

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000658-ME

TIA BROWN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE HUGH SMITH HAYNIE, JR., JUDGE
ACTION NO. 11-CI-500398

NEBIYOU SEYOUM

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MOORE, NICKELL AND THOMPSON, JUDGES.

NICKELL, JUDGE: Tia Brown, *pro se*, has appealed from the March 7, 2011, order of the Jefferson Circuit Court, Family Division, dismissing her petition seeking custody of her minor child based on a lack of jurisdiction. She has also appealed from the subsequent denials of her motion for default judgment and her

motions to alter, amend or vacate the trial court's orders. For the following reasons, we affirm.

FACTS¹

Brown and Nebiyou Seyoum resided in Maryland where they were engaged in a romantic relationship beginning in December 2008. The relationship produced a minor child, A.S., born on April 22, 2010. The pair experienced difficulties and decided to terminate the relationship a short time after the child's birth.

On August 6, 2010, Brown came to Kentucky with the child to visit relatives. She returned to Maryland on August 21, 2010, seeking to reconcile her relationship with Seyoum. Five days later, Brown left the child in Seyoum's care and went shopping. Upon her return, Brown discovered Seyoum had absconded with the child. Brown was unable to locate the child for a period of twelve days.

On August 27, 2010, Seyoum filed a petition for custody in a court of competent jurisdiction in Maryland. The parties entered into a temporary consent order on September 7, 2010, agreeing to have joint legal custody of the minor child

¹ We have attempted to glean the basic facts from the sparse record in this case which is replete with contradictions and inconsistencies. Brown was represented by two separate counsel below, both of whom were permitted to withdraw during the short pendency of this action. She continued filing pleadings *pro se* which contained statements contrary to those made previously. Further, both parties reference recorded proceedings which are not a part of the record on appeal, thus prohibiting us from fully reviewing their claims based on events occurring during such hearings. Brown likewise relies heavily upon errors which allegedly occurred in an action pending in the circuit courts of the state of Maryland—errors over which we have no control or jurisdiction. Although she references the record in that foreign proceeding, that record is not before us in this appeal. We have reviewed the record certified to us by the Jefferson Circuit Court and have based our decision solely on that record, as we are required to do.

and setting forth a timesharing arrangement. The consent order specified it was to remain in effect until a trial on the merits could be convened.

On February 4, 2011, Brown filed the instant petition seeking sole custody of A.S. She alleged she had resided in Kentucky with the child for more than 180 days prior to the filing of the action.² She acknowledged the existence of the Maryland custody proceedings but claimed Maryland was an improper venue because the child resided in Kentucky. She further alleged the temporary consent order was invalid since it was executed under duress and coercion by Seyoum. She insisted she participated in the Maryland proceedings only because Seyoum had kidnapped and concealed the whereabouts of their child.

The Maryland circuit court judge delivered a letter to the Jefferson Circuit Court dated February 18, 2011, providing information regarding the proceedings occurring in Maryland. Attached to the letter was an order dated February 17, 2011, which transferred sole physical and legal custody of the child to

² Brown does not state when she changed her residence to Kentucky from Maryland, and our careful review of the record indicates severe inconsistencies in her position on this issue. In pleadings from the Maryland action—which Brown attached to her custody petition—she alleged she and Seyoum had initially planned to move to Kentucky together and her travel to Kentucky on August 6, 2010, was simply to visit family. In her filings, it is clear she continued to provide the Maryland courts with a Baltimore residential address and did not mention a move of permanent residence to Kentucky. Although we cannot confirm his allegation because the record is not before us, Seyoum contends Brown never challenged the jurisdiction of the Maryland courts. Nevertheless, in subsequent pleadings filed in the instant case, Brown states she “officially moved” to Kentucky on August 6, 2010, because she was “trying to get away from” Seyoum and their abusive relationship. Contrary to Seyoum’s argument, Brown contends she vigorously challenged the Maryland court’s jurisdiction based on her Kentucky residency. In a letter to the trial court, Brown indicated she possessed an “official US Postal Residency change form” referencing August 6, 2010, but no such form or other proof of residency appears in the record. Brown never indicates when the child allegedly became a resident of Kentucky or what connections, if any, the child has to this state.

Seyoum. By order entered March 9, 2011, the Jefferson Circuit Court dismissed Brown's petition citing a lack of jurisdiction to modify the Maryland court's September 7, 2010, custody order. On that same date, Brown moved for a default judgment on her custody petition, which request was denied since the trial court had previously dismissed the action.

On March 21, 2011, Brown moved the trial court to alter, amend or vacate its March 9, 2011, order dismissing her petition. She contended the Maryland courts did not have jurisdiction to entertain Seyoum's request for custody, and that the Maryland courts had not followed proper procedure in entering the initial custody order. She additionally requested that the trial court reconsider its order denying her motion for default judgment. The trial court denied the motion on March 28, 2011. That same day, Brown re-filed the same motion to alter, amend or vacate. The trial court denied the renewed motion, specifically noting Maryland had exclusive jurisdiction over the matter. The trial court subsequently entered an order on April 5, 2011, ordering Brown to return to Maryland to litigate her custody issues, and restraining her from filing more motions in the instant case because Kentucky courts were wholly without jurisdiction to entertain such motions. This appeal followed.

ANALYSIS

On appeal, Brown contends the trial court erred in dismissing her custody petition, advancing the same arguments presented to the trial court. She again attacks Maryland's exercise of jurisdiction and the procedures followed in

that forum. She alleges Kentucky was the proper forum and had sole jurisdiction to determine custody issues with respect to A.S., since the child had resided here in excess of six months prior to the instigation of the instant action. We disagree with Brown's contentions and agree with the trial court that it had no jurisdiction.

Kentucky has adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).³ KRS 403.832 states, in pertinent part:

(1) Except as otherwise provided in KRS 403.828, a court of this state shall not exercise jurisdiction under Article 2 if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with KRS 403.800 to 403.880, unless the proceeding has been terminated or is stayed by the court of the other state

because a court of this state is a more convenient forum under KRS 403.834.

(2) Except as otherwise provided in KRS 403.828, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to KRS 403.838. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with KRS 403.800 to 403.880, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with KRS 403.800 to 403.880 does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

³ Kentucky Revised Statutes (KRS) 403.800 to 403.880.

It is undisputed that a child custody proceeding involving these parties was commenced in Maryland over five months prior to the instigation of the instant suit. That proceeding was still pending when Brown filed her petition in the Jefferson Circuit Court. The trial court had before it many of the documents filed in the Maryland action including the initiating complaint, Brown's responsive motions, the consent order, and other orders entered in that proceeding. The Maryland court communicated with the Jefferson Circuit Court regarding its exercise of jurisdiction and the orders it had entered in that action. It was clear to the trial court that Maryland had continuing exclusive jurisdiction over the custody dispute between these parties. Pursuant to the specific mandate of KRS 403.832, the trial court found it was without jurisdiction to decide this action. The trial court was correct.

Brown erroneously believes that since the child allegedly resided in Kentucky for a period of 180 days, jurisdiction was somehow conferred on our courts to determine her custody issues. She further fails to recognize that under the UCCJEA, Maryland properly exercised initial jurisdiction and maintains exclusive continuing jurisdiction. Although we understand Brown's discomfort and displeasure with litigating a matter as important as custody of her child in a foreign jurisdiction a great distance from her home, we simply cannot sanction an improper exercise of jurisdiction. As the trial court correctly noted, Maryland is the proper venue for resolution of this action.

For the foregoing reasons, the judgment of the Jefferson Circuit Court,
Family Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Tia Brown, *pro se*
Louisville, Kentucky

BRIEF FOR APPELLEE:

Nebiyou Seyoum, *pro se*
Baltimore, Maryland