

**IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CIVIL DIVISION**

JOSEPH N. REEVES
Plaintiff

v.

CHRISTINA M. NOLIN
Defendant

No. 2018-FC-000242-03

Civil Action – Custody

ORDER SUSTAINING DEFENDANT MOTHER'S PRELIMINARY OBJECTIONS

AND NOW, this 13th day of April 2018, for the reasons set forth in the Memorandum Opinion of this date, Defendant Mother's Preliminary Objections to Plaintiff Father's Complaint for Custody are **SUSTAINED** and the Interim Order for Custody, Pending Trial of March 20, 2018 is therefore vacated. A courtesy copy of this Order shall be sent to the Circuit Court of Montgomery County, Maryland.

BY THE COURT,


JOSEPH C. ADAMS, PRESIDENT JUDGE

OFFICE OF PROTHONOTARY
2018 APR 16 AM 7:18
JUDICIAL CENTER
YORK, PA

**IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CIVIL DIVISION**

JOSEPH N. REEVES
Plaintiff

v.

CHRISTINA M. NOLIN
Defendant

No. 2018-FC-000242-03

Civil Action – Custody

OFFICE OF PROTHONOTARY,
2018 APR 16 AM 7:18
JUDICIAL CENTER
YORK, PA

**MEMORANDUM OPINION SUSTAINING DEFENDANT'S PRELIMINARY
OBJECTIONS**

I. FACTS AND PROCEDURAL HISTORY

This is a matter pertaining to the jurisdiction of this Court in a custody matter. Joseph N. Reeves is the Father and Plaintiff ("Father") and Christina M. Nolin is the Mother and Defendant ("Mother"). Mother lives in Montgomery County, Maryland and Father lives in York County, Pennsylvania. Father filed a Complaint for Custody on February 9, 2018. In response to Father's Complaint for Custody, Mother raises Preliminary Objections on the basis of jurisdiction pursuant to Pa. R. Civ. P. 1028(a)(1), asserting that the State of Maryland has jurisdiction over this matter and asking this Court to dismiss Plaintiff Father's Complaint.

This matter was originally before the Circuit Court of Montgomery County, Maryland (case no. 142620-FL.) Mother filed a Complaint for Custody in the Circuit Court of Montgomery County on February 14, 2017. Two days later she filed an Emergency Motion for Temporary Custody, Pending Final Outcome of Custody Merits in the same Maryland Court. The Court held a hearing on that same day where Mother was granted sole physical custody of the minor children. A hearing for Mother's Complaint for Custody was scheduled for May 8, 2017, which was

continued to June 30, 2017. That same month, the parents entered into a written parenting agreement that stipulated for the children to remain in Mother's primary residence with rights of physical custody for Father one evening per week and every weekend from 5:00 p.m. to 7:30 a.m. on Monday. As a result of this agreement, the parties did not show up for the hearing of June 30, 2017 and the action was dismissed on July 17, 2017.

Prior to Mother being served with Father's Complaint for Custody, Mother filed a Motion to Waive Prepayment of Costs in the Circuit Court of Montgomery County, Maryland with the intention of filing a Complaint for Absolute Divorce. On February 28, 2018, the Maryland Court waived Mother's filing fees and Mother's Complaint for Absolute Divorce was filed. This Complaint included a request for primary physical custody and sole legal custody of the children. Mother filed Preliminary Objections to Father's Complaint for Custody on February 28, 2018. At the Conciliation Conference, the parties agreed that an Interim Order could be entered pending the outcome of Mother's Preliminary Objections. An evidentiary hearing on Mother's Preliminary Objections was held on April 3, 2018.

II. ISSUES

Mother raises two Preliminary Objections to Father's Complaint for Custody alleging lack of jurisdiction on two counts under Pa. R. Civ. P. 1028(a)(1). Mother claims that the State of Maryland made an initial custody determination and that the State of Maryland is the home state of the children, thus retaining exclusive, continuing jurisdiction over this matter under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA").

III. DISCUSSION

Preliminary objections, which if sustained, would result in the dismissal of a cause of action “should be sustained only in cases that are clear and free from doubt.” *Bower v. Bower*, 531 Pa. 54, 611 A.2d 181, 182 (1992). Furthermore, preliminary objections should be granted “only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover.” *Snare v. Ebensburg Power Co.*, 431 Pa. Super. 515, 637 A.2d 296 (1993) (citation omitted), *appeal denied* 538 Pa. 627, 646 A.2d 1181 (1994). In ruling on preliminary objections, “the court must consider the evidence in the light most favorable to the non-moving party.” *Maleski by Taylor v. DP Realty Trust*, 653 A.2d 54, 61 (Pa. Commw. Ct. 1994).

When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections. *Haun v. Community Health Systems, Inc.*, 14 A.3d 120, 123 (Pa.Super.2011).

