

J.S.,		:	IN THE COURT OF COMMON PLEAS
	Plaintiff	:	DAUPHIN COUNTY, PENNSYLVANIA
		:	
	v.	:	No. 2015-CV-04691-CU
		:	
R.S.S.,		:	
	Defendant	:	CIVIL ACTION – Custody

September 26, 2018

OPINION

Father J.S. filed preliminary objections to this custody action arguing that Pennsylvania no longer has subject matter jurisdiction under the UCCJEA.¹ In the alternative, Father argued that to the extent Pennsylvania still maintains jurisdiction, Hungary is a more convenient forum and I should therefore transfer the case there. I issued an order August 17, 2018, denying the preliminary objections. I denied Father’s motion to transfer the case to Hungary because he failed to prove that Pennsylvania is an inconvenient forum. I rejected Father’s jurisdictional challenge because, while the record reflects that the parties’ Child has had little connection to Pennsylvania since moving with Father to Hungary in July 2016, the record further revealed that the Child would have maintained a significant connection with Pennsylvania had Father not intentionally and repeatedly lied to Mother R.S.S. including that he and the Child were in a witness protection program, leading Mother to believe that the Child’s safety was imperiled to a degree that only his relocation, with sole legal and physical custody, would remedy. Father also repeatedly misled Mother, over a period of years, that he would soon return home to live with Mother and the Child as a family again.

Procedural Background

Mother and Father were married in Pennsylvania in 2008 and are the parents of one daughter, born in April 2012. During their marriage they lived in Dauphin County, Pennsylvania. Following their 2014 separation, Father moved out of the marital home. As described below, although they divorced in October 2015, they continued to act as a couple in many respects including maintaining an intimate relationship through the end of October 2017, well after Father’s remarriage in December 2015 and after he moved to Hungary in July 2016.

¹ Uniform Child Custody Jurisdiction and Enforcement Act. 23 Pa.C.S.A. §§ 5401-5482.

In June 2015, Father filed a complaint seeking custody and as well as a notice of intent to relocate to Hungary, which he indicated would be in November 2015. Mother filed a counter-affidavit stating she did not oppose relocation. On August 13, 2015, following a conference with a custody conference officer, the parties reached an agreed custody order granting Father sole legal and physical custody of the Child and permitting Father to relocate to Hungary. The order contained no specific provision concerning Mother's physical custody but only a statement that the parties understood and stipulated that "an expanded or altered schedule may be agreed upon" at a later date and that both retained the right to seek modification.

There was no further action until November 30, 2017, when Mother filed petitions for custody modification and special relief. In her petitions, she asserted that following entry of the custody order, Mother exercised primary physical custody of the Child, who resided with her at the parties' former marital home in Hummelstown (the "farmhouse"). Mother asserted as well her belief that Father never relocated to Hungary and that the Child continuously resided in Pennsylvania through the date of her petitions. Mother claimed that following entry of the August 2015 custody order, she exercised physical custody for the next year or so but as time went on, the Child spent less time with her and began to reside with Father. Mother claimed that she repeatedly asked Father to return the Child and that he would promise her he would do so, but never did. Father then told her that he and the Child were in a witness protection program and he could not disclose the Child's whereabouts. Father eventually cut off Mother from any contact with the Child, sometime in July 2016, which was the last time she saw the Child.

Mother alleged that between July 2016 and May 2017, Father nevertheless continued to see Mother at the farmhouse and they remained sexually intimate. In late October 2017, Mother became aware that Father and the Child had been observed in the local area, along with Father's new wife E.S. and their newborn, prompting Mother to file her current petitions. Mother requested in her special relief petition that Father surrender the child's passport and keep the Child in this area while she pursued sole legal and physical custody.

On November 30, 2017, the same day Mother presented her petitions, the Hon. William Tully issued an *ex parte* Order directing Father not remove the Child from the Central Pennsylvania area and that he surrender the Child's passport, pending custody litigation.²

Following a custody conference on January 17, 2018, addressing Mother's petition to modify custody, the matter was assigned to me for a custody trial.³ Father retained an attorney who filed preliminary objections to Mother's petitions for modification and special relief including a claim that Pennsylvania lacked jurisdiction under the UCCJEA as well as a motion to transfer this case to Hungary.⁴ In his preliminary objections, Father asserted that he and the Child had relocated permanently to Hungary in July 2016 where the Child has been enrolled in school, since September 2016. In her response opposing the preliminary objections, Mother clarified that at the time she agreed to grant Father sole legal and physical custody in August 2015, she did so because Father manipulated her into believing he was in trouble and might be entering a witness protection program. Mother pled that she believed Father's representations that the Child's safety was imperiled. Mother also asserted that Father led her to believe, up until November 2017, they were going to be a family again as soon as his situation was safe enough for Father to return with the Child.

I held a hearing February 27, 2018 on the jurisdictional challenge and forum transfer request. At the conclusion of that hearing, I took the matter under advisement pending the parties' attempts to settle their issues. Because they were unable to resolve their disagreement, I held a second hearing March 29, 2018. Following production of the transcripts and briefs, I issued an

² Father failed to comply with this order though the record shows Father most likely never received service of the order until after he had already left the U.S. and returned to Hungary. (See N.T. 2/27/18 12-13) As discussed later, at the time Mother filed her petitions and Judge Tully issued his order (November 30, 2017), Father was at the end of a five-week visit to the U.S. with the Child, his current wife and their newborn. They all flew back to Hungary on December 1 or 2, 2017. Mother's attorney attempted service of the petitions and order by regular mail on November 30, 2017, to his last known address in Hershey, Pa. (N.T. 2/27/18 at 127-28; Exbt. D-14(a)). Even if he received the order (through a third party), which he denied, he would not have received Judge Tully's order banning him from taking the Child out of the area and turning over her passport before he and the Child flew back to Hungary.

³ Father did not appear at the conference and denied receiving notice thereof. (Exbt. D-14(b)) He claims he only became aware of the current custody filings on or about January 25, 2018 when he received an email from Mother's attorney including a copy of a scheduling order. (N.T. 3/29/18 at 47-50; Exbt. D-15)

⁴ On February 19, 2018, Father also filed a petition with a court in Hungary seeking that it register and enforce the parties' 2015 Pennsylvania custody order. (Exbt. P-5.10)

order August 17, 2018 overruling Father's objection contesting Pennsylvania jurisdiction and denying his motion seeking that this matter be transferred to Hungary.

Factual Background

Mother's primary argument is that she would have exercised regular custody in Pennsylvania over the last few years, and would never have agreed to granting Father sole legal and physical custody of the Child and permission to relocate to Hungary, had Father not fraudulently and falsely told her both that he and the Child were in a witness protection program and that he intended to reunite with Mother and the Child as a family again, as soon as it was safe. This court believes that, under S.K.C. v. J.L.C., to the extent Mother can prove Father's fraud and misrepresentations deterred or thwarted her from exercising custodial rights in Pennsylvania that would have been sufficient to establish exclusive and continuing jurisdiction here, it would be improper and unjust to find Pennsylvania no longer has jurisdiction. 94 A.3d 402 (Pa. Super. 2014) (*infra.*). Thus, in order to fully explore Mother's argument that Father engaged in a lengthy saga of lies and manipulation to keep the Child from her and deterred her from seeking custody, this court heard a broad offering of evidence at the two hearings.⁵

The parties were married in 2008 and lived in the farmhouse, which Father solely owned. Father moved out sometime in 2014 and they eventually entered their custody agreement August 15, 2015. (N.T. 2/27/18 at 91) Mother testified that she only agreed to the terms of the custody order, granting Father sole legal and physical custody and the right to relocate, because Father told her he was in a witness protection program. (N.T. 2/27/18 at 15) He claimed he was in some kind of trouble and that the only way for the Child to be safe was if Mother agreed for him to have sole legal and physical custody. (N.T. 2/27/18 at 15) Mother trusted Father and thought she was doing the right thing. (N.T. 2/27/18 at 19) She asserted that Father had been mentally and physically abusive to her during their relationship, which spanned fourteen years. (N.T. 2/27/18 at 16, 19) In the past he had threatened her physically, threatened her job and she was scared of him. (N.T. 2/27/18 at 19, 21)

⁵ Father testified at both hearings from Hungary via Skype.

Father admitted he had conversations with Mother concerning him being in a witness protection program. He testified, however, that he never initiated the conversations although he did understand that Mother believed he was in a witness protection program and he never corrected her but confirmed his participation to her. (N.T. 3/29/18 at 14-15) Father insisted that he lied because Mother had tried to kill him two times in the past and had also harmed the Child by locking her in a room and calling her names. (N.T. 3/29/18 at 68, 81) He also claimed he lied in order to protect his current wife E.S. so Mother would not know where she was. (N.T. 3/29/18 at 68-69, 78)

Father's mother ("paternal grandmother") testified at the first hearing and admitted that Father also told her that he was in a witness protection program, although she was not sure if his claim was true. (N.T. 2/27/18 at 50-51)

Mother testified that immediately after being persuaded by Father in August 2015 to give him sole legal and physical custody, and to relocate to Hungary, the Child nevertheless resided with her at the farmhouse and that Father would stay with them sometimes. (N.T. 2/27/18 at 14, 23) Father admitted he did not immediately move to Hungary but continued to live in Dauphin County. (N.T. 3/29/18 at 8-12) In fact, at the time he filed for relocation and sought primary physical custody in 2015, Father maintained business connections to Central Pennsylvania. He and a partner have owned a Highspire-based real estate holding company since the early 2000's. The holding company, a Pennsylvania C corporation, previously owned a Harrisburg Italian restaurant Father operated and eventually sold in August 2016, shortly after his move to Hungary. (N.T. 2/27/18 at 70, 134; Exbt. D-17) The company currently owns two properties which Father previously owned but signed over just before his move. (N.T. 2/27/18 at 125-26) As of 2016, Father remained president of the company though his partner claimed he is currently the president and Father a "silent partner." (N.T. 2/27/18 at 68-70, 143)

According to Mother, after entry of the agreed custody order, she had custody close to full time particularly when Father worked at his restaurant. When she worked her nursing shifts, Father would keep the Child. (N.T. 2/27/18 at 14) Between August 2015 and July 2016, Father encouraged Mother to work more shifts and therefore Father began to exercise more physical custody and eventually stopped returning the Child to her. (N.T. 2/27/18 at 14-15) Mother last saw

the Child in July or August 2016. (N.T. 2/27/18 at 15, 81) Father denied that the Child lived with Mother at the farmhouse any time prior to July 2016, when he and the Child moved to Hungary, though he agreed the Child saw Mother on occasion during that time period. (N.T. 3/29/18 at 12)

Following their separation, roughly during the period between August 2015 and July 2016, Father would often visit Mother, without the Child, in order to have sex with her. (N.T. 2/27/18 15) Mother testified that he would manipulate her by sending pictures of the Child if she turned down his requests for sexual favors or making pornographic videos for him. (N.T. 2/27/18 at 15-16)

In December 2015, while Mother and Father were still in a relationship and unbeknownst to Mother, Father married his new wife E.S. in the United States. Mother would not discover this marriage until November 2016 when their wedding announcement was published in a local paper. (N.T. 2/27/18 at 111) E.S., who is Hungarian, had been living in the U.S. for a short time on a work visa. She and Mother lived together briefly in the farmhouse in 2015, however, their relationship deteriorated and in April 2015 E.S. filed a Protection From Abuse (PFA) petition against Mother, with whom she claimed to have been sexually intimate.⁶ (N.T. 3/29/18 at 79) The same day, Mother filed a PFA petition against Father, reciting incidents of physical and emotional abuse.⁷ Less than two weeks after filing their actions, both E.S. and Mother withdrew their respective PFA petitions.

In January 2016, Father flew to Hungary and bought a home. (N.T. 2/27/18 at 94; Exbt. P-3) Mother learned about the home purchase shortly thereafter when she read a copy of a bank transaction notice mailed to Father at the farmhouse in Dauphin County. (N.T. 2/27/18 110-11; Exbt. P-14) As noted above, continuing through the first half of 2016, Father continually reduced Mother's custodial time with the Child to the point Mother no longer saw the Child, in approximately July 2016. During this time, Father continued to visit Mother at the farmhouse without the Child during which they had sexual relations.

⁶ E.D. [E.S.] v. R.S., 2015 CV 2874 AB (PFA, Dauphin County).

⁷ R.S. v. J.S., 2015 CV 2888 AB (PFA, Dauphin County).

Between June 6 to 10, 2016, Father and the Child flew to Hungary for a short visit and then returned to the U.S. (N.T. 2/27/18 at 94, 96; Exbt. P-4) On July 14, 2016, Father flew with the Child to Hungary to live there, joining E.S. in the town of Kerekegyháza. (N.T. 2/27/18 at 44, 96-98) Upon their arrival, Father enrolled the Child for Kindergarten, which she has attended for the past two school years (through Spring 2018). (N.T. 2/27/18 at 96, 98-99; N.T. 3/29/18 at 34; Exbts. P-5.3, P-5.4) In August 2016, shortly following the Child's arrival in Hungary, both she and Father received Hungarian temporary residence cards and later permanent residence cards. (N.T. 2/27/18 at 101; Exbts. P-6 to P-8) Father also presented a Hungarian address card showing he and the Child reside in Hungary and other evidence he pays utility bills there. (N.T. 2/27/18 at 102; Exbts. P-10, P-11) Father testified that the Child speaks Hungarian fluently and is better speaking Hungarian than English. (N.T. 2/27/18 at 99, 114) Father provided documentary evidence that the Child receives medical care in Hungary and has been taking horse riding lessons. (N.T. 2/27/18 at 99; Exbts. P-5.5, P-5.8) Father found employment in Hungary in a motorcycle shop. (N.T. 2/27/18 at 44, 96-98) In August 2017, Father's wife E.S. gave birth to a son who lives with the Child, E.S. and Father in Hungary. (Exbt. P-5.6)

Paternal grandmother, who lives in Lancaster County, testified that since the Child has been in Hungary, she speaks with her weekly by telephone. (N.T. 2/27/18 at 49) Prior to the Child moving to Hungary, paternal grandmother saw the Child regularly at her home, including babysitting her and sometimes taking her to church. (N.T. 2/27/18 at 51-52)

Father admitted he never told Mother he had moved to Hungary until he informed her of his and the Child's Hungarian address late in 2017. (N.T. 3/29/18 at 15) Father claimed he kept information from Mother because he believed her to be mentally unstable. (N.T. 2/27/18 at 103-08) He recounted that when he would tell her that he did not want to be with her or that the Child was not coming back, she would threaten to kill herself. (N.T. 2/27/18 at 109-110) He claimed he also lied to protect and keep her away from him and his new family. (N.T. 3/29/18 at 82-83. 112) Father presented emails and texts reflecting his claims of Mother's alleged mental instability. For example, Mother texted Father January 15, 2016 writing "I can't even see my daughter every day. I'm killing you." (Exbt. P-13). On March 4, 2016, Mother texted that "actually I don't want to see you or [the Child] until you move in here. It's too hard on me. Better out of sight out of mind."

