

Commonwealth Of Kentucky

Court Of Appeals

NOS. 1998-CA-000877-MR AND 1998-CA-000941-MR

DEBBIE S. CHRISTY (NOW FAIRCLOTH) APPELLANT/CROSS-APPELLEE

V. APPEAL AND CROSS APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN D. MINTON, JR., JUDGE
ACTION NO. 96-CI-716

CRAIG A. CHRISTY APPELLEE/CROSS-APPELLANT

OPINION AFFIRMING

* * * * *

BEFORE: GUDGEL, Chief Judge; KNOX and McANULTY, Judges.

GUDGEL, CHIEF JUDGE: This is an appeal and cross appeal from a judgment entered by the Warren Circuit Court in a child custody and visitation dispute. Appellant/cross-appellee Debbie S. Christie (appellant) contends that the trial court erred by declining to exercise jurisdiction on the ground that Oklahoma has continuing jurisdiction. Appellee/cross-appellant Craig A. Christie (appellee) contends that the court erred by adjudging him to be in contempt of court for violating a certain visitation order. For the reasons stated hereafter, we disagree with both contentions. Hence, we affirm.

The parties were divorced and appellee was awarded child custody by an order entered in June 1993 by an Oklahoma county court. The Oklahoma court entered a series of orders during the next several years, including a November 1995 visitation order and a January 1996 show cause order concerning appellant's failure to comply with the earlier visitation order. After appellant continued to refuse to comply with visitation orders, the Oklahoma court awarded appellee temporary child custody on March 20, 1996. Meanwhile, appellant removed the child to Kentucky at some time between February 6 and March 20, 1996.

Appellee filed a motion in the Warren Circuit Court in June 1996, seeking emergency custody and enforcement of the Oklahoma order. Various motions and proceedings followed and on January 6, 1997, the trial court entered an agreed order, signed by the attorneys for the parties and tendered on December 30, 1996, retroactively providing for appellee to have visitation with the child between December 26 and December 29, 1996, and between January 3 and January 5, 1997. Nevertheless, in violation of the agreed order, appellee removed the child to Oklahoma and refused to return him to appellant on January 5, 1997. Hence, on January 24, 1997, the trial court issued a bench warrant charging appellee with contempt of court. Appellee was arrested and jailed without bond in January 1998.

The trial court then determined in March 1998 that the Oklahoma court was vested with continuing jurisdiction over the

parties' custody and visitation disputes, and it therefore declined to exercise jurisdiction herein. The court reduced appellee's contempt sentence to time served, and ordered his release from custody. This appeal and cross appeal followed.

First, appellant contends on direct appeal that the trial court erred by finding that Oklahoma is vested with continuing jurisdiction over the parties' custody and visitation disputes. The parties disagree as to whether appellant properly preserved this issue for review, but the record shows that the trial court clearly addressed it. Given this fact, we will assume for purposes of this appeal that the issue was properly preserved for review. Further, we conclude that the trial court did not err by declining to exercise jurisdiction.

KRS 403.450(1) provides that:

A court of this state shall not exercise its jurisdiction under KRS 403.420 to 403.620 if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with KRS 403.420 to 403.620, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons. (Emphasis added.)

Appellant alleges that she was not properly notified of the Oklahoma proceeding which resulted in the award of temporary child custody to appellee, and that the Oklahoma court therefore did not exercise "jurisdiction substantially in conformity" with statutory prerequisites in making that award. However, notwithstanding any nonfinal orders entered by a different

division of the circuit court to the contrary, the record indicates that notice of the Oklahoma proceeding was properly served on appellant's Oklahoma counsel of record, thereby satisfying applicable notice requirements. Moreover, in any event we are not persuaded that the alleged notification error would have divested the Oklahoma court of continuing jurisdiction in these circumstances. We conclude, therefore, that the trial court did not err by finding that the Oklahoma court is vested with continuing jurisdiction over the parties' custody and visitation disputes.

Next, appellee contends on cross appeal that the trial court erred by adjudging him guilty of contempt in regard to its visitation orders. He asserts that since the Oklahoma court retains continuing jurisdiction over the parties' custody and visitation disputes, a Kentucky court could not enter enforceable orders, the violation of which could result in appellee being adjudged guilty of contempt. This argument, however, fails to acknowledge the fact that by filing the instant action, appellee thereby agreed to the Kentucky court's exercise of in personam jurisdiction over him for purposes of that action. Appellee therefore cannot now claim that the court lacked jurisdiction over him when it attempted to enforce a visitation order therein which was not to his liking. Moreover, any challenge to the court's authority to enforce the order in question should have been made by filing an appropriate original action seeking such relief, rather than by unilaterally deciding to ignore the

court's order. Cf. Wilson v. West, Ky. App., 709 S.W.2d 468
(1986).

The court's order is affirmed.

ALL CONCUR.

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CROSS-APPELLEE:

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