

105 P.3d 963
Court of Appeals of Utah.

Wendy SULLIVAN, Petitioner and Appellee,

v.

Mark Allen SULLIVAN, Respondent and Appellant.

No. 20030957–CA.

|
Dec. 23, 2004.

Synopsis

Background: Wife filed complaint for divorce in Utah. Husband filed answer, requesting that all child custody proceedings be referred to Illinois and claiming that Utah court lacked jurisdiction over children. Wife then filed another divorce complaint in which she claimed that Utah court had jurisdiction over matter. The District Court, Farmington Department, [Darwin C. Hansen, J.](#), dismissed first complaint and concluded that Utah had jurisdiction over matter under wife's second complaint. Husband appealed.

Holdings: The Court of Appeals, [Bench](#), Associate Presiding Judge, held that:

[1] trial court properly dismissed first complaint for divorce filed by wife, as trial court lacked jurisdiction over action under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA);

[2] trial court properly denied husband's motion to consolidate two complaints for divorce that had been filed by wife; and

[3] child custody action commenced by husband in Illinois was untimely under UCCJEA.

Affirmed.

West Headnotes (7)

[1] Appeal and Error

🔑 Deference given to lower court in general

Appeal and Error

🔑 Review for correctness or error

Review of a grant of a motion to dismiss presents questions of law that are reviewed on appeal for correctness, giving no deference to the decision of the trial court.

3 Cases that cite this headnote

[2] Appeal and Error

🔑 Deference given to lower court in general

Appeal and Error

🔑 Review for correctness or error

Appellate court accords no deference to the trial court's legal conclusions, reviewing them for correctness.

1 Cases that cite this headnote

[3] Child Custody

🔑 “Home state” of child

Divorce

🔑 Involuntary

Trial court properly dismissed first complaint for divorce filed by wife, as trial court lacked jurisdiction over action under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); wife had filed complaint before she and parties' children had lived in state for six months, and, under UCCJEA, trial court had jurisdiction to make initial child custody determination only if Utah was home state of child on date of commencement of proceeding, and “home state” was defined as state in which child lived with a parent for at least six consecutive months immediately before commencement of child custody proceeding. West's U.C.A. §§ 78-45c-102(7), 78-45c-201(1)(a).

2 Cases that cite this headnote

[4] Divorce

🔑 Joinder of causes and proceedings

Trial court properly denied husband's motion to consolidate two complaints for divorce that had been filed by wife, as complaints involved

different interpretation and application of jurisdictional provisions of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); state did not have jurisdiction over matter under first complaint, but it did have jurisdiction under second complaint, and thus the two complaints presented different issues and procedures, and did not involve a common question of law or fact. West's U.C.A. §§ 78-45c-102(7), 78-45c-201(1)(a); Rules Civ.Proc., Rule 42(a).

[Cases that cite this headnote](#)

[5] Action

🔑 Power to consolidate

Trial courts have rather broad discretion in determining the outcome of motions to consolidate. Rules Civ.Proc., Rule 42(a).

[Cases that cite this headnote](#)

[6] Child Custody

🔑 Time for proceedings

Child custody action commenced by husband in Illinois was untimely under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), as it was clearly outside six-month time limit of UCCJEA; at time husband commenced action, Illinois was no longer the children's "home state" for purposes of UCCJEA, and record indicated that husband knew that wife and children were staying in Utah. West's U.C.A. § 78-45c-201(1)(a).

[Cases that cite this headnote](#)

[7] Child Custody

🔑 Presentation and reservation of grounds of review

Husband failed to preserve for appeal in divorce action issue of date on which wife and children had permanently moved to Utah, for purposes of determining whether Utah had jurisdiction over custody of parties' children as children's "home state" under Uniform Child Custody Jurisdiction and Enforcement

Act (UCCJEA), as husband never made request for evidentiary hearing on this issue in trial court. West's U.C.A. §§ 78-45c-102(7), 78-45c-201(1)(a).

[1 Cases that cite this headnote](#)

Attorneys and Law Firms

*964 [Thomas R. King](#), King Burke & Schaap PC, Salt Lake City, for Appellant.

[Robert L. Neeley](#), Campbell Campbell & Ference, Ogden, for Appellee.

*965 Before [BILLINGS](#), P.J., [BENCH](#), Associate P.J., and [JACKSON](#), J.

OPINION

[BENCH](#), Associate Presiding Judge:

¶ 1 Mark Sullivan appeals the trial court's ruling that the State of Utah had jurisdiction to determine custody issues of his children. We affirm.

BACKGROUND

¶ 2 Mr. Sullivan and Ms. Sullivan married in 1995, had two children, and moved to Illinois in 1999. On June 22, 2002, Ms. Sullivan took the two children and left Illinois, allegedly telling Mr. Sullivan she was merely visiting her family. Instead, Ms. Sullivan brought the children to Utah and filed a complaint for divorce (First Complaint) in September 2002. Mr. Sullivan filed an answer in December 2002 and requested that all custody proceedings be referred to the State of Illinois. He alleged that the Utah court lacked jurisdiction over the children because, when the First Complaint was filed, they had not yet lived in Utah for six months. He did not, however, file an action in Illinois at that time.

¶ 3 In January 2003, Ms. Sullivan filed another divorce complaint (Second Complaint) claiming the Utah court now had jurisdiction over the matter because she and the children had lived here for over six months, and

no custody action was pending in Illinois. Only later, in April 2003, did Mr. Sullivan file a Petition for Child Custody in Illinois. He then moved to consolidate both Utah complaints under the First Complaint or, in the alternative, to dismiss the Second Complaint. Ms. Sullivan objected to the consolidation and moved to dismiss her First Complaint.

¶ 4 Without giving Mr. Sullivan a full opportunity to respond to Ms. Sullivan's motion, the Utah trial court entered an order dismissing the First Complaint. Mr. Sullivan filed a motion to set aside this order. After a hearing on Mr. Sullivan's motion, the Utah trial court dismissed the First Complaint and ruled that because Mr. Sullivan had not filed his Petition for Child Custody in Illinois within six months of the children's departure from that state, Utah had jurisdiction under the Second Complaint.

ISSUES AND STANDARDS OF REVIEW

[1] ¶ 5 Mr. Sullivan contends that the trial court erred in dismissing Ms. Sullivan's First Complaint and allowing her to proceed with her Second Complaint. "Review of a grant of a motion to dismiss presents questions of law that we review for correctness, giving no deference to the decision of the [trial] court." *Foutz v. City of S. Jordan*, 2004 UT 75, ¶ 8, 100 P.3d 1171.

[2] ¶ 6 Second, Mr. Sullivan argues that he filed his custody action in the State of Illinois in a timely manner and that the Utah trial court erred in finding otherwise. "We accord no deference to the trial court's legal conclusions, reviewing them for correctness." *Smith Inv. Co. v. Sandy City*, 958 P.2d 245, 251 (Utah Ct.App.1998) (citing *Sandy City v. Salt Lake County*, 827 P.2d 212, 217–218 (Utah 1992)).

ANALYSIS

I. Trial Court's Dismissal of the First Complaint

¶ 7 Mr. Sullivan first argues that the State of Utah does not have jurisdiction to determine custody of his children under [Utah Code section 78–45c–201\(1\)\(a\)](#) of the Utah Uniform Child Custody Jurisdiction and Enforcement

Act (UCCJEA). See [Utah Code Ann. § 78–45c–201\(1\)\(a\) \(2002\)](#). According to the statute, Utah "has jurisdiction to make an initial child custody determination only if [Utah] is the home state of the child on the date of the commencement of the proceeding." *Id.* The statute defines "home state" as "the state in which a child lived with a parent ... for at least six consecutive months immediately before the commencement of a child custody proceeding." *Id.* § 78–45c–102(7) (2002).

¶ 8 Because Ms. Sullivan filed the First Complaint before she and the children had lived in Utah for six months, the Utah court had no jurisdiction over that action. Mr. Sullivan contends that the Second Complaint *966 cannot establish jurisdiction either because, even though it was filed after the required six months, the UCCJEA grants Utah jurisdiction "only if [it] is the home state of the child on the date of commencement of the proceeding." *Id.* § 78–45c–201(1)(a) (emphasis added). More specifically, Mr. Sullivan argues that, because Utah did not have jurisdiction "on the date of commencement" of the First Complaint, the trial court erred in dismissing the First Complaint and allowing the Second Complaint. *Id.*

¶ 9 If we were to embrace Mr. Sullivan's rigid interpretation, Utah could never acquire jurisdiction over custody issues where a parent had previously filed a complaint prematurely. The legislature could not reasonably have intended such an absurd result. See *Savage v. Utah Youth Village*, 2004 UT 102, ¶ 18, 104 P.3d 1242 ("[A] court should not follow the literal language of a statute if its plain meaning works an absurd result or is 'unreasonably confused, inoperable, or in blatant contravention of the express purpose of a statute.'" (quoting *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996))).

[3] ¶ 10 The trial court properly dismissed Ms. Sullivan's First Complaint because it did not establish jurisdiction. With this dismissal, the court then considered the Second Complaint on its merits. While it is true that the court granted Ms. Sullivan's order to dismiss prematurely, without affording Mr. Sullivan an adequate opportunity to file an answer, we are satisfied that the trial court considered the merits of Mr. Sullivan's arguments in his subsequent motion to set aside the order of dismissal.

II. Mr. Sullivan's Motion to Consolidate

[4] [5] ¶ 11 Mr. Sullivan also contends that both complaints should have been consolidated. Trial courts have rather broad discretion in determining the outcome of motions to consolidate. See [Utah R. Civ. P. 42\(a\)](#). We agree with the trial court that the complaints should not have been consolidated because, as Ms. Sullivan states, “they involve a different interpretation and application of the UCCJEA.” The State of Utah did not have jurisdiction over the First Complaint, but it does over the Second Complaint. Because of this disparity, these two complaints present different issues and procedures, and do not “involv[e] a common question of law or fact.” *Id.* Therefore, the trial court properly denied Mr. Sullivan's motion to consolidate.

III. Timeliness of Mr. Sullivan's Custody Action in Illinois

[6] [7] ¶ 12 Mr. Sullivan's Illinois custody action, filed on April 7, 2003, was clearly outside of the six-month time limit of [Utah Code section 78–45c–201\(1\)\(a\)](#). At that time, Illinois was no longer “the home state of the child [ren] within six months before the commencement of [Mr. Sullivan's action].” [Utah Code Ann. § 78–45c–201\(1\)\(a\)](#). While Mr. Sullivan disputes the date when Ms. Sullivan and the children permanently moved to Utah, the record reflects (1) a motion to reconsider filed by Mr. Sullivan in an Illinois court, stating that Ms. Sullivan indicated in July that she was not returning; and (2) the transcript of a hearing where Mr. Sullivan's attorney conceded that Ms. Sullivan advised Mr. Sullivan “sometime in July” that she was staying in Utah. Mr. Sullivan argues that these concessions refer only to Ms. Sullivan's representation that she was prolonging her trip to Utah, not that she was intending to stay. We believe the concessions in the record clearly indicate that Mr. Sullivan knew that Ms. Sullivan and the children were staying in Utah and

not returning to Illinois. Furthermore, this evidence also refutes Mr. Sullivan's claim that Ms. Sullivan took the children from Illinois under false pretenses. In any event, if there were any doubt, it was incumbent upon Mr. Sullivan to request an evidentiary hearing before the trial court. See [Montano v. Third Dist. Court, 934 P.2d 1156, 1157 \(Utah Ct.App.1997\)](#). Mr. Sullivan never made such a request and has therefore not preserved the issue for appeal. See *id.*

¶ 13 Finally, Mr. Sullivan argues that even if his Illinois action for custody was not timely, the court erred in not considering the provisions of [Utah Code section 78–45c–201\(1\)\(b\)](#). He contends that since the First Complaint could not vest Utah with jurisdiction, then even if his own action was untimely, the court must find Illinois as the home *967 state because of the factors listed in [section 78–45c–201\(1\)\(b\)](#). This section of the UCCJEA employs a balancing test when no home state can be determined under [section 78–45c–201\(1\)\(a\)](#). Because we have determined that Utah has jurisdiction under [section 78–45c–201\(1\)\(a\)](#), we have no occasion to address the provisions of [section 78–45c–201\(1\)\(b\)](#).

CONCLUSION

¶ 14 For the aforementioned reasons, we conclude that the trial court did not err in determining that Utah had jurisdiction of Ms. Sullivan's Second Complaint. We also conclude that the trial court did not err in ruling that Mr. Sullivan's custody action in Illinois was untimely.

¶ 15 Accordingly, we affirm.

¶ 16 WE CONCUR: **JUDITH M. BILLINGS**, Presiding Judge and **NORMAN H. JACKSON**, Judge.

All Citations

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