

NOT DESIGNATED FOR PUBLICATION

No. 91,979.

Karen PAUL, Appellant,

v.

Troy PAUL, Appellee.

Court of Appeals of Kansas

November 24, 2004

Appeal from Ellsworth District Court; MIKE KEELEY, judge. Opinion filed
November 24, 2004. Affirmed.

Tish Morrical, of Hampton & Royce, L.C., of Salina, for appellant.

Lisa A. Beran, of Law Office of Lisa A. Beran, of Great Bend, for appellee.

Before HILL, P.J., GREEN and MALONE, JJ.

MEMORANDUM OPINION

PER CURIAM.

In this case, we are asked to determine whether the district court erred in declining to rule that Kansas was an inconvenient forum as contemplated by the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), found in K.S.A. 38-1336 *et seq.* Father remains in

Kansas, while Mother and child have moved to Montana where they have resided for more than 18 months. When Mother requested the court to determine Kansas is an inconvenient forum, the court declined. After reviewing the record and seeing that the only disputes between the parties center on Father's parenting time, we see no abuse of discretion and affirm the district court.

Background Facts

Troy and Karen Paul are the parents of S.P., born March 25, 1999. The Paul's were divorced in September 2001. At a hearing in January 2002, the issues of property and debt division, child support, and parenting time were resolved. The court granted Karen and Troy joint custody of S.P. Karen ended up being the residential parent, and Troy was awarded parenting time.

Troy Paul filed a motion to enforce his parenting time in May 2002, and the court ordered that Troy was to have two 15-day sessions during the summer of 2002 as parenting time with S.P. The court also instructed both parties to submit proposals about Father's parenting time for the upcoming fall, Christmas, and spring 2003 periods. Mother and S.P. started living in Montana in August 2002.

Following that motion, a series of motions were submitted by the parties. Hearings concerning Troy Paul's parenting time were conducted by the court. Karen Paul petitioned the court to find that Kansas was an inconvenient forum under the UCCJEA in June 2003. She argued in her motion that Montana should be considered the appropriate forum for resolving issues of custody, residency, and parenting time for S.P., as Kansas was no longer S.P.'s home state and nearly all of the evidence concerning S.P.'s health, welfare, and schooling is located in Montana.

The court conducted an evidentiary hearing and took Karen Paul's request under advisement. Meanwhile, the court granted Troy Paul four periods of parenting time for the ensuing calendar year. Later, in January 2004, Troy Paul's retained counsel filed an objection to Karen Paul's motion and argued that Kansas should remain an appropriate forum for making child custody determinations.

Standard of Review

To clear up any doubt, we rely on *In re Marriage of Ruth*, 32 Kan.App.2d 416, 83 P.3d 1248, *rev. denied* 278 Kan. ____ (2004), as authority to use an abuse of discretion standard of review in this case. In *Ruth*, it was held that Kansas has exclusive continuing jurisdiction of all relevant issues under the UCCJEA. The mother in *Ruth*, who had moved with the children from Kansas to Missouri, then later to California, filed a motion asking that Kansas be found to be an inconvenient forum for resolution of issues involving the parties' children, claiming that the children had a closer connection to Missouri. The trial court simply noted that Kansas had jurisdiction. On appeal, the mother complained the trial court should not have exercised jurisdiction without first considering whether Kansas was a convenient forum. Under the facts presented, our court found the trial court did not abuse its discretion by failing to explicitly consider whether Kansas was an inconvenient forum.

Further, K.S.A. 38-1354(a) states: "A court of this state which has jurisdiction under [UCCJEA] to make a child-custody determination *may* decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum...." (Emphasis added.) This implies that a court has discretion on this issue. Therefore, we think it appropriate to use an abuse of discretion standard.

The pertinent portion of the UCCJEA, K.S.A. 38-1354(b), lists eight factors that are relevant for a court to consider in making a determination whether a state is an inconvenient forum. In this case, the district court considered those factors. We refer to them in order.

1. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

The district court, while considering this factor, noted that little evidence had been presented concerning domestic violence. We believe that *State v. Martis*, 277 Kan. 267, 280, 83 P.3d 1216 (2004), requires that a party asserting a trial court abused its discretion has the burden of showing such abuse of discretion. Karen Paul makes no argument regarding this factor; therefore, she has not sustained her burden in showing the court abused its discretion in considering this issue.

2. The length of time the child has resided outside the state.

When considering this factor, the court noted S.P. had resided outside of Kansas for about 18 months. The district court wrote that it was Karen Paul's choice to move such a distance from father but found it inappropriate to blame or punish him for this situation. Troy Paul agrees that S.P. resides in Montana simply because mother moved him there.

In her motion, Karen Paul indicated that she and S.P. moved to Montana so that she could attend college. She claims she should not be blamed or punished for her move to Montana, as the court's modification of prior orders and consideration thereof at least implies that the court has sanctioned her move. Karen further contends that Troy Paul had limited contact with S.P. since the divorce was filed and points out that S.P. had been in Kansas for only 7 weeks since their move to Montana in 2002.

3. The distance between the court in this state and the court in the state that would assume jurisdiction.

Here the court's comments do not really address this issue except to again state that it was Mother's decision to remove S.P. from Kansas. Karen Paul states the obvious, that Montana is several hundred miles away from Kansas. And Troy Paul maintains that it is difficult for him to travel to Montana for hearings. But, the district court also indicated that the significant distance separating the parties had created difficulties regarding parenting time. Karen Paul has given reasons of inclement weather or illness of S.P. in order not to meet father at specific locations in order to facilitate visitation.

4. The relative financial circumstances of the parties.

While considering this factor, the district court observed that neither party is wealthy

and that disagreements over child custody issues has simply created more financial problems for them. Both parties have cited financial difficulties in explaining their failures to complete previously scheduled parenting times. Karen Paul is single, a full-time student, works part time, and receives public assistance. Troy Paul is employed, more financially stable than Karen Paul, but he maintains that he does not possess the funds to travel extensively.

5. Any agreement of the parties as to which state should assume jurisdiction.

Here, the court accurately observed that no agreement exists regarding which state should assume jurisdiction.

6. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.

Here, the district court noted that the sole issue in this case was parenting time. It accurately observed that the evidence would be presented with equal ease in Kansas or Montana, as the key testimony would be that of the parents of the child. Karen Paul maintains the district court did not consider that the child, his teachers and physicians, daycare provider, and counselor are located in Montana. In response, Troy Paul argues that evidence regarding S.P.'s care while in Kansas and his relationship with his father and stepmother, two of the parties' most contentious issues, is accessible and more easily presented in Kansas.

7. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

8. the familiarity of the court of each state with the facts and issues in the pending litigation.

Concerning these two factors, the district court found that because of the extensive litigation history, Kansas remained in the more favorable position to resolve any pending issue.

The court stated:

"There have been continuing and ongoing problems with parenting time between the mother and the father. The father alleges the mother is turning the child against him and will not let the child see the father or visit with the father. The mother indicates, and has indicated throughout, the child does not want to see the father and the mother will not force the child to go see the father. The court has had several hearings that have been taken up either by telephone or personally. The court has made determinations throughout to try to continue a relationship with the father and the child, and to also allow the mother to be free of any concerns she might have for the child's safety. Obviously, neither parent has been happy with the court's rulings, and the parents continue, in the court's opinion, to use the child as a tool to hurt the other parent."

Here the district court determined the evidence most important in resolving the issue before the court, namely parenting time, was that of Karen and Troy Paul themselves. Obviously, Karen and S.P. reside in Montana, while Father, Troy, remains in Kansas, and therefore Kansas is a convenient forum.

Overall, we do not see an abuse of discretion in this analysis made by the district court. We agree with its reasoning that Kansas was not an inconvenient forum for making determinations concerning Troy Paul's parenting time with S.P. Furthermore, we recognize that our law, K.S.A. 38-1346(b), provides that an individual residing in another state may be deposed or "testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state." Considering Karen Paul's argument, if her witnesses were unable to testify by any of the aforementioned means, seemingly they would also have been unavailable to testify in a proceeding in that state. There has been no showing that the Kansas court has been unwilling to take testimony by any of the means provided for in K.S.A. 38-1346(b). We find no abuse of discretion here.

Affirmed.