**Rel: September 28, 2018**



# ALABAMA COURT OF CIVIL APPEALS

**SPECIAL TERM, 2018**

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**2170483**

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**Melissa K. Marler**

**v.**

**Julie Lambrianakos**

**Appeal from Madison Circuit Court**
**(DR-17-504)**

THOMPSON, Presiding Judge.

On August 17, 2017, Julie Lambrianakos ("the paternal grandmother") filed in the Madison Circuit Court ("the trial court") a petition seeking to register a foreign judgment under Alabama's version of the Uniform Child Custody

Jurisdiction and Enforcement Act ("the UCCJEA"), § 30-3B-101 et seq., Ala. Code 1975. The paternal grandmother attached to that petition a July 31, 2017, judgment of the Family Court of Kings County, New York, that awarded her grandparent visitation with her grandchild, who was born of the marriage of Melissa K. Marler ("the mother") and John Michael Lambros ("the father"), who is the paternal grandmother's late son.

On August 28, 2017, the mother filed an answer and an emergency motion to stay the visitation award set forth in the New York judgment. In that pleading, the mother argued that, for several reasons, including a purported lack of jurisdiction and a purported failure to provide her adequate notice, the New York judgment was not enforceable in Alabama.

After conducting a hearing, the trial court entered a September 1, 2017, order granting the paternal grandmother pendente lite visitation with the child. The trial court entered a September 12, 2017, order "confirming" the New York judgment, but it vacated that order on that same date on the motion of the mother. On September 13, 2017, the paternal grandmother filed a renewed and amended petition to register the New York judgment, and she sought to have the mother held

in contempt both for violating the provisions of the New York judgment and for failing to comply with the requirements of the trial court's September 1, 2017, pendente lite order. The mother opposed the amended petition to register the foreign judgment and disputed the claims seeking to have her held in contempt.

The trial court conducted an ore tenus hearing on December 4, 2017. Also on that date, it entered an order in which it, among other things, specified that the parties were allowed to submit posttrial briefs. The parties submitted letter briefs to the trial court, and the child's guardian ad litem submitted a report that included a recommendation to the trial court.

On February 15, 2018, the trial court entered an order in which it determined, among other things, that the mother had received the requisite notice from the New York court. The trial court confirmed the registration of the New York judgment. The mother filed a notice of appeal on February 16, 2018.

The trial court's February 15, 2018, order did not address the contempt claims the paternal grandmother had

asserted against the mother.[1] This court reinvested the trial court with jurisdiction, and the trial court entered an August 4, 2018, order in which it certified its February 15, 2018, order as final pursuant to Rule 54(b), Ala. R. Civ. P.

In her appellate brief, the mother argues that this court should overrule G.P. v. A.K.K., 841 So. 2d 1252 (Ala. Civ. App. 2002), "to the extent that it holds that an out-of-state judgment awarding grandparent visitation is a 'child-custody determination' as that term is defined in Alabama's UCCJEA"; the mother asks this court to hold that the UCCJEA does not govern this action. However, the mother did not argue before the trial court that the UCCJEA did not apply in this case. Rather, all of her arguments before the trial court pertained to her contention that, under the UCCJEA, the New York

[1]The issue of the finality of a judgment is jurisdictional, and, therefore, that issue may be addressed by an appellate court ex mero motu. Bryant v. Flagstar Enters., Inc., 717 So. 2d 400, 401 (Ala. Civ. App. 1998); see also Perry v. Perry, 92 So. 3d 799, 801 (Ala. Civ. App. 2012) (the failure to rule on a contempt claim rendered the order nonfinal); and Meek v. Meek, 54 So. 3d 389, 393 (Ala. Civ. App. 2010) (a pending claim alleging contempt for the failure to comply with a pendente lite order renders a judgment nonfinal).

judgment was invalid and could not be properly registered or confirmed in Alabama.

> "The function of an appeal is to obtain judicial review of the adverse rulings of a lower court; thus, it is a well-settled rule that an appellate court's review is limited to only those issues that were raised before the trial court. Andrews v. Merritt Oil Co., 612 So. 2d 409 (Ala. 1992); Crest Construction Corp. v. Shelby County Bd. of Education, 612 So. 2d 425 (Ala. 1992). Issues raised for the first time on appeal cannot be considered. Andrews, supra; Crest Construction, supra; Owens v. National Bank of Commerce, 608 So. 2d 390 (Ala. 1992)."

Beavers v. County of Walker, 645 So. 2d 1365, 1372 (Ala. 1994). See also Shiver v. Butler Cty. Bd. of Educ., 797 So. 2d 1086, 1088 (Ala. Civ. App. 2000) ("[A] reviewing court cannot consider arguments made for the first time on appeal."). The mother's failure to argue or raise this issue before the trial court precludes this court's review of the issue.

Section 30-3B-305, Ala. Code 1975, a part of the UCCJEA, governs the registration of a foreign custody judgment. The first few subsections of that statute--§ 30-3B-305(a), (b), and (c)--set forth the notice requirements for registering a foreign judgment. The mother argues that the trial court lacked subject-matter jurisdiction because, she says, the

record does not demonstrate that the paternal grandmother properly complied with the requirements of § 30-3B-305(a) in seeking to register the New York judgment. The mother is asserting that argument for the first time on appeal; she did not dispute before the trial court the paternal grandmother's compliance with § 30-3B-305(a). In her brief filed in this court, the paternal grandmother maintains, in response to the mother's argument on this issue, that some pages of her initial petition filed in the trial court have been omitted from the record and that she successfully obtained an order from the trial court granting her motion to supplement the record on appeal to include those pages; the paternal grandmother characterizes the omission as a "scanning error" on the part of the trial-court clerk. The trial court granted the motion to supplement, and the omitted pages are contained in the record on appeal, as supplemented.

In her reply brief filed in this court, the mother concedes that the pages were omitted from the record due to a "scanning error." The mother states that "a review of the record prior to May 9, 2018 [(i.e., the date on which the record on appeal was supplemented)], would reasonably lead one

to believe that the [paternal grandmother] had failed to comply with the requirements of Alabama Code § 30-3B-305(a)." The mother contends in her reply brief, in response to the paternal grandmother's request for an award of an attorney fee as a sanction for the mother's argument on this issue,[2] that, based on the record originally submitted to this court, her argument on this issue was not without merit and that, because the issue is jurisdictional, had the record not been supplemented, it would have supported her allegations and "the argument would have been properly presented." Thus, it appears that the mother is no longer asserting this argument on appeal.

The mother also advances several arguments asserting that the trial court erred in confirming the July 31, 2017, New York judgment. The UCCJEA sets forth the methods by which the registration of a foreign judgment may be contested by providing:

> "(d) A person seeking to contest the validity of a registered order must request a hearing within 30

[2]As is discussed later in this opinion, the paternal grandmother has requested an award of an attorney fee, arguing that this argument and others in the mother's brief submitted to this court are without merit.

> days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:
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> > "(1) The issuing court did not have jurisdiction under Article 2 [of the UCCJEA];
> >
> > "(2) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2; or
> >
> > "(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 30-3B-108, [Ala. Code 1975,] in the proceedings before the court that issued the order for which registration is sought."

§ 30-3B-305(d). The mother argues both that the New York court did not have jurisdiction under the UCCJEA, see § 30-3B-305(d)(1), and that she did not receive sufficient notice as required by § 30-3B-305(d)(3).

The evidence presented at the ore tenus hearing reveals the following facts. The mother testified that she, the child, and the child's father had lived in an apartment in New York City from 2008 until the father's death in 2013 and that she and the child continued to reside in that apartment for a short time thereafter. The paternal grandmother filed her grandparent-visitation action in New York on November 20,

2013, which, the mother stated, was approximately one week after the father's death.

The mother admitted that on November 22, 2013, she received service of process of the New York action while she and the child were residing in the New York City apartment. The mother stated that, on the date that she was served, she was in the process of moving from that New York apartment to Alabama to live with her mother.

The mother responded to the New York action from Alabama, and she provided the New York court with her mother's address. The mother explained that she and the child lived with her mother from the time they moved to Alabama in November 2013 through August 2014; it appears that, at that time, the mother moved into her own residence.

In early 2014, just after the paternal grandmother initiated her action in the New York court, the mother filed an action in the trial court, apparently pertaining to the paternal grandmother's visitation claim. Discussions during the ore tenus hearing on the merits in this action demonstrate that, at that time, the trial court had a conference with the New York court, pursuant to the requirements of the UCCJEA,

and that the New York court retained jurisdiction over the grandparent-visitation action. The trial court took judicial notice of that earlier action filed in Alabama and of the UCCJEA conference between the courts; no documentation pertaining to that earlier matter is contained in the record on appeal. It is undisputed that the New York court ruled that it maintained jurisdiction over the grandparent-visitation action initiated by the paternal grandmother in that court.

The mother argues that the trial court erred in entering its February 15, 2018, order because, she says, in entering that order, the trial court did not consider and rule on her argument that the New York court lacked jurisdiction under the UCCJEA to enter the July 31, 2017, judgment. In her initial filings before the trial court, the mother argued that the New York court had lacked jurisdiction to enter the July 31, 2017, judgment because, she said, New York was not the child's home state under the UCCJEA. After a September 28, 2017, status conference, the trial court entered an order setting a hearing on the mother's objection to the confirmation of the New York judgment for December 4, 2017, and ordering, among other

things, that "[i]f [the mother] has any procedural objection to confirmation of [the New York judgment], said objection must be filed by October 6, 2017." (Emphasis in original.)

During the ore tenus hearing before the trial court, the mother briefly argued that the New York court had not had jurisdiction under the UCCJEA to address the grandparent-visitation issue, and she expressed a desire to testify regarding her conclusions about whether the New York court could exercise jurisdiction. The trial court stated that the mother could testify regarding facts such as where she and the child lived but that, because the mother was not present at the hearing as a lawyer, she could not testify regarding her own legal conclusions concerning the New York court's jurisdiction.[3] The mother's attorney responded by stating

[3]The transcript includes the following exchange between the trial court and the mother's attorney in further discussing the trial court's ruling on the issue to be heard at the ore tenus hearing:

> "THE COURT: Well, let me state again. The Alabama court has been very specific about the three things that are at issue for confirmation. The first is that the issuing court did not have jurisdiction. And, you know, if there were issues for example, if there were issues that a party was not living in New York at the time or a party was not, you know, those are factual determinations that may go to the issue

that he did not have questions regarding the facts surrounding the issue of jurisdiction.

After the ore tenus hearing, the trial court entered a December 4, 2017, order stating, in pertinent part:

> "At the commencement of the hearing, the Court specified that the only issue for consideration was the confirmation of the [New York judgment], and that evidence and testimony would be limited to the matters enumerated in Ala. Code Section 30-3B-305.
>
> "Without precluding consideration of other matters, it seemed to the Court that the determinative issue was that raised in Section 30-3B-305(d)--the issue of notice. ..."

