Circuit Court for Queen Anne's County
Case No. 17-C-15-019740

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2345

September Term, 2018

EVANS IHENACHOR

v.

PAIGE MARTIN

Graeff,
Beachley,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 8, 2019

Evans Ihenachor ("Father"), appellant, and Paige Martin ("Mother"), appellee, are the parents of a 4-year-old daughter, O.I. When O.I. was less than six months old, Father filed a complaint for custody in the Circuit Court for Queen Anne's County. On December 28, 2015, the circuit court entered a custody order ("2015 Custody Order"), which granted Mother and Father joint legal custody and Mother primary physical custody of O.I., established a detailed liberal access schedule for Father, and ordered Father to pay $1,627 per month in child support.

More than two years later, Father moved to vacate the 2015 Custody Order on the grounds that the circuit court lacked subject matter jurisdiction and/or personal jurisdiction to issue its order, and that a circuit court judge who entered ancillary orders should have recused himself. He presents seven questions for this Court's review,[1] which we have consolidated and rephrased, as follows:

[1] Father presents the following questions:

> 1. Did the trial court abuse its discretion in entering an interstate child custody Order without subject matter jurisdiction?
>
> 2. Did the trial court abuse its discretion in awarding Appellee $1627.00 in monthly child support without personal and subject matter jurisdiction?
>
> 3. Did the trial court violate Appellant's due process rights and fundamental liberty interests in the care, custody, and control of the minor child in violation of the United States Constitution, the Maryland Declaration of Rights when it exceeded the authority afforded it by Maryland Rules?

1. Did the circuit court have subject matter jurisdiction to make an initial child custody determination pursuant to the Uniform Child Custody Jurisdiction & Enforcement Act (the "UCCJEA"), Md. Code (2015 Supp.), §§ 9.5-101–9.5-318 of the Family Law Article ("FL")?

2. Did the circuit court have personal jurisdiction over Father pursuant to the Maryland Uniform Interstate Family Support Act (the "UIFSA"), FL §§ 10-301–10-359?

3. Did a circuit court judge violate Maryland Rule 18-102.11 by not disqualifying himself from any involvement in this case because he was married to the attorney representing Mother?

For the reasons set forth below, we answer the first two questions in the affirmative and the third question in the negative, and therefore, we shall affirm the judgment of the circuit court.

4. Are the Custody Orders entered by the circuit court awarding Primary Custody and child support to Appellee void?

5. Did the circuit court err in approving the entrance of attorney Suzanne Henley on August 18, 2015, as well as the entry of the scheduling order on November 10, 2015?

6. Does Appellant not raising a lack of the trial court's subject matter jurisdiction prior to the entry of the December 2015 Order preclude Appellant from raising it any time thereafter?

7. Was Appellant's due process and equal protection rights protected by the 14th Amendment of the Constitution of the United States and Article 24 of the Maryland Declaration of Rights violated by the trial court in the entry of its Custody Orders?

FACTUAL AND PROCEDURAL BACKGROUND

Father and Mother are the parents of O.I., who was born on September 10, 2014. They were never married. On March 2, 2015, when O.I. was almost six months old, Father filed in the Circuit Court for Queen Anne's County his complaint for custody. He alleged that he lived in Arlington, Virginia, and that Mother lived in Stevensville, Maryland. He further alleged that O.I. had lived with Mother at her Stevensville home continuously since she was born. He asked the court to order joint legal and physical custody of O.I.

Mother filed a counter-complaint, seeking sole legal and primary physical custody of O.I. and asking the court to order Father to pay child support. Following a one-day trial in November 2015, the court issued the 2015 Custody Order. Father noted a direct appeal from that order, and this Court affirmed. *See Ihenachor v. Martin*, No. 2673, Sept. Term, 2015 (filed Dec. 9, 2016).[2]

On June 15, 2018, Father filed a Motion to Dismiss, in the Alternative for Summary Judgment and Motion to Vacate Judgment/Order seeking to vacate the 2015 Custody Order and all orders entered thereafter for lack of subject matter jurisdiction and/or personal jurisdiction. He also challenged the propriety of orders entered by a circuit court judge who was married to the attorney who represented Mother, asserting

[2] Subject matter jurisdiction, personal jurisdiction, or recusal were not raised as issues in that appeal.

that this violated his right to due process. Finally, he reiterated his substantive challenges to the 2015 Custody Order that had been raised and decided in his direct appeal.

By order entered August 1, 2018, the circuit court denied the motion to dismiss and/or vacate. Father filed a motion for reconsideration, which was denied on August 28, 2018.

This timely appeal followed.

DISCUSSION

I.

Father contends that the circuit court lacked subject matter jurisdiction over this interstate custody case because it failed to make an initial determination of jurisdiction pursuant to the UCCJEA. Mother argues that Father's challenge to subject matter jurisdiction under the UCCJEA is "misplaced" because it was Father who "chose Maryland as the forum by his filing in March 2015, and at no time prior to the entry of Judgment in December 2015 did [Father] assert" that the circuit court did not have jurisdiction.

"'Lack of subject matter jurisdiction may be raised at any time.'" *Alford v. State*, 236 Md. App. 57, 75 (quoting *Harris v. Simmons*, 110 Md. App. 95, 113–14 (1996)). *See* Maryland Rule 2-324(b). FL § 9.5-201 governs subject matter jurisdiction for "initial child custody determination[s]." As pertinent here, it provides that a Maryland circuit court has jurisdiction to make an initial custody determination "only if" one of four scenarios is present. FL § 9.5-201(a).

> The first scenario providing jurisdiction is that Maryland was
>
> *the home state of the child on the date of the commencement of the proceeding*, or was the home state of the child within 6 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[.]

FL § 9.5-201(a)(1) (emphasis added).

> "Home state" means:
>
> (1) the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence, immediately before the commencement of a child custody proceeding; and
>
> (2) *in the case of a child less than 6 months of age, the state in which the child lived from birth with any of the persons mentioned, including any temporary absence*.

FL § 9.5-101(h) (emphasis added).

In his complaint for custody, Father alleged that O.I., then 5 months old, had lived in Maryland with Mother since birth. Thus, Maryland was O.I.'s home state on the day that Father commenced this custody action, and the circuit court had subject matter jurisdiction to make the initial custody determination. *See Cabrera v. Mercado*, 230 Md. App. 37, 74 (2016) ("[I]f a child is not yet six months old, a child's home state under the UCCJEA is the state in which he or she has lived from birth with a parent.").

Father asserts that the court should have declined to exercise jurisdiction pursuant to FL § 9.5-208 because of Mother's "unjustifiable conduct." Specifically, he asserts that Mother kept O.I. in Maryland and did not permit Father to have access to her.

Pursuant to FL § 9.5-208(a), if the parents "have acquiesced in the exercise of jurisdiction," a court need not decline to exercise jurisdiction based upon evidence of

unjustifiable conduct. Here, because Father (1) invoked the court's jurisdiction by filing his complaint for custody in Maryland, and (2) failed to move to dismiss for lack of jurisdiction until more than three years after the commencement of this action, he clearly acquiesced in the court's exercise of subject matter jurisdiction. Thus, the circuit court did not lack subject matter jurisdiction.

II.

Father next contends that, pursuant to the UIFSA, the court lacked personal jurisdiction over him with respect to child support. Mother disagrees. She claims that UIFSA establishes personal jurisdiction over Father because he submitted to the jurisdiction of the Circuit Court for Queen Anne's County.

As this Court has explained "[t]o determine whether a Maryland court may exercise personal jurisdiction over a non-resident defendant, a court must consider two factors: (1) whether a long-arm statue has been satisfied; and (2) whether the exercise of jurisdiction comports with due process." *Friedetzky v. Hsia*, 223 Md. App. 723, 732 (2015). With respect to the first factor, Father relies on this Court's opinion in *Friedetzky*. In that case, we noted that, under the UCCJEA, there is limited immunity from personal jurisdiction for participating in a custody proceeding. Specifically, FL § 9.5-108(a) provides:

> A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

Friedetzky, however, is distinguishable from this case. There, the mother initiated a child custody proceeding in Maryland, where she lived with the child. 223 Md. App. at 728. The putative father was a New York resident and was served there. *Id.* Through counsel, the putative father filed a general appearance and an answer. *Id.* In his answer, he requested genetic testing to determine paternity. *Id.* The mother subsequently filed an amended complaint to establish paternity, for custody, and for child support. *Id.* at 729. The putative father later withdrew his request for genetic testing and moved to dismiss for lack of personal jurisdiction. *Id.* The circuit court ultimately granted custody to the mother, but it dismissed the claims to establish paternity and child support for lack of personal jurisdiction. *Id.* at 730–31.

On appeal, this Court reversed. *Id.* at 750. We held that, given the limited immunity provided in the UCCJEA, a nonresident participating in a custody proceeding is not, solely by such participation, subject to personal jurisdiction in another proceeding. *Id*. at 736. Accordingly, the father did not submit to the jurisdiction of the Maryland court regarding paternity and child support simply by answering the custody complaint. *Id.* at 742. Rather, the UIFSA long-arm statute governed the exercise of personal jurisdiction over an out-of-state defendant for purposes of establishing paternity and ordering child support. *Id.* at 734–35.

In that case, however, the father waived the limited immunity by seeking affirmative relief relating to matters outside custody, i.e., by requesting genetic testing to determine paternity, coupled with his efforts to obtain discovery. *Id.* at 745-46. Thus, we

reversed the court's grant of the motion to dismiss the mother's claims to establish paternity and for child support. *Id.* at 750.

Here, Father, a Virginia resident, filed a complaint for child custody in Maryland, the child's undisputed home state. Mother filed a counter-complaint in which she sought child support.[3] Father filed an answer to the counter-complaint in which he requested that the court "[e]stablish child support in an amount consistent with the Maryland Child Support Guidelines." As *Friedetzky* makes clear, by doing so, Father requested affirmative relief under the UIFSA and waived the limited immunity under the UCCJEA.

Moreover, we conclude that personal jurisdiction under the UIFSA long-arm statute was satisfied. FL § 10-304(a) provides:

> (a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
> (1) the individual is personally served within this State;
> (2) the individual submits to the jurisdiction of this State by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
> (3) the individual resided with the child in this State;
> (4) the individual resided in this State and provided prenatal expenses or support for the child;
> (5) the child resides in this State as a result of the acts or directives of the individual;

[3] In her countercomplaint, Mother alleged that, although Father was a Virginia resident, he had "submitted to the jurisdiction of the [circuit court]" by filing his complaint for custody there. In his answer to the countercomplaint for custody, Father admitted to that paragraph.

> (6) the individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse; or
> (7) there is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

At a minimum, personal jurisdiction was satisfied pursuant to § 10-304(a)(2).

We turn next to whether personal jurisdiction satisfied due process in this case. As we explained in *Friedetzky*, 223 Md. App. at 748–49,

> "To comply with the Due Process Clause of the Fourteenth Amendment, the exercise of personal jurisdiction over an out-of-state defendant requires that the defendant have established minimum contacts with the forum state and that to hale him or her into court in the forum state would comport with traditional notions of fair play and substantial justice." *Bond* [*v. Messerman*], *supra*, 391 Md. [706,] 722–23, 895 A.2d 990 [(2006)] (citations omitted). "In determining whether minimum contacts exist, we consider (1) the extent to which the defendant has purposefully availed himself or herself of the privilege of conducting activities in the State; (2) whether the plaintiff's claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable." *Id.* at 723, 895 A.2d 990 (citations omitted).

Here, Father's filing of the complaint and seeking child support satisfied the minimum contacts test. The circuit court had personal jurisdiction over Father when it ordered him to pay child support.

III.

Father contends that Judge Thomas Ross should have disqualified himself from any involvement in this case pursuant to Rule 18-102.11 because his wife, Susanne

Henley, Esq., represented Mother at various stages of the proceedings.[4] Mother claims that Judge Ross did not violate Rule 18-102.11 in failing to recuse himself because he only approved "routine administrative functions of the [c]ourt," which did "not impact on the merits of the case."

Father points to two orders that were signed by Judge Ross while Ms. Henley was representing Mother: (1) an order striking the appearance of Mother's former attorney and approving the entry of Ms. Henley's appearance in the case on August 14, 2015; and (2) a scheduling order entered on November 10, 2015. Both orders were entered prior to the 2015 Custody Order. Father, however, did not move to recuse Judge Ross nor did he raise the issue in his direct appeal following the entry of the 2015 Custody Order. By failing to do so, he waived this issue for this Court's review. *See* Maryland Rule 8-131(a)

[4] Maryland Rule 18-102.11 provides, in pertinent part, as follows:

> (a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including the following circumstances:
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> * * *
>
> (2) The judge knows that the judge, the judge's spouse or domestic partner, an individual within the third degree of relationship to either of them, or the spouse or domestic partners of such an individual:
>
> * * *
>
> (B) is acting as an attorney of the proceeding[.]

(An appellate court ordinarily will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court.").

Even if this issue was preserved, Father would not be entitled to relief on this ground. He has not pointed to any prejudice, nor can we envision any, due to the entry of two ancillary orders that had no bearing on the merits of the custody dispute. *See*, *Harris v. Harris*, 310 Md. 310, 319 (1987) (in a civil case, a party seeking reversal must show prejudice).

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.