

Lot No. 32 is improved with a two-story vinyl siding and partially brick-faced single family residence and having a street address of 104 Logan Lane, Shippensburg, PA 17257.

TERMS

As soon as the property is knocked down to purchaser, 10% of the purchase price or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN August 19, 1996 at 4:00 PM, prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on August 23, 1996, 1:00 PM, prevailing time, in the Franklin County Court House; Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be the higher, shall be paid in full.

Robert B. Wollyung
Sheriff
Franklin County
Chambersburg, PA
7/19, 7/26, 8/02/96

DONALD E. MOATS, Plaintiff vs. TRINITI L. MOATS,
Defendants, Franklin County Branch, Civil Action - Law F.R.
1993 - 1089

Moats v. Moats

Custody - Uniform Child Custody Jurisdiction Act - Subject Matter Jurisdiction

1. The underlying purpose of the Uniform Child Custody Jurisdiction Act ("UCCJA") is to promote the best interest of the children involved in the custody dispute.
2. Under the UCCJA a child's "home state" is the state where that child lived with a parent, parents, guardian or institution for at least six consecutive months preceding the commencement of the custody action; however, a child's home state is only one factor considered by the court determining jurisdiction for UCCJA purposes.
3. Under the UCCJA, in order for a state to have jurisdiction over a custody dispute, the child and at least one parent must have a significant connection with that state and substantial evidence pertinent to the custody dispute must exist within that state for it to exercise jurisdiction.
4. When two states meet the jurisdictional requirements under the UCCJA, the court must decide which is the better forum to decide the custody dispute.
5. In determining what state is better, the court may consider convenience of the forum as well as delays and costs resulting from the forum choice in light of the best interest of the children involved in the custody dispute.

J. Dennis Guyer, Esq., attorney for Plaintiff
Bradley L. Griffie, Esq., attorney for Defendant

OPINION AND ORDER

KAYE, J., July 17, 1996

OPINION

In the instant proceeding, Trinita L. Moats ("defendant"), has filed a petition for special relief pursuant to Pa.R.C.P. 1915.13", the thrust of which is a challenge to the Court's jurisdiction under the Uniform Child Custody Jurisdiction Act, 23 Pa.C.S.a. §5341 et seq. ("UCCJA"), to hear a child custody proceeding initiated by Donald E. Moats ("plaintiff").

A brief procedural synopsis of this case is as follows: Pursuant to a custody stipulation (the date of which is not inserted, except for the year "1995"), on November 14, 1995, the Honorable Douglas W. Herman of this Court entered a custody order concerning Matthew A. Moats, born July 4, 1990, and

Andrew L. Moats, born January 16, 1992. On April 8, 1996, plaintiff filed a custody complaint which sought modification of the stipulated custody order, and the Court entered an order which scheduled Custody Conciliation on May 16, 1996 before the Court's officer appointed for that purpose. On May 15, 1996, defendant filed a motion to continue the custody conciliation on the ground that a petition for special relief had been filed raising the jurisdictional question¹ instantly before the Court. On May 15, 1996, that petition for continuance was denied due to its untimeliness.

Conciliation was conducted, and an order of court was entered by the Honorable John R. Walker on May 21, 1996 which directed that home studies of the parties' homes be conducted and that the stipulated custody order would remain in effect pending a hearing.

On June 19, 1996, defendant presented the instant petition which resulted in an order being entered by the Honorable Douglas W. Herman which scheduled a hearing on July 1, 1996 before the undersigned. At that the commencement of the hearing, plaintiff presented a written "Motion to Dismiss" the instant proceeding under Pa.R.C.P. No. 1915.5. Since the last-mentioned motion, if granted, would require dismissal without consideration of the merits of the jurisdictional question, we will address that matter first.

(a) A party must raise any question of jurisdiction of the person or venue by preliminary objection filed within twenty days of service of the pleading to which objection is made or at the time of hearing, whichever first occurs.

No other pleading should be required, but if one is filed it shall not delay the hearing.

Pa.R.C.P. No. 1915.5

We do not understand that defendant's objection to jurisdiction relates to the issue of in personam jurisdiction or of venue, but rather to whether the UCCJA compels the adjudication of the subject matter of this litigation to be held in another jurisdiction.

¹ We did not locate this petition among the pleading filed in this case.

Subject matter jurisdiction may be raised at any time in litigation, *Goodman v. Goodman*, 383 Pa.Super. 374, 556 A.2d 1379, 1390 (1989), appeal denied 523 Pa. 642, 565 A.2d 1167, so we will deny the motion to dismiss.

Turning to consideration of the issue raised by defendant, we note that the facts presented to us are as follows: The stipulation which provided for the existing custody order recited that plaintiff resided at 656 Hykes Road, Greencastle, and that defendant resided at 15444 Pennsylvania Avenue, Greencastle. Although that pleading contains both an undated verification signed by defendant, and an affidavit of defendant dated August 17, 1995, defendant testified that she then resided in Hagerstown, Maryland. She moved with the children to Hagerstown without advance notice to plaintiff, or without receiving court approval of the move.

