SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5574-15T4

A.S.,

Plaintiff-Respondent,

v.

R.L.M.,

Defendant-Appellant.

Argued January 11, 2018 – Decided March 19, 2018

Before Judges Rothstadt and Gooden Brown.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Sussex County, Docket No. FD-19-0256-08.

Scott E. Becker argued the cause for appellant.

A.S., respondent, argued the cause pro se.

PER CURIAM

Defendant (father) appeals from the August 4, 2016 Family Part order denying his application for a change in custody of his then eight-year-old son, and relinquishing jurisdiction to the

state of Georgia under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), N.J.S.A. 2A:34-53 to -95. We affirm.

We glean the following facts from the record. Plaintiff (mother) and defendant are unmarried. They have a son, A.M., born in October 2007. On March 27, 2015, a Family Part judge granted plaintiff's application to relocate to Georgia with A.M., subject to the submission of "a detailed parenting plan proposal pursuant to the mandates of Baures v. Lewis, 167 N.J. 91 (2001)."[1]

On June 1, 2015, the parties executed a Memorandum of Understanding (MOU) developed through the Sussex County Family Court Mediation Program. Under the MOU, both parties agreed to "continue to share joint legal custody" of their son with plaintiff designated as the parent of primary residence. As to parenting time, the parties agreed that defendant would have parenting time "in New Jersey for the entirety of the summer recess except for the first and last weeks" and "every Christmas holiday and recess" with "[a]ny additional parenting time" to be "arranged by mutual agreement."

Additionally, a provision of the MOU entitled "Return to Mediation[,]" specified:

> We agree that if any differences arise from this agreement, we will first attempt to

[1] Baures has since been overruled by Bisbing v. Bisbing, 230 N.J. 309 (2017).

> resolve these concerns amicably between ourselves. If we reach an impasse, we agree that we will attempt to resolve these issues through mediation, and understand that we may contact the Sussex County Family Mediation program before filing a motion for [c]ourt intervention. We agree to participate in any future mediation sessions with a good faith effort at resolution.

On June 22, 2015, Judge Michael Paul Wright incorporated the MOU into a New Jersey Consent Order.

On June 29, 2016, while A.M. was residing with defendant in New Jersey for the summer, defendant filed an application for a change of custody, seeking designation as the parent of primary residence. To support his application, defendant certified that after plaintiff relocated to Georgia with their son, he was advised that "plaintiff had been charged with DWI [in New Jersey] and had gone to Georgia, in part, to obtain a driver['s] license in that state." According to defendant, the case remained open because plaintiff never returned to New Jersey to resolve it.

Defendant further certified that in March 2016, he learned that "plaintiff was involved in a car accident with [A.M.] in the car," and "plaintiff was charged with being under the influence of alcohol at the time of the accident and was arrested." According to defendant, "[a]side from the open cases in Georgia and New Jersey, . . . plaintiff ha[d] at least one other DWI conviction." Additionally, defendant alleged "[A.M.] ha[d] missed

[twenty-seven] days of school and ha[d] been late to school on [fifty] days during th[e] school year through April 27, 2016."

Plaintiff opposed the application. On August 4, 2016, Judge Michael C. Gaus conducted a hearing during which plaintiff provided sworn testimony denying defendant's allegations. Plaintiff acknowledged that she was in a car accident in Georgia on March 19, 2016 while A.M. was in the car, but denied drinking, having a .24 blood alcohol reading, being charged with a drunk driving violation, or having to go to court in connection with the accident. Plaintiff admitted she had been charged with DWI in New Jersey in December 2015, but claimed she resolved the case by entering a guilty plea and accepting a driver's license suspension.

As to A.M.'s excessive school absences, plaintiff testified that "[t]hey were excused because [A.M.] was sick," and she had "doctor's notes" as proof. She also attributed A.M.'s excessive tardiness to "a problem with his stomach." She explained that she had to wait for him to "have a bowel movement" at home before going to school, "because he [said] all the kids pee on the seat and it's gross, and he can't hold it all day."

Plaintiff testified she had family in Georgia who support her and care for A.M. She submitted A.M.'s current school records to show how well A.M. was doing. She claimed A.M. would not be safe with defendant, as he had lost his driver's license "because of

his three DWIs" and would not be able to transport A.M. "to the doctor or anything like that." According to plaintiff, while "[defendant] was in jail for a year[,]" she cared for A.M. alone. She also claimed defendant only paid child support "when he fe[lt] like it."

After considering the testimony and arguments of counsel, Judge Gaus denied the application, determined that Georgia was "clearly the more appropriate forum and jurisdiction" for adjudicating "other custody issues regarding the child," and "cede[d] jurisdiction under the UCCJEA to the state of Georgia." The judge noted "[t]his [was] at least the third application that's been filed by . . . defendant since he signed the [MOU] . . . ." and "entered into a consensual agreement."

> Despite that, in the fall of 2015 [defendant] made an emergent application seeking to have the child returned. That application was denied by Judge Wright on October the 19th. He then made an additional emergent application on March the 29th in which he sought a transfer of physical custody. That second one was based on the same incident that we are focusing on today with respect to the car accident of March the 19th.

According to Judge Gaus, in that second application, after defendant indicated to Judge Wright that he was in contact with a Georgia attorney but could not get a hearing date until the end

of May, "Judge Wright denied even the entry of the order to show cause" and "provided a statement of reasons" indicating "that as far as he was concerned[,] Georgia had now become the home state of the child under the [UCCJEA]." Judge Wright explained "that it was clearly more appropriate for future custody proceedings to take place" in Georgia because "[t]he child had lived in Georgia for more than six months" and there was no "basis for the [c]ourt to exercise emergency jurisdiction here in New Jersey."

According to Judge Gaus, following Judge Wright's ruling,

> defendant then waited from March 29 until June the 29th before he filed the application that's before the [c]ourt today. During that time, of course, the child came to stay with him for his summer parenting time. It is of note that he did not make the application until he physically had the child in his presence.

Judge Gaus acknowledged that "[t]here were some issues that are certainly of concern."

> However, the [c]ourt agrees with Judge Wright that these issues are more appropriately dealt with in the state of Georgia, which is now the home state of the child. The records about what actually happened on March 19[] are more easily dealt with down there. The school records, perhaps witnesses from the school, are more appropriately dealt with down there. The doctor's records that would support or not support the claim of [plaintiff] that she had all kinds of excused absences and reasons for the child being tardy, having to do with his health needs are more easily produced and

> reviewed and people brought to court to testify about them down there.

Judge Gaus acknowledged that, based on defendant's submissions, there were "a significant number of tardies [and] absences[] in the child's report card for the fourth quarter of the school year[.]" However, since then, "he was only absent five times and tardy once[.]"

> But more importantly, his grades during that marking period evidence a child who is doing exceedingly well . . . . [Plaintiff] also produced copies of two certificates issued for the child, one [of] which indicates that he earned all A's for the . . . third marking period, . . . and also he earned all A's for the first nine weeks of the school year. . . . [T]hat would also indicate a child who is doing well, and is well[-]adjusted.

In rejecting defendant's application, the judge summarized his reasoning thusly:

> In light of the fact that the [c]ourt finds that there is no emergent situation in place, in light of the fact that Georgia is now the home state of the child, in light of the fact that the father had consulted with counsel as early as March the 29th from Georgia, and the [c]ourt is certainly able to take judicial notice of the prior pleadings that he has filed in this case, and that is part of his underlying application, therefore it is certified to, he could have had himself a hearing in May in Georgia with the attorney that he had consulted with. Instead[,] he wait[ed] until he ha[d] the child over the summer to make the application to change custody up here.

The judge ordered defendant to arrange for A.M. to return to Georgia "immediately" and denied defendant's application for a stay. This appeal followed.

On appeal, defendant argues the judge erred by relinquishing jurisdiction without a hearing. According to defendant, if the judge had "bothered to conduct a hearing, it clearly would have shown that several of the factors militated toward the retention of jurisdiction in . . . New Jersey." We disagree.

The UCCJEA dictates the circumstances under which New Jersey courts have jurisdiction over child custody issues. Pursuant to N.J.S.A. 2A:34-66(a), once a state renders an initial custody determination, that state acquires "exclusive, continuing jurisdiction" over the custody dispute. Here, New Jersey acquired "exclusive, continuing jurisdiction" when Judge Wright entered the June 22, 2015 consent order incorporating the MOU.

However, N.J.S.A. 2A:34-66(a)(1) and (2) delineate circumstances that may divest a state of its jurisdiction. As applicable here, under N.J.S.A. 2A:34-66(a)(1), New Jersey loses "exclusive, continuing jurisdiction" if "a court of this State determines that neither the child, [nor] the child and one parent . . . have a significant connection with this State and that substantial evidence is no longer available in this State

concerning the child's care, protection, training, and personal relationships."

In Griffith v. Tressel, 394 N.J. Super. 128, 146 (App. Div. 2007), we noted that "[t]he question whether the requisite 'significant connection' remains is fact[-]specific[,] and the scenarios vary greatly" from case to case. Generally, the focus should be on the relationship between the child and the parent remaining in the State with exclusive, continuing jurisdiction. Id. at 145. "When that relationship becomes too attenuated, 'exclusive, continuing jurisdiction' is lost." Ibid.

However, even if N.J.S.A. 2A:34-66(a)(1) does not warrant relinquishing jurisdiction, a New Jersey court "may decline to exercise its jurisdiction at any time" under N.J.S.A. 2A:34-71(a) "if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum." In making this determination, a court "shall 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;
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> (2) the length of time the child has resided outside this State;
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> (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;
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> (6) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;
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> (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
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> (8) the familiarity of the court of each state with the facts and issues of the pending litigation.
>
> [N.J.S.A. 2A:34-71(b).]

Further, "[t]he issue of inconvenient forum may be raised upon the court's own motion, request of another court or motion of a party," N.J.S.A. 2A:34-71(a), and "the court shall allow the parties to submit information" pertinent to the determination. N.J.S.A. 2A:34-71(b).

We review the Family Part's determination regarding continuing exclusive jurisdiction or declining jurisdiction in favor of a more appropriate forum for abuse of discretion. Griffith, 394 N.J. Super. at 148. We review a "trial court's interpretation of the law and the legal consequences that flow from established facts" de novo. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Here, we are satisfied Judge Gaus properly applied the law and clearly understood his obligation to analyze the applicable factors contained in N.J.S.A. 2A:34-71(b). The record amply supports the judge's decision to relinquish jurisdiction to Georgia based on the facts as they existed at the time. Contrary to defendant's argument, the MOU provision that designated Sussex County as the forum for resolving disputes was but one factor to be considered and by no means a dispositive one. "An agreement between the parties cannot bind the courts of this state to accept subject matter jurisdiction when not permitted by law." Griffith, 394 N.J. Super. at 137 (citing Neger v. Neger, 93 N.J. 15, 35 (1983)). Moreover, in accordance with N.J.S.A. 2A:34-71(b), the parties were afforded the opportunity to testify and submit proofs pertinent to the jurisdictional issue. Accordingly, we discern no abuse of discretion, and we see no basis to overturn the judge's determination.

Affirmed.