DA 17-0463

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 217

IN RE THE PARENTING OF B.K.,

JESSICA SMALLING,

Petitioner and Appellee,

and

JASON KLUBBEN,

Respondent and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DR-16-476
Honorable Karen Townsend, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Marybeth M. Sampsel, Measure, Sampsel, Sullivan & O'Brien, P.C., Kalispell, Montana

For Appellee:

Emily Lucas, Ries Law Group, P.C., Missoula, Montana

Submitted on Briefs: June 6, 2018

Decided: September 4, 2018

Filed:

Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Jason Klubben (Father) appeals from an order of the Fourth Judicial District Court, Missoula County (Montana Court), determining that it had jurisdiction over the child custody proceeding concerning B.K., his minor child. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Father and B.K.'s mother, Jessica Smalling (Mother) had an on-again, off-again romantic relationship from approximately 2012 until 2016, during which they separated and reconciled several times. Father and Mother never married. B.K. was born in Montana in 2013 and lived with Mother in Montana. On August 1, 2014, following a major rupture in their relationship, Father moved to Minnesota for work and Mother and B.K. remained in Montana. The parties then again reconciled and in September 2015, Mother and B.K. moved to Minnesota on a temporary basis to live with Father. In addition to B.K., Mother has another child from a prior relationship. Pursuant to agreement with that child's father, Mother would only be absent from Montana for a year or less. According to Mother, the purpose of the move to Minnesota was to increase Father's employment opportunities and allow a return to Montana where he would either find new employment or work remotely from Montana. Father asserts the move was more permanent than that but acknowledged they might have moved to Washington or elsewhere in the future. Mother and B.K. remained in Minnesota eight to nine months until May 21, 2016, when Mother and Father ended their relationship. Thereafter, Mother, B.K., and Mother's other child moved back to Montana. Shortly after moving back to Montana, Mother agreed B.K. could vacation with Father's parents who live in Washington and have had ongoing contact with B.K.

throughout her life. The plan was for B.K. to visit her grandparents and then travel with them to and from North Dakota where they would see Father. Upon B.K.'s planned return to Montana, Father advised Mother B.K. was not returning to Montana with his parents. He "took custody" of her on June 24, 2016. Five days later, on June 29, 2016 (at 10:39 a.m., per the Montana Court's Findings of Fact), Mother commenced a child custody proceeding by petitioning the Montana Court to establish a parenting plan for B.K. Five months later, on November 2, 2016 Father initiated a separate custody proceeding in the Fourth Judicial District Court of Minnesota (Minnesota Court) by filing a complaint to establish paternity and resolve parenting issues.[1]

¶3 Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) adopted by both Montana and Minnesota, the Montana and Minnesota Courts conferred several times (10/25/16, 11/2/16, 11/9/16, and 1/20/17) to determine which court had jurisdiction over the matter. During these conferences, the courts together with the parties and their attorneys discussed and developed an agreed upon process for determining jurisdiction. At the November 2, 2016 conference, the Minnesota Court suggested the parties file briefs and affidavits upon which to submit the jurisdiction issue. The Minnesota Court further suggested that before proceeding in that manner, the parties consider participation in mediation. At the subsequent conference, it became apparent neither party was willing to participate in mediation and the courts again agreed additional evidence was

[1] Although the Complaint is dated June 1, 2016, and Father served the Complaint on Mother June 29, 2016, at 2:30 p.m. (per the Montana Court's Findings of Fact), he did not attempt to file it until October 24, 2016. The Clerk's office apparently refused to file the original Complaint for various deficiencies and an Amended Complaint was ultimately filed on November 2, 2016.

