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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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Ex parte Theresa Ray

PETITION FOR WRIT OF MANDAMUS

(In re: Lucas Ray

v.

Theresa Ray)

(Montgomery Circuit Court, DR-20-900366)

MOORE, Judge.

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Theresa Ray ("the mother") has filed a petition requesting that this court issue a writ of mandamus directing the Montgomery Circuit Court ("the trial court") to dismiss the petition filed by Lucas Ray ("the father") seeking to modify the custody of B.R. and C.R. ("the children"). We grant the mother's mandamus petition and issue the writ.

Procedural History

On January 26, 2018, the mother and the father, who were both in the United States military at the time, were divorced by a judgment entered by the Family Court at Bury St. Edmund while they were stationed in England. Subsequently, on May 13, 2018, the Family Court at Ipswich ("the Ipswich court") entered an order stating that, beginning on July 11, 2018, the children "shall live with the mother" and that the mother "ha[d] leave to remove the children from the jurisdiction to the United States of America." That order further provided that "any Order made today [i.e., July 11, 2018,] was not intended to be binding on the Courts of the United States of America but was of necessity limited to a determination as to which parent should be permitted to remove the

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children from the jurisdiction [of the Ipswich Court] and [to determine] their short term immediate living arrangements."

Subsequently, on November 13, 2019, the District Court of Larimer County, Colorado ("the Colorado court"), entered an order requiring the father to pay child support to the mother. That order also stated, among other things, that the children were with the mother 74.25% of the time and with the father 25.75% of the time, and that the "Order for Support does not address parental responsibility or parenting time of [the] children."

On June 11, 2020, the father filed a petition in the trial court, seeking to modify the custody of the children and child support; he also requested pendente lite relief. The action initiated by the father's petition was assigned case number DR-20-900366 ("the custody action"). On June 12, 2020, the father filed a separate motion for pendente lite relief. On June 16, 2020, the trial court entered an order stating: "MOTION FOR PENDENTE LITE filed by [the father] is hereby held in abeyance based on the submitted filings. The Court does not view the said matter as ripe

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or properly put before the Court, as there is no registration of any foreign judgment relative to divorce or custody." (Capitalization in original.)

On July 17, 2020, the father filed a petition in the trial court requesting the acceptance and domestication of both the divorce judgment and the order entered by the Ipswich court; the action initiated by that petition was assigned case number DR-20-900366.01 ("the registration action"). The mother filed in the registration action a limited notice of appearance and a motion to dismiss, based on lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process, pursuant to Rule 12(b)(2), (4), and (5), Ala. R. Civ. P. On September 16, 2020, the trial court dismissed the registration action as moot; the trial court found "that the underlying Foreign Judgment is not relevant to the issue before the Court under the [custody action]" and that "[t]here is no enforceable Order of Custody or Visitation that was previously entered by any Foreign Jurisdiction such that the Court is obliged to take notice thereof." The mother's motion to dismiss was also denied as moot.

On October 5, 2020, the mother filed in the custody action a limited notice of appearance and a motion to dismiss pursuant to Rule 12(b)(1),

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(2), (4), (5), and (6); specifically, she asserted lack of subject-matter jurisdiction, lack of personal jurisdiction, insufficiency of process, insufficiency of service of process, and failure to state a claim upon which relief could be granted because the father had not registered the order entered by the Ipswich court and the order entered by the Colorado court. That motion was denied on October 6, 2020. That same day, the mother filed an amended motion to dismiss, attaching an affidavit in support thereof. The mother filed her petition for a writ of mandamus with this court on November 17, 2020.

Standard of Review

"This Court has consistently held that the writ of mandamus is an extraordinary and drastic writ and that a party seeking such a writ must meet certain criteria. We will issue the writ of mandamus only when (1) the petitioner has a clear legal right to the relief sought; (2) the respondent has an imperative duty to perform and has refused to do so; (3) the petitioner has no other adequate remedy; and (4) this Court's jurisdiction is properly invoked. Ex parte Mercury Fin. Corp., 715 So. 2d 196, 198 (Ala. 1997). Because mandamus is an extraordinary remedy, the standard by which this Court reviews a petition for the writ of mandamus is to determine whether the trial court has clearly abused its discretion. See Ex parte Rudolph, 515 So. 2d 704, 706 (Ala.1987)."

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Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000).

Discussion

In her mandamus petition, the mother first argues that the trial court erred by not dismissing the custody action because the orders entered by the Ipswitch court and the Colorado court had not been registered. "The [Uniform Child Custody Jurisdiction and Enforcement Act, § 30-3B-101 et seq., Ala. Code 1975,] requires that a foreign custody judgment be registered in an Alabama trial court before that court may enforce or modify the terms of the custody or visitation award contained in the foreign judgment." Hummer v. Loftis, 276 So. 3d 215, 221 (Ala. Civ. App. 2018). See also Ala. Code 1975, § 30-3B-306; and Krouse v. Youngblood, 171 So. 3d 49 (Ala. Civ. App. 2015). "[A]n Alabama trial court lacks jurisdiction to modify a foreign child-custody judgment if that judgment has not been properly registered pursuant to § 30-3B-306[, Ala. Code 1975,] of the [Uniform Child Custody Jurisdiction and Enforcement Act]." Hummer, 276 So. 3d at 222. See also Ala. Code 1975, § 30-3B-306(b).

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The May 13, 2018, order entered by the Ipswich court was simply a temporary order determining which parent would be allowed to remove the children from that jurisdiction, and the father argues that he is not actually seeking to modify that order. However, § 30-3B-102(11), Ala. Code 1975, a part of Alabama's version of the Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), § 30-3B-101 et seq., Ala. Code 1975, "broadly" defines "modification" as "[a] child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination." (Emphasis added.) See also K.R. v. Lauderdale Cnty. Dep't of Hum. Res., 133 So. 3d 396, 404 n.7 (Ala. Civ. App. 2013). Accordingly, we conclude that any determination that the trial court might make in the custody action would qualify as a modification of the Ipswich court's order simply by virtue of its being made subsequent to the entry of the Ipswich court's order, and, thus, the trial court erred in determining that the father was not required to register that order before proceeding with the custody action. Because

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the trial court lacked jurisdiction to consider the custody action, it erred by declining to grant the mother's motion to dismiss.

Based on the foregoing, we grant the mother's mandamus petition. We issue a writ of mandamus directing the trial court to dismiss the custody action. The Ipswich court's May 13, 2018, order must be properly registered before the trial court may consider the custody modification requested by the father. In light of our disposition of the mother's first argument, we pretermitt discussion of her remaining arguments.

PETITION GRANTED; WRIT ISSUED.

Thompson, P.J., and Edwards, Hanson, and Fridy, JJ., concur.