STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1779

In re the Marriage of:
Samantha Magdalena Hansen, petitioner,
Respondent,

vs.

Richard Bradley Hansen,
Appellant.

Filed June 29, 2020
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-FA-19-2971

Scott M. Rodman, Michael G. Cain, Arnold, Rodman & Kretchmer, PA, Bloomington, Minnesota (for respondent)

Randall A. Smith, Lake Harriet Law Office, LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant father, a Canadian citizen, challenges the district court's exercise of jurisdiction over a child-custody dispute with respondent mother, a United States citizen who resides in Minnesota. Because the district court did not (1) err by concluding that it

has subject-matter jurisdiction due to the significant connections child and mother have with Minnesota or (2) abuse its discretion by rejecting father's argument that Minnesota is an inconvenient forum, we affirm.

FACTS

In 2014, appellant Richard Bradley Hansen and respondent Samantha Magdalena Hansen married in Minnesota. Their child was born in January 2017 and has dual citizenship in the United States and Canada. Father was convicted of a federal drug-distribution crime in January 2018, and the family moved to Winnipeg, Manitoba in Canada the following month.[1] Mother was able to maintain her Minnesota employment for the first six months. But by November, her employer would no longer permit her to work remotely. Mother decided to end the marriage, and she returned to Minnesota with the child on November 10. Since that time, the child has spent alternating two-week periods with each parent.

On May 2, 2019, mother petitioned to dissolve the marriage in Minnesota; father petitioned to dissolve the marriage in Canada later that month. At an initial case-management conference before the district court, counsel disputed which court has jurisdiction to determine custody of the child. Upon the parties' motions and affidavits, the district court determined that neither Minnesota nor Canada has home-state jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, codified in Minnesota

[1] Father advised the district court that he cannot return to Minnesota "for fear that [he] will be arrested for violating the terms of [his] probation."

as Minn. Stat. §§ 518D.01-.37 (2018) (the act). But the court concluded that it has significant-connection jurisdiction and is not an inconvenient forum. Father appeals.

D E C I S I O N

I. The district court has jurisdiction because the child and mother have significant connections with Minnesota.

The act governs which court has jurisdiction to resolve custody issues when a child's parents live in different states.[2] It provides four bases under which a court may exercise jurisdiction over an initial child-custody determination, two of which are at issue here. Under the act,

> 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 clause (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 appropriate forum . . . , and:
>
> (i) 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
>
> (ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships[.]

Minn. Stat. § 518D.201(a)(1), (2).

[2] The act applies to international custody disputes. *Abu-Dalbouh v. Abu-Dalbouh*, 547 N.W.2d 700, 704 (Minn. App. 1996). Minnesota courts "shall treat a foreign country as if it were a state of the Unites States" for purposes of the act. Minn. Stat. § 518D.105(a).

"Home state" is defined as "the 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." Minn. Stat. § 518D.102(h). And "[a] period of temporary absence of [the parents or child] is part of the [six-month] period." *Id.* Home-state jurisdiction has priority over the other statutory bases. *See Kasdan v. Berney*, 587 N.W.2d 319, 324 (Minn. App. 1999) (recognizing that the Uniform Child Custody Jurisdiction and Enforcement Act "gives home state of [the] child fundamental priority in determining jurisdiction over child custody").

We review subject-matter jurisdiction under the act de novo. *Cook v. Arimitsu*, 907 N.W.2d 233, 238 (Minn. App. 2018), *review denied* (Minn. Apr. 17, 2018). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous[.]" Minn. R. Civ. P. 52.01; *see* Minn. R. Civ. P. 43.05 (permitting a district court to hear a motion "on affidavits presented by the respective parties"). We will not disturb a district court's factual findings if reasonable evidence supports them, *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999), and reverse only if the findings are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole," *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012) (quotation omitted).

A. Home-State Jurisdiction

It is undisputed that on the day mother commenced this action, the child was living in Minnesota two weeks per month and in Canada two weeks per month. That arrangement had been in place for approximately six months. Accordingly, the district court concluded

that the child had not lived in or been absent from Minnesota or Canada for purposes of exercising home-state jurisdiction under Minn. Stat. § 518D.201(a)(1).

