Third District Court of Appeal

State of Florida

Opinion filed September 9, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-658
Lower Tribunal No. 20-34-K

Erin Murphy,
Appellant,

vs.

Jeswyn Collins,
Appellee.

An Appeal from a non-final order from the Circuit Court for Monroe County, Bonnie J. Helms, Judge.

Ross & Girten, and Lauri Waldman Ross; Samuel J. Kaufman, P.A. and Samuel J. Kaufman and Rachel L. Moss, for appellant.

Robertson & Hunter, and Loriellen Robertson, for appellee.

Before EMAS C.J., and HENDON and LOBREE, JJ.

HENDON, J.

Erin Murphy ("Mother") appeals a non-final order denying her motion to

dismiss the Petition for Determination of Paternity filed by Jeswyn Collins ("the Father")[1] based on the forum non conveniens provision in the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), section 61.520, Florida Statutes (2019). For the following reasons, we reverse the non-final order and remand for a new hearing before a new trial judge on the Mother's motion to dismiss.

In November 2019, the Mother gave birth to G.N.C. ("Child") in Key West, Florida, while the parties, who are not married, were residing together. On January 5, 2020, following an argument, the Mother moved out their apartment and moved in with her parents in Key West. On January 13, 2020, the Mother, along with the Child, left Key West and relocated to Pennsylvania where the Mother grew up. The following day, she notified the Father that she had left the state of Florida with the Child.

On January 16, 2020, the Father filed a Petition for Determination of Paternity in Florida ("paternity petition"), requesting, among other things, that if paternity is established, that the trial court enter an order establishing a time-sharing plan and child support. A few days later, the Mother filed in Pennsylvania a "Complaint in Custody." The Mother then filed a motion to dismiss the Father's paternity petition,

[1] Although paternity has not been established by the lower tribunal, in an action commenced by the Mother in Pennsylvania, she asserted that Mr. Collins is the Child's father. Thus, for ease of reference, Mr. Collins will be referred to as "Father."

requesting that the trial court decline jurisdiction because Florida is an inconvenient forum and because the Mother and the Child do not have significant ties to the state of Florida. See § 61.520(1), Fla. Stat. (2019) ("A court of this state which has jurisdiction under this part to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.").

On March 11, 2020, the trial court conducted an evidentiary hearing on the Mother's motion to dismiss. At the commencement of the hearing, the trial court ruled that Florida is the Child's "home state," which the parties do not dispute.[2] The trial court then informed the parties that it would need to hear testimony as to certain factors to determine if it would decline jurisdiction based on forum non conveniens.

[2] See § 61.503(7), Fla. Stat. (2019) (providing that "[i]n the case of a child younger than 6 months of age, the term ["home state"] means the state in which the child lived from birth with [a parent or a person acting as a parent]"). As Florida is the Child's home state, the Florida court has jurisdiction to make an initial child custody determination, see § 61.514(1)(a); Arjona v. Torres, 941 So. 2d 451, 454-55 (Fla. 3d DCA 2006), but the Florida court can decline to exercise its jurisdiction "if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum." § 61.520(1), Fla. Stat. (2019). Pursuant to section 61.520(2), prior to making this determination, the trial court "shall allow the parties to submit information and shall consider all relevant factors," including eight enumerated factors.

The factors listed by the trial court were the factors enumerated in section 61.520(2)(a)-(h), which states:

> (2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:
>
> (a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
> (b) The length of time the child has resided outside this state;
> (c) The distance between the court in this state and the court in the state that would assume jurisdiction;
> (d) The relative financial circumstances of the parties;
> (e) Any agreement of the parties as to which state should assume jurisdiction;[3]
> (f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
> (g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
> (h) The familiarity of the court of each state with the facts and issues in the pending litigation.

Following the parties' testimony, the trial court denied the Mother's motion to dismiss, making specific findings of fact and rulings. The trial court ordered the Mother's counsel to prepare an order consistent with the oral pronouncements.

