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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-693

No. COA21-800

Filed 18 October 2022

Rowan County, No. 21 CVD 679

JAMIE S. HOSCH, Plaintiff,

v.

KEIRA HOSCH-CARROLL, and JACOBY KENNEDY, Defendants.

Appeal by Defendant Hosch-Carroll from an order entered 9 July 2021 by Judge Charlie Brown in Rowan County District Court. Heard in the Court of Appeals 10 August 2022.

Ellis & Newsome, PLLC, by Spencer Newsome and Cindy Ellis, for Defendant-Appellant.

No brief for Petitioner-Appellee.

JACKSON, Judge.

¶ 1

This case involves the determination of the home state of a juvenile in a child-custody suit. Because we hold that the home state of the child was not North Carolina and therefore the trial court did not have subject matter jurisdiction, we vacate the orders entered by the trial court.

I. Background

HOSCH V. HOSCH-CARROLL

2022-NCCOA-693

Opinion of the Court

¶ 2 Defendant Keira Hosch-Carroll and Defendant Jacoby Kennedy are the parents of one child, “Kaitlyn,” born in 2017.¹ Plaintiff is Kaitlyn’s maternal grandmother. Plaintiff was not active in Kaitlyn’s life for the first three months other than bringing her gifts and supplies. Afterwards, Plaintiff saw Kaitlyn approximately twice a week and eventually every other weekend.

¶ 3 Kaitlyn was born in North Carolina and resided here with her mother, Defendant Hosch-Carroll, until March 2020. In March 2020, Defendant Hosch-Carroll moved to Texas with Kaitlyn. In May 2020, Kaitlyn came back to North Carolina for the summer. She alternated weeks staying with Plaintiff and with Davina and Odell Gillian, Kaitlyn’s godparents. Kaitlyn went back to Texas in August 2020 and remained there until December 2020.

¶ 4 In December 2020, the Gillians drove to Texas to visit Defendant Hosch-Carroll and Kaitlyn for Christmas. While there, Defendant Hosch-Carroll told Mrs. Gillian that she was going to come back to North Carolina in April and asked the Gillians to take Kaitlyn and care for her until she moved back. The Gillians agreed and brought Kaitlyn back with them to North Carolina. Mrs. Gillian explained that Defendant Hosch-Carroll continued to make legal decisions for Kaitlyn and that she conferred with Defendant Hosch-Carroll regarding all decisions for Kaitlyn. Sometime later,

¹ We use a pseudonym in this opinion to protect the privacy of the juvenile. N.C. R. App. P. 42(b).

HOSCH V. HOSCH-CARROLL

2022-NCCOA-693

Opinion of the Court

Defendant Hosch-Carroll texted Mrs. Gillian the following, asking the Gillians to take Kaitlyn in:

I really hate to ask y'all, but I want y'all to take [Kaitlyn] in until I find myself. I really came out here and lost myself because I was trying to make sure everyone else around me was straight. But now I see now I need to worry about myself and get myself together, for not only me, but for [Kaitlyn].

The Gillians agreed.

¶ 5 After returning to North Carolina, Plaintiff was not able to see or talk to Kaitlyn because of conflict between Plaintiff and Defendant Hosch-Carroll. In March 2021, Plaintiff was unable to get anyone on the phone and called for a welfare check on Kaitlyn.

¶ 6 On 6 April 2021, Plaintiff filed a complaint seeking custody of Kaitlyn. Defendant Hosch-Carroll was served in Killeen, Texas on 12 April 2021. Defendant Kennedy was unable to be located but was later served in North Carolina on 14 May 2021. The matter was heard in Rowan County District Court on 29 April 2021 before the Honorable Beth S. Dixon. Neither Defendant Hosch-Carroll nor Defendant Kennedy appeared. On 10 May 2021, Judge Dixon entered a temporary order granting Plaintiff visitation rights. Plaintiff was never able to see Kaitlyn, however, and by 25 May 2021, Defendant Hosch-Carroll had come to North Carolina and taken Kaitlyn back with her to Texas.

¶ 7 The matter was heard again in Rowan County District Court on 30 June 2021 before the Honorable Charlie Brown. Only Plaintiff appeared. Following the hearing, Judge Brown entered an order on 13 July 2021 granting Plaintiff physical and legal custody of Kaitlyn.

¶ 8 Defendant Hosch-Carroll thereafter retained counsel and filed timely notice of appeal on 9 August 2021. Defendant Kennedy has thus far made no appearance in this matter.

II. Analysis

¶ 9 Defendant Hosch-Carroll first contends that the trial court erred in finding that it had subject matter jurisdiction to adjudicate the issue of child custody because North Carolina was not Kaitlyn’s home state. We agree.

¶ 10 “It is axiomatic that a trial court must have subject matter jurisdiction over a case to act in that case.” *In re S.D.A.*, 170 N.C. App. 354, 355, 612 S.E.2d 362, 363 (2005). “Whether the trial court has jurisdiction under the [Uniform Child-Custody Jurisdiction and Enforcement Act] (“UCCJEA”) is a question of law subject to *de novo* review.” *In re J.H.*, 244 N.C. App. 255, 260, 780 S.E.2d 228, 233 (2015).

¶ 11 A North Carolina court has jurisdiction under the UCCJEA to make an initial child-custody determination if, in relevant part:

- (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 six 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 subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:
 - a. The child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and
 - b. Substantial evidence is available in this State concerning the child’s care, protection, training, and personal relationships[.]

N.C. Gen. Stat. § 50A-201(a)(1)-(2) (2021). “Home state” is defined under the UCCJEA as:

the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. . . . A period of temporary absence of any of the mentioned persons is a part of the period.

Id. § 50A-102(7). The home state takes priority in determining jurisdiction in an initial child-custody determination. “[A] significant connection State may assume jurisdiction *only* when there is no home State or when the home State decides that the significant connection State would be a more appropriate forum under Section 207 or 208.” *Id.* § 50A-201, Official Comment (emphasis added). Additionally, to determine whether an absence from a state was temporary, North Carolina looks at

the totality of the circumstances. *Chick v. Chick*, 164 N.C. App. 444, 449, 596 S.E.2d 303, 308 (2004).

¶ 12 The trial court made the following relevant findings in the 10 May 2021 order, incorporated into the 13 July 2021 order, regarding the home state analysis for Kaitlyn:

4. From birth to March 2020, the minor child resided in North Carolina; from March 2020 to May 2020, the minor child resided in Texas; from June 2020 through August, 2020, the minor child resided in North Carolina; from August 2020 to December, 2020, the minor child resided in Texas; and from December 2020 to present the minor child resided in North Carolina.

5. In March, 2020, the Defendant Hosch-Carroll moved to Texas with the minor child. Prior to her move to Texas, Plaintiff was seeing the child twice per week and every other weekend.

6. After the child moved to Texas in March, 2020, the Plaintiff continued to have video chat and phone time with the child.

7. The child came back to North Carolina for the summer of 2020 and Plaintiff had the child every other week, exchanging with Defendant Gillian every Sunday.

8. The minor child went back to Texas at the end of the summer of 2020 and remained until Christmas, 2020 when Defendant Hosch-Carroll asked the Defendant Gillian to take the child and care for the child.

9. Defendant Gillian then brought the child back to North Carolina where the child has remained since.

10. Defendant Gillian presented a text message from

Defendant Hosch-Carroll indicating that she needed to “find herself” in Texas and indicating that she could not care for the child at that time.

11. Defendant Gillian testified that Defendant Hosch-Carroll is still making legal decisions for the child and that she confers with Defendant Hosch-Carroll for all decisions.

¶ 13 Here, based on the trial court’s findings, Kaitlyn had a home state—Texas—at the time Plaintiff filed her complaint in April 2021.

¶ 14 First, Kaitlyn lived in Texas with her mother from March 2020 to May 2020, approximately two to three months. Then, Kaitlyn lived in North Carolina with Plaintiff and the Gillians from May/June 2020 to August 2020, approximately three months.

¶ 15 The crucial question here is whether this summer period constitutes a temporary absence, as temporary absences are considered part of the six-month period immediately preceding the commencement of a child-custody proceeding. N.C. Gen. Stat. § 50A-102(7) (2021). North Carolina has adopted a totality of the circumstances approach to determine whether an absence was a temporary absence, as it relies on the facts presented in each case, takes into consideration the parties’ intent and the length of the absence, and provides greater flexibility to the trial court when weighing additional circumstances. *Chick*, 164 N.C. App. at 449-50, 596 S.E.2d at 308.

¶ 16 In the case at bar, Kaitlyn was only in North Carolina for the summer months,

a normal time for a child to spend away from their primary home, and then returned to Texas to live with her mother at the end of the summer. As the trial court found in Finding of Fact 7, Kaitlyn was simply in North Carolina “for the summer of 2020[.]” Based on the totality of the circumstances, this absence from Texas was a temporary absence. Accordingly, because Kaitlyn’s stay in North Carolina during the summer of 2020 was a temporary absence and N.C. Gen. Stat. § 50A-102(7) allows for periods of temporary absence to count towards the minimum period of six consecutive months, Texas became Kaitlyn’s home state in August 2020 at the earliest, or September 2020 at the latest, depending on how the months are counted.

¶ 17 Furthermore, Texas was still Kaitlyn’s home state when she left with the Gillians to return to North Carolina in December 2020. Even if Kaitlyn’s stay in North Carolina from December 2020 to April 2021 would not be considered a temporary absence because Defendant Hosch-Carroll was intending to move back to North Carolina or because Defendant Hosch-Carroll asked the Gillians to keep Kaitlyn indefinitely so that she could find herself, only four months maximum had passed when Plaintiff filed her complaint on 6 April 2021. Consequently, Texas was still Kaitlyn’s home state at the date of the commencement of the proceeding as Kaitlyn had not lived in North Carolina for six consecutive months since returning to North Carolina in December 2020.

¶ 18 Therefore, we hold that the trial court lacked subject matter jurisdiction over

the initial child-custody determination in this case.

¶ 19 Lastly, we note that the trial court did not have temporary emergency jurisdiction in this case, which is only permitted when “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.” N.C. Gen. Stat. § 50A-204(a) (2021). The UCCJEA defines “abandoned” as “left without provision for reasonable and necessary care or supervision.” *Id.* § 50A-102(1). There is no evidence in the record on appeal indicating Kaitlyn was subjected to mistreatment or abuse by Defendant Hosch-Carroll. Additionally, the testimony of the Gillians provides evidence that Defendant Hosch-Carroll made provision for Kaitlyn’s care and supervision and continued to make regular decisions regarding Kaitlyn’s welfare while she lived in North Carolina from December 2020 to April 2021. Therefore, the trial court could only assume jurisdiction under N.C. Gen. Stat. § 50A-201, and as explained above, because Kaitlyn had a home state other than North Carolina and there is nothing in the record to suggest that Texas determined that North Carolina was a more convenient forum per § 50A-201(a)(2), the trial court lacked subject matter jurisdiction.

III. Conclusion

¶ 20 Texas was Kaitlyn’s home state at the time this proceeding commenced. Accordingly, the trial court lacked subject matter jurisdiction to enter either order.

HOSCH V. HOSCH-CARROLL

2022-NCCOA-693

Opinion of the Court

We therefore vacate the trial court's 7 May 2021 and 9 July 2021 orders. As the trial court lacked subject matter jurisdiction, we decline to reach the remaining issues raised by Defendant Hosch-Carroll.

VACATED.

Judges MURPHY and CARPENTER concur.

Report per Rule 30(e).