

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERMAN CHRISTOPHER KEMP,
Appellant,
vs.
FLORDELAINÉ TWINKLE CENTENO
TURQUEZA,
Respondent.

No. 86347

FILED

JAN 31 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order dismissing a child custody complaint. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

This order arises from a custody dispute over Z.K., a minor child. Z.K. was born in 2018 in the Philippines to an American father, appellant Herman Christopher Kemp, and a Filipina mother, respondent Flordelaine Centeno. Z.K. traveled often, taking trips from the Philippines to the United States to visit her father. Her parents' relationship dissolved in 2022, leading Kemp to file a complaint for child custody in Nevada's Eighth Judicial District Court. Centeno moved to dismiss the complaint, asserting that Nevada's courts lacked jurisdiction over Z.K. The district court considered evidence of Z.K.'s time spent in each country and found that Z.K.'s home state under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was the Philippines. It concluded that it lacked jurisdiction to hear the dispute and dismissed Kemp's complaint. Kemp now appeals that dismissal.

The district court followed the UCCJEA statutory scheme

Kemp argues that the district court erred applying the UCCJEA and in declining to exercise jurisdiction over Z.K. We disagree.

We review subject matter jurisdiction de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 702 (2009). The UCCJEA exclusively governs subject matter jurisdiction over child custody issues. NRS 125A.305(2); *Friedman v. Eighth Jud. Dist. Ct.*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011). It limits the authority over custody determinations to one court, which is usually the court in the child's "home state." *Ogawa*, 125 Nev. at 668, 221 P.3d at 704. We "shall treat a foreign country as if it were a state of the United States for the purpose of applying" the UCCJEA. NRS 125A.225(1). Nevada courts have jurisdiction over a child custody determination "only if" the requirements of one of the four subsections are met:

(a) This State is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(b) 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 this State is the more appropriate forum pursuant to NRS 125A.365 or 125A.375 and:

(1) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

(2) Substantial evidence is available in this State concerning the child's care, protection, training and personal relationships;

(c) All courts having jurisdiction pursuant to paragraph (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 pursuant to NRS 125A.365 or 125A.375; or

(d) No court of any other state would have jurisdiction pursuant to the criteria specified in paragraph (a), (b) or (c).

NRS 125A.305(1). Both parties agreed that paragraph (a) of the UCCJEA did not apply because Nevada was not Z.K.'s home state at the time Kemp filed the complaint, nor was it her home state in the six months preceding that filing. Thus, the district court moved to paragraph (b), which creates prerequisites for Nevada to exercise jurisdiction over a minor child. It requires another state not to have jurisdiction or to have declined the exercise of jurisdiction over the child. NRS 125A.305(1)(b). The district court found that the Philippines had jurisdiction over Z.K. and had not declined to exercise that jurisdiction. It therefore did not need to analyze the two subparts to paragraph (b), as they would have applied only if Z.K. had no home state. Nor did it have to analyze paragraphs (c) or (d), as they only apply when the child lacks a home state under either paragraph (a) or (b). NRS 125A.305(1)(c)–(d). We thus consider whether the district court properly determined Z.K.'s home state under the UCCJEA.

The district court properly determined that the Philippines was Z.K.'s home state

Kemp argues that the district court erred in concluding that the Philippines was Z.K.'s home state. We review the district court's factual findings for clear error and give those findings deference if they are supported by substantial evidence. *Ogawa*, 125 Nev. at 668, 221 P.3d at 704.

A home state for a child aged at least 6 months is defined as “[t]he state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence from the state, immediately before the commencement of a child custody proceeding.” NRS 125A.085(1). The commencement of a child custody proceeding occurs when a parent files a post-divorce decree motion concerning custody. *Kar v. Kar*, 132 Nev. 636, 640, 378 P.3d 1204, 1206 (2016). Therefore, the relevant six-month window for Z.K.’s home state determination opened on March 7, 2022, and closed on September 7, 2022 (the date Kemp filed his complaint).

During that six-month window, Z.K. split her time between the Philippines and Las Vegas. She was in the Philippines between March 7 and July 24, and she was in Las Vegas between July 25 and September 7. In such a situation, the district court must determine whether the child’s presence in either location constituted a “temporary absence” from the other state. NRS 125A.085(1). It did so and found that Z.K.’s absences from the Philippines were temporary. It based its conclusion on two factors: first, Z.K. had always returned to the Philippines following trips to Las Vegas. Second, Z.K. spent more time in the Philippines than in Las Vegas, both during the six-month UCCJEA window and for the years of her life before that window opened. The evidence regarding Z.K.’s physical location was uncontested.

Nonetheless, Kemp argues that the district court erred in concluding that Z.K.’s absence from the Philippines was temporary. He contends that the district court should have considered evidence that Z.K. had moved to Las Vegas permanently. He relies on items like Centeno’s tourist visa to the United States, her alleged intent to live and work in

Nevada, and Z.K.'s enrollment in Las Vegas school and dance classes. The district court considered those factors but found that they were unconvincing to establish that Z.K. had moved to Las Vegas.¹ We give deference to the district court's finding that Z.K.'s absence from the Philippines was temporary. *Ogawa*, 125 Nev. at 668, 221 P.3d at 704.

We find no error in the weight the district court gave to Z.K.'s physical location compared to the extrinsic evidence presented by Kemp. No statute or case law binds how the district court should have weighed those facts. Other jurisdictions look at the totality of the circumstances surrounding the child's absence from a state in determining whether an absence was temporary. *In re Marriage of McDermott*, 307 P.3d 717, 726 (Wash. Ct. App. 2013) (collecting cases); *Sajjad v. Cheema*, 51 A.3d 146, 154 (N.J. Super. Ct. App. Div. 2012) (same); *Felty v. Felty*, 882 N.Y.S. 2d 504, 509 (App. Div. 2009) (same).

Because "our review properly includes decisions from other UCCJEA states so as to harmonize our law with theirs," *Friedman*, 127 Nev. at 847, 264 P.3d at 1165, we conclude that the district court was correct to review the totality of the circumstances surrounding Z.K.'s absence from the Philippines. It supported its conclusion that Z.K.'s absence from the Philippines was temporary with the uncontested evidence about Z.K.'s physical location. Of the four years Z.K. lived up to that point, she spent


¹In analyzing these factors, the district court cited an unpublished order from Nevada's Court of Appeals. It erred in doing so. NRAP 36(c)(3). The error is harmless, however, as even without that authority, we conclude that the district court was correct to determine that the Philippines was Z.K.'s home state. See *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("An error is harmless when it does not affect a party's substantial rights.").

three years and five months in the Philippines. She took sporadic vacations to Japan, Vietnam, and various U.S. states but always returned to the same address in the Philippines.

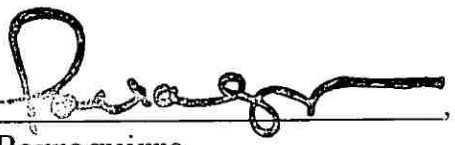
While Kemp presented some evidence in support of his position, the district court's finding is supported by substantial evidence and is not clearly erroneous. We give it substantial deference. *Ogawa*, 125 Nev. at 668, 221 P.3d at 704. Because we defer to its conclusion that Z.K.'s absence from the Philippines during the six-month UCCJEA window was temporary, we find it correctly determined the Philippines to be Z.K.'s home state.

Accordingly, we:

ORDER the judgment of the district court AFFIRMED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

cc: Hon. Vincent Ochoa, District Judge
Willick Law Group
McFarling Law Group
Eighth District Court Clerk