This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).

STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0488

In Re the Custody of H.M.B.

Harrison Wayne Bernier, petitioner,
Respondent,

vs.

Candida Diann Ackerson,
Appellant.

Filed September 4, 2018
Affirmed
Schellhas, Judge

Dakota County District Court
File No. 19AV-FA-17-2550

Julie K. Seymour, Mary B. Rannells Rowan, Seymour Family Law, Lakeville, Minnesota (for respondent)

Sharon Jones, Legal Assistance of Dakota County, Ltd., Apple Valley, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant seeks reversal of a district court's order concluding that Minnesota has jurisdiction over a custody dispute under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minn. Stat. §§ 518D.101-.317 (2016). We affirm.

FACTS

Appellant Candida Ackerson (mother) and respondent Harrison Bernier (father) are the parents of H.M.B., born in 2016, in Oregon. Mother and father never married, but father's name appears on H.M.B.'s birth certificate. In August 2016, mother and father signed a "Parental Contract Agreement of Custody of [H.M.B.]," through which they agreed to share custody. Father lived in Minnesota and visited mother and H.M.B. in Oregon.

In July 2017, father, mother, and H.M.B. moved to Washington, where mother and father signed an apartment lease. On September 3, H.M.B.'s paternal grandmother flew to Minnesota with H.M.B., and mother and father drove to Minnesota with all of their belongings. H.M.B.'s grandmother cared for her until mother and father arrived. Mother, father, and H.M.B. lived with father's family in Minnesota while they searched for housing.

On October 4, 2017, mother served and filed a petition for an order for protection (OFP) against father on behalf of herself and H.M.B. The next day, father served and filed a motion for an emergency ex parte order against mother, seeking a temporary custody determination for H.M.B. and an order that neither party remove H.M.B. from the state. The district court conducted an emergency hearing and found that H.M.B. had no home

state under the UCCJEA, that "[H.M.B.] and both parents presently reside in Minnesota and have a significant connection here," and that "[s]ubstantial evidence is available in this state concerning the child's care, protection, training and personal relationships." The court concluded that the Minnesota court has jurisdiction under Minn. Stat. § 518D.201(a)(2), granted temporary joint legal and physical custody of H.M.B. to the parents, and ordered that neither parent remove H.M.B. from the state.

On October 11, 2017, the district court granted mother's petition for an OFP as to mother only, not H.M.B. On October 16, mother filed a custody petition in Oregon. On October 24, mother filed a responsive motion in Minnesota, seeking a denial of father's motion, a ruling that Minnesota "is an inconvenient forum . . . and that this controversy should be addressed in Oregon," or a grant of sole legal and physical custody of H.M.B., permitting mother to move to Oregon with H.M.B., and an order that father pay child support to mother. Father thereafter moved the court to deny mother's responsive motion and to affirm the temporary custody plan in the court's October 5 order.

After a motion hearing in November 2017, the district court issued an order in January 2018. The court concluded that H.M.B. had no home state and that Minnesota would retain jurisdiction over the matter, noting that it would appoint a guardian ad litem to make recommendations regarding permanent custody and parenting time. The court also reserved any motions not addressed. The Oregon court dismissed mother's case on February 14, 2018. Mother stated at oral argument before this court that the Oregon court dismissed her case because it concluded that the Minnesota court had already asserted jurisdiction over the matter.

This appeal follows.

D E C I S I O N

Mother argues that this court should conclude that Minnesota courts lack subject-matter jurisdiction and reverse. We disagree. "The issue of subject-matter jurisdiction can be raised at any time in the proceeding." *Cook v. Arimitsu*, 907 N.W.2d 233, 237 (Minn. App. 2018) (quotation omitted), *review denied* (Minn. Apr. 17, 2018). A district court's determination of whether it has subject-matter jurisdiction under the UCCJEA presents a question of law that we review de novo. *Id*. at 238. "A district court's underlying findings of fact, however, are not set aside unless they are clearly erroneous." *Id*. (citing Minn. R. Civ. P. 52.01).

"The UCCJEA provides four bases for a Minnesota court to have jurisdiction to make an initial child-custody determination" with "[h]ome-state jurisdiction [being] one basis." *Id*.; Minn. Stat. § 518D.201(a)(1). Home-state jurisdiction exists when Minnesota is the "home state of the child on the date of the commencement of the proceeding." *Id*. "Home state" is specifically defined as "the state in which a child lived with a parent . . . for at least six consecutive months immediately before the commencement of a child custody proceeding." Minn. Stat. § 518D.102(h). "A period of temporary absence [from the state] is part of this period." *Id*.

Another basis for jurisdiction under the UCCJEA is when the child has no "home state," and the child and the child's parents have "a significant connection with this state," and "substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships." Minn. Stat. § 518D.201(a)(2). Once a district court

makes an initial child-custody determination under sections 518D.201 or .203, it has exclusive, continuing jurisdiction until it determines that "the child [and] the child's parents . . . 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." Minn. Stat. § 518D.202(a)(1).

Here, the district court determined that H.M.B. had no home state and that Minnesota has jurisdiction because both parents and child resided here, had a significant connection here, and substantial evidence existed regarding H.M.B.'s care, protection, training, and personal relationships. At the time that father filed his custody petition, neither Oregon nor Minnesota existed as H.M.B.'s home state because she had not resided in either state "for at least six consecutive months" prior to father's filing. *See* Minn. Stat. § 518D.102(h) (defining "home state"); *Arimitsu*, 907 N.W.2d at 239 (concluding Minnesota was children's home state when they had lived their entire lives in Minnesota and were only temporarily absent from Minnesota when father filed his case). The record supports the district court's findings that both parents and H.M.B. reside in Minnesota, have a significant connection to Minnesota, and that substantial evidence exists as to H.M.B.'s care, protection, training, and personal relationships. In Minnesota, H.M.B. has been enrolled in preschool, has a primary physician, has a bank account, and has strong connections to father's family.

