[Cite as *Urteaga v. Urteaga*, 2015-Ohio-2465.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

MARY POWERS-URTEAGA,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-08-109
	:	OPINION 6/22/2015
- vs -	:	
RAMON A. URTEAGA,	:	
Defendant-Appellant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 110DR34370

Harry B. Plotnick, 11069 Reading Road, Cincinnati, Ohio 45241, for plaintiff-appellee

Ramon Urteaga, 347 Winding Way, Merion Station, Pennsylvania 19066, defendant-appellant, pro se

M. POWELL, J.

{¶ 1} Defendant-appellant, Ramon Urteaga (Father), appeals a decision of the Warren County Court of Common Pleas, Domestic Relations Division, denying his motion to declare the state of Ohio an inconvenient forum and relinquish jurisdiction to the state of Pennsylvania.

{¶ 2} The parties are the parents of two minor children, a son born in 1999 and a

daughter born in 2006. In January 2011, plaintiff-appellee, Mary Powers-Urteaga (Mother), filed for divorce. At the time, the parties lived in Ohio. In May 2011, Father moved to Pennsylvania where he has resided since. The parties were divorced by decree on October 14, 2011. Pursuant to a shared parenting plan incorporated into the divorce decree, both parents were named legal custodians of the children, Mother was named residential parent for school purposes only, and the children were to relocate to Pennsylvania no later than June 15, 2012, regardless of whether Mother relocated there. On June 3, 2012, the children relocated to Pennsylvania where they have resided since. Mother has never relocated to Pennsylvania and continues to live in Ohio.

{¶ 3} On June 25, 2012, three weeks after the children relocated to Pennsylvania, Mother moved to modify the shared parenting plan; Father moved to terminate the plan. Following a hearing on the motions, the magistrate denied both motions. The magistrate found it was not in the children's best interest to terminate the shared parenting plan, found no significant change of circumstances justifying a modification of the shared parenting plan, and named Father as residential parent for school purposes only.

{¶ 4} In January 2013, Mother once again moved to modify the shared parenting plan; Father moved to terminate the plan. Following a hearing on the motions, the magistrate found that shared parenting was no longer in the children's best interest and terminated the shared parenting plan. Noting that Mother had no intention of moving to Pennsylvania, the magistrate named Father residential parent and legal custodian of the children and granted visitation to Mother. Subsequently, two weeks after the magistrate's decision, Mother sua sponte moved to modify custody of the children. Following a hearing on the motion, the magistrate found no change of circumstances and denied the motion.

{¶ 5} In October 2013, Mother once again moved to modify custody of the children. In December 2013, the magistrate conducted the first part of a bifurcated hearing, which

dealt solely with the issue of whether there had been a change of circumstances. On January 28, 2014, the magistrate found there was "a sufficient change of circumstances to warrant further inquiry into whether a change of custody [was] in the children's best interest." The magistrate subsequently scheduled a hearing on the issue of best interest. Father filed objections to the magistrate's decision which were overruled by the trial court.

{¶ 6} While his objections were pending, Father moved the trial court on March 17, 2014, for a "change of venue" to Pennsylvania. Father argued that Ohio was an inconvenient forum and therefore should relinquish jurisdiction over custody matters to Pennsylvania. Father also initiated proceedings in Pennsylvania to register the magistrate's June 10, 2013 decision terminating the shared parenting plan as adopted by the trial court in August 2013. Mother filed objections to the registration proceedings and a hearing was held before a Pennsylvania court. Upon learning about Father's motion for "change of venue," the Pennsylvania court stayed the registration proceedings. In Ohio, the magistrate held a hearing on Father's motion for "change of venue."[1]

{¶ 7} On May 12, 2014, the magistrate denied the motion as follows:

> Based on the fact that Mother's custody motion was bifurcated and has already been heard on the change of circumstances issue, the Magistrate finds that the timing of Father's motion is problematic. Although much of the pertinent evidence is located in Pennsylvania, the Magistrate finds that this Court should hear the current motion to conclusion. Evidence can be gathered through discovery methods including depositions and otherwise for presentation to this court.

