

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA A. SCHUMACHER,
Plaintiff-Appellant,

UNPUBLISHED
August 26, 2010

v

CARL STEEN and CATHY STEEN,
Defendants-Appellees.

No. 294593
Cass Circuit Court
LC No. 09-000444-DC

Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

PER CURIAM.

This case involves a child visitation dispute between plaintiff and defendants, the paternal grandparent's of plaintiff's child. Plaintiff appeals as of right from a circuit court order in which the court (1) declined to register a Minnesota divorce judgment and custody order in Michigan; (2) denied plaintiff's motion to suspend defendants' grandparent visitation and granted defendants' motion for summary disposition on jurisdictional grounds; and (3) dismissed as moot defendants' motions for appointment of a guardian ad litem and request to compel plaintiff to submit to a psychological evaluation. We affirm in part and reverse in part.

I. BASIC FACTS AND PROCEEDINGS

Plaintiff was formerly married to defendants' son. They had one child together. In May 2008, the couple was divorced pursuant to a judgment entered by a court in Minnesota, where the two were then living. The divorce judgment awarded plaintiff sole custody of the child, but also recognized that defendants, who are residents of Michigan, had obtained an order for grandparent visitation, which the Minnesota court allowed to continue. In September 2008, the Minnesota court issued an order allowing plaintiff to leave that state and relocate to Illinois. Defendants' son subsequently died in October 2008. In approximately November 2008, plaintiff moved from Illinois to Indiana. Plaintiff never registered the Minnesota custody orders in Indiana or sought to invoke that state's jurisdiction in a custody proceeding while she and the child resided there. In April 2009, defendants obtained an order from the Minnesota court expanding their grandparent visitation rights.

On June 9, 2009, the same day that plaintiff and her new husband moved into an apartment in Edwardsburg, Michigan, plaintiff filed this action in Michigan to register the Minnesota divorce judgment pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act ("UCCJEA"), MCL 722.1101 *et seq.* Plaintiff later sought to also register the

September 2008 Minnesota order that allowed her to leave Minnesota with her child. She also filed a supplemental motion to suspend defendants' grandparenting time. Despite moving into an apartment in Michigan, plaintiff continued to work in Indiana and enrolled her son in school in Indiana. Plaintiff later admitted that she relocated to Michigan on the advice of her attorney.

Defendants opposed plaintiff's request to register the Minnesota orders and informed the court that the orders that plaintiff was attempting to register had been modified. Defendants also moved for summary disposition for lack of jurisdiction, but additionally filed motions to compel plaintiff to submit to a psychological evaluation, and for the appointment of a guardian ad litem to represent the child's best interests. The trial court conducted an evidentiary hearing and also conferred with the assigned judge in the Minnesota case. The court thereafter declined to exercise jurisdiction pursuant to the UCCJEA and, accordingly, denied plaintiff's motion to suspend defendants' grandparent visitation and granted defendants' motion for summary disposition on jurisdictional grounds. The court also declined to register the Minnesota divorce judgment and custody order offered by plaintiff, and dismissed as moot defendants' motions for appointment of a guardian ad litem and request for a psychological evaluation. This appeal followed.

I. STANDARD OF REVIEW

The trial court ruled that it lacked subject-matter jurisdiction and that Minnesota had jurisdiction to enter the orders relating to the child's custody and defendants' grandparent visitation. This Court reviews a trial court's summary disposition decision de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although defendants moved for summary disposition under both MCR 2.116(C)(1) (lack of personal jurisdiction), and MCR 2.116(C)(4) (lack of subject-matter jurisdiction), the trial court's decision focused on the latter. Further, there appears to be no dispute that the trial court had personal jurisdiction over the parties, who were all living in Michigan at the time the action was filed. Thus, MCR 2.116(C)(4) is the appropriate subrule to apply. "Jurisdictional questions under MCR 2.116(C)(4) are questions of law that are also reviewed de novo." *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). "When reviewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show there was no genuine issue of material fact." *Bock v Gen Motors Corp*, 247 Mich App 705, 710; 637 NW2d 825 (2001).

