

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001984-MR

REBECCA JEANETTE MURPHY (CHIPMAN)

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 96-CI-01910

CHRISTOPHER MICHAEL MURPHY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON AND TAYLOR, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: This appeal concerns the propriety of jurisdiction in a child custody issue. The trial court ruled that Kentucky was the more fitting forum over Utah. We find no error and affirm.

Rebecca and Christopher Murphy were married in October 1994. Their only child, Brian, was born two years later.

Rebecca and Christopher separated in December 1996. The

¹ Senior Judge David C. Buckingham sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

marriage was dissolved in August 1997, and the final decree resolving all issues was entered on April 9, 1998. In that decree, it was determined that the parties have joint custody of the child with Rebecca as primary residential custodian. Later that year, she and the child moved to Utah without notifying Christopher or the Hardin Family Court. She has since remarried (her name is now Chipman), and she and her new spouse have two children.

In November 2001 Christopher moved to hold Rebecca in contempt for failure to comply with the visitation schedule. There was procedural posturing between the parties over the next several years, always in the courts of Kentucky; custody remained the same, with Rebecca as primary residential custodian and Christopher paying child support and receiving standard visitation. In March 2004 Rebecca filed the Kentucky dissolution decree, the supplemental judgment, and an order from May 2003 in the Utah court system.

In April 2005 Rebecca sought to modify visitation in Utah County District Court, Provo Department, and Christopher filed a reciprocal request in Kentucky in May 2005. A hearing was held on May 24, 2005, in the Hardin Family Court, and the parties subsequently filed simultaneous memoranda. The Hardin Family Court entered its Findings of Fact, Conclusions of Law, and Judgment on July 27, 2005, whereby it retained jurisdiction

of the parties and issues and ordered the parties to appear the next month to set a date certain for an extended hearing.

Rebecca subsequently moved the court to reconsider and vacate its order. A further hearing was held on August 9, 2005; the motion was denied on September 6, 2005, and Rebecca filed the within appeal.

In its order retaining jurisdiction, the Hardin Family Court repeated three times that it had conferred with the presiding commissioner (Hon. Tom Patton) in Utah District Court regarding the issue of jurisdiction. See KRS 403.816(1). In fact, it was at the behest of appellant's counsel that this telephonic conference occur: During the May 24, 2005, hearing, counsel advised the court that she had provided all pertinent information regarding the Utah action, including the commissioner's name and phone number, in order for the family court to confer with the Utah commissioner.

Rebecca complains that the family court made no record of its consultation with the Utah court system. See 403.816(4). And we find no written record of the communication between the two tribunals. However, a written record is not required; the requirement is satisfied by providing "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." KRS 403.816(5). Although the record lacks that medium

as well, it further lacks a request by appellant for access to that medium. Nor is there any allegation that Rebecca was denied access to the record (KRS 403.816(4)) or the "opportunity to present facts and legal arguments before a decision on jurisdiction is made." KRS 403.816(2). Thus, we may assume that there was sufficient evidence contained in the "substantial consultation" with the Utah commissioner to support the family court's finding that Kentucky should retain jurisdiction over these parties. See *Vinson v. Sorrell*, 136 S.W.3d 465, 470-71 (Ky. 2004).

The record does reflect that the Hardin Family Court not only conferred with the Utah District Court, but that it also considered the statutory factors before making its determination. Further, while Kentucky may not be a convenient forum for appellant, neither is Utah for appellee. In short, we perceive neither error nor abuse of discretion in any regard.

The order of the Hardin Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lyn Taylor Long
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

Dwight Preston
Elizabethtown, Kentucky