

**Commonwealth of Kentucky  
Court of Appeals**

NO. 2010-CA-000625-ME

T.M.

APPELLANT

v.

APPEAL FROM SCOTT FAMILY COURT  
HONORABLE TAMRA GORMLEY, JUDGE  
ACTION NO. 06-CI-00572

G.L.; AND J.B.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: TAYLOR, CHIEF JUDGE; ACREE AND COMBS, JUDGES.

COMBS, JUDGE: T.M. ( Father) appeals the order of the Scott Family Court awarding sole custody of his minor child to J.B., the child's grandmother.

Following careful review, we affirm.

G.L. (Mother) is Grandmother's daughter. The minor child was born on June 17, 2005, and she was the subject of a number of court actions that are best understood by way of a timeline in order to summarize the numerous portions of litigation and jurisdictions involved in this matter.

January 5, 2006 – Mother left the child with Father’s parents in Pennsylvania and returned to Kentucky.

May 8, 2006 – Father filed a petition in Warren County, Pennsylvania, seeking custody of the child.

June 19, 2006 – Mother took the child from Pennsylvania to Kentucky for a week-long visit in accordance with a notarized agreement signed by Mother and by Father’s parents.

June 26, 2006 – Mother failed to return the child to Father’s parents.

September 29, 2006 – Mother filed a petition in Scott Circuit Court seeking custody of the child.

October 4, 2006 – The Warren County Pennsylvania Court of Common Pleas awarded custody of the child to Father.

October 25, 2006 – Father filed a motion in Scott Circuit Court asking that court to grant full faith and credit to the Pennsylvania order.

December 12, 2006 – The Cabinet for Health and Family Services petitioned Fayette Family Court to grant permanent custody to Grandmother.

December 18, 2006 – The Fayette Family Court granted temporary custody to Grandmother.

January 30, 2007 – A DNA test confirmed Father’s paternity of the child.

February 21, 2007 – The Fayette Family Court awarded permanent custody to Grandmother.

April 2, 2007 – The Scott Family Court<sup>1</sup> granted full faith and credit to the Pennsylvania custody order and awarded custody to Father.

April 12, 2007 – Mother filed a motion to vacate the order granting full faith and credit.

July 27, 2007 – The Fayette Family Court granted summary judgment to Grandmother and adjudged Father to be the natural father of the child.

August 1, 2007 – The Fayette Family Court transferred its case to Scott County.

September 24, 2007 – The Scott Family Court entered an order setting aside its initial order that had given full faith and credit to the Pennsylvania order and to the order awarding custody to Father. It then awarded temporary custody to Grandmother.

May 15, 2008 – Father and Grandmother entered into an agreed order relating to timesharing of the child.

October 21, 2008 – Father and Grandmother entered into another agreed order relating to timesharing of the child.

January 21, 2009 – Grandmother filed a motion in Scott Family Court seeking permanent custody of the child and termination of Father's visitation.

June 12, 2009 – The Scott Family Court held a hearing regarding Grandmother's motion. The docket notes in the record indicated that "permanent sole custody remains with" Grandmother.

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<sup>1</sup> The Family Court program was implemented in Scott County on March 1, 2007, thus changing its designation from the Scott Circuit Court in which Mother had filed her petition on September 29, 2006.

January 29, 2010 – The Scott Family Court entered an order reflecting its findings from the June hearing.<sup>2</sup>

March 1, 2010 – Father filed a notice of appeal.

On appeal, Father’s only argument is that the Scott Family Court erred when it set aside its earlier order granting full faith and credit to the Pennsylvania order, contending that Pennsylvania properly exercised jurisdiction. Whether a trial court acts within its jurisdiction is a question of law; therefore, our review is *de novo*. *Grange Mut. Ins. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004).

Kentucky and Pennsylvania both adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) in 2004. Kentucky’s statute governing initial child-custody jurisdiction is codified as Kentucky Revised Statute(s) (KRS) 403.822, and Pennsylvania’s counterpart is Pennsylvania Statutes and Consolidated Statute(s) (Pa.Cons.Stat.Ann.) 23 § 5421. The language of both statutes is nearly identical. We will refer to KRS 403.822 in our analysis.

Our statute directs that:

(1) Except as otherwise provided in KRS 403.828,<sup>3</sup> a court of this state shall have jurisdiction to make an initial child custody determination only if:

(a) This state 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 this state but a parent or

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<sup>2</sup> The order begins by noting that Grandmother was a party “due to her status as de facto custodian.” We are unable to find in the record if, where, or when her status was adjudicated. However, Father has not disputed the *de facto* custodian issue on appeal.

<sup>3</sup> KRS 403.828 governs emergency jurisdiction. Father has not contended that it should have been applied.

person acting as a parent continues to live in this state; or

(b) A court of another state does not have jurisdiction under paragraph (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum . . . .

. . . .

(2) Subsection (1) of this section is the **exclusive jurisdictional basis** for making a child custody determination by a court of this state.

(Emphasis added). *Home state* is defined as “the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding.” KRS 403.800(7); 23 Pa.Cons.Stat.Ann. § 5402.

The parties do not dispute that the child spent the first six months of her life in Kentucky with her mother. Furthermore, no Kentucky court ever declined jurisdiction. At the time that Father filed his petition in Pennsylvania, the child had only been in Pennsylvania for four months. Pursuant to the clear terms of the statute, her home state was still Kentucky. Therefore, both Kentucky *and* Pennsylvania law provided that Pennsylvania did not have jurisdiction to make a custody determination. Very recently, the Superior Court of Pennsylvania remarked that “the home state is the preferred basis for jurisdiction.” *J.M.R. v. J.M.*, 1 A.3d 902, 909 (Pa. Super. Ct. 2010).

Father has cited several cases in which Kentucky courts afforded full faith and credit to out-of-state custody orders. However, they all predate the UCCJEA.

Our Court has stated that the “fundamental purpose of the UCCJEA [is] the avoidance of jurisdictional competition and conflict with other states in child custody matters. . . .” *Wallace v. Wallace*, 224 S.W.3d 587, 589 (Ky. App. 2007). Father also cites KRS 403.832, which provides guidance in the event of simultaneous proceedings in two states. However, that statute is inapplicable since it concerns proceedings in a court which has “jurisdiction substantially in conformity with KRS 403.800 to 403.880.” Pennsylvania did not have such jurisdiction in this case since the child had only been there for four months. KRS 403.822 plainly states that initial custody determination should be by a court in a child’s home state. In this case, the home state is Kentucky.

We affirm the order of the Scott Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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