

STATE OF MICHIGAN
COURT OF APPEALS

STEVE SALTER and KAREN SALTER,

Plaintiffs-Appellees,

v

ROCHELLE LYNN NASH and JEFFREY SEAN
SALTER,

Defendants-Appellants.

UNPUBLISHED

October 28, 2008

No. 282955

Wayne Circuit Court

LC No. 07-727706-DZ

Before: Schuette, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Defendants appeal as of right the order of the circuit court confirming the registration of a Texas child-custody determination. On appeal, they argue that the circuit court erred in registering the Texas order because the Texas court lacked subject-matter jurisdiction under the Uniform Child Custody and Enforcement Act (UCCJEA) to make a child-custody determination with respect to their daughter. We conclude, as did this Court in *Nash v Salter*, ___ Mich App ___; ___ NW2d ___ (Docket No. 282311, issued August 7, 2008), that the circuit court properly recognized and enforced the Texas order because the Texas court had jurisdiction in substantial conformity with the UCCJEA. We affirm.

I. FACTS

This Court set forth the relevant facts in *Nash*, supra, slip op pp 1-2:

This case arises from a custody dispute between [defendants], the parents of the child, and [plaintiffs], who are Jeffrey Salter’s parents. [Defendants] and the child, who was born August 3, 2006, lived with [plaintiffs] in Texas from approximately August 5, 2006, until March 20, 2007. On March 20, 2007, Rochelle Nash moved to Michigan, and, the next day, Jeffrey Salter filed a petition in the district court for the 356th Judicial District of Texas (“the Texas court”), asking that court to enter an order making him “sole managing conservator” of the child. On or about May 20, 2007, Jeffrey Salter moved to Michigan with the child. He apparently did not further pursue the petition for custody. The child resided in Michigan with both [defendants] commencing on or about May 21, 2007. On July 23, 2007, [plaintiffs] filed a “Petition in Intervention of Grandparents in Suit Affecting the Parent-Child Relationship” in

the Texas court. They claimed that “appointment of [defendants] as joint managing conservators would not be in the best interest of the child because the appointment would significantly impair the child’s physical health or emotional development,” and asked the Texas court to appoint them joint managing conservators with the “exclusive right to designate the primary residence of the child.”

[In LC No. 07-722692-DC, defendants] filed their complaint for determination of jurisdiction and custody in the Wayne Circuit Court (“the Michigan court”) on August 22, 2007. They argued that the Texas court did not have jurisdiction under the UCCJEA and that the Michigan court had jurisdiction. Accordingly, [defendants] asked the Michigan court to award them custody of the child.

On October 1, 2007, the Texas court entered an order appointing [plaintiffs] temporary sole managing conservators and [defendants] temporary possessory conservators of the child. The Texas court’s order provided that [plaintiffs] had the right to physical custody of the child and that [defendants] were to have possession of the child at times mutually agreed upon in advance by the parties. The order further provided that [plaintiffs] “shall take immediate possession of the child at [defendants’] residence” in Michigan. [Brackets added.]

In the instant case, LC No. 07-727706-DZ, plaintiffs filed, on October 16, 2007, a request for registration of the Texas court’s October 1, 2007, custody order, as well as an earlier temporary restraining order. They also filed, on October 22, 2007, a petition in the Michigan court to enforce the orders of the Texas court under the UCCJEA. They alleged that defendants violated the Texas court’s temporary restraining order by failing to appear and produce the child at a hearing before the Texas court. Plaintiffs asked the court to dismiss defendants’ pending action for custody and order the child to be returned to Texas under the Texas court’s October 1, 2007, order.

On November 7, 2007, the same day that the Michigan court entered an order in LC No. 07-722692-DZ, dismissing defendants’ complaint for custody for lack of subject-matter jurisdiction, which was the order appealed from in *Nash, supra*, it granted plaintiffs’ request for entry of an order confirming registration of the Texas custody order. The child has resided with plaintiffs in Texas since December 3, 2007. Defendants have returned to Texas to be near the child. *Nash, supra*, slip op p 2.

II. STANDARD OF REVIEW

Whether a trial court has subject-matter jurisdiction is a question of law that we review de novo. *Atchison v Atchison*, 256 Mich App 531, 534; 664 NW2d 249 (2003). However, once jurisdiction is established, the trial court has discretion to determine whether to exercise jurisdiction under the UCCJEA. *Young v Punturo (On Reconsideration)*, 270 Mich App 553, 560; 718 NW2d 366 (2006). We reverse only where there has been an abuse of that discretion. *Id.* We review issues of statutory interpretation, including the interpretation of the UCCJEA,

codified in Michigan as MCL 722.1101 *et seq.*, de novo as questions of law. *Atchison, supra* at 534-535.

III. ANALYSIS

Defendants argue on appeal that the Michigan court erred in recognizing and enforcing the Texas custody order because the Texas court did not have jurisdiction under the UCCJEA by virtue of plaintiffs' July 23, 2007, petition. However, we find that the Michigan court properly recognized and enforced the Texas custody order.

Under section 303 of the UCCJEA, codified in Michigan as MCL 722.1303(1), "[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 that was in substantial conformity with this act." Section 201 of the UCCJEA sets forth the basic jurisdictional requirement for making an initial custody determination, and is codified in Michigan as MCL 722.1201, which provides:

(1) Except as otherwise provided in section 204,^[1] a court of this state has jurisdiction to make an initial child-custody determination only in the following situations:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state^[2] of the child within 6 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.

(b) A court of another state does not have jurisdiction under subdivision (a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 207 or 208, and the court finds both of the following:

(i) The child and the child's parents, or the child and at least 1 parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

¹ "Section 204, MCL 722.1204, provides for temporary emergency jurisdiction in a court of this state 'if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.'" *Nash, supra*, slip op p 3 n 1. This provision is not at issue in this appeal because defendants did not make such an allegation in their complaint.

² MCL 722.1102(g) defines "home state" as "the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding."

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(c) All courts having jurisdiction under subdivision (a) or (b) have declined to exercise jurisdiction on the grounds that a court of this state is the more appropriate forum to determine the custody of the child under section 207 or 208.

(d) No court of another state would have jurisdiction under subdivision (a), (b), or (c).

(2) Subsection (1) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child-custody determination.

As this Court held in *Nash, supra*, slip op pp 7-8, the Texas custody proceeding was commenced by Jeffrey Salter's filing of his petition for custody on March 21, 2007, rather than by plaintiffs' filing of their petition in intervention on July 23, 2007. On March 21, 2007, Texas was the child's home state because the child had resided in Texas for at least six months before the commencement of that proceeding. UCCJEA, § 102(7); MCL 722.1102(g). Therefore, the Texas court had jurisdiction to make an initial custody determination. UCCJEA, § 201(a)(1); MCL 722.201(1)(a); *Nash, supra*, slip op pp 7-8. Further, because the Texas court properly exercised jurisdiction, the Michigan court was required to recognize and enforce the Texas custody order. MCL 722.1303(1).

Defendants also claim that the Texas court's exercise of jurisdiction was not in substantial conformity with the UCCJEA for several other reasons. First, they claim that plaintiffs failed to file their petition under the UCCJEA. This Court addressed this argument in *Nash, supra*, slip op p 11:

While it is clear that this custody dispute is governed by the UCCJEA, [defendants] cite no authority for the proposition that [plaintiffs] were required to "file the case under the UCCJEA," (emphasis added), or articulate precisely what they mean by that, and although section 209 of the UCCJEA contains certain pleading requirements, the remedy for lack of such information is a stay of the proceedings, either upon motion of a party or the court. UCCJEA, § 209(b).

Second, defendants argue that the Michigan court was required "to hold that the Texas court was not exercising jurisdiction that was in substantial conformity with the UCCJEA" because the Texas court failed to determine whether Texas was the child's home state as required by section 201. However, under MCL 722.1303(1), the Michigan court was required to "recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction that was in substantial conformity with this act." As this Court has held, the Texas court had jurisdiction under the UCCJEA because it was the child's home state on

March 21, 2007. *Nash, supra*, slip op p 7. Nothing in the language of MCL 722.1303 suggests that the Michigan court would be required or permitted to disregard the Texas court's order if that court failed to make a determination regarding the child's home state. In any event, this Court cannot determine whether the Texas court failed to determine whether Texas was the child's home state because defendants have not provided a record of the Texas proceedings.

Third, defendants argue that the Texas court's exercise of jurisdiction was not in substantial conformity with the UCCJEA because plaintiffs' petition in intervention failed to meet several pleading requirements of section 209. Section 209(a) is codified in Texas as Tex Fam Code Ann § 152.209(a), which provides, in part, as follows:

[E]ach party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

In *Nash, supra*, slip op p 7, this Court addressed defendants' arguments regarding the requirements of section 209 as follows:

Jeffrey Salter's initial petition in the Texas court contains only the child's county of residence. Further, the petition states only that, "[n]o court has continuing jurisdiction of this suit or of the child [sic] the subject of this suit," and "[t]here are no court-ordered conservatorships, court-ordered guardianships, or other court-ordered relationships affecting the child [sic] the subject of this suit." The record does not reflect that there is an affidavit included with this petition, and it is not clear whether an affidavit was filed with the petition in the Texas court. Defendants' Petition in Intervention contains exactly the same information, and, again, it is not clear whether an affidavit was also filed.

Nevertheless, the Texas court was not *required*, under section 209 of the UCCJEA, to take any action as a result of the deficiency of the parties' pleadings.

Under subsection (b), a court “may” stay the proceedings if the information set forth in subsection (a) is not provided. There is nothing in the language of the provisions of the UCCJEA cited by plaintiffs to indicate that the inadequacy of the pleadings under section 209 deprived the Texas court of subject matter jurisdiction, and that the Michigan court therefore erred in declining to exercise jurisdiction on that basis.

Therefore, we find that the Michigan court properly enforced the Texas custody order because the Texas court’s exercise of jurisdiction was in substantial conformity with the UCCJEA. MCL 722.1303(1).

Defendants also argue on appeal that because plaintiffs could not validly intervene into the custody action commenced by Jeffrey Salter on March 21, 2007, the date of the commencement of the proceeding could not be considered March 21, 2007. Again, this Court addressed this argument in *Nash*, slip op pp 7-8:

Jeffrey Salter filed his petition in the Texas court on March 21, 2007. Thus, as already discussed, Texas was the child’s home state on the date of the commencement of the proceeding, UCCJEA, § 201, because the child had resided in Texas for at least six months immediately before the commencement of that proceeding. UCCJEA, § 102(7). This means that Texas had jurisdiction to make an initial child custody determination. [Defendants] argue, however, that July 23, 2007, the date [plaintiffs] filed their petition in intervention, should be considered the date of the commencement of the proceeding. They base this argument on the claim that process was never served in connection with Jeffrey Salter’s petition (the parties stipulated that Rochelle Nash was not properly served), and “because the matter had become completely moot as of May 21, 2007[,] when Jeffrey Salter and the child arrived at their new residence in Michigan,” and Jeffrey Salter “abandoned” his petition. They therefore argue that [plaintiffs’] petition for intervention should be treated as an original filing, and the relevant date for determining whether Texas had jurisdiction was July 23, 2007. Because [defendants] cite no legal authority that compels the conclusion that the Michigan court was required or permitted to disregard the date of the initial filing, they have abandoned this issue. See *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003) (“An appellant may not . . . give issues cursory treatment with little or no citation of supporting authority. . . . [F]ailure to properly address the merits of [the appellant’s] assertion of error constitutes abandonment of the issue.”).

[Defendants] essentially ask this Court to determine that the Texas court should have dismissed Jeffrey Salter’s petition as moot, or otherwise disregarded it for purposes of determining the date of the commencement of the Texas proceeding. However, this Court’s role in this appeal is not to consider the propriety of the Texas proceedings under Texas law. It is simply to determine

whether the Michigan court properly declined to exercise jurisdiction to determine the custody issues between the parties. The only relevance of [defendants'] arguments in connection with this issue to questions before the Michigan court below and this Court on appeal is as they pertain to section 206 of the UCCJEA³: the Michigan court was not permitted to exercise its jurisdiction if, at the time of the commencement of the proceeding, a child custody proceeding had been commenced in a court of another state having jurisdiction substantially in conformity with this act. For purposes of this inquiry, the Texas proceeding was commenced when Jeffrey Salter filed his petition on March 21, 2007. "Commencement' means the filing of the first pleading in a proceeding." UCCJEA, § 102(5). Thus, a proceeding had been commenced, within the meaning of MCL 722.1206(1), at the time [defendants] filed their complaint in the Michigan court, and, on March 21, 2007, Texas was the child's home state and Texas therefore had jurisdiction to make an initial custody determination under section 201 of the UCCJEA. Accordingly, the Michigan court was not permitted to exercise jurisdiction.

Therefore, as this Court determined in *Nash, supra*, slip op pp 7-8, March 21, 2007, is properly considered the date of the commencement of the Texas proceeding, and because Texas was the child's home state on that date, the Texas court had jurisdiction to make an initial custody determination under section 201(a)(1). Accordingly, the Texas court "exercised jurisdiction that was in substantial conformity with this act," and the Michigan court was required to recognize and enforce its custody determination. MCL 722.1303(1).

Finally, defendants argue that the Texas court did not have "extended home state jurisdiction" or "significant connection jurisdiction" under the UCCJEA. However, because this Court has already held that the Texas court had jurisdiction under the UCCJEA by virtue of Texas being the child's home state on the date of the commencement of the Texas proceeding, we need not address defendants' argument that the Texas court lacked "extended home state

³ Section 206 of the UCCJEA, as codified in Michigan, MCL 722.1206, requires a court of this state to decline to exercise jurisdiction "if, at the time of the commencement of the proceeding, a child-custody determination has been commenced in a court of another state having jurisdiction substantially in conformity with" the UCCJEA. Section 206 was the relevant provision in *Nash, supra*, because the issue there was whether the Michigan court properly declined to exercise jurisdiction. The relevant provision in this case is section 303, codified in Michigan as MCL 722.1303, which requires a court of this state to "recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction that was in substantial conformity with this act." The analysis is the same: if the Texas court's exercise of jurisdiction was in substantial conformity with the UCCJEA, the Michigan court was required to decline to exercise jurisdiction and recognize the Texas custody order.

jurisdiction” and “significant connection jurisdiction.”⁴ See *Nash, supra* at 8.

Affirmed.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald

⁴ As this Court explained in *Nash, supra*, slip op p 8 n 8:

Under section 201 of the UCCJEA, a state has “extended home state jurisdiction” where it “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.” UCCJEA, §201(a)(1); Comment, § 201. A state has “significant connection” jurisdiction where no other state has home state or extended home state jurisdiction, or “a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum,” and “the child and the child’s parents, or the child and at least one parent or person acting as a parent, have a significant connection with this State concerning the child’s care, protection, training, and personal relationships.” UCCJEA, § 201(a)(2).