

[Cite as *In re N.R.*, 2010-Ohio-753.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE MATTER OF:

N.R.

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CASE NO. 09 MA 85

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from the Court of Common
Pleas, Juvenile Division, of Mahoning
County, Ohio
Case No. 03 JC 825

JUDGMENT:

Affirmed.

APPEARANCES:

For Plaintiff-Appellant, Michael Risavi:

Atty. Anna M. Ciambotti
Atty. Amanda J. Banner
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For Defendant-Appellee. Jessica Tringhese:

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JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Mary DeGenaro
Dated: February 24, 2010

WAITE, J.

{¶1} Appellant, Michael C. Risavi, appeals the judgment entry of the Mahoning County Court of Common Pleas, Juvenile Division, sustaining objections to the decision of the magistrate and denying Appellant's motion to transfer jurisdiction of this case to the Mercer County Court of Common Pleas in Pennsylvania.

{¶2} On June 10, 2003, Appellee, Jessica Tringhese, filed a dependency complaint and motion to allocate parental rights and responsibilities with respect to N.R. Pursuant to a judgment entry, file-stamped on January 12, 2005, the trial court adopted an agreed entry wherein all issues of custody and parenting rights were resolved between the parties to this appeal. In the agreed entry, Appellant was named the residential parent and legal custodian of the minor child.

{¶3} Both prior to and after the issuance of the January 12, 2005 judgment entry, the parties invoked the jurisdiction of the trial court on numerous occasions to resolve problems that developed as a result of the visitation schedule. The matter became such an imbroglio that visitation was modified in 2005 so that each party was required to deliver actual custody of the minor child to the other party at their respective local police stations. (10/12/05 J.E. p. 1.) The parties continued, nonetheless, to feud over the scheduling of visitation. For instance, Appellee filed a motion for the emergency modification of her companionship schedule in 2006, requesting the trial court to order Appellant to make the minor child available to attend Appellee's wedding rehearsal and dinner. (10/10/06 Motion, p.1.)

{¶4} In January of 2007, Appellant filed a motion in the Mercer County Common Pleas Court to assume jurisdiction and to modify custody. Appellant and

the minor child had been Pennsylvania residents since 2004. N.R. was scheduled to begin elementary school, and Appellant sought to alter the visitation schedule based on the minor child's new school schedule. Appellee retained Pennsylvania counsel and filed objections to the motions.

{¶15} On February 7, 2007, the Mercer County Common Pleas Court issued an order staying the substantive issues because the State of Ohio had not relinquished jurisdiction over the matter. In the order, the Mercer County Common Pleas Court expressed its willingness to accept jurisdiction in the event that the Ohio court chose to transfer the case.

{¶16} On February 15, 2007, Appellant filed a motion for transfer of jurisdiction to Mercer County in the Mahoning County Common Pleas Court, Juvenile Division, pursuant to R.C. 3127.21. On that same day, Appellee filed a motion to modify the allocation of parental rights and responsibilities and for the appointment of a guardian ad litem in Mahoning County. In her motion to modify, Appellee asked the trial court that she be appointed N.R.'s residential parent. She also filed in opposition to Appellant's motion to transfer jurisdiction.

{¶17} The magistrate concluded that Pennsylvania was a more convenient forum because N.R. has resided in Pennsylvania since December of 2004, and thus, the nature and location of the evidence is in Pennsylvania where she resides. The magistrate determined that all of the other factors were either irrelevant or did not favor either forum. Appellee timely objected to the decision of the magistrate judge.

{¶18} Following a hearing on the objections, the trial court concluded that Ohio was not an inconvenient form and premised its decision on its own knowledge

of the case. (4/1/09 J.E., p. 2.) The trial court also cited the fact that Appellant and the minor child would not face any burden or hardship if Ohio retained jurisdiction, but that Appellee would be forced to retain Pennsylvania counsel who would need to become versed in the case history. The trial court also relied on the fact that evidence in this case is located in both Ohio and Pennsylvania.

{¶9} The record reflects that Ohio is not an inconvenient forum, as that term is defined by the statute and the trial court simply gave greater weight to different factors found in the statute than did its magistrate. Because the trial court did not abuse its discretion in denying the motion, Appellant's sole assignment of error is overruled and the judgment of the trial court is affirmed.

