

Shelia Ann SANDLIN v. James R. SANDLIN

86-98

719 S.W.2d 433

Supreme Court of Arkansas
Opinion delivered November 24, 1986

APPEAL & ERROR — TEMPORARY CUSTODY ORDER APPEALABLE ONLY IF PROOF HAS BEEN COMPLETED. — Even though an order of temporary custody is appealable, there can be no appeal until the proof has been completed and the order entered.

Appeal from Montgomery Chancery Court; *Gayle Ford*, Chancellor; appeal dismissed.

Orvin W. Foster, for appellant.

Tapp Law Offices, by: *J. Sky Tapp*, for appellee.

GEORGE ROSE SMITH, Justice. This appeal must be dismissed for want of an appealable order.

The parties, both native Arkansans, were married in Montgomery County and lived at Mt. Ida for over ten years. They moved to Oklahoma with their three children. Upon their separation in 1983, the husband returned to Mt. Ida with the children. The wife remained in Oklahoma and obtained a divorce there and an award of custody. That decree, except as to the divorce, was set aside. The wife obtained a second award of custody in May, 1985. The children were still with the father in Arkansas.

After the entry of the first Oklahoma decree the mother filed the present petition for custody, in Montgomery County. The matter lay dormant during further proceedings in Oklahoma. The father filed a separate petition to obtain an award of custody. The two cases were eventually consolidated by agreement. Both Arkansas and Oklahoma have adopted the Uniform Child Custody Jurisdiction Act. After a preliminary hearing on the

issue of jurisdiction, the chancellor held that Arkansas is the "home state" of the children under the Uniform Act and that therefore the court was not required to give full faith and credit to the Oklahoma award of custody. Ark. Stat. Ann. § 34-2703 (Supp. 1985). The mother appeals from that order.

[1] There is evidently no final order, for the main issue, that of custody, is yet to be decided. No proof on that issue has been taken. Even though an order of temporary custody is appealable, *Chancellor v. Chancellor*, 282 Ark. 227, 667 S.W.2d 950 (1984), there can be no appeal, as we held in that case, until the proof has been completed and the order entered. We raise the issue ourselves, the matter being jurisdictional.

Appeal dismissed.
