STATE OF MICHIGAN

COURT OF APPEALS

PHILLIP EDWARD ROBERTS, JR.,

Plaintiff-Appellant,

v

CHRISTINE DAY,

Defendant-Appellee.

UNPUBLISHED
May 21, 2020

No. 352015
Oceana Circuit Court
Family Division
LC No. 19-013709-DP

Before: TUKEL, P.J., and MARKEY and GADOLA, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order dismissing his paternity action after the court concluded that a California court had jurisdiction over matters concerning the child at issue because California, not Michigan, was the child's home state. We affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The child was born to defendant in April 2018. The birth certificate did not identify the father, nor was an affidavit or acknowledgment of paternity executed. Defendant also had three other children. On December 3, 2018, defendant was arrested for felonious assault for threatening neighbors with a handgun. Plaintiff was incarcerated at the time. The next day the Department of Health and Human Services (DHHS) checked on the welfare of the four children and discovered that they were being cared for by two 17-year-old girls who were unable to provide long-term care for the children. On December 5, 2018, the DHHS filed a petition with the circuit court requesting removal of defendant's children. The petition indicated that plaintiff was the putative father of the child at issue in this case, a boy, and one of the other children, a girl. The parties were not married but had been in a volatile relationship marked by domestic violence. There is nothing in the lower court record showing that the DHHS's petition was authorized or that the court took jurisdiction over the children upon adjudication. Plaintiff, however, has presented an order after a preliminary hearing signed by a judge on December 5, 2018. The order stated that the children had been left without adequate supervision for a couple of days and that they were to be taken into protective custody by the DHHS, which was ordered to provide the children with care and supervision. The record is a bit unclear regarding what transpired next in the child protective proceedings. But an

"amended" DHHS petition prepared about three months later concerning defendant's three other children referred back to the circumstances surrounding the original petition and stated:

> The children were without proper care and custody. A petition was filed and the children were placed with DHHS. The children were subsequently re-placed with [defendant] when she was released from jail.

It does not appear that anything came of the original petition of December 5, 2018, after defendant was released from jail.

On January 16, 2019, defendant executed a power of attorney "regarding the care, custody and property of" the child. The power of attorney was granted to SB, who, along with her husband, NB, resided in California and wished to adopt the child. According to affidavits by SB and NB, SB had arrived in Michigan at some point in time to pursue the adoption, and she took control and care of the child on January 19, 2019, pursuant to the power of attorney. NB arrived from California on the evening of January 19, 2019, and joined his wife and the child; they all stayed at a Muskegon hotel. On February 4, 2019, defendant executed an independent adoption agreement placing the child for adoption with the California couple, SB and NB. Defendant also signed a waiver of her right to revoke consent for the adoption. On February 4, 2019, defendant additionally signed an interstate compact placement request, which was agreed to and signed by a representative from the Michigan Interstate Compact Office on February 7, 2019, and agreed to and signed by a representative of the California Department of Social Services on February 8, 2019.

On February 13, 2019, the California couple returned home to California with the child. They filed a request for adoption in a California court on February 25, 2019. As part of that proceeding, California counsel for SB and NB sent a letter to plaintiff notifying him of the pending adoption. The letter provided that plaintiff must bring legal action within 30 days of receiving the notice if he wished to challenge the adoption and that plaintiff's failure to do so might result in the termination of his parental rights. The associated proof of service indicated that the letter was personally served on plaintiff on April 16, 2019. Plaintiff did not bring legal action in California within the 30-day period. Indeed, the record does not reveal that plaintiff ever appeared in the California court, which is a matter that we address at the end of this opinion.

On August 5, 2019, plaintiff filed a paternity complaint in the instant Michigan case in an attempt to establish that he is the biological and legal father of the child. Plaintiff argued that it was in the child's best interests for a Michigan court to determine issues involving custody and parenting time. In response, defendant asserted that the child's home state was California because of the adoption proceedings. She also contended that the child had been in the continuous care of the California couple since early 2019. Therefore, according to defendant, it was unquestionably in the child's best interests to stay in California.

