IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

MELISSA MARTINEZ,

Appellant,

v. Case No. 5D18-2966

BRANDON LEBRON,

Appellee.
_____/

Opinion filed November 15, 2019

Appeal from the Circuit Court
for Orange County,
Diana Michelle Tennis, Judge.

Patrick Michael Megaro and Jaime T. Halscott, of Halscott Megaro, P.A., Orlando, for Appellant.

Nicholas A. Shannin and Carol B. Shannin, of Shannin Law Firm, P.A., Orlando, for Appellee.

COHEN, J.

Melissa Martinez ("Mother") appeals the trial court's second amended final judgment of paternity related to Brandon Lebron's ("Father") paternity petition. Primarily, Mother argues that the trial court lacked subject matter jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). She also contends that the trial court erred in entering a time-sharing schedule and granting Father attorney's fees. We affirm.

Mother and Father are the parents of J.D.L. ("Child"), who was born in New York. The parties were never married, but Father acknowledged paternity immediately after Child's birth. The parties and Child initially lived in New York, but eventually moved to Florida, although the parties disputed the precise date on which Mother intended to permanently move to Florida with Child. Mother and Father's relationship, which was rocky at best, deteriorated further while the parties were living in Florida, and Mother and Child returned to New York.

Unbeknownst to Father, Mother filed a paternity petition in New York shortly after her return. Two days later, Father filed a paternity petition in Florida, alleging that Mother had absconded with Child to New York. Unaware of the New York petition, the Florida court entered an initial order establishing a temporary time-sharing schedule.

A Florida court may not exercise jurisdiction under the UCCJEA if, at the time of the commencement of the proceeding in Florida, a child custody proceeding concerning the child had been commenced in another state having jurisdiction substantially in conformity with the UCCJEA, unless the court of the other state terminated or stayed the proceeding because Florida is a more convenient forum. § 61.519(1), Fla. Stat. (2017).

Upon learning of the New York paternity petition, the Honorable Michael Murphy stayed his initial order, ruling that before exercising jurisdiction, the Florida court must communicate with the New York court. In May 2017, the New York court declined to

exercise jurisdiction, finding that Florida was a more convenient forum.[1] Following that ruling, the Orange County circuit court proceeded with its handling of the case.[2]

At trial, Mother's counsel conceded that "jurisdiction has been established for the child as a resident of Florida." On appeal, despite that concession, Mother primarily challenges the authority of the Florida court to hear and decide the paternity action.[3]

The UCCJEA addresses subject matter jurisdiction in child custody proceedings. §§ 61.502–61.542, Fla. Stat. (2017). Section 61.514 provides:

> (1) Except as otherwise provided in s. 61.517, a court of this state has jurisdiction to make an initial child custody determination only if:
>
> (a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
>
> (b) A court of another state does not have jurisdiction under paragraph (a), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under s. 61.520 or s. 61.521, and:

[1] At oral argument, Mother's counsel stated that Mother had unsuccessfully appealed this order.

[2] The Honorable Diana Tennis presided over the proceedings from March 2017 through trial and ultimately entered the second amended final judgment of paternity that is the subject of this appeal.

[3] Although we acknowledge that the lack of subject matter jurisdiction may be raised at any time, we cannot help but look askance at Mother's argument that the trial court improperly ignored evidence that demonstrated New York was Child's home state. After Mother's concession that "jurisdiction has been established for the child as a resident of Florida," the trial court's focus would have been elsewhere, specifically on the issues presented for her resolution at trial. Additionally, Mother's brief does not specify which evidence she believes the trial court ignored, explain who provided such evidence, or provide us with the benefit of a record citation.

> 1. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
>
> 2. Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;
>
> (c) All courts having jurisdiction under paragraph (a) or paragraph (b) have declined to exercise jurisdiction on the grounds that a court of this state is the more appropriate forum to determine the custody of the child under s. 61.520 or s. 61.521; or
>
> (d) No court of any other state would have jurisdiction under the criteria specified in paragraph (a), paragraph (b), or paragraph (c).

Here, the trial court found Father's UCCJEA affidavit credible and concluded that Florida was Child's home state pursuant to section 61.514(1)(a). While Mother contested the allegations within Father's affidavit, the trial court was tasked to determine the parties' credibility and did so. Competent substantial evidence supports the trial court's finding that Florida was Child's home state.

Additionally, as Father points out, even if we agreed with Mother that New York was Child's home state, the trial court nevertheless had jurisdiction pursuant to section 61.514(1)(b). The New York court declined to exercise jurisdiction on the ground that Florida was a more convenient forum. Ample testimony was presented at trial of Father's significant connection to Florida, Child's extended family within the Orlando area, and the care, protection, training, and relationships of Child in Florida. Accordingly, even if New York was Child's home state, Florida nevertheless obtained jurisdiction under section 61.514(1)(b) when the New York court declined to exercise jurisdiction. Thus, Mother's challenge to the trial court's jurisdiction fails.

Next, Mother challenges the time-sharing schedule ordered by the court, arguing that in order to modify the previously ordered time-sharing schedule, the trial court was required to find a substantial, material, and unanticipated change in circumstances. We disagree. The requirement of section 61.13(3) that a time-sharing schedule be modified only upon a showing of a substantial, material, and unanticipated change in circumstances applies only to the modification of final time-sharing schedules. Riddle v. Riddle, 214 So. 3d 694, 697 (Fla. 4th DCA 2017) ("A substantial change in circumstances must be shown to modify a child custody determination only where a final judgment or decree was previously entered determining the issue."). Here, the previously ordered time-sharing schedule was a temporary order. Accordingly, the trial court was not required to make such findings.

Mother also asserts that the trial court "purportedly" conducted an analysis of the time-sharing factors in sections 61.13(3)(a)–(t) but did not employ a best interests of the child analysis. When developing a time-sharing schedule, the best interests of the child shall be the primary consideration. § 61.13(3), Fla. Stat. (2018). "Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to," the factors set out in section 61.13(a)–(t). Id. Contrary to Mother's assertion, the trial court considered each statutory factor, and, if applicable, made related factual findings and a determination of whether those findings weighed in favor of placing Child with Mother, Father, or either parent. The trial court's purpose in doing so was to determine the best interests of Child. While Mother might disagree with

those findings, they are supported by competent substantial evidence, and it is not this Court's role to reweigh the evidence.[4]

Finally, Mother challenges the trial court's award of $825 in attorney's fees and costs to Father related to an enforcement action Father instituted against Mother. Although Mother is correct that the trial court failed to make findings as to Father's need for attorney's fees or her ability to pay, Mother did not raise this issue below and thus, did not preserve it for appeal. See Mathieu v. Mathieu, 877 So. 2d 740, 741 (Fla. 5th DCA 2004) ("In the usual case, we will treat the lack of adequate findings as an unpreserved error unless previously brought to the trial court's attention."); see also Spreng v. Spreng, 162 So. 3d 168, 169 (Fla. 5th DCA 2015) (affirming attorney's fees award despite order lacking required findings of reasonable hourly rate and reasonable hours expended because husband failed to preserve error for appeal).

AFFIRMED.

EDWARDS and GROSSHANS, JJ., concur.

[4] The trial court recognized that this case was first and foremost about which parent would facilitate and encourage a close and continuing relationship with the other parent. That consideration is part of the first factor listed in section 61.13(3). In its order, the trial court detailed the actions Mother took to impede Father's efforts to maintain a relationship with Child, including preventing Father from contacting Child and going through "breathtaking" lengths to anger Father and "bait him to action." The trial court also detailed that Mother attempted to thwart time-sharing by failing to meet Father with Child for prearranged visits when Father flew from Florida to New York to see Child.