SUMMARY
January 13, 2022

2022COA12

No. 20CA1724, *People in Interest of E.W.* — Family Law — Uniform Child-custody Jurisdiction and Enforcement Act — Exclusive, Continuing Jurisdiction — Juvenile Court — Dependency and Neglect — Termination of the Parent-Child Legal Relationship

In this dependency and neglect case, mother and father appeal the judgment terminating their parent-child legal relationship with their child. During the pendency of the dependency and neglect case (and more than six months before the termination hearing), the parents and the child separately relocated from Colorado to another state. On appeal, the parents contend that this deprived the juvenile court of jurisdiction to terminate their parental rights, as Colorado was no longer the child's home state under the Uniform Child-custody Jurisdiction and Enforcement Act (UCCJEA), § 14-13-101 to -403, C.R.S. 2021.

Applying the principles set forth in *People in Interest of S.A.G.*, 2021 CO 38, and *People in Interest of B.H.*, 2021 CO 39, to the UCCJEA and the jurisdictional provisions of the Children's Code, a division of the court of appeals concludes that the juvenile court had jurisdiction to enter the termination judgment.

Because the division also rejects mother's and father's other challenges to the juvenile court's termination judgment, it affirms.

COLORADO COURT OF APPEALS **2022COA12**

Court of Appeals No. 20CA1724
El Paso County District Court No. 18JV1296
Honorable Robin Chittum, Judge

The People of the State of Colorado,

Appellee,

In the Interest of E.W., a Child,

and Concerning H.W. and R.W.,

Appellants.

JUDGMENT AFFIRMED

Division II
Opinion by JUDGE WELLING
Román, C.J., and Brown, J., concur

Prior Opinion Announced May 20, 2021, WITHDRAWN
Petition for Rehearing GRANTED

OPINION PREVIOUSLY ANNOUNCED AS "NOT PUBLISHED PURSUANT TO C.A.R. 35(e)" ON May 20, 2021, IS NOW DESIGNATED FOR PUBLICATION

Announced January 13, 2022

Diana K. May, County Attorney, Melanie Douglas, Special Assistant County Attorney, Colorado Springs, Colorado, for Appellee

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¶ 1 In this dependency and neglect case, H.W. (mother) and R.W. (father) appeal the judgment terminating their parent-child legal relationship with their child, E.W. During the pendency of the dependency and neglect case (and more than six months before the termination hearing), the parents and the child separately relocated from Colorado to Montana. On appeal, the parents contend that this deprived the juvenile court of jurisdiction to terminate their parental rights, as Colorado was no longer the child's home state under the Uniform Child-custody Jurisdiction and Enforcement Act (UCCJEA), § 14-13-101 to -403, C.R.S. 2021. Applying the principles set forth in *People in Interest of S.A.G.*, 2021 CO 38, and *People in Interest of B.H.*, 2021 CO 39, to the UCCJEA and the jurisdictional provisions of the Children's Code, we conclude that the juvenile court had jurisdiction to enter the termination judgment.

¶ 2 Because we also reject mother's and father's other challenges to the juvenile court's termination judgment, we affirm.

I. Background

¶ 3 In September 2018, the El Paso County Department of Human Services (Department) filed a petition in dependency and neglect

regarding then-nine-month-old E.W. (the child). The Department alleged that the police had responded to a domestic violence incident between the parents, the home was unsanitary, the child had been taken to the hospital and diagnosed with failure to thrive, the parents had a history of substance abuse and mental health problems, and mother's parental rights to two older children had been previously terminated in Montana.

¶ 4 The juvenile court adjudicated the child dependent and neglected and adopted treatment plans for the parents.

¶ 5 In July 2019, the child was placed with family-like kin providers in Montana through an Interstate Compact on the Placement of Children. In October 2019, the parents moved to Montana.

¶ 6 In February 2020, the Department filed a motion to terminate the parents' rights.

¶ 7 In July 2020, following a hearing, the juvenile court entered judgment terminating the parents' rights.

II. Subject Matter Jurisdiction

¶ 8 Mother and father contend that the termination judgment must be reversed because the juvenile court lost jurisdiction under the UCCJEA.[1]

¶ 9 We review de novo whether the juvenile court had subject matter jurisdiction under the UCCJEA, which applies in dependency and neglect proceedings. *People in Interest of M.S.*, 2017 COA 60, ¶¶ 11-12, 14. Because a challenge to the UCCJEA jurisdiction is a challenge to the court's subject matter jurisdiction,

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[1] On May 20, 2021, this division issued an unpublished opinion in this case. *See People in Interest of E.W.*, (Colo. App. No. 20CA1724, May 14, 2021) (not published pursuant to C.A.R. 35(e)). Twelve days later, our supreme court announced opinions in *People in Interest of S.A.G.*, 2021 CO 38, and *People in Interest of B.H.*, 2021 CO 39, both of which addressed a juvenile court's jurisdiction under the UCCJEA in the dependency and neglect context. Citing *S.A.G.* and *B.H.*, father filed a timely petition for rehearing. *See* C.A.R. 40(a)(1). In response to father's petition for rehearing, we ordered supplemental briefing from the parties on the issue of "whether, in light of the supreme court's opinions in *S.A.G.* and *B.H.*, the juvenile court had jurisdiction under UCCJEA to enter the termination order." *People in Interest of E.W.*, (Colo. App. No. 20CA1724, June 11, 2021) (unpublished order). Having considered father's petition for rehearing and the parties' supplemental briefs, we grant father's petition for rehearing, withdraw the unpublished opinion we announced on May 20, 2021, and issue this published opinion in its place. *See* C.A.R. 40(a)(5).

the issue may be raised at any time, including for the first time on appeal. *See B.H.*, ¶ 27.

¶ 10 "The primary aim of the UCCJEA is to prevent competing and conflicting custody orders by courts in different jurisdictions" and to "avoid jurisdictional competition over child-custody matters in an increasingly mobile society." *People in Interest of M.M.V.*, 2020 COA 94, ¶ 17. "To effectuate this purpose, [the UCCJEA] establishes a comprehensive framework that a Colorado court must follow to determine whether it may exercise jurisdiction in a child-custody matter or whether it must defer to a court of another state." *Id.*

¶ 11 "The UCCJEA covers a wide variety of child-custody matters, defined as child-custody determinations and child-custody proceedings." *Id.*; *see* § 14-13-102(3)-(4), C.R.S. 2021. A court has jurisdiction to make an initial child-custody determination if, as relevant here, the state is the home state of the child on the date of the commencement of the proceeding. § 14-13-201(1)(a), C.R.S. 2021. As pertinent here, the home state is defined as the state in which the child has lived with a parent for a least 182 consecutive days immediately before the commencement of the proceeding.

§ 14-13-102(7)(a). Commencement is defined as "the filing of the first pleading in a proceeding." § 14-13-102(5).

¶ 12 Under the UCCJEA, the court that makes an initial child-custody determination generally retains exclusive, continuing jurisdiction. § 14-13-202, C.R.S. 2021; *M.S.*, ¶ 15. The UCCJEA must be read in conjunction with the court's general jurisdiction. *See S.A.G.*, ¶¶ 22-23. Thus, we turn to the juvenile court's jurisdiction to preside over and enter orders in a dependency and neglect proceeding.

¶ 13 The Children's Code gives a juvenile court exclusive jurisdiction concerning any child who is dependent and neglected. § 19-1-104(1)(b), C.R.S. 2021. And it provides that a court has continuing jurisdiction over a child adjudicated dependent and neglected until the child "becomes eighteen and one-half years of age unless earlier terminated by court order." § 19-3-205(1), C.R.S. 2021 (amended effective July 7, 2021, to reduce age from twenty-one years to eighteen and one-half years); *see also People in Interest of E.M.*, 2016 COA 38M, ¶ 20 ("[T]he juvenile court presiding over the dependency and neglect case maintains continuing, exclusive jurisdiction over the adjudicated child, and in most circumstances

his or her parents, as long as the case continues."), *aff'd sub nom. People in Interest of L.M.*, 2018 CO 34, ¶ 20.

