

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2006 CU 1510**

**GEORGE RANDELL JOHNSON, JR.**

**VERSUS**

**DEBORAH W. JOHNSON**

*Judgment Rendered: December 28, 2006*

\*\*\*\*\*

**Appealed from the  
21st Judicial District Court  
In and for the Parish of Tangipahoa, Louisiana  
Case No. 2003-002419**

**The Honorable Zorraine M. Waguespack  
Judge Presiding**

\*\*\*\*\*

**Cassandra Butler  
Independence, LA**

**Counsel for Plaintiff/Appellant  
George Randell Johnson, Jr.**

**Bruce E. Simpson  
Kentwood, Louisiana**

**Counsel for Defendant/Appellee  
Deborah W. Johnson**

*KUHN, J CONCURS AND ASSIGNS REASONS*

\*\*\*\*\*

**BEFORE: KUHN, GAIDRY, AND WELCH, JJ.**

*EJG  
JRW*

**SUMMARY DISPOSITION**

In this child custody proceeding, the plaintiff-appellant, George Randell Johnson, Jr., appeals a judgment of the trial court dismissing his Rule for Contempt and Modification of Custody Order on the grounds that the trial court lacked jurisdiction to make a modification order and to take further action related to custody of the minor children.<sup>1</sup> While we do not reach the merits of the jurisdictional issue, we vacate the judgment and remand the case for further proceedings.

Mr. Johnson contends that the trial court erred in its refusal to retain continuing jurisdiction over this proceeding, given its exercise of jurisdiction related to custody for over two years following the filing of the divorce petition. The trial court based its ruling on the finding that the parties' minor children have resided in the State of Mississippi since July 2003. Under the Uniform Child Custody Act, La. R.S. 13:1700, *et seq.*, Mississippi would seem to be the children's "home state." *See* La. R.S. 13:1701(5).

However, Louisiana might also have the right to continue to assert jurisdiction by virtue of a significant connection under La. R.S. 13:1702(A)(2), especially considering the ongoing custody jurisdiction actually exercised by the trial court since this matter was instituted. Louisiana Revised Statutes 13:1706(A) authorizes a Louisiana court otherwise having jurisdiction to make a "modification decree" to decline to exercise its jurisdiction "any time before making a decree if it finds that it is

---

<sup>1</sup> For some reason, the rule was taken up before Judge Robert Morrison, who also rendered the judgment, rather than by the judge to whom this matter was randomly allotted. Nothing in the trial court record or even the appellate briefs suggests any objection under La. C.C.P. art. 253.2 by either party to that interdivisional transfer, which appears to have been limited to that brief time period. *See Oliver v. Cal Dive Int'l, Inc.*, 02-1122, pp. 8-10 (La. App. 1st Cir. 4/2/03), 844 So.2d 942, 948-49, *writs denied*, 03-1230 (La. 9/19/03), 853 So.2d 638 and 03-1796 (La. 9/19/03), 853 So.2d 648, and Rule 1-3, Uniform Rules of Louisiana Courts of Appeal.

an inconvenient forum . . . under the circumstances of the case and that a court of another state is a more appropriate forum.” Such action may be taken by the court *sua sponte*. La. R.S. 13:1706(B). Among the factors which may be considered in declining jurisdiction are that another state is the child’s home state and that another state has a closer connection to the child and one or more of the parties contesting custody. La. R.S. 13:1706(C).

Here, the record does not confirm that the trial court conducted a full evidentiary hearing at which evidence relating to the relevant factors under La. R.S. 13:1706 was presented. The court’s minute entry suggests that only a conference in chambers took place prior to rendition of judgment. Given this lacuna in the record, we cannot determine if the trial court’s judgment was an appropriate exercise or an abuse of its discretion. In the interest of justice, we therefore vacate the judgment and remand this matter for a full hearing on the issue of jurisdiction pursuant to La. R.S. 13:1706.

#### **DECREE**

We vacate the trial court’s judgment and remand this matter for further proceedings through this summary disposition, in accordance with Rules 2-16.2(A)(4) and (10) of the Uniform Rules of the Louisiana Courts of Appeal. The costs of this appeal are assessed to the parties in equal proportions.

**JUDGMENT VACATED AND CASE REMANDED.**

**GEORGE RANDELL  
JOHNSON, JR.**

**VERSUS**

**DEBORAH W. JOHNSON**

**FIRST CIRCUIT**

**COURT OF APPEAL**

**STATE OF LOUISIANA**

**NO. 2006 CU 1510**

 **KUHN, J.**

I write separately to expressly note the improper transfer of this custody proceeding from Division H to which it was randomly allotted.

Mr. Johnson's initial petition for divorce (and the related matters) was allotted to Division H for which Judge Zorraine Waguespack presides. Judge Waguespack signed judgments pertaining to the custody of the minor children on October 15, 2003, January 4, 2005, and January 25, 2005. Additionally, after Mr. Johnson filed the Rule for Contempt and Modification of Custody Order, on November 10, 2005, Judge Waguespack signed a judgment concerning temporary visitation and re-setting Mr. Johnson's rule for January 30, 2006. But the appealed judgment, that determined the trial court no longer had jurisdiction which subsequently issued from Division H, was signed by Judge Robert Morrison. The only information contained in the record about the January 30, 2006 proceeding is a minute entry issued for a proceeding purportedly held by "Judge: Zorraine Waguespack" for "Div: H," which states:

The matter was taken up and heard. After a brief in chambers [conference] with both counsel, Court noted for the record, the defendant lives in Mississippi and has been living there for two years. Court advised the defendant this court has no jurisdiction to hear this matter and she will need to file this rule in Pike County Mississippi.

The majority has given short shrift to the fact that Judge Morrison, rather than Judge Waguespack, signed the appealed judgment for the

Division H matter, suggesting that because the parties have not raised a complaint they implicitly acquiesced in the interdivisional transfer, ostensibly based on this court's decision in *Oliver v. Cal Dive International, Inc.*, 02-1122, pp. 9-10 (La. App. 1st Cir. 4/2/03), 844 So.2d 942, 948. Although I agree that *Cal Dive* is a controlling authority, it is factually and procedurally distinguishable. *Cal Dive* involved a personal injury suit which had been allotted to Division G of the 16th Judicial Court. The duty judge, empowered by the local rules of court, rendered a judgment confirming a preliminary default. See also La. C.C.P. art. 253.3. The same duty judge heard oral argument in open court on the subsequent motion for new trial and rendered a judgment, denying that motion. While the *Cal Dive* court noted that the duty judge's action of conducting a hearing and rendering a judgment on the motion for new trial was an improper interdivisional transfer, it concluded that Cal-Dive's failure to object *at the hearing* for new trial constituted its acquiescence to the forum at the trial level.

In this case, the record is devoid of anything indicating that a contradictory hearing was held. Thus, the parties in this case were not given the opportunity to object. Moreover, nothing in the record establishes that all parties agreed to the transfer of the matter from Judge Waguespack to Judge Morrison. See La. C.C.P. art. 253.2. Hence, there is no basis to find that the parties acquiesced in the divisional transfer as they did in *Cal Dive*. Therefore, on remand the matter should be heard by Judge Waguespack as the presiding judge for Division H to which the case was randomly allotted. Accordingly, I concur.