[Cite as *S.K. v. M.W.*, 2019-Ohio-1101.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STEPHANIE K.

Plaintiff-Appellant

-vs-

MATTHEW W.

Defendant-Appellee

JUDGES:
Hon. W. Scott Gwin, P. J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. CT2018-0049

O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. DG2018-0350
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	March 25, 2019

APPEARANCES:

For Plaintiff-Appellant

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Wise, J.

{¶1} Appellant Stephanie K. appeals the decision of the Muskingum County Court of Common Pleas, Domestic Relations Division, which dismissed her complaint for child support brought against Appellee Matthew W. The relevant facts leading to this appeal are as follows.

{¶2} Appellant is the mother of S.W., a female child born in 2015. Appellee's name is listed as the father on the girl's birth certificate.

{¶3} On April 20, 2018, appellant filed a *pro se* complaint to establish child support for S.W. in the Muskingum County Court of Common Pleas, Domestic Relations Division (hereinafter "trial court"), alleging *inter alia* that she and the child were residing in Muskingum County.[1] This action was assigned Muskingum County case number DG2018-0350.

{¶4} In the meantime, on April 24, 2018, appellee filed a complaint to establish a parent/child relationship regarding S.W. in the Licking County Court of Common Pleas, Domestic Relations Division (Licking County case number 2018-DR-409).

{¶5} Appellee's complaint under 2018-DR-409 was actually his second such action in Licking County. Appellee had also filed a complaint in June 2017 in the Licking County Court of Common Pleas, Domestic Relations Division, to establish a parent/child relationship with S.W. (Licking County case number 2017-DR-641). Although appellee and appellant had partially resolved some of the issues, no agreed judgment entry has been finalized in 2017-DR-641. But on April 19, 2018, the Licking County court dismissed "all pending motions" in 2017-DR-641. Appellee apparently interpreted that decision as a

[1] Appellant obtained the assistance of counsel during the trial court proceedings.

full dismissal of his complaint, and proceeded to file his second complaint, resulting in Licking County case number 2018-DR-409.

{¶6} On May 3, 2018, in the underlying case (Muskingum County DG2018-0350), appellee made a limited appearance with counsel and filed a motion to dismiss, claiming a lack of jurisdiction in Muskingum County. On June 13, 2018, the trial court conducted an evidentiary hearing on appellee's motion to dismiss.

{¶7} On June 19, 2018, the trial court issued a judgment entry dismissing appellant's complaint, concluding in pertinent part as follows: "Since Licking County as well as Muskingum County Domestic Relations Court both have concurrent jurisdiction then the Licking County case having been first served has priority to proceed in this matter." Judgment Entry at 2.

{¶8} On July 13, 2018, appellant filed a notice of appeal. She herein raises the following sole Assignment of Error:

{¶9} "I. THE MUSKINGUM COUNTY TRIAL COURT IMPROPERLY DISMISSED THE MOTHER'S COMPLAINT FOR SUPPORT."

I.

{¶10} In her sole Assignment of Error, appellant maintains the trial court erred in dismissing her complaint for child support regarding S.W. We disagree.

{¶11} Ohio law recognizes the "the bedrock proposition that once a court of competent jurisdiction has begun the task of deciding the long-term fate of a child, all other courts are to refrain from exercising jurisdiction over that matter." *In re Adoption of Pushcar,* 110 Ohio St.3d 332, 2006-Ohio-4572, 853 N.E.2d 647, ¶ 10, citing *In re*

Adoption of Asente (2000), 90 Ohio St.3d 91, 92, 734 N.E.2d 1224. *See*, *also*, *Lindenmayer v. Lindenmayer*, 197 Ohio App.3d 580, 2011-Ohio-5511 (5th Dist.), ¶ 46.

{¶12} As noted in our recitation of the history of the case *sub judice*, the trial court concluded, in its judgment entry of dismissal, that Muskingum County and Licking County had concurrent jurisdiction over the child. Earlier in said dismissal entry, the trial court specifically found that in Muskingum County case number DG2018-0350, appellant had completed service of her complaint on appellee on April 25, 2018 at about 5:00 PM. But the trial court further found that in Licking County case number 2018-DR-409, appellee had completed service of *his* complaint on appellant on April 25, 2018 at about 11:55 AM, a few hours sooner. *See* Judgment Entry at 1. The trial court, concluding that appellee's Licking County case would have "priority to proceed," therefore ordered dismissal of Muskingum County DG2018-0350.

