IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 4, 2016

GUY MICHAEL KAPUSTKA, II[1] v. COURTNEY ROSE KAPUSTKA

Appeal from the Chancery Court for Montgomery County
No. MCCHCVDI13442 Ross H. Hicks, Chancellor

No. M2015-01984-COA-R3-CV-Filed June 3, 2016

In this post-divorce co-parenting action, the father filed a petition requesting modification of the parties' permanent parenting plan and a finding of contempt against the mother in the Montgomery County Chancery Court which had entered the parties' divorce decree. In response to the father's petition, the mother filed a motion requesting that the trial court find Tennessee to be an inconvenient forum and that the court either dismiss the case or transfer it to Florida. Since entry of the divorce judgment, the mother and the parties' minor child had resided in Florida. The father moved to Alaska at some point after entry of the divorce decree. The father filed a response objecting to the mother's motion and asserting that Tennessee was not an inconvenient forum. Pursuant to the Uniform Child Custody and Jurisdiction Enforcement Act ("UCCJEA"), *see* Tenn. Code Ann. §§ 36-6-201, *et seq.*, the trial court ultimately dismissed the father's petition, determining that Tennessee was an inconvenient forum because no party resided in Tennessee, the mother's alleged actions occurred in Florida, and the evidence necessary to resolve the issues would be unavailable in Tennessee. The father appeals, stating that the trial court erred in determining Tennessee to be an inconvenient forum and thereby dismissing his action. We affirm the trial court's determination that Tennessee is an inconvenient forum. However, pursuant to Tennessee Code Annotated § 36-6-222(c), we reverse the dismissal of the father's petition and remand to the trial court for issuance of a stay and imposition of conditions the court may consider just and proper.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Reversed in Part; Case Remanded

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which ANDY D. BENNETT, J., and J. STEVEN STAFFORD, P.J.,W.S., joined.

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[1] Mr. Kapustka is referred to in various places in the record as both "Guy Michael Kapustka" and "Guy Michael Kapustka, II." Mr. Kapustka represents himself as "Guy M. Kapustka, II," in his appellant brief and is represented as such in the trial court's final order. We will therefore refer to the appellant as Guy Michael Kapustka, II, throughout this opinion.

Radford H. Dimmick, Nashville, Tennessee, for the appellant, Guy M. Kapustka, II.[2]

OPINION

I. Factual and Procedual Background

The petitioner and original plaintiff, Guy Michael Kapustka, II ("Father"), and the respondent and original defendent, Courtney Rose Kapustka ("Mother") [3] were married on November 8, 2012, and have one child together, L.K. ("the Child"). On October 25, 2013, Father filed an action for divorce in the Mongomery County Chancery Court ("trial court"). The trial court entered a final decree of divorce on June 27, 2014, based upon the statutory ground of irreconcilable differences, pursuant to Tennessee Code Annotated § 36-4-101(14). The court incorporated the parties' marital dissolution agreement, permanent parenting plan order, and an addendum to the parenting plan. Pursuant to the permanent parenting plan order, the trial court designated Mother as the primary residential parent for the Child. In February 2014, prior to the entry of the final decree of divorce, Mother and the Child relocated to Florida. Following entry of the divorce decree, Father moved to Alaska.

On March 25, 2015, Father filed a petition seeking a modification of the permanent parenting plan and requesting a finding of criminal contempt against Mother. Father alleged that a material change in circumstances had occurred since the entry of the divorce decree and permanent parenting plan. Father also alleged, *inter alia*, in his petition that Mother suffered from Munchausen Syndrome by Proxy, which he explained had a "deeply emotional impact on the growth, esteem and well-being of the minor child." Consequently, as Father asserted, the material change in circumstances required that the permanent parenting plan be modified to grant him "Primary Parenting Privileges" for the minor child, L.K. Additionally, Father requested that the trial court determine Mother to be in criminal contempt of court and that she be incarcerated for such willful criminal contempt.

On May 4, 2015, Mother filed a letter acknowedging Father's petition and requesting that the trial court dismiss the case for "lack of jurisdiction and forum non convenient." The letter stated, *inter alia*, that Mother, the Child, and several witnesses resided in Florida and that Father resided in Alaska.[4] On July 10, 2015, Mother filed a

[2] The appellee, Courtney Kapustka, has chosen not to participate in this appeal.

[3] At the time of the modification, the mother's name had been changed to Courtney Johnson. In keeping with the style of this case, we will refer to her as Courtney Kapustka or "Mother" throughout this opinion.

[4] We note that neither party appeared to contest that Mother and the minor child both resided outside the state of Tennessee at the time the Petition was filed by Father. The record is unclear as to when Father

motion to dismiss, alleging that Tennessee was a "Forum of Non Convenience, inasmuch as the minor child, the mother, medical providers, attendants and community ties all reside in Hernando County, Florida." By her motion, Mother requested that Father's petition be dismissed or that the case be transferred to Florida where Mother and the Child reside. On July 14, 2015, the trial court entered an order setting a hearing on August 6, 2015, for consideration of Mother's motion. On August 5, 2015, Father filed a response to Mother's motion, requesting that the trial court retain jurisdiction over the matter as no petition had been filed in any Florida court and because Tennessee's divorce decree constituted the basis for the modification and contempt proceedings.

Father has filed no copy of a transcript or statement of the evidence documenting the motion hearing in accordance with Tennessee Rule of Appellate Procedure 24(c). On appeal, Father asserts that the trial court considered no evidence and took the issue under advisement on August 6, 2015. On or about September 1, 2015, Mother filed a "Petition for Domestication and Modification" in the Circuit Court of Hernando County, Florida.[5] The trial court subsequently entered an order on September 14, 2015, dismissing Father's petition upon a finding that Tennessee was an inconvenient forum for the modification and contempt petition. In determining that Tennessee was an inconvenient forum, the trial court found that (1) both Mother and the Child resided in Florida, (2) Father resided in Alaska, (3) the complaints made by Father against Mother arose out of Mother's actions which occurred in Florida, and (4) evidence necessary to litigate the issues joined between the parties would be unavailable in Tennessee. Father timely appealed. On November 30, 2015, Father filed notice that he did not intend to file a transcript or statement of the evidence for submission to this Court.

II. Issue Presented

Father presents one issue for our review, which we restate slightly as follows:

> Whether the trial court erred in declining to exercise subject matter jurisdiction pursuant to the UCCJEA and thereby dismissing Father's petition.

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moved to Alaska. Father did not include an address in his petition but provided an address in Fairbanks, Alaska on his UCCJEA affidavit, dated July 31, 2015, which was submitted to the trial court.

[5] Mother filed with the trial court in Tennessee a copy of the summons and petition she filed in the Florida court. The summons regarding the Florida action was signed by the clerk on September 1, 2015 and stamped as filed on September 2, 2015. No date of filing is noted on the "Petition for Domestication and Modification."

III. Standard of Review

This case requires application and construction of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). *See* Tenn. Code Ann. §§ 36-6-201, *et seq.* (2014). Concerning the standard of review for actions under the UCCJEA, this Court has previously explained:

> Whether a court has jurisdiction under the UCCJEA is a question of law, subject to de novo review with no presumption of correctness. *Staats v. McKinnon*, 206 S.W.3d 532, 542 (Tenn. Ct. App. 2006). A court's decision to accept or decline to exercise jurisdiction under the UCCJEA is a discretionary one. Tenn. Code Ann. § 36-6-222(a); *Staats*, 206 S.W.3d at 554-55; *Steckler v. Steckler*, 921 So.2d 740, 744 (Fla. Dist. Ct. App. 2006). Our review with respect to a trial court's decision to decline to exercise jurisdiction under the inconvenient forum provisions is limited to determining whether the trial court abused its discretion. *In re J.B.W.*, M2007-02541-COA-R9-CV, 2007 WL 4562885, at *3 (Tenn. Ct. App. Dec. 27, 2007); *In re Bridgestone/Firestone*, 138 S.W.3d 202, 205 (Tenn. Ct. App. 2003).

Busler v. Lee, M2011-01893-COA-R3-CV, 2012 WL 1799027 at *2 (Tenn. Ct. App. May 17, 2012). When a trial court declines to exercise subject matter jurisdiction based on a finding that Tennessee is an inconvenient forum, "an abuse of discretion can be found only when the trial court's ruling falls outside the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence found in the record." *Eldridge v. Eldridge*, 42 S.W.3d 82, 88 (Tenn. 2001).

We review questions of law, including those of statutory construction, *de novo* with no presumption of correctness. *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000) (citing *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 924 (Tenn. 1998)); *see also In re Estate of Haskins*, 224 S.W.3d 675, 678 (Tenn. Ct. App. 2006). Our Supreme Court has summarized the principles involved in statutory construction as follows:

> When dealing with statutory interpretation, well-defined precepts apply. Our primary objective is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002). In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). When a statute is clear, we

> apply the plain meaning without complicating the task. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). Our obligation is simply to enforce the written language. *Abels ex rel. Hunt v. Genie Indus., Inc.*, 202 S.W.3d 99, 102 (Tenn. 2006). It is only when a statute is ambiguous that we may reference the broader statutory scheme, the history of the legislation, or other sources. *Parks v. Tenn. Mun. League Risk Mgmt. Pool*, 974 S.W.2d 677, 679 (Tenn. 1998). Further, the language of a statute cannot be considered in a vacuum, but "should be construed, if practicable, so that its component parts are consistent and reasonable." *Marsh v. Henderson*, 221 Tenn. 42, 424 S.W.2d 193, 196 (1968). Any interpretation of the statute that "would render one section of the act repugnant to another" should be avoided. *Tenn. Elec. Power Co. v. City of Chattanooga*, 172 Tenn. 505, 114 S.W.2d 441, 444 (1937). We also must presume that the General Assembly was aware of any prior enactments at the time the legislation passed. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995).

In re Estate of Tanner, 295 S.W.3d 610, 613-14 (Tenn. 2009).

To the extent that we need also review the factual findings of the trial court, we presume those findings to be correct and will not overturn them unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Morrison v. Allen*, 338 S.W.3d 417, 425-26 (Tenn. 2011). "In order for the evidence to preponderate against the trial court's findings of fact, the evidence must support another finding of fact with greater convincing effect." *Wood v. Starko*, 197 S.W.3d 255, 257 (Tenn. Ct. App. 2006).

IV. Inconvenient Forum

Father contends that the trial court erred in determining that Tennessee was an inconvenient forum under Tennessee Code Annotated § 36-6-222. Specifically, Father argues that he was not afforded an opportunity to be heard regarding the statutory factors provided in Tennessee Code Annotated § 36-6-222(b) prior to the trial court's determination that Tennessee was an inconvenient forum. Upon a thorough review of the record and applicable authorities, we disagree.

The UCCJEA, codified at Tennessee Code Annotated §§ 36-6-201 *et seq.*, governs jurisdictional custody issues that concern multiple states. *See Iman v. Iman*, No. M2012-02388-COA-R3-CV, 2013 WL 7343928 at *3 (Tenn. Ct. App. Nov. 19, 2013) (citing *Staats v. McKinnon*, 206 S.W.3d 532, 544 (Tenn. Ct. App. 2006)) ("The UCCJEA is a detailed jurisdictional Act that has been adopted, in one form or another, in all fifty states."). The purpose of enacting the UCCJEA was to establish national stardards for

jurisdiction regarding initial custody determinations, to specify the circumstances under which a state can modify another state's child custody determination, to establish procedures for enforcement of both initial custody orders and modification orders, and to prevent contradictory orders by the courts of different states. *Id*. Even if the trial court in this state has jurisdiction under the UCCJEA, the trial court may, at any time, decline to exercise that jurisdiction if it determines that Tennessee is no longer a convenient forum under the circumstances and that another state is a more appropriate forum. *See* Tenn. Code Ann. § 36-6-222 (2014).

Whether a court is an inconvenient forum is governed by Tennessee Code Annotated § 36-6-222. Subsection (b) of that statute provides:

> Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:
>
> (1) The length of time the child has resided outside this state;
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> (2) The distance between the court in this state and the court in the state that would assume jurisdiction;
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> (3) The relative financial circumstances of the parties;
>
> (4) Any agreement of the parties as to which state should assume jurisdiction;
>
> (5) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
>
> (6) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;
>
> (7) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child; and
>
> (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

Tenn. Code Ann. § 36-6-222(b) (emphasis added).

At issue on appeal is the UCCJEA's statutory requirement that "the court shall allow the parties to submit information and shall consider all relevant factors" prior to determining if the court is an inconvenient forum. *See* Tenn. Code Ann. 36-6-222(b). Father specifically argues that the trial court did not allow the parties an opportunity to be heard on the statutory factors regarding whether Tennessee is an inconvenient forum. To the contrary, the record reflects that both parties were afforded ample opportunity to submit information to the trial court for the court to consider and that the trial court considered the relevant statutory factors. In fact, the record reflects that both parties did submit information to the trial court for its consideration. Mother filed her motion and an accompanying UCCJEA affidavit on July 10, 2015. Father submitted his response objecting to Mother's motion, case law supporting his position, and an accompanying UCCJEA affidavit on August 5, 2015.[6]

In the statement of the case and relevant facts included in his principal brief on appeal, Father acknowledges that he had an opportunity to argue the issue during a motion hearing conducted on August 6, 2015. Father states in pertinent part:

> The Father responded to the Motion on or about August 4, 2015. At the Motion hearing, Father argued that the Tennessee Court should retain jurisdiction over this case as no competing petition had been filed in the transferee court (Florida) and the Court should retain jurisdiction because the basis[]for the modification are the acts of contempt of a Tennessee order by the Mother. The Court took the matter under advisement.

(Internal citations omitted.) However, in the argument section of his brief, Father asserts that "[n]o evidence was taken and no proof or other information was allowed to be offered." A strict reading of Tennessee Code Annotated § 36-6-222(b) reflects that the statute does not require a full evidentiary hearing prior to the trial court rendering a decision on the matter. Instead, the statute requires that the parties be allowed to submit information regarding the issue, which Father did. *See* Tenn. Code Ann. § 36-6-222(b).

Moreover, Father has filed neither a transcript or statement of the evidence with

[6] In his response, Father cited *Heilig v. Heilig*, No. W2013-01232-COA-R3-CV, 2014 WL 820605 (Tenn. Ct. App. February 28, 2016), in support of his argument for the case to remain in Tennessee. Father further filed a copy of the *Heilig* decision with the trial court as part of his response. The case before us is distinguishable from *Heilig* because *Heilig* involves exclusive, continuing jurisdiction pursuant to Tennessee Code Annotated § 36-6-217. The trial court in the case at bar recognized that continuing jurisdiction remained but declined to exercise that jurisdiction due to its finding that Tennessee is no longer a convenient forum for the present action.

this Court regarding the motion hearing that occurred on August 6, 2015. This Court has previously held that "the burden is . . . on the appellant to provide the Court with a transcript of the evidence or a statement of the evidence. . . ." *Outdoor Mgmt., LLC v. Thomas*, 249 S.W.3d 368, 378 (Tenn. Ct. App. 2007). Without a transcript of the proceedings or a statement of the evidence, we are not in a position to determine what occurred during the motion hearing on August 6, 2015. However, upon an independent review of the record, including the information submitted to the trial court by the parties, we find that the trial court's findings are supported by such information before the court for consideration.

Upon finding that Tennessee was an inconvenient forum, the trial court ruled as follows:

> The Parenting Plan which is the subject of the Petition to Modify was entered by this Court on June 9, 2014. That Parenting Plan designated the Mother as the primary residential parent. Since the entry of that Parenting Plan, the Mother and the minor child have resided in the state of Florida. Father currently resides in the state of Alaska. Father's Petition to Modify alleges that Mother has "developed an abusive pattern of promoting the notion that various conditions afflict the minor child" and that she has repeatedly attempted to obtain unnecessary medical treatment for the child and has falsely asserted that she has special needs. Father seeks to hold Mother in contempt for her various actions as well. All of Father's complaints against the Mother arise out of actions of Mother which occurred in the state of Florida. Although Tennessee certainly has continuing jurisdiction in this matter, Tennessee is no longer a convenient forum for either party nor will any of the information necessary to resolve issues which may have arisen since the entry of the Parenting Plan be available to the parties in Tennessee. For these reasons, the Court finds that Tennessee is an inconvenient forum . . . .[7]

We agree with the trial court's analysis. The specific findings of fact in this cause indicate that the trial court did consider the relevant factors pursuant to Tennessee Code Annotated § 36-6-222(b). Consequently, we find no abuse of discretion in the trial court's determination that Tennessee was an inconvenient forum and the trial court's resultant decision not to exercise jurisdiction over this case.

[7] We note that Father has not contested on appeal the trial court's finding that Tennessee had continuing jurisdiction; therefore, we will not address in this opinion exclusive, continuing jurisdiction, pursuant to Tennessee Code Annotated § 36-6-217.

V. Stay of Father's Petition

Although we discern no error in the trial court's decision not to exercise jurisdiction in this matter, we do determine that Father's petition should have been stayed pursuant to Tennessee Code Annotated § 36-6-222(c). Tennessee Code Annotated § 36-6-222(c) provides:

> If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

The official comments to the above statute recognize a departure in Tennessee law from the uniform act in that the trial court "may not simply dismiss the action. . . . Rather the court shall stay the case and direct the parties to file in the state that has been found to be the more convenient forum. . . . " Tenn. Code Ann. § 36-6-222(c) cmt.

Upon a grant of a stay of proceedings, the trial court may impose any other condition or conditions that the court considers just and proper. *See* Tenn. Code Ann. § 36-6-222(c). In the instant case, the proper procedure would have been for the trial court to issue a stay of Father's action and direct the parties to file the action in the state of Florida, which the court determined was a more convenient forum. The record reveals that Mother filed a "Petition for Domestication and Modification" with a Florida court regarding custody of this child. However, the record does not supply sufficient information for a determination as to whether Father has filed his action in the Florida court or whether the Florida court has agreed to exercise jurisdiction over the case. Therefore, we reverse the dismissal of Father's petition and remand to the trial court for issuance of a stay in this matter. Upon remand, the trial court may impose any conditions it considers just and proper pursuant to Tennessee Code Annotated § 36-6-222(c).

V. Conclusion

For the foregoing reasons, we affirm the trial court's finding that Tennessee is an inconvenient forum and the trial court's decision not to exercise jurisdiction. However, we reverse the dismissal of Father's petition. The matter is remanded to the trial court for further proceedings consistent with this opinion, for issuance of a stay in accordance with this opinion, and for collection of costs below. Upon remand, the trial court may impose any conditions during the stay that the court considers just and proper pursuant to Tennessee Code Annotated § 36-6-222(c). Costs on appeal are assessed to the appellant, Guy Kapustka.

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THOMAS R. FRIERSON, II, JUDGE