IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

MAURICIO FERNANDEZ MARGAIN,
Petitioner/Appellee,

and

ELSA LOURDES RUIZ-BOURS,
Respondent/Appellant.

No. 2 CA-CV 2020-0005-FC
Filed March 30, 2021

Appeal from the Superior Court in Pima County
No. D20143642
The Honorable Jennifer Langford, Judge Pro Tempore
The Honorable Jan Kearney, Judge

REVERSED AND REMANDED

COUNSEL

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OPINION

Presiding Judge Eppich authored the opinion of the Court, in which Chief Judge Vásquez and Judge Brearcliffe concurred.

E P P I C H, Presiding Judge:

¶1 As a matter of first impression in this state, we consider whether a decision by the Mexico Supreme Court, that clearly intends to decline to exercise its jurisdiction in a child custody action in favor of the Arizona courts, is sufficient to operate as a declination as a matter of law under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).[1] For the following reasons, we reverse the Pima County Superior Court's order and remand for further proceedings.

Factual and Procedural Background

¶2 As the Pima County Superior Court astutely observed, "almost an impenetrable web of international litigation has been woven around the custody of the divorced parties' minor child." The history underlying this dispute is well-discussed in our opinion from 2016, *see generally In re Marriage of Margain & Ruiz-Bours*, 239 Ariz. 369 (App. 2016), but we reiterate the relevant facts here and include new developments.

¶3 In September 2007, Margain and Ruiz-Bours married in Hermosillo, Sonora, Mexico, and in July 2008, S.F.R. was born in California. The family continued to live in California until Ruiz-Bours and S.F.R. traveled to Hermosillo where they remained from October 11, 2010 through at least July 5, 2012. In August 2011, Margain filed in the Second Family Court of Tijuana, Baja California, Mexico, for dissolution of the marriage. At the time of filing, S.F.R. had been living in Mexico for at least six consecutive months. Ruiz-Bours was aware that the Second Family Court had ordered S.F.R. not be removed from Hermosillo without its approval. Ruiz-Bours challenged the jurisdiction of the Second Family Court in Mexico's state and federal courts, arguing jurisdiction was proper in Sonora, as she and S.F.R. were living there. In July 2012, in the midst of her appeals, Ruiz-Bours violated the Second Family Court's order, and absconded with S.F.R. to Tucson.

[1]The term "custody" in domestic relations matters has fallen out of favor and generally been supplanted by "legal decision-making." *See, e.g.*, *Adrian E. v. Dep't of Child Safety*, 239 Ariz. 240, ¶ 5 (App. 2016). We use the former here insofar as the matter involves the interpretation of the UCCJEA, which retains the term. *See* A.R.S. § 25-1002(3); A.R.S. § 25-401(3) (for purposes of interpreting uniform code, "legal decision-making means legal custody").

¶4 In September 2013, Margain sought return of S.F.R. to Mexico, by filing a petition in the United States District Court for the District of Arizona pursuant to the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention").[2] *See generally* 22 U.S.C. § 9003. In January 2014, the District Court denied Margain's petition, determining that S.F.R. "did not abandon the United States as her habitual residence even though she lived in Mexico for several months." *Margain v. Ruiz-Bours*, No. CV-13-01162-TUC-RCC, at *5 (D. Ariz. Jan. 22, 2014) (order). The District Court also determined that "even if Mexico [was] the child's habitual residen[ce]," Margain's petition was filed "more than one year after the child was wrongfully removed and the child [was] well-settled in the United States."[3] *Id.* at 6. S.F.R. remained in Tucson with Ruiz-Bours.

¶5 In June 2014, the Supreme Court of Mexico affirmed jurisdiction properly laid with the Second Family Court, and in September, the Second Family Court issued its final judgment awarding Margain "definitive legal custody" of S.F.R. In October, Margain filed a petition in the Pima County Superior Court seeking to enforce the Second Family Court's custody order. The Pima County Superior Court ordered both parties not to remove S.F.R. from Pima County absent written agreement, or from the state of Arizona absent a written agreement and leave of court. In March 2015, the Pima County Superior Court denied Margain's petition, finding that the Second Family Court's custody determination had not been made in substantial conformity with the jurisdictional standards of the UCCJEA.

