

MISSOURI COURT OF APPEALS EASTERN DIVISION
OPINION SUMMARY

KELLY J. BLANCHETTE,)	No. ED102153
)	
Appellant,)	
)	Appeal from the Circuit Court
vs.)	of St. Louis County
)	
)	
STEVEN M. BLANCHETTE,)	Honorable John N. Borbonus III
)	
Respondent.)	FILED: June 2, 2015

Kelly Blanchette appeals from the trial court’s judgment in favor of her former spouse, Steven Blanchette. The court registered the couple’s foreign judgment of dissolution and two subsequent custody modifications, all issued in West Virginia, and dismissed Kelly’s motion to modify custody for lack of jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Kelly asserts that West Virginia lacked subject matter jurisdiction to determine custody of the parties’ Daughter, who was born in Missouri, so all prior custody orders are void as to Daughter. Kelly also asserts that the second modification is void for lack of due process in that she received only eight days’ notice of the hearing.

TRANSFERRED TO THE SUPREME COURT OF MISSOURI PURSUANT TO RULE 83.02.

DIVISION ONE HOLDS:

(1) The trial court did not err in registering the West Virginia custody orders because that state had subject matter jurisdiction to determine custody of Daughter even though she was born in Missouri after the initial dissolution petition was filed. The home-state basis for jurisdiction under the UCCJEA is inapplicable to Daughter given the chronology of this case. Other bases requiring that Missouri have declined jurisdiction are also inapplicable, as neither party nor the West Virginia court ever raised the matter. Even if they had, Missouri would have properly declined jurisdiction because proceedings were already pending in West Virginia. Consequently, Daughter falls into the default category, as no other court satisfied the criteria for jurisdiction under the preceding alternatives.

(2) The trial court did not err in recognizing and registering the second modification for lack of due process. Absent a definitive statute or court rule prescribing a particular timeframe for notice of custody modifications, West Virginia precedent follows the fundamental principle that due process requires reasonable notice and the opportunity to be heard. On this fact-specific inquiry, Kelly’s eight days’ notice provided ample opportunity to arrange to participate in the hearing telephonically or at least request a continuance. She did neither and elected not to appear.

Although this court would hold as aforesaid, given the general interest and importance of the question whether the home-state basis for jurisdiction under the UCCJEA applies to children

born after the commencement of an initial custody proceeding, we transfer the case to the Supreme Court of Missouri pursuant to Rule 83.02.

Opinion by: Clifford H. Ahrens, Judge
Amburg, J., concur.

Lawrence E. Mooney, P.J., and Lisa Van

Attorney for Appellant: Matthew Todd Singer

Attorney for Respondent: Robert O. Appleton Jr.

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.