Father contends that Canada is the child's home state because the child lived there during the six months before mother commenced this action. Minn. Stat. § 518D.201(a)(1). He characterizes the time the child spent in Minnesota as temporary absences from Canada that are included in calculating the six-month period under Minn. Stat. § 518D.102(h). We disagree.

In *Cook*, this court considered the meaning of a "temporary absence" under the act. 907 N.W.2d at 239. The parties married and had four children in Minnesota. *Id*. at 235. In preparation for a July 2014 trip to Japan, the parties agreed in writing that mother would return to Minnesota with the children by a specific date in August. *Id*. Mother did not comply with the agreement. *Id*. Father commenced a marriage dissolution action in April 2015, arguing Minnesota was still the children's home state because their absence during the preceding six months was temporary. *Id*. In affirming the district court's determination that Minnesota was the children's home state, we focused on the factual record, specifically the parties' intentions concerning the children's absence from Minnesota. Because the parties expressly agreed that the children would be in Japan for only one month, we concluded their absence from Minnesota was temporary, and included in the six-month period used to define "home state" under Minn. Stat. § 518.D.102(h). *Id*. at 239.

Father asserts that, as in *Cook*, the child's absence from Canada was only temporary because the parties agreed and intended that mother would "obtain Canadian citizenship,

and return to Canada to work and live as a family again." We reject this argument for two reasons.

First, the record does not support father's contention that mother's absence—and thus, the child's intermittent absence—from Canada was temporary. The parents in *Cook* expressly agreed in writing that mother would bring their children back to Minnesota within a specific time period. No such agreement exists here, and mother offered evidence that her departure from Canada was intended to be permanent. She avers in her affidavit that she left Canada not only for work-related reasons but also because she had decided to end the marriage. And she avers that when she left Canada, father was well aware that she wanted a divorce. Consistent with mother's affidavit, the district court found that the parties separated after mother left Canada. To the extent that father's factual assertions differ from mother's assertions, we do not "reconcile conflicting evidence," as that role is "exclusively the province of the factfinder." *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotation omitted). And we defer to the district court's factual findings, even when based on documentary evidence. *See* Minn. R. Civ. P. 52.01 (stating that "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous"); *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995) (same); *see also Straus v. Straus*, 94 N.W.2d 679, 680 (Minn. 1959) (noting that appellate courts defer to a district court's resolution of factual questions presented by conflicting affidavits); *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998) (citing this aspect of *Straus*).

Second, we discern no error by the district court in concluding that the child was not "absent" from Canada because she spent substantial time there after mother returned to Minnesota. The district court found that the child lived continuously in Canada from February 10, 2018, through November 10, 2018, and after the parties separated the child spent alternating two-week intervals in Canada and Minnesota. Father does not challenge these findings. The undisputed fact that the child has spent two weeks out of every month with her father in Canada since mother returned to Minnesota defeats the argument that she has been absent from Canada. *See* Minn. Stat. § 645.08(1) (2018) (requiring words to be interpreted "according to their common and approved usage"); *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012) (stating that "[w]e give words and phrases in a statute their plain and ordinary meanings"). The act does not define "absent." When a statute does not define a word, an appellate court often "look[s] to dictionary definitions." *Gilbertson v. Williams Dingmann, LLC*, 894 N.W.2d 148, 152 (Minn. 2017) (quotation omitted). The dictionary definition of "absent" is "[n]ot present; missing." *The American Heritage Dictionary of the English Language* 6 (5th ed. 2011). Because the child was not temporarily absent from Canada within the meaning of Minn. Stat. § 518D.201(a)(1), the district court did not err by concluding that Canada does not have home-state jurisdiction.

On this record, we observe no error in the district court's conclusion that neither Canada nor Minnesota is the child's home state for purposes of subject-matter jurisdiction.

B. Significant-Connections Jurisdiction

Father next asserts that the district court erred in concluding it has jurisdiction under Minn. Stat. § 518D.201(a)(2) because the child and mother have significant connections

with Minnesota. He relies on an Illinois case for the proposition that the exercise of jurisdiction under this basis requires "maximum rather than minimum" contacts, which do not exist here. *In re Frost*, 681 N.E.2d 1030, 1036 (Ill. App. 1997) (stating that "[m]aximum rather than minimum contacts with [a state] are required in order for jurisdiction to exist"). We are not persuaded.

