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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-17-511

MARCUS LASHUN TOWNSEND
APPELLANT

V.

DORIAN TYA TOWNSEND
APPELLEE

Opinion Delivered: April 11, 2018

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, THIRD
DIVISION
[NO. 60DR-16-971]

HONORABLE CATHLEEN V.
COMPTON, JUDGE

AFFIRMED IN PART; REVERSED IN
PART

MIKE MURPHY, Judge

This is a one-brief appeal. In it, appellant Marcus Townsend appeals a Pulaski County Circuit Court order modifying a custody determination registered here but made by a Hawaiian court. On appeal, Marcus first argues that we should dismiss the case because the summons was defective; thus, the circuit court did not have personal jurisdiction over him. He next argues that even if the circuit court had personal jurisdiction over him, it did not have jurisdiction to modify the decree under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). We affirm in part and reverse in part.

On March 10, 2016, appellee Dorian Townsend petitioned the Pulaski County Circuit Court to register a divorce decree from the state of Hawaii. The decree divorced her from her then-husband, Marcus and awarded her custody of the parties' three minor children, set child support, and set a visitation schedule. At all times during this case, Dorian and the children lived in Arkansas, and Marcus lived in Hawaii. Dorian's counsel mailed a copy of the notice, petition, and exhibits to Marcus by certified mail with return receipt and restricted delivery, and Marcus received them on March 29, 2016. Dorian's counsel filed proof of service on April 26, 2016.

Marcus never responded, and an order was entered June 8, 2016, registering the decree. On June 17, 2016, Dorian filed a motion for contempt alleging that contrary to the decree, Marcus was not allowing her to contact the children while they were in Marcus's care. On June 30, 2016, Dorian filed a motion to modify visitation to allow her to communicate with her children at least once a day when the children are with Marcus. She alleged discord between the parents as the material change in circumstances. Marcus did not respond to either of these motions.

A hearing was held on January 5, 2017. Dorian was represented by counsel, and Marcus appeared in person, pro se. He specifically stated he was there by special appearance and moved to dismiss the case for lack of jurisdiction. The court denied the motion. After the hearing, the circuit court modified the decree, ruling that the parents may have electronic contact with the children at least once a day while the children are in the care of the other parent. The court also ordered that, going forward, the parents would

freely share medical information with one another and would immediately notify the other of any medical events involving the children. Marcus timely appealed.

This is the second time this case is before us. We had initially remanded it to settle and supplement the record with a copy of the summons, if any, issued with the petition for contempt or motion to modify visitation. *Townsend v. Townsend*, 2018 Ark. App. 75. Marcus has now tendered a substituted brief and a supplemental record that included a summons issued by the Pulaski County clerk on July 1, 2016.

On appeal, Marcus first argues that the trial court lacked personal jurisdiction due to a defective summons. He alleges the summons is defective because it said that he had only twenty days to respond, and not thirty, as provided in Arkansas Rules Civil Procedure 4(b) and 12(a).

Arkansas Rule of Civil Procedure 4(b) provides that a summons shall state, among other things, “the time within which these rules require the defendant to appear, file a pleading, and defend.” Arkansas Rule of Civil Procedure (12)(a) provides that “[a] defendant shall file his or her answer within 30 days after the service of summons and complaint upon him or her.” A summons that provides an incorrect number of days within which the defendant must file an answer after service of the summons is defective and will deprive the circuit court of jurisdiction over a defendant. *Earls v. Harvest Credit Mgmt. VI-B, LLC*, 2015 Ark. 175, 460 S.W.3d 795.

In his argument, Marcus repeatedly points to the notice for the registration of the divorce decree, and not the summons, to argue that the summons is defective. After

settling the record, however, we hold that there was, in fact, a correct summons that stated Marcus had thirty days to respond. The summons was issued by the clerk of the court the day after Dorian had filed her motion for contempt. The record also contains an affidavit of service from a personal-process server averring that Marcus was served by “delivering a true copy of the SUMMONS; VERIFIED PETITION FOR CONTEMPT CITATION; NOTICE OF HEARING; MOTION TO MODIFY VISITATION; to: MARCUS LASHUN TOWNSEND” on September 28, 2016. Marcus did not change his argument with the settled record. On this point we affirm.

Marcus’s second point on appeal is that the trial court lacked authority to modify the decree. As previously noted, Dorian correctly registered the decree in Pulaski County following the process set forth in the UCCJEA codified at Arkansas Code Annotated section 9-19-305 (Repl. 2015). The order registering the decree was entered June 8, 2016, and Marcus does not argue that it was done so improperly. Instead, he argues that the court did not have the authority to modify the decree. Arkansas Code Annotated section 9-19-203 provides as follows:

Except as otherwise provided in § 9-19-204,¹ a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under § 9-19-201(a)(1) or (2) and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under § 9-19-202 or that a court of this state would be a more convenient forum under § 9-19-207; or

¹Discussing when a court of this state may have temporary emergency jurisdiction.

(2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

There is no evidence on this record that the requirements of section 9-19-203 were met. And while the trial court does have the authority under the UCCJEA to enforce the existing decree,² and we have held that changes that are ministerial in nature (such as changing a payment clearinghouse from one state to another) may be allowable under the enforcement portion of the UCCJEA,³ the changes in this case were not ministerial.

Here, the court changed Marcus's visitation with the children while they are in Dorian's custody from a minimum of twice a week phone/Skype/FaceTime calls to daily calls. It also granted Dorian's request for daily visitation with her children while they are in Marcus's custody, a point on which the decree was completely silent. We agree with Marcus that the trial court did not have jurisdiction to modify the parties' visitation arrangement set forth in the Hawaii decree. On this point we reverse.

Affirmed in part; reversed in part.

GLADWIN and BROWN, JJ., agree.

Robert S. Tschiemer, for appellant.

One brief only.

²Ark. Code Ann. § 9-19-303. The enforcement power under this provision is how an Arkansas court could have personal jurisdiction over a party while still not having the jurisdiction to modify a foreign determination.

³*Harter v. Szykowny*, 2014 Ark. App. 701, at 6, 451 S.W.3d 215, 219.