On August 26, 2019, the California court entered an order granting temporary custody of the child to SB and NB. The court noted that defendant had consented to the child's adoption and that the child had no preexisting relationship with plaintiff. The California court scheduled a hearing regarding a petition to terminate plaintiff's parental rights to the child that had been filed in July 2019. On September 23, 2019, the court in California entered an order accepting

jurisdiction of the adoption of the child, which included underlying custody proceedings, i.e., the complaint to establish paternity and the petition to terminate plaintiff's parental rights. The order explained that following a scheduled phone conference with the Michigan court pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*., the California court found that the child's home state was California. The order indicated that plaintiff and his attorney had been provided notice of the hearing by personal service and that neither appeared. The order further explained that plaintiff, in light of his lack of participation, was not considered an alleged or presumed father pursuant to California statute and that DNA testing to show paternity would be required if plaintiff wished to proceed. DNA testing was never completed.

Defendant moved to dismiss plaintiff's paternity complaint in Michigan, asking the trial court to defer jurisdiction to the California court. Defendant asserted that the Michigan court should defer jurisdiction considering that the adoption proceedings had already commenced in California and that the child had been placed in the care of the prospective adoptive parents since February 2019. Plaintiff, on the other hand, maintained that the Michigan court should exercise jurisdiction over the paternity complaint. Plaintiff objected to the adoption and the adoption process. According to plaintiff, Michigan had jurisdiction over the paternity complaint under the UCCJEA because Michigan was the child's home state. Plaintiff also argued that Michigan was the most convenient forum regarding evidence and witnesses. Plaintiff further contended that the interstate compact on the placement of children act (ICPCA), MCL 3.711 *et seq.*, provided that Michigan should retain jurisdiction under the circumstances.

The trial court held a hearing on defendant's motion to dismiss plaintiff's paternity complaint. Defendant argued that she did not believe that the UCCJEA applied to adoption proceedings or paternity complaints, but even if the court considered the UCCJEA, it should conclude that California was the child's home state. Defendant claimed that the intent was for the child to move to California with SB and NB as early as February 4, 2019. And the child had been living with the couple for over six months. Defendant maintained that plaintiff could have contested the adoption in the California court; however, he failed to participate in any of the hearings, and he did not submit to DNA testing. Defendant asserted that the child could not wait any longer for permanency and that the California court had already entered two custody orders.

In response, plaintiff argued that the trial court's phone conference with the California court did not comply with the UCCJEA because no record of the conference call was made. Plaintiff claimed that Michigan was the child's home state because he was born here and lived here until February 13, 2019, which was within six months of the time plaintiff filed his paternity complaint. Plaintiff also asserted that the child protective proceedings involving the child in December 2018 effectively created a child custody order, and the Michigan court had not relinquished jurisdiction. Plaintiff argued, therefore, that the Michigan court must exercise continuing jurisdiction over the paternity action and the adoption proceedings.

The trial court took the matter under advisement and subsequently issued a short written opinion and order on December 3, 2019, granting defendant's motion to dismiss on the basis of jurisdiction. The trial court, citing MCL 722.1102(d), first indicated that the UCCJEA defines a child custody proceeding as encompassing a paternity action and a proceeding to terminate parental rights. The court then stated that a child's home state is defined under MCL 722.1102(g)

as the state where the child lived with a parent or person acting as a parent for at least six months immediately before the commencement of a child custody proceeding. The trial court next discussed some of the procedural history of the litigation in California, noting that it had communicated with a judge in California, but "the discussion was centered around schedules, calendars, court records, and similar matters that [did] not require the parties to be present or the making of a record." The trial court also observed that "[a]lthough the Michigan Family Division Court ha[d] not entered an order regarding jurisdiction until now, the California Superior Court did enter an order on September 23, 2019 declaring California to be the home state of [the child], and asserted it's [sic] jurisdiction under the UCCJEA and Family Code of California." The trial court then ruled as follows:

