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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-28

Filed 12 September 2023

Watauga County, Nos. 18 JT 60-64.

IN THE MATTER OF: A.E., A.E., B.E., C.E., K.E.

Appeal by respondent-appellants from orders entered 6 July 2022 by Judge Hal Harrison and 12 October 2022 by Rebecca Eggers-Gryder in Watauga County District Court. Heard in the Court of Appeals 5 September 2023.

*Robert W. Ewing for respondent-appellant father.*

*Edward Eldred for respondent-appellant mother.*

*Di Santi Capua & Garrett, PLLC, by Chelsea Bell Garrett, for petitioner-appellee Watauga County Department of Social Services.*

*Brittany T. McKinney for Guardian ad Litem.*

DILLON, Judge.

Respondent-Mother and Respondent-Father, (collectively “Parents”), are the parents of A.E., A.E., B.E., C.E., and K.E. They appeal from orders terminating their parental rights to their children. We affirm.

I. Background

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Parents have five children. In August 2018, the family moved from Tennessee to North Carolina. However, in 2016 and 2017, prior to the family's move to North Carolina, the Tennessee Department of Child Services ("DCS") filed petitions in Tennessee concerning the four older juveniles. (Parents' fifth child was not born until early 2018).

In September 2018, a month after the family moved to North Carolina, the Watauga County Department of Social Services ("DSS") filed petitions alleging that all five children were neglected and dependent juveniles. Orders for nonsecure custody were entered the same day.

That same month, after a hearing on the matter, the trial court entered an order (the "2018 Nonsecure Order") granting "temporary, emergency custody" of the children to DSS.

The next month, after another hearing, the trial court ordered that "all Orders which are currently in place, including but not limited to those relating to placement . . . shall remain in full force and effect," and concluded that it was in the best interests of the children to remain in DSS custody. The parties waived ongoing nonsecure custody hearings and scheduled the initial adjudication hearing.

On 14 March 2019, Father filed several motions to dismiss the juvenile petitions on various grounds, including lack of subject matter jurisdiction. Father argued that Tennessee never relinquished its jurisdiction over the older four children.

That same day, Watauga County District Court Judge Leake, along with

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counsel for all parties, participated in a telephone conference with a Tennessee judge in which the Tennessee judge indicated that Tennessee was relinquishing jurisdiction over the matter. Following the call, the North Carolina judge held an adjudication hearing. The next day, on 15 March 2019, the Tennessee court entered its written order declining jurisdiction over the juveniles, stating:

The Juvenile Court of Johnston City, Tennessee, had assumed exclusive jurisdiction over the children, in January 2016, as the result of dependency and neglect proceedings filed by the Tennessee Department of Children's Services. . . Pending the trial home placement of the children with their parents, the Court continued to exercise jurisdiction over the children. The proceedings in this Court were closed on February 1, 2018, and there have not been any further proceedings filed in the Juvenile Court of Johnston City, Tennessee in regard to the children.

About a week later, Judge Leake entered its consent order adjudicating that the children were neglected and dependent and concluding that the children would remain in DSS custody with a primary permanency planning goal of reunification (the 2019 "Adjudication Order").

A year later, in March 2020, after another hearing, the trial court changed the permanency plan from reunification to adoption with a secondary plan of reunification.

The following year, on motions by DSS, the trial court entered an order terminating Parents' parental rights to all five children on the grounds of neglect, dependency, and willful failure to make reasonable progress (the "2021 Termination

Order”). Parents appeal from this order.

## II. Analysis

Parents’ primary argument is that DSS lacked standing to file its motions to terminate Parents’ parental rights because the trial court was not a “court of competent jurisdiction” under N.C. Gen. Stat. § 7B-1103. This argument presupposes Parents’ underlying contention that the trial court lacked subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) to enter its Adjudication Order. Parents argue that because DSS relied on the 2019 Adjudication Order to gain custody of the children, the 2021 Termination Order should be vacated. Accordingly, our decision in this appeal hinges on whether the trial court possessed subject matter jurisdiction to enter its 2021 Adjudication Order.

### A. Standard of Review

“The existence of subject matter jurisdiction is a matter of law and cannot be conferred upon a court by consent.” *In re K.J.L.*, 363 N.C. 343, 345-46, 677 S.E.2d 835, 837 (2009). We review questions of law *de novo*. *In re N.P.*, 376 N.C. 729, 731, 855 S.E.2d 203, 206 (2021).

### B. Subject Matter Jurisdiction

“In matters arising under the Juvenile Code, the court’s subject matter jurisdiction is established by statute.” *In re K.J.L.*, 363 N.C. at 345, 677 S.E.2d at 837. The UCCJEA is intended to “[a]void jurisdictional competition and conflict with

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courts of other States in matters of child custody.” N.C. Gen. Stat. § 50A-101 cmt. (2021); *In re N.P.*, 376 N.C. at 732, 855 S.E.2d at 206. “The trial court must comply with the UCCJEA in order to have subject matter jurisdiction over juvenile abuse, neglect, and dependency cases and termination of parental rights cases.” *In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200 (2020).

Under the modification provision of the UCCJEA, N.C. Gen. Stat. § 50A-203, a North Carolina court cannot modify a child-custody determination made by another state unless a trial court has jurisdiction to make an initial determination under § 50A-201(a)(1) or (a)(2), and meets the additional requirements found in § 50A-203.

Here, the parties dispute whether the requirements of § 50A-201(a)(2) were met at the time of the adjudicatory proceedings. Section 50A-201(a)(2) states, in pertinent part, that a court may obtain jurisdiction when “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....” N.C. Gen. Stat. § 50A-201(a)(2) (emphasis added).

Parents argue that the trial court did not have jurisdiction *to hold the adjudicatory hearing* on 14 March 2019, since the Tennessee Order declining jurisdiction was not filed until the next day, on 15 March 2019, notwithstanding that the trial court did not enter its 2019 Adjudication Order until after 15 March 2019.

Parents rely on an official comment to N.C. Gen. Stat. § 50A-202 which states that a “party seeking to modify a custody determination must obtain an order from the original decree State stating that it no longer has jurisdiction.” Official Comment

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to N.C. Gen. Stat. § 50A-202 (2021); *In re N.R.M.*, 165 N.C. App. 294, 300, 598 S.E.2d 147, 151 (2004) (vacating the trial court’s modification of an Arkansas custody order because there was no Arkansas order declining to exercise continuing jurisdiction). Parents argue that it was immaterial that the trial court did not enter its 2019 Adjudication Order until six days *after* the Tennessee Order was filed, because the adjudicatory hearing itself was an improper exercise of jurisdiction. *In re M.I.W.*, 365 N.C. 374, 379, 722 S.E.2d 469, 473 (2012) (emphasis added) (“[e]xercising jurisdiction, in the context of the Juvenile Code, requires putting the court’s jurisdiction into action by *holding hearings*, entering substantive orders or decrees, or making substantive decisions on the issues before it.”)

Parents are correct that a trial court was required to obtain an order from the home state court relinquishing jurisdiction before modifying an initial custody determination by in that state. Our Courts have repeatedly held that “[t]he trial court is not required to make specific findings of fact demonstrating its jurisdiction under the UCCJEA, but the record must reflect that the jurisdictional prerequisites in the Act were satisfied when the court exercised jurisdiction.” *In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200-01 (2020); *Sulier v. Veneskey*, 285 N.C. App. 644, 655, 878 S.E.2d 633, 641 (2022).

In its 2019 Adjudication Order, the trial court made the following findings:

On March 14, 2019, this Court consulted with the Tennessee Court as to whether the Tennessee Court, as a part of a phone call listened to by counsel in this matter,

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advised this Court that it was entering an Order in its file making clear that it no longer had jurisdiction of this matter and indicating its understanding and agreement that this Court would enter an Order finding that the phone call had occurred pursuant to the Uniform Jurisdiction Act. The Courts agreed that these children were properly before this Court.

We are satisfied that the trial court here possessed subject matter jurisdiction to enter the 2019 Adjudication Order.

Specifically, in this case, the North Carolina trial court held a hearing only after communicating with the children's home state by telephone and the home state judge verbally indicated that her state had relinquished jurisdiction over the children. The North Carolina court did not enter its order until after the home state had entered its order relinquishing jurisdiction. Under this narrow set of facts, we hold that the North Carolina court had jurisdiction to enter the 2019 Adjudication Order, notwithstanding that the hearing upon which the Order was based was held before the Tennessee order was actually filed. Indeed, North Carolina's version of the UCCJEA merely states that "a court of this State may not modify a child-custody determination made by a court of another state" until that other court relinquishes jurisdiction. N.C. Gen. Stat. § 50A-203.<sup>1</sup>

In so holding, we note that the Court of Appeals of Tennessee has previously recognized the authority of one of its trial court judges to exercise jurisdiction in a

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<sup>1</sup> We express no view as to whether the Order would have been valid had the hearing been held prior to the telephone communication with the Tennessee court.

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child custody matter after receiving verbal confirmation from the child's home state, but prior to any written order being entered in that state, that it was relinquishing jurisdiction under the UCCJEA. *See Wilson v. Tittle*, 2000 Tenn. App. LEXIS 579, at \*15 (Tenn. Ct. App. 2000) (stating that it is preferable, but not necessary, that a trial court obtain a written order from the other state). *See also In the Interest of T.B.*, 497 S.W.3d 640, 652 (Tex. App. 2016) (under similar facts, stating that "the comments to the UCCJEA state that the 'Act should be interpreted according to its purposes which are to: . . . [p]romote cooperation with the courts of other States to the end that a custody decree is rendered in that State which can best decide the case in the interest of the child' and to promote consistent and speedy resolution of child custody issues involving multiple states.")

C. Emergency Jurisdiction

Finally, Parents contend that the trial court lacked subject matter jurisdiction to enter the 2018 Nonsecure Orders because the trial court failed to properly obtain temporary, emergency jurisdiction.

At the time of the 2018 Nonsecure Orders, the trial court did not have subject matter jurisdiction to modify Tennessee's custody orders, because (1) North Carolina was not the "home state" of the children pursuant to § 50A-201(a)(1), and (2) Tennessee had not declined to exercise jurisdiction at this time pursuant to § 50A-201(a)(2). However, § 50A-204 provides an exception to the jurisdictional requirements of the UCCJEA and allows a trial court to obtain "temporary emergency

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jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.” N.C. Gen. Stat. § 50A-204 (2021).

Here, the trial court asserted temporary emergency jurisdiction over the children based on evidence that the children were neglected and dependent.

Section (c) of § 50A-204 states the following:

If there is a previous child-custody determination that is entitled to be enforced under this Article, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

N.C. Gen. Stat. § 50A-204.

Parents contend that the trial court failed to “specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction a time that the nonsecure custody orders remained in effect.” N.C. Gen. Stat. § 50A-204.

However, the initial 2018 Nonsecure Orders identified a maximum duration of seven (7) days until the next nonsecure custody hearing. This order stated that “[c]ontact[ing] TN CPS” was one of the steps necessary to prevent or eliminate the

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need for the juvenile's placement. Seven days later, at the second nonsecure custody hearing, the order stated that it was in effect until the next juvenile court session when the matter may be heard "on a determination on need for continued nonsecure custody and to evaluate jurisdiction." This order once again cited "[c]ontact[ing] TN CPS" as one of the efforts needed to eliminate the need for DSS placement. During the last nonsecure custody hearing prior to the adjudication, Parents requested a continuance, which the court granted. The parties then waived ongoing nonsecure custody hearings and scheduled the initial adjudication hearing, during which the trial court resolved the issue of jurisdiction with Tennessee. Thus, we see no merit to Parents' contention.

III. Conclusion

For the reasons stated above, we affirm the trial court's Termination Orders terminating Parents' parental rights to A.E., A.E., B.E., C.E., and K.E.

AFFIRMED.

Judges MURPHY and RIGGS concur.

Report per Rule 30(e).