[Cite as *Dobrovicz v. Manns* , 2009-Ohio-3588.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

SHELLI K. DOBROVICZ,	:	
	:	
Plaintiff-Appellee,	:	Case No. 08CA3064
	:	
vs.	:	**Released: July 17, 2009**
	:	
JOSEPH E. MANNS,	:	DECISION AND JUDGMENT
	:	ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Jeffrey J. Fanger and Kelly G. Adelman, Fanger and Adelman LLC, Cleveland, Ohio, for Appellant.

Alfred E. Baerkircher, Chillicothe, Ohio, for Appellee.

McFarland, J.:

{¶1} This is an appeal from a judgment by the Ross County Court of Common Pleas denying Appellant, Joseph Manns', motion to transfer a post-divorce decree support review to the Cuyahoga County Court of Common Pleas, Division of Domestic Relations. In his sole assignment of error, Appellant contends that the trial court erred in not allowing a change of venue from the Ross County Common Pleas Court to the Cuyahoga County Common Pleas Court Domestic Relations Division, when all parties and the minor children live in or near Cuyahoga County. Because Civ.R. 3

does not provide for intrastate transfer of cases based upon the doctrine of forum non conveniens, and in light of the reasoning of the Supreme Court of Ohio in *Chambers v. Merrell Dow Pharmaceuticals, Inc.* (1988), 35 Ohio St.3d 123, 519 N.E.2d 370, we cannot conclude that the trial court erred in denying Appellant's motion. Accordingly, we overrule Appellant's sole assignment of error and affirm the decision of the trial court.

FACTS

{¶2} Appellee filed for divorce in the Ross County Court of Common Pleas on August 5, 1999. It is agreed by all parties that Ross County was the proper forum for the divorce filing. On December 22, 2000, the parties were granted a divorce. Appellee was designated as the residential parent of the minor children and Appellant was ordered to pay child support. From that time until the present the parties have filed various post-decree motions involving custody and support, all of which have been filed in and decided by the Ross County Court of Common Pleas. Appellee relocated several times over the years, with a most recent relocation to Cuyahoga County. Appellee properly filed a notice of relocation to Cuyahoga County on June 20, 2006.

{¶3} On January 22, 2008, the case was referred for court review of a support order and a hearing was scheduled on March 27, 2008. On March

19, 2008, Appellant filed a notice of relocation with the court advising that he was currently residing in North Ridgeville, Ohio. It is unclear from the record before us whether North Ridgeville is actually located within or is simply near Cuyahoga County. The scheduled hearing was rescheduled for May 22, 2008, and in the interim, on April 14, 2008, Appellant filed a motion to transfer the case to Cuyahoga County Common Pleas Court, Domestic Relations Division. In support of his motion, he attached a statement from the Cuyahoga County Court of Common Pleas agreeing to accept the case. In his motion, Appellant stated that he was "asking for a transfer of this case to another more convenient forum." Appellee opposed the motion and the court subsequently denied the motion on the basis that it had no authority to transfer the case, and also based upon questions of whether Cuyahoga County would be able to acquire jurisdiction over the matter simply because the parties desired the matter to be transferred.

{¶4} Appellant immediately appealed the denial of his motion and Appellee opposed the appeal. We dismissed that appeal on August 21, 2008, based upon our reasoning that it was not a final appealable order because Appellant could appeal the denial of his motion to transfer the case after the trial court reviewed the support order. *Dobrovicz v. Manns* (Aug. 21, 2008), Ross App. No. 08CA3036. The trial court subsequently issued an entry on

September 2, 2008, ordering Appellant to pay Appellee $735.78 per month in child support, effective November 1, 2007. The next day, Appellee filed a motion for payment of arrears. However, before the trial court ruled on the motion for payment of arrears, Appellant filed a second notice of appeal with this Court. Although Appellee again opposed Appellant's appeal, arguing that Appellant's request for a transfer was moot now that the trial court had already reviewed the support order, we determined by entry dated January 2, 2009, that the trial court's entry was a final appealable order and that the matter should proceed according to rule. Thus, Appellant has proceeded with his appeal, setting forth a single assignment of error for our review.

ASSIGNMENT OF ERROR

"I. THE TRIAL COURT ERRED IN NOT ALLOWING A CHANGE OF VENUE FROM THE ROSS COUNTY COMMON PLEAS COURT TO THE CUYAHOGA COUNTY COURT OF COMMON PLEAS DOMESTIC RELATIONS DIVISION, WHEN ALL PARTIES AND THE MINOR CHILDREN LIVE IN OR NEAR CUYAHOGA COUNTY."

LEGAL ANALYSIS

{¶5} In his sole assignment of error, Appellant contends that the trial court erred in not allowing a change of venue from the Ross County Common Pleas Court to the Cuyahoga County Common Pleas Court Domestic Relations Division, when all parties and the minor children live in

or near Cuyahoga County. Appellant contends that the specific issue presented to this Court is whether a trial court has authority to allow a change of venue from its own Common Pleas Court, where original venue and jurisdiction were proper, to another Common Pleas Court in a post-decree Domestic Relations case, when all of the parties and the minor children live in or near a different Common Pleas Court jurisdiction. For the following reasons, we answer the issue presented by Appellant in the negative and therefore overrule his sole assignment of error.

