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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

JASON HOPE, *Plaintiff/Appellee*,

v.

MELANIE BLYTHE GREENHAM, *Defendant/Appellant*.

In re the Matter of:

MELANIE BLYTHE GREENHAM, *Petitioner/Appellant*,

v.

JASON DOUGLAS HOPE, *Respondent/Appellee*

Nos. 1 CA-CV 15-0548 FC A
1 CA-CV 15-0791 FC A
(Consolidated)
FILED 7-12-2016

Appeal from the Superior Court in Maricopa County

Nos. FC2014-052850

FC2011-093940

The Honorable Bethany G. Hicks, Retired Judge

The Honorable Theodore Campagnolo, Judge

The Honorable Richard Albrecht, Judge *Pro Tempore*

AFFIRMED IN PART; VACATED IN PART

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COUNSEL

Melanie Blythe Greenham, Mexico
Defendant/Petitioner/Appellant

MEMORANDUM DECISION

Presiding Judge Andrew W. Gould delivered the decision of the Court, in which Judge Randall M. Howe and Judge Kent E. Cattani joined.

G O U L D, Judge:

¶1 Melanie Blythe Greenham (“Mother”) appeals from the family court’s orders modifying custody and child support. Mother also appeals the entry of an order of protection against her by Jason Douglas Hope (“Father”). For the following reasons, we affirm in part and vacate in part.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Father were divorced in South Carolina in June 2011. Under the terms of the consent decree, Mother was designated as the primary residential parent with final decision making authority, and Father was awarded parenting time. Additionally, Father agreed to pay Mother monthly child support. At the time the decree was entered, Mother and the children had moved to Arizona.

¶3 In August 2011, Father filed the South Carolina decree in Arizona in conjunction with a petition to prevent Mother from relocating the children to Mexico.¹ In September 2011, without Father’s permission, Mother took the children to Texas, intending to move to Mexico. At a status conference on November 7, 2011, the court held Mother in contempt for violating the parenting time orders in the South Carolina decree, and ordered her to return the children to Father in Arizona until the next status conference set for November 21, 2011.

¹ Father did not comply with the registration requirements of the Uniform Interstate Family Support Act (“UIFSA”), Arizona Revised Statutes (“A.R.S.”) sections 25-1301 to -1316, when he filed the decree. However, in July 2013, Father properly registered the South Carolina decree in Arizona in accordance with the UIFSA requirements.

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¶4 On November 18, Father submitted a proposed custody and parenting time plan requesting sole custody of the children. The court granted Father's request for sole custody of the children on January 20, 2012.

¶5 Based on Father's sole custody of the children, Father petitioned to modify child support on April 19, 2012. Father served Mother with the petition on May 7, 2012. Father requested the court make any support modification effective from November 1, 2011 when he took primary custody of the children.

¶6 Mother objected to Father's petition to modify support, arguing the family court lacked jurisdiction to modify the South Carolina child support order. Mother also filed a petition seeking an arrears judgment for support allegedly owed by Father from July 2011 to June 2012.

¶7 On November 5, 2012, the court granted Father's petition to modify support, and ordered Mother to pay Father \$204.00 in monthly support for the time period of November 1, 2011 through April 30, 2012. Additionally, the court ordered Mother to pay Father \$124.43 per month commencing May 1, 2012. The court awarded Father \$3,089.50 in attorney's fees based on Mother's unreasonable conduct during the child support litigation.

¶8 Mother appealed the family court's orders modifying custody and support. *See Hope v. Hope*, 1CA-CV 13-0112, 2014 WL 860797 (Ariz. App. Mar. 4, 2014) (mem. Decision). On appeal, Mother argued the family court lacked jurisdiction to modify the custody and support orders in the South Carolina decree. *Hope*, 2014 WL 860797, at *1, ¶ 1. We remanded the case to the family court to clarify whether it had jurisdiction to modify custody under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), A.R.S. § 25-1001 *et seq.* *Hope*, 2014 WL 860797, at *6, ¶ 34. In addition, because Father had not registered the South Carolina decree in compliance with the UIFSA before the court modified child support, we concluded the family court did not have jurisdiction to modify child support and vacated the child support order. *Id.*