Citing *Arimitsu*, Mother argues that the district court clearly erred by not ruling that Oregon was the home state of H.M.B., and by ruling that H.M.B. has no home state. Mother

argues that "because she retained a home in Oregon, where she could return at any time, the absence from that state was temporary, and therefore, [Oregon] retained jurisdiction."

In *Arimitsu*, a mother of four children, who lived their entire lives in Minnesota, moved with the children to Japan, where father agreed they could stay temporarily. 907 N.W.2d at 235. A Japanese court ruled that the children had to be returned to Minnesota. *Id.* Father sought to enforce the Japanese order in Minnesota, and the district court concluded that it had jurisdiction because Minnesota was the children's home state. *Id*. at 236. On appeal, this court concluded that the district court correctly asserted home-state jurisdiction because, six months prior to father's filing for custody in Minnesota, Minnesota was the children's home state under Minn. Stat. § 518D.102(h). *Id*. at 239. This court determined that the children's absence from Minnesota was temporary based on the "parents' agreement and their intent regarding the temporary . . . status of the child's out-of-state absence," and when the father received notice of mother's intent to keep the children in Japan, the children's home state was Minnesota. *Id*.

Mother argues that, like the children's temporary absence from Minnesota in *Arimitsu*, H.M.B.'s absence from Oregon was temporary because mother never terminated her lease in Oregon, can return to Oregon at any time, intended to return to Oregon before father filed his motion, and did not have a permanent address in Minnesota. We disagree.

Mother provided no evidence that she intended to return to Oregon besides her bare assertion and two letters from her alleged Oregon landlords, stating that she "has been

residing" at their home with no reference to leases.[1] When mother moved to Washington, she took all of her belongings with her and signed a lease in Washington. Mother did not state in either of her affidavits that she left Oregon temporarily with H.M.B., or that she intended to return to Oregon. Mother instead focused on how litigation would be more convenient in Oregon and why H.M.B.'s best interests weigh in favor of residing in Oregon with mother.[2]

Father provided copies of the parties' Washington lease and a letter and envelope addressed to mother regarding assistance available to mother and H.M.B. from the State of Minnesota. The record also shows that mother was employed in Minnesota and underwent training at the University of Minnesota. Weighing the opposing evidence, the district court determined that H.M.B.'s absence from Oregon was not temporary. The evidence does not support mother's argument that Oregon remained her "primary residence" during the six months prior to the filing of father's custody motion. We therefore conclude that the district court did not err when it found that H.M.B. had no home state. *See Arimitsu*, 907 N.W.2d at 239 (concluding absence was temporary *where parents explicitly agreed* that the children could remain in Japan temporarily); *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn.

[1] Mother stated in her affidavit that she and father "agree[d] to move to Washington," and that "[she] was never sure that the move to Minnesota would be good for [H.M.B.] and [her], but [she] wanted to try to be a family [with father] . . . ." These statements contradict her claim that she always intended to return to Oregon after leaving it for Washington and then Minnesota.

[2] A Minnesota court "which has jurisdiction . . . may decline to exercise its jurisdiction at any time 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(a). The court here, in its January 19, 2018 order, concluded that Minnesota is not an inconvenient forum and that it remains the most appropriate forum. Mother does not challenge this conclusion on appeal.

App. 2009) (stating this court does not "reconcile conflicting evidence . . . which [is] exclusively the province of the factfinder" (quotation omitted)).

Citing *In re Marriage of Schmidt*, 436 N.W.2d 99 (Minn. 1989), mother argues that the district court did not make the requisite findings to assert jurisdiction. Mother argues that this court must remand so that the district court can make additional findings. We disagree.

In *Schmidt*, a Minnesota district court asserted jurisdiction over a custody dispute without explaining its basis for doing so under the UCCJEA's predecessor, the Uniform Child Custody Jurisdiction Act, Minn. Stat. §§ 518A.01-.25 (1988). 436 N.W.2d at 105. The supreme court reversed the district court's order on other grounds, but instructed that on remand, the district court should make the requisite findings to identify its basis for asserting jurisdiction. *Id*. at 105. But the supreme court stated "that omission [of the requisite findings], standing alone, would not have required reversal." *Id*. (footnote omitted).

Unlike in *Schmidt*, while the district court's October 5 ex parte order does not contain any supporting factual findings other than that H.M.B. has no home state, its January 19, 2018 order contains numerous findings regarding the facts of the case, including that the parties had moved to Washington from Oregon, and then to Minnesota, and that mother had been employed in Minnesota and received state assistance.

Mother also argues that the district court "erred as a matter of law in asserting jurisdiction" over this case because "mother's permanent home i[s] in Oregon." Mother argues this error warrants reversal. As discussed above, the evidence does not support

mother's contention and the district court did not clearly err when it found that H.M.B. had no home state and that jurisdiction was proper in Minnesota.

Based on the record, even if we remanded to the district court to make additional findings, the court likely would reach the same conclusion. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (refusing to remand for missing findings of fact when "from reading the files, the record, and the court's findings, on remand the [district] court would undoubtedly make findings that comport with the statutory language"). Regardless, we conclude that remand for further findings is not necessary. We therefore affirm the district court's assertion of subject-matter jurisdiction over this dispute.

Affirmed.