

STATE OF INDIANA)
)
COUNTY OF MARION) MARION SUPERIOR COURT
) CIVIL DIVISION 10
) CAUSE NO. 49D10-0206-JP-000979

IN RE: THE PATERNITY OF)
J.W.L., a Minor Child,)
By next friend and mother,)
)
J.L.M.,)
)
 Petitioner,)
)
 vs.)
)
A.J.P.,)
)
 Respondent.)

ORDER GRANTING PETITIONER’S MOTION TO DISMISS

Statement of the Case

Petitioner J.L.M. (“Mother”) brought this action several years ago establishing paternity and support for J.W.L. (Child”), but now resides outside of state and seeks to dismiss action. Respondent A.J.P. (“Father”) also resides outside of state, but argues that jurisdiction must reside with Indiana. The Court finds neither party is seeking substantive relief from this Indiana court, neither party nor Child resides in Indiana, Child is emancipated, so there is no continuing exclusive jurisdiction. Therefore, the case is dismissed.

Issue

Is there still continuing, exclusive jurisdiction when Father, Mother, and Child reside outside Indiana?

Facts and Procedural History

Father resides in New York. Child was conceived in Florida around 1983, when Mother resided there. Mother eventually moved to Indiana and filed this action in 1995. After paternity and support were established, Mother and Child have moved from Indiana to Pennsylvania to Scotland to Georgia, where both presently live. Mother and Child have not resided in Indiana for several years. Father has never resided in Indiana.

In May 2002, Mother filed her Motion for Contempt and Emergency Enforcement of Child Support. Eventually, this Court determined Father overpaid his child support obligation.

In July 2002, Petitioner filed for Writ of Mandamus, and also sought to modify the Court's order by petitioning the Family Court of the State of New York (Cause Number F-10801-02/02A) in August of 2002. The Family Court of New York declined jurisdiction since this Indiana court still maintained a pending case. Petitioner now files her Motion to Dismiss this case for lack of jurisdiction because none of the parties live in Indiana. Child is now 21 years old or more, has a child of her own, and is emancipated.

Law

Indiana Code § 31-18-2-5 is substantially similar to § 205 of the Uniform Interstate Family Support Act ("UIFSA") and provides in pertinent part:

An Indiana tribunal that issues a support order consistent with Indiana law has continuing, exclusive jurisdiction over a child support order:

(1) **if** Indiana remains the residence of the:

(A) obligor;

(B) individual obligee; or

(C) child for whose benefit the support order is issued; **or**

(2) until each individual party has filed written consent with the Indiana tribunal for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction. (emphasis supplied)

Under Indiana law, a court must interpret a statute to ascertain and give effect to the intent of the legislature. In determining legislative intent, the language of the statute itself must be examined, including the grammatical structure of the clause or sentence in issue. If possible, affective meaning must be given to every word, and no part of the statute is to be held meaningless if that part can be reconciled with the rest of the statute. A statute is to be examined and interpreted as a whole, given common and ordinary meaning to words used in English language and not overemphasizing a strict literal or selective reading of individual words. Foremost Life Insurance Company v. Indiana Department of Insurance (1980), Ind., 409 N.E. 2d 102. An unambiguous statute must be held to mean that it plainly expresses, and that given it's plain and obvious meaning. Indiana Department of State Revenue v. Horizon Bancorp (1994), Ind., 644 N.E. 2d 870.

Analysis

Mother and Child lived in Indiana at the time of the original petition, but now reside in Georgia. Father has always maintained his residence in New York.

Subsection (a) (1) is not ambiguous and clearly states that the issuing court loses continuing, exclusive jurisdiction when the parties and their child establish out-of-state residences. So, a tribunal loses continuing, exclusive jurisdiction under the UIFSA when the obligor, obligee, and child reside out of state. The term “or” between subsections (a)(1) and (a)(2) does not require the issuing court to further consider (a)(2) after it

determines that (a)(1) precludes continuing, exclusive jurisdiction. In re Marriage of Myers (2002), Kan. Ct. App., 56 P.3d 1286, 1289.

Father contends Indiana maintains “continuing, exclusive jurisdiction” over the child support order simply because neither he nor Mother have filed written consent elsewhere. This is a misapplication of subsection (a)(2). I.C. 31-18-2-5(a)(1) states “Indiana has continuing, exclusive jurisdiction over a child support order if Indiana remains the residence of the obligor, individual obligee; or child for whose benefit the support order is issued.” Since none of the parties reside in Indiana, Subsection (a)(2) does not give the parties the authority to re-bestow subject matter jurisdiction once it has lost continuing and exclusive jurisdiction under subsection (a)(1).