The mother, citing the September 28, 2017, order and the December 4, 2017, order, contends that the trial court "erroneously narrowed its scope of review" by failing to consider her arguments pertaining to the jurisdiction of the New York court. The record disproves that argument. The

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> of jurisdiction, let's hear it. But conclusions from a witness that the court didn't have jurisdiction or that process wasn't followed, that's not an issue here. If that's helpful.
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> "[MOTHER'S ATTORNEY]: All right. Well, that's helpful, and I don't think that the questions that I would ask would be appropriate right now."

mother had argued in her early filings in the trial court that the New York court lacked jurisdiction because, she asserted, New York was not the child's home state. In its September 28, 2017, order, the trial court specified that procedural issues would be considered at the December 4, 2017, hearing; thus, it appears that, at that hearing, the trial court did not seek to address the parties' arguments concerning the paternal grandmother's allegations that the mother was in contempt of both the New York judgment and the trial court's September 1, 2017, pendente lite visitation order. At that hearing, as indicated above, the mother was afforded the opportunity to address the issue of jurisdiction, but she did not do so. Rather, she focused on her contention that she had not received notice of the New York proceedings as required by the UCCJEA. The record fully supports the trial court's finding in its December 4, 2017, order that it had not precluded the consideration of other procedural issues, such as whether the New York court had properly exercised jurisdiction, but that the issue that seemed to the trial court to be determinative, apparently based on the mother's focus on that issue, was the issue of notice.

Also, the record indicates that, before the start of the ore tenus hearing, the trial court had asked the parties to brief the issue of notice and that, during the ore tenus hearing, the trial court made clear that it would consider evidence and arguments on any of the bases under § 30-3B-305(d) for contesting the registration of the foreign judgment. The trial court also stated that it would accept the parties' pretrial briefs, which had not yet been submitted to it, or that the parties could incorporate the evidence presented at the ore tenus hearing into posttrial briefs. In its December 4, 2017, order, the trial court set forth deadlines for the parties to file posttrial briefs. Both parties filed posttrial briefs after the December 4, 2017, hearing.

In her 16-page-long, December 12, 2017, posttrial brief, the mother did not present any argument pertaining to the issue of jurisdiction; that brief contains a one-sentence assertion on the issue of jurisdiction, stating: "New York lacked jurisdiction to issue an Order because the Child is a resident of Alabama, not New York, and has been for over four years, including when the operative petition was filed in New

York."[4] As the mother's attorney noted in the ore tenus hearing, however, the mother's contention regarding the jurisdiction of the New York court was briefed extensively in the mother's earlier filings in the trial court.

In its February 15, 2018, order, the trial court focused its ruling on the mother's more extensive arguments concerning notice and did not specifically address the issue of the New York court's jurisdiction under the UCCJEA to enter its July 31, 2017, judgment. We conclude that, in confirming the registration of the New York judgment, the trial court also implicitly denied the mother's argument that the New York court lacked jurisdiction to enter its July 31, 2017, judgment. Given the comments made by the trial court during the ore tenus hearing and the mother's failure to continue to assert arguments pertaining to jurisdiction during the ore

[4]In its February 15, 2018, order, the trial court noted that the mother had filed a supplemental posttrial brief and that the paternal grandmother had responded to that supplemental brief. The trial court ruled that both that supplement and the response should be stricken from the record because both were "outside the scope of what the court allowed in its December 4, 2017, order." Both those supplemental filings have been included in the record on appeal, although the mother did not challenge that part of the February 15, 2018, order excluding those filings from consideration. This court has not considered the supplemental filings.

tenus hearing or in her posttrial brief, we cannot agree with the mother's argument on appeal that the trial court "overly constricted the scope" of its review or that it "failed to consider" the issue of jurisdiction.

With regard to the merits of the issue of jurisdiction, the mother contends that the foreign custody judgment may not be enforced because, she contends, the New York court did not have jurisdiction under the UCCJEA to enter that judgment. See § 30-3B-305(d)("the court shall confirm the registered order unless the person contesting registration establishes that ... (1) [t]he issuing court did not have jurisdiction under Article 2 [of the UCCJEA]"). Although New York's version of the UCCJEA would govern whether the New York court had jurisdiction to consider the grandparent-visitation action, both before the trial court and before this court, the parties have referenced only Alabama's version of the UCCJEA and the caselaw interpreting Alabama's version of the UCCJEA in addressing their respective arguments. "The courts of Alabama do not take judicial notice of the law of a sister state, whether statutory or otherwise." Whitworth v. Dodd,

435 So. 2d 1305, 1307 (Ala. Civ. App. 1983).[5] Thus, the trial court applied Alabama's version of the UCCJEA.

Section 30-3B-201, Ala. Code 1975, a part of Article 2 of the UCCJEA, which is referenced in § 30-3B-305, sets forth the bases pursuant to which a court may make an initial custody determination as follows:

> "(a) Except as otherwise provided in Section 30-3B-204, [Ala. Code 1975,] a court of this state has jurisdiction to make an initial child custody determination only if:
>
> > "(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
> >
> > "(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more

[5]We note that N.Y. Dom. Rel. Law § 76, a portion of New York's version of the UCCJEA, is virtually identical to § 30-3B-201, Ala. Code 1975, governing jurisdiction to make an initial child-custody determination, and that New York's definition of the term "home state" in N.Y. Dom. Rel. Law § 75-a[7], also a part of New York's version of the UCCJEA, is identical to the definition set forth in Alabama's version of the UCCJEA.

> appropriate forum under Section 30-3B-207 or 30-3B-208, [Ala. Code 1975,] and:
>
> > "a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
> >
> > "b. Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;
>
> "(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 30-3B-207 or 30-3B-208; or
>
> "(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).
>
> "(b) Subsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.
>
> "(c) Physical presence of a child is not necessary or sufficient to make a child custody determination."

See also N.Y. Dom. Rel. Law § 76.

The mother argues that New York lacked jurisdiction under § 30-3B-201(a)(1), because, she says, New York "is not the

'home state'" of the child under the UCCJEA. The term "home state" is defined as

> "[t]he state 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 state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of the child or any of the mentioned persons is part of the period."

§ 30-3B-102(7), Ala. Code 1975.

The child was born in 2008 and had lived in New York for her entire life until she moved to Alabama with the mother in late November 2013, when she was almost five years old. The child was still residing in New York at the time the paternal grandmother's grandparent-visitation action was commenced in the New York court; it is undisputed that the mother and the child had not moved from New York when the complaint in the New York action was served on the mother. New York was "[t]he state in which [the] child [had] lived with a parent ... for at least six consecutive months immediately before the commencement of a child custody proceeding." § 30-3B-102(7) (emphasis added). Thus, the evidence supports a conclusion that, at the time the New York grandparent-visitation action

was commenced on November 20, 2013, New York was the child's home state by virtue of the fact that the child had lived with a parent in New York for the six months preceding the commencement of the New York action. § 30-3B-201(a)(1); § 30-3B-102(7).

In her brief on appeal, however, the mother argues that the New York action, while commenced on November 20, 2013, was superseded when the paternal grandmother filed, in late January 2014, an "amended" complaint in the New York action. The mother contends that because, she says, the January 2014 amendment "superseded" the original, November 20, 2013, complaint, the January 2014 complaint replaced the November 2013, complaint.[6] The mother relies on caselaw that states:

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[6]The mother's argument concerning the purported efficacy of the January 2014 amendment is that, at that time, New York was no longer the child's home state, and, therefore, she contends that the New York court could not exercise jurisdiction under § 30-3B-201(a)(1) of the UCCJEA. However, the New York court could also have exercised jurisdiction under § 30-3B-201(a)(2). See also N.Y. Dom. Rel. Law § 76(1)(a). That section provides the New York court jurisdiction if Alabama was not the child's home state, if the child and a parent had a significant connection with New York, and if substantial evidence concerning the child was available in that state. As is discussed later in this opinion, we conclude that the New York court could have properly exercised jurisdiction under the alternative basis set forth under § 30-3B-201(a)(2).

> "'A pleading that has been amended under Rule 15(a) (cf. Rule 15(a), [Ala. R. Civ. P.]) supersedes the pleading it modifies and remains in effect throughout the action unless it subsequently is modified. Once an amended pleading is interposed, the original pleading no longer performs any function in the case and any subsequent motion made by an opposing party should be directed at the amended pleading.'"

Holley v. St. Paul Fire & Marine Ins. Co., 396 So. 2d 75, 79 (Ala. 1981) (quoting 6 Wright and Miller, Federal Practice & Procedure § 1476 at 389-90 (1971)). Again, we note that, because the mother did not present or argue any New York law to the trial court, that court considered Alabama law in determining this issue. See Hammack v. Moxcey, 220 So. 3d 1053, 1059 (Ala. Civ. App. 2016) (when the mother in that case failed to present to trial court Florida law that would indicate that state's laws were different from those of Alabama, "the Alabama trial court was required to presume the law was the same in Florida").

Our supreme court has explained that, as long as an amended complaint relates to the same claim or transaction, the effect of an amended complaint "is to substitute the amended complaint for the complaint as originally filed, the same as though the original complaint had never been filed in

the [action]. The original complaint is superseded by the amended complaint." Lipscomb v. Bessemer Bd. of Educ., 258 Ala. 47, 51, 61 So. 2d 112, 115 (1952).

The mother characterizes the foregoing as requiring that the entire action be deemed commenced on the date of the filing of the amended complaint, in this case in late January 2014. At that time, the mother claims, the child's home state was no longer New York, and, therefore, she contends that New York could not exercise jurisdiction over what she contends was the new commencement of the grandparent-visitation action. In making that argument, the mother ignores Rule 15(c), Ala. R. Civ. P., which governs the relation back of amendments to pleadings. That rules provides, in part: "An amendment of a pleading relates back to the date of the original pleading when ... (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading ...."

