

RENDERED: JANUARY 9, 2009; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000619-ME

HEATHER LEAMON

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE KRISTI HOGG GOSSETT, JUDGE
ACTION NO. 05-CI-00396

JOSEPH WILLIAM LEAMON

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: CLAYTON, MOORE, AND STUMBO, JUDGES.

CLAYTON, JUDGE: Heather Leamon (“Heather”) appeals the Carter Circuit Court's Order, entered March 17, 2008, that held, consistent with the jurisdictional requirement of the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) and Kentucky Revised Statutes (KRS) 403.824, Kentucky retains

exclusive, continuing jurisdiction over the custody issues in this matter. For the reasons stated hereafter, we dismiss this appeal.

Joseph W. Leamon (“Joseph”) and Heather were married on March 1, 2003, and separated on September 12, 2005. Three children were born of the marriage. On July 21, 2006, the court entered its Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage, wherein Heather was granted sole custody of the children and supervised visitation was provided Joseph.

When the parties divorced, they lived in Boyd and Carter Counties in Kentucky. In October 2006, Heather and the children moved to Gallia County, Ohio. And in spring 2007, Joseph began attending a residential treatment facility in Louisville, Kentucky. Following his enrollment in this program, visitation was modified. Rather than visiting with the children twice per week as established in the original order, Joseph had monthly, supervised visitation in Carter County.

On November 27, 2007, Heather filed a motion in the Common Pleas Court of Gallia County, Ohio, requesting that the Carter Circuit Court Order of Child Custody be registered there and that further child custody and visitation issues be adjudicated there, too. Joseph was served with a copy of the Ohio proceeding on December 10, 2007.

Similarly, at about the same time period, on January 2, 2008, Joseph made a motion to the Carter Circuit Court to enter an order assigning the 2008 visitation dates. Heather responded to the motion by asking the court to overrule it and relinquish jurisdiction to the Common Pleas Court of Gallia County, Ohio, for

adjudication of further issues relating to custody and visitation. Heather argued that because she and the children now reside in Ohio and Joseph in Louisville, the Carter Circuit Court no longer exercises continuing, exclusive jurisdiction. She contended that, pursuant to KRS 403.824, neither the children, nor the children and one (1) parent, nor the children and a person acting as a parent have significant connection with Kentucky, and therefore, substantial evidence is no longer available here concerning the children's care, protection, training, and personal relationships. Furthermore, according to Heather's reasoning, even if the court determined that it still had continuing jurisdiction, it could decline this jurisdiction if it ascertained that Carter County is an inconvenient forum, and Ohio is a more appropriate forum. Joseph objected to the motion because he still resides in Kentucky, his guardian and the children's grandmother, Melinda Leamon, resides in Carter County, the monthly visitation takes place at her home [in Carter County], and therefore, he proffered that the court has continuing and substantial contacts with the children. On January 14, 2008, the Carter Circuit Court granted Joseph's motion assigning the specific dates for visitation. The court declined to relinquish jurisdiction because it concluded that, with regards to the child custody case, significant connection still exists with the state, and therefore, substantial evidence is still available. This order was not appealed.

Thereafter, on March 12, 2008, the Carter Family Court and Gallia County Common Pleas Court, Gallia County, Ohio, held a hearing by teleconference, involving the parties of record, to determine under the UCCJEA

whether Gallia County, Ohio, should accept or Carter County, Kentucky, should retain jurisdiction over the minor children of this action. Nothing in the record indicates the reason for this hearing. Nevertheless, in an Order entered March 17, 2008, the Carter Circuit Court retained its jurisdiction. This appeal followed.

Because we are unable to find any motion compelling the March 12, 2008, hearing, we decide that this appeal is not properly before us and must dismiss it because no controversy in fact exists. As stated in *Nordike v. Nordike*, 231 S.W.3d 733, 739, “[j]urisdiction can only be addressed within an action itself, whether initiated through a complaint or a motion requesting relief, neither of which has been made in this case.” Here, as in *Nordike*, no motion or complaint precedes the jurisdictional teleconference and eventual court order.

The purpose of the UCCJEA is to avoid jurisdictional conflict and to promote cooperation between state courts in custody matters so that a decree is rendered in the state most favorably situated to decide the best interest of the child. Under the UCCJEA, the court in which a custody decree is originally issued retains continuing and exclusive jurisdiction over modification of custody issues arising from that decree. The concept of continuing jurisdiction incorporated into the UCCJEA is found in KRS 403.824 which provides in its entirety:

(1) Except as otherwise provided in KRS 403.828, a court of this state which has made a child custody determination consistent with KRS 403.822 or 403.826 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, nor the child and one (1) 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

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

(2) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under KRS 403.822.

