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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

NANCY GRASER KOPLIN,

Plaintiff,

vs

File No. 91-8701-TC  
HON. PHILIP E. RODGERS

GARY WAYNE KOPLIN,

Defendant.

Robert B. Guyot, III (P25030)  
Attorney for Plaintiff

DECISION AND ORDER DENYING PLAINTIFF'S MOTION  
FOR TEMPORARY CUSTODIAL JURISDICTION  
AND DISMISSING PLAINTIFF'S COMPLAINT WITHOUT PREJUDICE

In this case, Plaintiff has filed a Second Petition for Emergency Hearing and a Motion for Emergency Custodial Jurisdiction under the Uniform Child Custody Jurisdiction Act, (hereinafter UCCJA), MCL 600.651, et seq., MSA 278.651, et seq., and VTCA Family Code, Sec. 11.51-11.75. In response to a previous petition, the Court determined that jurisdiction properly lay with the Texas Court. See, Decision and Order dated March 1, 1991. Likewise, this petition is also denied.

The parties recognize that both Michigan and Texas have enacted the UCCJA, and the Court previously discussed its application in this litigation and determined that Texas was the most appropriate situs for this custody dispute. With regard to the petition now before the Court, it is argued that the recent order of the Texas Court for the children to travel to Texas for purposes of psychiatric evaluations creates a medical emergency in the form of an immediate threat to the children's emotional well-being and is inconsistent with a current order of the Grand Traverse County Probate Court. Accordingly, Plaintiff cites Section 6 of the UCCJA, MCL 600.651 which provides as follows:

"(1) A Court of this state shall not exercise its jurisdiction under Section 651-673 if at the time of filing the petition a proceeding concerning the custody of the child is pending in a court of another state exercising jurisdiction substantially in conformity with Sections 651-673, unless... or unless temporary action by a Court of this state is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent." (Emphasis supplied.)

To grant this request for emergency custodial jurisdiction, this Court must find that the Texas Court, by ordering the children to attend psychiatric evaluations in Texas, has abused its discretion and thereby threatened the children with mistreatment or abuse. There is no transcript of the proceedings in Texas, but it is clear that both parties are represented by counsel in Texas, that a no contact order has been issued by the Texas Court which is directed at the children's father, and that the issue concerning the propriety of the children being evaluated in Michigan or Texas has been the subject of a hearing in Texas.

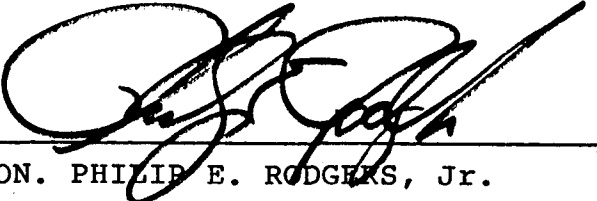
It is this Court's conclusion that a determination of custody often requires a psychiatric evaluation of the children. In ordering such evaluations, the Texas Court is following a procedure identical to that which this Court would employ. While this Court acknowledges a conflict between the opinions of psychiatrists, psychologists or social workers in Texas regarding the propriety of the children traveling to that forum for clinical evaluation vis-a-vis the opinions held by similar experts in Michigan, the resolution of that dispute in favor of the opinions expressed by Texas professionals does not, in the view of this Court and on this record, rise to the level of an abuse of discretion such that this Court should declare a custodial emergency and usurp the Texas Court's jurisdiction.

In reaching this conclusion, this Court recognizes that the Texas Court may have made an error. The remedy is to petition the Texas Court for reconsideration of its decision or to appeal

it on an emergency basis. There is no basis on this record for this Court to make a determination that a Texas Court, through its orders and after a hearing, is threatening these children with imminent abuse or neglect.

With respect to the violation of the Grand Traverse County Probate Court's order, it is proper to direct that issue to the attention of the Probate Court. The Probate Court has ample authority to enforce, modify or rescind its own orders. In reviewing this case with the Probate Court judge, it appears that a hearing has been scheduled for that purpose in Probate Court.

For all of the foregoing reasons, the Plaintiff's Motion for Emergency Custodial Jurisdiction and Petition for Emergency Hearing is denied and Plaintiff's Complaint is dismissed without prejudice.

  
\_\_\_\_\_  
HON. PHILIP E. RODGERS, Jr.  
Circuit Judge

DATED: \_\_\_\_\_

3/26/91

*Copies sent to  
Mr. Boulton & Lynn Budgey*

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Robert B. Guyot, III (P25030)  
Attorney for Plaintiff

DECISION AND ORDER

Plaintiff filed a Verified Petition seeking to have this Court take jurisdiction over a child custody dispute arising out of a Texas divorce. The Verified Petition was filed on February 26, 1991, and this Court issued its Decision and Order denying Plaintiff's request on March 1, 1991. In that Decision, this Court recognized that a pending proceeding existed in Texas which was being conducted in accordance with law substantially identical to that of Michigan, that the minor children of the parties marriage resided in Texas for all of their lives, with the exception of the last five months, that the alleged abuse or neglect occurred in Texas and that the Texas court was prepared to issue a "no contact order" in recognition of the emergency circumstances described by Plaintiff.

Thereafter, Plaintiff filed a second Petition for Emergency Hearing and a Motion for Emergency Custodial Jurisdiction. These pleadings were filed on March 25, 1991, and the Court issued its written Decision and Order on March 26, 1991. Again, this Court

declined to exercise jurisdiction for the reason that the emergent conditions leading to potential abuse and neglect of the children originated in orders of the Texas court. It was this Court's conclusion that the parties' appropriate remedy was to petition the Texas court for reconsideration of its decision, or to appeal its orders to the Texas appellate courts on an emergency basis. It was this Court's prior finding, then, that the actions complained of by Plaintiff were subject to remedy in Texas. It remains this Court's conclusion that dissatisfaction with the decision of a Texas trial court is an issue for resolution by Texas appellate courts. Michigan courts do not exercise appellate jurisdiction over the trial courts of sister states.

Despite this Court's earlier rulings Plaintiff has filed a Motion for Reconsideration pursuant to MCR 2.119 (F). This motion was timely filed on April 5, 1991, with regard to this Court's earlier decision of March 26, 1991. MCR 2.119 (F) (3) provides as follows:

"Generally, and without restricting the direction of the Court, a Motion for Rehearing or Reconsideration which merely presents the same issues ruled upon by the Court, either expressly or by reasonable implication will not be granted. The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the Motion must result from the correction of the error."

The evidence put forth by the Plaintiff to establish palpable error is the transcript of the February 28, 1991 hearing before the Texas trial court. This Court assumed in its prior

Decision that the issue of the children travelling to Texas for psychological evaluation and the impact such travel may have on the children was the subject, at least in part, of the February 28th hearing.

Despite the rather lengthy nature of this hearing, Plaintiff's counsel never brought to the Court's attention any emotional detriment that might occur to these children if they were brought to Texas for evaluation. The closest counsel came to bringing this issue to the Court's attention fell dramatically short and was contained in the following discussion:

"...I'm not sure but I think what Movant is asking for is for these girls and their mother to have to move back to Texas until this case is over, and this Court cannot make them move. I don't believe that this Court can make them move, and I know that Dr. Simmons and three of his colleagues from Michigan believe they should not move. They are now in a stable environment in Michigan. They've been evaluated by five people already. Now we're going to make a sixth person: Dr. Read.

And our position is, Judge, that if Mr. Koplín wants another independent person to evaluate the children, let's get someone in Michigan. He can pick out somebody at the University of Michigan, for example, that can evaluate the girls and Mrs. Koplín. Or, if he insists on having Dr. Read from San Antonio, Texas, let Dr. Read go to Michigan to evaluate the girls and their mother." Transcript pp 15 and 16.

At no time in the February 28, 1991 conference, did Plaintiff's counsel advise the Court that bringing these children to Texas could cause them severe emotional damage. If such damage will indeed occur, then fault lies not with the orders of

the Texas court, but with the clear and inexcusable error of Plaintiff's counsel to raise the issue in Texas.

Despite the failure of Plaintiff's counsel to raise the issue of imminent emotional harm, the Texas judge responded to counsel's suggestion that the Texas psychologist fly to Michigan for purposes of completing his evaluation. Implicitly, this would address the issues regarding any harm associated with the children travelling to Texas. Transcript p 16.

Twice in the ensuing discussion, the Court offered to have Dr. Read travel to Michigan if his expenses were paid. Transcript pp 23 and 25. Plaintiff's counsel never pursued this offer. Plaintiff could have agreed to pay those expenses or to pay the difference between Dr. Read's travel expenses and professional time for travelling to Michigan and the costs which would otherwise have been incurred by having the children travel to Texas. Rather, as the Court came to grips with the details regarding the evaluation and where it would take place and how the expenses would be shared, Plaintiff's counsel played no meaningful role in the discussion. Transcript pp 29-31.