¶9 Following remand, Mother sought to enforce her custody rights under the South Carolina decree. Mother unilaterally dis-enrolled the children from their schools and informed Father that she was relocating with them to Mexico. She also filed an action in South Carolina seeking

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what she alleged were \$54,000.00 in child support arrearages Father owed her under the South Carolina decree.²

¶10 In response, on August 8, 2014, Father obtained an order of protection against Mother to prevent her from relocating the children to Mexico. Father also petitioned to modify child support on August 11, 2014, arguing that (1) his support obligations should be suspended because the children were in his sole custody, and (2) he did not owe any arrearages under the South Carolina decree.

¶11 The family court held a hearing regarding child support on February 11, 2015. At the hearing, the parties stipulated that the South Carolina decree was properly registered in Arizona pursuant to the UIFSA on July 21, 2014. In addition, to clarify the record and establish UCCJEA jurisdiction, the family court found that at the time Father filed the August 2011 custody modification, no one resided in South Carolina, Mother and the children resided in Arizona, and Arizona was the appropriate forum.

¶12 On May 18, 2015 the court held a UCCJEA conference with the South Carolina judge to further address the jurisdictional issue.³ The South Carolina court disclaimed any jurisdiction over custody pursuant to the parties' agreement in the original decree, which stated that custody modification would be handled in Arizona. At the conclusion of the hearing, the Arizona court reiterated that the South Carolina decree had been properly registered in Arizona; the court also stated it would assume jurisdiction of the support modifications before it, including the issue of arrearages.

¶13 On June 9, 2015, the court issued its custody and support modification ruling. The court found it had subject matter jurisdiction on January 20, 2012, to modify the South Carolina custody order contained in the consent decree. Accordingly, the court re-affirmed its prior custody

² The South Carolina court granted Father's motion to dismiss Mother's child support action for lack of jurisdiction.

³ During the conference, the South Carolina court clarified that it had relinquished jurisdiction at the time the decree was filed in June 2011, and that its subsequent order entered on October 4, 2011 regarding some marital property situated in the state of South Carolina was not an attempt to exercise continuing exclusive jurisdiction over child custody under the UCCJEA.

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modification order granting sole custody to Father effective as of November 1, 2011.

¶14 With regard to child support, the family court also determined it had subject matter jurisdiction. The court found “no justification for requiring [Father] to continue paying child support to [Mother] after the point at which [Father] assumed primary custody of the children, which was November 1, 2011.” As a result, the court granted Father’s petition to modify support. The court further ordered Mother to pay Father \$3,089.50 for fees incurred in litigating the child support order and \$9,150.00 for fees incurred in litigating the custody issues.

¶15 On July 20, 2015, the court also dismissed Mother’s petition to modify custody filed May 19, 2015. The court found Mother’s petition did not conform with procedures Rule 91(D) required and that it was a modification filed within one year from the date of the Court’s modification ruling of June 9, 2015. The court also found that the petition’s allegations pertained to time periods before May 18, 2015, and were thus untimely.

¶16 In a separate matter, Mother moved to vacate the order of protection Father obtained in August 2014. She argued the order of protection was a void judgment because it modified the South Carolina custody order without UCCJEA jurisdiction to do so. Mother’s motion was denied.

¶17 Finally, on September 14, 2015, the court denied Mother’s Rule 83 and 85 motions for new trial and relief after a judgment regarding its custody and support orders.

¶18 Mother appeals “from *all* orders entered in this case since its inception.” Mother’s appeals regarding custody and child support have been consolidated with her appeal from the order of protection. However, with respect to Mother’s appeal from “all orders” since the “inception” of the case, such a designation is improper, and we will not address issues that have not been timely raised or have been addressed in our prior memorandum decision and are therefore moot.

DISCUSSION

I. Standard of Review

¶19 The UCCJEA determines a court’s subject matter jurisdiction to modify foreign custody orders, and the UIFSA determines a court’s subject matter jurisdiction to modify foreign child support orders. A.R.S.