¶ 14 The court that made an initial child-custody determination may, however, lose exclusive, continuing jurisdiction. § 14-13-202(1); *see Brandt v. Brandt*, 2012 CO 3, ¶¶ 25-28 (discussing how the issuing court may lose exclusive, continuing jurisdiction to another state). As pertinent here, the court in the issuing state or the court of another state may determine that the issuing state has been divested of jurisdiction because the child and no parent presently reside in the issuing state. § 14-13-202(1)(b); *see Brandt*, ¶¶ 26, 28.

¶ 15 The parents don't dispute that Colorado was the child's home state when the dependency and neglect case was initiated and that the Colorado court had jurisdiction to make an initial child-custody determination. This is significant because home state jurisdiction is the preferred basis for establishing initial child-custody jurisdiction. *See Madrone v. Madrone*, 2012 CO 70, ¶ 11. Rather, they argue that the Colorado court lost subject matter jurisdiction before the Department sought to terminate their parental rights. More specifically, mother asserts that after the child had been in

Montana for six months, Montana became the child's home state under the UCCJEA. Father contends that a termination is a new child-custody proceeding and a modification of a child-custody determination under the UCCJEA. The crux of both parents' arguments is that the Colorado court had to re-establish its jurisdiction before hearing and ruling on the termination motion, and, having failed to do so, the court lacked jurisdiction to enter the termination judgment.

¶ 16 We acknowledge that the parents and the child didn't reside in Colorado at the time of the termination hearing and that these facts, taken together and looked at in isolation, appear, at first glance, to provide fertile ground for arguing that the Colorado court had lost exclusive, continuing jurisdiction under the UCCJEA. *See* § 14-13-202(1)(b). However, when we consider section 19-3-205(1), the purpose of the UCCJEA, and other facts in this case, we must conclude that the Colorado court retained jurisdiction to enter the termination judgment.

¶ 17 To be sure, the Colorado court had jurisdiction throughout the dependency and neglect proceeding, including the termination stage, under section 19-3-205(1). Although the Colorado court

could have lost or ceded continuing jurisdiction under the UCCJEA despite section 19-3-205(1), it could not do so merely because the statutory factors under section 14-13-202(1)(b) had been met. This is because losing continuing jurisdiction also requires another state to attempt to acquire jurisdiction from the Colorado court. Such a requirement is consistent with the entire statutory scheme and ensures that parents are not incentivized to move out of state to avoid termination of their parental rights and that "another more appropriate forum exist[s] to resolve the dispute." *Kar v. Kar*, 378 P.3d 1204, 1204 (Nev. 2016); *see Brandt*, ¶ 27.

¶ 18 Here, there were no competing or conflicting child-custody proceedings or determinations by courts in different jurisdictions. Although a Montana court had initiated a dependency and neglect proceeding with regard to the parents' later-born child, it hadn't sought jurisdiction, temporary or otherwise, over E.W. *See* § 14-13-204(1), C.R.S. 2021 (A court "has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child."). In other words, this is not a case where the Colorado court and the

Montana court were trying to simultaneously exercise jurisdiction with regard to the child.

¶ 19 Moreover, our supreme court recently recognized in *S.A.G.*, ¶ 39 n.3, that the filing of a termination motion doesn't start a new proceeding for purposes of assessing home state jurisdiction under the UCCJEA. Therefore, termination is not a new child-custody proceeding or a modification of a child-custody determination that requires the juvenile court to re-assess its jurisdiction. *Id.* ("[I]n Colorado, a motion to terminate parental rights after a child has been adjudicated dependent and neglected is a request for a remedy, not the start of a second proceeding." (citing § 19-3-502(3)(a), C.R.S. 2021)).

¶ 20 Because the Montana court didn't seek to exercise jurisdiction under the UCCJEA and termination is not a new child-custody proceeding, the Colorado court maintained its exclusive, continuing jurisdiction under section 19-3-205(1).

¶ 21 Having concluded that the Colorado court maintained jurisdiction to consider the Department's termination motion, we reject the parents' argument that the Colorado court was required to communicate with a Montana court. Section 14-13-204(4)

requires the Colorado court to communicate with a court of another state "upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by" a court of another state. As noted above, no Montana court had commenced a child-custody proceeding or made a child-custody determination with regard to the child. Nor did a Montana court need to decline jurisdiction, which also requires communication with a court. *See S.A.G.*, ¶ 49. And nothing in the statute requires the Colorado court to communicate with a court of another state — here, a Montana court — merely because the child had been placed outside of, and the parents have moved out of, Colorado. *See Brandt*, ¶ 27 (The UCCJEA "helps ensure that parents do not have an incentive to take their child out-of-state in order to re-litigate the issue of custody.").

¶ 22 Accordingly, we conclude that the Colorado court had jurisdiction to enter the termination judgment.

III. Inconvenient Forum Factors

¶ 23 Father contends that the juvenile court failed to consider the UCCJEA's inconvenient forum factors under section 14-13-207, C.R.S. 2021. We conclude that this issue was not preserved.

¶ 24 Section 14-13-207(1) provides that a Colorado court that has jurisdiction to make a child-custody determination "may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum." This issue may be raised by a party's motion, the court's own motion, or request of another court. *Id.* In determining whether it's an inconvenient forum, a Colorado court "shall consider whether it is appropriate for a court of another state to exercise jurisdiction" by examining various factors listed in section 14-13-207(2).

¶ 25 Six months before the termination hearing, father's counsel asked the juvenile court, "Should we be considering a change of venue on this case in Montana? They have an open D&N so it wouldn't be asking them to necessarily open a new case themselves but, I mean, we're trying to litigate a matter when all parties are thousands of miles away." The court responded that the parties could discuss the issue. The guardian ad litem objected to a "change of venue" on the basis that the child needed permanency. The court made no findings, and the parents didn't ask the court to specifically rule on the request. Further, neither parent

subsequently filed a motion asking the court to consider section 14-13-207(1) or otherwise transfer the case to Montana.

¶ 26 We conclude that father didn't adequately preserve this issue for appeal. *See Est. of Stevenson v. Hollywood Bar & Cafe, Inc.*, 832 P.2d 718, 721 n.5 (Colo. 1992) ("Arguments never presented to, considered or ruled upon by a trial court may not be raised for the first time on appeal."). He didn't ask the juvenile court to determine whether it was an inconvenient forum under section 14-13-207(1). Rather, he raised the issue of venue, which is different than jurisdiction. *See People in Interest of C.N.*, 2018 COA 165, ¶¶ 16-18; *cf. Utils. Bd. v. Se. Colo. Power Ass'n*, 171 Colo. 456, 459, 468 P.2d 36, 37 (1970). On appeal, father concedes that he did not file a motion or request a hearing "concerning the inconvenience of the forum."

¶ 27 Even if we were to conclude that father sufficiently alerted the juvenile court to consider whether Colorado was an inconvenient forum under section 14-13-207, we are unable to meaningfully review the issue because the court didn't rule on it. The parties didn't "submit information" as required under section 14-13-207(2). And the court wasn't given an opportunity to consider the

applicability of this statute and make a decision whether Colorado was an inconvenient forum based on a consideration of the statutory factors. Without factual findings and legal conclusions from the court, we can't determine whether it abused its discretion. *See In re Parental Responsibilities Concerning B.C.B.*, 2015 COA 42, ¶ 8 (we review de novo the district court's determination whether it had jurisdiction under the UCCJEA and we review for an abuse of discretion the court's decision to decline to exercise jurisdiction).

¶ 28 Accordingly, because father raised this issue for the first time on appeal, we decline to consider it.

IV. Due Process, Equal Protection, and Venue

¶ 29 Mother contends that the juvenile court violated her due process and equal protection rights by failing to consider the request to change venue. We aren't persuaded.

¶ 30 Mother didn't adequately preserve the issue of change of venue for appeal. *See Stevenson*, 832 P.2d at 721 n.5. Although father raised the issue of changing venue, mother didn't. Nor did she file a motion to change venue or pursue a ruling on the issue of venue. Consequently, the juvenile court didn't rule on the issue. So we don't have any factual findings or legal conclusions with regard to

venue to review. *See Hagan v. Farmers Ins. Exch.*, 2015 CO 6, ¶ 15 (a trial court's decision whether to change venue is reviewed for an abuse of discretion).

¶ 31 Moreover, the crux of mother's argument appears to be that the dependency and neglect proceeding should've been litigated in a Montana court, not the Colorado court. But whether the dependency and neglect proceeding should've been litigated in a Montana court is a question of jurisdiction, not venue. "Jurisdiction is the authority of a court to hear and decide a case presented to it." *Sanctuary House, Inc. v. Krause*, 177 P.3d 1256, 1258 (Colo. 2008). "Once it is established that the courts of Colorado have jurisdiction to hear an action, the question of venue determines which particular Colorado court should hear and try the case." *Id.*

¶ 32 Because we've already concluded that the Colorado court had jurisdiction to enter the termination judgment, we decline to address this issue further.

V. Less Drastic Alternatives

¶ 33 Father contends that the juvenile court erred by finding that there were no less drastic alternatives to termination. Specifically,

he argues that the court could have allocated parental responsibilities to the child's family-like kin placement provider in Montana. We discern no basis for reversal.

¶ 34 The juvenile court must consider and eliminate less drastic alternatives before it terminates the parent-child legal relationship. *People in Interest of A.M. v. T.M.*, 2021 CO 14, ¶¶ 19, 40-41; *People in Interest of D.P.*, 181 P.3d 403, 408 (Colo. App. 2008). In considering less drastic alternatives, the court bases its decision on the best interest of the child, giving primary consideration to the child's physical, mental, and emotional conditions and needs. § 19-3-604(3), C.R.S. 2021. A court may consider (1) whether the child is bonded to the parent; (2) the quality of the relationship between the parent and the alternative placement option; and (3) the ability of the alternative placement option to appropriately care for the child. *See D.P.*, 181 P.3d at 408-09; *People in Interest of T.E.M.*, 124 P.3d 905, 910 (Colo. App. 2005); *People in Interest of J.M.B.*, 60 P.3d 790, 793 (Colo. App. 2002). We review a juvenile court's less drastic alternatives findings for clear error. *See A.M.*, ¶¶ 15, 44.

¶ 35 Here, the juvenile court considered an allocation of parental responsibilities (APR) but determined that there were no less drastic alternatives to termination that would meet the child's needs. In doing so, the court noted that the child's placement provider was a family friend who had ties to the family, but determined an APR wasn't in the child's best interest. The court found that the case had been going on for almost two years and the child was young and needed consistency. The court also found that the child didn't have a meaningful relationship with the parents. Specifically, the court found that the child recognized the parents "as the people who are on the video screen sometimes but she doesn't know them" and there were concerns that "these strangers [could] pop up down the line on an APR."

¶ 36 The record supports the juvenile court's findings. The case had been open for almost two years and the child and the parents didn't have a relationship. The caseworker testified that the child "didn't appear to recognize who [the parents] were since there were such large periods in between her seeing them." The caseworker also testified that the child didn't seem interested in visiting with the parents.

¶ 37 The record also shows that the child was young and needed permanency. The caseworker testified that the child needed "a permanent home with stable, sober caregivers who are going to consistently meet her needs." And when, as here, the child is less than six years old when a petition in dependency and neglect is filed, expedited permanency planning provisions apply. § 19-1-123(1)(a), C.R.S. 2021. The guidelines in effect at the time of the termination hearing required the juvenile court to place the children in a permanent home "as expeditiously as possible." § 19-3-702(5)(c), C.R.S. 2021. At the time of the termination hearing, the child had been in two placements and had been out of the home for almost two years.

¶ 38 The record further reveals that the Department and the placement provider preferred adoption over an APR. The caseworker testified that the placement provider wasn't willing to have an APR; rather, the provider wanted to adopt the child. The caseworker also testified that the parents weren't "in a place to safely parent" the child. The caseworker opined that given the protective order between the parents, their lack of engagement in

treatment, and their continued substance use, the child couldn't safely return to the parents.

¶ 39 Given this evidence, we conclude that the record supports the juvenile court's findings about less drastic alternatives. Therefore, we won't disturb them on appeal.

VI. Conclusion

¶ 40 We affirm the judgment.

CHIEF JUDGE ROMÁN and JUDGE BROWN concur.