STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0994

Caleb Bynum,
Respondent,

vs.
Margaret Ero-Phillips,
Appellant.

Filed May 19, 2009
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27FA068101

Caleb Elliotte Bynum, 1508 Queen Avenue North, Minneapolis, MN 55411 (pro se respondent)

Margaret Olayide Ero-Phillips, 4256 Fourth Street, #201, Washington, DC 20032 (pro se appellant)

Jean Peterson, C-562 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (guardian ad litem)

Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

In this child-custody appeal, appellant-mother argues that the district court order awarding sole custody of the parties' children to respondent-father must be vacated because the district court lacked jurisdiction over mother and did not provide her with notice of the custody proceedings. We affirm.

FACTS

Appellant-mother Margaret Ero-Phillips and respondent-father Caleb Bynum were never married and have two minor children together. In 2006, the parties' relationship grew acrimonious, and father petitioned the district court for sole legal and physical custody of the children. Mother filed a response to the motion requesting that she be granted sole legal and physical custody. After a hearing with both parties present, mother was awarded temporary custody of the children pending the outcome of the motion.

On June 12, 2007, mother left the children with father in Minneapolis and moved from Minneapolis to Washington, D.C. Mother claims that she moved "because she was tired of living in a shelter" and wanted to live near her extended family to establish some support for her and the children. The district court subsequently scheduled the hearing on father's custody motion for September 25, 2007, and ordered the court administrator to mail notice of the hearing to both parties. A handwritten notation in the record indicates that the notice was mailed to the parties on August 28, 2007.

The hearing on the custody motion was held as scheduled. Mother failed to appear. After the hearing, the district court awarded sole legal and physical custody of

the children to father and scheduled parenting time for mother. In arriving at its decision, the court found that mother had "consented to [father] primarily caring for the children" by leaving them with father and failing to appear at the hearing. The court also relied upon the custody and parenting-time evaluation which recommended that father be awarded sole legal and physical custody.

On April 1, 2008, mother moved to modify custody, claiming that father had abused the children. Mother also alleged that she did not receive notice of the September 27, 2007 hearing. The district court denied the motion. The court found that mother had received notice of the previous motion hearing and had failed to demonstrate a substantial change in circumstances because her allegations of abuse were vague and unsubstantiated. The court also concluded that mother's voluntary decision to relocate to Washington, D.C., had detrimentally impacted her ability to parent the children. This appeal followed.

D E C I S I O N

Mother argues, for the first time on appeal, that the court order awarding sole legal and physical custody to father must be vacated because the district court lacked personal jurisdiction over her. Mother claims that no personal jurisdiction existed because she was living in Washington, D.C., when the custody order was issued.

Generally, a court must have personal jurisdiction over the parties to resolve a controversy. *See, e.g.*, *Wick v. Wick*, 670 N.W.2d 599, 603-04 (Minn. App. 2003). "If a judgment is void for want of personal jurisdiction, it must be vacated under Minn. R. Civ. P. 60.02(d)." *In re Commitment of Beaulieu*, 737 N.W.2d 231, 235 (Minn. App. 2007).

Because the existence of jurisdiction is a question of law, we review jurisdictional challenges de novo. *Bode v. Minn. Dep't of Natural Res.*, 612 N.W.2d 862, 866 (Minn. 2000).

We conclude that personal jurisdiction existed here because the record indicates that mother was personally served with notice of father's motion while she was present and residing in Minnesota. *See Burnham v. Superior Ct. of Cal.*, 495 U.S. 604, 619, 110 S. Ct. 2105, 2115 (1990) (stating that jurisdiction based on physical presence in the forum state at the time of service satisfies due process). Mother's subsequent move to Washington, D.C., did not affect the court's jurisdiction over her. *See Berke v. Resolution Trust Corp.*, 483 N.W.2d 712, 716 (Minn. App. 1992) (stating that "events occurring after attachment of jurisdiction do not divest a court of a previously and correctly acquired ability to decide a case"), *review denied* (Minn. May 21, 1992). Moreover, even if personal jurisdiction did not exist, mother waived any jurisdictional challenge by failing to raise this issue at the district court level, filing a response to father's custody petition, appearing at a pretrial hearing, and participating in a custody and parenting-time evaluation and an early neutral evaluation program. *See* Minn. Stat. § 518C.201(2) (2008) (stating that an "individual submits to the jurisdiction of this state . . . by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction"); *see also* Minn. R. Civ. P. 12.08(a) (stating that objections to the sufficiency of process and to personal jurisdiction are waived if not raised as a defense by motion or in a responsive pleading); *Reed v.*

Albaaj, 723 N.W.2d 50, 56 (Minn. App. 2006) (concluding that party had waived its right to challenge personal jurisdiction by failing to raise the issue until appeal).

Mother also argues that her due process rights were violated because she did not receive notice of the September 27, 2007 hearing. We disagree. Government action may not deprive individuals of liberty or property interests without due process. U.S. Const. amends. V, XIV; Minn. Const. art I, § 7. One of the hallmarks of due process is the right to notice. *See Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 565 (Minn. App. 1994), *review denied* (Minn. Feb 14, 1995). Whether a party has received notice of court proceedings is an issue of fact. *Cf. Kopveiler v. Northern Pac. Ry. Co.*, 280 Minn. 489, 493-94, 160 N.W.2d 142, 146 (1968). A district court's factual findings will not be disturbed absent clear error. Minn. R. Civ. P. 52.01. A finding is "clearly erroneous" if, on review, we are "left with the definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted). When reviewing the findings for clear error, we consider the record in the light most favorable to the findings and defer to the fact-finder's credibility determinations. *Id.*

The district court's finding of notice resulted from a credibility determination. The court did not find mother credible because her asserted lack of notice was contradicted by the court's order directing the clerk of court to mail notice to mother, and the handwritten notation indicating that notice had been mailed.[1] Because we must defer

[1] It also appears that any lack of notice was precipitated by mother's failure to notify the court of her change of address.

to the district court's credibility determinations, and because there is some evidence in the record to support the finding, we conclude that the finding of notice is not clearly erroneous.

Affirmed.