STATE OF MICHIGAN

COURT OF APPEALS

JONATHON TROY HUFFAKER and DIANN LEIGH LABELL HUFFAKER, Plaintiffs-Appellants,	UNPUBLISHED October 24, 2013
v	No. 313392 Wayne Circuit Court Family Division
KENNETH LEVI HUFFAKER and AMBER GAE HANING, Defendants-Appellees.	LC No. 09-112217-DC

Before: SAAD, P.J., and SAWYER and JANSEN, JJ.

PER CURIAM.

Plaintiffs appeal as of right an opinion and order dismissing the case for lack of jurisdiction and vacating a prior order granting to plaintiffs sole legal and sole physical custody of the minor child. We affirm.

Plaintiffs argue that the trial court erred in determining that it lacked jurisdiction. We disagree. Absent a factual dispute, the determination whether a trial court has jurisdiction presents a question of law that is reviewed de novo. *Foster v Wolkowitz*, 486 Mich 356, 362; 785 NW2d 59 (2010). "Once jurisdiction is established, a trial court's decision concerning whether to exercise jurisdiction in a custody proceeding is reviewed for an abuse of discretion." *Fisher v Belcher*, 269 Mich App 247, 253; 713 NW2d 6 (2005). A trial court abuses its discretion when its decision falls outside the range of principled outcomes. *Jamil v Jahan*, 280 Mich App 92, 100; 760 NW2d 266 (2008). Issues of statutory construction are reviewed de novo as questions of law. *Nash v Salter*, 280 Mich App 104, 108; 760 NW2d 612 (2008).

The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*., prescribes the powers and duties of the court in a child custody proceeding involving a party or a proceeding outside Michigan. *Fisher*, 269 Mich App at 260.

> The UCCJEA was designed to: (1) rectify jurisdictional issues by prioritizing home-state jurisdiction, (2) clarify emergency jurisdictional issues to address time limitations and domestic-violence issues, (3) clarify the exclusive continuing jurisdiction for the state that entered the child-custody decree, (4) specify the type of custody proceedings that are governed by the act, (5) eliminate

> the term "best interests" to the extent it invited a substantive analysis into jurisdictional considerations, and (6) provide a cost-effective and swift remedy in custody determinations. [*Atchison v Atchison*, 256 Mich App 531, 536; 664 NW2d 249 (2003) (footnote omitted).]

Under the UCCJEA, another state's child custody determination must be enforced if the other state court acted in substantial conformity with the UCCJEA. MCL 722.1303(1). A "'[c]hild custody determination' means a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child. Child-custody determination includes a permanent, temporary, initial, and modification order. . . ." MCL 722.1102(c).

> "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or parenting time with respect to a child is an issue. Child-custody proceeding includes a proceeding for divorce, separate maintenance, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. . . . [MCL 722.1102(d).]

MCL 722.1201 governs a state court's authority to make an "initial child-custody determination." *Foster*, 486 Mich at 364. That provision states:

> (1) Except as otherwise provided in [MCL 722.1204, permitting temporary emergency jurisdiction for abandoned, abused, or mistreated children], a court of this state has jurisdiction to make an initial child-custody determination only in the following situations:
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> (a) 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 6 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.
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> (b) A court of another state does not have jurisdiction under subdivision (a), or 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 under section 207 or 208, and the court finds both of the following:
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> (*i*) The child and the child's parents, or the child and at least 1 parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.
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> (*ii*) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.
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> (c) All courts having jurisdiction under subdivision (a) or (b) have declined to exercise jurisdiction on the grounds that a court of this state is the more appropriate forum to determine the custody of the child under section 207 or 208.

(d) No court of another state would have jurisdiction under subdivision (a), (b), or (c).

(2) *Subsection (1) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state*.

(3) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child-custody determination. [MCL 722.1201 (emphasis added).]

MCL 722.1102(g) defines "home state" as

> the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a parent or person acting as a parent is included as part of the period.

A Michigan court may not exercise jurisdiction if, at the time of the commencement of the proceeding, a child custody proceeding has already been commenced in a court of another state having jurisdiction substantially in conformity with the UCCJEA, unless the proceeding has been terminated or stayed by the other state's court because a Michigan court is a more convenient forum. MCL 722.1206(1); *Fisher*, 269 Mich App at 254.

