

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2225

September Term, 2016

DUSTIN LEVI ARMSTRONG

v.

TIMARA A. ARMSTRONG

Nazarian,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James, R., J.

Filed: July 31, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal has its origin in a divorce and custody proceeding filed in the Circuit Court for Garrett County (the circuit court) by Dustin Levi Armstrong, appellant, against his wife, Timara A. Armstrong, appellee. Ms. Armstrong filed a counter complaint seeking temporary and permanent custody of the parties’ two minor children. During the course of the underlying proceedings, the parties revealed to the circuit court that approximately three years prior to the filing of the divorce action, a case had been opened in South Dakota with regard to the custody of their eldest child. At a November 4, 2016, *pendente lite* custody hearing in circuit court, the magistrate instructed the parties to provide the court with information about the South Dakota proceeding.

Several days after the hearing, Mr. Armstrong filed a motion requesting the circuit court to enter an order stating that South Dakota courts no longer had jurisdiction, and that the circuit court had jurisdiction, to make a custody modification. The circuit court denied that motion and ordered the parties to provide the information about the South Dakota proceeding within thirty days. Mr. Armstrong did not provide the circuit court with the information requested, but instead filed a motion to reconsider, which the court denied. In denying Mr. Armstrong’s motions, the circuit court, in effect, declined to exercise jurisdiction over the divorce and custody case absent the requested information. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presented two questions for our consideration which we have consolidated and restated as follows:

I. Did the trial court abuse its discretion in declaring that it did not have jurisdiction over the divorce and custody matters presented in the case at hand?

For the reasons set forth below, we shall vacate the decision of the circuit court and remand for further proceedings consistent with this opinion.

FACTUAL BACKGROUND

On December 26, 2014, the parties were married in South Dakota. They have two children, A.M., who was born on March 31, 2013, and H.J., who was born on November 28, 2014. Prior to the parties' marriage, Mr. Armstrong filed for custody of A.M. in South Dakota. According to the parties, an order for supervised visitation was issued by a South Dakota court, but was eventually "dropped." Neither party provided the circuit court with any documentation or information about the South Dakota proceedings, except to state that paternity testing determined that Mr. Armstrong was A.M.'s father, and thereafter, Mr. and Ms. Armstrong began living together. At some time prior to H.J.'s birth, Mr. Armstrong was discharged from the Air Force, and the parties relocated to Garrett County where Mr. Armstrong worked for his step-father's company. At times, Ms. Armstrong has asserted that Mr. Armstrong was not H.J.'s father, but it was undisputed that he was listed as the child's father on her birth certificate. There was no dispute that both parties and their children have resided in Garrett County for two years and that the parties resided in Maryland for more than one year prior to the filing of the divorce action.

During the November 4, 2016 *pendente lite* custody hearing, the magistrate instructed the parties "to make every effort to get" information pertaining to the South

Dakota proceedings. The magistrate recognized that “[i]f there’s an order regarding [A.M.], you guys are going to have to do some work and get me that information because I may or may not have jurisdiction over [A.M.’s] part of this.” Similarly, in her report and recommendations, the magistrate wrote that she “instructed the parties to investigate and report back to the Court if an Order does in fact exist in South Dakota pertaining to custody/visitation/parentage” of A.M. The circuit court’s *pendente lite* order did not mention the South Dakota proceeding or the instruction to counsel to provide further information with regard to it. Neither party provided any information to the circuit court regarding the South Dakota proceedings.

Three days after the hearing, but prior to the filing of the magistrate’s report and recommendations, Mr. Armstrong filed a motion asking the circuit court “to determine that the court in South Dakota no longer has exclusive, continuing jurisdiction; and that this Court has jurisdiction to make a custody modification.” The motion did not provide any information about the South Dakota proceeding, but Mr. Armstrong argued that under Maryland law and the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), the circuit court had jurisdiction over the pending matter. Mr. Armstrong argued that Maryland was

now the home state of the children; no other state is the home state of the children; both children and their parents have significant connections with this State other than mere physical presence; substantial evidence exists in this State concerning the care, protection, training, and personal relationships of the children, and no court of any other state would have jurisdiction under the above criteria.

Mr. Armstrong requested the circuit court to exercise jurisdiction and “make an initial custody determination and/or modify a prior custody determination.”

The circuit court denied the motion, stating that, “at this time . . . there is insufficient information available to the Court to make such a determination[.]” The circuit court ordered the parties “to follow the instructions of the Family Magistrate as given during the Pendente Lite hearing held in this matter on November 4, 2016, to supplement the Court record with any and all information, including a copy of, the Court Order issued by the State of South Dakota in regard to custody/visitation of the parties’ minor child,” A.M. The circuit court ordered the supplemental information to be submitted within 30 days.

Rather than submit the requested information, Mr. Armstrong filed a motion to reconsider in which he repeated the arguments made in his original motion and asserted that the information provided was sufficient and the circuit court should accept jurisdiction over all matters “regardless of the substance of any prior Order issued by a court of the State of South Dakota.” The circuit court denied the motion to reconsider stating, “South Dakota must decline to exercise jurisdiction before Garrett County can proceed.”

DISCUSSION

Mr. Armstrong¹ argues that the circuit court abused its discretion by refusing to consider the parties’ complaint and counter-complaint for divorce and their requests for

¹ Ms. Armstrong did not file a brief in this Court, but agreed with appellant’s position.

custody of both children, including H.J., who was never the subject of a custody proceeding in South Dakota. He maintains that the circuit court’s refusal to consider those issues “in effect, created a dismissal for lack of jurisdiction.”

Our review of the record reveals that the circuit court declined to exercise jurisdiction under the Maryland Uniform Child Custody Jurisdiction and Enforcement Act (“the Act”), which is codified as Md. Code (2012 Repl. Vol.), § 9.5-101 *et seq.* of the Family Law Article (“FL”), until the parties provided information to demonstrate that the South Dakota court did not have jurisdiction over A.M. Section 9.5-206(a) of the Act specifically provides:

(a) Except as otherwise provided in § 9.5-204 of this subtitle, a court of this State may not exercise its jurisdiction under this subtitle if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this title, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under § 9.5-207 of this subtitle.

FL § 9.5-206(a). Clearly, by requiring the parties to provide information about the South Dakota proceeding, the circuit court was attempting to determine whether its exercise of jurisdiction was proper.

Prior to oral argument in this Court, the information requested by the circuit court was obtained. During oral argument, the parties advised that they received information confirming that the South Dakota court never entered a custody order with respect to A.M., but merely referred the matter to mediation. Further, the South Dakota court was never asked to consider the parties’ divorce or custody of H.J. The parties further advised that they have reached an agreement as to all issues between them, including custody of both

children. As the information requested by the circuit court was obtained, and it confirms that the exercise of jurisdiction by the circuit court is proper, we shall remand this matter for further proceedings.

**JUDGMENTS OF THE CIRCUIT COURT FOR
GARRETT COUNTY VACATED; CASE
REMANDED FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION; COSTS
TO BE SPLIT EQUALLY BETWEEN THE
PARTIES.**