

No. 1-11-3139

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JEREMY BENNETT,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	08 D 7716
)	
KRISTIN GORDON,)	The Honorable
)	Raul Vega,
Defendant-Appellee.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *HELD*: In a custody dispute arising after a final initial determination of custody in a dissolution judgment, under the Uniform Child-Custody Jurisdiction and Enforcement Act (750 ILCS 36/101 *et seq.* (West 2008)) Florida had jurisdiction of custody matters regarding the minor child because Florida was the child's home state. The court affirmed the Cook County circuit court's orders finding

a lack of jurisdiction and denying the petitioner father's motions regarding modification of child custody and visitation.

¶ 2

BACKGROUND

¶ 3 Petitioner, Jeremy Bennett, and respondent, Kristin Gordon, were married on July 31, 2006 in Will County, Illinois when respondent was visiting her parents in Illinois on summer vacation from attending university in Florida. The parties were divorced on January 4, 2010. Kristin lives in Florida, where she attends university. The parties' minor child Victoria was born in Tallahassee, Florida on March 6, 2008. The parties' child Victoria and Kristin's other child Tristan Bennett¹ (3 years old), have resided in Florida since birth.

¶ 4 From April 2008 to July 2008, while the parties were still married, Kristin brought Victoria on her visit to Illinois. Jeremy saw Victoria approximately five times during Kristin's visit to Illinois with Victoria. Kristin then went back to Florida to attend school and took Victoria with her.

¶ 5 On August 12, 2008, Jeremy filed the petition for dissolution of marriage in Illinois.² The return of service indicates service of the dissolution petition was made by the Sheriff of Leon County, Florida, on October 1, 2008. Jeremy filed a motion for visitation on November 25,

¹ Although Tristan's surname is Bennett, it is unclear from the record whether Tristan is also Jeremy's child. The only child listed in the dissolution judgment was Victoria.

² All of Jeremy's pleadings, and Kristin's responses, were filed in Illinois, except for Kristin's pleadings for emergency relief in Florida and the entry of three Florida court orders, which we note.

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2008, in Cook County circuit court, which was entered and continued pending the outcome of mediation. Jeremy requested mediation of custody as well as visitation during mediation.

Kristin's response sought supervision of any visitation due to allegations that July 16-18, 2008, while Kristin was visiting in Illinois with Victoria, Jeremy attempted to kidnap Victoria and committed property damage by breaking the windshield on Kristin's car. On July 28, 2008, Kristin filed a petition for an emergency order of protection in Will County circuit court. On August 10, 2008, Kristin left Illinois and returned to Florida to continue school.

¶ 6 Kristin petitioned for a protective injunction in Florida. On October 8, 2008, the circuit court in Leon County, Florida, entered a temporary injunction for protection against domestic violence (with minor children), valid for 15 days in all counties in Florida until a hearing, unless extended by court order. The Florida temporary protective injunction order stated that the court had jurisdiction of Kristin and the subject matter and has jurisdiction of Jeremy upon service of the temporary injunction. The order prohibited violence and ordered "No Contact." Jeremy and Kristin were ordered to appear for a hearing in the Florida circuit court on October 20, 2008.

¶ 7 On December 16, 2008, the Florida court entered an order modifying and removing all of its prior provisions in the temporary injunctive order prohibiting Jeremy from having contact with the parties' minor child. The order also stated:

"This Court defers to the jurisdiction of the Circuit Court of Cook County, Illinois wherein provisions relating to parenting schedules, child support, or any other matters relating to the parties' minor child shall be determined by the Circuit Court of Cook County, Illinois in the parties' pending Dissolution of Marriage action, Cook County

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Circuit Court Case No.: 08-D-07716, on a temporary and permanent basis. However, until such time as the Cook County Court renders a temporary and/or permanent parenting order, the Petitioner [Kristin] shall have temporary custody of the parties' minor child. The parties are not prohibited by the temporary injunction herein from agreeing through counsel to parenting time for the Respondent [Jeremy] when the Petitioner [Kristin] and minor child are in Illinois during this holiday season."

¶ 8 On February 19, 2009, the Florida circuit court entered a final judgment of injunction for protection against domestic violence with children, valid in all counties in Florida. The court found that Kristin "is a victim of domestic violence or has reasonable cause to believe that he/she is in imminent danger of becoming a victim of domestic violence by respondent [Jeremy]." The order prohibited any violence and ordered "No Contact." The order also found that jurisdiction was proper under the Uniform Child Custody Jurisdiction Act (750 ILCS 36/101 *et seq.* (West 2008)). The order did not list a specific termination date for the injunction, but instead provided that the injunction was "subordinate to the judgment of the Illinois Court, Cook County, 08 D 7716 case with respect to all parenting materials [*sic*]."

¶ 9 In the meantime, the Cook County circuit court set Jeremy's motion for visitation for a hearing on March 11, 2009. On April 10, 2009, the court entered an order on the parties' agreed temporary visitation schedule, pending the outcome of mediation. Kristin would travel to Illinois with the minor child on May 31, 2009, and return to Florida with the child on June 13, 2009. During this period, Jeremy was to have visitation with the minor child every other day, for a total of seven times, lasting two hours, supervised by Kristin's aunt. Jeremy filed a petition for return

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of the minor child to Illinois. The specific dates and times for the visitations were to be agreed upon by Jeremy and Kristin. Jeremy was in arrears in paying child support, and Kristin filed a petition for rule to show cause why Jeremy should not be held in contempt. The hearing on Jeremy's motion for visitation and petition to return the child to Illinois, and Kristin's motion for rule to show cause why Jeremy should not be held in contempt for failure to pay child support was set for June 11, 2009.

¶ 10 On June 11, 2009, the Cook County circuit court entered an order denying Jeremy's motion for "return" of the minor child to Illinois. The court specifically found and stated in the written order that section 609 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/609 (West 2008)), pertaining to removal of children from Illinois, was "inapplicable to the current case," based on the fact that the minor child lives in Florida, not Illinois, and so was not removed from Illinois. The court's order also denied Kristin's request that visitation be supervised by her. The court continued Kristin's motion for rule to show cause to June 18, 2009, so that the parties could calculate the correct amount of child support arrearage. The court's order also continued Jeremy's motion for temporary visitation to June 18, 2009, so that the parties could enter an agreed order on that date. The order stated that Jeremy shall have visitation with the minor child, supervised by Kristin's aunt, on June 11, 2009, and June 12, 2009, at the times and locations specified in the order.

¶ 11 On June 18, 2009, the court entered an agreed order providing temporary visitation during Kristin's travel to Illinois August 10-21, 2009, at the times and locations specified in the order. The order also specified that Jeremy was to pay half of Kristin's plane ticket to Illinois and

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ordered him to pay a lump sum of \$421 for child support arrearages.

¶ 12 On December 24, 2009, Jeremy filed a motion for default judgment in the Illinois divorce proceedings. On January 4, 2010, the Cook County circuit court entered a judgment of dissolution, finding that Kristin was served but did not appear in court. The judgment provided for joint custody of the parties' minor child, Victoria Bennet (5 years old) with Kristin as the "primary residential party." The judgment provided a visitation schedule allowing Jeremy visitation every other Tuesday and Wednesday and every other weekend, and also set forth the month of July for summer visitation and a week during winter vacation, as well as a holiday schedule. The judgment made no mention of the fact that Kristin and the minor child reside in Florida. Kristin did not contest any portion of the judgment.

¶ 13 On April 27, 2011, Jeremy filed a motion requesting residential custody and a termination of the support order. The *pro se* handwritten motion alleged the following:

"I am requesting residential custody of my daughter Victoria Bennett. While in Florida Ms. Gordon and I have shared custody 50/50 and now we have agreed that it would be in the best interest for me to have residential custody on my return to Chicago. Ms. Gordon is unable to pay for childcare do [sic] to the fact that the free program that she was enrolled in for Victoria has now ended since she has turned three. It was also decided that she is unable to manage caring for two kids and attend [sic] school. Therefore, I am also motioning to terminate child support since Victoria will be in my care."

