NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY
CHANCERY DIVISION, FAMILY PART
DOCKET NO. FD-07-00767-19

CLEMENTINE BATA,

Plaintiff,

v.

GEORGE KONAN,

Defendant.

APPROVED FOR PUBLICATION

September 19, 2019

COMMITTEE ON OPINIONS

Decided: March 8, 2019

Clementine Bata, plaintiff pro se.

George Konan, defendant pro se.

PASSAMANO, J.S.C.

This matter comes before the court on plaintiff's application and defendant's counterclaim. In her application, plaintiff seeks, among other things, an initial custody determination concerning the parties' minor child. In his counterclaim, defendant opposes plaintiff's application and contests jurisdiction. Plaintiff, the child's natural mother, resides in New Jersey. Defendant, the child's natural father, resides in New York.

Based on the written submissions and limited testimony taken on the initial hearing date, the court found that a plenary hearing was necessary. At the plenary hearing, which was held on December 5, 2018, both plaintiff and defendant testified. No other witnesses were called.

The court has considered the testimony of the parties,[1] the documents admitted into evidence and the arguments presented. Following are the court's findings of fact and conclusions of law.

I.

The parties are not married and live separate and apart from one another. They have one child, a daughter. The child, who was born on October 9, 2015, was three years old at the time of the hearing. Plaintiff, the child's mother, resides in New Jersey. Defendant, the child's father, resides in New York. On August 22, 2018, plaintiff filed an application seeking sole legal custody of the child, physical custody and an order for support. Defendant opposes plaintiff's application and contests jurisdiction.

For the reasons set forth herein, the court finds that New Jersey does not have jurisdiction to make a custody determination.

---

[1] Except as noted herein, both parties generally were credible in their testimony. Both testified in a straightforward, forthright manner. Their body language and demeanor indicated that each was giving truthful testimony. In large part, the basic facts were not in dispute, although the parties ask the court to draw different conclusions from those facts.

A.

Plaintiff and defendant met and began their relationship in the summer of 2014. Notwithstanding that the relationship had its ups and downs, plaintiff in March 2015 found herself to be pregnant by defendant. The pregnancy caused additional stress between the parties and plaintiff ended the relationship.

The parties remained apart until about the fifth month of plaintiff's pregnancy. Around that time, plaintiff's parents had visited from Paris. They advised plaintiff to work towards re-establishing her relationship with defendant. Plaintiff's parents emphasized their belief that doing so would facilitate the child knowing his or her father. On plaintiff's initiative, the parties re-established their relationship with defendant being supportive of plaintiff and their unborn child. At that time, plaintiff resided in New Jersey and worked as a flight attendant, based out of New York. Defendant was residing in New York and did not work outside of the home.

The parties decided that plaintiff would deliver the child at a hospital in Jersey City, New Jersey and she did so on October 9, 2015. After giving birth, plaintiff took three months off from work to care for the child. During that time, the child stayed with plaintiff in New Jersey. Defendant commuted from New York to visit and help with the child.

Plaintiff's credible testimony showed that her employment required that she regularly work overnight flights outside of the United States – sometimes for multiple days. Due to her work schedule, plaintiff oftentimes was absent from home. When plaintiff was away, the parties either arranged for a babysitter, or would have defendant stay with the child in New Jersey. At that time, both parties felt that the child was too small to travel to New York to stay with defendant.

Shortly before the child's first birthday, the parties changed the arrangement and the child began spending time both in New Jersey, and in New York. On occasion, plaintiff would travel to New York and stay with defendant and the child. Then, around March 2017, plaintiff ended the parties' relationship. From that time forward, although the child continued to spend time with each parent and in each state, plaintiff ceased travelling to defendant's residence in New York.

Defendant takes the position that during the relevant time period, New York was the child's home state for purposes of jurisdiction. Plaintiff takes the contrary position and asserts that jurisdiction is proper in New Jersey.[2]

---

[2] As detailed in part II of this opinion, the relevant time period for purposes of determining jurisdiction is the six months prior to when plaintiff filed her application.

After considering the testimony of the parties, the documents submitted into evidence and the arguments made, the court agrees with defendant. The court finds that New York, not New Jersey, was the child's home state during the six months prior to when plaintiff filed her application. As such, this court does not have jurisdiction.

B.

During the time prior to when she filed her application for custody, plaintiff worked as a flight attendant. The credible testimony showed that plaintiff's employer was inflexible with respect to scheduling. Plaintiff had to accept the work schedule offered, even if it contained overnight flights spanning multiple days. After the child was born, plaintiff was, however, able to reach an agreement with her employer that allowed her to work less than full time. Under that arrangement, plaintiff worked alternating months. Plaintiff would be "on" (available for work) for a month, and "off" (not working) the following month.

The parties had discussed the month on, month off work arrangement. Plaintiff anticipated that once her new work arrangement was in place, she and defendant would each have an equal share of time with the child. The evidence showed that the arrangement did not work as plaintiff had anticipated. The credible testimony of both parties was that defendant had the

child for significant periods of time even during the times the plaintiff was not working.

Plaintiff herself testified that she would be on flights for approximately fourteen to sixteen days during the months when she was working. She further testified that during those times, the child stayed with defendant in New York. Moreover, the testimony from both parties showed that even during the times when plaintiff was not working, the child spent every weekend in New York, spent additional time in New York for ongoing programs and activities, and as requested by defendant. From this credible testimony, the court finds that even when plaintiff was available to have the child in New Jersey, activities and events in New York, and defendant's requests took precedence.

With respect to activities and programs, defendant's credible testimony showed that virtually all of the child's school, church, programs and regular activities take place in New York. The child's pre-school, the charter school where she will attend kindergarten, and the church that she regularly attends and where she participates in additional programs, are all in New York.

In particular, defendant's credible testimony showed that the child completed the "Baby College" program at the Harlem Children's Zone located on East 125th Street, New York, New York (Children's Zone). The Baby College program is for children age newborn to three years. Defendant

credibly testified that the child has consistently attended programs at the Children's Zone. The child has been accepted into the Promise Academy, which is part of the Harlem Children's Zone. After the child finishes the Promise Academy program, she will attend Promise Charter School in Harlem. Promise Academy is located approximately five blocks from defendant's residence in New York. The undisputed testimony also showed that the child regularly attends age appropriate programs at The Abyssinian Baptist Church in New York, New York. The Church programs, which start Sunday at 10:00 a.m., include breakfast, classes and worship services.

The evidence adduced at the hearing shows that all of the programs that have continuity take place in New York. There was no evidence that the parties at any time had made plans for the child to attend school, church or ongoing programs in New Jersey. The court recognizes that the child spent time with plaintiff, and had some health care in New Jersey. The court finds, however, that the times the child spent in New Jersey were in the nature of temporary absences from New York.[3]

---

[3] While plaintiff generally was credible in her testimony, the manner in which she testified to the activities and events that she participates in with the child in New Jersey, such as visiting zoos and parks, showed that she was straining to have the court give them more weight than deserved. While the court finds that plaintiff truthfully testified that she takes the child to parks, zoos and for other activities, the court also finds that while giving this particular testimony,

The court finds that the arrangement described above lasted for at least the six months prior to when plaintiff filed her application.

C.

The evidence showed that defendant notified his landlord that a child was residing in his apartment and appropriate window guards were installed. Defendant has also established a bank account for the child in New York. For her part, plaintiff credibly testified that the child is listed on the lease for the apartment in New Jersey. In addition, the child's social security card and passport list her address as being in New Jersey, she has a Women, Infants and Children (WIC) card from New Jersey and she is enrolled in New Jersey Family Care.

With respect to medical care, defendant testified that the child had a check-up in New York on September 14, 2018. That check-up was required in order for the child to attend programs at the Harlem Children's Zone. While defendant testified that he is looking for a doctor for the child in New York, other than the check-up noted above, the child's health care has been provided in New Jersey. The court notes, however, that except for an issue concerning low iron, the child's health care mainly involves routine check-ups.

---

plaintiff's body language, tone of voice, and demeanor reflected an effort on her part to vest these activities with more importance than even she, herself, believed they warranted.

The court has considered the testimony of the witnesses and has reviewed the documents admitted into evidence. Having done so, the court now applies the facts to the law in order to determine jurisdiction.

II.

The court's jurisdiction with respect to child custody is set out in the New Jersey Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA was adopted in 2004 and is codified at N.J.S.A. 2A:34-53 to -95. New Jersey enacted the UCCJEA "in an effort to avoid jurisdictional competition and conflict between jurisdictions in favor of cooperation with courts of other states . . . as necessary to ensure that custody determinations are made in the state that can best decide the case." See Sajjad v. Cheema, 428 N.J. Super. 160, 170-71 (App. Div. 2012). Where jurisdiction is contested, the court must follow the multi-step procedure outlined in the UCCJEA. Id. at 171. In doing so, the court "must scrutinize the facts and make specific findings supporting the court's assumption or rejection of subject matter jurisdiction." Id. at 175.

In this case, there have been no prior custody proceedings, either in New Jersey or in any other state, and no other proceedings are pending. As such, the matter now before the court involves an initial custody determination. Under the UCCJEA:

a. [A] court of this State has jurisdiction to make an initial child custody determination only if:

> (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;
>
> (2) a court of another state does not have jurisdiction under paragraph (1) of this subsection, 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 . . . [N.J.S.A. 2A:34-71 and -72] and:
>
> > (a) the child and the child's parents, or the child and at least one parent or a person acting as a parent ha[s] a significant connection with this State other than mere physical presence; and
> >
> > (b) substantial evidence is available in this State concerning the child's care, protection, training and personal relationships;
>
> (3) all courts having jurisdiction under paragraph (1) or (2) of this subsection 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 under section 19 or 20 of this act; or

> (4) no state would have jurisdiction under paragraph (1), (2) or (3) of this subsection.
>
> b. Subsection a. of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this State.
>
> c. Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination.
>
> [N.J.S.A. 2A:34-65(a), (b), (c).]

The UCCJEA prioritizes use of the child's "home state" as the "exclusive basis for jurisdiction of a custody determination . . . ." Sajjad, 428 N.J. Super. at 171 (citation and footnote omitted). This is so "regardless of the residency of the parents." Ibid. Accordingly, the threshold issue for determination in this case, where jurisdiction is disputed, is "whether New Jersey or [New York] is the child's home state." Id. at 175.

The UCCJEA defines "home state" as "the state in which a child lived . . . for at least six consecutive months immediately before the commencement of a child custody proceeding." N.J.S.A. 2A:34-54. Importantly, as concerns the case now before the court, "[a] period of temporary absence . . . is part of the period." Ibid. The court notes that determination of a child's home state is based on the facts as they stood during the six months prior to the time that the custody application was filed. Sajjad, 428 N.J. Super. at 173. For this reason,

the court gave no weight to plaintiff's testimony that she changed jobs around November 2018, which was after she filed her application seeking custody. In any event, there was no testimony concerning how, if at all, plaintiff's job change would impact on the matters at issue.

As with the UCCJEA, the New York custody statute uses the child's home state as a basis for jurisdiction. See N.Y. Dom. Rel. Law § 76 (Consol. 2019). In addition, as with the definition of "home state" in New Jersey, the definition in New York provides that temporary absences are included in the time that a child is present in a state. Specifically, the New York custody statute provides that:

> "Home state" means the 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. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.
>
> [Id. at § 75-a.]

For purposes of determining a child's home state, the word "lived" "connotes physical presence within the state, rather than subjective intent to remain." Sajjad, 428 N.J. Super. at 172-73. Moreover, "determination of the

child's legal residence or domicile is unnecessary." Ibid. As explained by the Appellate Division:

> ("[T]he Legislature used the word 'lived,' rather than 'resided,' or 'was domiciled,' precisely to avoid complicating the determination of a child's home state with inquiries into the states of mind of the child or the child's adult caretakers."). "By adopting a definition of home state that focuses on the historical fact of the child's physical presence in a jurisdiction, the Legislature intended to provide a definite and certain test."
>
> [Id. at 173 (citations omitted).]

The court now applies the facts to determine the home state of the parties' child.

A.

In this case, the child was physically present in both New Jersey, and in New York during the six months preceding the date on which plaintiff filed her application. That does not, however, end the analysis as temporary absences are included as part of the six month period that a child lives in a state. See N.J.S.A. 2A:34-54; N.Y. Dom. Rel. Law § 75-a (Consol. 2019). Accordingly, jurisdiction cannot be established in a state where the time spent in that state is found to be a period of temporary absence from another state. See Sajjad, 428 N.J. Super. at 175. As the Appellate Division held in Sajjad:

> A proper jurisdictional analysis must include review of whether Pakistan was the child's home state

> when defendant filed for custody on December 10, 2009. If the child relocated to Pakistan in June 2009 and only temporarily returned to New Jersey in September or October 2009, he would have been in Pakistan for six months. On the other hand, if the child's absence from New Jersey from June to September 2009 was temporary, then his stay in Pakistan preceding the initiation of defendant's custody action was merely three months, calling into question whether Pakistan is the child's home state as defined under the UCCJEA.
>
> [Id. at 176.]

The court must now determine whether the times the child spent in New Jersey were periods of temporary absence from New York. Doing so requires that the court "not only examine whether the child was physically in that state, but also, under what circumstances the child came to and remained in the state." See Richardson v. Richardson, 625 N.E.2d 1122, 1124 (Ill. App. Ct. 1993). If the child in this case had previously relocated to New York and temporarily returned to New Jersey, albeit on a regular basis, then, for purposes of determining the child's home state, those times would be counted as time that the child lived in New York. Sajjad, 428 N.J. Super. at 175.

With respect to the issue of determining what constitutes a temporary absence, the Appellate Division in Sajjad held that:

> We have located limited New Jersey authority examining the question of what constitutes a temporary absence. In Neger v. Neger, 93 N.J. 15, 33, 459 A.2d 628 (1983), the Supreme Court reviewed the

facts presented to determine whether the child's absence from New Jersey was temporary under a similar provision of the UCCJA. Following the terms of a custody schedule, the child was in her father's care in California for a two-month period when the mother filed for custody. Ibid. Focusing on the child's physical presence in the two states, the Court rejected the temporary characterization, explaining the child "had resided with her father in California for approximately 3 1/2 of the six months immediately preceding commencement of the New Jersey [custody] action and had not lived with her mother [in New Jersey] for six consecutive months within the prior six-month period." Ibid. The Court considered the child's California stay as "not truly characteristic of a visit, [because it] consisted of fixed substantial periods of time in a regular alternating manner unrelated to holidays or vacations." Ibid.

In Maqsudi v. Maqsudi, 363 N.J. Super. 53, 66-68, 830 A.2d 929 (Ch. Div. 2002), the Family Part judge noted the dearth of New Jersey authority on what constitutes a child's temporary absence under the UCCJA. In deciding whether New Jersey was the child's home state, the judge concluded a temporary absence was

> an absence for a limited period of time from the forum that is the residence for a permanent, or indefinite, period of time. In determining whether an absence was temporary, courts must examine not only whether the child was physically present in the state but also how and when the child came to and remained in that state.
>
> [Id. at 67, 830 A.2d 929.]

> The salient facts underpinning the trial judge's conclusion that New Jersey was the child's home state included: the parties' only permanent "home of infinite duration" was in New Jersey; the parties never established a permanent residence or engaged physicians for the child while abroad; trips were made to New Jersey "for renovation arrangements and vacation periods[;]" and the child attended a school abroad designed for "transient children who would one day make their way back to the United States to an American school curriculum." Id. at 67-68, 830 A.2d 929.
>
> [Id. at 176-77.]

The court now addresses the question of whether the times that the parties' child was physically present in New Jersey during the six months prior to when plaintiff filed her petition were temporary absences from New York. If so, then that time would not serve as a basis to establish jurisdiction in New Jersey.

B.

The Appellate Division in Sajjad cited to factors that other courts have weighed in considering whether an absence is temporary.[4] In particular, the Appellate Division noted that:

> In considering whether an absence is temporary, courts have weighed: (1) the parent's purpose in removing the child from the state, rather than the

[4] The exact test to be applied in determining whether time in a state is a temporary absence from another state has not been set out in any published opinion from the New Jersey Courts.

> length of the absence, see Arnold v. Harari, 4 A.D.3d 644, 772 N.Y.S.2d 727, 729-30 (2004) (examining father's admission in the record that one-year visit to Israel was intended to be temporary for purposes of child custody matters); (2) whether the parent remaining in the claimed home state believed the absence to be merely temporary, see Sullivan v. Sullivan, 105 P.3d 963, 966, 2004 UT App 485 (Utah Ct. App. 2004) (rejecting father's assertion that wife absconded with children, thereby concluding absence was "temporary"); (3) whether the absence was of indefinite duration, see Consford v. Consford, 271 A.D.2d 106, 711 N.Y.S.2d 199, 205 (2000) (finding move precipitated on indefinite military assignment was not temporary); and (4) the totality of the circumstances surrounding the child's absence, see Chick v. Chick, 164 N.C. App. 444, 596 S.E.2d 303, 308 (2004). Courts examining this question have concluded temporary absences include court-ordered visitations, In re Lewin, 149 S.W.3d 727, 739 (Tex. App. 2004), and vacations and business trips, Alley v. Parker, 1998 ME 33, 707 A.2d 77, 78 (Me. 1998).
>
> [Id. at 173.]

The court finds that viewed together, the opinions in Sajjad, Neger, and Maqsudi, lead to the conclusion that the totality of the circumstances is the test to be used in determining whether time spent in a particular state is a temporary absence from another state. The court also finds that the factors, noted by the Appellate Division in Sajjad as having been weighed by other courts, are to be considered as a part of the totality of circumstances test. In reaching this conclusion, the court recognizes that a totality of the circumstances test is

> somewhat more subjective than the bright-line, six-month rule imposed by the legislature; and while such subjectivity interferes with the UCCJEA's goal of uniform application of child custody jurisdiction laws between states; requiring temporary absences to be measured against the purposes and underlying assumptions of the intended bright-line rule in an objective test seems to provide a rule that is as precise as possible.
>
> [In re Marriage of Sampley, 347 P.3d 1281, 1287 (Mont. 2015).]

This approach, using a totality of the circumstances, is consistent with rulings from courts in other states. See In re M.S., 176 A.3d 1124, 1130 (Vt. 2017); S.M. v. A.S., 938 S.W.2d 910, 918 (Mo. Ct. App. 1997); Chick v. Chick, 596 S.E.2d 303, 308 (N.C. Ct. App. 2004). In In re M.S., the Vermont Supreme Court held that:

> The statute explains that in determining home state "[a] period of temporary absence" is included in the period. 15 V.S.A. § 1061(7). While the determination of whether a child "lived" in a state involves an objective test dependent on the child's physical presence and not based on subjective intent, this is different from the question of whether a period outside the state qualifies as a "temporary absence," which is determined by looking at the totality of the circumstances. In re A.W., 196 Vt. 228, 2014 VT 32, ¶ 21, 94 A.3d 1161; see In re S.M., 938 S.W.2d 910, 918 (Mo. Ct. App. 1997) (holding that in Missouri temporary absence under UCCJA is resolved by examining totality of circumstances); Chick v. Chick, 164 N.C. App. 444, 596 S.E.2d 303, 308 (N.C. Ct. App. 2004) (adopting totality-of-the-circumstances

> test to determine if absence from state amounted to "temporary absence" under UCCJEA).
>
> [In re M.S., 176 A.3d at 1130 n.1.]

Similarly, in S.M., the Court of Appeals of Missouri held that:

> In other jurisdictions, one court has focused on the length of the absence in determining if the absence was temporary, In re Marriage of Schoeffel, 268 Ill. App. 3d 839, 644 N.E.2d 827, 829, 206 Ill. Dec. 59 (Ill. App. 1994); while other courts have focused on whether the parties intended the absence to be temporary or permanent. Walt v. Walt, 574 So. 2d 205, 216 (Fla. App. 1991); Koons v. Koons, 161 Misc. 2d 842, 615 N.Y.S.2d 563, 567 (Sup. 1994). Still other courts don't refer specifically to the length of the absence or the intent of the parties, but look to the totality of the circumstances. Jones v. Jones, 456 So. 2d 1109, 1113 (Ala. App. 1984); Richardson v. Richardson, 255 Ill. App. 3d 1099, 625 N.E.2d 1122, 1124-25, 193 Ill. Dec. 1 (Ill. App. 1993); Joselit v. Joselit, 375 Pa. Super. 203, 544 A.2d 59, 63 (Pa. Super. 1988). In comparing the different approaches to resolving the temporary absence issue, the totality of the circumstances test is best suited to adequately deal with the variety of situations which occur, is consistent with prior Missouri decisions, and will be adopted by this court.
>
> [S.M., 938 S.W.2d at 918.]

Lastly, in Chick, the Court of Appeals of North Carolina held that:

> While the issue of whether an absence from a state amounted to a temporary absence has previously come before this Court, we have decided this issue on a case-by-case basis. See, e.g., Pheasant v. McKibben, 100 N.C. App. 379, 384, 396 S.E.2d 333, 336 (1990). Some courts in sister states have adopted

> certain tests for determining whether an absence from a state was a temporary absence. These tests include (1) looking at the duration of absence, (2) examining whether the parties intended the absence to be permanent or temporary, and (3) adopting a totality of the circumstances approach to determine whether the absence was merely a temporary absence. See S.M. v. A.S., 938 S.W.2d 910 (Mo. App. 1997). We deem the third option to be the most appropriate choice for several reasons. First, it comports with the approach taken by North Carolina courts in determining the issue of whether an absence was temporary on the basis of the facts presented in each case. Second, it incorporates considerations, such as the parties' intent and the length of the absence, that courts of sister states have found important in making this determination. Third, it provides greater flexibility to the court making the determination by allowing for consideration of additional circumstances that may be presented in the multiplicity of factual settings in which child custody jurisdictional issues may arise.
>
> [Chick, 596 S.E.2d at 308.]