Further, a Michigan court may not modify a child-custody determination of a court in another state unless the Michigan court has jurisdiction to make an initial child-custody determination under MCL 722.1201(1)(a) or (b) and either the foreign court determines that it no longer has exclusive, continuing jurisdiction or that a court of this state would be a more convenient forum, or a court determines that neither the child nor a parent of the child presently resides in the other state. MCL 722.1203; *Jamil*, 280 Mich App at 101. Temporary emergency jurisdiction may exist if the child has been abandoned or it is necessary to protect the child because of mistreatment or abuse. MCL 722.1204(1).

Here, the trial court correctly determined that both it and the Michigan probate court that had previously issued letters of guardianship regarding the minor child lacked jurisdiction under the UCCJEA. A short chronology of the relevant events is necessary to address the issue:

- The minor child was born on January 8, 2008, in Utah; her natural parents are defendants, Amber Gae Haning (Amber) and Kenneth Levi Huffaker (Kenneth), who were married to one another and living in Utah when the minor child was born.

- On February 24, 2008, Amber, Kenneth, and the minor child moved to Michigan to live with plaintiffs, Jonathon Troy Huffaker (Jonathon) and Diann Leigh Labell Huffaker (Diann), who are, respectively, the paternal grandfather and the paternal step-grandmother of the minor child.

- On April 24, 2008, Amber and the minor child moved back to Utah without Kenneth.

- A few days later, Jonathon and Kenneth took the minor child from Utah back to Michigan without Amber's knowledge or consent.

- In late May 2008, Kenneth returned to Utah by himself, leaving the minor child in plaintiffs' care.

- On June 12, 2008, Jonathon commenced guardianship proceedings in probate court in Michigan, and letters of guardianship were issued one day later making plaintiffs the minor child's temporary guardians.

- On August 21, 2008, a guardianship hearing was held in which Amber objected to the guardianship and asked to take the minor child back to Utah, Kenneth expressed his intent to file for divorce in Utah, and the probate court indicated it would continue the guardianship pending the Utah divorce proceedings.

- On August 25, 2008, Kenneth filed a petition for divorce in Utah, and on August 28, 2008, the Utah court entered a divorce judgment awarding Kenneth and Amber joint legal custody but awarding sole physical custody to Kenneth; despite the Utah divorce judgment, the minor child remained in plaintiffs' care in Michigan.

- On September 4, 2009, plaintiffs commenced the instant litigation by filing a complaint for custody of the minor child in circuit court in Michigan.

- Following a trial in this custody action on April 19, 2010, the predecessor trial court judge entered an order on June 18, 2010, awarding sole physical and sole legal custody of the minor child to plaintiffs.

- In November 2011, Amber moved in probate court to terminate the guardianship, but the motion was dismissed because the guardianship had already been terminated when plaintiffs were granted custody in this action.

- In January 2012, Amber filed in this case the instant motion to modify custody.

- Following a one-day evidentiary hearing on October 10, 2012, the successor trial court judge[1] issued a written opinion and order on November 12, 2012, dismissing the case for lack of subject-matter jurisdiction and vacating the June 18, 2010, order granting plaintiffs sole legal and sole physical custody.

Because a guardianship proceeding constitutes a "child-custody proceeding," MCL 722.1102(d), the probate court was required to possess jurisdiction under the UCCJEA in order to issue letters of guardianship. For the probate court to have had jurisdiction under MCL 722.1201(1)(a), the minor child's "home state" must have been Michigan when the guardianship petition was filed. Jonathon filed the guardianship action on June 12, 2008. At that point, the

[1] We use the term "trial court" to refer to the successor trial court judge in this action.

minor child was less than six months old. Thus, her "home state" was the state in which she "lived from birth with a parent or person acting as a parent." MCL 722.1102(g). As discussed, the minor child was born in Utah on January 8, 2008, moved to Michigan with defendants on February 24, 2008, moved back to Utah with Amber on April 24, 2008, and a few days later was taken by Jonathon and Kenneth from Utah back to Michigan without Amber's knowledge or consent. Thus, Utah was the minor child's home state because it was the state in which she lived from birth with a parent or person acting as a parent. See *Fisher*, 269 Mich App at 259 (finding that a child's home state was Missouri because: she was born on April 30, 2004; she lived from birth in Missouri until moving to Michigan on July 30, 2004; at the time of the initial custody filing, September 23, 2004, the child had not lived for at least six consecutive months in Michigan; and thus, "the state in which the child lived from birth with a parent is the home state, namely Missouri"); *id.* at 261-267 ("Because plaintiff and [the child] had not resided in Michigan for at least six months before the filing of plaintiff's initial petition, Michigan is not a 'home state' as defined in MCL 722.1102(g). MCL 722.1201(1)(a). Similarly, by definition, Missouri is the child's home state because [the child] was less than six months of age at the time plaintiff's initial petition was filed and the child lived from birth with a parent in Missouri.").

Because Michigan was not the minor child's home state, the probate court lacked jurisdiction under MCL 722.1201(1)(a). Moreover, the probate court did not have jurisdiction under MCL 722.1201(1)(b) because, given that Utah was the minor child's home state, the Utah court had jurisdiction under MCL 722.1201(1)(a), and the Utah court did not decline to exercise jurisdiction on the ground that Michigan was the more appropriate forum. The probate court also did not have jurisdiction under MCL 722.1201(1)(c) because the Utah court did not decline to exercise jurisdiction. Further, jurisdiction was not conferred on the probate court by MCL 722.1201(1)(d) as the Utah court had jurisdiction under MCL 722.1201(1)(a).

Plaintiffs suggest that the probate court may have had temporary emergency jurisdiction under MCL 722.1204(1).[2] As the trial court noted, however, there is no indication that jurisdiction was alleged or found to exist under MCL 722.1204(1) in the probate court. Jurisdiction is determined on the basis of the allegations at the commencement of the proceeding. *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992). While plaintiffs now suggest that grounds for temporary emergency jurisdiction may have existed, plaintiffs do not dispute the trial court's conclusion that although the petition for guardianship "was granted on an emergency basis, the petition [did] not contain any allegations that an emergency situation existed. Specifically, there were no allegations that the child was abandoned, or that the child had been subjected to or threatened with abuse."[3] Moreover, even if the probate court had exercised

[2] MCL 722.1204(1) states: "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."

[3] Although plaintiffs assert on appeal that there were "allegations" that the minor child was being mistreated in that she was purportedly underfed with watered down formula when in defendants' care and had lived "in squalor" in Utah, it appears this is a reference to the allegations made by

temporary emergency jurisdiction, a temporary emergency order remains in effect only "until an order is obtained from the state court having proper jurisdiction under the UCCJEA." *Foster*, 486 Mich at 364 n 15. Thus, because the Utah court had proper jurisdiction and subsequently issued a custody order, a temporary emergency order entered by a Michigan court would not have remained in effect once the Utah order was entered.

Plaintiffs contend that it was inappropriate for the trial court in this action to make a collateral determination that the probate court lacked jurisdiction under the UCCJEA. However, "[w]hen there is a want of jurisdiction over the parties or the subject matter, no matter what formalities may have been taken by the trial court, the action is void because of its want of jurisdiction. Consequently, its proceedings may be questioned *collaterally* as well as on direct appeal." *Altman*, 197 Mich App at 472-473 (emphasis added). Thus, the trial court here properly assessed whether the probate court had jurisdiction in the guardianship proceeding. Given that the probate court lacked jurisdiction under the UCCJEA, its proceedings were void for want of jurisdiction. *Id*.

Further, we agree with the trial court that, even if the probate court had possessed jurisdiction under MCL 722.1201, it should have declined to exercise jurisdiction in light of Jonathon's unjustifiable conduct in taking the minor child from Utah back to Michigan without Amber's knowledge or consent. MCL 722.1208(1) states:

> (1) Except as otherwise provided in [MCL 722.1204] or by other law of this state, if a court of this state has jurisdiction under this act because a person invoking the court's jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless the court finds 1 or more of the following:
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> (a) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction.
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> (b) A court of the state otherwise having jurisdiction under [MCL 722.1201 to MCL 722.1203] determines that this state is a more appropriate forum under [MCL 722.1207].
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> (c) No court of another state would have jurisdiction under [MCL 722.1201 to MCL 722.1203].

