appellant.

Nayibe Dlin, in proper person.

Before SALTER, SCALES, and HENDON, JJ.

HENDON, J.

Juan Pablo Dlin ("Husband") appeals from the trial court's order denying his motion to dismiss Nayibe Dlin's ("Wife") Verified Petition for Dissolution filed in Miami-Dade County. As the Wife's petition was filed in the improper venue, we reverse and direct the lower court to transfer the case to Volusia County, Florida.

The parties were married in 2015 and lived in Orange County, Florida, for about three years. They moved to Volusia County, Florida, and lived there for about three months before the Wife relocated to Miami-Dade County in January 2019, fleeing the Husband's domestic violence. She was granted a temporary injunction against domestic violence in Miami-Dade County. On February 7, 2019, the Wife filed her petition for dissolution of marriage in Miami-Dade County, but the Husband was not served until March 6, 2019.[1] The Husband filed his petition for dissolution of marriage in Volusia County on February 22, 2019, in the interim between the Wife filing her petition and serving the Husband. The Husband then sought to dismiss the Wife's Miami-Dade petition based on improper venue, and the Miami-Dade court denied his motion to dismiss on May 7, 2019, and rendered the order on May 19, 2019. The Husband timely appealed. The proceedings on the Husband's petition for dissolution in Volusia County, however, went forward. After a July 9, 2019, hearing on the Wife's motion to

[1] The Wife alleges in her brief that the reason for the delay in serving the Husband was the Husband's avoidance of service of process. There is nothing in the record on appeal to substantiate this.

dismiss the Husband's petition, the Volusia County circuit court granted her motion, the Husband's petition was dismissed, and the case was closed.

The Husband now argues that, because he filed his petition first in Volusia County before the Wife served him with her petition in Miami-Dade County, venue is proper in Volusia County. We find that venue was proper in Volusia County, but not for the reason provided by the Husband.

The standard of review for an order on a motion to transfer or dismiss for improper venue is abuse of discretion. Carr v. Stetson, 741 So. 2d 567, 568 (Fla. 4th DCA 1999). Venue is proper where the defendant is domiciled, where the cause of action accrued, or where the property in litigation is located. § 47.011, Fla. Stat. (2018). "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.'" Crawford v. Crawford, 415 So. 2d 870, 870 (Fla. 1st DCA 1982) (citing Carroll v. Carroll, 341 So. 2d 771, 772 (Fla. 1977)).

Here, the parties have filed competing petitions for dissolution in different counties, at different times, and with different procedural outcomes. There are an abundance of cases in Florida, however, holding that a cause of action for dissolution accrues, for purposes of applying the venue statute, in the single county where the parties last lived together with a common intent to remain married. See,

e.g. Bowman v. Bowman, 597 So. 2d 399 (Fla. 1st DCA 1992). This is true even when one spouse moves to another county to escape the marriage, the situation presented in the facts before us. See Hoskins v. Hoskins, 363 So. 2d 179, 181 (Fla. 4th DCA 1978) (holding that the last place where the parties resided together was Polk County and under the holding in Carroll, venue should be in Polk County, despite the wife having moved to live in another county); see also Butler v. Butler, 866 So. 2d 1280, 1281 (Fla 4th DCA. 2004) (holding that, since the parties last resided together with the intent to be married in Brevard County as the last place where an intact marriage existed, then wife is not entitled to elect to file in Broward County simply based on her statement of intent which is contrary to the manifest weight of the undisputed evidence that Brevard County was their "home").

At the time the Wife filed her dissolution petition in Miami-Dade County, venue for dissolution purposes was proper in Volusia County, where the parties were last domiciled together, albeit for three months, and where the Husband currently remains. When the Husband filed his dissolution petition, venue was proper in Volusia County pursuant to the venue statute. It does not matter for application of the venue statute that the Wife moved to Miami-Dade to escape domestic violence. The complication here is that the Miami-Dade County circuit court incorrectly found venue was proper in Miami-Dade by denying the

Husband's motion to dismiss the Wife's petition, while many weeks later, the Husband's dissolution action, which was correctly-filed in Volusia County, was dismissed and the case closed. We have no record of the hearings in either the Miami-Dade or Volusia cases, and cannot know the reasoning behind either order. We must apply the statute and case law to the facts at hand. See Vinsand v. Vinsand, 179 So. 3d 366 (Fla. 2d DCA 2015) (finding no competent substantial evidence to support a conclusion that venue is proper in the county where the wife currently lives, where the last place the parties lived together in common is where the husband resides), citing Rivenbark v. Rivenbark 335 So. 2d 23 (Fla. 1st DCA 1976)).

Thus, "[i]f there is no legal basis to support the plaintiff's [Wife's] choice of venue, the trial court must dismiss the case or transfer it to a forum that is authorized under the applicable venue statute." Host Marriott Tollroads, Inc. v. Petrol Enters., Inc., 810 So. 2d 1086, 1089-90 (Fla. 4th DCA 2002). We are thus constrained to reverse and remand for transfer of the Wife's dissolution petition to the appropriate court in Volusia County. See Fla. R. Civ. P. 1.060[2]; Vinsand, 179 So. 3d at 368.

[2] Florida Rule of Civil Procedure 1.060 provides:

> (b) Wrong Venue. When any action is filed laying venue in the wrong county, the court may transfer the action in the manner provided in rule 1.170(j) to the proper court in any county where it might have been brought in accordance with the venue statutes. When the venue

Reversed and remanded with directions to transfer the action to Volusia County, Florida.

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might have been laid in 2 or more counties, the person bringing the action may select the county to which the action is transferred, but if no such selection is made, the matter shall be determined by the court.