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IN THE
COURT OF APPEALS OF INDIANA

DANIEL J. HOOPER,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 32A01-1009-DR-439
	)	
DONNA J. SMITH,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable Stephenie LeMay-Luken, Judge
Cause No. 32D05-1001-DR-6

January 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Daniel Hooper (Father) appeals from the trial court's order granting Donna Smith's (Mother) "Motion for Acceptance of Jurisdiction Under the Uniform Child Custody Jurisdiction Act." Father presents one issue for our review: Did the trial court err when it accepted jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act (UCCJA).[1]

We reverse.

Father and Mother were married on July 5, 1986 and three children were born of the marriage. Mother and Father were divorced by the Lowndes County, Mississippi Chancery Court on or about April 2, 2004 and were granted joint legal and physical custody of the children. Subsequent to the divorce, Mother and the children relocated to Indiana. Father continued to exercise parenting time with the children.

On January 19, 2010, Mother filed a "Motion for Acceptance of Jurisdiction Under the Uniform Child Custody Jurisdiction Act" in Hendricks County Superior Court 5 (Indiana court). By her motion, Mother requested the Indiana court to assume jurisdiction over the matter for purposes of dealing with matters relating to parenting time and tax exemptions. Mother indicated in her motion that the Mississippi court had issued the prior judgment relating to child custody, parenting time, and other matters relating to the children born of the marriage. The Indiana court issued an order on January 21, 2010 indicating that it would accept jurisdiction of the matter "upon transfer from Lowndes County Chancery Court, Mississippi." *Appellant's Appendix* at 22.

On June 11, 2010, Mother renewed her request for the Indiana court to accept jurisdiction by filing a second motion. The Indiana court issued its order accepting

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[1] *See* Ind. Code Ann. 31-21 *et seq*.

jurisdiction on June 14, 2010 without mentioning any transfer of jurisdiction from the Lowndes County Chancery Court in Mississippi. On July 13, 2010, Father filed a motion to correct error in which he asserted that it was error for the Indiana court to assume jurisdiction in this matter. Mother filed a response to Father's motion to correct error in which Mother asserted that Father submitted himself to the jurisdiction of the court.[2] The trial court denied Father's motion to correct error on August 16, 2010.[3] On appeal, Father argues that the trial court erroneously accepted jurisdiction in this cause under the UCCJA.

We begin by noting that Mother did not file an appellee's brief. When an appellee fails to submit a brief, we apply a less stringent standard of review with respect to the showing necessary to establish reversible error. *Zoller v. Zoller*, 858 N.E.2d 124 (Ind. Ct. App. 2006). In such cases, we may reverse if the appellant establishes prima facie error, which is error at first sight, on first appearance, or on the face of it. *Id*. Moreover, we will not undertake the burden of developing legal arguments on the appellee's behalf. *Id*.

Here, the jurisdictional facts are undisputed. Mother and Father were divorced in Mississippi and, part and parcel with the dissolution, the Mississippi court made a determination as to custody of the parties' minor children. Mother and the children relocated to Indiana and have been present in this state for over six years. Father, who maintains that he continues to reside in Mississippi, has exercised parenting time with the children. Where the jurisdictional facts are undisputed, the question of whether a trial court had jurisdiction is

[2] The argument presented by Mother in opposition to Father's motion to correct error goes to the issue of personal jurisdiction. The issue of jurisdiction over child custody under the UCCJA is a matter of subject matter jurisdiction.

reviewed *de novo*. *In re K.C.*, 922 N.E.2d 738 (Ind. Ct. App. 2010) (citing *Novatny v. Novatny*, 872 N.E.2d 673 (Ind. Ct. App. 2007)), *trans. denied*.

Both Mississippi and Indiana have adopted the UCCJA, which contains provisions for establishing jurisdiction to decide custody matters having an interstate dimension. *See* I.C. 31-21 *et seq*. and Miss. Code Ann. 93-27 *et seq*.; *see also Westenberger v. Westenberger*, 813 N.E.2d 343 (Ind. Ct. App. 2004), *trans. denied*. Under the UCCJA, the court that first enters a custody decree on a matter gains exclusive jurisdiction. *Novatny v. Novatny*, 872 N.E.2d 673. Exclusive jurisdiction continues until all parties and the children that were the subject of the decree have left the state. *Id*.

It has been noted that "[t]he fundamental principle underlying the UCCJA is that once a court with a jurisdictional basis exercises jurisdiction over a 'custody' issue, that court retains exclusive jurisdiction over all custody matters so long as a 'significant connection' remains between the controversy and the state, and that court alone has discretion to decide whether it will defer jurisdiction to the court of another state upon the basis that the other court is a more convenient forum to litigate the issues." *Matter of E.H.*, 612 N.E.2d 174, 185 (Ind. Ct. App. 1993), *opinion adopted by* 624 N.E.2d 471 (Ind. 1993). A "significant connection" remains under the scheme as long as one parent continues to reside in the state rendering the initial determination. *Matter of E.H.*, 612 N.E.2d 174. Indeed, pursuant to I.C. § 31-21-5-3 (West, Westlaw through 2010 2nd Regular Sess.):

> [A]n Indiana court may not modify a child custody determination made by a court of another state unless an Indiana court has jurisdiction to make an initial

[3] No hearing was ever held. The trial court's acceptance of jurisdiction and ruling on the Father's motion to correct error were based solely on the information presented in the parties' pleadings.

determination under section 1(a)(1) or 1(a)(2) of this chapter and:
(1) the court of the other state determines that:
(A) it no longer has exclusive, continuing jurisdiction under section 2 of this chapter; or
(B) an Indiana court would be a more convenient forum under section 8 of this chapter; or
(2) an Indiana court or a court of the other state determines that:
(A) the child;
(B) the child's parents; and
(C) any person acting as a parent;
do not presently reside in the other state.

Here, there is no evidence that the Mississippi court that issued the initial custody order as part of the divorce decree relinquished its exclusive jurisdiction or made a determination that Indiana would be a more convenient forum. Thus, subsection (1) has not been met. With regard to subsection (2), no determination was made by any court that the children and the children's parents do not "reside in the other state." *Id.* In her motion requesting acceptance of jurisdiction, Mother noted that she and the children had lived in Indiana for nearly six years. Mother presented no evidence from which the Indiana court could have determined Father's state of residence. The Indiana court could not have therefore made the necessary determination required under subsection (2).

In his motion to correct error, Father informed the court that he still resides in Mississippi.[4] Thus, there is still a "significant connection" with the State of Mississippi. Given this information, a court could not have made the requisite determination under subsection (2) that would have permitted the Indiana court to assert jurisdiction for purposes

[4] In his motion to correct error, Father asserted that in February he filed in the Mississippi court an objection to transfer of jurisdiction over custody matters to Indiana.

of modifying the custody determination initially entered by the Mississippi court.[5] We have noted before that the mere fact that the child and his custodial parent move to another state does not, as a matter of law, divest the original trial court of jurisdiction properly exercised. *See Stewart v. Vulliet*, 888 N.E.2d 761 (Ind. 2008).

On the record before us, Father has made a prima facie showing that the trial court erred in asserting jurisdiction under the UCCJA.

Judgment reversed.

MAY, J., and MATHIAS, J., concur.

[5] There is no claim and no evidence that would support a determination that Mother was requesting the Indiana court to exercise temporary emergency jurisdiction over matters relating to custody of the children. *See* I.C. § 31-21-5-4 (West, Westlaw through 2010 2nd Regular Sess.) (providing a jurisdictional basis for a state to make custody determinations where the child is physically present in the state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, the child's sibling, or the child's parent is subjected to or threatened with mistreatment or abuse).