

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD N. LETSOS,	§
	§ No. 461, 2005
Respondent Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
TERRY L. WARREN,	§ File No. CN04-08707
	§ Petition No. 04-21723
Petitioner Below-	§
Appellee.	§

Submitted: March 17, 2006

Decided: June 12, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER¹

This 12th day of June 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The respondent-appellant, Edward N. Letsos (“Father”), filed an appeal from the Family Court’s August 5, 2005 order denying his motion to vacate the registration of a foreign custody order and its September 9, 2005 order denying his motion for reargument. We find no merit to the appeal. Accordingly, we AFFIRM.

¹ The Court has sua sponte assigned pseudonyms to the parties and their minor child pursuant to Supreme Court Rule 7(d).

(2) Father and the petitioner-appellee, Terry L. Warren (“Mother”), are the parents of Valerie, born July 2, 2000. Father, Mother and Valerie moved to Lyon, France, in May 2002, where Father had accepted a position with the World Health Organization. While living in France, the couple began to experience troubles in their marriage. On September 11, 2002, Father initiated divorce and custody proceedings, seeking sole custody of Valerie.

(3) Later that year, Mother moved back to her home state of Michigan with Valerie. Valerie lived with her maternal grandparents while Mother was being treated in a mental health facility. In November 2002, while Mother was still under treatment, Father filed an emergency petition for custody of Valerie in Michigan. The Michigan court granted Father temporary custody. Mother then filed a petition requesting that Father be enjoined from taking Valerie outside the United States pending a full custody hearing, which the Michigan court granted. Father’s subsequent motion to vacate that order was denied.² The record reflects that, despite the

² The Michigan court ultimately ruled that it lacked jurisdiction to issue a permanent custody order in the matter. In December 2002, Father also filed a Hague Convention petition seeking permission from the United States District Court for the District of Delaware to leave the United States with Valerie. In May 2003, the District Court dismissed the petition on the ground that it lacked jurisdiction over the matter.

order of the Michigan court, Father unilaterally took Valerie out of the United States with him.³

(4) Following a hearing on March 4, 2003, the French court entered an order giving the parties joint legal custody of Valerie, but designating Father's residence as Valerie's principal residence. In January 2004, Mother filed an appeal in the French appellate court. On June 29, 2004, the court reversed the decision of the court below and ordered that Valerie would reside with Mother, although Mother and Father would maintain joint legal custody. The French court determined that it had jurisdiction over the matter because Father had initiated the proceeding in France, and because Father and Valerie had resided in France at the time of and for several months prior to the filing of Father's original petition.

(5) On July 2, 2004, Mother requested the Family Court to register the June 29, 2004 order of the French court in the State of Delaware.⁴ On October 18, 2004, Father moved to vacate the registration on the grounds that the French court lacked jurisdiction over the matter and he was never

³ It appears that Mother has not seen Valerie since that time. It also appears that Valerie is now living with Father in Greece.

⁴ In August 2004, Mother also filed a petition requesting that the June 29, 2004 order be registered in the State of Michigan, which was unopposed by Father and ultimately granted by the Michigan court.

properly served with notice of the registration of the order.⁵ On November 9, 2004, the Family Court reserved decision on Father's motion pending a hearing on March 15, 2005. On March 18, 2005, the Family Court ordered briefing on whether there were any valid grounds for challenging the registration in Delaware of the June 29, 2004 order of the French court.

(6) In this appeal, Father claims that: a) the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA")⁶ violates due process under the Delaware Constitution; b) the UCCJEA, as applied to him, violates his right to due process under the Delaware Constitution;⁷ c) the Family Court erred in its determination that the June 29, 2004 order is a valid judgment of the French court; d) the Family Court erred in its determination that the French court had jurisdiction over the matter; e) the Family Court relied on a factual error when it assumed that the parties and their child were present in France for several months prior to the filing of his petition; and f) the Family Court abused its discretion by ordering the registration of the foreign decree, denying the motion for reargument and refusing to stay its order pending appeal.

⁵ The record reflects that the Family Court initially did not have Father's current address in Greece, but that, once that address was obtained, proper notice was given.

⁶ Del. Code Ann. tit. 13, Chap. 19 (2002).

⁷ Father explicitly concedes in his opening brief that these first two issues were never presented to the Family Court in the first instance.

(7) The UCCJEA in its present form was adopted on September 1, 2002. The UCCJEA promotes cooperation among the States in matters of child custody.⁸ Under the UCCJEA, a child custody determination issued by a court of another State may be registered in the State of Delaware.⁹ The provisions of the UCCJEA also apply to the custody decrees of other nations.¹⁰ Under the UCCJEA, “a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of [the UCCJEA] must be recognized and enforced” (Emphasis supplied.)¹¹

(8) A person seeking to contest the validity of a registered order must, first, request a hearing within 20 days following service of notice of the registration of the order.¹² At the hearing, the person must establish that: the issuing court lacked jurisdiction over the matter; the order has been vacated, stayed or modified by a court of competent jurisdiction; or notice was not properly given in the proceedings before the court issuing the order.¹³

⁸ *Adoption House, Inc. v. A.R.*, 820 A.2d 402, 406 (Del. Fam. Ct. 2003).

⁹ Del. Code Ann. tit. 13, § 1934.

¹⁰ Del. Code Ann. tit. 13, § 1905.

¹¹ Del. Code Ann. tit. 13, § 1905(b).

¹² Del. Code Ann. tit. 13, § 1934(d).

¹³ Del. Code Ann. tit. 13, § 1934(d) (1), (2) and (3).

(9) Father’s first two claims constitute a challenge to the constitutionality of the UCCJEA. Specifically, Father argues that registration of the order of the French court in Delaware has unfairly “forced him to defend [himself] in a Delaware forum” and that his constitutional right to due process has been violated because he has no “minimum contacts” with the State of Delaware. Father concedes that he never presented those claims to the Family Court in the first instance. As such, we decline to consider them in this appeal.¹⁴ We note, however, that the claims appear to be based upon a misunderstanding of the rationale underlying the UCCJEA. Registration of a foreign custody order in Delaware does not mean that the Delaware Family Court has assumed jurisdiction over the matter for all purposes. Rather, registration is a ministerial act for purposes of enforcement of the order of the foreign court, which retains jurisdiction over the matter.¹⁵ The legal authority cited by Father is, thus, inapposite in the present circumstances.

(10) Father’s next three claims essentially challenge the jurisdiction of the French court that issued the June 29, 2004 order. The record reflects that Father himself filed the custody petition in the French court and

¹⁴ Supr. Ct. R. 8.

¹⁵ Del. Code Ann. tit. 13, §§ 1932, 1934, 1935, 1942. A similar rationale underlies the statutes governing the registration and enforcement of foreign judgments. Del. Code Ann. tit. 10, §§ 4781-4787.

represented to that court that it had jurisdiction to decide the matter of Valerie's custody. Moreover, Father represented to the federal court in Delaware that the French court was the proper forum. In its June 29, 2004 order, the French court assumed jurisdiction over the matter on the grounds that Father and Valerie had been residents of France at the time of and several months prior to the filing of Father's petition. Because the record reflects that Father and Valerie had the most "significant connection" to France at the time Father filed his petition,¹⁶ a circumstance acknowledged by Father at the time he filed his petition and thereafter in at least one court proceeding, we find Father's present claims challenging the jurisdiction of the French court to be unavailing.

(11) Father's final claims are that the Family Court abused its discretion by ordering the registration of the June 29, 2004 order of the French court, denying his motion for reargument and denying his motion to stay the Family Court judgment pending the instant appeal. In the absence of any evidence that the French court lacked jurisdiction to issue its June 29, 2004 order, that the order was vacated, stayed or modified by another court of competent jurisdiction, or that Father was not given proper notice of the

¹⁶ Del. Code Ann. tit. 13, §§ 1932(a), 1920(a).

proceedings in the French court,¹⁷ we conclude that the Family Court correctly ordered the registration of the June 29, 2004 order in Delaware. Moreover, in the absence of any evidence of legal or factual error on the part of the Family Court in its August 5, 2005 decision, the Family Court correctly denied Father's motion for reargument¹⁸ and, given that there was no merit to any of Father's claims, the Family Court acted within its discretion when it denied Father's motion for stay.¹⁹

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹⁷ Del. Code Ann. tit. 13, § 1934(d) (1), (2) and (3).

¹⁸ *Bowen v. E.I. duPont de Nemours and Co., Inc.*, 879 A.2d 920, 921 (Del. 2005).

¹⁹ *Homestore, Inc. v. Tafeen*, 886 A.2d 502, 505 (Del. 2005).