



Ex Parte Carolin E M. Sideriu S v. Carolin E M. Siderius

2013 | Cited 0 times | Court of Civil Appeals of Alabama | January 11, 2013

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Carolin E M. Siderius ("the mother") has petitioned this court for a writ of mandamus to be issued to the Mobile Circuit Court directing that court (a) to vacate its order, entered in a divorce action brought against the mother by Kenneth V. Fordham ("the father"), awarding temporary custody of the parties' two minor children to the father, and (b) to dismiss that portion of the father's action seeking a custody determination. We deny the petition, which is the second mandamus petition filed by the mother in this matter. See *Ex parte Siderius* (No. 2110171, January 11, 2012), So. 3d (Ala. Civ. App. 2012) (table).

The attachments to the mother's mandamus petitions and to the father's responsive filings indicate that the parties' prior ceremonial marriage, during which the parties' children were born, was dissolved in 2002 by the Mobile Circuit Court;¹ however, the parties have stipulated that they entered into a new marriage at common law in 2006 while residing in Mobile County. In 2009, the mother obtained employment that required her to live in Oregon, and she moved to Oregon to accept that employment; the mother subsequently moved to Washington, also for employment-related purposes, and has become a Washington resident. The residency of the father and of the parties' minor children during that period, however, are issues that the parties adamantly dispute, although it appears undisputed that the father and the children also traveled to Oregon and then to Washington and that the children were enrolled in schools in those states.

On August 11, 2011, the father filed in the Mobile Circuit Court a complaint seeking a divorce from the mother and an award of custody of the minor children to him; he also filed an "emergency motion" seeking immediate custody of the minor children on the stated basis that the mother had frequently left the children alone or in the care of the father in order to travel with a paramour and attached as exhibits an affidavit of the parties' minor daughter and a copy of a letter she had sent to the mother that, the father said, contained "a rather thorough rendition of the explanation of why the minor children feel a strong need to live with their



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father. " We not e tha t neithe r th e affidavi t nor th e lette r were attache d as exhibit s t o th e parties ' mandamus filings . The Mobil e Circui t Cour t entere d an orde r on Augus t 12, 2011, grantin g th e father' s "emergency motion " and awardin g him custod y o f th e childre n pendent e lite , wit h th e mother havin g th e righ t t o a revie w hearin g upon request .

On Augus t 15, 2011, th e mother file d a petitio n i n th e Superio r Cour t fo r Spokane County , Washingto n ("the Washingto n cour t") , seekin g dissolutio n o f th e parties ' marriag e and an award o f custod y o f th e parties ' mino r childre n t o her ; i n tha t petitio n , she averre d tha t th e Washingto n cour t had jurisdictio n t o award custod y t o he r because , she said , Washingto n was th e "home state " o f th e childre n by virtu e o f thei r purportedl y havin g "live d i n Washingto n wit h a paren t o r a perso n actin g as a paren t fo r a t leas t si x consecutiv e months." The Washingto n cour t entere d on tha t day a showcause orde r that , among othe r things , purporte d t o direc t tha t th e childre n woul d resid e wit h th e mother durin g th e pendenc y o f proceeding s i n tha t cour t and instructe d th e fathe r t o "retur n childre n t o Spokane, Washingto n immediatel y." The mother als o file d on tha t day, i n th e Mobil e Circui t Cour t , a motio n t o dismis s th e father' s divorc e actio n pursuan t t o Rul e 12(b)(2) , Ala . R. Civ . P., whic h reference s lac k o f persona l jurisdictio n as a basi s fo r dismissal ; th e mother als o sough t t o enforc e th e Washingto n cour t' s show-cause orde r .

