IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

AASYA F. GREENBANK, *Petitioner/Appellee*,

v.

BONNIE VANZANT, *Intervenor/Appellant*.

No. 1 CA-CV 20-0300 FC

FILED 03-09-2021

Appeal from the Superior Court in Maricopa County
No. FC2009-007482
The Honorable Margaret B. LaBianca, Judge

AFFIRMED

COUNSEL

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Counsel for Petitioner/Appellee

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By Amy D. Sells
Counsel for Intervenor/Appellant

OPINION

Judge Lawrence F. Winthrop delivered the opinion of the Court, in which Presiding Judge Paul J. McMurdie and Judge Cynthia J. Bailey joined.

W I N T H R O P, Judge:

¶1 Bonnie Vanzant appeals the superior court's April 2020 rulings dismissing with prejudice a visitation enforcement action—which rendered void a prior stipulated order granting Vanzant visitation with her grandchild ("the Visitation Agreement")—and quashing a civil arrest warrant against the child's mother, Aasya F. Greenbank ("Mother").

¶2 Arizona was the home state of the child under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). *See* Ariz. Rev. Stat. ("A.R.S.") § 25-1002(7)(a). In 2012, the superior court entered the Visitation Agreement, a negotiated order granting Vanzant visitation privileges with her minor grandchild. Mother, however, immediately moved with the child to Canada, where she embarked on a long history of violating the agreement. In 2019, Mother obtained an order from a Canadian court modifying the agreement. The Arizona superior court then concluded that under the UCCJEA, as enacted in Arizona—most specifically, A.R.S. § 25-1032—the Canadian court's order automatically divested Arizona of exclusive, continuing jurisdiction. The superior court quashed a civil arrest warrant issued to remedy Mother's persistent violations of the Visitation Agreement and then dismissed with prejudice the entire matter. Although the result is arguably inconsistent with the spirit of the UCCJEA, we affirm because the superior court's orders are supported by the underlying Arizona statutes' plain language.

FACTS AND PROCEDURAL HISTORY[1]

¶3 Mother and Vanzant's son, Toby Greenbank ("Father"), were married in Arizona and had two children, born in 2003 and 2005, respectively. In February 2009, the older child died as the result of injuries sustained in a car accident.

¶4 In December 2009, Mother filed for legal separation in the Arizona superior court, and the marriage was dissolved in a decree entered in July 2010. Mother was awarded sole legal custody of their surviving child, with Father having supervised parenting time.

¶5 After entry of the decree, Mother began denying Vanzant access to the child. Consequently, in 2011, Vanzant petitioned to establish

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[1] We view the facts and all reasonable inferences therefrom in favor of sustaining the superior court's rulings. *Day v. Day*, 20 Ariz. App. 472, 473 (1973).

visitation rights as a grandparent. *See* A.R.S. § 25-409. In May 2012, Father was killed in a car accident.

¶6 In June 2012, the superior court approved and formally entered the negotiated and binding Visitation Agreement between Mother and Vanzant pursuant to Arizona Rule of Family Law Procedure 69. The Visitation Agreement allowed Vanzant visitation with the child, and specified terms for continued visitation if Mother and the child were to move to Canada. The Visitation Agreement also required Mother to give Vanzant at least fourteen days' notice before moving to Canada.

¶7 A few days later, without first notifying Vanzant, Mother moved to British Columbia, Canada with the child and thereafter refused to comply with the Visitation Agreement. After Mother failed to attend a superior court hearing concerning her non-compliance, the court issued a civil arrest warrant against her for failure to abide by court orders. The superior court re-issued the warrant periodically through 2016.

¶8 In 2013, Vanzant filed an application to domesticate the Visitation Agreement in British Columbia. The Canadian court, however, dismissed Vanzant's application in June 2014 after concluding the Visitation Agreement was "contrary to public policy in British Columbia." The court took specific issue with a provision in the Visitation Agreement allowing Vanzant to have weeklong annual visits with the child in Arizona because, by that time, Vanzant had not seen the child in two years, and Mother could not bring the child or otherwise return to Arizona without risking arrest if the civil arrest warrant the superior court had issued was executed.

¶9 In 2017, Mother filed a motion in the Arizona superior court to quash the civil arrest warrant, arguing the Canadian court's 2014 rejection of Vanzant's attempt to domesticate the Arizona order divested Arizona of exclusive, continuing jurisdiction. Mother appeared at the January 2018 oral argument on her motion. The superior court denied her motion, concluding the Canadian court's order did not constitute a new third-party visitation order and the Canadian court had simply declined to take jurisdiction.[2]

[2] Mother challenged the superior court's ruling in a special action filed in this court. In a summary order accepting jurisdiction but denying relief, we rejected Mother's argument.

¶10 At the hearing, Vanzant's counsel argued Mother should be found in contempt and incarcerated until she produced the child, given prior unsuccessful efforts to secure compliance with the Visitation Agreement. Mother testified that although she was not then willing to produce the child, she would comply with the Visitation Agreement going forward. The court expressed skepticism, however, noting, "[T]hat's a hollow promise, because she promised to comply with the court order. She entered into the order, and almost immediately went to –- to Canada, and she's ignored civil arrest warrants for a length of five years, essentially." The court found that Mother remained in contempt based on her noncompliance with the Visitation Agreement. To ensure compliance, the court ordered her immediate incarceration. However, after determining an amount she could reasonably pay, the court also ruled she could purge her contempt by posting a $15,000 bond.

¶11 Mother immediately posted bond and returned to Canada, where, despite her sworn statement to the superior court, she continued to violate the Visitation Agreement. In April 2018, Vanzant filed a new petition for contempt.

¶12 Although Mother filed a response to the contempt petition, she failed to appear at the subsequent hearing on the petition and did not attempt to explain her absence to the court. At the hearing, the court found Mother had "falsely testified under oath" at the January 2018 hearing "that she would comply with the Court's orders and still has not complied." Accordingly, the court again found Mother in contempt and issued a civil arrest warrant.

¶13 In December 2018, Mother commenced a family court action in British Columbia. Vanzant filed a "jurisdictional response," but did not appear at the August 2019 trial. At the trial, the Canadian court referenced the earlier Canadian court order declining to recognize and enforce the Visitation Agreement and found that "although a ruling regarding access and visitation in [British Columbia] may not accord with the existing Arizona order, that Arizona order does not apply to the court in British Columbia." The Canadian court accepted jurisdiction and entered an order allowing only limited supervised visitation between Vanzant and the child ("the Canadian Visitation Order").[3]

[3] The Canadian Visitation Order imposes a series of conditions that allow Mother to easily frustrate any attempts at visitation by Vanzant, thus

¶14 In the meantime, the Arizona superior court reissued the civil arrest warrant, effective June 18, 2019. In December 2019, Mother moved to dismiss and quash the warrant on the ground that the Canadian court had taken jurisdiction over her family court proceedings and entered the Canadian Visitation Order. Vanzant responded to the motion, arguing in part that Arizona retained jurisdiction and could enforce its orders. The superior court held a telephonic oral argument in March 2020.

¶15 In April 2020, the superior court granted Mother's motion to dismiss the matter with prejudice and quash the civil arrest warrant, finding that, because Canada had assumed jurisdiction, Arizona lost exclusive, continuing jurisdiction under A.R.S. § 25-1032(A)(2).

¶16 Vanzant filed a timely notice of appeal. We have jurisdiction under A.R.S. § 12-2101(A)(2).

ANALYSIS

¶17 Vanzant argues the superior court erred in concluding that Arizona lost exclusive, continuing jurisdiction under the UCCJEA when the Canadian court issued the Canadian Visitation Order.

¶18 "We review *de novo* whether a court has subject matter jurisdiction under the UCCJEA." *Mangan v. Mangan*, 227 Ariz. 346, 350, ¶ 16 (App. 2011) (citing *In re Marriage of Tonnessen*, 189 Ariz. 225, 226 (App. 1997) (addressing the predecessor statute, the Uniform Child Custody Jurisdiction Act ("UCCJA")); *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 233, ¶ 8 (App. 2005) (stating that this court reviews *de novo* matters of statutory interpretation and mixed questions of fact and law)).

¶19 In construing statutes, our goal is to give effect to legislative intent. *Martineau v. Maricopa County*, 207 Ariz. 332, 334, ¶ 9 (App. 2004) (citing *State Comp. Fund v. Superior Court (EnerGCorp, Inc.)*, 190 Ariz. 371, 375 (App. 1997)). We begin our analysis with the applicable statutes' language because that language provides the best evidence of the legislature's intent. *Id.* (citing *Zamora v. Reinstein*, 185 Ariz. 272, 275 (1996); *EnerGCorp*, 190 Ariz. at 375). If possible, each word or phrase must be given meaning so that no part is rendered void, superfluous, contradictory, or

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making it difficult, if not realistically impossible, for Vanzant to have visitation. To date, Vanzant has not been able to have visitation with the child under the Canadian Visitation Order.

insignificant. *State v. Superior Court (Kerr–McGee Corp.)*, 113 Ariz. 248, 249 (1976).

¶20 We seek to interpret statutes that relate to the same subject or have the same general purpose—that is, statutes which are in pari materia—in a way that promotes consistency and harmony among them. *State v. Sweet*, 143 Ariz. 266, 270 (1985) (citing *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122 (1970)). Also, if the language of a statute is not plain, we may infer intent from a statute's purpose. *Martineau*, 207 Ariz. at 334, ¶ 9; *accord Midland Risk Mgmt. Co. v. Watford*, 179 Ariz. 168, 171 (App. 1994) (recognizing that, in seeking to determine and give effect to legislative intent, we may consider the language used, the context of the statutes, and the underlying spirit and purpose of the law).

¶21 The precursor to the UCCJEA was the UCCJA, which Arizona enacted in 1978. *See J.D.S. v. Franks*, 182 Ariz. 81, 88 (1995). The UCCJA was enacted to deter unilateral removals of children undertaken to obtain custody awards, to discourage the use of state court systems to continue custody controversies, to avoid re-litigation of custody decisions in different states, to avoid jurisdictional competition and conflict with courts of other states, and to promote cooperation between courts of different states. *See* UCCJA § 1. In 1997, the UCCJA was revised, giving rise to the UCCJEA, codified in A.R.S. §§ 25-1001 to -1067, which Arizona adopted effective January 1, 2001. *See Welch-Doden v. Roberts*, 202 Ariz. 201, 208, ¶ 29 (App. 2002). Forty-eight other states also have adopted versions of the UCCJEA.

I. Application of A.R.S. § 25-1032

¶22 In this case, Mother affirmatively invoked the Arizona superior court's jurisdiction pursuant to A.R.S. § 25-1031 when she initiated legal-separation proceedings in 2009. By invoking the Arizona superior court's jurisdiction, Mother conferred upon that court exclusive, continuing jurisdiction over this matter.[4] *See* A.R.S. § 25-1032(A). Further, under A.R.S. § 25-1032(A), Arizona retained exclusive, continuing jurisdiction unless and until certain conditions were met:

> A. Except as [inapplicable here], a court of this state that has made a child custody determination consistent with § 25-1031

[4] The record is also clear that Mother continued to invoke and rely upon the Arizona superior court's jurisdiction as it fit her needs.

> or 25-1033 has exclusive, continuing jurisdiction over the determination until either of the following is true:
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> 1. A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships.
>
> 2. A court of this state or a court of another state[5] determines that the child, the child's parents and any person acting as a parent do not presently reside in this state.

¶23 In granting Mother's motion to dismiss, the superior court found that subsection (A)(2) of A.R.S. § 25-1032 applied, divesting Arizona of exclusive, continuing jurisdiction.[6] The court explained:

> [T]he Canadian court determined (and it is undisputed by the parties) that the child and the child's sole parent do not presently reside in this state and have not for more than seven years. While it is true that [Vanzant] continues to live in Arizona, she is not the child's parent nor a "person acting as a parent" so her living in Arizona does not bear on application of the statute. [Vanzant]'s reliance on *Mangan v. Mangan*, 227 Ariz. 349 (App. 2011) is misplaced. In *Mangan*, the Court of Appeals affirmed the trial court's assertion of exclusive, continuing jurisdiction despite the mother living with the children in New Mexico; but in *Mangan*, the children's other

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5 "'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States." A.R.S. § 25-1002(15). A foreign country is treated as if it were a state of the United States, however, for purposes of applying Articles 1 (A.R.S. §§ 25-1001 to -1013) and 2 (A.R.S. §§ 25-1031 to -1040) of the UCCJEA. *See* A.R.S. § 25-1005(A).

6 Vanzant argues that subsections (1) and (2) of A.R.S. § 25-1032(A) are not "self-effectuating." We agree that both subsections require a court to make a "determination," and neither subsection is effective immediately without the need of court action.

parent, the father, still lived in Arizona — an important factual distinction.

¶24 Thus, both the Canadian court and the Arizona superior court determined that subsection (A)(2) of A.R.S. § 25-1032 applied because the Canadian court had found that neither "the child, the child's parents" nor "any person acting as a parent" of the child continued to reside in Arizona. We agree that the record and the statute's plain language both support the superior court's analysis.[7] Moreover, we agree with the superior court that the "law of the case" did not bind that court to its January 2018 ruling on Mother's prior motion to dismiss because the circumstances since that earlier ruling had changed—specifically, the Canadian court had found in 2019 that Mother and the child had lived in Canada for more than seven years. Accordingly, the Canadian court possessed and exercised jurisdiction over the matter pursuant to A.R.S. § 25-1032(A)(2). The superior court did not err in determining that Arizona no longer had exclusive, continuing jurisdiction.

¶25 Vanzant contends that enforcing the plain language of § 25-1032(A)(2) contradicts the UCCJEA's spirit and purpose. She argues that "[u]nder this reading, a parent who is displeased with an initial custody order can refuse to obey it, unilaterally remove the child to another state (or country) for a period sufficient to establish residency, re-litigate the custody issue in the foreign state (or country), and usurp the continuing, exclusive jurisdiction of the initial state, all without the two courts ever communicating or cooperating, rendering the initial state powerless." Vanzant's argument, although understandable given the facts of this case, is a bit broad. As we recognized in *Mangan*, the plain language of A.R.S. § 25-1032(A) allows a court of this state to maintain exclusive, continuing jurisdiction when a *parent* relocates to another state with a child and the other *parent* continues to reside in this state, as long as substantial evidence exists concerning the child's care, protection, training, and personal relationships. *See* 227 Ariz. at 350-51, ¶¶ 15-24. The problem with Vanzant's argument is that, as written, the statute grants no such jurisdictional protections for grandparents or other third parties who are

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[7] We disagree with Mother's argument that, on the record before us, we could conclude that subsection (A)(1) of A.R.S. § 25-1032 also applies. Mother offered no evidence, and the superior court did not find, that she and the child no longer have a significant connection with Arizona and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.

not acting as a parent.[8] *See also* A.R.S. § 25-1038(A)(1) (providing that a court shall decline jurisdiction when a party has engaged in unjustifiable conduct, but providing exceptions, including if "[t]he parents and all persons acting as parents have acquiesced in the exercise of jurisdiction").[9]

¶26 We agree with Vanzant that, given the spirit and purpose of the UCCJEA, and despite the statute's literal language, the better practice would have been for the Canadian court to have conferred with the Arizona superior court before taking jurisdiction and issuing modified—and, in light of the parties' history, essentially unworkable—visitation orders. The UCCJEA contemplates, encourages, and in some instances requires communication and cooperation between courts. *See* A.R.S. §§ 25-1010, -1012, -1036, -1039, -1057; *cf. London v. London*, 32 So. 3d 107, 110-11 (Fla. Dist. Ct. App. 2009) (reversing and remanding dismissal of Florida custody proceedings because upon learning that France retained jurisdiction over a custody dispute, the trial court was required to stay the proceedings and communicate directly with the French court to determine jurisdiction governing simultaneous proceedings under the UCCJEA). Of course, that did not happen here, and although the record on this issue is not clear, it appears neither Vanzant nor Mother requested such communication.

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[8] Vanzant does not assert she has rights under any in loco parentis statutes. *See* A.R.S. § 25-401(1) ("'In loco parentis' means a person who has been treated as a parent by a child and who has formed a meaningful parental relationship with a child for a substantial period of time."); *see also* A.R.S. §§ 25-402(B)(2), -409(A)(1), (C)(4); *Chapman v. Hopkins*, 243 Ariz. 236, 240, ¶ 16 (App. 2017).

[9] Except as otherwise provided in A.R.S. § 25-1005(C), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA must be recognized and enforced under Article 3 (A.R.S. §§ 25-1051 to -1067) of the UCCJEA. A.R.S. § 25-1005(B). Subsection (C) of A.R.S. § 25-1005 provides that Arizona courts are not required to apply the UCCJEA "if the child custody law of a foreign country violates fundamental principles of human rights." Vanzant, however, has made no showing that Canada's (or British Columbia's) child custody laws violate fundamental principles of human rights.

II. Application of A.R.S. § 25-1057

¶27 Vanzant also argues that under A.R.S. § 25-1057, the superior court had a duty to communicate with the Canadian court before dismissing the Arizona proceedings. That statute states:

> If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under article 2 of this chapter, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

A.R.S. § 25-1057 (internal footnote omitted).

¶28 Vanzant's reliance on A.R.S. § 25-1057 is misplaced. The statute's plain language required the Arizona superior court—the enforcing court—to communicate with the Canadian court—the modifying court—while Mother's December 2018 action to modify visitation was pending. Of course, that requirement presupposes the superior court knew of the Canadian court proceedings. The record is not clear whether the superior court had such knowledge, despite both Mother's and Vanzant's duty to keep the court apprised of such proceedings. *See* A.R.S. § 25-1039(D) ("Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding."). After the Canadian court accepted jurisdiction and issued the Canadian Visitation Order in August 2019, absent exceptions not applicable here, the Arizona superior court no longer had exclusive, continuing jurisdiction, and did not err in quashing the civil arrest warrant and dismissing the matter with prejudice.

III. Costs and Attorneys' Fees on Appeal

¶29 Both parties request costs and attorneys' fees on appeal under A.R.S. § 25-324. *See* A.R.S. § 25-324(A). Neither side, however, has provided us with information about the parties' respective financial resources. As for the parties' reasonableness throughout the proceedings, Mother argues Vanzant has acted in a "vengeful" manner throughout the history of this case. At the same time, however, Mother also concedes she has exhibited "unreasonableness." In fact, the record on reasonableness overwhelmingly weighs in favor of Vanzant. Mother's bad faith, lack of candor, and

persistent violations of the Visitation Agreement unreasonably expanded these proceedings, which have now continued for nearly a decade. Given Mother's actions throughout the proceedings, any fee award to Mother would be clearly inappropriate. On the other hand, we see nothing unreasonable about Vanzant's vigorous pursuit of her negotiated and court-authorized grandparent visitation rights. Accordingly, upon her compliance with Rule 21, ARCAP, we award Vanzant taxable costs and reasonable attorneys' fees on appeal pursuant to A.R.S. § 25-324(A). Further, given the nature of Mother's actions throughout the proceedings, we also find applicable both A.R.S. § 12-349(A)(3) and Rule 25, ARCAP, as a basis for awarding taxable costs and attorneys' fees to Vanzant and against Mother.

CONCLUSION

¶30 The superior court's April 2020 orders are affirmed and, upon compliance with Rule 21, ARCAP, we award Vanzant her taxable costs and reasonable attorneys' fees incurred on appeal.

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