

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD G. MOORE,

Plaintiff-Appellant,

V

WENDY MURRAY CRITTENDEN,

Defendant-Appellee.

UNPUBLISHED

January 22, 2004

No. 250771

Otsego Circuit Court

LC No. 03-010259-DC

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order dismissing his petition to enforce an out-of-state child custody order. Because the determination to exercise jurisdiction in a custody matter rests within the discretion of the trial court and the Florida court upon an earlier filing has exercised jurisdiction in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, the trial court's decline of jurisdiction does not constitute an abuse of discretion. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This is a child custody case involving orders entered in three states. Plaintiff and defendant, who were never married, are the parents of a son and a daughter. The parties resided in Georgia, but defendant married and moved to Florida. In 1999 plaintiff filed suit in Georgia seeking permanent custody of the children. The Georgia court awarded custody of the children to plaintiff, granted defendant parenting time, and allowed plaintiff and the children to move to Michigan. In February 2001 plaintiff was injured in an accident. During his recuperation the children resided with defendant in Florida. Plaintiff moved to Michigan in April 2001, and the children joined him in the summer of that year.

In August 2001 defendant filed a petition for change of custody in Florida. This request was denied. On May 5, 2003 defendant filed a second petition for change of custody in Florida. On June 6, 2003 plaintiff filed a petition in circuit court to enforce the Georgia custody order under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101

*et seq.*¹ The petition alleged that under the UCCJEA the trial court had jurisdiction as the children's home state to resolve the custody dispute. The trial court assumed temporary jurisdiction over the children for the purpose of determining their legal home state.

At a subsequent hearing the trial court reviewed copies of documents filed in the Florida court, as well as several orders entered by that court. The trial court took the matter under advisement in order to speak with the judge presiding over the Florida action.

The trial court dismissed the matter on the ground that in an order entered on September 9, 2002 the Florida court had determined that it had jurisdiction and that Florida was the more convenient forum. The trial court denied plaintiff's motion for reconsideration, concluding that because the Florida court had jurisdiction substantially in accordance with the UCCJEA and had not determined that Michigan was a more convenient forum, dismissal of the instant action was required under MCL 722.1206(2).

The determination whether to exercise jurisdiction in a custody matter is within the discretion of the trial court. The question whether a court has subject-matter jurisdiction to hear a particular matter is an issue of law that is reviewed de novo. *Young v Punturo*, 252 Mich App 47, 54; 651 NW2d 122 (2002).

Under the UCCJEA a Michigan court has jurisdiction when (1) Michigan is the home state of the child on the date of the commencement of the proceedings or was the home state of the child within six months before the commencement of the proceedings; (2) a court of another state does not have jurisdiction or has declined to exercise jurisdiction on the ground that Michigan is the more appropriate forum; all courts having jurisdiction have declined to exercise jurisdiction on the ground that Michigan is the more appropriate forum; and (3) no court of another state would have jurisdiction. MCL 722.1201(1)(a)-(c).

MCL 722.1206(1) and (2) provide:

(1) Except as otherwise provided in section 204, a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court of another state having jurisdiction substantially in conformity with this act, 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 section 207.

(2) Except as otherwise provided in section 204, before hearing a child-custody proceeding, a court of this state shall examine the court documents and other information supplied by the parties as required by section 209. If the court determines that, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court in another state having

¹ The UCCJEA replaced the repealed Uniform Child Custody Jurisdiction Act, MCL 600.651 *et seq.*

jurisdiction substantially in accordance with this act, 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 this act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the child-custody proceeding.

Plaintiff argues that the trial court abused its discretion by declining to exercise jurisdiction and dismissing this matter. We disagree and affirm. An appellant is required to provide the entire lower court record to this Court, *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540; 506 NW2d 890 (1993), as well as any exhibit, whether admitted or not, in his possession. MCR 7.210(C). Plaintiff has not furnished this Court with copies of the orders entered by the Florida court, and has not explained his failure to obtain copies of those orders.² The trial court communicated with the Florida court and was informed that that court had assumed jurisdiction and had not determined that Michigan was a more appropriate forum to resolve the matter. Plaintiff's assertion that the trial court was given erroneous information by the Florida court is not substantiated by any documentary evidence.

The trial court determined that the court of another state had jurisdiction substantially in accordance with the UCCJEA,³ and that that court had not determined that Michigan was a more appropriate forum to resolve the matter. The record does not indicate that the trial court made an initial determination that it had jurisdiction under MCL 722.1201(1); however, any error was harmless because under the circumstances, the trial court correctly concluded that it was required to dismiss this matter. MCL 722.1206(1) and (2). Because the trial court determined that it was not entitled to exercise any jurisdiction in this matter, it was not required to make an inquiry under MCL 722.1207 as to whether it should decline to exercise jurisdiction on the ground that the court of another state having jurisdiction would be a more appropriate forum to resolve the dispute. No abuse of discretion occurred. *Young, supra*.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard A. Griffin
/s/ Kathleen Jansen

² The lower court file contains no copies of the Florida court's orders.

³ Plaintiff's assertion that a question exists as to whether Florida is a state having jurisdiction substantially in accordance with the UCCJEA is unsubstantiated.