

[Cite as *In re H.P.*, 2015-Ohio-1309.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101781

IN RE: H.P., ET AL.
Minor Children

[Appeal By N.P., Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. CU-13110589 and CU-13110590

BEFORE: Celebrezze, A.J., S. Gallagher, J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: April 2, 2015

ATTORNEYS FOR APPELLANT

Andrew J. Simon
James L. Simon
Law Office of Andrew J. Simon
6000 Freedom Square Drive
Freedom Square II - Suite 165
Independence, Ohio 44131

ATTORNEYS FOR APPELLEES

For C.J.F.S.-O.C.S.S.

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: Joseph C. Young
Assistant Prosecuting Attorney
Cuyahoga Jobs & Family Services
P.O. Box 93894
Cleveland, Ohio 44101-5984

BY: Timothy W. Clary
Charles Richley Raley, Jr.
Assistant Prosecuting Attorneys
9300 Quincy Avenue
Fourth Floor
Cleveland, Ohio 44106

For M.P.

Joseph J. Lanter
815 Superior Avenue
Suite 1915
Cleveland, Ohio 44114

FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Mother-appellant, N.P. (“Mother”), appeals the judgment of the Cuyahoga County Court of Common Pleas, Juvenile Division, denying her motion to vacate the August 14, 2013 child custody order naming father-appellee, M.P. (“Father”),¹ sole legal custodian of the parties’ minor children. After a careful review of the record, we affirm the judgment of the juvenile court.

I. Statement of the Case and Facts

{¶2} Mother and Father were married on March 22, 2006, in San Diego, California. During their marriage, the parties had two children: H.P., born April 3, 2007, and A.P., born May 8, 2008.

{¶3} In May 2012, the parties began to experience marital difficulties, and Mother and the minor children temporarily moved to North Olmsted, Ohio, to reside with N.P.’s mother. Father remained in California.

{¶4} On November 30, 2012, Mother and the children moved back to California so that Mother and Father could attempt a reunification. After approximately seven months, the parties’ reunification proved unsuccessful, and Mother made arrangements to move back to Ohio with the children. Contemporaneously, Father also made arrangements to move to Ohio to live in a separate residence. Both parties and the children arrived in Ohio on June 30, 2013.

¹Father did not file an appellee brief.

{¶5} On July 23, 2013, Father filed an application to determine custody and visitation of the parties' minor children in the juvenile division of the Cuyahoga County Court of Common Pleas. At the time the motion was filed, the parties were still married.

The juvenile court referred the matter to mediation on August 6, 2013. In mediation, the parties reached an agreement naming Father sole legal custodian of the children. The juvenile court ordered the terms of the mediation into effect in an order dated August 14, 2013.

{¶6} On December 6, 2013, Mother retained counsel and filed a motion to modify the custody order. On December 12, 2013, the trial court determined that no change in circumstances existed to warrant a modification and dismissed Mother's motion to modify without prejudice.

{¶7} On January 30, 2014, Mother filed a complaint for divorce against Father in the Domestic Relations Division of the Cuyahoga County Court of Common Pleas. On February 20, 2014, appellee, Cuyahoga Job and Family Services ("CJFS"), filed a motion to intervene, which was granted.

{¶8} On March 15, 2014, Mother filed a motion to vacate the custody order entered on August 14, 2013. In her motion, Mother asserted that the juvenile division did not have jurisdiction to make a custody determination between married parents. Mother contended that the domestic relations division had exclusive jurisdiction over the matter. Mother further argued that the juvenile court did not have jurisdiction to make a custody determination because California remained the children's "home state" at the

time Father initiated the custody proceedings. On July 25, 2014, the trial court issued a decision denying Mother's motion to vacate.

{¶9} Mother now appeals from the trial court's July 25, 2014 order, raising two assignments of error for review:

I. The trial court erred in failing to vacate its August 14, 2013 order. The order is void ab initio because the Cuyahoga County Juvenile Court does not have jurisdiction to make initial private custody determinations between married parents.

II. The trial court erred in failing to vacate its August 14, 2013 order. At the time the underlying proceeding was commenced, California remained the "home state" of the children under the UCCJEA. As such the trial court lacked jurisdiction under the UCCJEA and its August 14, 2013 order is void ab initio.

