

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 27, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP364

Cir. Ct. No. 2013FA002300

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

SHALAN K. FISHER,

PETITIONER-APPELLANT,

V.

ABDULLATTIEF A. SULIEMAN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM SOSNAY, Judge. *Reversed and cause remanded.*

Before Curley, P.J., Brennan, J. and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Shalaan K. Fisher, *pro se*, appeals the order dismissing the divorce action she initiated against her husband Abdullattief A.

Sulieman. We conclude that the circuit court erroneously exercised its discretion. Consequently, we reverse and remand for further proceedings.

BACKGROUND

¶2 A convoluted procedural history underlies this appeal. For our purposes, it suffices to state that the parties were married in Michigan in 2001. The marriage ended in divorce, with a judgment entered in Michigan in 2010. Following an April 11, 2013 opinion of the Michigan Court of Appeals, the judgment was vacated and the case was remanded to the Michigan circuit court for entry of an order dismissing the action.

¶3 On April 15, 2013, two days after the Michigan Court of Appeals opinion, Fisher filed the divorce action underlying this appeal in the Milwaukee County circuit court. The record indicates that Sulieman, who is a doctor, moved to Wisconsin in 2008 and later purchased a medical practice in the Milwaukee area. Fisher, however, still lived in Michigan. In response to the divorce action, Sulieman, *pro se*, filed a motion to dismiss arguing, among other things, that there was a lack of jurisdiction because the parties had a divorce action pending in Michigan.

¶4 Before dismissing the action based on forum non conveniens, the circuit court detailed the history of litigation between the parties. The court went on to state:

The court has examined the record here and the facts before me, and the court finds that I have discretion to certainly consider these motions and I have discretion to rule, including dismissing an action, when it appears that the cause can be tried more conveniently and justly in another locale, including another state. This doctrine is quite commonly and for a long period of time has been known as the Doctrine of Foreign Non-Convenience.

There are considerations obviously that the courts must look at in determining whether or not that is appropriate based upon the record and whether or not the record exists that considering all the factors, that a trial elsewhere is more convenient and more just.

The court must look at a balance of certain factors to determine whether that exists or not. It includes, but is not limited to, the residence of the parties, the distance from the forum to the place where the action arose, the fact that the result at the forum might be different from that obtained at a more convenient place of trial, and the burden which the litigation imposes upon local taxpayers and the dockets of local courts.

Another factor is the potential or the possibility of harassment of the defendant in litigating in an inconvenient forum. To that the court cites *Littmann* [*v. Littmann*, 57 Wis. 2d 238, 246, 203 N.W.2d 901 (1973)].

In reviewing the record here and the factors in this case, it is clear that the petitioner here, Ms. Fisher, is a Michigan resident. It's also clear that an action for divorce was litigated in Michigan and the county where the parties reside and where the court had jurisdiction. The fact that she is a Michigan resident and is litigating a divorce action here suggests an improper purpose. In fact, an inference one could reasonably draw is that she is forum shopping.

This case unquestionably arose in Michigan where this was initially litigated. The distance between Michigan and Wisconsin is certainly not negligible. The court notes that the Michigan divorce statutes to some extent are different from those here in Wisconsin, and they are not on all fours nor do they exactly parallel one another, so the result might be different from that obtained from a court in Michigan.

Clearly, the court taking this case under the facts and circumstances here is a burden to the taxpayers of the state, and the court also finds that arguably one could reasonably infer that the petitioner here is attempting to misuse the courts here for harassment purposes.

There are actions that have been filed here more recently, including the action before Judge Witkowiak which was dismissed and then a subsequent action filed before Judge Pohan which is now pending before his successor judge, Judge Guolee.

There have been, and this was a matter of subject discussion at the last appearance, multiple subpoenas that were filed and issued by the petitioner in this action which could and do[] reasonably infer again the appearance of harassment or abuse of process. And arguably, this action was filed at a time when it was not clear whether or not the Michigan case was still pending and whether Michigan still had jurisdiction over the matter. Merely because a Michigan Court of Appeals suggests that the action is more conveniently litigated in Wisconsin is of no significance or avail.

Clearly, what this court notes is this matter was litigated in Michigan, almost to completion.

....

THE COURT: The court, therefore, based upon these factors and finding that these factors, as alluded to in the record a moment ago, exist, concludes, and I, therefore, choose to exercise my discretion that the more convenient forum would be the forum in Michigan, and, therefore, this action is dismissed under the Doctrine of Foreign Non-Convenience.

¶5 Fisher appeals.

