

NOTICE

Decision filed 03/24/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 150433-U

NO. 5-15-0433

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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|--------------------------|---|---------------------|
| <i>In re</i> MARRIAGE OF |) | Appeal from the |
| |) | Circuit Court of |
| RACHEL DOHM KLIER, |) | Jasper County. |
| |) | |
| Petitioner-Appellee, |) | |
| |) | |
| and |) | No. 15-D-4 |
| |) | |
| SHANNON LEE KLIER, |) | Honorable |
| |) | Daniel E. Hartigan, |
| Respondent-Appellant. |) | Judge, presiding. |

JUSTICE MOORE delivered the judgment of the court.
Justices Chapman and Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held:* Circuit court's order denying respondent's petition for stay and injunctive relief affirmed, where it was not an abuse of discretion to not allow issues other than child custody to be resolved in Texas court, where circuit court had proper subject matter jurisdiction over all of the issues.
- ¶ 2 The respondent, Shannon Lee Klier, appeals the September 22, 2015, order of the circuit court of Jasper County that denied his petition for stay and injunctive relief. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 On January 23, 2015, the petitioner, Rachel Dohm Klier, filed in the circuit court a petition for dissolution of marriage. On February 6, 2015, the respondent filed a combined motion that challenged jurisdiction over his person because he is a resident of the state of Texas, and requested an involuntary dismissal based on the allegation that a petition for dissolution of marriage was pending between the parties in the district court of Midland County in the state of Texas.

¶ 5 At the hearing on the combined motion, the respondent conceded that the issue of personal jurisdiction was moot. Regarding the motion to involuntarily dismiss, the circuit court held, *inter alia*, that, pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) (750 ILCS 36/101 *et seq.* (West 2014)), Illinois was the home state of the parties' children for six months prior to the filing of the petition for dissolution of marriage. Accordingly, the motion to involuntarily dismiss was denied with prejudice in an order entered in the circuit court of Jasper County by Judge Allan F. Lolie on July 6, 2015. The respondent neither filed a motion to reconsider nor appealed the order.

¶ 6 On July 15, 2015, the respondent filed a petition for stay and injunctive relief. The petition alleged, *inter alia*, that the UCCJEA does not give the court exclusive jurisdiction to handle matters not related to a child custody determination. Accordingly, the respondent requested the circuit court to stay the petition for dissolution of marriage as to all matters except the child custody determination, and to allow those matters to be resolved in the Texas court.

¶ 7 A hearing was conducted on the petition on September 1, 2015. The crux of the respondent's argument at the hearing was that, until very recently, the parties lived together in Texas and the respondent continues to reside there, the parties' assets are in Texas, the respondent filed a petition for dissolution of marriage in Texas before the petitioner filed the petition for dissolution of marriage in Illinois, and the UCCJEA does not regulate issues of property, child support, and maintenance. Accordingly, the respondent argued that although the circuit court has jurisdiction over the children and the custody determination, the remaining issues should be litigated in Texas.

¶ 8 In response, the petitioner argued that the circuit court has jurisdiction over all of the issues and that Judge Lolie's July 6, 2015, order neither separated the issues nor asserted any lack of jurisdiction to litigate the remaining issues here. The petitioner further argued that the respondent did not file a motion to reconsider Judge Lolie's order denying the motion to involuntarily dismiss, and that there was no petition or pleading on file giving the circuit court a basis to decline to hear any portion of the case.

¶ 9 On September 22, 2015, the circuit court entered an order by docket entry denying the respondent's petition for stay and injunctive relief. The circuit court found that it had both subject matter jurisdiction over all issues and personal jurisdiction over the parties, and ruled in its discretion that the case must be litigated in Illinois because it would be a waste of resources by both parties to litigate the matter in two different states. The circuit court further found that because the July 6, 2015, order¹ entered by Judge Lolie

¹The September 22, 2015, order actually references the date of the July 6, 2015,

determined that Illinois had proper jurisdiction over the issues and matters, the entire case must be litigated in Illinois. For those reasons, the respondent's petition for stay and injunctive relief was denied. The respondent filed a timely notice of appeal.

¶ 10

ANALYSIS

¶ 11 The sole issue on appeal is whether the circuit court properly denied the respondent's petition for stay and injunctive relief. Rulings on motions to stay are reviewed under the abuse of discretion standard. See *Northeast Illinois Regional Commuter R.R. Corp. v. Chicago Union Station Co.*, 358 Ill. App. 3d 985, 993 (2005). "The standard used in determining whether the trial court abused its discretion is whether no reasonable person would take the view adopted by the court." *In re Marriage of Heller*, 153 Ill. App. 3d 224, 230 (1987).

¶ 12 Here, the respondent argues that the UCCJEA does not give the circuit court jurisdiction over matters other than a child custody determination. While the UCCJEA addresses child custody matters, jurisdiction over the remainder of this case is proper, pursuant to the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2014)). Section 401 of the Act provides that "[t]he court shall enter a judgment of dissolution of marriage if at the time the action was commenced[,] one of the spouses was a resident of this State *** and the residence *** had been maintained for 90

order as June 2, 2015. This is a scrivener's error, as the order referenced was signed and dated by Judge Lolie on July 2, 2015, and entered in the circuit court on July 6, 2015. The circuit court also stated at the hearing that Judge Lolie entered the order on July 6.

days next preceding the commencement of the action or the making of the finding." 750 ILCS 5/401(a) (West 2014). In a divorce case, it is the petitioner's residence that confers subject matter jurisdiction on the circuit court. See *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 28. Here, the petitioner met the residency requirement, thus giving the circuit court subject matter jurisdiction over the case.

¶ 13 In his brief, the respondent argues that the circuit court abused its discretion by "assuming venue" over the remaining issues of the case. We disagree. Section 104 of the Act provides as follows with regard to venue: "[t]he proceedings shall be had in the county where the plaintiff or defendant resides." 750 ILCS 5/104 (West 2014). The petitioner is a resident of Jasper County. Accordingly, venue is proper and the respondent's argument to the contrary must fail.

¶ 14 In arguing that the circuit court abused its discretion by denying the petition for stay and injunctive relief, the respondent asserts the following factors of consideration: (1) comity; (2) prevention of multiplicity; (3) vexation and harassment; (4) likelihood of obtaining complete relief in the foreign jurisdiction; (5) the *res judicata* effect of a foreign judgment in the local forum (see *Jam Productions, Ltd. v. Dominick's Finer Foods, Inc.*, 120 Ill. App. 3d 8, 11 (1983)); (6) the orderly administration of justice; and (7) judicial economy (see *First National Bank of Hoffman Estates v. Fabbrini*, 255 Ill. App. 3d 99, 101, 103 (1993)).

¶ 15 Regarding the above factors, the respondent contends that the circuit court should have granted the petition to stay and, "as a courtesy," deferred to the Texas court to resolve the remaining issues. We disagree. The record reflects that Judge Lolie

referenced a transcript from a proceeding in the Texas court before determining that Illinois was the home state of the parties' children when the petition for dissolution of marriage was filed. The record does not reflect any judgments that were entered in the Texas court. Because the circuit court entered the July 6, 2015, order, denying the respondent's motion to involuntarily dismiss and the respondent did not appeal that order, jurisdiction was established and there is no basis to defer to the Texas court.

¶ 16 The respondent contends that a multiplicity of litigation would have been avoided, had the circuit court granted his petition for stay and injunctive relief. We disagree. Had the issue of child custody been resolved in Illinois and the respondent's petition granted, allowing the remaining issues to be resolved in Texas, this would have created a multiplicity of litigation, not prevented it as the respondent claims. By litigating the entire matter in Illinois, a multiplicity of litigation is avoided.

¶ 17 The respondent further contends that the petitioner filed the petition for dissolution in Illinois in retaliation, vexation, and harassment against the respondent because he filed his petition in Texas. We disagree. The record shows that the petitioner filed her petition on January 23, 2015, just two days after the respondent filed his petition in Texas. The petitioner had resided in Illinois with the children for over six months before filing her petition for dissolution. She had a legitimate basis to file the petition in her home county. The respondent cites no evidence in the record to establish any vexation or harassment on the part of the petitioner.

¶ 18 Regarding the likelihood of obtaining complete relief in the foreign jurisdiction, as already established, the Texas court could not grant complete relief had the petition for

stay been granted because the issue of custody would have been resolved in Illinois. Because Illinois has jurisdiction over all of the issues, the likelihood of obtaining complete relief here is greater than the likelihood in Texas.

¶ 19 The factor of the *res judicata* effect of a foreign judgment in the local forum does not apply, as the record does not show any judgments that were entered in the Texas court. The orderly administration of justice and judicial economy were promoted by the circuit court's denying the petition for stay and injunctive relief, as all issues will be resolved here and no split of issues between states exists, thereby creating judicial economy. After considering all of these factors, we disagree with the respondent that the circuit court's judgment was erroneous. In light of the record and the facts of this case, we cannot say that no reasonable person would have taken the view adopted by the circuit court. Accordingly, the circuit court did not abuse its discretion in denying the respondent's petition for stay and injunctive relief. See *In re Marriage of Heller*, 153 Ill. App. 3d 224, 230 (1987).

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Jasper County.

¶ 22 Affirmed.