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§§ 25-1001 to -1067 (West 2016)⁴ (UCCJEA); A.R.S. §§ 25-1301 to -1362 (West 2016) (UIFSA). We review questions of jurisdiction under these statutes de novo. *Duwyenie v. Moran*, 220 Ariz. 501, 503, ¶ 7 (App. 2009) (UCCJEA); *McHale v. McHale*, 210 Ariz. 194, 196, ¶ 7 (App. 2005) (UIFSA).

II. Child Custody

¶20 Mother asserts that Arizona did not have jurisdiction to modify the South Carolina custody order until after it held the UCCJEA conference on May 18, 2015. Accordingly, she argues that all of the custody orders entered by the Arizona family court before that date are void for lack of subject matter jurisdiction.

¶21 Mother's argument is based on a faulty interpretation of our prior memorandum decision in this case. To be clear, we did not conclude the Arizona family court lacked subject matter jurisdiction to modify custody. Rather, we directed the family court to clarify whether it had subject matter jurisdiction in accordance with procedures set out in A.R.S. § 25-1033. *Hope*, 2014 WL 860797, at *4, ¶ 23. We noted that section 25-1033 provides that an Arizona court has jurisdiction to modify a foreign court's custody order if the foreign court makes a determination that (1) it no longer has exclusive continuing jurisdiction, or (2) the child and the child's parents no longer live in the foreign jurisdiction. *Id.* at ¶ 21. Alternatively, if the foreign court has not made a determination, an Arizona court can make the determination that the child and the child's parents do not reside in the foreign jurisdiction. *Id.*

¶22 Here, the family court's UCCJEA conference clearly established that the South Carolina court relinquished its exclusive continuing jurisdiction at the time it entered the parties' consent decree in June 2011. Additionally, the family court expressly found that at the time Father filed his petition to modify custody in August 2011, the children, Mother and Father did not reside in South Carolina. On this clarified record, we conclude the family court had jurisdiction to modify the South Carolina custody orders when it entered its modification order in January 2012.

¶23 Mother also argues the court improperly dismissed her petition to modify custody filed on May 19, 2015. Arizona Rule of Family Law Procedure 91(D) requires any petition to modify custody to comply

⁴ Absent significant revision since the time of the relevant events, we cite to the current version of the statute.

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with A.R.S. § 25-411. Section 25-411(A) prohibits a person from making a “motion to modify a legal decision-making or parenting time decree earlier than one year after its date.” Mother did not serve Father with her petition until June 13, 2015, four days after the family court entered its June 9 order modifying custody. Accordingly, her petition improperly sought to modify custody less than one year after entry of the court’s June 9 custody order. *See* A.R.S. § 25-411(A) (West 2016). We find no error.

III. Child Support

¶24 Mother argues the court erred in finding it had jurisdiction to modify support. We need not address whether the court properly found jurisdiction under A.R.S. § 25-1311(A)(1) because we find there is jurisdiction under § 25-1311(A)(2). *See Forszt v. Rodriguez*, 212 Ariz. 263, 265, ¶ 9 (App. 2006) (stating that appellate court will affirm the trial court if it is correct for any reason).

¶25 Under § 25-1311(A)(2), an Arizona court “may modify a child support order issued in another state that is registered in this state if, after notice and a hearing,” it finds:

This state is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

¶26 Here, the parties stipulated that the South Carolina support order was properly registered in July 2014; in fact, the record indicates the order was properly registered as early as July 2013. It is also clear that the children’s residence is Arizona, and Mother is subject to the family court’s personal jurisdiction, having appeared in this action.

¶27 Finally, the consent decree clearly designates Arizona as the minor children’s home state and the state in which all future actions will be adjudicated. Indeed, based on the South Carolina court’s actions, the language in the South Carolina decree no doubt qualifies as the required consent under A.R.S. § 25-1311(A)(2). When Mother sought to enforce child support arrearages in South Carolina, the action was dismissed for lack of jurisdiction. Clearly, South Carolina viewed the parties as having consented to jurisdiction in Arizona.

