UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0027

September Term, 2016

ELIZABETH TUCKER

v.

DAVID TATE

Wright,
Arthur,
Leahy,

JJ.

Opinion by Arthur, J.

Filed: November 18, 2016

A father filed a petition in Louisiana concerning custody of his two minor children; he and the mother stipulated that Louisiana would have exclusive jurisdiction over the children; a Louisiana court orally approved the stipulation; and for over two years, the parties conducted themselves in accordance with their stipulation. Then the mother filed a parallel custody proceeding in the Circuit Court for Anne Arundel County.

The Louisiana and Maryland courts held a telephonic conference to determine which court should exercise jurisdiction. At the conclusion of the conference, the courts agreed that the custody matter should proceed in Louisiana, and the Circuit Court for Anne Arundel County dismissed the mother's complaint.

The mother appealed. We affirm.

QUESTIONS PRESENTED

Appellant Elizabeth Tucker presents four questions for review, which we quote:

1. Was the hearing in the Circuit Court for Anne Arundel County appropriate as there was a request for a continuance and ex-parte communications and no fair opportunity to present Petitioner's case?

2. Was there a valid Court Order in the State of Louisiana that would preclude or prohibit proceeding on Petitioner's Original Complaint for Custody in Maryland under the [Uniform Child Custody Jurisdiction and Enforcement Act (the "UCCJEA")]?

3. The question of an Emergency Petition was not raised by the Petitioner in her Complaint for Custody. Would that have altered the outcome and was there sufficient language in the Complaint that the Petitioner could have addressed this issue?

4. The issue of Inconvenient Forum was raised by the Judges in their conversation. Could this issue have altered the outcome if counsel had been allowed the opportunity to present it? Further, Home State is the preference with the

UCCJEA, was the court in error addressing Inconvenient Forum instead of Home State [sic]?

FACTUAL AND PROCEDURAL BACKGROUND

Elizabeth Tucker ("Mother") and David Tate ("Father") are the parents of two daughters, who are currently 12 and 14 years of age. The children resided in Louisiana until mid-2007, when they moved with Mother to Maryland. In 2009 or 2010, Mother and the children returned to Louisiana.

On February 7, 2013, when the children were living in Louisiana, Father filed a petition in state court in Livingston Parish, Louisiana, seeking custody. It appears that Father's petition was precipitated by Mother's intention to move back to Maryland with the children.

The record extract reflects that on May 29, 2013, Father and Mother resolved the issue of custody by filing a handwritten stipulation with the clerk in Livingston Parish. Among other things, the two-page stipulation stated that Mother would be permitted to relocate to Maryland, that she would have physical custody of the children during the school year, and that Father would have physical custody when the children were out of school. The stipulation expressly stated that "Louisiana shall retain exclusive jurisdiction" over the children.

A document in the record extract further reflects that on May 29, 2013, the date of the handwritten stipulation, Mother's Louisiana counsel read the stipulation into the record. According to the document, the Louisiana court "granted the judgment as prayed

for." The court envisioned that it would receive and sign a more formal version of the stipulation, but the parties did not submit one.

Nonetheless, the parties appear to have conducted themselves in accordance with the stipulation. Mother and the children moved back to Maryland in August 2013. Furthermore, in papers filed in Louisiana, Father asserts that the parties abided by the stipulation until November 2015, when Mother suddenly cut off his communication with the children and prevented them from visiting him during a school holiday.

Mother's conduct coincided with the filing of her complaint for custody and child support in the Circuit Court for Anne Arundel County on November 20, 2015. Her complaint alleged that "[t]here are no custody orders in this or any other jurisdiction." Her allegation is accurate if one looks only for written orders and ignores the document reflecting the Louisiana court's oral approval of the parties' stipulation.

Perhaps in reaction to the developments in Maryland, Father resubmitted the handwritten stipulation to the Louisiana court on December 4, 2015. On December 9, 2013, the Louisiana court issued a formal, written order that transformed the stipulation into a judgment.

Although Mother had not informed the Circuit Court for Anne Arundel County of the Louisiana stipulation, the circuit court learned of it and scheduled a telephonic conference with the Louisiana court for March 3, 2016. The purpose of the conference

was to determine which State should exercise jurisdiction over the children under the UCCJEA.

In advance of the telephonic conference, on March 1, 2016, Mother requested a continuance, which the court denied. The court accepted Mother's seven-page, single-spaced memorandum on the legal issues, but did not permit Mother's counsel to participate in the call with the Louisiana court.[1]

During the telephonic conference, the circuit court asked whether the Louisiana court would retain continuing, exclusive jurisdiction. The Louisiana court said that it would. Consequently, on March 4, 2016, the circuit court dismissed Mother's complaint and ordered that all custody disputes involving the minor children and related matters be heard in the State of Louisiana.

On March 10, 2016, Mother noted a timely appeal.[2]

DISCUSSION

I. The Telephonic Conference

Mother's first question generally concerns the appropriateness of the conference in which the circuit court conferred with the Louisiana court to determine which of the

[1] Representing himself, Father filed a memorandum in support of dismissal on the morning of the conference between the Louisiana and Maryland judges. Father has not filed a brief in this appeal.

[2] After noting her appeal, Mother moved to reconsider the ruling that she had appealed. Mother appears not to have appreciated that her appeal prohibited the circuit court from interfering with the appellate court's ability to review the order on appeal by, for example, reversing or revising that order before the appellate court (continued…)

dueling custody cases should take precedence. She appears to complain that the court did not allow her to participate in the telephonic conference and that it denied her request for a continuance.

The rules for avoiding simultaneous custody proceedings in different jurisdictions are detailed by the UCCJEA, which is codified as Md. Code (1984, 2012 Repl. Vol.), §§ 9.5-101 to -318 of the Family Law Article ("FL"). "[T]he purpose of the UCCJEA is 'to provide stronger guidelines for determining which state has jurisdiction, continuing jurisdiction, and modification jurisdiction over a child custody determination[.]'" *Miller v. Mathias*, 428 Md. 419, 452 (2012) (quoting *In re Kaela C.*, 394 Md. 432, 455 (2006)).

In the event of custody proceedings in different jurisdictions, a Maryland court may communicate with a court in another State to determine the jurisdiction in which the custody matter will proceed. FL § 9.5-109(b). "The court may," but need not, "allow the parties to participate in the communication." FL § 9.5-109(c)(1). However, "[i]f the parties are not able to participate in the communication, they shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made." FL § 9.5-109(c)(2).

Mother contends that the circuit court did not provide an opportunity for her to present facts and legal arguments before the conference call with the Louisiana court. She argues that her counsel was unaware of the Louisiana order, by which she apparently

---

can act. *See*, *e.g.*, *Jackson v. State*, 358 Md. 612, 620 (2000) (citations omitted). In any event, the circuit court denied the motion to reconsider.

means the written order that the Louisiana court entered on December 9, 2015.[3] She maintains that no exigent circumstances prohibited the court from allowing her additional time to develop and present a comprehensive argument to the court in a full hearing.

This Court reviews a trial court's "decision to deny a motion for a continuance for an abuse of discretion[.]" *Prince v. State*, 216 Md. App. 178, 203 (2014). To constitute an abuse of discretion, the decision "has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Evans v. State*, 396 Md. 256, 277 (2006) (citation and internal quotation marks omitted).

Mother has said nothing to persuade us that the court abused its broad discretion in denying her request for a continuance. It is perfectly appropriate for courts to act expeditiously to resolve a conflict concerning which of them should proceed with a custody determination. The potential for inconsistent decisions is itself a circumstance that demands immediate attention from the courts. *See Garba v. Ndiaye*, 227 Md. App. 162, 170 (2016) (explaining some of UCCJEA's overarching goals, which include

[3] The record extract contains an email, dated December 16, 2015, in which Father's counsel in Louisiana informed Mother's counsel in Maryland of the stipulation that the parties had made in the Louisiana court on May 29, 2013. The record extract also contains an order, dated February 16, 2016, in which the Louisiana court directed mother to show cause why she should not be held in contempt for violating the stipulation and for "falsifying statements" in her filings in Maryland. The show cause order, which was to be served on Mother at her address in Maryland, predates the telephonic conference by two weeks.

avoiding jurisdictional competition and conflict with other state courts and avoiding relitigation of custody decisions of other states) (citation omitted).

Upon the court's denial of Mother's motion for a continuance, it notified her that in accordance with FL § 9.5-109(c)(2) it would accept a memorandum of facts and legal arguments before the conference on March 3, 2016. Although Mother filed her memorandum, she appears to take exception to the court's decision not to allow her to participate in the conference call with the Louisiana court. FL § 9.5-109(c)(1) does not, however, say that a circuit court "shall" or "must" allow a party to participate in its conference with a court from another State, but only that the court "may" allow the party to participate. As a matter of logic and grammar, it follows that the circuit court might have opted to permit Mother to participate, but it was in no way required to do so. *See, e.g.*, *Helms v. State*, 191 Md. App. 185, 194 (2010).

Finally, it is incorrect for Mother to refer to the telephonic conference as an "ex parte" proceeding. An ex parte proceeding is one in which a court hears from one side only. *See, e.g.*, *Harris v. State*, 331 Md. 137, 159 (1993); Bryan A. Garner, *A Dictionary of Modern Legal Usage* 232 (1987). In the telephonic conference in this case, however, the circuit court did not hear from either "side" of the dispute, but from its counterpart in Louisiana. The court did exactly what the UCCEJA envisions and requires; it did not err or abuse its discretion in any way.

II. The Louisiana Court Order

Mother contends that when the Louisiana court signed the order dated December 9, 2015, she and her minor children had been residents of Maryland for more than two years, that Louisiana was no longer the children's home State, and that Louisiana therefore had lost jurisdiction over the case. Although her argument is not entirely cogent, she appears to focus on the 30-month delay between the handwritten stipulation, which the Louisiana court approved in May 2013, and the entry of a formal order in December 2015. Much of her argument involves factual assertions that she did not present to the circuit court and, hence, have no foundation in the record.

To the extent (if any) to which Mother's argument is even before us,[4] we reject it. In May 2013 Mother entered into a stipulation in which she agreed that Louisiana would retain continuing, exclusive jurisdiction over custody matters. The Louisiana court approved the stipulation. As a result of the stipulation, Mother was able to move to Maryland with the children. For reasons not revealed by the record before us, the parties did not promptly submit a formal, written order to the Louisiana court, as the stipulation envisioned they would do. Nonetheless, the record extract indicates that the parties complied with the stipulation for well over two years, until November 2015, when Mother cut off communication with Father and commenced this parallel custody proceeding in Maryland. In these circumstances, we reject Mother's contention that

[4] *See* Md. Rule 8-131(a) (aside from issues of subject-matter and personal jurisdiction, an appellate court ordinarily "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court").

Louisiana lost its continuing, exclusive jurisdiction over custody matters because of the delay in transforming the parties' court-approved stipulation into a formal order.

III. Emergency Petition

FL § 9.5-204(a) states that "[a] court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse." Mother asks whether the outcome of the conference would have been different had she presented her complaint as an "emergency petition" under FL § 9.5-204(a). She concedes, however, that she "did not" actually "file an emergency petition." Because this Court does not decide hypothetical questions, we decline to address whether the circuit court would or should have reached a different conclusion had Mother made an argument that she did not make. *See Apenyo v. Apenyo*, 202 Md. App. 401, 421-22 (2011); *Cohen v. Cohen*, 162 Md. App. 599, 607-08 (2005).[5]

IV. Inconvenient Forum and Home State

Under the UCCJEA, a court may decline to exercise its jurisdiction over a custody proceeding if it determines that it is an inconvenient forum. FL § 9.5-207(a)(1); La. Stat. Ann. § 13:1819(A) (2007). Mother mentions that, during the telephonic conference, the

[5] Although Mother admits that she "did not file an emergency petition," she asserts that some of the allegations in her complaint accuse Father of child abuse or neglect. We cannot fault the circuit court for failing to attribute any greater significance to these allegations than Mother herself did.

Louisiana and Maryland judges (briefly) discussed whether Louisiana was an inconvenient forum. She asks whether the outcome of the conference would have been different had she had been allowed to argue that Louisiana is an inconvenient forum. Mother neglects to note that she had the opportunity to make that argument in the memorandum that the circuit court permitted her to file under FL § 9.5-109(c)(2).

Under FL § 9.5-201(a), a Maryland court has jurisdiction to make an "initial child custody determination" if Maryland is the children's "home state" – i.e., "the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence, immediately before the commencement of a child custody proceeding[.]" FL § 9.5-101(h)(1). Mother goes on to ask whether the circuit court erred in deferring to Louisiana on the ground that Louisiana was not an inconvenient forum and in not asserting jurisdiction on the ground that Maryland had become the children's home state.

Maryland's "home state" status is, however, "only a threshold consideration and is not ultimately dispositive of the issue" of which forum is most appropriate for these custody proceedings. *Apenyo v. Apenyo*, 202 Md. App. at 419 (citing *Gestl v. Frederick*, 133 Md. App. 216, 227 (2000)). Even if a Maryland court has jurisdiction, it will nonetheless decline to exercise its jurisdiction in three circumstances:

> (1) pursuant to § 9.5-206, when the same proceeding is pending in another State; (2) pursuant to § 9.5-207, when Maryland determines that it is an inconvenient forum and that another state is a more appropriate forum; and

> (3) pursuant to § 9.5-208, when Maryland declines jurisdiction because the party seeking jurisdiction has engaged in unjustifiable conduct.

Id. at 419-20 (internal citations and quotation marks omitted).

A court's decision about whether to exercise jurisdiction when a parallel proceeding is pending in a different State is reviewed for abuse of discretion. *Id.* at 413.

FL § 9.5-206(a) provides, in pertinent part:

> (a) Except as otherwise provided in § 9.5-204 of this subtitle,[6] a court of this State may not exercise its jurisdiction under this subtitle if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this title, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under § 9.5-207 of this subtitle.

The Louisiana UCCJEA, La. Stat. Ann. § 13:1801 *et seq.*, is in substantial conformity with Maryland's UCCJEA. Father filed his custody complaint in Louisiana on February 7, 2013. On this date, Louisiana had jurisdiction, because the children had resided in Louisiana for the requisite six months necessary for Louisiana to be considered their "home state."[7] The Louisiana court had approved the parties' stipulation that Louisiana would have continuing, exclusive jurisdiction over custody matters, and the

[6] FL § 9.5-204 concerns temporary emergency jurisdiction, which a court may assert "if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse." Mother did not invoke temporary emergency jurisdiction in the circuit court. *See supra* § III.

[7] Mother's circuit court complaint alleges that the children lived in Walker, Louisiana, from August 2009 until August 2013. Therefore, the children had lived in Louisiana for about three and one-half years when Father filed his petition.

Louisiana proceeding had not been terminated or stayed in favor of Maryland as a more convenient forum. Therefore, the circuit court acted in complete accordance with FL § 9.5-206(a) and did not in any way abuse its discretion when it deferred to Louisiana and declined to exercise its jurisdiction over Mother's complaint.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.