

2017 IL App (2d) 160837-U
No. 2-16-0837
Order filed January 17, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|--------------------------|---|-------------------------------|
| <i>In re</i> MARRIAGE OF |) | Appeal from the Circuit Court |
| SEEMA I. JEELANI, |) | of Du Page County. |
| |) | |
| Petitioner-Appellant, |) | |
| |) | |
| and |) | No. 16-D-1038 |
| |) | |
| ASIM M. KHAN, |) | Honorable |
| |) | Robert E. Douglas, |
| Respondent-Appellee. |) | Judge, Presiding. |

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in granting respondent's motion to dismiss petitioner's dissolution petition for lack of jurisdiction pursuant to the UCCJEA. Affirmed.
- ¶ 2 Petitioner, Seema I. Jeelani, appeals from the trial court's dismissal of her petition for dissolution of her marriage to respondent, Asim M. Khan, for lack of jurisdiction (735 ILCS 5/2-619(a) (West 2014)) over issues concerning custody and visitation pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) (750 ILCS 36/101 *et seq.* (West

2014)).¹ She argues that neither Illinois nor Arizona is the home state under the statute, but that the parties and their two children have significant connections with Illinois such that Illinois courts have jurisdiction to make a child-custody determination. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Seema is an emergency medicine physician, and Asim is an anesthesiologist. The parties were married on May 10, 2013, in Naperville. They initially lived in Asim's parents' house in Naperville while Seema continued her residency program in Chicago and Asim completed his first year of residency in Park Ridge. In June 2013, Asim moved to Arizona to continue his residency training in anesthesiology at the University of Arizona. Seema moved to Oakbrook Terrace. Their daughter, Noha, was born on August 2, 2013, in Illinois.

¶ 5 In November 2013, Asim petitioned in Du Page County for dissolution of the parties' marriage. A temporary custody order was entered in January 15, 2014, but, by agreement, Asim voluntarily withdrew the petition in July 2014.

¶ 6 In June/July 2014, Seema completed her residency program and moved with Noha to Tucson. In July 2014, the parties executed a lease to rent a house in Tucson and, in August 2014, Seema accepted a full-time position as an attending physician at Tucson Medical Center. On October 2, 2015, the parties signed a one-year lease on a larger home in Tucson. According to Seema, the majority of the utilities were in her name.

¹ UCCJEA jurisdiction does not refer to the trial court's constitutionally-derived subject matter jurisdiction, but is "a procedural limit on when the court may hear initial custody matters." *McCormick v. Robertson*, 2015 IL 118230, ¶ 27.

¶ 7 The parties' second child, Yusuf, a son, was born on December 16, 2015, in Arizona. Asim still worked on his residency program, and Seema began working part-time at Tucson Medical Center.

¶ 8 As related in Seema's filings, both parties are licensed to practice medicine in Arizona. Asim has a restricted medical license meant for temporary and training purposes, which lists an Arizona practice address and an Illinois mailing address (his parents' home). The parties filed joint Arizona and Illinois tax returns for the 2014 tax year. They filed (via an extension) Arizona tax returns for the 2015 tax year, and did not file in Illinois for that year. Asim is registered to vote in Will County, Illinois. From 2014 through 2016, Noha spent periods in Illinois with Seema's mother due to "inability to find proper daycare," according to an affidavit Seema submitted. Also, after Yusuf was born, Seema took three months' leave and spent six weeks in Illinois, from January to March 2016. The children had a pediatrician in Arizona and also have maintained one in Illinois. Seema averred that, at one point, she had an Arizona driver's license that she obtained for credentialing purposes after she lost her Illinois license, but she currently maintains an Illinois driver's license, as does Asim.

¶ 9 On May 23, 2016, Seema had her sister take the children to Illinois. Also on that date, Seema petitioned, in Du Page County, for dissolution of the parties' marriage, requesting decision-making authority over the two minor children, ages two and five months, respectively, and a majority of parenting time with them. She resigned from her Arizona job in May 2016.

¶ 10 On June 16, 2016, Asim petitioned in Pima County, Arizona, for dissolution of the parties' marriage, requesting decision-making authority over the two minors and a majority of parenting time with them. He also filed a motion, requesting temporary custody of the children.

