

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1504**

Justin Thomas Skyberg,
Respondent,

vs.

Danielle Christen Orlich,
Appellant,

County of Sherburne,
Intervenor.

**Filed July 8, 2024
Reversed
Reyes, Judge**

Sherburne County District Court
File No. 71-FA-12-176

Katie M. Jendro, Hess & Jendro Law Office, PA, Elk River, Minnesota (for respondent)

Victoria M.B. Taylor, Shawn C. Reinke, Reinke Taylor, PLLC, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Reyes, Judge.

SYLLABUS

Based on the plain meaning of Minn. Stat. § 518D.206(b) (2022), governing simultaneous proceedings between two jurisdictions, a Minnesota district court that has exclusive, continuing jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) must dismiss a child-custody proceeding when a foreign court properly exercises temporary, emergency jurisdiction under the UCCJEA.

OPINION

REYES, Judge

In this custody and parenting-time dispute, appellant-mother argues that the Minnesota district court lacked subject-matter jurisdiction to file contempt orders against her in connection with the underlying child-custody proceeding because an Iowa district court was properly exercising temporary, emergency jurisdiction under the Iowa version of the UCCJEA at the same time. We agree and reverse.

FACTS

This case arises from protracted litigation between appellant-mother Danielle Christen Orlich and respondent-father Justin Thomas Skyberg¹ over custody and parenting time of their joint child. Mother, who is from Iowa, moved into father's Minnesota home in 2011 and lived with him for five months. After child was conceived, mother returned to Iowa. In March 2012, before child was born, father filed a paternity and custody suit in Minnesota. Mother later filed a similar suit in Iowa. Child was born in Iowa. The Iowa court declined jurisdiction under its version of the UCCJEA, Iowa Code §§ 598B.101-317 (2022), and the Minnesota district court determined that it had jurisdiction under Minnesota's version of the UCCJEA, Minn. Stat. §§ 518D.101-317 (2022 & Supp. 2023) (the Minnesota UCCJEA). We affirmed the Minnesota district court's determination that it had subject-matter jurisdiction to make the initial custody determination under the

¹ Father did not file a response brief, so we decide this case on its merits. Minn. R. Civ. App. P. 142.03.

Minnesota version of the UCCJEA. *Skyberg v. Orlich*, No. A13-0026, 2013 WL 5417746, at *2 (Minn. App. Sept. 30, 2013).

In 2014, the Minnesota district court issued its initial order on child custody, determining that mother and father would share joint legal custody of child and that mother would have sole physical custody of child, subject to parenting time by father. Because the Minnesota district court made the initial custody determination, it retained exclusive, continuing jurisdiction over the determination.² Minn. Stat. § 518D.202(a) (2022). Mother continued to reside in Iowa with child, while father resided in Minnesota.

In April 2020, father filed a motion in the Minnesota district court to modify the custody award to grant him sole legal and sole physical custody of child. In October 2021, mother and father reached a settlement agreement regarding custody. The agreement was read into the record, and the district court adopted the agreement in full, immediately as a binding order, to be later reduced to writing. Under the agreement, father was to have parenting time the second weekend of every month. Mother and father also agreed to the appointment of a parenting consultant, who would have binding authority to modify parenting time, and would be paid for jointly by mother and father. The district court filed the written order adopting the parties' agreement in May 2022.

Father asserted that mother refused to allow father parenting time beginning in January 2022. Mother asserted that father had not timely requested parenting time from January through April. She also alleged that child had disclosed to her that father had made

² “The determination” is a term of art in the Minnesota UCCJEA referring to a child-custody determination. *See* Minn. Stat. § 518D.102(d) (2022).

child remove all of child's clothes, measured child's body, and body-shamed child by calling child "fat." In June 2022, Iowa state authorities began a Child in Need of Assistance (CINA)³ proceeding in the Iowa district court on behalf of child, based on allegations that father emotionally abused child, did not supervise child, and was unwilling to provide mental-health treatment to child.

