RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2156-20

C. M.,

Plaintiff-Appellant,

v.

A. M.,

Defendant-Respondent.

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Argued April 25, 2022 – Decided May 5, 2022

Before Judges Vernoia and Petrillo.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FD-02-0322-21.

Richard A. Outhwaite argued the cause for appellant (Weinberger Divorce and Family Law Group, LLC, attorneys; Richard A. Outhwaite, on the brief).

Lawrence Kalish argued the cause for respondent (Kalish Law Group, attorneys; Lawrence Kalish, on the brief).

PER CURIAM

Plaintiff C.M.[1] appeals from a February 23, 2021 Family Part order granting defendant A.M.'s motion to dismiss her complaint, which sought a determination concerning custody of the parties' then one-year old son and a child support award. Plaintiff argues the court erred by dismissing the complaint based on its conclusion it lacked jurisdiction under the New Jersey Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), N.J.S.A. 2A:34-53 to -95, and that jurisdiction properly lies in the courts of the State of Florida. Unpersuaded by plaintiff's arguments, we affirm.

I.

The parties are not married. They are the parents of a son, who was born in New York in September 2019. Following their son's birth, the parties lived with the child in a Tenafly, New Jersey, apartment until December 2019, when they traveled to Florida to visit defendant's family. The parties did not own or lease a residence in Florida, but they lived with their son at defendant's family's Florida home from their arrival in December 2019 until August 2020.

[1] We employ initials to identify the parties because the issues presented require that we address proceedings involving an alleged domestic violence incident between them, and the identity of an alleged victim of domestic violence is excluded from public access under Rule 1:38-3(c)(12).

On August 7, 2020, after an alleged incident of domestic violence against plaintiff by defendant, plaintiff returned to New Jersey with their child. On August 14, 2020, plaintiff sought and obtained a temporary domestic violence restraining order against defendant in the Leonia Borough Municipal Court under the Prevention of Domestic Violence Act, N.S.J.A. 2C:25-17 to -35. In her complaint supporting her request for the restraining order, plaintiff certified that on August 5, 2020, defendant committed an act of domestic violence against her "while at [the parties'] Florida residence." The complaint also alleged prior acts of domestic violence, including one three years earlier "in a Florida casino" and another at an undisclosed location in October 2019. Plaintiff's domestic violence complaint was later dismissed on the merits following a trial.

On August 20, 2020, defendant filed a complaint against plaintiff in the Family Division of the Circuit Court in Miami-Dade County Florida for "[e]stablishment of [p]aternity, [t]imesharing, [c]hild [s]upport and [o]ther [r]elief" concerning the parties' son.[2] The complaint alleged that on August 7, 2019, plaintiff took the child to New Jersey from the State of Florida "without [defendant's] knowledge or consent." Defendant also filed with the Circuit

[2] Defendant later filed an amended complaint with the Circuit Court. The amendments to the original complaint are not relevant to the issues presented on appeal.

Court an August 20, 2020 "Uniform Child Custody Jurisdiction and Enforcement Act . . . Affidavit" stating the parties and their son resided in Florida since December 2019.

On October 10, 2020, plaintiff filed a verified complaint for custody and child support in the Family Part. The complaint noted "jurisdiction is an issue to be determined" because defendant had "filed an application in Florida." Plaintiff further alleged she appeared in the Florida action "for the limited purpose[] of contesting jurisdiction" there. In the complaint, plaintiff asserted "Florida did not obtain home state jurisdiction as there was no intent of the parties to reside in or remain in Florida and . . . they did not have a home in Florida." Plaintiff also asserted the parties' and their son's stay in Florida was extended due to "the [COVID-19] crisis," which "was way beyond [p]laintiff's control." Plaintiff also claimed Florida is an inconvenient forum.

On December 3, 2020, the Family Part entered an order following a telephonic conference with the parties and counsel. The order directed paternity testing and noted defendant "contests jurisdiction."

Genetic testing confirmed defendant's paternity. Defendant subsequently moved for dismissal of plaintiff's complaint on jurisdictional grounds. In pertinent part, defendant sought a declaration Florida is the home state under the

UCCJEA over all claims between the parties concerning their son. The record on appeal does not include any pleadings or papers filed on plaintiff's behalf in opposition to the motion. See R. 2:6-1(a)(1) (requiring the appendix prepared by appellant include "the pleadings" and "such other parts of the record, excluding the stenographic transcript, as are essential to the proper consideration of the issues").

After hearing argument on defendant's motion, the court rendered a decision from the bench. The court determined Florida is the child's home state under the UCCJEA because the parties and their child lived in Florida for nine months, from the time the child was approximately two months old in December 2019, until he was eleven months old in August 2020. The court also found defendant filed a custody proceeding in Florida in August 2020, plaintiff's New Jersey domestic violence complaint had been dismissed on the merits, and, although plaintiff and the child "had been in New Jersey for six months now," defendant contested jurisdiction in New Jersey during that entire period. The court further noted it had conferred with the Circuit Court judge presiding over

the Florida matter, and the judge had determined Florida had jurisdiction because it was the home state under the UCCJEA.[3]

The motion court found no evidence supporting plaintiff's claim the COVID-19 emergency prevented the parties from returning to New Jersey from Florida following the 2019 winter holidays, noting air travel due to COVID-10 was not suspended until the beginning of March 2020. The court further observed plaintiff failed to present any evidence the parties had made travel plans to return to New Jersey after the 2019 winter holidays. Moreover, the evidence showed plaintiff returned to New Jersey on business for a short period in January 2020 prior to the suspension of air travel during the COVID-19 emergency.

The court granted defendant's motion. The court entered an order finding "jurisdiction properly remains in the State of Florida" and dismissing "plaintiff's complaint for lack of jurisdiction." This appeal followed.

[3] Plaintiff appealed from the Circuit Court's order finding it had jurisdiction as the child's home state under the UCCJEA. On appeal, defendant has provided a decision from the District Court of Appeal of Florida, Third District, affirming the Circuit Court's order.

II.

Plaintiff argues the court erred by determining it lacked jurisdiction to decide the claims in her complaint. Because the court's decision it lacked jurisdiction constitutes a legal determination, we review it de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995); Landers v. Landers, 444 N.J. Super. 315, 319 (App. Div. 2016).

Plaintiff argues the court erred by misapplying the legal standard applicable to its jurisdictional determination. Plaintiff claims the court failed to correctly interpret and apply the statutory standards set forth in the "UCCJEA," and, more particularly, she argues the court should have determined it had jurisdiction as a matter of law under the UCCJEA.[4]

[4] In plaintiff's brief on appeal, she argues the court erred by failing to apply, and by incorrectly interpreting and applying, N.J.S.A. 2A:34-31(a)(1) and (a)(2) in determining it lacked jurisdiction. Those statutory provision are inapplicable here because they were part of the Uniform Child Custody Jurisdiction Act (UCCJA), N.J.S.A. 2A:34-28 to -52, which was repealed in 2004, L. 2004, c. 147, § 44, and replaced by the UCCJEA, which became effective December 13, 2004, L. 2004, c. 147, § 1; see also Senate Judiciary Committee Statement to S. 150 (L. 2004, c. 147) (explaining the UCCJEA was adopted to replace the UCCJA). Plaintiff also more generally argues the court erred in its application of the UCCJEA, which is the statute that governs the disposition of jurisdictional disputes in custody proceedings following its December 13, 2004 effective date. See N.J.S.A. 2A:34-94 (providing the UCCJEA applies to motions and other requests for relief made in child custody proceedings commenced after the effective date of the statute). We therefore consider the pertinent statutory provisions of the UCCJEA in our analysis of plaintiff's claims.

The court considered the jurisdictional issue presented by defendant's motion to dismiss under the UCCJEA. See N.J.S.A. 2A:34-53 to -95. Florida adopted the UCCJEA in 2002, as codified in chapter 61, Florida Statutes. See Fla. Stat. §§ 61.501 to -.542. "The UCCJEA governs the determination of subject matter jurisdiction in interstate . . . custody disputes." Sajjad v. Cheema, 428 N.J. Super. 160, 170 (App. Div. 2012). We interpret the UCCJEA "so as to avoid jurisdictional competition and conflict and require cooperation with the courts of other states as necessary to ensure that custody determinations are made in the state that can best decide the case." Griffith v. Tressel, 394 N.J. Super. 128, 138 (App. Div. 2007).