The paternal grandmother's January 2014 amended complaint was filed by an attorney, and it reiterated her claim for grandparent visitation asserted in the paternal grandmother's

pro se November 20, 2013, complaint.[7] The mother has made no argument that, under Rule 15(c), that amendment would not relate back to the date of the original filing of the November 20, 2013, complaint. See Ex parte Dowling, 506 So. 2d 340, 341 (Ala. Civ. App. 1986) (an amended complaint related back to the date of the filing of the original complaint). Thus, the paternal grandmother's amended complaint arguably superseded the original, November 20, 2013, complaint. Lipscomb v. Bessemer Bd. of Educ., supra. However, the mother has failed to demonstrate that the amended complaint did not relate back to the date of the filing of the November 20, 2013, complaint. See Rule 15(c), Ala. R. Civ. P.; Ex parte Dowling, supra. Accordingly, the record does not support the mother's argument that, at the time of the commencement of the November 20, 2013, action seeking grandparent visitation, New

[7]In the January 2014 amended complaint, the paternal grandmother acknowledged that the mother and the child were, at that time, residing in Alabama. In that amended complaint, however, the paternal grandmother stated that, "at the date of initial filing," the mother and the child had lived in New York. The January 2014 amended complaint filed in the New York court set forth facts identical to those in the original complaint as well as additional factual allegations. However, the sole claim being asserted in both complaints remained the same, i.e., the paternal grandmother sought an award of grandparent visitation with the child.

York lacked jurisdiction under the UCCJEA to exercise jurisdiction over that action. § 30-3B-102(7); § 30-3B-201(a)(1).

Also, the New York court stated that it could exercise jurisdiction pursuant to New York Domestic Relations Law § 76(1)(b)(ii), which mirrors § 30-3B-201(a)(2). Under that section, the New York court could exercise jurisdiction if Alabama was not the child's home state and the mother and child had a significant connection to New York and substantial evidence was available in New York. See, e.g., J.H. v. C.Y., 161 So. 3d 233, 240 (Ala. Civ. App. 2014) (discussing jurisdiction under § 30-3B-201(a)(2), which is nearly identical to N.Y. Dom. Law § 76(1)(b)). The mother has not contended, and the evidence does not support a conclusion, that Alabama was the child's home state in January 2014. See § 30-3B-102(7) (defining "home state" as "[t]he state in which a child lived with a parent ... for at least six consecutive months immediately before the commencement of a child custody proceeding" (emphasis added)). Rather, the mother argues that the child has lived in Alabama for approximately four years during the pendency of the grandparent-visitation action.

However, the child had lived in New York for her entire life, and was almost five years old at the time she moved to Alabama with the mother in November 2013. The evidence supports a determination that, at the time of the filing of the November 2013 grandparent-visitation complaint and the later, January 2014, amended complaint, both the child and the mother had a significant connection with New York and that substantial evidence pertaining to the action was available in New York. Rather, the argument in the mother's appellate brief is that, in the years since the move to Alabama, the mother and child have had little connection to New York and evidence pertaining to the child is available in Alabama and not in New York. Jurisdiction under the UCCJEA is determined at the time of the commencement of an action. See § 30-3B-201; § 30-3B-102(5); Wahlke v. Pierce, 392 S.W.3d 426, 429 (Ky. Ct. App. 2013) ("[J]urisdiction under the UCCJEA 'attaches at the commencement of a proceeding.'"); Blanchette v. Blanchette, 476 S.W.3d 273, 280 (Mo. 2015) ("[J]urisdiction under the UCCJEA attaches when a custody proceeding commences, i.e., when the first pleading is filed."); and Schirado v. Foote, 785 N.W.2d 235, 243 (N.D. 2010) ("It has long been held that

subject matter jurisdiction is determined at the time a suit is initiated, and to hold otherwise would undermine one of the UCCJEA's central functions by allowing participants to divest a state of jurisdiction by changing the analysis after proceedings have begun.").

Thus, we conclude that the evidence presented to the trial court fully supports a determination that the New York court could properly exercise jurisdiction under N.Y. Dom. Rel. Law § 76[1](b), which is equivalent to § 30-3B-201(a)(2), Ala. Code 1975. Even assuming, therefore, that it could be said that the late January 2014 amended complaint did not relate back to the November 20, 2013, filing date of the original complaint, the record supports a determination that the New York court could have properly determined that it had jurisdiction under the UCCJEA in January 2014. See N.Y. Dom. Rel. Law § 76[1](b); see also § 30-3B-201(a)(2). The mother has failed to demonstrate that the trial court erred in determining that the New York court had properly exercised its jurisdiction over the grandparent-visitation action.

The mother also contends that the New York court's July 31, 2017, judgment cannot be registered and confirmed in

Alabama because, she contends, she did not receive sufficient notice. The mother does not dispute that she received service of process of the paternal grandmother's grandparent-visitation action while the mother and the child were still in New York. Thus, it is clear that the mother had notice of the grandparent-visitation action. The mother contends in her brief on appeal, however, that she was entitled to notice of each of the multiple hearings conducted by the New York court, and, she says, she did not receive that notice.

Section § 30-3B-305(d) provides that a trial court shall confirm a foreign judgment unless, among other things, "[t]he person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 30-3B-108, [Ala. Code 1975,] in the proceedings before the court that issued the order for which registration is sought." § 30-3B-305(d)(3). Section 30-3B-108, Ala. Code 1975, provides:

> "(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

> "(b) Proof of service may be made in the manner prescribed by the law of this state.
>
> "(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court."

In making her argument on this issue, the mother does not address whether notice was provided as specified in § 30-3B-108, which is referenced in § 30-3B-305(d). Rather, the mother argues that the trial court could not enforce the New York judgment if the New York court did not "exercise[] jurisdiction in substantial conformity with" the UCCJEA, and she references § 30-3B-303(a), Ala. Code 1975; that section provides:

> "(a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter [i.e., the UCCJEA] or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter."

The mother contends that she did not receive notice of each hearing upon which she says the New York court based its July 31, 2017, judgment and, therefore, that the notice she received was not in conformity with the requirements of the UCCJEA.

