STATE OF MICHIGAN

COURT OF APPEALS

SHALAAN FISHER,

Plaintiff/Counterdefendant-Appellant,

v

ABDULLATTIEF A. SULIEMAN,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
April 11, 2013

No. 299212
Wayne Circuit Court
LC No. 08-128171-DO

Before: JANSEN, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals by right the judgment of divorce, entered on June 29, 2010. In addition to challenging the terms of the judgment of divorce, plaintiff also challenges the circuit court's decision to reinstate this case following an earlier dismissal for lack of progress on April 16, 2010. For the reasons set forth in this opinion, we reverse the circuit court's order reinstating the action, vacate the judgment of divorce, and remand to the circuit court for entry of an order dismissing the action.

I. BACKGROUND FACTS

Plaintiff and defendant were married in Detroit, Michigan, on February 16, 2001. The parties did not have any children during their marriage. However, defendant had two children from a previous marriage and plaintiff had one child from a previous marriage.

Defendant is originally from Iraq, where he was trained as a medical doctor. Defendant left Iraq for political reasons in 1994. After leaving Iraq, he worked as a surgeon in Jordan and the United Arab Emirates and obtained additional surgical education in Ireland. Defendant came to the United States in 2000 on a visitor's visa. Defendant's visa did not permit him to work in the United States, but it was his goal to obtain his license to practice medicine in this country.

Defendant and his first wife, Shatha I. Alkatib, were divorced in mid-2000. Defendant then met plaintiff in October 2000. The parties were married on February 16, 2001, and defendant applied for a work permit shortly thereafter.

Upon obtaining his work permit, defendant took a job as a surgical assistant at Bon Secours Hospital in Grosse Pointe. Defendant earned approximately $44,000 per year as a surgical assistant. Defendant worked at Bon Secours Hospital from June 2001 until May 2002, at which time he injured himself on the job and was placed on disability. While defendant was on disability, he studied for the examinations required for medical licensure in the United States.

Defendant testified that, after his disability payments expired, he sent out "thousands of application[s]" but it was "very difficult for [a] foreigner . . . to find a job at that time . . . [e]specially after 9/11." Defendant ultimately received an offer to join a non-accredited pediatric surgery fellowship training program at Miami Children's Hospital in Miami, Florida. The position at Miami Children's Hospital paid approximately $36,000 per year. Defendant worked there for about six months, from January 2004 until July 2004.

Thereafter, defendant joined a non-accredited urology and oncology training program at Roswell Park Cancer Institute in Buffalo, New York. Defendant worked at Roswell Park from July 2004 until March 2005. The Roswell Park position paid $46,000 per year. Defendant testified that he was fired from his position at Roswell Park "for no reason" and "because of discrimination." Defendant sued Roswell Park for employment discrimination and ultimately settled with Roswell Park for approximately $73,000 in about 2008.

While defendant was working at Roswell Park, he had applied for a training program at St. John Hospital in Detroit. Defendant interviewed for the position in January 2005, and began working at St. John Hospital in June 2005. The position at St. John Hospital paid about $43,000 per year. Defendant had a one-year contract with St. John Hospital. After defendant's first year, St. John Hospital terminated his employment and declined to offer him a second year.

Defendant testified that he had a difficult time finding employment after leaving St. John Hospital. At some point, defendant discovered that Wisconsin, unlike other states that require at least two years of additional training for foreign-educated doctors, only requires one year of additional training for foreign-educated physicians who are seeking to become fully licensed. Thus, defendant decided to move to Wisconsin and take the medical licensing examination there.

Defendant passed the Wisconsin examination and received his license. Defendant was eventually offered a position with Visiting Physicians Association (VPA) at its office in Milwaukee. The VPA job paid $120,000 per year. Defendant began his new job with VPA in June 2008.

Defendant worked for VPA until May 18, 2009, at which time he was fired. Defendant testified that he was frequently required to take time off work to travel to Michigan for child support hearings stemming from his 2000 divorce from Alkatib. Defendant believed that this was "the main reason" for his termination from VPA.