{¶13} We initially note appellant has not filed a transcript of the June 13, 2018 evidentiary hearing on appellee's motion to dismiss, in accordance with App.R. 9(B), or made other accommodations for a record of those proceedings under App.R. 9(C) or 9(D). "When portions of the transcript or statement of proceedings necessary for resolution of the assigned error are omitted from the record, the reviewing court has nothing to pass on and thus, as to those assigned errors, the court has no choice [but] to presume the validity of the lower court's proceedings." *In re Adoption of I.M.M.,* 5th Dist. Ashland No. 16 COA 018, 2016–Ohio–5891, ¶ 33, *citing Knapp v. Edwards Laboratories,* 61 Ohio St.2d 197, 400 N.E.2d 384 (1980). Furthermore, in a bench trial, a trial court judge is presumed to know the applicable law and to properly apply it. *In re Fell,* 5th Dist. Guernsey No. 05–CA–9, 2005–Ohio–5299, ¶ 27.

{¶14} We therefore are without basis to disturb the trial court's aforesaid findings and conclusions. Appellant nonetheless essentially maintains that Ohio statutory law demands a different result. She first directs us to R.C. 3111.06(A), which states in pertinent part as follows:

> Except as otherwise provided in division (B) or (C) of section 3111.381 of the Revised Code, an action authorized under sections 3111.01 to 3111.18 of the Revised Code may be brought in the juvenile court or other court with jurisdiction under section 2101.022 or 2301.03 of the Revised Code of the county in which the child, the child's mother, or the alleged father resides or is found or, *** of the county in which the child is being provided support by the county department of job and family services of that county.

{¶15} One of the exceptions set forth in the above statutory text is R.C. 3111.381(C), which states as follows:

> An action to determine the existence or nonexistence of a parent and child relationship may be brought by the putative father of the child in the appropriate division of the court of common pleas *in the county in which the child resides***,** without requesting an administrative determination, if the putative father brings the action in order to request an order to determine the allocation of parental rights and responsibilities. ***.

{¶16} (Emphasis added).

{¶17} Appellant presently asserts that appellee never requested an administrative determination of paternity or submitted a formal acknowledgement of paternity, other than

being listed on S.W.'s birth certificate. She therefore urges that R.C. 3111.381(C) mandates having her case heard in Muskingum County, contrary to the trial court's ruling.[2]

{¶18} We note that R.C. 3111.381 contains provisions analogous to those found in former R.C. 3111.22. *See State ex rel. Jackson County Child Support Enforcement Agency v. Long*, 4th Dist. Jackson No. 03CA1, 2004-Ohio-2184, f.n. 1. Under the prior statutory nomenclature, it was recognized that R.C. 3111.22(A)(1) did not purport to regulate the juvenile court's subject matter jurisdiction. *See In re Ruff*, 2nd Dist. Montgomery No. 17615, 1999 WL 399230. In addition, although subject matter jurisdiction is not subject to waiver, the defenses of lack of personal jurisdiction and improper venue may be waived. *Keeley v. Stoops*, 7th Dist. Belmont No. 13 BE 23, 2014-Ohio-4161, ¶¶ 10-11.

{¶19} We therefore hold that R.C. 3111.381(C) likewise was not intended by the General Assembly to establish subject matter jurisdiction; rather, it merely addresses the proper court venue in cases where a putative father has never requested an administrative finding of paternity.

{¶20} In the case *sub judice*, appellant asserts that she asserted a venue or jurisdiction challenge in Licking County case number 2018-DR-409, and that waiver therefore does not apply. In any event, despite the paucity of the present record, it appears undisputed that in the *first* Licking County case, *i.e*., 2017-DR-641, appellant submitted to an agreed temporary order for child support and appellee's parenting time,

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[2] The trial court reasoned that R.C. 3111.381(C) was not applicable in this instance because the presence of appellee's name on the birth certificate removed him from the category of "putative" father. Judgment Entry at 2. We find it unnecessary to reach this issue in our resolution of the present appeal.

although the parties take different positions on whether 2017-DR-641 remains an open case. Under these circumstances, we find judicial estoppel applies against appellant as to challenging venue in Licking County. The doctrine of judicial estoppel precludes a party from assuming a position in a legal proceeding inconsistent with one previously asserted. *See Toops v. Toops,* 5th Guernsey No. 03CA18, 2004-Ohio-1771, ¶ 21. The trial court thus did not commit reversible error under the circumstances presented in determining that Licking County would be the proper forum to address appellee's request to establish a parent/child relationship concerning S.W.

{¶21} Appellant's sole Assignment of Error is therefore overruled.

{¶22} For the reasons stated in the foregoing, the decision of the Court of Common Pleas, Domestic Relations Division, Muskingum County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Hoffman, J., concur.

JWW/d 0225