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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
January 17, 2023 Session

JOEY D. THOMPSON v. ASIA THOMPSON

**Appeal from the Circuit Court for Knox County
No. F-21-153095 Gregory S. McMillan, Judge**

No. E2022-00345-COA-R3-CV

This appeal involves an interstate custody matter. The mother and child reside in Massachusetts while the father resides in Tennessee. The father attempted to obtain custody of the child by filing an emergency petition in the Knox County Juvenile Court. The juvenile court dismissed the petition for lack of subject matter jurisdiction. The father appealed the juvenile court's decision to the Knox County Circuit Court which, also finding a lack of subject matter jurisdiction, dismissed the appeal. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded.

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and KRISTI M. DAVIS, J., joined.

Joey D. Thompson, Knoxville, Tennessee, Pro se.

Christine Knott, Knoxville, Tennessee, for the appellee, Asia Thompson.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

Joey D. Thompson ("Father") and Asia Thompson ("Mother") share one minor child ("Child") born in August 2011. It appears from the record that Mother and Father's relationship has been rather tumultuous throughout the years, resulting in numerous separations and reconciliations. The parties were eventually married in 2018 but separated in August of 2019. Shortly thereafter, Mother moved with Child and her other children from Tennessee to Massachusetts, where they have resided since approximately September of 2019. Father was aware of Mother's relocation from Tennessee and did not object to it.

On June 22, 2020, Mother filed a complaint for divorce in Massachusetts. On December 2, 2020, the Massachusetts Probate and Family Court entered a temporary order granting Mother physical custody of Child and awarded joint legal custody to both Mother and Father, with Father to have virtual parenting time with Child three times per week. On April 2, 2021, the parties stipulated to a new custody agreement wherein Father was awarded parenting time in Tennessee. Initially, among other dates, it was agreed Father was to have Child during summer vacation for a minimum of thirty consecutive days. The parties ultimately agreed that Father would have Child for two months during the summer, from June 25, 2021, until Mother picked up Child on August 24, 2021. On August 9, 2021, Mother received an email from Father, informing her that he had enrolled Child in school in Tennessee. Mother contacted the school and informed them of Child's residency in Massachusetts and of the relevant court orders; the school then unenrolled Child.

On August 23, 2021, Mother filed an *ex parte* petition in Massachusetts for the immediate return of Child. On August 24, 2021, Father filed a petition for emergency temporary custody in the Knox County Juvenile Court, in which he alleged neglect and mistreatment of Child by Mother. On August 27, 2021, following a hearing in which Mother and Father testified as well as child protection case workers from both Massachusetts and Tennessee, the Massachusetts court entered an order directing Father to immediately return physical custody of Child to Mother. Father complied with the court's order and returned Child to Massachusetts. On September 30, 2021, Child's appointed guardian *ad litem* in the Tennessee juvenile court proceeding filed a motion to dismiss Father's petition for lack of jurisdiction. Specifically, the guardian *ad litem* stated that Child had been a resident of Massachusetts since on or about September 1, 2019, and had lived there continuously. Moreover, Father had never objected to Child's move nor made any attempt to stop the move within the relevant six-month period contemplated by Tennessee Code Annotated section 36-6-216. In addition, there was ongoing litigation in the courts of Massachusetts involving Father, Mother, and Child, in which Father had appeared through counsel and participated. The juvenile court magistrate granted the motion to dismiss on November 4, 2021. Father appealed the magistrate's ruling to the juvenile court judge, who affirmed the decision. Thereafter, Father appealed to the Knox County Circuit Court. A hearing was held on Father's appeal on January 21, 2022. Subsequently, the circuit court entered an order on February 17, 2022, finding that Child had returned to Massachusetts and that there were "valid and existing orders" from Massachusetts wherein the Massachusetts courts had exercised and continued to exercise "continuing and exclusive jurisdiction over custody matters" involving Child. This appeal followed.

ISSUE

Father raises numerous issues for our review on appeal, which we have condensed and restated into a single issue, as follows:

Whether the trial court had subject matter jurisdiction over Father's emergency petition.

DISCUSSION

The question of whether a court has subject matter jurisdiction is a question of law in which our review is *de novo* with no presumption of correctness as to the ruling of the lower court. *Button v. Waite*, 208 S.W.3d 366, 369 (Tenn. 2006) (citing *State v. Cawood*, 134 S.W.3d 159, 163 (Tenn. 2004)). The Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), codified at Tennessee Code Annotated sections 36-6-201 to 36-6-243, governs jurisdiction between Tennessee and other states over child custody proceedings. *Id.* "The purpose of enacting the UCCJEA was to establish national standards for jurisdiction regarding initial custody determinations, to specify the circumstances under which a state can modify another state's child custody determination, to establish procedures for enforcement of both initial custody orders and modification orders, and to prevent contradictory orders by the courts of different states." *Hernandez v. Hernandez*, No. W2018-01388-COA-R3-CV, 2019 WL 3430534, at *4 (Tenn. Ct. App. July 30, 2019) (citing Tenn. Code Ann. § 36-6-202 (2017); *Iman v. Iman*, No. M2012-02388-COA-R3-CV, 2013 WL 7343928, at *3 (Tenn. Ct. App. Nov. 19, 2013)).

There are three ways in which a trial court may obtain jurisdiction over a custody matter: initial jurisdiction, continuing jurisdiction, or emergency jurisdiction. *See* Tenn. Code Ann. § 36-6-216 (setting forth the requirements for an initial custody determination); Tenn. Code Ann. § 36-6-217 (setting forth the parameters surrounding exclusive, continuing jurisdiction over custody determinations); Tenn. Code Ann. § 36-6-219(a) (setting forth the requirements for emergency jurisdiction); *see also* Tenn. Code Ann. § 36-6-218 (noting the requirements that must be met for a court of this state to modify a child-custody determination made by a court of another state).

In the case at bar, Mother and Child moved to Massachusetts in approximately September of 2019 and have lived there continuously. Father continues to live in Tennessee and was aware of Mother and Child's relocation to Massachusetts and made no objection to it. In fact, prior to the events giving rise to the present matter, Father participated in Massachusetts court proceedings by responding to Mother's complaint for divorce and filing a counterclaim thereto in 2020. Moreover, Father voluntarily submitted himself to Massachusetts's jurisdiction by further participating in court proceedings concerning custody of Child and even entered into a joint stipulation setting forth custody arrangements. Further, based on the record, Massachusetts has continuously exercised jurisdiction over Child by rendering orders relating to custody of Child. As such, we find no basis that Tennessee has initial jurisdiction regarding Child's custody. We further find no support for the notion that Tennessee has exclusive, continuing jurisdiction. Accordingly, the only basis upon which a court of this state could obtain jurisdiction over this custody matter would be emergency jurisdiction.

Tennessee Code Annotated section 36-6-219(a) provides that “[a] court of this state has temporary emergency jurisdiction if the child *is present in this state* and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.” Tenn. Code Ann. § 36-6-219(a) (emphasis added). Here, it is clear that Child was returned to Massachusetts and was no longer present in Tennessee. This is dispositive of the jurisdictional inquiry. Indeed, because Child was no longer in Tennessee, temporary emergency jurisdiction is not available in Tennessee pursuant to section 36-6-219(a). *See Hernandez*, 2019 WL 3430534, at *8 (“[T]he trial court did not have the authority to invoke temporary emergency jurisdiction concerning the Child because the Child was not present in Tennessee and had not been present in Tennessee for several months.”). Rather, Massachusetts, where Child resides, would be the appropriate venue to exercise jurisdiction. Accordingly, we find no error on the part of the trial court in dismissing Father’s appeal of the decision of the Knox County Juvenile Court due to lack of subject matter jurisdiction.

CONCLUSION

For the foregoing reasons, the trial court’s order is affirmed.

s/ Arnold B. Goldin

ARNOLD B. GOLDIN, JUDGE