

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
FAMILY COURT

COPY

Tammy Moore,  
Intervening Party

v.

Ashlyn Massey,  
Plaintiff,

and

David HineLine and Mary Henderson,  
Defendants.

Case Number: 11-DR-32-2453

**ORDER FROM MOTION TO  
INTERVENE AND MOTION TO  
DISMISS**

FILED  
2012 APR 27 A 11:08  
BETH A. GARRIGG  
CLERK OF COURT  
LEXINGTON, SC

**Date: April 11, 2012**

**Judge: Dale M. Gable**

**Intervenor's Attorney: Monet S. Pincus**

**Plaintiff's Attorney: William Y. Rast, Jr.**

**Defendant's Attorney: David HineLine, Pro Se**

**Defendant's Attorney: Mary Henderson, Pro Se**

**Guardian ad Litem: Michelle Gorski (no appearance)**

**Court Reporter: Sanya L. Kaiser**

This matter was heard before me on April 11, 2012 as a Motion for Emergency Hearing to Contest Jurisdiction Pursuant to the UCCJEA. All parties were properly served and appeared. Monet S. Pincus appeared representing the moving party, Tammy Moore. William Y. Rast, Jr. appeared representing the Plaintiff. Both Defendants appeared *pro se* and I allowed them to proceed after I determined that they both exhibited the requisite education and life experience to represent themselves; that they understood the proceedings before them; and they had an opportunity to obtain representation if they so desired. The Guardian *ad Litem*, Michelle Gorski,

*MS*

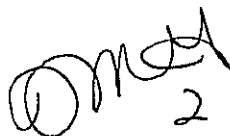
did not appear due to a scheduling conflict. However, she was noticed of this hearing; had not been informed she was appointed as the Guardian prior to the filing of this Motion; and she had not yet begun her investigation. Since this Motion is jurisdictional in nature, her presence was not necessary in order to proceed.

The Honorable Robert Armstrong was contacted by the Clerk's office to determine if he wanted to preside over this Motion hearing since he issued the *Pendente Lite* Order in this matter. Judge Armstrong allowed the Clerk to schedule this matter before the next available Judge since the underlying issue was whether subject matter jurisdiction existed and since this matter needed to be scheduled expeditiously.

Having read the entire Court file, the affidavits and documents submitted for my review and after hearing arguments of counsel and the Defendants, I make the following findings of facts and conclusions of law:

#### **FINDINGS OF FACT**

- A. That the Plaintiff is the paternal aunt of Noah Parcus Henderson, DOB 8/24/09 who is the subject of this action and who was born in Tennessee. She filed a Notice of Motion and Motion for Temporary Injunction, along with a Summons and Complaint on October 24, 2011. She resides in Lexington County, South Carolina.
- B. That the Defendant, Mary Henderson, is the biological mother of Noah. Mary Henderson resides in the State of Tennessee and has so resided in that State since 2009.
- C. That the Defendant David Hine is the biological father of Noah and is a resident of Lexington County, South Carolina.
- D. That the intervening party, Tammy Moore, is the maternal grandmother of Noah and has had primary physical custody of Noah since his birth through March 22, 2012 when the

  
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M. That on or about February 27, 2012, the Juvenile Court for Carter County Tennessee was notified by Plaintiff's counsel that a *Pendente Lite* Order had been issued in this case.

N. That on March 24, 2012, after being informed of the issuance of the South Carolina *Pendente Lite* order, Tennessee dissolved its Order awarding custody to Tammy Moore and David Moore. The Order stated in its entirety "the Order Awarding Custody in this case entered on February 23, 2012 is hereby set aside and is void. Lexington County, South Carolina has jurisdiction in this matter." *Order, Filed March 22, 2012, In the Matter of Noah Parcus Henderson, In the Juvenile Court of Carter County, Tennessee, Case Number J-31053.* (Tennessee Order Setting Aside Custody). The Juvenile Court for Carter County Tennessee did not communicate with South Carolina and did not make any "home state" or jurisdictional findings of any nature whatsoever in its Order.

O. That the minor child is a resident of the State of Tennessee and had been for at least six (6) months prior to the filing of this action.

P. That the minor child was born in Tennessee with his address listed on his birth certificate as 161 Sinking Creek Road, Johnson City, Tennessee. His pediatrician's office is Medical Care, PLLC located in Johnson City, Tennessee and his medical records since his birth list his address as 161 Sinking Creek Road, Johnson City, Tennessee. He has been consistently seen by his pediatrician since his birth. His medical records indicate he was seen on 9/30/09, 10/27/09, 01/15/10, 3/19/10, 3/24/10, 07/28/10, 10/19/11 and 2/19/12. He received vaccines in Tennessee on 10/28/10 and 12/11/10 with his residence listed as 161 Sinking Creek Road. The Lexington County Child Support Order issued against Defendant Hine line indicates that the minor child

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and his mother, Defendant Henderson, were living in Tennessee when the Order was issued on August 19, 2010. The minor child was seen in the Carter County Health Department WIC office on 5/14/11, 8/10/11, and 12/8/11 with his address listed as 161 Sinking Creek Road. A Tennessee Department of Children Services case worker met with the minor child and Defendant Henderson on 12/19/11 and also did a home visit at Tammy Moore's home at 161 Sinking Creek Road. The Department listed this address as the minor child's residence and confirmed that he had his own room with age appropriate belongings and was being well cared for by Tammy Moore. The minor child has been covered by the Tennessee state sponsored health care program, TennCare, since his birth and is currently covered as of the date of this hearing. His address according to the TennCare records is 161 Sinking Creek Road. Multiple affidavits from family and friends residing in the State of Tennessee confirm that the minor child has lived with Tammy Moore at 161 Sinking Creek Road since his birth through his removal from the State of Tennessee by the Plaintiff. Multiple affidavits from family and friends residing in this State confirm that while the minor child has visited his family here in South Carolina, he has lived with Tammy Moore at 161 Sinking Creek Road since his birth through his removal from the State of Tennessee by the Plaintiff. The Court finds that the minor child has spent time within the state of South Carolina, but that his appearance in the State was for the purpose of visiting family and did not rise to the level of the minor child becoming a resident of South Carolina. It should be noted that Defendant Henderson was allegedly served with the South Carolina pleadings at 161 Sinking Creek Road and this is also the address where the minor child was retrieved by the Plaintiff after the issuance of the South

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South Carolina where none existed at the time the South Carolina action was filed. The Tennessee Order Setting Aside Custody made no findings of fact or conclusions of law concerning jurisdiction or any of the required UCCJEA findings despite the fact that Tennessee has adopted the UCCJEA in Tennessee Code Ann. §36-6-201 et seq..

Additionally, the Tennessee Order Setting Aside Custody made no findings that it was declining or should decline the exercise of "home state" jurisdiction under the provisions of Tennessee's UCCJEA analogous to our S. C. § 63-15-330(a)(2) or (3). This Court is not constrained by *dicta* in an order that also failed to make the requisite jurisdictional findings mandated by the UCCJEA. *Cf., Clark v. Gordon*, 313 S.C. 240, 437 S.E.2d 144 (1993) (*citing Purdie v. Smalls*, 293 S.C. 216, 222, 359 S.E.2d 306, 309 (Ct.App.1987)).

Because this is an initial custody determination that requires an analysis of what state is the child's "home state" and because subject matter jurisdiction can be raised at any time even by this Court *sua sponte*, this Court can and must rule on the Intervenor's motion and "right the wrong" that occurred at the temporary hearing, as requested by counsel for the Intervenor.

Pursuant to South Carolina Code § 63-15-330, this Court has no subject matter jurisdiction to render a child custody determination as to Noah Parcus Henderson, DOB 8/24/09.

Pursuant to South Carolina Code § 63-5-372, [t]he court shall award the prevailing party necessary and reasonable expenses incurred including costs, communication expenses, attorney's fees, private investigative fees, expenses for witnesses, travel expenses and childcare during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly

  
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inappropriate.” Tammy Moore has prevailed on her motion. An award of attorney’s fees is appropriate. Upon review of the Intervener’s attorney’s fee affidavit, the fees detailed therein were both necessary and reasonable as required by the statute. Additionally, nothing in the record establishes that an award of attorney’s fees would be clearly inappropriate and no evidence was presented by the Plaintiff or Defendant HineLine that an attorney’s fees award would be clearly inappropriate.

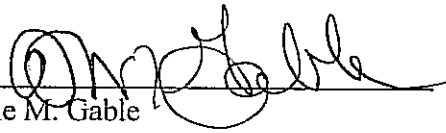
**IT IS THEREFORE ORDERED:**

1. That this case is dismissed with prejudice for lack of subject matter jurisdiction and the *Pendente Lite* Order filed by this Court on February 21, 2012 is vacated.
2. That any further custody proceedings should be held in the child’s home state, Tennessee.
3. That the minor child shall be immediately returned to the Intervenor, Tammy Moore, and she may utilize law enforcement if necessary retrieve the minor child.
4. That the Lexington County Order of Financial Responsibility filed on August 19, 2010 in case number 10-DR-32-2111 which was vacated by the *Pendente Lite* Order issued in this case shall be immediately reinstated, *nun pro tunc*, January 26, 2012.
5. That Tammy Moore is awarded Four Thousand (\$4,000.00) Dollars in attorneys’ fees. Plaintiff, Ashlyn Massey, shall be responsible for Two Thousand (\$2,000.00) Dollars of this award and Defendant, David HineLine, shall be responsible for Two Thousand \$2,000.00 (Dollars). These fees shall be payable directly to Monét S. Pincus, 3306 Millwood Avenue, Columbia, SC 29205 within fifteen (15) days of the date of this

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Order.

**AND IT IS SO ORDERED.**



Dale M. Gable  
Family Court Judge  
Presiding at the 11<sup>th</sup> Judicial Circuit

4-24, 2012

Bwell, South Carolina

signature page  
only  
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Moore v Moore et al

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