

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

C.M.,	:	
	:	Plaintiff
	:	
	:	DOCKET NO. 12-20, 392
	:	
	:	vs.
	:	
	:	CIVIL ACTION – LAW
	:	IN CUSTODY
K.M.,	:	
	:	Defendant

OPINION AND ORDER

This matter comes before the Court on the objection of Mother, K.M., to the jurisdiction of this Court in reference to the above-captioned matter.

A brief procedural history of the case is as follows: on March 19, 2012, Father, C.M., filed a Complaint for Custody in the Court of Common Pleas of Lycoming County, Pennsylvania. In this complaint, Father requested custody rights for the parties' minor child, C.C.M., born October 25, 2008. Father lives on Park Avenue in the City of Williamsport, Lycoming County, Pennsylvania. Upon the filing of his complaint, Father did not know the location of either Mother or the child. However, Father indicated in his complaint that the child lived with the parties on Park Avenue from October 1, 2011 through March 1, 2012.

On May 1, 2012, a custody conference was held in Family Court. Father appeared without counsel. Attorney Katie Bellfy appeared on behalf of Mother, who participated by telephone. At the time of the conference, Mother refused to provide to the Court her current address. However, Mother confirmed that the child was with her in the state of Utah. During this conference, Mother raised the issue currently before this Court: whether this Court has jurisdiction over the present matter. A hearing to determine jurisdiction was scheduled for May 8, 2012 before this Court.

At the time of the hearing, Father appeared without counsel, and Attorney Bellfy

appeared on behalf of Mother, who, again, participated by telephone. During the hearing, both of the parties testified as to their history and the child's contacts with the Commonwealth. The parties' history reveals that the child was born in Utah, where Mother and Father lived with the child until March 2011. In March 2011, the parties and the child moved to the state of New York. Thereafter, on or about October 1, 2011, the parties moved to the Commonwealth of Pennsylvania. The parties and the child lived within the Commonwealth until approximately March 10, 2012. On or about March 10, 2012, Mother and the child left the Commonwealth. Mother testified that she and the child left Pennsylvania and returned to Utah. Mother testified that she and the child stayed briefly in the state of Oregon with Mother's sister in March or April 2012; however, Mother and the child have since returned to Utah and remain there to date.

This Court must analyze this case under the Commonwealth's adopted Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), 23 Pa. C.S. §§ 5401-5482. Under section 5421, relating to a Commonwealth court's initial child custody jurisdiction, the child's home state maintains priority jurisdiction. 23 Pa. C.S. § 5421(a)(1). A child's home state is defined as: "[t]he state in which a child lived with a parent... for at least six consecutive months immediately before the commencement of a child custody proceeding." 23 Pa. C.S. § 5402.

In this matter, Pennsylvania is not the child's home state. During late 2011 and early 2012, the child lived in Pennsylvania for a little more than five (5) months. Therefore, since the child must live within the Commonwealth for six (6) consecutive months prior to the filing of a child custody proceeding for the Commonwealth to be deemed the child's home state, the child's presence within the Commonwealth for five (5) months does not bestow on this Court home state jurisdiction.

Next, section 5421(a)(2) provides that courts within the Commonwealth may take initial

child custody jurisdiction over a case if another court does not have home state jurisdiction or a court with home state jurisdiction declines to exercise jurisdiction because the Commonwealth would be a more convenient forum. 23 Pa. C.S. § 5421(a)(2).

In this matter, no other state retains home state jurisdiction. In the six (6) months prior to the commencement of this custody action, the child lived in Pennsylvania for a little over five (5) months; the child spent the balance of the past six (6) months in New York State. Additionally, in this matter, no other state has declined jurisdiction. The parties testified that they had a custody agreement as part of the parties' divorce proceeding in Utah during 2009. However, both of the parties testified that their divorce proceeding and all related documents have since been vacated and dismissed. Therefore, based on the parties' testimony, no other court has home state jurisdiction or has declined jurisdiction in this matter.

Further, under section 5421(a)(2)(i) and (ii), in order for a court of this Commonwealth to exercise jurisdiction, the child and at least one parent must have significant connections, beyond mere physical presence, with this Commonwealth. 23 Pa. C.S. § 5421(a)(2)(i)-(ii).

Based on the testimony received by the Court, this Court finds that there are no significant connections between the child and at least one parent within the Commonwealth. The child resided within the Commonwealth for a very brief time, approximately five (5) months. While in the Commonwealth, the child attended Paddington Station daycare within Lycoming County, for approximately three (3) months. Additionally, the child attended several doctor's appointments within the Commonwealth. However, neither of the parties have relatives within the Commonwealth. Mother's family lives in Utah, while Father's family lives in California. Mother's parents, siblings, grandfather, and several nieces and nephews reside in Utah. Since the child's return to Utah, he has commenced swimming lessons. Additionally, the

child has returned to the pediatrician he originally had when he was previously living in Utah. In addition, under subsection (ii), no substantial evidence exists within the Commonwealth concerning the child's care, protection, training and personal relationships.

In short, under 23 Pa. C.S. § 5421(a), this Court does not believe that the Commonwealth of Pennsylvania has jurisdiction over this case. This Court believes that the state of Utah has jurisdiction over the case based upon the significant contact that state has with the child. Utah is the child's state of birth, the state where the child has lived the majority of his life, the state where he is currently located, and the state where he has a significant number of relatives.

ORDER

AND NOW, this __ day of May, 2012, following an evidentiary hearing on jurisdiction, it is hereby ORDERED and DIRECTED that C.M.'s March 19, 2012 Complaint for Custody is DISMISSED, for lack of jurisdiction.

BY THE COURT,

Richard A. Gray, J.

RAG/kae

cc: C.M.
Katie Bellfy, Esquire, North Penn Legal Services
Gary L. Weber, Esquire