FILED
JUN 15 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE CUSTODY OF
WITT McCALL FEATHERSTON and WILLIAM MATTHEW FEATHERSTON

Upon the Petition of)
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WILLIAM MATTHEW FEATHERSTON, III,)
)
Petitioner-Appellant,)
)
And Concerning)
)
REBECCA SMITH FEATHERSTON,)
)
Respondent-Appellee.

9-190
88-1498

Appeal from the Iowa District Court for Keokuk County (CE195-0488), Dan Morrison, Judge.

William appeals from the district court's order declining jurisdiction of his custody petition. **AFFIRMED.**

Thomas M. Walter of Johnson, Hester & Walter, Ottumwa, for petitioner-appellant.

Benny B. Waggoner, Fairfield, for respondent-appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

PER CURIAM 51

This is a child custody dispute. The Iowa District Court for Keokuk County declined to accept jurisdiction of this matter. The district court determined Texas was the proper forum, pursuant to section 598A.1 and 598A.3, Code of Iowa (1987). Petitioner, William appeals. We affirm.

Our scope of review is de novo. Iowa R. App. P. 4.

Petitioner, William Matthew Featherston, III (William), was born and raised in Elk City, Oklahoma. Respondent, Rebecca "Smith Featherston (Rebecca), was a lifetime resident of Texas until June 1985. The parties were married and resided in Texas until they moved to Fairfield, Iowa, in June of 1985. They have two sons: Witt, born July 1, 1981, and Matt, born July 17, 1984. In September, 1986, the family moved back to and resided in Texas. In August 1987 William and Rebecca separated. In September 1987 William returned to Iowa to resume his former job.

Rebecca filed a divorce action March 30, 1988, in Texas. She requested custody of their two boys. On April 11, 1988, William filed this action requesting custody under Iowa Code chapter 598A, designated "Uniform Child Custody Jurisdiction." Texas, also, has adopted the Uniform Child Custody Jurisdiction Act (UCCJA). William claims the boys came to live with him, and Rebecca alleges the boys went to Iowa for a visit with William and were not returned.

The Texas court held a hearing concerning the "home" state of the children. Both parties appeared on June 10, 1988, and presented evidence. The Texas court found the boys' home state was Texas and took jurisdiction of the custody matter. The Iowa district court, on August 2, 1988, stayed all proceedings in Iowa until such time as communications were had between the courts of both states. The Iowa and Texas judges corresponded by a letter each to the other in August of 1988. A hearing was held in the Keokuk County Courthouse on September 12, 1988, and William testified and the parties' attorneys presented their arguments to the court. On September 19, 1988, the Iowa district court filed its "Order Re: Jurisdiction" and held there was nothing in the record indicating William failed to present all of his evidence at the Texas hearing and further found Texas is the proper forum, pursuant to sections 598A.1 and 598A.3, Code of Iowa. It was also ordered Iowa lacked jurisdiction over the custody determination and withdrew the stay order.

A hearing was held July 27, 1988, in the Texas court on the Texas divorce action filed by Rebecca. A Final Decree of Divorce was signed by the presiding judge in Texas an September 27, 1988, and filed in the clerk's office in Keokuk County, Iowa, on October 4, 1988. Rebecca was given custody of the two boys as their "Sole Managing Conservator."

In this appeal William contends Iowa is the most appropriate forum for a custody determination under the UCCJA. He claims Iowa has the closest connection to the children, and the best access to relevant information, because the children are physically located here and because their baby-sitters, teachers, school records, and medical records are here. On the other hand, Rebecca asserts all of her relatives live in Texas and William's relatives live in Oklahoma. The oldest boy, Witt, was enrolled in the Corsicana, Texas school district at the time he went to visit his father on November 15, 1987, and the youngest boy, Matt, was enrolled in the County Day Care Center in Corsicana. The boys' enrollments were left open for their expected return. Witt participated in organized sports in Texas. The parties and their children's medical and financial records were in Texas at the time she filed for divorce. Rebecca also claims William knew she was going to file for divorce in Texas. It had been discussed between them for months. They had even discussed settlement agreements. She claims he intentionally misled her in order to obtain time to file in Iowa. She also claims she permitted the boys to visit William in Iowa based upon his promise to return them to her in two months and upon his assurance custody would be agreed to in the Texas divorce.

Iowa's legislative intent in enacting the UCCJA is embodied in Iowa Code section 598A.1. We set it out as follows:

> The general purposes of this chapter are to:
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> 1. Avoid jurisdictional competition and conflict with courts of other states in matters of child custody, which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.
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> 2. Promote cooperation with the courts of other states to the end that a custody decree is rendered in the state which can best decide the case in the interest of the child.
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> 3. Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and the family have the closet connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and the family have a closer connection with another state.
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> 4. Discourage continuing controversies over child custody, in the interest of greater stability of home environment and of secure family relationships for the child.
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> 5. Deter abductions and other unilateral removals of children undertaken to obtain custody awards.
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> 6. Avoid relitigation of custody decisions of other states in this state insofar as feasible.
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> 7. Facilitate the enforcement of custody decrees of other states.
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> 8. Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.
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> 9. Make uniform the law of those states which enact it.

This chapter shall be construed to promote the general purposes stated in this section.

Iowa Code section 598A.3 designates the criteria to confer jurisdiction in Iowa as follows:

1. A court of this state which is competent to decide child custody matters has jurisdiction to make a custody determination by initial or modification decree if:

a. This state is the home state of the child at the time of commencement of the proceeding, or had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state; or

b. It is in the best interest of the child that a court of this state assume jurisdiction because the child and the child's parents, or the child and at least one contestant, have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

c. The child is physically present in this state, and the child has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

d. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph "a," "b," or "c," or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that this court assume jurisdiction.

2. Except under paragraphs "c" and "d" of subsection 1, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a custody determination.

3. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine custody. (Emphasis added.)

Iowa Code section 598A.6 designates when jurisdiction shall be withheld in Iowa and we recite that section as follows:

> A court of this state shall not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child as pending in a court of another state exercising jurisdiction substantially in conformity with this chapter, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.
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> Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under section 598A.9 and shall consult the child-custody registry established under section 598A.16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.
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> If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending, to the end that the issue may be litigated in the more appropriate forum and that information may be exchanged in accordance with sections 598A.19 to 598A.22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court, to the end that the issues may be litigated in the more appropriate forum.

The evidence presented to the Texas court on June 10, 1988, supports that court's determination the "home state" of the children at the time Rebecca commenced her divorce proceedings was Texas. The day care and school records shows the boys were last in attendance on November 15, 1987. She is one of their natural parents. She was a resident of Texas and the boys lived with her. She filed her petition and the divorce action was pending as of March 30, 1988. The boys had lived with her in Texas within six months of the time involved. She requested custody of the boys in her divorce petition. She did not remove the boys from the State of Texas. William caused the boys' removal from their home state of Texas and has prevented their return.

The underlying policy of the UCCJA is to eliminate jurisdictional fishing with children as bait. Barcus v. Barcus, 278 N.W.2d 646, 649 (Iowa 1979) (citations omitted). Here the boys were absent from Texas because of retention by William, who is claiming custody. See Pierce v. Pierce, 287 N.W.2d 879, 883 (Iowa 1980).

We hold Texas is the proper forum for this case and jurisdiction in Iowa is lacking. Because of our decision on this issue, it is not necessary for this court to address Rebecca's Application for Temporary Order of Visitation. The Texas Final Decree of Divorce is binding on both parties.

The district court is affirmed in all respects.

AFFIRMED.