

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA** **CIVIL ACTION**

B M,
Mother,

vs.
J F,
Father,

Case No. XX DR YYYY N

**ORDER REGARDING U.C.C.J.E.A. JURISDICTION AND
NOTICE OF HEARING**

This matter having come before the court today on the court's own motion, it is ordered:

1. Findings

This is a supplemental proceeding in a paternity action originally filed in the Court of Common Pleas, *Omitted* County, Pennsylvania. The mother filed this action on *Date omitted* /2015 to domesticate the Pennsylvania orders concerning the custody of a minor child and she filed a supplemental petition in this action that seeks to modify those orders.

The mother's pleading in this file shows that the parties have a minor child, PSF, female, born *Date omitted* /2010.

The mother's UCCJEA affidavit avers that the child has resided in Lee County, Florida, since 4/1/2014.

The file reflects that the father was served with process in Pennsylvania on *Date omitted* /2015.

2. Ruling

(A) Under Florida law an order for a parenting plan, a parental responsibility order, and a time-sharing schedule is a "custody" order under the UCCJEA. Florida law does not use the terms "custody", "visitation", or "primary residential parent" in a proceeding between separated parents, although the term "custody" is used in Florida's adoption of the UCCJEA because that term is used in that uniform statute. Nevertheless, the correct terms under Florida law in a case between separated parents are "parenting plan," "parental responsibility order," and "time-sharing schedule."

(B) Pursuant to F.S. §§61.511, 61.513, 61.514, 61.515, 61.519, 61.520, and 61.521, and the

equivalent provisions of the UCCJEA in the Pennsylvania statutes, when this court learns that a simultaneous UCCJEA case is pending in another state, this court must stay its proceeding and the two courts are required to promptly communicate about the two cases and to determine which state has jurisdiction concerning the custody of the minor children and which court should proceed to a ruling on the issues.

F.S. §61.515 provides:

“(1) Except as otherwise provided in s. 61.517, a court of this state which has made a child custody determination consistent with s. 61.514 or s. 61.516 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that the child, the child's parents, and any person acting as a 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; or

(b) A court of this state or a court of another state determines that the child, the child's parent, and any person acting as a parent do not presently reside in this state.

(2) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under s. 61.514.”

F.S. §61.519(2) provides:

“ ... If the court determines that a child custody proceeding was previously commenced in a court in another state having jurisdiction substantially in accordance with this part, the court of this state shall stay its proceeding and communicate with the court of the other state.”

F.S. §61.511 provides:

“(1) A court of this state may communicate with a court in another state concerning a proceeding arising under this part.

(2) The court shall allow the parties to participate in the communication. If the parties elect to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(4) Except as otherwise provided in subsection (3), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(5) For purposes of this section, the term “record” means a form of information, including, but not limited to, an electronic recording or transcription by a court reporter which creates a verbatim memorialization of any communication between two or more individuals or entities.”

Presumably, Pennsylvania’s adoption of the UCCJEA is the same. **So, this court now stays this proceeding until it can communicate with the Pennsylvania court concerning the Pennsylvania case and a determination of which court should proceed with a ruling on the custody issues.**

(C) Pursuant to §61.511(2) & (4) the parties must be allowed to participate in the communication between the courts and a record must be made.

(D) Therefore, this order is notice to the parties that this judge and the Pennsylvania judge will communicate about these two cases and will determine which court has custody jurisdiction under the foregoing statutes.

(E) The two judges will communicate in a hearing for which both parties will have notice and an opportunity to be heard.

(F) This will be an evidentiary hearing at which the parties may present evidence. The parties may also present argument. Both may be represented by lawyers in Florida and Pennsylvania. The father and the mother may appear before the Florida court or the Pennsylvania court. This court will conduct the hearing with a speaker phone in the courtroom. So, if either parent is before the court in Pennsylvania he or she may appear and give testimony before this court by speaker phone.

(G) This court will make a record of the entire hearing by electronic court reporting as required by §61.511.

See, e.g., Johnson v. Johnson, 88 So.3d 335 (Fla. 2d DCA 2012) concerning notice of the hearing with both judges and opportunity to be heard;

London v. London, 32 So.3d 107 (Fla. 2d DCA 2009) concerning the requirement to stay

proceeding and communicate with the other court;

Barnes v. Barnes, 124 So.3d 994 (Fla. 4th DCA 2013); concerning “home state” jurisdiction;

M.A.C. v. M.D.H., 88 So.3d 1050 (2d DCA Fla. 2012) concerning “looked back” at 1054;

Sarpel v. Eflanli, 65 So.3d 1080 (Fla. 4th DCA 2011) same.

(H) Notice of Hearing

The hearing will be held before the undersigned on Date omitted at 11:30

AM in

(1) Courtroom 4-I, 1700 Monroe Street, Fort Myers, Florida, and

(2) Before the Honorable *Judge Omitted*, *Omitted County Court of Common Pleas, Address Omitted*, PA.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Certificate of Service

I hereby certify that copies of the foregoing order were provided by U.S. mail to:

(1) , Esq.,

(2) J F, *pro se*, *Address Omitted*, PA

(3) Hon. *Judge Omitted*, *Omitted County Court of Common Pleas, Address Omitted*, PA.

Dorina Soumastre, Judicial Assistant