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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3631-20

JEFFREY ANDERSEN,

Plaintiff-Respondent,

v.

SHERYL ANDERSEN,¹

Defendant-Appellant.

Argued December 21, 2022 – Decided February 6, 2023

Before Judges Firko and Natali.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Mercer County,
Docket No. FM-11-0919-10.

Keith D. Sklar (Law Offices of Sklar Smith-Sklar,
LLC) argued the cause for appellant.

Jeffrey Andersen, respondent, argued the cause pro se.

PER CURIAM

¹ Now known as Sheryl Guilmette.

Defendant Sheryl Andersen, a resident of the Commonwealth of Virginia, appeals from a July 6, 2021 Family Part order that denied her motion to vacate all prior custody orders entered in Mercer County from July 2014 to the present involving her three children with plaintiff Jeffrey Andersen: Justin, Jason, and Adin. Defendant also appeals from the two September 11, 2015 guardianship orders entered in the Mercer County Probate Part regarding Justin and Jason, the parties' adult autistic twins, and have them returned to her custody and residence in Virginia. Because we conclude the Mercer County Family Part properly exercised jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), N.J.S.A. 2A:34-53 to -95, we affirm all of its orders. We also affirm the September 11, 2015 guardianship orders because the appeal as to those orders is untimely.

I.

In 2011, the parties divorced in the State of New Jersey. Defendant did not contest in personam jurisdiction. An agreement addressing child custody, parenting time, equitable distribution, child support, and alimony dated March 21, 2011, was incorporated into their final judgment of divorce (FJOD). Jason and Justin were born in 1997, and Adin was born in 2002.² In their agreement,

² Adin is now twenty years old and not part of this appeal.

the parties agreed to "share joint legal custody" of the three children. Defendant was designated as the "primary residential parent." The parties stated in their agreement that they were "supportive of their son, Adin, attending and obtaining a four-year college degree" or other post-high school education. However, Jason and Justin were both noted to have autism, which the agreement recognized may raise "a future issue as to the[ir] emancipation." According to defendant, the children moved to Virginia in September or October of 2009³ and lived with her when the parties separated, at the time the parties divorced, and up through June of 2014.

In 2014, defendant was convicted of embezzlement in Virginia and sentenced to a six-month term of imprisonment, which was to commence on July 1, 2014, at the end of the school year. Upon learning of defendant's impending incarceration, plaintiff, a New Jersey resident, filed a motion in the Mercer County Family Part on May 8, 2014, to modify the FJOD and agreement and be designated as the parent of primary residence (PPR) for the three children. Despite having notice of plaintiff's pending motion to be designated as the PPR,

³ In her merits brief, defendant contends the children moved to Virginia in September 2009. This conflicts with defendant's certified representations in the record that the children moved to Virginia in October of 2009. This is not germane to our decision.

defendant surreptitiously initiated custody proceedings in Virginia requesting that her mother, Lynda Jackson, who resides in Virginia Beach, be granted custody of the children during defendant's period of incarceration. Defendant did not proffer a reason her mother should have custody when her agreement with plaintiff, as incorporated in the FJOD, provided that plaintiff had joint custody of the children. The record also does not indicate if defendant properly registered the FJOD in Virginia. Until the filing of defendant's 2014 Virginia action, all post-judgment motions filed by the parties relative to the children and financial issues had been filed in Mercer County.

On July 2, 2014, at an emergency hearing, a Virginia judge issued an order granting temporary custody to Jackson. The order stated that defendant "turned the children over to her mother" prior to going to jail. The Virginia judge recognized the "parents share legal custody and mother has primary physical custody." The record shows plaintiff was present at the Virginia hearing.

In addition, the Virginia judge noted plaintiff had filed a motion for change of custody in New Jersey, and a hearing was scheduled in Mercer County on July 11, 2014. The Virginia order stated the judge would "contact the court in [New Jersey] to determine the issue of jurisdiction." The order also provided the children were to remain in Jackson's "temporary care" pending further order

of the court. In the interim, plaintiff was granted limited visitation rights with the children.

That same day, July 2, 2014, a Family Part judge in Mercer County considered the ex parte emergent application of plaintiff and awarded him "temporary sole residential and temporary sole legal custody" of the children. The order provided the children be returned to New Jersey and that plaintiff be allowed to collect them in Virginia from Jackson's home or any other location. The New Jersey and Virginia judges had promptly conferred by telephone and agreed New Jersey had jurisdiction over the case.⁴

The next day, the Virginia judge ordered Jackson to turn over custody of the children to plaintiff pursuant to the July 2, 2014 New Jersey order. The Virginia order provided that "[i]f the New Jersey court determines that it will retain jurisdiction, the proceeding in [the Virginia] court shall be dismissed." Plaintiff alleges Jackson initially refused to comply with the order, and he filed charges against her in Virginia for parental obstruction.

⁴ Virginia's General Assembly adopted the UCCJEA "'to [a]void jurisdictional competition and conflict with courts of other states,' and to '[p]romote cooperation with the courts of other states to the end that a custody decree is rendered in the state that can best decide the case in the interest of the child.'" Foster v. Foster, 664 S.E.2d 525, 526 (Va. Ct. App. 2008) (alterations in the original) (citing Va. Code Ann. §§ 20-146.38(A)(1), (2) (effective Mar. 19, 2001)).

On July 11, 2014, the Mercer County judge conducted a hearing and ordered that New Jersey shall retain jurisdiction, and she granted plaintiff residential custody of the children without prejudice to defendant. Defendant's current husband and mother appeared at the Mercer County hearing on her behalf since defendant was incarcerated. The judge instructed Jackson to turn the children over to plaintiff, otherwise parental obstruction charges would be referred to the Virginia judge for handling. Two days later, Jackson returned the children to plaintiff. The order also terminated plaintiff's child support obligation and provided that defendant's child support obligation would be established pending her release from prison. Since 2014, the children have continuously resided with plaintiff in New Jersey.

At a later date not specified in the record, defendant filed a motion in Mercer County Family Part seeking to resume custody of the children, ostensibly upon her release from prison. On April 9, 2015, the judge entered an order reserving decision pending a plenary hearing. The order provided the parties were to provide updated case information statements (CIS) within twenty days, engage in discovery, and attend financial mediation prior to the hearing. By consent of the parties, a joint custody expert was appointed to perform a custody evaluation. The judge scheduled a plenary hearing on the issues of

custody, parenting time, reimbursement of any overpaid child support, and child support over the course of six days in July 2015.

Defendant failed to provide discovery, and plaintiff filed a motion to dismiss defendant's motion for change of custody without prejudice pursuant to Rule 4:23-5(a)(1).⁵ On August 21, 2015, the judge granted plaintiff's motion and dismissed defendant's motion for change of custody without prejudice. Defendant never provided the outstanding discovery and did not move to restore

⁵ Rule 4:23-5(a)(1) provides for "Dismissal Without Prejudice." In pertinent part, the Rule provides:

If a demand for discovery pursuant to R[ule] 4:17, R[ule] 4:18, or R[ule] 4:19 is not complied with and no timely motion for an extension or a protective order has been made, the party entitled to the discovery may, except as otherwise provided by paragraph (c) of this rule, move, on notice, for an order dismissing or suppressing the pleading of the delinquent party. The motion shall be supported by an affidavit reciting the facts of the delinquent party's default and stating that the moving party is not in default in any discovery obligations owed to the delinquent party. Unless good cause for other relief is shown, the court shall enter an order of dismissal or suppression without prejudice The delinquent party may move on notice for vacation of the dismissal or suppression order at any time before the entry of an order of dismissal or suppression with prejudice.

her custody motion under Rule 4:23-5(a)(1). Therefore, the plenary hearing never proceeded.

Complaints thereafter were filed in the Mercer County Probate Part seeking to have Jason and Justin adjudicated as incapacitated persons and for the appointment of a guardian of their persons and property.⁶ The twins were eighteen years old at the time. Defendant was notified of the proceedings by certified mail, return receipt requested, and regular mail. The certified mail was not claimed, but the regular mail was not returned and constituted valid service on defendant under Rule 4:4-4(b)(1)(C).

On September 11, 2015, the Probate Part judge adjudicated Jason and Justin as "incapacitated person[s] . . . unfit and unable to govern" themselves or their affairs. Plaintiff consented to his appointment as guardian for Jason and Justin. Defendant did not oppose the applications to have Jason and Justin declared incapacitated and did not object to plaintiff serving as their guardian. Defendant did not appeal from the September 11, 2015 Judgments of Legal Incapacity and Appointments of Guardian for Jason and Justin.

⁶ Docket numbers MER-15-14488 and MER-15-1449, respectively. These complaints are not included in the appendices.

More than four years later on September 27, 2019, defendant filed a motion in the Mercer County Family Part seeking, in pertinent part, to vacate all prior New Jersey judgments entered on July 2, 2014, and thereafter, and to reinstate custody of the parties' children to her. Plaintiff filed a notice of cross-motion to compel defendant to provide proof of a life insurance policy, submit an updated CIS, and increase her child support obligation. On February 24, 2020, in an oral opinion, the judge denied defendant's motion to vacate all prior judgments from July 2, 2014, and onward, and denied her application to reinstate custody.

The judge disagreed with defendant's position that there "was no time limit" to move to vacate the orders, finding Rule 4:50-1(a), (b), and (c), and Rule 4:50-2 state the motion must be made "within a reasonable time" and "not more than one year after the judgment, order[,] or proceeding was entered or taken." With regard to the issues raised in plaintiff's cross-motion, the judge reserved decision pending receipt of both parties' updated CIS's. A February 24, 2020 memorializing order was entered.⁷

⁷ Defendant sought to appeal from the February 24, 2020 order but we determined it was not a final order. The parties had not filed their updated CIS's as of the entry of that order. On July 6, 2021, upon application of defendant, the judge entered an order deeming final the February 24, 2020 decision denying

On appeal, defendant argues all of the custody-related orders entered in New Jersey from July 2, 2014, through July 6, 2021, are invalid because the three children were residents of Virginia, and this State improperly exercised jurisdiction over them in violation of the UCCJEA.

II.

We accord "great deference to discretionary decisions of Family Part judges," Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (citations omitted), in recognition of the "family courts' special jurisdiction and expertise in family matters," N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Hitesman v. Bridgeway, Inc., 218 N.J. 8, 26 (2014) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

A.

Jurisdictional questions in interstate child custody disputes are reviewed de novo. See Sajjad v. Cheema, 428 N.J. Super. 160, 170 (App. Div. 2012).

defendant's "application to vacate prior judgments from July 2, 2014 and thereafter."

"The UCCJEA governs the determination of subject matter jurisdiction in interstate, as well as international, custody disputes." Ibid. (citing Greely v. Greely, 194 N.J. 168, 178 (2008)). It serves to "ensure that custody determinations are made in the state that can best decide the case." Griffith v. Tressel, 394 N.J. Super. 128, 138 (App. Div. 2007). The UCCJEA was enacted "to avoid jurisdictional competition and conflict' between jurisdictions in favor of 'cooperation with courts of other states.'" Sajjad, 428 N.J. Super. at 170-71 (quoting Griffith, 394 N.J. Super. at 138). To address a multi-state child custody issue, courts in the Family Part are to follow the procedures in the UCCJEA. Id. at 171 (citing Poluhovich v. Pellerano, 373 N.J. Super. 319, 357 (App. Div. 2004)).

The UCCJEA typically "prioritizes the use of the child's 'home state,' as the exclusive basis for jurisdiction of a custody determination, regardless of the residency of the parents." Ibid. (citing Dalessio v. Gallagher, 414 N.J. Super. 18, 26 (App. Div. 2010)); accord Bata v. Konan, 460 N.J. Super. 562, 572 (Ch. Div. 2019). A New Jersey 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." N.J.S.A. 2A:34-65(a)(1).

Based on the undisputed facts now before us, the children had been living with defendant in Virginia since sometime in 2009. Consequently, New Jersey was not the children's home state when plaintiff filed his motion in Mercer County on May 8, 2014, seeking to be the PPR.⁸ However, lack of home state status is not the only factor to consider under the UCCJEA and did not divest New Jersey of jurisdiction over the custody issue here. A New Jersey court may exercise jurisdiction if a court with home-state jurisdiction declines to exercise it, and two other factors are present:

(a) the child and the child's parents, or the child and at least one parent or a person acting as a parent have 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[.]

[N.J.S.A. 2A:34-65(a)(2).]

In the matter before us, plaintiff, the children's biological father and joint legal custodial parent, resided in New Jersey in 2014 and continues to reside in

⁸ We also note that New Jersey was not the children's home state when the FJOD was granted.

this State. Moreover, the agreement—which addressed custody and parenting time—was entered in New Jersey in 2011—two years after defendant moved to Virginia with the children. Thus, we conclude New Jersey had subject matter jurisdiction over the custody issue on May 8, 2014, grounded on: (1) the FJOD, because New Jersey made the initial custody determination by incorporating the parties' agreement into the FJOD, see N.J.S.A. 2A:34-65(a)(1); (2) Virginia divesting itself of jurisdiction; and (3) the "significant connection" and "substantial evidence" tests because plaintiff has been and continues to be a bona fide resident of this State.

Notably, the Virginia judge readily conceded New Jersey was the appropriate forum to "retain" jurisdiction of the custody issue since no other jurisdiction ever modified the New Jersey custody agreement incorporated into the FJOD. Based upon our de novo review, New Jersey properly exercised jurisdiction over this matter in 2014, and thereafter, and there was no violation of the UCCJEA. Moreover, we note the maternal grandmother, Jackson, was not entitled to be awarded custody of the children when plaintiff was ready, willing, and able to parent them as the designated joint custodial parent in the FJOD. The two judges promptly determined that New Jersey should retain

jurisdiction over the custody matter, and the Virginia action was dismissed by the court.

B.

Defendant next argues the Mercer County Family Part judge violated the UCCJEA by having an "ex[] parte communication" with the Virginia judge "without the participation of the parties," before the decision concerning jurisdiction was made. New Jersey courts are permitted to communicate with a court in another state about a proceeding arising under the UCCJEA. N.J.S.A. 2A:34-62(a). The statute provides that the "court may allow the parties to participate in the communication." N.J.S.A. 2A:34-62(b) (emphasis added). A plain reading of the statute indicates the parties' participation is discretionary, and not mandatory as defendant asserts.

We discern there was no prejudice to either party resulting from the ex parte communication between the two judges warranting reversal or vacating any orders. Although there is no transcript memorializing the communication, it is evident the judges engaged in a jurisdictional analysis based upon the orders entered in Virginia and New Jersey. Both judges readily agreed New Jersey was the more appropriate forum to handle the custody issue over eight years ago. Defendant's argument is devoid of merit.

C.

Finally, we address the Judgments of Legal Incapacity and Appointments of Guardian for Jason and Justin. First, defendant never appealed from the September 11, 2015 judgments and therefore, her appeal is untimely. See R. 2:4-1(a) (requiring appeals from judgments, orders, decisions, actions, and rules to be filed within forty-five days of their entry). We emphasize that the Judgments were entered by the Probate Part of the Chancery Division and not the Family Part. And, Jason and Justin are now twenty-five years old. Consequently, the Family Part is now divested of child custody jurisdiction over Jason and Justin because they are beyond the age of twenty-three. See R. 4:3-1(a)(4)(I).⁹ Moreover, the judgments entered by the Probate Part dealing with

⁹ Rule 4:3-1(a)(4)(I) states:

(I) Post-Judgment Relief Relating to Incapacitated Adult Child of Parents Subject to Family Part Order. An action seeking to modify or enforce the terms of a Chancery Division, Family Part order addressing custody and/or parenting time/visitation of an unemancipated minor child who was later adjudicated incapacitated after reaching age [eighteen], shall be filed and heard in the Chancery Division, Probate Part. If the action affects support and the incapacitated child has not yet turned age [twenty-three], the matter shall be filed and heard in the Chancery Division, Family Part. If the action affects support and the incapacitated

their substantial disabilities supersede any prior Family Part orders regarding their custody.

Second, we add that by September 11, 2015, when the judgments were entered, Jason and Justin had continuously resided in New Jersey with plaintiff for well over six months. Clearly, jurisdiction was conferred in New Jersey by that point under UCCJEA's home state definition. See N.J.S.A. 2A:34-67. In sum, the Judgments of Legal Incapacity and Appointments of Guardian for Jason and Justin were validly entered, and defendant's appeal as to this issue is dismissed as untimely.

We conclude that defendant's remaining arguments—to the extent we have not addressed them—lack sufficient merit to warrant any further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, dismissed in part.

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


CLERK OF THE APPELLATE DIVISION

child has turned age [twenty-three], the matter shall be filed and heard in the Chancery Division, Probate Part pursuant to R[ule] 4:86-7A. Notwithstanding the foregoing, when an application is filed relating to support of an incapacitated child over the age of [twenty-three] and either parent remains subject to a Family Part support or financial maintenance order related to other dependents, the support issue for the incapacitated child shall be determined in the Chancery Division, Family Part.