With respect to questions of jurisdiction under the UCCJEA, this Court has stated:

"Whether a trial court has subject-matter jurisdiction presents a question of law that this Court reviews de novo." *Atchison v Atchison*, 256 Mich App 531, 534; 664 NW2d 249 (2003). However, "the determination whether to exercise jurisdiction under the UCCJEA [is] within the discretion of the trial court, and would not be reversed absent an abuse of that discretion." *Young v Punturo (On Reconsideration)*, 270 Mich App 553, 560; 718 NW2d 366 (2006). The jurisdictional determination in this case involves the UCCJEA, codified in Michigan as MCL 722.1101 *et seq.* We review issues of statutory construction de novo as questions of law. *Atchison, supra* at 534-535. We also review constitutional questions de novo. *Blackburne & Brown Mortgage Co v Ziomek*,

264 Mich App 615, 620; 692 NW2d 388 (2004). [*Nash v Salter*, 280 Mich App 104, 108-109; 760 NW2d 612 (2008).]

In reviewing a trial court's exercise of discretion,

an appellate court should defer to the trial court's judgment, and if the trial court's decision results in an outcome within the range of principled outcomes, it has not abused its discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). The abuse of discretion standard acknowledges that there are circumstances in which there is no one correct outcome. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). [*Jamil v Jahan*, 280 Mich App 92, 100; 760 NW2d 266 (2008).]

II. APPLICABILITY OF THE UCCJEA

Plaintiff primarily argues that the trial court erred in applying the UCCJEA to this case. Plaintiff contends that Michigan's version of the UCCJEA does not apply to orders relating to grandparent visitation and, accordingly, the trial court erred in recognizing those orders issued by the Minnesota court. We disagree.

The trial court's initial task in this case was to determine if another state had jurisdiction. Before a court in this state may make an initial child-custody determination, it must determine whether an out-of-state child-custody proceeding has already commenced. MCL 722.1206; *Fisher v Belcher*, 269 Mich App 247, 253-254; 713 NW2d 6 (2005). MCL 722.1206 provides, in relevant part:

(1) Except as otherwise provided in section 204 [MCL 722.1204], a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 207 [MCL 722.1207].

(2) Except as otherwise provided in section 204 [MCL 722.1204], before hearing a child-custody proceeding, a court of this state shall examine the court documents and other information supplied by the parties as required by section 209 [MCL 722.1209]. If the court determines that, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the child-custody proceeding.

In this case, it was undisputed that a child-custody proceeding had previously been commenced in Minnesota. Thus, the trial court was required to determine if, pursuant to MCL

722.1206(1), that court's jurisdiction (1) was substantially in conformity with this state's version of the UCCJEA and, if so, (2) whether the Minnesota proceedings had been terminated or should be stayed because this state is a more convenient forum. MCL 722.1206(2) also required the trial court to confer with the Minnesota court to determine whether it should proceed with the hearing or dismiss it in favor of the Minnesota court's jurisdiction. Thus, under MCL 722.1206, whether Michigan could exercise jurisdiction in this matter depended first on whether Minnesota had exercised jurisdiction in a child-custody proceeding "substantially in conformity" with Michigan's act.

As plaintiff argues, Michigan's version of the UCCJEA appears to be limited to custody orders between parents and does not specifically extend to orders relating to visitation with nonparents. The UCCJEA is intended to resolve jurisdictional disputes relating to "child-custody determinations" or "child-custody proceedings." See MCL 722.1201, MCL 722.1202, and MCL 722.1203. These terms are defined in MCL 722.1102 as follows:

(c) "Child-custody determination" means a judgment, decree, or other court order providing for legal custody, physical custody, or *parenting time* with respect to a child. Child-custody determination includes a permanent, temporary, initial, and modification order. Child-custody determination does not include an order relating to child support or other monetary obligation of an individual.

(d) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or *parenting time* with respect to a child is an issue. Child-custody proceeding includes a proceeding for divorce, separate maintenance, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. Child-custody proceeding does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under article 3 [MCL 722.1301 *et seq.*]. [Emphasis added.]

Plaintiff argues that, under these definitions, Michigan does not recognize orders relating to grandparent visitation as being subject to the UCCJEA. Thus, plaintiff appears to contend that she could register the Minnesota divorce judgment and the September 22, 2008, order granting her full custody of the child and allowing her to leave Minnesota, but that defendants could not similarly assert their visitation rights under the Minnesota orders, or have standing to argue that Minnesota has jurisdiction under the UCCJEA. We disagree.

