STATE OF MICHIGAN

COURT OF APPEALS

CLINTON HERWIN CARNEGIE SCOTT, JR.,

Plaintiff-Appellant,

v

KASAGGA EVA NABUUFU,

Defendant-Appellee.

UNPUBLISHED
March 21, 2019

No. 345382
Berrien Circuit Court
LC No. 18-002481-DC

Before: RIORDAN, P.J., and MARKEY and LETICA, JJ.

PER CURIAM.

Plaintiff, Clinton Herwin Carnegie Scott, Jr., appeals as of right the trial court's order dismissing his custody complaint for lack of jurisdiction. We affirm.

I. INTRODUCTION

Defendant, Kasagga Eva Nabuufu, and plaintiff have one child together, SCAS.[1] The parties never married, but they cohabitated in Michigan on occasion. They agree that defendant and SCAS lived with plaintiff in New Buffalo, Michigan, from August 10, 2016 until October 15, 2016, and again from October 21, 2017 until May 18, 2018.

Plaintiff filed his initial complaint on April 11, 2018, seeking joint legal and physical custody of SCAS. Defendant was arrested and charged with domestic violence against plaintiff on May 17, 2018. The following day, defendant retrieved SCAS from daycare in Indiana and did not return her to plaintiff's home in New Buffalo. Plaintiff then filed an amended complaint on May 25, 2018, again requesting joint legal and physical custody of SCAS. Defendant responded with a motion to dismiss plaintiff's complaint, arguing that the Michigan trial court

[1] There was no dispute whether plaintiff was SCAS's father. Plaintiff is listed as SCAS's father on her birth certificate.

did not have jurisdiction in the case. Following an evidentiary hearing, the trial court agreed with defendant and dismissed plaintiff's custody complaint. This appeal followed.

II. ANALYSIS

First, plaintiff argues that the trial court erred in not taking jurisdiction pursuant to the Child Custody Act, MCL 722.21 *et seq*., as SCAS was physically present in Michigan when he filed his initial complaint and the act does not contain a time-specific residency requirement. We disagree.

Plaintiff did not present this argument to the trial court. However, "a challenge to subject-matter jurisdiction may be raised at any time, even if raised for the first time on appeal." *Smith v Smith*, 218 Mich App 727, 729-730; 555 NW2d 271 (1996). This Court reviews whether a trial court has subject-matter jurisdiction de novo. *White v Harrison-White*, 280 Mich App 383, 387; 760 NW2d 691 (2008). "[I]ssues of statutory construction present questions of law, which [this Court also] review[s] de novo." *Id*.

The Child Custody Act, MCL 722.21 *et seq*., is the statutory scheme that addresses issues related to child custody disputes. See *Van v Zahorik*, 460 Mich 320, 327-328; 597 NW2d 15 (1999). In support of his position, plaintiff cites MCL 722.26(2), which provides, in pertinent part, "if the circuit court of this state does not have prior continuing jurisdiction over a child, the action shall be submitted to the circuit court of the county where the child resides . . . ." However, this Court has concluded that MCL 722.26(2) "concerns venue rather than jurisdiction." *Morrison v Richerson*, 198 Mich App 202, 208; 497 NW2d 506 (1992).

The Child Custody Act does not address jurisdiction in cases in which residents of other states are involved, such as the situation here because SCAS was born in Illinois. Defendant lived and worked in Illinois during the pregnancy, and she returned to Illinois before the end of her maternity leave. Defendant moved to Michigan in October 2017, when she accepted a position at the University of Notre Dame in Indiana. After the domestic violence incident on May 17, 2018, defendant and SCAS moved to Indiana and remained in Indiana. SCAS's daycare and healthcare providers were located in Indiana. Plaintiff also worked in Indiana. Further, at the time that plaintiff filed his amended complaint on May 25, 2018, defendant and SCAS were living in Indiana. As a result, this case involves parties who are residents of different states and concerns jurisdiction, not venue. Thus, the relevant provision from the child custody act does not apply. MCL 722.26(2); see *Morrison*, 198 Mich App at 208; see also *McDonald v McDonald*, 74 Mich App 119, 123 n 1; 253 NW2d 678 (1977) ("Plaintiff alternatively contends that jurisdiction may be founded upon [MCL 722.26(2)]," but "[t]hat section concerns venue [] rather than jurisdiction.").

Plaintiff alternatively argues that the trial court erred in declining to exercise jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*. We disagree. "The UCCJEA prescribes the powers and duties of the court in a child-custody proceeding involving [Michigan] and a proceeding or party outside of this state . . . ." *Cheesman v Williams*, 311 Mich App 147, 151; 874 NW2d 385 (2015) (quotation marks omitted; alterations and ellipsis in original). MCL 722.1201(2) states that MCL 722.1201(1) "is the

exclusive jurisdictional basis for making a child-custody determination by a court of this state." MCL 722.1201(1) states:

> (1) Except as otherwise provided in section [MCL 722.1204,[2]] a court of this state has jurisdiction to make an initial child-custody determination only in the following situations:
>
> (a) This 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 6 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.
>
> (b) A court of another state does not have jurisdiction under subdivision (a), or 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 under section [MCL 722.1207] or [MCL 722.1208], and the court finds both of the following:
>
> (*i*) The child and the child's parents, or the child and at least 1 parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.
>
> (*ii*) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.
>
> (c) All courts having jurisdiction under subdivision (a) or (b) have declined to exercise jurisdiction on the grounds that a court of this state is the more appropriate forum to determine the custody of the child under section 207 or 208.
>
> (d) No court of another state would have jurisdiction under subdivision (a), (b), or (c).

According to MCL 722.1102(g), in pertinent part, a child's "home state" is "the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding." The UCCJEA defines "commencement" as "the filing of the first pleading in a proceeding." MCL 722.1102(e).

In this case, the trial court properly concluded that it did not have jurisdiction of plaintiff's custody complaint under MCL 722.1201(1)(a). The parties agree that defendant and SCAS lived in Michigan from August until October 2016. Further, the parties appear to agree that defendant and SCAS returned to Michigan on October 23, 2017. Plaintiff filed his initial custody complaint on April 11, 2018, which was the commencement of the proceeding. See MCL 722.1102(e). As a result, the child had not resided in Michigan for 6 consecutive months.

[2] MCL 722.1204 concerns temporary emergency jurisdiction.

Here, the plaintiff filed his complaint 12 days before Michigan could have been established as SCAS's home state. MCL 722.1102(g). Therefore, the trial court properly concluded that it did not have jurisdiction of the custody complaint pursuant to MCL 722.1201(1)(a).

The trial court also found that it did not have jurisdiction under MCL 722.1201(1)(b) because the parties and SCAS did not have sufficient ties to Michigan. At the time that the initial complaint was filed, defendant worked in Indiana. She did not have any family members in Michigan. SCAS was born in Illinois. Although defendant and SCAS lived in Michigan from August until October 2016, defendant returned to Illinois with SCAS until she accepted the position at Notre Dame in October 2017. At the time of the August 1, 2018 evidentiary hearing, defendant and SCAS had been living in Indiana since May 2018. SCAS's childcare and healthcare providers were located in Indiana. As a result, even if another state did not have jurisdiction under MCL 722.1201(1)(a), the trial court did not err in finding that neither SCAS nor defendant had "a significant connection with" Michigan, MCL 722.1201(1)(b)(*i*), or that "[s]ubstantial evidence [was] available in this state concerning the child's care, protection, training, and personal relationships," MCL 722.1201(1)(b)(*ii*).

Finally, the trial court properly concluded that it did not have jurisdiction under MCL 722.1201(1)(d). The trial court explained that SCAS's home state was being established in Indiana as it was defendant's intent to remain there. Accordingly, the trial court properly concluded that it did not have jurisdiction of the custody complaint pursuant to MCL 722.1201(1)(d).

III. CONCLUSION

Therefore, the trial court did not abuse its discretion in finding that it did not have jurisdiction under the UCCJEA. See *Cheesman*, 311 Mich App at 150.

Affirmed.

/s/ Michael J. Riordan
/s/ Jane E. Markey
/s/ Anica Letica