

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT BURNHAM,

Plaintiff-Appellant,

v

SUSAN BURNHAM,

Defendant-Appellee.

UNPUBLISHED
December 20, 2012

No. 310622
Oakland Circuit Court
Family Division
LC No. 2012-791902-UM

Before: STEPHENS, P.J., and OWENS and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition in this interstate custody action. We affirm.

This case arises from a 2010 Arizona custody order that granted defendant, the minor child's mother, full custody of the minor child. Plaintiff is the child's maternal grandfather. Plaintiff had custody of the child until 2010, when he relinquished custody to defendant. After the Arizona custody order was issued in 2010, defendant moved with the child to Michigan, where they have lived ever since. In 2012, plaintiff filed a custody complaint in the Oakland Circuit Court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1201 *et seq.*, seeking to modify the Arizona custody order. After some preliminary hearings,¹ defendant filed a motion for summary disposition, arguing that plaintiff lacked standing to challenge custody. The court granted the motion and entered a final order dismissing the case, from which plaintiff now appeals.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition by incorrectly holding that plaintiff lacked standing to challenge custody over the minor child. Plaintiff's argument is premised upon the assertion that the trial court had jurisdiction under the UCCJEA, and in particular under MCL 722.1201(1)(a), because it was the

¹ The trial court initially held a hearing regarding plaintiff's assertion that the trial court should invoke the emergency jurisdiction provisions of the UCCJEA. At that hearing the court concluded that no emergency existed.

home state of the child at the time the complaint was filed and neither the child, the mother or father, nor for that matter plaintiff, remained in Arizona. MCL 722.1203(b). As we outline below, plaintiff is correct that the trial court had *jurisdiction* over this case. But, having properly exercised that jurisdiction, the trial court correctly held that plaintiff did not have *standing* to challenge the custody order.

“In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. This Court reviews de novo a trial court’s determination on a motion for summary disposition as well as the legal question of whether a party has standing to sue.” *Int’l Union, United Auto, Aerospace & Agricultural Implement Workers of America v Central Mich Univ Trustees*, 295 Mich App 486, 493; 815 NW2d 132 (2012) (quotation marks and citations omitted). “[T]he determination whether to exercise jurisdiction under the UCCJEA is within the discretion of the trial court and will not be reversed absent an abuse of that discretion.” *Jamil v Jahan*, 280 Mich App 92, 100; 760 NW2d 266 (2008). A trial court abuses its discretion if the trial court’s decision results in an outcome outside the range of principled outcomes. *Id.*

The UCCJEA prescribes the powers and duties of a court in a child custody proceeding involving a Michigan court and a Sister State’s custody order. *Fisher v Belcher*, 269 Mich App 247, 260; 713 NW2d 6 (2005). The UCCJEA is a procedural statute. *In re Clausen*, 442 Mich 648, 681-684; 502 NW2d 649 (1993). This case falls under the purview of the UCCJEA because it involves an attempt to modify an Arizona child custody order in Michigan.

Under the UCCJEA, “[o]nce an initial child-custody determination occurs, exclusive, continuing jurisdiction generally remains with the decreeing court.” *Atchison v Atchison*, 256 Mich App 531, 538; 664 NW2d 249 (2003); MCL 722.1202. A child-custody determination is a “judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child.” *Jamil*, 280 Mich App at 102, quoting MCL 722.1102(c). In this case, the Arizona Superior Court issued an initial custody decision on July 26, 2010. The order was issued in a dependency proceeding, which is considered a child-custody proceeding under the UCCJEA. MCL 722.1102(d). The Arizona custody order awarded “the minor’s legal care, custody and control” to defendant. Because Arizona issued an initial custody determination over the minor child, Arizona has exclusive, continuing jurisdiction. MCL 722.1202.

However, because plaintiff is attempting to modify the Arizona custody order in Michigan, we must determine whether Michigan has jurisdiction to modify the order. Under the specific requirements of the UCCJEA, the circuit court clearly had jurisdiction over the complaint. First, Michigan was the minor child’s home state on the date of the commencement of the proceeding because he and his mother lived in Michigan for more than a year before the complaint was filed. MCL 722.1201; MCL 722.1102(g); *Foster v Wolkowitz*, 486 Mich 356, 368; 785 NW2d 59 (2010); *Jamil*, 280 Mich App at 100. Second, the minor child and defendant no longer resided in Arizona. Therefore, the circuit court had jurisdiction to modify the Arizona order under MCL 722.1203.

Even with this statutory jurisdiction, a Michigan court may still not modify a child custody determination made by a court of another state unless either (1) the court of the other

state determines it no longer has exclusive, continuing jurisdiction or that the Michigan court would be a more convenient forum, or (2) the Michigan court or a court of the other state determines that neither the child, nor a parent of the child, nor a person acting as a parent, presently resides in the other state. *Jamil*, 280 Mich App at 101, citing MCL 722.1203. As noted, it is undisputed that neither the child nor either parent, nor any person acting as a parent, remain in Arizona.

Despite the court's ability to exercise jurisdiction over the minor child, the trial court dismissed plaintiff's complaint, finding that plaintiff lacked standing to challenge custody because he was a third party. MCL 722.26c. Plaintiff argues that standing is irrelevant since the trial court had jurisdiction to proceed under the UCCJEA, and this was not an original custody action. Additionally, he argues that if a standing analysis is undertaken, Arizona laws on standing should apply.

We first hold that a conclusion that jurisdiction exists is not the equivalent of finding that the party invoking the court's jurisdiction has standing to maintain the complaint. For one, the UCCJEA does not confer standing on a party, *Clausen*, 442 Mich at 682 n 38, and so the fact that jurisdiction exists for a court to act on a complaint does not mean plaintiff can maintain an action to modify custody. As the *Clausen* Court stated:

The [Uniform Child Custody Jurisdiction Act] UCCJA^[2] is a procedural statute governing the jurisdiction of courts to entertain custody disputes. It is not enough that a person assert to be a "contestant" or "claim" a right to custody with respect to a child. If that were so, then any person could obtain standing by simply asserting a claim to custody, whether there was any legal basis for doing so or not. [*Id.* at 682 (footnote added).]

Second, we hold that under Michigan law, which governs the circuit court's substantive analysis once it exercises its jurisdiction and turns to the merits of the complaint to modify, see *Bivins v Bivins*, 146 Mich App 223, 233-234; 379 NW2d 431 (1985), plaintiff lacked standing to seek a modification of custody. Michigan law is clear that, absent some order granting some form of custodial rights (a guardianship, etc), a grandparent has no legal right to *seek* court intervention to disrupt the current custody order. *Heltzel v Heltzel*, 248 Mich App 1, 28-29; 638 NW2d 123 (2001); *Sirovey v Campbell*, 223 Mich App 59, 69; 565 NW2d 857 (1997). And, as the *Clausen* Court noted, "a third party does not obtain such a substantive right by virtue of the child's having resided with the third party." *Clausen*, 442 Mich at 682. Therefore, although plaintiff correctly argues that the circuit court had jurisdiction over this case, plaintiff did not have standing to challenge the custody order.

² The UCCJA, MCL 600.651 *et seq.*, was repealed in 2001 and replaced by the UCCJEA. *Atchison*, 256 Mich App at 536 n 3.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Donald S. Owens

/s/ Christopher M. Murray