Assignment of Error

{¶10} "The lower court abused its discretion when it sustained the objection, reversed the Magistrate's Decision, and declined to transfer this case to Mercer County, Pennsylvania."

{¶11} 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, 883 N.E.2d 420, ¶20-21. Over 40 states, including Ohio and Pennsylvania, have adopted the UCCJEA.

{¶12} A trial court's decision as to whether to exercise jurisdiction pursuant to the UCCJEA should only be reversed if the court committed an abuse of discretion. *Beck v. Sprik*, 9th Dist. No. 07CA0105-M, 2008-Ohio-3197; *In re Collins*, 5th Dist. No. 06CA000028, 2007-Ohio-4582. The phrase "abuse of discretion" connotes more than an error of judgment; rather, it implies that the trial court's attitude was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. Moreover, when applying an abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. See *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, 614 N.E.2d 748.

{¶13} Magistrate's decisions are generally interlocutory in nature, and may be reconsidered on the court's own motion or that of a party. *Robinson v. Ohio BMV*, 8th Dist. No. 88172, 2007-Ohio-1162, ¶5, citing *Pitts v. Dept. of Transp.* (1981), 67 Ohio St.2d 378, 423 N.E.2d 1105. A court also has the discretionary power to take new evidence after a matter has already been referred to a magistrate, regardless whether objections have been filed to that magistrate's decision. Civ.R. 53(D)(4)(b). The trial court's standard of review of a magistrate's decision is de novo. *Shihab & Assoc. Co., L.P.A. v. Ohio Dept. of Transp.*, 168 Ohio App.3d 405, 2006-Ohio-4456, 860 N.E.2d 155, ¶13.

{¶14} Appellant contends that the trial court ignored the statutory factors set forth in R.C. 3127.21 when it reversed the decision of the magistrate and denied the motion to transfer venue. That statute reads, in pertinent part:

{¶15} "(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.

{¶16} “(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:

{¶17} “(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;

{¶18} “(2) The length of time the child has resided outside this state;

{¶19} “(3) The distance between the court in this state and the court in the state that would assume jurisdiction;

{¶20} “(4) The relative financial circumstances of the parties;

{¶21} “(5) Any agreement of the parties as to which state should assume jurisdiction;

{¶22} “(6) The nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;

{¶23} “(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;

{¶24} “(8) The familiarity of the court of each state with the facts and issues in the pending litigation.”

{¶25} Appellant essentially argues that the child's residence is dispositive of the convenience issue. While we agree that 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 considerations given equal weight pursuant to statute. It is clear from the record that the trial court considered all of the factors listed in R.C. 3127.21, but afforded greater weight to its own familiarity with the case and the possible cost in both time and actual expense of Appellee retaining Pennsylvania counsel.

{¶26} Next, Appellant argues that the delay in resolving the motion to transfer constitutes evidence that the trial court is unable to decide issues in the case expeditiously. While it is true that two years passed between the filing of the motion to transfer and the trial court's order on the motion, the delay was the result of numerous continuances granted by the court for a series of valid reasons, including the withdrawal of Appellee's original trial counsel, the appointment of new counsel, and the death of new trial counsel's father.

{¶27} At oral argument, Appellant's counsel asserted that Appellant doggedly pursued a swift resolution to his motion to transfer, never once requesting a continuance in this case, and repeatedly objecting to continuances. In fact, the record reveals that Appellant did file a motion to continue a hearing in this matter due to a conflict with his work schedule. Further, the only objection of record is the guardian ad litem's objection to Appellant's motion for a continuance. To the extent that the continuances in this matter appear to have been granted even-handedly and

for good cause, we cannot conclude that the trial court is incapable of expeditiously handling the issues in this case.

{¶28} In summary, the legislature has entrusted trial courts with the discretion to determine whether their court is an inconvenient forum under R.C. 3127.21. Ultimately, the trial court determined that retaining jurisdiction did not pose an inconvenience. While it is true that certain enumerated factors favored Pennsylvania as a more convenient forum, and others favored Ohio as more convenient, the trial court acted within its discretion in weighing the factors. Appellant has not pointed to any evidence in the record to demonstrate that the trial court's decision to retain jurisdiction over this case is arbitrary, unreasonable, or unconscionable. Accordingly, Appellant's sole assignment of error is overruled and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

DeGenaro, J., concurs.