

NOT DESIGNATED FOR PUBLICATION

ECHO J. ALONZO * **NO. 2004-CA-0748**
VERSUS * **COURT OF APPEAL**
SHANE MULKEY * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 94-298, DIVISION "C"
Honorable Wayne Cresap, Judge
* * * * *
Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray,
and Judge Dennis R. Bagneris, Sr.)

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AFFIRMED

This is an appeal of the trial court's judgment, which denied defendant's Exception of Improper Venue in a custody matter. For the reasons assigned below, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY:

Appellant/defendant, Shane Mulkey (Mulkey), and appellee/plaintiff, Echo Alonzo (Alonzo), are the unmarried parents of the minor child, Alyssa Mulkey (Alyssa). The parties lived together in St. John Parish until they separated in 2001. On May 22, 2001, Mulkey filed a petition for custody in the 40th Judicial District Court for the Parish of St. John (40th JDC). This matter remained pending until a Consent Judgment was rendered on February 1, 2002.

Alonzo maintains that she moved to St. Bernard Parish with Alyssa on April 1, 2001. On September 20, 2001, she filed a Petition for Domestic Abuse Protection in the 34th Judicial District Court for the Parish of St. Bernard (34th JDC). The trial court in the 34th JDC issued a Protective Order, granted Alonzo temporary custody of Alyssa, and set the matter for October 26, 2001. A Consent Judgment was thereafter rendered on October

28, 2001, continuing the Protective Order pending judgment from the 40th JDC, establishing an interim visitation schedule, and decreeing that the permanent custody of the minor child shall be heard in the 40th JDC.

On February 1, 2002, a Consent Judgment was rendered in the 40th JDC ordering an evaluation of the parties and the minor child, and ordering that the 34th JDC judgment of October 26, 2001 be adopted and remain in effect pending further orders of the court. There appears in the appeal record an unsigned Interim Consent Judgment purportedly arising from a hearing before the 40th JDC on September 11, 2002, that established joint custody and designated Alonzo as the domiciliary parent. Although the record before us does not contain a signed copy of that judgment, we note that the parties do not deny the existence of the judgment. Specifically, both parties acknowledge the fact that Alonzo was designated as the domiciliary parent in that judgment.

On January 16, 2003, the parties appeared before the 40th JDC on a Rule for Holiday Visitation filed by Mulkey. On January 22, 2003, a judgment was rendered setting forth a holiday visitation schedule.

On October 28, 2003, Alonzo filed a Rule for Contempt and for Modification of Joint Custody Plan in the 34th JDC. In response, Mulkey filed an Exception of Improper Venue. The trial court denied the exception

on March 18, 2004. On appeal, Mulkey argues that the trial court erred in denying his Exception of Improper Venue.

DISCUSSION:

Under La. C.C.P. art. 74.2(B), the proper venue for a change of custody is “the parish where the person awarded custody is domiciled or in the parish where the custody decree was rendered.” When there is joint custody, the use of the singular “parish” in the article means that the parish of the domiciliary parent is the proper venue. *St. Amant v. St. Amant*, 564 So.2d 1312 (La. App. 1st Cir.1990); *See also, Fountain v. Waguespack*, 93-1077 (La. App. 4 Cir. 7/8/94), 639 So. 2d 882.

In his argument to this court, Mulkey concedes that pursuant to La. C.C.P. art. 74.2(B), venue is proper in both St. Bernard and St. John Parishes. Mulkey submits, however, that because the 40th JDC rendered the initial joint custody decree and Mulkey still resides there, maintaining all the proceedings in that venue would be a more appropriate and convenient forum under La. C.C.P. art. 74.2.

A plain reading of La. C.C.P. art. 74.2(B) and the above cited jurisprudence shows that venue for this custody matter was proper in either St. John Parish where joint custody was decreed or in St. Bernard Parish where the designated domiciliary parent now resides with the child. The

forum non conveniens provision of La. C.C.P. art. 74.2(D) grants the trial court the discretion to decide which of the several “proper” venues is more appropriate, in view of the convenience of the parties and witnesses and the interest of justice. *Addington v. McGehee*, 29-729 (La. App. 2 Cir. 8/20/97), 698 So. 2d 702.

After a thorough review of the record, it is clear that Alonzo was the domiciliary parent of Alyssa, residing with the child in St. Bernard Parish, when her Rule for Modification of Custody was filed in the 34th JDC. Under these circumstances, we perceive no abuse in the trial court’s discretion.

For the foregoing reasons, we affirm the trial court’s denial of the Exception of Improper Venue.

AFFIRMED