II. Law and Analysis

A. Juvenile Court Jurisdiction

{¶10} In her first assignment of error, Mother argues that the trial court erred in failing to vacate its August 14, 2013 order because the juvenile court lacked jurisdiction to make initial custody determinations between married parties. We disagree.

{¶11} "The juvenile court possesses only the jurisdiction that the General Assembly has expressly conferred upon it." *See In re Gibson*, 61 Ohio St.3d 168, 172-173, 573 N.E.2d 1074 (1991), citing Ohio Constitution, Article IV, Section 4(B). The subject-matter jurisdiction of the juvenile court is created and defined in R.C. 2151.23. *See id.*; *see also Rowell v. Smith*, 133 Ohio St.3d 288, 2012-Ohio-4313, 978 N.E.2d 146, ¶ 13. R.C. 2151.23(A)(2) provides that the juvenile court has exclusive

original jurisdiction “[t]o determine the custody of any child not a ward of another court of this state.”

{¶12} In the case at bar, no proceedings between the parties were pending in the jurisdiction of another court at the time the child custody proceedings took place and concluded in the juvenile court. Therefore, although the parties were still married at the time, the juvenile court properly exercised exclusive original jurisdiction over the custody proceedings pursuant to R.C. 2151.23(A)(2).

{¶13} Mother’s first assignment of error is overruled.

B. Jurisdiction under the UCCJEA

{¶14} In her second assignment of error, Mother argues that the trial court erred in failing to vacate its August 14, 2013 order because the juvenile court lacked jurisdiction to enter a judgment under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”). Mother contends that California remained the “home state” of the children at the time the custody proceedings began in Ohio and, therefore, California had exclusive continuing jurisdiction.

{¶15} Normally, a trial court’s decision regarding child custody issues are reviewed by an appellate court under the abuse of discretion standard. *Baxter v. Baxter*, 9th Dist. Lorain No. 10CA009927, 2011-Ohio-4034, ¶ 6, quoting *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988). An appellate court, however, reviews issues relating to subject matter jurisdiction de novo, as such a determination is a matter of law. *In re K.R.J.*, 12th Dist. No. CA2010-01-012, 2010-Ohio-3953, ¶ 16.

{¶16} R.C. 2151.23(F)(1) authorizes a juvenile court to exercise jurisdiction in custody matters in accordance with R.C. 3127.01 to 3127.53 of the UCCJEA. As the title of the Act suggests, R.C. Chapter 3127 sets forth a series of standards and definitions for determining when an Ohio court has jurisdiction, as opposed to a court of another state, to issue a child custody decision. The primary purpose of the UCCJEA is “to avoid jurisdictional competition and conflict with courts of other jurisdictions” in custody matters. *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, 883 N.E.2d 420, ¶ 20, quoting *In re Palmer*, 12 Ohio St.3d 194, 196, 465 N.E.2d 1312 (1984). The UCCJEA gives “jurisdictional priority and exclusive continuing jurisdiction to the home state.” (Citation omitted.) *Id.* In order to strengthen the certainty of home-state jurisdiction, the UCCJEA eliminates the review of subjective factors, such as the child’s best interest, from the original jurisdictional inquiry that existed in the former version of the UCCJEA. *Id.* at ¶ 21. Further, R.C. 3127.15(A) “is the exclusive jurisdictional basis for making a child custody determination by a court of this state.” R.C. 3127.15(B).

{¶17} The UCCJEA, as codified in Ohio, provides four types of initial child-custody jurisdiction: (1) home-state jurisdiction, (2) significant-connection jurisdiction, (3) jurisdiction because of declination of jurisdiction, and (4) default jurisdiction. R.C. 3127.15(A)(1)-(4). *Rosen* at ¶ 31.

{¶18} 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).

{¶19} R.C. 3127.01(B)(7) defines "home state" as the state in which a child lived with a parent * * * for at least six consecutive months immediately preceding the commencement of a child custody proceeding * * *. A period of temporary absence of any of them is counted as part of the six-month or other period.

{¶20} Although R.C. 3127.01(B)(7) refers to "at least six consecutive months immediately preceding the commencement" of a child custody proceeding, the Ohio Supreme Court has held that for purposes of determining the child's "home state" under the UCCJEA, the six-consecutive-month period includes not only the six months immediately preceding the commencement of a child custody proceeding, but can also occur "within" the six months before the commencement of the child custody proceeding. *See Rosen*, 117 Ohio St.3d 241, 2008-Ohio-853, 883 N.E.2d 420. Put another way, a

child's home state is where the child lived for six consecutive months ending within the six months before the child custody proceeding was commenced. *See id.* at ¶ 41-42 (Ohio Supreme Court granted father's writ of prohibition to prevent an Ohio judge from proceeding on mother's custody action that she filed four months after moving to Ohio with the children; the Supreme Court held that West Virginia was the children's "home state" because they had only lived in Ohio for four months, but had lived in West Virginia for six consecutive months "within" the six-month period before the commencement of mother's custody action.).

{¶21} In the case at bar, CJFS concedes that Ohio was not the home state of the children at the time the child custody proceedings were commenced. CJFS further concedes that there has not been a declination of jurisdiction in California. However, CJFS argues that, although California "was" the home state of the children, because both parents left California, Ohio would assume significant-connection or default jurisdiction under R.C. 3127.15(A)(2) or (A)(4). In contrast, Mother argues that "California did not automatically and instantaneously relinquish home state status when the parties left the state of California." After careful review, we agree with CJFS's interpretation of the relevant statutory language.

{¶22} We recognize the considerable confusion that arises when attempting to resolve what the Ohio Supreme Court has called, "contradictory language," between the definition of "home state" as provided under R.C. 3127.01(B)(7) and the use of the term in R.C. 3127.15(A)(1). *See Rosen*, 117 Ohio St.3d 241, 2008-Ohio-853, 883 N.E.2d

420, ¶ 34. As contended by Mother, applying R.C. 3127.01(B)(7) to 3127.15(A)(1), there is a plausible argument that California remains, or “is” the home state of the children, because California was the last state the children lived in for more than six consecutive months within the six months before the child custody proceeding was commenced. However, Mother’s interpretation of R.C. 3127.01(B)(7) and 3127.15(A)(1), would render meaningless the second portion of R.C. 3127.15(A)(1), which states “or was the home state of the child within six months before the commencement of the proceeding *and the child is absent from this state but a parent or person acting as a parent continues to live in this state.*” (Emphasis added.)

{¶23} Applying our interpretation of R.C. 3127.01(B)(7) and 3127.15(A)(1) to the case at bar, we find that California “was” the children’s home state. However, because the children are “absent from [California]” and there is no longer “a parent or person acting as a parent continu[ing] to live in [California],” we find that California does not have jurisdiction under R.C. 3127.15(A)(1). Had either party remained in California, R.C. 3127.01(A)(1) would require us to reach the opposite conclusion. However, those are not the facts of this case. While the parties did not necessarily relinquish jurisdiction in California the moment they moved to Ohio, they certainly relinquished jurisdiction under R.C. 3127.15(A)(1) once the custody proceedings were filed while both parties were permanently living in Ohio.

{¶24} Moreover, because we have determined that California does not have jurisdiction under R.C. 3127.15(A)(1), we find that Ohio is the more appropriate forum

given the circumstances of this case. *See* R.C. 3127.15(A)(2). Here, both Mother and Father have established permanent residences in Ohio and have enrolled their minor children in school. As such, the children and both parents have a significant relationship with this state and substantial evidence is available in Ohio concerning the children's care, protection, training, and personal relationships. Accordingly, we find Ohio has "significant-connection" jurisdiction to resolve the custody dispute under the UCCJEA.

{¶25} Mother's second assignment of error is overruled.

III. Conclusion

{¶26} Pursuant to the plain language of R.C. 2151.23(A)(2), the trial court in this matter had exclusive original jurisdiction to determine the custody of the children because they were not then wards of another court. Additionally, pursuant to R.C. 3127.15(A)(2), the trial court had jurisdiction consistent with the provisions of the UCCJEA. Accordingly, the trial court did not error in failing to vacate the custody order.

{¶27} Judgment affirmed.

It is ordered that appellee recover of said appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
EILEEN A. GALLAGHER, J., CONCUR