

[Cite as *Rupp v. Sharp*, 2010-Ohio-3888.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SAMUEL RUPP II

Plaintiff-Appellant

-vs-

GENETTA SHARP

Defendant-Appellee

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. W. Scott Gwin, J.

Hon. William B. Hoffman, J.

Case No. 2009CA00287

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Juvenile Division, Case
No. 109551

JUDGMENT:

Reversed and remanded

DATE OF JUDGMENT ENTRY:

August 16, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Hoffman, J.

{¶1} Plaintiff-appellant Samuel Rupp, II appeals the October 30, 2009 Judgment Entry of the Stark County Court of Common Pleas, Juvenile Division, dismissing his complaint and finding Ohio an inappropriate forum. Defendant-appellee is Genetta Sharp.

STATEMENT OF THE FACTS AND CASE

{¶2} The parties are parents of a minor child who was born in Franklin County, Virginia on October 4, 1999. Appellant's paternity was established through the Stark County Child Support Enforcement Agency.

{¶3} Via Judgment Entry of October 27, 2000 the trial court granted supervised visits and companionship to Appellant, and indicated Appellee Mother "agrees not to relocate her residence outside Stark County, OH and the same is ordered."

{¶4} On August 8, 2003, Appellant petitioned the trial court for custody of the minor child.

{¶5} On July 16, 2004, the parties notified the trial court the matter had been settled, and Appellant's child support obligation was reinstated. The trial court's resulting order indicates all prior orders remained in full force and effect.

{¶6} On June 12, 2005, Appellee moved with the minor child to New Mexico without Appellant's knowledge and without notice to or permission of the trial court.

{¶7} On July 21, 2005, Appellant filed a motion for contempt against Appellee for her violation of the trial court's previous orders.

{¶8} Via Judgment Entry of November 9, 2005, the trial court found Appellee Mother guilty of contempt for relocating to New Mexico without Appellant Father's

knowledge. The court ordered her to purge the contempt by paying \$500.00 within sixty days, representing Appellant's attorney fees incurred. The court's order indicates Appellee agreed to provide transportation and or pay for transportation for visitation with Appellant, and Appellant was to have open communication with the minor child.

{¶19} On January 27, 2006 and August 13, 2007, Appellant again moved the trial court to find Appellee in contempt.

{¶10} On January 26, 2009, Appellant moved the trial court for custody.

{¶11} On March 16, 2009, Appellee moved the trial court to dismiss Appellant's complaint for custody.

{¶12} On March 24, 2009, Appellant filed an Amended Motion and/or Complaint for Custody. Appellee moved the trial court to dismiss the amended complaint.

{¶13} On July 21, 2009, the trial court ordered the parties to brief the jurisdictional issues and submit the same to the court.

{¶14} Via Judgment Entry of October 30, 2009, the trial court dismissed Appellant's amended complaint for custody finding Ohio an inappropriate forum.

{¶15} Appellant now appeals, assigning as error:

{¶16} "I. THE TRIAL COURT ERRED IN DISMISSING THIS CASE FOR LACK OF JURISDICTION WHERE THE MOVING PARTY CONTINUED TO LIVE IN OHIO.

{¶17} "II. OHIO CONTINUES TO HAVE JURISDICTION OVER THIS CASE UNDER THE PARENTAL KIDNAPPING PREVENTION ACT AND UCCJEA."

I & II

{¶18} The assignments of error raise common and interrelated issues; therefore, we will address both assignments of error together.

{¶19} The trial court's October 30, 2009 Judgment Entry indicates Appellant failed to file a brief with the trial court as to the jurisdictional issue raised. The trial court's entry reads:

{¶20} "The Plaintiff's request to continue the jurisdictional issue hearing is denied. The Court has considered the argument set forth in the Defendant's brief and sustains the motion to dismiss, finding Ohio to be an inappropriate forum. The Complaint for Custody is ordered dismissed."

{¶21} Contrary to Appellant's assigned error, we find the trial court did not dismiss Appellant's complaint for lack of jurisdiction; rather, the court found Ohio to be an inappropriate forum. O.R.C. Section 3127.21 sets forth the factors to be considered:

{¶22} "(A) A court of this state that has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more convenient forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or at the request of another court.

{¶23} "(B) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including the following:

{¶24} "(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

{¶25} "(2) The length of time the child has resided outside this state;

{¶26} “(3) The distance between the court in this state and the court in the state that would assume jurisdiction;

{¶27} “(4) The relative financial circumstances of the parties;

{¶28} “(5) Any agreement of the parties as to which state should assume jurisdiction;

{¶29} “(6) The nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;

{¶30} “(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;

{¶31} “(8) The familiarity of the court of each state with the facts and issues in the pending litigation.”

{¶32} “(C) *If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.*” (Emphasis added.)

{¶33} The record indicates Appellee relocated with the minor child in 2005. The trial court’s November 9, 2005 Judgment Entry indicates the parties agreed Appellee would provide transportation and or pay for transportation for visitation with Appellant, and Appellant was to have open communication with the minor child. Noteworthy is the fact the trial court did not change custody to Appellant nor order the child returned to Ohio. The Child has continued to reside with Appellee in New Mexico since 2005.

{¶34} Although the trial court had jurisdiction in this matter, R.C. 3127.21 permits the trial court to decline to exercise jurisdiction finding another state a more appropriate forum. Here, the trial court's October 30, 2009 Judgment Entry dismissed Appellant's complaint after determining Ohio was an inappropriate forum. The statute specifically requires the trial court to stay the proceedings upon the condition a child custody proceeding be promptly commenced in another designated state. Accordingly, while we find the trial court did not abuse its discretion in determining Ohio was an inappropriate forum, we find the trial court failed to comply with the statutory requirements as to disposition. Therefore, we reverse the judgment of the trial court and remand the matter for further proceedings in accordance with the statute and this Opinion.

By: Hoffman, J.

Edwards, P.J. and

Gwin, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ W. Scott Gwin
HON. W. SCOTT GWIN

