

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

<b>EGW,</b>		<b>: No. 18-21,456</b>
	<b>Plaintiff</b>	<b>:</b>
		<b>:</b>
<b>vs.</b>		<b>: CIVIL ACTION - LAW</b>
		<b>:</b>
<b>BD, JoD and/or</b>		<b>:</b>
<b>JaD,</b>		<b>:</b>
	<b>Defendants</b>	<b>: CUSTODY</b>

**OPINION AND ORDER**

Before the Court are Preliminary Objections filed on December 19, 2018, by Defendants, JoD and JaD. Argument was held on February 6, 2019, at which time EGW (“Father”) was present with his counsel, Mark Taylor, Esquire, and BD (“Mother”) was present with her counsel, Lindsay Walker, Esquire. Michael H. Collins, Esquire, appeared as local counsel on behalf of Defendants JoD and JaD (“Custodial Parents”).

**Background**

Father testified that he and Mother initially discussed adoption in March or April of 2018, but never formally agreed to anything in writing. Father testified that Mother changed her mind approximately two weeks later and wanted to keep the child and he agreed. Father further testified that shortly before the child’s birth Mother changed her mind again and wished to place the child for adoption, a decision which left Father confused as he wanted to keep the child but was not ready to be a father. The child was born on September 10, 2018, at UPMC Susquehanna Williamsport. On that same date, Father entered a substance abuse treatment facility in Duncansville, Pennsylvania. Father had no access to social media while he was at the treatment facility and his phone access was

limited to two calls per week for 10 minutes each. Father was not made aware of the child's birth until approximately two weeks after he entered the treatment facility.

On September 16, 2018, Mother signed an Interstate Compact on the Placement of Children Request from Pennsylvania to Tennessee. The request was signed by a representative of Pennsylvania on September 24, 2018, and by a representative of Tennessee on September 27, 2018. The form is clearly marked that "adoption" is the type of care requested. Father did not sign the form; in fact, his name is not even listed on it.

On September 17, 2018, Deborah E. Crum, Esquire, counsel for Mother in her adoption plan, sent Father a letter regarding the adoption plan. Included with the letter were various forms that Father needed to complete in order to "proceed expeditiously with the adoption." The letter instructed Father that if he did not consent to the adoption, or if he opposed the adoption, he must notify Attorney Crum or the Lycoming County Court immediately. While the letter provides some "caution" that if Father opposed the adoption he could be "responsible for support for at least the next eighteen years of the child's life," nowhere does it mention that the child would be transported to Tennessee for adoption. The Court notes for the record that it finds the content and the tone of this letter simply appalling. The letter essentially sought to bully Father into consenting to the termination of his parental rights with the threat of having to support his child if he did not cooperate with Mother's plan. This Court would like to emphasize that Mother's plan was created and executed without Father's knowledge or consent. The Court is dismayed by the level of exclusionary tactics employed to prevent Father from having any part in the decision-making regarding his child.

Father testified that he did not sign the paperwork sent to him by Attorney Crum, and that he was not contacted by anyone from her office to follow-up. Father had no contact with Mother while he was in the treatment facility. On October 6, 2018, while still in the treatment facility, Father signed an Acknowledgment of Paternity. (Ex. F1). Father testified that his dad mailed the completed form for him while he was in treatment, and that his dad attempted to help him handle the situation while he was at the facility.

Although Father testified that he did not contact the law firm after receiving the letter regarding the adoption, on October 27, 2018, Father did send a letter to the Lycoming County Orphans Court. (Ex. F4). In the letter, Father – under no uncertain terms – indicates that he did not consent to the adoption and demanded information regarding the child.

This action commenced on October 30, 2018, with the filing of a Complaint for Custody by Father. A custody conference was scheduled for December 19, 2018. On November 27, 2018, Father filed a Petition for Emergency or Special Custody Relief, which alleged:

“As the natural and biological father of B.G.D., it is imperative that the child, B.G.D., be returned to me immediately during this crucial time in her development to bond with me, her father. At this stage in her formative days, she needs to have my voice and my face imprinted on and in her developing brain. Her continued custody by a third party who is completely unknown to me could result in detrimental early development. Having never met the defendant(s), I am deeply concerned for the health and well-being of my child, B.G.D. I have no knowledge of their parental capabilities or the environment in which she would be raised, a fact which is very alarming. I never consented to adoption, nor gave up my parental rights.”

Father’s Petition for Emergency Custody was dismissed as the allegations, although concerning, did not rise to the level of imminent threat of physical harm required to grant

immediate relief. It is clear to this Court, however, that Father was attempting to take every step possible to gain access to the child and prevent the child's adoption from proceeding without his consent.

