IN THE COURT OF APPEALS OF IOWA

No. 1-266 / 10-1213
Filed May 25, 2011

IN RE THE MARRIAGE OF MATTHEW P. WEICHERS AND THERESA A. WEICHERS

Upon the Petition of
MATTHEW P. WEICHERS,
Petitioner-Appellant,

And Concerning
THERESA A. WEICHERS,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Bruce Zager, Judge.

Father appeals the district court's order declining to exercise jurisdiction over his modification petition. **AFFIRMED.**

Matthew P. Weichers, Cedar Falls, pro se.

Theresa A. Weichers, Cypress, Texas, pro se.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

PER CURIAM

Matthew Weichers appeals the district court's order declining to exercise jurisdiction over his modification petition. We affirm.

I. Background Facts and Proceedings.

Matthew and Theresa Weichers were divorced in March 2004. Their three minor children were placed in their joint legal custody and in the physical care of Theresa. In April 2005, Theresa and the children moved to Texas. Multiple filings and hearings have occurred since in both Texas and Iowa.

In August 2007, Matthew filed a petition for modification. On November 9, 2009, the Iowa district court ruled:

> [Theresa] has moved to dismiss the Petition for Modification . . . based upon an [Iowa] order entered . . . on December 13, 2007. In said order [the district court] suspended further proceedings in this court and allowed the parties an opportunity to seek a determination of jurisdiction from the State of Texas.
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> . . . .
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> In the action before the court, the State of Iowa has original jurisdiction herein. The State of Texas has claimed simultaneous jurisdiction over the children. Before a determination can be made as to which court shall continue to exercise jurisdiction, communication between the courts must take place as provided in [Iowa Code] section 598B.110 [(2007)]. Until such time as the courts have made a determination as to which court will exercise jurisdiction, the State of Iowa retains jurisdiction as the court of original jurisdiction.
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> [Theresa's] Motion to Dismiss based upon the custody order from the State of Texas should be denied. The courts of this state should communicate with the courts of the State of Texas concerning the simultaneous jurisdiction being exercised herein.

On January 11, 2010, Matthew filed an application requesting "the court issue an order not giving full faith and credit to any order from the State of Texas" and seeking relief from a December 2, 2009 Texas ruling involving child custody and support. On February 5, 2010, Theresa filed a motion to dismiss Matthew's

modification petition "for lack of jurisdiction." On February 18, 2010, after hearing, the district court ruled:

> Pursuant to the order entered . . . on November 9, 2009, the state of Iowa has original jurisdiction of the parties and their children based upon this underlying dissolution action. . . . [U]ntil such time as the Iowa and Texas courts have made a determination as to which court will exercise jurisdiction over these children, the state of Iowa retains jurisdiction as the court of original jurisdiction.
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> . . . .
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> 3. Once the Court has obtained [the name of the presiding judge in Texas, the contact information, and the times and dates when the court in Texas will be available], it will issue a new order setting the matter for hearing and shall initiate this telephone conference.
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> 4. Until the time of the next hearing, the previous order entered by the Texas court . . . shall be stayed. Additionally, the income withholding order [for Matthew] shall be quashed.

Matthew's request to amend/enlarge was denied on March 9, 2010. Matthew's request for interlocutory appeal/stay was denied on March 23, 2010.

On March 24, 2010, the Iowa district court held a hearing in which Theresa and Judge Robert Newey, presiding judge in Harris County, Texas, appeared telephonically from Texas. After hearing the arguments of the parties, the Iowa district court stated:

> I do believe Texas is now the home state of these children. I also believe that Texas is, in fact, the most convenient forum, and . . . again that's the purpose of this telephone call is to get your opinion as well, sir, that pursuant to the dictates of an inconvenient forum pursuant to our code section 598B.207, and I'm assuming that Texas has the Uniform Child Custody Jurisdiction Act as well with a different number perhaps.
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> Judge Newey of Texas: We do.
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> The Court: And I was just looking through the factors that we need to consider. Specifically under subsection 2 it talks about the length of time that the children have resided outside the state. I think the record is clear that that's probably four or five years, at least at this time. . . . I'm not sure that [Matthew] has ever indicated that he agreed to have Texas be the jurisdiction. So I'm not giving any weight to that particular factor. What I'm giving weight to is the

> nature and location of all of the evidence which would be required to resolve the pending litigation including any testimony of the children, which clearly would fall in favor of the state of Texas.
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> Also, I think . . . that the familiarity of the court of each state with the facts and issues in the pending litigation, which is actually a modification . . . that's relating to custody, visitation and other matters relating to these children, which also clearly to me seems to fall on Texas rather than Iowa. So I am just setting forth my reasons for believing that Iowa no longer should have jurisdiction of this matter and jurisdiction should be assumed by Texas.
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> Judge Newey of Texas: Concur with you, Judge, and I would add to that that there was, in fact, a hearing on the special appearance filed by [Matthew] on May the 11th, 2009, and he was represented by counsel on that date and the result of that was the order of May 11, signed on May 14, wherein jurisdiction over the children was taken by Texas and the remaining issues in the divorce were left in Iowa.
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> The Court: All right.
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> Judge Newey of Texas: After that [Matthew's] attorney withdrew and there was a trial held by this court on the children's issues on November the 9th, 2009, with a subsequent order entered consistent with the findings on that. That was signed and made an official order on December 2, 2009, and as far as I know, there's been no appeal from that order. So I concur with . . . you, Judge, that Texas has jurisdiction over these children.

Matthew made an oral motion on the record to stay the district court's order. The district court declined to stay the proceedings. On March 25, 2010, the district court ordered:

> A review of the court file reveals a long history and dispute about which state now has jurisdiction to make decisions regarding the custody of the minor children of the parties. While several Iowa district court judges have attempted to resolve this matter, this Court felt it imperative to follow the dictates of the Uniform Child Custody Jurisdiction and Enforcement Act and conduct a hearing with the Court in Texas to finally resolve the matter of jurisdiction. . . . The Court and the Honorable Robert Newey also analyzed the relevant factors set forth in Iowa Code Section 598B.207 regarding inconvenient forum. It was the undersigned's opinion, and the opinion of the Honorable Robert Newey that Texas was now the home state of these children and that Texas is the most convenient forum in which to address issues of custody and visitation involving these children. For the reasons set forth in the record, the Court [orders]:

> 1. The Iowa Court hereby declines to exercise its continuous jurisdiction over the children involved in this dissolution of marriage action as it concludes that Texas is now the home state of these children and is likewise the most convenient forum in order to address the issues raised with regard to these children.
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> 2. The Motion to Dismiss the Petition for Modification and Request for Temporary Custody, filed by [Theresa] is hereby granted and the underlying modification action is dismissed.

Matthew now appeals.

II. Scope of Review.

"Although the primary question on appeal concerns jurisdiction, the underlying action involves child custody; therefore, equitable principles apply and our review is de novo." *In re Marriage of Hocker*, 752 N.W.2d 447, 449 (Iowa Ct. App. 2008). "The fundamental question of which state is best suited to resolve custody quickly, permanently, and on the merits, is decided by us anew." *Id*.

III. Merits.

The Iowa district court determined that although Iowa properly held continuing and exclusive jurisdiction over child custody matters, Iowa is an inconvenient forum relative to Texas. Matthew argues:

> The Iowa district Court erred when it transferred subject matter jurisdiction of the child custody case to Texas after Texas had already issued an order on the case. And the Iowa District Court erred by using Iowa Code 598.207(b) and (f) as the reasoning for transferring the jurisdiction.

Chapter 598B (2007), Iowa's Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) promotes cooperation between states in order to "avoid jurisdictional competition and conflict between state courts in child custody matters." *In re Jorgensen*, 627 N.W.2d 550, 555 (Iowa 2001). "Provisions of Iowa Code chapter 598B do envision that, over time, a child's ties to the decree

state may become too tenuous to justify continuing jurisdiction." *Hocker*, 752 N.W.2d at 449. The overarching purpose of chapter 598B is to:

> [a]ssure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and the family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and the family have a closer connection with another state.

Id. at 450 (quoting *In re Marriage of Cervetti*, 497 N.W.2d 897, 901 (Iowa 1993) (ruling "[a]lthough the Iowa district court could exercise jurisdiction in this [modification], it should have declined to do so" and noting "these girls *visit* in Iowa, they *live* in North Carolina")). In a modification, the court assesses "the current situation and projects into the future" and "we do not consider relevant the location of evidence prior to [the decree]." *Hocker*, 752 N.W.2d at 450.

We therefore consider whether the Iowa district court, having jurisdiction, correctly declined its authority to rule on Matthew's request for modification. We first consider Iowa Code section 598.207:

> 598B.207 Inconvenient forum.
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> 1. A court of this state which has jurisdiction . . . 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. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.
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> 2. 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. For this purpose, the court shall . . . consider all relevant factors, including all of the following:
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> . . . .
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> b. The length of time the child has resided outside this state.
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> . . . .
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> f. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.

> . . . .
> h. The familiarity of the court of each state with the facts and issues in the pending litigation.

Therefore, section 598B.207 provides "that a court with jurisdiction may decline to act if another state is a more appropriate forum and this is an inconvenient forum" when the enumerated factors are considered. *See Hocker*, 752 N.W.2d at 450. Chapter 598B also provides:

> 598B.202 Exclusive, continuing jurisdiction.
> 1. . . . [A] court of this state which has made a child-custody determination . . . has exclusive, continuing jurisdiction over the determination *until any of the following occurs*:
> a. A court of this state determines that . . . the child and one parent . . . do not 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.

(Emphasis added.)

Our de novo review of the record convinces us that Texas, not Iowa, is the state presently having the most significant connection as well as the state holding the most substantial evidence about the children's welfare. The district court conducted a phone hearing with a judge in Texas as authorized by Iowa Code section 598B.110(1): "A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter." The Iowa court and the Texas court jointly considered the appropriate statutory factors. The Texas court stated Texas had enacted its own UCCJEA. The Iowa district court stated it was not considering whether Matthew had agreed to jurisdiction in

Texas as a statutory factor[1] and ruled: "Texas is now the home state of these children and is likewise the most convenient forum in order to address the issues raised with regard to these children." This ruling comports with the requirements of section 598B.202(1)(a). *See Hocker*, 752 N.W.2d at 451 ("Although the Iowa court may be more familiar with the original court case in the decree, we agree with the Iowa district court's conclusion that at this time the bulk of the evidence pertinent to modification of child custody is in Illinois."). Accordingly, the Iowa district court correctly declined to exercise its jurisdiction.

We have considered all of the issues raised in Matthew's brief and those not specifically addressed are without merit.

AFFIRMED.

[1] The record shows Matthew, with his attorney, appeared at a September 14, 2005 hearing in Texas. Beth Barron, the Texas Assistant District Attorney, Prosecuting Attorney for Harris County, initialed a handwritten sentence on the Texas court's subsequent protective order: "[Matthew] denies the allegations in the affidavit; he only agrees to comply with this order." Therefore, as of September 2005, Matthew voluntarily appeared in a Texas court and agreed to comply with its order.