

RENDERED: JULY 12, 2019; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000333-MR

SHAHRAZAD D. QAISI

APPELLANT

APPEAL FROM HARDIN CIRCUIT COURT
FAMILY COURT, DIVISION I
v. HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 16-CI-00519

ANIS YOUSEF ALAEDDIN

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, CHIEF JUDGE; MAZE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Shahrazad D. Qaisi appeals from a January 26, 2017, Findings of Fact, Conclusions of Law and Order of the Hardin Circuit Court, Family Court Division, declining to register documents from courts in Dubai, United Arab Emirates (U.A.E.). After careful review, we affirm.

Qaisi and Appellee Anis Yousef Alaeddin were married and lived in Dubai with their two minor children. In 2013, a Dubai court issued a document

styled a “divorce certificate.”¹ That same year, the court issued a document memorializing an agreement between the parties whereby “[t]he custody of the children . . . shall be proved for the Second Party [Qaisi].” Dubai Courts Document 37/2013 at 1. The document does not explain the precise meaning of custody being “proved for” Qaisi, nor did the parties cite Dubai, U.A.E., authority to explain the phrase. In early 2016, a Dubai court issued a document approving an amended agreement between the parties whereby the children were designated to live with Qaisi while Alaeddin “shall not claim custody until the sons reach the legal age.” Dubai Courts Document 154/2015 at 2. The document does not specify the “legal age,” nor have the parties cited clarifying Dubai, U.A.E., authority.

In March 2016, Qaisi, who had moved from Dubai to Kentucky, filed a petition asking the Hardin Family Court to register those three Dubai documents described above. Presumably, the petition was filed to enforce the custody and support provisions therein. Alaeddin made a limited appearance to object to the petition. Thereafter, the family court scheduled a hearing for October 2016. No testimony was presented at the hearing; instead, the trial court ordered the parties to submit briefs on whether the Dubai documents could properly be registered in Kentucky as a foreign decree. Without citing to any authority to buttress his

¹ The original Dubai court documents are written in Arabic, but no party has objected to the accuracy of the English translation submitted by Shahrazad D. Qaisi.

position, Alaeddin’s brief below asserted that “in Dubai, a mandate exists that small children initially are in the custody of their mother, but when a male child turns 8, custody is then automatically transferred to the father to finish his rearing.”² In Qaisi’s reply brief below, she disagreed – again without citation to relevant authority – arguing that “Dubai does follow the . . . ‘best interest of the child’ standard. . . . No blanket law exists about custody transferring to the father at a particular age.”³

On January 26, 2017, the family court issued Findings of Fact, Conclusions of Law and Order declining to register the Dubai documents. The court noted the documents did not contain an express grant of custody nor did the record show whether the Dubai court had considered the best interest of the children. Thus, the court concluded “there is insufficient evidence for this Court to conclude that this document [sic] utilized the . . . best interest standard, [so] this Court finds that this is a violation of the fundamental principles of human rights under the laws of the Commonwealth of Kentucky” Findings of Fact, Conclusions of Law and Order at 4-5. This appeal followed.

Recognition of a child custody determination from a foreign country is governed by Kentucky Revised Statutes (KRS) 403.806, which is part of the

² Record on appeal at 41-42.

³ Record on appeal at 47-48.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). KRS

403.806 provides in its entirety as follows:

(1) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying Articles 1 and 2 [of the UCCJEA].

(2) Except as otherwise provided in subsection (3) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of KRS 403.800 to 403.880 shall be recognized and enforced under Article 3 [of the UCCJEA].

(3) A court of this state need not apply KRS 403.800 to 403.880 if the child custody law of a foreign country violates fundamental principles of human rights.

As the party seeking relief, Qaisi bore the burden to show that the Dubai court documents: a) contained a child custody determination, b) which was made “in substantial conformity with the jurisdictional standards of KRS 403.800 to 403.880” and, c) the Dubai, U.A.E., child custody decision did not violate fundamental principles of human rights. *See, e.g., 31A C.J.S. Evidence §195 (2019)* (“In general, the party invoking the judicial process in its favor bears the burden of production and persuasion The burden of proof in a civil proceeding generally rests on the party requesting relief or the moving party.”) (footnotes omitted); *Colovo’s Adm’r v. Gouvas*, 108 S.W.2d 820, 822 (Ky. 1937) (“The burden in the entire action lies upon the party who would be defeated if no

evidence were produced on either side.”). A failure to make a sufficient showing of any of the statutory mandates ends the inquiry by the family court.

The family court expressed skepticism that the Dubai court documents were child custody determinations. KRS 403.800(3) defines, in relevant part, a “child custody determination” for UCCJEA purposes as “a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes permanent, temporary, initial, and modification orders.”

We agree with the family court that the phrase custody “shall be proved for” Qaisi is ambiguous in the Dubai Courts Document 37/2013. However, when read in conjunction with other sections of the Dubai documents, it is clear that Qaisi has been granted some form of child custody. For example, in addition to saying custody “shall be proved” for Qaisi, Dubai Courts Document 37/2013 also states that Qaisi “shall undertake to enable [Alaeddin] from seeing” the children on Monday and Wednesday evenings and Friday nights. Furthermore, the Dubai Courts Document 154/2016 between the parties provides in relevant part that the children “shall live with the Second Party – their mother – wherever the Second Party lives” and Alaeddin “shall not claim custody until the sons reach the legal age.” Therefore, even though the language is at times dissimilar to what a

Kentucky court would use, we would conclude that the Dubai court rendered some form of a “child custody determination” as a matter of law.

However, Qaisi has not shown that custody determination was made in substantial conformity with the UCCJEA. Simply put, Qaisi has offered no evidence whatsoever as to how the Dubai court reached its custody determination. The meager record in this appeal regarding the specifics of Dubai, U.A.E., law and the procedural history of the custody proceedings in Dubai lead to a host of questions, such as: Were both sides afforded the opportunity to be represented by counsel? Would both Qaisi and Alaeddin have been permitted to appear at all court proceedings? Would both parties have been permitted to call witnesses on their behalf and to cross-examine any witnesses called by the other party? Is the testimony of a wife entitled to the same legal weight as that of a husband? Does Dubai, U.A.E., law mandate awarding custody of young children to their mother and/or older children to their father? Does the language saying Alaeddin cannot “claim” custody until the children reach the (unspecified) legal age mean he is automatically entitled to custody at that time, regardless of whether awarding him custody would be in the best interests of the children? Do Dubai, U.A.E., courts consider the best interests of the children when making child custody determinations?

We cannot answer those questions with any reasonable degree of certainty because Qaisi has not cited to *any* Dubai, U.A.E., authority nor provided *any* affidavits or similar statements from experts on Dubai, U.A.E., laws. Qaisi did not personally submit an affidavit detailing the Dubai proceedings, nor did she ask the trial court to conduct an evidentiary hearing before ruling. Qaisi's failure to show that the Dubai proceedings were in "substantial conformity" to the UCCJEA is fatal to her petition. Accordingly, we cannot conclude that the family court erred in finding there was insufficient evidence to establish whether Dubai utilized a best interest standard similar to or consistent with Kentucky law regarding child custody. Thus, we must affirm the family court's conclusion and ruling that the Dubai documents presented by Qaisi do not conform with the jurisdictional requirements for Kentucky law in regards to child custody and thus were not entitled to be registered under the UCCJEA.⁴

For the foregoing reasons, the Hardin Circuit Court, Family Court Division's January 26, 2017, Order is affirmed.

ALL CONCUR.

⁴ This Court has not researched Dubai's child custody laws to determine if they violate fundamental principles of human rights, so we do not reach that issue.

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