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Kar v. Kar, 132 Nev. Adv. Op. 63 (August 12, 2016)¹

FAMILY LAW: MODIFYING CHILD CUSTODY

Summary

The Court considered an appeal from a district court order denying a motion to modify child custody and support. The Court held that the district court lost exclusive, continuing jurisdiction when the parents and child left Nevada. However, this did not end the jurisdictional analysis. The district court should have considered whether it retained jurisdiction under NRS 125.315(2) and NRS 125.305.

Background

Respondent Kathleen A. Kar and appellant Mehmet Sait Kar, divorced while living in Nevada with their child. Pursuant to the divorce decree, the two shared joint legal custody of the child and Kathleen was awarded primary physical custody. After the divorce, Mehmet moved to Turkey and Kathleen obtained an order modifying the decree to give her sole legal and physical custody of the child. After, Kathleen obtained sole custody, the Air Force notified her that she had received a Permanent Change of Duty Station (PCS) to England.

Two months after Kathleen and the child moved to England, Mehmet filed the motion to modify child custody. Kathleen opposed the motion and filed a countermotion to dismiss for lack of jurisdiction. The district court ruled that it lacked jurisdiction to modify the agreement when Kathleen and the child moved to England. The district court denied Mehmet's motion and granted Kathleen's counter motion to dismiss.

Discussion

The question here is whether the district court was correct that it lost subject matter jurisdiction to hear Mehmet's motion when the parties and the child left Nevada. The Court concluded that resolving this question required an examination of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which Nevada adopted as NRS Chapter 125A.² The Court noted that the UCCJEA established uniform protocols to be followed in modifying child custody decrees across state or international lines.³

Nevada had jurisdiction of the initial child custody agreement under NRS 125A.305(1)(a) because Nevada was the child's "home state" at the time the parties divorced.⁴ Under NRS 125A.315(1) the district court lost "exclusive, continuing jurisdiction" when the child and parents no longer resided in Nevada.⁵ However, this did not mean that the district court lost all jurisdiction. The Court noted "[o]n the contrary, even after a district court loses exclusive, continuing jurisdiction, it still may modify its own prior order if the criteria NRS 125A.305(1)

¹ By Briana Martinez.

² *Friedman v. Eighth Judicial Dist. Ct.*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011).

³ *See* NEV. REV. STAT. § 125A.225(1).

⁴ NEV. REV. STAT. § 125A.085(1).

⁵ NEV. REV. STAT. § 125A.315(1)(b).

establishes for a court to obtain jurisdiction over an initial custody determination are met by the motion to modify custody.”

Under NRS 125A.305 Nevada has four possible means for obtaining jurisdiction over an initial child custody determination. The Court noted that Nevada would have jurisdiction if it met the three conditions under NRS 125A.305(1)(b). Here, the first condition was met because no state had home state jurisdiction. Nevada no longer had home state jurisdiction. England did not have home state jurisdiction because the child had only lived there for two months.

Because the district court determined it lacked jurisdiction once Kathleen and the child left Nevada, it did not consider the other conditions under NRS 125A.305(1)(b): “connection of the child and his parents to Nevada other than mere physical presence; and whether there is substantial evidence in Nevada pertaining to the child’s care, protection, training, and personal relationships.” Because NRS 125A.305(1)(b) required a highly factual analysis, the Court reversed and remanded for the district court to determine whether jurisdiction was warranted under that subsection.

The Court also could not determine the criteria for NRS 125A.305(1)(d) without knowing whether Nevada or England had jurisdiction. Further, the Court noted that the district court’s erroneous rejection of jurisdiction, did not provide England with jurisdiction under NRS 125.305(1)(c) because no other state other than Nevada had the opportunity to decline jurisdiction.

Finally, under NRS 125A.365(1) a court may decline to exercise its jurisdiction if it determines that the forum is inconvenient and there is another court that is more appropriate.⁶ Here, Kathleen argued that the district court properly determined that Nevada was inconvenient. However, the Court noted that the problem was that at the time the district court granted Kathleen’s countermotion to dismiss, no child custody proceeding had been commenced in England.” The Court held that a court may not dismiss the action, it must stay the case and direct the parties to file in the more convenient forum.

Conclusion

Although the district court lost exclusive, continuing jurisdiction it did not end the jurisdictional analysis. The district court should have considered whether it retained jurisdiction under NRS 125.315(2) and NRS 125.305. Finally, if the district court determines that it has jurisdiction but a more convenient forum exists, the district court must stay the case until filed in the appropriate forum. The Court reversed and remanded.

⁶ NEV. REV. STAT. § 125A.365(1).