

Rel: 1/18/08

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2007-2008

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Patrick S. Ramsey

v.

Carla R. Ramsey

Appeal from Jefferson Circuit Court
(DR-06-2054)

THOMAS, Judge.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.; § 30-3B-206, Ala. Code 1975; § 30-3B-207, Ala. Code 1975; Shealy v. Golden, 959 So. 2d 1098, 1106 (Ala. 2006); Ex parte Fann, 810

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So. 2d 631, 637 (Ala. 2001); Case v. Case, 627 So. 2d 980, 983 (Ala. Civ. App. 1993); Stevenson v. Stevenson, 452 So. 2d 869, 871 (Ala. Civ. App. 1984); and Ballard v. Ballard, 444 So. 2d 872, 873 (Ala. Civ. App. 1984).

The appellee's request for the award of an attorney fee on appeal is denied.

Thompson, P.J., and Pittman and Bryan, JJ., concur.

Moore, J., dissents, with writing.

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MOORE, Judge, dissenting.

I respectfully dissent from the no-opinion affirmance of the trial court's judgment.

Patrick S. Ramsey ("the father") appeals from the Jefferson Circuit Court's judgment declining to exercise jurisdiction over the divorce action that he had instituted against Carla R. Ramsey ("the mother").

The parties were married in May 1994 in Hawaii. From June 1998 to July 23, 2006, the parties lived in Birmingham, Alabama. In July 2006, the parties had an argument, and the mother informed the father that she and the parties' children were going to travel to Nebraska to visit her parents. The father did not object to the mother's plan because he was scheduled to attend a medical conference in Colorado during that same time. After both parties left Alabama, the mother traveled from Nebraska to Colorado on August 1, 2006, to meet with the father. During that meeting, the mother presented the father with a proposed temporary stipulation regarding child custody, child support, and spousal support. The father signed the stipulation, and the mother then filed the

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stipulation in the District Court of Lincoln County, Nebraska ("the Nebraska trial court"), which approved the stipulation.

After returning to Alabama, the father instituted a divorce action in the Jefferson Circuit Court ("the Alabama trial court") on August 18, 2006. Thereafter, the mother requested that the Alabama trial court decline to exercise jurisdiction, pursuant to § 30-3B-207(a), Ala. Code 1975. The father objected to the mother's request, and he also moved to dismiss the action in the Nebraska trial court. After a hearing on the father's motion to dismiss, the Nebraska trial court determined that it would not exercise jurisdiction unless the Alabama trial court declined to exercise jurisdiction.

On December 19, 2006, the Alabama trial court entered a judgment stating:

"THIS cause came on for consideration by the Court on the [mother's] Motion to Defer Jurisdiction in the within matter. The Court, having considered said motion, as well as [having] heard argument from the attorneys for both parties, finds that the [father] has voluntarily submitted himself to the jurisdiction of the District Court of Lincoln County, Nebraska and does hereby enter the following Order. It is, therefore,

"ORDERED, ADJUDGED and DECREED as follows:

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- "(1) The [mother's] Motion to Defer Jurisdiction is granted.
- "(2) Jurisdiction in the within matter is deferred to the District Court of Lincoln County, Nebraska.
- "(3) Court costs accrued in the above styled matter are hereby taxed as paid."

On appeal, the father argues (1) that the Alabama trial court exceeded its discretion in declining to exercise jurisdiction, (2) that the Alabama trial court erred by failing to communicate with the Nebraska trial court as required by § 30-3B-206(b), Ala. Code 1975, and (3) that the Alabama trial court should have exercised jurisdiction over the divorce action even if it chose to decline to exercise jurisdiction over the matter of child custody. It is my opinion that the father's first argument is dispositive of this appeal.

Both parties agree that Alabama has jurisdiction over the child-custody determination pursuant to § 30-3B-201(a). However, § 30-3B-207(b) provides:

"(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit

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information and shall consider all relevant factors, including:

"(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

"(2) The length of time the child has resided outside this state;

"(3) The distance between the court in this state and the court in the state that would assume jurisdiction;

"(4) The relative financial circumstances of the parties;

"(5) Any agreement of the parties as to which state should assume jurisdiction;

"(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

"(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

"(8) The familiarity of the court of each state with the facts and issues in the pending litigation."

As noted above, the Alabama trial court indicated in its judgment that it was basing its decision to decline to exercise jurisdiction on its finding "that the [father had] voluntarily submitted himself to the jurisdiction of the

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[Nebraska trial court]." I note that, although the Alabama trial court could have determined that the father had submitted to the jurisdiction of the Nebraska trial court with regard to the issues addressed in the temporary stipulation, there is no evidence indicating that the father agreed that the Nebraska trial court "should assume jurisdiction" with regard to a permanent determination of child custody. Further, the plain language of § 30-3B-207(b) requires that the Alabama trial court consider all the factors enumerated in that section. Although the statute does not require a trial court to make written findings regarding each factor, the fact that the Alabama trial court specifically referenced one factor in its judgment while failing to make any reference whatsoever to any of the other relevant factors indicates to me that the Alabama trial court did not consider any of the other relevant factors. Accordingly, I would reverse the Alabama trial court's judgment and remand this cause with instructions for it to reconsider whether it should decline to exercise jurisdiction taking into consideration all the relevant factors enumerated in § 30-3B-207(b). I would also instruct the Alabama trial court that consent to jurisdiction

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with regard to a temporary custody stipulation does not equate to an agreement that the Nebraska trial court may assume jurisdiction over the determination of child-custody matters.