In Hammack v. Moxcey, supra, this court addressed a fact situation similar to the one at issue in this case. In that case, the father filed an action in Florida, and a Florida court entered a final judgment that awarded the father custody of the child born of his relationship with the child's mother; the Florida court also issued a pickup order allowing the father to obtain custody of the child. 220 So. 3d at 1054-55. Thereafter, the mother filed an action in Alabama seeking custody of the child, but the Alabama trial court determined that the Florida court had continuing jurisdiction and dismissed the mother's action. 220 So. 3d at 1055. The father filed in the Alabama trial court a motion seeking to enforce a second pickup order entered by the Florida court. The Alabama trial court granted the father's motion, and the mother appealed. This court concluded that registration of the second pickup order was governed by § 30-3B-313, Ala. Code 1975, which provides that the a court of this state shall accord full faith and credit to an enforcement order issued by a court of another state as long as the order was entered in compliance with the requirements of the UCCJEA. 220 So. 3d at 1058.

The mother in Hammack v. Moxcey, supra, argued that the Florida court's orders should not be enforced by the Alabama trial court because, she contended, she had not received notice of the trial on the merits that resulted in the Florida court's judgment awarding custody to the father. This court, determining that the relevant UCCJEA sections governing that action required notice as provided for in § 30-3B-108, discussed the issue as follows:

> "Section 30-3B-108 requires a court exercising jurisdiction over child custody proceedings to notify each parent of the child at issue so that each parent is afforded an opportunity to be heard on the merits of the case. See, e.g., Blanchette v. Blanchette, 476 S.W.3d 273 (Mo. 2015) (interpreting Mo. Rev. Stat. § 452.762, which requires service and proof of service in accordance with 'the law of this state' or 'the law of the state in which the service is made'). In that regard, § 30-3B-108 coincides with 28 U.S.C. § 1738A(e), a part of the Parental Kidnapping Prevention Act ('the PKPA'), which provides:
>
> > "'Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.'
>
> "See Ex parte C.J.A., 12 So. 3d 1214, 1216 (Ala. Civ. App. 2009).

> "In this case, it is undisputed that the mother had received notice of the Florida child custody proceedings and that she had appeared with counsel in those proceedings so that she had submitted to the jurisdiction of the Florida court. Accordingly, under the UCCJEA, the Florida court did not have to formally notify the mother further that it would continue to exercise jurisdiction over the case. The question, however, is whether a court, in exercising its continuing jurisdiction, must notify a parent of the trial of the child custody dispute in order to meet the requirements regarding notice and an opportunity to be heard under the UCCJEA and the PKPA.
>
> "Although it is clear that a court need not give full faith and credit to a foreign judgment entered without procedural due process, see Pirtek USA, LLC v. Whitehead, 51 So. 3d 291 (Ala. 2010), the failure of a court to give notice to a party of a trial setting does not necessarily imply a denial of due process. In fact, the rule prevailing in this state is that the failure of the clerk of the court to notify a party of a trial setting does not violate procedural due process unless the evidence shows that the clerk voluntarily assumed responsibility of notifying the parties and negligently failed to do so. Ex parte Weeks, 611 So. 2d 259, 262 (Ala. 1992). In the proceedings below, the mother did not present any Florida law to the contrary, see Whitworth v. Dodd, 435 So. 2d 1305, 1307 (Ala. Civ. App. 1983) ('The courts of Alabama do not take judicial notice of the law of a sister state, whether statutory or otherwise.'), so the Alabama trial court was required to presume the law was the same in Florida. See International Paper Co. v. Curry, 243 Ala. 228, 238, 9 So.2d 8, 17 (1942). Accordingly, lack of notice of a trial date did not necessarily render the Florida child custody determination unenforceable."

Hammack v. Moxcey, 220 So. 3d at 1059-60.

This court reiterated that the burden of proof is on the party contesting the registration and confirmation of the foreign judgment. Hammack v. Moxcey, 220 So. 3d at 1060 (citing § 30-3B-308(d)(1)c). In that case, although the mother presented evidence indicating that she had not received notice of the custody hearing, she had also failed to allege or present evidence that the Florida court clerk had undertaken the duty to notify her or had "negligently failed" to notify her of the hearing. 220 So. 3d at 1060. This court then stated:

> "Even assuming that the Florida court had assumed the duty, due process requires only notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950)."

220 So. 3d at 1060. This court affirmed the Alabama trial court's judgment confirming the registration of the foreign judgment. Hammack v. Moxcey, supra.

In its July 31, 2017, judgment, the New York court found, in part:

> "This case has been on the court's calendar for three years and seven months. Numerous appearances were held and testimony was taken on February 23,

> 2016, April 6, 2016, December 20, 2016, January 4, 2017, February 1, 2017, April 19, 2017, and May 8, 2017. It is unfortunate that it took almost four years for a resolution to the matter. Delays were caused in part by the sheer volume of cases the court handles, in addition to the [mother's] dilatory tactics. [The mother], who is an attorney licensed to practice law in the States of New York and Alabama, attempted to circumvent this court's jurisdiction by initiating actions in the Alabama courts which were ultimately dismissed. Furthermore, this jurist and the previous jurist adjourned this matter on several occasions to provide the [mother] an opportunity to appear. However, despite notices from the court to appear and her ability as an attorney who practiced law in the State of New York to review the court's calendar to ascertain when the case was on the calendar, respondent refused or neglected to appear. The respondent mother even called the Part Clerk on two occasions on the date after the case was heard to ascertain what transpired. She was notified of the subsequent court dates and nothing further. However, she failed to appear. As such, the court proceeded to a hearing in respondent's absentia. The petitioner grandmother was represented by retained counsel, Susan Smith, Esq., and the subject child was represented by Louisa Floyd, Esq., who was assigned by the Supreme Court to represent [the child's] interest in the previous matrimonial action."

