RENDERED: MARCH 25, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001603-MR

ANGELA M. ALLEN — APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 01-CI-00630

CHARLES E. ALLEN — APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

** ** ** ** **

BEFORE: BUCKINGHAM, McANULTY, AND VANMETER, JUDGES.

McANULTY, JUDGE: Appellant Angela M. Allen appeals from an order of the Greenup Circuit Court which denied her motion to transfer venue to the Lawrence Circuit Court.

Angela Allen and Charles E. Allen were married in 1992 and have two minor children. Charles filed a petition for dissolution of marriage in the Greenup Circuit Court. A decree for the dissolution of their marriage was entered by the Greenup Circuit Court on March 18, 2002. The parties had entered into a settlement agreement to resolve all issues between them. After

the decree of dissolution was entered, Angela brought a petition/motion alleging domestic violence. Charles brought a motion asking the court to resolve issues regarding modification of the visitation schedule, disputes concerning the exchange of the children, and decision-making regarding medical care and body piercing.

Angela then asked the court to transfer venue to the Lawrence Circuit Court. Angela filed a memorandum in support of the motion in which she noted that the parties and the children lived during the marriage in Lawrence County, and the children continued to live in Lawrence County with Angela. Angela argued that the majority of the evidence on the issues would be found in Lawrence County rather than Greenup County. She conceded that she had waived her right to object to venue at the time that Charles filed the petition for dissolution in his home county of Greenup. However, she believed that the court had the power to now transfer the venue of the case to Lawrence County, and cited KRS 452.105 and the doctrine of forum non conveniens as authority.

On February 21, 2003, the trial court entered an order in which it denied Angela's motion to transfer venue. The court referred the case to the domestic relations commissioner for a hearing on all pending motions. The parties on March 4, 2003 entered into a temporary agreed order regarding visitation. On

March 20, 2003, Angela filed a motion to alter, amend or vacate the court's order of February 21, or in the alternative to make it final and appealable. Charles filed a response in which he argued that the motion was late pursuant to CR 59.05 since it was not filed within 10 days after the order was entered. Angela filed a motion to suspend visitation on June 9, 2003, after their older child returned from a visitation with Charles with a fractured nose. On July 16, 2003, the court denied the motion to alter, amend or vacate, and sustained the motion to make the order final and appealable. Angela filed a notice of appeal and the case was briefed to this Court.

In June 2004, this Court ordered appellant to show cause why the appeal should not be dismissed as having been taken from an order that was not final and appealable. The show cause order stated that it appeared that the decision overruling the motion to change venue was not final and could not be appealed until a final judgment had been entered in the case, despite the finality language in the order. Angela's response stated that all other post-decree motions had "been resolved by agreement during the pendency of this appeal." She argued, therefore, that the matter was final at the circuit court level because the only issue was that of venue. The question of whether the appeal is from a final judgment is now before this panel for decision.

An appellate court should determine for itself whether it is authorized to review the order appealed from even if the question is not raised by the parties. Hook v. Hook, 563 S.W.2d 716, 717 (Ky. 1978). CR 54.01 states, in part, "A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." CR 54.02 is confined to actions involving multiple claims or multiple parties. Hook, 563 S.W.2d at 717. It permits an interlocutory judgment or order to be made appealable under specified circumstances. Id. Where an order by its very nature is interlocutory even the inclusion of the recitals in CR 54.02 will not make it appealable. Id.

We conclude that the order appealed from is by its nature interlocutory. It has been held generally that a person aggrieved by a venue determination is confined to obtaining review of a final judgment. Pettit v. Raikes, 858 S.W.2d 171 (Ky. 1993); see also Martin v. Fuqua, 539 S.W.2d 314 (Ky. 1976). In this state, the court has discretion to determine the application of forum non conveniens, and if the decision is erroneous as a matter of law it may be reviewed on appeal from a final judgment entered. Skidmore v. Meade, 676 S.W.2d 793, 794 (Ky. 1984). Although *dismissal* of an action on the grounds of forum non conveniens is a final and appealable order, Beaven v. McAnulty, 980 S.W.2d 284, 289 (Ky. 1998)(modified by statute as

stated in Seymour Charter Buslines, Inc. v. Hopper, 111 S.W.3d 387, 389 (Ky. 2003)), that rule has no application here since the court declined to dismiss the action. Additionally, we note that only the doctrine of forum non conveniens was applicable. There was no ground for employing KRS 452.105 to transfer the case because that statute first requires the trial court to find that it lacked venue. Fritsch v. Caudill, 146 S.W.3d 926, 929 (Ky. 2004). From all the foregoing authority, we conclude that the venue issue is not ripe for appeal since there has been no final judgment entered in this case to finally resolve pending issues.

ORDER

Therefore, it is hereby ORDERED that the appeal be dismissed.

ALL CONCUR.

ENTERED: March 25, 2005 /s/ Wm. E. McAnulty, Jr.
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

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Inez, Kentucky

BRIEF FOR APPELLEE:

James E. Armstrong
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