On March 26, 2020, the Mother filed a timely verified motion to disqualify the trial judge. In the motion, the Mother asserted that during a hearing in an

[3] The trial court did not specifically refer to the factor set forth in subsection (2)(e)—"Any agreement of the parties as to which state should assume jurisdiction"—but there appears to be no such agreement in the instant case.

unrelated case held on March 16, 2020, the trial judge began to yell at Ms. Moss of the Law Offices of Samuel J. Kaufman, who represents the Mother along with Mr. Kaufman. The trial judge allegedly told Ms. Moss that she believes that Mr. Kaufman had filed a motion as a "ploy"; he has a "history of submitting motions at the last minute"; the trial judge has refused to "tolerate" Mr. Kaufman's behavior, and has instructed her staff not to accommodate Mr. Kaufman; and that Mr. Kaufman "plays games" and "blames the court and her staff." The Mother's motion to disqualify also outlined the trial court's handling and lack of response to motions filed by Mr. Kaufman on behalf of the Mother, including not being able to obtain a ruling and/or hearing on certain motions. The Mother asserted Mr. Kaufman first became aware that the trial judge "harbors bias, prejudice and animus towards" him following the hearing in the unrelated case. Further, based on these events, the Mother has a well-grounded and reasonable fear that she will not receive a fair hearing in front of the trial judge.

The following day, Mr. Kaufman filed a notice of filing, attaching the parties proposed orders. The notice of filing also attached the transcript from the March 11th hearing and emails between the parties' counsels indicating that they could not agree to an order.

On March 30, 2020, the trial court denied the Mother's motion to disqualify, finding that it was legally insufficient. Thereafter, the Mother filed a petition for

writ of prohibition in this Court, asserting that the motion to disqualify the trial judge was legally sufficient and seeking to disqualify the trial judge from continuing to preside over the child custody proceedings.

The following day, March 31, 2020, the trial judge entered her written order denying the Mother's motion to dismiss, nunc pro tunc to March 11, 2020. The trial judge's written order did not adopt either of the parties' proposed orders. A review of the trial judge's written order indicates that the written order deviates from her oral pronouncements made at the hearing. Specifically, the trial judge did not include a specific finding of fact relating to why the Mother left Key West with the Child, which finding favored the Mother. Instead, the trial judge's written order includes a finding of fact relating to why the Mother left Key West, which finding was not made by the trial judge during her oral pronouncements and does not favor the Mother's position and portrays her in a negative light. The Mother's appeal of this non-final order followed.

While this non-final appeal was pending, this Court issued an opinion granting the Mother's writ of prohibition, determining that the Mother's verified motion to disqualify was legally sufficient. This Court also remanded with instructions to reassign the case to a new judge. Murphy v. Collins, No. 3D20-0672, 2020 WL 4196656 (Fla. 3d DCA July 22, 2020).

The Mother contends that the trial court's written order, which was entered

after the trial judge denied the Mother's motion to disqualify, deviates from its oral pronouncements, warranting reversal. We agree.

When a trial judge "has heard testimony and arguments and rendered an oral ruling in a proceeding, the judge retains the authority to perform the ministerial act of reducing that ruling to writing. However, any substantive change in the trial judge's ruling would not be a ministerial act." See Fischer v. Knuck, 497 So. 2d 240, 243 (Fla. 1986). As explained in Godin v. Owens, 275 So. 3d 700, 700-01 (Fla. 5th DCA 2019):

> Generally, a trial court must grant a legally sufficient motion to disqualify immediately and may not take any further action in the matter. The trial court, however, maintains the authority to perform the ministerial duty of preparing a written order to reflect oral pronouncements made before the motion to disqualify. This exception does not apply if the final judgment or order provides details not articulated in the trial court's prior oral pronouncement. In that instance, substantive changes in the trial court's ruling are not ministerial and are considered void.

(internal citations omitted).

In the instant case, although the hearing on the Mother's motion to dismiss took place prior to the filing of her motion to disqualify, the trial court's written order deviates from the trial court's oral pronouncement. As such, the exception is not applicable, and the substantive changes in the trial judge's order "are not ministerial and are considered void." Godin, 275 So. 3d at 701.

As this Court has granted the Mother's petition for writ of prohibition

determining that the Mother's motion to disqualify was legally sufficient, we reverse the order under review and remand for a new hearing on the Mother's motion to dismiss before the new judge assigned to the paternity action.[4] We note our concern as to the timing of what occurred in this case. After denying the Mother's motion to disqualify, which was clearly legally sufficient[5], the trial judge on the following day entered the order under review. Assuming the allegations in the Mother's motion to disqualify are true, the trial judge ruled on the Mother's motion to dismiss at a point where she already harbored some sort of bias and prejudice against the Mother's counsel, calling into question the trial judge's findings of fact and ultimate ruling.

As we have reversed the order under review, we do not need to reach the additional issues raised by the Mother.

Reversed and remanded with directions.

[4] We take no position as to the Mother's motion to dismiss.

[5] Oddly enough, despite denying the Mother's motion to disqualify, the trial judge granted the motion to disqualify filed by Mr. Kaufman in the unrelated case. Both motions to disqualify were based on the same comments made by the trial judge during the March 16th hearing.