Here, we have such a case. As such, in the January 14, 2008, decision, the court retained its continuing and exclusive jurisdiction. The determination of whether to retain jurisdiction rests with the court where the action was originally initiated.

Yet, for some unknown reason, with no actual custody issue in controversy and after the issue had been answered in the January 2008 order, a hearing about jurisdiction under the UCCJEA took place on March 14, 2008. While the record shows several motions surrounding visitation, all are resolved independently of the March 17, 2008, order. Thus, these motions do not explain the reason for the hearing. It is axiomatic that the court cannot rule prospectively or in an advisory capacity. Indeed, the appealed order itself states:

10. This is a matter involving sole legal custody maintained by Heather Michelle Leamon. **Although not explicitly discussed, Heather Michelle Leamon presumably intends to seek modification** (reduction or elimination) of Joseph William Leamon's timesharing with the children. (Emphasis added).

In other words, the two courts engaged in a conversation about continuing, exclusive jurisdiction when there was no disputed issue.

Jurisdiction itself, broadly defined, is the power of the court to decide an issue in controversy. *Black's Law Dictionary* 594 (abridged 6th ed. 1991). It is fundamental that a court must have jurisdiction before it has the authority to decide a case. Jurisdiction is explained in the following passage from *Milby v. Wright*, 952 S.W.2d 202, 205 (Ky. 1997):

Jurisdiction is a term too often used in a loose fashion. It can mean the court's authority to determine a claim affecting a specific person. That is personal jurisdiction. The authority to determine a type of case, such as the dissolution of a marriage, is subject-matter jurisdiction. See, e.g., *Gordon v. NKC Hosp., Inc.*, Ky., 887 S.W.2d 360 (1994); *Duncan v. O'Nan*, Ky., 451 S.W.2d 626, 631 (1970). As a general matter a court is deprived of subject-matter jurisdiction only in cases "where the court has not been given any power to do anything at all in such a case, as where a tribunal vested with civil competence attempts to convict a citizen of a crime." *Duncan, supra*, at 631 (quoting *In re Estate of Rougeron*, 17 N.Y.2d 264, 271, 270 N.Y.S.2d 578, 583, 217 N.E.2d 639, 643 (N.Y. 1966)).

Finally there is jurisdiction over the particular case at issue, which refers to the authority and power of the court to decide a specific case, rather than the class of cases over which the court has subject-matter jurisdiction. An apt example of this type of jurisdiction would be the instance of the filing of a notice of appeal in

a civil case on the thirty-second day after the trial court entered judgment. The Court of Appeals has the authority to decide civil appeals in general, but lacks the power to adjudicate a case filed too late.

In the case at hand, the court does not have authority to act because it has not been asked to modify the custody decree. Therefore, the court does not have jurisdiction over this particular case. There is no controversy.

Apparently, there may have been some confusion or disagreement about the registration of the custody decree in Gallia County, Ohio. The record does contain some forms and motions from Ohio. Kentucky courts have no jurisdiction to become involved in Ohio cases.

Moreover, Ohio and Kentucky have both adopted the UCCJEA and have basically the same provision regarding registration. *See* KRS 403.850. Furthermore, it is not unusual for a parent to register another state's custody decree in the state where the parent and children have moved. It gives the new state notice of the existing custody order and the issuing court's continuing jurisdiction. Nonetheless, it does not authorize the registered state to modify an existing decree. Rather, it only provides that state the power to enforce the decree, as written, if it should become necessary.

Hence, because the law is well-settled that, unless there is "an actual case or controversy," courts have no jurisdiction to hear an issue and are prohibited from producing mere advisory opinions. *Com. v. Hughes*, 873 S.W.2d 828, 829 (Ky. 1994); Ky. Const. § 110. We hold the court's March 17, 2008, order

regarding jurisdiction was prospective and advisory, and therefore, null.

Accordingly, this appeal is ORDERED dismissed.

ALL CONCUR.

ENTERED: January 9, 2009

/s/ Denise G. Clayton
JUDGE, COURT OF APPEALS

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BRIEF FOR APPELLEE:

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