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¶28 We turn now to whether the family court properly modified the support order. “The decision to modify an award of child support rests within the sound discretion of the trial court and, absent an abuse of that discretion, will not be disturbed on appeal.” *Little v. Little*, 193 Ariz. 518, 520, ¶ 5 (1999). The court’s interpretation of the law in making its modification is reviewed de novo. *Guerra v. Bejarano*, 212 Ariz. 442, 443, ¶ 6 (App. 2006).

¶29 Under Arizona law, “a court should modify a child support order only if a parent shows a substantial, continuing change of circumstances.” *Little*, 193 Ariz. at 521, ¶ 6. When making a modification, the court can modify an award to alter the amount of arrearages accrued from the time notice of the petition to modify is given to the other parent, but not before. *Guerra*, 212 Ariz. at 444, ¶ 7.

¶30 Here, the family court correctly concluded that Father was not obligated to pay support to Mother during the period he had sole custody of the children. Father took custody of the children under the terms of the court’s order in November 2011.⁵ Because support payments are for the support and maintenance of the minor children, “[i]t would certainly be inequitable to allow [Mother] in the instant case to collect money for support of [the children] during the time [Father] was actually supporting [them].” *Cole v. Cole*, 101 Ariz. 382, 384 (1966). Thus, Mother is not entitled to collect for support she did not provide. *See id.*

¶31 However, the child support modification can only reach back to the time Father’s petition to modify was filed. *See* A.R.S. § 25-327(A). Thus, “the earliest authorized effective date of the modification order is the filing date of the petition for modification.” *Guerra*, 212 Ariz. at 444, ¶ 7. Father filed his petition in April 2012. The court was permitted to modify child support from that point forward; but it was improper to modify the support obligation to require Mother to make child support payments for any period before April 2012. Accordingly, the court’s support award requiring Mother to pay \$204.00 per month for the time period of November 1, 2011 through April 30, 2012 was improper.

IV. Order of Protection

¶32 Mother argues the family court lacked jurisdiction to issue the order of protection in August 2014 because an Arizona court could not

⁵ Mother conceded that Father had no arrearages at the time he took custody of the children in November 2011.

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modify the South Carolina custody orders until after the UCCJEA conference in May 2015. We disagree. As noted above, the family court had jurisdiction to modify the South Carolina custody orders prior to the August 2014 order of protection. *See, supra* at ¶ 22.

V. Attorney's fee awards

¶33 Mother argues the court erred in awarding Father his attorneys' fees. The only fee awards properly before us in this appeal are the awards contained in the family court's June 9, 2015 ruling. The court awarded Father \$3,089.50 in fees incurred for the litigation of the child support order, and \$9,150.00 in fees incurred for litigation of custody issues. We review the court's ruling regarding an award of fees for an abuse of discretion. *In re Marriage of Robinson and Thiel*, 201 Ariz. 328, 335, ¶ 20 (App. 2001). We find none.

¶34 Under A.R.S. § 25-324(A) (West 2016), a trial court may order a party to pay the other party's attorney's fees after considering the financial resources and the reasonableness of the positions of both parties. The record supports the court's conclusion that Mother's unreasonable positions warranted an award of fees against her.

CONCLUSION

¶35 The family court had subject matter jurisdiction to modify the South Carolina custody and child support orders. We therefore affirm the court's modification of the South Carolina custody and support orders. However, we vacate the portion of the court's order requiring Mother to pay \$204.00 per month for the period from November 1, 2011 through April 30, 2012. The remainder of the court's orders, including the support modification requiring Mother to pay Father \$124.43 per month commencing May 1, 2012, are affirmed.

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¶36 Mother has not prevailed on the majority of her claims of error on appeal; thus, she is not a prevailing party. Accordingly, she is not entitled to an award of costs. Additionally, because Father did not participate in this appeal, he is not entitled to an award of costs.



Ruth A. Willingham · Clerk of the Court
FILED: AA