

[Cite as *Phlipot v. James*, 2009-Ohio-5306.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
DARKE COUNTY**

ERIC M. PHLIPOT	:	
	:	Appellate Case No. 09-CA-04
Plaintiff-Appellant	:	
	:	Trial Court Case No. 20840116
v.	:	
	:	(Juvenile Appeal from
JASMINE JEAN JAMES, et al.	:	Common Pleas Court)
	:	
Defendant-Appellees	:	
	:	

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OPINION

Rendered on the 2<sup>nd</sup> day of October, 2009.

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FRENCH, J. (by assignment)

{¶ 1} Plaintiff-appellant, Eric M. Phlipot, appeals the judgment of the Darke County Court of Common Pleas, Juvenile Division, which dismissed his complaint for custody, support, and related orders against defendant-appellee, Jasmine Jean James. Having determined that the trial court lacked jurisdiction, we affirm.

{¶ 2} Eric and Jasmine met while Eric was in the United States Air Force and

stationed in Alaska. In June 2005, Eric was discharged from the Air Force, and he returned to Ohio. Jasmine came to Ohio in September 2005 to be with Eric, but when the relationship did not work out, she returned to Alaska in late 2005. In the meantime, however, she had become pregnant with Eric's child. That child, T., was born in Alaska on June 6, 2006.

{¶ 3} At the time T. was born, Eric was working as a civilian heavy equipment operator in Iraq. Although Eric had not seen Jasmine during her pregnancy, he arrived in Alaska shortly after T.'s birth. He executed an Affidavit of Paternity in Alaska on June 20, 2006, and he was designated as T.'s father on her birth certificate. Eric brought T. to Ohio for a two-week visit in December 2006. While working in Iraq, Eric sent Jasmine money for T.'s care. Eric testified that he visited Jasmine and T. when he had leave from his job in Iraq. He visited every four months for two weeks. He kept the job in Iraq until May 2008.

{¶ 4} Eric brought T. to Darke County, Ohio, to visit his family in June 2008. Shortly thereafter, Jasmine joined Eric and T. in Ohio. As we detail below, Eric and Jasmine disagree about the circumstances surrounding Jasmine's move and their intentions with respect to it.

{¶ 5} By August 2008, Jasmine wanted to return to Alaska. On August 14, 2008, Eric filed his complaint for custody against Jasmine. Jasmine testified that, although Eric had agreed to purchase airline tickets for her and T. to return to Alaska if their relationship did not work out, Eric would only purchase a return ticket for Jasmine. Unable to purchase a ticket for T., Jasmine returned to Alaska alone. T. remained in Ohio with Eric.

{¶ 6} On October 7, 2008, Jasmine filed a motion to dismiss Eric's complaint for lack of jurisdiction. The trial court held a hearing on February 26, 2009, and issued a decision granting the dismissal on April 15, 2009. The court ordered Eric to return T. to Jasmine in Alaska within 30 days.

{¶ 7} Eric filed a timely appeal, and he raises the following assignment of error:

{¶ 8} "THE JUVENILE COURT ABUSED ITS DISCRETION BY FINDING THAT IT DID NOT HAVE JURISDICTION TO MAKE A CHILD CUSTODY DETERMINATION PURSUANT TO OHIO R.C. 3127.15(A), WHICH FINDING WAS CONTRARY TO LAW."

{¶ 9} In its decision, the trial court determined that it did not have jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("the Act"), as codified in R.C. Chapter 3127. We will reverse a trial court's decision whether to exercise jurisdiction under the Act only upon a showing of an abuse of discretion. *Beck v. Sprik*, 9th Dist. No. 07CA0105-M, 2008-Ohio-3197, ¶7; *In re Collins*, 5th Dist. No. 06CA000028, 2007-Ohio-4582, ¶15.

{¶ 10} The Supreme Court of Ohio has stated that the Act "provides four types of initial child-custody jurisdiction: home-state jurisdiction, significant-connection jurisdiction, jurisdiction because of declination of jurisdiction, and default jurisdiction."

*Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, ¶31. More specifically, R.C. 3127.15(A) provides that, with exceptions not relevant here, a court in Ohio has jurisdiction to make an initial decision in a child custody proceeding only if one of the following applies: (1) (a) Ohio is the home state of the child on the date the

proceeding commenced or (b) Ohio was the home state of the child within six months before the proceeding's commencement, the child is absent from Ohio, and a parent or guardian continues to live in Ohio; (2) a court of another state does not have jurisdiction as the child's home state or a court of the child's home state has declined to exercise jurisdiction because Ohio is the more appropriate forum and both of the following are true: (a) the child and one of her parents has a "significant connection" with Ohio other than mere physical presence; and (b) substantial evidence is available in Ohio concerning her care, protection, training, and personal relationships; (3) all courts having jurisdiction as a home state or as a "significant connection" state have declined to exercise jurisdiction on the ground that a court of Ohio is the more appropriate forum; or (4) no court of any other state would have jurisdiction under (1), (2) or (3).

{¶ 11} As reflected in R.C. 3127.15(A), the Act gives jurisdictional priority to the home state. *Rosen* at ¶21. For these purposes, "home state" means "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of a child custody proceeding." R.C. 3127.01(B)(7). A period of temporary absence of the child or parent counts as part of the six-month period. *Id.* Although R.C. 3127.01(B)(7) refers to "at least six consecutive months," in *Rosen*, the Supreme Court interpreted "home state" to mean the state in which the child lived "within" six months prior to the commencement of proceedings. See *Rosen* at ¶35-42.

{¶ 12} Here, the trial court determined that neither R.C. 3127.15(A)(1) nor (2) applied. Conceding that Ohio was not T.'s home state when he filed his complaint,

Eric agrees that R.C. 3127.15(A)(1) does not apply.

{¶ 13} Although the trial court did not explain its decision in detail, the court necessarily determined that R.C. 3127.15(A)(2) did not apply because Alaska is T.'s home state for purposes of the Act. The court expressly found that "Alaska has jurisdiction." Eric contends, however, that Alaska was not T.'s home state at the time of his filing because Jasmine had left Alaska with the intention of making Ohio a permanent home for her and T. and that she had abandoned their Alaska domicile. Eric argues further that, since neither Ohio nor Alaska was T.'s home state at the time of the filing, R.C. 3127.15(A)(4) grants default jurisdiction to Ohio. We disagree.

{¶ 14} Jasmine testified that she did not intend to leave Alaska permanently when she came to Ohio in June 2008. Instead, she intended to come to Ohio for "a trial period and figure out what was going to happen" between her and Eric. (Tr. 19.) She arrived with just a suitcase, and she stayed about four to six weeks. In response to her counsel's questions about her intentions, she said that she had not given up her right to an annual dividend from the state of Alaska, sold the property she owns in Alaska or closed her bank accounts in Alaska. As for making Ohio T.'s permanent home, Jasmine testified that she had not brought T.'s winter clothes or other belongings to Ohio, and she had not transferred any of T.'s medical records from Alaska to Ohio. While Eric testified that Jasmine intended to move to Ohio permanently, Jasmine's testimony provides competent, credible evidence on which the trial court could make its implicit finding that Alaska was T.'s home state when Eric filed his complaint in August 2008 or within six months prior to that filing.

Therefore, because Alaska has home-state jurisdiction under R.C. 3127.15(A)(2), the trial court did not have default jurisdiction under R.C. 3127.15(A)(4).

{¶ 15} Finally, having addressed R.C. 3127.15(A)(1), (2), and (4), we note that the trial court did not have jurisdiction under R.C. 3127.15(A)(3) either. That section would grant jurisdiction to an Ohio court if another court having jurisdiction had declined to exercise jurisdiction on the ground that Ohio was the more appropriate forum. As Eric concedes, no other proceedings have been filed. Therefore, no other court has declined to exercise jurisdiction, and no jurisdiction arises under R.C. 3127.15(A)(3) or, for the same reason, under the second part of R.C. 3127.15(A)(2).

{¶ 16} For all these reasons, we overrule Eric's assignment of error. We affirm the judgment of the Darke County Court of Common Pleas, Juvenile Division.

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GRADY and FROELICH, JJ., concur.

(Hon. Judith L. French, judge from the Tenth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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