

[Cite as *In re R.P.B.*, 2010-Ohio-322.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

IN THE MATTER OF:

R.P.B.

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CASE NO. CA2009-07-097

OPINION
2/1/2010

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case No. 07-C00806

Jeffrey W. Stueve, 12 West South Street, Lebanon, OH 45036, for appellant

Robert S. Fischer, 8738 Union Centre Boulevard, West Chester, OH 45069, for appellee

POWELL, P.J.

{¶1} Petitioner-appellant, Phillip Sidney Pacheco Badiz, appeals a decision of the Warren County Court of Common Pleas, Juvenile Division, granting the motion of respondent-appellee, Denise Farley, to dismiss, for lack of jurisdiction, appellant's petition for access rights to the parties' son, R.P.B., pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by

the International Child Abduction Remedies Act (ICARA) found in Section 11601 et seq., Title 42, U.S.Code.

{¶2} R.P.B. was born on April 29, 1993 to appellant (Father) and his then wife, appellee (Mother), who were living in Brazil at the time. When R.P.B. was two years old, Father and Mother separated, at which time Mother retained custody of R.P.B. and Father visited him regularly. In 2001, a Brazilian court granted Father and Mother a divorce. Under the terms of the divorce decree, Mother was granted custody of R.P.B. and Father was granted parenting time with him on weekends and summers. Mother subsequently married Scott Farley, and in 2002, Father agreed to allow Mother and Scott to take R.P.B. with them to the United States after Mother agreed to return R.P.B. to Brazil for yearly visits with Father.

{¶3} In 2004, Mother planned a trip to Brazil and offered Father a daytime visit with R.P.B. Upset at being offered only a short time to visit with his son who he had not seen at all the previous year, Father threatened not to allow R.P.B. to return to the United States if he came to Brazil. Since then, Mother has refused to allow R.P.B. to travel to Brazil.

{¶4} In 2006, Scott contacted Father and requested his consent to adopt R.P.B. Father refused. In August of that year, Scott filed a petition for adoption in the Warren County Probate Court, claiming that Father's consent was unnecessary. That petition is presently stayed, pending the outcome of this case.

{¶5} In September 2007, Father, seeking to enforce his visitation rights with R.P.B., filed a "Petition for Access to Minor Child" pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the ICARA.

{¶6} A hearing was held on Father's petition in July 2008. In November of

that year, the magistrate issued a decision finding that Father was entitled to visit R.P.B. and that Mother had wrongfully retained R.P.B. in the United States. However, the magistrate refused to order R.P.B. to return to Brazil to visit with Father. Instead, the magistrate ordered that Father be permitted to travel to the United States to visit R.P.B. at least twice per year for a minimum of five consecutive days per visit and that Mother pay for Father's travel expenses for the visits. The magistrate also ordered Mother to reimburse Father for his airline ticket to attend the July 2008 hearing held on Father's petition.

{¶7} Mother filed objections to the magistrate's decision. Before the juvenile court ruled on them, Mother, in May 2009, moved to dismiss Father's petition on the ground that under Article 4 of the Hague Convention, the Convention ceased to apply when R.P.B. turned 16 years old on April 29, 2009, and therefore the juvenile court no longer had jurisdiction to rule on Father's petition. The juvenile court agreed and dismissed Father's petition.

{¶8} Father now appeals, assigning the following as error:

{¶9} Assignment of Error No. 1:

{¶10} "THE TRIAL COURT ERRED TO THE PREJUDICE OF FATHER BY DISMISSING FATHER'S PETITION FOR PARENTING TIME."

{¶11} Father concedes that the Hague Convention "is clearly inapplicable to children when they reach the age of sixteen," but contends that under Article 29 of the Convention, the juvenile court retained jurisdiction to grant him relief under state law, and therefore the court erred or abused its discretion by dismissing what he is now calling his "petition for parenting time." We disagree with this argument.

{¶12} Father did not bring a petition for parenting time pursuant to state law,

but instead, a petition for "access rights" under the Hague Convention as implemented by ICARA. "The term "rights of access" means visitation rights." ICARA, Section 11602 (7), Title 42, U.S. Code. One of the objectives of the Hague Convention is to ensure that access rights or visitation rights under the laws of one country are "effectively respected" in other countries. See Article 1 of the Hague Convention.

