

STATE OF MICHIGAN
COURT OF APPEALS

LEAH MICHELLE SIGNS,

Plaintiff-Appellant,

v

AUSBY BREWINGTON,

Defendant-Appellee.

UNPUBLISHED

June 16, 2009

No. 289281

Montcalm Circuit Court

LC No. 2008-010955-DP

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's order holding that it lacked jurisdiction and dismissing the complaint. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

The facts are not in dispute. Plaintiff and defendant never married, but are the parents of a child who was born while the parties lived together in Tennessee. In May 2008, plaintiff and the child left defendant and came to Michigan to live. In July 2008, defendant filed a petition in Tennessee state court, requesting that plaintiff be required to return to Tennessee and participate in court proceedings there to establish whether she should be allowed to relocate to Michigan with the child. Defendant also requested that the Tennessee court establish a visitation schedule. Instead of responding to this complaint, in September 2008, plaintiff filed suit in Michigan for paternity, temporary custody, and child support. Her complaint alleged that jurisdiction was proper in Michigan because "pursuant to the Uniform Child Custody Jurisdiction Act the state wherein the presence of the child is found has primary jurisdiction."

On October 7, 2008, the Michigan circuit court issued a default against defendant. However, the next day the court received a letter from defendant stating that the matter was already set for a November court date in Tennessee. Plaintiff moved to enter the default judgment, and a hearing was held on November 5, 2008. Plaintiff's counsel stated that the mother and child had been in Michigan for over six months, having arrived on May 14, 2008, and noted that the mother was receiving state support. Noting that defendant's letter arrived after the default had issued, and that defendant had not moved to set it aside, the court entered an order finding that defendant was the biological father of the child, that plaintiff would have sole physical custody, and that matters of visitation and child support would be referred to the Friend of the Court.

The circuit court then faxed a copy of its order to the Tennessee court referenced in defendant's letter. Apparently, this resulted in some further communication between the circuit court and the Tennessee court. On November 20, 2008, the circuit court entered a sua sponte order vacating its earlier order. This second order stated that "Michigan is not the home state of the child Therefore, this Court has no jurisdiction of this matter per MCL 722.1201(1)(a)." The court determined that there were no emergency reasons for it to take jurisdiction and that it had lacked jurisdiction to enter its earlier order.

Statutory interpretation is a question of law that we review de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

The provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq.*, cited by plaintiff are alone sufficient to show that plaintiff's claim must fail. MCL 722.1201, which provides "the exclusive jurisdictional basis for making a child-custody determination by a court of this state,"¹ states in relevant part:

(1) Except as otherwise provided in section 204, a court of this state has jurisdiction to make an initial child-custody determination *only in the following situations*:

(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 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

(b) A court of another state does not have jurisdiction under subdivision (a), 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 under sections 207 or 208, and the court finds both of the following:

(i) The child and the child's parents, or the child and at least 1 parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(c) All courts having jurisdiction under subdivision (a) or (b) have declined to exercise jurisdiction on the grounds that a court of this state is the more appropriate forum to determine the custody of the child under sections 207 or 208.

¹ MCL 722.1201(2).

(d) No court of another state would have jurisdiction under subdivision (a), (b), or (c). [Emphasis added.]

As this statute makes clear, critical to the determination of whether Michigan has jurisdiction is whether Michigan is or was the child's "home state." Although plaintiff would have this Court interpret the term "home state" as meaning "the state where the child is located," this is not the way the term is statutorily defined. Instead, the term "home state" has its own particular statutory meaning:

"Home state" means the state in which a child lived with a parent or a person acting as a parent for *at least 6 consecutive months immediately before the commencement of a child-custody proceeding*. In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a parent or person acting as a parent is included as part of the period. [MCL 722.1102(g) (emphasis added).]

"Child-custody proceeding" is defined as "a proceeding in which legal custody, physical custody, or parenting time with respect to a child is an issue." MCL 722.1102(d).

Because plaintiff and the child had lived in Michigan for less than five months at the time plaintiff commenced her suit in September 2008, Michigan was not the child's "home state." Nor was Michigan the child's "home state" at any time within the six months immediately preceding the filing of plaintiff's complaint. Plaintiff's attempt to argue that Tennessee also lacked jurisdiction is unpersuasive. We note that the UCCJEA has been enacted in Tennessee, see *Keyt v Keyt*, 244 SW3d 321, 333 (Tenn, 2007), and is codified at Tennessee Code Annotated § 36-6-201 *et seq.* Under Tennessee Code Annotated § 36-6-216(a)(1), the courts of Tennessee have jurisdiction to make an initial child-custody determination if "[Tennessee] 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 person acting as a parent continues to live in this state." Tennessee's version of the UCCJEA defines "home state" in substantially the same manner as Michigan's UCCJEA. See Tennessee Code Annotated § 36-6-205(7). Tennessee was clearly the child's "home state" within six months before the filing of plaintiff's complaint, and although the child was absent from Tennessee, defendant continued to reside there after plaintiff and the child left for Michigan. Accordingly, jurisdiction of plaintiff's claims was proper in Tennessee. Tennessee Code Annotated § 36-6-216(a)(1). The circuit court properly determined that the Michigan courts lacked jurisdiction under the UCCJEA.

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jane E. Markey