UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1012

September Term, 2016

LARRIER G.WALKER, JR.

v.

JANELLE SAMPSON DAWKINS

Arthur,
Reed,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: May 11, 2017

Larrier Walker ("Father"), appellant, and Janelle Dawkins ("Mother"), appellee, are the parents of two minor children, B.S. and L.S. In 2009, while all parties were residing in Maryland, the Circuit Court for Baltimore County entered orders on both child support and custody, with the parents have joint legal custody and Mother having primary physical custody. In 2010, Mother moved to Virginia with the two children. Over the next several years, there was very little activity in the case. In August 2015, Father filed a motion to transfer the case to Anne Arundel County, which was initially granted, but later struck. In December 2015, Mother filed a motion to transfer jurisdiction of the case to Accomack County, Virginia, where she and the children had been living for three years. Father opposed the motion, arguing that Maryland was still the proper forum for the case. In June 2016, the Circuit Court for Baltimore County held a hearing on the motion. During the hearing, a judge from Accomack County teleconferenced in to participate in the proceeding. At the conclusion of the hearing, the court agreed to transfer the custody and visitation case to Virginia, while the child support case remained in Maryland.

Father appealed, and now presents nine questions for our review, which we have rephrased as three:

1. Were the telephone communications between the courts in Accomack County, Virginia and Baltimore County, Maryland so inadequate that the requirements of due process were not met?

2. Did the court abuse its discretion when it determined that Baltimore County had become an inconvenient forum concerning custody and visitation?[1]

[1] Father's questions presented, as stated in his brief, are as follows:

1. As [the Accomack County judge] who teleconferenced in via phone, repeatedly stated he had issues hearing [Father's] testimony, did the circuit court err by not providing an environment in which all communications equipment was functioning properly and by which all testimony was to be clearly communicated to standard without question or assumption of meaning?

2. As UCCJEA section § 9.5-202(a)(1) and (2) provides that a court of this state making an initial custody determination maintains exclusive continuing jurisdiction, was the circuit court's decision legally correct as [Father] has always remained domiciled in the state of Maryland; thus substantial evidence remainded regarding the children's care, protection, training and personal relationships in Maryland?

3. As the UCCJEA section § 9.5-207 (b) requires that all information submitted and relevant factors be reviewed, did the circuit court err by not reviewing/including "all" information provided to both judges so as to reach a just conclusion?

4. As the current court order states that the "issues of custody, visitation and support remain in the continuing jurisdiction" of Baltimore County, Maryland and per state laws regarding moving minors out of state when two parents have joint legal custody, did the court err by not reviewing/discussing the fact that [Mother] first moved the children out of state, hiding the move from [Father] and hiding the move from MD courts against Annotated Code of Maryland, Family Law Article § 9-305, then subsequently filing for a modification of custody in Virginia?

5. Per the UCCJEA section § 9.5-207(b), the courts were to consider "all" pending litigation before determining which forum was convenient or inconvenient; however, did the courts err by not considering the change of venue, modification of child support, and change of minors name (filed in Anne Arundel County) which were all filed prior to the hearing?

(Continued . . .)

3. Did the court err by not considering whether Mother had violated FL § 9-305 when she moved out of state with the children?

For the following reasons, we answer no to each question and affirm the judgment of the circuit court.

(. . . continued)

6. Per the UCCJEA section § 9.5-207(b) one factor is consideration of the nature and location of evidence needed to resolve pending litigation, did the courts err by not factoring in that the children had spent the majority of their lives in Maryland?

7. Whereas the UCCJEA section § 9.5-207(b) requires the court to review the familiarity of the states with respect to facts and issues of pending litigation, did the court err by not fully reviewing or omitting evidence on file which clearly shows Maryland is significantly more familiar with this case?

8. Did the court err by not reviewing previously filed information signaling a pattern of Parental alienation, denial of custody and or custodial interference which would have had an impact on the final decision of jurisdiction?

9. Regarding "convenience," the UCCJEA section § 9.5-207(b) which is based on the Uniform Child Custody Jurisdiction Act, there is intent and expectation of expeditious resolution using the "most convenient" forum; thus did the court in its decision err by prematurely bifurcating custody and child support between two states causing further hardship/burden to the parties when MD, clearly had the jurisdiction to decide "both" custody and support issues?

BACKGROUND

This case originated in Talbot County, where Mother filed a paternity action attempting to establish Father as the parent of her two minor children, B.S. (born September 25, 2001) and L.S. (born July 4, 2003). Father did not dispute paternity of B.S., but denied paternity of L.S. Father's paternity of L.S. was eventually established through genetic testing. In November 2008, Father petitioned to move the case to Baltimore County. This request was granted and the case was transferred to Baltimore County on December 12, 2008. The following spring and summer of 2009 involved a custody and child support battle over the parties' two minor children. On August 29, 2009, the court issued an order granting joint legal custody to the parties, with primary physical custody going to Mother, and an agreed upon amount of child support to be paid by Father.

On March 3, 2010, Mother filed a Petition for Contempt and Petition to Modify Order. On June 23, 2010, a hearing was held on Mother's petition. Father did not appear at the hearing and a finding of contempt was entered. Father later challenged the service of process of the petition for contempt. There were no active proceedings in the case between the summer of 2011 and 2015. In 2015, the court dismissed the case for lack of prosecution.

On June 22, 2015, Father filed a motion to transfer the case to Anne Arundel County. His motion was denied because there were no matters pending in the case. On August 11, 2015, Father filed another motion to transfer the case to Anne Arundel

County, which was granted. On September 16, 2015, Mother filed a motion to strike the transfer, which the court granted. On October 21, 2015, Father filed a motion to modify child support, claiming that his income had significantly decreased.

On December 7, 2015, Mother filed a motion to transfer jurisdiction of the case to Virginia. In her motion, Mother asserted that she had moved to Chesapeake, Virginia with her husband and children in the fall of 2010. Since 2013, Mother and the children had been living in Accomack County, Virginia. As a result, Mother contended that Accomack County was now the appropriate venue for the case. On December 10, 2015, Father filed a motion to modify custody.

On June 10, 2016, a hearing was held on Mother's motion to transfer the case to Virginia. The hearing was conducted before a judge in the Circuit Court for Baltimore County. Both Father and counsel for Mother were present. Mother was in Accomack County and teleconferenced in to the hearing along with an Accomack County judge. Mother and Father both provided testimony regarding their current circumstances. Father was living in Anne Arundel County, while Mother was living with their children in Accomack County. Father indicated to the court that he needed a change in child support, because his annual income had decreased from $85,000 to $31,000 in the years since the entry of the child support order in 2009. Mother was making approximately $61,000 a year. At one point during testimony from Father, the Accomack County judge indicated that he could not hear him through the phone. The Baltimore County judge briefly summarized Father's testimony for the Accomack County judge. When Father

tried to continue testifying, it became clear that the phone system still was not working. The Accomack County judge then hung up and called the court back on a different phone. At that time, the judge indicated that the phone was working and he could now hear everything.

The court then heard arguments from both parties on whether the case should be transferred to Virginia. Mother's counsel argued that a transfer was appropriate because the children had lived in Accomack County for three years, and all of their medical, school, and athletic activities were located there. Mother's counsel asserted that the majority of the witnesses and evidence for the case was located in Accomack County. Father countered that the children still had ties to in Maryland, and visited him in the summer and every other weekend.

At that point, the parties were excused from the courtrooms and the two judges had a discussion about how to resolve this issue. Both judges agreed that the child support case would remain in Maryland, and the only issue was whether to move the custody case to Virginia. After discussing the statutory factors enumerated in the Family Law Article, the judges agreed that the custody case should be transferred to Accomack County.

On June 13, 2016, the court issued an order transferring the case to Virginia on the custody and visitation issues. On July 12, 2016, Father noted his appeal of the court's order.

STANDARD OF REVIEW

> The decision whether to relinquish the court's jurisdiction in favor of a more convenient one is one addressed to the sound discretion of the court. This is confirmed by the fact that the statute authorizing the making of the decision enumerates a number of factors that the court must consider, without prescribing what the decision should be. Before finding an abuse of discretion we would need to agree that, the decision under consideration is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

Miller v. Mathias, 428 Md. 419, 454 (2012) (Citations and internal quotation marks omitted). "There is an abuse of discretion where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (Citations and internal quotation marks omitted).

DISCUSSION

I. Telecommunication Issues Between the Courts

The hearing on the motion to transfer involved two judges in different courthouses teleconferencing via phone. During Father's testimony regarding his financials, the judge in Accomack County indicated that he could not hear what was being said. Father argues that the court erred by not providing an environment in which all communications equipment was functioning properly, so as to prevent testimony from being clearly communicated. Although Father is correct that there was an issue with the communications, it was quickly remedied by the court. First, the Baltimore County judge summarized Father's testimony for the Accomack County judge, explaining that he used

to make around $90,000 a year as a defense analyst, but had been laid off and now made $31,000 a year working for TSA. The judge then asked Father if she had fairly summarized his statements, to which he said yes. When Father attempted to continue his testimony, the Accomack County judge said that he still could not hear. At that point, he hung up and called back on a different phone, at which point the Accomack County judge indicated that the problem had been fixed. Accordingly, the issues with the telecommunications were swiftly remedied, Father was not denied due process, and the court did not err in allowing the proceedings to continue.

II. Inconvenient Forum Determination

The only issue before the court during the June 10, 2016 hearing was whether Maryland had become an inconvenient forum for the custody case. A Maryland court that has made a child custody determination has "exclusive, continuing jurisdiction" over the case until:

> (1) a court of this State determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or
>
> (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.

Md. Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 9.5-202(a).

Furthermore, the Family Law Article provides that "[a] court of this State that has jurisdiction under this title to make a child custody determination may decline to exercise

its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum." FL § 9.5-207(a)(1). Mother filed a motion contending that Maryland had become an inconvenient forum, and that the case should be transferred to Accomack County, Virginia. After a hearing, two judges from Baltimore County and Accomack County agreed that the case should be transferred. Father argues that the court did not consider all the relevant information required before making this determination.

"Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction." FL § 9.5-207(b)(1). To do so, the court is required to consider the following factors:

> (i) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
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> (ii) the length of time the child has resided outside this State;
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> (iii) the distance between the court in this State and the court in the state that would assume jurisdiction;
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> (iv) the relative financial circumstances of the parties;
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> (v) any agreement of the parties as to which state should assume jurisdiction;
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> (vi) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
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> (vii) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
>
> (viii) the familiarity of the court of each state with the facts and

issues in the pending litigation.

FL § 9.5-207(b)(2).

At the conclusion of the hearing on the motion to transfer, the parties were excused and the two judges discussed the appropriate resolution. At that point, the judges went through the eight required factors. Both judges agreed that domestic violence had never been alleged and was therefore not at issue in this case. The children had resided outside of the state of Maryland for six years, three of which had been in Accomack County. The Baltimore County and Accomack County courthouses are 191 miles apart, with a driving distance of over three hours. The court acknowledged that Mother currently made significantly more money than Father, but felt that it was not an important factor. There was no agreement between the parties regarding which state should have jurisdiction. The court identified the sixth factor, nature and location of the evidence, as the most important factor in this case. The Accomack County judge stated that Father "described a lot of activities that he has with the kids in Maryland, but my impression was he [was] making it up as he went along and exaggerating." The court also acknowledged that Mother "makes a good point about the schools and the medical care, the mental health care" all being located in Virginia. The court found the time period spent in Accomack County to be significant, "and the contact [the children] had in Maryland, the schools and neighborhoods and so on are minimal, I would expect." The Accomack County judge stated that they would be able to get to the case quickly if it were transferred to Virginia. As to the final factor, familiarity of the court with the

issues, the Baltimore County judge admitted that his court had done very little with the case since it had originally been decided seven years earlier. Taking all those factors into consideration, the judges agreed that Maryland was not a convenient forum and the custody and visitation case should be transferred to Virginia.

The consideration of the factors was reiterated in the court's order, which included the following:

> 1. Maryland shall bifurcate the current proceedings of Motion to Modify Child Support and Custody filed by [Father], and **pursuant to the UCCJEA Section 9.5-207 of the Maryland Family Law Article, after reviewing the factors in Section (b) of this Article**, this Court finds that Maryland is not a convenient forum for consideration of the pending Motion to Modify Custody and shall STAY the Custody/Visitation proceeding and decline to exercise jurisdiction in the pending Motion to Modify Custody.

(Emphasis added).

Despite Father's contentions to the contrary, as described above, the court went through each required factor and reached the reasonable conclusion that Maryland had become an inconvenient forum. At the time of the trial, the children had already lived outside of Maryland for six years. At their ages, fourteen and twelve at the time of the hearing, this constituted a very significant portion of their lives. Moreover, Mother and the children lived approximately three hours away from the Baltimore County courthouse, making it a burdensome destination for any custody proceedings. The court acknowledged that Father made less money than Mother, but at the same time felt that he would not have trouble coming to court in Virginia if he wanted to be there. It is also

reasonable to assume that after six years of living in Virginia, including three years in Accomack County, that most of the witnesses in this case would be located in Virginia. The court believed that Father had exaggerated about the extent of the children's lives in Maryland, and chose to discount his testimony. We have stated that, "the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony. . . ." *Walker v. State*, 432 Md. 587, 614 (2013) (Citation omitted). "A fact-finder decides which evidence to accept and which to reject." *Grimm v. State*, 447 Md. 482, 505 (2016) (Citation and internal quotation marks omitted). "In its assessment of the credibility of witnesses, the Circuit Court was entitled to accept—or reject—*all, part*, or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011). Accordingly, it was within the court's discretion to reject Father's testimony and weigh this factor in favor of transferring the case to Virginia. Additionally, because it had been so many years since this case had been heard before a Maryland court, neither the Baltimore County court nor the Accomack County court had more familiarity with the facts and issues in the case. Finally, the Accomack County judge assured the Baltimore County judge that he would be able to hear the case quickly if it was transferred to him. Taken all together, the FL § 9.5-207(b)(2) factors weighed in favor of granting jurisdiction to the Virginia court. Accordingly, the court properly exercised its discretion in granting Mother's motion to transfer the case to Accomack County.

III. Applicability of FL § 9-305

Father also argues that the court failed to consider that Mother moved the children out of the state without telling him, in violation of FL § 9-305. That statute provides that "[i]f a child is under the age of 16 years, a relative who knows that another person is the lawful custodian of the child may not, with the intent to deprive the lawful custodian of the custody of the child: abduct, take, or carry away the child from the lawful custodian to a place in another state[.]" FL § 9-305(a)(1). By its plain language, FL § 9-305 applies to non-custodial parents or relatives who take the children away to a different state. On the contrary, Mother had primary physical custody of the children. Moreover, Father has pointed to no statute in Maryland that requires a parent with primary physical custody to obtain court approval before moving out of state, nor is there any court order in this case that required Mother to do so. Accordingly, FL § 9-305 has no bearing on this case, and did not require a different result than that reached by the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.