The Iowa district court emailed the Minnesota district court, inquiring "if Minnesota intends to maintain exclusive and continuing jurisdiction over [child], or, would choose to decline jurisdiction for Iowa to exercise jurisdiction" regarding the CINA proceeding. The Minnesota district court responded that it would not relinquish exclusive, continuing jurisdiction over child. On August 15, the Iowa district court dismissed the CINA proceeding based on its lack of jurisdiction.⁴

On August 19, father filed a motion in the Minnesota district court for temporary immediate sole physical and sole legal custody of child and requested that the district court find mother in contempt of court for "failing to abide by the court's ordered parenting time." On September 8, the parenting consultant ordered that father receive parenting time with child for a weekend beginning on September 23.

On September 23, mother filed a "Petition for Relief from Sexual Abuse" on behalf of child in the Iowa district court. The Iowa district court issued a temporary protective

³ A CINA proceeding in Iowa is similar to a Child in Need of Protection or Services (CHIPS) proceeding in Minnesota. *Compare* Iowa Code § 232.2(6)(c) (2022) *with* Minn. Stat. § 260C.201 (2022).

⁴ The child's Iowa guardian ad litem (GAL) then asked the Iowa district court to assume emergency jurisdiction, but the Iowa district court issued an order denying the GAL's request. The Iowa district court filed that order on September 6, 2022.

order (TPO) that same day. The order prohibited father from contacting child, granted temporary custody to mother, and scheduled a hearing. The order also stated that “[t]his order is enforceable in every state” and that “this order prevails over any other custody or visitation order.” The Minnesota district court contacted the Iowa district court to resolve whether the Iowa district court had subject-matter jurisdiction. However, the record does not reflect a clear resolution of the question by the courts.

The Minnesota district court held evidentiary hearings on father’s motion to hold mother in contempt of court on October 12, 13, and 26. On November 14, the Minnesota district court filed an order holding mother in constructive civil contempt of court. The order included seven conditions for mother to fulfil to purge her contempt: (1) pay the parenting consultant’s retainer and fees; (2) coordinate with the parenting consultant to enroll child in therapy; (3) dismiss the TPO action in Iowa and request to vacate the TPO; (4) comply with the parenting consultant’s order on parenting time; (5) post a \$100,000 bond with the court; (6) post a \$5,000 bond with the court in favor of father as prepayment for expenses associated with parenting time; and (7) pay \$4,290 in attorney fees to father’s attorney in Iowa and \$33,714.50 in attorney fees to father’s attorney in Minnesota. The order stated, “**[Mother] is expressly warned future willful failure to comply with the orders of the court may result in incarceration to compel compliance.**” Nevertheless, in that same order, the Minnesota district court acknowledged that “temporary emergency jurisdiction regarding custody of the child has subsequently been invoked in Iowa, [it] is of limited duration . . . and does not extinguish the continuing jurisdiction of the presiding court.”

Just three days later, on November 17, the Iowa district court issued an order explicitly confirming that it was exercising temporary, emergency jurisdiction for mother's TPO under its version of the UCCJEA and that the TPO would expire in 30 days. The 30 days were to allow mother to file for an order for protection in Minnesota. Finally, the order denied father's request for attorney fees for his expenses in defending against the TPO.

In May 2023, the Minnesota district court held a review hearing to determine whether mother had purged her contempt. By written order in June, the district court determined that mother had failed to meet the purge conditions. The district court sentenced mother to 30 days' confinement but stayed the confinement for 90 days to allow mother to comply with the purge conditions. The district court outlined four purge conditions with which mother would have to comply: (1) pay the parenting consultant's retainer; (2) by August 15, pay \$5,000 towards the judgment owed to father; (3) pay \$500 monthly to father until the amount owed to father was satisfied; and (4) post a \$100,000 bond and a \$5,000 bond with the court as previously ordered. The order also reduced the previous order for attorney fees to a judgment.