needed to determine the appropriate jurisdiction. Neither party requested a hearing and counsel for both parties expressed agreement to filing affidavits and legal briefs in support of their respective positions on jurisdiction. The Minnesota Court then expressed, "if we're not going to do it in a mediation style, I tend to think we're maybe better moving into a motion if we're going to expedite it," whereupon the Montana Court responded that Father "has in fact filed here in Montana what essentially is a motion to dismiss for lack of jurisdiction." The Minnesota Court then advised, "I want to make sure that we're efficient and I want to make sure that at the end of this everybody on this call feels well served by two judges who are eager to do our professional best to reach a fair result." Upon the courts and parties agreeing for the Montana Court to rule on Father's motion to dismiss after the parties' submittal of affidavits and legal briefs, the Minnesota court advised, "For the time being then, I'm going to stand down. Our case is more or less on hold while Judge Townsend decides her jurisdictional issue." On December 30, 2016, the Montana Court issued thorough, highly detailed findings of fact and conclusions of law in an Order Re: Jurisdiction Under the UCCJEA and Denying Respondent's Motion to Dismiss for Lack of Jurisdiction. The Montana Court found: the Montana child custody proceeding was commenced prior to Mother being served with the Complaint and Summons prepared for the Minnesota case; the Mother's move to Minnesota with B.K. was a temporary absence from Montana; Montana was the home state of B.K.; Montana has jurisdiction over B.K. and the child custody proceeding; and that, although not part of her consideration for finding Montana jurisdiction, Montana was a convenient forum given Father's allegations regarding Mother's ability to parent as most evidence of those allegations was located in

Montana or Washington, not Minnesota. After the Montana Court determined Montana to be the home state of B.K., the courts and parties again conferred on January 20, 2017. At that conference, the Montana Court inquired of the Minnesota Court, "So Judge Wahl, I just wonder if there is anything else that you and I have to do in connection with this case as far as what you think or what Minnesota law might be involved here." The Minnesota Court responded, "I don't see any further involvement for my court or Minnesota courts. I believe the matter is not properly a part of our jurisdiction and you have appropriately asserted the jurisdiction in the Montana courts unless there's some reason for me to be involved, I will bow out."

¶4 Father appeals from the Montana Court's December 30, 2016 Order.

STANDARD OF REVIEW

¶5 A district court's determination of whether it has subject matter jurisdiction is a conclusion of law reviewed for correctness. *In re Marriage of Sampley*, 2015 MT 121, ¶ 6, 379 Mont. 131, 347 P.3d 1281.

DISCUSSION

¶6 Mother claims Montana is B.K.'s home state and the eight to nine months B.K. spent in Minnesota was a temporary absence from Montana. In opposition, Father claims Minnesota is B.K.'s home state and the time she was absent from Minnesota from May 21, 2016, to the commencement of the child custody proceeding on June 29, 2016, was a temporary absence from Minnesota. The District Court agreed with Mother.

¶7 At issue here is whether Montana is B.K.'s home state. This issue turns on whether B.K.'s absence from Montana was "temporary" and implicates our codification of the

Uniform Child Custody Jurisdiction Act (UCCJA), which was enacted to promote uniformity and discourage jurisdictional conflict. *See* §§ 40-7-101 to -317, MCA; *Stephens v. Fourth Judicial Dist. Court*, 2006 MT 21, ¶ 6, 331 Mont. 40, 128 P.3d 1026. In 1977 Montana adopted the UCCJA. Prior to all 50 states adopting the UCCJA, the disparate and conflicting exercise of jurisdiction over child custody matters encouraged forum shopping, self-help, and re-litigation of custody matters in never ending disputes. *Sampley*, ¶ 23. The purpose of the UCCJA was to eliminate these problems by establishing uniform criteria for states to exercise jurisdiction of child custody matters. *Sampley*, ¶ 23 (citing UCCJA § 1). The UCCJA aimed to establish a bright-line rule whereby a state could exercise jurisdiction if it was the child's "home state." *Sampley*, ¶ 23. The six-month requirement for establishing a home state was based on the assumption most children integrate into a community after living in that community for six months. *Sampley*, ¶ 23 (citing UCCJA § 3 Comment). The UCCJA was revised to help further the Act's goals and address inconsistencies among state interpretation and enforcement of the UCCJA resulting in the UCCJEA, which Montana adopted in 1999. The UCCJEA did not substantially change the definition of "home state" from the UCCJA and Montana did not repeal the UCCJA but instead amended its language. *Sampley*, ¶ 24. The UCCJEA did not alter the purpose or meaning of the "home state" requirement, and in adopting the UCCJA and UCCJEA definition of "home state" the legislature intended to create a bright-line rule based on the assumption a child's integration into a community occurs after six months of living in a community. *Sampley*, ¶ 24 (citing Sec. 4, Ch.91, L. 1999).

¶8 Section 40-7-201, MCA, provides for establishing initial jurisdiction of a child custody determination:

> (1) Except as otherwise provided in 40-7-204, a court of this state has jurisdiction to make an initial child custody determination only if:
>
> > (a) this state is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

¶9 Pursuant to § 40-7-103(7), MCA, "'Home state' means the state in which a child lived with a parent . . . for at least 6 consecutive months immediately before the commencement of a child custody proceeding . . . . A period of temporary absence of any of the mentioned persons is part of the period." We previously addressed how courts properly determine what constitutes a temporary absence and what distinguishes a temporary absence from an absence that will not be included as time a child lived in Montana for purposes of § 40-7-103(7), MCA, consistent with the Montana legislature's intent in adopting the definition of "home state":

> Forty-nine states have adopted the UCCJEA, and several courts have considered what constitutes a "temporary absence" for the purposes of determining a child's home state. Despite the UCCJEA's purpose of uniform state treatment of child custody jurisdiction issues, these jurisdictions' treatment of the term has been far from uniform. (*citations omitted*). Instead, three primary approaches have developed. Some courts have considered only the duration of an absence in determining whether the absence is temporary. (*citation omitted*). Others have considered the intention of a child's parent, parents, or other caregivers. (*citations omitted*). Still others have adopted a "totality of the circumstances" test, considering factors like the parties' living arrangement, the location of the child's doctor, receipt of public benefits, and frequency of relocation, in addition to duration and intention. (*citation omitted*). We are not particularly persuaded by the reasoning of these courts to adopt any of these approaches. The

> decisions we have reviewed provide little rationale for why any particular approach best gives effect to legislatures' intents in adopting the UCCJEA.
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> . . .
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> A totality of the circumstance approach makes the most sense for determining whether an absence renders the integration assumption unreasonable. We cannot say that a single factor will be dispositive to this determination in all cases; neither the intentions and expectations of the parents nor the duration of the absence will control every situation. Instead, the continued reasonableness of the integration assumption in light of an absence is best considered in the context of the totality of the circumstances surrounding the absence.
>
> While such a standard is somewhat more subjective than the bright-line, six-month rule imposed by the legislature; and while such subjectivity interferes with the UCCJEA's goal of uniform application of child custody jurisdiction laws between states; requiring temporary absences to be measured against the purposes and underlying assumptions of the intended bright-line rule in an objective test seems to provide a rule that is as precise as possible. At the very least, we think that providing such a standard will better promote uniform treatment of child custody jurisdiction than the similar standardless tests of other states.

Sampley, ¶¶ 22, 26-27.

¶10 The UCCJEA's intent to create a bright-line rule is based on the assumption a child usually integrates into a community after six months of living there. However, the UCCJEA recognizes this assumption of integration may be rebutted by jurisdictional facts. Thus, the court must apply these jurisdictional facts in the "home state" determination under the UCCJEA. Recognizing the potential for inconsistencies among state interpretation and enforcement in this regard, the UCCJEA contains important judicial communication and cooperation provisions to promote uniformity and reduce and minimize the potential for courts to issue inconsistent, competing jurisdictional orders in child custody proceedings. Section 40-7-107(1), MCA, precludes a court of this state from

exercising jurisdiction "if at the time of commencement of the proceeding a proceeding concerning the custody of the child had been previously commenced in a court of another state having jurisdiction . . . unless the proceeding has been terminated or is stayed by the court of the other state . . . ." Further, before hearing a child custody proceeding, the court must determine if a child custody proceeding was previously commenced in a court of another state and, if so, "stay its proceeding and communicate with the court of the other state." Section 40-7-107(2), MCA. Section 40-7-139, MCA, then provides the ability for the court to communicate with a court of another state, to allow the parties to participate in the communication, and for a record of the communications between the courts to be kept. Section 40-7-140, MCA, then provides for a court of this state to request a court of another state to hold an evidentiary hearing; order a person to produce evidence; order a child custody evaluation; forward certified copies of the transcript, evidence presented, and evaluation prepared to a court of another state; and order a party to appear in the proceeding. Section 40-7-140, MCA, provides these same abilities to a court of another state. Communication between courts with participation of the parties is designed to reduce potential for courts to be issuing competing, inconsistent orders regarding jurisdiction.

