

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

E.B.

Court of Appeals No. E-11-045

Appellant

Trial Court No. 2011-PA-004

v.

R.F.

DECISION AND JUDGMENT

Appellee

Decided: February 3, 2012

* * * * *

John F. Kirwin for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant brings this accelerated appeal of an order of the Erie County Court of Common Pleas, Juvenile Division, dismissing her parentage action for want of jurisdiction.

{¶ 2} Appellee, R.F., is the putative father of N.B, born July 18, 2010, in Norwalk, Ohio. Appellee is a resident of Tucson, Arizona, where he alleges intimate contact with N.B.'s mother, appellant E.B., which resulted in the child's conception.

{¶ 3} According to appellee, on January 20, 2010, before N.B.'s birth, he filed a paternity action in Pima County, Arizona. Appellee told the trial court that he was unable to make immediate service on appellant as she had left Arizona and her whereabouts were unknown. Service of process in the Arizona case was not made on appellant until July 19, 2010, the day after N.B.'s birth. Appellee reported that on January 13, 2011, the Pima County Superior Court ordered testing to establish N.B.'s parentage.

{¶ 4} On January 24, 2011, appellant filed a parenting action in the Erie County, Ohio, Court of Common Pleas, Domestic Relations Division, seeking a determination that appellee is N.B.'s father and an order that she receive custody of the child. Appellee responded, advising the court of the pending proceeding in Arizona. It is not clear from the record, but it appears that the court sua sponte questioned its subject matter jurisdiction for the case and ordered appellant to brief the issue. On consideration, the magistrate ruled that the state of Ohio does not have jurisdiction over this matter because the state of Arizona has already commenced proceedings. The court overruled appellant's objections to the magistrate's decision and adopted the order.

{¶ 5} From this order, appellant now brings this appeal, asserting in a single assignment of error that the trial court's conclusion that Arizona had jurisdiction over

appellant's paternity case was erroneous. The Arizona court has stayed those proceedings pending this appeal.

{¶ 6} A court that lacks subject matter jurisdiction is without authority to act. *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 27. When a juvenile court has subject matter jurisdiction in an interstate custody matter, the manner in which that jurisdiction is exercised under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") as under its predecessor, the Uniform Child Custody Jurisdiction Act, is within the discretion of the court and will not be reversed absent an abuse of that discretion. *In re M. T.*, 178 Ohio App.3d 546, 2008-Ohio-5174, 899 N.E.2d 162, ¶ 31 (2d Dist.). "An abuse of discretion will be found where the trial court acted arbitrarily, capriciously, or unreasonably." *Id.* citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 7} Before the trial court and here, appellant relies on the provisions of the UCCJEA. The act has been enacted in 49 of the 50 states, [http://www.nccusl.org/Act.aspx?title= Child Custody Jurisdiction and Enforcement Act](http://www.nccusl.org/Act.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act) (accessed Jan. 17, 2012), including Ohio and Arizona. R.C. Chapter 3127, Arizona Revised Statutes §25-1001 et seq. The purpose of the UCCJEA is to avoid jurisdictional conflict and competition with courts of other jurisdictions in child custody proceedings. *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 244, 2008-Ohio-853, 883 N.E.2d 420, ¶ 20-21.

{¶ 8} Those proceedings include when "legal custody, physical custody, parenting time, or visitation with respect to a child is an issue. 'Child custody proceeding' may

include a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, parentage, termination of parental rights, or protection from domestic violence.” R.C. 3127.01(B)(4). Arizona R.S. § 25-1002(4)(a) and the uniform act contain identical language except that the word “paternity” is substituted for “parentage.” Since the proceedings at issue here are for parentage/paternity, the UCCJEA applies. *Compare Nissen v. Cortez-Moreno*, 10 So.3d 1110 (Fla. 3d Dist.App. 2009).

{¶ 9} With certain exceptions not relevant here, R.C. 3127.15(A)(1), and Arizona R.S. § 25-1031(A)(1), provide that a court in the state may exercise jurisdiction only if, “[t]his 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.” If any state fails to meet the “home state” definition a court may examine whether the child or his or her parents have a significant connection to the state and thereby establish jurisdiction. R.C. 3127.15(A)(2), Arizona R.S. § 25-1031(A)(2). If all courts that would have jurisdiction under the first two criteria decline to exercise that jurisdiction on the ground that this state is a more appropriate forum or if no court of any other state would have jurisdiction, this state may exercise jurisdiction. R.C. 3127.15(A)(3)-(4), Arizona R.S. § 25-1031(A)(3)-(4).

{¶ 10} “‘Home’ state means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the

commencement of a child custody proceeding and, *if a child is less than six months old, the state in which the child lived from birth with any of them. * * *.*” (Emphasis added.) R.C. 3127.01(B)(7), Arizona R.S. § 25-1002(7).

{¶ 11} In this matter, it is uncontested that appellant left Arizona before N.B. was born. It is also uncontested that N.B. was born in Ohio and has lived here with appellant, his mother, from birth. On these facts, Arizona cannot be N.B.’s home state. Ohio is N.B.’s home state. Thus, pursuant to Ohio’s enactment of the UCCJEA, the trial court has jurisdiction to hear appellant’s parentage and initial custody requests.

{¶ 12} Since the trial court erroneously concluded that it was without jurisdiction to proceed with the present action, its decision dismissing this action premised on that erroneous conclusion constitutes an abuse of discretion. Accordingly, appellant’s sole assignment of error is well-taken.

{¶ 13} On consideration, the judgment of the Erie County Court of Common Pleas, Juvenile Division, is reversed. This matter is remanded to said court for proceedings on the merits or to entertain motions pursuant to R.C. Chapter 3127 as to why it should not exercise jurisdiction. It is ordered that appellee pay costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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>.