

can determine whether it had jurisdiction.

{12} A.G.M., born June 23, 2005, lived with her mother in Michigan. Her parents were never married and her biological father lived in Butler County, Ohio. The biological father would later tell the juvenile court that there was a paternity proceeding in Butler County and that he was ordered to pay child support. When asked whether he had a set parenting schedule with the child, the biological father said mother "fled to Michigan" and "we never knew where she lived." The nature and extent of the Butler County order was not explored or admitted into the record.

{13} Mother was previously married to D.M. and they had a son during that marriage. D.M. lived in Warren County, Ohio and had custody of the son. Mother exercised visitation. We will refer to D.M. and his current wife as "the Millers". The relationship between mother and the Millers was contentious. The Millers acknowledge that they had little previous contact with A.G.M.

{14} The relationship between the Millers and mother improved after mother was diagnosed with cancer. Mother and A.G.M. had been living with grandmother in Michigan on and off during the child's lifetime and were living with grandmother when mother entered hospice care. The Millers offered to care for A.G.M. The Millers say that, with all parties in agreement, they traveled to grandmother's home and picked up the child, packed up many of the child's belongings, and returned to Ohio. Grandmother was visiting at the hospice facility at the time.

{15} Mother died a few days after the child was brought to Ohio. The Millers filed for custody in Warren County a few days after that. The custody paperwork listed the mother in Michigan as deceased with the biological father giving written consent to their having custody of the child. The juvenile court gave the Millers

custody.

{116} The Millers claim that mother asked them to take the child permanently because they were raising the child's half brother. They say that grandmother and others in Michigan knew the arrangement was permanent. Grandmother said the arrangement with the Millers was temporary and only while mother was in hospice. After mother's death, grandmother asked the Millers for the child's return. When the child was not returned to Michigan, grandmother filed her own motion for custody in Warren County. Grandmother received visitation while her motion was pending.

{117} An evidentiary hearing was held over two days. The biological father appeared at the beginning of the custody hearing. He said he did not have a good relationship with grandmother. He wanted the Millers to have custody. It was at this hearing that the father indicated that a previous order existed from Butler County. The biological father was excused and did not participate any further in the proceedings.

{118} The juvenile magistrate vacated the initial Warren County custody order. After considering the best interests of the child, the magistrate gave grandmother custody. The magistrate said the initial grant of custody to the Millers would not have been made had the magistrate been aware of the child's living arrangements in Michigan.

{119} The Millers objected to the magistrate's decision. The juvenile court heard the objection and issued its own decision. The juvenile court said grandmother's custody motion would normally require a showing of a change of circumstances, but the juvenile court would only consider the best interest of the child because the Millers omitted any reference to grandmother in their initial custody

paperwork. The trial court refused to adopt its magistrate's decision and found that custody with the Millers was in the child's best interest. Grandmother received visitation.

{¶10} Grandmother argues in her first assignment of error that the juvenile court did not have jurisdiction to decide custody under R.C. Chapter 3127, Ohio's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) because Michigan was the child's home state. Grandmother did not raise this issue with the juvenile court and the record does not show that the court expressly addressed jurisdiction.

{¶11} The Ohio Supreme Court in *Rosen v. Celebreeze* explained that subject-matter jurisdiction goes to the power of the court to adjudicate the merits of a case and can never be waived and may be challenged at any time.¹

{¶12} According to Ohio law, a juvenile court has exclusive original jurisdiction under the Revised Code to determine the custody of any child not a ward of another court of this state.²

{¶13} The purpose of the Uniform Child Custody Jurisdiction Act (UCCJA), the predecessor to the UCCJEA, was to avoid jurisdictional competition and conflict with courts of other jurisdictions in custody matters.³ The *Rosen* court noted that the most significant change from the UCCJA to the current law was giving jurisdictional priority and exclusive continuing jurisdiction to the home state.⁴

1. *Rosen v. Celebreeze*, 117 Ohio St.3d 241, 2008-Ohio-853, ¶45.

2. R.C. 2151.23(A)(2).

3. See *Rosen* at ¶20.

4. *Id.* at ¶21.

{¶14} "Home state" is defined by R.C. 3127.01, the version of the statute applicable here, as the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of a child custody proceeding and, if a child is less than six months old, the state in which the child lived from birth with any of them.⁵ A period of temporary absence of any of them is counted as part of the six-month or other period.⁶

{¶15} R.C. 3127.15(A) states that except in emergency custody jurisdiction, a court of this state has jurisdiction to make an initial determination in a child custody proceeding only if one of the following applies: (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.⁷

{¶16} The second type of initial custody jurisdiction from R.C. 3127.15 is where a court of another state does not have jurisdiction (as the home state) under division (A)(1) of this section or a court of the home state of the child has declined to exercise jurisdiction on the basis that this state is the more appropriate forum and both of the following are the case:

{¶17} "(a) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state

5. R.C. 3127.01(B)(7).

6. Id.

7. R.C. 3127.15(A)(1).

other than mere physical presence.⁸

{¶18} "(b) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships."⁹

{¶19} According to statute, a "person acting as a parent" is defined as a person, other than the parent, who has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence from the child, within one year immediately before commencement of the child custody proceedings and the person has been awarded legal custody by a court or claims a right to legal custody under the law of the state.¹⁰

{¶20} The third type of jurisdiction from R.C. 3127.15 is where all courts having jurisdiction under division (A)(1) or (2) 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.¹¹

{¶21} The fourth type of jurisdiction from R.C. 3127.15 is where no court of any other state would have jurisdiction under the criteria specified in division (A)(1), (2), or (3) of this section.¹²

{¶22} R.C. 3127.16 provides that except where temporary emergency jurisdiction is invoked, a court of this state that has made a child custody determination consistent with this chapter has exclusive, continuing jurisdiction over

8. R.C. 3127.15(A)(2)(a).

9. R.C. 3127.15(A)(2)(b).

10. R.C. 3127.01(B)(13).

11. R.C. 3127.15(A)(3).

12. R.C. 3127.15(A)(4).

the determination until the court or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

{¶23} Under R.C. 3127.18, a court of this state has temporary emergency jurisdiction if a child is present in this state and either the child is abandoned or it is necessary in an emergency to protect the child because the child, or sibling, or parent of the child is subjected to or threatened with mistreatment or abuse.¹³

{¶24} A child is abandoned for purposes of R.C. Chapter 3127 when the parents of the child have failed to visit or maintain contact with the child for more than 90 days, regardless of whether the parents resume contact after the 90-day period.¹⁴

{¶25} R.C. 3127.18 also provides that if there is no previous child custody determination entitled to be enforced and a proceeding has not been commenced in a court of state having jurisdiction under the UCCJEA, the temporary emergency custody determination remains in effect until an order is obtained from a court of the state having jurisdiction under R.C. 3127.15 through R.C. 3127.17.¹⁵ If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under this chapter, "a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child."¹⁶

{¶26} R.C. 3127.18(C) states, in part, that where there is a previous custody

13. R.C. 3127.18(A)(1) and (2).

14. R.C. 3127.01(B)(1).

15. R.C. 3127.18(B).

16. Id.

determination, the temporary emergency order should remain in effect for a specified period to allow the person seeking such a custody order to obtain an order from the court having jurisdiction.

{¶27} Grandmother raises the UCCJEA because she now argues that Michigan is the proper state to hear the custody issue. It is not clear from the record whether a previous custody order existed for the child. A previous custody finding for this child would have an impact on which portions of the UCCJEA, if any, apply. There is no indication that a Michigan court ever acted on behalf of this child. If there is a prior custody order, it appears likely that it may be from an Ohio court, the court in Butler County. The record does not indicate that Warren County considered whether there was a previous custody order and whether it properly had jurisdiction over any other court in this state or a court of another state.

{¶28} We regret any further delay in the custody proceeding for this young child. However, we must sustain grandmother's first assignment of error insofar as the juvenile court must determine whether it has jurisdiction to act. Her remaining three assignments of error pertain to the custody finding of the juvenile court and are rendered moot by our resolution of the first assignment.

{¶29} The judgment of the juvenile court is reversed and this case is remanded to the juvenile court to conduct a determination of its jurisdiction consistent with the law and to proceed accordingly.

RINGLAND and HENDRICKSON, JJ., concur.