> [The child] was placed in the care and custody of [SB and NB] on February 4, 2019, pursuant to the adoption placement agreement signed by [defendant]. The [California couple] were acting as the parents of [the child] since February 4, 2019, and have met the statutory requirement of a minimum of 6 consecutive months, which included a temporary absence from California for 9 days. [Plaintiff] filed the paternity action on August 5, 2019, which is 6 months and 1 day after [the child] went to live with the [couple]. Defendant's motion is granted, and I hereby determine that the home state of [the child] is California. The pending paternity action in this court is hereby dismissed. . . . .

On December 20, 2019, the California court entered an order confirming its jurisdiction and noting the Michigan court's ruling dismissing plaintiff's paternity complaint. The California court agreed that the child's home state was California for the reasons stated by the Michigan court. The California court also mentioned that its earlier phone conference with the Michigan court only covered nonsubstantive matters and thus no record of the conference call was made. On February 3, 2020, the California court entered an order terminating plaintiff's parental rights to the child, allowing the adoption to proceed regardless of plaintiff's consent.

II. ANALYSIS

On appeal, plaintiff argues that the trial court erred in determining that California was the child's home state under the UCCJEA, that the court erred by failing to apply the ICPC, and that the court erred by deferring to the exercise of jurisdiction by the California court.

A. STANDARDS OF REVIEW

In *Cheesman v Williams*, 311 Mich App 147, 150-151; 874 NW2d 385 (2015), this Court observed:

> Absent a factual dispute, this Court reviews de novo, as a question of law, whether a trial court has jurisdiction under the UCCJEA. But even if a court may exercise jurisdiction under the UCCJEA, the decision do so is within the discretion of the trial court, and will not be reversed absent an abuse of that discretion. Generally, an appellate court should defer to the trial court's judgment, and if the trial court's decision results in an outcome within the range of principled outcomes, it has not abused its discretion. Additionally, the clear legal error standard applies

where the trial court errs in its choice, interpretation, or application of the existing law. This Court reviews issues of statutory construction de novo. [Quotation marks, citations, and alterations omitted.]

B. RULES OF STATUTORY CONSTRUCTION

This Court's role in construing statutory language is to discern and ascertain the intent of the Legislature, which may reasonably be inferred from the words in the statute. *Mich Ass'n of Home Builders v City of Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019). We must focus our analysis on the express language of the statute because it offers the most reliable evidence of legislative intent. *Id.* When statutory language is clear and unambiguous, we must apply the statute as written. *Id.* A court is not permitted to read anything into an unambiguous statute that is not within the manifest intent of the Legislature. *Id.* Furthermore, this Court may not rewrite the plain statutory language nor substitute its own policy decisions for those decisions already made by the Legislature. *Id.* at 212-213. "Judicial construction of a statute is only permitted when statutory language is ambiguous." *Noll v Ritzer*, 317 Mich App 506, 511; 895 NW2d 192 (2016). A statute is ambiguous when an irreconcilable conflict exists between statutory provisions or when a statute is equally susceptible to more than one meaning. *People v Hall*, 499 Mich 446, 454; 884 NW2d 561 (2016). "When faced with two alternative reasonable interpretations of a word in a statute, we should give effect to the interpretation that more faithfully advances the legislative purpose behind the statute." *People v Adair*, 452 Mich 473, 479-480; 550 NW2d 585 (1996).

C. THE UCCJEA

The UCCJEA "governs interstate child custody disputes." *Foster v Wolkowitz*, 486 Mich 356, 364; 785 NW2d 59 (2010). Under the UCCJEA, a "child-custody proceeding" is defined as "a proceeding in which legal custody, physical custody, or parenting time with respect to a child is an issue[,]" and it includes "a proceeding for . . . paternity [and] termination of parental rights." MCL 722.1102(d).[1] And a "child-custody determination" is defined as "a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child." MCL 722.1102(c).

