

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001657-ME

ENOS BANKS AND JOYCE BANKS

APPELLANTS

v. APPEAL FROM FLOYD CIRCUIT COURT  
HONORABLE JOHNNY RAY HARRIS, JUDGE  
ACTION NO. 07-CI-00285

JUDY COMBS, DONNIE COMBS,  
JOHNNY BANKS, AND EMILY BANKS

APPELLEES

OPINION AND ORDER  
DISMISSING

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BEFORE: CLAYTON AND ACREE, JUDGES, GRAVES,<sup>1</sup> SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Enos and Joyce Banks appeal from an order of the Floyd Family Court denying their motion to transfer venue to Perry Circuit Court. We find that this appeal was taken from an interlocutory order. Therefore, we must dismiss the appeal as premature.

Judy Combs is the maternal grandmother of the two minor children of Johnny and Emily Banks. The Perry District

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<sup>1</sup> Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Court ordered that the children be placed in the care of Judy Combs. Johnny and Emily Banks are currently in the midst of a divorce action in Perry Circuit Court. The Perry Circuit Court granted visitation rights to Enos and Joyce Banks and supervised visitation rights to the biological parents. Enos and Joyce Banks filed a motion seeking primary custody of the children and to terminate visitation to Combs in Perry Circuit Court. Subsequently, Combs filed a motion in Floyd Family Court seeking custody of the children and to terminate the visitation rights of Enos and Joyce Banks. Various motions were filed by both parties in both counties. On March 28, 2007, the Perry Circuit Court ordered that venue for the custody determination was proper in Floyd County while it retained jurisdiction over the visitation issues in Perry County. No appeal was taken from this order. In Floyd Family Court, Enos and Joyce Banks moved the court to transfer venue back to Perry County. The Floyd Family Court reiterated the Perry Circuit Court's finding that the venue for the custody determination was Floyd County while the venue for the visitation determination was Perry County. This appeal followed.

Parties aggrieved by a venue determination are confined to pursue relief from a final judgment. *Martin v. Fuqua*, 539 S.W.2d 314, 316 (Ky. 1976). In confronting a similar situation, our Supreme Court stated:

All other things being equal, under *Blanton v. Sparks*, Ky., 507 S.W.2d 156, 157 (1974),

the court in which the second action is filed should hold the litigation in that court in abeyance until the court in which the first action was brought has had an opportunity to resolve the issue of venue. In this instance the record does not show which action was filed first, but since the question of venue was first reached and decided by the Todd Circuit Court there is no substantial reason why that should not end the matter, subject, of course, to the right of appeal **following final judgment.**

*Id.* at 315-16(emphasis added); also see generally *Petit v. Raikes*, 858 S.W.2d 171 (Ky. 1993).

The order appealed from in this case dealt solely with the issue of venue. Therefore, it is interlocutory by its very nature despite the inclusion of finality language and must be dismissed. Although the question is not properly before this Court, we discourage the piecemeal approach of this litigation concerning the same subject matter and parties between two jurisdictions. We will restate the general rule that "the same factors applicable to the jurisdictional issue in interstate custody disputes can be used for guidance when determining the question of the proper venue." *Wallace v. Wallace*, 224 S.W.3d 587, 591 (Ky.App. 2007). The jurisdictional requirement is that the court having original jurisdiction over custody matters "maintains exclusive continuing jurisdiction though the child has acquired a new home state if the general requirement of the substantial connection jurisdictional provisions are met." *Id.* at 590.

Therefore, it is hereby ORDERED that the appeal be  
DISMISSED.

ALL CONCUR.

ENTERED: May 2, 2008 /S/ Judge John W. Graves

SENIOR JUDGE, COURT OF

APPEALS

BRIEF FOR APPELLANT:

John Hansen  
Hazard, Kentucky

BRIEF FOR APPELLEE:

Jimmy C. Webb  
Prestonsburg, Kentucky