

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-001912-ME

TRAVIS LEE MYERS

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE CATHERINE R. HOLDERFIELD, JUDGE  
ACTION NO. 09-CI-00718

LAUREN MESSER MYERS

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\*

BEFORE: CAPERTON, MOORE, AND STUMBO, JUDGES.

STUMBO, JUDGE: Travis Lee Myers appeals from an order of the Warren Circuit Court dismissing his Petition for Dissolution of Marriage. He contends that the trial court improperly determined that the Petition did not comply with the applicable statutes and civil rules, and that the court erred in concluding that the

parties' children are not Kentucky residents. We find no error, and accordingly affirm the order on appeal.

Travis Lee Myers and Lauren Messer Myers were married on December 28, 2004, in Logan County, Kentucky. The marriage produced two children. The parties separated on June 29, 2007, and Travis filed a Petition for Dissolution of Marriage on April 23, 2009.

The matter proceeded in Warren Circuit Court for several months. In July 2010, Lauren filed a motion to dismiss the Petition for lack of jurisdiction, a motion to strike, and a motion seeking a finding that Kentucky lacks jurisdiction. As a basis for the motions, Lauren maintained that Travis failed to prosecute the action in a timely manner by delaying some 19 months between the signing of the Petition and the issuance of a summons. She contended that during that intervening period, the facts alleged in the Petition became stale and inaccurate, and jurisdiction was lost by the children's residency in Texas. She also argued that Travis failed to comply with a number of statutory and civil rule requirements including Travis' duty to demonstrate Lauren's residency in Kentucky for 180 days prior to the commencement of the action. She went on to allege that because she and the children resided in Texas, neither jurisdiction nor venue vested in Warren County, Kentucky, and she noted that Travis did not make any pleading as to custody.

After Travis filed a responsive pleading, a hearing on the motion was conducted on September 2, 2010. The court found that Lauren and the two

children had been residing in San Antonio, Texas since October 2009, and that an action seeking dissolution of marriage and child custody was pending in Bexar County, Texas District Court. The court also noted that a summons was not issued in the Kentucky proceeding until May 28, 2010, and that the Kentucky Petition did not address child custody and did not comport with the applicable statutes, civil rules and local rules.

Citing KRS 403.800(7) and KRS 403.828, the circuit court determined that the children's residency in Texas precluded the Warren Circuit Court from exercising jurisdiction over custody and visitation. Based on the finding of numerous deficiencies in the Petition, Travis' delay in commencing the action with the service of a summons, and the fact that Lauren and the children resided in Texas, the court concluded that it lacked subject matter jurisdiction. Lauren's motion to dismiss was granted, and this appeal followed.

Travis now argues that the circuit court erred in sustaining Lauren's motion to dismiss the action. He maintains that jurisdiction over the action properly vested in Warren County, Kentucky because Kentucky is the children's home state for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") and KRS 403.800(4). He notes that Lauren was a resident of Kentucky prior to the parties' marriage, and remained a resident following their separation in 2007. He goes on to claim that he was a resident of Kentucky for at least 180 days preceding the filing of the Petition as required by KRS Chapter 403. Citing *Wood v. Graham*, 633 S.W.2d 404 (Ky. 1982), Travis

contends that jurisdiction over the custody issues should vest in Kentucky because Lauren unilaterally moved the children from Kentucky, the children had significant contacts with the state, and one parent remained a resident of Kentucky. He also maintains that the court erred in dismissing the action because the delay in issuing the summons to Lauren was the fault of the circuit court clerk, and he argues that the Petition contained no errors sufficient to justify dismissing the action. He seeks an order setting aside and vacating the circuit court's order of dismissal, with a remand for further proceedings.

The central issue before us is whether the circuit court properly determined that it did not have jurisdiction over the instant controversy. We must answer that question in the affirmative. A civil action is commenced by the filing of a compliant with the court *and the issuance of a summons*. CR 3.01. Travis signed the Petition on October 24, 2008, and filed the Petition on April 28, 2009. The record indicates that at the time of the filing, Travis did not request or pay for the issuance of a summons. Lauren was not served when the Petition was filed.

In October 2009, Lauren and the children moved to Texas and established residency there. Nine months later in July 2010, Travis requested and paid for service of the summons. The summons was mailed by the Kentucky Secretary of State on July 12, 2010, and was received by Lauren in Texas on July 14, 2010. The summons was issued only after Lauren filed her motion to dismiss.

Lauren was served some 15 months after the Petition was filed. During the intervening period, facts changed which were essential to the

establishment of jurisdiction in Warren Circuit Court. Lauren and the children moved to Texas some 9 months prior to the service of summons and commencement of the action. Lauren's mere knowledge of the pendency of the action, absent service on her in conformity with the statutory law and civil rules, is insufficient to establish jurisdiction. *Rosenberg v. Bricken*, 302 Ky. 124, 194 S.W.2d 60 (1946). Additionally, as stated in KRS 403.822:

Except as otherwise provided in KRS 403.828, a court of this state shall have jurisdiction to make an initial custody determination only if:

- (1) this state is the home state of the child on the date of commencement of the proceeding, or was the home state of the child within (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

“Home state” is the state in which the child lived with a parent for at least six (6) consecutive months immediately prior to the commencement of the child custody proceeding. KRS 403.800(7). The parties' children did not reside in Kentucky either at the time the action was commenced or within six months prior to its commencement. As such, we find no error in the circuit court's determination that Travis' failure to serve Lauren for 15 months, coupled with the relocation of Lauren and the children to Texas at least 9 months prior to service, required dismissal of the matter at bar.

For the foregoing reasons, we affirm the Order Dismissing Action of  
the Warren Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. B. Hines  
Brownsville, Kentucky

BRIEF FOR APPELLEE:

Rebecca A. Simpson  
Kentucky Legal Aid  
Bowling Green, Kentucky