MCL 722.1202(1) provides, in relevant part, that "a court of this state that has made a child-custody determination . . . has exclusive, continuing jurisdiction over the child-custody determination . . . ." Plaintiff argues that the circuit court in the 2018 child protective proceedings made a child-custody determination and thus had continuing jurisdiction with which the trial court and the California court improperly interfered. We disagree. In the child protective proceedings, the circuit court ordered the DHHS to temporarily take the child into protective custody and to provide for his care and supervision. We question whether the removal order constituted an order regarding "legal custody, physical custody, or parenting time," *as that language is used and intended in* MCL 722.1102(c). Regardless, there is no indication that the court in the 2018 child protective proceedings ever took "jurisdiction" over the child; therefore, it would be wholly

[1] MCL 722.1103 provides that the UCCJEA "does not govern an adoption proceeding."

illogical to find that the court had "continuing" jurisdiction over a child-custody determination. Accordingly, we reject plaintiff's argument.

Plaintiff's next argument concerns MCL 722.1201, which addresses jurisdiction with respect to an initial child-custody determination and provides in full as follows:

> (1) Except as otherwise provided in section 204 [inapplicable], a court of this state has jurisdiction to make an initial child-custody determination only in the following situations:
>
> (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.
>
> (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 208,2 and the court finds both of the following:
>
> (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.
>
> (ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.
>
> (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.

A "home state" is defined in MCL 722.1102(g) as follows:

> [T]he 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.

We first conclude that Michigan was not the child's home state under MCL 722.1201(1)(a) when the paternity suit was filed. The Michigan paternity action was commenced on August 5, 2019, and February 5, 2019, would be the six-month mark before the commencement of the action.[2] On February 5, 2019, the child was still in Michigan and did not leave the state for California until February 13, 2019. Therefore, Michigan *had been* the child's home state within six months before the commencement of the paternity action. MCL 722.1201(1)(a); MCL 722.1102(g). And, the child was absent from Michigan when the paternity action was filed on August 5, 2019. MCL 722.1201(1)(a). But there was no "parent or person acting as a parent" continuing to live in Michigan when the paternity suit was commenced. *Id.* Certainly no one in Michigan was acting as the child's parent at that point. See MCL 722.1102(m). Further, plaintiff was not a "parent" because there was no DNA test proving paternity; there was no affidavit or acknowledgment of paternity; there was no marriage, and there was no legal ruling declaring him to be a parent. Moreover, defendant could no longer be considered a "parent" because back on February 4, 2019, she had signed the adoption agreement, the waiver of the right to revoke the consent for adoption, and the interstate compact placement request. Accordingly, Michigan was not the child's home state.

California, however, was also not the child's home state under MCL 722.1201(1)(a); MCL 722.1102(g), when the paternity action was commenced. The child had not "lived" with SB and NB in California "for at least 6 consecutive months immediately before the commencement of" the paternity action, MCL 722.1102(g), where the paternity action was filed on August 5, 2019, and where the child did not go to California until February 13, 2019. See *Ramamoorthi v Ramamoorthi*, 323 Mich App 324, 339; 918 NW2d 191 (2018) (the word "lived" in the definition of "home state" means the state where the child is physically present).

