

Case Number: 291740-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

ALLAN and HILARY SNODGRASS,

Respondents,

v.

ROGER JOLICOEUR and JUDY WILEY

Appellants.

RESPONDENTS' BRIEF

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. STATEMENT OF THE CASE.....1

III. ARGUMENT.....3

a. THE TRIAL COURT HAD THE LEGAL DUTY TO DISREGARD THE ERRONEOUS CALIFORNIA RULING.....3

b. THE TRIAL COURT THE TRIAL COURT PROPERLY FOUND CALIFORNIA DID NOT HAVE JURISDICTION UNDER CALIFORNIA LAW.....4

c. THE TRIAL COURT PROPERLY RULED THAT WASHINGTON HAS JURISDICTION TO MODIFY THE CALIFORNIA RULING.....5

1. Washington satisfies the first prong of RCW 26.27.221 because it was the home state.....6

2. Washington satisfies the second prong of RCW 26.27.221 two ways.....9

IV. CONCLUSION.....10

TABLE OF AUTHORITIES

WASHINGTON CASES

Custody of A.C., 165 Wn.2d 568, 574, 200 P.3d 689 (2009).....7, 8, 9,
In Re: Marriage of Tostado, 137 Wn.App. 136, 151 P.3d 1060 (2007)....7, 9
In re Marriage of Thurston, 92 Wash.App. 494, 497, 963 P.2d 947
(1998).....3

CALIFORNIA CASES

In re Marriage of Nurie, 176 Ca.App. 4th 478 (2009).....4

WASHINGTON STATUTES

RCW 26.27.201 6, 8, 9
RCW 26.27.221.....5, 6, 10
RCW 26.27.421..... 3

CALIFORNIA STATUTE

Section 3422 of the California code4

I. INTRODUCTION

The Respondents request the court affirm the trial court's ruling that Washington has jurisdiction in this matter.

II. STATEMENT OF THE CASE

During respondent Allan Snodgrass' marriage to Sherise Snodgrass, they had two children, Megan Joy and Matthew Allan Snodgrass. Megan was born on October 13, 1999. Matthew was born on July 16, 2001. Allan Snodgrass ("Allan") and Sherise Snodgrass ("Sherise") dissolved their marriage on July 15, 2004, in California. Sherise and Allan agreed to share joint legal and physical custody of their children. Sherise died in a car accident on March 24, 2006. (CP 121).

After Sherise's death, Allan became the sole guardian of the children, who lived with him full time. In April of 2006, Allan and the children moved to Washington State. Allan and the children have lived continuously in Washington State since April of 2006. In June of 2007, Allan married respondent Hilary Brown, now Hilary Snodgrass. (CP 122, 127-27).

Appellants Jolicoeur and Wiley are the parents of Sherise Snodgrass. After Allan, Megan and Matthew moved to Washington, the appellants made no attempts to visit the Megan or Matthew. In fact, Wiley has seen Megan and Matthew only once in the past three years. Jolicoeur has not seen Megan and Matthew at all in the past three years. (CP 122). The appellants have no relationship of any type with Megan or Matthew. (CP 122-23).

In spite of having no relationship with the children and 18 months after the children left California, the appellants filed a petition in the dissolution matter in Riverside County, California, to obtain grandparent rights over Megan and Matthew. (CP 22). Since the inception of that action, the Snodgrasses have contended that California lacks jurisdiction. (CP 111, 240). The California denied their jurisdiction challenge and found that California was the home state. (CP 13).

On September 9, 2009, the Snodgrasses filed this complaint for declaratory relief. On September 12, the appellants were served with copies of the summons and complaint. (CP 133-139). After this matter was started, the California court entered a Statement of Decision. (CP 18-20).

The respondents moved for summary judgment that the court had jurisdiction, that the Snodgrasses had full and complete control over their children and that the appellants did not have any rights to the children. (CP 146).

On April 16, 2010, the parties presented oral argument before the Honorable Greg Sypolt. (See RP). On April 21, 2010, the Honorable Greg Sypolt granted the Snodgrasses' motion in its entirety. (CP 96-98).

Judge Sypolt drafted an insightful order articulating his findings. He correctly found that Washington was the home state of the children and Mr. Snodgrass since they had lived in Washington since 2006. (CP 96-97). Judge Sypolt properly noted that he would not enforce the California order because it was "not in substantial conformity with the UCCJEA, Article 3." (CP 97). Judge

Sypolt also found that he had “jurisdiction to determine this matter and/or modify the California order.” (CP 97). Judge Sypolt ordered the plaintiffs were entitled to judgment as a matter of law. (CP 98).

The Snodgrasses request this court affirm the trial court’s ruling that Washington has jurisdiction in this matter.

III. ARGUMENT

The appellants failed to state the standard of review in their brief. This court reviews the lower court’s jurisdiction ruling de novo. *In re Marriage of Thurston*, 92 Wash.App. 494, 497, 963 P.2d 947 (1998).

a. THE TRIAL COURT HAD THE LEGAL DUTY TO DISREGARD THE ERRONEOUS CALIFORNIA RULING.

The essence of the appellants’ fallacious argument is that Judge Sypolt was required to enforce the California order. Judge Sypolt properly noted that he would not enforce the California order because it was “not in substantial conformity with the UCCJEA, Article 3.” (CP 97).

Article 3 of the UCCJEA is codified, in part, as RCW 26.27.421 and expressly allows a Washington court not to enforce another state’s order.

(1) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

RCW 26.27.421.

Judge Sypolt acted in accordance with the UCCJEA when he ruled that Washington had jurisdiction and did not follow the California ruling. As proven below, the California court's decision that it had jurisdiction violated the UCCJEA. Therefore, the Snodgrasses request the court affirm Judge Sypolt's ruling.

b. THE TRIAL COURT PROPERLY FOUND CALIFORNIA DID NOT HAVE JURISDICTION UNDER CALIFORNIA LAW.

The California court's ruling that it had jurisdiction violates California law. Its decision violates Section 3422 of the California code that specifically provides that California does not have jurisdiction after the parties leave the state.

(a) Except as otherwise provided in Section 3424, a court of this state that has made a child custody determination consistent with Section 3421 or 3423 **has exclusive, continuing jurisdiction over the determination until either of the following occurs:**

...

(2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

Under the clear language of §3422 (2), California did not have jurisdiction found to rule on the appellants' case. The parents and Mr. Snodgrass had not lived there and, thus, California did not have jurisdiction. *See In re Marriage of Nurie*, 176 Ca.App. 4th 478 (2009) (California does not have jurisdiction after the

parents and children leave the state).

Accordingly, Judge Sypolt had the obligation and right not to follow the California order.

c. THE TRIAL COURT PROPERLY RULED THAT WASHINGTON HAS JURISDICTION TO MODIFY THE CALIFORNIA RULING.

Judge Sypolt carefully examined the evidence and the law and correctly held that Washington was the home state with “jurisdiction to determine this matter and/or modify the California order.” (CP 97).

RCW 26.27.221 expressly permits a Washington court to modify another state’s ruling.

Except as otherwise provided in RCW 26.27.231, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under RCW 26.27.201(1) (a) or (b) and:

...

(2) A court of this state 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.

RCW 26.27.221 has a two prong test to determine if Washington has jurisdiction to modify another state’s ruling. Since the Snodgrasses satisfy both prongs, the trial court properly exercised Washington jurisdiction to modify the California order.

1. Washington satisfies the first prong of RCW 26.27.221 because it was the home state.

The Washington trial court properly found that Washington was the home state with power to make an initial determination under RCW 26.27.201. RCW 26.27.201 provides as follows:

(1) . . . a court of this state has jurisdiction to make **an initial child custody determination** only if:

(a) This state 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 state but a parent or person acting as a parent continues to live in this state;

(b) A court of another state does not have jurisdiction under (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or 26.27.271, and:

(i) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

RCW 26.27.201 (7) 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." Mr. Snodgrass and his children moved to Washington in April of 2006, making Washington the home state since November of 2006. (CP 122, 127-27). The trial court properly held that after Washington became the home state, Washington had

jurisdiction to hear a child custody dispute and modify California's child custody order. (CP 97).

Other Washington courts have affirmed that Washington becomes the home state six months after the children and parents reside in Washington and then has jurisdiction to modify another state's child custody order. *Custody of A.C.*, 165 Wn.2d 568, 574, 200 P.3d 689 (2009); *In Re: Marriage of Tostado*, 137 Wn.App. 136, 151 P.3d 1060 (2007).

In *Tostado*, Mr. and Mrs. Sergio married in Mexico and again later in the U.S. They resided in Washington but then divorced in Mexico. After their Mexican divorce, they resided together in Washington until 2004 when Mrs. Tostado filed for divorce in Washington. Mr. Tostado asked the court to modify the Mexican divorce decree. *Id.* at 139.

The court of appeals ruled that Washington had become the home state and had authority to modify the Mexican order.

Because Maria and Sergio and their two children resided in Washington for more than six consecutive months immediately before Maria filed for dissolution, Washington was Sergio Jr.'s "home state...before the commencement of the proceeding," satisfying RCW 26.27.201 (1)(A). **Thus, Sergio is correct that the trial court had jurisdiction to modify the Mexican custody award under the UCCJEA.**

Id. at 148 (*bold added*).

Likewise, Washington became the home state when the children and Mr. Snodgrass resided here for more than 6 months.

The Washington Supreme Court in *Custody of A.C.* also held that Washington becomes the home state after six months and has jurisdiction to modify a prior child custody ruling. A.C.'s former foster parents resided in Montana, which had issued the initial child custody rulings. A.C. and his mother moved to Washington. Though still residing in Montana, the foster parents filed suit in to modify the Montana custody order. *Id.* at 571.

The Washington Supreme Court declined jurisdiction because the foster parents still resided in Montana. "Under the UCCJEA, a Washington court may modify Montana's initial child custody determination only if either Montana declines jurisdiction **or all parties have left the state.** RCW 26.27.221." *Custody of A.C.*, at 574. Since the foster parents who were parties to the initial petition still lived in Montana, Montana retained jurisdiction.

In this matter, however, the children and Mr. Snodgrass left California in April of 2007, leaving no parties to the original matter in California. Therefore, California did not have jurisdiction when the appellants joined the California lawsuit some 18 months after the children and Mr. Snodgrass left California.

Contrary the clear language of RCW 26.27.201, *Custody of A.C.* and *Tostado*, the appellants allege that the initial home state remains the home state for the entire proceedings. They are wrong for several additional reasons.

First, their interpretation requires the court to re-write RCW 26.27.201 to restrict the home state to the state in which the initial matter was filed for all remaining matters. RCW 26.27.201 does not limit the home state to where the “initial” or “first” proceeding was filed.

(7) "Home state" means 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.

RCW 26.27.201 (7).

Second, such a reading is absurd because it would mean California would remain the home state even after the children and all parents moved to a new state and California lost any interest in the matter. Clearly, RCW 26.27.201 does not warrant such a contorted result.

Third, RCW 26.27.201, *Custody of A.C.* and *Tostado* all expressly allow Washington to become a home state with jurisdiction to modify another state’s child custody order when parties to the original matter have left that state. Since the parties the original matter no longer reside in California, California does not have jurisdiction.

In sum, the trial court properly ruled that Washington had authority to rule in this matter.

2. The Snodgrasses satisfy the second prong in two ways.

In addition to fulfilling the first prong, this matter satisfies both RCW

26.27.221 (1) and (2). Under RCW 26.27.221 (1), Washington is a more convenient forum because the children and their custodial and only living parent have resided here for four years. Thus, Washington has jurisdiction to modify the California ruling.

Under RCW 26.27.221 (2), the children have lived continuously in Washington since April of 2006 and, thus, Judge Sypolt had the right to modify the California order.

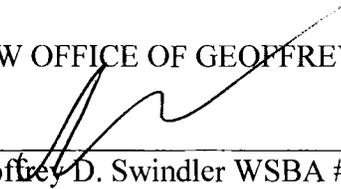
Thus, this court properly held that Washington had jurisdiction to hear and rule on this matter.

IV. CONCLUSION

The respondents request this court deny the appellants' request and affirm Judge Sypolt's ruling.

DATED this 9th day of July, 2010.

LAW OFFICE OF GEOFFREY D. SWINDLER



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CERTIFICATE OF SERVICE

I do hereby certify that on 10th day December of 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

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Delivery Service
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Geoffrey D. Swindler