



Paternity

11/21/2002

In ***In Re Paternity of M.R.***, 778 N.E.2d 861 (Ind. Ct. App. 2002), the Court reversed the trial court's assertion of jurisdiction and vacated its support order, but affirmed the trial court's order establishing Father's paternity. Mother and Father, who were not married, executed a paternity affidavit the day after the child was born. They all lived in Indiana until Mother and child moved to Georgia. More than six months after the move, Father filed in Indiana a Verified Petition to Establish Paternity and expressed his desire that "he and Mother develop a plan of care for the minor child, and that the parameters of their future relationship as parents to each other and to the minor child be carefully delineated through a Final Decree Establishing Paternity." A week after receiving service in Georgia, Mother filed a Complaint to Establish Paternity in a Georgia court. Before the scheduled Indiana hearing began, Mother's attorney entered her appearance and filed a Motion to Dismiss for Lack of Personal Jurisdiction and Insufficient Notice to Persons Outside This State. Mother also argued to continue the hearing. Because the notice period was insufficient for issues governed by the Uniform Child Custody Jurisdiction Law (UCCJL), father took the positions that the UCCJL applied only to custody and visitation issues, but not to questions of support, and that the trial court should leave the custody and visitation issues for a subsequent hearing, but determine Father's support obligations immediately. The trial court heard evidence regarding Father's income, took the matters under advisement, and requested additional briefs addressing Mother's jurisdictional challenge. Mother filed an amended motion and supporting memorandum in which she argued that the trial court lacked subject matter jurisdiction over Father's petition under both the UCCJL and the Uniform Interstate Family Support Act (UIFSA). Thereafter, the trial court denied Mother's motion to dismiss, and ordered Father to pay \$584 per week in child support for the child. Mother appealed.

The Uniform Child Custody Jurisdiction Law (UCCJL), which applied to Father's paternity action because it had an interstate dimension and amounted to a "custody proceeding" that would have resulted in a "custody decree" under the UCCJL, deprived the trial court of jurisdiction to issue a custody determination in that Georgia was the child's "home state" at the time Father's petition was filed, but did not limit the trial court's jurisdiction to rule on non-custodial matters raised by Father's paternity petition because the UCCJL only limits the trial court's power to issue custody determinations. *Id.* at 864-66. The Court found that Georgia was the child's "home state" after it noted that (1) the UCCJL at I.C. 31-17-3-3(a)(1), provides in pertinent part that "[a] court of this state ... has jurisdiction to make a child custody

determination ... if ... this state ... is the home state of the child at the time of commencement of the proceeding;...” (2) the UCCJL at I.C. 31-17-3-2(5), provides that a child’s “home state” is “the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least (6) consecutive months;...” and (3) Father admittedly filed his petition more than six months after Mother and child left Indiana. *Id.* at 864-65. The Court further noted that the UCCJL: (1) at I.C. 31-17-3-2(3), defines “custody proceeding” to include “proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage, but does not include child in need of services proceedings;...” (2) at I.C. 31-17-3-2(4), defines “custody decree” as “a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree;” and (3) at I.C. 31-17-3-2(2), defines the term “custody determination” as “a court decision providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person.” The Court found that, because I.C. 31-14-10-1 provides that, once the trial court finds that a man is a child’s biological father, the trial court must “conduct a hearing to determine the issues of support, custody and visitation,” Father had placed the support, custody and visitation of the child at issue when he filed his paternity petition, and accordingly he had made it subject to the UCCJL. *Id.* at 864-65. The Court agreed with Father, however, that the UCCJL jurisdictional provision at I.C. 31-17-3-3 only addressed a court’s power to issue a child custody determination as defined above. *Id.* at 865-66.

The Court vacated the trial court’s support order after finding that trial court was deprived of jurisdiction “to establish, enforce, or modify a support order or to determine paternity” pursuant to the Uniform Interstate Family Support Act (UIFSA) (I.C. 31-18-2) because I.C. 31-18-2-4(b) prohibited the trial court’s exercise of jurisdiction inasmuch as (1) Georgia was the child’s home state; (2) Mother timely filed her challenge to Indiana’s exercise of jurisdiction; and (3) Mother timely filed her Georgia Complaint to Establish Paternity, which included a request for child support. *Id.* at 867-68. The Court found that, pursuant to IC 31-18-2-1(3), because Mother had lived in Indiana with the child for a time, she was subject to the trial court’s jurisdiction with regard to Father’s paternity and support claims. The Court further found, however, that the trial court lacked jurisdiction to issue a support order because Mother had complied with all three conditions of IC 31-18-2-4(b) which provides that an Indiana tribunal may not exercise jurisdiction to establish a support order if the petition is filed before a petition or comparable pleading is filed in another state if: (1) the filing in the other state is made before expiration of the time allowed in Indiana for filing a responsive pleading challenging the exercise of jurisdiction; (2) the contesting party timely challenges the exercise of jurisdiction in Indiana; and (3) the other state is the home state of the child, if relevant. *Id.*

The Court affirmed the trial court’s determination establishing Father’s paternity. *Id.* at 868. The Court noted that Mother pointed to no authority indicating that the Indiana trial court lacked jurisdiction to make that ruling.