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FRANKIE GAYLA FALCO ADKINS V. CARMELO ABEL
FALCO ANTEPARA, C.P., Franklin County Branch, No. F.R.
1993-275

Civil Action-Custody-Uniform Child Custody Jurisdiction Act

1. Article 4 Section 1 of the United States Constitution provides that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. The purpose of the full faith and credit provision is to preserve rights acquired under the judicial proceedings of one state by requiring recognition of their validity in other states.

2. "*res judicata*" is the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

3. If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in conduct intending to benefit his position in a custody hearing, the court may decline to exercise jurisdiction if this is just and proper under the circumstances. 23 Pa.C.S.A. Section 5349

4. The Uniform Child Custody Jurisdiction Act is applicable to international custody contests, absent a showing that the household in the foreign location is physically or emotionally harmful to the children.

D.L. Reichard, II, Esquire, Counsel for Plaintiff

Lynn Y. MacBride, Esquire, Counsel for Defendant

Leonard H. Rubin, Esquire, Counsel for Defendant

OPINION AND ORDER

KAYE, J., May 11, 1994:

OPINION

The instant matter is a child custody proceeding which currently is limited in scope to a determination of whether this Court has jurisdiction under the Uniform Child Custody Jurisdiction Act ("UCCJA"), 23 Pa. C.S.A. §5341 et seq. For the reasons, and upon the analysis set forth herein, we determine that this Court lacks jurisdiction to entertain this matter, and we will dismiss the custody proceeding to permit it to proceed in the proper jurisdiction.

I. Procedural History:

The history of this case, and of related cases, is complex and lengthy, but must be understood as they are central to the Court's determination in this matter. There were three (3) proceedings in two other jurisdictions before the instant proceeding was commenced by the filing of a complaint for custody on March 30, 1993:

1/ On January 21, 1992, Carmelo Abel Falco Antepara, ("defendant"), father of the children who are the subject of this proceeding, filed a petition with the Juvenile Court of the Republic of Panama, seeking an award of custody of the children which resulted in an award (a "resolution") of the children to defendant on February 12, 1992, and directed that the children be returned to Panama by a date certain.

2/ Frankie Gayla Falco Adkins, ("plaintiff"), mother of the children who are the subject of this proceeding, on August 13, 1992 filed pleadings with the Minors' Tutelary Court in the Republic of Panama seeking an award of custody of the children. [See plaintiff's Exhibit #3].

3/ On January 23, 1993, plaintiff filed a petition for custody of the children in the Seventh Judicial District for the State of Tennessee - Chancery Division. The matter came before the Court for hearing on March 2, 1992, and was dismissed by order dated May 18, 1992, on the ground *inter al.*, that the Court lacked subject matter jurisdiction, in that the Republic of Panama, and not Tennessee, was found to be the "home state" of the children. An appeal was taken therefrom to the Tennessee Court of Appeals, which affirmed, and permission for further appeal to the Supreme Court of Tennessee was denied, thus making the decision of the Court of Appeals the final order in the matter. This decision is reported *sub nom. Falco Adkins v. Falco Antapera*, at 850 S.W.2d 148 (Tenn. App. 1992). [See Exhibits B, C, and D attached to plaintiff's "Petition to Amend Complaint" filed February 17, 1994].

In summary, aside from the instant proceeding, there have been other proceedings for custody of the children previously in the Republic of Panama (still pending) and in the State of Tennessee (final order entered which found that the court lacked jurisdiction, and that the Courts in the Republic of Panama were the proper forum for adjudicating this matter). Plaintiff and defendant actively were involved in both other proceedings, plaintiff having

initiated the Tennessee custody proceeding, and defendant the proceeding in Panama, but plaintiff also sought (and continues to seek) an award of custody in the latter jurisdiction.

II. Facts:

Plaintiff, an American citizen, and defendant, a Panamanian citizen, met while both were students in the State of Tennessee. They married on August 22, 1976, and lived in Panama continuously for fifteen (15) years, where plaintiff was employed for much of the time she resided there as a civilian employee of the United States Army. While the parties were residing in Panama, two children, Lillie Elena Falco Adkins, age ten (10) years, and Tamra Lynette Falco Adkins, age seven (7) years, were born to the marriage. Both girls have joint American and Panamanian citizenship.

For various reasons, not particularly relevant to this proceeding, by early 1992, plaintiff became disenchanted with her life in Panama, and determined to return to the United States. She also apparently was concerned that the "downsizing" of the U.S. military might result in a loss of her job and applied for a civilian position with the U.S. military at a site in Chambersburg, Pennsylvania. She received a job offer, but turned it down. She subsequently obtained a second job offer at Ft. Ritchie, Maryland which she accepted. During this period, plaintiff spoke with defendant about his moving to the United States, but he did not wish to do so.

Without giving advance notice to defendant, on January 18, 1992, plaintiff took the children out of school and removed them to the United States, where she took them first to the State of Tennessee where her parents lived, and where she initiated the custody action referenced above. Subsequently, plaintiff moved to Waynesboro, Pennsylvania, where she and the children initially resided in a motel, briefly in a room, and then in an apartment, prior to moving to the house where they now reside. Both girls are elementary school pupils in the Waynesboro Area School District, and neither has been back to Panama since leaving on January 18, 1992.

III. Discussion of legal issues:

As we view this matter, there are two issues for the Court to determine: 1/ the effect of the Tennessee court's decision that the courts in the Republic of Panama are the proper forum to decide the custody issue on the instant proceeding and, 2/ whether this Court has jurisdiction over the subject matter of this case under the provisions of the Uniform Child Custody Jurisdiction Act, 23 Pa. C.S.A. §5341 et seq. We find that either issue compels a decision that will result in dismissal of the instant custody proceeding for a determination of the custody issue by the Panamanian courts.

With respect to the former issue, we would note that *plaintiff* initiated a child custody proceeding in the State of Tennessee after she had spirited the children out of Panama without prior notice to defendant. She voluntarily submitted herself to the jurisdiction of that Court, and fully and completely availed herself to the courts in that jurisdiction on precisely the same issue now before this Court. After defendant challenged the trial court's jurisdiction and prevailed, plaintiff sought appellate review, and those courts affirmed the trial court's holding that jurisdiction properly lay in Panama.

Article 4 §1 of the U.S. Constitution provides that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. The purpose of the full faith and credit provision is to preserve rights acquired under the judicial proceedings of one state by requiring recognition of their validity in other states.

Schifano v. Schifano, 324 Pa.Super. 281, 471 A.2d 839, 845 (1984). [citations omitted].

In the instant case, it is particularly ironic that plaintiff, who initiated the Tennessee proceeding, now seeks a decision from this Court, the effect of which would necessarily require us to make an order which would be directly contra to that portion of the Tennessee decision which determined that Panama was the proper jurisdiction to decide the custody issue. The full faith and credit clause requires states to recognize judgments rendered by sister states in most instances to prevent the chaos that would result if a dissatisfied litigant were permitted simply to move to a different state, there to relitigate the same issue in the hope of achieving a

more favorable result. Plaintiff herein not only participated in the Tennessee litigation, but even initiated it, and pursued her appellate rights. We think we are compelled to follow the Tennessee Courts, decision, by the constitutional principle cited, as well as by the legal doctrine of *res judicata*.

"*Res judicata*" is the "[r]ule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action ... The sum and substance of the whole rule is that a matter once judicially decided is finally decided." Black's Law Dictionary 1305-1306 (6th ed. 1990).

The Tennessee, Courts addressed the precise legal question involved in this proceeding, with the identical parties and subject matter as are involved in the instant proceeding, and it concluded that the Republic of Panama is the proper jurisdiction to determine the issue of custody. We think it would be inappropriate for this Court to re-determine the precise issue which a sister court has previously adjudicated.

Moreover, if we were to address the jurisdictional question on its merits, the result would not change. The UCCJA contains the following express provisions regarding the Act:

(a) Purposes.-The general purposes of this sub-chapter 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) 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.

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(4) Discourage continuing controversies over child custody in the interest of great 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.

23 Pa.C.S.A. §5342.

Among others, it has been held that a purpose of the Act is to deter kidnapping or the snatching of children from one jurisdiction to another. *Haynes v. Willock*, 288 Pa.Super. 167, 431 A.2d 341 (1981). Moreover, the Act is applicable to international custody contests, absent a showing that the household in the foreign location is physically or emotionally harmful to the children. *Turk v. Turk*, 1 D&C 4th 583 (C.P. Chester Co. 1988). There is no question that plaintiff surreptitiously removed the children from Panama without any prior notice to defendant, or without any exigent circumstances which might justify such action.

Plaintiff has attempted to justify her actions by claiming: 1/ that civil unrest in Panama endangered the children and 2/ defendant threatened to kill her if she ever left him and took the children. Defendant denied both allegations, and we find that plaintiff failed to prove either allegation. With respect to the former, we would note that even if we accepted plaintiff's allegations, they simply indicated a level of criminal activity, and responses thereto such as armed guards being put into banks and places of public accommodation, that does not exceed what unfortunately is present in most American cities, and is far less than found in high crime areas of such cities. Moreover, the parties resided in Panama during the American invasion to capture General Noreiga, and its aftermath, when there is no question that the civil authorities lost control. The situation in 1992, when plaintiff left Panama, clearly was much more orderly than it had been several years previously during the invasion and its aftermath. Further, we observe that plaintiff's Panamanian attorney, who testified in this proceeding, did not testify to any physical risk to the children resulting from their return to Panama. This silence on the issue is quite telling, and supports our belief that the allegation was not established, especially when one considers the testimony by

defendant and his witness from Panama, who clearly indicated plaintiff's claim was exaggerated.

As to the latter allegations regarding threats to plaintiff's life, we note that plaintiff never raised this issue previously, neither in the pleadings filed in this case, nor in the Tennessee proceedings. Indeed, in the Tennessee proceedings, the Court specifically noted: "Mrs. Falco does not allege Mr. Falco is an unfit parent or a bad husband." *Falco Adkins v. Falco Antapara*, 850 S.W.2d 148, 149 (Tenn. App. 1992), permission to appeal denied 3/22/93. Under these circumstances, and taking into consideration defendant's vehement denial of the allegations, we do not find these belated allegations to be credible. In accordance with the foregoing, no extraordinary circumstances exist in this case which would warrant this Court's taking of jurisdiction.

The UCCJA provides, *inter al.*:

(a) *General rule.*- If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in conduct intending to benefit his position in a custody hearing, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

23 Pa.C.S.A. §5349.

In the case *sub judice*, plaintiff and defendant married, and both decided to reside in Panama, where the children were born and resided for a number of years. Plaintiff then unilaterally, and without compelling reason, decided to return to the United States with the children, removing from the home and culture in which she and defendant had decided to raise them. She stealthily removed the children from their Panamanian home and school, and took them to the United States without informing the defendant. She then sought a judicial determination of custody in the courts of Tennessee, which effort was ultimately unsuccessful, and now seeks to re-litigate this same issue in this Court.

Were we to permit this case to proceed in this Court, we would contravene virtually all of the purposes of the UCCJA as set forth in section 5342 thereof. There is a case involving custody of the children now pending in the Republic of Panama. The issue of

which forum has jurisdiction over custody previously was litigated in the courts of Tennessee. Under the circumstances present in the case *sub judice*, we find that jurisdiction does not lie with this Court, but rather with the Courts of the Republic of Panama.

In so concluding, we obviously do not reach the merits of the underlying case, which we trust will now be expeditiously addressed in the appropriate forum.

ORDER OF COURT

NOW, May 11, 1994, the Court determines:

1/ the subject matter of the instant case previously was fully litigated in the courts of the State of Tennessee, and it would be improper for this Court to disturb the decision rendered therein;

2/ under the provisions of the uniform Child Custody Jurisdiction Act, 23 Pa. C. S.A. §5341 *et seq.*, jurisdiction over the subject matter hereof is in the courts of the Republic of Panama.

It is therefore ORDERED and DECREED that plaintiff's complaint for custody is dismissed for the reasons above set forth, and jurisdiction is relinquished to the appropriate court in the Republic of Panama.

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