

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFF RANDALL,
Appellant,
vs.
FANCHON BRIANNA CALDWELL,
Respondent.

No. 72080

FILED

JUN 22 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Jeff Randall appeals from a district court order dismissing his custody and support action for his second child with respondent Fanchon Brianna Caldwell for lack of subject matter jurisdiction. Second Judicial District Court, Family Court Division, Washoe County; Frances Doherty, Judge.¹

Randall and Caldwell were in a relationship, but never married. Following the birth of their second child, Caldwell filed an action in California that included custody and support matters for the second child. Thereafter, Randall filed a corresponding action in Nevada.

Randall's suit relating to his second child with Caldwell was assigned to a district court judge hearing a separate action relating to the parties' first child, but Randall filed a peremptory challenge in the second child's case. In considering the peremptory challenge, the judge newly assigned to the suit found that, pursuant to NRS 125A.355, the prior filing

¹We have considered Randall's motion to strike "Respondent's Child Custody Fast Track Response" and for sanctions, as well as his motion for reconsideration of the Nevada Supreme Court order denying his motion for leave to file record references, and conclude these requests are without merit. We therefore deny the motions.

in California—which included the second child—gave California proper jurisdiction over the second child’s custody and support. As such, the district court dismissed the case and this appeal followed.

The district court’s determination of whether it had subject matter jurisdiction is a question of law subject to de novo appellate review. *See Ogawa v. Ogawa*, 125 Nev. 660, 667-68, 221 P.3d 699, 704 (2009); *Friedman v. Eighth Judicial Dist. Court*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011) (stating that when jurisdictional facts are undisputed, UCCJEA subject matter jurisdiction is subject to de novo review). The district court here dismissed Randall’s complaint pursuant to NRS 125A.355(2), which requires, amongst other things, that the district court examine court documents and other information supplied by the parties to determine whether custody proceedings have commenced in another state with proper jurisdiction over the matter before hearing the subject custody dispute.

To the extent Randall asserts it was improper for the district court to consider documents and information pertaining to the prior Nevada and California custody cases in the course of dismissing the underlying matter, that argument is without merit. Indeed, when a prior custody proceeding exists, the provision and review of materials such as the ones at issue here prior to moving forward with the Nevada custody case is required by statute. *See* NRS 125A.355(2) (stating that “a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to NRS 125A.385”); *see also* NRS125A.385 (setting forth required disclosures regarding other proceedings impacting child custody). And to the extent Randall challenges the district court’s taking judicial notice of the related proceedings that were

required to be disclosed by statute, regardless of whether judicial notice was required or proper pursuant to NRS Chapter 47, in light of the statutory disclosure requirements, we determine that Randall's arguments are without merit. Similarly, because Randall's due process challenge to the dismissal order is grounded in his contention that it was improper for the court to take judicial notice or review these materials without giving him a chance to object to the court considering them, his challenge is without merit since the district court was statutorily required to review and consider these documents. *See* NRS 125A.355.


Nonetheless, our review of the record and the parties' arguments indicates that the dismissal of this matter must be reversed and remanded based on the district court's failure to comply with NRS 125A.355(2). Under NRS 125A.355(2), if the court of another state has commenced proceedings substantially in accordance with Nevada's child custody statutes, the Nevada district court "shall stay its proceedings and communicate with the court of the other state." And if after communicating with the other state, the Nevada court determines that the other state is properly exercising its jurisdiction and the other state does not find Nevada to be a more appropriate forum, the Nevada court "shall dismiss the proceeding." *Id.*


Our review of the record does not indicate that the district court below communicated with California, the other state, before dismissing this action. Thus, because the district court here failed to comply with the

requirement to communicate with the other state prior to dismissal pursuant to NRS 125A.355(2), we necessarily,

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Frances Doherty, District Judge, Family Court Division
Jeff Randall
Anderson Keuscher, PLLC
Washoe District Court Clerk