Defendant testified that he filed for unemployment in May 2009, and received unemployment compensation through August 2009. Defendant then obtained employment as a physician with Procare Medical Group in Milwaukee, a position that paid $80,000 per year. Defendant began working for Procare Medical Group in late August 2009, but lost his job with Procare Medical Group on December 15, 2009. At about that same time, defendant was arrested

in Michigan for felony non-payment of child support, resulting from his failure to pay support as ordered in his previous divorce case.

II. PROCEDURAL HISTORY

Plaintiff filed a complaint for separate maintenance in the Wayne Circuit Court on November 13, 2008. Defendant counterclaimed for divorce on January 29, 2009. The circuit court entered an interim order requiring defendant to pay spousal support to plaintiff in the amount of $750 per month, beginning on February 1, 2009.

At a motion hearing on February 13, 2009, the circuit court took proofs concerning defendant's salary at VPA and increased the interim spousal support award to $1,600 per month. The circuit court also ordered defendant to pay plaintiff various amounts for property taxes, automobile repairs, and attorney fees.

Plaintiff thereafter filed several motions to show cause why defendant should not be held in contempt for failing to comply with the circuit court's interim orders. The circuit court denied at least two of plaintiff's motions to show cause. However, on April 28, 2009, the court found defendant in contempt for failing to pay spousal support as directed. The circuit court sentenced defendant to 30 days in jail or to pay $3,500 immediately.

Plaintiff filed numerous additional motions to compel discovery, to modify spousal support, to freeze assets, to issue subpoenas, to compel the payment of bills and expenses, and to show cause. Defendant responded by filing various motions for reconsideration and motions to decrease his interim spousal support obligations. Most of these motions were either denied or taken under advisement pending trial.

Trial began on November 5, 2009, and continued on November 18, 2009, November 19, 2009, and January 20, 2010. It was plaintiff's theory that defendant had rarely contributed to the marriage and that she had been forced to pay most or all of the marital expenses with her numerous credit cards. The evidence established that plaintiff had tens of thousands of dollars in credit card debt, spread across several different cards. Plaintiff also had an outstanding home-equity loan and second mortgage loan, totaling approximately $169,000. Plaintiff argued that her credit card debt and home-loan indebtedness was all marital in nature and should be split evenly between the parties. In contrast, defendant described plaintiff as a "lavishly overspending woman" and asserted that much of the debt that she had incurred was separate as opposed to marital. Defendant argued that plaintiff had many bank accounts and was very good at hiding her income.

Plaintiff testified that she had worked as a court reporter in the Detroit area for 32 years. She had purchased her house, located on Detroit's east side, for approximately $43,000 in 1985. At the time of trial, plaintiff was 52 years old. Plaintiff continuously testified that her court-reporting business had suffered since tort reform in the 1990s, and that she no longer earned enough money as a court reporter to pay her bills. Plaintiff testified that defendant had only given her a total of $9,000 for household expenses and bills from April 16, 2001, until he moved out of her Detroit home on September 28, 2008.

The evidence established that defendant's employment-discrimination suit against Roswell Park Cancer Institute had settled for approximately $73,000. Plaintiff testified that defendant had never told her about the settlement check from Roswell Park, and that she had only discovered the existence of the $73,000 settlement sometime later, through her own investigations.

The evidence also established that defendant had received a workers' compensation redemption for about $20,000 in 2004, stemming from his on-the-job injury at Bon Secours Hospital. Plaintiff similarly testified that defendant had never disclosed this redemption and that she "never knew anything about [it]" until she discovered its existence through her own investigations in April 2009.

Plaintiff admitted that she had received PIP benefits from Farmers Insurance for providing in-home care to her mother, who had been injured in a 2008 automobile accident. In sum, plaintiff received about $10,000 from Farmers Insurance.

