

JUVENILE COURT CITY AND COUNTY OF DENVER 520 WEST COLFAX AVENUE DENVER, CO 80204	
IN THE INTEREST OF K.A.B., Minor Child. UPON THE PETITION OF: ROBERT MANZANARES, Petitioner, AND CONCERNING CARIE TERRY, n/k/a CARIE MORELOCK, Respondent, AND, SCOTT BYINGTON and JULISSA BYINGTON, Intervenor.	<p style="text-align: center;">^ COURT USE ONLY ^</p>
	Case No.: 08JV141 Division: 2F
ORDER	

THIS MATTER is before the court on its own motion regarding subject matter jurisdiction. The question is whether the court has subject matter jurisdiction to enter an order allocating parental responsibilities for the minor child, K.A.B. (the “Child”).

For the reasons stated in this order, the court holds that it currently does not have subject matter jurisdiction. However, subject matter jurisdiction may be obtained under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), if a court in the Child’s home state enters an appropriate order transferring the case to this court. The UCCJEA is in effect in

Colorado, and in the Child's home state, Utah. *See* Section 14-13-101, C.R.S. (2011); and, U.C.A. 1953 § 78B-13-101.

This order sets out the court's jurisdiction under Colorado law, and the UCCJEA.

Background

Petitioner Robert Manzanares ("Father") filed this matter in the Denver Juvenile Court in 2008 before the Child was born pursuant to section 19-4-105.5(3), C.R.S. (2011), which states that paternity proceedings may be "commenced prior to the birth of the child." Respondent Carie Terry ("Mother") acknowledged that Father was the child's birth father.

The Child was born in Utah on February 17, 2008. On February 29, 2008, following a hearing, this court entered a final order of paternity, declaring that there is a parent-child legal relationship between the biological father and the Child. Section 19-4-116(1), C.R.S. (2011). The court's action conferred and imposed "rights, privileges, duties, and obligations," on the Father. Section 19-4-102, C.R.S. (2011). The court delivered its decision orally from the bench. The court also ordered Father's name placed on the Child's birth certificate. Section 19-4-116(2), C.R.S. (2011). The court's final paternity order was not appealed.

Although this case was filed first, court proceedings commenced in Utah after the child was born. The mother executed a consent to adoption, and the Child was placed with the Mother's brother and sister-in-law, who intended to adopt. Father strenuously objected and joined the court proceedings in Utah where he fought the adoption. This case remained open, but idle, while the Utah litigation proceeded.

On January 27, 2012, following almost four years of litigation, the Utah Supreme Court reversed the Utah trial court's decision to terminate Father's parental rights and proceed with a Utah adoption. *In the Matter of the Adoption of Baby B.*, 2012 WL 252005 (Utah 2012). The

Utah Supreme Court remanded the matter back to the Utah trial court to determine under Utah law whether: (1) the Father fully complied with Colorado's requirements to establish his parental rights in the Child; and, (2) determine whether he demonstrated a full commitment to his parental responsibilities. *Id.* at *20.

On January 30, 2012, Father notified this court of the Utah Supreme Court's decision, and requested that this matter resume in Colorado. (Petitioner's Status Report of January 30, 2012.) On February 15, 2012, the Mother's brother and sister-in-law, Scott and Julissa Byington (the "Intervenors"), moved for permission to intervene and to change the caption in the case. The Byingtons are the Child's caretakers in Utah. They asked to intervene "in this action so that they can make a claim for an allocation of parental responsibilities to the child." (Motion to Intervene and to Change Caption, at ¶ 2.) The Intervenors asked the caption be changed to include them, and also to reflect the fact that mother was now married with a new name, Carie Morelock.

On February 24, 2012, Father answered that he did not object to Intervenors joining the case, and he too requested a hearing "to determine the allocation of parental responsibilities for the minor child." (Petitioner's Response to Motion to Intervene and to Change Caption, at ¶ 3.) Mother did not file anything regarding the Intervenors joining the case or changing the caption.

On March 9, 2012, following two separate hearings, the court issued a written order granting the Motion to Intervene and to Change Caption. The court made findings that the Intervenors submitted to the personal and subject matter jurisdiction of this court, and are properly subject to orders of the court, subject to appellate review. The court made this finding based on Intervenors' motion, and based on comments from Intervenors' counsel made at the two hearings that the Intervenors are unequivocally committed to appearing in this court and

consenting to this court's personal and subject matter jurisdiction. The court was informed that the adoption case in Utah was being dismissed.

