IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TANYA BOURGO, *Petitioner/Appellant*,

v.

KEVIN DALE BOURGO, *Respondent/Appellee*.

WILL WILLIS; LEI LANI WILLIS, *Intervenors/Appellants*.

No. 1 CA-CV 16-0254 FC
FILED 2-23-2017

Appeal from the Superior Court in Maricopa County
No. FC2003-006256
The Honorable Howard D. Sukenic, Judge

AFFIRMED

COUNSEL

Tanya Bourgo, Phoenix
Petitioner/Appellant Pro Per

Will Willis, Lei Lani Willis, Fernandina Beach
Intervenors/Appellants Pro Per

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Lawrence F. Winthrop joined.

T H O M P S O N, Judge:

¶1 This appeal arises from the family court's order denying Will Willis and Lei Lani Willis's (grandparents) and Tanya Bourgo's (mother) petition for grandparent visitation. We affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Grandparents are mother's parents, and thus the maternal grandparents of mother's minor child, K.B., who is the subject of this appeal. The child was born in January 2001. K.B. was born out of wedlock to mother and Kevin Dale Bourgo (father). Mother and father married in May 2002. They are also the biological parents of two other children, not subjects of this appeal.

¶3 Mother petitioned for dissolution of marriage with minor children in June 2003. The family court rendered a decree of dissolution in November 2004. As to custody of the minor children, the court ordered that "[m]other shall have parenting time every weekday from 9:00 a.m. until 4:00 p.m. and every other weekend from Saturday at 3:00 p.m. through Sunday at 3:00 p.m." However, in January 2006, both parents agreed on a "Parenting Plan" pursuant to which the family court granted father sole legal custody of the three children, albeit the children would remain in mother's care Monday through Friday 9 a.m. through 4 p.m. and one night every alternating weekend. At the time, it was noted that father would, within the subsequent several weeks, relocate to Portland, Oregon.

¶4 The following month, mother filed an "Emergency Motion" for "sole custody" of the three children and to have them returned to her. The court considered mother's motion a procedurally proper objection to "Father's Motion for Relocation." The court "overruled" mother's objection based upon presented testimony and "pursuant to A.R.S. § 25-608(H) and A.R.S. § 25-408(G)," ordering that the parties shall abide by the terms of the "Parenting Plan." The court, however, further ordered that mother would

have parenting time in Oregon upon 48 hours' notice to father. The record indicates that the children have resided in Oregon since 2006.[1]

¶5 After many years, and circumstances which are irrelevant to this appeal, on March 15, 2016, mother and maternal grandparents, as intervenors, filed a petition in the family court requesting grandparent visitation with K.B. Concluding it no longer has jurisdiction over the matter, the family court issued a minute entry on March 29, 2016, denying the grandparents' visitation request. Grandparents and mother appealed. This court concluded that appeal was premature—because the family court's order was not final under Arizona Rule of Civil Procedure 58(a) as the judge did not sign it.

¶6 On June 6, the family court issued a *nunc pro tunc* order amending its initial minute entry to include the judge's signature. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and pursuant to Arizona Revised Statutes (A.R.S.) §§ 12-120.21 (A)(1) (2016) and -2101 (2016).[2]

DISCUSSION

¶7 Whether the family court has subject matter jurisdiction under Arizona's version of the Uniform Child Custody and Enforcement Act (UCCJEA)[3] is a question of law we review de novo. *Mangan v. Mangan*, 227 Ariz. 346, 350, ¶ 16, 258 P.3d 164, 168 (App. 2011) (citing *In re Marriage of Tonnessen*, 189 Ariz. 225, 226, 941 P.2d 237, 238 (App. 1997) (addressing

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[1] The grandparents' visitation request filed by mother acknowledges that K.B. has lived in Portland, Oregon with her father and stepmother, at least as of 2010.

[2] Absent material changes from the relevant date, we cite a statute's current version.

[3] Arizona adopted the UCCJEA in 2001 as part of a uniform "effort to resolve ambiguity and create consistency in interstate child custody jurisdiction and enforcement proceedings." *Mangan v. Mangan*, 227 Ariz. 346, 350, ¶ 17, 258 P.3d 164, 168 (App. 2011) (citing A.R.S. §§ 25-1001 to -1067) (citations omitted). Section 25-1031 of the Arizona Revised Statutes provides the actual conditions under which Arizona courts may exercise jurisdiction in accordance with the UCCJEA. Section 25-1032 additionally provides that Arizona retains exclusive, continuing jurisdiction until certain conditions arise.

the Uniform Child Custody Jurisdiction Act (UCCJA), which is the predecessor to the UCCJEA)).

¶8 The family court ruled it no longer has jurisdiction of this matter in regards to K.B., pursuant to A.R.S. § 25-1031 (Supp. 2016), because the child has resided in Oregon for several years. We agree that Arizona does not have jurisdiction in this matter. *See* A.R.S. § 25-1031A(1), (2) (Supp. 2010) (indicating that Oregon, not Arizona, would have jurisdiction because Arizona was not the child's home state at the time of, or six months prior to, the grandparents' petition for visitation); A.R.S. § 25-1032A(1) (establishing that Arizona does not have continuing jurisdiction where the child no longer has "a significant connection with this state and . . . substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships").

CONCLUSION

¶9 We affirm the family court's ruling.

AMY M. WOOD • Clerk of the Court
FILED: AA