**IN THE COURT OF APPEALS OF IOWA**

No. 0-422 / 99-1559
Filed August 30, 2000

**IN RE MARRIAGE OF JOLENE M. JOHNSON AND JOHN H. JOHNSON,**

FILED
AUG 30 2000
CLERK SUPREME COURT

**Upon the Petition of**
**JOLENE M. JOHNSON,**
**Petitioner-Appellant,**

**And Concerning**
**JOHN H. JOHNSON,**
**Respondent-Appellant.**

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Appeal from the Iowa District Court for Cass County, Timothy O'Grady, Judge.

The petitioner appeals the district court's grant of respondent's motion to dismiss based on the lack of personal jurisdiction. **AFFIRMED.**

Robert Kohorst of Kohorst Law Firm, Harlan, for appellant.

J. C. Salvo and Richard C. Schenck of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

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**ZIMMER, J.**

Petitioner Jolene Johnson appeals the district court's grant of John Johnson's motion to dismiss her modification petition. She argues the court had personal jurisdiction over John Johnson because he had sufficient minimum contacts with Iowa. We affirm.

Jolene and John married in Iowa in 1989. They have two children: Dakota, born in July of 1993 and Devin, born in October of 1994. Jolene and the children moved to Iowa on February 4, 1996, but John remained in South Dakota. The marriage was dissolved on May 15, 1996, in South Dakota. Jolene was named the primary physical caretaker. John was granted visitation and ordered to pay child support. After the dissolution, John maintained his residency in South Dakota and Jolene and the children continued to live in Iowa.

On December 12, 1997, Jolene filed a petition to modify the visitation and child support provisions of the South Dakota dissolution decree. She filed the petition in Iowa pursuant to Iowa Code Chapter 598A.[1] John filed a motion to dismiss on January 5, 1998, contending he did not have sufficient minimum contacts with Iowa for its courts to assume personal jurisdiction over him. An unreported hearing was held on August 17, 1998. The trial court found Jolene failed to establish personal jurisdiction over John and dismissed the modification petition.

Jolene appeals. She contends John had sufficient minimum contacts with Iowa for jurisdictional purposes.

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[1] Chapter 598A was repealed by 1999 Iowa Acts ch. 103, § 47. A new version of the Uniform Child Custody Jurisdiction Act became effective July 1, 1999, and is codified in Iowa Code chapter 598B. We apply chapter 598A since it was in effect at the time this modification action was commenced. *See* Iowa Code § 598B.402 (1999).

***I. Scope of Review.*** Lack of personal jurisdiction is properly raised by a pre-answer motion to dismiss. *See* Iowa R. Civ. P. 88(a). Jolene contends our review is de novo. Although we review a district court's modification of a dissolution decree de novo, *see In re Marriage of Rietz,* 585 N.W.2d 226, 229 (Iowa 1998), we review the district court's grant of a motion to dismiss for errors of law. *See State v. Clark*, 608 N.W.2d 5, 7 (Iowa 2000) (reviewing resolution of jurisdictional issue for correction of errors of law); *Sanford v. Manternach*, 601 N.W.2d 360, 363 (Iowa 1999) (reviewing grant of motion to dismiss for errors of law). When reviewing a ruling on a motion to dismiss for lack of personal jurisdiction, the trial court's findings of fact have the effect of a jury verdict and are subject to challenge only if unsupported by substantial evidence in the record. *Twaddle v. Twaddle,* 582 N.W.2d 518, 519-20 (Iowa App. 1998). However, we are not bound by the trial court's application of legal principles or its conclusions of law. *Id.* (citation omitted).

***II. Jurisdiction under Iowa Code Chapter 598A.*** Jolene claims because the parties married in Iowa and John routinely comes here to visit family, John has minimum contacts with Iowa. We find the parties erroneously frame the issue as a minimum contacts one. We must first determine whether Iowa courts may modify a South Dakota order regarding visitation and child support; if not, then personal jurisdiction is irrelevant. Although the district court did not base its ruling on this ground, we can uphold the trial court's ruling on any ground apparent from the record. *See Sievers v. Iowa Mut. Ins. Co.*, 581 N.W.2d 633, 636 (Iowa 1998) (citing *Bensley v. State,* 468 N.W.2d 444, 445 (Iowa 1991)).

***A. Custody Modification.*** All orders relating to custody are subject to Iowa Code Chapter 598A (now 598B), the Uniform Child Custody Jurisdiction Act ("UCCJA"), *see* Iowa Code § 598.21(6), and the federal Parental Kidnapping Prevention Act of 1980 ("PKPA"). *See* 28 U.S.C. §1738A; *see also In re Guardianship of T.H.*, 589 N.W.2d 67, 68 (Iowa 1999). In an increasingly mobile society, state courts are called upon to rule in matters involving children who have already been the subject of rulings in courts of another state. *T.H.*, 589 N.W.2d at 68. The premise of both the PKPA and the UCCJA is that a state court should not modify the decree entered by another state unless that other state no longer retains jurisdiction in the matter. *See* 28 U.S.C. § 1738A(d); *T.H.*, 589 N.W.2d at 68.

The PKPA provides in pertinent part:

> (a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.
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> (b) As used in this section, the term—
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> . . .
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> (3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;
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> . . .
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> (5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;
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> . . .
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> (9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.
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> . . .

> (g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.
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> (h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

28 U.S.C. § 1738A.

Certain requirements must be met under the PKPA before Iowa courts have jurisdiction to modify the South Dakota order: Iowa must qualify as the child's "home state," South Dakota must no longer have jurisdiction and must have declined to exercise jurisdiction to modify its prior order. *See* 28 U.S.C. § 1738A(f)(1) and (2); *T.H.*, 589 N.W.2d at 69. The "home state" is defined as the state in which the child lived with a parent for at least six consecutive months before institution of the current proceeding. *See* 28 U.S.C. § 1738A(a)(4).

Clearly, this modification proceeding is a 'custody determination' or a 'visitation determination' within the meaning of the PKPA. Iowa also qualifies as the children's home state. However, Iowa's jurisdiction fails under the other requirements of the PKPA because South Dakota continues to exercise jurisdiction. John's motion to dismiss reveals that as recently as December 15, 1997 (three days *after* Jolene filed her modification petition in Iowa), the South Dakota courts addressed a holiday visitation problem between the parties. Jolene apparently filed her modification petition in Iowa only after John had sought relief on the visitation problem in South Dakota. We also have no evidence of any determination by South Dakota courts that they do not have

jurisdiction. It is not the role of Iowa appellate courts, in resolving PKPA disputes, to explore and resolve challenges to the authority of another state's courts to issue orders. *See T.H.*, 589 N.W.2d at 69. The South Dakota court purported to enter its order involving children over which courts of that state had claimed jurisdiction for several years. We think the jurisdiction claimed by South Dakota bars Iowa jurisdiction. *See id.* at 69. Jolene's modification petition was properly dismissed under 28 U.S.C. §1738A(g) and (h) because a South Dakota proceeding was pending when she filed her modification petition in Iowa and because South Dakota had apparently not declined to exercise jurisdiction. Because the PKPA bars jurisdiction, we do not need to analyze the claim under the UCCJA. *See id.*

***B. Child Support Modification.*** Actions to obtain or modify child support are not governed by the UCCJA but rather by the Uniform Interstate Family Support Act ("UIFSA"). *See* Iowa Code § 252K.904 (stating that chapter 252K took effect January 1, 1998, but applies to matters pending on that date). We determine Iowa courts do not have continuing and exclusive jurisdiction necessary to modify the original South Dakota child support order.

Iowa Code section 252K.611 governs modification of another state's child support order:

> 1. After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if section 252K.613 does not apply and after notice and hearing it finds that paragraph "a" or "b" applies:
> a. The following requirements are met:
> (1) The child, the individual obligee, and the obligor do not reside in the issuing state.
> (2) A movant who is a nonresident of this state seeks modification.

> (3) The respondent is subject to the personal jurisdiction of the tribunal of this state.
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> b. The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents to the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. . . .

Section 252K.613 provides:

> 1. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order. . . .

Section 252K.613 does not apply because all of the parties do not reside in this state. We also do not have jurisdiction under section 252K.611(1) because neither subparagraph (a) nor (b) applies. For subparagraph (a) to apply, the situation must be that *no* party resides in the issuing state (South Dakota). Here, the obligor (John) continues to reside in South Dakota. Subparagraph (b) requires that the parties be subject to the personal jurisdiction of this state and file written consents in the issuing state in order for this state to be able to modify the support order. There is no evidence these parties filed any such consents in South Dakota. Furthermore, it does not appear Iowa has personal jurisdiction over John. *See In re Marriage of Crew*, 549 N.W.2d 527, 530 (Iowa 1996) (holding nonresident father's contacts with resident children, although frequent, were unrelated to claim for modification of child support and, therefore, insufficient to establish personal jurisdiction). While John occasionally comes to Iowa to visit other family members, the record indicates that the children spend their visitation time with him in South Dakota. In *Crew*, the supreme court stated: "The focus, for jurisdictional purpose, rests on the defendant's connection with the *litigation* in the forum state, not the defendant's

that state." *Crew*, 549 N.W.2d at 530 (emphasis in original) (citations omitted). We affirm the trial court's grant of John's motion to dismiss.

**AFFIRMED.**