(Emphasis added.)

Later in that judgment, the New York court also stated:

> "... [I]n the instant matter, despite initially appearing, the respondent mother failed to appear once the case was scheduled for trial. The court provided the mother several opportunities to appear before finally moving forward to conducting the hearing. As such, the mother is now foreclosed from

> asserting the defense that the court failed to hear the nature and basis of her objections to visitation.
>
> "This Court would note that after the mother failed to comply with the Order to produce the child to meet with her attorney so that the court may obtain the child's perspective regarding the nature of the relationship between the [paternal grandmother] and the child, the court appointed evaluator, Ms. Thomsen, accompanied the paternal grandmother on a visit to Alabama to assess the nature of the relationship. Ms. Thomsen testified that the child appeared to enjoy being in her grandmother's presence and sought out opportunities to sit near her grandmother."

The mother claims in her appellate brief filed in this court that she did not receive "sufficient notice" of any of the seven hearings listed by the New York court, i.e., the hearings conducted in 2016 and 2017, in its July 31, 2017, judgment. The mother does not dispute that she had notice of and participated, either by telephone or by submitting documentary evidence, in some earlier hearings conducted in New York. The record also indicates that there were hearings conducted in New York in 2015 of which the mother had notice but in which she did not participate or submit any documents to the New York court. The New York court's judgment indicates that it found that the mother had been provided notice, and also that the mother was capable of checking the

progress of the litigation and had done so on a few occasions. Although the mother testified that she had not received notice, the trial court could have questioned the mother's credibility on that issue. See Ex parte Fann, 810 So. 2d 631, 633 (Ala. 2001) (holding that the presumption of correctness afforded a trial court's judgment is based upon its superior position to evaluate the credibility of the witnesses as they testify); Espinoza v. Rudolph, 46 So. 3d 403, 412 (Ala. 2010) (same).

The mother testified that, in late 2014 or early 2015, after she had terminated the services of her New York attorney, she notified the New York court of her new address, i.e., the one to which she and the child moved when they moved from the maternal grandmother's home in Huntsville. She also stated that she continued to receive notices from the New York court at her previous address, i.e., her mother's home, for some unspecified period. The mother testified that although she did not receive notice from the New York court of a February 2016 hearing, she received actual notice of that hearing from her former attorney; the mother submitted documents to the New York court for its consideration during

that February 2016 hearing. The mother stated that she had checked with the New York court regarding the action after that hearing, but that she did so only that one time.

A litigant, whether pro se or represented by counsel, has the duty of monitoring the status of his or her case. Ex parte State ex rel. J.Z., 668 So. 2d 566, 571 (Ala. 1995); Burleson v. Burleson, 19 So. 3d 233, 239 (Ala. Civ. App. 2009). The mother relies on Knight v. Davis, 356 So. 2d 156 (Ala. 1978), in support of her contention that she did not receive "sufficient notice" of each hearing date. In that case, the defendant's attorney was allowed to withdraw three days before the scheduled trial date, and the trial court then postponed the trial for three days. The defendant was not notified of the withdrawal of his attorney or the rescheduled trial date. Our supreme court reiterated the rule that a party is charged with keeping track of the status of his or her litigation. However, it reversed the default judgment entered in that case, stating:

> "The rule, however, does not contemplate the hybrid situation, presented in the case before us, where the litigant had no knowledge of the setting of the case and his attorney, though having knowledge of the setting, withdrew from the cause with the

> Court's permission a mere three days prior to trial without even relating these facts to his client."

Knight v. Davis, 356 So. 2d at 158. See also Dodds v. Boatner, 376 So. 2d 1107, 1108 (Ala. Civ. App. 1979) (also reversing a default judgment after concluding that the facts of that case were similar to those of Knight v. Davis, supra); Nelson v. Nelson, 381 So. 2d 655 (Ala. Civ. App. 1980) (same).

In this case, however, the mother had terminated the services of her New York attorney some time in 2014 and had elected to proceed pro se in that litigation. The record indicates that the mother participated for some period in the New York litigation, but that she did not do so consistently and did not comply with the New York court's order requiring her to produce the child, and she protested orders allowing pendente lite visitation. The mother stated that, at one point in late 2014 or early 2015, she notified the New York court of her new address in Huntsville. It is clear that she knew the New York action was proceeding. The mother testified that, after the time she says she notified the New York court of her new address, she learned of a contempt hearing from notice she received at her mother's address, and she later learned of the February 2016 hearing from her former attorney.

However, there is nothing to indicate that she took further action to inquire concerning the lack of notice at her new address or that she again attempted to notify the New York court of that address.

