

SUPREME COURT OF ARKANSAS

No. CV-12-886

JONATHAN PARKER

APPELLANT

V.

ERIN PARKER

APPELLEE

Opinion Delivered May 30, 2013

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. DR-2012-1607-3]HONORABLE MARK T. FRYAUF,
JUDGEREVERSED AND REMANDED.**JOSEPHINE LINKER HART, Associate Justice**

After Jonathan Parker had filed for divorce in Benton County, his estranged wife, Erin Parker, who filed for divorce later that same day in Washington County, moved to dismiss his complaint, asserting that the “proper” venue was Washington County. The Benton County Circuit Court agreed with Erin and dismissed Jonathan’s complaint. Jonathan appeals, arguing that the Benton County Circuit Court erred because it failed to comply with Arkansas Code Annotated section 9-12-303(a) & (c) (Repl. 2009). This appeal was originally filed in the court of appeals but was certified to this court in accordance with Arkansas Supreme Court and Court of Appeals Rule 1-2(b) (5) & (6) (2012) because this case involves matters of statutory interpretation and raises issues that require clarification and development of the law. We reverse and remand.

The legally significant facts are not in dispute. Jonathan filed his complaint for divorce in Benton County on September 10, 2012, at 9:05 a.m., and Erin filed her

complaint in Washington County that same day at 9:43 a.m. In his complaint, Jonathan asserted that he was a resident of Benton County and had been a resident of the state of Arkansas for more than sixty days prior to initiating his divorce action.

Erin moved to dismiss his complaint pursuant to Arkansas Rule of Civil Procedure 12(b)(3). In her petition, she admitted that Jonathan resided in Benton County, and she did not deny that he filed his complaint in Benton County before she filed her complaint in Washington County. Instead, she asserted that Washington County was the “proper” venue because the parties resided in Washington County at the time of their separation, that she still resided in Washington County with the parties’ two minor children, that the marital home is located in Washington County, and that all necessary witnesses pertaining to this action reside in Washington County. After consultation between the judges of the Washington and Benton County Circuit Courts, the Benton County Circuit Court granted Erin’s motion to dismiss Jonathan’s complaint. Jonathan appeals.

The legislature is vested with the power to establish venue under the Arkansas Constitution. *Farm Bureau Mut. Ins. Co. of Ark., Inc. v. Gadbury-Swift*, 2010 Ark. 6, 362 S.W.3d 291. In domestic-relations cases, venue is controlled by Arkansas Code Annotated section 9-12-303.

(a) The proceedings shall be in the county where the complainant resides unless the complainant is a nonresident of the State of Arkansas and the defendant is a resident of the state, in which case the proceedings shall be in the county where the defendant resides and, in any event, the process may be directed to any county in the state.

(b) In actions initiated by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or the Department of Human Services, proceedings may also be commenced in the county where the

defendant resides.

(c) When a spouse initiates an action against the other spouse for an absolute divorce, divorce from bed and board, or separate maintenance, then the venue for the initial action shall also be the venue for any of the three (3) named actions filed by the other spouse, regardless of the residency of the other spouse.

Venue is determined from the allegations in the complaint. *Premium Aircraft Parts, LLC v. Cir. Ct. of Carroll Cnty.*, 347 Ark. 977, 69 S.W.3d 849 (2002). In reviewing a trial court's decision on a motion to dismiss under Arkansas Rule of Civil Procedure 12(b), this court treats the facts alleged in the complaint as true and views them in the light most favorable to the plaintiff. *Servewell Plumbing, LLC v. Summit Contractors, Inc.*, 362 Ark. 598, 210 S.W.3d 101 (2005). In testing the sufficiency of the complaint on a motion to dismiss, all reasonable inferences must be resolved in favor of the complaint, and the pleadings are to be liberally construed. *Id.*

On appeal, Jonathan argues that the trial court erred in dismissing his complaint because it misapplied section 9-12-303(a) and (c). He asserts that he was a resident of the state of Arkansas and of Benton County when he filed his divorce complaint on September 10, 2012, before Erin filed her complaint in Washington County. Erin does not dispute Jonathan's residence or that he filed in Benton County before she filed her complaint. Accordingly, he asserts that pursuant to section 9-12-303(c), Erin was required to file her complaint as a counterclaim in Benton County. In support of his argument premised on subparagraph (c), Jonathan cites *Tortorich v. Tortorich*, 324 Ark. 128, 919 S.W.2d 213 (1996), where this court held that where a wife had previously filed for a divorce from bed and board in Pulaski County, pursuant to section 9-12-303(c), the husband could not

subsequently maintain an action for absolute divorce in Saline County. We find merit in this argument.

Erin did not dispute that Jonathan was the first to file for divorce, that he was a resident of Benton County, Arkansas, at the time, or that he had resided in this state for more than sixty days prior to the filing of his complaint. In her motion to dismiss, Erin, ignoring the plain language of section 9-12-303, focused only on why it would be more desirable to hear the parties' divorce in Washington County—essentially invoking the doctrine of forum non conveniens. However, this court in *Hicks v. Wolfe*, 228 Ark. 406, 411, 307 S.W.2d 784, 787 (1957), held that the doctrine of forum non conveniens does not apply “between Counties in this State.” We reaffirmed that holding in *Gadbury-Swift*, *supra*. Accordingly, inasmuch as the plain language of section 9-12-303(a) lays venue where the complainant resides and section 9-12-303(c) grants the venue determination to the first Arkansas resident to file, we hold that the trial court erred in dismissing Jonathan's complaint.

Reversed and remanded.

GOODSON, J., not participating.

Everett, Wales & Comstock, by: *Jason H. Wales*, for appellant.

Taylor Law Partners, by: *John Mikesch*, for appellee.