

BB,	Plaintiff	:	IN THE COURT OF COMMON PLEAS OF
		:	LYCOMING COUNTY, PENNSYLVANIA
		:	
	vs.	:	NO. 11-20,809
		:	
		:	
TH,	Defendant	:	CIVIL ACTION - CUSTODY
		:	
		:	

ORDER

AND NOW, this 15th day of August, 2011, this order is entered after a hearing regarding Mother, TH’s, Petition to Establish Jurisdiction. Mother is requesting to have an existing Montgomery County Custody Order modified in Lycoming County. At the hearing, held on August 10, 2011, Mother was present and represented by Tiffany A. Shoemaker, Esquire; BB, Father, participated via telephonic testimony and was unrepresented.

At issue is whether the Lycoming County Court of Common Pleas has jurisdiction to modify the existing Montgomery County Court Order.

23 Pa. C.S. § 5423. Jurisdiction to modify determination.

Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth may not modify a child custody determination made by a court of another state unless a court of this Commonwealth has jurisdiction to make an initial determination under section 5421 (a)(1) or (2) (relating to initial child custody jurisdiction) and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under section 5422 (relating to exclusive, continuing jurisdiction) or that a court of this Commonwealth would be a more convenient forum under section 5427 (relating to inconvenient forum); or

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

In regards to jurisdiction to modify, 23 Pa. C.S. § 5423 establishes a two-prong test that a court must satisfy in order to modify another court's order. First, the court of the Commonwealth must have jurisdiction to make an initial custody determination under 23 Pa. C.S. § 5421. 23 Pa. C.S. § 5421 states:

(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 finds that because the Mother and Child have lived in Lycoming County for the past four years that there is jurisdiction under 23 Pa. C.S. § 5421 (a)(1) for the court to make an initial custody determination.

The second prong of the two part test requires that the Court of the other county or state to decide that it no longer has or wants to retain exclusive continuing jurisdiction or that another forum is more convenient. 23 Pa. C.S. § 5423. In this case Montgomery County has not been petitioned in regards to relinquishing jurisdiction; therefore Montgomery County's position is not known. This Court cannot find that Montgomery County has relinquished jurisdiction; prong two of the test has not been met.

Due to the fact that Mother has not been able to get past the two prong test established by 23 Pa. C.S. § 5423 this Court does not feel that further analysis on the Petition to Establish Jurisdiction is needed. However, this Court will note that present in the March 20, 2006 Montgomery County Custody Order is an agreement between the two parties stipulating to the fact that Montgomery County Court of Common Pleas shall retain jurisdiction in this matter. This Court foresees that issue being heard before the Montgomery County Court of Common Pleas if Mother further pursues this petition.

This Court lacks the jurisdiction to modify the current custody order. Mother's Petition to Establish Jurisdiction is hereby DISMISSED.

BY THE COURT,

Joy Reynolds McCoy, Judge