

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 7, 2004**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-3404  
STATE OF WISCONSIN**

**Cir. Ct. No. 01PA000041**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN RE THE PATERNITY OF KAITLIN A.:**

**PHAEDRA P., F/K/A PHAEDRA E.,**

**PETITIONER-RESPONDENT,**

**v.**

**DENNIS A.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Kenosha County:  
DAVID M. BASTIANELLI, Judge. *Affirmed.*

¶1 SNYDER, J.<sup>1</sup> Dennis A. appeals from a circuit court order that defers jurisdiction of his motion concerning the custody, placement and support of

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

his daughter, Kaitlin A., to the State of Texas. Dennis contends that the circuit court erred in applying the correct law and in addressing the facts relevant to the question of jurisdiction. We disagree and affirm.

¶2 The essential background and facts are undisputed. Kaitlin was born on May 4, 1994, and is presently ten years old. Dennis lived with Kaitlin and her mother, Phaedra P., for approximately one year after Kaitlin's birth and was adjudicated Kaitlin's father in May 2001 in Kenosha county, Wisconsin. The paternity judgment granted joint legal custody to Phaedra and Dennis, with primary physical placement of Kaitlin to Phaedra and secondary placement rights to Dennis on a reasonable time and notice basis. Phaedra and Kaitlin moved from Kenosha county to the State of Texas in December 2001.<sup>2</sup> Dennis and Phaedra entered into a placement agreement on December 3, 2001, which provided Dennis with summer and holiday placement/visitation with Kaitlin in Wisconsin.

¶3 Phaedra married in Texas and planned to move with Kaitlin and her husband, an active duty Army member, to his new military assignment in Germany. On August 6, 2003, Dennis filed an Order to Show Cause in Kenosha county seeking to prohibit Kaitlin from moving to Germany. On September 5, 2003, Phaedra filed a motion in Bell County, Texas, seeking modification of the Wisconsin placement order, and on September 9 filed a motion in Kenosha county requesting that the Wisconsin circuit court determine the appropriate forum for the motions. On October 9 and November 19, 2003, the Kenosha County Circuit Court held hearings to determine the appropriate forum. During the hearings,

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<sup>2</sup> Dennis conceded that Phaedra and Kaitlin had lived in Texas for almost two years on October 9, 2003.

Kenosha County Circuit Court Judge David M. Bastianelli conferred with Judge Joseph Carroll of the 27th Judicial District, Bell County, Texas. *See* WIS. STAT. § 822.07(4).

¶4 On December 4, 2003, Judge Bastianelli issued an Order of Jurisdiction (Order) finding that “the State of Texas is the most appropriate forum in this case and hereby orders that jurisdiction for the motions pending shall be in Bell County, Texas.” Dennis appeals from that order.

¶5 The modification of a Wisconsin child custody determination by a court of another state is addressed in the Parental Kidnapping Prevention Act of 1980, 28 U.S.C. § 1738A (1980) (PKPA), and the Uniform Child Custody Jurisdiction Act, WIS. STAT. ch. 822 (UCCJA). *Michalik v. Michalik*, 172 Wis. 2d 640, 643, 494 N.W.2d 391 (1993). To the extent that the PKPA and the UCCJA conflict, the PKPA preempts the UCCJA. *Michalik*, 172 Wis. 2d at 649. Where the PKPA preempts the UCCJA, the UCCJA provisions governing modification of child custody are not applicable. *Michalik*, 172 Wis. 2d at 649 n.2.

¶6 Dennis first suggests that the Order is in error because it is based upon the UCCJA and the UCCJA is preempted by the PKPA. However, the record does not support a conflict between the PKPA and the UCCJA concerning the appropriate forum issue presented here, nor did Dennis raise and argue in the circuit court that a conflict between the laws existed. The only record reference to the PKPA was a brief exchange between the circuit court and Dennis’ counsel, Renee Mura:

THE COURT: As far as I’m concerned, the issues are straightforward. You want primary physical placement. You don’t want the child out of the country. The issue is

where's this going to be litigated and what's the best forum for [litigation].

MS. MURA: But, Judge, what I want to inform you is there are the statutes that guide that, which is the-- P. K. P. A. is the first and foremost.

THE COURT: There's also a forum of convenience.

¶7 Inherent in the circuit court's "forum of convenience" response is the acknowledgement that under the PKPA, Texas could only exercise jurisdiction over the child custody motions if Wisconsin declined to exercise its original jurisdiction over the child custody. The lesson of *Michalik* is that the PKPA prohibits another state (Texas) from assuming jurisdiction over an original state (Wisconsin) custody order where the child and custodial parent live in Texas, but Wisconsin has original jurisdiction, the child lived in Wisconsin for a sufficient period of time prior to the date of the initial custody order, the noncustodial parent still lives in Wisconsin, and Wisconsin has not relinquished jurisdiction to Texas. See *Michalik*, 172 Wis. 2d at 652-54.

¶8 *Michalik* is not instructive here because Indiana, the original *Michalik* jurisdiction forum, had not declined to exercise its jurisdiction. The issue presented here is whether Wisconsin properly declined its exercise of original jurisdiction under the provisions of the UCCJA. There is no conflict with the PKPA in the circuit court's application of the UCCJA in this case, nor does Dennis point to any conflict. We are satisfied that the circuit court was fully aware of and properly applied the correct law in addressing the appropriate forum issue.

¶9 The circuit court found that Texas was the appropriate forum for deciding the Kaitlin custody questions. While Wisconsin had PKPA controlling

jurisdiction, under WIS. STAT. § 822.07 Wisconsin could still be an “inconvenient forum” and the court of another state could be a “more appropriate forum.”

Section 822.07 provides in part:

**Inconvenient forum.** (1) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

¶10 We agree with Dennis that the standard of review for UCCJA jurisdictional determinations is discretion. A circuit court properly exercises its discretion if the facts support the circuit court’s decision and the circuit court applied a correct legal standard. *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). An exercise of discretion is not the equivalent of unfettered decision making but must reflect the circuit court’s “reasoned application of the appropriate legal standard to the relevant facts in the case.” *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982).

¶11 In exercising its UCCJA discretion, the circuit court may consider the factors provided in WIS. STAT. § 822.07(3), which reads:

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) If another state is or recently was the child’s home state;

(b) If another state has a closer connection with the child and family or with the child and one or more of the contestants;

(c) If substantial evidence concerning the child’s present or future care, protection, training, and personal relationships is more readily available in another state;

(d) If the parties have agreed on another forum which is no less appropriate; and

(e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in s. 822.01.

¶12 Dennis complains that the circuit court based its forum decision solely on Texas being Kaitlin’s current home and that consideration of the WIS. STAT. § 822.07(3)(a) factor, alone, constitutes an erroneous exercise of discretion. Dennis supports his contention with the circuit court statement that “[t]he only concern I have is the child being physically at your location.” In context, however, the circuit court continued that thought with further considerations appropriate to establishing an appropriate forum in the interest of Kaitlin, including the location of “the guardian ad litem who’s going to represent the child, current information as to the psychological impact, if any, on the child in relation to school, [and] in relation to [the child] dealing with the people is much easier to determine [in Texas].”

¶13 In addition, at the earlier hearing on October 9, 2003, the circuit court stated that

the problem I’d have with litigating [the custody and placement issues] here with the child and mother being in Texas for almost about the last two years is if we look at current school records, current friendships, current neighbors, and what’s been going on plus the guardian ad litem being appointed and trying to have contact with the parties would make it somewhat difficult.

The circuit court further considered that Kaitlin has been living in Texas “for the last two years in terms of school, friends, pastors, guardian ad litem.” We are satisfied that the circuit court considered other relative forum factors in addressing the child custody motions than just Kaitlin’s present location in the State of Texas. We are also satisfied that the circuit court analyzed the forum convenience issue

consistent with the UCCJA primary consideration of the best interests of Kaitlin. *See* WIS. STAT. § 822.07(3).

¶14 Based upon the considered factors, the circuit court’s consideration of the affidavits of the parties addressing the appropriate forum question, the court’s consultations with the Texas court, and the Texas court’s acceptance of the forum responsibility, we conclude that the circuit court properly exercised its discretion in declining to retain Wisconsin jurisdiction. The procedure used by the circuit court did not conflict with the PKPA and was consistent with the purposes of the UCCJA and with the WIS. STAT. § 822.01(1)(b) goal of “[p]romot[ing] cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child.” We therefore affirm the order.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

