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DISTRICT II

January 20, 2016

To:

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Circuit Court Judge
Ozaukee County Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2015AP633

Richard Langlois v. Gloria Erickson (L.C. #2014CV292)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Richard Langlois appeals an order granting Gloria Erickson's motion to dismiss his lawsuit for lack of personal jurisdiction. The trial court dismissed the matter without prejudice on grounds of forum non conveniens. Based on our review of the briefs and the record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21.¹ As we construe the court's ruling as having granted a stay of proceedings under WIS. STAT. § 801.63, we remand to modify the order. We affirm the order as modified.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Langlois and Erickson lived together in Florida, most recently for about twelve years. During that time, Langlois loaned Erickson \$28,000. Erickson failed to repay the money and moved out. In July 2014, Langlois filed suit, seeking compensatory and punitive damages. Erickson was personally served at an address in Ozaukee county. Langlois filed an affidavit averring that Erickson told him she was moving to that address, that he personally saw her RV parked there, and that the Florida address she gives as her new residence is a “very small” one-bedroom mobile home where her uncle lives.

Erickson moved to dismiss the case for lack of personal jurisdiction. Her supporting affidavit averred that she lives year-round in Florida, has been a Florida resident and had a Florida driver’s license since 1995; she came to Wisconsin in May 2014 to visit her daughter; Langlois’s claims deal with obligations that arose in Florida and have nothing to do with Wisconsin; and her potential witnesses all reside in Florida.

At the hearing on the motion, the court determined that there were sufficient contacts for personal jurisdiction but that the real issue was one of forum non conveniens. It concluded that Florida was the more proper venue and granted the motion to dismiss. Langlois appeals.

“[T]he doctrine [of forum non conveniens] is invoked when a court has unquestioned jurisdiction but, for policy reasons, declines to exercise it.” *Littmann v. Littmann*, 57 Wis. 2d 238, 246, 203 N.W.2d 901 (1973). WISCONSIN STAT. § 801.63 is the forum non conveniens provision generally applicable in civil actions. *Mayer v. Mayer*, 91 Wis. 2d 342, 350, 283 N.W.2d 591 (Ct. App. 1979). Section 801.63(1) provides that a court of this state may enter an order to stay further proceedings on the action in this state if it finds that trial of the action pending before it should, as a matter of substantial justice, be tried in a forum outside this state.

Whether a foreign forum is more convenient than the one in which the plaintiff brought the action is a matter within the discretion of the court where the action is pending. *See U.I.P. Corp. v. Lawyers Title Ins. Corp.*, 65 Wis. 2d 377, 382, 222 N.W.2d 638 (1974) (construing predecessor statute to WIS. STAT. § 801.63). In exercising its discretion, the court may consider, as between this state and any alternative forum, such factors as amenability to personal jurisdiction, convenience to the parties and witnesses for trial, differences in conflict-of-law rules, or “[a]ny other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.” Sec. 801.63(3).

Here, the court found that both parties were long-time Florida residents, the anticipated witnesses were Florida residents, Erickson’s visits to her daughter who has a “pancreatic issue” do not make Erickson a Wisconsin resident, and there was “no indication” Erickson intended to stay in Wisconsin. Although it did not expressly invoke the statute, the court considered proper factors and implicitly concluded that Erickson made a convincing showing that trying the case in Wisconsin was too inconvenient. *See Littmann*, 57 Wis. 2d at 245.

The court implicitly invoked WIS. STAT. § 801.63 when it stated that the real issue was one of forum non conveniens. Section 801.63 does not provide for outright dismissal, however. Accordingly, because we are satisfied that the court properly exercised its discretion and the action was dismissed without prejudice, we construe the order of dismissal to be an order granting a stay of proceedings pursuant to § 801.63. We remand with directions to modify the order consistent with this opinion. As the circuit court’s jurisdiction continues over the parties, the court may, on motion and notice to the parties, modify the stay order at a later date. Sec. 801.63(4).

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court shall be modified to reflect that it is an order granting a stay of proceedings pursuant to WIS. STAT. § 801.63 and, as modified, is summarily affirmed. WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals