

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0861**

In re the Marriage of: James Edward Cook, II, petitioner,
Respondent,

vs.

Hitomi Arimitsu,
Appellant.

**Filed January 22, 2018
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-FA-15-499

Victoria M. B. Taylor, Crossroads Legal Services, St. Paul, Minnesota (for respondent)

Drake D. Metzger, Metzger & Nyberg, L.L.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Cleary, Chief Judge; and
Reyes, Judge.

S Y L L A B U S

I. Under the Uniform Child Custody Jurisdiction and Enforcement Act, a court has home-state jurisdiction to make an initial child-custody determination if the state was the home state of the child within six months before the commencement of the proceeding, and the child is absent from the state but a parent or person acting as a parent continues to live in this state. Further, if a child is not in what would otherwise be the child's home state, the six-month period within which a parent can commence a custody proceeding in

the state does not begin to run until that parent has reason to recognize the permanency of the child's absence from the state.

II. Substantial compliance with the notice requirements of Minn. Stat. § 518D.305 (2016) is sufficient to allow a Minnesota district court to confirm the registration of a foreign custody determination.

O P I N I O N

REYES, Judge

Appellant-mother Hitomi Arimitsu, who currently lives in Japan with the four children she shares with respondent-father James Cook, asserts that the district court erred in ruling that it had subject-matter jurisdiction over the parties' child-custody dispute. Mother argues that (1) the successor district court judge in this case should not have reviewed a ruling by a predecessor district court judge that it lacked subject-matter jurisdiction to address child custody; (2) the district court lacks subject-matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to hear the parties' custody dispute; and (3) there was no proper registration of an order of a Japanese court in the Minnesota District Court (district court). We conclude that the district court did not err in its rulings. Therefore, we affirm.

F A C T S

The parties married in 1998 and had twins in 2002 and again in 2008. In May 2014, they listed their home for sale. In July 2014, in preparation for a trip mother and the children were to take to Japan, the parties signed an agreement stating that mother would

return with the children by August 29, 2014, after which mother and the children left for Japan. July 2014 was the last time the children were in Minnesota.

In mid-August 2014, father agreed that the children could stay in Japan for an unspecified additional amount of time, but not indefinitely. In October 2014, father visited the children in Japan. In January 2015, father filed a summons and petition in district court to dissolve the parties' marriage. Father's summons and petition were served on mother on April 27, 2015. At a July 23, 2015 initial case-management conference (ICMC), the district court asked the parties to address whether, given the children's time in Japan, the district court had subject-matter jurisdiction under the UCCJEA to address child custody.

On August 7, 2015, father applied under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the Hague Convention) for aid in getting the children returned to the United States. Twelve days later, father started Hague litigation in Japan, asking the Japanese court to return the children to the United States.

On October 19, 2015, the district court filed its order arising from the ICMC, ruling that, under the UCCJEA, Minnesota lacked subject-matter jurisdiction to address custody because Minnesota was not the children's home state. The district court acknowledged that, under the UCCJEA, a child's temporary absence from a state did not mean that the state stopped being the child's home state, but concluded that, on the then-existing record, the absence of the children from Minnesota did not constitute a temporary absence. The assigned judge subsequently retired and, in May 2016, the case was assigned to a successor judge.

On October 30, 2015, in the Hague litigation, a Japanese court ruled that the parties' younger twins, but not the older twins, should be returned to the United States. Both parties appealed this ruling, and, on January 28, 2016, a Japanese court ruled that all four children should be returned to the United States. Mother appealed that ruling, but her appeal was denied. Mother did not return any of the children to the United States. Instead, in the Japanese courts, she challenged father's attempts to enforce the January 2016 Hague order requiring the children to return to the United States.

In September 2016, father moved the district court to reassert jurisdiction over the question of child custody and to enforce the January 2016 Hague return order. By order filed December 2, 2016, the district court granted these motions. The district court found, based in part on what the parties and their attorneys said about Japanese law, that Japanese courts were precluded from dissolving the parties' marriage and from addressing custody for four reasons: (1) the pendency of the Hague litigation; (2) the dissolution proceeding pending in Minnesota; (3) father had not abandoned the family and his whereabouts were known; and (4) the parties were still legally married.

Mother moved the district court for amended findings, essentially asking it to reverse the December 2016 ruling reasserting jurisdiction over the question of child custody. A hearing on mother's motion occurred on February 10, 2017.

A week after that hearing, a Japanese court filed an order ruling that the January 2016 Hague return order should not be enforced because (1) the children "refused strongly to be returned to the U.S.[];" (2) father's home in the United States had been foreclosed and the redemption period had expired without father redeeming the home; (3) father

lacked the ability to provide the children with a stable environment in the United States; and (4) mother cannot provide the children with a stable environment in the United States because “she doesn’t have a basis to live in the U.S.” Six days later, father’s Minnesota attorney sent a letter to the district court, stating that father was appealing the Japanese court’s February 2017 order.

By order filed March 24, 2017, the district court found mother in contempt of court for not returning the children to the United States and set purge conditions. On April 4, 2017, the district court filed an order denying mother’s motion for amended findings, and ruling, among other things, that (1) the district court had authority to reconsider the jurisdictional ruling in the October 2015 order; (2) despite the February 2017 order of the Japanese court, Minnesota currently has subject-matter jurisdiction to address custody because, among other reasons, Minnesota is the children’s home state under the UCCJEA; and (3) the Japanese courts lack jurisdiction to address child custody.

Mother appealed, and, after this court questioned jurisdiction, it filed an order construing the appeal to be from the December 2016 and April 2017 orders.

ISSUES

I. Did the successor district court judge err in reconsidering the jurisdictional ruling made in the October 2015 order by the predecessor judge?

II. Did the district court err in ruling that it had subject-matter jurisdiction to address the parties’ child custody dispute?

III. Did the district court err by registering the order of the Japanese court without satisfying the requirements of the UCCJEA?

ANALYSIS

I. The successor judge was not precluded from reconsidering subject-matter jurisdiction to address child custody.

Mother argues that, under *Kornberg v. Kornberg*, 542 N.W.2d 379 (Minn. 1996), the successor judge could not reconsider whether the district court had subject-matter jurisdiction to decide child custody because father's motion asking the district court to readdress the point was filed after the expiration of the time to file a motion for amended findings of fact. We disagree.

"Parties should not be denied reconsideration of a predecessor judge's ruling by a successor judge if reconsideration by the judge who made the original ruling would have been permissible." *Kornberg*, 542 N.W.2d at 385. "The extent of a successor judge's authority to perform judicial duties is a question of law" which we review de novo. *Id.* at 384.

A motion for amended findings must be served within 30 days of a party's service of notice of filing of the decision to be amended. Minn. R. Civ. P. 52.02; 59.03. Also, a motion for amended findings must be based on the record previously submitted to the district court, and the district court "may neither go outside the record, nor consider new evidence" when addressing the motion. *Rathbun v. W.T. Grant Co.*, 300 Minn. 223, 238, 219 N.W.2d 641, 651 (1974); *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006) (quoting *id.*), review denied (Minn. Nov. 14, 2006).

Here, it is undisputed that father served his motion more than 30 days after mother served him with notice of filing of the October 2015 order. It is also undisputed that father

did not ask the district court to amend the findings in the October 2015 order based on the record as it existed when the district court filed that order, but to “[m]odify” the October 2015 order based on the *new* evidence of the Japanese court’s January 2016 Hague return order. Under these circumstances, we conclude that father did not seek amended findings under rule 52.02, and hence his failure to satisfy that rule is not fatal to the district court’s ability to address his motion.

The issue of subject-matter jurisdiction “can be raised at any time in the proceeding.” *Tischer v. Hous. & Redev. Auth. of Cambridge*, 693 N.W.2d 426, 430 (Minn. 2005). Further, if a case involves multiple claims for relief or multiple parties, any ruling

which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Minn. R. Civ. P. 54.02. An exception to this rule exists if the district court includes in that ruling an express determination that there is no just reason for delay and an express direction that judgment be entered. *Id.*

Father’s petition to dissolve the parties’ marriage included numerous claims for relief, and the merits of none of those claims have been adjudicated. Further, the October 2015 order lacked the express determination mentioned in rule 54.02. Thus, if the predecessor judge had still been presiding over the case, he would have had, and hence the successor judge actually had, authority to revise the October 2015 ruling that the district court lacked subject-matter jurisdiction to address child custody. *See Buchman Plumbing*

Co. v. Regents of Univ. of Minn., 293 Minn. 437, 439, 196 N.W.2d 629, 630 (1972) (stating that, when there was no express determination under rule 54.02, the dismissal of a claim as to one codefendant was “subject to revision in the trial of the remaining issues”); *Strand v. Ill. Farmers Ins. Co.*, 429 N.W.2d 266, 269 (Minn. App. 1988) (ruling that a judgment stating that a party was entitled to benefits but not specifying the amount of benefits was not a final judgment absent language of rule 54.02).¹

Mother also argues that the district court misread *Engvall v. Soo Line R.R. Co.*, 605 N.W.2d 738 (Minn. 2000), to mean that father’s failure to appeal the October 2015 order ruling precluded alteration of that ruling at a later time. *Engvall* states that “[a]n interlocutory judgment dismissing a party for lack of subject-matter jurisdiction is not immediately appealable absent an express determination by the district court that there is no just reason for delay pursuant to Minn. R. Civ. P. 54.02.” 605 N.W.2d at 739. Here, the October 2015 order lacks the express determination mentioned in rule 54.02. Therefore, that ruling was not appealable.²

¹ While not specifically argued here, we note that, in dissolution matters, district courts can grant relief from an existing ruling for the reasons listed in Minn. Stat. § 518.145, subd. 2 (2016).

² Mother’s reply brief asserts that the district court’s revision of the October 2015 jurisdictional ruling violates the doctrine of law of the case. Mother’s failure to raise that doctrine in her principal brief, however, means that the doctrine is not properly before this court. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010); *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). Moreover, law of the case “is not normally applied by a trial court to its own prior decisions.” *Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994); *see Kornberg*, 542 N.W.2d at 386 n.2 (citing this aspect of *Loo*). Thus, that doctrine would not have precluded the district court from revising the October 2015 order.

II. The district court had subject-matter jurisdiction under the UCCJEA to address child custody.

Mother challenges the district court's ruling that it had subject-matter jurisdiction to make an initial child-custody determination on four grounds. We are not persuaded.

The UCCJEA provides four bases for a Minnesota court to have jurisdiction to make an initial child-custody determination. Minn. Stat. § 518D.201(a) (2016). Application of the UCCJEA “involves questions of subject-matter jurisdiction[,]” which appellate courts review de novo. *Schroeder v. Schroeder*, 658 N.W.2d 909, 911 (Minn. App. 2003). A district court's underlying findings of fact, however, are not set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

Home-state jurisdiction is one basis under the UCCJEA allowing Minnesota courts to make an initial child-custody determination. Minn. Stat. § 518D.201(a)(1). A district court has home-state jurisdiction if either (1) Minnesota “is the home state of the child on the date of the commencement of the proceeding” or (2) Minnesota “was the home state of the child within six 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[.]” *Id.* A marital-dissolution proceeding “[is] commenced by personal service of the summons and petition.” Minn. Stat. § 518.09 (2016).

Here, father's summons and petition to dissolve the parties' marriage and seek custody of the children was served on April 27, 2015. It is undisputed that, at present, the children are absent from Minnesota, and father still lives in Minnesota. Under the second option described above, the district court has home-state jurisdiction to make an initial

custody determination if Minnesota was the home state of the children on or after October 27, 2014, which was six months before the April 27, 2015 commencement of the dissolution case.

A child's home state is the state in which the child lived with a parent "for at least six consecutive months immediately before the commencement of a child custody proceeding[,]" and "[a] period of temporary absence [from the state] is part of the period." Minn. Stat. § 518D.102(h) (2016). It is undisputed that this case involves a child-custody proceeding. *See id.* (e) (defining "child custody proceeding" for UCCJEA purposes to include a proceeding in which custody or visitation is at issue). Thus, because the children lived their entire lives in Minnesota before mother took them to Japan in July 2014, Minnesota would be the children's home state if they were temporarily absent from Minnesota on October 27, 2014.

There is limited caselaw addressing what constitutes a temporary absence from a state under the UCCJEA. Comments to the UCCJEA, however, state that there is "no substantive" difference between the definitions of "home state" in the UCCJEA and its predecessor, the Uniform Child Custody Jurisdiction Act (UCCJA). UCCJEA § 102 cmt. (amended 2017), 9 Pt. IA U.L.A. 659 (1999). Additionally, Minnesota courts "give great weight to other states' interpretations of a uniform law." *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (making this statement in the context of construing the UCCJA); *see* Minn. Stat. § 645.22 (2016) (stating that uniform laws "shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them"). When addressing whether a child's absence from a state was "temporary"

under the UCCJA, foreign caselaw allows courts to “consider the parents’ agreement and their intent regarding the temporary or permanent status of the child’s out-of-state absence.” *In re Frost*, 681 N.E.2d 1030, 1036 (Ill. Ct. App. 1997). Further,

[w]hile the child may have resided in the new state for a period of six months or longer, *the six-month period* within which the parent in the original state could file a custody action within that state *would not begin to run until that parent had reason to recognize the permanency of the out-of-state absence.*

Id. at 1036 (emphasis added); see *Ogawa v. Ogawa*, 221 P.3d 699, 704-05 (Nev. 2009) (using a similar analysis in a UCCJEA case).

Here, the district court discussed *Frost* and *Ogawa*, found that “by as early as approximately December 2014, [father] was on notice that [mother] did not intend to return the children to the U.S.[,]” and ruled that it had home-state jurisdiction. Because father was not on notice that mother did not intend to return the children until December 2014, under *Frost*, Minnesota was the children’s home state on October 27, 2014, meaning that the district court did not err by ruling that it had home-state jurisdiction to make an initial child-custody determination.

Mother argues to the contrary, based on what she asserts is the finality of the district court’s October 2015 order, and on the district court’s reading of an unpublished opinion of this court. The former we rejected above. The latter is unpersuasive because the district court did not base its home-state analysis on the unpublished opinion, but rather on *Frost* and *Ogawa*. Mother does not challenge the applicability of those decisions to this case. In light of the statute and caselaw encouraging Minnesota courts to read uniform laws consistently with other states, we discern no reason why Minnesota would read its version

of the UCCJEA differently than how sister states have read a substantively identical provision of the UCCJEA. Thus, we conclude that the district court had home-state jurisdiction under the UCCJEA to make an initial child-custody determination.

Mother also argues that the district court's conclusion in its April 2017 order that Minnesota is the children's home state appears to be based on "findings [by the Japanese courts] that Minnesota was the children's habitual residence for purposes of the Hague Convention." Mother misreads the April 2017 order. The portion of the April 2017 order referring to the children's "habitual residence" under the Hague Convention addresses whether Minnesota has jurisdiction to address custody on a basis other than home-state jurisdiction. But because we conclude that the district court correctly ruled that it had home-state jurisdiction to make an initial child-custody determination, we need not address the other bases for its assertion of jurisdiction.³

III. Registration of the January 2016 Hague return order is not defective.

Mother argues that the district court failed to provide her with adequate notice of the process to register and confirm the January 2016 Hague return order pursuant to Minn.

³ Mother challenges a number of the district court's findings of fact, especially findings supporting the district court's assertion of jurisdiction on bases other than home-state jurisdiction. While our conclusion that the district court has home-state jurisdiction means that we need not address those other bases for the district court's assertion of jurisdiction, we have reviewed the record, and we are satisfied that the findings that mother challenges are not clearly erroneous. *See Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (stating that the function of an appellate court "does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the trial court's findings" and an appellate court's "duty is performed when [it] consider[s] all the evidence, as we have done here, and determine[s] that it reasonably supports the findings"); *Peterka v. Peterka*, 675 N.W.2d 353, 357-58 (Minn. App. 2004) (applying this aspect of *Wilson* in a family law appeal).

Stat. § 518D.305(b)(2), (c)(2) (2016), and therefore the registration must be vacated. We disagree.

Father does not challenge mother’s assertion that all of the statutory notices were not given. Instead, he argues that any error is harmless because “[mother] had ample *actual* notice and opportunity to dispute the Hague Order” in subsequent proceedings but failed to do so. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

Factual disputes regarding the adequacy of notice are reviewed for clear error, while the legal adequacy of any notice that may have been given is reviewed de novo. Minn. R. Civ. P. 52.01 (factual questions); *In re License of West Side Pawn*, 587 N.W.2d 521, 522 (Minn. App. 1998) (legal adequacy of notice); *see Benton v. Mut. of Omaha Ins. Co.*, 500 N.W.2d 158, 160 (Minn. App. 1993) (referring to different standards of review for legal and factual questions regarding notice), *review denied* (Minn. July 19, 1993).

The process for registering foreign orders under the UCCJEA “parallels” the process in the Uniform Interstate Family Support Act (UIFSA) “for the registration of child support orders.” UCCJEA § 305 cmt. (amended 2017), 9 Pt. IA ULA 693 (1999). Under the UIFSA, “‘substantial compliance’ with the registration requirements is sufficient.” *Ex Parte Reynolds*, 209 So. 3d 1122, 1126 (Al. Civ. App. 2016); *see* UIFSA § 602 cmt. 9 Pt. IB ULA B 243 (2008) (making this observation). Therefore, we conclude that substantial compliance with the requirements for registration and confirmation of a foreign order is sufficient under the UCCJEA.

Cases involving the Hague Convention “have not been included [in the UCCJEA’s definition of ‘child-custody proceeding’] because custody of the child is not determined in

a proceeding under the International Child Abductions Remedies Act. Those proceedings are specifically included in Article 3 [of the UCCJEA regarding the] enforcement process.” UCCJEA § 102 cmt., 9 Pt. IA ULA 659 (1999). Under the enforcement provisions of the UCCJEA, “a court of this state may enforce an order for the return of the child made under the [Hague Convention] as if it were a child custody determination.” Minn. Stat. § 518D.302 (2016). And a district court “shall” confirm the registration of a foreign custody order “unless[, in relevant part,] the person contesting registration establishes that . . . the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so[.]” *Id.* (b)(2), (c)(2) (2016). The purpose of the notification is to provide “an opportunity to contest the registration[,],” and notice that failure to do so will result in confirmation of the foreign order. Minn. Stat. § 518D.305(b)(2); (c)(2). Here, we conclude that there was substantial compliance with the relevant requirements of the UCCJEA.

The question of registering the January 2016 Hague return order first arose at the November 21, 2016 hearing when the district court raised the subject and sought input on the point from both parties. On November 29, 2016, father filed documents for registration pursuant to Minn. Stat. § 518D.305(a) (2016). The reasons a district court may refuse to confirm the registration of a foreign order are listed in Minn. Stat. § 518D.305(d). Mother, however, made no objection under this statute.

Finally, we note that *Stone v. Stone*, 636 N.W.2d 594, 597 (Minn. App. 2001), on which mother relies, is distinguishable from this case. There, appellant “attempted to register the [foreign] orders under [UIFSA,]” did not seek registration under the UCCJEA,

and did not assert the existence of a custody dispute. *Id.* at 598. Here, the district court was focused on (and even solicited input from the parties regarding) registration under the UCCJEA, and a custody dispute does exist.

Under these circumstances, we will not grant relief regarding registration of the January 2016 Hague return order.

D E C I S I O N

The successor district court judge had authority to reconsider her predecessor's ruling that the Minnesota court lacked subject-matter jurisdiction to address child custody. Because father did not have reason to believe that his children were permanently absent from Minnesota at least six months before he commenced this dissolution proceeding, the district court has home-state jurisdiction to make an initial child-custody determination. Finally, the district court did not err by confirming registration of the January 2016 Hague return order.

Affirmed.