¶11 Prior to the Montana Court reaching its determination that Montana was B.K.'s home state, the Montana and Minnesota Courts did exactly what they were supposed to do under the UCCJEA to resolve the jurisdictional issue. On August 16, 2016, the Montana Court set a status conference on Mother's petition for September 6, 2016. Per § 40-7-107, MCA, the Montana Court was in contact with the Minnesota Court prior to setting the status hearing to determine if a child custody proceeding had been previously commenced

in Minnesota.[2] The Montana Court learned no action was pending in Minnesota. Father's attorney appeared telephonically at the status hearing on September 9, 2016.[3] The Montana Court advised Father of the need to make a filing in Montana to avoid default and requested Father's counsel notify the court when an action was actually filed in Minnesota so that a UCCJEA conference could be held with the Minnesota Court. On September 19, 2016, Father filed a limited appearance on Mother's petition challenging jurisdiction and seeking dismissal of Mother's petition. Thereafter, the Montana Court set a further status conference on October 25, 2016, at which time the Montana and Minnesota Courts began their several UCCJEA conferences. During these conferences, the courts appropriately determined: 1) the first commenced child custody proceeding was that filed by Mother in Montana, 2) additional evidence from the parties relating to jurisdictional facts was necessary to determine the jurisdictional issue, 3) the process by which the parties would submit affidavits and legal memoranda regarding jurisdiction, and 4) the Montana Court would determine the first-in-time filed motion to dismiss for lack of jurisdiction. As provided for in the UCCJEA, the Minnesota Court stayed its proceedings until the Montana

[2] There was some question throughout the District Court case of which party commenced their case first because Minnesota litigation commences when the defendant is served (Minn. R. Civ. P. 3.01) while Montana litigation commences when the complaint is filed (M. R. Civ. P. 3). Under the UCCJEA, "'[c]ommencement' means the filing of the first pleading in a proceeding." Section 40-7-103(5), MCA; Minn. Stat. § 518D.102. This is perhaps a conflict of laws question for Minnesota but not at issue here. Here, there is no question that the Montana case was filed June 29, 2016, and the Minnesota case was served on the same day but not successfully filed with the court until November 2, 2016. Thus the Montana case was the first to commence under the UCCJEA.

[3] Prior to the hearing, Father's attorney had sent a letter to the Montana Court's Clerk of Court objecting to jurisdiction and asserting Minnesota had jurisdiction even though he had not yet made a formal filing in Minnesota.

Court determined the first-in-time filed jurisdictional issue. After the Montana Court determined Montana to be the home state of B.K., the courts and parties again conferred on January 20, 2017. At the conclusion of that conference, the Minnesota Court accepted the Montana Court's determination and declined further involvement of the Minnesota Court in the child custody proceeding. The procedure engaged in by the Montana and Minnesota Courts was exactly that provided for by the UCCJEA.

¶12 Next, we review the Montana Court's application of § 40-7-201, MCA, and whether a totality of the circumstances supported its finding that the time Mother and B.K. lived in Minnesota was a temporary absence from Montana such that this eight- to nine-month period is included as time living in Montana for purposes of §§ 40-7-103(7) and 40-7-201(1), MCA. *Sampley*, ¶¶ 22, 26-27. In this case, the Montana Court was correct when it decided that Montana is B.K.'s home state.

¶13 Under the UCCJEA, general principles of determining jurisdiction, including a party's domicile, are inapplicable. *See* § 40-7-201(3), MCA. Instead, the UCCJEA prioritizes home-state jurisdiction for child custody proceedings, under which a state has jurisdiction if it is the child's "home state." Section 40-7-201(1)(a), MCA, provides that a court in Montana has home-state jurisdiction in two manners: (1) if Montana *is* the child's home state; "or" (2) if (a) Montana *was* the child's home state "within 6 months before the commencement of the proceeding"; (b) the child is absent from Montana; and (c) a parent continues to live in Montana (emphasis added).

¶14 The dissent asserts the time B.K. spent out of Minnesota from May 21, 2016 prior to the commencement of the child custody proceeding on June 29, 2016 was a temporary

absence from Minnesota and should be counted as time B.K. resided in Minnesota for purposes of establishing home state jurisdiction under the first manner of § 40-7-201(1)(a), MCA. The Montana Court did not make that finding and instead found that the time B.K. and Mother spent residing in Minnesota was a temporary absence from Montana such that this eight- to nine-month period is included as time living in Montana. From the facts found by the Montana Court, B.K. did not live in Minnesota at least six consecutive months immediately before the commencement of the child custody proceeding[4] and therefore Minnesota was not B.K.'s home state under the first manner provided in § 40-7-201(1)(a), MCA.

¶15 In *Stephens*, ¶¶ 16-17, 331 Mont. 40, 128 P.3d 1026, this Court considered the second manner of establishing home-state jurisdiction under § 40-7-201(1)(a), MCA, because Montana was, at one point, the children's home state; the children were absent from Montana; and father continued to live in Montana. In that case, the Court concluded Montana lost its status as the children's home state when the children spent more than six months living in Arkansas, making Arkansas their home state. *Stephens*, ¶¶ 10, 17. After the family spent more than six months in Arkansas, the family returned to Montana in May 2005; however, "[mother] removed the children from Montana in August 2005, thereby stopping the six-month clock needed to establish Montana as the 'home state' for purposes of jurisdiction under the UCCJEA." *Stephens*, ¶ 17.

[4] B.K. was in Minnesota not quite 5 months prior to the commencement of the child custody proceeding on June 29, 2016 because she moved back to Montana with Mother on May 21, 2016. The Montana Court determined the time B.K. was outside Montana to be temporary and, as such, included as time living in Montana.

¶16 Pursuant to the Montana Court's finding that the time B.K. and Mother spent residing in Minnesota was a temporary absence from Montana such that this eight- to nine-month period is included as time living in Montana, Montana is also B.K.'s home state under the second manner of establishing home state jurisdiction under § 40-7-201(1)(a), MCA.

¶17 We turn then to review of the Montana Court's finding that the time B.K. and Mother spent residing in Minnesota was a temporary absence from Montana such that this eight- to nine-month period is included as time living in Montana. It is not this Court's function to reweigh conflicting evidence or substitute its judgment regarding the strength of the evidence for that of the district court. *In re A.F.*, 2003 MT 254, ¶ 24, 317 Mont. 367, 77 P. 3d 266. Rather, the ultimate test for adequacy of findings of fact is whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision, and whether they are supported by the evidence presented. *Rose v. Rose*, 2016 MT 7, ¶ 22, 382 Mont. 88, 364 P.3d 1244. Even when there is a conflict in the evidence, this Court will uphold the district court's determinations where there is substantial credible evidence to uphold its findings of fact and conclusions of law. *Bock v. Smith*, 2005 MT 40, ¶ 27, 326 Mont. 123, 107 P.3d 488.

¶18 The Montana Court reviewed the initial and responsive affidavits of both Mother and Father and the affidavit of Mathew Vantassel, the father of Mother's other child. While the facts set forth in these affidavits do not conflict with each other, Mother and Father disagreed as to how the courts should interpret those facts in determining whether Mother intended to remain indefinitely in Minnesota. It is not this Court's function to reweigh

evidence or substitute its judgment regarding the strength of the evidence for that of the district court. *In Re A.F.*, ¶ 24. The Montana Court considered and weighed that evidence and prepared comprehensive findings and conclusions pertinent to the jurisdictional issue supporting the basis of its determination that Montana is B.K.'s home state. The record contains substantial credible evidence supporting the findings and conclusions of the Montana Court.

¶19 The dissent asserts that although the term "temporary absence" found in § 40-7-103(7), MCA, is not defined, implicit in this statute is that a "temporary absence" cannot be longer than the six-month "period" and still be a "part" of that period. We do not agree. Consistent with our determination in *Sampley*, "[a] totality of the circumstance approach makes the most sense for determining whether an absence renders the integration assumption unreasonable" rather than a blanket conclusion that a temporary absence cannot be longer than six months. *Sampley*, ¶¶ 26-27.

¶20 *Sampley* requires a consideration of the totality of the circumstances, including the physical presence of the child; the integration of the child into the Montana community; the duration of the absence; the parties' living arrangements; the location of B.K.'s other family members; the frequency of relocation; and the parties' intentions. The Montana Court considered the totality of these circumstances and based on substantial credible evidence concluded the time Mother and B.K. spent living in Minnesota was a "temporary absence" from Montana. We conclude the District Court correctly applied the provisions of §§ 40-7-103(7) and -201(1)(a), MCA.

