



ATTORNEY FOR APPELLANT

Anthony J. Saunders
New Castle, Indiana

ATTORNEYS FOR APPELLEE

Matthew T. Albaugh
Taft Stettinius & Hollister LLP
Indianapolis, Indiana

Kathrine D. Jack
Jack Law Office
Greenfield, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Austin Shoemaker,

Appellant,

v.

Aubrey Shoemaker,

Appellee.

June 20, 2022

Court of Appeals Case No.
22A-DC-50

Appeal from the Henry Circuit
Court

The Honorable Bob A. Witham,
Judge

Trial Court Cause No.
33C01-2103-DC-58

Bailey, Judge.

Case Summary

- [1] Austin Shoemaker (“Husband”) appeals an order of the Henry Circuit Court declining to exercise jurisdiction in Husband’s child custody dispute with Aubrey Shoemaker (“Wife”), based upon the domestic violence prevention provision of Indiana Code Section 31-21-5-8(b)(1). Husband presents the sole issue of whether the trial court abused its discretion in finding Indiana to be an inconvenient forum in which to adjudicate the custody dispute. We affirm.

Facts and Procedural History

- [2] Husband and Wife are the parents of Child, born in Alabama in July of 2019. The parties moved to Indiana and were married in December of 2019. Late in 2019, Husband was arrested in Henry County, Indiana upon allegations of domestic violence against Wife. However, criminal prosecution was not pursued after Wife executed an affidavit to the effect that Husband had not intended to harm her, and he did not remember doing so, apparently due to the ingestion of sedatives. On March 24, 2021, Wife left the State of Indiana, taking Child with her.
- [3] The following day, Wife filed in the Montgomery County, Alabama Circuit Court a Petition for Protection from Abuse. The petition was granted upon an ex parte and temporary basis and the matter was set for hearing with notice to Husband.

[4] On March 28, 2021, Husband filed in the Henry County, Indiana Circuit Court a Petition for Dissolution of Marriage and Application for Emergency Custody. On April 5, 2021, the Henry Circuit Court issued an ex parte order granting Husband temporary custody of Child and ordering Wife to produce Child in the State of Indiana. The matter was set for hearing. On April 6, 2021, Wife filed in the Henry Circuit Court a Petition for an Order of Protection. The petition was assigned a cause number but, for unknown reasons, was not acted upon. On May 6, 2021, the Henry Circuit Court conducted a hearing at Husband’s request, at which only Husband appeared. The trial court made a docket entry reaffirming the prior temporary custody order.

[5] On June 29, 2021, the Alabama Circuit Court conducted a hearing. Husband appeared with counsel, who informed the Alabama court of the pending proceedings in Indiana. In a telephonic conference of July 27, 2021, the judges of the respective courts agreed that Indiana was the home state of Child as of that date.¹ The Alabama court exercised emergency jurisdiction to allow litigation of the Alabama petition for a protective order.

[6] On August 3, 2021, the parties appeared for a hearing in the Alabama Circuit Court. The allegations before the trial court were that Husband had strangled and slapped Wife, dragged her by her hair, punched her in the head, and threatened her life. At the outset of the hearing, Husband’s counsel advised the

¹ Pursuant to Indiana Code Section 31-21-5-1(a)(1), an Indiana trial court can make an initial child custody determination if it is the child’s “home state.”

court that Husband would consent to the entry of a protective order. Counsel advised his client to assert his rights under the Fifth Amendment to the United States Constitution if questioned upon the factual basis for the protective order. The trial court questioned Husband regarding his consent and, ultimately, Husband agreed after consultation with his attorney that a protective order “should issue” and was “due to be entered.” (Exhibits at 47.) The Alabama court entered an order prohibiting Husband from contacting Wife and granting Wife temporary custody of Child until September 17, 2021. The order was forwarded to the Henry Circuit Court, where the matter was set for hearing.

[7] On August 16, 2021, Wife filed in the Henry Circuit Court a motion to set aside the ex parte emergency custody order and a motion that the court decline jurisdiction on the basis of forum non conveniens. The Henry Circuit Court conducted hearings on September 14 and October 20 of 2021. Following the first hearing, the trial court withdrew its temporary custody order in deference to the Alabama court order on temporary custody.

[8] On December 28, 2021, the trial court entered its “Order on Finding of Inconvenient Forum,” declining to exercise jurisdiction over the custody dispute. The order provides in pertinent part:

Domestic violence has occurred in the marriage of the parties which resulted in Aubrey Shoemaker leaving Indiana and moving to Alabama with the minor child of the parties. Said domestic violence is likely to continue. Alabama is the state best able to protect Aubrey Shoemaker and the minor child of the parties.

(Appealed Order at 1.) Husband now appeals.

Discussion and Decision

[9] The issue of an inconvenient forum may be raised on motion by one of the parties or upon the court’s own motion. *Stewart v. Vulliet*, 888 N.E.2d 761, 766 (Ind. 2008). A court’s decision concerning whether to exercise jurisdiction is reviewable for an abuse of discretion. *Id.* In conducting our review, we consider only the evidence most favorable to the decision and reverse only if the result is clearly against the logic and effect of the facts and the reasonable inferences to be drawn therefrom. *Id.*

[10] Uniform child custody laws have been widely enacted, and among the purposes is “to prevent parents from seeking custody in different jurisdictions in an attempt to obtain a favorable result.” *Tamasy v. Kovacs*, 929 N.E.2d 820, 827 (Ind. Ct. App. 2010). In 2007, Indiana adopted the Uniform Child Custody Jurisdiction and Enforcement Act (referenced in Article 21 of the Indiana Code as the Uniform Child Custody Jurisdiction Act or “UCCJA”), which had added provisions for the protection of domestic violence victims to then-existing uniform custody laws. First, the Indiana court involved in an interstate child custody dispute is to determine if a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in conformity with the UCCJA; if so, the Indiana court is to stay its proceeding and communicate with the court of the other state; finally, a determination

must be made as to which court is the more appropriate forum. Ind. Code § 31-21-5-6(b).

[11] The UCCJA inconvenient forum statute, Indiana Code Section 31-21-5-8, now provides:

(a) An Indiana court that has jurisdiction under this article to make a child custody determination may decline to exercise its jurisdiction at any time if the Indiana court determines that:

- (1) the Indiana court is an inconvenient forum under the circumstances; and
- (2) a court of another state is a more appropriate forum.

The issue of inconvenient forum may be raised on motion of a party, the court's own motion, or request of another court.

(b) Before determining whether an Indiana court is an inconvenient forum, the Indiana court shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the Indiana court shall allow the parties to submit information and shall consider the relevant factors, including the following:

- (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.

(c) If an Indiana court determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, the Indiana court:

(1) shall stay the proceedings on condition that a child custody proceeding be promptly commenced in another designated state; and

(2) may impose any other condition the Indiana court considers just and proper.

(d) An Indiana court may decline to exercise its jurisdiction under this article if a child custody determination is incidental to an action for dissolution of marriage or another proceeding while

still retaining jurisdiction over the dissolution of marriage or other proceeding.

The statutory factors are not an exclusive list, and “courts may consider all relevant factors, including factors not listed in Indiana Code section 31-21-5-8(b).” *Tamasy*, 929 N.E.2d at 827.

[12] Here, the trial court found that domestic violence had occurred and was likely to continue. The court also concluded that Alabama is the state best able to protect Wife and Child.² Father argues that the trial court erred in determining that Alabama is the more appropriate forum to decide the issues of custody and parenting time because the evidence presented at the hearing did not support the trial court’s findings and the order is inconsistent with its prior orders.

[13] The record is replete with evidence of Husband’s domestic violence against Wife. Wife testified that Husband had physically attacked her on multiple occasions, including in September and November of 2019, December of 2020, and January of 2021. According to Wife’s testimony, Husband had choked her, slapped her, scratched her, and punched her in the collarbone. She offered into evidence photographic exhibits depicting bruises, marks, and petechiae. Additionally, Wife testified that Husband frequently screamed at her and had severely and repeatedly abused the family pets in her presence. She opined that

² The trial court also stated that the Circuit Court of Montgomery County, Alabama is familiar with the parties. Although Husband undertakes to contest a finding that Alabama was “more familiar” with the case, Appellant’s Brief at 8, the Indiana trial court did not enter a finding of greater familiarity.

his volatility was, in part, due to abuse of alcohol and pills. Wife described herself as fearful and intimidated.

[14] Wife also offered into evidence text messages and recordings of Husband's voice threatening Wife and claiming that she could not obtain police protection because his family was mafia-connected and had New Castle police officers "on their payroll." (Tr. Vol. II, pg. 35.) In one recording, Husband claimed that his prior arrest for domestic violence upon Wife had simply been an illusion and he had not been required to post bail. Husband acknowledged that it was his voice that had been recorded.

[15] Finally, Wife offered as exhibits the records of the protective order proceedings in Alabama. To support her petition for a protective order, Wife had alleged that Husband strangled, slapped, and punched her and dragged her by her hair. Husband's response in the Alabama hearing was an acknowledgement that a protective order against him should be entered. At the Indiana hearing, he testified to his understanding that he had, in essence, admitted the factual allegations against him in the Alabama court.

[16] Nonetheless, Husband argues that the record lacks sufficient evidence to support the trial court's determination of a future likelihood of abuse. His insistence that the decision lacks evidentiary support is a blatant request that we reweigh the evidence and find evidence of historical abuse to be lacking in credibility. We decline the invitation. *See Stewart*, 888 N.E.2d at 766.

[17] Notably, Husband does not claim that he has taken any steps to prevent his perpetration of domestic violence in the future, such as participation in anger management classes or substance abuse treatment. He simply observes that the protective order exists to prevent domestic abuse and can be expected to serve that purpose. Although the grant of a protective order is one circumstance for proper consideration by the trial court in predicting the likelihood of future violence, it is to be considered within the totality of the circumstances. This might include past behavior, severity and repetition of abusive conduct, and any rehabilitative measures taken or the lack thereof. Here, we find no abuse of the trial court's discretion in this regard.

[18] Indeed, Husband's dismissive attitude regarding court "flip-flopping" and alleged "flimsy" evidence found credible by the trial court is particularly troubling. Appellant's Brief at 10. At times, Husband seeks both to minimize the seriousness of domestic violence and to have this Court impose a heightened evidentiary standard for supporting claims of domestic violence. For example, Husband argues:

The evidence establishes beyond a doubt in the instant case that the actions of the mother are nothing more than an abduction for the purpose of gaining an advantage in a child custody dispute. The trial court in this case has ignored the primary purpose of the UCCJEA and allowed a mother to abduct a child, move hundreds of miles away, and seek custody in another state, under the laws of another state, merely by claiming an inconvenient forum based upon allegations of domestic abuse.

It is important to note that the Father is not asserting that domestic abuse would never qualify the child's home state as an inconvenient forum under the UCCJEA. There are extreme circumstances in which a battered spouse should be allowed to leave the state and not be forced to return. However, the key concession in this argument is extreme circumstances. Those extreme circumstances should leave a paper trail of evidence. Namely, there should be medical records, hospital visits, and criminal convictions.

(Appellant's Reply Brief at 6.) Our Legislature, in directing the trial court to consider "whether domestic violence has occurred," I.C. 31-21-5-8, has neither limited evidence of abuse to perceived extremity nor required predicate criminal convictions or hospitalizations. The expressed public policy of this State is the rejection of such archaic barriers to protection of domestic violence victims.

[19] Finally, Husband observes that the trial court's order declining jurisdiction over the custody dispute is a departure from its prior exercises of jurisdiction. Again, Husband demonstrates no abuse of discretion. That is, a trial court is explicitly authorized to decline jurisdiction "at any time" that the court makes the requisite statutory determination as to an inconvenient or more appropriate forum. *Id.*

Conclusion

[20] Husband has failed to demonstrate that the trial court abused its discretion by declining to exercise jurisdiction over the custody dispute between Husband and Wife.

[21] Affirmed.

Najam, J., and Bradford, C.J., concur.