"One of the primary objectives of the UCCJEA was to 'prioritize[] home state jurisdiction' over other bases for a state assuming jurisdiction of a child custody dispute." Dalessio v. Gallagher, 414 N.J. Super. 18, 22 (App. Div. 2010) (quoting UCCJEA, Prefatory Note, 9 (Part IA) U.L.A. 651 (1999)). Under N.J.S.A. 2A:34-65 and Fla. Stat. § 61.514, jurisdiction over an interstate child custody dispute is vested in the home state. Where, as here, the child at issue is over the age of six months when the custody proceeding is commenced, "home state" under New Jersey and Florida law is defined as "the state in which the child lived with a parent or a person acting as a parent for at least [six]

consecutive months immediately before the commencement of a child custody proceeding." N.J.S.A. 2A:34-54; Fla. Stat § 61.503(7).

The record presented to the motion court provides ample support for its determination Florida is the home state for purposes of determining jurisdiction under the UCCJEA. It is undisputed the parties' son "lived" with them in Florida during the nine-month period from December 2019 until plaintiff left Florida with the child without defendant's knowledge or consent in August 2020. Defendant immediately filed the custody proceeding in Florida following plaintiff's removal of the child from that state.

We reject plaintiff's claim that a different conclusion is required because the parties intended to return to New Jersey when they first traveled to Florida and, thereafter, their return to New Jersey was delayed by the COVID-19 emergency and they continued to maintain the lease on their Tenafly apartment. As the motion court correctly found, those claims are belied by the lack of evidence the parties made travel arrangements to return to New Jersey when they first went to Florida or at any time during the months prior to August 2020, and by the evidence showing the parties were able to travel to New Jersey—as plaintiff did in January 2020—if they chose to do so. Plaintiff's claim she did not consider Florida to be the parties' residence is also contradicted by her

certified statement, provided in support of her complaint for the domestic violence restraining order, that on August 5, 2020, defendant committed an act of domestic violence in the parties' "Florida residence."

More importantly, however, even accepting plaintiff's claim the parties visited Florida but intended to return to New Jersey, the motion court correctly concluded Florida is the home state under the UCCJEA. N.J.S.A. 2A:34-65, and its Florida counterpart, Fla. Stat. § 61.503(7), define home state by reference to where the child lived during the six months immediately prior to the commencement of the child custody proceeding. Here, the undisputed facts establish the parties' son lived with them in Florida for the six months immediately prior to the commencement of defendant's custody proceeding in Florida.

The motion court could not properly determine the child's home state is New Jersey because there is no evidence the child lived in this State for six months immediately proceeding the commencement of either the custody proceeding in Florida or the one later commenced by plaintiff in New Jersey. See P.H. v. L.W., 456 N.J. Super. 630, 637 (App. Div. 2018) (finding New Jersey was not the home state under the UCCJEA because the child lived in the State five days less than the required six months immediately preceding the

commencement of the custodial proceeding). Plaintiff's claim the parties were domiciled in New Jersey, or intended to return to New Jersey, during the nine months they lived with the child in Florida is insufficient to support a finding New Jersey is the home state under the UCCJEA. As we explained in Sajjad, "determination of a child's legal residence or domicile is unnecessary as the statutory language 'lived,' included with the definition of home state" under the UCCJEA "connotes physical presence within the state, rather than subjective intent to remain." 428 N.J. Super. at 172-73.

N.J.S.A. 2A:34-65 governs the determination of jurisdiction over an initial child custody determination. Dalessio, 414 N.J. Super. at 23. In pertinent part, the statute provides:

> [(a)] a court of this State has jurisdiction to make an initial child custody determination only if:
>
> (1) 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 six 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;
>
> (2) a court of another state does not have jurisdiction under paragraph (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under . . . [N.J.S.A.2A:34-71and -72] and:

> (a) the child and the child's parents, or the child and at least one parent or a person acting as a parent ha[s] a significant connection with this State other than mere physical presence; and
>
> (b) substantial evidence is available in this State concerning the child's care, protection, training and personal relationships;
>
> (3) all courts having jurisdiction under paragraph (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child . . . ; or
>
> (4) no state would have jurisdiction under paragraph (1), (2) or (3) of this subsection.
>
> b. Subsection [(a.)] of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this State.
>
> c. Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination.
>
> [N.J.S.A. 2A:34-65(a) to (c) (emphasis added).]

