

**For Publication**

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

<b>CRISTIA ALLENBAUGH,</b>	)	<b>S. Ct. Civ. No. 2017-0059</b>
Appellant/Petitioner,	)	Re: Super. Ct. CS. No. 35/2014 (STX)
	)	
v.	)	
	)	
<b>SHANE I.M. HODGE,</b>	)	
Appellee/Respondent.	)	
	)	

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On Appeal from the Superior Court of the Virgin Islands  
Division of St. Croix  
Superior Court Judge: Hon. Denise Hinds-Roach

Considered: April 10, 2018  
Filed: February 27, 2019

Cite as: 2019 VI 7

**BEFORE:** **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and  
**IVE ARLINGTON SWAN**, Associate Justice.

**APPEARANCES:**

**Cristia Allenbaugh**  
Charleston, S.C.  
*Pro Se,*

**Shane I.M. Hodge**  
St. Croix, U.S.V.I.  
*Pro Se.*

**OPINION OF THE COURT**

**SWAN, Associate Justice**

¶1 Appellant Cristia Allenbaugh seeks to vacate all orders of the Superior Court of the Virgin Islands pertaining to her child custody case, including those emanating from hearings on June 27, 2017 and October 30, 2017. Allenbaugh also seeks termination of the Superior Court’s jurisdiction

over her child custody case. Lastly, Allenbaugh requests \$53,000 in monetary sanctions from appellee, Shane I.M. Hodge, for attorney fees, court costs, mental anguish, and emotional distress. For the reasons elucidated below, we vacate the orders, we terminate the Superior Court's jurisdiction over the child custody matter, and we reject Allenbaugh's request for monetary sanctions against Hodge.

## **I. FACTS AND PROCEDURAL HISTORY**

¶2 On July 24, 2013, a son was born on St. Croix to appellant Cristia Allenbaugh and appellee Shane I.M. Hodge. In November 2013, the minor and Allenbaugh relocated to Pennsylvania. (A-126). On December 29, 2014, Allenbaugh and Hodge entered into a custody agreement which was filed with the Superior Court on December 30, 2014. Allenbaugh and the child later relocated to the state of South Carolina.

¶3 On June 5, 2017, Hodge wrote Family Court Judge Denise Hinds-Roach seeking the court's assistance in obtaining his mandatory summer visitation with his son. (A-79-80). Based on that letter, the Superior Court issued a June 9, 2017 summer visitation order that instructed Allenbaugh to relinquish custody of the child to Hodge by June 14, 2017 at 6 pm EST for six weeks of continuous, uninterrupted summer vacation. The order enabled Hodge to remove the child from his present location and to obtain the assistance of local law enforcement in South Carolina if necessary. (A-92-94) Hodge then travelled to South Carolina where Allenbaugh and the child resided and attempted to execute the Superior Court order. On June 11, 2017, Hodge sent a text message to Allenbaugh that stated Hodge was in South Carolina and that Allenbaugh had until June 14, 2017 to transfer the child to him. (A-124). However, Allenbaugh refused to relinquish

custody of the child, and Hodge returned to St. Croix without the child. On June 16, 2017, Allenbaugh received notice of the Superior Court's June 9 summer visitation order.

¶4 On June 21, 2017, Hodge again wrote Judge Hinds-Roach to explicate what transpired when he attempted to execute the court's June 9 summer visitation order in South Carolina. In response to that letter, the court issued a June 23, 2017 order scheduling a hearing on June 27, 2017. At the hearing, Hodge testified but Allenbaugh failed to appear. Importantly, Allenbaugh received notice of the June 27, 2017 hearing on July 3, 2017. Based on Hodge's testimony at the June 27 hearing, the court issued three orders on June 28, 2017: (1) an order stating that Allenbaugh and Hodge were to appear on October 30, 2017 for a modification hearing; (2) an order to show cause requiring Allenbaugh to appear on October 30, 2017 to state why she should not be held in contempt for noncompliance with the court's June 9 summer visitation order; and (3) a visitation order that required Allenbaugh to surrender custody of the child to Hodge for six weeks of uninterrupted visitation beginning the day physical custody of the child was transferred to Hodge. The visitation order also allowed Hodge to remove the child from his present location, to obtain the assistance of local law enforcement, and to require him to register all Superior Court orders relating to the custody of the child with the Charleston County Family Court in South Carolina. (A-96-101).

¶5 On June 23, 2017, Allenbaugh appealed the Superior Court's June 9 summer visitation order to the Supreme Court of the Virgin Islands. On July 8, 2017, Allenbaugh received notice of the three orders issued in the June 27 hearing and appealed them to the Virgin Islands Supreme Court on July 10, 2017. (A-125).

¶6 On July 25, 2017, Hodge wrote Judge Hinds-Roach elucidating what occurred after he registered the three orders from the June 27 hearing with the Charleston County Family Court in South Carolina. In the letter, Hodge said he registered the orders with the Charleston court on July 17, 2017 and showed copies of the registered orders to local police authorities, who told him to contact them when he arrived at Allenbaugh's residence. Hodge did as instructed, but Allenbaugh refused to transfer custody of the child because she had not received notice from the Charleston court that the Superior Court's orders were registered in South Carolina. (A-136). She received notice of the orders' registration from the Charleston County Family Court on July 24, 2017. (A-125). After four days, Hodge departed South Carolina without the child.

¶7 On July 25, 2017, Allenbaugh filed in the Charleston County Family Court an objection to the registration of the Superior Court's three orders. The Charleston court scheduled a hearing on the matter for August 22, 2017 and instructed both parties to appear. At the hearing, Allenbaugh was present but Hodge was absent. The Charleston court entered an order denying the registration of the Superior Court's orders on September 6, 2017.

¶8 On October 30, 2017, the Superior Court held a hearing in which it admitted it lacked proof of service of its June 28, 2017 orders upon Allenbaugh. (A-142). In a November 7, 2017 order, the Superior Court rescheduled the October 30, 2017 hearing for December 18, 2017. The court informed that the change was to allow for proper service upon Allenbaugh and to allow Hodge time to obtain counsel. In the order, the court stated that the December 18 hearing was to rectify the loss of visitation Hodge sustained, potentially amend the custody agreement on the issue of visitation, provide Allenbaugh with an opportunity to defend by explaining why she should not be held in contempt for failing to comply with the court's previous orders, and possibly enable Hodge

to spend Christmas with the child. The November 7, 2017 order authorized Hodge to retrieve the child from Allenbaugh anytime on or after December 1, 2017. Lastly, the order decreed that this order and all previous orders relating to the custody case between Allenbaugh and Hodge would be registered sua sponte with the Charleston County Family Court.

¶9 On December 2, 2017, Allenbaugh filed a motion to dismiss the Superior Court’s November 7 order. Allenbaugh also filed a memorandum in support of her motion to dismiss. On December 11, 2017, the Superior Court denied the motion to dismiss. On December 29, 2017, Allenbaugh filed an appellate brief with the Supreme Court of the Virgin Islands that supported her notice of appeal that was filed with the Supreme Court on June 28, 2017.

## II. JURISDICTION

¶10 “The Supreme Court [has] jurisdiction over all appeals arising from final judgements, final decrees, and final orders of the Superior Court.” 4 V.I.C. § 32(a). “An order that disposes of all claims submitted to the Superior Court is considered final for the purposes of appeal.” *Jung v. Ruiz*, 59 V.I. 1050, 1057 (2013) (citing *Matthew v. Herman*, 56 V.I. 674, 677 (2012)). Because the Superior Court’s June 28 order disposed of all claims submitted for adjudication, the order is final and we may exercise jurisdiction over Allenbaugh’s appeal.

## III. STANDARD OF REVIEW

¶11 We review the trial court’s factual findings for clear error and exercise plenary review over its legal determinations. *Thomas v. People*, 63 V.I. 595, 602-03 (2015) (citing *Simmonds v. People*, 53 V.I. 549, 555 (2010)). The trial court’s evidentiary rulings are reviewed for abuse of discretion.

