

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
HURON COUNTY

Nick A. V.

Court of Appeals No. H-04-004

Appellant

Trial Court No. FJ-2003-00001

v.

Laurie Anne F.

**DECISION AND JUDGMENT ENTRY**

Appellee

Decided: January 14, 2005

\* \* \* \* \*

Thomas J. Stoll, for appellant.

Deborah L. Wood, for appellee.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶ 1} Plaintiff-appellant, Nick A.V., appeals the December 22, 2003 judgment of the Huron County Court of Common Pleas, Juvenile Division, which concluded that the court did not have jurisdiction to modify custody or parental rights and responsibilities.

For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} Appellant, Nick A.V., and appellee, Laurie Anne F.'s marriage was dissolved on November 24, 1999, in Stanislaus County, California. The judgment awarded joint legal custody and shared physical custody of the parties' three minor

children,<sup>1</sup> and named appellant as the primary caretaker. The judgment contemplated that appellant would be moving to Ohio and provided, inter alia, that the children would spend ten consecutive weeks in the summer with appellee.

{¶ 3} On April 23, 2003, appellant filed a petition to register the California judgment in Huron County, Ohio. On May 6, 2003, appellant filed a motion to modify custody/parental rights and responsibilities. In his motion, appellant requested that the court name him the residential parent and the legal custodian based upon changed circumstances and that the change would be in the children's best interests. Thereafter, on June 10, 2003, appellant filed a "Motion for Emergency Hearing Re Summer Visitation." In his motion appellant requested that the court modify summer visitation to the second half of summer due to the children's extra-curricular activities.

{¶ 4} During the pendency of appellant's motions, appellee filed a petition for writ of habeas corpus, in Stanislaus County, California, requesting enforcement of the 1999 custody order. In Huron County, appellee also raised the argument that California, not Ohio, had continuing jurisdiction over the matter. The parties briefed this issue and an evidentiary hearing was held; however, the hearing was not completed due to scheduling issues.

{¶ 5} In its December 22, 2003 judgment, the trial court stated that the Stanislaus County, California court continued to exercise jurisdiction over the parties, including the

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<sup>1</sup>Two of the children were issue of the marriage; the third, and the eldest, is not appellant's biological child.

subject matter of their dispute. The court then determined that it did not have jurisdiction to grant the relief requested by appellant. This appeal followed.

{¶ 6} Appellant now raises the following assignments of error:

{¶ 7} “I. The trial court erred and abused its discretion in failing to exercise jurisdiction under R.C. 3109.31.

{¶ 8} “II. The trial court denied the appellant due process of law and abused its discretion where it dismissed the plaintiff’s motion for lack of jurisdiction without completing the evidentiary hearing.”

{¶ 9} In his first assignment of error, appellant contends that the court erroneously determined that it lacked jurisdiction over the matter. Initially, we note that a juvenile court has discretion under the provisions of the Uniform Child Custody Jurisdiction Act (“UCCJA”), adopted in Ohio under R.C. 3109.21, et seq., to assume jurisdiction in cases involving an interstate change of custody. *State ex rel. Aycock v. Mowrey* (1989), 45 Ohio St.3d 347, 349. Thus, a reviewing court cannot reverse a trial court’s decision regarding jurisdiction absent an abuse of discretion. An abuse of discretion connotes more than an error of law of judgment; it implies that the court’s attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 10} Generally, “[t]he court in which a decree of divorce is originally rendered retains continuing jurisdiction over matters relating to the custody, care, and support of the minor children of the parties.” *Loetz v. Loetz* (1980), 63 Ohio St.2d 1, 2.

Nevertheless, “a jurisdictional dispute may arise when one parent moves out of state with

the children.” *Justis v. Justis* (1998), 81 Ohio St.3d 312, 314. When that occurs, “[t]he question then becomes which state has the authority to exercise jurisdiction over the matter.” *Id.*

{¶ 11} “Under R.C. 3109.22(A), a trial court in Ohio that has jurisdiction to make a parenting determination shall exercise that jurisdiction only if one of the conditions specified in subsections (1) through (4) is met. *Id.* at 315. R.C. 3109.22(A) provides:

{¶ 12} “(A) No court of this state that has jurisdiction to make a parenting determination relative to a child shall exercise that jurisdiction unless one of the following applies:

{¶ 13} “(1) This state is the home state of the child at the time of commencement of the proceeding, or this state had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a parent who claims a right to be the residential parent and legal custodian of a child or by any other person claiming his custody or is absent from this state for other reasons, and a parent or person acting as parent continues to live in this state;

{¶ 14} “(2) It is in the best interest of the child that a court of this state assumes jurisdiction because the child and his parents, or the child and at least one contestant, have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

{¶ 15} “(3) The child is physically present in this state and either has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent;

{¶ 16} “(4) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with division (A)(1), (2), or (3) of this section, or a court in another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to make a parenting determination relative to the child, and it is in the best interest of the child that this court assume jurisdiction.”

{¶ 17} Arguably, in this case sections (1) and (2) may apply. The children have lived in Ohio for the past six consecutive months, and the children and their father have significant connections with the state of Ohio. However, as noted in *Justis*, supra, “[o]ne of the problems inherent in the UCCJA is that some of its provisions, such as the ‘substantial evidence’ and ‘significant connection’ factors cited above (and found in R.C. 3109.22[A][2]), can be interpreted to allow two states to exercise concurrent jurisdiction.” *Id.* at 317. The *Justis* court concluded that the (Parental Kidnapping Prevention Act (“PKPA”), 1738A, Title 28, U.S. Code, acts to more clearly limit the circumstances under which a court may modify a custody decree of another state. (Citations omitted.) *Id.* The PKPA defines when a state can modify a parenting decree, or child custody decree, from another state, as follows: “(1) the state seeking to modify the decree must have jurisdiction to make a child custody determination, and (2) the

original state must no longer have jurisdiction, or must have declined to exercise such jurisdiction.” *Id.*, citing Section 1738A(f), Title 28, U.S.Code. Accord R.C. 3109.31(A).

{¶ 18} In the present case, even though Ohio may have jurisdiction to make a custody determination, California also has jurisdiction and has exercised such jurisdiction. The parties were divorced in California and the court ordered joint legal custody and shared physical custody of the children. Appellee resides in California. As evidenced by the record, Stanislaus County, California, has exercised jurisdiction over the issues in this case. Accordingly, the trial court did not abuse its discretion in determining that it lacked jurisdiction to grant the relief requested by appellant. Appellant’s first assignment of error is not well-taken.

{¶ 19} In appellant’s second assignment of error, he contends that the trial court denied him due process of law when it dismissed appellant’s motion for lack of jurisdiction without completing the evidentiary hearing. Appellant is correct in citing *Bowen v. Britton* (1993), 84 Ohio App.3d 473, 479, for the proposition that when considering if a court should exercise jurisdiction on the factors specified in R.C. 3109.22(A) and 3109.31(A), a court should conduct an evidentiary hearing. In *Bowen*, the trial court determined it lacked jurisdiction based solely upon a prior foreign custody decree; the appellate court concluded that the court erred by failing to determine whether the foreign court no longer had jurisdiction. *Id.* at 481.

{¶ 20} Unlike *Bowen*, in this case the trial court did schedule an evidentiary hearing where eight witnesses testified on appellant’s behalf. The witnesses, including family friends, appellant’s current wife, the school principal, and the office manager of

the children's doctor's office, all testified regarding the contacts the children had in Ohio. Several exhibits were also presented. These issues were also thoroughly briefed by the parties. Though it would have been prudent to complete the hearing, after a careful review of the record we can find no indication that appellant would have proffered any evidence to exclude California as having jurisdiction in the matter. Accordingly, appellant's second assignment of error is not well-taken.

{¶ 21} On consideration whereof, we find that substantial justice was done the party complaining, and the judgment of the Huron County Court of Common Pleas, Juvenile Division, is affirmed. Pursuant to App.R. 24, appellant shall pay the court costs in this matter.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Richard W. Knepper, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, P.J.  
CONCUR.

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JUDGE

