

STATE OF MICHIGAN
COURT OF APPEALS

BRENDA LEE WALLS a/k/a
BRENDA LEE CONCA,

UNPUBLISHED
December 17, 1996

Plaintiff-Appellant,

v

No. 191981
LC No. 94-003227-DC

DAVID CONCA,

Defendant-Appellee.

Before: Fitzgerald, P.J., and Holbrook, Jr. and E.R. Post,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a Midland Circuit Court order vacating jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act (UCCJA), MCL 600.653(1); MSA 27A.653(1), and dismissing plaintiff's custody case. We affirm.

Plaintiff brought this action to obtain custody of the parties' minor child. The parties were married in New York and resided in New York until June 1994. At that time, plaintiff and the infant moved to Michigan without defendant's knowledge. Three days later, plaintiff brought this action, and on the following day defendant filed a similar custody action in New York. Defendant's action was subsequently dismissed because, at the time that his claim was filed, plaintiff's suit in Michigan was pending. In December 1994 plaintiff filed an action for divorce in Midland Circuit Court. In his answer, defendant raised jurisdiction as a defense, arguing that New York, rather than Michigan, had jurisdiction over both cases.

Plaintiff first contends that the trial court erred when it failed to exercise jurisdiction under subsection (1)(b) of the UCCJA, MCL 600.653(1)(b); MSA 27A.653(1)(b), which provides that this state has jurisdiction over a child custody dispute if:

It is in the best interest of the child that a court of this state assume jurisdiction
because the child and his parents, or the child and at least 1 contestant, have a

* Circuit judge, sitting on the Court of Appeals by assignment.

significant connection with this state and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships.

In deciding whether it has jurisdiction over a child custody case, a court must consider the situation as it existed on the date that the complaint was filed. *Dean v Dean*, 133 Mich App 220, 223; 348 NW2d 725 (1984). Here, evidence presented at an evidentiary hearing revealed that plaintiff traveled to Michigan without first notifying her husband that she planned to leave and without telling him when she planned to return. Plaintiff testified that she left because she believed that an emergency situation existed since it appeared that the parties would not be financially capable of providing for the child. Plaintiff also indicated that defendant's behavior toward the child bordered on mistreatment or abuse; however, other testimony indicated that defendant was a loving parent. The testimony of both parties established that the child had extended family members in both states who were willing and able to provide the parties financial support and babysitting services.

As part of the evidentiary hearing, a telephone conversation occurred among the trial court, the parties and their counsel, and the New York judge who had declined jurisdiction. The New York judge informed the trial court that if Michigan decided not to exercise jurisdiction, then a forum would be available in New York. Based on this conversation, as well as other testimony, the trial court found that plaintiff and the child did not have a more significant connection with Michigan than New York and that it would be in the child's best interests to decline to exercise jurisdiction in Michigan given that the child had a caring, extended family in both locations.

These findings were consistent with the testimony on this issue and were not against the great weight of the evidence. MCL 722.28; MSA 25.312(8). Moreover, we find that the trial court properly refused to exercise jurisdiction. Although the child's connection to Michigan was significant, it was not greater than his connection to New York. *Bivins v Bivins*, 146 Mich App 223, 231; 379 NW2d 431 (1985). Further, short-term presence in this state is not enough to confer jurisdiction, MCL 600.653(2); MSA 27A.653(2), even where the parent intends to stay longer. Since subsection (1)(b) of the UCCJA must be interpreted to discourage the unilateral removal of a child from one jurisdiction to another, *McDonald v McDonald*, 74 Mich App 119, 126-127; 253 NW2d 678 (1977), the trial court's failure to exercise jurisdiction under UCCJA (1)(b) was not in error.

Plaintiff also contends that the trial court erred in failing to find that jurisdiction existed under subsection (1)(c) of the UCCJA, MCL 600.653(1)(c); MSA 27A.653(1)(c), which provides that this state has jurisdiction over a child custody dispute if:

The child is physically present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent.

Since the evidence did not clearly preponderate in a direction opposite the trial court's finding that there was no substantial and immediate physical or mental harm to the child, plaintiff's argument that the trial

court's findings of fact were against the great weight of the evidence is misplaced. Moreover, the trial court properly chose, adopted, and applied the law on this issue when it refused to find that an emergency existed as a result of the parties' financial difficulties. Under subsection (1)(c), an emergency only arises from mistreatment, abuse, neglect, or dependency. This subsection does not encompass financial hardship. Therefore, the trial court correctly concluded that plaintiff did not establish that an emergency situation existed when she left New York.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Edward R. Post