RENDERED: JUNE 18, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001565-ME

TERRY L. GOODMAN — APPELLANT

v.

APPEAL FROM JEFFFERSON FAMILY COURT
HONORABLE DONNA L. DELAHANTY, JUDGE
ACTION NO. 91-FP-005828

MELISSA L. CRAIG — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, TAYLOR AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Terry L. Goodman appeals from a denial of his motion to terminate child support. We agree with the Jefferson Family Court that, although the paternity judgment adjudging Terry to be the child's natural father was entered in Kentucky, Terry waived any right to contest the jurisdiction of the Indiana court when he failed to object to the transfer of the case and entered his appearance in the Indiana court.

In 1989, Melissa Craig and Terry were Kentucky residents and conceived a child. After the child was born in Jefferson County, Kentucky, Melissa filed a complaint to establish paternity and child support pursuant to KRS 406.021(1). Terry admitted paternity and, in August 1995, an Agreed Paternity Judgment was entered which ordered him to pay $603 per month for child support. In November 1995, Melissa and the child moved to Indiana where they continue to reside while Terry continues as a Kentucky resident.

In 1996, Melissa filed a *pro se* "Petition Pursuant to the Uniform Child Custody Act to Transfer Case to Indiana." On April 8, 1996, even though there was no case in Indiana, an order was entered by the Jefferson Family Court transferring the case to the child's county of residence in Indiana pursuant to the Uniform Child Custody Jurisdiction Act.

The Indiana chronological case summary reveals that the first activity occurred in February 1997, when over a year after the transfer order was entered, a petition was filed to change the child's name. In March 1997, Susan L. Williams entered an appearance in the Indiana court as counsel for Terry who objected to the name change. In the fall of 1997, Terry appeared for a hearing on Melissa's petition for modification of support which was filed in the name change litigation. In 1998, an agreed order was entered providing that Melissa provide health insurance for the child. In 2003, a mediated agreement was entered increasing Terry's child support obligation to $220 per week. Notably, Terry did not object to the transfer of the case to Indiana or, at any time, present a jurisdictional challenge

to the Indiana court or present any challenge that the name change litigation did not confer subject matter jurisdiction over the issue of child support.

Terry did not seek to invoke the jurisdiction of Kentucky until June 26, 2009, when he filed a motion to terminate his child support obligation on the basis that the child had attained the age of eighteen and had graduated from high school. KRS 403.212(3). The significance of whether Kentucky or Indiana has jurisdiction over the child support matter is that, contrary to Kentucky law, Indiana law provides for the payment of child support for three years beyond the age of eighteen.

Seeking to avoid future child support payments, Terry argued that Kentucky was without authority to transfer the case to Indiana and, citing the Uniform Interstate Family Support Act (UIFSA), as adopted in KRS Chapter 407 *et. seq.*, that Kentucky retained jurisdiction over the case because it had issued the original support order in 1995. The family court disagreed and found that Terry had waived any right to object to the exercise of jurisdiction by Indiana and denied his motion.

Since 1998, jurisdiction to determine child support matters has been governed by KRS Chapter 407 *et seq*., modeled after the UIFSA.[1] Based on the Uniform Child Custody Jurisdiction Act (UCCJA), the Jefferson Family Court found that Indiana was the child's home state and transferred the case to Indiana. Terry contends, and he may be correct, that Kentucky had no authority to transfer

[1] Prior to the adoption of the UIFSA, Kentucky adopted the Uniform Reciprocal Enforcement of Support Act.

the case to Indiana and could only decline to exercise jurisdiction. He further contends that the transfer was in violation of CR 79.05 and KRS 30A.080, which require that the clerk keep and maintain the original record.

Essentially, Terry argues that the Kentucky court erred when it declined to exercise its jurisdiction over the child support matter and transferred that case to Indiana. Even if there is merit to Terry's contention, no appeal was pursued from the transfer order.

