

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002090-MR

PAUL C. WILLIAMS

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE STEPHEN M. SHEWMAKER, JUDGE
ACTION NO. 97-CI-00192

JODY M. WILLIAMS AND
MICHAEL L. JUDY

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: GUIDUGLI, McANULTY AND TACKETT, JUDGES.

GUIDUGLI, JUDGE. Paul C. Williams ("Paul") appeals from an order of the Mercer Circuit Court denying his request to modify a joint custodial arrangement, and granting the request of his former wife, Jody M. Williams ("Jody"), for reimbursement of costs and fees. We affirm.

Paul and Jody were divorced by way of a decree of dissolution rendered by the Mercer Circuit Court in July, 1998. The marriage produced one child, Dylan ("Dylan"), who was born in 1995. The parties' were awarded joint custody of Dylan, with each party serving as primary custodian for rotating three-week

periods. This arrangement continued after Paul moved from Kentucky to Michigan, with Dylan traveling between the states every third week.

When Dylan reached pre-school age, it became apparent to the parties that the system of rotating custody was no longer viable. On March 1, 1999, Paul filed an action in Michigan apparently seeking sole custody or the appointment as primary custodian. The following month, Jody filed a similar action in Mercer Circuit Court (Kentucky). Paul's action in Michigan was dismissed on October 5, 1999.

Jody's action continued in Mercer Circuit Court, with the court retaining jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act (UCCJA). On August 2, 1999, the court rendered an order continuing joint custody, with Jody serving as primary custodian. The court also granted Jody's request for reimbursement of costs associated with defending the Michigan proceeding. As a basis for this award, the court opined that it was troubled because Paul sought to resolve the matter in Michigan when he knew or should have known that jurisdiction vested in Kentucky. This appeal followed.

Paul now offers two claims of error. He first argues that the trial court erred in exercising jurisdiction in this case. Specifically, he maintains that Kentucky was not Dylan's home state as defined by the UCCJA, because Dylan did not reside in Kentucky for the six-month period immediately preceding commencement of the action. Paul also contends that the exercise of jurisdiction under the UCCJA is not warranted because there

was no evidence upon which the court could properly conclude that it was in the child's best interest to exercise jurisdiction. As such, he seeks to have the matter remanded to the trial court so that it may act in accordance with the statute's requirements.

We have closely studied the record, the law, and the arguments of counsel, and find no error on this issue. KRS 403.410 and 403.420 provide in relevant part that Kentucky may exercise jurisdiction in a child custody modification proceeding if Kentucky is the child's home state or has been the child's home state within six months before commencement of the proceeding. KRS 403.410 goes on to provide that periods of temporary absence from the home state are counted as part of the six-month period.

The trial court found in the order on appeal that Dylan " . . . has spent virtually his entire life in Kentucky." While it is clear that Dylan resided for substantial periods of time in Michigan pursuant to the agreed upon custodian arrangement, Paul does not assert, nor does the record support, the proposition that Dylan was absent from Kentucky for the six-month period immediately preceding the commencement of the instant action. While it is arguable that jurisdiction could conceivably vest concurrently in both Michigan and Kentucky, it is clear that the Michigan court ceded jurisdiction and that the Mercer Circuit Court properly exercised jurisdiction. Jody was the primary custodian, and the circuit court so found. Paul has not overcome the strong presumption that the trial court's rulings are

correct, City of Louisville v. Allen, Ky., 385 S.W.2d 179 (1964), and accordingly we find no error on this issue.

Paul's second argument is that the court erred in ordering him to reimburse Jody for her costs and attorney fees incurred in the Michigan action. He maintains that the award is tantamount to a sanction under CR 11, and argues that the court acted improperly in awarding said sanctions for proceedings which occurred in Michigan.

We are not persuaded by Paul's argument. It is uncontroverted that the award of costs and attorney fees may be exercised under the sound discretion of the trial court. KRS 403.220; Wilhoit v. Wilhoit, Ky., 521 S.W.2d 512 (1975). Paul has offered nothing upon which we may conclude that the Mercer Circuit Court abused its discretion in awarding to Jody her costs and fees, and we do not share his belief that the award is akin to sanctions under CR 11. The award is supported by the law and the record, and we will not tamper with it.

For the foregoing reasons, we affirm the order of the Mercer Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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