

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

J.B.

Court of Appeals No. L-13-1269

Appellant

Trial Court No. 13234424

v.

L.L.

DECISION AND JUDGMENT

Appellee

Decided: May 16, 2014

* * * * *

Robert P. Soto, for appellant.

Matthew O. Hutchinson, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an accelerated appeal from a November 20, 2013 judgment of the Lucas County Common Pleas Court, Juvenile Division, determining that, “jurisdiction is more appropriate with the Michigan court,” thereby declining to exercise jurisdiction in a child custody dispute which had been separately filed by the mother in Michigan, where she and the subject child reside, and by the father in Ohio, where he resides.

{¶ 2} This disputed jurisdictional judgment was made pursuant to the express authority established by R.C. 3127.21, the forum non conveniens statute. Pursuant to R.C. 3127.21(A), Ohio trial courts may decline jurisdiction in certain child custody cases upon determining a more convenient forum is available in conjunction with factors enumerated in R.C. 3127.21(B).

{¶ 3} In the instant case, given separate filings in separate jurisdictions, the Ohio trial court and the corresponding Michigan trial court cooperatively communicated with one another on the matter and determined that the Oakland County Michigan Circuit Court was the more convenient forum for this case. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 4} Appellant, J.B., father of the minor child, sets forth the following four assignments of error:

FIRST ASSIGNMENT OF ERROR: THE TRIAL COURT
ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE
ERROR WHEN IT FOUND THAT OHIO WAS AN INCONVENIENT
FORUM AND MICHIGAN WAS A MORE CONVENIENT FORUM.

SECOND ASSIGNMENT OF ERROR: THE TRIAL COURT
ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE
ERROR WHEN IT FAILED [TO] PROVIDE APPELLANT WITH
NOTICE AND AN OPPORTUNITY TO BE HEARD BEFORE
DECLINING JURISDICTION.

THIRD ASSIGNMENT OF ERROR: THE TRIAL COURT
ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE
ERROR WHEN IT FOUND THAT APPELLEE DID NOT ENGAGE IN
UNJUSTIFIABLE CONDUCT PURSUANT TO OHIO REVISED CODE
§ 3127.22.

FOURTH ASSIGNMENT OF ERROR: THE TRIAL COURT
ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE
ERROR BY NOT FINDING THAT MICHIGAN ONLY POSSESSED
LIMITED EMERGENCY JURISDICTION.

{¶ 5} The following undisputed facts are relevant to this appeal. In 2010, L.L., a 17-year-old Michigan girl with a tenth grade education met a Toledo man, J.B., on a dating website known as “My Yearbook.com.” J.B. represented himself to be 23 years of age. In actuality, J.B. was not 23 years of age. He was 32 years of age, nearly a decade older than he had represented and 15 years older than L.L. The two began to communicate with one another regularly upon first meeting via the online website.

{¶ 6} By September 2010, an intimate, in-person relationship began to develop between the parties. Shortly thereafter, J.B. requested that L.L. move from her home state of Michigan into his Toledo, Ohio home. J.B. is the owner of a successful Toledo technology business specializing in various covert recording devices.

{¶ 7} Upon moving in with J.B., L.L. ended her work towards her GED and began working for J.B.’s business. L.L. was furnished a mobile phone and a vehicle to drive by

J.B. Notably, J.B. equipped the vehicle and devices provided to his new girlfriend with clandestine recording and monitoring devices.

{¶ 8} Approximately one year after moving in with J.B., L.L. became pregnant. Despite being a seemingly successful business owner, J.B. would not pay the medical expenses of his pregnant girlfriend, necessitating her enrollment on public assistance during the pregnancy. The parties continued to cohabit prior to the birth. They did not get married.

{¶ 9} On July 26, 2012, J.B. Jr., the child whose custody underlies this case, was born. J.B. agreed to purchase necessary items for the child if he was personally present during any purchases and if L.L. removed herself from the state assistance programs. The record reflects that the relationship between the parties degenerated from strained to volatile in the year following the birth of their son. In conjunction with the installation of spyware devices by J.B. upon the vehicle and mobile phone he furnished to L.L., he would sometimes threaten her with punitive material actions when he was displeased with her in some way, such as threatening to confiscate the vehicle and mobile phone he had provided to her.

{¶ 10} Consistent with the escalating instability of the situation, J.B. threatened to remove L.L. from his Toledo home where she resided during one of their arguments following a party they held for their son's first birthday. The following day, on July 27, 2013, L.L. packed up their infant child and moved back home to Oakland County,

Michigan, to live with relatives. She continues to live there with their son in the home of her relatives.

{¶ 11} On August 2, 2013, L.L., appellee, filed her complaint for custody, paternity, and child support in the Oakland County Michigan Circuit Court. On August 7, 2013, J.B., appellant, filed his complaint and supporting affidavit for custody and visitation in Lucas County Common Pleas Court, Juvenile Division.

