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6 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

7 **DAWN R. BRUDEVOLD,**

8       Petitioner-Appellant,

9 v.

**NO. 31,000**

10 **DOUG FULTON,**

11       Respondent-Appellee.

12 **APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY**

13 **Camille Martinez Olguin, District Judge**

14 University of New Mexico Clinical Law Program

15 Barbara Creel

16 Albuquerque, NM

17 for Appellant

18 Goodwin & Bryan, LLP

19 Elizabeth A. Goodwin

20 Fairview Park, OH

21 Armand T. Carian

22 Albuquerque, NM

23 for Appellee

24 **MEMORANDUM OPINION**

25 **VANZI, Judge.**

1 Dawn Brudevold appeals from the district court's order declining to exercise  
2 jurisdiction over Brudevold's petition to establish parentage and giving full force and  
3 effect to an Ohio judgment awarding custody of the parties' daughter to Fulton. This  
4 Court issued a calendar notice proposing to affirm. Brudevold has filed a  
5 memorandum in opposition to the Court's proposed disposition. Having given due  
6 consideration to Brudevold's memorandum in opposition, we affirm.

7 In this Court's calendar notice, we proposed to conclude that (1) the district  
8 court did not err in giving full force and effect to the Ohio custody order because  
9 Brudevold had been provided notice and an opportunity to be heard [CN 2-3], (2) the  
10 district court did not err in declining to exercise jurisdiction over Brudevold's petition  
11 to establish parentage because Ohio had already exercised jurisdiction in substantial  
12 conformity with the Uniform Child Custody Jurisdiction and Enforcement Act  
13 (UCCJEA) [CN 3-6], and (3) circumstances of domestic violence do not invalidate an  
14 out-of-state custody order pursuant NMSA 1978, Section 40-10A-208 (2001) [CN 6-  
15 7].

16 With respect to our first proposed holding, Brudevold asserts that due process  
17 requires that she receive reasonable notice, and that ten days notice was not  
18 reasonable. Specifically, Brudevold asserts that the Ohio statute requires fourteen  
19 days notice for custody hearings and that her due process rights were violated because

1 the local rules of the Ohio court were violated. [MIO 4-5] In support of this argument,  
2 Brudevold refers this Court to *Wachter v. Wachter*, 439 So.2d 1260 (La. Ct. App.  
3 1983), to argue that failure to provide twenty days notice was held to be unreasonable  
4 in *Wachter*. *Wachter*, however, does not address due process. Instead, the court in  
5 *Wachter*, held that the Louisiana district court was correct in not enforcing a New  
6 Jersey custody order where New Jersey required twenty days notice be provided  
7 before a custody hearing and, there, only three days notice had been provided. *Id.* at  
8 1264. Thus, the court in *Wachter* decided that the New Jersey custody order had not  
9 been issued in substantial conformity with the New Jersey version of the UCCJEA  
10 and, therefore, that the Louisiana district court was correct in not enforcing the New  
11 Jersey order. *Id.*

12 Although Brudevold argues that this case should result in this Court  
13 reconsidering its proposed disposition, we disagree. Although the court in *Wachter*  
14 held that New Jersey was not in substantial conformity where it gave three days notice  
15 instead of twenty, it does not follow that ten days instead of fourteen is similarly  
16 egregious so as to render Ohio's decision not in substantial conformity with its  
17 version of the UCCJEA.

18 Moreover, to the extent Brudevold argues that ten days was unreasonable given  
19 her financial circumstances, Brudevold has not cited any authority to support her

1 argument that her circumstances rendered the time period constitutionally  
2 unreasonable. Instead, we suggest that the remedy available to Brudevold to address  
3 her specific circumstances was to request that the hearing be postponed.

4         With respect to the remainder of our proposed disposition, Brudevold argues  
5 that the domestic violence in this case was relevant to a determination of jurisdiction  
6 and that New Mexico courts should have exercised jurisdiction over her petition to  
7 establish custody. Brudevold’s argument is misplaced. Brudevold submitted a  
8 petition to establish custody with the New Mexico district court. Even if the New  
9 Mexico court had exercised temporary emergency jurisdiction as Brudevold argues,  
10 the ultimate custody determination would still have been left to the jurisdiction of the  
11 Ohio courts. As this Court pointed out in its calendar notice, “Section 204 only  
12 provides for temporary emergency jurisdiction and would not permit the district court  
13 to rule on Brudevold’s petition for parentage.” [CN 4] *See* NMSA 1978, § 40-10A-  
14 204(a), (c). Brudevold does not identify any action she expected the district court to  
15 take on her behalf, other than to rule on her petition for custody. As such, we find this  
16 argument unavailing.

17         Finally, Brudevold contends that the district court erred in refusing to allow the  
18 submission of evidence regarding inconvenient forum before ruling it did not have  
19 jurisdiction. In this Court’s calendar notice we proposed to conclude that the alleged

1 failure of the district court to properly assess whether it was a more convenient forum  
2 was not a basis for reversal, because Brudevold had never asked the Ohio Court to  
3 make that determination, and New Mexico cannot determine that it is a more  
4 convenient forum unless the home state has declined to exercise jurisdiction. *See* §  
5 40-10A-201(a)(2). In her memorandum in opposition, Brudevold merely argues that  
6 the district court did not permit the submission of evidence on this issue. However,  
7 Brudevold has failed to point out any legal error with this Court’s proposed analysis.  
8 “Our courts have repeatedly held that, in summary calendar cases, the burden is on the  
9 party opposing the proposed disposition to clearly point out errors in fact or law.”  
10 *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683.  
11 Accordingly, we rely on the reasoning contained in our proposed disposition with  
12 respect to this issue.

13 For the reasons stated above, we affirm.

14 **IT IS SO ORDERED.**

15 \_\_\_\_\_  
16 **LINDA M. VANZI, Judge**

17 **WE CONCUR:**

18 \_\_\_\_\_  
19 **JAMES J. WECHSLER, Judge**

1 **RODERICK T. KENNEDY, Judge**