¶6 Margain appealed the Pima County Superior Court's ruling to this court. While the appeal was pending, Ruiz-Bours moved to dismiss it, asserting Margain had "kidnapped" S.F.R. and taken her to Mexico in

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[2]The International Child Abduction Remedies Act implements the Hague Convention in the United States. *Monasky v. Taglieri*, ___ U.S. ___, ___, 140 S. Ct. 719, 723 (2020). The Hague Convention has been in force between the United States and Mexico since 1991. *Gonzalez v. Gutierrez*, 311 F.3d 942, n.2 (9th Cir. 2002), *abrogated on other grounds by Abbott v. Abbott*, 560 U.S. 1 (2010).

[3]The United States Court of Appeals for the Ninth Circuit affirmed the District Court in Arizona's order. *Margain v. Ruiz-Bours*, 592 F. App'x 619 (9th Cir. 2015) (mem. decision). It agreed that S.F.R. was "settled in her new environment" and did not address the "habitual residence question." *Id.* at 620-21.

violation of the Pima County Superior Court's order.[4] We denied Ruiz-Bours' motion, and in 2016, issued our opinion reversing the Pima County Superior Court. *See Marriage of Margain*, 239 Ariz. 369, ¶¶ 14, 41. We held the Pima County Superior Court erred in its interpretation of the UCCJEA because it had "only considered the legal circumstances under which the [Second Family Court] exercised jurisdiction and did not consider the factual circumstances." *Id.* ¶ 27. We determined that because S.F.R. had lived in Hermosillo, "for approximately ten months prior to Margain's initiation of the custody proceedings in Mexico," the facts underlying the Second Family Court's order were "consistent" with the UCCJEA and S.F.R.'s home state was properly established in Mexico. *Id.* ¶ 35.

¶7 In our prior opinion, we noted that Ruiz-Bours had "filed a motion to supplement the record, attaching 'a Mexican *amparo* order and translation'" and asserting that the *amparo* showed that "the validity and finality of the Mexican custody order [was] at issue." *Id.* n.1. We determined that any impact of that *amparo* was "best left to the courts of Mexico." *Id.* In August 2018, the Supreme Court of Mexico issued a decision that determined the Second Family Court had no authority to issue the initial custody order to Margain because it was contrary to the District Court's finding that S.F.R. was a habitual resident of the United States. It ultimately determined that "it is clear that the final custody of [S.F.R.] must necessarily be ventilated in the State that denied the restitution," that state being Arizona. As a result, it observed S.F.R. should be returned to Ruiz-Bours in Tucson during the pendency of the custody case and that "cross-border contact . . . must exist between [S.F.R.] and [Margain] until the final custody of [S.F.R.] is decided in [her] usual place of residence," which it repeatedly noted had been determined by the District Court to be Tucson, Arizona.[5]

¶8 In November 2019, the Pima County Superior Court determined that the Mexico Supreme Court's decision did not, "alter[] the efficacy of [our court's 2016] decision," finding that the Mexico Supreme Court's reasons for declining jurisdiction were "not those mandated for declining on inconvenient forum grounds" under A.R.S. § 25-1037. The court concluded that Mexico "continues to have exclusive jurisdiction over

[4]It appears S.F.R. has remained in Mexico since that time.

[5] In March 2019, the Second Family Court ordered S.F.R. to be returned to the United States. In November 2019, Margain provided "notice and disclosure" to the Pima County Superior Court that another court in Mexico had subsequently enjoined her removal from Mexico.

the custody decisions concerning [S.F.R.]." Ruiz-Bours appealed, and we have jurisdiction over the appeal pursuant to A.R.S. §§ 12-120.21(A)(1), 12-2101(A)(1), and 25-1064.[6]

Discussion

¶9 On appeal, Ruiz-Bours argues that Arizona should exercise jurisdiction because the Mexico Supreme Court's decision was a sufficient declination by the home state under the UCCJEA.[7] *See* A.R.S. §§ 25-1031, 25-1037. Margain concedes that it was the intent of the Mexico Supreme Court to decline jurisdiction, but counters that the declination was

