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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0026**

Justin Thomas Skyberg,  
Respondent,

vs.

Danielle Christine Orlich,  
Appellant.

**Filed September 30, 2013  
Affirmed  
Stauber, Judge**

Sherburne County District Court  
File No. 71FA12176

James W. Hess, Katie M. Jendro, Hess Law Office, P.A., Elk River, Minnesota (for respondent)

Timothy A. O'Brien, O'Brien Law Firm, P.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Stauber, Judge.

**UNPUBLISHED OPINION**

**STAUBER**, Judge

Appellant-mother Danielle Christine Orlich appeals the district court's denial of her motion to dismiss respondent-father Justin Thomas Skyberg's paternity and custody suit, arguing that the district court lacked jurisdiction. Because the child was conceived

in Minnesota, and because the Iowa court having jurisdiction over the custody claim declined to exercise it, we affirm.

## **FACTS**

Mother, who is originally from Des Moines, Iowa, moved into father's Elk River home at the beginning of May 2011, lived with him for five months, and was employed in the area. The child was conceived during their cohabitation, and mother does not dispute father's paternity. In September 2011, mother returned to Des Moines. The child was born there in May 2012. Mother and child now reside in Des Moines. Father continues to reside in Elk River.

In March 2012, before the child was born, father initiated a paternity and custody suit in Sherburne County, serving a summons and complaint on mother at her Des Moines residence. Mother then filed a similar suit in Polk County, Iowa, but did not disclose to the Iowa court that she had already been served in the Minnesota action. Father moved to dismiss the Iowa action, and mother responded with a motion to dismiss the Minnesota action. The Iowa court conferred with the Minnesota court and, citing provisions of Iowa's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), declined to exercise jurisdiction and granted father's motion to dismiss. The Minnesota court, applying Minnesota's version of the UCCJEA while noting that the Iowa court had declined to exercise jurisdiction, determined that it had jurisdiction over mother and denied her motion to dismiss. Mother appeals.

## DECISION

“Whether personal jurisdiction exists is a question of law, which we review de novo.” *Wick v. Wick*, 670 N.W.2d 599, 603 (Minn. App. 2003). “Application of the [UCCJEA] involves questions of subject matter jurisdiction.” *Schroeder v. Schroeder*, 658 N.W.2d 909, 911 (Minn. App. 2003). This court reviews questions of subject-matter jurisdiction de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002); *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001).

With regard to the parentage claim, mother does not dispute father’s paternity, but she argues that the district court lacked personal jurisdiction over her because she did not have the necessary minimum contacts with Minnesota to make the exercise of jurisdiction by the Minnesota courts consistent with “traditional notions of fair play and substantial justice.” *See Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 570 (Minn. 2004).

Personal jurisdiction over a parentage-suit defendant may be established by operation of the long-arm statute or by “any [other] method provided by rule or statute.” Minn. Stat. § 257.59, subd. 2 (2012). Minn. Stat. § 518C.201 (2012) provides for “extended personal jurisdiction” in parentage cases, stating that “[i]n a proceeding to . . . determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual . . . if . . . the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.” We find section 518C.201 dispositive. The district court had personal jurisdiction over mother because it

is undisputed that the child was conceived by an act of sexual intercourse that occurred in Minnesota.

Turning to the custody claim, Minnesota's version of the UCCJEA exclusively governs jurisdictional determinations for child custody issues. *See* Minn. Stat. § 518D.201(b) (2012) (“[Minn. Stat. § 518D.201(a)] is the exclusive jurisdictional basis for making a child custody determination by a court of this state.”).<sup>1</sup> The jurisdiction necessary under the UCCJEA is subject-matter jurisdiction. *Schroeder*, 658 N.W.2d at 911. Personal jurisdiction is not required. Minn. Stat. § 518D.201(c).

Under the UCCJEA, whether a court has subject-matter jurisdiction depends on several factors, including whether the court is in the child's home state, whether another state may have jurisdiction, whether a court in another state has declined to exercise jurisdiction, whether there is a custody suit pending in another state, and whether the court of another state would be a more appropriate forum. *See* Minn. Stat. § 518D.201(a) (detailing the factors to be considered). The parties made vigorous arguments based on their differing views of these factors.<sup>2</sup> In the procedural posture of this case the fact that the Iowa court declined to exercise jurisdiction negates those arguments.

Minn. Stat. § 518D.201(a)(3) provides that “a court of this state has jurisdiction to make an initial child custody determination . . . if . . . all courts having jurisdiction under [the enumerated factors] have declined to exercise jurisdiction on the ground that a court

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<sup>1</sup> Minnesota adopted its version of the UCCJEA in 2000. 1999 Minn. Laws c. 74, art. 3, § 20. Minnesota's version of the UCCJEA is codified as Minn. Stat. §§ 518D.101–.317.

<sup>2</sup> Mother has also argued that the UCCJEA does not apply in cases where the child is not yet born. We do not reach this issue because we find existing legal rules dispositive.

of this state is the more appropriate forum to determine the custody of the child under section 518D.207 or 518D.208.” Iowa law includes the same provision. Iowa Code § 598B.201(1)(c) (2012). Minn. Stat. § 518D.208 (2012) provides that a court having jurisdiction may decline to exercise it if “a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct.” The analogous Iowa statute uses the same operative language. *See* Iowa Code § 598B.208 (2012).

The Iowa court determined that mother’s decision to file suit in Iowa was a “strategic” move by which she “hoped to leverage the simultaneous proceedings into a favorable settlement.” The Iowa court also noted that when she filed in Iowa, mother “failed to note the preexisting Minnesota action in her petition.” The UCCJEA provisions of both states require plaintiffs to reveal, at the time of filing, the existence of any other proceeding that might affect the suit being filed. Iowa Code § 598B.209(1), (2) (2012); Minn. Stat. § 518D.209(a), (b) (2012).

The Iowa court, the only other court possibly having jurisdiction under the UCCJEA, has declined to exercise jurisdiction, and the parties have not disclosed an appeal of that ruling. Minn. Stat. § 518D.201(a)(3) therefore gives Minnesota courts authority to exercise subject-matter jurisdiction for purposes of the initial child-custody determination.

**Affirmed.**