

DA 17-0615

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 137N

IN RE THE PARENTING OF:

P.R.F.,

a Minor Child,

PRESTON ORRIE BALDRY,

Petitioner and Appellee,

and

SHALYNN RAHEL FJELD,

Respondent and Appellant.

APPEAL FROM: District Court of the Fifteenth Judicial District,
In and For the County of Daniels, Cause No. DR-2017-6
Honorable David Cybulski, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

John P. Nesbitt, Jr., Nesbitt Law Office, PC, Bozeman, Montana

For Appellee:

Terrance L. Toavs, Law Offices of Terrance L. Toavs, PLLC, Wolf Point,
Montana

Submitted on Briefs: May 2, 2018

Decided: June 5, 2018

Filed:



Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Shalynn Fjeld (Shalynn) appeals from the October 17, 2017 order of the Fifteenth Judicial District Court, Daniels County, denying her motion to dismiss the parenting plan action in Daniels County. We affirm.

¶3 Shalynn is the biological mother of P.R.F., a minor child. Preston Baldry (Preston) and Shalynn were engaged in in a relationship when Shalynn became pregnant. During the relationship, Preston and Shalynn lived in Scobey, Montana. Shortly after Shalynn became pregnant, she moved to Belgrade, Montana. P.R.F. was born in Bozeman, Montana. Shalynn refused to acknowledge Preston as the father of P.R.F. Shalynn obtained an Ex Parte Order of Protection in Gallatin County Justice Court.¹ On August 31, 2017, Preston filed a Petition to Establish a Parenting Plan in Daniels County. On September 4, 2017, Preston removed the Order of Protection to Daniels County.

¶4 On September 13, 2017, Shalynn filed a Motion to Dismiss the parenting plan arguing the District Court did not have jurisdiction. Preston filed a response brief

¹ During the proceedings, Shalynn admitted the Order of Protection was not made in good faith and was filed to obtain full custody of P.R.F.

addressing Shalynn's motion to dismiss the parenting action. Preston's response brief construed the motion as a motion to change venue of the parenting action. On September 25, 2017, Preston filed an amended petition clarifying the statutory basis for his parenting plan and included an action for paternity. On September 29, 2017, Shalynn filed a reply brief adamantly objecting to Preston construing her motion to dismiss as a motion to change venue. She maintained she only sought to have venue transferred back to Gallatin County for her Order of Protection. On October 2, 2017, Shalynn filed a motion to transfer venue of the paternity action in Preston's amended complaint arguing inconvenient forum. On the same day, Shalynn filed a motion to dismiss the amended petition and renewed her assertion the District Court lacked jurisdiction. The District Court issued its final Order on Motions denying Shalynn's motions to dismiss, request to change venue of the Order of Protection, request for professional fees, and motion to transfer venue of petition for paternity on October 17, 2017.

¶5 The determination of proper venue is a question of law involving the application of Montana's venue statutes to the pleaded facts. Our review of a district court's grant or denial of a motion to change venue is plenary; we merely determine whether the court's decision is legally correct. *In re B.C.B.W.*, 2008 MT 147, ¶ 6, 343 Mont. 215, 185 P.3d 327. A district court exercises its discretion when it assesses the merits of changing venue based on the convenience of the witnesses and the ends of justice and we will not disturb the court's decision absent a clear abuse of that discretion. *In re C.M.R.*, 2016 MT 120, ¶ 9, 383 Mont. 398, 372 P.3d 1275 (citations and quotations omitted).

¶6 On appeal, Shalynn argues that the District Court erred in denying her motion to dismiss because P.R.F. is not a permanent resident of Daniels County, Montana. We conclude the District Court correctly denied Shalynn’s motion to dismiss arguing lack of jurisdiction. A district court of Montana has jurisdiction to decide parenting matters if Montana is the home state of the child at the time of commencement of the proceedings. Section 40-4-211(1)(a)(i), MCA. P.R.F. was born in Montana and has resided in Montana since birth. Therefore, Montana is the home state of P.R.F. See § 40-7-103(7), MCA. We conclude, based on the applicable statutes, Daniels County District Court has jurisdiction over the parenting action.

¶7 “The proper place of trial for an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner or the respondent has resided during the 90 days preceding the filing of the action.” Section 25-2-118(3), MCA. Under this general venue statute, if Preston’s proceeding was brought under Title 40, chapter 4, both Gallatin and Daniels Counties would be proper places for trial. Preston filed his parenting action in Daniels County, where he has resided 90 days preceding the filing of the action; therefore, venue was proper in Daniels County. Section 40-4-211(4), MCA, is a specific venue statute with regard to a parenting action. Although Shalynn cited § 40-4-211(4), MCA, a venue statute, she repeatedly and vehemently denied requesting a change of venue for the parenting action in her motion to dismiss and instead asserted lack of jurisdiction to argue

for dismissal of the parenting action.² Therefore, we conclude the District Court properly denied Shalynn's motion to dismiss based on jurisdiction.

¶8 Furthermore, the District Court properly denied Shalynn's request to change venue on the paternity action. Section 40-6-109, MCA, is contained within Montana's Uniform Parentage Act (Act). Section 40-6-109(3), MCA, provides an action brought under the Act may be brought in the county in which the child or the alleged father resides. As Preston brought the paternity action under the Act in Daniels County where he resides, venue is appropriate in Daniels County. Even though Daniels County is a proper venue, Shalynn argues inconvenient forum. Shalynn failed to support her assertion of inconvenient forum. Thus, the District Court did not abuse its discretion in denying Shalynn's request to change venue of the paternity action as an inconvenient forum.

¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶10 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ DIRK M. SANDEFUR

/S/ BETH BAKER

/S/ JIM RICE

² The appropriate motion under § 40-4-211(4), MCA, would be a motion to change venue, not a motion to dismiss.