

NOT DESIGNATED FOR PUBLICATION

No. 109,799.

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of Z.E.H.

MEMORANDUM OPINION

Appeal from Elk County District Court; David A. Ricke, Judge. Opinion filed November 8, 2013.
Reversed and remanded with directions.

G. Thomas Harris, of Harris Law Office, of Sedan, for appellant natural mother.

Kerry D. Holyoak, of Fredonia, for appellee natural father.

Before MALONE, C.J., McANANY and STANDRIDGE, JJ.

PER CURIAM.

C.J.J. and D.E.H. have a minor son, Z.E.H, who lived in Oklahoma with D.E.H. prior to the incidents giving rise to this appeal. While Z.E.H. was visiting C.J.J. in Kansas, C.J.J. filed an application for an ex parte order of protective custody in Elk County District Court. The magistrate judge granted C.J.J. a temporary order of protective custody. C.J.J. also filed a petition to have Z.E.H. adjudicated a child in need of care (CINC). D.E.H. argued that pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), Oklahoma courts—not Kansas courts— had jurisdiction over the dispute because Oklahoma courts had previously awarded him sole custody of Z.E.H. When the magistrate judge declined to dismiss the CINC case for lack of jurisdiction, D.E.H. appealed to a district judge, who found that the magistrate judge had improperly exercised jurisdiction and that Oklahoma was the appropriate forum. The district judge declined to further exercise jurisdiction over the action, assessed costs and expenses against C.J.J., and dismissed the case. C.J.J. appeals.

We agree with C.J.J. that the district court lacked jurisdiction to consider D.E.H.'s appeal from the magistrate's decision denying the motion to dismiss the CINC case. Thus, we vacate all orders entered by the district court including the assessment of costs and expenses against C.J.J. However, we also find that the magistrate judge exceeded her jurisdiction in the CINC case. We conclude that under the UCCJEA, Oklahoma courts have exclusive jurisdiction over the custody dispute involving Z.E.H. Accordingly, we remand with directions to dismiss the Kansas CINC proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

This case has a complicated procedural background and presents unusual jurisdictional issues for this court to address. C.J.J. and D.E.H. are the mother and father, respectively, of Z.E.H., who was born in 2003. Prior to the incidents giving rise to this appeal, Z.E.H. lived in Tulsa, Oklahoma, with D.E.H., and C.J.J. lived in Howard, Kansas. An Oklahoma court had previously awarded D.E.H. sole custody of Z.E.H.

On December 14, 2012, while Z.E.H. was visiting C.J.J. in Kansas, C.J.J. filed an application for an ex parte order of protective custody in Elk County District Court pursuant to the Revised Kansas Code for Care of Children (RKCCC), alleging that Z.E.H. was likely to sustain harm if he was not immediately removed from D.E.H.'s home. C.J.J.'s allegations included that D.E.H. had threatened to rape Z.E.H.; D.E.H. used excessive corporal punishment on Z.E.H.; D.E.H. routinely abandoned Z.E.H. in order to go to bars; Z.E.H. frequently observed D.E.H. in bed naked with women; D.E.H. told Z.E.H. to lie to C.J.J. and others; Z.E.H.'s school performance suffered from his living with D.E.H.; D.E.H. neglected Z.E.H.'s dental and medical care; D.E.H. refused to provide Z.E.H. with recommended counseling; and D.E.H. had a history of violence.

The Honorable Magistrate Judge Kristin Hutchison held an ex parte hearing on December 14, 2012. C.J.J. testified at the hearing, reasserting the claims in her application and adding a claim that D.E.H. smoked and stored marijuana around Z.E.H. The magistrate judge found there was probable cause to believe the allegations in C.J.J.'s application, awarded temporary custody to C.J.J., and entered a restraining order against D.E.H. to prevent him from contacting Z.E.H. The magistrate judge also appointed a guardian ad litem for Z.E.H.

On December 17, 2012, C.J.J. filed a petition alleging that Z.E.H. was a CINC. C.J.J. alleged that Z.E.H. was without adequate parental care, control, or subsistence that was not due solely to D.E.H.'s lack of financial means; he was without the care or control necessary for his physical, mental, or emotional health; and that he had been physically, mentally, or emotionally abused or neglected or sexually abused. The factual assertions on which C.J.J. based these allegations mirrored the allegations she made at the hearing on her application for a protective order. C.J.J. requested that the court find Z.E.H. to be a CINC and issue the appropriate custody and child support orders.

That same day— December 17, 2012— the magistrate judge held a hearing on temporary custody, at which C.J.J., her counsel, Z.E.H., and his guardian ad litem were present. At the beginning of the hearing, the magistrate judge asked C.J.J. about service of the petition on D.E.H. C.J.J.'s attorney stated that D.E.H. had been personally served 2 days prior but that the documents had been in a sealed envelope, so he did not know whether D.E.H. had seen them. The magistrate judge found that was sufficient notice and that D.E.H. could later request a rehearing on temporary custody if he became involved in the case. After the guardian ad litem stated that he had no objection to placing Z.E.H. with C.J.J., the magistrate judge issued temporary orders awarding custody to C.J.J., finding probable cause to believe the allegations in

the petition, and continuing the restraining order. The magistrate judge set a hearing in January 2013 for admission or denial of the allegations of the petition and to allow D.E.H. an opportunity to appear.

On December 18, 2012, an attorney entered his appearance in the CINC case on D.E.H.'s behalf. The next day, D.E.H. filed a motion to set aside the temporary orders and to dismiss the CINC petition. In the motion, D.E.H. alleged that Cindy Deal, who claimed to be from Z.E.H.'s school in Oklahoma, had come to his home and had given him a sealed envelope wrapped with a gold elastic bow that Deal stated contained a " party invitation" for Z.E.H. D.E.H. did not immediately open the envelope, saving it for Z.E.H. to open upon his return. When Z.E.H. failed to return from his visit as scheduled, D.E.H. called C.J.J., but he received no answer. The following day, an Elk County deputy informed D.E.H. that calling C.J.J. had violated the temporary restraining order against him. After learning that there was no restraining order filed in the Tulsa County District Court, D.E.H. opened the envelope he thought was a party invitation and discovered the summons and ex parte order of protective custody.

The magistrate judge held a hearing that day— December 19, 2012— at which both C.J.J. and D.E.H. appeared in person and by counsel along with the guardian ad litem. D.E.H. denied most of C.J.J.'s allegations. D.E.H. also argued that Kansas courts lacked jurisdiction under the UCCJEA because Oklahoma courts had previously awarded him sole custody of Z.E.H. and that the matter should be heard in Oklahoma. D.E.H. asked the magistrate judge to dismiss the CINC case for lack of jurisdiction.

After hearing from both parties, the magistrate judge stated that although there were concerns that C.J.J. was making " an end run around Oklahoma [c]ourts," the main concern was Z.E.H.'s safety. The magistrate judge found that she had jurisdiction over the matter because

Z.E.H. was present in Kansas and because of the nature of the allegations. When D.E.H. again raised the UCCJEA, contending that under its rules the magistrate could not make an initial custody decision unless it found that Z.E.H. lived in Kansas for the last 6 months, the magistrate judge replied that the UCCJEA did not apply because this was a CINC case and not a child custody case. The magistrate judge ultimately set the matter for another hearing at which she would hear testimony from the parties.

The magistrate judge held an evidentiary hearing on January 7, 2013. D.E.H. again objected to the magistrate judge's jurisdiction over the matter. C.J.J. testified first about the basis for the allegations against D.E.H. C.J.J. explained that she did not file a report in Oklahoma because Z.E.H. had not told her of the problems until recently and because she knew through past experiences with the Oklahoma court system that she could not depend on it. C.J.J. also called Jennifer Roggow, who worked at a dental practice to which C.J.J. had taken Z.E.H. to have his teeth examined. Roggow testified that Z.E.H. had several areas of severe decay, which could damage his permanent teeth and cause pain; she stated that her office had referred Z.E.H. to a pediatric dentist.

C.J.J. then called Jolene Clark, who worked for the Department for Children and Families (DCF) and had spoken with Z.E.H. and investigated his situation. Clark testified that Z.E.H. told her that his dad threatened to rape him but that it was an offhand remark made while D.E.H. was either high or drunk; that D.E.H. choked him because he could not sit still; and that D.E.H. once left a bruise from spanking him. Clark also testified that Z.E.H. said that D.E.H. had previously instructed him on what to say in custody proceedings; D.E.H. left him home alone usually twice a week; and D.E.H. always went to bars on Friday nights. On cross-examination, Clark testified that Z.E.H. did not disclose any abuse or neglect that occurred in Kansas. When the magistrate

judge asked, Clark stated that she did not feel Z.E.H. was a child in need of care because C.J.J. was available to take care of him.