For these reasons, the court finds that the totality of the circumstances is the appropriate test for determining whether an absence from a state constitutes a "temporary absence" for purposes of determining a child's home state under the UCCJEA. In applying the totality of the circumstances test, the court should consider (1) the parent's purpose in removing the child from the state, rather than the length of the absence, (2) whether the parent remaining in the claimed home state believed the absence to be merely temporary, (3)

whether the absence was of indefinite duration, and (4) any other circumstances particular to the case at issue.

III.

Following is the court's analysis of the factors.

(1) The parent's purpose in removing the child from the state, rather than the length of the absence.

The credible evidence in this case showed that the times the child stayed with plaintiff in New Jersey were temporary periods based on plaintiff's flight schedule. Moreover, even when plaintiff was available to have the child in New Jersey, the child's activities and ongoing programs in New York took precedence. All of the continuity and certainty in the child's schedule and activities was in New York. Based on the credible evidence, the time that the child spent with plaintiff in New Jersey was in the nature of visits.

The court finds that the move to New York was to allow for the child to have that continuity and certainty and to put her in a positive position for when she enters kindergarten. The credible evidence showed that the child's activities and programs at the Harlem Children's Center and Promise Academy tie to a charter school where the parties anticipate that the child will attend for kindergarten. There was no evidence that the parties at any time had

considered having the child participate in any significant ongoing activities and programs, attend school, or attend school related programs in New Jersey.

The credible evidence showed that more than six months prior to when plaintiff filed her application, the parties moved the child out of New Jersey and anchored her in New York. The court finds based on the credible evidence that the time the child spent in New Jersey was in the nature of visits to plaintiff. The periods the child spent in New Jersey were temporary absences from New York. As such, those times count as time in New York for purposes of determining the child's home state and establishing jurisdiction.

For these reasons, the court finds based on the credible evidence that this factor weighs in favor of finding that the times the child spent in New Jersey were temporary absences from New York and that New York is the child's home state.

(2) Whether the parent remaining in the claimed home state believed the absence to be merely temporary.

The credible evidence showed that the child's life was centered in New York.

It was obvious from defendant's testimony that he believed the time in New Jersey to be temporary absences from New York. Moreover, as noted in part I.B. of this opinion, the court found that plaintiff strained to give the time

in New Jersey a level of importance that she herself did not believe was warranted. The child was always returning to New York. The credible testimony was that even during times when plaintiff may have been available, activities and requests for time in New York took precedence.

The court finds that the testimony of each party showed that they both believed the absences from New York to be temporary.

For these reasons, the court finds based on the credible evidence that this factor weighs in favor of finding that the times the child spent in New Jersey were temporary absences from New York and that New York is the child's home state.

(3) Whether the absence was of indefinite duration.

As detailed above, the times the child spent in New Jersey were not of indefinite duration. Rather, they were tied to plaintiff's work schedule. Moreover, the credible testimony of both parties was that the child was always returned to New York for her scheduled time with defendant, programs, and activities. As such, the time spent in New Jersey could not be of indefinite duration. The parties understood that the child would always return to New York. The time in New Jersey was not only not of indefinite duration, but due to the ongoing programs in New York, the time in New Jersey was always for limited periods of time.

For these reasons, the court finds based on the credible evidence that this factor weighs in favor of finding that the times the child spent in New Jersey were temporary absences from New York and that New York is the child's home state.

(4) Any other circumstances.

The court does not find that any other circumstances need to be addressed in this case.

As detailed above, the court finds that all of the factors weigh in favor of finding that the time spent in New Jersey were periods of temporary absence from New York. Since all of the factors weigh in the same direction, the court need not consider whether any factor should be given more or less weight than any other. The court finds that under either a qualitative, or a quantitative analysis the totality of the circumstances shows that the time that the child spent in New Jersey during the six months prior to when plaintiff filed her application were temporary absences from New York. As such, the court finds that New York, and not New Jersey, is the child's home state for purposes of subject matter jurisdiction.[5]

---

[5] Having found that New York is the child's home state, the court need not conduct a significant connection analysis under N.J.S.A. 2A:34-65(a)(2)(a) and (b).

Since this state does not have jurisdiction, plaintiff's application is dismissed.[6] Defendant's counterclaim, to the extent that it contests jurisdiction, is granted.

[6] Based on the evidence presented, the court cannot find that a support award would issue in plaintiff's favor. For this reason, the part of her application seeking child support is denied.