

Circuit Court for Montgomery County
Case No. 164323-FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0039

September Term, 2020

ALIVIA FRANZONE

v.

JOHN FRANZONE

Friedman,
Wells,
Zic,

JJ.

Opinion by Zic, J.

Filed: April 1, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from appellant Alivia Franzone (“Wife”) and appellee John Franzone (“Husband”) filing family law actions in different counties. Husband filed in the Circuit Court for Baltimore County on August 2, 2019. Wife filed in the Circuit Court for Montgomery County on September 10, 2019. The Circuit Court for Montgomery County granted Husband’s motion to dismiss Wife’s complaint.

FACTS AND PROCEEDINGS

Baltimore County Action

On August 2, 2019, Husband filed a Complaint for Limited Divorce in the Circuit Court for Baltimore County. In addition to limited divorce, Husband’s complaint requested “sole or shared physical and sole legal custody of the [couple’s] minor child,” “sole or shared physical custody and sole legal custody” of his stepchild, child support, and other relief. In response, Wife filed a Motion to Dismiss Plaintiff’s Complaint for Limited Divorce or in the Alternative to Transfer Venue on September 10, 2019. Wife’s motion to dismiss and her subsequent motion for reconsideration were denied.

Montgomery County Action

On September 10, 2019, Wife filed a Complaint for Absolute Divorce or, in the Alternative, Limited Divorce, Custody, Child Support, Alimony, Monetary Award, Attorney’s Fees, and Other Related Relief in the Circuit Court for Montgomery County. Husband moved to dismiss Wife’s complaint or, in the alternative, to transfer venue.

On February 20, 2020, a hearing was held on Husband’s motion to dismiss. The court granted Husband’s motion and dismissed Wife’s complaint. In its ruling from the bench, the court provided this explanation:

[C]learly even a dismissal here is something without prejudice to the plaintiff to pursue her claims in Baltimore County. All of the claims that plaintiff’s counsel indicates can certainly be sought there. And I think it’s pretty clear where one Circuit Judge of another County has ruled definitively in this way that this Court is not going to rule to the contrary.

The court entered a corresponding order on February 28, 2020. This appeal followed.

QUESTIONS PRESENTED

Wife presents the following questions on appeal:

1. Did the Circuit Court for Montgomery County commit reversible error in granting the Appellee’s Motion to Dismiss?
2. Did the Circuit Court for Montgomery County properly dismiss Appellant’s Complaint for Absolute Divorce or in the Alternative, Limited Divorce, Custody, Child Support, Alimony, Monetary Award, Attorney’s Fees, and other Related Relief?¹

For the following reasons, we answer the first question in the negative and the second question in the affirmative. Accordingly, we shall affirm the judgment of the Circuit Court for Montgomery County.

¹ Husband presented the following question: “Did the Circuit Court for Montgomery County err in dismissing the appellant’s complaint for divorce on the basis that an earlier-filed divorce action between the same parties was pending in the Circuit Court for Baltimore County?”

STANDARD OF REVIEW

“[T]he standard of review of the grant or denial of a motion to dismiss is whether the trial court was legally correct.” *Lipp v. State*, 246 Md. App. 105, 110 (2020) (quoting *Howard v. Crumlin*, 239 Md. App. 515, 521 (2018)). This court reviews the grant of a motion to dismiss *de novo*. *Lipp*, 246 Md. App. at 110 (citing *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019)).

DISCUSSION

“It has long been the rule in this State that, once a court takes jurisdiction over a particular subject matter, another court of concurrent jurisdiction generally should abstain from interfering with the first proceeding.” *State v. 91st St. Joint Venture*, 330 Md. 620, 628 (1992). When “the actions are materially the same, the court in which suit first was commenced should retain the case and another court should abstain from exercising its jurisdiction. . . .” *Vaughn v. Vaughn*, 146 Md. App. 264, 279 (2002) (citing *91st St. Joint Venture*, 330 Md. at 628). “The standard . . . is whether the question presented in the [second] action ‘*can be adequately decided*,’ or ‘*may be adjudicated*,’ in the earlier-filed, pending action.” *Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 21 (2017) (footnotes omitted) (citing *Sprenger v. Pub. Serv. Comm’n of Maryland*, 400 Md. 1, 27-28 (2007)).

As of the date the Montgomery County court entered its order (February 28, 2020) and the date Wife noted this appeal (March 2, 2020), Husband’s Complaint for Limited Divorce was the operative pleading pending in Baltimore County. We note, however, that significant activity took place in the Baltimore County action between the date Wife

noted this appeal and the date of oral argument in this Court (February 5, 2021), including Husband’s Amended Complaint for Absolute Divorce and Immediate Custody (March 12, 2020) and Wife’s Counterclaim for Absolute Divorce and Other Relief (July 24, 2020).²

The crux of Wife’s argument is that Baltimore County is not a proper venue for Husband’s complaint, which is argued at length in her briefs and was repeatedly emphasized at oral argument. Wife “maintains that the two (2) cases should be allowed to move forward in an effort to rectify the faulty jurisdiction grounds that the Baltimore County lawsuit stands on.” The conclusion to Wife’s reply brief summarizes her argument as follows:

