DIVISION ONE
FILED: 05/01/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	No. 1 CA-CV 10-0654
	)	
FORREST M. SMITH, JR.,	)	DEPARTMENT D
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules of
	)	Civil Appellate Procedure)
AURORA BOREALIS,	)	
	)	
Respondent/Appellant.	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC2009-093743

The Honorable James P. Beene, Judge

AFFIRMED IN PART, REMANDED IN PART, VACATED IN PART

Forrest M. Smith, Jr. — Queen Creek
Petitioner/Appellee *in propria persona*

Aurora Borealis — Denver, CO
Respondent/Appellant *in propria persona*

S W A N N, Judge

¶1 Forrest M. Smith, Jr. ("Father") and Aurora Borealis ("Mother") married in 1997. In 1999, they moved to Mesa, Arizona, where they had Forrest Amber Borealis-Smith ("the Child"). Soon afterward, Father and Mother separated,

eventually divorcing in Arizona in 2002. Later, Mother and the Child moved to Denver, Colorado; child custody proceedings began there in 2003. Then, in 2006, Mother and the Child moved to Austin, Texas. In 2008, the Texas court issued a child custody order, which it modified on April 28, 2009. Under the modified order, Mother had sole custody of the Child, and Father was required to pay $905 per month in child support. Mother and the Child returned to Colorado in September 2009.

¶2 On October 1, 2009, Father filed a copy of the Texas order in the Maricopa County Superior Court. The notice submitted by Father stated that he was filing the Texas order "per pg 27 – Settlement of Future Disputes." Page 27 of the Texas order states: "THE COURT ORDERS that if [Mother] moves away from the state of Texas with [the Child], any subsequent modifications regarding [the Child] shall be conducted in the State of Arizona as long as [Father] resides in Arizona."

¶3 On October 15, 2009, Father submitted a petition to establish child custody, parenting time, and child support in the Maricopa County Superior Court. In his petition, Father requested that the court grant him joint custody. Mother responded and moved to dismiss. In her response, Mother requested that the court consolidate the case created by Father's petition, FC2009-093743, with original case number DR

2000-016993.[1] The court denied Mother's motion to dismiss and set a two-hour hearing for May 12, 2010.

¶4 At the May 12 hearing, Father and Mother each received 50 minutes to present their sides of the case, and each was allowed to cross-examine the other. Both presented exhibits addressing one another's employment status and financial situation. And at several points in the hearing, the court asked questions and received answers from both parties about their own and the other's finances.

¶5 On June 8, 2010, the court issued a signed order. The court found that it had jurisdiction "as Arizona is the 'home state' of the minor child." The order awarded Mother sole legal custody of the Child. It allocated parenting time between Mother and Father as well as their shares of the travel costs (70% for Father, 30% for Mother). And it made the following findings for child support:

Mother's Income	$2,428.00
Father's Income	$6,100.00
Adjustments to Father's Income	$0.00
Adjustments to Mother's Income	$0.00
Basic Support Obligation	$978.00
Over 12 Adjustment	$0.00
Child Care Paid by Mother	$100.00
Health Insurance Paid by Father	$72.66
Health Insurance Paid by Mother	$78.00

[1] In a motion to dismiss filed with this court, Husband provided a copy of a judgment entered against Mother in DR2000-016993. The judgment was an order for the reimbursement of child support paid in dual jurisdictions; it was signed on November 28, 2008.

Extraordinary Child Expense Paid by Father (violin)	$100.00
Parenting Time Adjustment (60 days)	8.50 percent

Based upon those findings, the court ordered Father to pay $775 per month in child support, commencing November 1, 2009.

¶6 On June 18, Mother filed a motion to reconsider the judgment and a motion for a new trial. In both motions Mother argued (1) that she did not have adequate time to present her case and submit her evidence; (2) that the court erroneously admitted evidence; (3) that the court ignored evidence when it determined Father's income; (4) that the court failed to prorate the insurance coverage Father provides the Child; (5) that the order for Father to pay $100 for violin lessons was unjustifiably low; (6) that crediting Father with 60 days of parenting time was an error; and (7) that "back-dating" the order to November 2009 put a "severe financial hardship" on Mother. In her motion to reconsider, Mother took issue with the court's use of the phrase "home state," saying that it was "not factual." The court denied both motions.

¶7 Mother timely appealed from the court's June 8 order and from the denial of her motion for a new trial.[2]

[2] Father moved this court to dismiss Mother's appeal from the June 8 order as untimely. In an order issued January 17, 2011, we noted that Mother's motion for a new trial extended the deadline for filing a notice of appeal.

DISCUSSION

I. JURISDICTION

¶8 Even when jurisdictional issues are not raised on appeal by the parties, it is this court's duty to determine whether it has jurisdiction to consider the appeal. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997). That duty can require us to question the trial court's jurisdiction over a particular matter. *See Ronan v. First Nat. Bank of Ariz.*, 90 Ariz. 341, 344, 367 P.2d 950, 952 (1962). And the court may be correct in concluding that it had jurisdiction, even if it did not reach that conclusion for the correct reason. *Glaze v. Marcus*, 151 Ariz. 538, 540, 729 P.2d 342, 344 (App. 1986) ("We will affirm the trial court's decision if it is correct for any reason, even if that reason was not considered by the trial court.").

A. Jurisdiction Over the Texas Order as to Child Custody

¶9 We begin by addressing the lower court's jurisdiction to enter a child custody order. In her motion to reconsider, Mother pointed out that the court's characterization of Arizona as the Child's "home state" was problematic. She stated:

> The home state of the minor child is Colorado, where the minor child resides 100 percent of the time with Mother, the Sole Custodian. The parties have stipulated to using the Arizona Court in the event that

> there is need for modification and this should be stated within the Order.

¶10 The Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") gives an Arizona court jurisdiction to make an initial child custody determination if it is the child's "home state." A.R.S. § 25-1031(A)(1). But Arizona cannot have been the Child's "home state" under § 25-1031(A)(1), because she did not live here for the requisite six months. *See* A.R.S. § 25-1002(7)(a) (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"). The record indicates that before Father filed his petition in Arizona in October 2009, the Child was living in Texas and then in Colorado -- not in Arizona.

¶11 A.R.S. § 25-1033 allows an Arizona court to modify a child custody determination made by the court of another state only if the Arizona court has the jurisdiction to make an initial child custody determination under either paragraph (1) or (2) of § 25-1031(A). As we just observed, the court did not have that jurisdiction under paragraph (1), because Arizona was not Child's "home state."

¶12 Nor was jurisdiction available under § 25-1031(A)(2). The Texas order provided that Arizona would be the appropriate forum if the child moved from Texas. Even if this provision

could be taken as an order declining jurisdiction by the child's home state, there was no evidence that the child has any substantial connection with Arizona, and A.R.S. § 25-1031(A)(2)(a) therefore operates to defeat jurisdiction. Because the Arizona court did not meet the requirements of either (1) or (2) of § 25-1031(A), it lacked the jurisdiction to modify the Texas order as to child custody under § 25-1033.

B. Jurisdiction Over the Texas Order as to Child Support

¶13 Under the Uniform Interstate Family Support Act ("UIFSA"), an Arizona court may modify a child support order issued in another state. A.R.S. § 25-1311(A). That order must be registered in this state; there must be notice and a hearing; and the record must allow the court to reach certain findings. *Id.* The court may modify the child support order if it finds that:

> This state is the state of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in the record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

A.R.S. § 25-1311(A)(2).

¶14 Here, the Texas order was registered in Arizona when Father filed it in the Maricopa County Superior Court. *See* A.R.S. § 25-1303(A) ("A support order or income withholding

order issued in another state is registered when the order is filed in the registering tribunal of this state."). Father certified that Mother received notice of the filing. Both Mother and Father received a hearing in May 2010. It is undisputed that Father, a resident of Maricopa County, "is subject to the personal jurisdiction of the tribunal." And both Mother and Father have "filed consents in the record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction" because each of them signed the 2009 Texas order. The order states "that if [Mother] moves away from the state of Texas with [the Child], any subsequent modifications regarding [the Child] shall be conducted in the State of Arizona as long as [Father] resides in Arizona." We therefore conclude that the trial court did have jurisdiction to modify the child support order under A.R.S. § 25-1311(A)(2).[3]

[3] Commentary in the Uniform Laws Annotated sheds light on the difference between the UCCJEA and UIFSA and supports the result we reach here:

> Both have similar restrictions on the ability of a tribunal to modify the existing order. The major difference between the two acts results from the fact that the basic jurisdictional nexus of each is founded on different consideration[s]. UIFSA has its focus on the personal jurisdiction necessary to bind the obligor to payment of a child-support order. UCCJEA places its focus on the factual circumstances of the child,

II. MOTHER'S CHALLENGES TO THE CHILD SUPPORT ORDER

¶15 We review child support awards for an abuse of discretion. *In re Engel*, 221 Ariz. 504, 510, ¶ 21, 212 P.3d 842, 848 (App. 2009). And, unless they are clearly erroneous, we will accept the trial court's findings of fact. *Id.*

¶16 Mother points to three principal errors of the trial court in setting the amount for the child support order. First, she says that the court ignored evidence when it determined Father's gross monthly income. But during the hearing, the court discussed with Mother her claim that Father's income should be set at a figure closer to $6,600 rather than the $6,100 it eventually found. The court pointed out that Father had submitted evidence along with his financial affidavit that indicated Father's income was actually $6,108.36. Mother said she would submit her evidence as an exhibit, and she did. The record suggests that the court, as trier of fact, resolved the conflict. That is the trial court's duty, and we find no abuse of discretion. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, 972 P.2d 676, 680 (App. 1998) ("We will defer to the trial court's

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> primarily the "home State" of the child; personal jurisdiction over a parent in order to bind that parent to the custody decree is not required.

Unif. Interstate Family Support Act § 611 cmt. (2001).

determination of witnesses' credibility and the weight to give conflicting evidence.").

¶17 Second, Mother says that the court erred when it credited Father with $72.66 in health care coverage. She claims that Father admitted that his wife and stepchildren were also covered by the insurance policy that covers the Child. She argues that under the Arizona Child Support Guidelines, A.R.S. § 25-320 app. § 9(A) ("Guidelines"), which require the court to prorate insurance coverage in determining child support, Father should only receive $20 in credit. Mother is correct about the proration requirement.[4] During the hearing, Father testified specifically, upon the court's inquiry, that the $72.66 was "[j]ust for the child." Mother, however, points us to an exhibit that shows that Father's cost per paycheck for health insurance is $138.14. That exhibit further shows that the insurance covers the Child as well as Father's spouse and two stepdaughters. The court's finding that Father should be credited $72.66 therefore is clearly erroneous, because it is not mathematically possible to arrive at that figure after proration.

[4] Guidelines § 9(A) states: "In determining the amount to be added, only the amount of the insurance cost attributable to the children subject of the child support order shall be included. If coverage is applicable to other persons, the total cost shall be prorated by the number of persons covered."

¶18 Third, Mother argues that the trial court abused its discretion when it credited Father with a parenting time adjustment of 60 days. The Guidelines allow a court to make parenting time adjustments "when proof establishes that parenting time is *or is expected to be exercised* by the noncustodial parent." Guidelines § 11 (emphasis added). Under the Texas order, Father was entitled to exercise parenting time 60 days per year.

¶19 It is undisputed that the time he actually exercised was drastically less than 60 days. Mother insists that Father himself admitted that his credited days of parenting time should be "zero." But the passage of the transcript Mother refers to suggests otherwise –- a fair reading of the testimony reveals that Father claimed that he exercised very little parenting time because of alienating behavior by Mother. The court heard testimony that providing regular air travel for the Child was frequently difficult for both Mother and Father because of the costs and also the contingencies of flying standby on Mother's passes.

¶20 The court did not find that Mother had impeded Father's access –- it made no finding concerning the reason that Father had not exercised his parenting time in the past, nor did it find that Father was expected to exercise his time in the future. Either finding would have been sufficient to justify

the 60-day credit, but absent such a finding, we can discern no basis for the credit. We therefore remand for further proceedings to determine the appropriate credit.

¶21 We find that Mother's remaining arguments lack merit. She argues that Rule 32(D) of Arizona Family Law Procedure required the court to hold a hearing on her motion to dismiss. This is incorrect. The rule does not require oral argument on every motion.

¶22 Mother next contends that the court erred by not granting her a continuance. It is well settled in Arizona "that a motion for continuance is directed to the sound discretion of the trial court, and unless that discretion has been abused the trial court's ruling will not be disturbed by a reviewing tribunal." *Dykeman v. Ashton*, 8 Ariz. App. 327, 330, 446 P.2d 26, 29 (1968). The question of continuance arose when the parties were discussing exhibits. Mother argues that the denial was an abuse of discretion because she was not given exhibits before trial by Father. But Father testified that he had the exhibits delivered to her in Colorado and that extra copies were available for her to examine in court. The court decided to proceed because the hearing had been scheduled many months earlier and it determined that moving forward was in both parties' best interests. Nothing in the record suggests the court's decision to proceed was an abuse of discretion.

¶23 Finally, Mother argues that it "was not reasonable to limit the hearing to two hours when so many issues were before the court." She claims that as a result of the trial court's "rushing to conclude," Father was permitted to admit evidence that left the court "with a skewed impression of the facts." We disagree. The court set two hours for the hearing and equitably divided the time between Father and Mother, allowing each to speak and to argue without interruption. The record indicates that the court afforded the parties adequate time and did not abuse its discretion in its conduct of the hearing.

CONCLUSION

¶24 We affirm the trial court's June 8 order insofar as it concerns child support, but remand for clarification of the insurance coverage proration and the parenting time adjustment. We vacate the order to the extent that it addresses child custody issues. We deny Mother's request for fees and costs on appeal.

/s/
_____
PETER B. SWANN, Presiding Judge

CONCURRING:

/s/
_____
MICHAEL J. BROWN, Judge

/s/
_____
JON W. THOMPSON, Judge