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[6]The Pima County Superior Court's order issued on November 8, 2019, and Ruiz-Bours filed a motion to reconsider on December 2, 2019. A notice of appeal was filed on December 6, 2019, *see* Ariz. R. Civ. App. P. 9(a), divesting the Pima County Superior Court of jurisdiction to rule on the motion to reconsider, *see In re Marriage of Flores & Martinez*, 231 Ariz. 18, ¶ 10 (App. 2012). Subsequent to the notice of appeal, Ruiz-Bours filed a "Rule 60" motion. *See* Ariz. R. Fam. Law P. 85; *see also* Ariz. R. Civ. P. 60. Ruiz-Bours asked our court to re-vest jurisdiction in the Pima County Superior Court for the purposes of deciding that motion. We denied the request. The notice of appeal was premature because the order did not contain the requisite Rule 78(c), Ariz. R. Fam. Law P., finality language, *see McCleary v. Tripodi*, 243 Ariz. 197, ¶ 7 (App. 2017), but it was cured by the filing of the January 6, 2020 final order, which is substantively identical apart from the addition of the finality language, *see* Ariz. R. Fam. Law P. 78(a)(1), (c) ("'Judgment' as used in these rules includes . . . an order from which an appeal lies."); *see also McCleary*, 243 Ariz. 197, ¶ 19 (if the order "could form the basis of a final judgment" and "actually resulted in final judgment," intervening motions do not deprive the notice of appeal of the benefit of Rule 9(c), Ariz. R. Civ. App. P.).

[7]Ruiz-Bours devotes a portion of her brief to arguing that the Mexico Supreme Court's decision "substantially complied" and was in "substantial conformity" with the UCCJEA. We do not apply a "substantial conformity" standard because that term is found in A.R.S. § 25-1005(B) which concerns enforcement of an international child custody determination. *See* A.R.S. §§ 25-1051–1067. An order "for the return of the child" made under the Hague Convention *may* be enforced as if it were a child custody determination, A.R.S. § 25-1052, but here, the question of jurisdiction was considered by the trial court and is the issue before us on appeal. Thus, the relevant "[i]nternational application" section is § 25-1005(A). That section does not contain the term "substantial conformity." *Id.*

insufficient because § 25-1037 lists mandatory factors for the declining court to consider, and the Mexico Supreme Court did not properly consider these factors, rather it relied on the "habitual residence" finding under the Hague Convention.[8]

¶10 We review "whether a court has subject matter jurisdiction under the UCCJEA" and questions of statutory interpretation de novo. *Gutierrez v. Fox*, 242 Ariz. 259, ¶ 17 (App. 2017) (subject matter jurisdiction); *Marriage of Margain*, 239 Ariz. 369, ¶ 21 (statutory interpretation). Based on our review, we agree with the Pima County Superior Court that it was the "clear intent of the Mexican [Supreme] Court to decline jurisdiction in favor of Arizona." The question on appeal is whether this "clear intent" was sufficient to decline jurisdiction under the UCCJEA and whether Arizona can properly exercise jurisdiction. For the following reasons, we reverse the Pima County Superior Court's conclusion that it was an insufficient declination under the UCCJEA and remand for further proceedings consistent with this opinion.

¶11 Subject matter jurisdiction in child custody proceedings in Arizona is governed by article two of the UCCJEA. A.R.S. § 25-1031–1040. Arizona treats a "foreign country as if it were a state of the United States for the purpose of applying . . . article 2 of [the UCCJEA]." A.R.S. § 25-1005(A). In cases not involving temporary, emergency jurisdiction, an Arizona court only has jurisdiction to make an initial child custody determination if any of the following are true:

> 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

[8]Margain also argues that because Hague Convention restitution proceedings and the jurisdictional requirements of the UCCJEA are distinct, the Mexico Supreme Court could have exercised jurisdiction. Even assuming that he is correct and that under the UCCJEA a court can properly exercise jurisdiction despite the outcome of Hague Convention restitution proceedings, unless Mexico has adopted the UCCJEA, it is not required to follow it. *See Holly C. v. Tohono O'odham Nation*, 247 Ariz. 495, ¶ 58 (App. 2019) (a jurisdiction that has not adopted the UCCJEA "cannot be said to be 'violating' the UCCJEA"). Neither party has suggested that Mexico has adopted the UCCJEA nor that the Mexico Supreme Court's decision is not in accordance with its own laws. *See id.*

> 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 paragraph 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 under § 25-1037 or 25-1038 and both of the following are true:
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> (a) 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.
>
> (b) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships.
>
> 3. All courts having jurisdiction under paragraph 1 or 2 have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under § 25-1037 or 25-1038.
>
> 4. A court of any other state would not have jurisdiction under the criteria specified in paragraph 1, 2 or 3.

