

Children's Law Center of Indiana



Custody/Parenting Time

7/26/18

In **Wilkinson v Assante**, 107 N.E.3d 1074 (Ind. Ct. App. 2018), the Court held that that the trial court did not err when it dismissed Father's petition to modify custody, declining jurisdiction under the Uniform Child Custody Jurisdiction Act ("UCCJA").

Mother and Father were never married, but paternity of two children (A.W., born 7/2/2009 and Ai.W., born 5/16/2010) was established by affidavit. The children were in the custody of Maternal Grandparents for some time due to parents' involvement with the Division of Youth and Family Services, but Mother was eventually granted primary physical custody of the children on June 17, 2011. The family resided in New Jersey until March 2014, when both parents and children moved to Gibson County, Indiana. They resided there until February 2016, when Mother moved back to New Jersey with the children. Father's emergency petition to modify custody in Gibson County three weeks later was granted, with the trial court specifically noting his right to utilize law enforcement to take custody of the children. In response, Maternal Grandparents filed a motion to intervene in the New Jersey courts, requesting a restraining order to prevent father from removing the children. The New Jersey court granted the temporary restraining order, advising Maternal Grandparents to intervene in the Indiana trial court within the next 30 days. They did so, and the parties engaged in discovery for the following nineteen months. In October 2017, Mother filed for dismissal of Father's petition pursuant to UCCJA. The trial court dismissed Father's petition.

The trial court did not abuse its discretion when it declined to exercise jurisdiction over Father's petition to modify custody; a court is not limited to "considering the parties' circumstances only as they existed at the time the petition was filed, but rather can evaluate the case on a continuing basis to ensure the Children's best interests are protected", and in this case, Indiana was no longer the most convenient forum. *Id.* at 1080, *citing Stewart*, 888 N.E.2d at 761, 768 (Ind. 2008). Once a court properly exercises jurisdiction over a custody issue, that court retains jurisdiction so long as there is a significant connection between the case and the state. *Id.* at 1079. Indiana was the home state in this case; however, the UCCJA provides that a court that has jurisdiction may decline to exercise that jurisdiction if it finds that it is an inconvenient forum and that a court of another state is a more appropriate forum. *Id.*, *citing Stewart v. Vulliet*, 888 N.E.2d 761, 766 (Ind. 2008). Factors that a court must consider in making this determination include but are not limited to: (1) Whether domestic violence has occurred and is likely to continue in the future and which state is best able to protect the parties and the child; (2) The length of time the child has resided outside Indiana; (3) The distance between the Indiana court and the court in the state that would assume jurisdiction; (4) The relative financial circumstances of the parties; (5) An 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 the child's testimony; (7) The ability of the court of each state to

decide the issue expeditiously and the procedures necessary to present the evidence; (8) The familiarity of the court of each state with the facts and issues in the pending litigation. See IC 31-21-5-8(b). In concluding that it was no longer the most convenient forum, the trial court considered the number of years that the family had resided in New Jersey, the history of the family with the Sussex County courts, the school and family support in New Jersey, and brief amount of time spent by the family in Indiana by comparison. Wilkinson at 1079-80. The Court did not find error, as “the UCCJA provides that ‘a court with subject matter jurisdiction over a child custody dispute may nonetheless ‘decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum . . . under the circumstances . . . and that a court of another state is a more appropriate forum.’” Id. at 1079, citing Stewart at 766.