On October 2, the Minnesota district court held another review hearing to determine whether mother had complied with the purge conditions. Mother testified that she could not meet some of the purge conditions because she lacked the financial resources to pay. The district court determined that mother willfully had not complied with the purge conditions and ordered her into confinement immediately. Mother orally petitioned this court for an emergency writ of prohibition, seeking relief from her immediate confinement.

That same day, we temporarily stayed mother's confinement and directed the district court to file a written order identifying the reasons for its denial of mother's motion for a stay pending appeal of the confinement order. The district court filed its order on October 3, 2024. On October 6, the district court filed a written order requiring mother to report to jail on November 1. It noted that mother had not complied with the remaining purge conditions of making a \$5,000 payment toward the judgment owed to father and had not made monthly \$500 payments to father beginning in August. The district court determined that mother was "not excused from meeting her purge conditions" and that she "has the financial ability to meet the purge conditions."

Mother appealed on October 9. On October 13, mother moved this court to review the denial of her motion for a stay pending appeal. On October 31, we denied mother's motion. That same day, mother orally petitioned the Minnesota Supreme Court for an extraordinary writ under Minn. R. Civ. App. P. 121.01 that would stay her confinement pending appeal. On November 1, the Minnesota Supreme Court stayed mother's confinement and stated that she may file a petition for an extraordinary writ, which she filed with the Minnesota Supreme Court on November 3.

On April 5, the Minnesota Supreme Court issued a writ of mandamus directing this court to issue an order staying mother's confinement, which we did. The supreme court's order also granted her request for leave to proceed in forma pauperis before the supreme court. It also concluded that the record did not support the district court's finding that she could make the \$5,000 cash payment to avoid confinement.

This appeal follows.

ISSUE

Did the Minnesota district court err by finding mother in constructive civil contempt of court when a district court of another state properly exercised temporary, emergency jurisdiction?

ANALYSIS

Mother argues that, because the Iowa district court properly exercised temporary, emergency jurisdiction over mother's TPO proceeding that began on September 23, 2022, the Minnesota district court lacked subject-matter jurisdiction to hold hearings on and find mother in contempt of court for violating the October 2021 custody and parenting-time order while the TPO was in place. Because the district court erred by not dismissing the proceeding, we agree that the district court erred by finding mother in constructive civil contempt of court.⁵

Appellate courts review the interpretation of a statute de novo. *Nelson v. Nelson*, 866 N.W.2d 901, 903 (Minn. 2015). When the plain language of a statute is unambiguous, appellate courts enforce the plain meaning of the statute. *Id.*

⁵ Although mother argues that the district court lacked subject-matter jurisdiction, we note that the term “jurisdiction” has been used imprecisely in prior caselaw. Subject-matter jurisdiction relates to a court's adjudicatory authority over a particular class of cases. *Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, 770 N.W.2d 169, 173 (Minn. App. 2009), *rev. denied* (Minn. Oct. 20, 2009). Minnesota district courts have subject-matter jurisdiction over most civil and criminal cases, with some exceptions. Minn. Const. art. VI, § 3 (designating original jurisdiction in the district courts). The Minnesota Supreme Court has cautioned against the imprecise use of the term “jurisdictional.” *In re Civ. Commitment of Giem*, 742 N.W.2d 422, 427 n.6 (Minn. 2007). Because mother's argument can be resolved based on the statutory language without reference to jurisdiction, we evaluate her argument based on the text of Minnesota's UCCJEA.

Both Minnesota and Iowa have adopted the UCCJEA. Minn. Stat. §§ 518D.101-317; Iowa Code §§ 598B.101-317. Under the UCCJEA, when a Minnesota district court makes the initial custody determination, it retains exclusive, continuing jurisdiction over the determination. Minn. Stat. § 518D.202(a). Notwithstanding Minnesota’s exercise of exclusive, continuing jurisdiction, the Iowa district court may exercise temporary, emergency jurisdiction if the child is present in Iowa and it is necessary to protect the child from abuse. Iowa Code § 598B.204. The Iowa UCCJEA provision states that, if there is a child-custody order issued by a different state exercising exclusive, continuing jurisdiction, “any order issued by a court of [Iowa] under [section 204] must specify in the order a period that the court considers adequate to allow the [petitioner] to obtain an order from the state having [exclusive, continuing jurisdiction].” *Id.*, (3). Further, “[t]he order issued in [Iowa] remains in effect until an order is obtained from the other state within the period specified or the period expires.” *Id.* Minnesota has the same provision. Minn. Stat. § 518D.204 (2022).