According to plaintiff, defendant never disclosed that he had been hired by Procare Medical Group for $80,000 per year. Plaintiff testified that defendant continued to fraudulently collect unemployment benefits from the state of Wisconsin even after he was hired by Procare Medical Group.

Plaintiff asserted that her gross income from working as a court reporter was $17,590 in 2008. She admitted that she had reported a monthly income of $4,800 on a credit union loan application in 2004. Plaintiff had been filing her income tax returns as a "single person" even though she was married. She had also refinanced her home during the marriage as an "unmarried person." Plaintiff testified that her only sources of income in 2008 and 2009 were (1) her work as a court reporter, and (2) the $10,000 payment that she received from Farmers Insurance. Plaintiff had previously filed for bankruptcy in 1992.

Plaintiff testified that defendant had given her a total of $3,001 since he started his job at VPA in June 2008. Plaintiff admitted that she had called VPA and inquired into whether the human resources department could directly deposit a portion of defendant's paychecks into her account.

Defendant testified that he sent about $70,000, which he had received in settlement from Roswell Park Cancer Institute, to his family in Iraq in January 2009. Defendant insisted that he had "no" assets in Iraq and that he had not hidden any money or sent any other assets out of the country. Defendant claimed that he had borrowed money from people in Iraq and still needed to repay some of them. Defendant also owed significant past-due child support stemming from his previous marriage to Alkatib. Defendant had certain medical bills, dental bills, $1,500 in unemployment benefits that he needed to repay, and an outstanding judgment against him for

about $3,000 in unpaid attorney fees and costs.[1] Defendant testified that, apart from these amounts, he had no other debts.

The proofs established that defendant and plaintiff kept their finances entirely separate throughout the marriage. At the time of trial, defendant was 52 years old and in generally good health except for hypertension, high cholesterol, insomnia, and his previous rotator cuff injury. Defendant believed that plaintiff and Alkatib had been conspiring against him by repeatedly calling his workplaces, bothering his employers, sharing certain financial information about him, and jointly turning him over to the Attorney General's office for prosecution for felony non-payment of child support.

Defendant admitted that he had never told plaintiff about the $73,000 settlement that he received from Roswell Park in 2008. However, he did not believe that this was a problem because the settlement was "confidential" and he was "disclos[ing] it here in front of the Judge." Defendant again insisted that he had sent either $63,000 or $70,000 overseas sometime in January 2009. Defendant believed that he was entitled to conceal the existence of the $73,000 settlement from plaintiff because "[plaintiff] did the same thing" by concealing certain money from him. Defendant admitted that he had spent an additional $10,000 for attorney fees and travel, but had not disclosed this expenditure to plaintiff because it was "irrelevant."

Contrary to plaintiff's assertion that she had only received $3,001, defendant testified that he had paid plaintiff more than $6,000 during the summer and fall of 2009. Defendant testified that he had paid for plaintiff's insurance premiums and had made at least one car payment and a home mortgage payment for plaintiff. Defendant testified that he typically paid plaintiff in cash. Defendant admitted that he had not told plaintiff or the court about his employment at Procare Medical Group.[2]

Plaintiff's expert witness, Ronald Smolairski, testified that there was a shortage of physicians in Wisconsin and that defendant could expect to earn between $161,000 and $291,000 per year in the Milwaukee area. Kathy Zarem, VPA's director of human resources, testified that defendant was fired on May 18, 2009, for "non-performance," "anger and inappropriate comments," and "[m]iss[ing] over 45 days since hire." It was plaintiff's theory that defendant had intentionally lost his job at VPA by deliberately requesting too much time off in order to reduce his salary, and consequently his support obligations as well.

As explained previously, defendant lost his job with Procare Medical Group on December 15, 2009, and was arrested for felony non-payment of child support at about that same time.

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[1] This outstanding judgment was apparently related to previous federal litigation in which defendant had sued St. John Hospital for wrongful discharge.

[2] Plaintiff initially led the circuit court to believe that he remained unemployed even after he started working for Procare Medical Group.