We believe that Minnesota's version of the UCCJEA is in substantial conformity with this state's version. Minn Stat Ann 518D.201(a) generally provides that Minnesota has jurisdiction to make "an initial child custody determination" if Minnesota was the child's home state on the date of the commencement of the proceeding, or it was the child's home state six months before then and at least one parent, or a person acting as a parent, continues to reside in the state and no other state has exercised jurisdiction. Here, the parties do not dispute that Minnesota was the child's home state when the Minnesota divorce proceeding commenced.

The Minnesota act, like Michigan's act, contains definitions of "child-custody determination" and "child-custody proceeding." Those terms are defined in Minn Stat Ann 518D.102(d) and (e) as follows:

(d) “Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or *visitation* with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(e) “Child custody proceeding” means a proceeding in which legal custody, physical custody, or *visitation* with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under sections 518D.301 to 518D.317. [Emphasis added.]

Because the definitions of “child-custody determination” and “child-custody proceeding” in the Minnesota statute encompass orders “providing for . . . visitation with respect to a child” and proceedings in which “visitation with respect to a child is an issue,” we believe that Minnesota’s version of the UCCJEA applies to orders or proceedings relating to grandparent visitation. Thus, the Minnesota orders granting defendants visitation rights are subject to Minnesota’s UCCJEA.

The commencement of an action under the UCCJEA is defined by the filing of the first pleading in the proceeding, *Fisher*, 269 Mich App at 259-260; MCL 722.1102(e); see also Minn Stat Ann 518D.102(f), which in this case was the Minnesota complaint for divorce that was filed in 2007. Defendants’ grandparent visitation rights were recognized in that proceeding, which clearly involved both a child-custody proceeding and a child-custody determination.

We disagree with plaintiff’s suggestion that the trial court should not have recognized Minnesota’s jurisdiction because its definitions of “child-custody determination” and “child-custody proceeding” are not identical to Michigan’s definitions of those terms, given that the former refers to “visitation” whereas the latter refers to “parenting time.” Under MCL 722.1206, it is not necessary that each state’s act be identical. They need only be “substantially in conformity,” or the other state must have exercised jurisdiction “substantially in accordance” with Michigan’s version of the UCCJEA. Despite some differences in terminology in the two acts, we believe that they are substantially in conformity with each other.

Plaintiff’s reliance on this state’s definitions of “child-custody proceeding” or “child-custody determination” in MCL 722.1102 is misplaced, because those definitions are not dispositive. Rather, what is important is that Minnesota’s version of the UCCJEA is in substantial conformity with Michigan’s version, and that Minnesota, where the custody and grandparent visitation orders were issued, recognizes requests for grandparent visitation as being subject to that state’s version of the UCCJEA.¹

¹ Accordingly, we need not decide whether Michigan’s version of the UCCJEA may be
(continued...)

Therefore, the trial court did not err in looking to the UCCJEA to determine whether it should exercise jurisdiction in this case.

III. THE TRIAL COURT'S APPLICATION OF THE UCCJEA

By attempting to register the Minnesota divorce judgment and custody order, plaintiff was seeking jurisdiction in Michigan to enforce those orders. See MCL 722.1304. However, plaintiff also sought to modify those orders to the extent that they related to defendants' grandparent visitation. Plaintiff argued that Minnesota no longer had jurisdiction in the matter, given that she and the child no longer lived there and the child's father was deceased, and therefore the trial court could exercise jurisdiction to modify the Minnesota orders.

While this state can enforce a registered judgment of another state, it may not modify it, except in accordance with article 2 of the UCCJEA. MCL 722.1305.

MCL 722.1203 provides:

Except as otherwise provided in section 204 [MCL 722.1204], a court of this state shall not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial child-custody determination under section 201(1)(a) or (b) [MCL 722.1201(1)(a) or (b)] and either of the following applies:

(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 202 [MCL 722.1202] or that a court of this state would be a more convenient forum under section 207 [MCL 722.1207].

(b) A court of this state or a court of the other state determines that neither the child, nor a parent of the child, nor a person acting as a parent presently resides in the other state.

Initially, plaintiff has shown that MCL 722.1203(b) is satisfied in this case. It was undisputed that plaintiff and her son no longer resided in Minnesota, that defendants never lived in Minnesota, and that the child's father had died. However, the trial court still needed to find that there was a basis for its jurisdiction under MCL 722.1201(1)(a) or (b).

MCL 722.1201 provides, in relevant part:

(1) Except as otherwise provided in section 204 [MCL 722.1204], 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 of the child within 6

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construed as encompassing orders for grandparental visitation.

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 [MCL 722.1207 or 722.1208], 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.

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

* * *

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

MCL 722.1102(g) provides:

“Home state” means 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. In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a parent or person acting as a parent is included as part of the period.

Plaintiff asserts that the child's home state is Indiana. Thus, plaintiff concedes that Michigan was not the child's home state when this proceeding was commenced. Further, Indiana's status as a home state would be relevant under § 1201(1)(b) only if an Indiana court declined to exercise jurisdiction. Plaintiff does not assert that jurisdiction in Indiana was ever sought. Instead, the only dispute here is whether Minnesota continued to have jurisdiction in this matter.

Because the child had not resided with a parent in Michigan for at least six consecutive months before the petition was filed, as required by MCL 722.1102(g), there was no basis for jurisdiction under MCL 722.1201(1)(a). Under MCL 722.1201(1)(b), the trial court could have exercised jurisdiction only if another state either did not have jurisdiction as the child's home state or another state had declined to exercise jurisdiction on the ground that this state's forum was more appropriate and (1) the child and at least one parent had a significant connection with this state other than mere physical presence, and (2) substantial evidence was available in this state regarding the child's care, protection, training, and personal relationships.

The first part of MCL 722.1201(1)(b) provides that another court must not have jurisdiction under subdivision (a), which means that another state must not have been the child's home state within the immediate preceding six months. Minnesota was not the child's residence

for the six months immediately preceding this action. Accordingly, to exercise jurisdiction, the trial court was required to find that both conditions in subsections (b)(i) and (ii) were satisfied.

The trial court did not err in finding that subsection (b)(i) was not satisfied, because there was no evidence that plaintiff and her son had a significant connection with this state, other than their physical presence here. Plaintiff continued to work in Indiana and the child was attending school there. Although plaintiff claimed that some relatives lived in Michigan, she admitted that they were not “blood relatives.” Further, plaintiff conceded that she moved to an apartment in Michigan based on the advice of her attorney. The record does not establish that plaintiff has a significant connection to Michigan apart from her physical presence.²

Furthermore, the record shows that substantial evidence regarding “the child’s care, protection, training, and personal relationships” was available in Minnesota, and not in Michigan. As the trial court noted, the Minnesota court had already spent considerable time and amassed extensive evidence concerning the child’s relationships with plaintiff and defendants, and the child’s best interests. That court dealt with allegations that the child’s father had sexually abused the child, and plaintiff was relying on the validity of those same allegations and evidence of the child’s relationship with defendants to support her request to suspend defendants’ visitation rights. Thus, if the trial court exercised jurisdiction, it would be necessary to revisit and relitigate those issues. The trial court did not err in finding that substantial evidence concerning the child’s care, protection, training, and personal relationships was not available in this state, but rather was available in Minnesota.

The trial court did not err in finding that a basis for its jurisdiction had not been established, and that Minnesota had exclusive, continuing jurisdiction because no court had specifically found that jurisdiction by Minnesota had been lost. Minn Stat Ann 518D.202(a).

The trial court alternatively ruled that even if it could exercise jurisdiction in this matter, it would decline to exercise it based on forum non conveniens, MCL 722.1207, and because plaintiff engaged in “unjustifiable conduct” within the meaning of MCL 722.1208, given that her move to an apartment in Michigan on the advice of her attorney was motivated by forum shopping. Given our conclusion that the trial court correctly determined that it did not have jurisdiction under MCL 722.1203, we need not address these issues. However, the trial court and the Minnesota court agreed that “if [plaintiff] had established herself in Michigan for a period of time, you know, I could see jurisdiction switching here if she’s been here for six months and developed some contact with out state. . .” Because the courts recognized the

² Plaintiff’s reliance on *White v Harrison-White*, 280 Mich App 383, 394; 760 NW2d 691 (2008), is misplaced. In that case, this Court determined that the “significant connection with this state” requirement of MCL 722.1202(1)(a) could be satisfied where one parent lives in Michigan and maintains a meaningful relationship with the child in this state. But unlike the statute at issue in *White*, § 1201(1)(b)(i) additionally provides that mere physical presence is insufficient to satisfy the “significant connection” requirement of the statute. Thus, plaintiff cannot rely on her mere physical presence in Michigan with the child to establish a significant connection with Michigan.

possibility of future proceedings in Michigan and the possibility that Michigan could acquire jurisdiction in the future, we conclude that the issues may continue to affect plaintiff in some collateral way, and thus, we address them. *In re Dodge Estate*, 162 Mich App 573, 583-584; 413 NW2d 449 (1987).

Here, the trial court sua sponte addressed the issue of forum non conveniens in its oral opinion. This is appropriate, as MCL 722.1207(a) provides that “[t]he issue of inconvenient forum may be raised upon the motion of a party, the court’s own motion, or the request of another court.” Problematically, however, MCL 722.1207(b) expressly states that [b]efore determining whether it is an inconvenient forum . . . the court shall allow the parties to submit information.” The trial court did not provide the parties an opportunity to submit information, and thus, the finding of inconvenient forum was improper. We also agree with plaintiff that the trial court erred in finding that plaintiff engaged in forum shopping:

The concern surrounding forum shopping stems from the fear that a plaintiff will be able to determine the outcome of a case simply by choosing the forum in which to bring the suit. Presumably, plaintiffs will bring suit in the forum whose law is the most advantageous. In so doing, the plaintiff may be attempting to obtain a favorable result simply by choosing the right forum . . . [*Olmstead v Anderson*, 428 Mich 1, 26; 400 NW2d 292 (1987)].

The stated concern is that,

“applying the law sought by a forum-shopping plaintiff will defeat the expectations of the defendant or will upset the policies of the state in which the defendant acted (or from which the defendant hails).” [*Id.* quoting Morrison, Death of conflicts, 29 Vill L R 313, 362 (1983-84).]

Here, however, “[s]ince defendant is a citizen of Michigan, there can be no serious argument that applying Michigan law will defeat his expectations.” *Olmstead*, 428 Mich at 27. Indeed, “[p]laintiff’s choice of Michigan, being the state of defendant’s citizenship and thus subjecting defendant to general jurisdiction, is perfectly legitimate.” *Id.* Accordingly, we reverse the trial court’s finding that plaintiff engaged in unjustifiable conduct, i.e, forum-shopping.

IV. THE TRIAL COURT REFUSAL TO REGISTER THE DIVORCE JUDGMENT

Plaintiff argues that even if the trial court lacked jurisdiction to modify the Minnesota orders, it should have still registered the judgment and the September 2008 orders under MCL 722.1304. Given the facts presented, we conclude the trial court did not err by declining to register the orders presented by plaintiff.

Plaintiff only sought to register the divorce judgment and the September 2008 order. Plaintiff maintained that the additional orders entered by the Minnesota court in 2009 were void because that court did not have jurisdiction to issue those orders. As discussed previously, however, we agree with the trial court that the Minnesota court continued to have jurisdiction in the matter. MCL 722.1304(1) requires that a party seeking to register a child-custody determination provide the court with any modifications to the orders she is seeking to register.

Because the orders that plaintiff was offering for registration had been modified in part by subsequent orders that plaintiff did not offer for registration, the trial court did not err by declining to register the orders offered by plaintiff.

V. PLAINTIFF'S MOTION TO SUSPEND VISITATION

Plaintiff also argues that the trial court erred by denying her request for emergency relief to suspend defendants' grandparent visitation. We disagree.

MCL 722.1204 permits a court to temporarily assume jurisdiction in a child-custody matter, even if another court has jurisdiction, where the child has been abandoned or is subjected to or threatened with abuse or mistreatment. There was no claim that the child had been abandoned, and we agree with the trial court that there was no factual support for a finding of actual or threatened abuse or mistreatment. Accordingly, the trial court did not abuse its discretion by declining to exercise emergency jurisdiction.

Furthermore, because the trial court did not err in finding that Minnesota had continuing jurisdiction in this matter, modification of defendants' grandparent visitation was not warranted under MCL 722.27b(11).

VI. THE TRIAL COURT'S REFUSAL TO CONSIDER OTHER MOTIONS

Plaintiff also challenges the propriety of defendants' motions to compel plaintiff to submit to a psychological evaluation, to have the child treat with a neutral psychologist, and for appointment of a guardian ad litem. Because the trial court dismissed this matter on jurisdictional grounds, it declined to address defendants' motions. Thus, plaintiff did not receive any adverse decision on those motions. Because we affirm the trial court's decision, we likewise conclude that it is unnecessary to consider this issue.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher