

IN THE COURT OF APPEALS OF IOWA

No. 7-786 / 07-0614

Filed January 30, 2008

IN THE INTEREST OF

RACHEL SCHROCK,

Minor Child-Appellant,

SAMUEL SCHROCK,

Petitioner-Appellant,

vs.

DIETER GEORGE ERDELT

AND EDNA SCHROCK,

Respondents-Appellees.

Appeal from the Iowa District Court for Fayette County, James L. Beeghly (Motion to Dismiss), Jon C. Fister (Recusal Order), and Stephen C. Clarke (Order of Dismissal), Judges.

Plaintiff appeals from the district court's order dismissing his petition seeking a declaratory judgment. **REVERSED AND REMANDED.**

Todd Locher, Farley, for appellant minor child.

Mark Roeder, Manchester, for appellant Samuel Schrock.

Timothy Luce of Anfinson & Luce, Waterloo, for appellee Dieter George Erdelt.

Edna Schrock, Lavallo, Wisconsin, pro se.

Heard by Huitink, P.J., and Vogel, J. and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

VOGEL, J.

Samuel Schrock appeals from a district court order dismissing his declaratory judgment petition for lack of subject matter jurisdiction. The petition requested the district court in Fayette County to declare as void a judgment issued by the district court in Buchanan County. We reverse and remand.

Background Facts. Samuel and Edna Schrock were married in December 2003. A few months later, Edna gave birth to Rachel and caused Rachel's birth certificate to reflect Samuel as her father.¹ In July of 2004 Edna, Samuel, and Rachel moved from Buchanan County, Iowa to Wisconsin. Shortly after the family moved, Dieter Erdelt filed a petition in the Iowa District Court for Buchanan County alleging he was the father of Rachel and seeking joint legal custody along with visitation rights.² Dieter named Edna as a party to the suit; neither Samuel nor Rachel was named as a party and a guardian ad litem was not appointed for Rachel. After a hearing, the district court found that Samuel was Rachel's legal father but Dieter was Rachel's biological father, and granted visitation rights to Dieter. The court further found, "Dieter's petition does not seek to overcome Samuel's legal paternity or disestablish him as Rachel's legal father." Dieter filed a motion to enlarge, which requested, among other things, the court disestablish Samuel as the father. On December 2, 2005, the district court granted the motion, disestablished Samuel's paternity of Rachel,

¹ See Iowa Code § 252A.3(4) (2003)(deeming child born during a marriage to be a child of the parties to the marriage); see also *Callender v. Skiles*, 591 N.W.2d 182, 185 (Iowa 1999) (defining an "established father" as a father whose paternity "has been established by some means authorized by law").

² There has been considerable activity in the Buchanan County district court regarding little Rachel. Only the highlights, sufficient to bring us to the issue presented on appeal, will be noted here.

established Dieter as Rachel's legal father, and approved Edna and Dieter's agreed upon visitation schedule.

Declaratory Judgment Action and Procedure. On May 25, 2006, Samuel filed a petition in the Iowa District Court for Fayette County seeking a declaratory judgment that the Buchanan County judgment was void because neither he nor Rachel was made a party to the suit and a guardian ad litem was not appointed to represent Rachel's interests. He filed the petition in Fayette County because this was the county of Dieter's residence. See Iowa Code §§ 616.5 and 616.17 (2005) (stating that unless otherwise provided, an action must be brought in the county of the defendant's residence). On June 9, 2006, Dieter filed a motion to dismiss, or in the alternative, to move the case to Buchanan County, arguing that the Buchanan County ruling could not be collaterally attacked in Fayette County. After an unreported hearing, the district court (Judge Beeghly) on July 31, 2006, summarily denied the motion. On August 11, 2006, Samuel filed a motion for summary judgment asking the court to declare the Buchanan County ruling void. On March 1, 2007, following another unreported hearing on the matter, the district court (Judge Clarke) dismissed Samuel's petition after finding it did not have jurisdiction. Samuel appeals from the dismissal of his petition.

Scope of Review. We review a district court's order of dismissal for lack of subject matter jurisdiction for errors at law. *Klinge v. Bentien*, 725 N.W.2d 13, 15 (Iowa 2006); see also *In re Marriage of Engler*, 532 N.W.2d 747, 748 (Iowa 1995) (stating questions of jurisdiction, authority, and venue are legal issues and are reviewed for correction of errors at law).

Dismissal Order. In the present case, Samuel's petition requested the Fayette County district court to declare the Buchanan County judgment void because Samuel was not made a party nor did he receive proper notice of the Buchanan County suit and because Rachael was not made a party nor was a guardian ad litem appointed to represent her interests. Iowa R. Civ. P. 1.211, 1.212; see Iowa Code § 600B.41A (requiring notice to be served upon any parent of the child and a guardian ad litem be appointed to represent the child in an action to overcome paternity); see also *Heyer v. Peterson*, 307 N.W.2d 1, 5 (1981) (voiding a custody ruling where the father was not notified custody was at issue in a proceeding to determine paternity and the father defaulted). A judgment made without notice to the proper parties is void and has no legal value; therefore it may be attacked in any proceeding, direct or collateral, and at any time. *Rosenberg v. Jackson*, 247 N.W.2d 216, 218 (Iowa 1976); 46 Am. Jur. 2d *Judgments* § 29 at 404-05 (2006). The district court dismissed Samuel's petition characterizing the petition as a direct attack or "an attempt to invoke some form of appellate jurisdiction." It thereby determined the Fayette County district court did not have "subject matter jurisdiction to hear an appeal over a court of coordinate jurisdiction." The Fayette County district court did not discuss venue nor reference the prior order of July 31 denying a change of venue.

