[Cite as *Doba v. Doba*, 2009-Ohio-4164.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

JINIDA DOBA	C.A. No. 24525
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
ISHAYA PIERRE DOBA	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellee	CASE No. DR 1999-10-2497

DECISION AND JOURNAL ENTRY

Dated: August 19, 2009

SLABY, Judge.

{¶1} Appellant, Ms. Jinida Doba, appeals an order of the Summit County Court of Common Pleas, Domestic Relations Division, that dismissed her motion to modify custody for lack of subject matter jurisdiction. We affirm.

{¶2} This unfortunate custody dispute has been litigated in multiple jurisdictions for ten years. It commenced in Summit County in 1999 when Ms. Doba filed a complaint in Summit County for legal separation from her husband of two years. Contemporaneous with that filing, Mr. Ishaya Doba filed a complaint for divorce in the Chancery Court of Giles County, Tennessee. The parties filed a shared parenting plan in the Summit County case and the domestic relations court entered temporary orders regarding custody of their child, H.D., but the Summit County case was not litigated to conclusion. Instead, the parties were granted a divorce by the Giles County, Tennessee Court on May 26, 2000. On July 25, 2000, the action for legal separation in Summit County was converted to an action to grant full faith and credit to the out-

of-state divorce decree. Although the divorce decree originally allocated custody of H.D. to Mr. Doba, that portion of the decree was vacated by agreement of the parties, who also agreed that the Summit County Court would retain jurisdiction to determine custody of H.D. The Summit County Court's July 25, 2000, order stated simply, "All child related issues previously decided in this court will remain in effect. Mother is deemed the residential parent and child support will continue as previously ordered."

{¶3} This was not the last word on custody of H.D. The record indicates that within a year, the parties entered into an informal agreement without court approval that permitted H.D. to reside with Mr. Doba in Tennessee. Not unexpectedly, further litigation resulted. In May 2003, Ms. Doba moved the Summit County court for an emergency order to compel H.D.'s return to her custody as required by the July 25, 2000, order. Mr. Doba responded with a motion to transfer the matter to the Chancery Court of DeKalb County, Tennessee, where he then resided. On June 14, 2003, the Summit County court granted Mr. Doba's motion, concluding:

> "It is evident that the parties' minor child, [H.D.], has lived in DeKalb County, Tennessee for over one year. The Administrative Domestic Relations Judge of the Summit County Domestic Relations Court has engaged in a conference call with the Court in DeKalb County. The DeKalb County Chancery Court has agreed to accept a transfer of this case.
>
> "Wherefore, this Court relinquishes jurisdiction of the above-captioned case and transfers the same to DeKalb County Chancery Court of DeKalb County, Tennessee. The Summit County Domestic Relations Clerk of Court shall facilitate the transfer."

On July 16, 2004, the DeKalb County court modified the 2000 custody determination by designating Mr. Doba as the "primary parent."

{¶4} Disputes over parenting time with H.D. soon erupted, and Mr. Doba obtained an order from the DeKalb County court that ordered Ms. Doba to return H.D. to his father's custody from Akron, where she continued to reside. In January 2007, Mr. Doba moved the Summit

County court to register the DeKalb County custody determination and for an emergency order returning H.D. to his custody. Ms. Doba, in turn, moved for an emergency order granting custody to her, for temporary custody, and for a modification of custody. The matter proceeded to trial before a magistrate on Ms. Doba's motion to modify custody of H.D. as set forth in the DeKalb County court's July 2004 order.

{¶5} On March 3, 2008, the magistrate ruled that a change in circumstances that justified modification existed and that Ms. Doba should become the residential parent of H.D. Mr. Doba timely filed numerous objections to the magistrate's factual conclusions and, in a supplemental objection, contested the jurisdiction of the Summit County court to modify the DeKalb County decree. On July 15, 2008, the trial court sustained Mr. Doba's supplemental objection and dismissed Ms. Doba's motion to modify custody for lack of subject matter jurisdiction. The trial court concluded:

> "The registration of a Foreign Order does not bestow upon this Court the power to modify a foreign court's custody order – it only allows enforcement of that order as if it had been issued by a court in Ohio. O.R.C. 3127.36 provides that a 'court of [Ohio] shall recognize and enforce, but may not modify … a registered child custody determination of a court of another state.' Once this Court properly relinquished jurisdiction, the Tennessee Court obtained jurisdiction. There is nothing before the Court to indicate that Tennessee has refused to exercise jurisdiction. Further, this Court cannot determine whether Tennessee lacked continuing jurisdiction."

Ms. Doba timely appealed.

ASSIGNMENT OF ERROR

> "THE TRIAL COURT ABUSED ITS DISCRETION IN HOLDING THAT IT LACKED SUBJECT MATTER JURISDICTION TO ADJUDICATE MS. DOBA'S COMPLAINT FOR MODIFICATION OF PARENTAL RIGHTS AND RESPONSIBILITIES."

{¶6} Ms. Doba's assignment of error is that the trial court erred by dismissing the custody action on the basis that it lacked jurisdiction under the Uniform Child Custody

Jurisdiction and Enforcement Act ("UCCJEA"), codified in Chapter 3127 of the Ohio Revised Code. This Court reviews a trial court's action with respect to a magistrate's decision for an abuse of discretion. *Fields v. Cloyd*, 9th Dist. No. 24150, 2008-Ohio-5232, at ¶9. Under this standard, we must determine whether the trial court's decision was arbitrary, unreasonable, or unconscionable-not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. "In so doing, we consider the trial court's action with reference to the nature of the underlying matter." *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009-Ohio-3139, at ¶18.