On some subsequent date, defendant remarried, and her new husband and she took up residence in Hagerstown, Maryland. However, her present husband became abusive, and she left him, moving with the children to a shelter in Hagerstown, where she resided until the day of hearing, on which date she moved to 429 Cook Street, Hagerstown, Maryland.

The children are in their mother's primary care and custody, and have been at all times since entry of the existing custody order, and their primary residence has been in Washington County, Maryland at all times since entry of that order. They attend Pangborn Elementary School in Hagerstown, and thus any current school teachers or personnel who would testify in this proceeding, would come from Hagerstown. However, they had attended schools in the Greencastle-Antrim School District for several months at the beginning of the 1995-96 school year.

The children have received medical and dental services in Hagerstown throughout their lives. While we are not informed that any such persons would be expected to be witnesses in a subsequent custody proceeding, if this were an issue, we observe that the witnesses presumably would be Maryland residents and recognize that it could be more problematic to compel or secure their attendance at a Pennsylvania hearing than if it were held in Maryland.

Although plaintiff alleges that he has been denied scheduled contact with his children by defendant, we infer that there would be witnesses both in Pennsylvania and Maryland who would be available to testify concerning their observations regarding these allegations, and that it would be of little advantage from the perspective of the children's best interest for the forum in which the custody issues are adjudicated were either in Pennsylvania or Maryland. We do not think that the younger child is enrolled in speech therapy at the public school he attends in Maryland, both children have been enrolled in behavioral therapy at Brooklane Psychiatric Center in Maryland, and thus conclude that witnesses involved in those activities would be located in Maryland.

We are presented herein with the issue of whether this Court should retain jurisdiction to determine custody of the children, or whether we should dismiss this action under the UCCJA to permit the parties to litigate² the issue in Maryland where the children and their mother now reside, and have resided for a period in excess of six (6) months. In determining this limited issue, we must turn to the UCCJA itself as the starting point. While the UCCJA is one of many laws enacted by the States to engender greater uniformity in state laws to minimize confusion as to what one must do to conform to legal requirements, to discourage "forum shopping", and to promote other stated purposes, the UCCJA perhaps is unique in that underlying its purposes is an effort to promote the best interest of non-litigants - the children - who are the ultimate subjects and who are most affected by the custody proceeding.

The UCCJA has eight (8) stated purposes, and is to be constructed as follows:

(a) **Purposes.** -The general purposes of this subchapter are to:

- (1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

² No Litigation on this issue currently exists in Maryland.

- (2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child.

- (3) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training and personal relationships is most readily available, and that courts of this Commonwealth decline the exercise of jurisdiction when the child and his family have a closer connection with another state.

- (4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

- (5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

- (6) Avoid relitigation of custody decisions of other states in this Commonwealth insofar as feasible.

- (7) Facilitate the enforcement of custody decrees of other states.

- (8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this Commonwealth and those of other states concerned with the same child.

(b) **Construction.** -This subchapter shall be construed to promote the general purposes stated in this section.

23 Pa.C.S.A. §5342.

Several of the themes running through the foregoing deal with issues not present in this case: parental kidnapping across state lines, competing litigation in the courts of two jurisdictions on the issue of custody, and re-litigation of issues already decided by courts of other states. In the instant litigation, the provision in the foregoing statement of purposes that is most applicable is that contained in the third paragraph thereof.

However, the "purposes and construction" section of the Act is implemented by other sections of the UCCJA:

§5344. Jurisdiction

(a) General rule. -A court of this Commonwealth which is competent to decide child custody matters had jurisdiction to make a child custody determination by initial or modification decree if:

(1) this Commonwealth:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the home state of the child within six months before commencement of the proceeding and the child is absent from this Commonwealth 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 Commonwealth;

(2) it is in the best interest of the child that a court of this Commonwealth assume jurisdiction because:

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this Commonwealth; and

(ii) there is available in this Commonwealth substantial evidence concerning the present or future care, protection, training and personal relationships of the child;

(3) The child is physically present in this Commonwealth, and:

(i) the child has been abandoned; or

(ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent;

(4) (i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2) or (3), or another state has declined

to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum to determine the custody of the child; and

(ii) it is in the best interest of the child that the court assume jurisdiction; or

(5) the child welfare agencies of the counties wherein the contestants for the child live, have made an investigation of the home of the person to whom custody is awarded and have found it to be satisfactory for the welfare of the child.

(b) Physical presence insufficient. -Except under subsection (a) (3) and (4), physical presence in this Commonwealth of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this Commonwealth to make a child custody determination.

(c) Physical presence unnecessary. - Physical presence of the child, while desirable, is not prerequisite for jurisdiction to determine his custody.

23 Pa.C.S.A. §5344

A child's "home state" is "[t]he state in which the child immediately preceding the time involved lived with his parents, a parent or a person acting as a parent, or in an institution, for at least six consecutive months..." 23 Pa.C.S.A. §5343. The critical period for the instant case is the six months preceding April 8, 1996, that being the date on which the instant custody proceeding was filed, i.e. the period from October 8, 1995 through April 8, 1996. The children herein were residents of Washington County, Maryland, throughout that entire period, and thus it is apparent that Maryland is the "home state" of the children. However, under the statutory section set forth above, the children's home state is only one factor in determining the jurisdictional question.

The second sub-paragraph provides for a "best interest" of the children determination founded upon the fact that the children and at least one parent have a significant connection with the Commonwealth *and* substantial evidence exists within the Commonwealth that would be pertinent to the child custody determination. In our analysis of this provision, we note that

plaintiff has always resided within the Commonwealth, and the children did for all of their lives up to October 5, 1995, and there is little question that a significant amount of evidence exists regarding the issue of custody within the commonwealth. While the children attended school in Maryland for the greater part or the 1995-96 school term, they previously attended school in Pennsylvania, and we could infer that their teachers from both jurisdictions are potential witnesses in this case.

Moreover, while the children get much of their medical and dental needs attended to in Maryland, they had their medical needs attended to in Pennsylvania prior to their fairly recent move to Maryland, and they have always gone to Maryland for dental care, so this is a factor that is unrelated to the locus of their domicile.

While defendant has numerous relatives in Maryland, and is employed there, both parties have relatives in Pennsylvania, and we can reasonably infer that witnesses in both jurisdictions exist who would be called by the parties to testify regarding the relationship of the parties to the children.

Given the above factors, we conclude that both Pennsylvania and Maryland have jurisdiction to determine the child custody issue, so the question then becomes "... which of these fora, both having jurisdiction, would be the better of the two" (to determine the custody issue). *Gulla v. Fitzpatrick*, 408 Pa.Super. 269, 284, 596 A.2d 851, 859 (1991). In *Gulla*, the Court addressed the issue by considering the provisions of the UCCJA relating to "Inconvenient forum":

(a) **General rule.** -A court which has jurisdiction under this subchapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) **Moving party.** -A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) **Factors to be considered.** -In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose, it may take into account the following factors, among others:

- (1) If another state is or recently was the home state of the child.
- (2) If another state has a closer connection with the child and his family or with the child and one or more of the contestants.
- (3) If substantial evidence concerning the present or future care, protection, training and personal relationships of the child is more readily available in another state.
- (4) If the parties have agreed on another forum which is no less appropriate.
- (5) If the exercise of jurisdiction by a court of this Commonwealth would contravene any of the purposes stated in section 5342 (relating to purposes and construction of subchapter).

23 Pa.C.S.A. §5348

Defendant argues that the holding in *Gulla, id.*, militates for a decision in her favor, i.e. a transfer of the case to Maryland's jurisdiction. While there are undoubtedly factors set forth above that would incline toward a transfer of the case as defendant suggests, as is implicit in the court's decision in *Gulla*, there is no check list of factors for the court to apply in making this determination. In *Gulla*, the contention was that the Pennsylvania court should transfer a child custody proceeding to Rhode Island for disposition, where Gulla (the father) lived in New York, but had his business in Pennsylvania, and Fitzpatrick (the mother) had exercised custody in Rhode Island for the two years preceding the initiation of the current custody proceeding. In the facts of that case, it was readily apparent that the child had been in Rhode Island for much of his life, and the great bulk of evidence presented in a custody proceeding would arise from information available in that state. While considered a factor, the mere

occurrence of two stipulated child custody orders in Pennsylvania, unaccompanied by a best interests analysis, was held not to be determinative of the issue, and Rhode Island was held to be the appropriate jurisdiction to consider the matter.

The facts in the instant case are readily distinguishable from those in *Gulla*. First and foremost, we recognize that although Franklin County is in Pennsylvania, and the Washington County involved in this case is in Maryland, the Counties are contiguous and, in fact, the parties' residences are in significantly closer proximity than are other parties' residences both of which are within Franklin County. Plaintiff's residence is in the State Line, Pennsylvania area, which is adjacent to the Maryland state line. Even before the defendant moved to Maryland, the children went to Maryland for some of their medical/dental needs, as is common practice in such border communities, and as would be unlike a case involving litigants from Pennsylvania and Rhode Island, where the distance is significant. It is also clear that the parties will both have witnesses from Pennsylvania, and in fact virtually *all* of plaintiff's witnesses will be from Pennsylvania, while others will be from Maryland.

We do reiterate that the existence of a prior custody order entered in this jurisdiction by stipulation of the parties is a factor in this determination, and is not determinative. Defendant has resided in Washington County, Maryland, for a long enough period for that to become the children's home state, but only barely. Since no litigation is pending in Maryland, any transfer of this case would necessarily involve additional legal expense and further delay in disposing of the issue. Plaintiff has already commenced this proceeding in Pennsylvania, the parties have undergone custody conciliation, and obviously expended a significant amount of time and effort in the instant litigation, and would be required to begin anew and duplicate that effort if we were to find as defendant suggests. We conclude that it is consonant with the UCCJA and the children's best interest to enter the attached order.

ORDER OF COURT

NOW, July 17, 1996, upon consideration of defendant's petition for special relief, and of the evidence presented, and arguments made, the petition is DENIED.