D.E.H. also testified at the hearing, stating that C.J.J. was "always" making wild allegations against him and that he believed it was best for Oklahoma courts to continue handling the situation. D.E.H. denied C.J.J.'s allegations of abuse and stated that C.J.J. refused to help him pay for Z.E.H.'s medical or dental needs and had never told him that Z.E.H.'s teeth were in poor shape. D.E.H. further testified that he was concerned about Z.E.H. living with C.J.J.; D.E.H. claimed that a threat against Z.E.H. by someone in Kansas had originally led to D.E.H. obtaining sole custody. On cross-examination, D.E.H. admitted smoking marijuana but stated that he did it " [v]ery seldom," that he did not smoke it at home, and that he did not buy it.

When the magistrate judge asked the guardian ad litem for his recommendation, he stated that he believed the allegations potentially warranted an adjudication of Z.E.H. as a CINC. He continued, " That being said, I'm not sure the Court isn't best off sustaining the temporary custody at this point in time and refer this matter back down to Oklahoma to allow them, because as [D.E.H.] said all the witnesses, almost all the evidence that we presented there, they're going to be more familiar."

At the conclusion of the hearing, the magistrate judge continued the earlier temporary custody orders but allowed D.E.H. limited telephone contact with Z.E.H. The magistrate judge also stated that she would talk with Clark about " the process of checking with Oklahoma to see what, if anything, maybe has been done." In her written journal entry, the magistrate judge ordered the Secretary of DCF to " contact the Oklahoma Division of Health Services to determine if Oklahoma may be willing to pursue this matter in the Oklahoma equivalent of a CINC petition, and if such proceedings are appropriate, or if this matter and proceedings shall

continue to be handled by this court." The magistrate judge set the matter for a hearing on February 11, 2013, at which the court would either transfer the matter to Oklahoma or set it for "admission or denial of the allegations of the CINC petition filed herein."

On January 31, 2013, D.E.H. filed a motion to dismiss for lack of jurisdiction based upon improper notice or, in the alternative, for an order setting a time period in which C.J.J. would be required to obtain a child custody order from Oklahoma pursuant to the UCCJEA. C.J.J. filed a response to the motion to dismiss. C.J.J. also filed a motion for sanctions against D.E.H. for violating the restricted telephone contact with Z.E.H.

At the hearing on February 11, 2013, the magistrate judge again heard arguments on the applicability of the UCCJEA. D.E.H. pointed to K.S.A.2012 Supp. 38-2203(b), which states that district courts have original jurisdiction of proceedings under the RKCCC " [s]ubject to the [UCCJEA]." After hearing arguments of counsel, the magistrate judge denied D.E.H.'s motion to dismiss, " as this matter is a CINC proceeding for temporary placement and custody to provide temporary protection of the child, and not a custody proceeding, and this Court has proper jurisdiction and venue." The magistrate judge also continued C.J.J.'s motion for sanctions against D.E.H.; ordered DCF to complete its reports and recommendations and submit them by March 13, 2013, the date it set the matter for adjudication; and restricted D.E.H.'s phone contact with Z.E.H.

On February 25, 2013, D.E.H. filed a notice of appeal to the district court of the magistrate's February 11, 2013, orders. The record does not reflect that any hearing was ever scheduled or held in district court. On March 25, 2013, the Honorable David Ricke filed his ruling and order declining jurisdiction of the matter. The district court found that Kansas CINC

actions are subject to the UCCJEA and that the magistrate judge " inappropriately exercised jurisdiction over the legal and physical custody of [Z.E.H.] and that the appropriate forum for further litigation over [C.J.J.]'s concerns about [D.E.H.]'s parenting should be conducted in the District Court of Tulsa County, Oklahoma." The district court took notice of the serious allegations against D.E.H. but stated that " the magistrate court's understandable and well-intentioned concerns about a child's welfare do not override the court's responsibility to exercise its authority within the jurisdictional limitations that the UCCJEA imposes." The district court ordered the matter " returned to the forum of at least equal convenience and the forum of exclusive, continuing jurisdiction, the State of Oklahoma."

Acknowledging the practical difficulties in dissolving the orders in place, the district court continued the previous orders awarding temporary custody to C.J.J. until April 1, 2013, at which time the Elk County District Court's " temporary, emergency jurisdiction shall cease except as is necessary to further govern and enforce the return of the child to his custodian father or to oversee the wind-up of this case." The district court instructed the parties on the transfer of Z.E.H. back to D.E.H.'s custody and stated that it would issue an order of dismissal following the transfer and/or reestablishment of Oklahoma's jurisdiction. Finally, the district court ordered D.E.H.'s attorney and the guardian ad litem to prepare statements of billing and to provide those to the district court, which would then rule on assessment and apportionment of costs.

On April 1, 2013, the district court entered an order terminating jurisdiction except as to the assessment and collection of costs and expenses, stating that all previous orders of temporary custody no longer had legal effect. The following day, the district court entered an order assessing to C.J.J. the docket fee, any service of process fees, the fees allowed for the guardian ad litem, and the fees allowed to D.E.H.'s attorney for services rendered prior to March 25, 2013.

C.J.J. timely appealed the district court's orders dismissing the CINC case and assessing costs and expenses against C.J.J.

Finally, in response to an order to show cause issued by this court, the parties have updated this court with the current status of the pending child custody case in Tulsa County, Oklahoma, involving Z.E.H. In case No. FD-2007-779, the Tulsa County District Court held a hearing on April 19, 2013, on C.J.J.'s petition for emergency custody. Both parties were represented by counsel, and counsel was appointed for Z.E.H. At the conclusion of the hearing, the district court granted temporary custody of Z.E.H. to C.J.J. subject to unsupervised (non-overnight) visitation with D.E.H. on alternating weekends. The district court also ordered D.E.H. to enroll in and complete a parenting class and to complete a drug and alcohol assessment. The case was set for review on June 24, 2013, but the review hearing was continued to November 25, 2013.

DID THE DISTRICT COURT HAVE JURISDICTION TO CONSIDER D.E.H.'S APPEAL FROM THE MAGISTRATE'S DECISION DENYING THE MOTION TO DISMISS?

As a threshold issue, C.J.J. argues that the district court lacked jurisdiction to consider D.E.H.'s appeal from the magistrate's decision denying the motion to dismiss. Specifically, C.J.J. contends that D.E.H. did not appeal from an appealable order. Thus, C.J.J. argues that the district court had no authority to entertain the appeal and its orders dismissing the case for lack of jurisdiction and assessing costs and fees are null and void.

The right to appeal is entirely statutory and is not contained in the United States or Kansas Constitutions. Subject to certain exceptions, Kansas appellate courts have jurisdiction to entertain an appeal only if the appeal is taken in the manner prescribed by statutes. *Harsch v. Miller*, 288 Kan. 280, 287, 200 P.3d 467 (2009). Whether jurisdiction exists is a question of law over which an appellate court has unlimited review. *Frazier v. Goudschaal*, 296 Kan. 730, 743,

295 P.3d 542 (2013). C.J.J. did not argue before the district court that it lacked jurisdiction to consider D.E.H.'s appeal, but that failure does not prevent her from raising the issue here. See *Shipe v. Public Wholesale Water Supply Dist. No. 25*, 289 Kan. 160, 166, 210 P.3d 105 (2009) (stating that subject matter jurisdiction may be raised at any time).

C.J.J. argues that the order from which D.E.H. appealed—the order denying his motion to dismiss for lack of jurisdiction— was not an appealable order. K.S.A.2012 Supp. 60-2103a(a) states that "[i]n actions commenced in the district courts of this state all appeals from orders or final decisions of a district magistrate judge shall be heard by a district judge." The statute further states that except as otherwise provided by law, all such appeals shall be taken by filing a notice of appeal specifying the order or decision complained of within 14 days after the entry of the order or decision. K.S.A.2012 Supp. 60-2103a(a). D.E.H.'s notice of appeal to the district court stated:

" COMES NOW the natural father, [D.E.H.], by counsel ... and ... submits notice of appeal of the temporary orders issued by the District Magistrate Judge on February 11, 2013[,] including the issue of the [sic] jurisdiction. The natural father requests that the matter should be set before a District Court Judge for a hearing within 30 days on the basis of the record or for a trial de novo if no record was made."

The February 11, 2013, order to which the notice of appeal refers denied D.E.H.'s motion to dismiss, continued C.J.J.'s motion for sanctions, ordered DCF to complete its evaluation and recommendations by March 13, and set parameters on D.E.H.'s contact with Z.E.H. Generally, a magistrate's denial of a motion to dismiss is not a " final decision" that can be appealed to a district judge. C.J.J. is correct that under the general provisions of K.S.A.2012 Supp. 60-2103a(a), the district judge lacked jurisdiction to consider D.E.H.'s appeal from the magistrate's denial of the motion to dismiss.

Furthermore, K.S.A.2012 Supp. 38-2273 governs appeals in CINC cases and provides:

" (a) An appeal may be taken by any party or interested party from any order of temporary custody, adjudication, disposition, finding of unfitness or termination of parental rights.

" (b) An appeal from an order entered by a district magistrate judge shall be to a district judge. The appeal shall be heard on the basis of the record within 30 days from the date the notice of appeal is filed. If no record was made of the proceedings, the trial shall be de novo.

" (c) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto."

This court has stated that subsection (a) is exclusive and lists the only orders appealable in a CINC case. *In re C.E.*, 47 Kan.App.2d 442, 448, 275 P.3d 67 (2012) (" If the order here does not fit into one of those five categories, the order, by statute, is not appealable."); see *In re A.F.*, 38 Kan.App.2d 742, 745-46, 172 P.3d 63 (2007); *In re D.M.M.*, 38 Kan.App.2d 394, 397-400, 166 P.3d 431 (2007). As C.J.J. points out, the February 11, 2013, order was not an order of temporary custody, adjudication, disposition, finding of unfitness, or termination of parental rights. Thus, it was not an appealable order under the RKCCC.

Because the magistrate's February 11, 2013, order was not appealable, the district judge lacked jurisdiction over the appeal and erred in considering D.E.H.'s arguments. The appropriate remedy where a court lacks jurisdiction to enter an order is to reverse and vacate the judgment. See *State v. Unruh*, 281 Kan. 520, 526, 133 P.3d 35 (2006) (reversing Court of Appeals judgment where the Court of Appeals lacked jurisdiction to consider the issue). Accordingly, we reverse and vacate the district court's orders entered in this case including the assessment of costs and expenses against C.J.J.

DID THE MAGISTRATE JUDGE EXCEED HER JURISDICTION IN THE CINC CASE?

This case presents us with a jurisdictional predicament. Although we are ruling that the district court lacked jurisdiction to consider the appeal from the magistrate's decision denying the motion to dismiss, we are not obligated to remand for further proceedings if we also find that the

magistrate exceeded her jurisdiction in the CINC case. Resolution of this issue requires an examination of the provisions of the UCCJEA. Interpretation of a statute is a question of law over which appellate courts have unlimited review. *Jeanes v. Bank of America*, 296 Kan. 870, 873, 295 P.3d 1045 (2013). Likewise, whether jurisdiction exists is a question of law over which appellate courts have unlimited review. *Frazier v. Goudschaal*, 296 Kan. at 743.

D.E.H. continuously objected to the magistrate's jurisdiction in the CINC case. Specifically, D.E.H. argued that pursuant to the UCCJEA, Oklahoma courts— not Kansas courts— had jurisdiction over the dispute because Oklahoma courts had previously awarded him sole custody of Z.E.H. The magistrate judge ruled that the UCCJEA did not apply because this was a CINC case and not a child custody case. At the hearing on February 11, 2013, the magistrate judge denied D.E.H.'s motion to dismiss, " as this matter is a CINC proceeding for temporary placement and custody to provide temporary protection of the child, and not a custody proceeding, and this court has proper jurisdiction and venue."

Despite the magistrate judge's findings to the contrary, the UCCJEA is clearly applicable to CINC proceedings such as this case. The RKCCC, which governs CINC cases, states: " Subject to the uniform child custody jurisdiction and enforcement act, K.S.A.2012 Supp. 23-37,101 through 23-37,405, and amendments thereto, the district court shall have original jurisdiction of proceedings pursuant to this code." (Emphasis added.) K.S.A.2012 Supp. 38-2203(b). By its terms, the UCCJEA applies to child custody proceedings, which it defines as

" a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [the portion of the UCCJEA dedicated to enforcement of a child-custody determination]." K.S.A.2012 Supp. 23-37,102(5).

CINC proceedings fall within this definition and therefore under the purview of the UCCJEA. Moreover, this court has explicitly stated that "[t]he UCCJEA applies to proceedings held under the Kansas Code for the Care of Children" (KCCC), the precursor to the RKCCC. See *In re E.T.*, 36 Kan.App.2d 56, 64, 137 P.3d 1035 (2006), overruled on other grounds *In re B.D.-Y.*, 286 Kan. 686, 699-706, 187 P.3d 594 (2008).

" The UCCJEA prohibits simultaneous custody proceedings in two different states, except for temporary emergency situations." *In re Marriage of Iwed*, 34 Kan.App.2d 178, 181, 116 P.3d 36 (2005). Moreover, under the UCCJEA, the state which issues the initial child custody decree has exclusive, continuing jurisdiction over the matter unless special circumstances exist that allow another state to modify the custody determination. See K.S.A.2012 Supp. 23-37,202. Those exceptional circumstances are set forth in K.S.A.2012 Supp. 23-37,203 and K.S.A.2012 Supp. 23-37,204.

K.S.A.2012 Supp. 23-37,204(a) addresses temporary emergency jurisdiction and provides:

" A court of this state has temporary" emergency 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."

Under the circumstances of this case, it is uncontroverted that Z .E.H. was present in Kansas when C.J.J. filed her application for an ex parte order of protective custody on December 14, 2012. C.J.J. alleged that Z.E.H. was subject to mistreatment or abuse by D.E.H. Thus, the magistrate judge properly asserted temporary emergency jurisdiction over the situation. However, the statute goes on to say:

" If there is a previous child-custody determination that is entitled to be enforced under this act, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under [the sections of the UCCJEA that address initial child-custody jurisdiction, exclusive, continuing jurisdiction, and jurisdiction to modify], 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 [the portions

of the UCCJEA establishing initial and continuing jurisdiction and jurisdiction to modify]. 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." K.S.A.2012 Supp. 23-37,204(c).

Accordingly, the magistrate judge was authorized to issue an order granting temporary custody to C.J.J., but in such an order, the magistrate judge was required to specify a date by which C.J.J. was required to seek an order from the State of Oklahoma. In addition, once the magistrate judge was aware that there was a prior child-custody determination regarding Z.E.H. by the Oklahoma court, K.S.A.2012 Supp. 23-37,204(d) requires that the magistrate judge " shall immediately communicate with the other court."

Greatly simplified, K.S.A.2012 Supp. 23-37,204 addresses temporary emergency jurisdiction but also requires ultimate deferral to the authority of another state if that state had initial child-custody jurisdiction. Here, the magistrate judge properly asserted temporary emergency jurisdiction by entering the ex parte order of protective custody on December 14, 2012. But under the UCCJEA, the magistrate judge also was required to set a specific duration of any temporary orders and to immediately communicate with the Oklahoma court to resolve the situation. Although the magistrate judge ordered the secretary of DCF to contact the Oklahoma Division of Health Services to determine if Oklahoma " may be willing to pursue this matter," the record does not reflect whether anyone followed up on this order. Likewise, the magistrate judge never set a specific duration of any temporary orders as required by the UCCJEA. Thus, the magistrate judge's orders exceeded her jurisdiction under the UCCJEA, and the magistrate judge erred by denying D.E.H.'s motion to dismiss the CINC case for lack of jurisdiction.

Both parties agree that Oklahoma entered the initial child-custody orders involving Z.E.H. Initially, D.E.H. was awarded sole custody of Z.E.H. We now know that at a hearing on April 19, 2013, on C.J.J.'s petition for emergency custody order, the Tulsa County District Court granted temporary custody of Z.E.H. to C.J.J, subject to unsupervised (non-overnight) visitation with

D.E.H. on alternating weekends. The Oklahoma district court also ordered D.E.H. to enroll in and complete a parenting class and to complete a drug and alcohol assessment. The case is set for review on November 25, 2013. Any future orders concerning Z.E.H.'s care and custody will be based upon evidence presented to the Oklahoma district court, and such orders will be subject to appeal in Oklahoma. Under provisions of the UCCJEA, we conclude that the Oklahoma courts have exclusive jurisdiction over the custody dispute involving Z.E.H.

In summary, we agree with C.J.J. that the district court lacked jurisdiction to consider D.E.H.'s appeal from the magistrate's decision denying the motion to dismiss the CINC case. Thus, we vacate all orders entered by the district court including the assessment of costs and expenses against C.J.J. However, we also find that the magistrate judge exceeded her jurisdiction in the CINC case. We conclude that under the UCCJEA, Oklahoma courts have exclusive jurisdiction over the custody dispute involving Z.E.H. Accordingly, we remand with directions to dismiss the Kansas CINC proceedings.

Reversed and remanded with directions.