§ 25-1031(A).

¶12 We interpret statutes in a way that "promotes consistency, harmony, and function," the primary goal being to "determine and give effect to the legislative intent behind the statute, considering among other things the context of the statute, the language used and the spirit and purpose of the law." *Welch-Doden v. Roberts*, 202 Ariz. 201, ¶ 22 (App. 2002) (quoting *Midland Risk Mgmt. Co. v. Watford*, 179 Ariz. 168, 171 (App. 1994)). "If possible, each word or phrase must be given meaning so that no part is rendered void, superfluous, contradictory or insignificant," *id.*, and the

statute should be construed sensibly so as to avoid reaching an absurd result. *State ex rel. Montgomery v. Harris*, 237 Ariz. 98, ¶ 13 (2014).

¶13 The UCCJEA aims to avoid "jurisdictional competition and conflict," *Welch-Doden*, 202 Ariz. 201, ¶ 32, and to create consistency in interstate child custody jurisdiction proceedings, *Melgar v. Campo*, 215 Ariz. 605, ¶ 7 (App. 2007). To give effect to this purpose, a child's home state has jurisdictional priority. *Gutierrez*, 242 Ariz. 259, ¶ 18. However if the home state abdicates its jurisdiction to a more appropriate state, this purpose is not frustrated. *See id.*

¶14 Section 25-1031 sets forth the standards for initial child custody jurisdiction under the UCCJEA, providing several circumstances under which a court of this state may exercise jurisdiction. Subsection (A)(1) is inapplicable here because Mexico is S.F.R.'s home state under the UCCJEA.[9] *See Marriage of Margain*, 239 Ariz. 369, ¶ 35; *see also* A.R.S. § 25-1002(7) (defining home state). Under Section 25-1031(A)(2) if there is a home state other than Arizona, Arizona has jurisdiction to make an initial child custody determination if the home state declines jurisdiction, "[t]he 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 [Arizona] other than mere physical presence," and "[s]ubstantial evidence is available in this state concerning the child's care, protection, training and personal relationships."

¶15 Margain argues that even if the Supreme Court of Mexico's decision were a sufficient declination, Arizona cannot exercise jurisdiction because S.F.R. does not have a significant connection to this state, as she has been in Mexico for the past five years, and the substantial evidence requirement is lacking. However, we need not reach whether S.F.R. has a significant connection or whether there is a lack of substantial evidence, because even assuming this is true, § 25-1031(A)(3) does not require such findings so long as the home state court has declined and no other court would have jurisdiction.[10]

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[9]Neither party clearly argues that Mexico is no longer S.F.R.'s home state under the UCCJEA as a result of the Mexico Supreme Court decision. Accordingly, to the extent any dispute as to S.F.R.'s home state exists, we assume Mexico is still her home state for the purposes of our analysis.

[10]We determined in 2016 that California was not S.F.R.'s home state and could not exercise jurisdiction as such. *Marriage of Margain*, 239 Ariz. 369, ¶¶ 36-37. Neither party has argued in this appeal that any other

¶16 Section 25-1031(A)(3) is clear that a court of this state has jurisdiction to make an initial custody determination if "[a]ll courts having jurisdiction under paragraph 1 or 2 have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under § 25-1037 or 25-1038."[11] However, nothing in § 25-1031 provides the means by which a court can decline jurisdiction. *See In re M.M.*, 192 Cal. Rptr. 3d 849, 859-60 (Ct. App. 2015) (recognizing materially identical California statute was ambiguous as to how a state may decline jurisdiction). And § 25-1005(A), which pertains to jurisdiction, does not provide a measure by which a foreign country's declination must comply with § 25-1031. *Compare* § 25-1005(A) *with* § 25-1005(B) (Section (B) requires "factual circumstances in substantial conformity" and section (A) is silent to this effect.).

