

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL GENE ROBERTS,

Plaintiff-Appellee,

v

LORRI LYNN ROBERTS,

Defendant-Appellant.

UNPUBLISHED

August 6, 1996

No. 185815

LC No. 95-22270-DC

Before: MacKenzie P.J., and Markey and J.M. Batzer,* JJ.

PER CURIAM.

Plaintiff was granted interim custody of his three minor children by way of an ex parte order issued March 8, 1995. At a hearing for custody on April 7, 1995, the trial court vacated the interim order of custody and declined to exercise further jurisdiction in the custody matter. Plaintiff appeals as of right. We affirm.

In February 1995, plaintiff, defendant and their three minor children were in the process of moving from Florida, where they had lived for almost two years, to Illinois. Defendant and the two younger children went to Orlando, Florida on March 1, 1995 for a short vacation before they were to meet plaintiff and the oldest child in Illinois. On March 4, 1995, plaintiff, while visiting his brother in Michigan, was notified that the two children in Florida had not seen defendant since March 1, 1995. Apparently, after arriving in Orlando, defendant paid an acquaintance \$200 to watch the children and then went to Maryland to meet another man. Plaintiff immediately went to Florida and brought the children to his brother's home in Michigan. On March 8, 1995, plaintiff filed a complaint for child custody in Michigan and an interim order awarding him custody was entered. On March 9, 1995, defendant filed a divorce and a spousal abuse action in Florida. On April 7, 1995, the Michigan trial court vacated the interim custody order and declined to exercise further jurisdiction, finding that Florida was a more appropriate forum to hear and determine custody matters between the parties.

* Circuit judge, sitting on the Court of Appeals by assignment.

The trial court did not abuse its discretion in declining to exercise further jurisdiction in this case. *Braden v Braden*, ___ Mich App ___ (Docket No. 190887, issued June 25, 1996), slip op at 5. Both Florida and Michigan have adopted the Uniform Child Custody Jurisdiction Act. MCL 600.651 et seq.; MSA 27A.651 et seq.; FSA 61.1302 et seq. Pursuant to MCL 600.657; MSA 27A.657, a Michigan court may decline to exercise jurisdiction over custody matters where it determines that another forum is more appropriate or convenient for the parties. The factors that a court should consider when deciding to exercise or decline jurisdiction include determining the children's home state, the connection between each state involved and the children, the availability of evidence regarding the children's care and relationships, the parties' agreement on an equally appropriate forum, and whether the exercise of jurisdiction would contravene the purpose of the Uniform Child Custody Jurisdiction Act. MCL 600.657; MSA 27A.657; *Braden, supra* at 4-5. The court uses these factors to determine whether "it is in the interest of the child that another state assume jurisdiction." *Id.* Thus, it is within the trial court's discretion to determine if another forum would be more convenient. *Breneman v Breneman*, 92 Mich App 336, 342; 284 NW2d 804 (1979).

In this case, the trial court held that Florida not only had jurisdiction but was a more appropriate forum and, thus, should resolve the custody matter. We find no abuse of discretion where the trial court based its determination on the facts of the case which established that Florida was the children's home state, that the records of the children were in Florida, and that the evidence necessary to determine the custody matter was in Florida. See *Braden, supra*. It was also appropriate for the court to consider the hardship posed to defendant when determining the appropriate forum for these custody proceedings. *Lustig v Lustig*, 99 Mich App 716, 726; 299 NW2d 375 (1980). The court considered the statutory factors and determined that Florida was more appropriate and convenient. Where the evidence necessary for a determination of custody is in Florida, the trial court's decision to decline exercising jurisdiction was proper.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Jane E. Markey

/s/ James M. Batzer