

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOHN K. HAMILTON

APPELLANT

VS

NO. 2015-IA-01260-SCT

KIDRON S. WISE YOUNG

APPELLEE

APPEAL FROM THE CHANCERY COURT OF LEE COUNTY, MISSISSIPPI

BRIEF OF APPELLEE, KIDRON S. WISE YOUNG

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Counsel for the Appellee, Kidron S. Wise Young, hereby certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. John K. Hamilton, Appellant
2. Kidron S. Wise Young, Appellee
3. Honorable T.K. Moffett, Attorney representing Kidron S. Wise Young, Appellee
4. Honorable Roy O. Parker, Jr., Attorney representing Kidron S. Wise Young Appellee,
5. Honorable William W. Smith, Attorney representing John K. Hamilton, Appellant.

RESPECTFULLY SUBMITTED,

/s/ Roy O. Parker Jr.
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STATEMENT OF ISSUES

1. Whether the Defendant/Appellant is estopped from challenging an order of the Chancery Court two (2) years after entry of the order, by filing a Motion to Dismiss for lack of jurisdiction. The order being challenged is Judge Littlejohn's order of July 30, 2013, nunc pro tunc July 15, 2013. Appellant/Defendant's Motion to Dismiss was filed July 10, 2015 pursuant to MRCP 12(b)(1), an affirmative defense for Lack of jurisdiction over the subject matter.

2. Once Mississippi assumed jurisdiction based on an agreement by Ohio, and upon finding that Mississippi was the more convenient forum, can it be challenged by a Court in Ohio without finding Ohio is the more convenient forum. Ohio was under a duty to make a finding of fact that it was the more convenient forum, and to communicate with Mississippi regarding jurisdiction. Ohio made no findings regarding forum after agreeing to transfer jurisdiction to Mississippi.

SUMMARY OF THE ARGUMENT

Defendant/Appellant John Hamilton failed to object to Mississippi jurisdiction for two years. Both Kidron Young and Hamilton, with counsel present, were in Judge's chambers for the conference call when Chancellor Littlejohn called the Ohio Court, and made the agreement to transfer jurisdiction to Mississippi. An order was entered reflecting the registration of the Ohio Judgment and giving full faith and credit pursuant to MCA S 93-27-313, as well as the Court assuming jurisdiction over all issues related to the minor child, including but not limited to: custody, visitation and support. No appeal of that order was made. It became a final order.

Then, two years later, in response to a *Complaint for Modification and Other Relief*, Hamilton objected to Mississippi jurisdiction for the first time, by filing a Motion to Dismiss for Lack of Jurisdiction under MRCP Rule 12 (b)(6).

Ohio transferred jurisdiction to Mississippi in accordance with the UCCJEA. The Ohio judgment of divorce was registered in Mississippi in response to Kidron filing a *Complaint for Registration of Judgment Entry and Decree in Divorce and for Modification* in Lee County Chancery Court. No further orders from Ohio were requested to be registered in Mississippi. Hamilton continued to litigate in Ohio, (related to property division, which Mississippi did not assume jurisdiction over, as well as modification of visitation) in spite of Mississippi assuming jurisdiction as to the minor child. Hamilton never had Ohio determine that it was the state with the more convenient forum.

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ARGUMENT

I. STATEMENT OF FACTS

- A.** The parties were divorced in Ohio in 2010. In July 2013, the Chancery Court of Lee County Mississippi registered the Ohio Judgment granting full faith and credit to the Ohio Judgment. Noting that the minor and her mother lived in Mississippi, and had so for some several years, the Mississippi Court assumed jurisdiction of all matters relating to the minor child including, but not limited to: custody, visitation and support. The judgment was entered after the Chancellor conducted a telephonic conference with the Ohio Judge, with both parties present with their attorneys, in accordance with the UCCJEA. Ohio relinquished jurisdiction to Mississippi in that telephonic conference. That order was not appealed.
- B.** Plaintiff/Appellee Kidron Young, hereafter Kidron, filed a Complaint for Modification and Other Relief on May 27, 2015. (C.P. 068-075). Defendant/Appellant John Hamilton, hereafter Hamilton, filed an Answer and a Motion to Dismiss for lack of subject matter jurisdiction.

