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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1743**

Korey Lee Peterson, petitioner,
Appellant,

vs.

Amber Marie Gordon,
Respondent.

**Filed May 7, 2018
Reversed and remanded
Bjorkman, Judge**

Benton County District Court
File No. 05-FA-17-1312

Daniel S. Shub, Jeddeloh and Snyder, P.A., St. Cloud, Minnesota (for appellant)

Amber Marie Gordon, Orlando, Florida (pro se respondent)

Considered and decided by Kirk, Presiding Judge; Johnson, Judge; and Bjorkman,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant father challenges the district court's determination that it lacks subject-matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minn. Stat. §§ 518D.101-.317 (2016), to address father's petition for custody and parenting time. We reverse and remand for further proceedings.

FACTS

Appellant Korey Lee Peterson and respondent Amber Marie Gordon are the parents of B.R.G. (born 2015) and K.L.G. (born 2016). The parties never married, but father signed a recognition of parentage (ROP) after each child's birth. *See* Minn. Stat. § 257.75 (2016) (establishing procedures for and describing effect of a ROP). And a district court subsequently ordered him to pay child support. *Benton County v. Peterson*, No. 05-FA-17-426 (Minn. Dist. Ct. May 3, 2017) (ordering father to pay child support based on ROPs).

Until July 2017, the parties lived in St. Cloud. Both children were born in Minnesota, and attended daycare in Minnesota. On July 9, 2017, mother took the children to Florida. Ten days later, father initiated this action by serving a petition for custody and parenting time on mother.

Mother appeared at the hearing on father's petition. She acknowledged moving the children to Florida in July and explained that she intends to remain there with the children permanently. The district court dismissed father's petition for lack of subject-matter jurisdiction. Although father only requested custody and parenting time, the district court also characterized his petition as a motion to establish paternity. Citing Minn. Stat. §§ 257.51-.74 (2016), which govern paternity proceedings, the court concluded that mother and the children were Florida residents. And the district court determined that Minnesota cannot exercise jurisdiction unless Florida declined to do so. Father appeals.

DECISION

A district court's determination of whether it has subject-matter jurisdiction under the UCCJEA presents a question of law that we review de novo. *Schroeder v. Schroeder*, 658 N.W.2d 909, 911 (Minn. App. 2003). We review the district court's factual findings for clear error. *Cook v. Arimitsu*, 907 N.W.2d 233, 238 (Minn. App. 2018), *review denied* (Minn. Apr. 17, 2018).

The UCCJEA establishes which state court has jurisdiction to make an initial child custody determination.¹ Minn. Stat. § 518D.201(a). Under this uniform provision, a Minnesota court has jurisdiction to make this determination if (1) Minnesota was the child's home state when the action was started, or had been the child's home state during the preceding six months as long as one parent remains within the state; (2) no other state court is the child's home state, or a state meeting the definition of "home state" has declined to exercise jurisdiction because Minnesota is a more appropriate forum, the child and at least one parent have a significant connection to Minnesota, and substantial evidence is available in the state; (3) all other state courts have declined to exercise jurisdiction because Minnesota would be a more appropriate forum; or (4) no other state court meets the criteria for assuming jurisdiction. *Id.*; *see also* Fla. Stat. Ann. § 61.514(1) (West 2017) (setting forth identical language for initial custody determination).

¹ A ROP has "the force and effect of a judgment or order determining the existence of the parent and child relationship." Minn. Stat. § 257.75, subd. 3. The parties' status as never-married parents does not affect application of the UCCJEA. *See Beardsley v. Garcia*, 753 N.W.2d 735, 737-38 (Minn. 2008) (stating that a ROP establishes parent-child relationship and permits a father to commence an action to determine parenting time under chapter 518).

“Home state” is specifically defined as “the state in which a child lived with a parent . . . for at least six consecutive months immediately before the commencement of a child custody proceeding.” Minn. Stat. § 518D.102(h); *see also* Fla. Stat. Ann. § 61.503(7) (West 2017) (setting forth identical definition of “home state,” requiring residence for at least six consecutive months immediately prior to commencement of child-custody proceeding).

Father argues that the district court erred by dismissing his custody petition because Minnesota is the home state for purposes of the UCCJEA. We agree. The undisputed record demonstrates the children and both parties lived in Minnesota for more than six consecutive months immediately before father commenced this action and that father remains in the state. Minn. Stat. § 518D.201(a)(1). Mother acknowledged that she did not move the children out of Minnesota until ten days before father served her with his petition. Accordingly, Florida does not meet the UCCJEA definition of “home state.” Moreover, Florida has not exercised jurisdiction, or indicated it was willing to do so. And nothing in the record indicates that the district court communicated with a Florida court concerning jurisdiction. *See* Minn. Stat. § 518D.110(a), (c), (d) (permitting Minnesota court to communicate with a court from another state concerning a custody proceeding, and requiring court to make a record of the communication, unless it solely involves “schedules, calendars, court records, and similar matters”).

The district court’s reliance on mother’s establishment of a new Florida residence with the children is misplaced. While residence may be relevant to the court’s exercise of jurisdiction over a paternity action, it does not determine a court’s authority to hear a

custody case. *See* Minn. Stat. § 257.59, subd. 3 (2016) (establishing venue for paternity action in county where child or presumed father resides). More to the point, the existence of a significant connection between a child and one parent and a state, and the availability of substantial evidence in that state do not, standing alone, confer jurisdiction to make an initial child-custody determination. Rather, those factors come into play when a “home state” has declined to exercise jurisdiction. Minn. Stat. § 518D.201(a)(2). Because Florida is not a home state, the district court erred by relying on the Florida residence and claimed availability of substantial evidence in Florida to decline to exercise jurisdiction.

A district court may decline to exercise jurisdiction if Minnesota would be an inconvenient forum. Minn. Stat. § 518D.207. In order to do so, a court must consider whether there has been domestic abuse, how long the child has resided out of state, the distance between jurisdictions, the financial circumstances of the parties, any agreements as to jurisdiction, which court has the ability to most expeditiously decide a case, and the familiarity of each state court with the facts. Minn. Stat. § 518D.207(b). Although the district court noted that Florida appears to be a more appropriate forum, the court made no findings on any of the statutory factors. And because Florida is not a home state, we need not address its relative convenience as a forum.

In sum, Minnesota is the only home state under the UCCJEA. The district court erred by dismissing father’s petition to establish custody. Accordingly, we reverse and remand for further proceedings.

Reversed and remanded.