The term "jurisdiction" has been used to refer to both subject matter jurisdiction and the authority of the court to hear the case before it. *Engler*, 532 N.W.2d at 748-49. "Subject matter jurisdiction refers to the authority of a court to hear and determine cases of the general class to which the proceedings in question belong, in contrast to the authority of the court to hear the particular

case then occupying the court's attention." *Id.* at 749 (internal quotations omitted). The distinction between these two concepts becomes important when the issue of waiver arises. *State v. Mandicino*, 509 N.W.2d 481, 482 (Iowa 1993). "Subject matter jurisdiction cannot be conferred by consent, waiver or estoppel. But where subject matter jurisdiction exists, an impediment to a court's authority can be obviated by consent, waiver or estoppel." *Id.*

The issue here concerns the authority of the district court sitting in Fayette County to hear this particular case, rather than whether the court had subject matter jurisdiction. Clearly, Iowa district courts have subject matter jurisdiction to hear a declaratory judgment action and to declare a prior judgment void. See Iowa R. Civ. P. 1.1101 (providing district courts with authority to hear declaratory judgment actions); *Klinge*, 725 N.W.2d at 16 (stating a judgment entered without subject matter jurisdiction may be collaterally attacked (citing *Rosenberg*, 247 N.W.2d at 218 (voiding a judgment for lack of personal jurisdiction))). This jurisdiction is statewide. See Iowa Code § 602.6101 (establishing a unified trial court that has exclusive, general, and original jurisdiction over all civil and criminal proceedings, except where the legislature has provided otherwise); *In re Marriage of Rathe*, 521 N.W.2d 748, 749 (Iowa 1994) (discussing that Iowa's district courts have statewide jurisdiction over all appropriate matters and the remedy for bringing an action in an improper county is a change of venue). Therefore, because the Fayette County district court had jurisdiction to hear Samuel's petition, we must next examine whether it had authority to proceed. See *Engler*, 532 N.W.2d at 749 (finding that venue was a question of the district court's authority rather than subject matter jurisdiction).

In examining whether the district court had authority to entertain this particular case, we review where venue was proper and whether any challenge to that venue was waived. We agree with the Fayette County district court that Samuel's petition is a direct attack on the judgment rendered in Buchanan County. See *City of Chariton v. J.C. Blunk Constr. Co.*, 253 Iowa 805, 818, 112 N.W.2d 829, 836 (1962) ("An action in equity to set aside a judgment . . . is a direct challenge to the judgment."); *Brown v. Tank*, 230 Iowa 370, 374, 297 N.W. 801, 803 (1941) (stating a suit that attempts to declare a judgment void in a proceeding instituted for that specific purpose is a direct attack). We also agree with the Fayette County district court that when a petitioner is directly attacking a judgment as void, proper venue lies in the same county that issued the judgment. See generally Iowa R. Civ. P. 1.1510 (providing that where an action seeks to enjoin a proceeding, proper venue lies in the county where such proceeding is pending or judgment was obtained); *Hawkeye Ins. Co. v. Huston*, 115 Iowa 621, 627, 89 N.W. 29, 31 (1902) (stating that when "the object of an action is to declare a judgment or final order invalid, the action must be brought in the court in which the judgment or order was obtained" (citations omitted)).

However, in this case any challenge to venue being in Fayette County was waived. Dieter filed a motion to dismiss, or in the alternative, to move the case to Buchanan County. See Iowa R. Civ. P. 1.808 (providing that an action brought in the wrong county may be prosecuted there unless the defendant moves for a change in venue before answering). On July 31, 2006, the Fayette County district court summarily denied the motion. Dieter did not move the district court to enlarge or amend its conclusions of law. Iowa R. Civ. P. 1.904(2) (providing

that a party may move for the court to enlarge or amend its findings and conclusions). The case therefore proceeded to a hearing with another judge presiding and with venue resting in Fayette County. On appeal, Dieter does not challenge the July 31 adverse ruling, but simply maintains that Fayette County did not have jurisdiction to hear the case and that such jurisdiction cannot be conferred by waiver or consent. Dieter, too, has confused the court's jurisdiction with venue and the court's authority to hear a case. "Venue is a matter of proper situs, not jurisdiction." *Rathe*, 521 N.W.2d at 749. While initially Dieter did properly move to change venue to Buchanan County, that motion was denied and Dieter has abandoned that argument both in the district court and now on appeal. As a result, Dieter has waived any challenge to the district court's July 31 ruling denying a change of venue to Buchanan County and the resulting authority of the Fayette County district court to hear this case. See Iowa R. App. P. 6.14; *Mandicino*, 509 N.W.2d at 483 (holding "an impediment to a court's authority can be obviated by consent, waiver, or estoppel").

The district court's order dismissing Samuel's petition for lack of subject matter jurisdiction did not reference the prior July 31 ruling that denied a change of venue. We do not disagree with the district court's rationale following *Hawkeye Insurance Company* that Buchanan County may well have been the proper county in which to bring this action. *Hawkeye Ins. Co.*, 115 Iowa at 627, 89 N.W. at 31. However, as the change of venue to Buchanan County had already been denied in the prior July 31 order, venue necessarily then rested in Fayette County where the action proceeded. With no further objection or appeal of that order, challenges to venue were waived. Therefore, the Fayette County

district court had the authority to proceed to hear the case. We accordingly reverse the district court's ruling dismissing Samuel's petition on the grounds that it did not have jurisdiction to hear the case.

Recusal Order. Finally, Samuel contends the district court (Judge Fister) erred in expressing personal opinions regarding the merits of the case in an October 16, 2006 order of recusal. We agree the order of recusal did state personal opinions which were unnecessary and could be prejudicial to Samuel. Therefore, we reverse and remand for the district court to strike these comments from the record.

REVERSED AND REMANDED.