Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2016-405

MAY TERM, 2017

In re Z.L., Juvenile	}	APPEALED FROM:
	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	
	}	DOCKET NO. 126-11-13 Bnjv
		Trial Judge: David A. Howard

In the above-entitled cause, the Clerk will enter:

Mother appeals from the trial court's denial of her motion for relief from judgment in this juvenile proceeding. Through her motion, mother sought to vacate the trial court's order determining that Z.L. was a child in need of care or supervision (CHINS) and all of its prior custody rulings. Mother maintains that the court abused its discretion in denying her motion because: she timely challenged the court's jurisdiction; the court failed to determine if it had jurisdiction; and the court erred in suggesting that she could challenge custody during the permanency proceedings. We affirm.[1]

Given the nature of mother's claims, we must recount the procedural history of this case in detail. Z.L. was born in April 2001. He is a U.S. citizen, as are mother and his late father. Z.L. lived in France since at least 2008; his father died in France in March 2013. While in France, Z.L. lived with parents and in foster homes. French officials first became involved with the family in 2008 due to issues of child neglect, domestic violence, filthy home conditions, and issues related to mother's mental health and alcohol abuse. In 2012, French child protective services became Z.L.'s guardian and the guardian of his then seventeen-year-old sister M.L. In March 2013, mother absconded with Z.L. and M.L.; the parties were located several days later. French authorities subsequently placed Z.L. and his sister M.L. in substitute care. After the order regarding M.L. was lifted, mother returned to the United States with M.L. Z.L. remained in foster care in France. At a May 2013 hearing, a French judge continued the order for the placement of Z.L. for one year in France and until there was an order from an American judge in the area where mother established residence. Mother had sought the assistance of DCF in her effort to repatriate her son and DCF became involved in connection with that effort.

In mid-November 2013, the Department for Children and Families (DCF) filed a CHINS petition. In an affidavit, DCF summarized the history recited above and asked the court to issue an emergency care order (ECO) to the Commissioner for DCF, which would allow DCF to initiate Z.L.'s repatriation and resettlement. The court denied the request, expressing serious doubts that

[1] Mother filed a motion to strike certain portions of the State's supplemental printed case. The motion is denied. The materials included in the supplemental printed case were filed in the trial court and included in the trial court file. They are therefore part of the record on appeal. See V.R.A.P. 10(a)(1).

it had jurisdiction over the juvenile given that the child had not lived in Vermont for at least five years and given that it had no information as to any contact that the child had with Vermont.

DCF filed a corrected affidavit in late November 2013, providing information on the U.S. Repatriation Program. DCF informed the court that Z.L. would be brought to the United States and that it was working with International Social Services (ISS) and the U.S. State Department to effectuate his transfer. DCF indicated that it would notify the court when French authorities and ISS made the necessary arrangements. DCF explained that in accordance with Vermont's agreement with the U.S. Department of Health and Human Services, Vermont had agreed to provide citizens with services upon their repatriation to the United States. When Z.L. arrived in Vermont, he would be taken into state custody under an emergency care order and would initially be in substitute care while DCF assessed his possible reunification with mother, who resided in Vermont. DCF thus requested that the family court grant it emergency legal custody of Z.L. and assume jurisdiction over him. It requested that the ECO order take effect upon Z.L.'s arrival in the United States. Finally, DCF noted that the State Department had indicated that the court must issue "a Commitment Order" whereby the court would commit to issuing an ECO once Z.L. was within the court's jurisdiction, and that this "Commitment Order" would also meet the needs of the French government. DCF filed a proposed order with the court, which the State Department approved.

In mid-December 2013, the court granted DCF's request and issued the Commitment Order. The court made findings consistent with the information recounted above. It indicated that it would issue an ECO placing Z.L. in DCF custody upon Z.L.'s arrival in the United States. It ordered the DCF to notify it immediately upon Z.L.'s arrival and indicated that the ECO would be issued forthwith at that time. On January 14, 2014, DCF notified the court of Z.L.'s arrival, and the court issued its ECO on that date.

Shortly thereafter, the court held a temporary care hearing, following which it issued a temporary care order continuing Z.L. in DCF custody. DCF issued an initial case plan on January 24, 2014 with a preliminary goal of discharging custody to mother. Several days later, mother took Z.L. without permission from his foster home. She was arrested in New Hampshire and charged with custodial interference and unlawful restraint. She later pled guilty to custodial interference pursuant to a plea agreement and was sentenced to two-to-five years, all suspended but one year, and she was placed on probation.

Meanwhile, following mother's arrest, the court issued an amended temporary care order in February 2014, continuing legal custody with DCF and imposing conditions on mother's parent-child contact. In May 2014, DCF filed an amended CHINS petition. It attached several affidavits, which averred, among other things, that mother and her then-attorney were in agreement with and consented to the process that would bring Z.L. back to the United States, including a recognition that Z.L. would come to the United States, at least initially, in DCF custody. A supplemental affidavit set forth concerns about mother expressed by French authorities and DCF employees and recounted events that had transpired since Z.L.'s arrival in the United States.

At a July 2014 hearing mother admitted that Z.L. was CHINS based on her guilty plea to custodial interference and the conduct underlying that charge. The court adjudicated Z.L. as CHINS on the same date. Mother did not appeal the CHINS order, nor did she assert in any way that the court lacked jurisdiction to issue this order. A disposition plan was filed on September 4, 2014, and adopted in February 2015. Mother did not appeal from the court's disposition order or challenge the court's jurisdiction to issue such order.

In late September 2016—almost three years after Z.L. was taken into DCF custody and after the unchallenged rulings recounted above—mother filed the pro se motion to vacate the court's custody orders at issue in this case. She raised numerous arguments, including an assertion that the court had "fraudulently realized jurisdiction" over Z.L. "predicated upon perjury and false testimony by the court."[2] She argued that the question of who would have custody of Z.L. should have been litigated before Z.L. arrived in the United States. The court denied mother's motion, finding that most of mother's arguments had been heard before and dismissed or ruled on and would be issues for an appeal rather than grounds for a motion to vacate. The court found that issues about initial jurisdiction should have been raised long before and pursued on appeal. Any remaining issues about custody, the court noted, were under the umbrella of the permanency review process, which was ongoing and would involve review of the plan and objections to it. Mother appealed from the court's order.

Mother argues that the court abused its discretion in denying her motion. She maintains that she timely challenged the court's jurisdiction to issue an ECO, citing motion that she filed in November 2014, ten months after the ECO had issued. Mother also asserts that the court was obligated to determine if it had jurisdiction before making any rulings. According to mother, the court lacked jurisdiction because DCF filed its petition before Z.L.'s plane had landed in the United States, and the court could not exercise jurisdiction unless the child was in Vermont. Although a later CHINS petition was filed while Z.L. was in Vermont, mother argues that the basis for this petition was mother's incarceration, and she contends that her incarceration resulted from her violation of a "void" custody order. Finally, mother asserts that the court erred in suggesting that she could challenge custody during the permanency proceedings. In a pro se filing that mother's attorney asks the Court to consider, mother similarly challenges the court's initial jurisdiction over Z.L. and raises unsupported allegations of inappropriate behavior by the trial judges in this case.

"A motion for relief from judgment, V.R.C.P. 60(b), is addressed to the discretion of the trial court and is not subject to appellate review unless it clearly and affirmatively appears from the record that such discretion was withheld or otherwise abuse." Estate of Emilo v. St. Pierre, 146 Vt. 421, 423 (1985) (quotation omitted)). Mother has the burden of showing an abuse of discretion, Green Mountain Bank v. Magic Mountain Corp., 148 Vt. 247, 247-48 (1987) (per curiam), and she failed to meet her burden here.

The custody orders at issue have long been final, and they "are not void pursuant to a belated collateral attack." In re C.P., 2012 VT 100, ¶ 18, 193 Vt. 29. We made clear in C.P. that:

> when a party seeks to void a judgment after it is final the party must satisfy the criteria for obtaining relief from a final judgment. A challenge made on subject matter grounds must show that the court lacked jurisdiction over the general category of case. When a court has jurisdiction over a general category of case, the fact that the court errs in exercising its jurisdiction in a particular case within that general category is generally not sufficient to make the resulting judgment void for lack of subject-matter jurisdiction.

[2] This is the motion decided by the trial court and appealed by mother. Mother argues that the court ruled on a motion filed on October 19, 2016, which she has included in the printed case. Because, as indicated by the date stamp on the document, this motion was filed after the court rendered its decision on October 18, 2016, the court could not have considered it.

Id. (quotations and brackets omitted). Here, as in C.P., "the court had jurisdiction over the child-neglect proceeding—the general type of controversy." See id. ¶ 19; see also 33 V.S.A. §§ 5103(a) (granting family division jurisdiction over CHINS proceedings). Thus, "the resulting judgments were not void even if jurisdiction was erroneously exercised in [this] particular case." See In re C.P., 2012 VT 100, ¶ 17. As we emphasized in C.P., this result promotes the policy underlying the Uniform Child Custody Jurisdiction Act (UCCJA) because "automatically voiding prior judgments stemming from an erroneous exercise of jurisdiction under the UCCJA not only would undermine the principle of finality, but would permit litigants to contest the merits of a controversy in a convenient forum while reserving the 'jurisdictional card' in the event of an unfavorable decision." Id. (quotation and brackets omitted). This rationale applies equally to proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the successor to the UCCJA.

We conclude that our holding in C.P. plainly controls here. The court did not abuse its discretion in rejecting mother's belated attempts to challenge the court's jurisdiction. Mother fails to show that the orders were "void" under Rule 60(b)(4), or that relief from judgment was warranted for "other reasons" under Rule 60(b)(6).

The court was not obligated, moreover, to issue a written decision asserting the basis for its jurisdiction before issuing the ECO, as mother suggests. This would be inconsistent with C.P., where we imposed no such requirement where the issue of jurisdiction was raised orally but not by motion in earlier stages of the juvenile proceedings. See 2012 VT 100, ¶¶ 14-15, 20 (reasoning that it was "highly significant that no party challenged the court's jurisdiction at the initial stages of the proceeding," and noting that "despite the court's invitation to file a motion challenging jurisdiction, no party did"). Mother suggests that she questioned the court's jurisdiction to issue the ECO in a November 2014 motion.[3] Mother did not argue in her Rule 60 motion below that she had challenged the court's jurisdiction to issue the ECO in a November 2014 motion, or that her November motion was somehow overlooked or improperly denied, and we do not consider that argument here. We note, however, that as the State recounts, the court discussed this motion at a January 2015 disposition hearing and denied it as moot. Mother did not challenge the court's ruling. The court also stated at this hearing, without objection, that Vermont was Z.L.'s "home state" under the UCCJEA. See 15 V.S.A. § 1061(7) (defining "home state" to mean "state in which a 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"). Moving forward, it is apparent that this remains true. See In re C.P., 2012 VT 100, ¶ 23 (recognizing that CHINS decision ends one phase of juvenile proceeding and jurisdiction is determined anew at subsequent stages, including disposition and termination). Vermont is Z.L.'s "home state" under the UCCJEA and Vermont has jurisdiction over this dispute.

Finally, we reject mother's assertion that the court erred in stating that custody issues could be addressed in the permanency process. The court appears to have been responding to assertions made in mother's pro se Rule 60 motion concerning her mental health and her ability to parent Z.L. The court was not suggesting that mother could challenge its subject matter jurisdiction in the permanency review process. This would be plainly inconsistent with its clear ruling that

[3] The record indicates that mother filed a "motion to appeal" the ECO and a notice of appeal of the ECO in November 2014. The emergency order was interlocutory and replaced by a later order. Obviously, any attempt by mother to "appeal" the ECO, which issued ten months earlier, would be inappropriate. See V.R.A.P. 5 (party who seeks to appeal from interlocutory order must request permission from trial court to do so within ten days after entry of order). By that time, moreover, Z.L. had been adjudicated as CHINS, a final order that mother did not appeal.

mother's attempts to challenge the court's jurisdiction were untimely. We similarly reject mother's attempt to raise the issue of comity, which was not pursued by mother's attorney below, as well as her suggestion that DCF "brought an end" to her trial attorney's representation of mother "[t]o forestall these matters from coming to the attention of the court." This latter assertion is not supported by the record. We find no error in the court's denial of mother's motion.

Affirmed.

BY THE COURT:

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Marilyn S. Skoglund, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice