FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1788

SHANNA L. BEEHLER, Former Wife,

Appellant,

v.

DAVID M. BEEHLER, Former Husband,

Appellee.

On appeal from the Circuit Court for Duval County.
Daniel F. Wilensky, Judge.

December 2, 2022

ON MOTION FOR WRITTEN OPINION

TANENBAUM, J.

Shanna Beehler and David Beehler saw their marriage dissolved pursuant to a final judgment that also determined child custody and timesharing. The former husband is a military-service member stationed outside Florida, but he claims this state for his residence. His parents also reside in Florida. With approval from the trial court, the former wife had relocated with their children to Idaho while the dissolution matter was pending, and by stipulation of the parties, the final dissolution judgment confirmed that relocation. On appeal is the trial court's post-judgment order

denying the former wife's motion to "transfer jurisdiction" out of Florida.[1] We affirmed without an opinion, but the former wife asked that we give a written explanation for our disposition. We grant her motion and set out the following as the analysis lying behind our affirmance.

I

The final dissolution judgment not only terminated the parties' marriage, but it also addressed child support, attorney's fees, and the equitable distribution of their marital property. In the judgment, the trial court approved a parenting plan, which contained the rules for timesharing and the responsibilities of each party for the children's travel. According to the parenting plan, which was stipulated to by both parties, the children could travel to the former husband for his scheduled time, or he could travel to see them. Additionally, the former husband's parents, who live in Florida, were allowed to exercise his scheduled timesharing if his military assignments prevented him from being able to do so himself. However, the arrangement did not even last a full year.

The former wife filed a petition in an Idaho state court to modify the child custody agreement. She also filed a motion pursuant to section 61.520, Florida Statutes, with the trial court that rendered the dissolution judgment. That motion asked the trial court to "transfer jurisdiction" regarding custody of the children to the Idaho state court where her motion for modification was pending. The former wife claimed that "Florida has become an inconvenient forum." At an evidentiary hearing on the "transfer" motion, the former wife testified by phone that she wanted the transfer because "all of our lives are right here in Idaho." According

[1] Her notice of appeal purported to ask for review of two final orders—the other one being an order denying her request to reopen the case to present additional evidence. Although this latter order is not a final order, it is an order that is reviewable as part of the appeal of the former. *See* Fla. R. App. P. 9.110(h). At the same time, based on the reasoning we are about to set out for affirmance, we reject without further comment the proposition that we should reverse because the trial court should have allowed for taking more evidence.

to the former wife, she does not have the financial means to travel to Florida. She also mentioned that the children's pediatricians and dentists are in Idaho. And she noted an abuse allegation that the former husband had made against her: the abuse allegedly occurred in Idaho, and the witnesses she would marshal in connection with her Idaho modification request are in that state.

At the hearing and in its order denying the wife's motion, the trial court made clear that it was carefully considering the factors listed in section 61.520. In its order, the trial court observed that the children have doctors and family in both states. It found that any Florida or Idaho investigation into abuse had already been closed. It also found that there was no pending litigation in the Florida dissolution case. The trial court nevertheless noted that the former wife's financial means are not relevant because she had been attending hearings by phone in the past. It concluded that it "has original and continuing jurisdiction over this matter," and that it would not "be inconvenient" to retain that jurisdiction. The former wife appealed.

II

The former wife argues that the trial court abused its discretion in that it "either ignored or misinterpreted" the evidence presented at the hearing in the light of the factors set out in section 61.520. The former wife goes so far as to assert that the trial court "ignored the fact that all evidence as to every aspect of the children's lives is in Twin Falls, Idaho." She also contends that the trial court "misinterpreted and misapplied" one or more provisions of section 61.520. We reject the former wife's contentions of error. We do so because section 61.520 is not the correct statute through which to have the trial court relinquish (or "transfer") its continuing, exclusive jurisdiction over the custody and timesharing matters addressed in the final dissolution judgment. There is nothing in the record that would support such a relinquishment under the applicable statute, section 61.515.

Section 61.520 is part of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). *See* § 61.501, Fla. Stat. One purpose of the UCCJEA is the avoidance of "jurisdictional competition and conflict with courts of other states in matters of child custody." § 61.502(1), Fla Stat.; *cf. Yurgel v.*

Yurgel, 572 So. 2d 1327, 1330 (Fla. 1990) (explaining that "the primary purpose of the [predecessor version of the UCCJEA] is to create certainty by ensuring that jurisdiction over a specific custody dispute can be obtained only by a single state at a time"). Because the trial court below made the original child custody determination[2] as part of its dissolution judgment, it retains "exclusive, continuing jurisdiction" over that determination. § 61.515(1), Fla. Stat. There is no "concurrent jurisdiction" across two different states regarding custody and timesharing for the parties' children; no other court in the country has jurisdiction to modify the determination reflected in the dissolution judgment. *Cf. Yurgel*, 572 So. 2d at 1330–31. This exclusive jurisdiction in fact persists until a trial court of this state "*determines* that the child, the child's parents, *and* any person acting as a parent do not 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." § 61.515(1)(a), Fla. Stat. (emphasis supplied). Alternatively, under the same statute, exclusive jurisdiction continues with the original trial court until a court of either this state or another state "*determines* that the child, the child's parent, *and* any person acting as a parent do not presently reside in this state." *Id.* (1)(b) (emphasis supplied).

Either way, the highlighted text above demonstrates that section 61.515 is supposed to be the mechanism by which a party seeks to "transfer" jurisdiction over an order governing child custody. The party seeking that transfer must obtain the appropriate judicial determination of whether the circumstances listed in the statute exist. The effect of such a determination is to terminate the original trial court's exclusive jurisdiction, thereby freeing up the entire custody matter so it can be handled by another appropriate jurisdiction. Notably, convenience is not listed

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[2] For purposes of the UCCJEA, a "child custody determination" includes any order that determines timesharing. *See* § 61.503(3), Fla. Stat. (defining the term as a "judgment, decree, or other order of a court providing for the legal custody, physical custody, residential care, or visitation with respect to a child").

among the criteria to be considered for this termination to occur. Before "exclusive, continuing jurisdiction" can be terminated, a trial court must look primarily at the connection between the jurisdiction and *all* the parties and children. *Cf. Yurgel*, 572 So. 2d at 1331 (explaining that the predecessor to the UCCJEA "does not operate to divest a court of continuing jurisdiction unless virtually all contacts have been lost with the forum state").

The former wife's motion to "transfer jurisdiction" to an Idaho state court seems to have been an effort to accomplish such a termination of exclusive jurisdiction. She pointed to her effort to domesticate the trial court's dissolution judgment in Idaho, and she asked generally that the trial court "relinquish jurisdiction of this matter" and "transfer jurisdiction of this matter to the" Idaho state court. She, however, did not proceed under section 61.515. The former wife instead proceeded under section 61.520, which is an inconvenient-*forum* provision, not one that governs termination of exclusive jurisdiction. *Cf. Yurgel*, 572 So. 2d at 1329 (characterizing a similar provision in the predecessor act as one that "codifies and strengthens the long-standing judicial doctrine of inconvenient forum"). Section 61.520 *allows* (using the term "may"), but does not require, a trial court that has jurisdiction "to make a child custody determination" nevertheless to "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." *Id.* (1). The trial court, though, cannot decline the exercise of jurisdiction over a "child custody determination" because of inconvenience unless it first "consider[s] whether it is appropriate for a court of another state to exercise jurisdiction," looking at "all relevant factors," including eight expressly enumerated criteria. *Id.* (2). The former wife's motion attempted to track several of these criteria, and the main thrust of her argument for reversal on appeal is the trial court's improper (or legally incorrect) application of these criteria to the evidence she presented.

We mentioned in the introduction to this part that the former wife has the wrong statute. We say this because she cannot point to an issue that was pending before the trial court regarding its original custody determination when she made the motion. Section 61.520 undoubtedly is a forum provision, and the term "forum"

references a place to resolve a pending dispute. Put another way, if there is no dispute, there is no need for a forum (convenient or inconvenient) in which to have it resolved. There are several references to this concept in the criteria that the trial court must consider before making an inconvenient-forum determination. *See id.* (2)(f), (h) (requiring consideration of the evidence and familiarity with the facts and issues pertaining to "the pending litigation"); *id.* (2)(g) (requiring consideration of the ability of the respective courts "to decide *the issue* expeditiously" (emphasis supplied); *id.* (3) (referring to a stay of "the [child custody] *proceedings* upon condition that a child custody proceeding be promptly commenced in another designated state" (emphasis supplied)).

Moreover, we must bear in mind that there can be more than one "child custody determination" made over time by the same trial court. The term "child custody determination" is broadly defined to include not just the initial determination of custody but also any subsequent modification. *See* § 61.503(3), Fla. Stat. In a case like this one, where the trial court already has made the original custody determination (thereby acquiring "exclusive, continuing jurisdiction"), any subsequent request for modification or enforcement commences a proceeding for a new "child custody determination." *Cf.* § 61.503(4), Fla. Stat. (defining "child custody proceeding" as one "in which legal custody, physical custody, residential care, or visitation with respect to a child *is an issue*" (emphasis supplied)); *see Yurgel*, 572 So. 2d at 1331 (distinguishing between the initial exercise of jurisdiction regarding custody and subsequent "modification jurisdiction"). Terms like "decline" and "at any time" appearing in the statute indicate that the trial court can make this forum determination whenever it is called upon to exercise its jurisdiction to resolve a custody dispute.

If we consider the application of section 61.520 in the light of the terms it uses, then, we see that *each time* a new dispute regarding custody comes before the trial court, it has the option, under appropriate circumstances, to "decline" to exercise its exclusive jurisdiction to decide that issue. *Cf. Yurgel*, 572 So. 2d at 1331 (explaining that, under the predecessor act, only the state with continuing jurisdiction can modify the custody order and only

"that state decides whether to decline the exercise of its jurisdiction *in any particular case*" (internal quotation and citation, and some emphasis, omitted)). That is, the trial court takes each dispute arising out of its custody order separately and considers the propriety of the forum for deciding the discrete dispute brought before it for resolution. For section 61.520 to come into play at all, then, the trial court must be called upon to exercise its jurisdiction to resolve a custody dispute in the first place. That dispute was missing in the case. As the trial court found (and the former wife concedes), there was no ongoing custody litigation before it at the time it considered the former wife's motion to "transfer." Because the trial court was not being asked to decide anything regarding custody or timesharing at the time of the former wife's motion, the supposed inconvenience of the forum, generally speaking, was not relevant. Section 61.520 simply did not apply, so the trial court's denial of the former wife's motion made pursuant to that statute could not have been erroneous.

At all events, the evidence supported the trial court's findings that the former husband still is a resident of Florida and that there remains a connection between Florida and at least one of the parents and the children. The trial court concluded, essentially, that it was appropriate "to continue maintaining jurisdiction in Florida." Even if the former wife had proceeded instead under section 61.515 to "transfer jurisdiction," there was no evidentiary basis for doing so, and the trial court's determination that it still had exclusive jurisdiction was legally correct.

Motion GRANTED.

ROWE, C.J., concurs with an opinion; MAKAR, J., concurs only in the disposition of the case, and dissents from the grant of the motion, with an opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

ROWE, C.J., concurring.

I join in granting Appellant's motion for written opinion and concur in Judge Tanenbaum's opinion explaining the reasoning for our disposition of this appeal. I write separately to express my disagreement with two principles set out in the dissenting opinion.

First, I disagree with the suggestion that when granting a motion for a written opinion, an appellate court should not "stray" from the arguments advanced in the motion or the parties' briefs. Nothing in Florida Rule of Appellate Procedure 9.330(a)(2)(D) mandates that a district court of appeal, when it exercises it inherent authority to write, explain its reasoning in a manner tailored to the grounds set out by the movant. *Cf. Sch. Bd. of Pinellas Cnty. v. Dist. Ct. of Appeal*, 467 So. 2d 985, 986 (Fla.1985) (finding "no authority for this Court to require a written opinion" and denying petition for a writ of mandamus requesting that the supreme court direct the district court to write an opinion replacing its prior decision). The Rule restricts only the arguments a party may advance when seeking a written opinion. *See* Fla. R. App. P. 9.330(a)(2)(D) (requiring a party moving for a written opinion "to set forth the reasons" the party seeks a written opinion and providing seven authorized grounds). An appellate court retains its "inherent discretion . . . to issue a written opinion when, in its reasoned judgment, a written opinion is required," and to not write when it "has determined that no opinion is necessary." *R.J. Reynolds Tobacco Co. v. Kenyon*, 882 So. 2d 986, 989 (Fla. 2004). Within the inherent discretion on *whether* to write is the Court's judgment on *what* to write.

Second, the parties' failure to cite in their briefs or in the motion for written opinion the authorities supporting affirmance does not prevent this Court from relying on those authorities when explaining its reasoning. *See State v. Pitts*, 936 So. 2d 1111, 1133 (Fla. 2d DCA 2006) (explaining that appellate courts should affirm "even if the specific basis for affirmance has not been articulated by the appellee"). The well-established principle expressed in this Court's decision in *Rosier*—that an appellate court should not stray from the briefing when reversing a trial court's judgment—has no application in the context of an affirmance:

> It should go without saying that this rule of law applies only to arguments to *reverse* a trial court's ruling. It is just as much a fundamental rule of appellate law that the court may *affirm* (in fact *must* affirm) a ruling on any argument supported by the record, even if not raised by the appellee.

Rosier v. State, 276 So. 3d 403, 411 n. 5 (Fla. 1st DCA 2019) (Winokur, J., concurring) (citing *Dade Cty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 645 (Fla. 1999)).

Thus, in granting the motion for a written opinion, this Court was not constrained by the arguments set out in Appellant's motion or by the parties' briefing of this appeal. Rather, in affirming the judgment below, we exercised our inherent discretion to explain the reasoning for our decision and to provide guidance to the parties and the trial court.

Last, despite the dissent's election not to join in the majority opinion, our decision to grant the motion for written opinion and provide the reasoning for the disposition of this appeal can hardly be described as the provision of "gratis dicta." Quite the contrary. The opinion was not written on the Court's whim, but instead followed a motion for a written opinion by a party to this appeal.

Neither can the opinion provided here be waved away as mere dicta, unnecessary to the disposition of the appeal and lacking in authority. Rather, the written opinion furnishes precedent that can be applied by trial courts in future cases. *See Eisner v. Macomber*, 252 U.S. 189, 205 (1920) (explaining that language from a prior opinion of the court could not "be regarded as obiter dictum, it having furnished the entire basis for the conclusion reached"); *see also Myers v. United States*, 272 U.S. 52, 59 (1926) (declining to treat "the definite holding" in the Court's decision in *Marbury v. Madison* as "mere dictum" and explaining that "[e]very point determined was deemed essential, and the suggestion of dictum, either idle or partisan exhortation, ought not to be tolerated"); *cf.* Fla. R App. P. 9.330(a)(2)(D)(iii)(providing, among several reasons that a party may seek a written opinion, that the written opinion would provide "guidance to the parties or lower tribunal").

MAKAR, J., concurring in per curiam affirmance only and dissenting from grant of motion for written opinion.

Gratis dicta best describes the needless written opinion in this marital dissolution case that has unnecessarily delayed its final determination. The case was docketed in this court over three and a one-half years ago when the former wife filed a notice of appeal on May 15, 2019. The underlying dispute regards a July 2018 request by the former wife to transfer the trial-level case to a different state, Idaho, where she and the minor children of the marriage have lived since 2015. The case was fully briefed in this court on March 30, 2020. It was resolved by a per curiam affirmance on March 3, 2021 (i.e., without written opinion), which was well beyond the judicial time standards that apply in such cases.