Under the statute's plain language, the Family Part has jurisdiction over an initial child custody dispute "only if" the standards in one or more of the subsections is satisfied. The court correctly determined plaintiff did not satisfy any of the prescribed standards. Plaintiff did not satisfy the requirements of subsection (a)(1) because, for the reasons noted, New Jersey was not the child's

home state on the date of the commencement of the custody proceeding or within six months of the commencement of the custody proceeding. N.J.S.A. 2A:34-65(a)(1).

Plaintiff also failed to present evidence the Family Part had jurisdiction under subsection (a)(2). The undisputed facts established there was another state, Florida, that is the child's home state under the UCCJEA, and the Circuit Court in Florida did not decline to exercise its jurisdiction in favor of New Jersey as a more convenient forum. N.J.S.A. 2A:34-65(a)(2); see also Dalessio, 414 N.J. Super. at 23 (explaining "unless the home state declines jurisdiction" New Jersey courts "cannot assume 'significant connection' jurisdiction over an initial child custody determination under N.J.S.A. 2A:34-65(a)(2)"). In fact, in his consultation with the Family Part, the Florida Circuit Court judge confirmed his determination Florida is the child's home state and that he intended to exercise jurisdiction over the custodial dispute under the UCCJEA. And, as we noted, the Circuit Court's determination, which plaintiff appealed, has been affirmed.

The Family Part also did not have jurisdiction under subsection (a)(3) of N.J.S.A. 2A:34-65 because the Circuit Court did not decline "jurisdiction on the ground that" the Family Part "is the more appropriate forum to determine the custody of the child." N.J.S.A. 2A:34-65(a)(3). There is also no evidence

supporting a finding of jurisdiction in New Jersey under subsection (a)(4) because there is a state, Florida, which has jurisdiction as the home state over plaintiff's claims. N.J.S.A. 2A:34-65(a)(4).

In sum, our de novo review of the record under N.J.S.A. 2A:34-65(a) compels the conclusion the motion court correctly determined it lacked jurisdiction over the claims asserted in plaintiff's complaint. A New Jersey court "may not exercise its jurisdiction" under the UCCJEA "if at the time of the commencement of the proceeding a proceeding concerning the custody of the child had been commenced in a court of another state having jurisdiction substantially in conformity with [the] act."[5] N.J.S.A. 2A:34-70(a). The record supports application of that prohibition here.

We disagree with plaintiff's argument the court did not make adequate findings of fact and conclusions of law supporting its determination. See R. 1:7-4(a). The court's findings are succinctly stated, but the court applied the correct legal standard, fully considered the record and its communication with the Circuit Court in Florida, and explained it lacked jurisdiction because New Jersey

[5] There are exceptions to this statutory prohibition set forth in N.J.S.A. 2A:34-70(a) but they are not applicable here.

is not the child's home state under the UCCJEA. We discern no basis requiring a remand for further findings of fact or conclusions of law.

We are also unpersuaded by plaintiff's argument, made in the alternative, that if we do not reverse the court's dismissal order, we should remand for a plenary hearing because there are issues of material fact that require a plenary hearing. "A plenary hearing should be held in cases where the court must make findings on disputed facts." B.G. v. L.H., 450 N.J. Super. 438, 462 (Ch. Div. 2017). In those circumstances, a plenary hearing allows for the court to take testimony from witnesses so that it may make credibility determinations. See Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 475-76, (App. Div. 1997). A plenary hearing is unnecessary when it "would adduce no further facts or information," and "[a]ll of the relevant material was supplied to the motion judge." Llewelyn v. Shewchuk, 440 N.J. Super. 207, 217 (App. Div. 2015) (quoting Fineberg v. Fineberg, 309 N.J. Super. 205, 218 (App. Div. 1998)).

Plaintiff does not identify any disputed fact issues pertinent to a determination of the jurisdictional issue under the UCCJEA, and we find none based on our review of the record. Additionally, the undisputed facts establish Florida is the child's home state under the UCCJEA because he lived there for more than six months immediately prior to the commencement of the Florida

custody proceeding. Thus, a plenary hearing is unnecessary and "would adduce no further facts or information" because "[a]ll of the relevant material was supplied to the motion judge[.]" Llewelyn, 440 N.J. at 217 (quoting Fineberg, 309 N.J. Super. at 218).

Any of plaintiff's arguments we have not addressed directly are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.