¶ 14 On April 29, 2011, Jeremy also filed a motion for modification of custody and visitation.

¶ 15 On May 12, 2011, a different judge presided over the motion for modification of custody

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and visitation and entered an "agreed" order terminating and vacating all support orders against Jeremy, and ordering that Jeremy "shall become the primary residential parent of Victoria effective immediately."

¶ 16 On May 24, 2011, upon Kristin's motion, appearing through Illinois counsel, the Cook County circuit court entered an emergency order vacating the May 12, 2011 order. In the written order the court specifically "found that the order of May 12, 2011 was procured through [the] fraudulent conduct of Jeremy Bennett." The written order also ordered that Jeremy shall have no contact with Kristin or the minor child and that "all visitation privileges of Jeremy Bennett shall be suspended as of this date." Also on May 24, 2011, Kristin filed a petition for an emergency order of protection, which the court entered, granting Kristin physical care and possession of the minor child, prohibiting Jeremy from committing physical abuse, harassment, interference with personal liberty, intimidation of a dependent and removing the minor child from Illinois or concealing the minor child within Illinois. Jeremy was also ordered to stay away from Kristin and the minor child.

¶ 17 On May 26, 2011, Jeremy filed a motion for reinstatement of the orders entered on May 12, 2011, granting him residential custody of the minor child, seeking to vacate the court's May 24, 2011 orders. On June 3, 2011, the motion was stricken without prejudice. On June 8, 2011, Kristin filed another petition for an emergency order of protection, based on Jeremy's actions in taking Victoria from Florida to Chicago on April 25, 2011. Also on June 8, 2011, the court entered an order denying Jeremy's motion to vacate the May 24, 2011 order and granted Jeremy up to June 14, 2011 to file an amended petition.

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¶ 18 On June 13, 2011, Jeremy filed a response to Kristin's petition to vacate the order of May 12, 2011 (procured by Jeremy) and to vacate the order of protection. Jeremy admitted taking Victoria to Chicago but alleged he maintained contact with Kristin regarding Victoria. Kristin filed an answer maintaining that Jeremy took Victoria from Florida to Chicago, hid her with his girlfriend, and refused to tell Kristin Victoria's whereabouts. On July 8, 2011, the judge was not in attendance and the presiding judge set the case for a progress call on July 21, 2011. On July 21, 2011, the matter was stricken from the call.

¶ 19 On August 2, 2011, Jeremy filed a motion for a hearing to vacate the order of protection and reinstate the May 12, 2011 orders, as well as a petition for residential custody, denying any threats to Kristin and also maintaining that there was a "verbal agreement that the minor child would be relocating to Chicago, IL from Tallahassee, FL with her father." Kristin filed a response denying that there was any agreement for Jeremy to take Victoria from Florida to Illinois and maintained that he kidnaped her. The motion was set for status on September 27, 2011.

¶ 20 Jeremy alleges that on August 8, 2011, the case was up on a progress call to hear Jeremy's motion(s), but the judge was not in attendance that day and the presiding judge set the matter for a progress call on September 29, 2011. The case was also up for another progress call on August 16, 2011, when the case was ultimately scheduled for a progress call for September 27, 2011. Jeremy alleges he did not receive notification of this September 27, 2011 court date.

¶ 21 On September 27, 2011, the court entered an order striking the matter from the call and ordering Jeremy not to file any further pleadings in Cook County, finding that the court has no

jurisdiction and that all matters shall be filed in Florida. The order also provided that any further filings by Jeremy "will result in sanctions" against him.

¶ 22 On October 3, 2011, Jeremy filed another motion for hearing on the order of protection and to vacate the orders of May 24, 2011. On October 13, 2011, the court entered an order denying all relief sought by Jeremy, with prejudice. On October 21, 2011, Jeremy filed a notice of appeal, seeking the following relief:

"I am requesting to have orders dismissed based on the fact that the judge has missed several court dates and this case has not be[en] heard fairly. The judge also showed bias because I do not have an attorney."