Trial resumed on January 20, 2010, and the circuit court took the matter under advisement. On February 3, 2010, the circuit court issued a lengthy oral ruling, outlining its findings of fact and conclusions of law. The court allowed plaintiff to keep her Detroit home. However, the court found that the vast majority of plaintiff's credit card debt and home-loan indebtedness was separate in nature and assigned most of it exclusively to her. The court also determined that defendant had concealed his $73,000 settlement from Roswell Park Cancer Institute and awarded plaintiff half of the $73,000 settlement as alimony in gross. The court determined that each party should keep his or her own personal belongings and automobiles, and awarded plaintiff $5,000 from defendant for attorney fees. The court retroactively decreased defendant's spousal support obligation as of August 1, 2009, and suspended defendant's spousal support payments as of December 15, 2009, the date defendant lost his job with Procare Medical Group.

The circuit court directed the parties to prepare a proposed judgment of divorce in conformity with its oral ruling. Plaintiff's attorney remarked that he would draft a proposed judgment of divorce in accordance with the oral ruling, and would submit it under the seven-day rule of MCR 2.602(B)(3).

On March 5, 2010, a Notice of Intention to Dismiss was sent out by the circuit court, informing the parties that "the above action is awaiting the entry of the final order or judgment" and that the court would issue an order dismissing the case if no final order or judgment was presented by April 12, 2010.

On March 11, 2010, defendant filed a document entitled "Objection to the (Verbal) . . . Opinion and Determination." Defendant enumerated his many objections to the circuit court's oral ruling, noted that it had been difficult for him to attend trial because he was living in Wisconsin and had been in jail, argued that the settlement proceeds obtained from Roswell Park did not constitute a marital asset, asked the circuit court to sanction plaintiff's attorney, and requested that the circuit court "dismiss the case."

On March 12, 2010, plaintiff's attorney wrote a letter informing defendant that he had received defendant's objections, as well as the court's Notice of Intention to Dismiss. Plaintiff's counsel wrote, "Shalaan is also upset with the ruling of the court, and unless the court corrects its factual rulings on a number of matters, I will not prepare a judgment." Plaintiff's counsel informed defendant that "the decision to prepare [a judgment of divorce] is up to you."

The circuit court treated defendant's objections as a motion for reconsideration, which it denied on March 17, 2010. The court observed that "[t]o date, neither party has presented this Court with a Judgment of Divorce." Because no written judgment of divorce had yet been entered, the court noted that defendant could not demonstrate any palpable error requiring reconsideration.

Then, on March 18, 2010, plaintiff's counsel filed a motion for reconsideration of the circuit court's oral ruling. This motion enumerated plaintiff's numerous objections to the oral ruling and argued that the court had erred by decreasing the amount of spousal support to be paid by defendant. Plaintiff's counsel did not submit a proposed judgment of divorce with the

motion. On March 24, 2010, the circuit court denied plaintiff's motion for reconsideration, again noting that "[t]o date, neither party has presented this Court with a Judgment of Divorce."

On April 16, 2010, observing that "no order or judgment ha[s] been presented . . . and proper notice of impending dismissal ha[s] been mailed," the circuit court entered an administrative order dismissing the case for lack of progress.

On May 12, 2010, defendant filed a handwritten "Motion to Reinstate the Case and Sign the Judgment of Divorce." Defendant attached a proposed, one-sentence "judgment of divorce," which did not purport to divide the marital estate or otherwise conform to the circuit court's oral ruling. The circuit court denied defendant's motion on June 1, 2010, "for the reason that the moving party has failed to provide a Judgment of Divorce in conformity with MCR 3.211(A) and (B)." The circuit court's order of June 1, 2010, went on to provide:

> [T]he balance of Defendant's Motion shall be DISMISSED until a proper *Motion to Reinstate* and a conforming Judgment of Divorce is presented to this Court and reinstatement of this case has been granted pursuant to MCR 2.502. Until such a time, this case will remain in dismissed status and no claims shall be heard by this Court.