II. TWO YEARS IS TOO LATE TO CHALLENGE JURISDICTION

A. FAILURE TO APPEAL THE JULY 30, 2013 ORDER

The Mississippi Order assuming jurisdiction over the minor child was entered on July 30, 2013. (C.P. 066-067; A.R.E. 01-02) It became a final order thirty days after it was entered since it was never appealed, nor was any post-trial motion challenging it filed. The timely filing of a Notice of Appeal is jurisdictional. *Smith v. Parkerson Lumber, Inc.*, 890 So.2d 832, 834 (Miss. 2003). Because Hamilton never appealed the July 30, 2013 order, this Court lacks jurisdiction. The time for appealing expired some two years before Hamilton objected.

III. THE LEE COUNTY CHANCERY COURT PROPERLY ASSUMED JURISDICTION

- a. Kidron filed a Motion to have the Chancery Court of Lee County register the Ohio Divorce Order and to assume jurisdiction over the minor child. In accordance with MCA § 93-27-203, *Jurisdiction To Modify Determination*, the Chancellor held that the Ohio court relinquished jurisdiction during a conference call from Chancellor Littlejohn with the Ohio Judge, in which both parties were present. (C.P. 103-104; A.R.E. 03-04) The Chancellor further held that Mississippi was a more convenient forum under MCA § 93-27-207. (C.P. 103-104; A.R.E. 03-04)
- b. At the time Kidron filed her Modification, Mississippi was the home state of the child, and Ohio had relinquished jurisdiction. Lee County Chancery Court Order of August 12, 2015. (C.P. 103-104; A.R.E. 03-04)

- c. The UCCJEA only allows one court to assert jurisdiction after an initial custody decision has been made. MCA § 93-27-201. A court that issued the initial custody decision generally has continuing jurisdiction over the minor, however, if only one party remains in the state, another state may modify the decision if the issuing court finds that neither the child, nor the child and one parent, have a significant connection with the state, and that substantial evidence is no longer available in the issuing state. MCA § 93-27-202,203.

In this case, Kidron and the minor child no longer have significant connections with Ohio, and current and future evidence relating to custody would be in Mississippi. The Chancellor ruled that because of the length of time that Kidron and the minor child lived in Mississippi, that Mississippi was the more convenient forum. (C.P. 103-104; A.R.E. 03-04)

- d. The Chancellor applied the correct standard of law, stated on the record his review of the factors under the UCCJEA that established jurisdiction in Mississippi, and made a factual finding that the Ohio Court relinquished jurisdiction during the conference call with the Ohio Judge. (C.P. 109; A.R.E. 09)

IV. THE CHANCELLOR ASSUMED JURISDICTION ACCORDING TO UCCJEA REQUIREMENTS

- a. MCA § 93-27-201 states that if a home state declines jurisdiction, a state with significant connections to the child and the action may take jurisdiction. MCA § 93-27-201 (b) states that a court of another state does

not have jurisdiction if that state has declined to exercise jurisdiction and that the child and at least one parent have a significant connection with this state. Chancellor Littlejohn made a finding of fact that the Ohio Court relinquished jurisdiction to Mississippi. (C.P. 066-067; A.R.E. 01-02) The Chancellor further held that Mississippi was the proper forum based on the residency of the parties' minor child. (C.P. 066-067; A.R.E. 01-02) Then the chancellor ruled that Mississippi was assuming jurisdiction over all issues related to the minor.

- b. MCA § 93-27-305 specifies the procedure for Registering a child custody determination. Section (6) states that confirmation of a registered order precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. Clearly contesting the Mississippi Court assuming jurisdiction over all the issues related to the minor was a matter that could have been asserted at the time of registration. By failing to contest Mississippi's jurisdiction, Hamilton has conceded Mississippi assumed jurisdiction in July of 2013.

- c. Mississippi's Three-Part Test: MCA § 93-23-5

Mississippi Courts are required to apply a three-part test when ruling on jurisdiction between two states. *Bridges v Bridges*, 910 So.2d 1156 (Miss. Ct. App. 2005). Mississippi must first review jurisdiction under the applicable statutes, and then decide if the other state prohibits Mississippi from assuming jurisdiction. Last, they must determine whether Mississippi is the most convenient forum. MCA § 93-23-5 outlines the criteria.

Chancellor Littlejohn applied MCA § 93-23-5 and determined that the

minor and her mother had been residing in Mississippi for several years, that no order from Ohio forbid another court from assuming jurisdiction, and that Mississippi was the most convenient forum based on significant connections that the mother and minor child have in Mississippi.

V. Hamilton has failed to prove Ohio has retained jurisdiction

- a. The “Order” of the Ohio Court of August 21, 2013 is not certified to be a true and correct copy. (C.P. 073-075)
 - i. The Ohio August 21, 2013 order does not address the proceeding that had just occurred in Mississippi (Order of July 30, 2013-C.P. 066-067; A.R.E. 01) Therefore, it is questionable as to whether it complied with the UCCJEA. It was not signed by Kidron’s attorney, giving the impression that her attorney was not present at the time the order was presented. There is no UCCJEA affidavit from Ohio made a part of the record here.
- b. The “Order” of the Ohio Court of November 1, 2014 is not certified to be a true and correct copy. On its face, it states that the matter comes before the Court upon the recommendation of the Muskingum County Department of Job and Family Services, Child Support Division. It does not state that Kidron had notice of the proceeding. It does state that the Child Support Division has completed a review of the existing child support order and has submitted its Findings and Recommendations to the Court. (C.P. 083-089) The order states “Neither party requests a court hearing to review these findings or recommendations. Nowhere in

the order does it state that the parties had notice. The “order” appears to be a summary proceeding without notice to Kidron. It does not state that Kidron had notice.

- i. No proof was introduced to show that Kidron had notice of any Ohio proceeding in November of 2014.

VI. CONCLUSION

- a. Hamilton failed to appeal the Order of July 30, 2013, nunc pro tunc to July 15, 2013, that ruled Mississippi had jurisdiction over the minor, and all matters regarding the minor. Hamilton’s failure to appeal this decision necessarily means that he conceded that Mississippi had jurisdiction. Regardless of his concession, his failure to appeal allowed the July 30, 2013 order to become final, and established the continuing jurisdiction of Mississippi.
- b. Hamilton failed to introduce evidence to prove that Ohio retained jurisdiction. The Lee County Mississippi order of July 30, 2013 established jurisdiction. Hamilton did not provide any evidence refuting that jurisdiction.
- c. The Lee County Chancery Court properly followed the Mississippi statutes concerning the UCCJEA, and found that Mississippi had jurisdiction over the minor, and that Mississippi was the most convenient state to have jurisdiction.

THEREFORE, this Court should dismiss this Interlocutory Appeal, and award costs and attorney’s fees to the plaintiff/appellee Kidron Young.

Respectfully submitted, this the 6th day of July, 2016.

/s/ Roy O. Parker, Jr.
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CERTIFICATE OF SERVICE

I, ROY O. PARKER, JR., Attorney for the Appellee, Kidron S. Wise Young, do hereby certify that I have, this date, filed the above and foregoing Motion for Enlargement of Time using the Court's MEC system, which sent notification to the following Counsel of record for the Appellant:

Honorable William Wayne Smith

attorney@booneville.ms

This the 6th day of July, 2016.

/s/ Roy O. Parker, Jr.
ROY O. PARKER, JR.