¶17 Ruiz-Bours contends that the Mexico Supreme Court considered "numerous facts" regarding whether Arizona or Mexico was an appropriate forum including her connection with Arizona and S.F.R.'s connection to Arizona. While we agree that the Mexico Supreme Court's decision suggests that it ultimately determined that Arizona is an appropriate forum, from our review, it appears the primary rationale for this decision was the impact of the Hague proceedings, not necessarily relevant inconvenient forum considerations.[12]

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jurisdiction, apart from Mexico or Arizona, would be proper under § 25-1031(A)(1), (2). Additionally, in regards to § 25-1031(A)(3), Margain argues § 25-1037 requires the Mexico Supreme Court first "acknowledge that it has jurisdiction" in order to decline. We read nothing in § 25-1037 to require such an acknowledgement.

[11] Ruiz-Bours argues that the Mexico Supreme Court's decision is also a sufficient declination under § 25-1038. Because we resolve this matter on § 25-1037 grounds, we need not consider § 25-1038.

[12] Under § 25-1037, inconvenient forum considerations include: occurrence of domestic violence; length of time the child has been outside of the forum; distance between the declining forum and exercising forum; parties' financial circumstances; parties' agreement to jurisdiction; nature and location of the evidence, including child's testimony; ability of the courts to decide the matter expeditiously; and the court's familiarity with the litigation. Section 25-1037 instructs that "all relevant factors" shall be considered. Ruiz-Bours essentially acknowledges in her brief that not all relevant factors under § 25-1037 were explicitly considered by the Mexico Supreme Court.

¶18 Nevertheless, we do not believe the legislature intended § 25-1031(A)(3) to be read so narrowly as to preclude an Arizona court from exercising jurisdiction. This is especially so when the home state, which is a foreign country with no reason or obligation to follow the UCCJEA, has clearly intended to decline its jurisdiction in favor of Arizona. *See In Re Marriage of Fernandez-Abin & Sanchez*, 120 Cal. Rptr. 3d 227, 229-30 (Ct. App. 2011) (observing that the UCCJEA applies "even if the competing forum has not adopted [it]" in case involving Mexico and California); *see also* Deborah F. Buckman, *Uniform Child Custody Jurisdiction and Enforcement Act's Application to Tribal Courts*, 45 A.L.R. 7th Art. 5 (2019) (all fifty states, Washington, D.C., Guam, and the U.S. Virgin Islands have essentially effected the UCCJEA—Mexico not listed). To hold otherwise, would lead to a result in which ostensibly no court would be able to exercise jurisdiction over the custody case. *See Montgomery*, 237 Ariz. 98, ¶ 13 ("Statutes should be construed sensibly to avoid reaching an absurd conclusion."). This would be contrary to many of the purposes of the UCCJEA: to avoid jurisdictional conflict, to deter abductions of children, to "discourage the use of the interstate system for continuing controversies over child custody," and to "promote cooperation with the courts of other States to the end that a custody decree is rendered in that State which can best decide the case in the interest of the child." *Marriage of Margain*, 239 Ariz. 369, ¶ 30 (quoting Unif. Child Custody Jurisdiction & Enf't Act § 101 cmt. (1997)).

¶19 The parties point to no authority, nor have we found any, in which a court has precisely addressed this discrete issue—whether a declination from a foreign country home state court primarily motivated by the Hague convention, rather than on inconvenient forum grounds, is sufficient to operate as a declination under § 25-1037.[13] Ruiz-Bours cites to *Krymko v. Krymko*, 822 N.Y.S.2d 570, 571-72 (App. Div. 2006), which appears to be the most comparable.

¶20 In *Krymko*, the child was born in Canada in September 2003, and in the summer of 2004, the family moved to New York. *Id.* at 571. On January 10, 2005, the child's mother took the child to Ontario, Canada and eight days later filed for custody there. *Id.* The father filed for custody in

[13]Our opinion does not purport to address or hold how a court of this state should comply with § 25-1037 if it is the home state, as that is not at issue here. *Cf. Gutierrez*, 242 Ariz. 259, ¶¶ 23, 25 (substantial evidence supported refusal by Arizona as the home state to decline jurisdiction where trial court "provided detailed analysis . . . analyzing all the § 25-1037(B)(1-8) factors").

