

STATE OF MICHIGAN
COURT OF APPEALS

DEANNA MARIE SULLIVAN,

Plaintiff-Appellant,

UNPUBLISHED
November 16, 1999

v

ROBERT CARLOS SULLIVAN,

Defendant-Appellee.

No. 214337
Calhoun Circuit Court
LC No. 98-002532 DM

Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying her petition to transfer jurisdiction of a custody matter to Michigan. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant are the parents of a daughter, Brittany (DOB May 2, 1990). In 1992 the parties were divorced in Florida. The consent judgment awarded physical custody of Brittany to plaintiff, and gave defendant liberal visitation rights. The judgment provided that jurisdiction of the matter would remain in Florida as long as defendant resided in that state. After the divorce defendant continued to reside in Florida, and plaintiff and Brittany relocated to Michigan.

From August, 1992 through December, 1997, defendant did not see and had very little contact with Brittany. In December, 1997 plaintiff refused defendant's request that Brittany be flown to Florida to visit him for one week. Plaintiff reasoned that such an extended visit with a virtual stranger would be too upsetting for Brittany, who has been diagnosed as learning disabled. Subsequently, plaintiff refused a second, similar request from defendant.

Defendant moved in the Florida court to hold plaintiff in contempt for failing to cooperate in effectuating visitation. A general master issued a report, to which plaintiff objected. Plaintiff filed a motion in the Florida court to amend the judgment to transfer jurisdiction of custody and visitation matters to Michigan.

In addition to moving in Florida to amend the judgment, plaintiff filed a petition in Calhoun Circuit Court seeking to transfer jurisdiction of the custody matter to Michigan pursuant to the Uniform Child Custody Jurisdiction Act (UCCJA), MCL 600.651 *et seq.*; MSA 27A.651 *et seq.* The circuit court, after consulting with the Florida court, denied the petition. The circuit court declined to exercise jurisdiction on the grounds that the judgment specified that jurisdiction should remain in Florida, and further custody proceedings were underway in that court.

Plaintiff argues that the circuit court erred by denying her petition to transfer jurisdiction of the custody matter to Michigan. We disagree and affirm. It is undisputed that Florida has jurisdiction over the matter. However, under the UCCJA, Michigan would also have jurisdiction over the matter because Michigan was Brittany's "home state," as that term is defined in MCL 600.652(e); MSA 27A.652(e), for at least six months prior to commencement of this action. MCL 600.653(1)(a); MSA 27A.653(1)(a). If more than one state has jurisdiction, MCL 600.656; MSA 27A.656 determines which state should proceed to exercise jurisdiction. Priority of time of filing ordinarily controls which state is to proceed, provided that the state with priority is exercising jurisdiction in a manner substantially in conformity with the UCCJA. *Moore v Moore*, 186 Mich App 220, 224; 463 NW2d 230 (1990). The court in the priority state must issue some order indicating that it has assumed jurisdiction. *Braden v Braden*, 217 Mich App 331, 336-337; 551 NW2d 467 (1996). Here, Florida had continuing jurisdiction by virtue of the provision contained in the judgment of divorce. In addition, proceedings relating to defendant's contempt motion were underway, and plaintiff had filed a petition to amend the judgment. The court in Florida had issued orders and taken steps to exercise jurisdiction in the matter. The Calhoun Circuit Court properly declined to take jurisdiction. MCL 600.656(1); MSA 27A.656(1).

Affirmed.

/s/ William C. Whitbeck
/s/ Roman S. Gribbs
/s/ Helene N. White