Meanwhile, plaintiff had filed a petition for divorce in Wisconsin (Milwaukee Circuit Court Case No. 10FA003774). A date stamp indicates that plaintiff's Wisconsin divorce petition was "Filed and Authenticated" on May 20, 2010.

Defendant then filed a handwritten "Motion to Reinstate the Case and to Sign the Divorce Judgment" on June 11, 2010. Defendant alleged that "the Judge in Milwaukee, Wisconsin [is] ready to dismiss the Divorce in his court once [a] final order enter[s] in [the] Michigan Court." Although defendant requested that the circuit court "sign the proposed Judgment as soon as possible," there was no proposed judgment of divorce attached to defendant's motion.

Plaintiff, through counsel, responded to defendant's motion on June 24, 2010. Plaintiff asserted that the Milwaukee Circuit Court had "properly accepted" jurisdiction and that the Wayne Circuit Court "should recognize that venue is proper in Wisconsin . . . and that it no longer has jurisdiction in this matter."[3] Plaintiff also argued that defendant had moved to Wisconsin and no longer had any "presence in Wayne County."

For the first time, plaintiff asserted that defendant had recently purchased a medical practice in the Milwaukee area from Ravi Gupta, M.D., who had apparently retired. Plaintiff believed that defendant had purchased the practice with the $73,000 settlement proceeds that he

[3] It appears that the Milwaukee Circuit Court entered an administrative order scheduling a dismissal hearing for September 23, 2010. However, there are no other papers or documents related to the Wisconsin divorce proceedings contained in the lower court file. Therefore, while it is most likely that the Wisconsin divorce proceedings have been dismissed, the current status of the Wisconsin action is not entirely clear.

had concealed or with other concealed marital assets. Plaintiff attached photographs of Dr. Gupta's former practice, located at 10625 West North Avenue, Suite #230, Wauwatosa, Wisconsin, which showed that the name on the sign had been changed to "A. Latief Sulieman, M.D." She also attached certain other evidence tending to show that Dr. Gupta had retired in February 2010, and that defendant had taken over Dr. Gupta's Milwaukee-area practice. Plaintiff accordingly requested that the circuit court deny defendant's motion to reinstate the case.

The circuit court held oral argument on defendant's motion to reinstate the case on June 29, 2010. Defendant essentially accused plaintiff of forum shopping by filing for divorce in Wisconsin. Plaintiff's counsel argued that the Wayne Circuit Court no longer had jurisdiction of the matter and that defendant's motion should be denied.

The court determined that the order of dismissal for lack of progress was properly entered on April 16, 2010, in accordance with MCR 2.502 and MCR 3.211(F)(1). Relying on MCR 2.502(B)(1) and (C), the circuit court determined that the order of dismissal had been entered without prejudice and had not divested the court of jurisdiction to reopen the case. The circuit court ruled that there was "good cause" to reinstate the action because (1) defendant had timely moved to reinstate the case, (2) the court had invested a significant amount of time in the case, (3) plaintiff had refused to present a proposed judgment of divorce simply because she was dissatisfied with the court's findings, and (4) plaintiff's resort to the courts of Wisconsin indicated that she was "forum shopping in an attempt to get a better . . . deal." The court granted defendant's motion to reinstate the case and noted that it would enter a judgment of divorce.[4] That same day, the circuit court issued a six-page, perfunctory judgment of divorce, conforming in all essential respects to its oral ruling of February 3, 2010.[5]

Plaintiff filed various post-judgment motions, including a motion for a new trial. These motions were denied by the circuit court. Plaintiff filed her claim of appeal in this Court on July 19, 2010.

III. STANDARDS OF REVIEW

We review de novo whether the circuit court has personal and subject-matter jurisdiction. *Atchison v Atchison*, 256 Mich App 531, 534; 664 NW2d 249 (2003); *Poindexter v Poindexter*, 234 Mich App 316, 319; 594 NW2d 76 (1999). We review for an abuse of discretion the circuit court's entry of a no-progress dismissal, *Bolster v Monroe Co Bd of Rd Comm'rs*, 192 Mich App

[4] The court remarked that defendant had "prepared" a proposed judgment of divorce. However, as stated previously, no proposed judgment of divorce was attached to defendant's motion of June 11, 2010. Thus, it is unclear when defendant may have "prepared" a proposed judgment of divorce or presented it to the court. It appears more likely that the circuit court, itself, prepared the judgment of divorce that was ultimately entered in this case.

[5] The circuit court also advised defendant to "file a motion to dismiss the action in Wisconsin, based on the entry of the judgment here in this court."

394, 399; 482 NW2d 184 (1991), the circuit court's entry of a voluntary dismissal, *Mleczko v Stan's Trucking, Inc*, 193 Mich App 154, 155; 484 NW2d 5 (1992), and the circuit court's decision to reinstate an action after it has been dismissed, *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 138; 624 NW2d 197 (2000); *Marquette v Fowlerville*, 114 Mich App 92, 97; 318 NW2d 618 (1982). We similarly review for an abuse of discretion the circuit court's decision whether to abstain in favor of an alternative, foreign forum. *Hare v Starr Commonwealth Corp*, 291 Mich App 206, 214; 813 NW2d 752 (2011).

IV. REINSTATING THE MICHIGAN DIVORCE ACTION

Plaintiff argues that the circuit court abused its discretion by reasserting jurisdiction and reinstating the Michigan divorce action after it had been administratively closed and after she had filed for divorce in Wisconsin. We agree.

In general, an administrative dismissal for lack of progress is not a final judgment on the merits that would bar a subsequent suit for the same cause of action. *Wickings*, 244 Mich App at 135; see also 3 Michigan Pleading & Practice, Dismissals, § 32:63, p 248. Indeed, a dismissal for lack of progress is without prejudice unless otherwise ordered by the court. MCR 2.502(B)(1).[6]

However, the idea of "finality" actually encompasses two distinct concepts: (1) a final judgment on the merits that would preclude a subsequent suit for the same cause of action, and (2) the final disposition of a particular suit. See *Bowne v Johnson*, 1 Doug 185, 186 (1843). We fully acknowledge that this Court has described a no-progress dismissal under MCR 2.502(B)(1) as "something less than a final order or judgment" which necessarily allows for "further substantive proceedings on the claims." *Wickings*, 244 Mich App at 135; see also *Bowne*, 1 Doug at 186 (observing that a dismissal for nonsuit "does not ordinarily bar a subsequent suit for the same cause of action" and "is not a final disposition of the subject matter in litigation"). But our Supreme Court recognized long ago that a dismissal of this nature does constitute "a final disposition of the suit in which it is entered[.]" *Id*. Accordingly, even though the administrative order dismissing the Michigan divorce action for lack of progress was entered without prejudice and was not a final adjudication on the merits, it was still sufficiently final to close the parties' divorce case in Wayne Circuit Court.

Stated another way, although the order of dismissal under MCR 2.502(B)(1) was not a final adjudication on the merits, "there was no suit pending between the parties" once it was entered. See *Baskin v Wayne Circuit Judge*, 236 Mich 15, 19; 209 NW 925 (1926). This left plaintiff free to file for divorce in Wisconsin. This is true even if the Michigan divorce action

[6] Pursuant to MCR 2.502(C), the court may "reinstate an action dismissed for lack of progress" upon the motion of a party and a showing of "good cause."

technically remained "pending" by virtue of the fact that the parties could seek to reinstate it under MCR 2.502(C). See *Owen v Owen*, 389 Mich 117, 120 n 2; 205 NW2d 181 (1973).[7]

