

Appellate Division Weighs In On The Extent Of A New Jersey Court's Exclusive And Continuing Jurisdiction Over Its Prior Custody Determination

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In the February 14, 2019 unpublished decision of *Flores v. Flores* (A-4841-17T2), the Appellate Division discussed the extent of a New Jersey Court's "exclusive, continuing jurisdiction" over custody of a non-resident child as it relates to the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). The issue presented in this case revolves around two competing laws regarding jurisdiction for child custody determinations:

1. New Jersey acquires "exclusive, continuing jurisdiction" when a New Jersey court makes an initial custody determination; and,
2. New Jersey no longer has continuing jurisdiction when "a court of this State determines that neither the child, 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"

In this case, Defendant-Mother appealed from an April 20, 2018 New Jersey Order granting custody of the parties' child to Plaintiff-Father. The parties were divorced in New Jersey on February 29, 2016. The parties' Final Judgment of Divorce ("FJOD") incorporated their Agreement regarding custody, which stated that Defendant would have sole residential custody. On the date the FJOD was entered, Defendant resided in Pennsylvania and Plaintiff resided in New Jersey.

Following the parties' divorce, the child lived with Defendant in Pennsylvania. Plaintiff continued to live and work in New Jersey and saw the child periodically – sometimes in New Jersey and sometimes in Pennsylvania.

In March 2018, Defendant was hospitalized in Pennsylvania for an overdose of prescription medication. After he was contacted by the Pennsylvania State Police, Plaintiff picked up the child and returned to New Jersey on March 13, 2018. Plaintiff subsequently filed an ex parte Order to Show Cause requesting custody of the child, which was granted.

On the rescheduled return date of the Order to Show Cause, Defendant's attorney argued that New Jersey lacked jurisdiction to make a custody determination because the child resided with Defendant in Pennsylvania since 2009 and New Jersey was not the home state of the child under the UCCJEA, N.J.S.A. 2A:34-53 et seq. Without setting forth findings of fact or conclusions of law, the court entered the April 20, 2018 Order determining that New Jersey has jurisdiction over the child and awarded sole physical custody to Plaintiff.

Defendant's Motion for Reconsideration was denied because the trial court judge found that the New Jersey FJOD, which incorporated the parties' agreement as to custody, granted New Jersey "exclusive, continuing jurisdiction" over the issue. This appeal followed.

The Appellate Division reversed and remanded the case to the trial court so that it may hold a plenary hearing to determine whether or not New Jersey has jurisdiction to determine custody of the child and, if so, whether New Jersey should exercise jurisdiction.