Filed 7/5/17 Baggarly v. Rogers CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NICK BAGGARLY, Plaintiff and Appellant, v. KATHERINE ROGERS, Defendant and Respondent.	B269094 (Los Angeles County Super. Ct. No. BF039834)

APPEAL from an order of the Superior Court of Los Angeles County. Laura A. Seigle, Judge. Affirmed.

Nick Baggarly, in pro. per. for Appellant.

Feinberg, Mindel, Brandt & Klein and Gregory A. Girvan for Respondent.

Nick Baggarly (father) appeals the trial court's order finding Alabama, the state of residence of his daughter, to be a more convenient forum for child custody proceedings. We conclude there was no abuse of discretion and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Father and Katherine Rogers (mother) have a daughter who was born in February 2010. They lived together in Los Angeles from the daughter's birth until June 2010 when mother moved with the child to Alabama.

The following month, father filed a petition in Los Angeles County to establish a parental relationship, seeking joint custody and visitation. The parties stipulated that mother would have temporary physical custody of the child, mother would bring the child to Los Angeles once a month, and father could visit the child in Alabama without limitation.

Visitations were generally uneventful and the legal proceedings were dormant for approximately five years until August 2015, when father filed an ex parte request regarding the child's schooling. Father objected to the child's recent enrollment in an Alabama public school and offered to pay the tuition for the child to attend a nearby private school. The parties stipulated to the child's enrollment in private school.

Mother then moved for an order transferring the case to Alabama as a more convenient forum under Family Code section 3427 (section 3427). She submitted evidence that all of the child's "close relations" and caretakers, other than father, lived in Alabama, father's visits with the child generally took place in Alabama, and all of the child's schooling had taken place in Alabama. Mother claimed she could not afford to litigate in

California because father was tens of thousands of dollars in arrears in child support.

Father filed an opposition, arguing that the California court should maintain jurisdiction over the case. He submitted evidence that the child had visited California nine times in her lifetime during which she had interacted with paternal relatives who lived in California. Father also cited to the parties' 2010 stipulation in which they had agreed to "commence" a child custody evaluation in California.[1]

The court held a hearing on the matter and concluded that "going through the various factors under [section] 3427, the factors weigh in favor of transferring the case to Alabama."[2] The court stayed the proceeding and directed mother to promptly file a proceeding in Alabama, after which the California proceeding would be dismissed. Father timely appealed.

---

[1] Father also stated that mother had committed domestic violence against him. However, he acknowledged those charges had been dismissed.

[2] The court disagreed with mother's argument that California had lost exclusive, continuing jurisdiction under Family Code section 3422. (See Fam. Code, § 3422, subd. (a)(1) ["a court of this state that has made a child custody determination . . . has exclusive, continuing jurisdiction over the determination until . . . (1) A court of this state determines that neither the child, nor the child and one parent . . . have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships."].)

DISCUSSION

Father argues the trial court did not allow the parties to present evidence as required under section 3427, and did not properly consider the section 3427 factors.

Under section 3427, a California court with "exclusive, continuing jurisdiction to make child custody determinations 'may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum.' " (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1098.)

In making this determination, "the court shall allow the parties to submit information and shall consider all relevant factors, including: [¶] (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child. [¶] (2) The length of time the child has resided outside this state. [¶] (3) The distance between the court in this state and the court in the state that would assume jurisdiction. [¶] (4) The degree of financial hardship to the parties in litigating in one forum over the other. [¶] (5) Any 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 testimony of the child. [¶] (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." (§ 3427, subd. (b).)

"The court has broad discretion with respect to weighing the applicable factors and determining the appropriate weight to

accord to each. However, the court cannot ignore any relevant circumstance enumerated in section 3427, subdivision (b); rather, the trial judge must recognize and apply each applicable statutory factor. Under the doctrine of 'implied findings,' if the record is silent, we must presume the trial court fully discharged its duty to consider all of the relevant statutory factors and made all of the factual findings necessary to support its decision for which there is substantial evidence." (*Brewer v. Carter* (2013) 218 Cal.App.4th 1312, 1320.)

Here, father's argument that the court did not provide the parties with an opportunity to present evidence is not supported by the record. Both parties submitted declarations to the court with attached exhibits. The record does not indicate that father requested and was denied an evidentiary hearing.

Father's argument that the court did not consider the section 3427 factors is also contrary to the record. Both parties presented arguments addressing each factor in their briefs. At the hearing, the court stated that it had considered these factors. "Unless the record is to the contrary, we must take the trial court at its word and assume it did its duty." (*Acree v. General Motors Acceptance Corp.* (2001) 92 Cal.App.4th 385, 400 citing Evid. Code, § 664.)

Finally, the court did not abuse its discretion in concluding Alabama was a more convenient forum for determining child custody. Many of the factors weighed in favor of Alabama as a forum: the child had lived there from the time she was an infant, there was evidence mother would face financial hardship if she had to litigate in California given father's substantial arrears in child support, and all recent evidence related to the child's education and activities was present in Alabama. Although the

California court was familiar with the "facts and issues" related to the child's recent enrollment in elementary school, this case had not otherwise been before the California court since 2010. (§ 3427, subd. (b)(8).)

At oral argument, father argued the court should have considered the results of an Evidence Code section 730 child custody evaluation for his daughter before deciding whether California was an inconvenient forum. (See Cal. Rules of Court, rule 5.220.) In 2010, the parties stipulated to, and the court ordered, a section 730 evaluation. Due to extenuating circumstances, and without fault on the part of father, no evaluation ever took place. Although we understand father's strong preference to have the California court consider such evidence, given the child's long-standing residence in Alabama, it was not unreasonable for the court to conclude that any evaluation would be more appropriate in Alabama.

On these grounds, the trial court could reasonably conclude that Alabama was a more convenient forum for child custody determinations.

DISPOSITION

The order is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.