It is clear that the mother has resisted visitation between the paternal grandmother and the child at least since the filing of the grandparent-visitation action. Further, the mother, who is an attorney licensed in both Alabama and New York, was capable of inquiring into the status of the ongoing litigation; she stated that she checked with the New York court one time following the February 2016 hearing, and the New York court found that the mother had checked its records on at least two occasions. During the hearing in the trial court, the mother several times referred to the New York court as "purporting" to exercise jurisdiction over the grandparent-visitation action. Thus, the trial court could have concluded that the mother, in resisting allowing visitation between the child and the paternal grandmother, willingly ignored the progression of the New York litigation under her theory (advanced at the trial-court level and in this appeal) that New York lacked jurisdiction to consider the action. Given

the foregoing, together with the findings in the New York judgment indicating that the New York court believed that the mother was intentionally delaying the grandparent-visitation action and the duty of the mother to follow the progress of the litigation, we conclude that the trial court could reasonably have questioned the mother's credibility concerning her lack of notice or knowledge of the New York action. The presumption of correctness afforded a trial court's judgment is based upon its superior position to evaluate the credibility of the witnesses as they testify. See Ex parte Fann, 810 So. 2d at 633; Espinoza v. Rudolph, 46 So. 3d at 412. We cannot say that the mother has demonstrated that the trial court erred in determining that she was not afforded notice consistent with the requirements of the UCCJEA or that the notice provided was not in conformity with that required under the UCCJEA.

The mother also argues that the enforcement of the July 31, 2017, New York judgment "contravenes" Alabama's grandparent-visitation statute, set forth at § 30-3-4.2, Ala. Code 1975. The mother acknowledges that, unless there is a lack of jurisdiction by a court that has entered a foreign

judgment, that foreign judgment is entitled to full faith and credit, and "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." Milliken v. Meyer, 311 U.S. 457, 462 (1940). This court has concluded that the mother has failed to demonstrate that the New York court lacked jurisdiction in entering its July 31, 2017, judgment.

The mother argues that the courts of this state are not required to recognize or enforce a judgment that contravenes this state's public policy. The mother cites Pacific Employers Insurance Co. v. Industrial Accident Commission of California, 306 U.S. 493, 501 (1939), for the proposition that the full faith and credit clause may not be used to "compel[] a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." Pacific Employers involved a dispute regarding competing workers' compensation statutes, specifically, whether a California tribunal could apply its laws and refuse to extend full faith and credit to

Massachusetts laws in an action brought by a Massachusetts employee who was injured when he was temporarily in California. This case, unlike Pacific Employers, does not involve competing grandparent-visitation statutes, however.

The mother argues that because the New York grandparent-visitation statute applies a different evidentiary standard than does the Alabama grandparent-visitation statute, the enforcement of the New York judgment is "repugnant" to Alabama's public policy. In addition to other authority, the mother cites a Tennessee slip opinion in which the Tennessee Court of Appeals determined that the laws under which a Kentucky court entered a grandparent-visitation judgment did not require the same evidentiary burden as did Tennessee's grandparent-visitation statute and that, therefore, the foreign judgment could not be registered in Tennessee for constitutional reasons. That court stated that, "[b]ecause registration of a foreign grandparent visitation order that does not comply with our State's constitutional guarantees would present serious concerns, we conclude that the TUCCJEA registration provision does not apply to foreign grandparent visitation orders." Moorcroft v. Stuart (No. M2013-02295-COA-

R3-CV, Jan. 30, 2015) (Tenn. Ct. App. 2015) (not published in S.W.3d). The mother did not raise this issue, as it is framed in her appellate brief, before the trial court. Before the trial court, the mother cited Moorcroft in her posttrial brief as a part of her argument that she did not receive adequate notice, and she stated briefly that a judgment that does not guarantee the fundamental rights afforded under an Alabama statute may not be enforced in Alabama; she did not cite the constitutional authorities referenced in her appellate brief or contend, as she does on appeal, that G.P. v. A.A.K., 841 So. 2d 1252, 1255 (Ala. Civ. App. 2002), which held that the UCCJEA governs the registration and enforcement of a grandparent-visitation judgment, should be overruled. In her brief on appeal, however, the mother has dedicated a lengthy argument containing citations to constitutional authorities to this issue. Thus, the mother is asking this court to reverse the trial court's judgment on a basis that she did not adequately or thoroughly argue before the trial court. We decline to address an issue not properly presented to the trial court.

> "'Alabama courts may inquire into the jurisdictional basis of a foreign court's judgment sought to be

> enforced in this state, but having determined that jurisdiction was not lacking, the court is required to give full faith and credit to the foreign judgment. Wilson v. Lee, 406 So. 2d 416 (Ala. Civ. App. 1981).'"

D.B. v. P.B., 692 So. 2d 856, 860 (Ala. Civ. App. 1997) (quoting Trillo v. Trillo, 506 So. 2d 1019, 1020 (Ala. Civ. App. 1987)). Alabama courts have held that a grandparent-visitation order may be registered under the UCCJEA. See, e.g., G.P. v. A.A.K., supra; and Garrett v. Williams, 68 So. 3d 846, 848 (Ala. Civ. App. 2011) (holding that the petitioners had not properly complied with the UCCJEA in seeking to register a foreign grandparent-visitation judgment). We conclude that the mother has failed to demonstrate that the trial court erred in registering the July 31, 2017, judgment of the New York court.

The paternal grandmother has requested from this court an award of an attorney fee as a sanction for what she argues is a frivolous appeal taken by the mother. She asserts that several of the mother's arguments are frivolous. We conclude that at least one of the mother's arguments on appeal is without merit and that several have been asserted for the first time on appeal. We award the paternal grandmother an

attorney fee of $5,962.50, representing one-half of her attorney-fee request.

AFFIRMED.

Pittman, Thomas, Moore, and Donaldson, JJ., concur.