{¶ 8} The magistrate premised its decision on the fact that although the Pennsylvania court could become familiar with the facts and issues of the case in short order, the trial court in Ohio was "extremely familiar with the facts and issues in this case" and was "adequately

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1. Upon finding that Father's motion was erroneously captioned, the magistrate construed the motion as "a request for determination of inconvenient forum and a stay of proceedings." The magistrate noted that Father correctly cited the governing statute in his motion.

prepared to decide the issue expeditiously and has procedures in place to do so." The magistrate also found that (1) the children had lived in Pennsylvania since June 2012, (2) consequently, most of the relevant evidence was located in Pennsylvania, including the children's relatives, doctors, dentists, friends, and school records, and (3) there was a significant driving distance between the Pennsylvania court and the Ohio court of at least 10 to 11 hours. The magistrate further found there was no agreement of the parties as to which state should assume jurisdiction.

{¶ 9} Father filed objections to the magistrate's decision. On July 25, 2014, the trial court overruled the objections and adopted the magistrate's decision. Agreeing with the magistrate's detailed analysis of the applicable statutory factors, the trial court upheld the magistrate's determination that Ohio was not an inconvenient forum. Specifically, the trial court found that while the fact the children have resided in Pennsylvania for two years favors Father, this factor was only one of eight statutory factors to be considered. Further, "just as there are factors that favor Father's position, there are factors that favor this Court hearing the current motion to conclusion. Since an analysis of the factors did not clearly establish whether this Court is an inconvenient forum, it was not unreasonable for the Magistrate to consider the timing of Father's motion for Change of Venue." The trial court found that the five-month delay in filing the motion was excessive and problematic.

{¶ 10} Father appeals, raising one assignment of error:

{¶ 11} THE TRIAL COURT ERRED IN FAILING TO DECLARE ITSELF AN INCONVENIENT FORUM.

{¶ 12} Father argues the trial court erred when it denied his motion to declare Ohio an inconvenient forum and relinquish jurisdiction to Pennsylvania.

{¶ 13} The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), codified in Ohio in R.C. 3127.01 through 3127.53, was drafted to avoid jurisdictional conflicts

and competition between different states with regard to child custody litigation. The intent of the UCCJEA was to ensure that a state court would not exercise jurisdiction over a child custody proceeding if a court in another state was already exercising jurisdiction over the child in a pending custody proceeding. *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, ¶ 20-21. Over 40 states, including Ohio and Pennsylvania, have adopted the UCCJEA. *In re N.R.*, 7th Dist. Mahoning No. 09 MA 85, 2010-Ohio-753, ¶ 11.

{¶ 14} R.C. 3127.21 gives a trial court discretion to transfer jurisdiction to a court of another state upon a finding that the Ohio court is an inconvenient forum and that the court of the other state is a more convenient forum:

> (A) A court of this state that has jurisdiction under this chapter to make a child custody determination 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 convenient forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or at the request of another court.
>
> (B) Before 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. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including the following:
>
> (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
>
> (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 the 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;
>
> (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

{¶ 15} We first address what is the appropriate standard of review in the case at bar. Contrary to Father's assertion, we do not review the trial court's decision de novo but rather under an abuse of discretion standard. That is because the issue at bar is not whether the trial court *had jurisdiction* to decide custody matters but whether the trial court erred in deciding to *exercise jurisdiction*. An appellate court reviews de novo a trial court's determination regarding the existence of subject matter jurisdiction, that is whether the trial court has or lacks jurisdiction in the first place, because such determination is a matter of law. *See Mulatu v. Girsha*, 12th Dist. Clermont No. CA2011-07-051, 2011-Ohio-6226, ¶ 26. By contrast, an appellate court reviews a trial court's decision to exercise or decline to exercise jurisdiction on the basis of inconvenient forum under an abuse of discretion standard. *See In re Guardianship of Wonderly*, 67 Ohio St.2d 178, 187 (1981) (trial court abused its discretion in not dismissing the case on the theory of an inconvenient forum); *Kemp v. Kemp*, 5th Dist. Stark No. 2010-CA-00179, 2011-Ohio-177; *White v. Ritchey*, 7th Dist. Mahoning No. 12 MA 98, 2013-Ohio-4164; *Walter v. Liu*, 193 Ohio App.3d 185, 2011-Ohio-933 (8th Dist.); and *Buzard v. Triplett*, 10th Dist. Franklin No. 05AP-579, 2006-Ohio-1478.

{¶ 16} Upon reviewing the record, and given the trial court's superior and great familiarity with the facts and issues in the pending custody litigation, the trial court's history of involvement with the case in light of the numerous motions filed by the parties over the years, and the fact the current custody proceedings are well underway in Ohio as the trial court has already found a change of circumstances, we find that the trial court did not abuse its

discretion in retaining jurisdiction over this case.

{¶ 17} Father first asserts that pursuant to the Ohio Supreme Court's decision in *Wonderly*, "it [is] clear that the best interest of the children should be the primary factor in deciding whether a court is an inconvenient forum," and thus jurisdiction should be relinquished to Pennsylvania. However, *Wonderly* was decided under former R.C. 3109.25 (as part of the then Uniform Child Custody Jurisdiction Act adopted in Ohio in 1977), and not under R.C. 3127.21. When R.C. 3127.21 was enacted in 2004 as part of the UCCJEA, former R.C. 3109.25 was repealed. *Witt v. Walker*, 2d Dist. Clark No. 2012-CA-58, 2013-Ohio-714, ¶ 22. Unlike former R.C. 3109.25(C) which based the determination on the interest of the child, R.C. 3127.21 focuses on whether it is appropriate for another state to assume jurisdiction. *Id.*

{¶ 18} Father next argues the trial court erred in denying his motion to transfer the case to Pennsylvania because the statutory factors under R.C. 3127.21 "clearly tilt in favor of Father's position that the Ohio court should declare itself an inconvenient forum[.]" Father essentially argues that the children's residence in Pennsylvania and thus, the location of evidence and witnesses in that state, are dispositive of the convenience issue.

{¶ 19} We note that the statute does not set forth what weight to assign the statutory factors. Therefore, the trial court had discretion to determine what weight, if any, to assign each factor, in relation to the other factors, depending on the facts and circumstances of the case. While the statute requires a trial court to consider the child's home state, as well as the location of any evidence required to resolve the pending litigation, these are only two of eight factors to be considered under the statute. It is clear from the record that the trial court considered all of the factors listed in R.C 3127.21 but ultimately determined that Ohio was not an inconvenient forum, given its own familiarity with the case, the fact the trial court was adequately prepared to decide the issue expeditiously, and the lack of evidence as to the

ability of the Pennsylvania court to decide the issue. We also note that although the children reside in Pennsylvania, visitation with Mother has occurred in Ohio on several occasions. Further, evidence regarding the children's future care and relationship with Mother is available in Ohio. *See In re D.H.*, 8th Dist. Cuyahoga No. 89219, 2007-Ohio-4069.

{¶ 20} Father also argues the trial court erred in considering when he filed his motion for "change of venue" as the timing of filing such a motion is not one of the statutory factors listed in R.C. 3127.21(B). While timing is not one of the factors listed in the statute, R.C. 3127.21(B) mandates trial courts to "consider all relevant factors," including the eight factors specifically listed.

{¶ 21} The record shows that three weeks after the children relocated to Pennsylvania in June 2012, the parties began filing several motions, including to modify or terminate the shared parenting plan. Once the shared parenting plan was terminated in June 2013, Mother filed several motions to modify custody of the children. Each time, the parties' motions were filed in the trial court. Each time, Father availed himself of the same jurisdiction he now claims is inconvenient and each time, he prevailed. It was not until the trial court found a change of circumstances in favor of Mother in January 2014 that Father moved the trial court in March 2014 to relinquish jurisdiction over the custody matter to Pennsylvania on the ground Ohio was now an inconvenient forum. Given the fact that Father's motion was filed five months after Mother's motion to change custody and after the trial court's unfavorable decision, we find the trial court did not err in considering the timing of Father's motion as a relevant factor under R.C. 3127.21(B). A review of the trial court's decision does not support Father's assertion that the timing of his motion was seemingly the "sole factor that the court used as a justification to deny Father's motion."