On November 28, 2018, the Custodial Parents filed a Petition for Termination of Parental Rights and Adoption in the Chancery Court of Meigs County, Tennessee.

Attached to the Preliminary Objections was a copy of a court order, entered on December 4, 2018, which granted the Custodial Parents physical custody of the child.

A custody conference was held on December 19, 2018, in Lycoming County, Pennsylvania; however, on the same date Defendants JoD and JaD filed Preliminary Objections alleging both a lack of subject matter jurisdiction and improper venue under Pa.R.C.P. 1028(a)(1). Therefore, the Family Court Hearing Officer declined to take any action on Father's Complaint for Custody pending the resolution of the Preliminary Objections. On February 5, 2019, Father filed a Response to Preliminary Objections and New Matter. On February 6, 2019, at the time set for the argument on Defendant's Preliminary Objections, counsel for Mother, an additional Defendant, verbally joined JoD and JaD's Preliminary Objections. Although Father's counsel indicated at the time of the argument that there was not much dispute about the factual allegations in the Preliminary Objections, the Court did hear brief testimony from the Plaintiff concerning his knowledge of the events surrounding the child's birth and transfer to Tennessee, and his efforts to establish his custodial rights to the child.

### **Analysis**

Defendants' first preliminary objection is that this Court lacks subject matter jurisdiction pursuant to Pa.R.C.P. 1028 (a)(1). The Defendants cite §3(a) of the Uniform Child Custody Jurisdiction Act, which states:

"A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) This State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this State; or

(2) It is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships. . .

Defendants' second Preliminary Objection alleges that Lycoming County is an improper venue. Pursuant to 23 Pa.C.S. §5421, the 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).

From the pleadings and the testimony at the hearing, this Court has found that the child was born at a hospital in Lycoming County on September 10, 2018. Mother lives in Lycoming County, and Father lives in Schuylkill County. Pursuant to Mother's adoption plan, custody of the child was immediately turned over to the Custodial Parents, who remained at the hospital for approximately two weeks while the child was treated for the symptoms of withdrawal from Suboxone. Mother signed her Irrevocable Consent to Adoption as well as her consent under the Interstate Compact on the Placement of Children ("ICPC") on September 16, 2018. The ICPC was approved by Pennsylvania on September 20, 2018. The Child was discharged from the hospital on September 25, 2018, and the ICPC was approved by Tennessee on September 27, 2018, at which time the Custodial Parents immediately returned home with the child. The child has resided in Meigs County, Tennessee, since her discharge from the hospital after birth. The child requires extraordinary medical care and has received said care and personal services in Tennessee since her arrival in that state at approximately two weeks of age.

We note that Father has been extremely diligent and responsible in his efforts to gain access to and custody of his child. Father did not complete and return the adoption forms sent to him - while in a substance abuse treatment facility - by Mother's counsel. Although Father did not contact Mother's attorney to express his concerns or objections, he did write a letter to the Lycoming County Orphans' Court – *as was suggested by Mother's counsel in her letter dated September 17, 2018*. Father completed and submitted an Acknowledgment of Paternity form while still in the treatment facility. Most importantly, Father filed a Custody Complaint on October 30, 2018, which was served on the Custodial Parents by certified and regular mail addressed to their Tennessee attorneys on or about November 19, 2018. Additionally, Father filed a Petition for Emergency Custody on November 27, 2018, citing his concerns about the child's location and well-being. This Court emphatically notes that the Petition for Termination of Parental Rights was not filed with the Chancery Court of Meigs County, Tennessee, until November 28, 2018.

Both Pennsylvania and Tennessee have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which seeks to provide uniformity among the states by vesting exclusive and continuing jurisdiction in the home state of the child. When custody actions are simultaneously filed in Pennsylvania and another state, the Pennsylvania statute sets forth the following requirement: “[a] court of this Commonwealth which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of a state having jurisdiction under sections 5421 through 5423, shall immediately communicate with the other court.” **23 Pa.C.S. §5424(d)**. Tennessee, also having adopted the UCCJEA, has an identical requirement. In this case,

however, despite the fact that the initial custody filing was in made in Pennsylvania and served on Custodial Parents' attorneys 10 days prior to the filing of the Petition for Termination of Parental Rights, the Tennessee Court did not communicate with the Pennsylvania Court prior to assuming jurisdiction. Whether it was because the attorneys representing the Custodial Parents failed to disclose that they had been served with a custody complaint filed in Pennsylvania prior to their filing of the Petition for Termination of Parental Rights or the Tennessee Court chose not to adhere to the requirements of the UCCJEA is unknown to this Court, but on November 28, 2018, the Chancellor of the Meigs County Court entered an ex-parte order assuming venue and jurisdiction over the child and granting the Custodial Parents partial guardianship and physical custody of the child. Father was not notified of the filing prior to the entry of the order, and therefore was not afforded the opportunity to object to or contest the entry of said order. This Court does not agree, however, that the entry of said order is automatically determinative of the jurisdiction over the child.

As discussed, a state has jurisdiction to make an initial child custody determination if they are the home state of the child on the date of the commencement of the proceeding. The state is considered the "home state" if the child has lived there with a parent for six consecutive months, or in the case of a child under six months of age, since birth. If no state satisfies this residency requirement, then the state that has "significant connections" to the child and at least one parent or person acting as a parent shall be considered the home state if substantial evidence is available in that state concerning the child's care, protection, training and personal relationships. In the present case, we have a child who was born in Pennsylvania. At the time of her birth, it was Mother's intent that the child



would be placed for adoption and at the time allowed by law, Mother irrevocably signed over her rights to the child. Although there were discussions about adoption while Mother was pregnant, Father was not included in the ultimate decision and was unaware that the child would be transported to Tennessee. Nevertheless, the child was present in Pennsylvania for only two weeks while she received treatment in the hospital for symptoms of withdrawal from narcotics that were present in her system at birth. While she was being treated in the hospital in Lycoming County, she was in the care of the Custodial Parents.

Since her release from the hospital, the child has resided in Tennessee with the Custodial Parents. Although she is quite young, she has extraordinary needs and has received extensive medical and social services from providers in Tennessee. This Court is cognizant of the fact that, given the circumstances, nearly all of the evidence concerning her care, protection, training, and personal relationships would be located in Tennessee. Although with modern technology, it certainly would not be impossible to present those witnesses by telephone and obtain those records electronically, this Court understands that conducting the proceedings in Tennessee would be more convenient for the majority of the parties.

In light of the above, this court is constrained to grant Defendants' Preliminary Objections, as it believes that - had the court in Tennessee communicated with this Court pursuant to the requirements of the UCCJEA - this Court most likely would have acquiesced to the fact that according to the law, Tennessee is in fact the home state of the child and therefore the proper venue to litigate the custody matters. Although the child was born in Pennsylvania, it is clear that the intent of the Mother was to release her to the care of the Custodial Parents as soon as the law allowed, and to relinquish her rights to the

child. Father's efforts to get access to and gain custody of his child are nothing short of heroic given the circumstances he faced. However, Father's case is compounded by the fact that he filed his custody action in Lycoming County and he is not, nor has he ever been, a resident of Lycoming County.

This Court has not made this decision lightly. The Court is sympathetic to the plight of Father, who now must expend additional time and resources to fight for custody of his child who was placed for adoption and transported to a different state without his knowledge or consent. In fact, the Court finds it unconscionable that Mother, with the assistance of sophisticated attorneys, could unilaterally consent to this child's placement with third parties and transfer to a different state. Father did not sign any of the documents consenting to the placement. His name is not even listed on the ICPC request form! This is not a case of an unknown father. Here, Father - in spite of the numerous roadblocks that Mother, Custodial Parents, and their attorneys have placed in his path - has persisted in his efforts to gain access to and custody of his child. If ever there were a case to prompt sweeping public policy change with regard to how interstate adoptions are handled, this would be it. However, despite Pennsylvania being "first in time" with regard to the filing of a custody action, this Court's hands are tied and unfortunately must find that Pennsylvania lacks the subject matter jurisdiction to hear the case, and that the Chancery Court of Meigs County, Tennessee, is the proper venue to litigate the matter. This Court strongly feels that Father's issues are meritorious and that he has done his due diligence in attempting to mitigate the effects of Mother's unilateral decisions; however, according to the law he now must continue those efforts in Tennessee.

Accordingly, the Court enters the following order:

**ORDER**

**AND NOW**, this 5<sup>th</sup> day of **March, 2019**, after careful consideration, the Preliminary Objections of Defendants, JoD and JaD, filed on December 19, 2018, and verbally joined by Defendant BD at the time scheduled for argument on February 6, 2019, are hereby **GRANTED**. For the reasons discussed above, this matter is hereby transferred to Meigs County, Tennessee.

Regarding the Defendants' request for a court order protecting the disclosure of their identity and address during the pendency of the proceedings, this request is **DENIED** as moot. The proper names of JoD and JaD have appeared in pleadings filed of record in Meigs County, Tennessee, and the identity of all parties is now known.

By The Court,

Joy Reynolds McCoy, Judge