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Summary of Friedman v. Dist. Ct., 127 Nev. Adv. Op. 75

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Friedman v. Dist. Ct., 127 Nev. Adv. Op. 75 (Nov. 23, 2011)[1]
FAMILY LAW - CHILD CUSTODY

Summary

The Court considered a petition for mandamus or prohibition to stop family court from asserting jurisdiction in interstate child custody dispute.

Disposition/Outcome

The Court granted the petition for writs of prohibition and mandamus, directing the family court to discontinue its assertion of jurisdiction and to dismiss the case unless the "home state" of California declined to exercise jurisdiction. The (UCCJEA) forms the exclusive basis for determining subject matter jurisdiction in interstate child custody disputes in Nevada. Divorced parents' agreement that Nevada would have exclusive jurisdiction does not trump the UCCJEA. Instead, the Nevada court must defer to the children's "home state," as determined under UCCJEA. Nevada courts will have jurisdiction only if the "home state" declines to exercise jurisdiction on the ground that Nevada is a more appropriate or convenient forum.

Factual and Procedural History

Daniel Friedman ("Friedman") and Kevyn Wynn ("Wynn") divorced in Nevada in November 2008. The divorce decree ordered joint legal custody (and under certain conditions, joint physical custody) of their three children. Although both parents contemplated moving out of state, they included an agreement in the decree that the children's "home state" would be Nevada for the purpose of all future child custody disputes. Further, the decree expressed the parents' intent that Nevada have exclusive jurisdiction over such disputes. Both parents eventually relocated to California, where they were to share joint physical custody of the children.

In August 2010, after the parents failed to settle on a joint custody schedule, Wynn applied to the Eighth Judicial District Court (Family Court) in Nevada for an order awarding her primary physical custody of the children. Friedman opposed the motion and challenged the Nevada court's jurisdiction. He initiated alternate custody proceedings in California.

The Nevada district court rejected the father's argument that it did not have subject matter jurisdiction and awarded the mother primary physical custody. The district court found that the parents and children resided in California for at least eleven months and recognized that under the UCCJEA this suggested Nevada did not have jurisdiction. The district court nonetheless found the parents' forum agreement controlling. The district court further held the

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father was judicially estopped to deny jurisdiction. The father petitioned the Court for writs of prohibition or mandamus to prohibit the district court from exercising subject matter jurisdiction.

Discussion

Justice Pickering wrote for the Court, sitting en banc. Justices Cherry and Gibbons separately dissented.

Nevada (like every state except Massachusetts) adopted the UCCJEA to address issues that arise in interstate child custody proceedings, including jurisdictional disputes.[2] The UCCJEA is the "exclusive jurisdictional basis for making a child custody determination" in Nevada.[3] In cases where jurisdictional facts are undisputed, subject matter jurisdiction[4] under the UCCJEA is a question of law and subject to *de novo* review.[5] However, the review should consider decisions from other states to harmonize and "promote uniformity of the law . . . among states that enact [the UCCJEA]."[6]

It was undisputed that Nevada had jurisdiction over the initial child custody determination when the court entered the divorce decree in 2008. This would normally give it "exclusive, continuing jurisdiction" over child custody determinations.[8] However, such jurisdiction ends when "[a] court of this state or another state determines that the child [or] the child's parents . . . do not presently reside in this state."[9] The district court made such a determination when it found that the parties resided in California, thereby ending its jurisdiction.

After its "exclusive, continuing jurisdiction" ends, a court may modify its prior child custody determination "only if it has jurisdiction to make an initial determination" under NRS § 125A.305.[10] Under 125A.305, "a [Nevada court] has jurisdiction to make an initial child custody determination only if [Nevada] is the home state of the child on the date of the commencement of the proceeding" or "a court of the home state of the child has declined to exercise jurisdiction on the ground that [Nevada] is a more appropriate forum . . . ."[12]

Under the UCCJEA, "home state" means "[t]he state in which a child lived with a parent . . . for at least 6 consecutive months . . . immediately before the commencement of a child custody proceeding."[13] The court found, and Wynn conceded, that when Wynn filed her motion in August 2010, California was the children's "home state" under the UCCJEA.

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[2] The UCCJEA was codified at NEV. REV. STAT. CH. 125A.
[3] NEV. REV. STAT. § 125A.305(2) (2007).
[4] The Court, quoting the Washington Supreme Court, noted that the term "exclusive venue" might be more accurate than "subject matter jurisdiction" but nonetheless used the UCCJEA's term for consistency. *In re* Custody of A.C., 200 P.3d, 689, 691 n.3 (Wash. 2009).
[5] Ogawa v. Ogawa, 1125 Nev. ___, ___, 221 P.3d 699, 704 (2009).
[6] NEV. REV. STAT. § 125A.605 (2007).
[8] *Id.* at § 125A.315.
[9] *Id.* at (1)(B). Based on the use of the disjunctive "or" in the statute, the Court dismissed an argument that jurisdiction continues unless *both* this test and an alternate test in paragraph (1)(A) are met.
[10] NEV. REV. STAT. § 125A.315(2) (2007).
[12] *Id.* at (1)(A)-(B).
[13] NEV. REV. STAT. § 125A.085(1) (2007).

The Court, consistent with the courts of other states, dismissed the idea that "commencement of the proceeding" in NRS section 125A.305 could mean the original divorce proceeding. Construing the phrase in this way "would confer perpetual jurisdiction over matters of custody to the courts of the state which granted dissolution," without regard to continued contact with the state and in conflict with the UCCJEA's goals.[14] Accordingly, the relevant proceeding was the instant motion to modify custody.

Since the father initiated child custody proceedings in California, the Nevada court was required to "stay its proceeding[,]communicate with the [California] court[, and if the California court] does not determine that [Nevada] is a more appropriate forum, . . . dismiss the proceeding."[15]

Under the UCCJEA, a court may consider several factors to determine whether another state's court is a more appropriate forum. One of the factors is whether the parties have an agreement "as to which state should assume jurisdiction."[17] Therefore, a court could consider the parents' agreement when deciding whether to exercise jurisdiction. However, the Court emphasized this determination was California's to make. In this, the Nevada district court got it "precisely backward" when it asserted jurisdiction and determined that California could ask it for deference.

The Court also dismissed Wynn's argument that, under *Vaile v. Dist. Ct.*,[18] Friedman was judicially or equitably estopped from contesting Nevada's jurisdiction. A court that lacks subject matter jurisdiction under the UCCJEA cannot acquire it by estoppel.[19] *Vaile* is consistent with this case because while the court judicially estopped a wife from contesting jurisdiction in a *divorce* proceeding, the court denied jurisdiction by estoppel in the *child custody* issues, finding them governed by the UCCJA (the precursor to the UCCJEA). Wynn may argue to the California court, in the context of asking it to decline jurisdiction, that she detrimentally relied on Friedman's agreement to abide by the agreement. However that argument has no bearing on the Nevada district court's jurisdiction.

The Court may issue a writ of prohibition to halt "the proceedings of any tribunal . . . when such proceedings are . . . in excess of the jurisdiction of the tribunal."[21] It may issue a writ of mandamus "to compel the performance of an act"[22] when "there is not a plain, speedy and adequate remedy in the ordinary course of law."[23] Since the district court's assertion of exclusive, continuing jurisdiction exceeded its authority, and since it failed to stay its proceedings in deference to the home state of California, extraordinary writs were justified to promote comity and the jurisdictional goals of the UCCJEA.

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[14] Sidell v. Sidell, 18 A.3d 499, 506 (R.I. 2011). *See also* In re A.C.S., 157 S.W.3d 9, 16 (Tex. App. 2004).
[15] NEV. REV. STAT. § 125A.355(2) (2007).
[17] *Id.* at § 125A.362(2)(E).
[18] 118 Nev. 262, 44 P3d 506 (2002).
[19] *Sidell*, 18 A.3d at 508.
[21] NEV. REV. STAT. § 34.320 (2007).
[22] *Id.* at § 34.160.
[23] *Id.* at § 34.330.

Dissents

Justice Gibbons dissented, believing that extraordinary writs were unwarranted because California had not yet decided to exercise jurisdiction, and may yet decline to do so in light of the parties' prior agreement that Nevada have exclusive jurisdiction. Justice Cherry joined Justice Gibbons' dissent and added that he believed the Court should examine the law to find "fair and just exceptions to the loss of jurisdiction when both parents have stipulated to Nevada having exclusive jurisdiction over all child custody matters."

Conclusion

An agreement in a divorce decree selecting Nevada as the forum state for deciding interstate child custody disputes is ineffective when it conflicts with the UCCJEA. A court with jurisdiction over the dispute – that is, a court in the child's "home state" – may consider such an agreement as one of several factors when determining whether another state would be a more appropriate or convenient forum, but is not bound by it.