

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-002079-ME

COURTNEY G. ROBERTS

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JOHN P. SCHRADER, JUDGE
ACTION NO. 08-CI-02123

ERIK BEDARD

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: CAPERTON AND STUMBO, JUDGES; KNOFF,¹ SENIOR JUDGE.

CAPERTON, JUDGE: The Appellant, Courtney Roberts, appeals the October 14, 2008, order of the Fayette Family Court, wherein the court dismissed Roberts's motion to modify a child support order from the state of Florida based upon a lack of personal jurisdiction after finding Roberts was a non-resident of the

Commonwealth. In response, the Appellee, Erik Bedard, argues that the issues

¹ Senior Judge William Knopf 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.

raised by Roberts are resolved by KRS 407.5611(1), and thus, the order of the trial court should be affirmed. Having reviewed the record, the arguments of the parties, and the applicable law, we affirm.

Roberts and Bedard were never married, but had one minor child together, as confirmed by a December 14, 2006, final judgment of paternity and paternity agreement from the state of Florida, wherein the parties resolved issues of both paternity and child support. At the time of entry of that order, Roberts had resided in Florida for approximately three years. Bedard, a citizen of Canada, was living in the United States pursuant to a work visa, and resided primarily in the state of Maryland. Thereafter, in November of 2007, Roberts relocated to Kentucky, and subsequently filed a notice, petition and motion to modify child support on July 2, 2008.² That pleading was served on Bedard in Seattle, Washington, by certified mail.

Bedard made a special appearance, and objected to Kentucky jurisdiction, stating that he was not a Kentucky resident, and further, that he had not been served in Kentucky. In addition, Bedard noted Florida's reservation of jurisdiction. Roberts responded by affidavit, stating that she was in Kentucky at Bedard's direction. Bedard filed a responsive affidavit, denying the allegations made by Roberts.

² Bedard is a professional baseball player. Following entry of the initial child support order in Florida, Bedard's annual income went from approximately \$380,000 per year to \$3,200,000 per year while playing for the Baltimore Orioles, and then to approximately \$7,000,000 per year upon being traded to the Seattle Mariners.

At the hearing below on this issue, Roberts elaborated on her affidavit, testifying that when she and Bedard spoke in December of 2007, he directed her to move to Kentucky, and that but for his directive, she would have stayed in Florida. Roberts claimed that residing in Kentucky enhanced the opportunity for both Bedard and his parents to visit the minor child, although no such visits had taken place at the time of the hearing.

Part of the evidence reviewed by the court below included various emails sent between the parties between December of 2007 and February of 2008. The court found that those emails established that, contrary to Roberts's claim that Bedard had directed her to move to Kentucky, she was considering numerous other places to live, and that she eventually settled in Lexington for various reasons, none of which were at the direction of Bedard.³ The court also noted that Roberts had stated in both affidavit and deposition testimony that she had no support or friends in Florida.

Ultimately, after reviewing the evidence presented by the parties, the court below issued an order finding that Roberts did not meet her jurisdictional burden of proof under KRS 407.5201(5) for personal jurisdiction or KRS 407.5205 for issuing state jurisdiction. In so finding, the court stated that KRS 407.5201(5) requires not mere suggestion of an act or direction by Bedard but in fact requires some exercise of authority by Bedard.

³ According to the emails, the reasons included the importance of the child going to Roberts's dentist in Lexington, and attending the same "pre-k" school that Roberts had attended as a child, in addition to being close to family.

Accordingly, the court found that the emails sent by Roberts, and her clear personal ties to Lexington established that Bedard did not direct her relocation. Thus, the court determined that not only would it decline to exercise any jurisdiction it might have under KRS 407.5201, but that in fact it had no jurisdiction, because none of the scenarios mandated by the statute occurred. Accordingly, the court dismissed the motion to modify support.