That should have been the end of the case. Two weeks later, however, the former wife filed a motion for a written opinion on an issue raised below, explaining that doing so would (a) provide a "legitimate basis for supreme court review" and (b) "likely create express and direct conflict with a decision of another district court of appeal on the same question of law" that had been as briefed. The request paralleled, but did not cite, the appellate rule regarding the grounds for seeking a written opinion. *See* Fla. R. App. P. 9.330(a)(2)(D). No response from the former husband was filed.

The motion—which ought to have been summarily denied—languished for over eighteen months. What ultimately resulted is a written opinion that—contrary to what was requested—*neither* provides a basis for supreme court review *nor* creates conflict with decisions of other district courts of appeal. Instead, the opinion is a lengthy rumination on matters neither party has raised or briefed (no supplemental briefing was requested). The opinion cites none of the precedents set forth in the motion for written opinion as grounds for relief and, importantly, provides no explanation as to how the opinion assists the actual parties in the resolution of their actual dispute. It seems doubtful that the former wife was interested in a written opinion—issued over a year and a half after her motion—that addressed none of her concerns.

This type of inessential judicial writing, particularly in a long overdue marital dissolution case involving children, goes counter to the general principle of not straying from the parties' briefs or wandering off into unchartered terrain, whether reversing a trial court order, *see, e.g., Rosier v. State*, 276 So. 3d 403, 406 (Fla. 1st DCA 2019), or affirming one on a basis other than a pure question of law involving no discretionary judgment calls, *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999) ("[E]ven though a trial court's ruling is based on improper reasoning, the ruling will be upheld if there is any theory or principle of *law* in the record which would support the ruling.") (emphasis added); *see generally* Philip J. Padovano, 2 *Fla. Prac., Appellate Practice* § 18:7 (2022 ed.). As a general matter, a court ought not—on its own volition—unilaterally decide a matter that the parties themselves have not had an opportunity to address; doing so "is not fair to the parties, and the better practice would be to allow supplemental briefing prior to decision." *Hicks v. State*, 277 So. 3d 153, 157 (Fla. 1st DCA 2019) (Kelsey, J., dissenting).

No suggestion is made here that a judge or panel lacks the power to write an opinion after a per curiam affirmance has issued or otherwise; or is necessarily constrained to precisely what a party presents in a motion for written opinion. Judges have inherent authority, subject to reasonable boundaries (such as time limits), to explain in writing their votes on public matters (such as votes on the merits, en banc motions, and so on). But the inherent authority to write, and the scope of what is written, is not limitless, timewise or substantively. The discretion to write—it seems to me—doesn't tolerate a delay of over eighteen months to write a needless opinion that doesn't respond to a party's motion for written opinion or address the actual parties' concerns; no defense is offered for such an unwarranted delay.

In addition, the opinion easily fits *each* of the definitions of *gratis dictum*, whose meanings include:

> 1. A voluntary statement; an assertion that a person makes without being obligated to do so. 2. A court's stating of a legal principle more broadly than is necessary to decide the case. 3. A court's discussion of points or

> questions not raised by the record or its suggestion of rules not applicable in the case at bar.

Bryan A. Garner et al., *The Law of Judicial Precedent* 792 (2016) (definition of *gratis dictum*). First, the written opinion was wholly unneeded in light of the per curiam affirmance in March 2021; it was volunteered up over a year and half later as a legal essay of sorts on a matter of which neither any party nor this writer was aware. Second, and likewise, it is—by definition—overbroad, addressing a matter not necessary to decide the case. Third, the entirety of the written opinion is pure post-disposition makeweight; nothing in the trial court record nor in the parties' legal filings discuss the matter addressed. Overall, the written opinion is simply judicial shadowboxing—and long overdue to boot.

Under the circumstances of this case, involving a marital dissolution matter with children involved, a disservice is done in taking more than an *additional* eighteen months after a per curiam affirmance to produce a written opinion that amounts to gratuitous dicta on unbriefed issues, provides no basis for review in the supreme court, and results in no meaningful benefit to the actual parties, who have been in legal limbo in this court for over three years. As a panel member who finds this unacceptable, I dissent.

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