

Third District Court of Appeal

State of Florida

Opinion filed September 11, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1691
Lower Tribunal No. 16-8230

Britny Bock,
Petitioner,

vs.

Jonathan Vilma,
Respondent.

A Case of Original Jurisdiction—Prohibition.

Young, Berman, Karpf & Gonzalez, P.A., and Mitchell K. Karpf (Fort Lauderdale); Cynthia L. Greene, for petitioner.

Law Offices of Jeffrey Alan Aenlle, P.A., and Jeffrey Alan Aenlle; Brannock & Humphries, and Ceci C. Berman and Joseph T. Eagleton (Tampa), for respondent.

Before SCALES, LINDSEY and GORDO, JJ.

SCALES, J.

Petitioner Britny Bock (the mother) seeks an emergency writ of prohibition from this Court both: (i) to vacate an order denying her motion to dismiss the Respondent Jonathan Vilma's (the father) second amended petition to modify parenting plan and reduce child support; and (ii) to prohibit the circuit court from making custody or any other determinations regarding the minor child of the mother and father. We deny the petition because the trial court has not acted in excess of its jurisdiction.

I. Relevant Background Facts

In June 2016, in lower tribunal case number 16-8230-FC-07, the mother and father domesticated in Florida a May 2015 Louisiana consent paternity judgment that adjudicated, among other things, certain timesharing and support issues related to their minor child. In May 2018, while the minor child was residing in Florida, the father filed, in the Miami-Dade County Circuit Court, a petition seeking to modify the child support provisions of the domesticated consent judgment. The mother then notified the father of her intent to make a permanent move with the minor child from Florida to Maryland, which she did in August 2018.¹

The father amended his petition twice (once on June 13, 2018 and again on July 24, 2018). In his original petition, the father sought a reduction in his child

¹ The Louisiana Consent Judgment allowed the mother to make a prospective move with the child to any of various locations in the United States, including Maryland. The mother and child first moved to Miami where the father had returned to live.

support obligations due to a change in his income. In his two amended petitions, the father also sought an increased role in his parental responsibilities, particularly because he was aware of and opposed to the relocation of his child. The father amended his petition again on February 27, 2019, to address the material change in circumstances caused by the mother and child's relocation to Maryland. The mother moved to dismiss the father's amended petition, arguing, in part, that the child's residency in Maryland for more than six months caused the Florida court to lose subject matter jurisdiction. It appears from our limited record that the trial court did not rule on the mother's motion to dismiss, and that two new events intervened to alter the course of the litigation.

First, in April 2019, the mother filed an action in family court in Maryland seeking to, among other things, establish Maryland as the child's home. In August 2019, the Maryland court denied the father's motion to dismiss that action.

Second, the child came to stay with the father in Miami during the summer of 2019. According to the mother, the father refused to return the child to Maryland on a designated date in August 2019, for the start of the school year, and instead enrolled the child in school in Miami.

On August 19, 2019, the mother filed an emergency motion in the Miami-Dade court seeking an order requiring the father to return the child to Maryland. After conducting a four-hour evidentiary hearing over two days, the trial court

denied the motion, without prejudice, on August 27, 2019. The trial court's order provided that "[t]he child shall remain in the State of Florida until further ordered by this Court." The mother then filed her emergency prohibition petition to this Court.

II. Analysis

As she did below, the mother asserts here that, because the minor child has been residing in Maryland for over six months, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), as embodied in section 61.501 *et seq.*, Florida Statutes, the Florida trial court no longer has jurisdiction to make child custody determinations.² We disagree.

The UCCJEA "does not operate to divest a court of continuing jurisdiction unless virtually all contacts have been lost with the forum state." Yurgel v. Yurgel, 572 So. 2d. 1327, 1331 (Fla. 1990). Where "minimum contacts clearly have been maintained with Florida," the trial court "has continuing jurisdiction over its own prior decree." Id. at 1332.

This case has been litigated in Florida for more than three years and the issue of where the child should reside was raised below more than a year ago. The father's June 13, 2018 first amended petition and July 24, 2018 second amended petition both sought a change to the parenting plan in light of the mother's anticipated move

² The pertinent statute is section 61.514(1) of the Florida Statutes (2018).

to Maryland, which occurred approximately a week after the father filed the second amended petition. Florida was the home state of the child when the father raised custody and shared parenting issues. See Barnes v. Barnes, 124 So. 3d 994, 995-96 (Fla. 4th DCA 2013) (holding that under Florida Statutes section 61.514(1)(a), jurisdictional priority lies in the State where the child resided during the six months prior to the filing of a custody proceeding). The father's operative petition – his third amended petition of February 27, 2019 – relates back to his initial filings. See Kopel v. Kopel, 229 So. 3d 812, 816 (Fla. 2017).

We, therefore, conclude that, in denying the mother's August 19, 2019 emergency motion, the trial court did not act in excess of its jurisdiction.

Petition denied.³

³ The father also asserts that the remedy of prohibition is prospective only and, to the extent that the mother's petition for such a writ seeks to vacate the trial court's August 27, 2019 order, it is improper. Because we conclude the trial court did not act in excess of its jurisdiction, we need not, and therefore, do not reach this issue.