On appeal to this Court, Roberts raises five issues, which include whether the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) of KRS 403.800 is applicable to the exercise of personal jurisdiction over a non-resident party; whether the family court had personal jurisdiction over a non-resident party pursuant to the Uniform Interstate Family Support Act (UIFSA) of KRS 407.5201 et. seq.; whether a foreign judgment registered in Kentucky would be treated the same as if the judgment originated in Kentucky; whether a state loses continuing jurisdiction of the parties and any judgment or order when all parties move from the state; and whether the trial court improperly admitted emails introduced by Bedard. In her prehearing statement, however, Roberts identified the sole issue on appeal as being whether the family court had personal jurisdiction over Bedard for modification of the foreign child support determination pursuant to KRS 407.5201(5).

At the outset, we note that CR 76.03(8) provides that a party shall be limited on appeal to issues in the prehearing statement except for instances wherein when good cause is shown. In such instances, the appellate court may permit

additional issues to be submitted upon timely motion. As we have received no such motion from Roberts in the matter *sub judice*, we decline to address the numerous issues raised for the first time in her brief, and instead, focus our attention on the application of the UIFSA to the matter *sub judice*, and to the issue raised in her prehearing statement concerning whether the court had personal jurisdiction pursuant to KRS 407.5201(5).

In her arguments to this Court, Roberts asserts that the court below had personal jurisdiction over Bedard pursuant to KRS 407.5201(5), which provides that the court will have jurisdiction over a non-resident if, “the child resides in this state as a result of the acts or directives of the individual.” Certainly, personal jurisdiction is required for child support orders to be enforceable because such orders involve the imposition of a personal obligation to pay money. *See Gibson v. Gibson*, 211 S.W.3d 601 (Ky.App. 2006). Further, we acknowledge that the primary purpose of UIFSA is to eliminate multiple and inconsistent child support orders by establishing a principle of having only one controlling order in effect at any one time. *See KRS 407.5205 et. seq.*

Roberts attempted both below, and in her brief to this Court, to establish that the court had personal jurisdiction over Bedard pursuant to KRS 407.5201(5). Having reviewed the record and applicable law, we believe that the court lacked personal jurisdiction on the basis asserted by Roberts, and agree with the trial court that the weight of the evidence establishes that Roberts moved to Kentucky by her own choice, and not by act or at the direction of Bedard.

Furthermore, we believe *Gibson, supra*, to be determinative of the issues raised in the matter *sub judice*. In *Gibson*, we addressed a scenario in which neither of the parties resided in the issuing state of a support order which they sought to modify. In *Gibson*, as in the matter *sub judice*, we were required to interpret and apply the UIFSA, which Kentucky has adopted. In so doing, we determined that various decisions made by our sister states were persuasive, and found that any increase in child support requested by the obligee must be sought in the state of residence of the obligor. In making that determination, we specifically cited a holding of our sister state stating that, “the purpose of UIFSA is to prevent a party from obtaining a local advantage by requiring that the moving party must be a non-resident of the state where the motion is filed.” See *Gibson* at 607, citing *In re the Marriage of Abplanalp*, 27 Kan.App.2d 833, 7 P.3d 1269 (2000).

The reasoning behind our holding in *Gibson* is further affirmed by the language of KRS 407.5611, which provides specifically that:

1) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if KRS 407.5613 does not apply and if after notice and hearing it finds that:

(a) The following requirements are met:

1. The child, the individual obligee, and the obligor do not reside in the issuing state;
2. A petitioner who is a nonresident of this state seeks modification; and

3. The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consent with the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

In the matter *sub judice*, it is true that none of the parties reside in Florida, the original issuing state, and that the order was properly registered in Kentucky. It is equally clear that Roberts is a resident of Kentucky, however it is just as clear that Bedard is neither subject to the personal jurisdiction of a tribunal of Kentucky (KRS 407.5611(1)(a)(3)) nor consented to a modification of child support by a tribunal of Kentucky (KRS 403.5611(1)(b)).

While Roberts has attempted to establish that Kentucky has personal jurisdiction over Bedard, in reviewing the potential grounds for jurisdiction under KRS 407.5201, we find that none have been properly established. Accordingly, under both UIFSA and our holding in *Gibson*, we find that the trial court was correct in finding that the statutory prerequisites for jurisdiction to modify the support order were not met, and that it was therefore without jurisdiction to do so.

Wherefore, for the foregoing reasons, we hereby affirm the October 14, 2008, order of the Fayette Circuit Court, the Honorable John P. Schrader, presiding.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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