Mother asserts that this Court lacks jurisdiction over this matter pursuant to Pa. R. Civ. P. 1028(a)(1). She alleges that the State of Maryland made an initial custody determination and that the State of Maryland is the home state of the children. As a consequence, she asserts that the Maryland Court retains exclusive, continuing jurisdiction under the UCCJEA. Father avers that Maryland Court was exercising emergency jurisdiction when it entered its original order for custody. Under the UCCJEA, emergency jurisdiction is strictly temporary. 23 Pa.C.S.A. §5424

(Temporary Emergency Jurisdiction) As such, Father reasons that Maryland no longer has continuing exclusive jurisdiction.

The UCCJEA sets forth the conditions when Pennsylvania may exercise jurisdiction over a custody matter. 23 Pa.C.S.A. § 5401-5482. Under the UCCJEA, A court that has made an initial custody determination, in this Commonwealth or another state, retains exclusive, continuing jurisdiction until the original court determines that it no longer has jurisdiction *B.L. v. T.B.*, 2016 PA Super 284, 152 A.3d 1014 (Pa. Super. Ct. 2016). An initial custody determination is a permanent, temporary, initial, or modification order of a court order providing for custody with respect to a child. 23 Pa.C.S.A. § 5402. The determination of jurisdiction in a custody dispute is governed by the UCCJEA, which provides, in relevant part, that 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;

(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...

23 Pa.C.S.A. § 5421

To make an initial custody determination under this Act, a Court must be the home state. *Id.* The child's home state is the preferred basis for jurisdiction under the Act. *McCoy v. Thresh*, 2004 PA Super 429, 862 A.2d 109 (Pa. Super. Ct. 2004).

The UCCJEA defines "home state" as:

The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child six months of age or younger, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

R.M. v. J.S., 2011 PA Super 98, 20 A.3d 496, 501 (Pa. Super. Ct. 2011)

After a Court in the home state makes an initial custody determination, it retains exclusive, continuing jurisdiction over the determination until it decides otherwise. 23 Pa.C.S.A. § 5422. 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.A. §5423

The Court agrees with Mother that jurisdiction is proper in Maryland and that this Court lacks jurisdiction over the matter. On February 16, 2017, the Circuit Court for Montgomery County, Maryland, upon consideration of Defendant Mother's Emergency Motion for Temporary Custody and Plaintiff Father's Opposition thereto, entered an Order awarding Mother sole custody of the children. Although the order was entered as a result of Mother's request for emergency relief that does not automatically equate to an exercise of "temporary emergency jurisdiction." It is only under limited circumstances that a court may exercise temporary emergency jurisdiction. They include: when a child is present in the state and has been abandoned or where assertion of jurisdiction is necessary to protect the child from abuse on an emergency basis. 23 Pa.C.S.A § 5424.

It is important to note that Mother initially filed a Complaint for Custody in Maryland which Father never challenged based on jurisdictional grounds. It was only after Father, without Mother's knowledge or consent, decided to move with the children to Pennsylvania that Mother requested interim emergency relief. Because "emergency" jurisdiction is strictly temporary, it is reasonable to conclude that the Maryland Court was exercising "home state" jurisdiction and not "emergency" jurisdiction in that the Maryland Court scheduled a further hearing on Mother's complaint for custody. As mentioned, at no time did Father ever object to the Maryland Court's exercise of jurisdiction. Nor could he, as the parties, up until the time of filing of Mother's Custody Complaint, always resided in Maryland.

Accordingly, the Order granting Mother sole legal and physical custody of the children entered by the Maryland Court was an initial custody determination under the UCCJEA. That Court has not relinquished jurisdiction of this matter and thus retains continuing, exclusive

jurisdiction. Given that the Maryland Court retains jurisdiction over this matter and Mother continues to reside in Maryland, this Court cannot assume jurisdiction.


Even if Maryland does not have continuing exclusive jurisdiction, Maryland is the “home state” of the children as defined by the UCCJEA. Mother and Father presented testimony at the April hearing, each arguing that their state is where the children spent most of their time. Based upon the evidence presented, the Court finds that while the parents entered into an agreement that stated Mother would have primary physical custody with partial rights for Father, in actuality, it was closer to a shared physical custody arrangement. It is this Court’s opinion, however, that while the actual custody arrangement was closer to shared, the time spent with Father in Pennsylvania is not as significant as compared to the time spent in Maryland with Mother and her family. Maryland is where the children have spent the vast majority of their lives, where they have always attended school, where their health care providers are, and where they participate in sports and other activities. Given the foregoing, the Court concludes that Maryland is the “home state” of the children.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that it does not have jurisdiction over this matter pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act because a Court in Maryland made an initial custody determination and has not relinquished jurisdiction. Because Mother continues to reside in that state, Maryland has continuing exclusive jurisdiction. Moreover, the Court cannot conclude that the Maryland Court intended to exercise temporary emergency jurisdiction. Furthermore, based on the evidence presented this Court finds that Maryland is the home state of the children. Accordingly, Defendant Mother’s Preliminary Objections pursuant to

Pa. R. Civ. P. 1028(a)(1) are **SUSTAINED**. An Order will be entered in conformance with this Opinion.

BY THE COURT,



JOSEPH C. ADAMS, PRESIDENT JUDGE

Dated: April 13, 2018