

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1541**

In re the Custody of: S. E. R. R., DOB 08/07/2002, S. L. R. R., petitioner,
Appellant,

vs.

F. R. L. and V. R. L.,
Respondents.

**Filed April 26, 2021
Reversed and remanded
Connolly, Judge**

Nobles County District Court
File No. 53-FA-20-349

Kimberly M. Woods, Khanh Nguyen law Office, Minneapolis, Minnesota (for appellant)

F.R.L. and V.R.L., Department of San Marcos, Guatemala (pro se respondents)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and
Connolly, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the district court's denial of his petition for custody of his
foreign-born son, who is now 18 and residing with appellant in Minnesota, because the

district court determined that it lacked subject-matter jurisdiction. Because the district court erred in determining that it lacked jurisdiction, we reverse and remand for proceedings in accord with this opinion.

FACTS

Appellant S.L.R.R. is the father of S.E.R.R., who was born on August 7, 2002, in Guatemala. In about 2006, his mother, D.R.L., abandoned him, leaving him with his maternal grandparents, respondents F.R.L. and V.R.L. She had no further contact with him, and her whereabouts are unknown. Appellant, who moved to Minnesota, sent financial support for S.E.R.R. to respondents and maintained telephone contact with him.

S.E.R.R. witnessed an armed robbery. He was chased and assaulted by the perpetrators, and feared for his safety. In 2019, when S.E.R.R. was 16, respondents told him they could no longer care for him. He travelled to the United States alone, entered as an unaccompanied minor in May 2019, was apprehended, and was placed in removal proceedings.

In July 2019, he was released into the custody of appellant, his father. S.E.R.R. turned 17 in August and began attending school full-time. He enrolled in the tenth grade because his educational qualifications in English and Spanish were minimal. He is still in high school and is expected to be 20 or 21 when he graduates.

In April 2020, appellant filed a petition to establish his custody of S.E.R.R. so S.E.R.R. could pursue Special Immigrant Juvenile Status (SIJS) and become a lawful permanent resident. By the time the petition was heard in October 2020, S.E.R.R. had

turned 18. Respondents did not appear and were not represented at the hearing.¹ The district court denied appellant’s petition on the ground of lack of subject-matter jurisdiction.

DECISION

“The existence of subject-matter jurisdiction and a determination of the meaning of statutes addressing subject-matter jurisdiction present legal questions, which this court reviews de novo.” *Christianson v. Henke*, 812 N.W.2d 190, 192 (Minn. App. 2012), *aff’d* 831 N.W.2d 532 (Minn. May 31, 2013).

Jurisdiction over child-custody determinations is governed by the Uniform Child Custody Jurisdiction and Enforcement Act, Minn. Stat. § 518D.101-.317 (2020). Chapter 518D (2020). *See* Minn. Stat. § 518.155 (2020) (“[A] court in which a proceeding for . . . child custody has been commenced shall not issue . . . any order . . . which affects the custody of a minor child . . . unless the court has jurisdiction over the matter pursuant to the provisions of chapter 518D.”) Chapter 518D begins with a list of definitions, three of which are relevant here. *See* Minn. Stat. § 518D.102(a) (“The definitions in this section apply to this chapter.”) First, “[c]ommencement’ means the filing of the first pleading in a proceeding.” *Id.* (f). Second, “[h]ome state’ means 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.” *Id.* (h). Third, “[c]hild’ means an individual who has not

¹ Although identified as respondents, they take no part in this appeal. It is at least arguable that, like S.E.R.R.’s mother, they abandoned him by telling him they could no longer care for him.

attained 18 years of age.” *Id.* (c). Chapter 518A provides a more extensive definition of “child”: “‘Child’ means an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support.” Minn. Stat. § 518A.26, subd. 5 (2020).

The district court relied on the definition of “child” in Minn. Stat. § 518D.102(c) to conclude that S.E.R.R. was not a child and that it therefore lacked jurisdiction over his custody. But chapter 518D also provides that:

(a) . . . [A] court of this state has jurisdiction to make an initial child custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding . . . ;

(2) a court of another state does not have jurisdiction under clause (1) . . . and:

(i) . . . the child and at least one parent . . . have a significant connection with this state other than mere physical presence and

(ii) substantial evidence is available in this state concerning the child’s care, protection training, and personal relationships;

(3) all courts having jurisdiction under clause (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child . . . ; or

(4) no court of any other state would have jurisdiction under the criteria specified in clause (1), (2) or (3).

(b) Paragraph (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

Minn. Stat. § 518D.201.

This proceeding was commenced on April 28, 2020, when appellant’s petition to establish custody and parenting time was filed. On that date, S.E.R.R. was 17 years old and had been living with appellant in Minnesota for about nine months. Minnesota was

therefore “the home state of the child on the date of the commencement of the proceeding,” so the first criterion of Minn. Stat. § 518D.201 was fulfilled. No court of any other state had jurisdiction over his custody and he and appellant, his parent, had a significant connection with the state: both of them resided here, appellant was employed here, and S.E.R.R. was a full-time student here; moreover, substantial evidence about S.E.R.R. was available here, so the second criterion was fulfilled. No other court had jurisdiction under clause 1 or 2, so clause 3 was fulfilled, and no court of any other state would have jurisdiction under clause 1, 2, or 3, so clause 4 was fulfilled. Thus, the district court, as “a court of this state,” had jurisdiction to make the initial child-custody determination under Minn. Stat. § 518D.201.

Moreover, chapter 518D also provides that “a court of this state which has made a child custody determination consistent with section 518D.201” has “exclusive, continuing jurisdiction over the determination until: (1) a court of this state determines that the child [and] the child’s parents . . . do not have a significant connection with this state, or . . . (2) . . . do not presently reside in this state.” Minn. Stat. § 518D.202(a). There is no statutory provision for cancelling jurisdiction when, or because, a child who was under 18 when the proceedings commenced later turns 18 when the matter is pending. The district court effectively read that provision into the statute. But neither this court nor a district court may “add[] words or meaning to a statute that are purposely omitted or inadvertently overlooked.” *Premier Bank v. Becker Dev., L.L.C.*, 785 N.W.2d 753, 760 (Minn. 2010) (quotation omitted).

The district court provided no statutory or caselaw support for its decision that it lacked jurisdiction because S.E.R.R., who was 17 when the proceedings commenced, had turned 18 by the time of the hearing. Moreover, the view that a district court's jurisdiction is terminated the day a child turns 18 conflicts with the view that "a child" is also an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support. See Minn. Stat. § 518A.26, subd. 5. It is undisputed that S.E.R.R. is still attending secondary school and is incapable of self-support. Individuals over 18 meeting these conditions have been deemed entitled to support. See *e.g.*, *Maki v. Hansen*, 694 N.W.2d 78, 83 (reversing and remanding for a determination of a 20-year-old's emancipation before refunding child support); *State ex rel. Jarvela v. Burke*, 678 N.W.2d 68, 70, 72 (Minn. App. 2004) (holding that parent retained legal custody of 18-year-old child who was in secondary school and incapable of self-support), *review denied* (Minn. July 20, 2004).

The district court erred in concluding that it lacked jurisdiction over S.E.R.R.'s custody and denying appellant's petition. We reverse and remand for further proceedings in accord with this opinion.

Reversed and remanded.