COURT OF APPEALS
DECISION
DATED AND FILED

October 12, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-2804

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE PATERNITY OF STEPHENIE R.N.:

ANDREW J.N.,

PETITIONER-RESPONDENT,

v.

WENDY L.D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: GERALD C. NICHOL, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Wendy L.D. appeals from an order declining jurisdiction of a custody and placement dispute. Wendy challenges the jurisdictional decision on several grounds. We reject her contentions and affirm.

¶2 Stephenie R.N. was born to the parties in 1987. She remained in Wendy's care until a Rock County Circuit Court ordered custody and placement transferred to Andrew in 1989. This court reversed the trial court's order in 1992. The Wisconsin Supreme Court upheld our decision in 1993. Meanwhile, both parties moved to Dane County. After conclusion of the appellate proceedings, Andrew commenced a Dane County proceeding for custody. In 1994, the trial court awarded Stephenie's sole custody to Andrew.

¶3 In 1997, the parties stipulated that Andrew could take Stephenie to his new home in Knoxville, Tennessee, and the Dane County trial court so ordered. In March 1999, Wendy moved the court for a finding of contempt against Andrew, alleging that he was interfering with her placement. She sought other relief as well. The trial court denied the motion on the grounds that Wendy had previously stipulated to arbitrate all placement disputes. While Wendy's motion for reconsideration was pending, Andrew moved to transfer jurisdiction of the case to his county of residence in Tennessee.

¶4 The trial court granted Andrew's motion and declined to exercise any further jurisdiction in the matter. The court concluded that it was in Stephenie's best interest to try all subsequent matters in Tennessee because she had lived there with her father, stepmother and stepsiblings for three years and that is where her school, pediatrician, and "other important players" are located. The court also noted its knowledge of the case and indicated a willingness to share views with the Tennessee court.

¶5 Wendy's issues on appeal are whether: (1) the transfer served Stephenie's best interest, (2) the court had authority to decline to exercise jurisdiction without hearing her contempt motion, (3) Andrew moved to transfer

custody to escape the contempt proceeding, and (4) Dane County was the proper venue to decide the jurisdictional issue.

¶6 The Uniform Child Custody Jurisdiction Act governs jurisdictional determinations in interstate custody disputes. *See* WIS. STAT. § 822.01(1) (1997-98).[1] The primary purposes of the act are to avoid jurisdictional competition, insure that the custody decree is rendered in the state that can best decide the case in the interest of the child, and to assure that litigation ordinarily occurs in the state with which the child and family have the closest connection. *See* ***id.*** A Wisconsin court may take jurisdiction of a custody matter if it is the child's home state, the child and at least one contestant have a significant connection with the state and substantial evidence concerning that child's life, the child is physically present in the state or it appears that no other state would have jurisdiction. *See* WIS. STAT. § 822.03(1). Even if the court of this state has jurisdiction under those standards, the court may decline to exercise jurisdiction if a court of another state is a more appropriate forum. *See* WIS. STAT. § 822.07(1). In determining whether another state is a more appropriate forum, the court shall consider whether another state is the child's home state, whether it has a closer connection with the child and the child's family, whether evidence concerning the child is more readily available in the other state, whether the parties have stipulated to another forum, and whether this state's jurisdiction would contravene any of the purposes of the act. *See* § 822.07(3). Determining jurisdiction under these standards is a discretionary determination. *See* ***In Re Paternity of J.L.V. v. M.W.G.***, 145 Wis. 2d 308, 311, 426 N.W.2d 112 (Ct. App. 1988). The "home state" of the child for jurisdiction

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

purposes is the state in which the child has lived with the child's parents or guardian for at least six consecutive months. *See* WIS. STAT. § 822.02(5).

¶7 The trial court properly and reasonably concluded that Tennessee was the appropriate forum to litigate matters concerning Stephenie's placement. Stephenie has lived there for three years. Under any reasonable view, substantial evidence concerning her current life is much more readily available in Tennessee. The record shows little, if any, benefit from continuing to litigate matters in Wisconsin other than for Wendy's convenience. That is not a justifiable reason to maintain jurisdiction here under WIS. STAT. ch. 822. Although Wendy alleges that Andrew concealed plans to move to yet another state, no facts of record support that allegation.

¶8 The contempt proceeding initiated by Wendy did not prevent the trial court from transferring jurisdiction. The trial court had resolved the contempt issue by the time it decided the jurisdiction issue. Whether it should have done so without a hearing is a separate and unrelated issue, and one that Wendy has not raised on appeal. Nor is Andrew's motive for filing the transfer motion grounds to challenge the court's decision, even if the record showed what that motive was.

¶9 Wendy's challenge to venue in Dane County is meritless. Numerous matters have been litigated here since 1993, without objection from Wendy. It is far too late to raise the issue now.

¶10 Finally, Andrew asserts that three of Wendy's four issues are frivolous, and asks for costs under WIS. STAT. RULE 809.25(3). Costs are allowed under that section only if the appeal as a whole is frivolous. *See* ***Union State Bank v. Galecki***, 142 Wis. 2d 118, 127-28, 417 N.W.2d 60 (Ct. App. 1987).

Andrew implicitly concedes that Wendy raised one meritorious issue. Therefore, we decline to award costs under RULE 809.25(3).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.