

NOTICE

Decision filed 09/04/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120402-U  
NO. 5-12-0402  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

CARLA CARLYON,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Madison County.
	)	
v.	)	No. 09-F-1018
	)	
CHAD BAARSON,	)	Honorable
	)	Dean E. Sweet,
Respondent-Appellee.	)	Judge, presiding.

---

JUSTICE GOLDENHERSH delivered the judgment of the court.  
Justices Stewart and Wexstten concurred in the judgment.

**ORDER**

¶ 1 *Held:* Illinois is not the home state and does not have jurisdiction to hear Carlyon's petition for grandparent visitation.

¶ 2 Petitioner, Carla Carlyon, filed a petition for grandparent visitation in the circuit court of Madison County. The court dismissed the petition. On appeal, petitioner raises issues as to whether the circuit erred in dismissing the petition for want of jurisdiction. We affirm.

¶ 3 FACTS

¶ 4 Petitioner's daughter, Maria, and respondent, Chad Baarson, were husband and wife. They had one child, L.B., born August 4, 2007. On September 15, 2009, Maria met her untimely and unfortunate demise. At the time of Maria's passing, she and L.B. had been residing in Madison County, Illinois, with petitioner. Respondent had been living in Maryland. After Maria's death, litigation ensued.

¶ 5 This appeal concerns dismissal of a petition for grandparent visitation. Petitioner filed

the petition on May 31, 2011. The court entered the order of dismissal on May 24, 2012. The circuit court entertained several pleadings prior to the dismissal.

¶ 6 The initial pleadings were in the probate court. On October 2, 2009, petitioner filed a petition for guardianship and estate of L.B. in the probate court of Madison County (No. 09-P-513). On November 17, 2009, petitioner filed an amended petition alleging that respondent had forcibly removed L.B. from petitioner's physical custody and taken L.B. to Maryland. On December 29, 2009, the court stated that "being advised and having jurisdiction," it would allow counsel for respondent to enter an appearance in the probate matter. Respondent was ordered to file a responsive pleading within 30 days. Respondent filed a motion to dismiss. 735 ILCS 5/2-619 (West 2008); 755 ILCS 5/11-5(b) (West 2008).

¶ 7 On March 25, 2010, the court transferred the petition for guardianship with the pending motion to dismiss to the family court where matters regarding custody were then pending (No. 09-F-1018). On June 28, 2011, the circuit court entered an order captioned by the filing numbers of both the probate and family law proceedings. The court reviewed the history of the probate and family court proceedings, and granted the motion to dismiss the probate petition for guardianship with prejudice. The court noted that respondent was, in fact, a party to the custody proceedings in the family court and ordered him to file responsive pleadings within 28 days.

¶ 8 Petitioner had filed the petition for custody under the Illinois Marriage and Dissolution of Marriage Act on December 23, 2009. 750 ILCS 5/601(b)(4) (West 2008). Petitioner alleged that Maria and L.B. had been residing with her in Madison County at the time of Maria's death. Petitioner further alleged that respondent had been engaged in an ongoing pattern of domestic violence prior to Maria's death and that respondent "snatched" L.B. from petitioner's physical custody through deception. See 750 ILCS 60/103 (West 2008). Petitioner requested temporary and permanent custody of L.B. Respondent filed a

motion to dismiss asserting that petitioner lacked standing and the circuit court lacked jurisdiction.

¶ 9 On August 23, 2011, the court entered an order dismissing the petition for custody, giving petitioner 21 days to file amended pleadings. The court noted that petitioner had filed a petition for grandparent visitation and ordered respondent to file responsive pleadings. Respondent filed a motion to dismiss the petition for grandparent visitation. Petitioner responded that she had standing to proceed with the petition for grandparent visitation. 750 ILCS 5/607(a-5) (West 2008).

¶ 10 On May 24, 2012, the court entered an order dismissing the petition for grandparent visitation. The court reviewed the prior proceedings and found that Illinois was not the home state for purposes of determining jurisdiction.

¶ 11 Petitioner appeals.

¶ 12 ANALYSIS

¶ 13 The Uniform Child-Custody Jurisdiction and Enforcement Act (Jurisdiction Act) sets the parameters of subject matter jurisdiction over child custody disputes. 750 ILCS 36/101 to 403 (West 2008); see 750 ILCS 5/601(a) (West 2008). The procedure for determining jurisdiction is meticulously defined by the Jurisdiction Act. Section 201 establishes the grounds for "Initial Child-Custody Jurisdiction." 750 ILCS 36/201(a) (West 2008). Section 201 is the "exclusive jurisdictional basis" for initial determinations of legal custody, physical custody, and visitation. 750 ILCS 36/201(b) (West 2008); see 750 ILCS 36/102(3) (West 2008). If an Illinois court finds that jurisdiction may be exercised over the initial determinations of child custody, then section 202 provides the grounds for exclusive and continuing jurisdiction. 750 ILCS 36/202 (West 2002).

¶ 14 Under section 201, Illinois may exercise jurisdiction only under certain circumstances. Several subparagraphs of section 201 address situations where no other state exercises

jurisdiction, but the usual basis for Illinois to obtain jurisdiction is when it is the "home state." 750 ILCS 36/201(a) (West 2008). Jurisdiction over initial determinations of custody and visitation is appropriate when Illinois "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." 750 ILCS 36/201(a)(1) (West 2008).

¶ 15 The Jurisdiction Act defines the terms which control our disposition:

"(7) 'Home state' means 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 less than six months of age, 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." (Emphasis added.) 750 ILCS 36/102(7) (West 2008).

¶ 16 Underlying petitioner's appeal is her claim that she fits the description of "a person acting as a parent" during the time L.B. resided in Illinois. Her arguments fail to address the precise definition of the term provided by the Jurisdiction Act:

"(13) 'Person acting as a parent' means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding;  
*and*

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this State." (Emphasis added.) 750 ILCS 36/102(13) (West 2008).

¶ 17 Petitioner makes a series of arguments attempting to bootstrap her past caretaking into present jurisdiction of Illinois. Petitioner's arguments rest on a definition of a person acting

as a parent that stops at physical custody. The legal definition, however, mandates a person either has been awarded custody or be able to claim a right to legal custody in order to fulfill the status as a person acting as a parent. 750 ILCS 36/102(13)(B) (West 2008). Petitioner cannot assert this status.

¶ 18 In 2009, petitioner filed a petition for custody under the Illinois Marriage and Dissolution of Marriage Act. As the trial court noted in ruling on the petition for grandparent visitation, the petition for custody had been dismissed on August 23, 2011. Petitioner's claim to "a right to legal custody under the law of this State" had been determined. Thus, petitioner did not fit the definition of "a person acting as a parent" for purposes of ascertaining the home State.

¶ 19 Petitioner's attempts to bootstrap the issue of visitation to the other proceedings before the circuit court ignore that she does not fit under the legal definition of a person acting as a parent. Petitioner argues that her petition for visitation should relate back to the filing of her original pleadings. See *In re Parentage of Frost*, 289 Ill. App. 3d 95, 99, 681 N.E.2d 1030, 1034 (1997); *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 361, 882 N.E.2d 583, 593 (2008). Petitioner asserts that she filed the original pleadings within six months of her "physical custody" of L.B., but she fails to show how she could maintain an action as "a person acting as a parent." In other words, she fails to address the second part of the definition. "Physical custody" is merely the first requirement. The definition also requires a person to have a right to legal custody or be able to claim the right to legal custody. When the court dismissed petitioner's petition for custody on August 23, 2011, it terminated any claim that she was a person acting as a parent.

¶ 20 Petitioner conflates any standing she might have had as a grandparent with the ability of Illinois to exercise jurisdiction over her petition for visitation. Petitioner points out that the Illinois Marriage and Dissolution of Marriage Act grants grandparents standing to file a

petition for visitation in a pending dissolution or custody proceeding. 750 ILCS 5/607 (West 2008). Petitioner further asserts that a grandparent need not have custody in order to have standing. 750 ILCS 5/607(a-5) (West 2008). Nonetheless, standing to participate in proceedings does not confer jurisdiction on Illinois. The Illinois Marriage and Dissolution of Marriage Act premises jurisdiction on the terms of the Jurisdiction Act. 750 ILCS 5/601(a) (West 2008). As Illinois does not have jurisdiction to render initial custody decisions under section 201 of the Jurisdiction Act, this state may not conduct further proceedings to determine visitation rights. Section 201 provides the "exclusive jurisdictional basis" for determining custody and visitation. 750 ILCS 36/201(a)(1) (West 2008).

¶ 21 A petition for grandparent visitation cannot stand alone. As the trial court noted, petitioner may not simply step into the shoes of a deceased parent. *Wickham v. Byrne*, 199 Ill. 2d 309, 317, 769 N.E.2d 1, 6 (2002). The trial court prudently observed that cultivating intergenerational bonds would be ideal, but found a lack of jurisdiction. A court may not review the merits of a petition unless that court is vested with jurisdiction, and Illinois lacks jurisdiction to hear petitioner's petition for grandparent visitation.

¶ 22 Application of the definitions of the Jurisdiction Act resolves the issues on appeal. Illinois is not the home state. Petitioner's assertions that alternative avenues to jurisdiction exist because of Illinois's connections to the litigation fail to address the prerequisites of the Jurisdiction Act. In particular, this court need not address whether the circuit court ever had jurisdiction over the probate proceedings or the propriety of the dismissal of the probate petition. The Jurisdiction Act provides the exclusive jurisdictional basis for determinations of legal custody. 750 ILCS 36/201(b) (West 2008). Illinois does not have jurisdiction over the subject matter of custody and, thus, lacks jurisdiction over the petition for grandparent visitation.

¶ 23 Accordingly, the order of the circuit court of Madison County dismissing the petition

for grandparent visitation is hereby affirmed.

¶ 24 Affirmed.