

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Itzik Peled,	:	
	:	No. 22AP-346
Plaintiff-Appellant,	:	(C.P.C. No. 21DR-516)
v.	:	
	:	(REGULAR CALENDAR)
Yael Peled,	:	
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on January 10, 2023

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**On brief:** *Gary J. Gottfried Co., L.P.A., and Gary J. Gottfried*, for appellant. **Argued:** *Gary J. Gottfried*.

**On brief:** *Zashin & Rich Co., LPA, Christopher R. Reynolds, and Eva C. Saulnier*, for appellee. **Argued:** *Christopher R. Reynolds*.

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APPEAL from the Franklin County Court of Common Pleas,  
Division of Domestic Relations

LUPER SCHUSTER, J.

{¶ 1} Plaintiff-appellant, Itzik Peled ("father"), appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, dismissing appellant's complaint for custody of his three children and financial support from the children's mother, defendant-appellee, Yael Peled ("mother"). For the following reasons, we affirm.

**I. Facts and Procedural History**

{¶ 2} In February 2021, father initiated this case in Franklin County seeking designation as the residential parent and legal custodian of the children, and for an order requiring mother to pay child support. In December 2021, mother asserted proceedings

had already been initiated in Israel concerning custody of the children and, pursuant to R.C. 3127.21, she requested the trial court decline to exercise its jurisdiction and dismiss the matter. Father argued in part that the weight of the factors in R.C. 3127.21 favored the Ohio court exercising its jurisdiction over the matter. In January 2022, the trial court found Ohio to be the home state of the parties' children, pursuant to R.C. 3127.04(A)(1), and therefore had jurisdiction to make an initial determination in the child custody proceeding. As to whether to divest itself of that jurisdiction, pursuant to R.C. 3127.21, the trial court indicated it had analyzed the relevant factors and would exercise its jurisdiction.

{¶ 3} In February 2022, mother filed a motion to dismiss for lack of jurisdiction and insufficient service of process. Mother requested the trial court reconsider its decision not to relinquish jurisdiction, and argued she was not properly served with process. In response, father argued that mother was properly served and the trial court should not reconsider its decision to exercise its jurisdiction over the matter. In support of her motion, mother submitted translated copies of Israeli court decisions concerning the parties and their children.

{¶ 4} On May 18, 2022, the trial court held a hearing on mother's motion to dismiss, permitting the parties to argue the service of process and forum non conveniens issues. Six days later, the trial court filed a judgment entry granting mother's motion. The trial court concluded mother had not been properly served with the complaint and, upon conducting a second review of the R.C. 3127.21 factors, it is an inconvenient forum under the circumstances, and the Israeli court is a more convenient forum. Consequently, the trial court dismissed the matter.

{¶ 5} Father timely appeals.

## **II. Assignment of Error**

{¶ 6} Father assigns the following error for our review:

The trial Court abused its discretion by arriving at its May 24, 2020, *Judgement (sic) Entry* without relying upon any evidence.

(Emphasis sic.)

### III. Discussion

{¶ 7} In his sole assignment of error, father asserts the trial court erred in dismissing his complaint because it did not rely on any evidence. This assignment of error is not well-taken.

{¶ 8} The trial court dismissed father's complaint on two independent bases. First, the trial court concluded the action was not properly commenced, pursuant to Civ.R. 3(A), because mother was not served with the complaint. Second, the trial court concluded it is an inconvenient forum under the circumstances, and the Israeli court is a more convenient forum. Father challenges both these conclusions. For the purpose of our analysis and disposition of father's appeal, we assume mother was served with the complaint, and the action was properly commenced. Thus, our focus centers on whether the trial court erred in dismissing the matter on forum non conveniens grounds.

{¶ 9} The Uniform Child Custody Jurisdiction and Enforcement Act, set forth in R.C. 3127.01 et seq., provides that "[a] court of this state that has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more convenient forum." R.C. 3127.21(A). A foreign country is treated as if it is a state of the United States for the purpose of applying R.C. 3127.21. R.C. 3127.04(A). Therefore, a trial court has discretion to exercise or divest itself of jurisdiction over matters concerning interstate custody or visitation when more than one state (or a state of the United States and a foreign country) meet jurisdictional requirements. *Q.W. v. A.T.*, 10th Dist. No. 15AP-1099, 2016-Ohio-5019, ¶ 13; *Mulatu v. Girsha*, 12th Dist. No. CA2011-07-051, 2011-Ohio-6226, ¶ 14.

{¶ 10} In deciding whether to retain jurisdiction of a child custody matter, R.C. 3127.21(B) requires a trial court to "allow the parties to submit information" as to this issue, and to consider all relevant factors, including:

- (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 this state;

- (3) The distance between the court in this state and the court in the 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;
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

{¶ 11} In the absence of evidence to the contrary, we presume the trial court considered the relevant factors. *Witt v. Walker*, 2d Dist. No. 2012-CA-58, 2013-Ohio-714, ¶ 22-23. Further, we review a trial court's decision whether to assume or divest itself of jurisdiction, pursuant to R.C. 3127.21, under an abuse of discretion standard. *Q.W.* at ¶ 13. An abuse of discretion connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "[M]ost instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary. A decision is unreasonable if there is no sound reasoning process that would support that decision." *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990).

{¶ 12} Here, the trial court expressly discussed its factual findings concerning certain factors set forth in R.C. 3127.21(B). In particular, the trial court found mother had made domestic abuse allegations and had requested, and was granted, an ex parte protection order in Israel; the parties and their children have been in Israel since December 2020; the parties disagree as to whether they made an agreement as to whether the children should remain in Israel; the nature and location of the evidence required to resolve the custody dispute can be found in both Ohio and Israel; and the nature of the cases currently pending in Ohio and Israel would make it more difficult for Ohio to resolve expeditiously this custody dispute. Upon reviewing the relevant factors, the trial court concluded it was

an inconvenient forum under the circumstances and the Israeli court is a more convenient forum.

{¶ 13} Father does not directly challenge the trial court's factual findings relevant to its R.C. 3127.21 analysis. Instead, father argues the trial court's forum non conveniens decision was flawed because it did not consider that mother engaged in "unjustifiable conduct," as defined in R.C. 3127.22(D), by allegedly abducting the children in an effort to obtain a more favorable jurisdiction. He also argues the trial court did not first address its jurisdiction over the matter before reaching the forum non conveniens issue, and that mother did not raise the forum non conveniens issue in her motion to dismiss or submit any evidence on the issue. We are unpersuaded.

{¶ 14} Contrary to father's arguments, the trial court addressed its subject-matter jurisdiction, and mother raised the forum non conveniens issue in her February 2022 motion to dismiss. As to mother's first request for the trial court to decline to exercise jurisdiction, filed in December 2021, the trial court found Ohio to be the home state of the parties' minor children, and therefore it had jurisdiction to make an initial child custody determination under R.C. 3127.15(A)(1). This belies father's contention that the trial court did not address its jurisdiction over the matter. At that stage in the proceedings, the trial court declined to divest itself of jurisdiction based on its analysis of the relevant R.C. 3127.21 factors. Subsequently, in February 2022, mother requested the trial court reconsider its prior forum non conveniens decision. This issue was argued in the briefing and at the hearing on the motion to dismiss. Thus, father's suggestion that mother did not raise the forum non conveniens issue in the trial court is not accurate.

{¶ 15} Additionally, father's reliance on R.C. 3127.22 is unavailing. R.C. 3127.22(A) provides, in pertinent part, that, unless an exception applies, "if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction." For the purpose of this statute, R.C. 3127.22(D) defines "unjustifiable conduct" as "conduct by a parent or that parent's surrogate that attempts to create jurisdiction in this 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." By its terms, this statute is "relevant when an Ohio court considers whether it has jurisdiction to make the initial custody determination in a particular case." *Q.W.* at ¶ 29. But father relies on R.C. 3127.22 to challenge the trial court's forum non conveniens determination pursuant to R.C. 3127.21. As to such reliance, this court previously has found that no authority exists that a party's alleged "unjustified conduct" in establishing jurisdiction in another state is a factor an Ohio court must consider in making the determination of the proper forum for a custody dispute under R.C. 3127.21. *Id.* at ¶ 32. Regardless, nothing in the record indicates the trial court did not consider all circumstances relevant to its R.C. 3127.21 determination. Therefore, we are unpersuaded by father's R.C. 3127.22 argument.

{¶ 16} Lastly, we reject father's contention that the trial court's decision was erroneously not based on any evidence. "[I]t is not mandatory that an evidentiary hearing be held to determine whether Ohio is an inconvenient forum under the [Uniform Child Custody Jurisdiction and Enforcement Act], if sufficient undisputed facts are in the record for a reviewing court to determine the particular question." *Martindale v. Martindale*, 4th Dist. No. 14CA30, 2016-Ohio-524, ¶ 40. *See Kemp v. Kemp*, 5th Dist. No. 2010-CA-00179, 2011-Ohio-177, ¶ 26-28 (R.C. 3127.21 requires a court to allow the parties to "submit information," but does not require an evidentiary hearing). Here, the trial court permitted the parties to submit briefing and information relevant to the R.C. 3127.21 determination, and it held an oral hearing at which the parties further argued the matter. In support of her position, mother submitted translated copies of Israeli court filings concerning the children's custody. And, as noted above, father does not dispute any of the trial court's specific factual findings relevant to the forum non conveniens issue. Nor does he argue that the record lacked sufficient undisputed facts, relevant to the forum non conveniens issue, for that issue to be resolved without an evidentiary hearing. For these reasons, we find the trial court complied with R.C. 3127.21's requirement to "allow the parties to submit information" as to the forum non conveniens issue, and it did not err in not holding an evidentiary hearing on this issue. Therefore, we are unpersuaded by father's argument that the trial court's decision was erroneously not based on any evidence.

{¶ 17} Because father fails to demonstrate the trial court abused its discretion in divesting itself of jurisdiction, pursuant to R.C. 3127.21, we overrule father's sole assignment of error.

#### **IV. Disposition**

{¶ 18} Having overruled father's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

*Judgment affirmed.*

BEATTY BLUNT, P.J., and DORRIAN, J., concur.

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