NOT DESIGNATED FOR PUBLICATION

No. 109,879

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JENNIFER A. SOEBBING,
Appellant,

v.

MICHAEL A. LESSER,
Appellee.

MEMORANDUM OPINION

Appeal from Shawnee District Court; C. WILLIAM OSSMANN, judge. Opinion filed March 14, 2014. Affirmed.

Alan F. Alderson, of Alderson, Alderson, Weiler, Conklin, Burghart & Crow, LLC, of Topeka, and *Carolyn Sue Edwards*, of Law Offices of Snow and Edwards, of Wichita, for appellant.

Bryan W. Smith and *Dustin R. Crook*, of Smith Law Firm, of Topeka, for appellee.

Before MALONE, C.J., ATCHESON and STEGALL, JJ.

Per Curiam: Jennifer A. Soebbing appeals a ruling of the Shawnee County District Court denying her motion for a change of venue in the divorce action she filed there against Michael A. Lesser. We affirm on the grounds that the motion was not ripe for review in that there was no pending substantive dispute between Soebbing and Lesser that required judicial resolution.

Soebbing filed for divorce in 2001. She and Lesser agreed venue was proper in Shawnee County. In due course, the district court entered a decree dividing the marital

property and establishing terms of custody and support for their two children. In 2007, Soebbing remarried and, over Lesser's objection, obtained court approval to move with the children to Wichita. Lesser also remarried at some time.

All did not go smoothly in parenting the children. The district court ordered conciliation in 2011 because of disputes over the parenting plan. In 2012, Soebbing filed actions in Sedgwick County District Court for orders of protection from abuse and from stalking based on confrontations between her and Lesser and their new spouses. Shortly afterward, Soebbing filed a motion in the divorce case to have it transferred from Shawnee County to Sedgwick County. No other motions or requests for relief were pending in the divorce at the time. Soebbing argued that the convenience of the parties would best be served by having the divorce case moved to Sedgwick County, since she and the children lived there. Lesser opposed the motion.

In a letter ruling, the district court denied Soebbing's motion and cited K.S.A. 60-609(a), limiting the transfer of a case to "any county where it might have been brought" if the move "would better serve the convenience of the parties and witnesses and the interests of justice." We infer the district court concluded that the divorce action could not have been brought originally in Sedgwick County and denied the motion to change venue on that basis. The ruling is not as explicit as it might have been on the precise reason for the denial. Soebbing then filed an appeal.

Lesser filed a motion with this court to dismiss the appeal on the grounds that a denial of a motion to change venue is not a final order or otherwise appealable. After issuing a show-cause order and receiving written argument from the parties, the motions panel retained the appeal.

As presented to us, the change of venue request presents a question of law. The material facts are not in dispute, and we are required to consider how statutes governing

venue might be applied. Accordingly, we owe no particular deference to the result the district court reached in denying Soebbing's motion or the reasoning it used to get to that result. See *Estate of Belden v. Brown County*, 46 Kan. App. 2d 247, 258-59, 261 P.3d 943 (2011). We may affirm the district court, even though we rely on a different rationale. *Rosé v. Via Christi Health System, Inc.*, 279 Kan. 523, 525, 113 P.3d 241 (2005). We do so on the narrow ground that the motion to change venue wasn't ripe for review because it was presented simply as an abstract proposition—that Sedgwick County would be a more convenient forum in the event some undefined substantive dispute might arise at some undefined time. That's remarkably indefinite, and courts typically do not decide issues unconnected to an actual, substantive dispute. See *In re D.E.R.*, 290 Kan. 306, 314, 225 P.3d 1187 (2010); *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 896, 179 P.3d 366 (2008) ("issues must be ripe, having taken fixed and final shape rather than remaining nebulous and contingent").

In a typical civil case, a motion to change venue for the convenience of the parties would be made early in the action on the grounds that discovery and trial could be better handled elsewhere—generally, a place where many of the key witnesses and other evidence might be found. The district court's decision then is made in light of the contours of impending discovery and trial. After discovery, the case winds down to a settlement or judgment, and that's pretty much the end of things, especially insofar as venue might be a consideration.

Divorce cases, particularly those with minor children, don't fit that template. The divorcing spouses may obtain a decree settling up property and terminating the marriage. But the district court retains jurisdiction to address requests for changes in child custody or support, among other issues. So a divorce action may lie quiet for years like a dormant volcano waiting to erupt. And a motion for a change of venue could be likened to an evacuation plan for the area surrounding the volcano. Without knowing the scope of the eruption, officials can't really implement an effective evacuation plan. In the same way, a

district court cannot rule on a motion to change venue in the absence of a substantive legal dispute—an eruption—between the parties. Without knowing the nature of the dispute and the witnesses and evidence that might be necessary, there is no way to determine if transferring the case to another district actually would substantially enhance the convenience of the parties. For some issues, it might. For others, like a recalculation of support payments, it probably would not. Moreover, even if hearing a given motion might be more convenient in another district, that alone wouldn't automatically require transferring the case. See *Bohanon v. Werholz*, 46 Kan. App. 2d 9, Syl. ¶ 4, 257 P.3d 1239 (2011) ("A change of venue rests largely in the discretion of the trial court.").

When Soebbing filed her motion to change venue, there was no ongoing legal dispute. The divorce was dormant. Absent a specific substantive disagreement before the district court, the court was in no position to gauge whether transferring the case to Sedgwick County would, in fact, be more convenient for the parties. Simply transferring a divorce case in anticipation of an actual dispute is neither particularly sensible nor particularly efficient. If, for example, Soebbing had moved from Wichita to Overland Park before any controversy erupted, we might suppose she would then want to file a motion to transfer the case from Sedgwick County to Johnson County. But legal actions aren't household furnishings, and they don't customarily follow the parties as they change residences like a sofa on a moving van.

Because Soebbing's motion to change venue was not made in connection with an actual legal dispute, it presented an abstract and largely hypothetical question. It lacked the sort of "fixed and final shape" necessary for the district court to provide an appropriate answer. *Morrison*, 285 Kan. at 896. In a word, the motion wasn't ripe. The district court, therefore, properly denied the motion.

In reaching our conclusion, we rely on what is, perhaps, the narrowest basis for upholding the district court. Our decision should not be taken as endorsing or rejecting

the notions that this action could have been filed in Sedgwick County under K.S.A. 60-607, the venue statute for divorces, or that transferring venue there would have been proper under K.S.A. 60-609(a)—those propositions are open to fair debate. Likewise, we do not reconsider the decision of the motions panel to allow this appeal to go forward, a similarly debatable proposition.

Affirmed.