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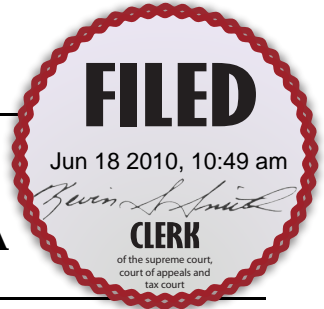
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**IN THE
COURT OF APPEALS OF INDIANA**



ANTHONY EMMETT COLLETT,)
)
Appellant/Respondent,)
)
vs.)
)
KELLY JEAN COLLETT,)
)
Appellee/Petitioner.)

No. 89A05-0912-CV-728

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Gregory A. Horn, Judge
Cause No. 89D02-0908-DR-97

June 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary and Issue

Anthony Emmett Collett (“Father”) appeals a trial court order declining jurisdiction and deferring jurisdiction of his initial child custody determination action to a Minnesota court. The sole issue is whether the trial court abused its discretion in issuing the order pursuant to the Uniform Child Custody Jurisdiction Act (“UCCJA”). We affirm.

Facts and Procedural History

Father is an Indiana resident with relatives in Minnesota. He met Kelly Jean Collett (“Mother”) at an Indiana high school in the early 1980s, but did not maintain contact with her. Mother was born in Minnesota and had lived there most of her life. Father’s occupation as an over-the-road truck driver often brought him through Minnesota. In 2006, Father and Mother became re-acquainted during one of his visits to Minnesota. On June 22, 2007, S.C. was born in Minnesota to Father and Mother. On August 27, 2007, Father and Mother were married in Minnesota. Thereafter, Father continued to live at his Indiana residence, and Mother continued to live at her Minnesota residence with S.C. She also had joint custody of two older children from a previous marriage, who lived in Minnesota.

At various points in their marriage, Father and Mother discussed the desirability of living in the same location. In late June 2008, Mother and S.C. moved to Indiana to live with Father, with the understanding that Father would prepare his home for sale and eventually move to Minnesota. During their nine months in Indiana, Mother and S.C. returned to Minnesota several times, either to tend to Mother’s older children, to take S.C. for doctor visits, or to see relatives. In total, Mother and S.C. spent almost two months of that time

period in Minnesota. On March 25, 2009, Mother packed up S.C. and a few of their belongings and moved back to Minnesota. In May 2009, Father drove the remainder of Mother's belongings back to Minnesota.

On June 19, 2009, Father filed a petition in Wayne Superior Court ("the trial court") seeking to dissolve his marriage to Mother. In July 2009, he voluntarily dismissed his petition. He testified that he did so because he and Mother had a reconciliation plan that involved him selling his house and moving to Minnesota. Tr. at 67. However, on August 10, 2009, he filed a second dissolution petition with the trial court. On August 18, 2009, Mother filed a dissolution petition in the District Court Seventh Judicial District in Stearns County, Minnesota ("the Minnesota court"). On September 15, 2009, Father filed a request with the trial court for provisional orders. On October 1, 2009, Mother responded by filing a memorandum asserting that the Minnesota court has jurisdiction pursuant to the UCCJA.

On November 3, 2009, the trial court held a hearing to address Father's request for provisional orders and Mother's jurisdiction memorandum. On November 9, 2008, the trial court conferred with the Minnesota court regarding jurisdiction and determined to await the parties' briefs in support of their respective positions. Thereafter, on November 20, 2009, the trial court entered its decision declining jurisdiction and deferring jurisdiction to the Minnesota court. Father now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Father contends that the trial court erred in declining jurisdiction and deferring jurisdiction to the Minnesota court. We review a trial court's decision whether to exercise

jurisdiction in a UCCJA case for an abuse of discretion. *In re Marriage of Kenda & Pleskovic*, 873 N.E.2d 729, 735 (Ind. Ct. App. 2007), *trans. denied*. An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before it or if the court has misinterpreted the law. *Id.* We defer to the trial court in family law matters and will set aside judgments only when they are clearly erroneous. *Id.* at 736-37. We will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment; thus, it is not enough that the evidence might support some other conclusion. *Id.* at 737. Rather, we give deference to the trial court and will neither reweigh evidence nor judge witness credibility. *Kondamuri v. Kondamuri*, 852 N.E.2d 939, 945-46 (Ind. Ct. App. 2006).

With regard to the initial custody determination, the UCCJA states:

(a) Except as otherwise provided in section 4 of this chapter, an Indiana court has jurisdiction to make an initial child custody determination only if one (1) of the following applies:

(1) Indiana is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six (6) months before the commencement of the proceeding, and the child is absent from Indiana but a parent or person acting as a parent continues to live in Indiana.

(2) A court of another state does not have jurisdiction under subdivision (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that Indiana is the more appropriate forum under section 8 or 9 of this chapter, and:

(A) the child and the child's parents, or the child and at least one (1) parent or person acting as a parent, have a significant connection with Indiana other than mere physical presence; and
(B) substantial evidence is available in Indiana concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that an Indiana court is

the more appropriate forum to determine the custody of the child under section 8 or 9 of this chapter.

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

(b) The jurisdictional requirements described in this section provide the exclusive jurisdictional basis for making a child custody determination by an Indiana court.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Ind. Code § 31-21-5-1. The UCCJA defines “home state” as “the state in which a child lived with ... a parent ... for at least six (6) consecutive months immediately before the commencement of a child custody proceeding.” Ind. Code § 31-21-2-8.

As part of its November 20, 2009 order, the trial court entered the following findings:

Indiana is not the “home” state as defined by I.C. 31-21-2-8. More specifically, the Court finds that the parties’ child, [S.C.], did not live [in Indiana] with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of this child custody proceeding.

While it is true that Mother and [S.C.] came to Indiana for a limited time, the visit was brief and only until Father’s real estate in Indiana could be sold. At no time did Mother intend to make Indiana her home nor did she intend to relinquish Minnesota residency Father stated that as an over the road truck driver that in order to avoid the harsh Minnesota winters that he would be on the road most of the time in the winter. Domicile is defined as “the place where a person has his true, fixed, permanent home and principal establishment and to which place he has, whenever he is absent, the intention of returning.” *State Election Board v. Bayh*, 521 N.E.2d 1313, 1317. [sic] (Ind. 1988). This Court finds that Mother’s residence is Minnesota and that her residency for purposes of these proceedings has always been Minnesota.

In conferring with the [Minnesota court], such judge indicated a willingness to assume jurisdiction. In addition, the Court finds that there are more connections and a more significant nexus with the State of Minnesota such that under the *forum non conveniens* doctrine, Minnesota is a more convenient and appropriate forum to hear the witnesses and testimony regarding custody.

Appellant's App. at 182.

We conclude that the evidence supports the trial court's decision. First, S.C. always resided with Mother. According to the plain language of the UCCJA, S.C. clearly did not reside in Indiana for six consecutive months immediately preceding Father's August 18, 2009 dissolution petition. Instead, S.C. and Mother had been residing in *Minnesota* for approximately five months, having returned there in March 2009. Even during the preceding nine-month period in which S.C. and Mother were residing with Father in Indiana, they spent a total of nearly two months making intermittent trips to Minnesota. Moreover, the evidence most favorable to the trial court's order indicates that Mother and S.C. came to Indiana temporarily and that Mother never intended to make Indiana her permanent home. Father's own testimony indicates that he dismissed his initial dissolution action based on his intention to reconcile with Mother and move to Minnesota. It was only when he was unable to sell his Indiana house that he filed the instant dissolution petition. To the extent he cites Mother's address change filings and procurement of an Indiana driver's license and vehicle registration as evidence of her intent to put down roots in Indiana, such arguments amount to an invitation to reweigh evidence, which we may not do.¹ Simply put, Indiana is not S.C.'s home state. As such, the trial court acted within its discretion in determining that Minnesota

¹ Father relies on *Horlander v. Horlander*, 579 N.E.2d 91 (Ind. Ct. App. 1991), *trans. denied* (1992), as support for his argument that an Indiana trial court should exercise jurisdiction even where significant connections exist between the child and another state. However, in *Horlander*, unlike the present case, the court found significant connections between the children and Indiana: the children born in Indiana, the majority of the evidence was in Indiana, and, except for the preceding two months, the children had always lived in Indiana. *Id.* at 98. Also, the *Horlander* court noted the unique choice of law issues involved in that case between French law and the UCCJL (now UCCJA). *Id.* at 96.

is the more appropriate forum and in ordering deferral of jurisdiction to Minnesota pursuant to Indiana Code Section 31-21-5-1(a).² Accordingly, we affirm.

Affirmed.

BAKER, C. J., and DARDEN, J., concur.

² We applaud the trial court's diligence in communicating and cooperating with the Minnesota court in the process of reaching its decision.