For thirteen years after entry of the transfer order, Terry appeared and voluntarily participated in the Indiana proceedings and paid child support pursuant to the Indiana support orders. It is a basic tenant of the law that judicial error be seasonably corrected. If the court has jurisdiction over the parties and subject matter, if erroneous, it is voidable, not void. *Dix v. Dix*, 310 Ky. 818, 222 S.W.2d 839, 842 (1949). The distinction between a void judicial act and one that is merely voidable has been explained as follows:

> Were it held that a court had 'jurisdiction' to render only correct decisions, then, each time it made an erroneous ruling * * * the court would be without jurisdiction, and the ruling itself void. Such is not the law, and it matters not what may be the particular question presented for adjudication, whether it relates to the jurisdiction of the court itself, or affects the substantive rights of the parties litigating; it cannot be held that the ruling or decision itself is without jurisdiction, or is beyond the jurisdiction of the court. The decision may be erroneous, but it cannot be held to be void for want of jurisdiction.

Id. at 842. (quoting *Covington Trust Co. v. Owens,* 278 Ky. 695, 129 S.W.2d 186 (1939)).

The Jefferson Family Court had personal jurisdiction over the parties and the authority to consider matters relating to the child. It was within its authority to either assert its jurisdiction or defer to another state's jurisdiction; therefore, whether it had authority to issue a transfer order, is an issue that should have been presented in a timely appeal.

Despite his failure to object to the transfer order, or appeal the order, and his repeated appearances in the Indiana court where he sought and obtained affirmative relief, Terry argues that Kentucky has continuous and exclusive jurisdiction to modify its own judgment pursuant to the UIFSA.

It has been uniformly held that if the obligor or obligee remains a resident of the issuing state and no written consent is filed as required by statute, the issuing state retains continuing exclusive jurisdiction to modify its support decree. *Koerner v. Koerner*, 270 S.W.3d 413 (Ky.App. 2008). As Terry points out, he continues to be a Kentucky resident and neither party filed a written consent to modify the support order. KRS 407.5611. Courts in jurisdictions that have addressed whether the parties can nullify the written consent requirement by their actions have generally held that a written consent is required. *See Stone v. Davis*, 148 Cal.App.4th 596, 55 Cal.Rptr.3d 833 (2007). However, this issue is not directly before this Court because the case was transferred and jurisdiction assumed by Indiana prior to the enactment of the UIFSA when there was no requirement that a written consent be filed.

A similar fact situation confronted the court in *Hoehn v. Hoehn*, 716 N.E.2d 479 (Ind. 1999). Indiana asserted jurisdiction over a Georgia child support order after the wife moved to Indiana and while the husband remained a Georgia resident. Eight years after the parties filed joint petitions to modify the child support in Indiana, the husband filed a declaratory judgment action in Georgia seeking to have his support obligation terminated when the child turned eighteen. *Id*. at 482. Indiana held that the husband's voluntary participation in the Indiana proceedings precluded him from challenging Indiana's jurisdiction and further rejected his contentions based on the UIFSA. The court properly reasoned that once the parties submitted to the jurisdiction of Indiana and that state issued a modified child support order, it then became the state of exclusive, continuing jurisdiction. *Id*. at 483.

We agree with the analysis and, in this case, conclude that Indiana now has exclusive, continuing jurisdiction and Kentucky's jurisdiction to modify an order entered in Indiana and under that state's law is confined to the limitations set forth in KRS 407.5205(2). The parties voluntarily appeared in Indiana and that state has issued orders modifying the Kentucky child support order. Unambiguously, the statute states in part:

> (1) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to KRS 407.5101 to 407.5902.

> (3) If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to KRS 407.5101 to 407.5902, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:
>
> (a) Enforce the order that was modified as to amounts accruing before the modification;
>
> (b) Enforce nonmodifiable aspects of that order; and
>
> (c) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.
>
> (4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to KRS 407.5101 to 407.5902.

Our decision today is supported by the plain meaning of the UIFSA and furthers the purpose of the UIFSA to eliminate multiple and inconsistent support orders by having only one controlling order in effect at any one time. *Koerner*, 270 S.W.3d at 415.

Based on the foregoing, the order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR APPELLANT:	BRIEF AND ORAL ARGUMENT FOR APPELLEE:
Michael T. Connelly Louisville, Kentucky	Phyllis Deeb Louisville, Kentucky