

SANDRA PARDUN, Plaintiff,  
v. LAURIE COOK AND RICHARD CALDWELL, Defendants  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Civil Action — Law, No. 2010–3010

*Child custody, jurisdiction, home county, determination of initial child custody; Child custody, jurisdiction, home county, temporary absences from home county; Child custody, jurisdiction, home county, home county and home state are synonymous; Child custody, jurisdiction, home county, emergency jurisdiction*

1. Pa. R.C.P. 1915.2(a)(1) and Uniform Child Custody Jurisdiction Enforcement Act 23 Pa.C.S.A. §5401 et seq. (“UCCJEA”) provide that an action can be filed in any county “which is the home county of the child at the time of commencement of the proceeding.”
2. In cases of children six (6) months of age or younger, home state is “the state in which the child lived from birth with any of the persons mentioned.” 23 Pa.C.S.A. §5402; see also Pa. R.C.P. 1915.1.
3. A period of temporary absence is part of the time period for purposes of home state.
4. The terms “home county” and “home state” are used synonymously. See 23 Pa.C.S.A. §5471 (“The provisions of this chapter allocating jurisdiction and functions between and among courts of different states shall also allocate jurisdiction and functions between and among the courts of common pleas of this Commonwealth.”); Pa. R.C.P. 1915.2, Explanatory Comment—2008 (“Subdivision (a) of Rule 1915.2 incorporates the categories of jurisdiction for initial custody determinations and temporary emergency proceedings in the Uniform Child Custody Jurisdiction and Enforcement Act at 23 Pa.C.S.A. §§5421 and 5424 as the venue provisions for these rules, restating them without substance.”)
5. Lancaster County CYS implemented the initial living arrangements for the child through their safety plan.
6. Although the child lived with the Plaintiff in Franklin County for seventy-three (73) days, the Court finds that this was a period of temporary absence from the home county of Lancaster.
7. Pa. R.C.P. 1915.2(a)(2) allows for jurisdiction in any county where “the child and at least one parent or a person acting as a parent, have a significant connection with the county other than mere physical presence and there is available within the county substantial evidence concerning the child’s protection, training and personal relationships.”
8. Pa. R.C.P. §1915.2(a)(5) and 23 Pa. C.S.A. §5424 allow for emergency jurisdiction when child is present in county and there is sufficient evidence of record to establish that the child has been subjected to or threatened with mistreatment or abuse.

Appearances:

Kevin M. Taccino, Esquire, *Attorney for Plaintiff*

Carrie M. Bowmaster, Esquire, *Attorney for Defendant*

MEMORANDUM OPINION

Presently before the Court is Plaintiff, Sandra Pardun's Ex Parte Petition for Special Relief and the Complaint for Custody. For the reasons that follow, the Court determines it is without jurisdiction and dismisses the action without prejudice so that Plaintiff may file in Lancaster County, the appropriate county.

### Facts

The Defendants, Laurie Cook and Richard Caldwell, are the biological parents of Emily Elizabeth Caldwell Cook ("child") born May 6th, 2010 in Lititz, Pennsylvania. Plaintiff, Sandra Pardun, is the child's maternal grandmother. On May 7, 2010, Lancaster County Children and Youth Services ("Lancaster County CYS") contacted the Defendants over concerns about their housing and Mother's mental health. Lancaster County CYS implemented a safety plan that required the Defendants to be supervised with their child with the Plaintiff having supervisory authority. The case was transferred to Franklin County Children and Youth Services ("Franklin County CYS") because the Plaintiff lives in Franklin County and Franklin County is where the child was supposed to live according to the safety plan. Franklin County CYS implemented a safety plan similar to the Lancaster County CYS plan which the parties signed on May 12, 2010. The Defendants lived in the Plaintiff's residence between May 10, 2010 and June 2nd, 2010. Between June 2nd and July 16th, the Defendants spent a total of four (4) nights in the Plaintiff's home. Likewise, the child spent the weekend of June 12, 2010 and June 28, 2010 in Lancaster County with the Defendants under the Plaintiff's supervision.

The Defendants notified Franklin County CYS that they had returned to Lancaster County; therefore, Franklin County CYS dropped their safety plan and closed the case on June 30, 2010. On July 8, 2010 Lancaster County CYS drafted another safety plan that was identical to the previous safety plans, specifically providing that maternal grandmother supervise the biological parents with their child. On July 14, 2010 Lancaster County CYS notified Plaintiff that a new safety plan was being implemented that allowed the child to live with the Defendants in Lancaster County with adequate alternative supervision. On July 16, 2010, the Defendants moved the child to the current residence at 430 West Vine Street in Lancaster County. Also, on July 16, 2010, the Complaint for Custody was filed in Franklin County by Plaintiff. It must be noted that at no time was a petition ever filed alleging the child to be dependent. Further, at no time was the child ever placed with maternal grandmother by order of court.

### Discussion

As a preliminary matter, Pa. R.C.P. 1915.2(a)(1) and Uniform Child Custody Jurisdiction Enforcement Act 23 Pa.C.S.A. §5401 et seq. ("UCCJEA") provides that an action can be filed in any county "which is the home county of the child at the time of commencement of the proceeding." In cases of children six (6) months of age or younger, home state <sup>[1]</sup> is "the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period." 23 Pa.C.S.A. §5402; see also Pa. R.C.P. 1915.1.

In the present case, the child's home county is Lancaster County. The child, who was ten (10) weeks old at the time the Complaint for Custody was filed, was born in Lancaster County. Lancaster County CYS implemented the initial living arrangements for the child through their safety plan. The Defendants resided in Lancaster County while the mother was pregnant. Further, the Defendants have lived in twelve (12) locations within the past year, seven (7) of those locations <sup>[2]</sup> being in Lancaster County. The Defendants receive mail at 430 Vine Street, Lancaster, Pennsylvania in Lancaster County. Finally, Defendants list 616 Marion Street, Lancaster Pennsylvania in Lancaster County as their home for purposes of vehicle registration, driver's license, and car insurance.

Although the child lived with the Plaintiff in Franklin County for seventy-three (73) days, the Court finds that this was a period of temporary absence from the home county of Lancaster. Therefore, based on all of the evidence of record, the Court is constrained to find that it is without jurisdiction in this matter, as Lancaster County is the child's home county.

Next, Pa. R.C.P. 1915.2(a)(2) allows for jurisdiction in any county where "the child and at least one parent or a person acting as a parent, have a significant connection with the county other than mere physical presence and there is available within the county substantial evidence concerning the child's protection, training and personal relationships." As previously discussed, the child's home county is Lancaster and therefore the child's most significant connections are in Lancaster County.

Finally, the Plaintiff's request that this Court assume jurisdiction pursuant to Pa. R.C.P. §1915.2(a)(5) and 23 Pa.C.S.A. §5424, which allows for emergency jurisdiction must be denied. Emergency jurisdiction is improper because the child is not currently present in Franklin County and there is insufficient evidence of record to establish that the child has been subjected to or threatened with mistreatment or abuse.

ORDER OF COURT

August 24, 2010, the Court having reviewed Plaintiff, Sandra Pardun's Ex Parte Petition for Special Relief and the Complaint for Custody, the evidence of record, the arguments of counsel, and the law, it is hereby ordered that the case is dismissed without prejudice. Plaintiff may commence an action for custody in Lancaster County.

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[1] The terms "county" and "state" are used synonymously. See 23 Pa.C.S.A. §5471 ("The provisions of this chapter allocating jurisdiction and functions between and among courts of different states shall also allocate jurisdiction and functions between and among the courts of common pleas of this Commonwealth."); Pa. R.C.P. 1915.2, Explanatory Comment—2008 ("Subdivision (a) of Rule 1915.2 incorporates the categories of jurisdiction for initial custody determinations and temporary emergency proceedings in the Uniform Child Custody Jurisdiction and Enforcement Act at 23 Pa.C.S.A. §§5421 and 5424 as the venue provisions for these rules, restating them without substance.").

[2] Plaintiff's counsel avers that the Defendants have lived in the following locations within the past year: 430 W. Vine Street, Lancaster, Pa (Lancaster County) 2922 Philadelphia Avenue, Chambersburg, Pa (Franklin County) A motel in Columbia, Pa (Lancaster County) A vehicle (unknown county) 430 West Vine Street, Lancaster, Pa (Lancaster County)

616 Marion Street, Lancaster, Pa (Lancaster County)

2922 Philadelphia Ave, Chambersburg, Pa (Franklin County)

616 Marion Street, Lancaster, Pa (Lancaster County)

Yukon, OK

Oklahoma City, OK

139 E. Walnut Street, Lancaster, Pa (Lancaster County)

21 Square Street, Mt. Joy, Pa (Lancaster County)