This appeal concerns two lawsuits: one that was first filed in an improper venue, Baltimore County, by [Husband], and one that was filed closely thereafter in a proper venue, Montgomery County, by [Wife]. Because [Husband] did not work in Baltimore County, nor did [Husband] live there at the time of his filing, pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 6-201, *et seq.*, Baltimore County was an impermissible venue for [Husband]’s Complaint. Accordingly, Baltimore County and Montgomery County did not have concurrent jurisdiction and the two (2) cases cannot be considered parallel proceedings. As a result, [Husband]’s argument regarding parallel and/or duplicative litigation fails. Should the Court somehow be persuaded by [Husband]’s theory, the unusual and compelling circumstances of correcting the clear jurisdictional error permit it. In other

² Although the Baltimore County case docket is not part of the record in this case, we take judicial notice of the docket and filings from Baltimore County. *Hanover Invs.*, 455 Md. at 9 n.5 (noting that “although an appellate court does not normally ‘travel’ outside the record, judicial notice may be taken of filings in related cases in furtherance of a just result” (citing *Cochran v. Griffith Energy Sers., Inc.*, 426 Md. 134, 144-45, 145 n.4 (2012))).

words, correcting an improper venue decision, which has potentially far-reaching consequences, merits the allowance of the parallel Montgomery County litigation.

Relying primarily on *Hanover Investments, Inc. v. Volkman*, 455 Md. 1 (2017), and *State v. 91st Street Joint Venture*, 330 Md. 620 (1992), Husband argues against allowing parallel cases to proceed and that the distinction between a complaint for limited for divorce and a complaint for absolute divorce is irrelevant.

Fader’s Maryland Family Law provides an instructive summary regarding absolute divorce and limited divorce to guide our analysis.

Maryland recognizes two types of divorce: an *absolute* divorce and a *limited* divorce. An absolute divorce is permanent, permits remarriage, permits the court to address marital property issues, and terminates all property claims—including real property. . . . Limited divorces do not permit remarriage, and do not terminate real property claims. Limited divorces serve only to legalize the separation and provide for support. . . .

Limited divorces are not favored. The utility for a limited divorce today is as the basis for seeking temporary child support, alimony, custody, use and possession, etc. It provides access to the court system, especially when parties are living separate and apart, but for less than 12 months. . . . Time passes, the complaint for limited divorce is usually amended to be one for absolute divorce, and the case goes to a trial or a hearing with an absolute divorce being granted. That is a typical scenario.

Cynthia Callahan & Thomas C. Ries, *Fader’s Maryland Family Law* § 4-2 (6th ed. 2016) (footnotes omitted).

The premise of Wife’s argument—that this appeal concerns two lawsuits and venue of Husband’s lawsuit in Baltimore County is improper—is incorrect. To be sure,

the Montgomery County court dismissed Wife’s complaint because the Baltimore County action was pending, but the Baltimore County action is not before us with regard to venue or any other issue. There is no appeal pending from the Baltimore County action. This appeal is from the dismissal of Wife’s Montgomery County action.

With regard to the issues pertinent to this appeal, the two actions are materially the same. Husband’s initial complaint for limited divorce in Baltimore County and Wife’s complaint for absolute divorce in Montgomery County involve the same parties, and the same, if not similar issues. Both parties filed for divorce, custody, child support, and other relief.³ “Absolute identity of all issues in both cases is not the standard.” *Hanover Invs.*, 455 Md. at 21. That Husband initially filed for *limited* divorce and Wife filed

³ At oral argument, Wife’s counsel argued that the actions are not materially the same because Husband did not seek custody of the couple’s minor child in his Complaint for Limited Divorce. In fact, Husband’s initial complaint requested custody of the couple’s minor child and his stepchild, Wife’s child from a previous relationship. In addition to his amended complaint for absolute divorce, Husband has filed numerous child access requests and the Baltimore County court has entered child access orders in response to some of the child access requests, including: Petition for Emergency Hearing – Immediate Child Access (December 12, 2019), Petition for Emergency Hearing – Immediate Interim Child Access (July 14, 2020), Motion for Custody and/or Immediate Access to a Minor Child (August 20, 2020), Custody and Access Order (November 13, 2020), Amended Custody and Access Order (November 20, 2020), Plaintiff’s Motion for Court to Enter Bench Warrant to Take Physical Custody of Minor Child (December 8, 2020), and Order Granting the Issuance of a Bench Warrant to Take Physical Custody of the Minor Child (December 9, 2020). On January 11, 2021, the court issued a Show Cause Order with regard to Wife and scheduled a contempt hearing for May 10, 2021. Wife’s counsel’s argument is simply not supported by the record in this case and the Baltimore County case docket.

shortly after that for *absolute* divorce does not make the cases materially different.⁴

“Time passe[d], the complaint for limited divorce [was] amended to be one for absolute divorce, and the case [will] go[] to a trial or a hearing with an absolute divorce being granted. That is a typical scenario.” Callahan & Ries, *supra*, § 4-2.

Not only can the issues presented in the Montgomery County action be adequately decided or adjudicated in the Baltimore County action, they are currently in that process. *Hanover Invs.*, 455 Md. at 21. Wife’s argument that “the unusual and compelling circumstances of correcting the clear jurisdictional error” should permit the Montgomery County action to go forward is not applicable in this case. There is no doubt that litigating a contentious family law case can be a difficult, unusual experience with potentially far-reaching consequences for the people involved in the case. There is, however, no unusual or compelling circumstance for us to consider with regard to venue. Again, a venue issue regarding the Baltimore County action is not before us.

For the above reasons, we hold that the Montgomery County court properly refrained from interfering with the Baltimore County action.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**

⁴ Whether we perform our analysis based on the initially filed complaints or the amended complaints, we come to the same conclusion—the actions are materially the same.