{¶ 22} Father also challenges the trial court's assertion that Ohio is not an inconvenient forum because although the majority of the evidence is located in Pennsylvania,

"[e]vidence can be gathered through discovery methods including depositions." It is "Father's belief that opposing counsel would object to the use of any deposition or document where there is not an individual present to testify as to the document's authenticity," and that the trial court would "have no choice but to sustain the objection." In support of his belief, Father cites the fact that during the inconvenient forum hearing, "Mother's counsel objected to the inclusion of all exhibits presented by Father, stating that they contained 'considerable hearsay information' and that 'we don't know who some of the people are.'"

{¶ 23} The record shows that during Father's testimony, Mother's counsel successfully objected to the attempt by Father's counsel to question Father about the parties' daughter's performance in school. The magistrate ruled that Father could only "testify about the evidence that's available," and not about the "substantive content of that evidence" as the latter "[was] not at issue today." Likewise, at the end of the hearing, Mother's counsel objected to the admission of Father's exhibits on the ground they were hearsay and that while they were "significant and efficient * * * for whatever information is contained in them," Father had testified about the fact the children's schools and various providers were located in Pennsylvania. The exhibits detailed the children's performance in school, the son's mental health diagnosis, the existence of a special school program for the son, and Father's attempts to register the custody decree in Pennsylvania. The magistrate admitted the exhibits "for the limited purpose of documenting the testimony that there [were] in fact" doctors and schools as evidenced by the exhibits.

{¶ 24} We find that Father's exhibits were properly objected to during the inconvenient forum hearing as the issue was whether Ohio was an inconvenient forum, and not whether a change of custody was in the children's best interest. Father's assertion that Mother's counsel will inevitably object to the use of any deposition or document at the best interest hearing if Ohio retains jurisdiction over the custody matter is purely speculative.

{¶ 25} Further, Father's assertion ignores the fact that certain provisions of the UCCJEA govern witness testimony and documentary evidence. Specifically, R.C. 3127.10 provides that

> (A) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.
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> (B) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.
>
> (C) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

{¶ 26} Thus, under R.C. 3127.10, testimony can be taken of witnesses located in another state, including testimony of the parties and the children, by deposition, telephone, audiovisual means, or any other electronic means. An Ohio court, on its own motion, may order that testimony be taken of a person in another state and prescribe the manner and the terms as to how the testimony is to be taken.

{¶ 27} Another important provision of the UCCJEA is R.C. 3127.11, the guiding provision for cooperation between courts. Pursuant to R.C. 3127.11, an Ohio court may request a court of another state to hold an evidentiary hearing, order a person to produce or give testimony pursuant to the procedures of that state, order an evaluation to be made concerning the allocation of parental rights and responsibilities, and order a party to appear with or without the child. R.C. 3127.11(A). At the request of another state, the court may

hold a hearing or enter an order. R.C. 3127.11(B). Thus, R.C. 3127.11 provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. It also allows courts to request assistance from and assist courts of other states. Communications between courts is governed by R.C. 3127.09.

{¶ 28} As stated earlier, both Ohio and Pennsylvania have adopted the UCCJEA. R.C. 3127.10, which governs witness testimony, is identical to its counterpart in Pennsylvania. *See* 23 Pa.C.S.A. § 5411. R.C. 3127.11, which governs cooperation between courts, is very similar to its counterpart in Pennsylvania. *See* 23 Pa.C.S.A. § 5412.

{¶ 29} The Ohio legislature has entrusted trial courts with the discretion to determine whether their court is an inconvenient forum under R.C. 3127.21. *In re N.R.*, 2010-Ohio-753 at ¶ 28. In the case at bar, the trial court engaged in a detailed analysis of each of the eight statutory factors in R.C. 3127.21 and ultimately determined that retaining jurisdiction did not pose an inconvenience. *Id.* While it is true that several factors favored Pennsylvania as the more convenient forum, and other factors favored Ohio as the more convenient forum, the trial court acted within its discretion in weighing all of the statutory factors. *Id.* We therefore find the trial court did not abuse its discretion in determining that Ohio is a convenient forum and in refusing to relinquish jurisdiction over the custody matter to Pennsylvania.

{¶ 30} Father's assignment of error is accordingly overruled.

{¶ 31} Judgment affirmed.

PIPER, P.J., and HENDRICKSON, J., concur.