

STATE OF MICHIGAN
COURT OF APPEALS

BENJAMIN Z. LORENZ,

Plaintiff-Appellant,

V

CORNELIA S. LORENZ,

Defendant-Appellee.

UNPUBLISHED

May 20, 2021

No. 355973

Wayne Circuit Court

Family Division

LC No. 20-108979-DC

Before: MARKEY, P.J., and M. J. KELLY and SWARTZLE, JJ.

PER CURIAM.

Plaintiff filed a complaint seeking an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq.* The trial court dismissed the action on the basis that it lacked jurisdiction under the UCCJEA. Plaintiff appeals by right. Assuming that the issue of jurisdiction is not moot due to subsequent court filings, we affirm.

I. PLAINTIFF’S ALLEGATIONS

In the complaint that he filed on October 26, 2020, plaintiff alleged that he and defendant were married in 2000, that they have two children, and that the parties remained married as of the filing of the complaint. Plaintiff alleged that the parties and their children moved from Michigan to Germany in 2014, where they remained until July 21, 2020, when plaintiff returned to Michigan with their children. While defendant consented to this move, she remained in Germany. Plaintiff asserted in his complaint that Michigan was the children’s home state; therefore, the trial court had jurisdiction under the UCCJEA and more specifically MCL 722.1201(1)(a). The trial court disagreed and entered a cursory order of dismissal. The court stated that it had reviewed the pleadings and “found that the Minor Children have not resided in the State of Michigan for the 6 months immediately preceding the commencement of this case[.]” Plaintiff moved for reconsideration, and the trial court denied the motion in a written opinion that analyzed and rejected plaintiff’s arguments under the UCCJEA. Plaintiff now appeals.

II. ANALYSIS

Plaintiff argues on appeal that the trial court erred by failing to consider whether it had jurisdiction over his complaint under MCL 722.1201(1)(b) after it rejected jurisdiction under MCL 722.1201(1)(a). In plaintiff's complaint and his motion for reconsideration, he argued that Michigan was the children's home state, and that jurisdiction was proper under MCL 722.1201(1)(a). Contrary to plaintiff's assertion in his appellate brief, he did not preserve an argument under MCL 722.1201(1)(b), which focuses on circumstances in which Michigan can exercise jurisdiction even though it is not a child's home state. Despite the preservation failure and our underlying mootness concern, we shall address whether the trial court had jurisdiction under MCL 722.1201(1)(b).

A. STANDARDS OF REVIEW

In *Cheesman v Williams*, 311 Mich App 147, 150-151; 874 NW2d 385 (2015), this Court set forth the relevant standards of review:

Absent a factual dispute, this Court reviews de novo, as a question of law, whether a trial court has jurisdiction under the UCCJEA. . . . 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 brackets omitted.]

B. DISCUSSION

Subsection (1) of MCL 722.1201 "is the exclusive jurisdictional basis for making a child-custody determination by a court of this state." MCL 722.1201(2). And MCL 722.1201(1) provides, in relevant part:

(1) Except as otherwise provided in section 204 [inapplicable here], 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, 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.

The UCCJEA defines “home state” as “the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding[;] . . . [a] period of temporary absence of a parent or person acting as a parent is included as part of the period.” MCL 722.1102(g).

While MCL 722.1102(p) defines “state” as “a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular possession subject to the jurisdiction of the United States,” MCL 722.1105(1) requires “[a] court of this state [to] treat a foreign country as a state of the United States for the purposes of applying articles 1 and 2[.]” of the UCCJEA. And MCL 722.1201 is found in Article 2 of the UCCJEA. Accordingly, in this case, we shall treat Germany as a “state” for purposes of MCL 722.1201.

In *Cheesman*, this Court held that “the trial court erroneously applied the jurisdictional provisions of the UCCJEA when it failed to consider whether it could exercise jurisdiction under MCL 722.1201(1)(b) and MCL 722.1201(1)(d),” even though the plaintiff had specifically argued that the court should exercise jurisdiction under those provisions. *Cheesman*, 311 Mich App at 154, 156. Again, plaintiff here requested the trial court to exercise jurisdiction under MCL 722.1201(1)(a), which is implicated when Michigan is or was, within six months, a child’s home state—plaintiff did not raise any argument under MCL 722.1201(1)(b). On appeal, plaintiff does not renew any argument under MCL 722.1201(1)(a).

For the Michigan trial court to exercise jurisdiction under MCL 722.1201(1)(b) on consideration of the circumstances presented in this case, Germany either had to lack jurisdiction under MCL 722.1201(1)(a), or Germany had to be the home state of the children and had to decline to exercise jurisdiction on the basis that Michigan was the more appropriate forum.¹ First, Germany had jurisdiction under MCL 722.1201(1)(a) because it *was* the home state of the children within 6 months before the commencement of the instant lawsuit on October 26, 2020, and because defendant continued to live in Germany. Plaintiff and the children left Germany on July 21, 2020, which was within six months before the action was commenced, and the parties and the children had lived in Germany for several years up until July 21, 2020. See MCL 722.1102(g). Second, it cannot be said that a court of the “home state” of the children declined to exercise jurisdiction because Germany was not the “home state” of the children when plaintiff filed the action on October 26, 2020, where the children had not “lived with a parent . . . for at least 6 consecutive months [in Germany] *immediately* before the commencement of [the] child-custody proceeding.” See MCL 722.1102(g) (emphasis added). We note that a state can have jurisdiction under MCL 722.1201(1)(a) when it had *previously* been a child’s “home state” within the six-month window, while not *currently* being the child’s “home state” relative to the declination-of-jurisdiction

¹ We shall assume that plaintiff and the children had a significant connection with Michigan other than mere physical presence and that substantial evidence was available in Michigan concerning the children’s care, protection, training, and personal relationships. MCL 722.1201(1)(b)(i) and (ii).

provision. That said, even if we accept that Germany was “the home state of the child[ren],” there is nothing in the record showing that Germany declined to exercise jurisdiction, nor did MCL 722.1201 require the trial court to communicate with the German court authorities on the matter. Accordingly, the Michigan trial court could not have exercised jurisdiction under MCL 722.1201(1)(b)

We affirm.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Brock A. Swartzle