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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0598-21**

JOSEPH OLUWAFEMI,

Plaintiff-Appellant,

v.

OGUNLEYE OLIADE,

Defendant-Respondent.

Submitted October 12, 2022 – Decided January 6, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Essex County, Docket
No. FD-07-1559-21.

Harriet E. Raghnael, attorney for appellant.

Freeman Law Center LLC, attorneys for respondent
(Adam C. Brown, of counsel and on the brief).

PER CURIAM

Plaintiff Joseph Oluwafemi appeals from a September 16, 2021 Family
Part order dismissing his complaint against defendant Ogunleye Oliade seeking

custody of their child. The court determined it lacked jurisdiction over the parties' multi-state custody dispute because New Jersey is not the child's home state under the New Jersey Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), N.J.S.A. 2A:34-53 to -95. We vacate the court's order and remand for further proceedings because the record presented to the court did not permit a proper determination of the child's home state under the UCCJEA without a plenary hearing.

I.

The parties are not married. They are the biological parents of a child born in New Jersey in 2019. Following the child's birth, the parties did not obtain any orders concerning the child's custody or addressing issues related to parenting time or child support.

On June 17, 2021, plaintiff filed a complaint and order to show cause seeking custody of the child and an order directing the child's return to New Jersey from Minnesota, where the child had been living with defendant since August 2020. In his certification supporting the order to show cause, plaintiff asserted defendant promised on August 18, 2020, she would return the child to New Jersey "sometime in January . . . 2021," she removed the child from New Jersey in August 2020, and she failed to honor her promise to return the child to

New Jersey in January 2021. Plaintiff further certified he "initially did not agree" to allow defendant to take the child to Minnesota, but he and defendant later "agreed that it would be [okay] and that [defendant] and [the child] would return to New Jersey in January 2021."

Plaintiff further certified defendant moved to Minnesota with the child "for work," and, "during the months of September [2020] through January [2021]," he and defendant "kept in frequent and regular contact." During that time, plaintiff spoke regularly with the child, and defendant kept plaintiff "up to date with [the child's] progress." According to plaintiff, defendant also kept "regular contact with him" and he "therefore . . . had no reason to believe . . . she was lying to [him]."

Plaintiff also certified that although January 2021 passed without defendant or the child's return to New Jersey, defendant "continued contact with [him]," and when he asked defendant when "she was coming back she continued to say soon." Plaintiff explained that in May 2021, defendant "cut off all contact with [him]," and he did not know defendant's or the child's location in Minnesota. Plaintiff asserted he "no longer [had] confidence" defendant was returning with the child to New Jersey, and he requested the court order the child's return to his custody in this State.

The Family Part conducted a virtual hearing on plaintiff's application, but defendant opted not to participate, claiming she was unavailable due to her work. The court entered a June 17, 2021 order granting temporary custody of the child to plaintiff, requiring defendant return the child to New Jersey by June 27, 2021, and scheduling a June 28, 2021 hearing on the order to show cause.

On June 28, 2021, the court conducted a virtual proceeding with the parties and their counsel. The court temporarily stayed the June 17, 2021 order directing the child's return to New Jersey "until the issue of jurisdiction is decided." The court ordered the parties communicate concerning the child, and allowed daily telephonic parenting time and in-person parenting time for plaintiff in Minnesota. The court also scheduled a July 14, 2021 case management conference.

Following the case management conference, the court entered an order scheduling the submissions of briefs on the issue of jurisdiction and allowing parenting time for plaintiff with the child in New Jersey during the last two weeks of August 2021. The court also scheduled a September 16, 2021 "hearing on the issue of jurisdiction only."

Neither party appeared at the scheduled hearing on the court's jurisdiction. Instead, the parties' counsel presented oral argument and the court rendered an

oral opinion finding it did not have jurisdiction because New Jersey is not the child's home state under the UCCJEA. More particularly, the court found Minnesota was the child's home state because the child resided in that state "for six (6) consecutive months prior to" the filing of plaintiff's custody complaint "on July 17, 2021."¹ The court further determined New Jersey is not the home state for purposes of determining jurisdiction under the UCCJEA because the child "has lived with [defendant] outside of New Jersey since at least" August 2020. The court dismissed the complaint, entering an order finding "New Jersey does not have jurisdiction under the UCCJEA."² This appeal followed.

¹ In its opinion, the court found plaintiff initiated "[t]he child custody proceeding" on "June 17, 2021," but in its order dismissing the complaint, the court stated plaintiff filed his complaint on "July 21, 2021." The order is in error. Plaintiff's complaint is dated June, 16, 2021, and the complaint and order to show cause in the Family Part could not have been filed later than on June 17, 2021, because the court conducted the initial hearing on the complaint and order to show cause on June 17, 2021, and the court entered the initial order in this matter on June 21, 2021.

² The court also determined it did not have significant connection jurisdiction, initial custody determination jurisdiction, and continuing jurisdiction over the child's custody under the UCCJEA. We do not address those determinations because plaintiff does not claim they are erroneous. See Skłodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) (holding an issue not briefed on appeal is deemed waived); Jefferson Loan Co. v. Session, 397 N.J. Super. 520, 525 n.4 (App. Div. 2008) (same).

II.

"The UCCJEA governs the determination of subject matter jurisdiction in interstate . . . custody disputes." Sajjad v. Cheema, 428 N.J. Super. 160, 170 (App. Div. 2012). Plaintiff argues the court erred by determining it lacked jurisdiction under the UCCJEA. Because the court's determination constitutes a legal determination, we review it de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

"The UCCJEA was enacted 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.'" Sajjad, 428 N.J. Super. at 170-71 (quoting Griffith v. Tressel, 394 N.J. Super. 128, 138 (App. Div. 2007)). Accordingly, our courts resolve multi-state child custody issues under the statutory framework established in the UCCJEA. Ibid. (citing Poluhovich v. Pellerano, 373 N.J. Super. 319, 357 (App. Div. 2004)).

The UCCJEA "prioritizes the use of the child's 'home state[]' as the exclusive basis for jurisdiction." P.H. v. L.W., 456 N.J. Super. 630, 637 (App. Div. 2018) (quoting Sajjad, 428 N.J. Super. at 171). Under the UCCJEA, a "court has initial child custody jurisdiction if it was the child's 'home state' when

the proceeding commenced, 'or was the home state of the child within six months before the' proceeding commenced 'and the child is absent from this State but a parent or person acting as a parent continues to live in this State.'" Ibid. (quoting N.J.S.A. 2A:34-65(a)(1)).

The UCCJEA defines "home state" as follows:

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.

[N.J.S.A. 2A:34-54 (emphasis added).]

"The statutory definition of 'home state' allows the child's 'temporary absence' from the home state within the six[-]month period." Sajjad, 428 N.J. Super. at 173 (citing N.J.S.A. 2A:34-54). "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."³ Bata v. Konan, 460 N.J. Super. 562,

³ We also observe a "child's time within a jurisdiction after a custody proceeding is initiated is irrelevant when determining the child's home state" under the UCCJEA. Ibid. Thus, any time the parties' child has spent in either New Jersey or Minnesota following the June 17, 2021 filing of plaintiff's complaint may not be considered in the determination of the child's home state. Ibid.

574 (Ch. Div. 2019). A "[t]emporary absence' within the ambit of the [UCCJEA] . . . means an absence for a limited period of time from the forum that is the residence for a permanent, or indefinite, period of time." Maqsudi v. Maqsudi, 363 N.J. Super. 53, 67 (Ch. Div. 2002).

In determining whether a child's absence from a putative home state is "temporary," courts have weighed multiple factors, including:

(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) the totality of the circumstances surrounding the child's absence.

[Sajjad, 428 N.J. Super. at 173 (citations omitted).]

See also Bata, 460 N.J. Super. at 576-78 (discussing factors considered in determining whether a child's absence from the putative home state is temporary under the UCCJEA). Delay by a parent in seeking relief is also relevant in determining whether "the parent remaining in the claimed home state believed the absence to be merely temporary," to whether the parent acquiesced or consented to their absence, and to "the totality of the circumstances surrounding the child's absence." Sajjad, 428 N.J. Super. at 173.

To properly determine a child's home state under the UCCJEA, "a Family Part judge must scrutinize the facts and make specific findings supporting the

court's assumption or rejection of subject matter jurisdiction." Id. at 175. Moreover, the determination of "[a]n inter-jurisdictional custody dispute must be subject to the analysis outlined in the UCCJEA," and "[m]ore often than not, [the] determination requires a plenary hearing." Ibid.

Here, the court rejected plaintiff's claim that New Jersey is the child's home state based on its finding the child lived in Minnesota with defendant from August 2020 to the June 17, 2021 filing of plaintiff's custody complaint in the Family Part. Thus, the court concluded Minnesota was the child's home state within six months of the commencement of the custody proceeding. See N.J.S.A. 2A:34-65(a)(1). The court made those findings without considering, or making any findings, as to whether any time the child spent in Minnesota should be considered temporary for purposes of determining her home state under N.J.S.A. 2A:34-54.

The only competent evidence addressed to the issue of the child's home state is plaintiff's certification supporting his request for the order to show cause. Defendant did not submit a certification or affidavit challenging plaintiff's version of the facts and, as such, for purposes of the determination of the jurisdictional issue presented, plaintiff's factual allegations are unrefuted. See R. 1:6-6 (providing a court may decide a motion "based on facts not appearing

of record, or not judicially noticeable" only where supported by "affidavits made on personal knowledge, setting forth only facts which are admissible in evidence"); see also Celino v. Gen. Accident Ins., 211 N.J. Super. 538, 544 (App. Div. 1986) (citing R. 1:6-6) ("Facts intended to be relied on which do not already appear of record and which are not judicially noticeable are required to be submitted to the court by way of affidavit or testimony.").

As noted, plaintiff certified defendant secured his permission to remove the child from New Jersey based on her "promise[] to return" in January 2021 and, although she did not return as promised, she continued to assure plaintiff she would return to New Jersey "soon" until she ceased contact in May 2021. In our view, plaintiff's unrefuted certification supports a finding that for at least some period of time, and perhaps until as late as May 2021 when defendant ceased all communications with plaintiff, the parties' child lived in Minnesota only temporarily. For example, according to plaintiff, he agreed to allow defendant to take the child to Minnesota based on her promise she would return the child to New Jersey in 2021, and defendant continued to assure plaintiff through January 2021 she would return to New Jersey with the child as she had promised. The certification, however, lacks details as to the precise nature of

defendant's promises to return, her assurances, and the circumstances under which they were made.

We are convinced that although plaintiff's factual assertions are not refuted, there are factual issues as to, and a need for a full evidentiary record to determine, whether defendant's removal of the child from New Jersey and stay in Minnesota was temporary and, if so, whether at some point it was no longer temporary for purposes of determining the child's home state under N.J.S.A. 2A:34-54 and N.J.S.A. 2A:34-65(a)(1). Because any time the child was only temporarily living in Minnesota is included in the six-month period used to determine whether New Jersey was the child's home state under N.J.S.A. 2A:34-65(a)(1), see Bata, 460 N.J. Super. at 574, the court must consider and decide the material factual issues pertinent to that determination at a plenary hearing. We remand for the court to conduct a plenary hearing so it may properly and fully "scrutinize the facts and make specific findings supporting the court's assumption or rejection of subject matter jurisdiction." Sajjad, 428 N.J. Super. at 175 (first citing R. 1:7-4; and then citing J.A. v. A.T., 404 N.J. Super. 132, 145 (App. Div. 2008)).

In sum, the record presented to the motion court did not support a dispositive determination that New Jersey is not the child's home state under the

UCCJEA as a matter of law. Given the fact issues raised by plaintiff's certification and the factors a court must consider in determining whether all or any part of the child's stay in Minnesota prior to the filing of plaintiff's custody complaint was temporary under N.J.S.A. 2A:34-54, see generally Sajjad, 428 N.J. Super. at 173, and whether New Jersey was the child's home state under N.J.S.A. 2A:34-65(a)(1) within six months of the filing of the custody complaint, it is necessary to remand for an evidentiary hearing to establish the full record required for those determinations.

Our decision to vacate the court's order and remand for a plenary hearing shall not be construed as expressing an opinion on the merits of whether our courts have jurisdiction over the parties' custody dispute. As we have explained, a determination of the child's home state under the UCCJEA requires resolution of all pertinent fact issues based on the evidence admitted at the remand hearing. The court shall in its discretion conduct such proceedings necessary to conduct the remand hearing, and the parties shall be permitted to make whatever arguments are pertinent to a determination of jurisdiction under the UCCJEA, including all aspects of the jurisdictional issue under N.J.S.A. 2A:34-65.

Vacated and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION