

Circuit Court for Anne Arundel County
Case No. 02-C-13-184357

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1257

September Term, 2016

APRIL CARRINGTON

v.

ANDRE RICHARDS

Graeff,
Leahy,
Beachley,

JJ.

Opinion by Graeff, J.

Filed: October 16, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal involves a custody battle between April Carrington (“Mother”), appellant, and Andre Richards, (“Father”), appellee. Mother appeals from the July 21, 2016, Order of the Circuit Court for Anne Arundel County denying her request for Maryland to relinquish exclusive, continuing jurisdiction over the parties’ minor child, M.C.

On appeal, appellant presents the following question for this Court’s review, which we have rephrased slightly, as follows:

Did the circuit court err in determining that Maryland has exclusive, continuing jurisdiction over the parties’ minor child?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Father and Mother, who never married, have one child together, M.C. On December 23, 2013, Father filed a complaint for custody of M.C. in the Circuit Court for Anne Arundel County. He alleged that the parties had been living separate and apart since December 2, 2013, when Mother filed false criminal charges against him, as well as a Petition for Protection from Domestic Violence, also based upon false allegations. Father alleged that he was unaware of Mother’s current residence, but he believed M.C. was living with Mother. Father sought primary physical custody and sole legal custody of M.C. He asserted that he had not participated in any other custody proceeding pending in any other court of this or any other state.

On March 4, 2014, Mother filed an answer to the complaint, admitting that she had been a resident of Maryland for more than a year prior to the filing of the complaint. She

subsequently filed a counterclaim for custody in the circuit court, in which she stated that M.C. had lived with her in Fort Meade, Maryland, from November 2, 2012 to July 4, 2013; in Odenton, Maryland, from July 4, 2013 to August 20, 2013; and with both parties from August 20, 2013 to December 3, 2013. The pleadings further indicated that M.C.'s maternal grandmother had filed for custody or guardianship of M.C. in the Family Court of Jefferson County, Alabama, a fact of which Father was not aware until after his complaint was filed. Father argued that Maryland was M.C.'s "home state" because, at the time the complaint was filed, "both parents ha[d] been residing in the State of Maryland for approximately three years or more," and therefore, "the Jefferson County, Alabama case, along with any Court Orders" should be vacated.

On June 17, 2014, the court held a hearing/conference call with the Honorable W. Alan Summers Jr. of the Family Court of Jefferson County, Alabama; Beryl Carrington, M.C.'s maternal grandmother, along with her counsel; and the guardian ad litem for M.C. Counsel for Father and Mother were present in court. At the conclusion of the call, the court scheduled a pendente lite hearing regarding custody.

On July 22, 2014, the court held a pendente lite hearing. Following the hearing, the court entered a pendente lite order. The court ordered that Father and Mother have joint legal custody, and it ordered a physical access schedule.

On November 3, 2014, the court held a trial on Father's complaint for custody. Mother was not present for the hearing. On November 7, 2014, the court issued an order, awarding Father sole physical and legal custody of M.C., and denying Mother all access to

M.C. The court further ordered that Mother turn over M.C.'s birth certificate, passport, and social security card to Father.¹

On February 12, 2015, Father filed a motion for contempt, alleging that Mother had not complied with the November 7, 2014, order, and that Mother

has failed and refused to make any arrangements to have [M.C.] turned over to the Plaintiff's care and custody, despite the Plaintiff making many attempts to locate and take custody of [M.C.], including the Plaintiff making two separate trips to Alabama in order to locate [M.C.], particularly if [M.C.] is still residing with Beryl Carrington, who was the Intervenor in this case until she was dismissed from this case per the November 7, 2014 Order.

Father further alleged that "it is believed . . . that the Defendant or Beryl Carrington . . . at the request of the Defendant, is intentionally 'hiding' [M.C.], thus keeping him away from the Plaintiff."

On May 7, 2015, the court entered a temporary order in response to Father's contempt filing. The court again ordered that Father have physical and legal custody, and it ordered that law enforcement officers use all reasonable force to return M.C. to Father.

On March 8, 2016, Mother filed a petition to modify custody and visitation, stating as follows:

[Father] is a known repetitive [sic] abuser. Currently Alabama has order [sic] a protective order against [sic] [Father]. [Father] has made offensive abusive comments about the child['s] life and well being. [Father] does not have the child's [sic] best interest [sic] in mind. [Father] does not reside in Maryland nor any parties in the case above[.] Jurisdiction of all listed cases should be granted to the state of Alabama due to lack of jurisdiction on Maryland's behalf [sic]. Maryland has not shown just cause

¹ The court ordered "that the Intervenor, Beryl Carrington, be dismissed from" the case.

of jurisdiction. I [Mother] and [M.C.] do not have any ties with the state of Maryland. We are bonafide [sic] Alabamians.

On April 4, 2016, the court issued a show cause order, stating as follows:

Upon review of the file, Defendant's Petition to Modify Custody and Visitation (requesting this Court to "relocate" the case to Alabama) filed on March 23, 2016, and based upon communication from counsel in the State of Alabama, the Court finds that Defendant alleges the minor child, [M.C.] has resided in the State of Alabama since approximately December 2013 and that there is a case involving the same minor child pending in the State of Alabama. In addition, Defendant alleges that Plaintiff now resides in the State of New York. Pursuant to the Maryland Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA),^[2] MD. CODE ANN., FAM LAW § 9.5-202, this Court has exclusive, continuing jurisdiction over the matters involving the minor child herein, until jurisdiction is relinquished by this Court. Therefore, it is hereby

ORDERED, that the Plaintiff shall show cause, in writing, within twenty (20) days of the date of this Order, why Maryland should not relinquish its exclusive, continuing jurisdiction over the matters involving the minor child herein pursuant to § 9.5-202 of the UCCJEA.

(footnote omitted).

On April 22, 2016, Father filed an answer to the show cause order, alleging that he had been a resident of Maryland since May 23, 2011, and at the time of filing, he lived in Anne Arundel County and worked in Washington, D.C. He alleged that he had no significant ties to Alabama, "except for the fact that [M.C.] was taken there without

² The Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), adopted by Maryland and codified as Md. Code (2012 Repl. Vol.) § 9.5-101, *et seq.* of the Family Law Article, is designed, in part, to "[a]void jurisdictional competition and conflict with courts of other States in matters of child custody. . . . [d]iscourage the use of the interstate system for continuing controversies over child custody," and "[a]void relitigation of custody decisions of other States in" other states. Official Comment to ULA CHILD CUST JUR & ENF § 101 (1997).

[Father's] knowledge or permission and is currently being hidden at several of [Mother's] relative['s] home[s] so that [Father] cannot have access" to M.C.³

Father alleged that Mother came before the court "with unclean hands" and was perpetrating fraud against both the circuit court and the Family Court in Alabama. In regard to the latter, he stated that Mother had filed several motions for custody in Alabama, in which she stated that there was "no other state involved in this custody matter . . . and no other states ha[d] jurisdiction of this matter." With regard to the proceedings in the Alabama court, the answer alleged the following:

b) The Defendant refused to appear before this court May 7, 2015 though she was served in the state of Maryland on April 7, 2015. However, 14 days after being served with a show cause order to appear before this court, the Defendant appeared before the Family Court of Jefferson County, AL requesting to be granted full custody of the minor child and the District Court of Jefferson County, AL requesting paternity and child support from the Plaintiff on April 7, 2015 as well.

c) During the December 2, 2015 hearing before Judge Alan Summer of the Family Court of Jefferson County, AL the defendant was order[ed] to turn over the minor child to the Plaintiff and comply with all custody order[s] that [were] issued by the Circuit Court for Anne Arundel County, MD (see The Family Court for Jefferson County, AL Order JU2014181.03 dated 2 December 2015, Exhibit A). The Defendant and her mother informed Judge Summers in open court that they were not aware of the location of the minor child and do not know who's [sic] care he was under at the time of questioning. Judge Summers ordered both the Plaintiff and her mother to appear before the Family Court for Jefferson County, Al the following day 03 December 2015.

d) On December 3, 2015, when the matter was called before the Family Court for Jefferson County, Al the Defendant failed to appear and

³ Father alleged that M.C. was returned to Maryland in September 2014, but Mother continued to hide him from Father. Once Father learned of M.C.'s location, M.C. was taken back to Alabama, in March 2015.

Judge Summer issue[d] and attached [sic] for her arrest base[d] on the fact that she failed to appear and comply with his orders (see The Family Court for Jefferson County, AL Order JU2014181.03 dated 3 December 2015 and 5 Janurary [sic] 2016, Exhibit B and C).

e) On December 16, 2015 the matter before the District Court of Jefferson County, AL in regards to paternity and child support was heard before Judge Carnella Green-Norman where the matter was dismissed base[d] on the certified orders that were issue[d] as [sic] the hands of this court and were presented as evidence and the fact that the Defendant and her counsel failed to appear before the District Court of Jefferson County to answer to the matter at hand (see The District Court of Jefferson County, AL order CS-2015-000111.00 date 16 December 2015, Exhibit D.

f) The defendant was arrested on 30 March 2016 by officers of the Jefferson County Police Department in regards to the attachment that was issued for her arrest on 5 January 2016 by Judge Summers.

g) At all times, the Defendant has been in violation of this Court's order dated November 7, 2014 and is in wrongful possession of the Plaintiff's minor child. The defendant has "kidnapped" the parties' minor child and is seeking a change in jurisdiction based on her unlawful act of kidnapping the parties' minor child.

Father attached four exhibits to his answer to the show cause order. Exhibit A, a December 2, 2015, Order of the Family Court of Jefferson County, AL, provided:

This court enters this emergency order based on certified copies of orders entered by the Circuit Court of Anne Arundel County Maryland. This Court hereby accepts and enrolls the foreign judgements [sic] of Anne Arundel County, MD, which placed legal custody of [M.C.] with [Father]. Police and Deputies of Birmingham and Jefferson County AL are requested to assist [Father] in obtaining physical custody of [M.C.] Pursuant to prior orders of this Court and the UCCJEA, the Courts of Maryland have accepted, maintained and exercised jurisdiction. This Court gives full faith and credit to the orders of the Courts of Maryland. Minor child to be immediately picked up; with the minor child to be released and turned over to [Father]. Mother . . . to have no contact with minor child pending Final Orders of this Court.

Exhibit B, a December 3, 2015, Order of the Family Court of Jefferson County, provided:

Case was reset this morning to make sure mother turned child over to father as this court is enforcing the State of Maryland court orders. Mother failed to cooperate with Birmingham Police and did not turn over child. Furthermore, mother has failed to appear this date. *Warrant is to be issued for the arrest of [Mother] for her failure to appear and for her failure to comply with court orders.

The court reset the case for a January 5, 2016, status conference.

Exhibit C, a December 16, 2015, Order of the District Court of Jefferson County, dismissed Mother's complaint against Father for paternity and child support due to Mother's failure to appear.

Exhibit D, a January 5, 2016, Order of the Family Court of Jefferson County, provided:

Mother fta this date.

Attachment to re-issue for [Mother]

Attachment issued for failure to follow court orders and failure to appear for court.
Case is reset for 3/10/16 at 1:30 pm

In his answer, Father requested that the circuit court not relinquish its exclusive, continuing jurisdiction over custody of M.C. and deny Mother's request to "relocate" the matter and grant Alabama jurisdiction. Father further requested that the court order Mother to comply with all orders of both courts.

On April 28, 2016, after reviewing Mother's motion to modify custody and Father's answer to the show cause order, the court found that Maryland retained jurisdiction. It

issued an order setting the matter for a merits hearing on Mother's motion to modify custody.

On July 21, 2016, the court held a merits hearing. It noted that it needed to determine whether Maryland continued to have exclusive jurisdiction over the case, whether there was another proceeding pending in another state, and whether Maryland was an inconvenient forum, and it stated that the court did not have information that it needed.

Mother testified that she and M.C. lived in Alabama. She is medically retired from the military and is on disability.⁴ She asserted that M.C. had been living with her in Alabama for 31 months, and she believed that Father "moved back to New York after his discharge from the military." She stated that it was in M.C.'s best interests that she retain custody because she has been his primary care giver, and she was not properly notified of the hearing. Mother further stated that Father's history with his family is "unstable," that Father did not properly care for M.C., and even questioned whether Father was M.C.'s biological father.

Mother testified that she had an open child support case in Alabama, which was scheduled for a hearing on September 14, 2016. She stated that there were no other cases open in Alabama.⁵

⁴ Mother testified that she stopped working in October 2013, but she "still get[s] paid."

⁵ Mother stated that her mother filed for emergency custody of M.C. while she was in the hospital and Father was incarcerated. That case was dismissed.

M.C.'s grandmother testified that Father beat Mother. While Mother was in the hospital and Father was incarcerated, she took M.C. into her care.

Father testified that he lived in Odenton, Maryland, and he had not lived in New York since May 2011. The court asked about a New York address that was listed on the pleadings, to which Father responded: “[T]hat was not done by me or my attorney. That was done by [Mother].” The court directed Father to complete a change of address form.

Father attempted to obtain his son pursuant to the custody court's order. The court then observed that “he has an order, the order hasn't been complied with, and he says he lives in Maryland.”

On cross-examination, Father testified that his discharge from the military was a “general discharge under honorable conditions.” Father admitted that the military found him guilty of child neglect and abuse of Mother “based on the statements and the documentation that [Mother] presented.” He stated that he did not provide “any statement to them. And that is part of the reason why I was found guilty.” Father did provide documentation “once the protective order that [Mother] had in place was appealed and it was dismissed.”

At the conclusion of the hearing, Mother asked the court to grant her custody of M.C. and allow him to remain in her care. The court stated: “It would be a whole lot easier for me to do that if you had been compliant with the court orders.” Mother responded that she was not aware of the court orders. The court explained that Mother had “created a horrible situation . . . because [she] violated numerous court orders which have ordered

[her] to turn [M.C.] over to [Father]," and "there is a concept in equity which basically involves clean hands." The court stated that Mother's argument, that because M.C. had always lived with her he should remain with her, did not acknowledge that the reason M.C. had been with her was because of "almost two years of violation of court orders."

After reviewing the procedural history of the case, the court first addressed the issue of jurisdiction, and Mother's request that the case be transferred to Alabama:

Now Section 9.5-207 provides factors that a court would – for a court to consider to see whether Maryland is an inconvenient forum. Under Section 9.5-202, Maryland had exclusive jurisdiction. Under Section 9.5-206, there is no pending proceeding in another state that relates to custody. Maybe child support, but nothing else.

Under 9.5-207, the inconvenient forum factors, the Court is not convinced that domestic violence has occurred, as the mother has alleged and is likely to continue in the future. Maryland can certainly protect the child if there was. The child has resided outside of this State for over two years due to the mother's illegal action in failing to complying [sic] with the court order.

Maryland and Alabama are quite a distance apart, but the mother made it up here today. The father lives here. The mother is on disability. I don't have a lot of information on the father's financial circumstances. There is no agreement between the parties. But the Court can certainly resolve this case based upon the evidence necessary to decide the case. There is no testimony from the child needed. And the Court has the ability to decide this issue expeditiously. And the Court in this state is very familiar with the facts and issues of the litigation.

The Court must in this case decide whether or not Maryland is an inconvenient forum. The Court does not believe in any way that Maryland is an inconvenient forum and the motion to relinquish exclusive continuing jurisdiction over the minor child is denied.

The court then addressed Mother's March 2016 motion to modify custody and visitation as follows:

The motion to modify custody must have a material change of circumstance proven. The mother's failure to comply with court orders granting the father custody does not create a material change of circumstances. The motion to modify custody is denied.

The mother is ordered to comply with all court orders. The Court will order you, ma'am, to return the child to Maryland one week from today, on July 29, 2016, and return the child to the father at 2:00 p.m. at the Maryland State Police Barracks on Taylor Avenue and Rowe Boulevard.

The court advised that, if Mother failed to comply with this order, there may be "a further contempt proceeding where [she] may be incarcerated."

The court acknowledged that its ruling "may seem harsh," but it explained that Mother's "unjustified failure to comply with the order in no way grant[ed] [her] the right to keep the child." It stated:

This case should have been litigated and you should have appeared in Maryland years ago. If you had, you may have been given full custody. But as it stands today, he has custody, you have not advanced a material change of circumstance sufficient for the Court to do anything.

After the court issued its ruling, Mother argued that she had not been properly served, which was why she had failed to appear for the merits hearing. The court responded: "File indicates you were given notice." The court also stated: "There is a right way to do it. There is a self-help clinic on the third floor."

DISCUSSION

Mother's sole argument on appeal is that the circuit court erred in its determination that it has exclusive, continuing jurisdiction over M.C. She argues that the court did not properly conduct the requisite inconvenient forum analysis. Specifically, she argues that the "court did not have the parties submit information regarding" the factors that it must

consider in determining whether Maryland is an inconvenient forum, nor did it “go into detail about the . . . factors.” Instead, she argues that, based on the testimony and evidence, “it is evident that Alabama is the state that has significant connection with the minor child and that substantial evidence is no longer available in this State concerning the minor child’s care, protection, training, and personal relationship.” We disagree.

When a child custody dispute involves another jurisdiction, the UCCJEA is implicated. *Toland v. Futagi*, 425 Md. 365, 370, *cert. denied*, 133 U.S. 265 (2012). As this Court recently stated, the UCCJEA “prohibits concurrent jurisdiction between two states to limit the occurrence of different states creating competing custody awards,” and it “discourages states from exercising jurisdiction when they are not the most convenient forum.” *Pilkington v. Pilkington*, 230 Md. App. 561, 579 (2016).

FL 9.5-201 addresses jurisdiction as follows:

(a) [With an exception not applicable here], a court of this State has jurisdiction to make an initial child custody determination only if:

(1) this State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) a court of another state does not have jurisdiction under item (1) of this subsection . . .

Here, the evidence indicated that M.C. was living in Maryland at the time the complaint was filed, and there is no dispute that the Maryland court had jurisdiction to make the initial custody determination. The only question here is whether that court retained jurisdiction over Mother’s petition to modify custody.

Pursuant to FL § 9.5-202(a)(1) and (2),

(a) [With an exception not applicable here], a court of this State that has made a child custody determination consistent with § 9.5-201 or § 9.5-203 of this subtitle has exclusive, continuing jurisdiction over the determination until:

(1) a court of this State determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) a court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

There is no contention here that the Circuit Court for Anne Arundel County did not have continuing, exclusive jurisdiction. Pursuant to FL § 9.5-207(a)(1), however, the court may decline to exercise its continuing jurisdiction “if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum.” *See Miller v. Mathias*, 428 Md. 419, 452-53 (2012).

As Mother observes, when conducting an inconvenient forum analysis, the court is required to consider eight factors. Pursuant to FL § 9.5-207(b), in considering whether it is appropriate for a court of another state to exercise jurisdiction:

(2) . . . the court shall allow the parties to submit information and shall consider all relevant factors, including:

(i) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(ii) the length of time the child has resided outside this State;

(iii) the distance between the court in this State and the court in the state that would assume jurisdiction;

(iv) the relative financial circumstances of the parties;

(v) any agreement of the parties as to which state should assume jurisdiction;

(vi) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(vii) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(viii) the familiarity of the court of each state with the facts and issues in the pending litigation.

Although the court is required to consider these factors, the “decision whether to relinquish the court’s jurisdiction in favor of a more convenient one is one addressed to the sound discretion of the court.” *Miller*, 428 Md. at 454 (citing *Krebs v. Krebs*, 183 Md. App. 102, 117 (2008). *Accord Cabrera v. Mercado*, 230 Md. App. 37, 93-94 (2016). “An abuse of discretion occurs ‘where no reasonable person would take the view adopted by the [trial] court,’ or when the court acts ‘without reference to any guiding rules or principles.’” *In re J.J.*, 231 Md. App. 304, 341 (2016) (quoting *Hajireen v. State*, 203 Md. App. 537, 552 (2012)), *cert. granted*, 452 Md. 522 (2017).

Initially, we note that, although the statute requires the court to consider the factors listed, there is no requirement that the judge “state a finding as to each factor onto the record.” *Cabrera*, 230 Md. App. at 95. In any event, contrary to Mother’s assertion, the record reflects that the court carefully considered the testimony and evidence presented, and it addressed each one of the factors based on this evidence. The court stated that it was not convinced that domestic violence occurred or was likely to continue in the future, and it found that, although M.C. had resided outside the State for more than two years, this was “due to the mother’s illegal action in failing to comply[] with the court order.” Although the court acknowledged that it did not have a lot of evidence on the parties’ financial circumstances, it determined that it had sufficient evidence to decide the case, noting that

it was very familiar with the facts and issues, and it had the ability to decide the issue expeditiously. Accordingly, the court determined that Maryland was not an inconvenient forum, and it denied the motion to relinquish continuing, exclusive jurisdiction over M.C. We perceive no abuse of discretion in the trial court's decision in this regard.

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