New York and in Ontario moved for the return of the child pursuant to the Hague Convention. *Id.* The Ontario court found the child was "habitually resident" in New York and had been "wrongfully removed." *Id.* It ordered the mother to return the child to New York "pending further order of the New York court." *Id.* The New York court denied the mother's motion to dismiss, finding New York was the child's "home state." *Id.* at 571-72.

¶21 The appellate court determined that New York was properly the child's home state because the Ontario court had found that her removal to Ontario was improper, and thus the time that she was absent from New York was still considered part of the requisite continuous six-month period. *Id.* It also relied on New York's UCCJEA initial jurisdiction statute, N.Y. Dom. Rel. Law § 76, which in relevant part is substantively identical to Arizona's § 25-1031, and held that, "In any event, Ontario—the only other home that [the child] has ever known—has deferred jurisdiction to New York. Accordingly, New York has jurisdiction on the ground that it has been determined that it is the more appropriate forum." *Id.* at 572 (citation omitted). Unlike here, in *Krymko*, the New York court was properly exercising jurisdiction as the child's home state regardless of the Ontario court decision, and the Ontario court was not the child's home state. *Id.* at 571-72. Yet regardless of the home state analysis, the New York court considered the Ontario court's Hague Convention restitution decision sufficient to be a declination of jurisdiction. *Id.* at 572.

¶22 Like *Krymko*, decisions from courts in other jurisdictions that have adopted initial custody determination and declination provisions nearly identical to § 25-1031 and § 25-1037 lend support to our interpretation. *See In re M.M.*, 192 Cal. Rptr. 3d at 860-61 ("[W]hen a home state declines jurisdiction in any manner that conveys its intent *not* to exercise jurisdiction over a child in connection with a child custody proceeding" that "refusal is tantamount to a declination of jurisdiction by the home state on the grounds California is the more appropriate forum."); *In re A.C.*, 220 Cal. Rptr. 3d 725, 734, 736-37 (Ct. App. 2017) (non-home state properly exercised jurisdiction under UCCJEA after Mexico's inaction evinced attempt to decline jurisdiction); *see also Banerjee v. Banerjee*, 258 So. 3d 699, 704 (La. Ct. App. 2017) (suggesting that some evidence in the record from a foreign country court could be sufficient as a declination).[14]

[14]Although *In re M.M.* and *In re A.C.* are in the dependency context, we see no meaningful distinction because dependency proceedings are proceedings under the UCCJEA and the California courts were interpreting statutory provisions that are, in all material respects, identical to the ones

¶23 Even if our legislature contemplated that a court of a foreign country that has not adopted the UCCJEA should be in strict compliance with § 25-1037, it is unclear how this would be tenable, and how courts of this state would enforce a conclusion that another jurisdiction erred in applying the UCCJEA.[15] *See Krebs v. Krebs*, 960 A.2d 637, 643 (Md. Ct. Spec. App. 2008). In *Krebs*, the Maryland Court of Special Appeals considered whether their trial court had erred in concluding it had jurisdiction to make a child custody determination under the UCCJEA after an Arizona court had declined jurisdiction. *See id.* at 642, 646. The mother argued the court erred in accepting jurisdiction because Arizona was the more appropriate forum and the factors for declination under § 25-1037 had "not been applied or [had] been misapplied." *Id*. at 642. Her argument was based on a transcript of a telephonic conference held between the two courts in which there was no "'checklist' review of factors listed in the statute." *Id.* at 643.

