

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-002079-ME

JAMIE M. JACKSON

APPELLANT

v.

APPEAL FROM MEADE CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 08-CI-00307

JEREMY A. JACKSON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, COMBS, AND LAMBERT, JUDGES.

COMBS, JUDGE: Jamie M. Jackson appeals from an order of the Meade Circuit Court entered on September 25, 2012, that declined to consider her motion to modify the court's original child custody decree. The court determined that it lacked exclusive, continuing jurisdiction over the case. In the alternative, it concluded that the more convenient forum for an adjudication of the custody issue

was in Texas. After our review, we conclude that the circuit court did not err by refraining from exercising subject matter jurisdiction. Therefore, we affirm.

Jeremy Jackson is a soldier in the United States Army. He and Jamie were married in Georgia on February 18, 2001; three children were born to them. In August 2007, they moved to Kentucky, and Jeremy was stationed at Fort Knox. They separated less than a year later, and in a *pendente-lite* proceeding, the Meade Circuit Court awarded temporary custody of the children to Jeremy. The parties' marriage was dissolved by decree entered in October 2008, and they were awarded joint custody of the children. Jeremy was designated the primary residential custodian, and the children visited with Jamie on Wednesdays and alternating weekends.

In October 2010, Jeremy was ordered to relocate to Fort Hood, Texas. Because Jeremy expected to be deployed to Iraq, the parties agreed that the children would remain in Kentucky in order to complete the school year and that Jamie would be designated the primary residential custodian on a temporary basis. Jeremy was deployed to Iraq on May 27, 2011.

On January 10, 2012, at the end of his deployment, Jeremy filed a motion requesting that the temporary modification of the child custody decree revert to the original terms of the decree pursuant to the provisions of Kentucky Revised Statute[s] (KRS) 403.340(5)(a). The Meade Circuit Court granted his motion by order entered on February 14, 2012. From that point forward, the children were enrolled in school in Texas.

By order of the court entered June 18, 2012, Jamie was awarded an extended period of visitation with the children in Kentucky over their summer break from school. On July 27, 2012, she filed a motion to modify the court's initial custody award.

In August, the children returned to Texas as provided in the court's visitation schedule. Jeremy filed a motion requesting the Meade Circuit Court to decline to exercise jurisdiction over the custody matter. In his motion, Jeremy noted that he and the children were now residents of Texas; therefore, he contended that Texas was the more appropriate forum for the determination.

In the order from which Jamie appeals, the Meade Circuit Court concluded that although it had exclusive jurisdiction at the time of the initial custody determination, it lacked sufficient jurisdiction to modify the determination under the circumstances. In the alternative, it concluded that Texas, the children's "home state,"¹ was a more appropriate forum for the modification determination. The Meade Circuit Court stayed the proceedings for sixty (60) days in order to allow Jamie to initiate a child custody modification proceeding in Texas.

On appeal, Jamie contends that the circuit court erred by concluding that it lacked jurisdiction to modify its initial custody determination. We agree.

¹ KRS 403.800 defines *home state* as "the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding."

Whether a trial court acts within its jurisdiction is a question of law. *Biggs v. Biggs*, 301 S.W.3d 32 (Ky. App. 2009). Consequently, our review of this issue is *de novo*. *Id.*

In Kentucky, jurisdiction disputes regarding child custody are governed by the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Kentucky adopted the UCCJEA in 2004 in an effort to avoid “jurisdictional competition and conflict with other states” in custody matters. *Wallace v. Wallace*, 224 S.W.3d 587 (Ky. App. 2007).

Pursuant to the provisions of the UCCJEA, the state making an initial custody determination retains “exclusive, continuing jurisdiction over the determination” until such time as:

[a] court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child’s care, protection, training, and personal relationships[.]

KRS 403.824(1)(a). In *Biggs, supra*, we relied upon the following comment to UCCJEA § 202 in explaining what constitutes a “significant connection” for purposes of KRS 403.824:

[E]ven if the child has acquired a new home State, the original decree State retains exclusive, continuing jurisdiction. . . . If the relationship between the child and the person remaining in the State . . . becomes so attenuated that the court could no longer find significant connections and substantial evidence, jurisdiction would no longer exist.

It has been held that “a significant connection exists if ‘one parent resides in the state and exercises at least some parenting time in the state.’” *Id. quoting White v. Harrison-White*, 280 Mich.App. 383, 760 N.W.2d 691, 697 (2008); *see also Wallace*, 224 S.W.3d at 591. “[I]t is not necessary for a child to reside in the Commonwealth in order for Kentucky to retain jurisdiction.” *Biggs*, 301 S.W.3d at 34. Instead, continuing jurisdiction prevails over “home state” jurisdiction under the provisions of the UCCJEA until the standard set forth in KRS 403.824(1)(a) is met.

The fact that Jeremy and the children now live in Texas does not – by itself – deprive Kentucky courts of jurisdiction. Instead, Kentucky’s exclusive, continuing jurisdiction continues to prevail as long as the children and at least one parent maintain significant connections with the Commonwealth. *Wallace*, 224 S.W.3d 587. Since Jamie still lives in Kentucky and the children regularly visit Kentucky, the significant connection requirement is fulfilled, and Kentucky retains jurisdiction to modify the custody decree.

However, this conclusion does not end our analysis since the UCCJEA provides that “a court of this state which has jurisdiction . . . ***may decline to exercise*** its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum.” KRS 403.834 (1). (Emphasis added.) Before determining whether it is an inconvenient forum, the court must consider whether it is appropriate for a court of

another state to exercise jurisdiction. KRS 403.834 (2). To that end, the court is required to consider “all relevant factors,” including the following:

- (a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (b) The length of time the child has resided outside this state;
- (c) The distance between the court in this state and the court in the state that would assume jurisdiction;
- (d) The relative financial circumstances of the parties;
- (e) Any agreement of the parties as to which state should assume jurisdiction;
- (f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (g) The ability of the court of each state to decide the issue expeditiously and the procedure necessary to present the evidence; and
- (h) The familiarity of the court of each state with the facts and issues in the pending litigation.

KRS 403.834(2).

The record indicates that the circuit court carefully considered each of the relevant factors. Jamie does not contend otherwise; instead, she argues that the circuit court erred by concluding that Texas would provide the more convenient forum following its evaluation of the relevant factors.

The circuit court reviewed the allegations presented in Jamie’s motion and considered the evidence that would be offered both to support and to refute those

allegations. It then concluded that a Texas court would be better suited to make the custody determination. The court determined that the evidence necessary to present the case for a modification of custody and to defend against any modification was to be found primarily in Texas. It discounted much of the Kentucky-based evidence that Jamie proposed to present and instead highlighted the evidence to be found in Texas. The court also concluded that Jamie was in a better position than the children to travel the distance to court. These findings are adequately supported, and we cannot say that the court abused its broad discretion by concluding that Kentucky was an inconvenient forum and that the courts of Texas provide a more appropriate forum under the circumstances of this case.

Accordingly, we affirm the order of the Meade Circuit Court.

ALL CONCUR.

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