¶ 23

ANALYSIS

¶ 24 We begin by noting we have jurisdiction of this appeal from the court's final order of October 13, 2011, denying Jeremy all relief, with prejudice, thus disposing of all claims. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). The emergency injunctive orders and temporary orders entered were interlocutory "pending the adjudication of the issues of custody and visitation." 750 ILCS 45/13.5 (West 2008). However, these previous orders, including the September 27, 2011 order finding a lack of jurisdiction, culminated in the final order of October 13, 2011. Additionally, although the parties have both filed their arguments *pro se*, we are able to review the record and readily determine the issue.

¶ 25 Jeremy's *pro se* argument on appeal is essentially that the circuit court erred in determining it lacked jurisdiction and refusing to hear his motion to modify custody or reinstate the May 12, 2011 order modifying custody, which the Cook County circuit court found was

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fraudulently obtained by him. The Uniform Child-Custody Jurisdiction and Enforcement Act (750 ILCS 36/101 *et seq.* (West 2008)), provides state trial courts with a method to resolve jurisdictional questions that arise in interstate child custody disputes and gives priority to the jurisdiction of the state that is the child's "home state." *In re Marriage of Diaz*, 363 Ill. App. 3d 1091, 1096 (2006) (citing 750 ILCS 36/201(a) (West 2009)). The definition of "home state" is provided in section 102(7) of the Act:

" '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 before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period." 750 ILCS 36/102(7) (West 2008).

¶ 26 "The plain language of section 102(7) of the [Act] requires that a child live within a state for at least six consecutive months for that state to become the child's home state." *In re Marriage of Diaz*, 363 Ill. App. 3d at 1096 (citing 750 ILCS 36/102(7) (West 2004)). The requirement that a child live within a state for a consecutive six-month period to establish the child's home state pursuant to the Act "should be strictly adhered to." *In re Marriage of Diaz*, 363 Ill. App. 3d at 1098. "Additionally, section 102(7) of the UCCJEA directs us to look at the six months immediately before a custody proceeding is commenced." *In re Marriage of Diaz*, 363 Ill. App. 3d at 1096 (citing 750 ILCS 36/102(7) (West 2004)). A "custody proceeding" includes "a proceeding for divorce." 750 ILCS 36/102(4) (West 2008).

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¶ 27 At the time Jeremy filed for dissolution of the marriage in 2009, Kristin had already been residing in Florida for three years and the minor child was born in Florida and was residing there. The child resided in Florida for eleven of the first thirteen months of her life, exclusively with Kristin. The minor child only visited Illinois for two months. Under the Act, this period of time is still included in the amount of time spent in the home state. After that, Kristin returned to Florida with the minor child and continued residing there. Florida is the minor child's home state.

¶ 28 We note that the minor child was not a resident of Illinois at the time of the commencement of the dissolution proceeding, nor did the child reside in Illinois six months prior to the commencement of the dissolution proceeding. Thus, Illinois was not the home state for even the initial determination of custody in the divorce proceedings. The Act authorizes our Illinois circuit courts to make a child custody determination only if our State is the "home state" at the time of initiation of the child custody proceedings. *In re Marriage of Schuham*, 120 Ill. App. 3d 339, 347-48 (1983). The exercise of jurisdiction by the Cook County circuit court for the initial child custody determination in the dissolution judgment was appropriate, however, because Florida deferred to the jurisdiction of Illinois until the entry of a final divorce judgment. Section 201 of the Uniform Child-Custody Jurisdiction and Enforcement Act provides that an Illinois court has jurisdiction to make an initial child-custody determination when "a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum." 750 ILCS 36/201(a)(2) (West 2008). This section has the added requirements where a home state declines jurisdiction that "(A) the child and the child's parents,

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or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and (B) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships." 750 ILCS 36/201(a)(2)(A), (B) (West 2008). No such findings were made in the Illinois divorce proceeding. Nevertheless, Kristin never appeared, although she was apparently served, and never objected; thus, any objection was waived. The dissolution judgment awarding joint custody but giving Kristin primary physical custody of Victoria became final on January 4, 2010, and we do not revisit the propriety of the initial custody determination.

¶ 29 The Florida court's December 16, 2008, order found that it had jurisdiction because the minor child resided in Florida and provided that "until such time as the Cook County Court renders a temporary and/or permanent parenting order, the Petitioner [Kristin] shall have temporary custody of the parties' minor child." Florida had jurisdiction to enter this temporary order because the minor child was residing in Florida, pursuant to section 204 of the UCCJEA, the temporary emergency jurisdiction portion of the statute. See 750 ILCS 36/204 (West 2008). The Florida court also, then, had jurisdiction to enter the February 19, 2009 final judgment of injunction for protection against domestic violence with children. This order likewise provided that the injunction was "subordinate to the judgment of the Illinois Court, Cook County, 08 D 7716 case with respect to all parenting materials [*sic*]." The Florida court's orders reserved the exercise of jurisdiction in Florida only pending a final judgment in the Illinois divorce proceeding.

¶ 30 The final divorce judgment was entered on January 4, 2010, and the terms of that

judgment gave Kristin primary physical custody of Victoria. Section 202(a) of the Act provides:

"Except as otherwise provided in Section 204 [750 ILCS 36/204], a court of this State which has made a child-custody determination consistent with Section 201 or 203 [750 ILCS 36/201 or 750 ILCS 36/203] has exclusive, continuing jurisdiction over the determination until:

(1) a court of this State determines that neither the child, the child's parents, and any person acting as a parent do not 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; or

(2) a court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State."

750 ILCS 36/202(a) (West 2008).

¶ 31 Both the Cook County circuit court and the Florida court determined that Victoria and Kristin do not reside in Illinois but, rather, reside in Florida, thereby satisfying section 202(a)(2). Under section 202(a) of the Act, Florida now has exclusive jurisdiction of child custody determinations regarding Victoria. See also *In re Marriage of Wass*, 94 Ill. App. 3d 436, 440-41 (1981) (trial court lacked subject matter jurisdiction to hear any claims pertaining to the custody of the parties' children where Illinois was no longer the children's home state). Under the Act, the custody status of a child or children may be decided *quasi in rem*, and once that jurisdiction is assumed pursuant to the Act, "custody and visitation orders can be made and modified without regard to whether either parent has submitted to the court's jurisdiction." *In re Marriage of*

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Schuham, 120 Ill. App. 3d 339, 346 (1983). Thus, because Florida is Victoria's home state, Florida courts have jurisdiction to make custody determinations regarding Victoria regardless whether Jeremy submits to the jurisdiction of Florida. The Cook County circuit court's September 27, 2011 order finding it did not have jurisdiction, and its October 13, 2011 final order denying all relief sought by Jeremy, were proper.

¶ 32 Jeremy claims he did not have notice of the September 27, 2011 order and states that the court's September 27, 2011 order "grant[ed] Kristin permission to return to Florida." This is not the substance of the order. The September 27, 2011 order stated that Jeremy was not to file any further pleadings in Cook County because the court no longer had jurisdiction and directed that all matters be filed in Florida. Section 205(a) of the Illinois Marriage and Dissolution of Marriage Act provides that notice and an opportunity to be heard must be provided "[b]efore a child-custody determination is made under this Act." 750 ILCS 36/205(a) (West 2008). Here, however, no child-custody determination was made; rather, the court determined it did not have jurisdiction, and thus no notice was required.

¶ 33 Additionally, the September 27, 2011 date was set by the court and Jeremy, as a party, had a duty to check the court's docket. See *Fiallo v. Lee*, 356 Ill. App. 3d 649, 656 (2005) ("Even where a party is represented by counsel there is a 'duty to personally follow the progress of his case.'") (quoting *Gold v. Rader*, 201 Ill. App. 3d 775, 783 (1990)).

¶ 34 We find no merit to Jeremy's claim of bias. The court's finding and orders were based solely on the Act.

¶ 35

CONCLUSION

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¶ 36 The circuit court properly found that it did not have jurisdiction under the Uniform Child Custody Jurisdiction Act to modify the custody and visitation provisions of the dissolution decree because the minor child's home state is Florida. As the child's home state, Florida has jurisdiction of custody matters pertaining to the minor child.

¶ 37 Affirmed.