

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David Barnekow,
Appellant-Petitioner,

v.

Autumn Brickey,
Appellee-Plaintiff.

July 31, 2023

Court of Appeals Case No.
23A-JP-1064

Appeal from the Shelby Superior
Court

The Honorable Jennifer K.
Kinsley, Magistrate

Trial Court Cause No.
73D01-2303-JP-10

Memorandum Decision by Judge Brown
Judge Crone and Senior Judge Robb concur.

Brown, Judge.

[1] David Barnekow appeals the trial court’s order granting a motion to transfer cause. We reverse.

Facts and Procedural History

[2] On March 6, 2023, Barnekow filed a Verified Petition to Determine Issues Relating to Custody, Parenting Time and Support alleging that Autumn Brickey is the biological mother of O.B., a child born out of wedlock, the parties executed a paternity affidavit, the affidavit has not been rescinded or set aside, the parties have not requested genetic testing, he is the child’s legal father, and it is necessary for the court to determine issues related to custody, parenting time, and support. Barnekow stated that he resides in Shelby County, Indiana, and Brickey and O.B. reside in Marion County, Indiana. On March 28, 2023, Brickey filed a Verified Motion to Transfer Cause to Marion County. On April 11, 2023, the court entered an order granting Brickey’s motion and ordering that the cause be transferred to Marion County. On April 17, 2023, Barnekow filed an objection to Brickey’s motion. Barnekow appealed the court’s April 11, 2023 interlocutory order.

Discussion

[3] Barnekow maintains that Shelby County is a preferred venue and the trial court had no authority to transfer the paternity action to Marion County. As Brickey did not file an appellee’s brief, we may reverse if Barnekow “establishes *prima facie* error, which is an error at first sight, on first appearance, or on the face of it.” *See Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006).

[4] In *Strozewski v. Strozewski*, this Court stated:

Indiana Trial Rule 75 provides that, “[a]ny case may be venued, commenced and decided in any court in any county.” Ind. Trial Rule 75(A). However, if a party files a pleading or a motion to dismiss pursuant to Trial Rule 12(B)(3), the trial court shall order the case transferred to a county or court selected by the party filing such motion or pleading if the trial court determines that the county or court where the action was filed does not meet preferred venue requirements or is not authorized to decide the case and that the court or county selected has preferred venue and is authorized to decide the case. T.R. 75(A). The trial rule lists several criteria under which preferred venue can lie. T.R. 75(A)(1)-(10). The rule does not create a priority among these subsections establishing preferred venue. *Muneer v. Muneer*, 951 N.E.2d 241, 243 (Ind. Ct. App. 2011). Preferred venue may lie in more than one county, and if an action is filed in a county of preferred venue, change of venue cannot be granted. *Id.*

36 N.E.3d 497, 500 (Ind. Ct. App. 2015).

[5] Trial Rule 75(A)(8) provides that preferred venue lies in “the county where a claim in the plaintiff’s complaint may be commenced under any statute recognizing or creating a special or general remedy or proceeding[.]” A paternity action is a proceeding created and recognized by statute. Ind. Code § 31-14-2-1 provides “[a] man’s paternity may only be established: (1) in an action under this article; or (2) by executing a paternity affidavit in accordance with IC 16-37-2-2.1,” and Ind. Code § 31-14-3-2 provides “[v]enue lies in the county in which the child, the mother, or the alleged father resides.” Barnekow’s petition stated that he resides in Shelby County, Indiana. Pursuant to Trial Rule 75(A)(8), Shelby County is a preferred venue for Barnekow’s

paternity action, and although preferred venue may lie in more than one county, if an action is filed in a county of preferred venue, change of venue cannot be granted. *See Strozewski*, 36 N.E.3d at 500. Accordingly, the trial court erred in granting Brickey's Verified Motion to Transfer Cause to Marion County. *See id.* (holding the plaintiff met the requirements of the dissolution statute because, at the time he filed his petition for dissolution in Hamilton County, he had resided in Indiana for at least six months and in Hamilton County for at least three months; therefore Hamilton County was a preferred venue for the action under Trial Rule 75(A)(8), and the trial court did not err in denying the defendant's motion to transfer venue).

[6] For the foregoing reasons, we reverse the trial court's order.

[7] Reversed.

Crone, J., and Robb, Sr.J., concur.