*Id.* at 614. “The Superior Court’s custody determination is [likewise] reviewed for abuse of discretion.” *Jung*, 59 V.I. at 1057.

## IV. DISCUSSION

### CHILD CUSTODY JURISDICTION

¶12 On appeal, Allenbaugh seeks termination of the Superior Court’s jurisdiction over her child custody case. This prayer for relief requires an inquiry into the court’s initial and continuing child custody jurisdiction.

¶13 Under 16 V.I.C. § 127(a)(1), a Virgin Islands court may enter an initial child custody order only if the Virgin Islands is the home state<sup>1</sup> of the child on the date a child custody proceeding commences or it was the home state of the child within six months of the commencement of a custody proceeding and the child is absent from the jurisdiction, but a parent or a person acting as a parent continues to live in the territory. Jurisdiction for an initial custody order may also occur if “a court in another state does not have jurisdiction under paragraph [(a)(1)] or a court in the home state of the child has declined to exercise jurisdiction on the ground that [the Virgin Islands] is the more appropriate forum under § 133 or § 134, and (A) the child or the child’s parents, or the child and at least one person acting as a parent, have a significant connection to [the Virgin Islands] other than mere physical presence; and [B] substantial evidence is available in [the Virgin Islands]

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<sup>1</sup> “‘Home [s]tate’ means the [s]tate in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the [s]tate in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the persons mentioned is part of the period.” 16 V.I.C. § 116(7).

concerning the child’s care, protection, training, and personal relationships . . .” 16 V.I.C. § 127 (2).

¶14 In *Consford v. Consford*, 711 N.Y.S.2d 199, 205 (N.Y. App. Div. 2000), a mother commenced a custody action in New York following a Texas divorce. The father sought to have the Texas custody order enforced and the New York proceeding dismissed. The appellate court said Texas lacked jurisdiction to enter an initial custody order under the Uniform Child Custody Jurisdiction and Enforcement Act because it was never the home state of the child. The court opined that “Texas never possessed jurisdiction to determine the issue of Erica’s custody because it was not her home state as the term is defined in the [governing statute] . . . The home state of a child older than six months . . . is defined as the state in which the child at the time of the commencement of the custody proceeding has resided with her parents . . . for at least six months. . . . Erica never resided in Texas for six months.” The court continued by saying a child does not have a home state until it has resided in one state for the requisite six months. *See McDaniel v. McDaniel*, 262 A.D.2d 1066, 1067 (4th Dept. 1999); *In re Lambert*, 993 S.W.2d 123, 129 (Tex. App. 1999).

¶15 Here, Allenbaugh and the child left the Virgin Islands in November 2013. (A-126). At that time, the child, who was born on July 24, 2013, was only four months old and had resided in the Virgin Islands for that quantity of time. The custody action commenced on May 1, 2014. (Sup. Ct. Docket Sheet p. 10). This means the child was approximately nine months old when the custody proceeding began and he and his mother had resided out of the territory for six months preceding the action’s onset. Although the custody action commenced within six months of the child leaving the Virgin Islands as permitted by section 127 (a)(1), the Virgin Islands was never the home state

of the child because he had never lived in the territory for six months. Moreover, the record lacks evidence that the child has a substantial nexus to the territory or that another state has declined to exercise jurisdiction. On the date the action was filed in Superior Court, another state had already become the child's home state and had jurisdiction to make an initial custody determination. Therefore, we vacate the 2014 custody order and encourage the parties to initiate custody proceedings in a state that has jurisdiction. Because this determination dispenses with all other issues, we need not address Allenbaugh's other arguments because they are moot.

## V. CONCLUSION

¶16 Because the Superior Court lacked jurisdiction to enter the 2014 custody order, we vacate that order and all orders emanating from it. Similarly, all notices of appeal relating to these orders are moot. We remand this matter for proceedings consistent with this opinion.

**Dated this 27<sup>th</sup> day of February 2019**

/s/ Ive Arlington Swan  
**IVE ARLINGTON SWAN**  
Associate Justice

**ATTEST:**  
**VERONICA J. HANDY, ESQ.**  
Clerk of the Court