It appears that plaintiff properly filed for divorce in the Milwaukee Circuit Court. In order to commence a divorce proceeding in Wisconsin, "at least one of the parties" must have been a resident of Wisconsin for six months, and of the county in which the action is brought for 30 days, immediately preceding the commencement of the action. Wis Stat Ann 767.301. It is undisputed that defendant was a resident of Wisconsin for six months, and of Milwaukee County for 30 days, before plaintiff filed the Wisconsin divorce petition. Further, although plaintiff was not a resident of Wisconsin, she clearly submitted to the personal jurisdiction of the Wisconsin courts by appearing and voluntarily commencing the action. See *Bulik v Arrow Realty of Racine*, 154 Wis 2d 355, 359-360; 453 NW2d 173 (1990); see also *Keeton v Hustler Magazine, Inc*, 465 US 770, 779-780; 104 S Ct 1473; 79 L Ed 2d 790 (1984) (noting that a nonresident plaintiff, by voluntarily submitting to the forum state's personal jurisdiction, is not required to have minimum contacts).

Contrary to plaintiff's arguments, her filing of the divorce petition in Wisconsin *did not* divest the Wayne Circuit Court of jurisdiction in this matter. *In re Elliott's Estate*, 285 Mich 579, 584; 281 NW 330 (1938).[8] Nevertheless, we conclude that the Wayne Circuit Court should have voluntarily abstained from reasserting jurisdiction and consequently should have declined to reopen the case.

As already explained, defendant had moved to Wisconsin and had been living in the Milwaukee area for some time. Defendant's newly discovered medical practice, which plaintiff alleged was purchased with marital funds, was similarly located in the Milwaukee area. Plaintiff had voluntarily traveled to Wisconsin and subjected herself to the personal jurisdiction of the Wisconsin courts. Defendant had repeatedly informed the Wayne Circuit Court that it was

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[7] Alternatively, we conclude that the circuit court should have entered an order of voluntary dismissal when defendant requested that the court "dismiss the case" in his written objections of March 11, 2010. See *Sherfey v Sherfey*, 179 Mich App 291, 294-296; 445 NW2d 198 (1989). The circuit court was certainly aware that both parties were dissatisfied with its oral ruling and that both parties desired a dismissal of the Michigan action. Indeed, neither party had presented a proposed judgment of divorce and the case had been placed on the circuit court's administrative dismissal calendar. The circuit court should have treated the parties' actions and requests as a constructive stipulation to dismiss the proceedings pursuant to MCR 2.504(A)(1)(b). See *Sherfey*, 179 Mich App at 296.

[8] This Court has held that "a suit pending in another state . . . does not constitute a prior pending action subjecting the subsequent suit to a plea in abatement or motion to dismiss." *Hoover Realty Co v American Inst of Marketing Systems, Inc*, 24 Mich App 12, 16-17; 179 NW2d 683 (1970); see also *Sovran Bank, NA v Parsons*, 159 Mich App 408, 412-413; 407 NW2d 13 (1987). This rule of *Hoover Realty* and *Sovran Bank* is clearly jurisdictional, as is apparent from this Court's repeated citations to *In re Elliott's Estate*. As we have explained, plaintiff's filing of the Wisconsin divorce petition did not divest the Wayne Circuit Court of jurisdiction.

inconvenient for him to litigate in Detroit given his residency and employment in Wisconsin. Given the parties' circumstances and the unique facts of the case, the Wayne Circuit Court should have denied defendant's motion to reinstate the Michigan action, abstaining from any further exercise of jurisdiction as a matter of judicial comity. See 1 Michigan Pleading & Practice, Courts, § 2:57, pp 184-185; *Hare*, 291 Mich App at 222-224; see also *Allen v Allen*, 188 Mich 532, 535-536; 155 NW 488 (1915). In addition, the Wayne Circuit Court should have deferred to plaintiff's decision to litigate in the Wisconsin courts. See *Manfredi v Johnson Controls, Inc*, 194 Mich App 519, 523; 487 NW2d 475 (1992).

Nor can we conclude that there was "good cause" to reinstate the Michigan divorce action. MCR 2.502(C) provides:

> On motion for good cause, the court may reinstate an action dismissed for lack of progress on terms the court deems just. On reinstating an action, the court shall enter orders to facilitate the prompt and just disposition of the action.

In *Wickings*, 244 Mich App at 142, this Court observed:

> [O]ne or more of the following factors may be relevant to determining good cause to reinstate an action: (1) procedural or technical error in dismissing the case for lack of progress, (2) the movant's actual diligence before dismissal, (3) justification for the movant's failure to make progress before dismissal, (4) the movant's diligence in attempting to settle the case or a prompt motion to reinstate it following dismissal, and (5) potential prejudice to the nonmovant if the action is reinstated.

It is apparent that neither party was fully satisfied with the circuit court's oral ruling of February 3, 2010. At least initially, both parties refused to prepare a proposed judgment of divorce in conformity with the oral ruling. Indeed, in his written objections of March 11, 2010, defendant specifically requested, among other things, that the circuit court "dismiss the case." Likewise, plaintiff's counsel wrote in his letter of March 12, 2010, that plaintiff was "upset with the ruling of the court" and that "unless the court corrects its factual rulings on a number of matters, I will not prepare a judgment."

It is true that, after the no-progress dismissal was entered on April 16, 2010, defendant changed his position and moved to reinstate the Michigan action. However, in light of defendant's earlier request that the court "dismiss the case," it strikes us that his new position was entitled to very little weight. It might appear at first blush that plaintiff was the only party engaged in "forum shopping," namely by resorting to the courts of Wisconsin after the Michigan action was dismissed. But we conclude that defendant was effectively engaged in the same practice, first requesting a dismissal of the Michigan action, and then, only after the Wisconsin petition was filed, moving to reopen the very Michigan case that he had earlier sought to dismiss.

In addition, we note that only days before the circuit court reinstated the action, plaintiff presented newly discovered evidence tending to show that defendant had secretly purchased a medical practice in the Milwaukee area using marital funds. The Wisconsin courts were certainly better equipped to determine the value of this medical practice, to obtain real estate and

other records related to its purchase, and to determine whether defendant had used any other marital assets to purchase the business. On the basis of this newly discovered evidence, the circuit court should have concluded that the Wisconsin courts would be a more appropriate forum for the parties' litigation. Indeed, we note that permitting defendant to reopen the Michigan action and obtain a judgment of divorce from the Wayne Circuit Court, without having disclosed his purchase of the Milwaukee-area medical practice, would be tantamount to allowing him to commit a fraud upon the court.

Given the behavior of both parties, as well as the newly discovered evidence concerning defendant's purchase of the Milwaukee-area medical practice, we simply cannot say that there existed "good cause" to reinstate the Michigan action under MCR 2.502(C).[9] We conclude that the circuit court abused its discretion by reinstating this case after its earlier administrative dismissal and by reasserting jurisdiction in this matter.

V. CONCLUSION

The circuit court abused its discretion by reinstating this case following its earlier administrative dismissal for lack of progress. We reverse the circuit court's order reinstating the action, vacate the judgment of divorce,[10] and remand to the circuit court for entry of an order dismissing the action.

In light of our foregoing conclusions, it is unnecessary to address plaintiff's remaining claims on appeal.

Reversed in part, vacated in part, and remanded for entry of an order dismissing the case. We do not retain jurisdiction. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Deborah A. Servitto

[9] The circuit court also observed that it had invested a great amount of time in this case. But this was not relevant to determining whether there existed "good cause" to reinstate the action. Inconvenience to the court, itself, is not one of the factors to be weighed in determining whether there is good cause to reinstate a case. See *Wickings*, 244 Mich App at 142.

[10] All interim or prejudgment orders entered in this case are necessarily vacated as well. See 27A CJS, Divorce, § 310, pp 435-436; see also *In re Ward's Estate*, 152 Mich 218, 237; 116 NW 23 (1908); *Sherfey*, 179 Mich App at 296.