

2010

Carol Ann Lavoie v. Derrick Robert Lavoie : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

CAROL ANN LAVOIE,
nka CAROL ANN HUEBNER,

Petitioner/Appellee,

v.

DERRICK ROBERT LAVOIE,

Respondent/Appellant.

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Case No. 20100050-CA

Trial Court No. 074500609

BRIEF OF APPELLANT DERRICK ROBERT LAVOIE

**APPEAL FROM FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH
HONORABLE ERIC A. LUDLOW PRESIDING**

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FILED
UTAH APPELLATE COURT
MAY 24 2010

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TABLE OF CONTENTS

	<u>Page</u>
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUES AND STANDARD OF REVIEW	1
CONSTITUTIONAL OR STATUTORY PROVISIONS	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS.....	1
SUMMARY OF ARGUMENT	4
ARGUMENT	4
CONCLUSION	7

TABLE OF AUTHORITIES

Page

Cases

Case v. Case, 103 P.3d 171 (Utah App. 2004) 4, 5, 6

Statutes

Utah Code Ann. § 78B-14-101 through 901 4

JURISDICTIONAL STATEMENT

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. §78A-4-103(2)(h).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Did the-trial court err in denying Appellant's Motion to Strike and to Dismiss Underlying Proceedings for Lack of Subject Matter Jurisdiction?

CONSTITUTIONAL OR STATUTORY PROVISIONS

Utah Code Ann. § 78B-14-101 through 901, and specifically §611 (1)(a)(ii).

STATEMENT OF THE CASE

This case is a domestic relations case from South Dakota. The trial court modified the South Dakota child support order. Appellant moved to dismiss the proceedings below for lack of subject matter jurisdiction. That motion was denied. This is an appeal of the order denying the motion to dismiss.

STATEMENT OF THE FACTS

1. These parties were married on June 14, 1986. *Findings of Fact in Record on Appeal at 78.*

2. The parties are the parents of one child, Nathan LaVoie, born July 14, 1993. *Findings of Fact in Record on Appeal at 78.*
3. The parties were divorced on June 5, 2000 in the state of South Dakota. *Findings of Fact in Record on Appeal at 78.*
4. After entry of the South Dakota Divorce, Appellee moved to Utah, and Appellant moved to California. *Finding of Fact #s 5 & 6, Record on Appeal at 79.*
5. The South Dakota Decree of Custody was filed as a foreign judgment in the Fifth District Court for Washington County, Utah on July 20, 2007. *Record on Appeal at 1.*
6. The trial court entered an order on September 18, 2007, stating that the court had communicated with the judge of the South Dakota court, and that both judges concurred that the jurisdiction in this case should be in the Fifth District Court Washington County, Utah. *Record on Appeal at 29.*
7. On January 25, 2008, Appellee filed a Petition to Modify the Decree of Custody, seeking to increase Respondent's child support obligation. *Record on Appeal at 31.*
8. On February 21, 2008, an Answer was filed. *Record on Appeal at 58.*
9. The matter proceeded to trial on September 18, 2008. *Record on Appeal at 66.*

10. The trial court entered Findings of Fact and Conclusions of Law on November 12, 2008. *Record on Appeal at 78.*
11. On December 17, 2008, the trial court entered a Judgment and an Order Modifying Decree of Divorce. *Record on Appeal at 95 through 100.*
12. Appellant moved for a new trial and after briefing and hearing, the trial court entered its Order Denying Respondent's Motion for New Trial on July 22, 2009. *Record on Appeal at 114 through 198.*
13. On August 7, 2009, Appellant filed a Petition to Modify the Child Support Award of the trial court, based on a material change of circumstances. *Record on Appeal at 189.*
14. Appellee answered the Petition on August 18, 2009. *Record on Appeal at 202.*
15. On October 21, 2009, Appellant filed a Motion to Strike and Dismiss Underlying Proceedings for Lack of Subject Matter Jurisdiction. *Record on Appeal at 205.*
16. On November 16, 2009, Appellee filed a Memorandum in Opposition to the Motion to Strike and Dismiss. *Record on Appeal at 213.*
17. On November 24, 2009 Appellant filed a Motion to Strike and replied to Appellee's opposition. *Record on Appeal at 216.*

18. The Motion to Strike and Dismiss Underlying Proceedings for Lack of Subject Matter Jurisdiction was submitted for decision on November 24, 2009. *Record on Appeal at 220.*

19. The trial court denied the Motion to Strike and Dismiss Underlying Proceedings for Lack of Subject Matter Jurisdiction by written ruling on December 12, 2009. *Record on Appeal at 222.*

SUMMARY OF ARGUMENT

Utah's version of the Uniform Interstate Family Support Act (UIFSA) governs the District Court's jurisdiction to modify another state's child support order. For interstate policy reasons, UIFSA reserves subject matter jurisdiction to cases where the petitioner is a nonresident of this state. Because the Appellee is a resident of this state, the District Court lacks subject matter jurisdiction to modify the South Dakota child support order.

ARGUMENT

This Court has ruled in *Case v. Case*, 103 P.3d 171 (Utah App. 2004) that the Uniform Interstate Family Support Act (UIFSA) controls the modification of a child support order issued in another state, such as the South Dakota order filed herein.¹ In order to establish subject matter jurisdiction, UIFSA requires that the petitioner not be

¹ UIFSA was previously codified at Utah Code Ann. §§ 78-45f-100 to -902 (2002), and is now codified at Utah Code Ann. § 78B-14-101 to -901 (as amended 2008).

resident of this state. In the instant case, as was the situation before this Court in *Case*, the Appellee asked a Utah District Court to modify a foreign support decree against a resident of another state. According to *Case*, UIFSA requires that the petitioner be a non-resident of this state to qualify for subject matter jurisdiction to modify the South Dakota child support order, specifically holding that “the trial court lacked subject matter jurisdiction over this case because under UIFSA, a Utah court cannot establish, modify or enforce a foreign support order unless the petitioner is a non-resident of Utah. Accordingly, we reverse the trial court’s grant of summary judgment and its order requiring Appellant to pay child support and remand with instructions to dismiss Mother’s petition.” *Id.* at 177.

In *Case*, the Mother argued that the district court had jurisdiction by virtue of establishing personal jurisdiction over the Father. *Id.* at 176. This Court compared the confusing provisions of UIFSA, and after finding that the statutory language was ambiguous, turned to the official comments by the drafters of UIFSA. *Id.* The policy requiring petitioner to be a non-resident of the state in which enforcement or modification of a foreign support order is sought is to prevent forum shopping. To keep a petitioner from moving to a state where the child support laws are viewed as more favorable, UIFSA requires the petitioner to file where the other party resides, which is to say, petitioner must “play an away game.”

Because the parties in this case were divorced in South Dakota, and Appellant now lives in California, Appellee can return to South Dakota or go to California to enforce or modify the South Dakota child support order. Appellee would be “playing an away game” in either of the other jurisdictions. Similarly, Appellant may seek enforcement or modification of the support order in South Dakota or in Utah where Appellee resides, but Appellant is a non-resident. Appellant would not be allowed to file for a modification of the South Dakota support order in California, just as Appellee is not allowed to file for modification of the support order in Utah. This Court specifically concluded in *Case* that the requirement that the *Petitioner* be a non-resident of this state is a matter of subject matter jurisdiction, which cannot be waived by Appellant’s personal appearance herein. *Id.* (A petitioner under UIFSA must first establish subject matter jurisdiction under §104 or §611. Without such compliance, the petition must be dismissed. Personal jurisdiction achieved under §§ 201 and 202 does not confer the pre-requisite subject matter jurisdiction). The exact same scenario applies to the present case.

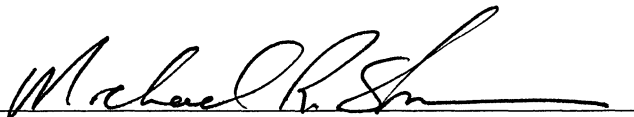
In this case, Appellee is a resident of Utah, and her Petition and all proceedings emanating from that petition are without subject matter jurisdiction, and should be stricken and dismissed.

CONCLUSION

The District Court's jurisdiction over the subject matter of modification of another state's child support order is limited to situations where the petitioner is a nonresident of this state. Appellee's Petition for modification of the South Dakota child support order must be dismissed for lack of subject matter jurisdiction. The trial court's Judgment and Order Modifying Decree of Divorce from December 17, 2008, should be stricken along with the Order Denying Respondent's Motion for New Trial from July 22, 2009.

DATED this 18th day of May, 2010.

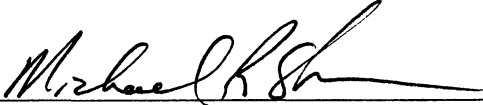
JONES WALDO HOLBROOK & MCDONOUGH P.C.

By: 
Michael R. Shaw
Attorneys for Respondent and Appellant

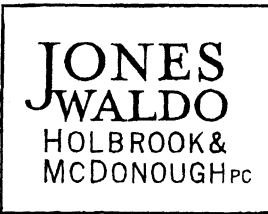
CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of May, 2010, two true and correct copies of the foregoing BRIEF OF APPELLANT DERRICK ROBERT LAVOIE were sent by United States Mail, postage prepaid, address to the following:

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MAY 24 2010



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May 24, 2010

VIA FACSIMILE (801) 578-3999 and U.S. Mail

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450 South State Street
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Salt Lake City, UT 84114-0230

Attention Nicole

Re: Lavoie v. Lavoie
Case No. 20100050-CA

Dear Nicole:

Per your request, please note the following addition to the Appellant's Brief filed with the Utah Court of Appeals on May 18, 2010: **NO ADDENDUM IS NECESSARY UNDER RULE 24(a)(11), UTAH RULES OF APPELLATE PROCEDURE.** I have forwarded a copy of this letter to opposing counsel. Please feel free to contact me or my assistant if you have any questions.

Sincerely,

JONES, WALDO, HOLBROOK & MCDONOUGH, P.C.

Michael R. Shaw

MRS:sjm
cc Brent Brindley