

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

|            |                  |                             |
|------------|------------------|-----------------------------|
| <b>JP,</b> |                  | <b>: No. 16-20,233</b>      |
|            | <b>Plaintiff</b> | <b>:</b>                    |
|            |                  | <b>:</b>                    |
| <b>vs.</b> |                  | <b>: CIVIL ACTION - LAW</b> |
|            |                  | <b>:</b>                    |
| <b>KW,</b> |                  | <b>:</b>                    |
|            | <b>Defendant</b> | <b>: CUSTODY</b>            |
|            |                  | <b>:</b>                    |

**ORDER**

**AND NOW**, this **21<sup>st</sup>** day of **March, 2016**, after a hearing held March 16, 2016, on Defendant’s Preliminary Objections to Plaintiff’s Custody Complaint, at which time JP (“Father”) was present with his counsel, Christina Dinges, Esquire, and KW (“Mother”) was present with her counsel, Heather Willis Lewis, Esquire, the Court finds the following:

Mother and Father were never married. They are the parents of MJW, born February 9, 2016 (“Child”). Father filed a Complaint for Custody in Lycoming County on February 26, 2016, and Mother filed Preliminary Objections on March 8, 2016, raising (1) that Lycoming County lacks jurisdiction or venue over this case and (2) that Father had not established paternity, therefore making the custody complaint premature. The Court notes that at the hearing, Mother testified that she did not intend to challenge Father’s paternity, and a separate Order regarding Father’s acknowledgment of paternity was issued by the Court at the hearing on March 16, 2016. We are left with Defendant’s Preliminary Objection to the jurisdiction of Lycoming County to hear this matter.

Whether this Court has jurisdiction is controlled by 23 Pa.C.S. § 5421, which reads as follows:

§ 5421. Initial child custody jurisdiction.

(a) General rule. --Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth has jurisdiction to make an initial child custody determination only if:

(1) this Commonwealth 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 Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;

(2) a court of another state does not have jurisdiction under paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under section 5427 (relating to inconvenient forum) or 5428 (relating to jurisdiction declined by reason of conduct) and:

(i) 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 Commonwealth other than mere physical presence; and

(ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under section 5427 or 5428; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3).

(b) Exclusive jurisdictional basis. --Subsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this Commonwealth.

(c) Physical presence and personal jurisdiction unnecessary. --Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

This Court must first determine the Children's home state.

*"Home state."* is "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. In the case of a child six months of age or younger, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period". 23 Pa.C.S. § 5402.

Pursuant to 23 Pa. C.S. § 5471, "provisions allocating jurisdiction and functions between and among courts of different states shall also allocate jurisdiction and functions between and among the courts of common pleas of this Commonwealth."

Father has lived in Lycoming County for 30 years. Mother's parents live on the line dividing Northumberland and Schuylkill Counties. Mother lived with Father in Lycoming County for less than six months. Mother previously owned a home in Columbia County, which she sold when she moved in with Father, and the two intended to live together as a family when the Child was born. While Mother was pregnant, Mother and Father made arrangements for the Child to see a pediatrician in Montoursville, Lycoming County. Mother and Father submitted paperwork for the Child to attend day care in Muncy, Lycoming County, where Father's sister-in-law is a teacher. Both Mother and Father are employed in Lycoming County.

However, sometime in the beginning of February, 2016, Mother vacated Father's residence and moved in with her parents in Klingerstown, Northumberland County. Father testified that he knew Mother did not intend to return to his residence in Lycoming County. Child's original due date was April 11<sup>th</sup> or 12<sup>th</sup> but he was born approximately 9 weeks prematurely on February 9, 2016, in Geisinger Medical Center, Danville, Montour County. Mother did not list Father on the Child's birth certificate, and

therefore he was limited to receiving information about the Child from Mother, as he was unable to speak with doctors or participate in training to care for the Child when he was released from the NICU. Child was released from Geisinger Medical Center on March 12, 2016, and has since resided with Mother in Northumberland County. Mother unilaterally selected a pediatrician in Shamokin, Northumberland County, and made arrangements for private childcare in Northumberland County. Child receives Medical Assistance from Northumberland County. All periods of visitation with Father have occurred in either Geisinger Hospital (Montour County) or at Mother's current residence in Klingerstown (Northumberland County).

Lycoming County is clearly not the Child's home county. Mother moved to Northumberland County approximately two months before Child's due date with the intention that she would reside there until, and after, Child's birth. As Child is less than six months of age, his home county is the county in which he lived from birth with a parent. 23 Pa.C.S. § 5402. Child spent the first month of his life in the NICU at Geisinger Medical Center in Montour County. Upon his discharge from the hospital, he was taken to Northumberland County, where he has since resided with Mother. All of Father's periods of visitation have occurred outside of Lycoming County. Child has never been present in Lycoming County.

As this Court does not have jurisdiction in this matter, Mother's Preliminary Objections regarding the lack of jurisdiction are GRANTED. Father's Complaint for Custody filed February 26, 2016, is DISMISSED. The parties are directed to pursue

custody proceedings in the child's home county, which this Court understands to be Northumberland County.

BY THE COURT,

Joy Reynolds McCoy, Judge