

STATE OF MICHIGAN
COURT OF APPEALS

LLOYD WALTON WILLIAMS, JR.,

Plaintiff-Appellant,

v

MARIA CRISTINA CHAVEZ-WILLIAMS,

Defendant-Appellee.

UNPUBLISHED

April 13, 2010

No. 293536

Genesee Circuit Court

LC No. 03-250460-DM

Before: WHITBECK, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Plaintiff Lloyd Williams, Jr. appeals as of right from the trial court's order declining jurisdiction in this case involving the custody of the parties' minor child and relinquishing jurisdiction to the probate court in Essex County, Massachusetts. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In late October 2003, Williams filed a complaint for divorce against defendant Maria Chavez-Williams, indicating that the parties had been married since September 1996, and requesting full custody of the parties' two minor children, D.W. and A.W. Williams asserted that Chavez-Williams had recently taken the children to live in Massachusetts. Chavez-Williams filed a counter-complaint for divorce requesting sole physical and legal custody of the children.

In August 2004, a judgment of divorce was entered, awarding the parties joint legal custody of D.W. and A.W., and awarding Chavez-Williams physical custody. The children were allowed to reside in Massachusetts with Chavez-Williams, but "the domicile, custody and support of the minor children shall remain under the jurisdiction of Genesee County[.]"

In October 2005, the friend of the court petitioned to suspend Williams' parenting time on the ground that a change of circumstances had occurred. The friend of the court had received three letters and numerous telephone calls from the children's therapist in Massachusetts regarding abuse. Further, Williams failed to comply with the order requiring him to provide proof of undergoing a psychiatric evaluation and regularly treating with his physician.

After a hearing on the petition, the trial court concluded that, based on the evidence presented at the hearing, there was a "significant change of circumstances" since the last custody order, and the trial court temporarily suspended parenting time in Michigan. The trial court permitted Williams to have supervised parenting time in Massachusetts once a month. The trial

court indicated that it would schedule an evidentiary hearing “to address the other issues in the petition relative to parenting time.” The trial court thereafter entered an order in November 2005, granting the friend of the court’s petition to suspend Williams’ parenting time “until such time as the Court conducts further hearing [sic] on this matter.”

In December 2007, Williams petitioned to reinstate parenting time pursuant to the judgment of divorce. Williams discussed the extensive history of custody battles between the parties and indicated that the trial court had ordered a hearing regarding terminating Williams’ parenting time in 2005, but no hearing had ever occurred. The parties stipulated to adjourning the hearing on the parties’ motion several times. However, Williams eventually withdrew his motion in September 2008.

In April 2009, Williams again moved to modify or change custody with respect to A.W., the only remaining minor child. The record then contains a letter from Williams’ counsel to an attorney in Massachusetts, dated May 4, 2009, indicating that Williams and counsel “were informed this morning by [Chavez-Williams’ Michigan attorney] that you have filed an action in Massachusetts to have the matter transferred to your local family court in Salem, Massachusetts.” Williams’ counsel “strenuously object[ed]” because “the children have only resided in Massachusetts for approximately three years,” and all the records and witnesses were in Michigan. The record also contains a letter from Williams’ counsel to the trial court, stating that Williams was informed that Chavez-Williams “had filed a petition in Massachusetts to assume jurisdiction over the minor child, [A.W.]” and that “the presiding judge in the existing case must confer with the judge in the state where the new petition to assume jurisdiction is pending.” Further, the letter provided that both parties “agreed that, in order for you to conduct the telephone conference required by statute, you will need some time to review and familiarize yourself with the file.”

At a hearing in May 2009, Chavez-Williams indicated that the parties had a proposed stipulated order for the trial court to sign, suggesting that they adjourn for a month so that the Michigan trial court could confer with the Massachusetts court to determine jurisdiction. The trial court decided to sign the parties’ stipulated order and adjourned the hearing for one month. The trial court then entered an order in June 2009, relinquishing jurisdiction and transferring the case to Massachusetts. Williams now appeals.

II. JURISDICTIONAL REVIEW

A. STANDARD OF REVIEW

Williams failed to raise in the trial court the issues he now presents for our review. Therefore, we review his claims for plain error affecting his substantial rights; that is, whether the error affected the outcome of the proceedings.¹

¹ *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008), citing *People v Carines*, 460 Mich 750, 763-764, 744; 597 NW2d 130 (1999).

B. ANALYSIS

Within the body of his brief, Williams presents arguments regarding the operative date for jurisdiction, Chavez-Williams' duty to inform the trial court about the other child custody proceedings and provide the trial court with copies of the relevant Massachusetts documents, defense counsel's alleged misrepresentations, and the trial court's failure to make a record of its communication with the Massachusetts court. Although we have discretion to review unpreserved claims or claims not properly presented in a party's question presented, given Williams' combined failure to preserve and properly present these issues for our review, we decline to review them.²

Although also unpreserved, we limit our review to the sole issue presented in Williams' statement of the question presented: whether the trial court examined "the previously filed parenting time hearing transcript as a court document required to be examined by MCL 722.1206(2) when it considered which court has proper jurisdiction or convenience of forum in transferring jurisdiction to Massachusetts."

Examining Williams' claim, we find no plain error requiring reversal. Essentially, Williams argues that because the trial court did not examine the court documents as required by MCL 722.1206(2),³ it failed to discover the "pending" custody proceeding, which he alleges began with the friend of the court's October 5, 2005 petition to suspend Williams' parenting time.

Besides Williams' assertion to the contrary, there is no evidence that the trial court failed to examine the lower court record. In fact, the record reflects that the October 5, 2005 petition and the transcript of the October 19, 2005 hearing regarding Williams' alleged abuse were contained in the lower court file, and the trial court was aware that the custody case was an ongoing case in the trial court since the parties' divorce. Moreover, Williams' counsel's letter to

² MCR 7.212(C)(5); *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008) (Although this Court has inherent power to review an issue not raised in the trial court to prevent a miscarriage of justice, generally a "failure to timely raise an issue waives review of that issue on appeal."); *English v Blue Cross Blue Shield of Mich*, 263 Mich App 449, 459; 688 NW2d 523 (2004) ("An issue not contained in the statement of questions presented is waived on appeal.").

³ MCL 722.1206(2) states:

Except as otherwise provided in section 204, before hearing a child-custody proceeding, a court of this state shall examine the court documents and other information supplied by the parties as required by section 209. If the court determines that, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the child-custody proceeding.

the trial court indicated that both parties agreed to postpone hearing Williams' petition to give the trial court time to review the file. And, further, the trial court's June 24, 2009 order also reflected that it recognized that the matter originated in Genesee County and had been pending since 2003, and thus the trial court had to determine whether to continue to exercise its jurisdiction, or to relinquish it to the Massachusetts court.

The record clearly supports the trial court's decision, and there was an adequate record to enable our review. No error with respect to making a record affected Williams' substantial rights.⁴ Reversal is not required.⁵

We affirm.

/s/ William C. Whitbeck
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

⁴ *Utrera*, 281 Mich App at 8-9.

⁵ *Id.*