CONCLUSION

¶21 Consistent with the requirements and intent of the UCCJEA, the Montana and Minnesota Courts appropriately communicated and cooperated exactly as they were supposed to in order to resolve the jurisdictional issue. The record contains substantial credible evidence supporting the jurisdictional findings and conclusions of the Montana Court. As such, we conclude the Montana Court did not err in finding B.K.'s home state to be Montana and assuming initial subject matter jurisdiction over her child custody proceeding.

¶22 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR
/S/ BETH BAKER

Justice Laurie McKinnon, dissenting.

¶23 A "home state" determination requires courts to look at where the child "lived" during the six months before the initiation of a child custody proceeding. Section 40-7-103(7), MCA. During the six months before the initiation of this proceeding, B.K. lived in Montana for only one week. Nevertheless, the Court concludes Montana is her "home state." Opinion, ¶ 21. In *Sampley*, ¶ 28, we determined that a similar amount of physical presence in Montana, between four days and one month, was insufficient to

conclude Montana was the child's home state. Here, we do the exact opposite because the courts communicated appropriately and, according to Mother, Mother did not intend to live in Minnesota for any longer than one year. Unfortunately, the courts' communication skills are irrelevant and the sincerity of their desire to help the parties does not insulate their decisions from appellate review. Under the UCCJEA and *Sampley*, Mother's self-serving statement about her intention does not inform the decision of whether Montana is B.K.'s home state, although it may be one of many circumstances to consider when determining whether an absence from the home state is temporary.

¶24 Instead, I would conclude Minnesota is B.K.'s home state under §§ 40-7-103(7) and -201(1)(a), MCA, because she was physically present in Minnesota for all but thirty-five days of the six months preceding the initiation of this action. Considering the totality of the circumstances relating to the absence from Minnesota, as *Sampley* requires, that period constituted a temporary absence because it was a short, unplanned, and chaotic period. Prior to the absence, B.K. lived in Minnesota for approximately nine months with Mother, Father, and her sister (Sister), where Sister attended school, Mother was employed part-time, Father was employed full-time, and Mother and Father entered into a one-year residential lease agreement. In fact, B.K. only left Minnesota when Mother unilaterally removed her from the state without Father's permission. Thereafter, Mother did not care for B.K. in Montana. Instead, B.K. traveled to Father's parents' home in Washington, not for a "vacation," Opinion, ¶ 2, but because, having just moved to Montana without permission from Father or any pre-existing plan to do so, Mother lacked housing, employment, and childcare for B.K. in Montana. B.K. spent more than three weeks in

Washington, approximately one week in Montana, and then returned to Father's care in Minnesota. Mother subsequently initiated this parenting action in Montana.

¶25 Today, we do our jurisprudence concerning the UCCJEA, an act adopted to clarify child custody issues and avoid jurisdictional conflict, a disservice by avoiding its common-sense definition of "home state," § 40-7-103(7), MCA; construing a period of up to one year to be a "temporary absence" if one party later says she only meant for it to be temporary; and avoiding the holdings in relevant, on-point, and controlling caselaw. I would reverse the Montana Court's order concerning jurisdiction and conclude, based on §§ 40-7-103(7) and -201, MCA, *Stephens*, and *Sampley*, that the Minnesota Court has jurisdiction over B.K.'s child custody proceeding because Minnesota is her home state.

¶26 A court has jurisdiction to make an initial child custody determination if it "is the home state of the child on the date of the commencement of the proceeding." Section 40-7-201(1)(a), MCA.

> "Home state" means *the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding.* In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with any of the persons mentioned. *A period of temporary absence of any of the mentioned persons is part of the period.*

Section 40-7-103(7), MCA (emphasis added). Here, during the "6 consecutive months immediately before the commencement," or the six months preceding June 29, 2016, B.K. "lived in" Minnesota for approximately five months, Washington for three weeks, Montana for one week, and Minnesota again for four days. While it is true B.K. was not in any one

state for every single day of the six months preceding June 29, 2016, it is also clear that she spent the least amount of time in Montana.

¶27 Backing up even further, it is clear Montana was B.K.'s home state when she initially moved to Minnesota because she was born in Montana in 2013 and lived in Montana until 2015, longer than six months. *See Stephens*, ¶¶ 10, 17. However, upon B.K.'s relocation to Minnesota in September 2015, a "six-month clock" began running in that state. *See Stephens*, ¶ 17. By March 2016, at the latest, when B.K. had lived in Minnesota for six consecutive months, Minnesota became B.K.'s home state. B.K. continued to live in Minnesota for approximately three additional months, until May 21, 2016. B.K. was absent from Minnesota from May 21, 2016, until June 24, 2016. B.K.'s thirty-five-day absence from Minnesota could be considered either: (1) the start of a new "six-month clock" for Washington or Montana; or (2) a "temporary absence" from Minnesota. Thus, Minnesota remained B.K.'s home state for purposes of the UCCJEA if B.K.'s absence from Minnesota was a "temporary absence." If B.K.'s absence from Minnesota was not a "temporary absence," then B.K. has no home state and there can be no home state jurisdiction—B.K. would not have lived in any state for "at least 6 consecutive months immediately before commencement of" the action. Where a child lacks a home state, other provisions of § 40-7-201(1), MCA, apply and would have to be considered. *Stephens*, ¶ 9; *see* § 40-7-201(1)(b)-(d), MCA. The first jurisdictional inquiry, however, is whether there is a home state pursuant to the provisions of § 40-7-201(1)(a), MCA. *Stephens*, ¶¶ 6-7.

¶28 The term "temporary absence" is included in the definition of "home state." Section 40-7-103(7), MCA. Although the term "temporary absence" is not defined, the definition of "home state" requires any period of temporary absence be included as "part" of the six-month period the child lived in his or her claimed home state. Section 40-7-103(7), MCA ("A period of temporary absence of any of the mentioned persons is part of the period."). Implicit in that requirement is the concept that a "temporary absence" cannot be longer than the "period" and still be a "part" of that period—a "temporary absence" cannot be longer than the entire six months immediately preceding the child custody proceeding.

¶29 The analysis for determining a child's home state is intended to be straightforward. First, a court must identify where the child "lived" during the six consecutive months before the commencement of the child custody proceeding. Sections 40-1-103(7) and -201(1)(a), MCA. Second, if the child was absent for "part" of that six-month "period," a court must determine whether the absence was a "temporary absence" by considering the totality of the circumstances surrounding that absence. *Sampley*, ¶ 28; § 40-1-103(7), MCA. Some circumstances to consider include the child's physical presence; the integration of the child into the Montana community; the duration of the absence; the parties' living arrangement; the location of other family members; the frequency of relocation; and the parties' intentions. *Sampley*, ¶¶ 22, 25-28.

¶30 Instead of applying these rules in a straightforward manner, the Montana Court equated Mother's "temporary move" to Minnesota with B.K.'s "temporary absence" from Montana and thereby concluded Montana is B.K.'s home state. Our decision today

erroneously affords deference to the District Court's finding. *See* Opinion, ¶¶ 14, 16, 18. Our standard of review is for correctness. Opinion, ¶ 5. Therefore, our review must begin, as the UCCJEA instructs, with a determination of where B.K. lived. Instead, our decision places the cart before the horse by first considering whether B.K.'s nine-month absence was a "temporary absence" from an incorrectly designated home state, Montana.

¶31 Our caselaw recognizes that a "six-month clock" begins to run when a child moves from his or her home state to a new state. *Stephens*, ¶ 17. Instead of recognizing that B.K. began living in Minnesota in September 2015, and beginning our analysis there, we focus, just as the District Court did, on Mother's bald representation that she never intended to remain in Minnesota for longer than one year. As evidence, Mother points to an agreement with Sister's father, which no one can locate, and Mother's discussions with Father about potentially moving back to Montana or another, unknown state to accommodate his career. Mother's own actions did not conform with her stated intention: Mother enrolled Sister into school in Minnesota; Mother obtained part-time employment in Minnesota; and after living in Minnesota for several months, signed a year-long residential lease agreement in Minnesota. Mother's actions indicated she would remain in Minnesota for a minimum of one year. I would conclude Minnesota is B.K.'s home state and therefore has jurisdiction to make an initial child custody determination.

/S/ LAURIE McKINNON