

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA LEE PERRY,
Appellant,
vs.
NAE-RYUNG LEE,
Respondent.

No. 86002-COA

FILED

OCT 10 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Joshua Lee Perry appeals from a district court order dismissing child custody claims based on a lack of jurisdiction. Eighth Judicial District Court, Family Division, Clark County; Kathy Hardcastle and Sandra L. Pomrenze, Senior Judges.¹

Joshua and Nae-Ryung Lee were married and resided in San Diego, California with their minor child, who was born in March 2019. In October 2021, the parties took a six-month vacation to Nae-Ryung's home country of South Korea. The vacation was extended for another two months, purportedly at Nae-Ryung's request. In June 2022, Joshua and the minor child returned to the United States, while Nae-Ryung remained in South Korea. Joshua and the minor child then moved to Las Vegas in June 2022 to reside with the child's paternal grandmother, and Nae-Ryung joined them in Las Vegas in August 2022. Nae-Ryung lived with the family in Las Vegas for several months after her return, but then alleged that Joshua had "kidnapped" the minor child as the parties had purportedly agreed that they

¹While Senior Judge Pomrenze signed the order at issue in this appeal, the hearing was held before and the decision was made by Senior Judge Kathy Hardcastle.

would return to South Korea. Accordingly, Nae-Ryung filed a complaint for divorce in Las Vegas in October 2022 and sought primary physical custody of the child, permission to relocate with the child, and an order that Joshua not leave the state with the child. Joshua responded to Nae-Ryung's complaint and custody requests, with both parents requesting that the court take jurisdiction over the custody issue, although Nae-Ryung asserted that there was no home state of the minor child.

Subsequently, the district court entered temporary custody orders to allow Nae-Ryung to exercise parenting time with the minor child, requested briefing from the parties as to jurisdiction, and held a hearing as to whether Nevada had jurisdiction to make a custody determination. Thereafter, the district court entered an order in which it determined Nevada was not the home state of the minor child and dismissed the custody portion of the divorce case in its entirety, declining to address whether the court could assert temporary jurisdiction on other grounds.

On appeal, Joshua asserts that the district court improperly dismissed the child custody portion of the action as Nevada had subject matter jurisdiction over child custody. Specifically, Joshua asserts that, because no other state or country had subject matter jurisdiction over child custody, the dismissal left Joshua with no ability to obtain child custody orders in any other jurisdiction; that the court improperly dismissed its temporary orders; and that the court, at a minimum, had temporary emergency jurisdiction. In response, Nae-Ryung asserts that the district court properly dismissed the custody claims and notes that there is a pending divorce and custody action in South Korea.

Subject matter jurisdiction is a question of law subject to de novo review. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009).

Subject matter jurisdiction over child custody issues is governed by NRS 125A.305. NRS 125A.305 provides different grounds for a district court in Nevada to obtain jurisdiction to enter an initial child custody order.

First, Nevada has jurisdiction if it 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, or Nevada was the home state within six months before the commencement of the proceeding and, although the child is no longer in Nevada, a parent continues to live in Nevada. NRS 125A.305(1)(a); *see also* NRS 125A.085. The second circumstance that provides Nevada with jurisdiction is if a court of another state does not have jurisdiction pursuant to paragraph (a) or a court of the home state of the child has declined to exercise jurisdiction on the ground that Nevada is the more appropriate forum based on significant connections to Nevada. NRS 125A.305(1)(b). The third circumstance which provides jurisdiction to Nevada is if all courts having jurisdiction pursuant to paragraphs (a) or (b) 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. NRS 125A.305(1)(c). The fourth circumstance provides Nevada with jurisdiction if there is no court of any other state that would have jurisdiction pursuant to the criteria specified in paragraphs (a), (b) or (c). NRS 125A.305(1)(d). In addition, foreign countries are designated as "sister" states for purposes of subject matter jurisdiction over child custody. NRS 125A.225.

Here, the Nevada child custody proceeding commenced in October 2022 when Nae-Ryung filed the complaint for custody and motion for primary physical custody. The minor child had been in South Korea from October 2021 to June 2022, when Joshua brought the child to Nevada.

Thus, the minor child was not in Nevada six months before the proceeding commenced, and the district court found that it did not have subject matter jurisdiction because Nevada was not the home state at the time the complaint was filed. However, the court failed to address whether Nevada had jurisdiction under any of the other circumstances outlined in NRS 125A.305, and thus it erred in dismissing the custody portion of the underlying case. *See Kar v. Kar*, 132 Nev. 636, 641-42, 378 P.3d 1204, 1206-07 (2016) (reversing where the district court erroneously determined that Nevada did not have jurisdiction, pursuant to NRS 125A.305(1)(a), but failed to consider whether it had jurisdiction under either NRS 125A.305(1)(b) or (d) and remanding for further proceedings); *see also Combs v. Eighth Judicial Dist. Court*, No. 70709, 2016 WL 6082080, at *1 (Nev. Oct. 17, 2016) (Order Granting Petition for Writ of Mandamus).

Because NRS 125A.305 requires a highly factual analysis best addressed by the district court in the first instance, which the court failed to conduct here, we necessarily reverse and remand this matter for the court to determine whether assumption of jurisdiction is warranted pursuant to NRS 125A.305(1). *See Kar*, 132 Nev. at 642, 378 P.3d at 1207. To the extent Nae-Ryung asserts that there is a pending custody proceeding in South Korea, the district court will need to consider that proceeding in its jurisdictional analysis on remand.² *See In re Parental Rights as to S.M.M.D.*, 128 Nev. 14, 20, 272 P.3d 126, 130 (2012) (recognizing that courts have inherent jurisdiction to determine jurisdiction); *Miannecki v. Second*

²In the event that the district court determines on remand that child custody proceedings have been commenced in South Korea, the district court must follow the procedures outlined in NRS 125A.355 (detailing how courts of this state shall proceed when simultaneous child custody proceedings have been commenced in multiple jurisdictions).

Judicial Dist. Court, 99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983) (defining comity as "a principle whereby the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect" but noting that the application of this principle is not automatic). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Presiding Judge, Eighth Judicial District Court, Family Division
Hon. Sandra L. Pomrenze, Senior Judge
Hon. Kathy Hardcastle, Senior Judge
McFarling Law Group
Nae-Ryung Lee
Eighth District Court Clerk

³Insofar as the parties raise 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.