

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARREN CHAKER,
Appellant,
vs.
SUSAN BETH ADCOCK,
Respondent.

No. 78783-COA

FILED

JUN 08 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Darren Chaker appeals from an order of dismissal in a child custody matter. Eighth Judicial District Court, Family Court Division, Clark County; Sandra L. Pomrenze, Judge.

The parties were never married, but have one minor child in common. In 2016, Darren, a California resident, initiated these proceedings seeking to establish paternity and custody. In his amended complaint, Darren alleged that respondent Susan Adcock was a Nevada resident and that the child had resided in Nevada for more than six months prior the initiation of the action. After Darren could not locate Susan, the district court permitted Darren to serve her by publication. In January 2019, the district court entered a default judgment awarding Darren sole legal and physical custody of the parties' minor child.

In April 2019, the matter came back before the court for an emergency Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) conference at the request of a judge in New Jersey. At the hearing, Darren was not present, but was represented by counsel. Susan was present in the New Jersey courtroom and testified that she left Nevada in 2009 and then went to Colorado. The child was born in Colorado in 2010, and Susan testified that she had not returned to Nevada since she left.

Based on this testimony, the district court found that it lacked jurisdiction to enter the January 2019 default judgment as the child had not resided in Nevada for at least six months prior to the action being initiated and, therefore, Nevada was not the home state of the child. Additionally, the New Jersey court agreed to accept jurisdiction over the custody matter. Accordingly, the district court dismissed Darren's action so that the custody matter could proceed in New Jersey. This appeal followed.

On appeal, Darren challenges the district court's dismissal based on lack of jurisdiction. In particular, Darren asserts that the district court denied him due process when it precluded him from presenting evidence that Susan did reside in Nevada, including evidence that Susan held a Nevada driver's license that she renewed in 2016. This court reviews subject matter jurisdiction under the UCCJEA de novo. *Friedman v. Eighth Judicial Dist. Court*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011). "Although de novo, our review properly includes decisions from other UCCJEA states so as to harmonize our law with theirs." *Id.* (citing NRS 125A.605, which provides that "[i]n applying and construing the [UCCJEA], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it").

NRS Chapter 125A governs jurisdiction in child custody matters. *See* NRS 125A.305(2). As relevant here, NRS 125A.305(1)(a) provides that the district court has jurisdiction to enter an initial child custody order if Nevada is the child's home state on the date the action is commenced, meaning the child has resided in Nevada for at least six consecutive months immediately prior to the commencement of the child custody proceeding. Pursuant to NRS 125A.275, the district court may communicate with courts of other states to determine jurisdiction in child custody proceedings. When communicating with a court of another state to determine jurisdiction, the district court "may allow the parties to

participate in the communication,” but “[i]f the parties are not able to participate in the communication, the parties must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.” NRS 125A.275(2).

Here, the district court communicated with the New Jersey court to determine which state had jurisdiction over this child custody matter. And the record demonstrates that the district court allowed the parties to participate in that communication. Indeed, the record indicates, and Darren does not contest, that Susan testified during the UCCJEA conference between the states and Darren was represented by counsel at the hearing. While Darren contends that the district court refused to allow him to admit evidence that Susan held a Nevada driver’s license,¹ the record indicates that the district court considered these arguments from Darren’s counsel, but found them unpersuasive, concluding that a Nevada driver’s license was insufficient to demonstrate residency. *See Sajjad v. Cheema*, 51 A.3d 146, 154 (N.J. Super. Ct. App. Div. 2012) (explaining that “home state” is defined as where the child “lived,” meaning physical presence within the state rather than a legal residence or domicile).

Based on these facts, the record demonstrates that the district court properly allowed the parties to participate in the communication with the New Jersey court, and we cannot conclude that Darren’s due process rights were violated. *See* NRS 125A.275(2); *Hays v. Hockett*, 94 N.E.3d 300, 304 n.3 (Ind. Ct. App. 2018) (concluding the UCCJEA requirements were


¹Darren also contends that the district court refused to admit other evidence demonstrating Susan resided in Nevada. But the evidence Darren relies on, including evidence that Susan was receiving Nevada Welfare and Medicaid benefits and that she initiated a child support action, were from 2012, well before the six month period prior to the initiation of this action in 2016 that is the relevant time frame for establishing home state jurisdiction.

met when the parties were both present to testify, counsel presented argument, and the hearing was held before the court decided to abstain from exercising jurisdiction); *In re Yaman*, 105 A.3d 600, 613-14 (N.H. 2014) (concluding that the UCCJEA does not require a full evidentiary hearing; rather it aims for the speedy resolution of jurisdictional challenges); *Johnson v. Johnson*, 88 So. 3d 335, 339 (Fla. Dist. Ct. App. 2012) (concluding the UCCJEA requirements were not met and appellant was denied due process where the trial court only heard legal argument and no sworn testimony). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²We note that because the district court lacked jurisdiction to enter the January 2019 default judgment, that order is void. See NRS 125A.305(2) (providing that NRS 125A.305(1) “is the exclusive jurisdictional basis for making a child custody determination by a court of this State”); *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 275, 44 P.3d 506, 515 (2002) (explaining that any order adjudicating child custody and visitation without jurisdiction pursuant to the UCCJEA is void).

Additionally, insofar as Darren raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
Darren Chaker
Susan Beth Adcock
Eighth District Court Clerk