In its March 9, 2012, order, the court directed the parties to prepare a stipulation for signature by the parties and by a Utah judge to transfer the case to Colorado, and to submit the stipulation by April 27, 2012.

Finally, on March 23, 2012, Mother filed a brief in a new, related case, 2012-JR-1, where Mother is seeking to relinquish her parental rights to the Child, provided that the Father's parental rights are involuntarily terminated. In that brief, Mother, through counsel, stated this court has jurisdiction to hear the relinquishment case, but stated it is unclear whether the court "has jurisdiction under the paternity statutes." (Petitioner/Birth Mother's Brief Regarding Relinquishment, filed in 2012-JR-1, at ¶ 12.) Counsel noted that Mother still resides in Denver, but that Father now resides in New Mexico. The Child resides in Utah. (*Id.*)

Mother in her brief also asserted for the first time that the court does not have jurisdiction under the Uniform Dissolution of Marriage Act ("UDMA") because the Child resides in Utah. (*Id.* at ¶ 13.) The court struck Mother's Verified Petition for Conditional Relinquishment in a separate order in case 2012-JR-1. However, the issue of the court's jurisdiction in this case remains.

Issue

At hearings since the Utah Supreme Court acted, the court questioned its jurisdiction to proceed to decide the permanent legal custody of the Child. It is undisputed that the Child has lived in Utah her entire life, and that Utah is her home state. Section 14-13-102(7)(a), C.R.S. (2011) ("Home state means the state in which a child lived with a parent or a person acting as a parent for at least six months immediately before the commencement of a child-custody

proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned.”). *See also* U.C.A. 1953 § 78B-13-102 (same definition of home state in Utah under the Utah UCCJEA).

The purpose of this order is to set forth the procedures the parties must follow if they wish this court to obtain subject matter jurisdiction, and enter a final custody order. The issue of subject matter jurisdiction must be resolved, because if the court does not have subject matter jurisdiction, it has no authority to act. *Currier v. Sutherland*, 218 P.3d 709, 712 (Colo. 2009).

Analysis

I.

Created by the Colorado Constitution, Art. VI, Sec. 1, the Denver Juvenile Court has exclusive original jurisdiction to determine the parentage of a child. Section 19-1-104(f), C.R.S. (2011).¹ The court is also empowered to issue a “temporary or permanent order allocating parental responsibilities that shall allocate the decision-making responsibility and parenting time of the child until further order of the court.” Section 19-4-130, C.R.S. (2011).

In paternity proceedings, the juvenile court “must make and modify permanent orders respecting parenting time in accordance with the Uniform Dissolution of Marriage Act.” *In the Interest of D.R. V-A. and D.G. V-A*, 976 P.2d 881, 883 (Colo. App. 1999).

Under the UDMA, an order allocating parental responsibilities may be granted to a parent, or to a person other than a parent who has had the physical care of a child for a period of six months or more. Section 14-10-123(a), -(c), C.R.S. (2011). While there is a presumption that parental responsibilities should be allocated to a parent, the presumption is rebuttable and may be overcome. *In re the Parental Responsibilities of Reese*, 227 P.3d 900, 903 (Colo. App. 2010).

¹ Juvenile courts exist in Colorado’s other judicial districts as a division of the district court. Section 19-1-103(70), C.R.S. (2011). The Denver Juvenile Court stands alone as a constitutionally created juvenile court in Colorado.

The standard of proof to grant an allocation of parental responsibilities to a non-parent is clear and convincing evidence. *Id.* The court must consider all relevant factors, while giving “paramount consideration to the physical, mental, and emotional conditions and needs of the child.” *See* Section 14-10-124(1.5), C.R.S. (2011). *Reese*, 227 P.3d at 903.

The court holds that if subject matter jurisdiction is acquired, it will determine the allocation of parental responsibilities in accordance with the Colorado UDMA.

II.

The UCCJEA applies to paternity proceedings. Under the UCCJEA: “‘Child-custody proceeding’ means a proceeding in which legal custody or physical custody with respect to a child or the allocation of parental responsibilities with respect to a child or visitation, parenting time, . . . is an issue. The term includes proceedings for . . . paternity.” *See* Section 14-13-102(4), C.R.S. (2011); U.C.A. 1953 § 78B-13-102(4). However, the UCCJEA does not apply to adoption proceedings. Section 14-13-103, C.R.S. (2011). In Utah, the UCCJEA specifically does not apply to any adoption proceeding, including any proceeding brought under the Utah Adoption Act. U.C.A. 1953 § 78B-13-103.

The UCCJEA implements the Full Faith and Credit Clause of the U.S. Constitution, U.S. Const., art. IV, § 1, in a specific, concrete way. According to the official commentary for the UCCJEA, the Act is to be interpreted to:

- (1) Avoid jurisdictional competition and conflict with courts of other States in matters of child custody which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being;
- (2) Promote cooperation with the courts of other States to the end that a

custody decree is rendered in the State which can best decide the case in the interest of the child;

(3) Discourage the use of the interstate system for continuing controversies over child custody[.]

Section 14-13-101, C.R.S. (2011) (official comment).

In addition, the UCCJEA has detailed enforcement proceedings that allow the judgment of one court to be enforced in another state.

The court holds that the UCCJEA applies to this paternity action.

III.

No party disputes that Utah is the Child's home state. Given this undisputed fact, there are two ways by which this court may acquire subject matter jurisdiction under the UCCJEA.

First, a Utah court may determine that is an inconvenient forum to hear the case. U.C.A. 1953 § 78B-13-207. The factors the Utah court must consider to reach this conclusion are listed in the Utah statute. *Id.* at 78B-13-207(2). These factors include residence, distance, financial circumstances, the agreement of the parties as to which state should assume jurisdiction, the nature and location of the evidence required, the ability of each state to decide the issue expeditiously, and the familiarity of the court of each state with the facts and issues. *Id.*

If the Utah court determines that it is an inconvenient forum, then it shall stay its proceedings upon condition that a child custody proceeding is promptly commenced in the other state. *Id.* at 78B-13-207(3).

Second, the Utah court may decline to exercise jurisdiction by a finding of "unjustifiable conduct." U.C.A. 1953 § 78B-13-208. *See* Section 14-13-208, C.R.S. (2011) (official comment) (discussing unjustifiable conduct).

The court holds that under the UCCJEA, the Utah court must decline “home state” jurisdiction before subject matter jurisdiction is acquired by the Denver Juvenile Court to determine the allocation of parental responsibilities for the Child.

IV.

The court is satisfied that it has obtained personal jurisdiction over the parties, including the Intervenor. The court holds that their appearance and motion so that they can make a claim for an allocation of parental responsibilities, together with the unequivocal statements of their counsel at the hearings on March 2nd and 9th, gives the court personal jurisdiction over the Intervenor. *In re the Marriage of Jeffers*, 992 P.2d 686, 689 (Colo. App. 1999) (holding that a trial court obtains personal jurisdiction over a party when they enter a general appearance and consent to the personal jurisdiction of a court by seeking relief in a form that acknowledges the personal jurisdiction of the court).

However, the court finds that at this time that it does not have subject matter jurisdiction to make a custody order or determine the allocation of parental responsibilities, and therefore has no authority to act. *Sutherland*, 218 P.3d at 712.

Accordingly, it is hereby ORDERED:

To obtain subject matter jurisdiction, the parties will have to obtain an order from a Utah court of competent jurisdiction declining “home state” jurisdiction in this case. The parties may seek that order together and by stipulation, subject to the approval of the Utah court. If the parties cannot agree, then a party seeking to have this case heard in Colorado will have to seek an order on their own from a Utah court. If this court obtains subject matter jurisdiction, it will proceed to decide expeditiously the allocation of parental responsibilities under the Colorado UDMA.

The parties at the next hearing shall be prepared to tell the court if they will be seeking an order transferring jurisdiction to Colorado, and whether they are doing so by stipulation, or separately.

Done this 24th day of April, 2012 at Denver, Colorado.

DONE BY THE COURT:

A handwritten signature in black ink, appearing to read "D. Brett Woods", written over a horizontal line.

Judge D. Brett Woods
Denver Juvenile Court

CERTIFICATE OF MAILING

I hereby certify that I have personally mailed a true and correct copy of the foregoing ORDER on this 24th day of April 2012 to the following persons:

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By: _____



Ruchi Kapoor
Law Clerk