

consideration. Tests which have previously been applied involve considerations of good faith and a showing that the circumstances which existed when the prior order was made have materially and substantially changed *Commonwealth ex rel. Long v. Long*, 181 Pa. Super. 41, 121 A.2d 888 (1956). Insofar as a reduction in earnings is necessitated by various exigencies, that reduction may evidence a reduction in earning capacity. The law is not harsh and support should not operate to punish or imprison a supporting spouse.

There being no other issues before the Court, the appeal will be dismissed.

ORDER

AND NOW, July 11, 1983, Defendant's appeal from the Order of the Domestic Relations Hearing Officer is dismissed and the Order affirmed.

HERRITT v. HERRITT, C.P. Franklin County Branch, F.R. 1982
- 34 - D

Divorce - Change of Venue - Pa. R.C.P. 1920.2 - Forum Non Conveniens - Pa. R.C.P. 1006(d)

1. Venue in a divorce action may be brought only in the county in which plaintiff or defendant resides.
2. Proper venue is a matter of law involving no discretion on the part of the court.
3. Under the doctrine of forum non conveniens the plaintiff's choice of forum should not be disturbed except for weighty reasons, and the change must be equally or more convenient for the plaintiff.

Patrick J. Redding, Esq., Counsel for Plaintiff

Hubert X. Gilroy, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., April 25, 1983:

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This action in divorce was commenced by the plaintiff filing her complaint in the Office of the Prothonotary of Franklin County on January 18, 1982. The complaint alleged plaintiff resides at 129 Highland Road, Chambersburg, Guilford Township, Franklin County, Pennsylvania, and the defendant resides at R.D. 2, Shippensburg, Southampton Township, Cumberland County, Pennsylvania. A true copy of the complaint in divorce was served upon the defendant on January 22, 1982 by the Sheriff of Cumberland County. Hubert X. Gilroy, Esq., counsel for the defendant entered his appearance on behalf of the defendant in the Office of the Prothonotary of Franklin County on January 26, 1982. On February 2, 1983, counsel for the defendant presented the defendant's motion for Change of Venue from the Court of Common Pleas of Franklin County to the Court of Common Pleas of Cumberland County. An order was signed on the same date granting the issuance of a rule to show cause why the defendant's request should not be granted. On February 17, 1983, an answer was filed on behalf of the plaintiff requesting denial of the defendant's motion. On February 7, 1983, the plaintiff's petition for equitable distribution under the Divorce Code was presented and an order was signed the same date by the Honorable George C. Eppinger granting the plaintiff leave to proceed under the above-captioned matter for equitable distribution of the parties' marital property pursuant to Section 401, et al. of the Divorce Code.

An examination of the defendant's change of venue motion discloses that it was filed in anticipation of the plaintiff seeking equitable distribution upon the parties being unable to arrive at a satisfactory compromise property settlement agreement. The defendant alleges as his reasons for requesting the change of venue:

- A. At the time of the filing of this action, the defendant was a resident of Cumberland County and, thus, the action could have been filed in Cumberland County;
- B. Both plaintiff and defendant resided in Cumberland County since approximately June of 1971;
- C. The plaintiff moved from Cumberland County to Franklin County on December 12, 1981, a little more than one month prior to the filing of this action;
- D. The parties own real estate which is located in Cumberland County and which is subject to equitable distribution;
- E. The defendant does a majority of his work in Cumberland

County;

F. A majority of the defendant's witnesses in this action reside in Cumberland County;

G. The parties have previously been before the Cumberland County Court in the matter of S. Eugene Herritt v. Kathryn R. Herritt - Docketed to No. 4601 - Civil - 1981 which was a custody action in which the Honorable George E. Hoffer signed a Custody Stipulation Order on February 9, 1982 granting custody of the parties' minor child to S. Eugene Herritt;

H. A transfer of this case to Cumberland County would be for the convenience of both parties.

Seeking a dismissal of the defendant's motion, counsel for the plaintiff alleges that a change of venue to Cumberland County would be inconvenient on the grounds that:

- A. Plaintiff has lived in Chambersburg, Franklin County, Pennsylvania, since December, 1981;
- B. Plaintiff has worked in Franklin County for several years;
- C. Most of plaintiff's witnesses reside in Franklin County;
- D. Plaintiff pays support through the Franklin County Domestic Relations Office;
- E. Plaintiff, through agreement with Defendant by his counsel, has secured a Franklin County realtor to appraise the parties' joint marital home located in Southampton Township, Cumberland County, which is located closer to Chambersburg than it is to Carlisle, Pennsylvania;
- F. Until negotiations became stalemated, defendant was more than satisfied with having the action dealt with in the Franklin County Courts.

Venue in divorce actions is established by Pa. R.C.P. 1920.2, which provides: "The action, except a claim for custody, may be brought only in the county in which the plaintiff or defendant resides."

Pa. R.C.P. 1006 (Venue. Change of Venue) provides inter alia.

- (a) Except as otherwise provided by Subdivisions (b) (c) of this rule, an action against an individual may be brought in

and only in a county in which he may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law.

(d) For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought. It shall be the duty of the prothonotary of the court in which the action is pending to forward to the prothonotary of the county to which the action is transferred, certified copies of the docket entries, process, pleadings, depositions and other papers filed in the action. The costs and fees of the petition for transfer and the removal of the record shall be paid by the petitioner in the first instance to be taxable as costs in the case.

The defendant does not question the plaintiff's allegation that she resides in Franklin County, Therefore, there can be no question but that venue in this divorce action is properly laid in Franklin County against the defendant.

Proper venue is a matter of law involving no discretion on the part of the court. However, great latitude is afforded the court in considering a petition to transfer a case from one county to another pursuant to the Forum Non Conveniens Doctrine set forth in Pa. R.C.P. 1006(d). Case law indicates that two highly important factors to be considered before applying the Forum Non Conveniens Doctrine are:

(1) The plaintiff's choice of forum should not be disturbed except for weighty reasons. *Tarasi v. Settino*, 223 Pa. Super. 158, 162 (1972); *Rini v. New York Central Railroad Company*, 429 Pa. 235, 238 (1968); *Peaceman v. Cades*, 272 Pa. Super. 568, 573 (1979); *Montgomery v. Montgomery*, 8 D&C 3d 221, 226 (1976).

(2) Where the defendant seeks a change of venue, he must show not only inconvenience to himself but also that the forum change will be equally or more convenient for the plaintiff. *Walker v. Ohio River Company*, 416 Pa. 149 (1964); *Bowerman v. Tomhave*, 8 D&C 3d 556, 560 (1978).

In the case at bar, those factors which would constitute inconveniences for the defendant are by their very nature matters of convenience to the plaintiff and vice versa. We find no weighty reasons for a finding of Forum Non Conveniens. The plaintiff has made her election to have the above-captioned matter litigated in Franklin County, and it is our conclusion that venue should not be transferred from the county of plaintiff's choice.

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ORDER

NOW, this 25th day of April, 1983, the plaintiff's rule to show cause is discharged, and his motion for change of venue dismissed. Exceptions are granted the defendant.

IN RE: PROCEEDING TO DETERMINE NECESSITY FOR CONDEMNATION OF PRIVATE RIGHT OF WAY, C.P. Franklin County Branch A.D. 1981 - 91

Private Road - Board of Viewers - Objection to Board's Report

1. A trial courts review of a Board of Views report is limited to the validity of the courts' jurisdiction, the regularity of the proceedings, questions of law and whether there has been an abuse of discretion.
2. Both necessity for a road and location of the road are factual matters within the province of the Board of Viewers.
3. An appeal from a Board of Views' report must be limited to the award of damages.

David C. Cleaver, Esquire, Counsel for Petitioners/Condemnors

Frederic C. Antoun, Jr., Esquire, Counsel for Respondent/Condemnees

OPINION AND ORDER

KELLER, J., May 17, 1983:

This action was commenced by the filing of a single petition on March 18, 1981, by various landowners requesting the appointment of a Board of View to determine the necessity and location for two private roadways for access to the petitioners' properties. Preliminary objections were filed on behalf of the condemnees, Melvin L. and Nancy L. Bland. Pursuant to stipulation of counsel, the objections were withdrawn and plaintiff filed two amended petitions on January 21, 1982, to separate the requests for roadways. Both petitions were filed to the same term and number. A Board of View consisting of J. Edward Beck, Jr., Esquire,

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