[Cite as *Hose v. Gatliff*, 2004-Ohio-4958.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

ERICA HOSE, et al.	C.A. No. 21957
Appellants	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
TRACY GATLIFF	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellee	CASE No. 2002-09-3697

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BAIRD, Judge.

{¶1} Appellants, Carol Hose, Wayne Hose, and Erica Hose, appeal the judgment of the Summit County Court of Common Pleas dismissing their claims. We reverse.

I.

{¶2} In February 2001, Appellants Wayne and Carol Hose filed for grandparent visitation rights with their granddaughter, Erica Hose, in the Medina County Juvenile Court. At the time, Erica lived with her mother, Appellee Tracy Gatliff. Subsequently, after Appellants moved for civil protection orders, the trial court entered judgment providing that Erica would live with Carol Hose.

{¶3} Following those proceedings, Appellants brought the instant case in the Summit County Court of Common Pleas, Domestic Relations Division. Appellants sought money damages for the failure of Erica's mother to provide necessaries. Appellee moved to dismiss the complaint for improper venue. The trial court dismissed the action for improper venue and dismissed Wayne Hose as a party to the action. Appellants timely appealed, raising three assignments of error.

II.

ASSIGNMENT OF ERROR I

> "THE TRIAL COURT ERRED IN DISMISSING WAYNE HOSE AS A PARTY."

{¶4} In their first assignment of error, Appellants argue that the trial court erred in dismissing Wayne Hose as a party the action. We agree.

{¶5} R.C. 3103.03(D) provides as follows:

> "If a parent neglects to support the parent's minor child in accordance with this section and if the minor child in question is unemancipated, any other person, in good faith, may supply the minor child with necessaries for the support of the minor child and recover the reasonable value of the necessaries supplied from the parent who neglected to support the minor child."

{¶6} Based upon the above provision, it was error for the trial court to conclude that Wayne Hose lacked standing to pursue his claim simply because he did not have custody of Erica. R.C. 3103.03(D) makes it clear that any person may pursue recovery for the provision of necessaries.

{¶7} Accordingly, Appellant's first assignment of error is sustained.

ASSIGNMENT OF ERROR II

"THE TRIAL COURT ERRED IN DISMISSING THE CLAIMS OF CAROLE HOSE BASED UPON IMPROPER VENUE."

ASSIGNMENT OF ERROR III

"THE TRIAL COURT ERRED IN DISMISSING THE CLAIMS OF ERICA HOSE BASED UPON IMPROPER VENUE."

{¶8} In Appellants' second and third assignments of error, they argue that the trial court erred in dismissing their action based upon improper venue. Therefore, we will address them together. We agree that the trial court erred in its dismissal.

{¶9} Initially, we note that Civ.R. 3 does not provide a trial court the authority to dismiss for improper venue.

> "When an action has been commenced in a county other than stated to be proper in division (B) of this rule, upon timely assertion of the defense of improper venue as provided in Civ.R. 12, the court shall transfer the action to a county stated to be proper in division (B) of this rule." Civ.R. 3(C)(1).

{¶10} As such, it was error for the trial court to dismiss the Appellant's claims based upon improper venue. We further note that the trial court is only to transfer venue when the original venue is improper.

{¶11} Appellee also argues that Medina County is the proper venue for this action because the parties have litigated prior issues regarding Erica in said County. However, the only rationale that justifies a transfer of venue when the

original venue is proper is a finding that a fair an impartial trial cannot be held in the county in which suit is pending. Civ.R. 3(C)(4). Accordingly, the trial court did not have the authority to transfer the case to Medina County because it is a "more appropriate venue," let alone dismiss Appellant's claims.

{¶12} Civ.R. 3(B)(6) provides that venue is proper in "[t]he county in which all or part of the claim for relief arose ***." The record reflects that Appellants Carol and Wayne Hose reside in Norton, Ohio in Summit County. Further, the record reflects that Erica Hose resided in Norton, Ohio in Summit County with her grandparents. As such, necessaries were supplied to Erica in Summit County. Therefore, Appellants' claims for damages based upon money spent to provide necessaries arose in Summit County. As such, under Civ.R. (3)(B)(6), venue was proper in Summit County.[1]

{¶13} Accordingly, Appellant's second and third assignments of error are sustained.

III.

{¶14} Appellant's first, second, and third assignments of error are sustained. The judgment of the Summit County Court of Common Pleas,

[1] We note as well that Appellee in his motion to dismiss in the trial court averred that venue was most appropriate in Summit County Juvenile Court.

Domestic Relations Division, is reversed and the cause remanded for proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

Exceptions.

WILLIAM R. BAIRD
FOR THE COURT

BATCHELDER, P. J.
BOYLE, J.
CONCUR

(Baird, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to, §6(C), Article IV, Constitution.)

APPEARANCES:

WILLIAM W. LOVE, II, Attorney at Law, 739 W. Rextur Dr., Akron, Ohio 44319, for Appellant.

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