Under Minnesota’s UCCJEA, “[e]xcept as otherwise provided in section 518D.204, a court of [Minnesota], before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 518D.209.” Minn. Stat. § 518D.206(b) (2022). A child-custody proceeding is “a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue.” Minn. Stat. § 518D.102(e) (2022); Iowa Code § 598B.102(4) (2022). “If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state *shall* stay

its proceeding and communicate with the court of the other state.” Minn. Stat. § 518D.206(b) (emphasis added). And “[i]f the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state *shall* dismiss the proceeding.” *Id.* (emphasis added). We conclude that the language of the statute is unambiguous. Based on the plain meaning of Minn. Stat. § 518D.206(b), we hold that, if a foreign district court is properly exercising temporary, emergency jurisdiction under the UCCJEA, then the Minnesota district court exercising continuing, exclusive jurisdiction must dismiss the proceeding.

On August 19, 2022, father filed his motion in the Minnesota district court. That motion sought temporary legal and temporary physical custody of child, as well as for the district court to hold mother in contempt of court. On September 23, 2022, mother filed a “Petition for Relief from Sexual Abuse” on behalf of child in the Iowa district court. Because her petition sought to limit father’s parenting time, this initiated a child-custody proceeding in Iowa. *See* Iowa Code § 598B.102(4) (defining “child-custody proceeding” as “a proceeding in which . . . visitation with respect to a child is an issue”). In its September order granting the TPO, the Iowa district court invoked the portion of Iowa Code § 598B.204 addressing an Iowa court’s temporary, emergency jurisdiction, stating that the TPO “is enforceable in every state” and “prevails over any other custody or visitation order.” The Minnesota district court knew of the Iowa proceeding, acknowledging that “temporary emergency jurisdiction regarding custody of the child has subsequently been invoked in Iowa,” so before the Minnesota district court heard father’s contempt motion, the UCCJEA required it to stay the proceeding and communicate with

the Iowa district court. Minn. Stat. § 518D.206(b). And although the Minnesota district court communicated with the Iowa district court, it failed to stay the Minnesota hearing on father's contempt motion. We note that the Iowa district court followed the proper procedure to invoke temporary, emergency jurisdiction. We also note that the Iowa district court clearly stated in its November 2022 order that it was exercising temporary, emergency jurisdiction to enter the TPO on September 23, 2022, and that its temporary, emergency jurisdiction would expire December 19, 2022. As a result, because the Iowa district court "d[id] not determine that the [Minnesota district] court [was] a more appropriate forum," the Minnesota district court erred by not dismissing the proceeding as required under Minn. Stat. § 518D.206(b).⁶

DECISION

Because a Minnesota district court with exclusive, continuing jurisdiction under the UCCJEA must dismiss a child-custody proceeding when a foreign court properly exercises temporary, emergency jurisdiction, the Minnesota district court erred by finding mother in contempt of court.

Reversed.

⁶ Mother also argues that the district court (1) violated the Full Faith and Credit clause of the U.S. Constitution by awarding fees for proceedings in Iowa, fees which the Iowa court denied; (2) should not have ruled that the prerequisites for a contempt ruling were satisfied; and (3) set conditions to purge the contempt that are improper because they are punitive and impossible to meet. We do not address these arguments because we conclude that the Minnesota district court lacked subject-matter jurisdiction. We note, however, that mother cites no law that permits a district court to order attorney fees for a proceeding in a foreign jurisdiction. See *State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family law appeal).