STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0995

In the Matter of the Welfare of the Child of: G. R., Parent.

Filed November 27, 2017
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-JV-17-429

Mary F. Moriarty, Fourth District Public Defender, David W. Merchant, Assistant Public Defender, Minneapolis, Minnesota (for appellant G.R.)

Michael O. Freeman, Hennepin County Attorney, Mary M. Lynch, Assistant County Attorney, Minneapolis, Minnesota (for respondent county)

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Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

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

BJORKMAN, Judge

In an interlocutory appeal from the district court's denial of her motion to dismiss for lack of subject-matter jurisdiction, appellant-mother argues that the district court erred by (1) placing the burden of proving domicile on her when determining subject-matter jurisdiction under the Minnesota Juvenile Court Act, Minn. Stat. §§ 260C.001-.637 (2016), (2) concluding appellant-mother and the child have significant connections to Minnesota

for purposes of the Minnesota Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minn. Stat. §§ 518D.101-.317 (2016), and (3) failing to address her motion to dismiss on the ground that Minnesota is an inconvenient forum. We affirm.

FACTS

Appellant-mother G.R. is well known by respondent Hennepin County Human Services and Public Health Department (the county). She voluntarily terminated her parental rights to four children in connection with a child-in-need-of-protection-or-services (CHIPS) proceeding in 2009. And her parental rights to three other children were involuntarily terminated by the Hennepin County District Court on June 3, 2016.

Mother became pregnant with D.D.R. in May 2016. She attended 11 prenatal doctor appointments between August 2016 and January 2017 at a clinic in St. Paul. Mother's last appointment was on January 18, 2017. Several days later, the doctor's office called to schedule a follow-up appointment. Mother explained that she was going out of town, and "would call when she got back." On or about January 21, mother's doctor advised the county of her concern that mother was attempting to have her baby at home or in seclusion to avoid the county's involvement.

On January 25, mother gave birth to D.D.R. at a hospital in Illinois. The hospital's records list mother's Minneapolis address as her residence, and the medical bills were paid by mother's Minnesota UCare insurance. An undated "Live Birth Worksheet" states that mother was residing at her sister's home in Waukegan, Illinois.

On January 27, the county filed a petition to terminate mother's parental rights and an ex parte motion seeking immediate custody of D.D.R. That same day, the district court ordered that D.D.R. be placed in the county's custody.

A Hennepin County investigator interviewed mother at the hospital four days later. Mother's sister participated in the interview by telephone, telling the investigator that mother had come to Illinois "for a visit." After the interview, the investigator brought D.D.R. to Minnesota where he remains in foster care.

Mother appeared with counsel for an emergency protective-care hearing on February 1. Before arguing the merits of the county's request, mother sought to dismiss the proceeding because of improper venue. The district court heard arguments and orally denied the motion because (1) mother had a current lease in Minnesota, (2) the facts alleged in the petition supported a determination that mother's residency was in Minnesota, and (3) mother's explanation that she no longer resided in Minnesota lacked credibility. At the end of the hearing, the district court found that the county's petition established a prima facie basis for termination of mother's parental rights and ordered that D.D.R. be placed into interim foster care.

On March 6, the parties appeared for a pretrial hearing. At the beginning of the hearing, mother requested that the case be transferred to Illinois based on her Illinois residency. The district court denied her request and set the TPR trial for May 15. Before the trial date, mother moved to dismiss for lack of subject-matter jurisdiction or, in the alternative, a forum transfer to Illinois. The district court denied both motions. Mother appeals.

D E C I S I O N

I. The district court did not clearly err by finding mother is a Minnesota resident for purposes of the Minnesota Juvenile Court Act.

Subject-matter jurisdiction defines a court's authority to hear a dispute and grant the requested relief. *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). Subjection-matter jurisdiction is a question of law that we review de novo. *In re Welfare of Children of D.M.T.-R.*, 802 N.W.2d 759, 762 (Minn. App. 2011). But determining where an individual is domiciled is a question of fact for the district court. *See Davidner v. Davidner*, 304 Minn. 491, 493, 232 N.W.2d 5, 7 (1975) (stating "a finding of proper domicile to confer jurisdiction for commencement of a divorce action will not be reversed unless it is palpably contrary to the evidence").

The juvenile court act affords original and exclusive jurisdiction in proceedings concerning the termination of parental rights (TPR) to a child living in Minnesota or a child who is a Minnesota resident. *See D.M.T.-R.*, 802 N.W.2d at 762. A child-protection matter commences when a petition is filed with the court. Minn. R. Juv. Prot. P. 32.01; *see* Minn. Stat. § 260C.307, subd. 1 (stating that proceedings to terminate parental rights are commenced by the filing of a petition to terminate parental rights). Because it is undisputed that D.D.R. was not living in Minnesota when the county petitioned to terminate mother's parental rights, the question becomes whether the child was a Minnesota resident at that time.

Residence and domicile for jurisdictional purposes are very similar under Minnesota law. *See In re Welfare of C.J.L.*, 379 N.W.2d 722, 723 (Minn. 1986) (stating in the context

of construing a juvenile delinquency statute "the word 'residence' must be construed to be synonymous with domicile"). Domicile is the union of an individual's physical presence in a state coupled with the intention to remain in that state indefinitely. *Berc v. Berc*, 407 N.W.2d 131, 135 (Minn. App. 1987). A child's domicile generally coincides with that of a custodial parent. *Ray v. Ray*, 299 Minn. 192, 193, 217 N.W.2d 492, 494 (1974). And "a domicile, once shown to exist, is presumed to continue until the contrary is shown." *Davidner*, 304 Minn. at 494, 232 N.W.2d at 7.

Mother first argues that the district court erred in placing the burden of proving domicile—and by extension disproving subject-matter jurisdiction—on her. While neither the juvenile court act nor Minnesota caselaw specifically identifies which party carries the burden of proof for establishing domicile, generally the petitioning party has the obligation to show all of the prerequisites for obtaining the relief sought in the petition. Minn. Stat. § 260C.317. But even with the burden on the county, mother's argument that the district court lacks subject-matter jurisdiction because she does not reside in Minnesota and therefore the child was not a Minnesota resident, is unavailing.

Mother's argument misconstrues how we apply the presumption that a domicile continues, unless proven otherwise. *See Davidner*, 204 Minn. at 494, 232 N.W.2d at 7. The county established, and mother conceded, that Minnesota was her domicile during the ten years preceding D.D.R.'s birth; application of the presumption assumes that Minnesota remains her current domicile until she establishes a new domicile. *Id.* The district court gave mother an opportunity to rebut the county's showing that Minnesota was mother's domicile when the county petitioned to terminate her parental rights to the child. But, as

in *Davidner*, mother failed to overcome the presumption because she "did not introduce [sufficient] evidence to counter the allegation of residency." *Id.*

The record supports the district court's finding that mother failed to rebut the presumption and hence that she and, by extension, D.D.R. are Minnesota residents. Mother lived in Minnesota for the past ten years. While pregnant with D.D.R., she received prenatal care on 11 occasions at the same St. Paul clinic. Mother told clinic staff that she planned to deliver her child in a local hospital and she never indicated that she was planning to move. After her last prenatal visit on January 18, 2017, the doctor's office called mother to discuss her need for a specialized antibiotic. Mother advised that she was going out of town and "would call when she got back." Instead, mother delivered her baby at an Illinois hospital, listing her Minnesota address and using health insurance issued by the State of Minnesota. While mother told a Hennepin County investigator that she had moved to Illinois, her sister contemporaneously stated that mother had only come "for a visit."

Although the district court did not explicitly state that it looked for mother's evidence to rebut the county's evidence, the context of the order makes clear that the court based its decision on evidence provided by the county, the presumption that an established domicile continues, and the fact that mother did not counter the county's evidence with anything other than an undated hospital live-birth worksheet and her own testimony, which the district court found to be not credible.[1] *See In re Welfare of R.T.B.*, 492 N.W.2d 1, 4

[1] The district court found that mother's extensive history of "giving false [and] misleading information," made her statement regarding her Illinois residence not credible.

(Minn. App. 1992) (stating the district court is in a better position to weigh the evidence and determine the credibility of witnesses).

Mother next asserts that the district court erred by not focusing on mother's potential reasons for moving to Illinois. Both mother and the county agree that mother tried to evade child protection's involvement with the birth of her child. But the question of when and if mother possessed the requisite intent to establish a new domicile is a question of fact for the district court to weigh and decide. *See Davidner*, 304 Minn. at 493, 232 N.W.2d at 7 (a district court's finding of domicile "will not be reversed unless it is palpably contrary to the evidence.") We will not reverse a district court's findings regarding domicile if substantial evidence supports them.

In sum, the district court did not improperly shift the burden of establishing domicile to mother but rather evaluated mother's evidence in the context of the continuing domicile presumption. And based on our careful review of the record, we discern no clear error in the court's factual determinations. Because mother's domicile, when the county filed its petition to terminate her parental rights to D.D.R., was Minnesota, the child's domicile was also Minnesota. Accordingly, the district court has subject-matter jurisdiction over this TPR proceeding.

II. The district court's exercise of jurisdiction under the UCCJEA is proper because D.D.R. has no home state and both mother and D.D.R. have significant connections with Minnesota.

Minnesota adopted the UCCJEA to help foster uniformity among the various state laws governing jurisdiction over child-custody determinations. *See* Minn. Stat. § 518D.101 official cmt., (1)-(2). The UCCJEA was established to resolve jurisdictional

issues involving interstate or foreign child-custody disputes. *Stone v. Stone*, 636 N.W.2d 594, 597 (2001). Under the UCCJEA, a Minnesota district court may make an initial custody determination if Minnesota is the child's "home state." Minn. Stat. § 518D.201(a)(1) (stating home-state jurisdiction is the first consideration). The home state for a child under six months old is "the state in which the child lived from birth with [a parent or a person acting as a parent]." Minn. Stat. § 518D.102(h). If Minnesota is not the child's home state, a Minnesota district court may nonetheless exercise jurisdiction if the child and at least one of the child's parents has a significant connection with this state other than mere physical presence, and substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships. Minn. Stat. § 518D.201(a)(2)(i)-(ii). Mother argues that Illinois is D.D.R.'s home state and that neither mother nor D.D.R. has a significant connection with Minnesota. We address each argument in turn.

Home-State Jurisdiction

Mother argues that Illinois is D.D.R.'s home state under the UCCJEA because it is the place where he lived with mother since birth. It is undisputed that D.D.R. remained in an Illinois hospital with mother from the day he was born until the county took him to Minnesota, six days later. Minnesota courts have not decided whether a hospital stay alone is enough to establish home-state jurisdiction. But the argument has been rejected by courts in several other states. *See, e.g.*, *H.T. v. Cleburne Cty. Dep't of Human Res.*, 163 So. 3d 1054, 1064-65 (Ala. Civ. App. 2014); *In re D.S.*, 840 N.E.2d 1216, 1222 (Ill. 2005); *State ex rel. R.P. v. Rosen*, 966 S.W.2d 292, 297 (Mo. Ct. App. 1998).

Mother argues that *D.S.* stands for the proposition that a child's home state is the state where the parent intends to live even if the child is born elsewhere. We disagree. In *D.S.*, the mother had a history with Illinois child protection and left the state to avoid agency involvement with the birth of her child. 840 N.E.2d at 1218. Before reaching her destination in Tennessee, the mother went into labor and delivered her baby in Indiana. *Id.* The Illinois Supreme Court rejected the mother's argument that Tennessee was the child's home state. *Id.* at 1222. And the court held that establishment of a home state under the UCCJEA requires more than a showing that a newborn has resided in a hospital with mother since birth, reasoning that the drafters of the UCCJEA intended the verb "live" to mean "to occupy a home" as opposed to just being alive and staying with a parent for two days in a hospital. *Id.* *D.S.* also suggests that efforts to evade child-protection involvement subvert UCCJEA's underlying public-policy goals, which include "ensuring that a custody decree is rendered in that State which can best decide the case in the interest of the child." *Id.* at 1223 (quotation omitted).

R.P. involved a mother who, while child-protection proceedings were pending, left Missouri to deliver her baby in Kansas. 966 S.W.2d at 294. The child was placed in protective custody and was returned to Missouri by child-protection services two days after birth. *Id.* The Missouri court determined that the child had no home state due to the circumstances of birth in Kansas, even though his parents planned on returning to Missouri. *Id.* at 300.

Here, as in *R.P.* and *D.S.*, mother left Minnesota for another state just prior to D.D.R.'s birth but never lived with D.D.R. outside of the hospital setting. Mother suggests

that *R.P.* and *D.S.* compel a different result because the mothers in those cases either (1) had the intent to return to the forum state as in *R.P.*, 966 S.W.2d at 294, or (2) had the intent to go to a different state but never actually was physically present in the new state as in *D.S.*, 840 N.E.2d at 1218. Mother is incorrect because, as noted above, she did not change her Minnesota domicile before D.D.R. was brought to Minnesota.

We agree with our sister states that the definition of home state—where a child "live[s] from birth" with a parent—requires more than a child simply staying at the hospital with a parent in the days immediately following his birth. *See D.S.*, 840 N.E.2d at 1221; *R.P.*, 966 S.W.2d at 300; *In re Interest of Violet T.*, 840 N.W.2d 459, 464 (Neb. 2013). Rather, we are persuaded that the plain and common sense meaning of the phrase "lived from birth" means to "occupy a home" as opposed to just literally being alive. The district court did not err by declining to expand the UCCJEA definition of home state to permit home-state jurisdiction to attach for children under six months old when their parent "intends to live somewhere" but does not actually live in that place with the child.[2] Since D.D.R. did not live with mother in the State of Illinois, the district court was correct in concluding that Illinois is not the home state for purposes of jurisdiction under the UCCJEA.

[2] Mother argues that not allowing for an expansive reading of the definition of home state (i.e., to allow home-state jurisdiction to attach to the place the parent intends to live with the child after birth) would create an absurd result because virtually no child would have home-state jurisdiction for the first six months if born in a hospital located in another state. This argument, however, is misplaced. If, for example, mother had moved into an apartment in Illinois and resided with D.D.R. in that apartment for a period of time with the intention of staying there indefinitely, then home-state jurisdiction would attach. But these circumstances do not exist here.

Significant Connection

Since D.D.R. has no home state, we turn to whether Minnesota has significant-connection jurisdiction. Minn. Stat. § 518D.201(2)(i)-(ii). Significant-connection jurisdiction exists if the child and at least one of the child's parents has a significant connection with Minnesota other than mere physical presence, and substantial evidence is available in Minnesota concerning the child's care, protection, training, and personal relationships. *Id.*

Mother does not dispute her own significant connections with Minnesota and does not dispute that substantial evidence concerning her ability to parent is available in this state. But she contends that D.D.R. does not have significant connections to Minnesota because his father is unknown and mother has no legal rights to D.D.R.'s siblings. We disagree. As the district court noted, D.D.R. has numerous connections to Minnesota: all seven of his biological siblings live in Minnesota, his maternal grandmother lives in Minnesota, and all of the events giving rise to the county's long-standing involvement with his mother, and his extended family, occurred in Minnesota.

Mother argues that aside from the biological connection, D.D.R. has "no siblings" and that there "is nothing in the record that would permit a reasonable factfinder to conclude [D.D.R.] will have any relationship with [mother's] former children." We are not persuaded. First, we reject mother's argument that D.D.R. and his siblings are no longer siblings simply because mother's rights to those children have been terminated. Children are not prevented from having real or potential physical, emotional, or biological connections with their siblings when parental rights are terminated. In fact, both Minnesota

and federal law require that "reasonable efforts" be made to place siblings together in foster care. *See* Minn. Stat. § 260C.212, subd. 2(d); *see also* 42 U.S.C. § 671(a)(31)(A) (requiring reasonable efforts be made to place siblings together as a condition of certain funding). A rule such as this would make little sense if, as mother asserts, these biologically related siblings were "no[t] siblings." Second, her assertion is factually incorrect because the record contains several pretrial reports showing that D.D.R. has begun to create a relationship with these siblings through physical visitation coordinated by foster parents. While the test for significant connections under Minn. Stat. § 518D.201(2)(i)-(ii) must be analyzed at the time of the initial custody termination, mother's contention that no reasonable judge could have found that D.D.R. and his siblings would ever see each other or have a relationship with one another is unavailing.

The sibling relationship is especially important for a young child with an unstable family structure as these siblings can provide secure emotional attachment, nurturing, and solace. *See* Jill Elaine Hasday, *Siblings In Law*, 65 Vand. L. Rev. 897, 901 (2012) (discussing the importance of the sibling relationship). D.D.R.'s potential bond with his siblings is consequential and important in its own right and supports the conclusion that D.D.R. has a significant connection with Minnesota. But this connection is bolstered by other undisputed evidence, including the fact that mother received prenatal care in Minnesota during the eight and half months preceding D.D.R.'s birth, his maternal grandmother lives in Minnesota, and all of mother's prior child-protection proceedings took place in Minnesota.

The district court found that mother had significant connections with the state, but did not make an express finding as to D.D.R. *See* Minn. Stat. § 518D.201(2)(i)-(ii) (requiring both *the child* and *the child's parent* to have a significant connection). But we conclude that the findings the district court made, including its determination that all seven of D.D.R.'s siblings live in Minnesota, support the conclusion that D.D.R. has a significant connection with Minnesota. We will not remand the district court's decision when its error is harmless. *See Grein v. Grein*, 364 N.W.2d 383, 387 (declining to remand custody decision when it was clear from the record that the court would make the same findings and reach the same conclusion); *see also In re Welfare of C. Children*, 348 N.W.2d 94, 98 (Minn. App. 1984) (concluding that even if certain evidence was improperly admitted, the improperly admitted evidence was a harmless error because it did not impact the party's substantive rights).

On this record, we conclude the district court has significant-connection jurisdiction under the UCCJEA.

III. The district court did not err by implicitly denying mother's motion to dismiss the proceeding on inconvenient-forum grounds.

A court may decline to exercise jurisdiction under the UCCJEA if it determines that it is an inconvenient forum and that a court of another state is a more appropriate forum. Minn. Stat. § 518D.207. The district court concluded that it has jurisdiction because D.D.R. has no home state and Minnesota has substantial-connection jurisdiction. Although the court did not directly address mother's inconvenient-forum motion, its denial is implicit. We do not assume a district court erred by failing to address a motion, and silence

on the motion is treated as an implicit denial of the motion. *Palladium Holdings, LLC. v. Zuni Mortg. Loan Trust 2006-OA1*, 775 N.W.2d 168, 177-78 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010).

Because Minnesota has subject-matter jurisdiction under the UCCJEA, the district court did not err by rejecting mother's motion to dismiss based on inconvenience of the forum.

Affirmed.