

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-088

OCT 8 2009

OCTOBER TERM, 2009

Brian Bowles	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Family Court
	}	
	}	
Aimee Hanson	}	DOCKET NO. 380-9-08 Wrdm
	}	
	}	
	}	Trial Judge: M. Kathleen Manley

In the above-entitled cause, the Clerk will enter:

Father appeals pro se from a family court order denying his motion to enforce the parent-child contact provisions of the parties' 2002 Vermont divorce judgment. The court denied father's motion, based on its conclusion that parent-child contact had been modified by an order of a Massachusetts court and that Massachusetts had jurisdiction over the matter. We reverse and remand.

The parties were divorced in March 2002, and the final order granted sole legal and physical parental rights to mother subject to parent-child contact for father every other weekend. Because mother lived in Massachusetts and father in Vermont, the final order provided that the parties would share transportation and meet at an exit in New Hampshire. In the years since the divorce, mother and child have continued to reside in Massachusetts and father has at different times resided in Vermont and Massachusetts. After some disagreement regarding transport for the child and return to mother after a visit, father filed a motion to enforce his parent-child contact in Vermont in May 2008. The proceeding was moved to a different county, and the court held a hearing in January 2009 on father's motion.

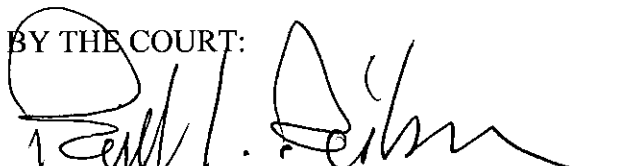
At the hearing, mother explained that she had filed a motion to modify in 2007 in a Massachusetts court and obtained an order modifying the original divorce order. Father testified that he had not been served in the Massachusetts proceeding. In response, mother claimed that she attempted to get defendant's address, but he would not provide it. She testified that eventually she served defendant at his parent's address in Massachusetts, where she alleged he had been residing and having parent-child contact for six months. The Massachusetts order states that "Father may have reasonable rights of visitation upon reasonable notice to the Mother and as decided by the Mother. All visits to occur in Massachusetts and the paternal grandmother may supervise these visits." Based on this information, the trial court denied father's motion. The court concluded that Massachusetts had properly exercised jurisdiction over the proceeding and thus found that the divorce decree provisions which father sought to enforce had been superseded. Father appeals.

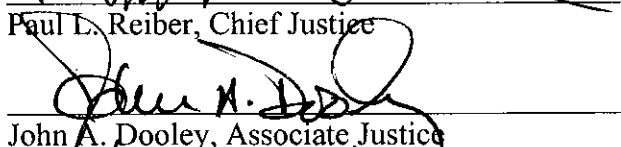
We first consider the question of jurisdiction. Under the Uniform Child Custody Jurisdiction Act (UCCJA), “[t]he courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter.” 15 V.S.A. § 1041. Jurisdiction is properly exercised by a state that is the child’s home state at the time of the proceeding. *Id.* § 1032(a)(1)(A); see Mass. Gen. Laws ch. 209B § 2(a)(1) (granting courts jurisdiction if the commonwealth is the child’s home state). Given that the child has lived with his mother in Massachusetts since the parties’ divorce in 2002, the Commonwealth is the child’s home state under the statute. See 15 V.S.A. § 1031(5) (defining home state as place child resided before the proceeding for at least six months). Therefore, the trial court did not err either in deferring to Massachusetts’s exercise of jurisdiction to entertain mother’s motion for modification or in declining to exercise its own jurisdiction.

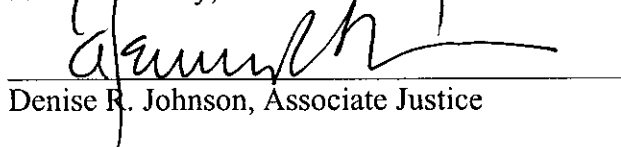
On appeal, father argues that the Massachusetts order is invalid because he was not properly served in that proceeding. The trial court did not address this issue in its decision and made no findings regarding the sufficiency of process on defendant. The Massachusetts modification cannot supersede the original Vermont order unless it has been validly entered, therefore, we must remand this matter to the trial court to consider whether father was properly served in the Massachusetts proceeding. Given that both parties have already appeared before the Court and testified concerning the sufficiency of process on defendant, if the trial court determines there is sufficient evidence on the issue, it may make findings based on the record without an additional hearing.

Reversed and remanded.

BY THE COURT:

  
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Paul L. Reiber, Chief Justice

  
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John A. Dooley, Associate Justice

  
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Denise R. Johnson, Associate Justice