

Grandmother's Contempt Reversed Since No UCCJEA Jurisdiction

V.C. v. L.P., __ A.3d __ (Pa. Super. 2018)

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Summary

A New York Court granted Maternal Grandmother custody of Child. Mother brought an action in Pennsylvania to modify the foreign order. The Court of Common Pleas (Northampton County, Stephen, J.) entered an interim custody order and found Maternal Grandmother in contempt. The Superior Court of Pennsylvania (Olson, J., Panella, J., Stevens, P.J.E.) reversed the order of the trial court, finding that the Court of Common Pleas lacked subject-matter jurisdiction to modify the New York custody order.

Factual and Procedural History

Child was born out of wedlock to Mother and Father. The New York court issued a final custody order granting Maternal Grandmother custody of the minor Child. Five (5) years later, Mother initiated proceedings in the Pennsylvania Court of Common Pleas seeking a modification of the New York custody order.

Mother was a resident of New York, Father was a resident of Hawaii, and Grandmother and Child were residents of Pennsylvania. The New York court informed the trial court that they retained continuing jurisdiction over the custody dispute and requested a conference with the Pennsylvania trial court under 23 PA.C.S.A § 5410. The trial court declined to participate in the conference.

An interim custody order was issued by the trial court. Maternal Grandmother moved to dismiss the complaint for custody for lack of subject matter jurisdiction. The trial court denied Maternal Grandmother's motion and found her in contempt of the interim order. Maternal Grandmother appealed the trial court decision alleging that the court lacked subject-matter jurisdiction pursuant to 23 PA.C.S.A § 5423, and, therefore, lacked the capacity to find her in contempt of the custody matter.

Superior Court Analysis

Judge Judith Ference Olson, writing for the Superior Court held that under the plain reading of the Pennsylvania Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), 23 Pa.C.S.A. § 5401 et seq., the New York courts retained jurisdiction over the custody matter.

The UCCJEA provides in relevant parts:

Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth may not modify a child custody determination made by a court of another state unless a court of this Commonwealth has jurisdiction to make an initial determination under section 5421 (a) (1) or (2) (relating to initial child custody

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jurisdiction) and:

- 1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under section 5422 (relating to exclusive, continuing jurisdiction) or that a court of this Commonwealth would be a more convenient forum under section 5427 (relating to inconvenient forum); or
- 2) a court of this Commonwealth or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

23 Pa.C.S.A. § 5423

In this case, there was no attempt to invoke temporary emergency jurisdiction. Nor is there any dispute that Mother resides in New York. Therefore, in order for a court of the Commonwealth to modify the existing custody order, the trial court must satisfy the requirements outlined in 23 Pa.C.S.A. § 5423.

Mother argued that the trial court possesses subject-matter jurisdiction because Pennsylvania is a more convenient forum. However, under the Pennsylvania statute, to exercise subject-matter jurisdiction, the New York court must first determine that it lacks exclusive continuing jurisdiction, or that the Pennsylvania courts are a more convenient forum. The comments to the UCCJEA further clarify this point stating: “the modification state [Pennsylvania] is not authorized to determine that the original decree state [New York] has lost its jurisdiction. The only exception is when the child, the child’s parents, and any person acting as a parent do not presently reside in the other state.” UCCJEA § 203 cmt. In other words, the state in which the original order was issued must first determine that it no longer has subject-matter jurisdiction or that the court of a different state is a more convenient forum.

The New York court found that it had exclusive continuing jurisdiction over the custody dispute, and did not find that Pennsylvania would be a more convenient forum.

The Superior Court held the trial court lacked subject-matter jurisdiction to modify the New York Court’s custody order, and therefore lacked authority to find Maternal Grandmother in contempt for violating its interim order.

Case Note Author’s Editorial Comments

This decision reinforces the purpose of the UCCJEA, which was adopted by the Commonwealth in 2004. The UCCJEA governs jurisdictional disputes arising out of custody matters. Practitioners should be aware that the plain language of the UCCJEA requires that the initial issuing state (often referred to as the original “home state”) must relinquish jurisdiction before a court of the Commonwealth can exercise jurisdiction. If a foreign court refuses to relinquish jurisdiction, and one of the parties continues to reside in the foreign state, a court of the Commonwealth may not modify the existing custody order.

Case Note Author’s Biography

Leora Cohen Schiff is an Associate with Philadelphia office of Cozen O’Connor. She earned her J.D. from Georgetown University Law Center in 2016 and her undergraduate degree in political science from Rutgers University in 2011. In law school, she volunteered as a student attorney with the Georgetown Law Domestic Violence Clinic. Following law school, she clerked for the Honorable Guy P. Ryan, J.S.C., Family Division of the Superior Court of New Jersey. Leora is admitted to practice in Pennsylvania and New Jersey.