Nevertheless, the trial court did not have jurisdiction to make a child-custody determination with respect to plaintiff's paternity action under any of the other subdivisions of MCL 722.1201(1), as required to exercise jurisdiction. First, at the time the paternity complaint was filed, the child did not have a significant connection to Michigan, nor was there substantial evidence available in Michigan regarding the child's personal relationships, training, protection, and care. MCL 722.1201(1)(b)(*i*) and (*ii*). Second, the California court did not and never indicated that it would decline jurisdiction. MCL 722.1201(1)(c). Third, a California court would have had jurisdiction under MCL 722.1201(1)(b) because the child and persons acting as parents, SB and NB, had a significant connection to California and substantial evidence was available in California regarding the child's personal relationships, training, protection, and care. MCL 722.1201(1)(d). Accordingly, we conclude that the trial court did not err in ruling that a Michigan court did not have jurisdiction under MCL 722.1201, albeit for the wrong reason. See *Klooster v Charlevoix*, 488 Mich 289, 310; 795 NW2d 578 (2011) (stating that "an appellate court may uphold a lower tribunal's decision that reached the correct result, even if for an incorrect reason").

Plaintiff also argues that the trial court violated the UCCJEA by not creating a record of the phone conference that it held with the California court. We disagree. Although generally a

[2] The term "commencement" is defined as "the filing of the first pleading in a proceeding." MCL 722.1102(e).

record must be made of such communications, a record need not be made of "[a] communication between courts on schedules, calendars, court records, and similar matters[.]" MCL 722.1110(3). Both the Michigan and the California courts stated that the phone conference concerned the matters listed in MCL 722.1110(3); therefore, we reject plaintiff's argument.

D. THE ICPCA

Plaintiff argues that the trial court erred by failing to apply the ICPCA to find jurisdiction, which act the court completely ignored. The introduction to the ICPCA states that it is an act "providing for the joinder of this state in an interstate compact on the placement of children[.]" Under the ICPCA, Article 5(1) of MCL 3.711 provides:

> The *sending agency* shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein. [Emphasis added.]

A "sending agency" is defined as "a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; *a person*, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state." MCL 3.711(Article II[b]) (emphasis added). In this case, the interstate compact placement request indicated that defendant was the "sending agency" and not the Michigan court. See *People ex rel AJC*, 88 P3d 599, 612-613 (Colo, 2004) (concluding that "the sending agency was not the state of Missouri but rather a person" who had initiated placement of the child, and she did not invoke powers under the ICPCA). As a result, given that defendant did not seek to exercise a right under the ICPCA, the Michigan court did not have jurisdiction over the case pursuant to the ICPCA. See *Moore v Asente*, 110 SW3d 336, 348 (Ky, 2003) ("we hold that the ICPC[A] does not apply to jurisdictional conflicts, but that the term 'jurisdiction' as used in the ICPC[A] merely refers to which party in an adoption proceeding has responsibility for a child's well-being") (quotation marks omitted).

E. MOOTNESS

Finally, even if we are wrong in our analysis, we would affirm because plaintiff has not established that the issue of his paternity is not moot. "[T]his Court does not reach moot questions or declare principles or rules of law that have no practical legal effect in the case before us unless the issue is one of public significance that is likely to recur, yet evade judicial review." *Federated Publications, Inc v Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002), overruled in part on other grounds *Herald Co, Inc v Eastern Mich Univ Bd of Regents*, 475 Mich 463; 719 NW2d 19 (2006). If we reversed and remanded on the basis that the trial court had jurisdiction over plaintiff's

paternity complaint, and assuming that the court found that plaintiff was the biological father of the child, a California court has already terminated his parental rights and has likely by now finalized the adoption. Without dispute, plaintiff was given all due and proper notice of the California case, but he made no attempt whatsoever to appear in the California case. Plaintiff fails to explain why the Michigan court would not be bound by the California order terminating his purported parental rights. See MCL 722.1303(1) ("A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction that was in substantial conformity with this act[.]"); MCL 722.1312 ("A court of this state shall accord full faith and credit to an order issued by another state and consistent with this act . . . ."). Under these facts and the pertinent law, we find reversal unwarranted.

We affirm. Having fully prevailed on appeal, defendant may tax costs under MCR 7.219.

/s/ Jonathan Tukel
/s/ Jane E. Markey
/s/ Michael F. Gadola