¶24 The *Krebs* court concluded that its trial court did not err in exercising jurisdiction because in its review of the superior court's decision, "this Court does not have the power or authority to conclude, or to enforce a conclusion, that the Superior Court of Arizona for Maricopa County erred in applying A.R.S. § 25-1037." Rather, if Krebs "was aggrieved by that court's declination of jurisdiction, the appropriate review would be in the appellate courts of Arizona." *Id.* at 643-45 (considering this court's opinion

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at issue before us. *Compare* Cal. Fam. Code § 3421(a)(2), (3) *and* Cal. Fam. Code § 3427 *with* A.R.S. § 25-1031(A)(2), (3) *and* A.R.S. § 25-1037. In *In re M.M.* and *In re A.C.* there was a lack of communication from the foreign country courts. *In re M.M.*, 192 Cal. Rptr. 3d at 714; *In re A.C.*, 220 Cal. Rptr. 3d at 734. The rationale is even more persuasive here, where the Supreme Court of Mexico has spoken on the issue and clearly determined its courts will not exercise jurisdiction and that Arizona should determine the custody matter.

[15]Our courts do have the ability to refuse to enforce a child custody determination of a foreign country if the law of that foreign country "violates fundamental principles of human rights." § 25-1005(C). This is consistent with the doctrine of comity, in which Arizona trial courts "may accord the laws and decisions of another state 'presumptive validity, subject to rebuttal.'" *Gnatkiv v. Machkur*, 239 Ariz. 486, ¶ 12 (App. 2016) (quoting *Fremont Indem. Co. v. Indus. Comm'n*, 144 Ariz. 339, 345 (1985)). We do not analyze this case on comity grounds because comity is a matter of discretion, *id.*, that was not addressed by the trial court here, and we need not reach it.

in *Welch-Doden*, 202 Ariz. 201, ¶¶ 44-45, that declination is a question for the home state court).

¶25 We find the analysis underlying *Krebs* even more compelling here. There, the court was considering the actions of one of our superior courts—one with jurisdictional provisions that were "substantially" the same as its own—but determined it could not find our court erred. *Id.* at 642-43. This determination was in light of its own jurisdictional analysis requiring Arizona to decline on inconvenient forum grounds. *See id.* (citing Md. Code Ann., Fam. Law § 9.5-207 materially identical to § 25-1037); *see also* Md. Code Ann., Fam. Law § 9.5-201 (requiring a declination on grounds of § 9.5-207 or § 9.5-208, Md. Code Ann., Fam. Law). Here, we are considering the actions of a foreign country court that, as discussed above, has apparently not adopted the UCCJEA, and would ostensibly have no reason or obligation, under its own law, to even consider § 25-1037. *See Marriage of Fernandez-Abin*, 120 Cal. Rptr. 3d at 229; *see also* Buckman, *Uniform Child Custody Jurisdiction and Enforcement Act's Application to Tribal Courts*, 45 A.L.R. 7th Art. 5. The inability to determine a foreign country court erred, coupled with a refusal to accept a foreign country court's clear declination in this case would, as explained above, lend itself to circumstances in which no court would have jurisdiction, frustrating the purposes of the UCCJEA. *See Marriage of Margain*, 239 Ariz. 369, ¶ 30.

¶26 Accordingly we hold that in a custody proceeding governed by the UCCJEA, if there is sufficient evidence in the record for a trial court to conclude that a court in a non-UCCJEA jurisdiction intends to decline home state jurisdiction in favor of Arizona, and it would otherwise be appropriate for Arizona to accept jurisdiction under § 25-1031, the declination is sufficient and Arizona can accept jurisdiction. Here, there was sufficient evidence that Mexico intended to, and has, declined their jurisdiction in favor of Arizona under § 25-1037 and Arizona can properly exercise jurisdiction over this custody case under § 25-1031(A)(3).

Attorney Fees

¶27 Pursuant to A.R.S. § 25-324 and Rule 21, Ariz. R. Civ. App. P., both parties request attorney fees. Beyond his bare citation to statutory authority, Margain states no grounds for his request, and is not the prevailing party on appeal. Ruiz-Bours' request is based on Margain's removal of S.F.R. without court approval and his refusal to return her in contradiction of court orders. But the appropriate sanction, if any, for that conduct is best left to the trial court in the first instance. In our discretion, we deny both parties' attorney fee requests. *See* § 25-324(A). However, as

the prevailing party, Ruiz-Bours is entitled to her costs upon compliance with Rule 21(b). *See Doherty v. Leon*, 249 Ariz. 515, ¶ 24 (App. 2020).

Disposition

¶28 For the foregoing reasons, we reverse the Pima County Superior Court's order, and remand for further proceedings consistent with this opinion.