Significant-connections jurisdiction exists if no state has home-state jurisdiction and "the child and the child's parents . . . have a significant connection with this state other than mere physical presence," and "substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships." Minn. Stat. § 518D.201(a)(2). In making this determination, "courts consider the nature and quality of the child's contacts with the State." *In Interest of T.B.*, 497 S.W.3d 640, 645 (Tex. App. 2016).

In defining this jurisdictional basis, the act contrasts a "significant connection" with "mere physical presence."[3] The record reveals mother and child are more than physically present in Minnesota. The district court made numerous findings about the significant

[3] We are not persuaded by father's reliance on *Frost*, in which an Illinois appellate court interpreted "temporary absence" as included in the home-state jurisdiction provision of the act in the context of a parent who moved with a child to another state. 681 N.E.2d at 1034-36. Without analyzing the significant-connections jurisdiction provision of the act, the appellate court remanded the case for an evidentiary hearing as to whether the court had home-state or significant-connections jurisdiction. *Id*. at 1036-37. The appellate court's statement that "[m]aximum rather than minimum contacts with Illinois are required in order for" significant-connection jurisdiction to exist is dicta and does not instruct our analysis in this case. *Id*. at 1036; *see Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 611 (Minn. 2016) (stating that "dictum" is a statement "unnecessary to the decision" of a case).

contacts mother and the child have with Minnesota and found that substantial relevant evidence regarding the child is available in this state. The record supports these findings. Since her birth in January 2017, the child has spent all but nine months of her life in Minnesota. The child has contact with members of mother's extended family in Minnesota, attends preschool here, receives medical care here, and "has established friendships and a sense of community." Mother lived in Minnesota when she met father in 2010. With the exception of her nine-month stint in Canada, she has lived in Minnesota ever since. She has worked for a Minnesota employer for many years, returning from Canada, in part, to retain that employment. While in Canada, mother continued to work for that Minnesota employer.[4] And the record amply establishes that substantial evidence related to the "child's care, protection, training, and personal relationships" is available here, as noted above, and includes records of the child's birth and ongoing medical care, school records, and documentation related to mother's health, employment, and ability to care for the child. The record persuades us that the district court did not err by concluding that Minnesota has significant-connections jurisdiction under Minn. Stat. § 518D.201(a)(2).

II. The district court did not abuse its discretion by rejecting father's argument that Minnesota is an inconvenient forum to determine child custody.

Even when a district court has subject-matter jurisdiction, it "may decline" to exercise it if the court "determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum." Minn. Stat. § 518D.207(a).

[4] While not part of the district court's findings of fact, the record shows that mother continued to receive mail in Minnesota during the time she lived in Canada.

We review this determination for abuse of discretion. *See Levinson v. Levinson*, 389 N.W.2d 761, 762 (Minn. App. 1986) (reviewing district court's inconvenient-forum ruling in a child-custody matter for abuse of discretion).

To determine whether Minnesota is an inconvenient forum, the district court must consider a number of factors including:

> (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
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> (2) the length of time the child has resided outside this state;
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> (3) the distance between the court in this state and the court in the state that would assume jurisdiction;
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> (4) the relative financial circumstances of the parties;
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> (5) any agreement of the parties as to which state should assume jurisdiction;
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> (6) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;
>
> (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
>
> (8) the familiarity of the court of each state with the facts and issues in the pending litigation.

Minn. Stat. § 518D.207(b).

The district court made findings as to each of these factors, determining that the forum choice is not affected by domestic violence involving the parties, the distance between the two states, the parties' incomes, the nature and location of evidence, or an agreement between the parties. But the court determined that Minnesota is a more favorable forum due to the length of time the child has resided outside of Canada, the

courts' ability to expeditiously decide child custody, and the courts' familiarity with the facts and issues of this case.

Father contends that he will be disadvantaged if Minnesota exercises jurisdiction because he cannot enter the United States without facing arrest. But, as the district court noted, each party is unlikely to appear in person at proceedings in the other's state due to the significant distance separating them, father's attorneys have "ably represented him" to date, and the act specifically facilitates out-of-state party participation. Minn. Stat. §§ 518D.110-.112. On this record, we discern no abuse of discretion by the district court in rejecting father's inconvenient-forum argument.

Affirmed.