

CAREN C. AL-RADDAHI,
Plaintiff

vs

FAISAL S. AL-RADDAHI,
Defendant

IN THE COURT OF COMMON
PLEAS FOR THE 26TH JUDICIAL
DISTRICT, COLUMBIA COUNTY
BRANCH, PENNSYLVANIA
CIVIL ACTION - LAW

CASE NO: 322 OF 2006

APPEARANCES:

MICHAEL P. GREGOROWICZ, ESQUIRE, Attorney for Plaintiff
LINDA SHAY GARDNER, ESQUIRE, Attorney for Defendant

May 17, 2006. JAMES, J.

FINDINGS OF FACT AND DISCUSSION

History of Case

This case is before the court to consider defendant's preliminary objections to plaintiff's complaint.¹ The preliminary objections contest this court's jurisdiction to

¹ Plaintiff has filed a claim for temporary emergency jurisdiction under the UCCJEA 23 Pa.C.S.A. §5424. In light of this opinion, said claim is moot.

hear the matter.² Plaintiff's complaint was filed on March 8, 2006, in Columbia County, Pennsylvania, seeking a divorce and custody of the parties' minor child. A hearing was held on May 12, 2006. Defendant appeared by telephone from Saudi Arabia and was his sole witness. Plaintiff testified in person. The only other witness was plaintiff's mother, Linda Sileski. Plaintiff's only exhibit was a series of e-mails. Defendant presented thirteen exhibits including, but not limited to, copies of airline tickets, photographs of the child and the parties and their belongings, and copies of various other documents including residency cards, an employment application, and e-mails.

Findings of Fact

² The defendant has filed preliminary objections through counsel but has not entered a general appearance. One of the preliminary objections contests personal jurisdiction. Plaintiff's brief advised this court that "[t]he Plaintiff had mailed notice of the proceedings both by International Registered Mail, restricted delivery, return receipt requested and by regular mail to the Defendant's last known address in Saudi Arabia. As of this date [May 11, 2006], Plaintiff has not received proof that the International Registered Mail, restricted delivery, return receipt letters have been received by the Defendant. However, by the same token, there has been no return of the letter sent by regular mail." This does not constitute proper personal service according to law. See 23 Pa.C.S.A. §5408 and Pa.R.C.P. 1930.4. Defendant has chosen to appear in this matter for the limited purpose of contesting and securing a determination of both subject matter jurisdiction and personal jurisdiction issues. These findings of facts and order regarding subject matter jurisdiction are thus binding on the parties. Although the issue of personal jurisdiction was not raised during the subject matter jurisdiction hearing, there is no proof yet that defendant had or has been properly served according to law or otherwise submitted himself to the jurisdiction of the court at this point for the purpose of litigating other issues.

The court finds that the following facts have been proven:

1. Plaintiff is Caren C. Al-Raddahi, an adult citizen of Pennsylvania and the United States of America, residing in Millville, Columbia County, Pennsylvania.
2. Defendant is Faisal S. Al-Raddahi, an adult citizen of Saudi Arabia residing in Tabouk, Saudi Arabia.
3. The parties met while they were students at the University of Scranton in Scranton, Pennsylvania. Plaintiff graduated from the University of Scranton with a Bachelor of Science degree in May of 2000 and received a Master of Science in School Counseling degree in May 2003.
4. The parties were married on August 28, 2001, in Honesdale, Wayne County, Pennsylvania, in an Islamic ceremony. She had converted to Islam by accepting the five basic precepts of the Islamic religion prior to the marriage. She never converted to "cultural" Islam as it is observed in Saudi Arabia.
5. While living in Pennsylvania, plaintiff became pregnant with the parties' child. Defendant wanted to move to Saudi Arabia to live and raise the child. Plaintiff was reluctant but agreed to relocate on a trial basis. She did some superficial research on what life would be like for her and her family in Saudi Arabia. Defendant did not fully disclose to her what life was like for women in Saudi Arabian culture, although he fully knew or should have fully known the difference since he had lived in both cultures for significant periods of time. Plaintiff had never lived in the Saudi culture.
6. Defendant knew that plaintiff was a strong-willed woman who would have a difficult time adapting to a controlling Saudi male dominated culture.
7. In late-2003, the parties left Pennsylvania for Saudi Arabia. There was a delay in gaining entry into Saudi Arabia. Thus, the parties stayed in Syria for several months. The parties' daughter, Sarah F. Al-Raddahi, was born in Syria on December 14, 2003. In

March 2004, the parties finally were allowed to enter Saudi Arabia where they began living.

8. While in Syria and after moving to Saudi Arabia, plaintiff found that life for women, and for her specifically, was brutal, something that defendant apparently did not disclose. Plaintiff attempted in good faith to adhere to the cultural dress codes and the mores of Saudi society. However, she was not prepared for the abusive treatment, physically and psychologically, inflicted upon women in that society.
9. Specifically, defendant repeatedly abused plaintiff in many ways for over a year. On many occasions he hit her, kicked her, pushed her, spat on her, threw food and other items at her, and called her demeaning names such as "bitch", "whore", and a "disgrace", all for seemingly minor infractions of Saudi customs. Some of the beatings and abuses occurred for not submitting to sex upon demand. On one occasion he slammed her head against a car window. On another occasion, defendant locked her in her room for many hours. Many abuses were inflicted in the presence of the minor child or while the child was in plaintiff's arms. During a visit to the Middle East, plaintiff's mother witnessed some of the abusive acts.
10. On the occasion of Sarah's first birthday, defendant became angry and smashed Sarah's birthday cake. He left without apology and blamed plaintiff, when she had done nothing wrong. On another occasion he became angry with Sarah in public and called her a "stupid dog idiot."
11. Almost every day, plaintiff complained to defendant about the abuse.
12. Any employment which she could secure in Saudi Arabia had to be arranged by defendant, who became extremely controlling. When plaintiff did work, defendant would punish her for her indiscretions and infractions of his rules by keeping her home from work or making her late for work. After one argument, he not only beat her, but locked her in her room for many hours.

13. In accord with Saudi custom, a divorce will occur if the husband says "I divorce you" three times. While they were in Saudi Arabia, he said it two times. If it had happened a third time, plaintiff would have had no one to help her since she could not talk to men outside of the family and women were powerless to help. Thus, she would have had to go to the U.S. Embassy and return to the United States without her daughter.
14. In the spring of 2005 she began to feel depressed and isolated. She saw a counselor. The only advice she received was to pray and to be more accommodating to her husband.
15. In August of 2005, plaintiff persuaded defendant to permit her and the minor child to visit her family in Pennsylvania. Defendant bought round-trip tickets for plaintiff and the child. Before they left Saudi Arabia, defendant made plaintiff write down the names of her family members. He told her that if she did not return, he had connections in the United States and he would harm her and her family. He also stated that he would rather see their daughter "dead" than raised in the United States. He told the minor child, "May God help you if you become a prostitute and a bitch like your mother."
16. Plaintiff visited Pennsylvania with Sarah. However, she failed to get on the plane and return to Saudi Arabia as scheduled on August 28 or 29, 2005. She had called defendant and said she was not returning, using the excuse that a relative was ill. She also told defendant that she was fearful of returning. However, she simply decided that she could not live in Saudi Arabia. She did not want her and her daughter to be forever subjected to the abuse she had experienced.
17. Before she left, she expressed her love for defendant. After she failed to return, she continued to express her love for defendant. However, said expressions of love were for the man she knew in the United States, not for the man she lived with in Saudi Arabia. Her expressions of love were based in fear and were not genuine. She was afraid that if her true feelings of fear were expressed, not only

would she not have been allowed to leave Saudi Arabia, but she would have been in danger in the United States.

18. When plaintiff did not return to Saudi Arabia in August 2005, defendant knew or should have known that she would not return. He had lived in the United States long enough to be aware of the cultural differences. He knew or should have known that the abuses that he heaped upon plaintiff in Saudi Arabia would not be accepted by such a strong and educated American woman as his wife. He knew or should have known that he had deceived her by not fully explaining the control and abuse that she would have to endure in Saudi Arabia. He threatened her and her family with harm if she did not return. He knew that when she did not return that she would never return to his extreme abuse and viciousness.
19. Plaintiff established a residence in the United States and in Pennsylvania by the end of August 2005. She purchased a car in August 2005. She rented an apartment for herself and her daughter in August 2005. She secured a job in Pennsylvania in August 2005. She lived and worked in York, Pennsylvania, for about four months and then moved to her present location where she is employed.
20. Plaintiff and defendant communicated by e-mail through December 2005, when all communication ended.
21. Plaintiff filed the complaint in divorce and custody on March 8, 2006.
22. On March 8, 2006, Pennsylvania had been the home state of plaintiff and Sarah for at least six months.
23. Defendant testified that he recently filed a custody action in Saudi Arabia but provided no proof.
24. Plaintiff was credible.

DISCUSSION

The issue is whether the Pennsylvania courts have jurisdiction to hear this custody and divorce action. The resolution of this issue is largely governed by whether or not plaintiff and the child had established residency in Pennsylvania at least six months prior to the filing of the complaint on March 8, 2006.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (23 Pa.C.S.A. §5401 et seq.) governs this fact situation. "A court of this Commonwealth shall treat a foreign country as if it were a state of the United States for the purpose of applying Subchapter B (relating to Jurisdiction and this subchapter." 23 Pa.C.S.A. §5405(a). Thus, the UCCJEA applies to this jurisdictional dispute involving Pennsylvania and Saudi Arabia.³

The UCCJEA establishes the law for "initial child custody jurisdiction" as follows:

³ "A court of this Commonwealth need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights." 23 Pa.C.S.A. §5405(c). The note to this section states that "[t]his Act takes no position on what laws relating to child custody would violate fundamental freedoms. While the provision is a traditional one in international agreements, it is invoked only in the most egregious cases." Furthermore, this court is cognizant of *The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* which is a multilateral treaty, which seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return. The United States is a signatory of the treaty. Saudi Arabia is not.

(a) General rule.--Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth has jurisdiction to make an initial child custody determination only if:

(1) this Commonwealth is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;

(2) a court of another state does not have jurisdiction under paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under section 5427 (relating to inconvenient forum) or 5428 (relating to jurisdiction declined by reason of conduct) and:

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this Commonwealth other than mere physical presence; and

(ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under section 5427 or 5428; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3).

(b) Exclusive jurisdictional basis.--Subsection (a) is the exclusive jurisdictional basis for

making a child custody determination by a court of this Commonwealth.

(c) Physical presence and personal jurisdiction unnecessary.--Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

23 Pa.C.S.A. §5421 (emphasis provided).

23 Pa.C.S.A. §5421(a) is the only section that is applicable in determining jurisdiction under the facts of this case. The question is whether Pennsylvania had become the minor child's "home state" on March 8, 2006, the date of the commencement of the custody and divorce proceedings. The UCCJEA defines "home state" as follows:

The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child six months of age or younger, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

23 Pa.C.S.A. §5402.

The UCCJEA amended its predecessor statute (the Uniform Child Custody Jurisdiction Act, hereinafter "UCCJA") and created several significant changes to child custody jurisdiction law. First, "the 'best interest' language of the UCCJA has been eliminated.

This phrase tended to create confusion between the jurisdictional issue and the substantive custody determination. Since the language was not necessary for the jurisdictional issue, it has been removed." See 23 Pa.C.S.A. §5421, note 1. Second, the UCCJA "significant connection" jurisdiction criterion has been eliminated as an alternative to home state jurisdiction. See 23 Pa.C.S.A. §5421, note 2. Thus, in this case, any jurisdictional analysis must be focused on whether Pennsylvania was the minor child's home state on March 8, 2006. Since the UCCJEA eliminates any best interest and significant contacts considerations (as an alternative to the home state criteria), the home state criteria for determining jurisdiction should be strictly construed.

This court finds that plaintiff and the minor child began establishing residency and, thus, Pennsylvania as their home state as of at least August 31, 2005. Prior to that date, plaintiff told the defendant she was not returning to Saudi Arabia and that she was afraid to return. Prior to August 31, 2005, she had purchased a car in Pennsylvania, had rented an apartment in Pennsylvania, and had secured a job in Pennsylvania. She had clearly intended to and

in fact had established a residence in Pennsylvania by August 31, 2005.

Defendant argues that under the UCCJEA "it is no longer necessary to determine why the child has been removed."⁴ The only inquiry relates to the status of the person left behind." 23 Pa.C.S.A. §5421, note 1. Surely, the defendant was the person left behind. However, after August 31, 2005, he simply chose to ignore plaintiff's intention to establish residency in the United States, despite the fact that he knew or should have known that she would not return. He was aware of the cultural differences between his world and plaintiff's world. He fraudulently misrepresented these differences to plaintiff in order to induce her to attempt a trial period of residency in Saudi Arabia. He wanted his child there. In order to do that he had to falsely paint his world as compatible with plaintiff's values and personality.

⁴ Defendant objected to the admission of defendant's history of violence toward plaintiff after she went with him to the Middle East. This court permitted the evidence of violence, not on substantive custody issues, but as relevant to the state of mind of each party. Such evidence is relevant to plaintiff's intent to establish a residence in the United States in August 2005, particularly in light of her credible testimony that she was only going to Saudi Arabia on a trial basis. This court finds that she never established residence in Saudi Arabia, but was simply prohibited by defendant from leaving with her daughter once she arrived. The evidence is also relevant to defendant's state of mind as to plaintiff's intentions.

After over a year of severe abuse, defendant knew there was a great chance that plaintiff would not return. He even threatened her and her family with harm, knowing that it was a possibility that she would not return. When she did not return in August 2005, his status was that of an intelligent, resourceful individual who was aware of his history of violence toward plaintiff, her distain of such treatment, and her fear of future violence. He knew that she was a strong woman seeped in American culture and adverse to the Saudi culture's violent and cruel treatment of women, particularly his treatment of her. He was educated in Pennsylvania and well aware of the cultural differences. When she did not return on the plane as planned, he knew or should have known that plaintiff was not going to return to Saudi Arabia in August 2005. He did nothing to address his custody concerns for over six months. He knowingly allowed plaintiff and the minor child to establish residency in Pennsylvania, their home state. Only after they had done so did he take action. He cannot now complain.

Defendant argues that because of plaintiff's "unjustifiable conduct", this court should decline

jurisdiction. The applicable section of the UCCJEA states:

(a) General rule.--Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction) or by other laws of this Commonwealth, if a court of this Commonwealth has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the state otherwise having jurisdiction under sections 5421 (relating to initial child custody jurisdiction) through 5423 (relating to jurisdiction to modify determination) determines that this Commonwealth is a more appropriate forum under section 5427 (relating to inconvenient forum); or

(3) no court of any other state would have jurisdiction under the criteria specified in sections 5421 through 5423.

23 Pa.C.S.A. §5428(a)(emphasis provided).

The operative term in this statute is "unjustifiable conduct." There is nothing in plaintiff's actions that was unjustifiable. Defendant fraudulently misrepresented to plaintiff how she would be treated when she lived in Saudi Arabia. Perhaps he hoped the cultural divide would be minimal, but he should have known that the cultural contrast was stark. He took her to Saudi Arabia through passive wishful thinking at best, under false pretenses at worst. He does not have clean hands in this matter. After

a year in Saudi Arabia, through her own cultural prism, plaintiff envisioned nothing but misery, abuse, and degradation for her and for the parties' daughter in Saudi Arabia over the course of their lifetimes. She fled with the child to escape an eternity of pain. Her conduct was not unjustifiable.

Plaintiff and defendant are entangled in an obvious tragedy which makes the untenable relationship of the Montagues and Capulets pale. These two young people fell in love and naively believed that they could bridge a cultural chasm in Saudi Arabia. They were wrong. Plaintiff made a good faith effort. However, that effort was doomed. Even before they left Pennsylvania, defendant knew the severity of the change that plaintiff would have to endure. She did not. He did not tell her. If the defendant had been forthright, and if the plaintiff had not been so young and naïve, plaintiff would never have left her home state.

However, she has established Pennsylvania as her home state, and the best interest of the child should now be addressed. Pennsylvania has jurisdiction over both the custody and the divorce actions.⁵

⁵ In regard to the divorce action, this court has jurisdiction where "at least one of the parties has been a bona fide resident in this Commonwealth for at least six months immediately previous to the commencement of the action." 23 Pa.C.S.A. §3104(b). In addition, this court finds that under the circumstances, this court will not decline

to exercise jurisdiction based on an inconvenient forum under 23 Pa.C.S.A. §5427. Jurisdictional requirements have not only been satisfied, but the parties have significant ties to Pennsylvania which is where the parties attended school, where the plaintiff was raised, where the parties were married, and where the child was conceived. The possibility of domestic violence is also a relevant factor which this court has considered. See 23 Pa.C.S.A. §5427(b)(1).

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CIVIL ACTION - LAW

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ORDER

AND NOW, this 17th day of May 2006, this court DENIES defendant's preliminary objections regarding subject matter jurisdiction and does hereby exercise jurisdiction over all aspects of the above captioned matter, including but not limited to the actions for custody and divorce.

BY THE COURT:

HONORABLE THOMAS A. JAMES, JR., J.