Numerous jurisdictions agree continuing and exclusive jurisdiction terminates when the obligor, obligee, and child leave the state and reside elsewhere:

1. Etter v. Etter (2001), Okla.Civ.App., 18 P.3d 1088: The parties divorced in Oklahoma, the mother was granted custody of the minor children, and the father was ordered to pay child support. The mother and children later moved to Illinois, and the father moved to Missouri. When father filed a motion to modify child support, the mother moved to dismiss for lack of jurisdiction. The father argued that under § 205 of Oklahoma’s version of the UIFSA, subsections (a)(1) and (a)(2) must be read in the alternative and that the issuing court retains jurisdiction because both parties have not filed written consents. The Oklahoma court found father’s argument, “. . . leads to an illogical result . . . Our research has shown that no court, when faced with similar facts and the same section of the UIFSA, has adopted this reasoning and reached that result.”

Id. at 1090. The court held the trial court did not have continuing, exclusive jurisdiction after all parties reside out of the state. Id. at 1091.

2. Groseth v. Groseth (1999), Neb., 600 N.W.2d 159: Mother and father divorced in Massachusetts, mother retained custody of the children, and the father was ordered to pay child support. The mother and children later moved to Nebraska, and the father moved to Texas. The Massachusetts court increased support upon mother's motion, but a Nebraska trial court subsequently modified it. The Supreme Court of Nebraska concluded, "[T]here is no doubt that the courts of Massachusetts lost continuing, exclusive jurisdiction to modify the child support provisions of the decree under the UIFSA once Charles moved to Texas and Diane moved to Nebraska with the children."¹ Id. at 168.

3. Jurado v. Brashear (2001), La., 782 So.2d 575, 580: The mother and father bore two children out of wedlock in Louisiana. A Louisiana court awarded custody and child support to mother. While the father had always resided in Mississippi, the mother and children later moved to Ohio. When the mother filed a motion to modify child support in Louisiana, the father objected to Louisiana's jurisdiction because the parties no longer resided in Louisiana. The Supreme Court of Louisiana held: "The drafters of the Uniform Act clearly show that the issuing court cannot *modify* a child support order after the obligor, obligee and child all leave the state permanently." Id. at 581².

¹ "[T]he substantive law of Massachusetts (the issuing state) applies merely to petitions to *enforce existing* orders of the issuing state and not to the subsequent orders resulting from petitions to *modify* child support orders in a responding state." 600 N.W.2d at 168.

² However, Jurado also held the order remains in effect and is enforceable until a court of another state with jurisdiction modifies it. Therefore, the court of the issuing state retains jurisdiction to enforce its order, but not to modify the order once continuing, exclusive jurisdiction is lost. 782 So.2d at 580.

4. Gentzel v. Williams (1998), Kan.Ct.App., 965 P.2d 855: The couple divorced in Arizona, the mother was awarded custody and child support. The father later moved to Kansas and the mother had moved with the children to Texas. The father sought to modify the child support order in Kansas, however the Court of Appeals of Kansas held that Kansas lacked jurisdiction under UIFSA to modify the support order. The court recognized that Arizona had lost continuing, exclusive jurisdiction when the parties and children left Arizona. However, Kansas lacked jurisdiction because the father was not a nonresident petitioner of Kansas seeking modification. Instead, all the elements of UIFSA could only be fulfilled in Texas. Id. at 860.

5. Cohen v. Powers (2002), Or.Ct.App., 43 P.3d 1150: The parents divorced in Alabama, and the mother was awarded custody and child support payments. The father always resided in Oregon, and the mother later moved to Florida. The Court of Appeals of Oregon concluded that Alabama lacked continuing, exclusive jurisdiction over the support order because none of the parties resided in Alabama anymore: “. . . the child’s or one of the parties’ residency in the state in which the child support order was issued is necessary for the state to have continuing, exclusive jurisdiction over the order.”³ Id. at 1152

6. In re B.O.G. (2001), Tx.Ct.App., 48 S.W.3d 312: The mother and father divorced in Texas, and the mother was appointed sole managing conservator of the child. The father was ordered to pay child support. The father later moved to Canada, and the mother subsequently moved to Virginia with the child. The father filed a motion to

³ The court further concluded that the Commentary to the UIFSA explains that an original order of an issuing tribunal remains valid and enforceable even though all individual parties have left the issuing state and the issuing state no longer has continuing, exclusive jurisdiction. 43 P.3d at 1154 (Citing Commentary to Uniform Interstate Family Support Act § 205, 9 ULA, Part IB at 286 (1996)).

modify conservatorship and child support in Texas. The trial court dismissed the father's motion and agreed with the mother's argument that the trial court no longer possessed continuing, exclusive jurisdiction because all parties now reside out of state. On appeal, the Court of Appeals of Texas agreed that the issuing court "loses jurisdiction to hear motions filed after the child and the custodial parent have resided in another state six months or more." Id. at 316-17.

7. Cepukenas v. Cepukenas (1998), Wis.Ct.App., 584 N.W.2d 227: The parents divorced in Virginia where the mother was awarded custody and child support. The mother later moved to Wisconsin with the child, and the father moved to Delaware. The mother sought to modify the support order in Wisconsin. The Court of Appeals of Wisconsin held, "Because neither of the parties nor the child continues to reside in Virginia, that state no longer has continuing, exclusive jurisdiction over the child support order." Id. at 173.

8. In Wall v. Borosky (2002), Ala Civ.App., 850 So.2d 351, the court determined an Alabama trial court had jurisdiction to modify a Tennessee child support judgment when the mother, father and child no longer lived in Tennessee.

9. LeTellier v. LeTellier (2001), Tenn., 40 S.W.3d 490: A District of Columbia court awarded child custody and support to mother. The mother later moved to Tennessee, and the father moved to Virginia. When the mother moved to modify the support order in Tennessee, the father moved to dismiss on grounds that Tennessee did not have jurisdiction. The Supreme Court of Tennessee held, ". . . the District of Columbia lost continuing exclusive jurisdiction when Mr. LeTellier, Ms. LeTellier and Nicholas were no longer residents of that state. The District of Columbia 'no longer

ha[d] an appropriate nexus with the parties or the child to justify exercise of jurisdiction to modify.” Id. at 493.

10. In Government of Virgin Islands ex rel. Simanca v. Proctor, 1998 WL 453666 (D. Virgin Islands 1998), a federal district court also ruled that an issuing state loses continuing, exclusive jurisdiction when all concerned parties no longer live there. The child was born out of wedlock and custody was given to the mother. The father was ordered to pay child support. The mother subsequently moved to New York with the child and the father eventually moved to Tennessee. The mother filed a motion to modify child support in the Virgin Islands and argued it had proper jurisdiction. The mother argued UIFSA Section 400(a)(2) bestowed continuing, exclusive jurisdiction to the Virgin Islands because neither mother nor father individually filed written consents. The court held this interpretation of subsection (a)(2) is erroneous. The court further explained:

“Subparagraph (a)(2) of this section is merely added so as to allow the parties a means to circumvent this mandatory jurisdictional law. Without subparagraph (a)(2), as long as one of the individuals of interest resided in the jurisdiction, which issued the last support order, the parties would have no choice but to subject themselves to this tribunal, regardless of the unified wishes of all involved to allow a more convenient forum to determine the matter . . . However, once all of the parties involved leave the state, jurisdiction ceases within the forum, as the issuing state no longer has a nexus with the parties or the child. UIFSA recognizes that it is inappropriate to litigate a support order in the initiating state where neither the obligor, the obligee, nor the child has any connection with that state. Additionally, it is unfair to inconvenience all involved by requiring both parties to travel to the original state.” Id. at 5.

Father cites two cases, Hoehn v. Hoehn (1999), Ind.App., 716 N.E.2d 479 and Schneider v. Schneider (1990), Ind.App., 555 N.E.2d 196 to argue Indiana has continuing exclusive jurisdiction over the parties’ child support orders because Indiana is the issuing state. However, in both of these cases, one of the parties lived in the state of

Indiana. These cases are different than our case because Mother, Father and Child all live outside Indiana.

Like the courts above, Indiana has adopted the UIFSA. Indiana Code § 31-18-2-5(a) places continuous, exclusive jurisdiction with the issuing state, as long as the obligor, obligee, or children reside in the issuing state. Clearly the word “or” between the UIFSA subsections (a)(1) and (a)(2) does not allow the court to consider (a)(2), and require parties’ consents, when the requirements of (a)(1) have not been satisfied. Overwhelming authority holds that continuous, exclusive jurisdiction is lost once the obligor, obligee, and the children leave the issuing state.

Conclusion

Here, Mother, Father, and Child all reside outside of Indiana. Under I.C. 31-18-2-5(a)(1), Indiana no longer possesses continuous, exclusive jurisdiction.

Order

The Motion to Dismiss is granted.

Dated this 2nd day of June 2004.

David J. Dreyer, Judge
Marion Superior Court

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