Plaintiff further alleges, although no transcript was attached to this Motion for Reconsideration, that the issue of the children travelling to Texas was raised before the Texas court in a Motion for Reconsideration on March 15, 1991. The Petition states, "the Texas court summarily dismissed argument, and any reference to the concerns of the Michigan professionals, including Dr. Barbara Jones Smith (see attached)." Petition at p

3. Plaintiff argues that this decision by the Texas court constitutes an abuse of discretion.

In reviewing the transcript of the February 28, 1991 hearing, it is patently obvious to this Court that had the issue of emotional harm been raised and had Plaintiff offered some financial accommodation regarding Dr. Read travelling to Michigan, that the Texas court would have ordered it. The Plaintiff now finds herself in a position where the Texas court has issued orders inconsistent with the professional opinions held by Michigan experts and seeks the jurisdiction of a Michigan court to review that decision. This request is inappropriate, and there is no basis under the UCCJA for this Court to exercise appellate review of a trial court's decision, find an abuse of discretion and then use that determination as a basis for usurping the jurisdiction of the Texas court. Rather, as Plaintiff's counsel is well aware, the appropriate procedure is to file an appeal in Texas.

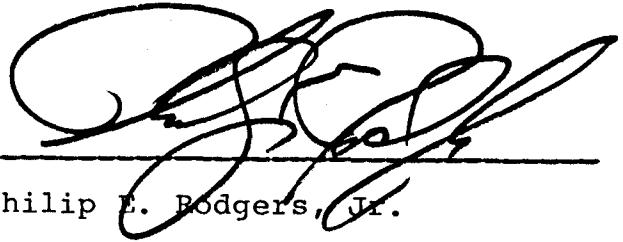
This Court is familiar with the allegations of emotional abuse and harm which have been attached as exhibits to the various pleadings filed in this case and the Court is extremely sympathetic to the plight of these children. Nevertheless, to the extent that substantive and procedural irregularities have occurred in this case, they appear primarily attributable to the errors of Texas counsel and not to error or abuse of discretion by the Texas courts. This Court must refuse the temptation to let hard facts make bad law.



Additionally, Plaintiff argues that the Texas court has assumed jurisdiction of the custody issues, but is not assuming jurisdiction over any pending abuse case in Michigan. Transcript p 45. Child abuse generally and sexual abuse involving children are statutory offenses in Michigan. Child Protection Law, MCLA 722.621, et seq. Jurisdiction over these cases lies with the Michigan Probate Courts and not with Circuit Court. The case referred to by the Texas court is a pending action in the Grand Traverse County Probate Court. Grand Traverse County Probate File Number 90-538-540-NA. It is within the discretion of the Probate Court to determine whether it will continue to exercise jurisdiction over allegations of child abuse in accordance with Michigan law, or whether it will leave those issues to resolution by the Texas court as part and parcel of the Texas custody proceeding.

Finally, although not material to the issues before this Court, a reading of the February 28, 1991 transcript only reinforces the conclusions drawn by this Court regarding Judge Haberman following an earlier telephone conversation with her. The Texas judge appears to be knowledgeable, experienced and highly sensitive to allegations of child abuse. The judge handled the February 20, 1991 hearing courteously and efficiently. Further, the judge noted that she has a social workers degree and has professional (non legal) familiarity with abuse cases. Transcript, p 26. Judge Haberman appears to be well qualified to determine the custody issues before the Texas court, and any abuse claims related thereto.

Plaintiff having failed to demonstrate a palpable error by which the Court and the parties have been misled and Plaintiff having failed to show that a different disposition of the Motion would have resulted by correcting such an error, Plaintiff's Motion for Reconsideration is denied.

A handwritten signature in black ink, appearing to read "Philip E. Rodgers, Jr.", written over a horizontal line.

Philip E. Rodgers, Jr.

Circuit Judge

4/09/91

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Robert B. Guyot, III, Esq.  
Attorney for Plaintiff

DECISION AND ORDER

The Court, having reviewed the Verified Petition for Order Modifying Prior Order with Regard to Visitation and Sole Custody and Petition for Temporary Restraining Order, Petition for Ex Parte Relief or, Alternatively, for an Emergency Hearing/Immediate Consideration, Affidavit of Plaintiff, Nancy Graser Koplín, and Ex Parte Order Regarding Petition for Order Modifying Texas Court's Decree in Suit Affecting Parent-Child Relationship, and Petition for Temporary Restraining Order, and the Court being otherwise fully advised in the premises:

IT IS HEREBY ORDERED that jurisdiction is denied for the reasons set forth herein. A review of the documents filed by the Plaintiff indicates that the parties received a divorce in Texas, which judgment was entered on November 5, 1990, and Plaintiff was awarded "the exclusive right to establish legal domicile and residence of the children." She moved to Michigan in the fall of 1990. The Defendant was awarded visitation rights. After the judgment was entered by the Texas Court, allegations of physical

and sexual abuse by the father involving the parties' minor children were made and investigated in Texas. Thereafter, on November 15, 1990, the Defendant filed, in Texas, a motion which would provide him with sole custody.

A hearing was held on the Defendant's petition on December 11, 1990 and an order was issued as a result of that hearing. This order is dated December 28, 1990 and is attached as Exhibit 4 to the Plaintiff's verified petition. The order clearly provides in Paragraphs 1 and 2 that the Texas Court had acquired and retained continuing jurisdiction over the suit and the children, and that Respondent's (Plaintiff herein) objections to jurisdiction and her motion to dismiss should be denied. The order also concluded with a finding that the Texas Court "has acquired and retains continuing jurisdiction of this suit and of the children, the subject of this suit as a result of prior proceedings."

The verified petition further recognizes that both Michigan and Texas have enacted the Uniform Child Custody Jurisdictional Act, (hereinafter UCCJA) MCL 600.651 et seq, MSA 278.651 et seq, and VTCA Family Code, SEC. 11.51-11.75.

The UCCJA clearly provides that a Michigan Court generally may not exercise jurisdiction if a proceeding concerning custody of the child is already pending in a Court of another state. MCLA 600.656 (1). The relevant statute provides as follows:

"The Court of this state shall not exercise jurisdiction under Sec. 651 to 673 if at the time of filing the petition the proceeding concerning the custody of the child is pending in a court of another state exercising jurisdiction substantially in conformity with Sec. 651 to 673, unless the proceeding is stayed by the court of the other state because this

state is a more appropriate forum or for other reasons or unless temporary action by a court of this state is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent." MCLA 600.656(1).

In this case, it is undisputed that a prior child custody proceeding is pending in a Texas Court, and that the Texas Court is exercising its jurisdiction "substantially in conformity with Section 651 to 673."

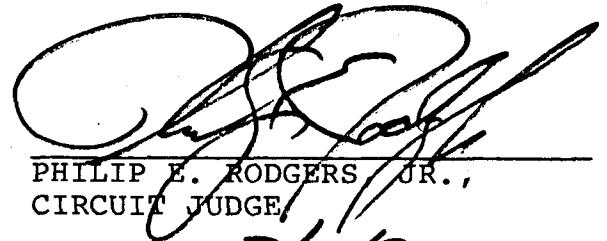
In accordance with MCLA 600.656 (2), this Court has contacted the presiding judge of the Texas Court where the action is pending. Judge Carol Haberman advised this Court that the Texas Court was asserting jurisdiction and going forward with a scheduled hearing on February 28, 1991.

This Court discussed with Judge Haberman the nature of the verified petition and supporting documents which had been filed in Michigan and the claim of an emergency occasioned by past or threatened future mistreatment or abuse. Judge Haberman indicated her familiarity with those allegations, that she had discussed them with Texas counsel for both sides and was prepared to issue a "no contact order" pending the resolution of all issues in the Texas litigation.

Recognizing that a pending proceeding exists in Texas which is being conducted in accordance with the UCCJA, that the minor children of the parties' marriage resided in Texas for all of their lives with the exception of the last five months, that the alleged abuse or neglect occurred in Texas, and that the Texas Court is prepared to issue a "no contact order" in recognition of the emergency circumstances identified by the Respondent

(Plaintiff herein), there is no basis in law or policy to usurp the jurisdiction of the Texas Court. Brown v Brown, 181 Mich App 61; 448 NW 2d 745 (1989) and Thompson v Hare, 146 Mich App 561; 381 NW 2d 765 (1985).

For all of the foregoing reasons, this Court declines to sign the ex parte orders presented to it, or to exercise jurisdiction over this case.

  
PHILIP E. RODGERS, JR.,  
CIRCUIT JUDGE  
DATED: 3/01/91