

Serial: 122395

**IN THE SUPREME COURT OF MISSISSIPPI
No. 2005-IA-00438-SCT**

NADINE KENNEDY BUSH

Petitioner

v.

JOHN MATHISON BUSH

Respondent

ORDER

This matter came before the Court on the Petition for Interlocutory Appeal and Stay filed by counsel for Nadine Bush. John Bush has failed to file a response. The petitioner seeks interlocutory review of the trial court's denial of a motion to dismiss for lack of subject matter jurisdiction. After due consideration, the Court finds that the petition for interlocutory appeal should be granted. The Court also finds that further record preparation and briefing is not needed, and that the merits of the petition may be decided at this time.

John Bush (John) filed a complaint for divorce in the Chancery Court of Simpson County on August 16, 2004, on the ground of adultery. Nadine Bush (Nadine) filed an answer and counterclaim on August 27, 2004. On November 10, 2004, Nadine filed a Motion to Dismiss for lack of subject matter jurisdiction, asserting that the parties resided at 212 Greenfield Place, Brandon, Rankin County, prior to and at the time of separation and that she continues to reside there. In his complaint for divorce, John admits that the marital domicile is in Rankin County and that the parties separated in Rankin County. Accordingly, Nadine asserts that Simpson County lacks subject matter jurisdiction pursuant to Miss. Code Ann. §93-5-11. We agree.

If the defendant be a resident of this state, the complaint shall be filed in the county in which such defendant resides or may be found at the time, or in the county of the residence of the parties at the time of separation, if the plaintiff be still a resident of such county when the suit is instituted.

A complaint for divorce based solely on the grounds of irreconcilable differences shall be filed in the county of residence of either party where both parties are residents of this state.

Miss. Code Ann. §93-5-11 (Revised 2004).

Based on the facts presented to us and the applicable statutory provision, subject matter jurisdiction would be proper in Rankin County. Therefore, we reverse the denial of the motion to dismiss and we remand to the trial court with instructions that an order be entered dismissing Simpson County Chancery Court Cause No. 2004-0342.

IT IS THEREFORE ORDERED that the Petition for Interlocutory Appeal and Stay filed by counsel for Nadine Bush is hereby granted as to the request for permission to appeal. The trial court order denying the motion to dismiss is reversed and the matter is remanded to the trial court for proceedings consistent with this order.

IT IS FURTHER ORDERED that all costs of this appeal are assessed to the respondent.

SO ORDERED, this the 5th day of April, 2005.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., PRESIDING JUSTICE

GRAVES, J., WOULD DENY.
DIAZ, J., NOT PARTICIPATING.