

RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0970-16T2

K.L.D.,¹

Plaintiff-Respondent,

v.

J.D.,

Defendant-Appellant.

Submitted October 11, 2017 – Decided November 6, 2017

Before Judges Koblitz and Manahan.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Burlington
County, Docket No. FD-03-0099-16.

David Jay Glassman, attorney for appellant.

K.D., respondent pro se.

PER CURIAM

Defendant father, J.D., an active duty aviator in the United
States Navy stationed in New Jersey, appeals from the discretionary

¹ We use initials because J.D. is facing criminal charges involving
his daughter. R. 1:38-3(c)(9).

determination that Canada should have exclusive jurisdiction over the custody and parenting time disputes of the parties. We affirm substantially for the reasons expressed by Presiding Family Judge John L. Call in his oral opinion of September 26, 2016, the same date the order was signed.

The parties were married in 2007 and remained in Florida until 2013. Their first child, a daughter, was born in Florida in 2010. J.D. was stationed in California later in 2013, where the parties' son was born. The parties moved to New Jersey in 2015, when J.D.'s assignment changed. During the summer of 2015, the parties separated, and on July 27, 2015, they entered into a New Jersey consent order in the non-dissolution FD docket, which provided for joint legal custody with plaintiff mother, K.D., as the parent of primary residence. The consent order allowed her to relocate with the children to Canada, and provided J.D. with parenting time in both New Jersey and Canada. The children lived for less than six months in New Jersey before moving to Alberta, Canada in August 2015. J.D. indicates he intends to leave the Navy in 2018, but plans to remain in New Jersey.

With regard to jurisdiction, the parties' consent order states in paragraph fourteen:²

The parties acknowledge they do not have the authority to confer jurisdiction on any

² We reproduce this paragraph exactly as written.

particular Court. As of the preparation of the present agreement, the parties acknowledge and agree that, pursuant to the UCCJEA, codified at N.J.S.A. 2A:34-53, et seq., New Jersey shall retain continuing, exclusive jurisdiction of the custody and parenting issues so long as Defendant remains in the State of New Jersey. It is anticipated by the parties that a divorce action will be filed in the State of Florida, assuming Florida will accept jurisdiction over the divorce action. At that time, the parties agree to discuss whether it is appropriate for jurisdiction over matters pertaining to the children should be reviewed.

Defendant then filed for divorce in Florida asserting he "is a resident of the State of Florida for purposes of dissolution of marriage." The parties agreed by consent that Florida did not have jurisdiction over the child-related issues.

A Canadian warrant was subsequently issued for defendant's arrest in connection with a criminal investigation into an alleged sexual assault against his six-year-old daughter. Defendant represented that the military was also conducting a concurrent criminal investigation. Plaintiff filed an application in August 2016 for New Jersey to relinquish jurisdiction over the post-divorce child-related issues to Canada. She provided a letter from a Canadian attorney indicating Canada would accept jurisdiction. Plaintiff pointed out that defendant had not at that point exercised parenting time in New Jersey, but had spent time with the children in Florida, where his parents reside.

Defendant alleged that plaintiff would not permit visits in New Jersey. It was unclear at the motion hearing whether defendant's parenting time had been suspended by any other court in connection with the criminal proceedings.

Judge Call addressed all eight factors of N.J.S.A. 2A:34-71(b) governing the court's authority to decline jurisdiction because New Jersey is an inconvenient forum. The provisions of the statute cover foreign countries as well as states. N.J.S.A. 2A:34-57(a). The judge described how the facts in this case relate to each factor. The children had lived in Canada for over a year at the time plaintiff sought to transfer custody to Canada. Information concerning their welfare was more accessible in Canada. The parties' agreement also anticipated a possible change of jurisdiction over the children's issues. In any event, consent to jurisdiction is only one factor to be weighed in a jurisdictional decision. See Peregoy v. Peregoy, 358 N.J. Super. 179, 184 (App. Div. 2003); N.J.S.A. 2A:34-71(b)(5).


Given the Family Part's special expertise, we must accord particular deference to fact-finding in family cases, and to the conclusions that logically flow from those findings. Cesare v. Cesare, 154 N.J. 394, 412-13 (1998). As Judge Call recognized, the agreement between the parties concerning jurisdiction left open the likelihood of a reassessment given a change of

circumstances. If J.D. were to go to Canada, he would have to address the outstanding warrant, but he is not precluded from entering Canada based on a conviction, as was true in S.B. v. G.M.B., 434 N.J. Super. 463, 468 (App. Div. 2014).

We therefor affirm the thoughtful decision of Judge Call to relinquish jurisdiction of the issues involving the children to Canada.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION