

NOT DESIGNATED FOR PUBLICATION

No. 107,383

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Adoption of

H.C.H., a Minor Child.

MEMORANDUM OPINION

Appeal from Saline District Court; JEROME P. HELLMER, judge. Opinion filed July 13, 2012.
Affirmed.

Robert A. Martin, of Norton, Wasserman, Jones & Kelly, L.L.C., of Salina, for appellant
stepfather.

Russel B. Prophet, of Hampton & Royce, L.C., of Salina, for appellee.

Before PIERRON, P.J., GREEN and LEBEN, JJ.

Per Curiam: G.M., the stepfather of H.C.H., appeals the trial court's decision to decline jurisdiction over his action to adopt H.C.H. The trial court concluded that the State of Mississippi had jurisdiction over the matter and that the State of Kansas was an inconvenient forum. On appeal, G.M. contends that the trial court erred in concluding that Kansas lacked jurisdiction over the adoption action. We disagree. Accordingly, we affirm.

Facts

C.H., the natural father of H.C.H., and C.M., the natural mother of H.C.H., were married when H.C.H. was born in 1997 in Mississippi. In 1999, C.H. and C.M. were divorced in Hinds County, Mississippi. As a part of the divorce order, the Mississippi

court issued orders granting C.M. residential custody of H.C.H. and granting C.H. supervised visitation with H.C.H. In 2002, C.M. and H.C.H. moved to Kansas and have remained in Kansas. In 2010, C.M. married G.M. On October 3, 2011, G.M. filed a petition for adoption of C.M. C.H. filed an answer contesting the adoption and the termination of his parental rights. No evidentiary hearing was conducted, but the parties submitted briefs to the trial court. On December 1, 2011, the trial court held a telephone conference to address the limited question of whether the court had jurisdiction to decide the adoption case. On December 30, 2011, the trial court issued a journal entry dismissing G.M.'s petition for adoption. The trial court determined that Kansas lacked jurisdiction over the adoption action. It also determined that Kansas was an inconvenient forum because of C.H.'s health issues.

Did the Trial Court Have Jurisdiction Over the Adoption Proceeding?

G.M. argues that the trial court erred in concluding that Kansas lacked jurisdiction over this adoption action and that Mississippi was a more convenient forum. G.M. maintains that K.S.A. 59-2127, the pertinent section of the Kansas Adoption and Relinquishment Act, K.S.A. 59-2111 *et seq.*, controls this issue. Moreover, G.M. contends that this statute directs the trial court to hear this adoption matter in Kansas.

Standard of Review

The main issue presented here is whether Kansas had jurisdiction to modify H.C.H.'s custody arrangements before the State of Mississippi surrendered jurisdiction. Whether jurisdiction exists is a question of law over which this court's scope of review is unlimited. To the extent a jurisdiction question requires statutory interpretation or application, this also frames a question of law for which appellate courts have unlimited review. *Bruch v. Kansas Dept. of Revenue*, 282 Kan. 764, 774, 148 P.3d 538 (2006). In addition to jurisdictional issues, this case presents questions regarding the Uniform Child-

Custody Jurisdiction and Enforcement Act (UCCJEA), which was adopted by the Kansas Legislature effective July 1, 2000. See K.S.A. 2011 Supp. 23-37,101 *et seq.* This court's interpretation of the trial court's statutory interpretation is *de novo*. *McNabb v. McNabb*, 31 Kan. App. 2d 398, 403, 65 P.3d 1068 (2003).

Analysis

Kansas adoption proceedings are governed by the Kansas Adoption and Relinquishment Act. The relevant jurisdictional statute under this act is K.S.A. 59-2127, which states the following:

"(a) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if at the time the petition for adoption is filed a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with the uniform child custody jurisdiction act, or the uniform child custody jurisdiction and enforcement act, or this act unless the proceeding is stayed by the court of the other state.

"(b) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a court of this state may not exercise jurisdiction over a proceeding for adoption of the minor unless:

(1) The court of this state finds that the court of the state which issued the decree or order:

(A) Does not have continuing jurisdiction to modify the decree or order under jurisdictional prerequisites substantially in accordance with the uniform child custody jurisdiction act, or the uniform child custody jurisdiction and enforcement act, or has declined to assume jurisdiction to modify the decree or order, or

(B) does not have jurisdiction over a proceeding for adoption substantially in conformity with subsection (a)(1) through (4) or has declined to assume jurisdiction proceeding for adoption; and

(2) the court of this state has jurisdiction over the proceeding.

"(c) Before determining whether or not to exercise its jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by such court of another state and that a forum will be available to the parties.

"(d) If the court determines not to exercise its jurisdiction, it may dismiss the proceedings, or it may stay the proceedings upon condition that an adoption proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper."

The Kansas Adoption statute refers to the UCCJEA in determining whether Kansas has jurisdiction. Under the UCCJEA, simultaneous custody proceedings, except for temporary emergency jurisdiction proceedings, are prevented by requiring a court exercising jurisdiction to first determine if a custody proceeding has been commenced in another state having jurisdiction substantially in conformity with the UCCJEA. See K.S.A. 2011 Supp. 23-37,206.

While G.M. concedes that Mississippi had jurisdiction when it entered the initial divorce decree and child-custody order, he argues that Mississippi no longer has exclusive continuing jurisdiction. To support his argument, G.M. points to the fact that H.C.H. has had no contact with Mississippi since she moved to Kansas in 2002. G.M. maintains that as H.C.H.'s home state, Kansas has jurisdiction to modify the existing Mississippi custody order.

Although Kansas may have been H.C.H.'s home state when the adoption proceeding was filed, this fact would not confer jurisdiction on a Kansas court to modify

the existing Mississippi child-custody order. There is no provision in the UCCJEA for jurisdiction by reason of the presence of the parties or by stipulation, consent, waiver, or estoppel. *In re Marriage of Nurie*, 176 Cal. App. 4th 478, 491, 98 Cal. Rptr. 3d 200 (2009); see K.S.A. 2011 Supp. 23-37,201(c) (physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination). In this case, there is no dispute that the initial determination regarding child custody was made by the Mississippi court in its divorce decree.

Under the UCCJEA, a court confronted with a petition to modify another state's child-custody order must first determine whether the state that made the initial custody order maintains exclusive continuing jurisdiction. Concerning the question of when the court that has entered the initial custody order has lost exclusive continuing jurisdiction, K.S.A. 2011 Supp. 23-37,203 states:

"Except as otherwise provided in K.S.A. 23-37,204, and amendments thereto, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under subsection (a)(1) or (2) of K.S.A. 23-37,201, and amendments thereto, and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under K.S.A. 23-37,202, and amendments thereto, or that a court of this state would be a more convenient forum under K.S.A. 23-37,207, and amendments thereto; or

(2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state."

A state that has made or modified a child-custody determination in accordance with the UCCJEA's jurisdictional requirements retains exclusive continuing jurisdiction over the determination until one of two things occurs. We are citing to the Mississippi code here to make it easier to understand how the Mississippi court which made the

initial custody decree or order would determine whether it retained exclusive continuing jurisdiction.

Miss. Code (1972) Ann. § 93-27-202 (Rev. 2004; 2011 Supp.) states the following:

"(1) Except as otherwise provided in Section 93-27-204 , a court of this state which has made a child custody determination consistent with Sections 93-27-201 or 93-27-203 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent currently do not reside in this state.

"(2) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 93-27-201."

We must consider Miss. Code Ann. § 93-27-202(1)(a) and (b) to determine whether Mississippi retains exclusive continuing jurisdiction. First, a state loses exclusive continuing jurisdiction if a court of that state determines that neither the child nor the child and at least one parent or person acting as a parent continues to have a significant connection with the state and that substantial evidence concerning the child's care, protection, training, and personal relationships is no longer available in the state. Miss. Code Ann. §93-27-202(1)(a). Second, a state loses exclusive continuing jurisdiction if a

court of any state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state. Miss. Code Ann. § 93-27-202(1)(b).

Here, the record reflects that the Mississippi court which made the initial custody decree or order has not made a determination under Miss. Code Ann. § 93-27-202(1)(a). Moreover, the record further reflects that C.H. continued to live in Mississippi at all times relevant to this action. Consequently, Miss. Code Ann. § 93-27-202(1)(b) is inapplicable. Thus, none of the jurisdictional requirements listed in Miss. Code Ann. § 93-27-202 have been met. Finally, the record reflects that the Mississippi court which made the initial child-custody determination has not declined jurisdiction.

As required by the UCCJEA, because the Mississippi court issued the initial child-custody decree or order, only the Mississippi court could determine whether Mississippi retains exclusive continuing jurisdiction. The only way that a Kansas court could have determined that the Mississippi court had lost exclusive continuing jurisdiction is if the child and both of the child's parents no longer lived in the State of Mississippi. Here, C.H. continues to reside in Mississippi; therefore, a Kansas court could not make a determination of whether the Mississippi court retained exclusive continuing jurisdiction. Accordingly, under the UCCJEA, a Kansas court lacked jurisdiction to modify the Mississippi court's custody decree or order.

Nevertheless, we must consider whether Kansas has jurisdiction over the adoption proceeding under the Kansas Adoption and Relinquishment Act. As stated earlier, Kansas adoption proceedings are governed by the Kansas Adoption and Relinquishment Act. The relevant jurisdictional statute under this act is K.S.A. 59-2127, which states the following:

"(b) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a

court of this state may not exercise jurisdiction over a proceeding for adoption of the minor unless:

(1) *The court of this state finds* that the court of the state which issued the decree or order:

(A) Does not have continuing jurisdiction to modify the decree or order under jurisdictional prerequisites substantially in accordance with the uniform child custody jurisdiction act, or the uniform child custody jurisdiction and enforcement act, or has declined to assume jurisdiction to modify the decree or order, or

(B) does not have jurisdiction over a proceeding for adoption substantially in conformity with subsection (a)(1) through (4) or has declined to assume jurisdiction proceeding for adoption; and

(2) the court of this state has jurisdiction over the proceeding.

"(c) Before determining whether or not to exercise its jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by such court of another state and that a forum will be available to the parties.

"(d) If the court determines not to exercise its jurisdiction, it may dismiss the proceedings, or it may stay the proceedings upon condition that an adoption proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper." (Emphasis added.)

Under K.S.A. 59-2127(b)(1), a Kansas court may not exercise jurisdiction over an adoption proceeding unless the Kansas court determines that the state which issued a custody decree or order does not have jurisdiction in accordance with the UCCJEA. K.S.A. 59-2127(b)(1), however, is inconsistent with what the UCCJEA instructs a modifying court to do when determining if it has subject matter jurisdiction to modify another state's child-custody order. Under the UCCJEA, the state that made the initial

child-custody order is required to determine whether it has lost exclusive continuing jurisdiction. The only exception to that rule is if none of the parties involved reside in the issuing state. See K.S.A. 2011 Supp. 23-37,202(a)(2). In that case, any state can determine whether the issuing state has lost exclusive continuing jurisdiction. Thus, a modifying state is not authorized to determine that the initial decree or order state has lost its jurisdiction unless the exception under K.S.A. 2011 Supp. 23-37,202(a)(2) is applicable.

The primary purpose of the UCCJEA is to promote uniformity of the law with respect to the enforcement of child-custody determinations across state lines among those states that have enacted the UCCJEA. Both Kansas and Mississippi have enacted the UCCJEA. While K.S.A. 59-2127 incorporates the UCCJEA, K.S.A. 59-2127(b)(1) is inconsistent with the workings of the UCCJEA because this subsection instructs a Kansas court to make a jurisdictional determination whereas the UCCJEA instructs the issuing state to make the jurisdictional determination unless K.S.A. 2011 Supp. 23-37,202(a)(2) is applicable. Thus, under the facts of this case, the Kansas trial court was not authorized to determine if the Mississippi court which made the initial child-custody determination retained exclusive continuing jurisdiction.

Affirmed.