STATE OF MICHIGAN

COURT OF APPEALS

SAMI ELEZI,

Plaintiff-Appellee,

v

SALO ELEZI,

Defendant-Appellant.

UNPUBLISHED
April 4, 1997

No. 189698
Wayne Circuit Court
LC No. 92-202460 DM

Before: Corrigan, P.J., and Sullivan* and T.G. Hicks,** JJ.

PER CURIAM.

In this custody dispute, defendant appeals by right the order transferring physical custody of her minor child to plaintiff, her ex-husband. We affirm.

In the wake of the breakdown of their four-year marriage, plaintiff and defendant separated in 1990. Defendant-mother and the couple's one-year-old daughter, Lindditta Elezi, moved to Windsor, Ontario, Canada, where they have resided throughout these proceedings. In the 1992 judgment of divorce, the court awarded plaintiff-father and defendant joint legal custody of Lindditta. The court awarded physical custody to defendant and granted reasonable visitation to plaintiff. In February 1995, plaintiff filed a visitation complaint with the Friend of the Court, claiming that defendant had not permitted him to visit Lindditta in over a year. The court held defendant in contempt when she failed to adhere to a visitation schedule set by the court. Soon thereafter, plaintiff petitioned for a change in physical custody. After presiding over a custody hearing, the court granted physical custody to plaintiff. Defendant did not appear in person at the hearing but was represented by counsel.

Defendant initially contends that the circuit court erred in denying her motion to dismiss because the court did not have jurisdiction to decide custody issues. Defendant maintains that under the Hague Convention, a Canadian court was the proper forum for resolving this custody dispute. We disagree.

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

Whether a court has subject-matter jurisdiction is a question of law that this Court reviews de novo. *Bruwer v Oaks (On Remand)*, 218 Mich App 392, 395; 554 NW2d 345 (1996). In 1986, the United States ratified the Hague Convention on the Civil Aspects of International Child Abduction and two years later enacted enabling legislation giving force to the convention. 42 USC 11601 *et seq*. The objects of the convention are two-fold: (1) to secure the prompt return of children wrongfully removed to, or retained in, another sovereign state and (2) to ensure that rights of custody and access under the law of one sovereign state are respected in other states. Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, ch. 1, art. 1, S. Treaty Doc. No. 99-11, 19 I.L.M. 1501. "The convention's goal is to curb international abductions of children by providing judicial remedies to those seeking the return of a child who has been wrongfully removed." *Tyszka v Tyszka*, 200 Mich App 231, 234; 503 NW2d 726 (1993). The instant case involves neither international kidnapping nor a request for the return of a wrongfully removed or retained child. Thus, the convention is inapplicable and the court properly denied defendant's motion to dismiss.

Further, defendant submitted to the court's jurisdiction because the court had jurisdiction over the parties when it granted the divorce. *Ewing v Bolden*, 194 Mich App 95, 101; 486 NW2d 96 (1992). Jurisdiction over a child of divorced parents remains in the court that granted the divorce until the child reaches age eighteen. MCL 552.17a; MSA 25.97(1); *Adams v Adams*, 100 Mich App 1, 17; 298 NW2d 871 (1980).

Defendant next asks this Court to review the circuit court's order on its merits. We decline to do so for the reasons expressed below. In July 1994, plaintiff filed a visitation complaint, asserting that defendant had not permitted visitation since January 1994. Plaintiff filed additional visitation complaints in February and March 1995. The court devised a visitation schedule in May 1995. In June 1995, the court entered an order holding defendant in contempt and establishing a new visitation schedule. Plaintiff petitioned in July 1995 for custody. In August 1995, the circuit court held a custody hearing, which defendant did not attend. Despite the visitation orders, defendant had permitted plaintiff to visit Lindditta only twice since January 1994. After making findings with respect to the statutory best interest factors involved in a custody determination, the judge adjourned the hearing so that he could interview Lindditta. Defendant, however, did not appear with Lindditta. The court thereafter entered the order granting custody to plaintiff.

After refusing to appear before the circuit court, defendant now asks this Court to overturn the order granting custody to plaintiff. Defendant has exhibited utter defiance of court orders. She denied plaintiff visitation. She failed to appear at hearings. She declined to appear with Lindditta so that the circuit court judge could interview the child. We will not endorse defendant's attempt to fashion an appellate parachute for her own failure to attend hearings. See *Alar v Mercy Memorial Hosp*, 208 Mich App 518, 542; 529 NW2d 318 (1995) (Jansen, J., dissenting).

Moreover, defendant willfully disobeyed court orders. These circumstances do not present a default situation. Rather, defendant refused to answer to the circuit court's authority, yet now appeals to this Court for relief. Defendant offers this Court no substantive explanation for her actions in ignoring the circuit court's repeated orders for her appearance. Defendant's history of noncompliance makes us

averse to reward her behavior with relief. The circuit court's characterization of this matter is apt: "[This Court's time is being spent] to accommodate the whims of [defendant,] who has been deliberately disobeying the orders of this Court."

The change in custody order is a harsh remedy in this case. Defendant, however, actively obstructed plaintiff from visiting Lindditta. Moreover, defendant's nonappearance at the critical custody hearing speaks for itself. The court held the requisite evidentiary hearing on the best interests of the child and considered the factors set forth in MCL 722.23; MSA 25.312(3). Although plaintiff's grounds for a change in custody appear weak, when coupled with defendant's complete noncompliance, the change in custody is merited.

Defendant also asserts that the circuit court's findings on some of the statutory factors reflected the court's attempt to penalize her for refusing to appear. To the contrary, the court was forced to make deductions and assumptions because defendant failed to appear at the critical custody hearing. We also find it ironic that defendant asserts on appeal that the court did not rely on a psychological evaluation when defendant herself did not produce the child for an evaluation. Defendant's choice to absent herself and Lindditta from the jurisdiction forced the court to make its decision solely on the evidence before it. *Currey v Currey*, 109 Mich App 111, 119; 310 NW2d 913 (1981).

Given our disposition of the above issues, the remaining evidentiary issue in this case is moot.

Affirmed.

/s/ Maura D. Corrigan
/s/ Joseph B. Sullivan
/s/ Timothy G. Hicks