

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

**R. K. M.,
Petitioner & wife,**

**vs.
J. L. V.,
Respondent & husband,**

Case No. 00 DR 00 N

ORDER REGARDING JURISDICTION

This matter having come before the court on 2/8/2012 on the court's own motion, it is ordered:

1. Findings

On 2/8/2012 and 10:00 a.m. the undersigned spoke to the Honorable , Circuit Judge, , Arkansas, regarding the two cases now pending between the parties in Florida and Arkansas. The Florida case is styled above. The Arkansas case is Case No. Dr-XX-XXX-X, in the Circuit Court of X County, Arkansas. The parties were notified through counsel that the two judges would communicate about these cases and the parties were given an opportunity to be present. The phone call took place in Courtroom 4-I, 1700 Monroe Street, Fort Myers, Florida, over the speaker phone and a record was made, as required by F.S. §61.511.

The husband's "Complaint for Divorce" filed in the Arkansas case on 10/27/2011 is not sworn but it alleges that the parties separated on 10/17/2011. The wife's "Petition for Dissolution of Marriage" filed in the Florida case on 12/6/2011 is sworn and it avers that the parties separated on 10/13/2011. Both pleadings ask the respective courts to take jurisdiction of the parenting issues under the U.C.C.J.E.A.

The parties are the parents of a minor child, C. X. V., born (*Month and day omitted*)/2009 in Naples, Florida. The mother filed a U.C.C.J.E.A. affidavit in this case on 12/6/2011. It avers that the child resided with both parties in Florida from 8/1/2010 to 6/21/2011, or 10 months, then with both parties in Arkansas from 6/25/2011 to 10/13/2011, or 4 months, and then in Florida again with only the mother from 10/15/2011 to the date of filing of the affidavit.

So, it appears that the child did not reside in Arkansas for 6 months and that the mother has not resided in Florida for 6 months continuously before her Petition was filed.

On 1/20/2012 in this case the husband filed a sworn *pro se* "Response" to the wife's Petition. That "Response" denies this court's subject matter jurisdiction over the marriage, but also requests affirmative relief. The relief sought includes a time-sharing schedule, a parental responsibility order, equitable distribution of marital debts, and a child support order. So his

“Response” appears to be a counter petition and a personal appearance that gives this court personal jurisdiction over the husband to decide any issue over which this court has subject matter jurisdiction.

2. Ruling

2.1 It appears this court has subject matter jurisdiction under the U.C.C.J.E.A. From the pleadings in the two cases, the mother’s U.C.C.J.E.A. affidavit in this case, and the father’s “Response” in this case, the two judges in these cases agree that it appears that this Florida court has jurisdiction over the parenting issues under the U.C.C.J.E.A. and that Arkansas does not have this subject matter jurisdiction.

If the child did not reside in Arkansas for 6 months, that state cannot be the “home state” of the child under §61.503(7) and no other provision of §61.514 gives Arkansas subject matter jurisdiction under the U.C.C.J.E.A. It appears that the child was in Florida with both parents before 6/21/2011 and is now in Florida with one parent since mid-October 2011.

Therefore, it seems that Florida is the only state with U.C.C.J.E.A. jurisdiction under §61.514 and the equivalent provision of Arkansas’ enactment of the U.C.C.J.E.A.

2.2 It appears that a Florida court may not have subject matter jurisdiction over the marriage F.S. §61.021 requires that a petitioner or a respondent “must reside 6 months in the state before the filing of the petition” before a Florida court will acquire subject matter jurisdiction over the *res* of the marriage. Case law interpreting §61.021 provides that “a continuous presence during the entire six-month period before filing the petition is not required,” *Rowland v. Rowland*, 868 So.2d 608, 610-611 (Fla. 2d DCA 2004), but absences from the state cannot amount to a change of residence and must be only temporary departures without any intention to move from Florida and make a permanent residence elsewhere. *Id.*

This court’s long arm personal jurisdiction over the husband for the financial issues of alimony, equitable distribution and child support are further questions. *See, e.g., Snyder v. McLeod*, 971 So.2d 166 (Fla. 5th DCA 2007) and §48.193(1)(e).

The mother’s U.C.C.J.E.A. affidavit appears to contradict the averment in the first paragraph of her Petition. Her affidavit shows she was absent from Florida for almost 4 months during the 6 months before she filed her Petition. However, her Petition swears she has resided in Florida for 6 months before the filing of the petition.

Under Arkansas law, the residency requirement for subject matter jurisdiction over the marriage is 60 days before the filing of a complaint for divorce, so it appears that the Arkansas court has subject matter jurisdiction over the marriage, because it appears that the husband has resided in Arkansas for 60 days before he filed his Complaint.

2.3 An evidentiary hearing regarding subject matter and personal jurisdiction is required Therefore, the factual question is this court’s jurisdiction, of all sorts, to resolve the issues raised by the mother’s Petition, that is, (1) subject matter jurisdiction over the marriage, *see* §61.021; (2)

long-arm personal jurisdiction over the husband, even if the court has subject matter jurisdiction over the marriage, to decide the property issues, that is, equitable distribution, alimony, and child support, *see* §48.193(1)(e) and *see, e.g., Marshall v. Marshall*, 988 So.2d 644 (Fla. 4th DCA 2008); (3) subject matter jurisdiction over the parenting issues, that is, a parenting plan, a time-sharing order and a parental responsibility order, *see* §61.514.

Under Florida law, an order for a parenting plan, a parental responsibility order, and a time-sharing schedule is a “custody” order under the U.C.C.J.E.A. Since 10/1/2008 Florida law does not use the terms “custody”, “visitation”, or “primary residential parent” in a proceeding between separated parents. Those terms have no meaning under Florida law in a case between separated parents.

The parties’ pleadings and the mother’s U.C.C.J.E.A. affidavit conflict. The father’s Complaint is unsworn. Therefore, the court cannot make findings of fact sufficient to determine whether the court has any jurisdiction and, if so, which.

3. Ruling

This court must hold an evidentiary hearing to determine the factual basis for this court’s jurisdiction, if any.

See Venetian Salami v. J. S. Parthenais, 554 So.2d 499 (Fla. 1989) and *Weiler v. Weiler*, 861 So.2d 472, 476 (5th DCA 2003): “In determining if personal jurisdiction is proper under the long-arm statute, the trial court must first determine whether the complaint alleges sufficient jurisdictional facts to bring it under the statute. (*Citation omitted.*) If the allegations are disputed, the court must hold, as it did in this case, an evidentiary hearing.”

The same must be said when a factual question is raised about any jurisdiction. Whenever a jurisdictional question arises, the court cannot decide the question on the basis of competing verified pleadings, much less an unsworn complaint and a verified petition, and the court must hold an evidentiary hearing at which testimony is subject to cross examination and evidence is taken. After that hearing, the court will make findings of fact and will make a ruling that determines this court’s jurisdiction.

Therefore, either party may schedule an extended evidentiary hearing to determine this court’s jurisdiction by contacting the court’s judicial assistant.

The court will not hear any other matter in this case until the court has determined whether or not it has jurisdiction to proceed with any issue in this case.

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

R. Thomas Corbin, Circuit Judge

Copies provided by FAX today and U.S. mail to:

, Esq., , Arkansas

, Esq., Fort Myers, Florida

Honorable , Circuit Judge, Arkansas