2015 IL App (5th) 140619-U

NO. 5-14-0619

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

CYNTHIA MARIE VOEGTLE,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	St. Clair County.
	)	
v.	)	No. 13-F-575
	)	
RONALD LEWIS RICHARDS, JR.,	)	Honorable
	)	Randall W. Kelley,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's denial of the respondent's motion to dismiss is reversed where the court did not have personal jurisdiction over the respondent.

¶ 2 The petitioner, Cynthia Marie Voegtle, sought to register a foreign consent judgment dealing with child support and visitation for the parties' minor children in the circuit court of St. Clair County in order to modify the child support provisions of said judgment. The respondent, Ronald Lewis Richards, Jr., filed a motion to dismiss the petition to modify for lack of personal jurisdiction. The circuit court denied the motion, finding that there was personal jurisdiction over the nonresident respondent in that he had sufficient contacts with Illinois to satisfy due process. The respondent petitioned for

leave to appeal the order pursuant to Illinois Supreme Court Rule 306(a)(3) (eff. Feb. 16, 2011), and the petition was granted. For the reasons which follow, we reverse the decision of the circuit court.

¶ 3 During their marriage, the parties had two children. The parties were divorced in the State of Arizona in 2005 and were awarded joint custody of the minor children with the petitioner being named the residential custodian. During the succeeding 10 years, both parties were required to relocate from state to state as a result of military responsibilities. On September 18, 2008, while the petitioner and the minor children resided in Louisiana, the parties entered into a consent judgment in that state, which, among other things, awarded the parties joint custody of the minor children with the petitioner being named the "domiciliary parent." The order also set forth a designated visitation schedule and ordered the respondent to pay the petitioner $650 per month in child support.

¶ 4 From approximately 2007 until 2009, which included the time that the consent judgment was entered, the respondent resided in Illinois. The respondent paid child support for the benefit of the parties' minor children and exercised his visitation rights while he was a resident of Illinois. He subsequently relocated to Florida in 2009. The petitioner and the minor children permanently relocated to Illinois in 2010. Thereafter, in 2011, the respondent moved to Nebraska. In 2013, the respondent received orders that his permanent duty station would be changing to Okinawa, Japan.

¶ 5 On May 7, 2013, the petitioner sought to register the 2008 Louisiana consent order in the circuit court of St. Clair County pursuant to the Uniform Interstate Family Support

Act (the Family Support Act) (750 ILCS 22/601 (West 2012)) for the purposes of modifying child support and visitation. Simultaneously, the petitioner filed a petition to modify judgment and for other relief, arguing that the following substantial changes in circumstances had occurred that warranted a modification of child support and visitation: (1) the respondent's income had increased substantially since 2008 and the financial needs of the minor children had increased; (2) the minor children were involved in sporting activities and events that required continual practice and the children were not given the opportunity to continue to practice and participate in these events while they were with the respondent during the summer; (3) the children may have inherited a heart condition that could be potentially fatal if not detected and treated, but the respondent refused to provide his medical records to the petitioner as requested by the children's cardiologist; and (4) the respondent had received orders that his permanent duty station had changed to Okinawa, Japan, and that he could be leaving the United States as early as July 2013. Therefore, the motion requested, among other things, an increase in child support and modification of the respondent's summer visitation with the minor children.

¶ 6 In response, the respondent filed a motion to dismiss the petition to modify contesting personal jurisdiction pursuant to section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301 (West 2012)). Although the respondent conceded that the circuit court of St. Clair County had jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) (750 ILCS 36/101 *et seq.* (West 2012)) for issues dealing with modification of visitation, he argued that the court did not have jurisdiction over him to modify child support. He further argued that he did not have the necessary

minimum ties with Illinois in that he did not reside in Illinois, he did not direct the residence of the petitioner or the minor children to Illinois, and he did not have any other ties to Illinois which would subject him to jurisdiction. Therefore, he requested that the petitioner's petition to modify with regard to child support be dismissed for lack of personal jurisdiction.

¶ 7 Thereafter, the petitioner filed a brief in response to the motion to dismiss. The petitioner countered that the respondent had submitted himself to jurisdiction under section 2-209(a)(7) of the Code of Civil Procedure (735 ILCS 5/2-209(a)(7) (West 2012)), the Illinois long-arm statute, in that he had entered into the 2008 consent judgment concerning child support and joint custody while he was an Illinois resident and that he had paid child support and exercised visitation with the minor children for 30 days each summer in fulfillment of his promises under the consent judgment while he resided in Illinois from 2007 through 2009.

¶ 8 The petitioner argued that the petition to modify arose from those promises and, therefore, the respondent's actions clearly constituted a substantial connection with the State of Illinois for the purposes of establishing personal jurisdiction. The petitioner argued that the respondent enjoyed a considerable personal benefit from exercising custodial time each summer with the minor children in his own residence in Illinois and had purposely availed himself of the benefits and protections of Illinois law so as to reasonably anticipate being haled into an Illinois court. Furthermore, the petitioner argued that she "should not be compelled to pursue [the] [r]espondent across the many U.S. military bases located around the world in order to have a Petition to Modify

Judgment and Other Relief to be heard on the merits, nor should [the] [r]espondent be allowed to evade the same as a benefit of military service."

¶ 9 On May 13, 2014, the circuit court of St. Clair County entered an order, denying the respondent's motion to dismiss. The court found that it had subject matter jurisdiction over this matter pursuant to the UCCJEA and proper registration of the foreign judgment by the petitioner. It also found that the State of Louisiana no longer had continuing, exclusive jurisdiction over the issue concerning child support as it was no longer the minor children's state of residence or the state of residence of either the petitioner or the respondent. The court further found that the respondent had sufficient minimum contacts with the State of Illinois and that the minor children had established residence in St. Clair County to grant the court jurisdiction over the respondent. Furthermore, the court found that it was the most convenient forum for the child support issue to be heard. On May 28, 2014, the respondent filed a motion to reconsider the court's order. On September 30, 2014, the circuit court denied the motion. The respondent appeals.

¶ 10 On appeal, the respondent contends that the trial court erred in finding *in personam* jurisdiction over him in that he had not committed any acts by which he submitted himself to the jurisdiction of the Illinois courts and his contacts with Illinois were insufficient to satisfy the requirements of due process.

¶ 11 In contrast, the petitioner argues that the Illinois courts have jurisdiction over the respondent pursuant to 28 U.S.C. § 1738B(e) as the Louisiana court no longer had continuing, exclusive jurisdiction over child support because it is no longer the minor children's state of residence and is not the state of residence for either party. In addition,

the petitioner argues that the Illinois courts have jurisdiction over the respondent for the purpose of modifying child support pursuant to section 201 of the Family Support Act (750 ILCS 22/201 (West 2012)) because the respondent resided in Illinois for a "substantial period of time," paid a "substantial amount" of child support for the parties' minor children while living in Illinois, and exercised "substantial visitation" with the children while residing in Illinois.

¶ 12 Furthermore, the petitioner contends that the Illinois courts have jurisdiction over the respondent under the Illinois long-arm statute. She further argues that the respondent's contacts in Illinois were sufficient to support the assertion of jurisdiction over him in matters involving his children, and that the nature of his activities in Illinois were such that it was fair and reasonable to require him to defend the petition to modify child support.

¶ 13 Section 201 of the Family Support Act (750 ILCS 22/201 (West 2012)) sets forth eight bases for jurisdiction over a nonresident respondent in a proceeding to *establish or enforce* a support order, one of which is that the individual resided in Illinois and provided support for the child. However, subsection (b) of this section provides as follows: "The bases of personal jurisdiction set forth in subsection (a) or in any other law of this State may not be used to acquire personal jurisdiction for a tribunal of the State to *modify* a child support order of another state unless the requirements of Section 611 or 615 are met." (Emphasis added.)

¶ 14 Section 611 of the Family Support Act (750 ILCS 22/611 (West 2012)) discusses an Illinois court's jurisdiction to modify child support orders entered in another state.

According to section 611, upon petition an Illinois court may modify a child-support order which was issued in another state and is registered in Illinois if, after notice and hearing, the tribunal finds that the following requirements are met: neither the child, nor the petitioner who is an individual, nor the respondent resides in the issuing state; a petitioner who is a nonresident of this State seeks modification; and the respondent is subject to the personal jurisdiction of the tribunal of this State. 750 ILCS 22/611 (West 2012).

¶ 15 In this case, the requirements set forth in section 611 of the Family Support Act are not satisfied as the petitioner is a resident of the State of Illinois. The petitioner concedes in her brief that this requirement is not met. Thus, an Illinois court would not have jurisdiction to modify the Louisiana child-support order under section 611 of the Family Support Act. However, notwithstanding her concession, the petitioner argues that 28 U.S.C. § 1738B, titled full faith and credit for child support orders, would give an Illinois court jurisdiction over the respondent and, therefore, preempts the Family Support Act. Because we conclude that the application of both 28 U.S.C. § 1738B and the Family Support Act yields the same result, we need not decide whether the Family Support Act is preempted by the federal law. See *Mattmuller v. Mattmuller*, 336 Ill. App. 3d 984, 992 (2003).

¶ 16 28 U.S.C. § 1738B provides the following with regard to a court's authority to modify a child support order issued by another state:

> "A court of a State may modify a child support order issued by a court of another State if *** (1) the court has jurisdiction to make such a child support order

pursuant to subsection (i); and (2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or (B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order."

Additionally, subsection (i) of this section provides as follows: "If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification." Thus, because the petitioner and the minor children no longer reside in Louisiana, 28 U.S.C. § 1738B(i) requires the circuit court of St. Clair County to have jurisdiction over the respondent in order to modify the child support order.

¶ 17 There are two requirements that must be satisfied for Illinois courts to exercise *in personam* jurisdiction over a nonresident. *In re Marriage of Howard*, 291 Ill. App. 3d 675, 678 (1997). First, the nonresident must have submitted himself to the jurisdiction of the Illinois courts by committing some act enumerated in the long-arm statute (735 ILCS 5/2-209(a) (West 2012)). *Id.* Second, the nonresident must satisfy the federal due process requirement of minimum contacts. *Id.* In other words, there must be sufficient contacts between the nonresident and the forum State such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Department of Healthcare & Family Services ex rel. Heard v. Heard*, 394 Ill. App. 3d 740, 743 (2009).

¶ 18 Because we conclude that the respondent does not have sufficient minimum contacts with the State of Illinois to satisfy the minimum contact due process requirement, we do not need to address whether he has committed one of the enumerated acts under the long-arm statute. In order to have minimum contacts with the forum State, a respondent's contact with respect to the State must be such that he would reasonably anticipate being haled into that state's court. *Heard*, 394 Ill. App. 3d at 743. It is essential that there be some act by which a respondent purposely avails himself of the privilege of conducting activities in the forum State. *Kulko v. Superior Court of California*, 436 U.S. 84, 94 (1978).

¶ 19 The following cases discuss the minimum contacts due process requirement with regard to a nonresident respondent. In *Heard*, 394 Ill. App. 3d at 741, the nonresident father appealed an order of the Peoria County circuit court registering for enforcement a child support order entered against him in Germany. The father objected to the registration and enforcement of the order because he maintained that Germany did not have jurisdiction over him due to inadequate contact with Germany and failure to serve him with notice of the proceedings. *Id.* The Third District concluded that the acts of marrying a German citizen and living briefly in Germany as a married couple were not, by themselves, acts by which the nonresident father purposely availed himself of the benefits of German law. *Id.* at 745.

¶ 20 In *Kulko*, 436 U.S. at 94, the United States Supreme Court concluded that a nonresident father who agrees, in the interest of family harmony and his children's preferences, to allow the children to spend more time in California than was required

under the separation agreement was insufficient to satisfy the minimum contacts requirements and to allow the State of California to exercise personal jurisdiction in order to modify child support. In making this decision, the Court noted that the nonresident father's presence in California for two visits was not an adequate basis for the assertion of jurisdiction over him with regard to an unrelated matter and that assertion of jurisdiction on that basis would make a "mockery" of the limitations on state jurisdiction imposed by the fourteenth amendment. *Id.* at 93.

¶ 21 Furthermore, in *Duncan v. Duncan*, 94 Ill. App. 3d 868, 870 (1981), the Third District concluded that the facts that the parties were married in Illinois in 1957 and that the parties lived in Illinois for a time following the marriage was not sufficient to subject a nonresident father to jurisdiction as respondent had moved out of Illinois in 1971 and had no contact with Illinois since he moved. Last, in *Howard*, 291 Ill. App. 3d at 680, our district concluded that a nonresident father who sent his minor child to Illinois to further the child's educational opportunities did not purposely avail himself of the benefits and protections of Illinois' laws. In making this decision, the court found significant the fact that the only time respondent spent any time in Illinois was to visit his son at school. *Id.*

¶ 22 Here, the trial court concluded that the requirements for obtaining personal jurisdiction over the respondent, a nonresident, were satisfied as the respondent had sufficient minimum contacts with Illinois. We disagree. The respondent moved to Illinois at the direction of the military following his divorce from the petitioner. He resided in Illinois from 2007 until 2009. In 2009, he moved to Florida and in 2011, he

relocated to Nebraska. In 2010, the petitioner permanently relocated with the minor children to Illinois and filed the 2013 petition to modify. Similar to *Duncan*, there is nothing contained in the record indicating that the respondent has visited Illinois since he relocated in 2009. Although the respondent resided in Illinois when the consent judgment was entered into, his previous residency in Illinois is unrelated to the change of circumstances asserted by the petitioner in her petition to modify child support. Further, the respondent has acquired no personal or commercial benefit from his children residing in Illinois and he did not direct the petitioner to relocate with the minor children to Illinois.

¶ 23 When determining whether the exercise of *in personam* jurisdiction violates the minimum contacts due process requirement, each case must be considered on its own facts and the quality and nature of a respondent's contacts with the state must be reviewed to see if the exercise of jurisdiction is fair and reasonable. *Howard*, 291 Ill. App. 3d at 680. We conclude that the above contacts are insufficient to satisfy the requirements of due process and that it would be unreasonable and unfair to force the respondent to defend the modification of child support action in Illinois. Thus, the trial court erred in exercising jurisdiction over the respondent. We reverse the trial court's ruling finding jurisdiction with regard to the issue of child support.

¶ 24 For the foregoing reasons the judgment of the circuit court of St. Clair County is hereby reversed.

¶ 25 Reversed.