Here, after Amber had moved back to Utah with the minor child in April 2008, Jonathon and Kenneth took the minor child from Utah back to Michigan without Amber's knowledge or consent. Although no kidnapping charges were filed or pursued because Kenneth was the minor child's father, it is undisputed that Kenneth is bipolar, has exhibited severe anger, and has committed violent acts, which plaintiffs admitted that they have observed. Jonathon conceded at the October 10, 2012, evidentiary hearing that Kenneth was not a fit parent. Thus, Jonathon's

plaintiffs' counsel at the August 21, 2008, guardianship hearing. Plaintiffs have not asserted that the guardianship petition itself contained allegations establishing mistreatment, abuse, or abandonment, and plaintiffs have not provided this Court with a copy of that petition.

conduct in flying to Utah with Kenneth, removing the minor child from Amber's care without her knowledge and consent, and taking the minor child back to Michigan with Kenneth, was unjustifiable.[4] Moreover, Amber did not acquiesce in the probate court's exercise of jurisdiction. Indeed, at the August 21, 2008, hearing, Amber objected to the guardianship and expressed her desire to take the minor child back to Utah. As discussed, the Utah court had home-state jurisdiction under MCL 722.1201(1)(a) and did not determine that Michigan was a more appropriate forum. The probate court thus should have declined to exercise jurisdiction in light of Jonathon's unjustifiable conduct.

In addition to the probate court's lack of jurisdiction in the guardianship proceeding, the trial court lacked jurisdiction in the instant custody action. When the present action was filed, the Utah divorce judgment had already been entered. The Utah divorce judgment constituted a "child-custody determination" given that it provided for legal and physical custody of the minor child. MCL 722.1102(c). "Once an initial child-custody determination occurs, exclusive, continuing jurisdiction generally remains with the decreeing court." *Atchison*, 256 Mich App at 538. MCL 722.1203 addresses a Michigan court's jurisdiction to modify a custody order issued by the court of another state. *Jamil*, 280 Mich App at 101. The statute provides:

> Except as otherwise provided in [the temporary emergency jurisdiction provision in MCL 722.1204], a court of this state shall 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 child-custody determination under [MCL 722.1201(1)(a) or (b)] and either of the following applies:
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> (a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under [MCL 722.1202] or that a court of this state would be a more convenient forum under [MCL 722.1207].
>
> (b) A court of this state or a court of the other state determines that neither the child, nor a parent of the child, nor a person acting as a parent presently resides in the other state. [MCL 722.1203.]

"'Modification' means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous child-custody determination concerning the same child, whether or not it is made by the court that made the previous child-custody determination." MCL 722.1102(k). Given that the instant custody action was filed after the issuance of the Utah child-custody determination concerning the same child, the present complaint was by statutory definition seeking to modify the Utah child-custody determination. However, the Michigan trial court could not modify the Utah child-custody determination because the Utah court has not determined that it no longer has exclusive, continuing jurisdiction or that a Michigan court would be a more convenient forum, and there has been no determination that neither the child nor a

[4] If Jonathon had concerns about Amber's own mental health or fitness as a parent, he should have directed his concerns to appropriate legal authorities rather than taking the minor child from Utah to Michigan without Amber's knowledge or consent.

parent of the child presently resides in Utah[5]. MCL 722.1203; *Jamil*, 280 Mich App at 101-103. Thus, the trial court lacked jurisdiction to modify the Utah child-custody determination. The trial court properly vacated its prior order awarding custody to plaintiffs because that order was void for lack of jurisdiction. *Fisher*, 269 Mich App at 263.

Plaintiffs argue that even if jurisdiction did not exist under the UCCJEA, the trial court nonetheless had jurisdiction in this case under MCL 722.26b. That statute provides, in relevant part:

> (1) Except as otherwise provided in subsection (2), a guardian or limited guardian of a child has standing to bring an action for custody of the child as provided in this act.
>
> (2) A limited guardian of a child does not have standing to bring an action for custody of the child if the parent or parents of the child have substantially complied with a limited guardianship placement plan regarding the child entered into as required by section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, or section 424a of former 1978 PA 642.
>
> (3) *If the circuit court does not have prior continuing jurisdiction over the child, a child custody action brought by a guardian or limited guardian of the child shall be filed in the circuit court in the county in which the probate court appointed the guardian*. [MCL 722.26b (emphasis added).]

Plaintiffs argue that subsection (3) grants jurisdiction over a child custody action to the circuit court in the county in which the probate court appointed the guardian, even if prior continuing jurisdiction does not exist under the UCCJEA. But as discussed, the guardianship proceedings in probate court are void for want of jurisdiction. *Altman*, 197 Mich App at 473. Because plaintiffs were not properly appointed as guardians, the present case does not comprise "a child custody action brought by a guardian or limited guardian of the child. . . ." MCL 722.26b(3). Thus, even if MCL 722.26b(3) could grant jurisdiction independent of the UCCJEA, it did not do so here.

Moreover, the UCCJEA provides that MCL 722.1201(1) "is the exclusive jurisdictional basis for making a child-custody determination by a court of this state." MCL 722.1201(2). "If statutes lend themselves to a construction that avoids conflict, that construction should control." *Walters v Leech*, 279 Mich App 707, 710; 761 NW2d 143 (2008). Unambiguous statutory language must be enforced as written. *Hanlin v Saugatuck Twp*, 299 Mich App 233, 241; 829 NW2d 335 (2013). Here, given that MCL 722.1201(2) expressly provides that MCL 722.1201(1) is the exclusive jurisdictional basis for making a child-custody determination by a Michigan court, that provision must be enforced as written. Contrary to plaintiffs' argument, MCL 722.26b(3) does not purport to create jurisdiction where it does not exist under the

[5] Indeed, it is undisputed that the minor child's parents, Amber and Kenneth, continue to reside in Utah. Utah thus "maintained an interest in retaining its exclusive, continuing jurisdiction." *Atchison*, 256 Mich App at 538.

UCCJEA and should not be construed to create a conflict with MCL 722.1201(2). MCL 722.26b(3) identifies the county in which a guardian shall file a child custody action but does not authorize filing an action when jurisdiction does not exist under MCL 722.1201(1).

Plaintiffs further contend that the probate court had jurisdiction under MCL 712A.2(b)(1), which provides:

> Sec. 2. *The court* has the following authority and jurisdiction:
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> * * *
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> (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
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> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:
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> (A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.
>
> (B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance. [Emphasis added.]

Plaintiffs' reliance on this statute is misplaced because it provides for the jurisdiction of the family division of circuit court, rather than the probate court. See MCL 712A.1(e) ("'Court' means the family division of circuit court."); MCL 600.1021(1)(e) (except as otherwise provided by law, the family division of circuit court has sole and exclusive jurisdiction over cases involving juveniles as provided in MCL 712A.1 to MCL 712A.32); *In re AMB*, 248 Mich App 144, 167; 640 NW2d 262 (2001) ("The family division of each circuit court has replaced the probate court in proceedings concerning custody of juveniles.") (footnote omitted). Plaintiffs fail to explain how a provision granting jurisdiction to the family division of circuit court could have granted jurisdiction to the probate court in the guardianship proceeding. An appellant may not leave it to this Court to discover and rationalize the basis for its claims or unravel and elaborate its arguments. *State Treasurer v Sprague*, 284 Mich App 235, 243; 772 NW2d 452 (2009). "Failure to brief a question on appeal is tantamount to abandoning it." *Id*. Further, as discussed, MCL 722.1201(2) expressly provides that MCL 722.1201(1) is the exclusive jurisdictional basis for making a child-custody determination by a Michigan court. Plaintiffs have failed to establish that jurisdiction existed under MCL 712A.2(b)(1).

Finally, plaintiffs challenge the trial court's decision to physically return the minor child to Amber, given that the Utah divorce judgment awarded physical custody to Kenneth. However, the Utah divorce judgment awarded joint legal custody to Amber and Kenneth, sole physical custody to Kenneth, and parenting time to Amber. Plaintiffs concede that Kenneth has "serious mental health issues," that he has failed to participate in these proceedings, and that his conduct seems to demonstrate that he has no interest in having any contact with the minor child. In its written opinion and order dismissing this case for lack of jurisdiction, the trial court stated that "[b]ecause the only custody order in effect is the Utah order, Amber and Kenneth will need to pursue modification of that order in the Utah court." Given the unique circumstances presented, the trial court's resolution was proper. Because the Utah divorce judgment grants Amber joint legal custody and parenting time, and Kenneth has not participated in this case or demonstrated that he wants to have any contact with the minor child, the trial court properly returned the minor child to Amber and stated that modification of the Utah order needs to be pursued in the Utah court.

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Kathleen Jansen