

The Family Court of the State of Delaware



FELICE GLENNON KERR
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 9400
WILMINGTON, DELAWARE 19801-3732

October 8, 2019

John A. Macconi, Jr., Esquire
900 Philadelphia Pike, Suite B
Wilmington, DE 19809

**LETTER DECISION
AND ORDER
MOTION TO DISMISS**

T. S. G.

**Re: K. L. B. v. T. S. G.
No.: CN19-04333; Petition No.: 19-22936
Petition Type: Custody Modification**

Dear Mr. Macconi and Mr. G. :

This is a letter decision and order regarding the Motion to Dismiss the above-referenced petition filed by Respondent T. S. G. (“Father”) regarding a Petition to Modify Custody filed by Petitioner K. L. B. (“Mother”). The Petition is regarding custody of C. R. G., born on , 2011. A summary of the proceedings can be found in the order issued on September 26, 2019.¹ In that Order the Court stayed the pending Delaware petition and requested confirmation that there was a custody modification proceeding filed in Maryland, the initiating state. Mother’s counsel provided the Court with verification that there was a Petition for Modification of Custody filed in Maryland by Father on or about August 30, 2019. The Court performed a thorough legal analysis of the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) in the September 26, 2019 decision and distinguished the case cited by Mother, C. v. C.² The facts of C. are different in that Delaware was the state of original jurisdiction, and the parties in the C. case had both moved out of Delaware.

In the pending case, Delaware is the receiving state and is governed by 13 *Del.*

¹ The Court notes the correction made by Mother’s counsel in the cover letter that the April, 2019 Order was not a second modification order but rather just the written form of the order entered on the record on October 23, 2018. This modification has no impact on the legal analysis.

² *Del. Fam.*, CN05-03786, Newell, J. (12/18/2013).

C. §1922.³ As noted in the September 26, 2019 order, Father still resides in Maryland and the Court has no information that Maryland has relinquished jurisdiction. As there is a pending case in Maryland, Mother has a forum to make a request to relinquish jurisdiction. The Court previously found that the prior Orders entered in Maryland did not indicate that Maryland had relinquished jurisdiction. The Court stated:

In the present case, Mother meets the first criteria as Delaware would have jurisdiction over an initial determination as she and the Child have resided in Delaware for the requisite six months to make Delaware the home state. However, the statute also requires Maryland to determine that it no longer has exclusive, continuing jurisdiction, unless this Court can find that neither parent nor the child live in Maryland. There is no dispute that Father still resides in Maryland. Thus, the question is whether the Maryland court determined that it no longer had jurisdiction.

While Maryland gave Mother primary placement in the April 1, 2019 (effective October 23, 2018) this Order does not state that Maryland has relinquished continuing, exclusive jurisdiction over modification of the order. There is no language in either custody related Order referencing Delaware other than a provision that Father would have a dinner visit in Delaware during the week while the child is in school. As this Order was a consent Order and both parties had attorneys, the Court did not make findings and the parties did not add a provision regarding jurisdiction for future modification. While Delaware may be a more appropriate forum, that decision must be made by the Maryland court.

While Father's petition in Maryland may have been filed after Mother's petition was filed in Delaware, this does not impact the legal analysis on which state has modification jurisdiction. The purpose of the UCCJEA is to avoid jurisdictional competition, promote cooperation between courts, deter the abduction of children and facilitate the enforcement of custody orders of other states. One of the main purposes of the UCCJEA is to clarify the exclusive, continuing jurisdiction for the state that entered the child custody decree. The

³ Except as otherwise provided in §1923 of this title, a court of this State may not modify a child custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under §1920(a)(1) or (2) of this title and:

- (1) The Court of the other state determines it no longer has exclusive, continuing jurisdiction under §1021 of this title or that a court of this State would be a more convenient forum under §1926 of this title; or
- (2) A court of this State or a court of the other state determines the child, the child's parents and any other person acting as a parent do not presently reside in the other state.

UCCJEA is designed to eliminate a rush to the courthouse to determine jurisdiction.⁴

CONCLUSION

While the existence of the other petition may not change the jurisdiction, as there are two pending petitions, the appropriate action of this Court would be to stay the case in Delaware until Maryland makes a determination as to jurisdiction, rather than dismiss the petition outright. The Court will **STAY** this petition pending a determination by Maryland regarding their continuing exclusive jurisdiction.

ORDER

IT IS HEREBY ORDERED THIS 8th DAY OF OCTOBER, 2019 THAT THIS PETITION IS STAYED PENDING THE DECISION OF THE STATE OF MARYLAND AS TO IT'S CONTINUING EXCLUSIVE JURISDICTION.

Very truly yours,

Felice Glennon Kerr, Judge

FGK:vm

Date emailed:

Date mailed:

⁴ See *T. D. v. M.H.*, 2019 PA Super 292, No. 1107 EDA 2019 (incorporated into *M. H. v. T. D.*, *Del. Fam.*, CN13-06371; 18-26445, October 7, 2019).