

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of J.N., P.N., K.N. and K.N.,)	(Not For Official Publication)
persons under eighteen years)	
of age.)	Case No. 20061056-CA
_____)	
C.H.,)	F I L E D
)	(June 21, 2007)
Appellant,)	2007 UT App 221
)	
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Second District Juvenile, Farmington Department, 514646
The Honorable Diane W. Wilkins

Attorneys: Scott L. Wiggins, Salt Lake City, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Bench, Orme, and Thorne.

PER CURIAM:

C.H. (Mother) appeals the juvenile court's order transferring custody of her children to D.N. (Father). This is before the court on its own motion to dismiss after remand, based on the lack of a final order.

Mother and Father were divorced in Idaho. As part of the divorce proceedings, Mother was granted joint legal and primary physical custody of the couple's children. Afterward, Mother moved to Utah. In October 2006, the Utah juvenile court entered an order purporting to permanently transfer legal and physical custody of the children from Mother to Father. Prior to entering its custody order, the juvenile court did not communicate with the Idaho court regarding custody matters as required by the Utah Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA or

the Act). See Utah Code Ann. §§ 78-45c-101 to -318 (2002 & Supp. 2006).

Mother appealed the order, asserting, among other things, that the juvenile court failed to comply with the UCCJEA. In response, the other parties conceded that the juvenile court failed to comply with the UCCJEA. The Guardian Ad Litem moved for remand to the juvenile court to permit the juvenile court to confer with the Idaho court as required under the Act. See id. § 78-45c-204. This court remanded the matter to the juvenile court in a January 2007 order.

On remand, the juvenile court conferred with the Idaho court to determine whether the Idaho court would retain jurisdiction over custody matters. The parties participated in the conference. The Idaho court retained jurisdiction. As a result, the juvenile court entered an order specifying that its prior order was temporary only, based on the juvenile court's temporary emergency jurisdiction pursuant to Utah Code section 78-45c-204. See id. The final disposition of custody matters would be determined by the Idaho court, which had original jurisdiction over the matter through the Idaho divorce case.

Appeals may be taken from final orders or judgments. See Utah R. App. P. 3. Although there may be several appealable orders over the course of a child welfare case, the determination of whether a child welfare order is appealable is similar to other matters. See In re H.J., 1999 UT App 238, ¶27, 986 P.2d 115. "A final appealable order is one that ends the current juvenile proceedings, leaving no question open for further judicial action. An order which does not completely determine the rights of the parties . . . is merely interlocutory in nature." Id.

Based on the outcome of the remand, the order appealed is a temporary order and thus not a proper basis for a direct appeal. See Utah R. App. P. 3. The order does not determine the rights of the parties with finality, but rather temporarily transfers custody of the children to assure their protection pending proceedings to finally resolve custody issues. Where an appeal is not properly taken, this court lacks jurisdiction and must dismiss the appeal. See Bradbury v. Valencia, 2000 UT 50, ¶8, 5 P.3d 649.

Mother asserts that dismissal of the appeal would deprive her of her right to appeal. However, only final orders or judgments provide the basis for a right of direct appeal. See id. at ¶9. Furthermore, Mother has received her relief on the key issue initially identified, that the juvenile court failed to

comply with the UCCJEA. On remand, this defect was cured. Proceeding with this appeal would not affect the remedy already received. See In re A.M.S., 2000 UT App 182, ¶14, 4 P.3d 95 (deeming juvenile court order to be temporary after finding juvenile court initially exceeded jurisdiction under UCCJEA).

Accordingly, this appeal is dismissed for lack of jurisdiction.

Russell W. Bench,
Presiding Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge