

NNH-FA24-6142272-S

Judicial District of New Haven  
SUPERIOR COURT  
FILED

: SUPERIOR COURT

ALFONSO MENDOZA

: JUDICIAL DISTRICT OF  
: NEW HAVEN

MAY 24 2024

V.

: AT NEW HAVEN

NATALIA WILSON

**CHIEF CLERK'S OFFICE**

: MAY 24, 2024

**MEMORANDUM OF DECISION RE:  
MOTION TO DISMISS #114 and OBJECTION TO MOTION TO DISMISS #117**

This memorandum of decision elucidates and supplements the orders of the court issued at the conclusion of the hearing on May 22, 2024.

**I Background/Procedural Posture**

Plaintiff commenced this action for dissolution of marriage, custody, access and for other relief with a complaint dated and filed with the court on April 10, 2024. The summons accompanying Plaintiff's complaint listed his address as 195 Sherman Ave., Hamden, Connecticut, and the Defendant's as 4923 Alta Mesa NW, Albuquerque, New Mexico. On April 10, 2024, Plaintiff father filed a motion for order of notice #101 and such was granted #106. Service was performed and the return filed #107. Plaintiff filed two pendente lite motions dated April 10, 2024, for custody and access #104 and for an order requesting a prohibition on the child being removed from the state of Connecticut #103. On April 25, 2024, Plaintiff filed an application for emergency ex parte order of custody #108 (hereinafter application) and requested, inter alia, an award of temporary legal and physical custody and that the Defendant not remove the minor child from the state of Connecticut. Accompanying the application was father's executed affidavit concerning children #111. The affidavit listed the child's date of birth as 2/16/2023, that the child resided in the state of Alabama with both

parents from birth to May 2023, in the state of Georgia with both parents from May 2023 through March 2024, and thereafter with Plaintiff father in Connecticut. Defendant appeared through counsel who filed a limited appearance #113, a motion to dismiss the dissolution action and the application # 114, a memorandum in support thereof #115, and an affidavit #116. The affidavit included an attached Schedule A which was an “Interim Order” from the Superior Court of the State of Georgia granting Defendant mother sole legal and physical custody of the subject minor child and suspending father’s parenting time. On May 8, 2024, the undersigned conducted a hearing and issued orders #112 which included a briefing schedule, that the ex parte orders #108 would continue in effect without prejudice to either party (by agreement of the parties), and an evidentiary hearing would take place on May 22, 2024. On May 13, 2024, Plaintiff father filed an objection to motion to dismiss #117 with an attached affidavit executed by him.<sup>1</sup> The defendant filed a reply memoranda # 118. On May 16, 2024, the undersigned issued an order #117.10 advising counsel and the parties that a telephonic conference was going to occur between the undersigned and the judge handling the proceedings in Georgia, which conference took place on May 17, 2024.

On May 22, 2024, the court conducted an evidentiary hearing on the Defendant’s motion to dismiss and the Plaintiff’s objection thereto. The court issued orders from the bench. This memorandum sets forth the procedural posture of the case, legal analysis, the court’s findings and orders which are consistent with those issued on May 22, 2024.

The court grants the Defendant’s motion in part and denies it in part.

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<sup>1</sup> The Plaintiff’s objection expressly provides “It is agreed that Connecticut was not the home state of the minor child at the time the Plaintiff’s motion was filed”. The Plaintiff argues however that jurisdiction in Connecticut is appropriate as there are greater connections to this state and Connecticut is the more appropriate forum to address the custodial issues.

## **II      Findings of Fact**

1. Plaintiff commenced this action via summons and complaint seeking a dissolution of marriage, determination of custody and an equitable division of marital assets and debt. (Complaint 4/10/2024)
2. The Plaintiff's dissolution complaint at paragraph 2 provides "One of the parties has resided continuously in this State for at least twelve months next preceding the date of the filing of this complaint."
3. Plaintiff's affidavit concerning children #111 lists the minor child's residence for the period May 2023 – March 2024 in the state of Georgia.
4. Plaintiff's objection to motion to dismiss #117 admits that Connecticut was not the home state of the minor child at the time the Plaintiff's motion was filed.
5. The Defendant mother commenced an action for dissolution of marriage and other relief on April 11, 2024, in the Superior Court of Crisp County, State of Georgia which has been docketed as 24V-086.
6. Simultaneously on April 11, 2024, the Defendant herein filed an emergency motion for entry of an ex parte order (in the above referenced Georgia dissolution action) regarding the minor child. The Superior Court of Crisp County, State of Georgia issued an "Interim Order" dated April 26, 2024, awarding mother sole legal and physical custody of the minor child and suspended father's access. This action remains pending and a hearing on the ex parte motion is scheduled for July 8, 2024.
7. The undersigned conducted a telephonic conference with the Superior Court in Georgia to address scheduling. The Georgia Court was notified that a hearing was

scheduled for May 22, 2024, to resolve mother's pending motion to dismiss and that this court's ruling would be sent to that court. At no time during this conference did the Judge advise that the State of Georgia was declining jurisdiction.

8. Prior to the party's commencement of actions in the states of Connecticut and Georgia as detailed above, no orders regarding custody or access of the subject minor child had been sought or entered.
9. Father left Georgia and returned to Connecticut on April 8, 2024. He established residency and intends on remaining in Connecticut and making this state his domicile.
10. Mother has a temporary residence with her parents in New Mexico. She intends on returning to the state of Georgia and resuming her domicile there. Her absence from the state of Georgia to be with family in New Mexico was temporary.
11. The minor child was not mistreated, abandoned, or abused as such terms are referenced in 46b-115n (Temporary Emergency Jurisdiction) and 46b-120.
12. Connecticut is not the home state of the child.
13. The state of Georgia is the home state of the child.

### **III Legal Principles**

#### **i. Subject Matter Jurisdiction**

Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. *Sousa v. Sousa*, 322 Conn 757, 770 (2016). If a court lacks subject matter jurisdiction it also lacks the authority to enter orders pursuant to such proceedings. *Reinke v. Sing*, 328 Conn 376, 382 -383(2018). Where a decision as to

whether a court has subject matter jurisdiction is required, every presumption favoring jurisdiction should be indulged. *Temlock v. Temlock*, 95 Conn. App. 505, 518, cert. denied, 279 Conn. 910 (2006).

A trial court is required to determine whether it has jurisdiction to make a custody determination pursuant to the UCCJEA. See *Scott v. Somers*, 97 Conn. App. 46, 50–51 (2006). Connecticut General Statute § 46b-56(a) provides that a trial court may make or modify a child custody order only if it has jurisdiction under the UCCJEA. “In any controversy before the Superior Court as to the custody or care of minor children ... the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p”<sup>2</sup>

The UCCJEA expressly provides that the jurisdictional grounds it lists are the exclusive jurisdictional basis for making a custody determination in a proceeding in Connecticut. See § 46b-115k(b).

## **ii. Motions to Dismiss**

The procedures governing the adjudication of a motion to dismiss are well established.

“[W]here a jurisdictional determination is dependent on the resolution of a critical factual dispute, it cannot be decided on a motion to dismiss in the absence of an evidentiary hearing to establish jurisdictional facts .... [W]hen issues of fact are necessary to the determination of a court's jurisdiction ... due process requires that a [trial like] hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses .... [I]n some cases ... it is necessary to examine the facts of the case to determine whether it is within a general class that the court has power to hear .... An evidentiary hearing is necessary because a court cannot make a critical factual [jurisdictional] finding based on memoranda and documents submitted by the parties.” (Citations omitted; footnote omitted; internal quotation

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<sup>2</sup> Chapter 815p is the UCCJEA.

marks omitted.) *Conboy v. State*, 292 Conn. 642, 652–54, 974 A.2d 669 (2009).  
*Parisi v. Niblett*, 199 Conn. App. 761, 771–72 (2020)

Generally, “[w]hen a ... court decides a jurisdictional question raised by a pretrial motion to dismiss; it must consider the allegations of the complaint in their most favorable light ... In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” (Internal quotation marks omitted.) *Cox v. Aiken*, 278 Conn. 204, 211 (2006). *Arrigoni v. Arrigoni*, No. FA094010774S, 2009 WL 4282816, at \*2 (Conn. Super. Ct. Nov. 6, 2009).

The court conducted an in-person evidentiary hearing with both parties and their counsel present. The court listened to the testimony, carefully considered all testimony and evidence and construed the allegations and pleadings (including facts necessarily implied from same) in a manner most favorable to the Plaintiff.

### **iii. This Court Lacks Jurisdiction to Adjudicate Custody and Access**

As discussed above, this court must first determine whether it has subject matter jurisdiction to adjudicate the custody and access issues. The UCCJEA as adopted by the State of Connecticut in chapter 815p is the statutory roadmap this court must follow.

The Connecticut Appellate Court in *Parisi v. Niblett*, 199 Conn. App. 761, 780–82 (2020) addressed the bases of jurisdiction under the UCCJEA and their ranking.

Section 46b-115k (a) (1) through (4) establishes a hierarchy of four bases that grant a state jurisdiction to make an initial custody determination: home state jurisdiction, significant connection jurisdiction, and more appropriate forum jurisdiction. Specifically, § 46b-115k (a) provides in relevant part: “(1) This state is the home state of the child on the date of the commencement of the child custody proceeding; (2) This state was the home state of the child within six months of the commencement of

the child custody proceeding, the child is absent from the state, and a parent or a person acting as a parent continues to reside in this state; (3) A court of another state does not have jurisdiction under subdivisions (1) or (2) of this subsection, the child and at least one parent or person acting as a parent have a significant connection with this state other than mere physical presence, and there is substantial evidence available in this state concerning the child's care, protection, training and personal relationships; (4) A court of another state which is the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under a provision substantially similar to section 46b-115q or section 46b-115r, the child and at least one parent or person acting as a parent have a significant connection with this state other than mere physical presence, and there is substantial evidence available in this state concerning the child's care, protection, training and personal relationships ....”

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**Home-state jurisdiction, which is given first priority when determining initial custody jurisdiction,** exists when, in relevant part, a state is the “home state” of the child “on the date of the commencement” of the proceeding or when the state was the home state of the child within six months of the “commencement” of the proceeding. See General Statutes § 46b-115k (1) and (2). Section 46b-115a (7) defines “home state” in relevant part as “the state in which a child lived with a parent or persons acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding .... A period of temporary absence of any such person is counted as part of the period.” (Emphasis added)<sup>3</sup>

In the hierarchy of UCCJEA jurisdiction the next basis is “significant connection” jurisdiction. The UCCJEA provides that Connecticut has jurisdiction to make an initial child-custody determination on this ground, if a court of another state does not have home-state

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<sup>3</sup> The child's physical presence within the state is not required for the exercise of home-state jurisdiction. See CGS 46b-115k(c). “Conversely, the physical presence or personal jurisdiction over the child or a party is not alone sufficient to confer jurisdiction to make a custody determination. For example, the fact that a child was abducted by her mother and brought to Connecticut does not make Connecticut that child's home state where prior to the abduction the child had lived her entire 2½-year life in New Jersey, her father remained in New Jersey and instituted a custody proceeding there.” § 40:5. Home-state jurisdiction, 8 Conn. Prac., Family Law & Prac. § 40:5 (3d ed.) See also, *Agnello v. Becker*, 184 Conn. 421 (1981).

jurisdiction, or if the court of the other state which has home-state jurisdiction has declined to exercise jurisdiction on the ground that Connecticut is a more appropriate forum, and:

1. the child and at least one parent or person acting as parent have a significant connection with this state other than mere physical presence, and
2. there is substantial evidence available in this state concerning the child's care, protection, training, and personal relationships. § 46b-115k(a)(3) and (4). See also, § 40:6. Significant-connections jurisdiction, 8 Conn. Prac., Family Law & Prac. § 40:6 (3d ed.) and *Arrigoni v. Arrigoni*, 2009 WL 4282816 (*Calmar, J.*). (“The significant connection aspect of § 46b-115k(a)(3) becomes the subject of the court’s attention then, if and only if there is no other identifiable home state for the child at issue”) and *Downs v. Downs*, 2009 WL 3087199 (*Boland, J.*).

Based on the testimony and evidence adduced at the evidentiary hearing including Plaintiff’s admission at the hearing that Georgia is the home state and his further admission in his opposition memoranda that Connecticut is not the home state, this court finds that the state of Georgia is the home state of the subject minor child. This finding is bolstered by the Plaintiff’s sworn affidavit concerning children #111 which lists the minor child’s residence for the period May 2023 – March 2024 being in the state of Georgia. This is also consistent with the Defendant’s claims in the dissolution action pending in the Superior Court, State of Georgia. No credible evidence was produced that the State of Georgia has declined jurisdiction. Based on the pending action in Georgia, the hearing on custody scheduled for July 8, 2024, in the Superior Court of Georgia, and the telephone conference this court held



with the court in Georgia, there is no evidence before this court that Georgia has declined jurisdiction.

The Defendant further argues in his objection that Connecticut is a more appropriate forum and should therefore assume jurisdiction over this matter. Connecticut General Statutes § 46b-115k(a)(4) and (5) address this argument. Connecticut has jurisdiction to make an initial child-custody determination if the state that would have home-state jurisdiction declines to act on the ground that Connecticut is a more appropriate forum, the child and at least one parent or person acting as a parent have a significant connection with this state other than mere physical presence, and there is substantial evidence available in this state concerning the child's care, protection, training and personal relationships. Importantly, it is the home state (Georgia) which must make the initial determination that Connecticut is a more convenient forum. § 40:7. More appropriate -forum jurisdiction, 8 Conn. Prac., Family Law & Prac. § 40:7 (3d ed.). No credible evidence has been produced that Georgia has made such a finding or determination.

The Plaintiff has also argues that this court has jurisdiction pursuant to 46b-115n entitled Temporary Emergency Jurisdiction. Per the express terms of that section this court would need to find that the child was abandoned, mistreated, or abused. The credible testimony at the hearing does not support such findings. At best the Defendant was/is a young mother who was caring for a very young child while the Plaintiff father was working and at times, she became exasperated, short, and in need of respite. Father would provide such care upon his return from work in the late afternoons. The Plaintiff's testimony that mother would often yell and occasionally state that she cannot handle the baby do not rise to the level of or equate with the statutory conditions of abuse or mistreatment. Similarly, Plaintiff's claim that

because the Defendant gave him the child to take her to a medical provider in Georgia does not constitute abandonment. The credible testimony is that mother was sick as was the child and she needed father's assistance to address the baby's needs. Accordingly, this court finds that temporary emergency jurisdiction does not support fathers' application for emergency relief.

**iv. The Court Does Not Lack Jurisdiction Over the Marital Dissolution Action**

The Defendant in her motion to dismiss argues that this court lacks jurisdiction to adjudicate the Plaintiff's dissolution action. The court does not agree. The Connecticut Appellate Court has addressed the design and intent of the UCCJEA.

"The purposes of the UCCJEA are to avoid jurisdictional competition and conflict with courts of other states in matters of child custody; promote cooperation with the courts of other states; discourage continuing controversies over child custody; deter abductions; avoid [relitigation] of custody decisions; and to facilitate the enforcement of custody decrees of other states .... **The UCCJEA addresses [interjurisdictional] issues related to child custody and visitation** .... The UCCJEA is the enabling legislation for the court's jurisdiction." (Citations omitted; internal quotation marks omitted.) *In re Iliana M.*, 134 Conn. App. 382, 390, 38 A.3d 130 (2012). (Emphasis added.)

*Parisi v. Niblett*, 199 Conn. App. 761, 747 (2020).

The Connecticut Appellate Court in *De Almeida-Kennedy v. Kennedy*, 207 Conn. App. 244, 262–64 (2021) addressed an issue analogous to the within matter.

We next address the defendant's claim that the court, in ruling on the plaintiff's motion to dismiss and his motion to reargue, improperly dismissed certain motions unrelated to the issue of child custody or visitation. We agree. The court's dismissal order was predicated on its conclusion that it lacked subject matter jurisdiction under the act .... The act, however, is limited in scope—it concerns issues of custody or visitation. Sections 46b-115k and 46b-115l, on which the court's decision here was predicated, expressly grant the trial court jurisdiction over "child custody determination[s]." Like the act, Connecticut law defines "[c]hild custody determination" as "a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. *The term does not include an order relating to child*

*support or other monetary obligation of an individual ....*"<sup>21</sup> (Emphasis added.) General Statutes § 46b-115a (3); see also Unif. Child Custody Jurisdiction and Enforcement Act (1997) § 102 (3), *supra*, 9 U.L.A. (Pt. IA) 658.

**The critical question, then, is whether the motions dismissed by the court fall within the purview of “ [c]hild custody determination[s], ” as defined by § 46b-115a (3).** The two motions for contempt filed by \*264 the defendant on April 4 and May 14, 2018, both concerned custody and visitation with the minor children and, thus, properly were dismissed by the trial court. The court likewise properly dismissed that portion of the defendant's April 4, 2018 motion for modification that sought to modify the existing visitation order. At the same time, the defendant's April 4, 2018 motion to modify the unallocated alimony and child support order plainly is beyond the purview of the act, as that order relates to the defendant's monetary obligations. See General Statutes § 46b-115a (3). **As this court has observed, a “motion for modification concerning child support is not governed by the [act]. Financial orders, such as child support, are not governed by the [act].”** *Parisi v. Niblett*, *supra*, 199 Conn. App. at 771 n.9, 238 A.3d 740. **The defendant's May 3, 2018 motion for a *Strobel* order, his May 3, 2018 motion to remove the guardian ad \*\*885 litem, and his May 3, 2018 motion to compel compliance with his discovery request also have no relation whatsoever to the issue of child custody or visitation. For that reason, the court improperly dismissed those motions for lack of jurisdiction under the act.** (Emphasis added.)

As set forth above, the within matter is a proceeding for dissolution of marriage in which the prayers for relief seek orders of custody and access, a dissolution of marriage, and an equitable division of marital assets and debt. The Defendant's motion to dismiss and memorandum assert that jurisdiction is lacking as father has not met the residency requirements. She cites to and relies primarily on the Supreme Court precedent of *LaBow v. LaBow*, 171 Conn. 433 (1976). A careful reading of *LaBow*, *Supra* does not support the Defendant's proposition. In *LaBow*, the Plaintiff wife commenced an action for dissolution of marriage and alleged in her complaint that she had resided continuously in the state of Connecticut one year next before the date of the complaint. The Plaintiff next filed *pendente lite* motions for alimony, support, and custody. The Defendant objected and argued that the court lacked jurisdiction because Plaintiff had not resided in nor was she domiciled in the state

for one year next before the date of the complaint. The trial court overruled the objection and granted Plaintiff pendente lite relief. The trial court based its decision on the Plaintiff having established residency when the action was filed. The Defendant appealed and the Appellate Court sustained the trial court's ruling. The Appellate Court held "for the purposes of filing a complaint for dissolution of marriage or for the granting of temporary alimony or support pendente lite, residence of one party, without a showing of domicile, is sufficient to give the court subject-matter jurisdiction ...." See also, *Carchrae v. Carchrae*, 10 Conn. App. 566 (1987). ("The defendant's jurisdictional argument appears to rest on his belief that the plaintiff had entered the court on jurisdictional allegations that were not true. The plaintiff entered the jurisdictional door of the court because she established residence in this state. See CGS 46b-44(a); *Sauter v. Sauter* 4 Conn. App. 581, 582-3 (1985). She left the courthouse door with a judgment of dissolution because she had complied with CGS 46b-44(c)(1).")

As set forth above, the Plaintiff commenced this action with a residence in this state and at this juncture, that is all that is required. Accordingly, this court will not dismiss the remaining portions of the pending dissolution action.

#### **IV Orders**

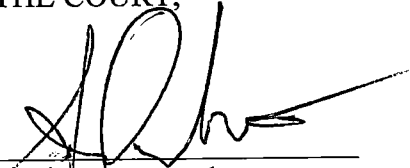
The following orders are consistent with the orders entered at the conclusion of the May 22, 2024, hearing:

1. In accordance with CGS § 46b-115p(b) the Connecticut custody proceedings are stayed while the Superior Court of the State of Georgia determines whether Connecticut is the more appropriate forum. If the court in Georgia determines that

Connecticut is not a more appropriate forum, this court shall dismiss these custody proceedings.

2. The undersigned shall have his clerk contact the Superior Court in Georgia to arrange a telephone conference which shall occur with counsel for both parties in attendance.
3. Given this court's finding and ruling that Georgia is the home state and that the conditions precedent for temporary emergency jurisdiction have not been met, the orders of the Superior Court of the State of Georgia shall be the operative orders which shall govern these proceedings and the parties until further order(s) of the court.

BY THE COURT,



Hon. Steven R. Dembo

Judgment entered \_\_\_\_\_ 20\_\_\_\_  
Counsel/Self-rep. Ind. notified 5/24 2024  
By  JDND  copy of memo  Other  
 Copy to Reporter of Judicial Decisions

mailed to:  
TT Atty T. Gunning  
Δ Atty B Amendola  
GA Judge TC Hughes  
by D. Sasser  
ASAC 5/24/24