

RENDERED: NOVEMBER 7, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001623-MR

TAMMYE M. GAUNCE

APPELLANT

APPEAL FROM WARREN FAMILY COURT
v. HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 07-CI-00867

PATRICK WAYNE GAUNCE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

DIXON, JUDGE: Appellant, Tammye M. Gaunce, appeals from an order of the Warren Family Court dismissing her petition for dissolution on grounds of improper venue. Finding no error, we affirm.

Appellant and Appellee were married on January 26, 2002. Two children were born of the marriage in 2003 and 2005, respectively. During the parties' marriage, they resided in Barren County, Kentucky. However, in

November 2006, Appellant leased an apartment in Warren County as a place to “get away to clear her head” while the parties were attempting to resolve marital problems. The children continued to live at the parties’ marital residence, the oldest being enrolled in a Montessori school in Barren County. The parties further continued to employ a full-time nanny in Barren County.

On Monday June 4, 2007, Appellant filed a petition for dissolution in the Warren Family Court. Upon being served with the petition, Appellee filed a similar petition in the Barren Circuit Court, as well as a motion in the Warren Family Court to dismiss the petition filed therein on venue grounds. During a subsequent hearing in the Warren Family Court, Appellant acknowledged that although she had moved a few possessions to the Warren County apartment, the majority of her belongings, as well as all of the children’s belongings, remained in the Barren County residence. Further, as of June 4, 2007, Appellant was still registered to vote in Barren County, had a Barren County driver’s license, and received some mail at the Barren County residence. Appellant further noted that she and Appellee had hosted a wedding party at their Barren County residence on Friday June 2, 2007. Finally, Appellant admitted that the parties’ oldest child had never spent a night in the Warren County apartment, while the younger child had only spent one night at the apartment.

At the conclusion of the hearing, the family court ruled that Appellant had only intended to change her residence to Warren County on the weekend prior to filing the petition, and that such was insufficient to warrant the court accepting

venue, especially in light of the fact that a similar petition was pending in Barren County. Thus, the family court dismissed Appellant's petition for dissolution. This appeal ensued.

Appellant argues to this Court that Warren County is the proper venue for the dissolution proceeding and that the family court erred in dismissing the petition. Appellant argues that it was her intent to relocate to Warren County and the amount of time between the change in residence and the filing of the petition is irrelevant. We disagree.

It is within the discretion of the court to accept or decline jurisdiction of a dissolution proceeding. *Hummeldorf v. Hummeldorf*, 616 S.W.2d 794, 798 (Ky. App. 1981); *Williams v. Williams*, 611 S.W.2d 807 (Ky. App. 1981); KRS 452.470. On appellate review, such a determination will not be reversed absent an abuse of that discretion. *Lancaster v. Lancaster*, 738 S.W.2d 116, 117 (Ky. App. 1987).

The legislature has clearly allowed for a choice of venues in dissolution proceedings. KRS 452.470 permits a dissolution proceeding to be adjudicated in a county "where the husband or the wife usually resides." In choosing to accept or decline jurisdiction in such actions, the court should look to a number of factors including the county of the parties' marital residence prior to separation, the usual residence of the children, if any, and the accessibility of witnesses and the economy of offering proof. *Hummeldorf, supra*.

In *Sebastian v. Turner*, 320 S.W.2d 794, 795 (Ky. 1959), Kentucky's highest court held that in determining whether or not a wife has established a new residence, (1) intention alone is insufficient, (2) no particular time is necessary to acquire a new residence, (3) good faith is required, (4) the wife must remove herself and a substantial portion of her belongings, and (5) the evidence must show that she has actually and completely abandoned her former residence. The Court further noted,

It is to be noted that KRS 452.470 fixes the venue of a divorce action in the county where the wife 'usually resides'. The use of the word 'usually' in the statute indicates an intention upon the part of the legislature that the place of abode must have become established as a residence. Something more is required than the overnight removal of the wife's person from one place to another for the purpose of commencing a suit for divorce.

Id.

Given Appellant's own testimony at the hearing, we must agree with the family court that Warren County was not where Appellant "usually reside[d]" prior to the filing of the petition for dissolution. Although it may have been her intent to permanently relocate herself and her children to Warren County, the evidence simply does not support a finding that she did so prior to filing the petition for dissolution. As such, the family court did not abuse its discretion in declining to accept jurisdiction. Clearly, Barren County is the appropriate venue to adjudicate the action herein.

The order of the Warren Family Court dismissing Appellant's petition
for dissolution is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David F. Broderick
Christopher T. Davenport
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Betty Reece Herbert
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