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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1299

Filed: 18 September 2018

Buncombe County, No. 15 CVD 2778

THORSTEN BLUMENSCHN, Plaintiff,

v.

NICOLE BLUMENSCHN, Defendant.

Appeal by plaintiff from orders entered 24 May 2017 and 15 August 2017 by Judge Susan Dotson-Smith in Buncombe County District Court. Heard in the Court of Appeals 9 August 2018.

*Siemens Family Law Group, by Jim Siemens, and Prendergast Law, by Anastasia M. Prendergast, for plaintiff-appellant.*

*Emily Sutton Dezio, PA, by Emily Sutton Dezio, for defendant-appellee.*

DIETZ, Judge.

Plaintiff Thorsten Blumenschcn appeals the trial court's order declining to exercise further jurisdiction over this child custody matter in favor of a parallel proceeding in Germany, where the parties' child resides with the consent of both parents. As explained below, the trial court's decision to decline jurisdiction in favor of the German custody proceedings was well within its sound discretion. Because the

German courts have determined that the trial court's orders are "of no legal consequence" in that foreign proceeding, we dismiss the remainder of Plaintiff's arguments as moot.

### **Facts and Procedural History**

Plaintiff Thorsten Blumenschein and Defendant Nicole Blumenschein were married in 2007, had one child in 2010, and divorced in 2015. Until their separation, the parties and their child lived in Buncombe County. On 24 August 2016, the trial court entered a consent order providing that the parties would share physical custody of their child. The consent order also provided that Plaintiff and Defendant would relocate to their home country of Germany with their child. In accordance with the consent order, Defendant moved to Germany at the end of September 2016 and then Plaintiff followed with their child on 2 October 2016.

On 10 October 2016, Plaintiff filed a motion for emergency child custody and a motion to modify child custody in Buncombe County. During the same time period, Plaintiff also filed a custody action in Germany. In the German proceedings, on 14 October 2016, the parties agreed to a plan "that the main place of residence of the child . . . shall continue to be [Defendant's] place of residence" with visitation for Plaintiff.

On 4 January 2017, the trial court in Buncombe County held a hearing on Plaintiff's motion to modify custody. Defendant's counsel appeared on her behalf, but

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Defendant did not appear at the hearing. On 5 January 2017, the trial court entered an order granting Plaintiff sole custody. Plaintiff submitted the 5 January 2017 order to the German court, but the German court found that the order “is of no legal consequence” and that “after the child[’s] relocation to Germany the international jurisdiction of the US courts does not apply to the case.”

On 17 January 2017, Defendant filed a Rule 59 motion for a new trial in Buncombe County, asserting that she was unable to attend the 4 January 2017 custody hearing because she was not made aware that a travel ban Plaintiff had initiated against her in the German court had been lifted until after the hearing already had occurred. On 25 January 2017, Defendant filed a motion to transfer venue and jurisdiction to Germany.

On 24 May 2017, the trial court entered an order granting Defendant’s motion for a new trial. On 15 August 2017, the trial court entered an order making findings of fact regarding the parties’ and the child’s current situations, weighing the N.C. Gen. Stat. § 50A-207 factors, and concluding that Buncombe County is an inconvenient forum and that Germany would be a more convenient forum. Accordingly, the trial court declined to exercise jurisdiction under N.C. Gen. Stat. § 50A-207 and stayed proceedings in Buncombe County “through October 30, 2017, or until Germany asserts jurisdiction for modification [of] custody, whichever occurs earlier.” Plaintiff timely appealed.

**Analysis**

**I. Order declining jurisdiction under N.C. Gen. Stat. § 50A-207**

We begin with Plaintiff’s challenge to the court’s order declining jurisdiction in favor of the parallel custody proceedings in Germany. The trial court relied on Section 50A-207 of the General Statutes, a provision of the Uniform Child-Custody Jurisdiction and Enforcement Act that permits a court to decline jurisdiction in favor of a more appropriate forum. As explained below, the trial court’s determination was well within its sound discretion.

This Court reviews a trial court’s decision to decline jurisdiction under N.C. Gen. Stat. § 50A-207 for abuse of discretion. *Velasquez v. Ralls*, 192 N.C. App. 505, 506–07, 665 S.E.2d 825, 826 (2008). “We review the trial court’s findings of fact to determine whether there is any evidence to support them. We reverse for an abuse of discretion only upon a showing that the trial court’s actions are manifestly unsupported by reason.” *Id.* (citations omitted).

Section 50A-207 provides that a court “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.” N.C. Gen. Stat. § 50A–207(a). *In re M.E.*, 181 N.C. App. 322, 324, 638 S.E.2d 513, 514 (2007). In this context, the term “state” includes “a foreign country.” N.C. Gen. Stat. § 50A-105(a).

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Under the statute, “[b]efore determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction” and “shall consider all relevant factors, including:”

- (2) The length of time the child has resided outside this State;
- (3) The distance between the court in this State and the court in the state that would assume jurisdiction;
- (4) The relative financial circumstances of the parties;
- (5) Any agreement of the parties as to which state should assume jurisdiction;
- (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

N.C. Gen. Stat. § 50A-207(b).

Here, the trial court made findings of fact, supported by testimony and other evidence in the record, that Plaintiff and Defendant are both German citizens; that the parties and their child relocated to Germany in 2016 under a consent order; that the distance between Buncombe County and Germany would “impose burdens” and require witnesses “to cross the ocean” to litigate the dispute; that Plaintiff has been

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consistently employed and able to attend proceedings in both countries while Defendant has reported difficulty in affording travel to the United States; that both “parties were willing to consent to living in Germany”; that in the August 2016 consent order, “[b]oth parties agreed that Germany would become the child’s residence”; that the key witnesses all reside in Germany, including “the German version of the Department of Social Services”; that the German courts have assumed jurisdiction based on the child’s residence there and are unwilling to communicate with the Buncombe County court or give legal effect to the Buncombe County court’s orders; and, finally, that the trial court has difficulty with translation of German documents and is “removed from recent and new evidence about the child’s best interests and wellbeing.”

These findings address all of the relevant factors listed in Section 50A-207 and readily support the trial court’s determination that the Buncombe County District Court is an inconvenient forum and that the German court is a more convenient forum. Because the trial court’s findings are supported by evidence in the record and its findings support its ultimate determination, the trial court’s ruling was well within its broad discretion. *In re M.E.*, 181 N.C. App. at 324, 638 S.E.2d at 514. Accordingly, we hold that the trial court did not err in declining jurisdiction under N.C. Gen. Stat. § 50A-207.

## **II. Appeal of Rule 59 Order**

Plaintiff also argues that the trial court erred by setting aside its previous child custody order under Rule 59. Having determined that the trial court properly declined to exercise jurisdiction over this proceeding, in favor of the parallel proceeding in Germany, this issue is moot. *See Kendrick v. Cain*, 272 N.C. 719, 722, 159 S.E.2d 33, 35 (1968). There will be no further proceedings in Buncombe County in this matter, and the German court already determined that the trial court's previous order "is of no legal consequence" in the German proceedings. Accordingly, we need not address Plaintiff's arguments on this issue because they will have no impact on the adjudication of the parties' custody issues in Germany.

### **Conclusion**

For the reasons discussed above, we affirm the trial court's order declining jurisdiction in favor of the German custody proceedings, and we dismiss the remaining challenges on appeal as moot.

**AFFIRMED IN PART AND DISMISSED IN PART.**

Judges TYSON and BERGER concur.

Report per Rule 30(e).