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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07-20-2010
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BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) No. 1 CA-CV 09-0291
)
SHANE A. SKEETE,) DEPARTMENT C
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
CHRISTINE M. MING,) Procedure)
)
Respondent/Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC 2008-001133

The Honorable Lisa Daniel Flores, Judge

AFFIRMED

Shane A. Skeete,
Petitioner/Appellee *In Propria Persona*

Upper
Marlboro,
Maryland

Christine M. Ming,
Respondent/Appellant *In Propria Persona*

Apache
Junction

D O W N I E, Judge

¶1 Christine Ming ("Mother") appeals certain rulings by
the family court. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Shane Skeete ("Father") divorced in Maryland in 2003. They were awarded joint legal custody of their two minor sons, with Mother having physical custody. Father received visitation rights, including Christmas in even-numbered years. Mother and the children moved to Arizona in 2004.

¶3 In February 2008, Mother domesticated the Maryland divorce decree in the Maricopa County Superior Court. On May 2, 2008, she filed a Petition for Order to Show Cause ("OSC petition"), alleging Father had failed to abide by provisions of the decree regarding medical insurance and trust accounts for the children; she also sought to reduce Father's parenting time.

¶4 In November 2008, Father contacted Mother about Christmas visitation. Mother stated she would not allow the visitation due to concerns about "physical and emotional abuse." Father requested an emergency hearing, which occurred on December 12. The court ordered Mother to send the children to Maryland for Christmas visitation with Father. It denied Mother's subsequent requests for reconsideration and assignment of a "new judge."

¶5 On January 12, 2009, the family court held an evidentiary hearing regarding Mother's OSC petition. Father initially challenged the court's jurisdiction, arguing Maryland

had not relinquished jurisdiction. His counsel suggested calling the Maryland judge or taking "provisional testimony." When the court indicated it was not inclined to proceed due to the jurisdictional challenge, Father withdrew his objection. The hearing proceeded.

¶16 In a minute entry dated March 3, 2009, the court ruled that the medical insurance issue was moot because Father had current coverage for the children. Regarding the trust funds, the court found that Father had substantially complied with the decree's terms. It also ruled that Father had satisfied his child support obligations and was entitled to claim the oldest child as a tax exemption in 2008. Finally, the court awarded Father an unspecified portion of his attorneys' fees, finding that Mother had taken unreasonable positions in the litigation.

¶17 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(C) (2003).

DISCUSSION

1. Subject Matter Jurisdiction

¶18 Mother challenges the family court's jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). She argues that, because Maryland had not relinquished its exclusive, continuing jurisdiction, the court

"erred in making any orders and in even hearing evidence." We disagree.

¶9 Arizona adopted the UCCJEA in 2001. A.R.S. §§ 25-1001 to -1067 (2007). The UCCJEA "establishes which court has subject matter jurisdiction in interstate child custody disputes." *J.D.S. v. Franks*, 182 Ariz. 81, 86, 893 P.2d 732, 737 (1995) (citations omitted). Jurisdiction under the UCCJEA is a question of law that we review *de novo*. *In re Marriage of Tonnessen*, 189 Ariz. 225, 226, 941 P.2d 237, 238 (App. 1997) (citation omitted). A party may not create subject matter jurisdiction through agreement or consent. *Thomas v. Thomas*, 203 Ariz. 34, 36, ¶ 9, 49 P.3d 306, 308 (App. 2002).

¶10 Article 2 of the UCCJEA limits the family court's jurisdiction when, in substantial conformity with the UCCJEA, another court has already commenced child custody proceedings, A.R.S. § 25-1032, or when a court modifies the initial child custody determination of another court. A.R.S. § 25-1033. In modification cases, Article 2 requires the Arizona court to first "confer with the judge who issued the out-of-state custody order and/or get the out-of-state court to release its continuing jurisdiction over its custody order." *Melgar v. Campo*, 215 Ariz. 605, 605, ¶ 1, 161 P.3d 1271, 1271 (App. 2007). Accord A.R.S. § 25-1033.

¶11 A "child custody proceeding" is one that raises or may raise an issue regarding legal custody, physical custody, or visitation with respect to a child. A.R.S. § 25-1002(4)(a). In defining "child custody proceeding," the UCCJEA specifically excludes "enforcement under article 3." A.R.S. § 25-1002(4)(b). Under Article 3, an Arizona court has a duty to recognize and enforce a child custody determination of another state's court if the other court exercised jurisdiction in substantial conformity with the UCCJEA. A.R.S. § 25-1053(A); *Melgar*, 215 Ariz. at 607, ¶ 10, 161 P.3d at 1271. Pursuant to this duty, an Arizona court must "recognize and enforce, but shall not modify, except in accordance with Article 2 of this chapter, a registered child custody determination of a court of another state." A.R.S. § 25-1056(B).

¶12 The visitation rulings at issue here (which are the only matters subject to the UCCJEA) merely enforced the Maryland decree. Although Mother initially sought to modify parenting time, she withdrew that request. Similarly, Father orally moved to modify custody and visitation, but the court found he had not properly presented the request and denied it. The family court acted within its jurisdiction under the UCCJEA.

2. Attorneys' Fees

¶13 Mother challenges the award of attorneys' fees to Father. She argues there was no basis for the award because

"the Court essentially agreed with nearly all of Appellant's issues, only ruled against her because Appellee had rectified the issues by the time of trial, and the prior Christmas action was irrelevant to this one." She also claims the court erred because Father earns more money than she does.

¶14 In responding to Mother's OSC petition, Father sought "fees and costs for having to bring action to enforce Christmas visitation and [to] respond to the [m]other's unwarranted Petition." He also requested fees in his pre-trial statement and alleged therein that Mother had taken "unreasonable positions throughout causing Father to incur fees." At the evidentiary hearing, the court asked whether either side was seeking a fee award. Father presented evidence regarding his entitlement to fees.

¶15 In its minute entry ruling, the court found that "Mother has taken unreasonable positions in this litigation and she caused Father to incur unnecessary attorney's fees to defend against them," including the "emergency motion to enforce his parenting time rights" at Christmas. It concluded Father was "entitled to an award of a *portion* of his reasonable attorney's fees." Father submitted a fee application seeking \$5670. Mother filed her notice of appeal and her objection to Father's fee application on the same day. The family court determined it

had been divested of jurisdiction and declined to enter a fee award for a specific sum.

¶16 In May 2010, this Court suspended the appeal and revested jurisdiction in the superior court so that it could rule on Father's pending fee application. The superior court did so by minute entry ruling filed June 15, 2010. The court awarded Father \$2835 in attorneys' fees. Despite being given an opportunity to file a supplemental brief regarding the amount of the fee award, Mother filed nothing further in this Court. Thus, the sole fee-related issue properly before us is the determination that Father qualified for a fee award.

¶17 Pursuant to A.R.S. § 25-324(A) (Supp. 2009), "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings," the court may order one party to pay a reasonable amount of attorneys' fees and costs expended by the other party in litigating the matter. We review an award of fees under A.R.S. § 25-324 for an abuse of discretion. *Breitbart-Napp v. Napp*, 216 Ariz. 74, 83, ¶ 35, 163 P.3d 1024, 1033 (App. 2007) (citation omitted).

¶18 The record reflects that Father earns \$27.26 per hour and Mother earns \$23.18 per hour, a difference the family court deemed "not significant," especially after considering Father's child support payments. The record also supports the

determination that Mother took unreasonable positions-- especially as to visitation, and that Mother acted unreasonably regarding the trust funds and insurance.¹

¶19 The decree required Father to put \$15,000 in trust for the children, with the parties named as joint trustees. According to Father, he told Mother in 2004 that he had placed the funds in a college savings plan through his State Farm agent and that the plan allowed only one enrollee. Father told Mother her name was not on the accounts and gave her the account numbers. Mother voiced no objection until 2008, when she filed her OSC petition. Father testified, without contradiction, that neither parent may withdraw funds from the accounts. The court found that Mother had notice of this arrangement for several years without objecting, that Father had substantially complied with the decree's terms, and that forcing him to now withdraw the funds and create new accounts was "unreasonable and punitive."

¶20 As for medical insurance, Father testified that he initially provided it, but discontinued the coverage because

¹ In concluding that Mother took unreasonable positions on these issues, the family court implicitly credited Father's version of events over Mother's where the two conflicted. The credibility of a witness is for the trier of fact and not an appellate court. *State v. Gallagher*, 169 Ariz. 202, 203, 818 P.2d 187, 188 (App. 1991) (citation omitted). As such, we afford great weight to the trial court's assessment of witnesses' credibility and will not reverse absent clear error. No such error appears here.

