COURT OF APPEALS
DECISION
DATED AND FILED

August 3, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP3332 **Cir. Ct. No. 2004FA521**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN RE THE MARRIAGE OF:

CLAUDE A. POTTS,

PETITIONER-RESPONDENT,

V.

MARGARET STROOT,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Walworth County: MICHAEL S. GIBBS, Judge. *Affirmed*.

Before Anderson, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. Margaret Stroot appeals from an order dismissing her petition to enforce the physical placement of her minor child under an Illinois

judgment divorcing her from Claude A. Potts. The petition was dismissed in favor of jurisdiction to be exercised by an Illinois court. Stroot argues that Wisconsin is the more appropriate forum to decide the existing placement dispute since she resided in Wisconsin with the child before physical placement was altered. We conclude that the circuit court properly exercised its discretion in deferring to the concurrent jurisdiction of the Illinois court under the Uniform Child Custody Jurisdiction Act, WIS. STAT. § 822.07 (2003-04).[1] We affirm the circuit court's order.

¶2 The parties were divorced in 1995 in Adams County, Illinois. Their daughter was almost one year old at the time. Stroot was awarded primary custody of the child, and Potts was awarded reasonable visitation. In 1999, by a stipulation filed in the Adams County court, the judgment of divorce was amended to give Potts specific periods of visitation. With Potts' knowledge and approval, Stroot and the child moved to Pell Lake, Walworth County, Wisconsin, in September 2002.

¶3 Due to contact with the Walworth County Human Services agency, around May 25, 2004, Stroot voluntarily placed the child with Potts at his residence in Sangamon County, Illinois. When Stroot requested that the child be returned to her, Potts refused. On July 28, 2004, Stroot filed this action to enforce physical placement. She later moved to also modify physical placement. Potts moved to dismiss the petition and indicated that he had filed an action to modify placement in Sangamon County, Illinois.

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶4 The parties agree that the Walworth County Circuit Court has subject matter jurisdiction and personal jurisdiction over Potts. *See* WIS. STAT. §§ 822.03, 822.05. The issue is whether the circuit court erroneously exercised its discretion in declining to exercise jurisdiction. *See* ***J.W. v. M.W.G.***, 145 Wis. 2d 308, 311, 426 N.W.2d 112 (Ct. App. 1988). A court may decline to exercise jurisdiction if the court finds that it is an inconvenient forum and the court of another state is a more appropriate forum. ***P.C. v. C.C.***, 161 Wis. 2d 277, 307, 468 N.W.2d 190 (1991); WIS. STAT. § 822.07. The court may consider the five factors listed in § 822.07(3)[2] in determining whether it is in the child's best interest to have another state exercise jurisdiction. ***P.C.***, 161 Wis. 2d at 312. The court may also communicate and exchange information with a court of another state to assure that jurisdiction is exercised by the more appropriate court. Sec. 822.07(4). A discretionary determination will be sustained if the circuit court examined the

[2] WISCONSIN STAT. § 822.07(3) provides:

> In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:
>
> (a) If another state is or recently was the child's home state;
>
> (b) If another state has a closer connection with the child and family or with the child and one or more of the contestants;
>
> (c) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
>
> (d) If the parties have agreed on another forum which is no less appropriate; and
>
> (e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in s. 822.01.

relevant facts, applied the proper standard of law, and demonstrated a rational process. ***J.W.***, 145 Wis. 2d at 311.

¶5 The circuit court's written decision is brief. It indicates that the circuit court conferred with the Sangamon County, Illinois court and that "[b]oth Courts have concluded based on the facts of this matter and under the guidelines set forth by the UCCJA that the appropriate jurisdiction is in Sangamon County, Illinois." We recognize, as Stroot argues,[3] that the circuit court failed to make appropriate findings in support of its decision. If the circuit court fails to adequately set forth its reasoning in reaching a discretionary decision, this court will search the record for reasons to sustain that decision. ***Long v. Long***, 196 Wis. 2d 691, 698, 539 N.W.2d 462 (Ct. App. 1995). *See also* ***Davidson v. Davidson***, 169 Wis. 2d 546, 558, 485 N.W.2d 450 (Ct. App. 1992) ("The fact that the circuit court failed to make the findings necessary under [WIS. STAT.] ch. 822 does not prevent this court from reviewing the record to determine whether the evidence supports the circuit court's decision.").

¶6 The record shows that all prior litigation concerning custody and visitation occurred in Illinois. Although Wisconsin is the child's home state,[4] the child lived in Illinois for eight and one-half years and in Wisconsin for only one and one-half years. Indeed, the child was removed to Illinois upon the agreement

[3] Stroot cites unpublished cases in her argument. It is a violation of WIS. STAT. RULE 809.23(3) to cite and quote from an unpublished opinion of the court of appeals. Stroot is wrong to assert that the citation is for the permissible purpose of establishing law of the case since the cited unpublished cases do not involve prior litigation between Stroot and Potts. Violations of the noncitation rule will not be tolerated, and a $50 sanction against Stroot's counsel is imposed and payable within fourteen days of this decision. *See* ***Tamminen v. Aetna Cas. & Sur. Co.***, 109 Wis. 2d 536, 563-64, 327 N.W.2d 55 (1982).

[4] The parties agree that Wisconsin is the child's home state. *See* WIS. STAT. § 822.02(5).

of the parties. Placement in Illinois was to promote the child's best interests and for the purpose of avoiding a Wisconsin court action under the children's code, WIS. STAT. ch. 48. These are facts of record relevant under WIS. STAT. § 822.07(3)(b) and (c).

¶7 Stroot argues that the child's home state is the preferred forum. *See* ***Davidson***, 169 Wis. 2d at 563. In deciding whether Wisconsin is an inconvenient forum, the child's home state is but one factor. "[T]here are no immutable rules of jurisdiction under the UCCJA, only preferences." ***Id.*** at 557. The weight to be given each factor is for the circuit court to determine. The circuit court determined that the child's present location was the most important factor in establishing a convenient forum. The circuit court's determination is also supported by heavy reliance on the fact that the child was removed to Illinois by agreement of the parties and to protect the best interests of the child. Illinois was chosen as a safe haven for the child. We summarily reject Stroot's contention that deferring to Illinois jurisdiction merely rewards Potts' noncompliance with the original custody determination. We conclude the circuit court properly exercised its discretion.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.