DISCUSSION

¶6 Fisher argues that the circuit court erred when it dismissed her divorce action based on its conclusion that Michigan would be a more convenient forum. As set forth above, the circuit court based its conclusion on the concept of forum non conveniens, which is codified in WIS. STAT. § 801.63 (2013-14).¹

¹ See *Mayer v. Mayer*, 91 Wis. 2d 342, 350, 283 N.W.2d 591 (Ct. App. 1979) (“Section 801.63 ... is the [f]orum non conveniens provision generally applicable in civil actions.”); *Littmann v. Littmann*, 57 Wis. 2d 238, 245, 203 N.W.2d 901 (1973) (“[Former WIS. STAT. §] 262.19 ... is the Wisconsin codification of the concept of forum non conveniens.”).

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶7 A decision that trial should be in a foreign forum is within the discretion of the court in which the action is pending.² See *U.I.P. Corp. v. Lawyers Title Ins. Corp.*, 65 Wis. 2d 377, 382, 222 N.W.2d 638 (1974). In exercising that discretion, the court may consider such factors as amenability to personal jurisdiction in the state and in any alternative forum of the parties; convenience to the parties and witnesses of trial in this state and in any alternative forum; differences in conflict of law rules in this state and any alternative forum; or any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial. WIS. STAT. § 801.63(3). On review, we determine whether the circuit court properly exercised its discretion. *U.I.P. Corp.*, 65 Wis. 2d at 382.

¶8 While the circuit court considered the factors under WIS. STAT. § 801.63(3), it did not follow the dictate of *U.I.P. Corporation* that the plaintiff's choice of a forum should rarely be disturbed unless the balance is strongly in favor of the defendant, and only upon a convincing showing that trial in Wisconsin is likely to result in a substantial injustice. See *id.* at 386-87. Sulieman had the burden of showing that trial in Wisconsin would be inconvenient and unjust while trial in Michigan would be more convenient and just, see *U.I.P. Corp. v. Lawyers Title Ins. Corp.*, 82 Wis. 2d 616, 629, 264 N.W.2d 525 (1978), yet the circuit court made little by way of findings as to the difference in convenience to the parties between trying the case in Wisconsin or Michigan. The circuit court simply stated that the distance between the two states "is certainly not negligible"

² While Sulieman moved to dismiss, the procedural mechanism technically would have been a motion to stay the proceeding and permit trial in a foreign forum. See WIS. STAT. § 801.63.

and further concluded that the suggestion by the Michigan Court of Appeals that the action is more conveniently litigated in Wisconsin was “of no significance or avail.”

¶9 Fisher, the petitioner in this matter, chose Wisconsin as the forum for this divorce action. Wisconsin is where Sulieman and his medical practice are located. Consequently, we fail to see how trying this case in Wisconsin would be inconvenient and unjust. And, while we do not seek to minimize the circuit court’s concern that Fisher’s pursuit of a divorce action in Wisconsin “suggests an improper purpose” or its inference that Fisher “is forum shopping,” this is not the key inquiry. Rather, the key inquiry is whether there has been a convincing showing that trial in Wisconsin is likely to result in a substantial injustice to Sulieman. We are not convinced that such a showing was made here.³

¶10 In light of the *U.I.P. Corporation* cases, we are compelled to reverse and remand for further proceedings.⁴

¶11 Fisher asks that, upon remand, this case be assigned to a new judge. We have no doubt that the previously assigned judge will fulfill his responsibilities

³ This court notes that at the time the circuit court dismissed Fisher’s divorce action based on its forum non conveniens analysis, there were no matters pending in Michigan that precluded Wisconsin from exercising jurisdiction.

⁴ In her appellate brief, Fisher advises that after the circuit court’s decision, she moved to Milwaukee County. In his response brief, Sulieman advised that after the circuit court’s decision, he moved his residence back to Michigan. It is unclear whether he continues to have a medical practice in Wisconsin.

We are not a fact-finding court and will leave it to the circuit court to make the necessary findings on remand. See *Lange v. LIRC*, 215 Wis. 2d 561, 572, 573 N.W.2d 856 (Ct. App. 1997) (“The court of appeals is an error-correcting court, and does not engage in fact-finding.”).

as an impartial magistrate. Notwithstanding, we express no opinion on whether Fisher may, on remand, seek relief under WIS. STAT. § 801.58(7), the substitution-of-judge statute applicable in civil cases.⁵

By the Court.—Order reversed and cause remanded for further proceedings.

This opinion shall not be published. See WIS. STAT. RULE 809.23(1)(b)5.

⁵ WISCONSIN STAT. § 801.58(7) provides:

If upon an appeal from a judgment or order ... the appellate court ... reverses or modifies the judgment or order as to any or all of the parties in a manner such that further proceedings in the [circuit] court are necessary, any party may file a request [for substitution of judge] within 20 days after the filing of the remittitur in the [circuit] court[.]

