

[Cite as *Slaughter v. Slaughter*, 2009-Ohio-6110.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93227

KENEETA S. SLAUGHTER

PLAINTIFF-APPELLEE

vs.

ALLEN SLAUGHTER III

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Division of Domestic Relations
Case No. DR-323884

BEFORE: Jones, J., Stewart, P.J., and Dyke, J.

RELEASED: November 19, 2009

JOURNALIZED:

ATTORNEY FOR APPELLANT

John D. Zoller
Zoller & Biacsi
490 Caxton Building
812 Huron Road
Cleveland, Ohio 44115

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Kestra Smith
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FOR CSEA

Mark R. Marshall
Assistant Prosecuting Attorney
P.O. Box 93923
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Appellant-defendant, Allen Slaughter III (“Slaughter III”), appeals the decision of the lower court. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the lower court.

STATEMENT OF THE CASE AND THE FACTS

{¶ 2} On or about August 25, 2008, appellee, Keneeta Slaughter (“Slaughter”), moved to Augusta, Georgia. Shortly after her arrival, Slaughter requested child support services from the state of Georgia. At the time Slaughter requested child support services she was a recent Georgia resident. Counsel for appellee notes in appellee’s brief that, to the best of counsel’s knowledge, appellee continues to reside in Georgia.

{¶ 3} On November 18, 2008, a support petition from the state of Georgia under the Uniform Interstate Family Support Act (UIFSA) on behalf of Slaughter was filed in the Cuyahoga County Domestic Relations Court. The petition requested the establishment of an order for child support against Slaughter III with respect the minor child, E.S.¹

{¶ 4} A hearing was held in the trial court on January 22, 2009. The hearing resulted in the parties entering into an agreed judgment entry for genetic testing on January 28, 2009. The results of those tests established that Slaughter III is the biological father of E.S. On February 26, 2009, after paternity had been established, and nearly three months after the action had commenced,

¹Born September 19, 2007.

Slaughter III filed an answer to UIFSA and counterclaim for divorce in the UIFSA action.²

{¶ 5} On April 9, 2009, the trial court, sua sponte, dismissed appellant's UIFSA counterclaim for divorce. The trial court found that it lacked subject matter jurisdiction within the confines of a support action under the UIFSA over an action for divorce. On April 30, 2009, appellant filed a timely notice of appeal with respect to the lower court's dismissal of his UIFSA divorce counterclaim.

{¶ 6} Appellant now appeals.

Assignments of Error

{¶ 7} Appellant assigns two assignments of error on appeal:

{¶ 8} "[1.] The decision of the trial court to sua sponte dismiss counterclaimant-appellant's counterclaim for divorce deprived counterclaimant-appellant of his due process rights.

{¶ 9} "[2.] The trial court erred in utilizing *Yusuf v. Omar* as the primary legal authority warranting dismissal of appellant's counterclaim as that case is factually and legally distinguishable from the present case."

LEGAL ANALYSIS

{¶ 10} Due to the substantial interrelation between appellant's two assignments of error, we shall address them together below. Appellant argues

²Appellant stated in his answer and counterclaim that Slaughter "was a resident of the State of Ohio and Cuyahoga County during the six (6) months proceeding the commencement of this action." However, the record demonstrates at the time the UIFSA action was filed on November 18, 2009, Slaughter was a resident of the state of Georgia.

that the lower court erred in sua sponte dismissing his counterclaim for divorce, and utilizing *Yusuf v. Omar*³ as the primary legal authority. However, contrary to appellant's claims, a review of the evidence demonstrates that the lower court acted properly.

UIFSA – Uniform Interstate Family Support Act

{¶ 11} An action under the UIFSA is unlike other child support actions. Pursuant to R.C. 3115.12, an action is commenced when an out of state resident or support enforcement agency forwards a complaint (interstate petition) to the state of Ohio for filing. Under R.C. 3115.13, a minor's parent, as well as a guardian or legal representative of a minor child may maintain a UIFSA action.

{¶ 12} The Ohio court upon receipt and filing of the interstate support petition, obtains service on the respondent-defendant, and proceeds to establish the respective paternity and support orders upon the evidence or agreement of the parties. R.C. 3115.16. The physical presence of a plaintiff (or the minor child) is not required for the issuance, enforcement, or modification of a support order as well as the determination of paternity under UIFSA. R.C. 3115.27(A). It is also important to note that Ohio's UIFSA statutes, effective January 1, 1998, replaced Ohio's Uniform Reciprocal Enforcement of Support Act (URESAs).

Lower Court's Dismissal of Appellant's Counterclaim

{¶ 13} The state does not have personal jurisdiction over a nonresident parent in which to grant divorce or divide marital property under the Uniform

³Franklin App. No. 06AP-416, 2006-Ohio-6657.

Interstate Family Support Act (UIFSA). The UIFSA only grants *limited* personal jurisdiction over a nonresident parent to determine issues of child and spousal support and custody. (Emphasis added.) R.C. 3115.03(E), *Sneed v. Sneed*, 164 Ohio App.3d 496, 2005-Ohio-6413. In *Sneed*, the court provided the following:

“Accordingly, the UIFSA, which includes R.C. 3115.03 and 3115.01, grants a trial court only limited jurisdiction over a nonresident individual, once personal jurisdiction has been established. Because a trial court’s jurisdiction is limited according to the exact language provided by R.C. 3115.03 and 3115.01, *the trial court had no authority to grant a decree of divorce or to make a division of property.*”

“In sum, while we are satisfied that there was sufficient evidence to establish personal jurisdiction over appellant pursuant to R.C. 3115.03, we find that the trial court went beyond the limited jurisdiction that that statute provides.” (Emphasis added.)

{¶ 14} The *Sneed* court specifically found that an Ohio court was prohibited in a UIFSA case from granting a divorce or dividing marital property because its jurisdiction was limited to the exact language of R.C. 3115.03 and R.C. 3115.01.

{¶ 15} Appellant argues that *Yusuf* is inapplicable to the case at bar. However, appellant’s argument is misplaced. *Yusuf* was cited, in part, to demonstrate that there is no provision in the UIFSA contemplating a court’s consideration of matters of *divorce*, including the division and distribution of marital assets and debts, visitation or custody. Appellant’s argument that the wife in *Yusuf* alleged that her husband moved from South Carolina to Minnesota four years earlier and took the children, is not the critical error appellant alleges it to be, nor is it the main point of the case.

{¶ 16} *Yusuf*, supra, rejected the argument that a counterclaim for divorce was properly before the court in a UIFSA action. *Yusuf* provided the following:

“While the Act’s purpose is no longer explicit, the UIFSA similarly manifests the Ohio legislature’s intent to provide a practical and efficient method for enforcing or establishing interstate support obligations. Despite appellant’s reliance on the reference in R.C. 3115.16(B)(12) to ‘any other available remedy[,]’ *no provision in the UIFSA contemplates a court’s consideration of matters of divorce, including the division and distribution of marital assets and debts, visitation or custody. Rather, like many Ohio courts observed with respect to the URESA, we conclude that the UIFSA limits the court’s subject-matter jurisdiction to matters of paternity and support. To hold otherwise would conflict with Ohio precedent concerning URESA, the express limitation on jurisdiction, and the efficient establishment and enforcement of support orders. Thus, we reject appellant’s arguments that her counterclaim for divorce was properly before the trial court in the UIFSA proceeding below.*”

(Emphasis added.)

{¶ 17} In addition, *Shanyfelt v. Shanyfelt* (1997), 118 Ohio App.3d 243, specifically held that causes under URESA confer subject matter jurisdiction over issues of paternity and support; related matters such as visitation and custody are not within the court’s purview. The same position was set forth in the cases of *Thorley v. Thorley* (1991), 77 Ohio App.3d 275 and *Redden v. Fraley* (May 6, 1993), Scioto App. No. 2066.

{¶ 18} Moreover, a review of the record demonstrates that, on or about August 25, 2008, Slaughter and her son left Ohio and moved to Georgia. On September 16, 2008, Slaughter applied for child support services in Georgia. As a result, an interstate support transmittal was sent to Ohio and filed in the lower court on November 18, 2008.

{¶ 19} Under Ohio law, a resident means one who possesses a domiciliary residence. In other words, a residence accompanied by an intention to make that state a permanent home. *Saalfeld v. Saalfeld* (1949), 86 Ohio App. 225. As such it requires two components: (1) an actual residence in the state, and (2) an intention to make that state a permanent home. *Coleman v. Coleman* (1972), 32 Ohio St.2d 155.

{¶ 20} There is a change in domicile (residence) when an individual actually abandons the first domicile coupled with the intention not to return to it, and acquires a new domicile with actual residence, with the intention to make the state of jurisdiction a permanent home. Therefore, when Slaughter moved with her son in August of 2008 with the intention of making Georgia their permanent home, they ceased to be residents of the state of Ohio. Their Georgia residency continued throughout November 18, 2008, when this UIFSA action was commenced.

{¶ 21} Under R.C. 3127.01, a child's home state relative to issues of custody and visitation means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the commencement of a child custody proceeding. Under that definition, Ohio was not E.S.'s home state at the time this UIFSA action commenced on November 18, 2008. Nor can we find that the filing of a child support action under the UIFSA constitutes a child custody proceeding that would convey to the trial court subject

matter jurisdiction over issues of custody. We do note, however, that the lower court ruling does not bar appellant from filing a separate action for divorce.

{¶ 22} Accordingly, we find no error regarding the lower court's dismissal of appellant's counterclaim for divorce or its reliance on *Yusef*, supra.

{¶ 23} Appellant's first and second assignments of error are overruled.

Judgment affirmed.

LARRY A. JONES, JUDGE

MELODY J. STEWART, P.J., CONCURS
IN JUDGMENT ONLY;
ANN DYKE, J., CONCURS