{¶ 12} On August 12, 2013, it was determined that service upon L.L. in Michigan was insufficient in the Ohio case. It was continued until September 23, 2013. In the interim, on August 26, 2013, the first hearing was held in the Michigan case and the parties began to present testimony to the Michigan trial court. The hearing could not be completed on that date and interim orders were issued.

{¶ 13} Subsequent to the Michigan hearing, the Michigan trial judge contacted the Ohio trial court in order for both involved trial courts to collaboratively discuss the matter and determine an appropriate course of action given parallel cases filed on the same matter in separate jurisdictions. The more convenient forum needed to be determined.

{¶ 14} On August 27, 2013, the Lucas County trial court executed a magistrate's decision declining jurisdiction. The trial court explicitly found that, "Based upon discussion with Judge Karen McDonald of the Oakland County Circuit Court in Pontiac, Michigan, Judge McDonald and this court agree that jurisdiction is more properly with the Michigan Court and that court will therefore proceed on the filings there where interim orders have been issued by Judge McDonald."

{¶ 15} On September 10, 2013, J.B. filed his objections to the trial court’s jurisdictional decision. On November 20, 2013, the trial court issued a judgment denying appellant’s objections and specifically finding that jurisdiction was more appropriate with Michigan pursuant to R.C. 3127.21(A). The trial court further found that a formal hearing was not required, that the parties had the opportunity to and did submit evidence prior to the decision pursuant to R.C. 3127.21(B), that appellant did not demonstrate “unjustifiable conduct” in appellee’s relocation to Michigan, and lastly found that invoking emergency jurisdiction in Lucas County would be improper given the determination that Michigan is the proper jurisdiction pursuant to R.C. 3127.21. This appeal ensued.

{¶ 16} In appellant’s first and primary assignment of error, he maintains that the trial court abused its discretion in determining that the current residential county of the mother and subject child, Oakland County, Michigan, is the more convenient forum in which to resolve the case in comparison to Lucas County, Ohio, the current residential county of the father. We are not persuaded.

{¶ 17} It is well-established that forum non conveniens disputes in child custody cases are statutorily governed. As specifically pertaining to the jurisdictional judgment disputed in the instant case, Ohio has adopted the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) and incorporated it into the Ohio Revised Code. Pursuant to R.C. 3127.21, an Ohio trial court may decline to exercise potential home state

jurisdiction if it determines that a court of another state is a more convenient forum under the facts and circumstances of the case as applied to statutorily enumerated factors.

{¶ 18} R.C. 3127.21(B) delineates that the factors to be considered in assessing which jurisdiction is more suitable in cases involving competing child custody forums include: (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; (2) the length of time the child has resided outside the home state; (3) the distance between the court in the home state and the court in the alternative state that would assume jurisdiction; (4) the relative financial circumstances of the parties; (5) any agreement of the parties as to which state should assume jurisdiction; (6) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child; (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and (8) the familiarity of the court of each state with the facts and issues in the pending litigation. R.C. 3127.21(B).

{¶ 19} We have reviewed and considered the record of evidence in this matter, applying it to the statutory factors relevant to this case. We find that the balance of the relevant factors clearly weigh in favor of Oakland County, Michigan, as the more convenient forum under the facts and circumstances of this case.

{¶ 20} Relative to the first statutory factor, we find that the record reflects that the parties were involved in a volatile relationship in which the young mother with a tenth grade level of education relied exclusively upon the father for every facet of her life

during their term of cohabitation. The mother worked for a company owned by the father, relied upon him for income, relied on him to provide a vehicle that he owned for her to drive, relied on him to provide a mobile phone for her use, lived in a home owned solely by him, and was subjected to systematic surveillance by him. Interestingly, some of the secretly recorded conversations have been furnished by appellant himself in support of this matter.

{¶ 21} We have thoroughly reviewed the record of evidence. We note that the transcripts of the secret recordings reflect the mother to engage in the conversations in a straightforward and conciliatory manner. Conversely, we note that the transcripts reflect the father who was recording the conversations in a transparent effort to bolster his legal position to be calculating and self-serving in the discussions.

{¶ 22} The record reflects that the mother's relocation with the child upon the volatile end of the relationship back to her home state of Michigan was reasonable. The record also reflects pervasive control exercised by the father over the mother throughout the relationship. These facets of this case reflect that Michigan is better situated to protect the parties and the child.

{¶ 23} With respect to the second factor, the record reflects that the mother and child have resided in the Michigan jurisdiction since July 27, 2013, and intend to continue residing there going forward. The record reflects that the mother's relatives and primary support system are in Michigan and that the mother was a resident of Michigan

prior to meeting the father online in 2010 when she was 17 years of age. This likewise reflects jurisdiction in Michigan to be more proper.

{¶ 24} With respect to the third factor, the record reflects that the distance between the two jurisdictions at issue is approximately 90 minutes for travel time. The record reflects that the mother owns no vehicle, lives with relatives, and is currently working on her GED. The record reflects that the father owns a successful business, home, and motor vehicles. Thus, it would have been far less convenient for jurisdiction to have remained in Lucas County, Ohio. For similar reasons, the related fourth factor, the relative financial positions of the parties, also reflects that Oakland County, Michigan, is the more convenient forum in this case.

{¶ 25} Regarding the fifth factor, the record reflects no concurrence between the parties regarding which state should assume jurisdiction in this matter. Likewise, the child is less than two years of age and the two locations are not particularly far apart or inconvenient to one another and thus, the sixth factor pertaining to the location of evidence, including any potential testimony of the child, has no significant relevance to this case.

{¶ 26} The record encompasses no objective or compelling indicia that could conceivably be construed so as to demonstrate that Michigan would be unable to handle the matter expeditiously or that Michigan could not be sufficiently familiar with the facts and issues so as to resolve the case as pertains to the seventh and eighth factors for determining jurisdiction.

{¶ 27} Accordingly, the balance of the evidence as applied to the relevant statutory factors clearly support the disputed trial court jurisdictional judgment finding Oakland County, Michigan, to be the more convenient forum and declining to exercise home state jurisdiction in Lucas County, Ohio, pursuant to R.C. 3127.21. The record is devoid of evidence demonstrating the decision to be arbitrary, unreasonable, or unconscionable. We find appellant's first assignment of error not well-taken.

{¶ 28} In appellant's second assignment of error, he contends that the trial court abused its discretion by not conducting a formal hearing prior to arriving at the disputed judgment. We do not concur.

{¶ 29} At the outset, we note that R.C. 3127.21(B), which governs this matter, does not mandate a formal hearing to be conducted prior to a forum conveniens jurisdictional determination.

{¶ 30} The record reflects that the trial court had a detailed affidavit and pleadings from appellant before it prior to reaching the decision. In addition, the record reflects that the trial court engaged in a detailed conference call with the Michigan trial court to discuss the matter and collaborate on information relative to the decision.

{¶ 31} Notably, the trial court further permitted the parties to submit additional evidence prior to the final decision. The record reflects that appellant availed himself and submitted a dozen additional exhibits along with his formal objections to the magistrate's preliminary decision on the matter. The record reflects that the trial court unambiguously

conveyed that it had reviewed and considered the evidence and it expressly referenced the submitted exhibits in denying appellant's objections.

{¶ 32} We find that the record is devoid of any evidence of demonstrable prejudice to appellant in connection to the jurisdictional judgment before this court. We find appellant's second assignment of error not well-taken.

{¶ 33} In appellant's third assignment of error, he contends that the trial court abused its discretion in determining that the mother did not engage in "unjustifiable conduct." This issue requires evaluation of whether the record reflects evidence establishing that the mother engaged in conduct reflective of an "attempt to create jurisdiction in the state by removing the child from the child's home state, secreting the child, retaining the child, or restraining or otherwise preventing the child from returning to the child's home state in order to prevent the other parent from commencing a child custody proceeding in the child's home state." R.C. 3127.21(D).

{¶ 34} The record reflects that the mother possesses a tenth grade education, lived in a home owned by the father, worked at a business owned by him, drove a vehicle owned by him, and used a mobile phone provided by him. The record reflects that when the father initially met the 17-year-old mother online he represented himself to be 23 years of age. The record reflects the father was actually a 32 year-old Ohio surveillance technology business owner. The record reflects that the father took the extreme measures of installing tracking devices and recording devices on the vehicle and devices furnished to the mother.

{¶ 35} Contrary to appellant’s assertions, it is not plausible to maintain that the mother’s return to Michigan constituted some sort of tactical strategy to create legal jurisdiction. We find appellant’s third assignment of error not well-taken.

{¶ 36} In appellant’s fourth assignment of error, he contends that the trial court abused its discretion in declining to hold that Michigan only had limited, emergency jurisdiction in the matter. For clarity, we note that the Ohio trial court held, “Regarding counsel’s fourth contention that emergency jurisdiction exists pursuant to the UCCJEA, the Court finds that since the Michigan court has begun proceedings in this matter, invoking emergency jurisdiction in this [Ohio] Court would be improper.”

{¶ 37} We reiterate that the disputed trial court decision held that pursuant to R.C. 3127.21(A) and (B), Lucas County, Ohio, was properly determined to be an inconvenient forum and Oakland County, Michigan, was determined to be the more convenient forum for this case. There is no objective legal basis from which to assert that the only potential jurisdiction of Oakland County, Michigan, in this matter was on a limited, emergency basis. We find appellant’s fourth assignment of error not well-taken.

{¶ 38} Wherefore, we find that the record demonstrates no abuse of discretion, no prejudice, and no impropriety in the trial court judgment finding Oakland County, Michigan, to be the more convenient forum in this matter pursuant to R.C. 3127.21. The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