{¶7} This Court has consistently stated that a trial court's decision regarding the exercise of jurisdiction under the UCCJEA is also reviewed for an abuse of discretion. See *North v. North*, 9th Dist. No. 24297, 2008-Ohio-6438, at ¶6, quoting *Beck v. Sprik*, 9th Dist. No. 07CA0105-M, 2008-Ohio-3197, at ¶7. But see *Smoske v. Sicher*, 11th Dist. Nos. 2006-G-2720, 2006-G-2731, 2007-Ohio-5617, at ¶21 (reviewing a jurisdictional issue arising under the UCCJEA de novo). Regardless, our review leads to the conclusion that the trial court's decision in this case should be affirmed.

{¶8} Although the record indicates that the Summit County Domestic Relations Court made the initial custody determination in connection with the parties' divorce and retained jurisdiction over custody matters, it is also clear that the Summit County court relinquished jurisdiction to the Chancery Court of DeKalb County, Tennessee in 2003. One year later, the DeKalb County court modified the custody award. It is the 2004 DeKalb County order that Ms. Doba sought to modify by filing a motion in the Summit County court. Consequently, the jurisdiction of the Summit County court in this matter is controlled not by R.C. 3127.05, which relates to the continuing jurisdiction of the court that makes an initial custody determination, but

by R.C. 3127.17, which relates to modification of custody determinations made by a court of another state. Although the trial court failed to analyze its jurisdiction in this matter under R.C. 3127.17, we conclude that the trial court's decision was correct for different reasons. See *Univ. of Akron v. Nemer*, 9th Dist. No. 24494, 2009-Ohio-2681, at ¶8.

{¶9} R.C. 3127.17 provides:

> "Except as otherwise provided in section 3127.18 of the Revised Code, a court of this state may not modify a child custody determination made by a court of another state unless the court of this state has jurisdiction to make an initial determination under division (A)(1) or (2) of section 3127.15 of the Revised Code and one of the following applies:
>
> "(A) The court of the other state determines that it no longer has exclusive, continuing jurisdiction under section 3127.16 of the Revised Code or a similar statute of the other state or that a court of this state would be a more convenient forum under section 3127.21 of the Revised Code or a similar statute of the other state.
>
> "(B) The court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state."

Thus, a determination of jurisdiction under R.C. 3127.17 involves two components. In the first, the Ohio court must determine whether it has jurisdiction to make an initial determination of custody with reference to R.C. 3127.15(A)(1)/(2). This determination is concerned with the Ohio court's jurisdiction at the time the motion to modify custody was made. See, e.g., *McGhan v. Vettel*, 122 Ohio St.3d 227, 2009-Ohio-2884, at ¶8, 25. In the second, the Ohio court must determine whether either of conditions set forth in R.C. 3127.17(A) and (B) are present. Because the components of jurisdiction under R.C. 3127.17 are stated in the conjunctive, an Ohio court lacks jurisdiction to modify an out-of-state custody determination if either the initial determination component or the requirements set forth in R.C. 3127.17(A)/(B) are absent.

{¶10} Regarding a court's jurisdiction to make an initial custody determination, R.C. 3127.15(A) provides, in relevant part:

> "(A) Except as otherwise provided in section 3127.18 of the Revised Code, a court of this state has jurisdiction to make an initial determination in a child custody proceeding only if one of the following applies:
>
> "(1) This state is the home state of the child on the date of the commencement of the proceeding, 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.
>
> "(2) A court of another state does not have jurisdiction under division (A)(1) of this section or a court of the home state of the child has declined to exercise jurisdiction on the basis that this state is the more appropriate forum under section 3127.21 or 3127.22 of the Revised Code, or a similar statute of the other state, and both of the following are the case:
>
> "(a) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.
>
> "(b) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships."

The home state for purposes of the UCCJEA is the state in which a child lived with a parent or a person acting as a parent within six months before the commencement of the proceeding. *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, at ¶35, 41 (reconciling R.C. 3127.01(A)(7) and R.C. 3127.15(A)). Temporary absences from the home state, although not defined by R.C. Chapter 3127, are included within the six-month period.

{¶11} In this case, the undisputed testimony of the parties was that, except for periods of visitation with Ms. Doba in the Akron, Ohio area, H.D. resided with Mr. Doba after the DeKalb County court's 2004 order that modified custody. At some point, Mr. Doba and H.D. relocated from Tennessee to Opelika, Alabama, but the record does not contain sufficient facts to determine when the move occurred. Regardless, the record does not support the conclusion that Ohio was H.D.'s home state as required by R.C. 3127.15(A)(1). The record also supports the conclusion that either Tennessee or Alabama could be the home state, and there is no indication that either has relinquished jurisdiction in this matter. On this basis, the requirements of R.C.

3127.15(A)(2) are also unmet. The Summit County court, therefore, did not have jurisdiction to make an initial custody determination regarding H.D. at the time that Ms. Doba filed her motion to modify custody. Because the initial determination requirement of R.C. 3127.17 is not satisfied, it is unnecessary to address the remaining components of R.C. 3127.17(A)/(B).

{¶12} Ms. Doba's assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

LYNN C. SLABY
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR

(Slaby, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to §6(C), Article IV, Constitution.)

APPEARANCES:

RICHARD V. ZURZ and MATTHEW L. RIZZI, JR., Attorneys at Law, for Appellant.

KENNETH L. GIBSON and MORA LOWRY, Attorneys at Law, for Appellee.