I t appear s that , becaus e o f th e existenc e o f paralle l custod y proceedings , an audi o teleconferenc e was hel d between th e presidin g judge s o f th e Mobil e Circui t Cour t and th e Washingto n cour t on Augus t 30, 2011 ; th e nex t day, on Augus t 31, 2011, th e mother file d a motio n t o dismis s i n th e Mobil e Circui t Cour t , allegin g lac k o f subject-matte r jurisdictio n and assertin g variou s matter s tendin g , i n th e mother' s view , t o suppor t th e exclusiv e jurisdictio n o f th e Washingto n cour t as t o th e children . On Octobe r 7, 2011, th e Mobil e Circui t Cour t , afte r havin g hel d hearing s on September 30, 2011, and Octobe r 4, 2011, a t whic h testimon y was offere d i n open cour t , denie d th e mother' s "motio n t o dismiss " withou t specifyin g whethe r it s denia l encompassed onl y th e motio n challengin g persona l jurisdiction , onl y th e motio n challengin g subject matte r jurisdiction , o r bot h motions ; however, th e reference s i n th e Octobe r 7, 2011, orde r t o th e mother' s "sufficien t minimum contact s with " Alabama indicate s tha t th e issu e o f persona l jurisdictio n was th e sol e matte r decide d . The mother petitione d thi s cour t fo r a wri t o f mandamus seekin g dismissal o f th e father' s complain t i n th e Mobil e Circui t Cour t and vacatio n o f tha t cour t' s Augus t 12, 2011, and Octobe r 7, 2011, orders ; tha t petitio n was denie d by thi s cour t . Ex part e Sideriu s (No. 2110171, Januar y 11, 2012) , So. 3d (Ala . Civ . App. 2012) (table) .

On Februar y 10, 2012, a t th e behes t o f th e mother, th e Washingto n cour t issue d an orde r i n whic h tha t cour t determine d tha t th e mino r childre n had reside d i n Washingto n fo r 17 months befor e th e fathe r had file d hi s divorc e complain t i n th e Mobil e Circui t Cour t i n Augus t 2011 and tha t th e Washingto n cour t was th e "prope r cour t " t o determin e th e custod y o f th e children ; tha t orde r note d tha t th e parties ' mino r daughte r had returne d t o th e mother' s



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car e i n Washington , whil e th e parties ' mino r son remaine d i n Alabama i n th e car e o f th e father . The mother the n sough t t o registe r th e Washingto n court' s Februar y 10, 2012, orde r wit h th e Mobil e Circui t Cour t fo r enforcement t purpose s and requeste d tha t tha t court' s August 12, 2011, custod y orde r be vacated . The fathe r resiste d enforcement t o f th e Washingto n court' s orde r , averrin g tha t he had neve r abandoned hi s Alabama residenc y and tha t th e Mobil e Circui t Cour t' s exercis e o f jurisdictio n ove r th e childre n was consisten t wit h federa l law. The Mobil e Circui t Cour t hel d a hearin g on th e issu e whethe r th e Washingto n court' s orde r was due t o be enforced ; i t appear s tha t no testimon y was offere d a t tha t hearin g t o supplemen t counsel' s arguments . On Jul y 12, 2012, th e Mobil e Circui t Cour t entere d an orde r denyin g enforcement t o f th e Washingto n court' s Februar y 10, 2012, orde r and declinin g t o vacat e it s August 12, 2011, custod y orde r . The mother' s curren t petitio n seek s revie w o f tha t Jul y 12, 2012, orde r .

As we recentl y note d i n Ex part e A.J. , [Ms. 2110879, Oct. 5, 2012] ___ So. 3d ___ (Ala . Civ . App. 2012), mandamus i s an extraordinar y remedy tha t i s t o be issue d onl y upon a showin g o f (1) a clea r lega l righ t on th e par t o f th e petitione r t o th e orde r tha t th e petitione r seeks ; (2) th e existenc e o f bot h an imperativ e dut y upon th e responden t t o perfor m and a refusa l t o do so ; (3) th e absenc e o f anothe r adequate remedy; and (4) th e prope r invocatio n o f th e reviewin g court' s jurisdictio n . See So. 3d a t . There i s no seriou s disput e tha t thi s cour t may properl y conside r a mandamus petitio n t o revie w th e propriet y o f an interlocutor y orde r denyin g a challeng e t o a tria l court' s jurisdictio n t o conside r a domestic-relatio n s actio n - an actio n as t o whic h an appea l fro m any fina l judgment woul d necessaril y fal l withi n th e appellat e jurisdictio n o f thi s cour t . See Coleman v. Coleman, 864 So. 2d 371, 373 (Ala . Civ . App. 2003) , and Ala . Code 1975, §§ 12-3-10 and 12-3-11. Thus, th e salien t issue s presente d by th e mother' s petitio n ar e he r righ t t o relie f and, i f any, th e dut y o f th e Mobil e Circui t Cour t t o perfor m appropriat e action s t o effec t tha t relief .

The mother contend s tha t th e Mobil e Circui t Cour t' s Jul y 12, 2012, orde r , and indee d al l o f it s orde r s t o dat e touchin g and concernin g custod y o f th e parties ' mino r children , ar e voi d fo r lac k o f subject-matte r jurisdictio n . She has asserted , bot h i n th e Mobil e Circui t Cour t and i n thi s cour t , tha t Washington , no t Alabama , i s th e "home state " o f th e childre n fo r purpose s o f determinin g jurisdictio n unde r th e Unifor m Chil d Custod y Jurisdictio n and Enforcement t Ac t ("the UCCJEA") as codifie d i n Alabama (see Ala . Code 1975, § 30-3B-101 e t seq.) . Generall y speakin g , an d i n th e absenc e o f a temporar y emergency, th e UCCJEA, i n th e state s tha t have adopte d i t (such as Alabama an d Washington) , forbid s th e court s o f an adoptin g stat e fro m makin g an initia l child custod y determinatio n unles s (1) th e foru m stat e i s th e "home state " o f th e chil d o r was th e child' s "home state " durin g th e precedin g si x months i f a paren t o r a perso n actin g as a paren t continue s t o resid e i n tha t state ; (2) th e court s o f th e child' s "home state " declin e jurisdictio n ; o r (3) ther e exist s a necessit y tha t th e foru m stat e asser t custod y jurisdictio n i n th e absenc e o f any cour t tha t woul d otherwis e have suc h jurisdictio n . Ala . Code 1975, § 30-3B-201(a) . I n turn , a child' s "home state " unde r th e UCCJEA i s th e stat e i n whic h he o r she ha s live d wit h a paren t o r a parenta l figur e fo r a t leas t si x consecutiv e months befor e a



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custody proceeding is commenced, including temporary absences. Ala. Code 1975, § 30-3B-102(7).

The mother contends that, at the time that the father initiated the divorce action in the Mobile Circuit Court from which this petition arises, the parties' minor children had lived in Oregon and Washington for a period of over two years and that Alabama was not the minor children's "home state" for that reason. However, the mother has submitted no evidence that she might have relied upon in the Mobile Circuit Court as potentially supporting her position; she has, in both mandamus proceedings, filed copies only of her motions and briefs and the order of the Washington court.² Notably, the affidavits of, and the letter authored by, the parties' minor daughter, which documents were submitted by the father to the Mobile Circuit Court in support of his August 11, 2011, filings, have not been submitted to this court, nor do we have any transcript or statement of evidence adduced in the Mobile Circuit Court on September 30, 2011, and October 4, 2011, that might have persuaded that court to conclude that it, and not the Washington court, had "home state" jurisdiction notwithstanding the extended absence of the children and the father from Alabama.

As was the case in *Ex parte A.J., So.* 3d at -, "we have no way of knowing what transpired during" those evidentiary hearings so as to be able to properly conclude that the Mobile Circuit Court has acted outside its discretion in determining that it has jurisdiction; similarly, the mother's filings in the Mobile Circuit Court, although relatively lengthy and presenting her position regarding the children's residency with singular force, are not themselves evidence. See *id.* Because the Mobile Circuit Court had some evidence before it - evidence to which this court is not privy - and because there is no indication that the mother presented any evidentiary material to the Mobile Circuit Court between the denial of her first mandamus petition and the entry of that court's July 12, 2012, order, we cannot conclude that the mother has demonstrated a clear legal right to the relief sought in her petition. *Ex parte A.J., supra.* The petition is, therefore, denied.

The mother's and the father's requests for attorney fees are denied.

PETITION DENIED.

Thompson, P.J., and Bryan and Moore, JJ., concur. Thomas, J., recuses herself.

1. We have taken judicial notice of the filing and materials in the mandamus proceeding previously filed by the mother. See *Goetsch v. Goetsch*, 990 So. 2d 403, 411 n.1 (Ala. Civ. App. 2008).

2. The order of the Washington court that the mother sought to register, although containing statements supportive of the mother's position regarding the residency of the parties' minor children, appears to have been prepared by the mother's Washington attorney and to have been the product of an ex parte proceeding rather than an adversarial process involving litigation of jurisdictional questions. We note that, under Alabama law, a



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defendant in a foreign civil action, such as the father here, is free to ignore judicial proceedings and to later challenge that judgment on jurisdictional grounds in a collateral proceeding, such as the mother's proceeding to register the foreign judgment in Alabama. See *Lanier Worldwide, Inc. v. Crum*, 976 So. 2d 451, 453 (Ala. Civ. App. 2007).

