

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

LA,		: No. 14-20, 695
	Plaintiff	:
		:
vs.		: CIVIL ACTION - LAW
		:
AD,		:
	Defendant	: CUSTODY

OPINION AND ORDER

AND NOW, this 2ND day of **July, 2014**, this Order is entered after a hearing held on June 18, 2014, regarding Mother, LA's Petition to Transfer Venue filed on May 22, 2014. Mother is requesting that the above-captioned matter be transferred from the Twenty-First Judicial District of North Carolina to Lycoming County, Pennsylvania, where she resides. Mother appeared and was represented by Melissa Clark, Esquire, and Father appeared by telephone and was unrepresented.

The facts presented were as follows:

The parties entered into an agreement in the Twenty-First Judicial District of North Carolina on September 16, 2013. The Agreement was made an Order of Court. At the time of the Agreement Father was a resident of Carroll County, Virginia. Mother was a resident of Forsyth County, North Carolina. Mother was granted primary custody of the minor child and leave to relocate herself and the child to Williamsport, Pennsylvania. The Order includes the following: "The Defendant agrees to remain under the jurisdiction of the North Carolina courts for purposes of future Modifications of this Order".

Mother relocated to Lycoming County by the end of September 2013. The child attends school in Lycoming County. The child's physician and dentist are located in

Lycoming County. The child has maternal family members located in Lycoming County including great uncles and aunts, an uncle and grandparents. Mother testified it would be difficult for her to travel to North Carolina due to issues with her employment. Father continues to reside in Virginia although he regularly travels and visits family members who reside in North Carolina.

In the present case, the initial and existing child custody order was from the Twenty-First Judicial District of North Carolina. 23 Pa. C.S. § 5422 Exclusive continuing jurisdiction states:

(a) GENERAL RULE.-- Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth which has made a child custody determination consistent with section 5421 (relating to initial child custody jurisdiction) or 5423 (relating to jurisdiction to modify determination) has exclusive, continuing jurisdiction over the determination until:

(1) a court of this Commonwealth determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this Commonwealth and that substantial evidence is no longer available in this Commonwealth concerning the child's care, protection, training and personal relationships; or

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

23 Pa. C.S. § 5422

The Court specifically finds that the neither the Child nor the parents of the child, nor any individual acting as a parent reside in North Carolina. Based on the facts that the Child and both parents no longer resided in North Carolina this Court holds that North Carolina no longer has exclusive, continuing jurisdiction as outlined in 23 Pa. C.S. 5422

Having found that North Carolina no longer has exclusive, continuing jurisdiction 23 Pa. C. S. § 5423 delineates the requirements for this Court's authority to Modify the Order entered in North Carolina.

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.

23 Pa. C. S. § 5423

The Court found, as outlined above, that Section (2) is met in that the child, parents and any person acting as a parent no longer reside in North Carolina. Further, this Court has jurisdiction to make an initial determination under section 5421(a)(1).

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;

23 Pa. C. S. § 5421

Pennsylvania is the home state of the child on the date of the commencement of the proceeding. Mother began the proceeding in Lycoming County with her filing on May 22, 2014. The Child had resided, by the agreement of the parties, in Pennsylvania specifically Lycoming County in excess of six months prior to the filing. The Child continues to reside in Lycoming County.

A final consideration of this Court is the effect of the forum selection clause entered into by the parties. The parties agreed to North Carolina remaining as the forum even when at the time of the agreement the facts were substantially the same as today. It was intended that neither party would reside in North Carolina. The Agreement reads in pertinent part: “The Defendant agrees to remain under the jurisdiction of the North Carolina courts for purposes of future Modifications of this Order”.

The recent Superior Court decision in *S.K.C. v. J.L.C.* is instructive. The Court specifically holds “that a trial court may not consider a forum selection clause in its section 5422 analysis” *S.K.C. v. J.L.C.*, 2014 PA Super 126 (Pa. Super. Ct. 2014). “[T]wo parents may not agree, via a forum selection clause, to litigate their child custody dispute in a court that lacks subject matter jurisdiction under the UCCJEA”. *Id.* Neither parent or the child resides in the North Carolina, the North Carolina court lacks subject matter jurisdiction which cannot be retained through the forum selection clause.

The North Carolina Court no longer has exclusive continued jurisdiction. Additionally, the North Carolina Court lack subject matter jurisdiction. This Court has jurisdiction to modify the North Carolina Court order, as Pennsylvania is the Child’s

home state and none of the parties reside in North Carolina. Wife's Petition for Change of Venue is hereby GRANTED. Mother's Petition for Modification shall be scheduled by separate Order.

By the Court,

Joy Reynolds McCoy, Judge