{¶13} Article 4 of the Hague Convention states that "[t]he Convention shall cease to apply when the child attains the age of 16 years." Moreover, courts have held that the Hague Convention ceases to apply when the child attains the age of 16 years even if the petition in which relief is sought was filed *before* the child turned 16. See, e.g., *Mohamud v. Guuleed* (E.D.Wisconsin 2009), No. 09-C-146, at p.3. See, generally, and *Gaudin v. Remis* (C.A.9, 2005), 415 F.3d 1028, 1037.

{¶14} Here, Father did not invoke the jurisdiction of the juvenile court in any way other than the Hague Convention, and did not even mention state law until Mother moved to dismiss his petition under Article 4 of the Hague Convention. When the juvenile court discovered that it no longer had jurisdiction over Father's petition when R.P.B. attained the age of 16, the juvenile court had no authority to take any further action on Father's petition other than to dismiss it.

{¶15} Article 29 of the Hague Convention states:

{¶16} "This Convention shall not preclude any person * * * who claims that there has been a breach of * * * access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention."

{¶17} Presumably, Article 29 would have permitted Father to bring a claim

under state law, as well as under the Hague Convention as implemented by ICARA, but he did not do so. Instead, as the trial court stated, Father's case "was pled, tried, and decided pursuant to the Hague Convention." When R.P.B. attained the age of 16, the Hague Convention ceased to apply, and the juvenile court ceased to have jurisdiction over this case. See *Mohamud*, No. 09-C-146 at p.3; *Gaudin*, 415 F.3d at 1037.

{¶18} Once the juvenile court was divested of jurisdiction over Father's petition, the court no longer had authority to take any action on the petition other than to announce the fact that it had been divested of jurisdiction to rule on Father's petition and then dismiss it. See *Steel Co. v. Citizens for a Better Environment* (1998), 523 U.S. 83, 94-95, 118 S.Ct. 1003, quoting *Ex parte McCardle* (1868), 7 Wall. 506, 514, 19 L.Ed. 264 ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause"). Consequently, the juvenile court did not err when it dismissed Father's petition.

{¶19} Therefore, Father's first assignment of error is overruled.

{¶20} Assignment of Error No. 2:

{¶21} "THE TRIAL COURT ERRED TO THE PREJUDICE OF FATHER BY NOT ORDERING MOTHER TO REIMBURSE FATHER'S AIRLINE TICKET FOR THE JULY 16, 2009 TRIAL."

{¶22} Father argues that even if the juvenile court was correct in dismissing his petition because it lost jurisdiction when R.P.B. turned 16, the court erred by not affirming the portion of the magistrate's decision ordering Mother to reimburse Father

for his airline ticket to attend the July 2008 hearing, because the hearing occurred prior to R.P.B.'s 16th birthday, and therefore any order issued by the magistrate prior to that event is enforceable. We disagree.

{¶23} Juv.R. 40(D)(4)(a) provides that "[a] magistrate's decision is not effective unless adopted by the court." In this case, the juvenile court approved and adopted the magistrate's decision at the time the decision was issued, as permitted under Juv.R. 40(D)(4)(b). However, the juvenile court granted Mother a reasonable extension of time to file objections to the magistrate's order, as permitted under Juv.R. 40(D)(5), and stayed the magistrate's decision pending its disposition of the objections.

{¶24} Before the juvenile court issued a final ruling on Mother's objections, the juvenile court, at Mother's request, dismissed Father's petition on the basis that the court was divested of jurisdiction to rule on the petition once R.P.B. turned 16. When the juvenile court was divested of jurisdiction over Father's petition, the court no longer had authority to take any action on the petition other than to announce that fact and then dismiss the petition. See *Steel Co.*, 523 U.S. at 94-95, 118 S.Ct. 1003, quoting *Ex parte McCardle*, 7 Wall. at 514.

{¶25} Therefore, Father's second assignment of error is overruled.

{¶26} Judgment affirmed.

YOUNG and HENDRICKSON, JJ., concur.