{¶6} We first note that although both parties seem to rely on the reasoning of *Bieniek v. Bieniek* and urge us to apply an abuse of discretion standard to the decision of the trial court, we find the reasoning of *Bieniek* to be inapplicable to the issue presently before us. (1985), 27 Ohio App.3d 28, 499 N.E.2d 356. In *Bieniek*, the court denied a post-decree motion for transfer of jurisdiction stating, in support of its decision, that "[e]ither the transfer or the retention of jurisdiction is discretionary." Id. Here, however, Appellant is appealing the denial of a post-decree motion for change of venue. Because change of venue is governed by Civ.R. 3, we conclude that the issue of whether Appellant is entitled to a change of venue is a question of law. This Court reviews questions of law de novo. *Watson v. Neff*, Jackson App. No. 08CA12, 2009-Ohio-2062; citing *Lewis v. Nease*, Scioto

App. No. 05CA3025, 2006-Ohio-4362, ¶ 66; *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 1995-Ohio-214, 652 N.E.2d 684. As such, we analyze the issue without deference to the trial court's decision.

{¶7} Civ.R. 75(A) states that "[t]he Rules of Civil Procedure shall apply in actions for divorce * * * ." Further, Civ.R. 3 governs venue, with section (3)(C) specifically covering change of venue. Civ.R. 3(C)(1) provides that:

"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)(4) further provides that:

"[u]pon motion of any party or upon its own motion the court may transfer any action to an adjoining county within the state when it appears that a fair and impartial trial cannot be had in the county in which the suit is pending."

Thus, Civ.R. 3(C)(1) and(4) only provide for intrastate, or county to county, transfer in situations when such is necessary to transfer the case out of a county where it was improperly venued or in order to secure a fair and impartial trial. Civ.R. 3 does not provide for intrastate transfer in order to obtain a more convenient forum, as requested by Appellant.

{¶8} In *Chambers v. Merrell-Dow Pharmaceuticals, Inc.*, supra, the Supreme Court of Ohio commented on Ohio's prohibition related to

intrastate transfers, based only upon considerations of securing a more convenient forum. For instance, although the facts of *Chambers* are distinguishable from the facts sub judice, the Court nevertheless commented upon the availability of county to county transfer in Ohio. Specifically the Court noted that in early 1969 the Rules Advisory Committee submitted draft proposed rules to the Court, which "included language specifically adopting *forum non conveniens*[1] provisions for both intra- and interstate change of venue." *Chambers* at 130. However, the Court went on to explain that in the final version of the rules submitted to the General Assembly for its approval, the Court "removed all reference of 'convenient forum' from Civ.R. 3, substituting 'proper venue' * * * and 'proper forum' * * * ." Id. at 131. The *Chambers* Court further stated as follows:

"The commentators have indicated that the reason for the change was a recognition that transfer of a case from one proper venue to another proper venue within the state for means of convenience is unnecessary in a geographically small state such as Ohio, and that any inconvenience to witnesses in such a situation could be remedied by the use of depositions. * * * Thus, Civ.R. 3(C) now provides for a transfer of a properly venued action, Civ.R. 3(B), to an adjoining county in Ohio (whether venue is 'proper' there or not) only 'when it appears that a fair and impartial trial cannot be had in the county in which the suit is pending.' " Id. See, also, *Meros v. Grange Mutual Casualty Company, et al.* (1999). 134 Ohio App.3d 299, 730 N.E.2d 1063 at fn. 1. (commenting on the fact that the Franklin County Court of Common Pleas "incorrectly transferred the case to the

[1] As set forth in *Chambers*, supra, "[t]he principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of the general venue statute." Citing, *Gulf Oil Corp. v. Gilbert* (1947), 330 U.S. 501, 507, 67 S.Ct. 839.

Cuyahoga County Court of Common Pleas under the doctrine of forum non conveniens.").

{¶9} Thus, based upon a reading of Civ.R. 3(C), as well as the reasoning of the *Chambers* and *Meros* Courts, as set forth above, it appears that county to county transfer, simply in an effort to obtain a more geographically convenient forum, is not permitted in Ohio. As such, the trial court did not err in denying Appellant's motion for transfer. Although it appears that the trial court may have denied the motion based upon concerns of jurisdiction rather than venue, the court nevertheless reached the correct result. The Supreme Court has consistently held that a reviewing court is not authorized to reverse a correct judgment simply because the trial court has stated an erroneous basis for that judgment. *Myers v. Garson* (1993), 66 Ohio St.3d 610, 614, 614 N.E.2d 742; *Joyce v. General Motors Corp*. (1990), 49 Ohio St.3d 93, 96, 551 N.E.2d 172. Therefore, we overrule Appellant's sole assignment of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that the Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.
Exceptions.

Kline, P.J.: Concurs in Judgment and Opinion.
Abele, J.: Concurs in Judgment Only.

For the Court,

BY: _____
Judge Matthew W. McFarland

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.