RENDERED: July 22, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-002242-MR

BONNIE JEAN NORDIKE (NOW HOLCOMB) APPELLANT

v. APPEAL FROM WARREN FAMILY COURT
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 02-CI-01313

MICHAEL D. NORDIKE APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

KNOPF, JUDGE: Bonnie Holcomb (formerly Nordike) appeals from an order of the Warren Family Court, entered October 20, 2004, declaring that the court does not have jurisdiction over the child-support provision of Bonnie's and Michael Nordike's Kansas divorce decree. Bonnie, who is now a Kentucky resident, contends that the Kentucky registration of the Kansas decree was for all purposes, including support, and that Michael, a non-

resident, has submitted himself to Kentucky's courts. Disagreeing with both of these contentions, we affirm.

Bonnie and Michael's marriage was dissolved by decree of the Sedgwick County, Kansas, district court in June 1997. The court awarded the parents joint custody of their daughter, named Michael the primary residential custodian, and provided that neither party would owe child support. In November 2000, when Michael, a member of the United States Air Force, accepted a transfer to Ohio, the Kansas court modified its decree by naming Bonnie the primary residential custodian and ordering Michael to begin paying support. Subsequently, Bonnie and the daughter moved to Bowling Green, Kentucky, and Michael was assigned to Colorado Springs, Colorado.

On April 24, 2003, the Warren Family Court entered an agreed order acknowledging registration of the modified Kansas decree and asserting that, pursuant to the Uniform Child Custody Jurisdiction Act (UCCJA), Kentucky, rather than Kansas, thenceforth had jurisdiction over "custody or visitation issues." In August 2003, the court denied Michael's motion to be designated either the sole custodian or the primary residential custodian, but did modify visitation provisions of the decree to reflect the greater distance now separating the parties.

As a preliminary step toward seeking an increase in Michael's child-support obligation, Bonnie moved, in September 2004, to have the April 2003, agreed order amended to reflect that Kentucky had also acquired jurisdiction over support issues. As noted above, the court denied Bonnie's motion, and it is from that denial that Bonnie has appealed. The trial court, referring to KRS 407.5201, the long-arm provision of the Uniform Interstate Family Support Act (UIFSA), held that Kentucky does not meet the statutory criteria for asserting in personam jurisdiction over Michael. Bonnie contends that by seeking affirmative relief with respect to custody Michael has waived his jurisdictional defense with respect to support. We disagree.

Although Bonnie would conflate them, child custody and child support present different jurisdictional issues. Jurisdiction to modify another state's custody order is governed, now, and was at the time of Bonnie's motion, by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), codified in Kentucky at KRS 403.800 to 403.880.[1] KRS 403.826

[1] The UCCJEA superseded the UCCJA, KRS 403.400 to 403.620, as of July 13, 2004.

specifies the prerequisites for custody-modification jurisdiction.[2]

Jurisdiction to modify another state's support order, on the other hand, is governed by the Uniform Interstate Family Support Act, codified at KRS 407.5101 to 407.5902. Under that Act, as provided in pertinent part by KRS 407.5611,

> [a]fter a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if KRS 407.5613 does not apply and if after notice and hearing it finds that:
> (a) The following requirements are met:
> 1. The child, the individual obligee, and the obligor do not reside in the issuing state;
> 2. A petitioner who is a nonresident of this state seeks modification; and
> 3. The respondent is subject to the personal jurisdiction of the tribunal of this state; or
> (b) The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consent with the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order.

KRS 407.5613 applies when all the parties are Kentucky residents; so it does not apply here. The Kentucky court has jurisdiction to modify the Kansas support order, then, only if

---

[2] See Ruth v. Ruth, 83 P.3d 1248 (Kan.App. 2004) (discussing jurisdiction under the act), *and see generally* David Carl Minneman, "Construction and Operation of Uniform Child Custody Jurisdiction and Enforcement Act," 100 ALR5th 1 (2002).

subpart (a) or subpart (b) is satisfied. Under subpart (a) however, even if the court had personal jurisdiction over Michael, the requirement that the petitioner be a non-resident is not satisfied, since Bonnie is a Kentucky resident. As discussed by the Supreme Court of Tennessee, the purpose of this requirement is

> to achieve a rough justice between the parties in the majority of cases by preventing a litigant from choosing to seek modification in a local tribunal to the marked disadvantage of the other party. . . . In short, the [petitioner] is required to register the existing order and seek modification of that order in a State which has personal jurisdiction over the [respondent] other than the state of the [petitioner's] residence. Most typically this will be the State of residence of the [respondent].[3]

We agree with the trial court, furthermore, that it does not have personal jurisdiction over Michael. In particular, we reject Bonnie's contention that Michael's appearance before the court in the custody matter subjects him to the court's jurisdiction with respect to child support. KRS 403.814 provides that

---

[3] Letellier v. Letellier, 40 S.W.3d 490, 495 (Tenn. 2001) (quoting from the official comments to the UIFSA; internal quotation marks omitted); *see also* Grumme v. Grumme, 871 So.2d 1288 (Miss. 2004); Walton v. State ex rel. Wood, 50 P.3d 693 (Wyo. 2002); In re Marriage of Zinke, 967 P.2d 210 (Colo. 1998); Kurtis A. Kemper, "Construction and Application of Uniform Interstate Family Support Act," 90 ALR5th 1 (2001).

> [a] party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

Although the UCCJEA, of which this statute is a part, was not in effect in Kentucky at the time of Michael's motion to modify custody, the UCCJA, which was, had the same goal of distinguishing custody from other matters and should be construed consistently in that regard with the new Act. Otherwise, as Michael notes, he does not have the minimum contacts with Kentucky the United States Constitution requires for the assertion of personal jurisdiction.[4] Subpart (a) of KRS 407.5611, therefore, is not satisfied.

Nor is subpart (b) satisfied. Although the Kansas court made a journal entry relinquishing to Kentucky jurisdiction over Michael's motion to modify custody, the journal entry makes no reference to child support and does not purport to reflect the parties' consent. It does not, therefore, satisfy subpart (b)'s requirement of a "written consent . . . for a tribunal of this state to modify the support order."

[4] Kulko v. Superior Court of California, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978).

In sum, the Warren Family Court lacked not only personal jurisdiction over Michael, but subject matter jurisdiction to modify the Kansas child-support order. Accordingly, we affirm that court's October 20, 2004, denial of Bonnie's motion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Matthew J. Baker
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Kenneth A. Meredith, II
Bowling Green, Kentucky