(Exbt. P-15) In texts she sent May 29, 2016 and August 11, 2016, Mother expressed to Father her depression and thoughts of suicide because she was not able to see the Child. (Exbts. P-16, P-17)

In late July 2016, Father returned to Pennsylvania, without the Child. (N.T. 2/27/18 at 95, 145; Exbt. P-25) He remained in Pennsylvania until early September 2016. (N.T. 2/27/18 at 145; Exbt. P-2) Mother did not know the Child was in Hungary and arranged with Father to take a three-day “family trip” to the beach with Father and the Child, in August. (N.T. 2/27/18 at 22) Father showed up without the Child telling her the Child was at paternal grandmother’s home. (N.T. 2/27/18 at 22) Father admitted he went on the beach trip with Mother but only agreed to go because Mother threatened to hang herself if he refused. (N.T. 2/27/18 at 145-46)

According to Mother, In September 2016, Father visited Mother at the farmhouse, without the Child, during which he and Mother engaged in sexual relations. (N.T. 2/27/18 at 16) Mother testified that Father told her at the time “they were all going to be coming back soon.” (N.T. 2/27/18 at 16) Father explained to her that the witness protection program was going to allow him to bring the Child “home” to be with Mother. (N.T. 2/27/18 at 16)

Shortly after their beach rendezvous and after Father returned to Hungary (unbeknownst to Mother), Mother and Father exchanged a series of emails on September 7, 2016. Exbt. D-22. Mother first asked Father in the emails whether he thought it would be a long time until she saw him and the Child. (N.T. 3/29/18 at 53-55; Exbt. D-22). Father, alluding to the witness protection program, responded: “I have no idea but this is not a joke don’t tell anybody you can loose [sic] your job if they find out about me.” (Exbt. D-22) Mother answered that she did not know how strong she could be and asked Father whether the Child asks for her. Father responded: “Make me hot videos so i can see you. ... please don’t tell any one its only get worse. ... you are still with me every night ... you are the most inportant [sic] in my life so you are my first and last love.” (Exbt. D-22) Mother asked again about the Child, and Father, alluding to witness protection, wrote: “[The Child] is good and maybe this will not be so long I don’t know to [sic] much and they will see this I hope.” (Exbt. D-22) The parties continued to discuss money issues as if they were still a couple, including Mother’s struggle to pay bills and Father’s promise to send money through his business partner. (Exbt. D-22) In a September 21, 2016 email, Father again blamed his delay on the witness protection program, writing: “I can’t come home and I can’t call anyone am not sapose

[sic] to contact any one from my pastor I will get a chance of getting hurt or hurting people I contact.” (N.T. 3/29/18 at 55-56; Exbt. D-23)

On November 22, 2016, the day Mother read the announcement that Father and E.S. had wed almost a year earlier, she sent a text to E.S., telling her she hoped E.S. would die and an email to Father hoping he got shot in the face or would suffer a stroke. (N.T. 2/27/18 104, 111; Exbts. P-18, P-20) She also made numerous suicidal threats after she found out about the marriage including expressing a desire to hang herself and texting Father a photo that same day with a noose around her neck, telling him goodbye. (N.T. 2/27/18 at 104; Exbt. P-19)

Nevertheless, even after her discovery of Father’s remarriage, Father and Mother continued to have a relationship. Mother claimed she and Father saw each other through May 2017 at the farmhouse and that they would often engage in sexual relations. (N.T. 2/27/18 at 17)

Between mid-June 2017 through the end of October 2017, Mother and Father engaged in a lengthy series of electronic messaging. (N.T. 3/29/18 at 60-66; Exbts. D-9, D-10, D-26 to D-34) The overarching narratives of these communications concerned Father’s intention to bring the Child “home” to live with him and Mother on September 1, 2017, that the Child would be starting school here, Father’s repeated assurances this was the plan, Mother’s belief in Father’s promises and Father’s continued demands that Mother make and send him pornographic photos and videos of herself.

The documentary evidence presented reflecting these narratives is as follows: On June 17, 2017, Mother texted Father that “All I want is [the Child] home and you can’t do that so someone else can ... I don’t care about you I’m very depressed I don’t have [the Child].” (Exbt. D-26) Father failed to respond to Mother other than to note “Ok so send me some really nice pic because I do miss you a lot.” (Exbt. D-26) Mother eventually mused that “maybe I still have custody rights and don’t know it.” They then discussed possible custody litigation and Father reminded her how long it takes to get a court date. Mother responded that she can’t wait until September to see the Child to which Father assured her: “I will be their [sic] before school start[s].” Mother expressed skepticism to which Father replied, alluding to the witness protection, that “I said before September this should be over.” (Exbt. D-26) On June 18, 2017, while texting about custody,

Mother stated “Do you want to fight?” Father warned her that “no way will you find someone to fight against my team and win. And this is a fact.” Mother replied: “Maybe your [sic] not in witness protection shit you made it up and the lawyer will tell the truth.” Mother continued to request custody and Father concluded: “I’m done with this conversation ... talk about something else or I can text Some Ukrainian girl.” (Exbt. D-26)

On June 23, 2017, Mother asked if the Child will be starting school late and what type of backpack she wants. (Exbt. D-26) She wondered “is it ok she starts late?” to which Father, again alluding to witness protection, stated “My people make it ok for what ever.” Mother replied “this is school not preschool there are laws” to which Father warned her, “Don’t play or fuck things up.” (Exbt. D-26)

On July 1, 2017, Mother texted: “Promise me this time ... One year is a long time. If it doesn’t happen I will be gone. I still hate you for doing this to me.” (Exbt. D-26) On July 12, 2017, On July 14, Mother texted: “We should get married on new years [sic] day.” (Exbt. D-28) On July 16, 2017, Mother asked: “Do you promise we will get married right away like in September. Hello. And you promise [E.S.] doesn’t exist at all to you. No contact with her since last July last year. Hello.” (Exbt. D-28) Father responded a few minutes later “Yes stop.” (Exbt. D-28) On July 14, 21, 22, 23, 25 and 29, 2017, Father requested that Mother take some pornographic videos and pictures of herself and send them to him. (Exbts. D-28, D-29, D-31)

On July 18, 2017, Mother texted Father to find out if he contacted the school where he would be enrolling the Child. (Exbt. D-29) A week later (July 25), Mother inquired whether Father had the Child enrolled in a public or private school so she could buy appropriate clothing or uniforms. Father responded by telling Mother to remind him again in the morning and again to send him pornographic pictures or video. (Exbt. D-31) On August 4 and 5, 2017, Father confirmed again that he would be coming with the Child September 1st. (Exbts. D-25, D-31)

In an August 7, 2017 Skype message, Mother lamented to Father about the possibility of not seeing the Child as planned and threatened “to put an end to this awful pain” if that happened. (Exbt. D-25) On August 8, Mother complained to Father that she has not seen a picture or spoken with the Child in over a year to which Father responded “Well I can’t help that. I can only keep

everyone safe.” (Exbt. D-32) He further wrote that he had not been allowing Mother contact with the Child because “you tell everything to everyone.” (Exbt. D-32)

On August 8, 2017, Mother asked Father for a Kindergarten supply list and informed him of her plans to decorate the Child’s room. (Exbt. D-25) The next day, Father wrote that September 1st is “still happening.” (Exbt. D-31) Mother also asked, ostensibly about the witness protection program, whether “they are paying for [the Child’s] school all year” and Father told her “yes.” (Exbts. D-25, D-31) On August 12, 14 and 16, Father confirmed again that he and the Child were coming September 1st. (Exbt. D-25) Mother then asked if the Child “still knows I’m mommy?” and Father told her “yes.” (Exbt. D-25)

In late August, Mother asked Father again to confirm the September 1st visit noting that school started in one week. Father texted back that he was still coming and, again referring to witness protection, told her “but they are stalling me I feel like. I’m putting a complaint in.” (Exbt. D-25) Mother responded that “I want my daughter. Now I will do anything to see [the Child], it’s been since last July your [sic] sick for taking her with you... You told me a date so if that date doesn’t happen then I’m done.” (Exbt. D-32) The following day (August 26) Mother wrote to Father how impatient she was to see the Child. (Exbt. D-27) Mother then asked if, upon Father’s arrival, he would start working right away. He responded: “I just read you[r] nasty text ... did you ever think that I don’t have control of my situation, hello you only care about yourself” (Exbt. D-27)

At this point, Mother expressed doubt: “So nice of you to lead me on almost until Sept. 1 then the week before you take it all away and can’t even say if it’s happening. ... wow you have moved on yourself with whoever [E.S.] Even [the Child] used to accidentally call her mommy now I know why you were training [the Child] to think if [E.S.] as her mom while you slowly took her away from me. I hope you rot in hell for all you did to ruin my life.” (Exbt. D-32) On August 27, she asked Father again for confirmation he would be bringing the Child, because “you never answer this question.” He eventually assured her he and the Child were coming. (Exbt. D-27)

On August 28, Father texted Mother complaining about vision problems. (Exbt. D-27) Mother noted that Father claimed to be sick the last two times he was supposed to come home,

stating “I can’t believe I fall for this every time.” (Exbt. D-27) The next day Father texted Mother to tell her that he is in the hospital and needed a laser procedure. (Exbts. D-27, D-32) After getting no response from Father whether his trip would be delayed, she wrote “you are not my husband, you and [E.S.] are a team together.” (Exbt. D-27) Father and the Child never showed for their long-planned reunion with Mother on September 1, 2017.

On September 10, 2017, the parties exchanged numerous messages including Father’s requests that Mother send him pornographic videos or pictures. (Exbt. D-33) Father also accused Mother of having a boyfriend. (Exbt. D-33) Mother texted back that she was depressed and wanted to die, prompting Father to ask her for a “hot video.” (Exbt. D-33) Mother then asked Father that if she sent him a video would he talk seriously with her and he told her “ok.” (Exbt. D-33) Father later assured Mother he will “come home” with the Child after he sees a doctor. (Exbts. D-27, D-32) Mother continued: “If you don’t ever come home how can [the Child] get all her clothes and shoes I bought[?]” to which Father texted: “I’m coming home. Stop.” (Exbt. D-27) The next day Mother asked him to “promise me your [sic] coming home” and he told her “Yes.” (Exbt. D-30)

The parties later arranged to see each other with the Child over the weekend of October 20, 2017. In anticipation, Mother texted Father and told him of her plan to take the Child to a show, which Father acknowledged. (Exbt. D-9) A few days later (October 4), Father confirmed the weekend visit. (Exbt. D-9) Father responded “ok good” to Mother’s texts on October 11, 2017, that she had signed up the Child for swim lessons. (Exbt. D-9) After Father changed their meeting to Friday October 27, Mother remained skeptical but Father assured her that he was coming. (Exbt. D-9)

Unbeknownst to Mother, on October 25, 2017, Father, E.S., their infant and the Child arrived in Pennsylvania after flying from Hungary. They visited paternal grandmother during this trip including spending a couple of days with her at her Lancaster County home over Thanksgiving. (N.T. 2/27/18 at 42-43) They remained in Pennsylvania until either December 1 or 2, 2017, when they all flew back to Hungary. (N.T. 2/27/18 at 97, 142; N.T. 3/29/18 at 18; Exbts. P-2, P-4)

On October 24, 2017, Father texted Mother and confirmed he was coming with the Child October 27. (Exbt. D-9) On October 26, Mother repeatedly texted Father about how happy and

excited she was to be seeing her child noting she has been waiting for over a year. (Exbt. D-9) She worried about being disappointed again and Father assured her they were coming. (Exbt. D-9) The night before their planned visit, Father wrote that the Child had gotten a bad cold but that they were still coming. (Exbt. D-9) On October 27, Father showed up at the farmhouse but without the Child. He told her he would bring the Child the next day. (Exbt. D-9) During this visit, the parties had sexual relations. (Exbt. D-9)

On October 28, 2017, Mother took off from work in anticipation of Father bringing the Child. Early that morning, Father texted Mother to say both he and the Child were ill. (Exbt. D-9) A few hours later Mother texted: “just tell me the truth, if your [sic] never coming home I want to stop this pain of losing all hope, every time it is something... come home please.” (Exbt. D-9) Mother complained later in the afternoon that Father was playing her for a fool. He responded by telling her that she is stressing him out and that he doesn’t feel like dealing with her. (Exbt. D-9) Father never did visit October 28, with or without the Child. (Exbt. D-9) Mother conveyed her deep disappointment later in the evening. (Exbt. D-9) Mother accused Father of using her to help pay for his farmhouse property. (Exbt. D-9) At the end of the day, Mother texted Father asking if he will see her the next day (October 29) and he told her “yes.” (Exbt. D-9) Throughout October 29, Mother continually texted Father about his intentions but he failed to respond. (Exbt. D-9) Eventually Father claimed to be too ill to drive and did not show again. (Exbt. D-9)

As noted, around October 28, 2017, Mother was alerted by a work colleague who had seen and taken pictures of Father, the Child, E.S. and the new baby at a local market that day. (N.T. 2/27/18 at 18) Mother then finally realized Father had been lying to her about his plans to be with Mother and bring the Child to live with her. (N.T. 2/27/18 at 18) Mother texted Father telling him she was getting a lawyer and that they were done. (Exbt. D-9) Mother moved out of the farmhouse soon thereafter and filed her petition for custody modification and emergency relief the following month.

Since his move to Hungary, Father has made a number of return trips to Pennsylvania including to visit his mother and attend to her health needs. (See N.T. 3/29/18 at 19) The record additionally shows that Father continues to maintain financial connections to Pennsylvania. In addition to his ownership interest in the real estate holding company, Father still owns the

Hummelstown farmhouse. Sometime following their separation, Mother took out a home equity line of credit on the farmhouse to help Father and as of early 2018, owed over \$150,000. (N.T. 2/27/18 at 20; Exbt. D-11) Father made a number of payments against that loan in late 2017 and early 2018. (N.T. 3/29/18 at 36-37; Exbt. D-11) Father also discussed with Mother on August 27, 2017, that he is delinquent on taxes for two Dauphin County area properties her owns. (Exbt. D-27)

Father additionally owns at least one vehicle in Pennsylvania which was insured through February 2018. (Exbt. D-25) The parties' communications reveal that Father has relied upon Mother meet some of his financial obligations including payment of his auto insurance policy. (Exbt. D-25) Father also relied upon Mother to keep him apprised of issues with his farmhouse property prior to moving out. (Exbt. D-34)

Legal Discussion

Father raised two claims: (1) that Pennsylvania should relinquish jurisdiction under the UCCJEA, and alternatively, (2) to the extent Pennsylvania still maintains jurisdiction, that this court transfer the matter to Hungary as the more convenient forum. I rejected both claims.

I. Exclusive, Continuing Jurisdiction

Pennsylvania adopted the UCCJEA in 2004. Its purpose "is to avoid jurisdictional competition, promote cooperation between courts, deter the abduction of children, avoid re-litigation of custody decisions of other states, and facilitate the enforcement of custody orders of other states." J.K. v. W.L.K., 102 A.3d 511, 513-15 (2014) (citing 23 Pa.C.S.A. § 5401, Uniform Law Comment). Under Section 5421 of the UCCJEA, Pennsylvania obtained original subject matter jurisdiction to make an initial custody determination in this matter in 2015 when Father filed this custody action in Dauphin County, where at the time, Pennsylvania was the Child's home state. See 23 Pa.C.S.A. § 5421(a)(1).

Under the UCCJEA, Pennsylvania maintains exclusive and continuing jurisdiction over a matter in which it had initial child custody jurisdiction except as provided under Section 5422(a), which states in relevant part:

§ 5422. Exclusive, continuing jurisdiction

(a) General rule.--Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth which has made a child custody determination consistent with section 5421 (relating to initial child custody jurisdiction) or 5423 (relating to jurisdiction to modify determination) has exclusive, continuing jurisdiction over the determination until:

(1) a court of this Commonwealth determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this Commonwealth and that substantial evidence is no longer available in this Commonwealth concerning the child's care, protection, training and personal relationships; or

...

23 Pa.C.S.A. § 5422.

Regarding a court's exclusive and continuing jurisdiction, our Superior Court has stated:

Under the plain meaning of section 5422(a)(1), a court that makes an initial custody determination retains exclusive, continuing jurisdiction until neither the child nor the child **and** one parent or a person acting as a parent have a significant connection with Pennsylvania and substantial evidence concerning the child's care, protection, training, and personal relationships is no longer available here. The use of the term "and" requires that exclusive jurisdiction continues in Pennsylvania until both a significant connection to Pennsylvania and the requisite substantial evidence are lacking. *In other words, Pennsylvania will retain jurisdiction as long as a significant connection with Pennsylvania exists or substantial evidence is present.*

... pursuant to the plain and ordinary meaning of the phrase "significant connection," exclusive, continuing jurisdiction is retained under section 5422(a)(1) as long as the child and at least one parent have an important or meaningful relationship to the Commonwealth. Accordingly, we must look at the nature and quality of the child's contacts with the parent living in the Commonwealth.

Rennie v. Rosenthol, 995 A.2d 1217, 1220-1222 (Pa. Super. 2010) (footnotes omitted, bolding in original, italics added).

In arguing their respective positions, the parties cite the same four Superior Court cases: Billhime v. Billhime, 952 A.2d 1174 (Pa. Super. 2008), A.D. v. M.A.B., 989 A.2d 32 (Pa. Super. 2010) as well as Rennie v. Rosenthol and S.K.C. v. J.L.C., *supra*. In each case, the parents and child(ren) previously resided in Pennsylvania where an initial custody order was entered.

Thereafter, the primary physical custodian parent moved out of state with the child(ren) while the other parent remained in Pennsylvania and later sought to modify the existing custody order in a Pennsylvania court. In each case, the out-of-state parent objected, claiming Pennsylvania was required to relinquish jurisdiction, under Section 5422(a).

In Billhime, the Superior Court held that that Pennsylvania must relinquish jurisdiction because a significant connection and substantial evidence no longer existed under Section 5422(a). The parents initially lived for five years in Florida with their twin sons before moving to Pennsylvania. After living in Pennsylvania for three years the parents separated and mother was awarded primary physical custody under a Pennsylvania custody order. The following year, mother and the children moved back to Florida. Father initially exercised custody in Pennsylvania during school and holiday breaks and nearly all of summer vacation. However, within a few years, his custodial time decreased until the children were visiting him only three times per year. The court found the children no longer had a significant connection with Pennsylvania and that there was insufficient evidence concerning the children's care, protection, training and personal relationships in Pennsylvania. Id. at 1177. Instead, the court found all significant connections and substantial evidence existed in Florida. Id.

In A.D., the Superior Court, following Billhime, also held that Pennsylvania must relinquish custody jurisdiction. There, the parties had one daughter during their relationship in Pennsylvania. After their separation, when the child was six months old, mother obtained primary physical custody and permission to relocate out-of-state under a 2002 Pennsylvania custody order. Mother and child later moved to Michigan. In 2008, Father filed a petition in Pennsylvania seeking custody modification. Mother's objection to jurisdiction was upheld based upon a lack of significant connections here since the child had not resided in Pennsylvania for almost seven years and father had no contact with the child since the child was six months old. Id. at 37.

In Rennie, however, the Superior Court upheld the trial court's findings that a significant connection existed between the child and Pennsylvania and affirmed the court's order denying mother's motion seeking Pennsylvania relinquish jurisdiction. The parents in Rennie adopted a child in 1998 while residing in Pennsylvania and separated shortly thereafter. A Pennsylvania custody order was entered in 1998 and was amended a number of times including in January 2003

under which terms the parties, who remained in Pennsylvania, agreed that the Pennsylvania common pleas court would retain jurisdiction. Shortly after entry of that order, Mother moved with the child to Minnesota while father remained in Pennsylvania. The custody order was further modified in Pennsylvania upon agreement of the parents in 2004 and 2007. In 2008, Father sought to obtain primary physical custody in the Pennsylvania court. Mother argued Pennsylvania must relinquish jurisdiction noting the child's minimal connections here since the child had resided in Minnesota for the previous six years.

On appeal, the Superior Court in Rennie held that the record supported the trial court's finding that the child had significant contact with Pennsylvania, stressing that the child had initially resided in Pennsylvania for five years and that following the parties' separation the parties' agreed to submit to Pennsylvania jurisdiction. Id. at 1222. The court further cited the fact that following the child's move to Minnesota, father was granted specific periods of custody two or three times per year during which he exercised a total of one month custodial time in Pennsylvania. Id. The child also visited paternal grandparents and other family in Pennsylvania, continued to have friendships in Pennsylvania and maintained connections with father's new family. Id. The court distinguished the facts from Billhime, noting that in addition to visiting Pennsylvania on numerous occasions every year the child also had significant, close Pennsylvania relationships with father, grandparents, step-sisters and friends, which Pennsylvania relationships were lacking in Billhime.⁸ Id. at 1223.

In S.K.C., the Superior Court also found Pennsylvania retained exclusive and continuing jurisdiction to modify the original Pennsylvania custody order based upon the child's significant connection to Pennsylvania. The child in that case resided with her parents in Pennsylvania for twelve years and attended Pennsylvania schools through sixth grade. During the latter portion of this time period, the family spent several months a year in Canada where the parents managed a hunting lodge. The parents separated in 2011 and in May 2012 father moved to Canada with the child to live there. In June 2012, the parents entered an agreed custody order in Pennsylvania under

⁸ Because the Rennie court found the child had a significant connection to Pennsylvania, Pennsylvania retained exclusive and continuing jurisdiction and it was unnecessary to consider whether there was substantial evidence available in Pennsylvania concerning the child's care, protection, training, and personal relationships. Id. at 1223 ("Pennsylvania will retain jurisdiction as long as a significant connection with Pennsylvania exists or substantial evidence is present." Id. at 1221).

which Father had primary physical custody and mother partial physical custody the first week of every month and certain holidays. In July 2012, mother drove five hours to the mid-way exchange point but father failed to appear. In October 2012, mother filed a motion in Pennsylvania seeking to modify custody as well as to hold father in contempt. Father countered with a motion seeking that Pennsylvania relinquish jurisdiction under Section 5422. The trial court denied father's motion and also found him in contempt for failing to provide mother her custodial time.

On appeal, the Superior Court in *S.K.C.* initially decided that “the [jurisdictional] determination must be made based upon the factual circumstances as they existed at the time the modification petition was filed.” *Id.* at 411. The court reiterated the standard set forth in *Rennie* that “a significant connection [exists] where one parent resides and exercises parenting time in the state and maintains a meaningful relationship with the child.” *Id.* at 1222. The court stressed that at the time mother filed her modification petition (October 2012), custody was controlled by the June 2012 order granting mother custody the first week of each month and holidays. Though mother had not seen the child since May 2012 and had not exercised custody in Pennsylvania between June and October of 2012, the court found that “this was not because of a lack of effort on Mother's behalf,” noting father's failure to appear for the June 2012 custody exchange, resulting in the contempt finding. The court went on to hold that mother's lack of actual custodial time did not preclude it from finding a significant connection, reasoning as follows:

Thus, if we were to conclude that Mother was not exercising parenting time with Child between June and October of 2012, then we would be rewarding Father's contempt. **We refuse to incentivize contemptuous behavior on the part of a litigant. Contemptuous behavior should be punished, not rewarded. To reward contempt would undermine the very nature of the judicial process. We therefore conclude that Mother was exercising parenting time within this Commonwealth and maintained a meaningful relationship with Child notwithstanding the actual lack of parental custody time during Summer 2012.** As such, Child had a significant connection with this Commonwealth. *See Rennie*, 995 A.2d at 1222.

Id. at 412-13 (bolding added). The court thus applied the fiction that the child was in mother's custody in Pennsylvania over one dozen times a year, a total of three months custody. *Id.* at 413.

With these legal parameters in mind, I turn to the first issue raised, whether Pennsylvania retains jurisdiction to modify the parties' custody order under Section 5422(a)(1). This court may do so as long as a significant connection with Pennsylvania exists **or** substantial evidence is present

here. Rennie at 1221. With regard to the second prong, little evidence exists in Pennsylvania regarding the child's care, protection, training and personal relationships. 23 Pa.C.S.A. § 5422(a)(1). This court heard only that since moving to Hungary, the Child has maintained a relationship with her paternal grandmother from Lititz via regular international telephone calls and that the Child had visited paternal grandmother over Thanksgiving during her five-week visit to Pennsylvania from October 25 through December 1, 2017. Thus, Pennsylvania cannot maintain jurisdiction under the second prong.

Nevertheless, Pennsylvania maintains jurisdiction under the first prong if there existed a significant connection between the Child and Mother as of November 2017, when Mother filed her custody modification petition. A significant relationship is established “where one parent resides and exercises [her] parenting time in [Pennsylvania] and maintains a meaningful relationship with the child.” S.K.C. at 412. The court thus looks “at the nature and quality of the child's contacts with the parent living in the Commonwealth.” Rennie at 1222

As of November 2017, Mother had had no contact of any sort with the Child in Pennsylvania (or otherwise) since the summer of 2016, a period of approximately 16 months. Thus, were this court to limit its inquiry upon those facts alone, I would find lack of significant connection, under Billhime and A.D. However, the Superior Court’s decision in S.K.C. is applicable here and supports a different inquiry and result. Under this court’s reading, S.K.C. stands for the proposition that where the out-of-state parent with primary physical custody interferes with or thwarts the custodial time of the Pennsylvania parent, the Pennsylvania parent can still prove existence of the child’s significant connection with Pennsylvania, permitting Pennsylvania to retain exclusive and continuing jurisdiction, whereby a court may apply a fiction that the Pennsylvania parent in fact exercised custody in Pennsylvania that he or she would have otherwise exercised without the other parent’s interference or improper behavior.

Before discussing application of the record and S.K.C., it is important to address a difference between this case and S.K.C. There, the Superior Court stressed that the mother intended to exercise custody under the terms of the parties’ custody order, which defined her expected custodial time, for the purpose of evaluating whether the child had a significant connection with Pennsylvania. The Superior Court held that were it to find that the mother had not

exercised custody as permitted in the custody order, it would be incentivizing and rewarding Father's contempt, which denied her custodial time and consequently her ability to prove the existence of a significant connection. Instead, it found that the contemptuous behavior "should be punished, not rewarded" and that to find otherwise would undermine the judicial process. *Id.* at 413.

In this case, unlike in S.K.C., the custody order granted Mother no custodial time and there is no contempt of the order by Father. However, in this court's estimation, this distinction should not render S.K.C. inapplicable. First, the terms of the agreed custody order in this case were ignored by both parties. Father did not relocate by November 2015 and Mother continued to exercise regular periods of custody for almost a year after its entry. Equally important, Father repeatedly led Mother to believe she would one day soon have permanent custody of the Child. Thus, the evidence showed neither party intended to be bound by their custody agreement and as such, it does not define the terms of Mother's rights for the purpose of evaluating her custodial time, as in S.K.C. Most compelling, however, is Father's fraudulent and deceitful representations that he needed custody to protect him and the Child under a witness protection program. Therefore, I found it just and legally sound to apply the holding in S.K.C. to these facts, i.e. to equate Father's fraudulent and deceitful behavior that directly affected Mother's promised custodial time to the contemptuous behavior exhibited by the father in S.K.C., thus not rewarding such behavior.

The evidence fully supports my finding that that the Child would have maintained a significant connection to Pennsylvania had Father not intentionally and repeatedly lied to and emotionally manipulated Mother, actively thwarting and deterring her from exercising custody in Pennsylvania. After the initial custody order was entered, Mother continued to have regular primary custodial periods with the Child through the Summer of 2016. Only a month after Mother last saw the Child, Father promised her she would see the Child during an August beach vacation weekend, but he lied about that. The following month, Father promised that Mother would be able to essentially exercise permanent custody in the very near future wherein "they were all going to be coming back soon." (N.T. 2/27/18 at 16)

When Mother pressed Father for some certainty, Father again lied and led her on telling Mother he was unable to come home or contact anyone because "I will get a chance of getting hurt

or hurting people I contact,”⁹ and that she must keep everything a secret. (N.T. 3/29/18 at 55-56; Exbts. D-22, D-23). When Mother expressed impatience, he wrote to her that she was the most important thing in his life (“you are my first and last love”) and again misled her into believing his situation would be resolved soon (“maybe this [witness protection situation] will not be so long”).¹⁰ (Exbt. D-22)

As noted above, on November 22, 2016, after Mother discovered that Father had married E.S. almost a year earlier, she expressed suicidal thoughts and intense anger at Father and E.S., including making threats against them. Despite this shocking event, both Mother and Father reconciled and continued their relationship. Father and Mother continued to meet at the farmhouse through May 2017. There was little evidence presented for this time period concerning the parties’ communications regarding the Child. As noted, however, Father had been lying to Mother for some time including specifically informing her in September 2016 that he was not allowed to come home with the Child and that people could get hurt, including the Child presumably, if their whereabouts were known. This court found credible that during this time frame, Mother believed Father’s falsehoods including that he and the Child were in danger, their situation must be kept a secret, and it was just a matter of time before everyone would be together, as soon as Father was no longer in witness protection.

Continuing his deceitful and manipulative behavior, throughout June and July of 2017, Father repeatedly promised Mother (in writing) that he would be coming back permanently to live with her and the Child on September 1, 2017, again falsely telling her that he believed the witness

⁹ Father denied that this email, sent September 22, 2017 (included in Exbt. D-23), was authentic and denied he ever sent it to Mother noting a lack of an email address. He suggested it had been “doctored.” (N.T. 3/29/18 at 57-58) Father’s allegation was not credible. The email at issue is consistent in tone and content with many other written communications Father made to Mother and authenticated by Father where Father alludes to his witness protection program participation. See Exbt. D-22 (9/7/16 email telling Mother “I have no idea but this is not a joke don’t tell anybody you can loose [sic] your job if they find out about me”); Exbt. D-32 (8/8/17 text where, after Mother complained about not hearing from the Child, Father replied “Well I can’t help that. I can only keep everyone safe”); Exbt. D-27 (8/26/17 Skype message stating “did you ever think that I don’t have control of my situation, hello you only care about yourself”). Mother adequately authenticated this email later in the hearing. (N.T. 3/29/18 at 85)

¹⁰ Father’s testimony that he never initiated any discussion about witness protection is contradicted by the record, including in this example. As detailed above, the documentary evidence of the parties’ social media communications reflected that Father in fact raised his participation in witness protection on numerous occasions, usually to explain to Mother why he was not able to see her and bring the Child home to live with her.

protection issue should be concluded by September. (Exbt. D-26) Father confirmed his plans to reunite, on August 4, 5, 9, 12, 14 and 16. (Exbts. D-25, D-31) Mother, clearly believing Father, texted the following to him: “Do you promise we will get married right away like in September. Hello. And you promise [E.S.] doesn’t exist at all to you. No contact with her since last July last year. Hello” (Exbt. D-28) Father responded a few minutes later “Yes stop.” (Id.) Though it is unclear to which of Mother’s questions or wishes he was responding – that Father would remarry Mother, that E.S. no longer existed to him and/or that he was no longer in contact with E.S. - his “Yes” to any one of them was undoubtedly meant to mislead Mother into believing Father was moving on from his life with E.S.

After Mother suggested the possibility of custody litigation, Father lied again, writing that his witness protection problem should be resolved by September 2017. (Exbt. D-26) He further threatened that if she went to court she could not fight him and win. (Id.) In early August, after Mother complained about her lack of contact with the Child, Father lied again telling her “I can’t help that. I can only keep everyone safe.” (Exbt. D-32) He further warned Mother that he had not been allowing contact because she would say something she should not (“you tell everything to everyone”) and presumably place the Child in danger. (Id.)

As noted, Father began to retreat from his promises to bring the Child home on September 1, 2017, fraudulently blaming the witness protection program for “stalling.” (Exbt. D-25) Father eventually postponed the Child’s arrival to the next month and strung Mother along with lies through the end of October. During this time period, Father had in fact flown to the U.S. and never once, during his five-week stay, brought the Child to Mother. Father did manage to find time to see Mother alone at the farmhouse, however, during which time they had sex. He lied again by promising her he would bring the Child the next day but never did so. (Exbt. D-9)

Father alleged throughout his testimony that he made up all his lies in order to protect himself, his new wife and the Child from Mother because she was mentally unstable and might harm them. He also claimed that he lied to Mother so that she would not harm herself, including, incredibly, that he repeatedly asked Mother to send him pornography because if he failed to do so, Mother would become depressed and might hang herself or take too many pills. (N.T. 3/29/18 at 83) Father’s excuses for his voluminous lies are completely self-serving and not credible. The

evidence showed that Mother made a few threats to Father and one to E.S. in response to Father not being truthful with her, most notably about being remarried. Her shock and anger were entirely explicable, however, given that Father had recently expressed to Mother that she was the most important thing in his life and continued to have a sexual relationship with her, well after his remarriage to E.S. In any event, Mother never acted upon any threats and Father's claim that he feared her were not remotely credible. It was not Mother who caused Father to lie but instead was Father's lies that caused Mother to react in a predictable manner.

The record revealed that Father never truly intended to live again as a family with Mother and the Child. What he wanted was to have a sexual relationship with Mother while remaining married to E.S., and used the Child as leverage when needed to manipulate and get what he wanted from Mother. This court found credible, through irrefutable documentary evidence of the parties' social media communications, that Mother believed Father's many lies, though she wavered every so often. These communications reflected Mother's desperate desire to be with the Child again. Importantly, the record shows as well that Father was aware of Mother's desperation and knew Mother believed his lies. He manipulated her emotionally and supported his lies with more lies or threats when Mother would wander in the direction of skepticism or disbelief. Most notably, Father used the witness protection program ruse many times to excuse his delay in bringing the Child to her. This massive lie was one he even told his own mother. Father also continually manipulated Mother emotionally, including leading her to believe that he wanted a future together with her and allowing her at one point to believe he had moved on from his life with E.S. and might even (re)marry Mother.

As such, the record fully supports a finding that Father's fraud and misrepresentations actively thwarted and deterred Mother from maintaining and exercising custodial rights in Pennsylvania and/or otherwise manipulated her in a manner that caused her to not pursue custody, which custodial contacts would have been otherwise sufficient to establish exclusive and continuing jurisdiction here. A finding that Mother lacked actual custodial time with the Child in Pennsylvania (between July 2016 through November 2017), would reward Father's extraordinarily deceitful behavior and under S.K.C., it would be unjust and improper to find Pennsylvania no longer has jurisdiction. Id. at 412-13.

Accordingly, as in S.K.C., I will employ the fiction that for jurisdictional purposes, despite her lack of actual parental time, Mother will be assumed to have exercised custody in Pennsylvania for the periods of time she was promised by Father or would have otherwise exercised had he not lied. Had Father followed through on his promises about reuniting as a family and essentially re-setting their relationship as if they were married again, Mother would have been exercising custody as early as September 2016, or at the latest, by September 1, 2017. Assuming the Child was living with Mother full time during either of these periods, the contacts between Mother and the Child in Pennsylvania would have been more than sufficient to prove the Child's significant connection with Pennsylvania inasmuch as Mother would have been exercising regular, daily parenting time here, maintaining a meaningful relationship with the Child. S.K.C. at 412. Mother thus proved a significant connection with the Child in Pennsylvania, establishing exclusive and continuing jurisdiction here.

II. Inconvenient Forum

Father alternatively asserts that to the extent Pennsylvania has properly retained jurisdiction to address Mother's custody modification request, I find Pennsylvania an inconvenient forum and transfer the matter to Hungary. I denied his request.

Under UCCJEA Section 5427(a), a trial court properly having jurisdiction over a child custody dispute may decline to exercise jurisdiction "if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum."¹¹ 23 Pa.C.S.A. § 5427(a). The UCCJEA further requires:

(b) Factors.--Before determining whether it is an inconvenient forum, a court of this Commonwealth shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) the length of time the child has resided outside this Commonwealth;
- (3) the distance between the court in this Commonwealth and the court in the state that would assume jurisdiction;

¹¹ For the purposes of applying UCCJEA, a foreign country is treated as if it is a state unless the custody law of the foreign country violates fundamental human rights. 23 Pa.C.S.A. § 5405.

- (4) the relative financial circumstances of the parties;
- (5) any agreement of the parties as to which state should assume jurisdiction;
- (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) the familiarity of the court of each state with the facts and issues in the pending litigation.

23 Pa.C.S.A. § 5427(b). “The list is not meant to be exclusive.” *Id.*, Uniform Law Comment. The burden is on the moving party to show that the home state is an inconvenient forum and that another state would be a more appropriate forum. *Joselit v. Joselit*, 544 A.2d 59, 62 (Pa. Super. 1988).

This court heard some evidence concerning the first factor, whether domestic violence has occurred and is likely to continue involving the parties and the child. Mother made broad allegations of physical abuse against Father extending from the beginning of her relationship with Father. In addition, Mother’s 2014 PFA petition alleged Father abused her but she subsequently withdrew it and the matter was never litigated. Father also made unsubstantiated claims Mother threatened to kill him and abused the Child by yelling at her. As such, this is not a relevant factor in this case to assess convenience.

The second factor is the length of time the child has resided outside this Commonwealth. The Child has resided outside of Pennsylvania since July 2016. At first glance, this factor weighs in favor of relinquishing jurisdiction to Hungary. I note, however, it would appear appropriate to also extend the logic of S.K.C. to an inconvenient forum analysis, which is that if a party acts in a wrongful or improper manner and thwarts or interferes with the residential time a child would have otherwise had in another forum, had one parent not acted wrongfully or improperly, then the court should consider this circumstance in assessing length of non-Pennsylvania residency. As noted above, Father’s fraudulent and deceitful behavior caused Mother to be unable to exercise custodial time in Pennsylvania between August 2016 and October 2017, including time Father promised the Child would be *residing* with her. Thus, while the Child has resided in Hungary for the last two years and three months (as of the date of this opinion), absent Father’s deceit, the court will infer

that some portion of that time would have involved the Child residing in Pennsylvania, thus tempering the impact of this factor as one weighing in favor of this court relinquishing jurisdiction.

The third factor involves an assessment of the distance between the available forums. Presumably, the Hungarian court where Father registered the Pennsylvania custody order (District Court of Kecskemét) would have jurisdiction over this custody matter should I have decided to transfer the case. In order to travel there, Mother would have to drive numerous hours from her home to an international airport (most likely JFK in Newark, N.J.), fly to the nearest Hungarian international airport, in Budapest, and then drive about one hour to the Hungarian court (near Father's home in Kerekegyháza). According to testimony, this flight usually involves one or two stops and takes about a half day. This would clearly be an onerous trip for Mother. Additionally, there was no evidence presented by Father as to the Hungarian court's resources for taking Mother's testimony remotely and of whether it is equipped to address language and translation concerns. This factor thus weighs in favor of this court exercising jurisdiction.

The fourth factor is the relative financial circumstances of the parties. Mother is a nurse who has recently filed for bankruptcy and currently owes \$150,000 on a home equity loan she took out for Father's benefit. There was little other evidence concerning her expenses and income. Father's primary vocation had been running a restaurant until he sold it in August 2016 for an unknown amount of cash. (N.T. 2/27/18 at 133-34; Exbt. D-17) Since moving to Hungary, Father appears to be employed in a motorcycle shop. Father remains a co-owner of a Pennsylvania real estate holding company, which buys and sells properties. In addition, he still owns the farmhouse in Hummelstown as well as a car registered in Pennsylvania. Father has been able to afford to take many trips between Pennsylvania and Hungary since late 2015.

Should Mother be required to travel to Hungary, it would be at a great expense to her including not only transportation but accommodations, inasmuch as there is no evidence she knows anyone there. Father, on the other hand, has ready access to accommodations should he have to travel to Pennsylvania for custody litigation including staying at his Hummelstown farmhouse or with his mother in Lancaster County. In addition, litigation could be scheduled to coincide with the regular trips he takes to Pennsylvania, reducing his costs. Father thus has much greater financial

ability to litigate a custody action in Pennsylvania than does Mother to litigate in Hungary. This factor weighs heavily in favor of this court exercising jurisdiction.

The fifth factor, whether the parties' entered a forum selection clause, is not applicable.

Regarding the sixth factor, the location of necessary evidence, such evidence would be located for the most part where the relevant witnesses reside. Mother is in Pennsylvania as is the paternal grandmother. Father, the Child and her step-mother are in Hungary, though as noted, Father regularly travels to Pennsylvania. Insofar as proceedings will be held in this court, remote video testimony has already been successfully used and would be available again for witnesses in Hungary. There was no evidence presented by Father as to the capabilities and requirements of the Hungarian court on this issue. As such, this factor weighs in favor of this court exercising jurisdiction.

Concerning the seventh factor, the ability of various courts to expeditiously resolve the matter, the Comment to Section 5427 explains:

In applying subsection (b)(7) on expeditious resolution of the controversy, the court could consider the different procedural and evidentiary laws of the two states, as well as the flexibility of the court dockets. It also should consider the ability of a court to arrive at a solution to all the legal issues surrounding the family. ...

23 Pa.C.S.A. § 5427, Uniform Law Comment. The court in S.K.C. further elaborated on this factor:

[I]t only requires common sense for a trial court to conclude that an issue will be resolved more expeditiously in a forum where proceedings have already commenced and where the trial court has held hearings on the child custody dispute than a forum where proceedings have not commenced and the trial court would have to learn the case anew.

Id. at 417.

Father presented no evidence of the Hungarian court's docket flexibility or of its procedural and evidentiary standards. This court is able to expeditiously address all legal issues that may arise surrounding this family. In addition, as recognized in S.K.C., this court's foray into the issues to date will allow it to more expeditiously resolve future proceedings than would a court learning the case anew. This factor heavily weighs in favor of this court exercising jurisdiction.

The eighth factor is the familiarity of the court with the facts and issues. This factor is similar to the one discussed above. As noted, this court has a history with this custody action while the Hungarian court does not, other than a request by Father to register the Pennsylvania custody order there. This factor similarly weighs in favor of this court exercising jurisdiction.

As noted, the eight listed factors under Section 5427(b) are not exclusive and this court can consider other relevant factors. Most notably, Mother has no connection whatsoever to Hungary and does not speak the language. If the matter were transferred to Hungary, Mother would have to hire a Hungarian attorney in order to be adequately represented and to overcome language barriers. Father has been connected to the Central Pennsylvania area for much of his life. The parties were married here and lived here during their marriage. Father routinely travels here since his move to Hungary. In addition, Father's mother lives in this area, Father maintains an interest in his Pennsylvania business and owns real estate and a car here. All these factors weigh in favor of this court exercising jurisdiction.

Inasmuch as nearly all factors weigh in favor of finding Pennsylvania the more convenient forum, I denied Father's petition to transfer the matter to Hungary.

Accordingly, I entered my order August 17, 2018 overruling Father's preliminary objection challenging Pennsylvania subject matter jurisdiction and denying his motion to transfer venue.

September 26, 2018

Date

Jeannine Turgeon, Judge

Distribution:

Debra R. Mehaffie, Esq.
5000 Ritter Road, Suite 202
Mechanicsburg Pa. 17055
Deb@MehaffieLaw.com

Penelope Boyd, Esq.
535 N. Church St., Suite 313
West Chester, Pa. 19380-2303
penelopeboydlaw@gmail.com