

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON MAY 1999 SESSION

FILED

June 14, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

ROBERT W. BRANCH,)	GIBSON CHANCERY
)	(No. H-3733)
Plaintiff/Appellee)	
)	
v.)	APPEAL NO. 02A01-9802-CH-00269
)	
ROXIE A. BRANCH,)	
)	
Defendant/Appellant)	

APPEAL FROM THE CHANCERY COURT OF GIBSON COUNTY
AT HUMBOLDT, TENNESSEE
THE HONORABLE GEORGE R. ELLIS, JUDGE

For the Appellant:

Richard Gossum
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For the Appellee:

Harold R. Gunn
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REVERSED

WILLIAM H. INMAN, Senior Judge

CONCUR:

DAVID R. FARMER, JUDGE

ALAN E. HIGHERS, JUDGE

OPINION

The issue in this case is whether under the undisputed facts the trial judge correctly ruled that Tennessee was the home state of the parties' child. We are constrained to the appellant's view of the matter and therefor reverse the judgment as being contrary to the preponderance of the evidence, our standard of review, TENN. R. APP. P., RULE 13(d); *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26 (Tenn. 1996).

The parents were married in South Carolina in 1992. Their child was born there in 1994. They moved to Tennessee in early 1995. The mother returned to South Carolina with the child in July, 1995; the father brought the child back to Tennessee in October, 1995. Two months later, the mother returned the child to South Carolina; in October, 1996, father brought the child back to Tennessee, and in November, 1996 filed an action for divorce and custody in Gibson County.

The trial court concluded that Tennessee had been the home state of the child since October, 1995, with concomitant jurisdiction.

Tenn. Code Ann. § 36-6-203 provides:

- (a) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:
 - (1) This state:
 - (A) Is the home state of the child at the time of commencement of the proceeding; or
 - (B) Had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of the child's removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state; or
 - (2) (A) It appears that no state has jurisdiction under subdivision (a)(1), or each state with jurisdiction under subdivision (a)(1) has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child; and

- (B) The child and at least one (1) contestant have a significant connection with this state; and
 - (C) There is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationship; and
 - (D) It is in the best interest of the child that a court of this state assume jurisdiction; or
- (3) It appears that no state has jurisdiction under subdivision (a)(1) or (2) or each state has refused jurisdiction on the ground that this is the more appropriate forum to determine child custody, and it is in the best interest of the child that a court of this state assume jurisdiction.
- (b) Except under subdivision (a)(3), physical presence in this state of the child, or of the child and one (1) of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.
- (c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine the child's custody.
- (d) Jurisdiction shall not be exercised to modify an existing custody decree except in accordance with § 36-6-215.

We have no occasion to belabor the dispositive point that Tennessee was never the home state of the child who at no time resided in Tennessee for six months, either consecutively or cumulatively, before the father unilaterally removed the child from South Carolina in October, 1996. Thus it is that the Court had no jurisdiction to make a custodial award.¹

Under the undisputed evidence, South Carolina was the home state of the child. *See, Brown v. Brown*, 847 S.W.2d 496 (Tenn. 1993). The judgment is accordingly reversed and the case is remanded for all necessary purposes with costs assessed to the appellee.

William H. Inman, Senior Judge

¹There is no evidence that South Carolina declined to exercise jurisdiction, or that the best interests of the child would be served if Tennessee exercised jurisdiction.

CONCUR:

David R. Farmer, Judge

Alan E. Highers, Judge