

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM R. HARGROVE,

Plaintiff-Appellee,

v

CHRISTINE ANN GUSTAFSON,

Defendant-Appellant.

UNPUBLISHED

July 1, 1997

No. 199379

Washtenaw Circuit Court

LC No. 94-003341-DP

Before: Gribbs, P.J., and Sawyer and Young, JJ.

PER CURIAM.

Defendant appeals as of right from the order denying her motion to dismiss this child custody dispute for lack of subject matter jurisdiction or, in the alternative, to transfer the venue of this case to a more appropriate forum. We necessarily decide only the issue of subject matter jurisdiction and reverse and remand.

This case arises out of the brief relationship between plaintiff, the father of the child and a resident of Michigan, and defendant, the mother of the child and a resident of New Mexico, while both parties were in New Mexico. Defendant subsequently gave birth to their child in New Mexico, raised the child alone for three years in New Mexico, and received welfare assistance from New Mexico until the New Mexico child support division required her to prove the father's identity. After flying to New Mexico, plaintiff denied paternity of the child until blood tests revealed that he was the father and the child's birth certificate was subsequently amended. Pursuant to an alleged marriage proposal by defendant, defendant and the child moved to Michigan for a total of approximately five and one-half months. Before defendant returned to New Mexico with the child, plaintiff filed a complaint for an order of filiation and visitation and allegedly threatened defendant that he would not allow her to leave Michigan unless she signed the consent judgment. Without a hearing, the lower court entered the parties' consent judgment, which contained language that Michigan had subject matter jurisdiction over the matter and granted both parties joint legal custody of the child, with defendant having physical custody. During the child's summer visitation with plaintiff, plaintiff filed the instant petition, a motion seeking sole custody of the child with only supervised visitation by defendant. Defendant subsequently filed the motion to dismiss, which the lower court denied because it found that jurisdiction by Michigan

was proper. Pursuant to MCL 722.28; MSA 25.312(8), this Court reviews the lower court's decision on a major issue such as a subject matter jurisdiction for clear legal error. *Fletcher v Fletcher*, 447 Mich 871, 876-882; 526 NW2d 889 (1994).

Initially, we note that the language in the parties' consent judgment that Michigan had subject matter jurisdiction over this matter is inconsequential because parties may neither waive nor stipulate to subject matter jurisdiction. *Redding v Redding*, 214 Mich App 639, 643; 543 NW2d 75 (1995). Moreover, whether a court has subject matter jurisdiction is an issue that "may be raised at any time, and parties to an action can neither confer jurisdiction by their conduct or action nor waive the defense by not raising it." *Winters v Dalton*, 207 Mich App 76, 79; 523 NW2d 636 (1994). Consequently, not only would the order changing custody be void if the lower court lacked subject matter jurisdiction over this dispute, but the original consent order of filiation, support and visitation would also be void and without force for the same reasons. *Grubb Creek Action Committee v Shiawassee Co Drain Comm'r*, 218 Mich App 665, 669; 554 NW2d 612 (1996).

On the merits of this issue, the Uniform Child Custody Jurisdiction Act (UCCJA), MCL 600.651 *et seq.*; MSA 27A.651 *et seq.*, governs the power of the states to enforce custody orders of other states and to make child custody determinations. *Loyd v Loyd*, 182 Mich App 769, 774; 452 NW2d 910 (1990). Under the UCCJA, a court presented with a child custody dispute must go through a multi-step process to determine whether to exercise jurisdiction over the case. *Braden v Braden*, 217 Mich App 331, 334; 551 NW2d 467 (1996). Although the facts relevant to each step in the process necessarily overlap, a court must make the following three individual determinations: first, the court must decide whether it has jurisdiction over the case; second, the court must decide whether another state also has jurisdiction over the dispute; third, if the court decides that more than one court could exercise jurisdiction, then it should decide which court should actually proceed with the matter. *Id.*, 334-335.

The first inquiry regarding jurisdiction is governed by MCL 600.653(1); MSA 27A.653(1). This statute provides that a court in Michigan has jurisdiction when:

(a) This state is the home state of the child at the time of commencement of the proceeding or had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state. [or]

(b) 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 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 this case, the lower court correctly found that it could not exercise "home state" jurisdiction pursuant to subsection (a) of this statute because the child did not live in Michigan for at least six

consecutive months before the present proceedings. MCL 600.652(e); MSA 27A.652(e). The lower court instead exercised jurisdiction under subsection (b), which provides a “significant interest” test for jurisdiction. *Bivins v Bivins*, 146 Mich App 223, 231; 379 NW2d 431 (1985). The physical presence of the child or the child and a parent is alone insufficient to confer jurisdiction under subsection (b). MCL 600.653(2); MSA 27A.653(2). Instead, if the child and his family have equal or stronger ties with New Mexico than with Michigan, then New Mexico has jurisdiction because the purpose of the UCCJA is to limit jurisdiction rather than to proliferate it. *Id.*, 231-232. The best interest of the child is served when the forum has optimum access to relevant information about the child and his family. *Id.*

Here, the record reveals that the relevant information connecting the child to Michigan includes the following: (1) plaintiff and plaintiff’s relatives are residents of Michigan; (2) defendant and the child together resided in Michigan for approximately five and one-half months; and (3) the child has had subsequent summer and holiday visitation periods in Michigan and is apparently still in Michigan as a result of plaintiff’s refusal to return the child after the summer visitation period expired. Thus, while it is true that the child has some ties to Michigan, the ties do not amount to maximum contacts so as to confer jurisdiction on a Michigan court. Accordingly, the court’s application of MCL 600.653(1)(b); MSA 27A.653(1)(b) to the facts in this case represented clear legal error.

Reversed and remanded.

/s/ Roman S. Gibbs
/s/ David H. Sawyer
/s/ Robert P. Young, Jr.