¶ 11 On June 21, 2016, the Arizona court set Asim’s petition for temporary relief for hearing on August 8, 2016.

¶ 12 On June 30, 2016, Asim completed his residency and, on July 5, 2016, he began an anesthesiology fellowship at Banner University Medical Center in Tucson.

¶ 13 On July 13, 2016, Asim filed a limited and special appearance in Du Page County and filed an emergency motion to dismiss Seema’s dissolution petition for lack of jurisdiction pursuant to both the UCCJEA, which governs actions involving custody and visitation, and the Uniform Interstate Family Support Act (UIFSA) (750 ILCS 22/101 *et seq.* (West 2014)), which addresses claims for child support and paternity. Asim argued that Arizona was the children’s home state. He also filed an emergency motion to set an immediate hearing on the emergency motion to dismiss.

¶ 14 On July 15, 2016, the Du Page County trial court granted Seema until July 26, 2016, to respond to Asim’s emergency motion to dismiss and granted Asim until August 3, 2016, to reply. The court also set a “UCCJEA/UIFSA conference on August 8, 2016, with the Arizona trial judge.

¶ 15 On August 8, 2016, the Du Page trial court granted Asim’s emergency motion to dismiss Seema’s dissolution petition with regard to the custody, visitation, child support, and maintenance issues (counts I and II). The court reserved and set for status the property issues. In announcing its ruling, the court rejected Seema’s argument that the temporary custody order issued (in 2014) in the first divorce filing in this case conferred jurisdiction to Illinois, noting that the earlier case was “clearly dismissed.” According to the court, the parties “settled” in Arizona and intended to make Arizona their home. Therefore, Arizona had jurisdiction.²

² The Arizona judge agreed and found that Arizona was the home state because the

¶ 16 On September 6, 2016, Seema moved to reconsider, arguing that Illinois retained exclusive, continuing jurisdiction because the January 15, 2014, temporary custody order constituted an initial custody determination in case No. 13-D-2335. This was so, she urged, even though the underlying action was subsequently dismissed. She also challenged that the court's home state analysis.

¶ 17 On October 3, 2016, the trial court denied Seema's motion to reconsider, and, on October 4, 2016, the court entered an amended order *nunc pro tunc* wherein it found that there was no just reason for delaying appeal of the order granting, in part, Asim's motion to dismiss (on the custody, visitation, child support, and maintenance issues) and the order denying Seema's motion to reconsider. See Ill. S. Ct. Rule 304(a) (eff. March 8, 2016). Seema appeals from the trial court's August 8, and October 3 and 4, 2016, orders.

¶ 18 II. ANALYSIS

¶ 19 Seema argues that the trial court erred in dismissing her dissolution petition for lack of jurisdiction over the child custody and related issues. She asserts that the pleadings and related documents reflect that, although there is no home state as defined by the UCCJEA, the parents and children have a significant connection with Illinois warranting a finding of jurisdiction in this state over child-custody determinations. For the following reasons, we conclude that, under all possible scenarios, Seema's claims are unavailing and Illinois does not have jurisdiction to make a child-custody determination in this case.

¶ 20 Initially, we note that Asim has not filed an appellee's brief. However, because we can decide Seema's claims without the aid of an appellee brief, we are not precluded from

children resided there for six months prior to the commencement of proceedings in that state.

750 ILCS 36/201(a)(1) (West 2014).

determining the merits of the appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (despite the absence of an appellee’s brief, a court of review should decide the merits of an appeal when the record is simple and the errors raised can easily be decided).

¶ 21 Asim’s motion was brought pursuant to section 2-619(a) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2014)). A motion to dismiss pursuant to section 2-619 admits the legal sufficiency of the complaint, but asserts certain defects, defenses, or other affirmative matters that act to defeat the claim. *Relf v. Shatayeva*, 2013 IL 114925, ¶ 20. In ruling on a section 2-619 motion, all pleadings and supporting documents must be construed in the light most favorable to the nonmoving party, and the motion should be granted only where no material facts are in dispute and the defendant is entitled to dismissal as a matter of law. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. “The purpose of a section 2-619 motion to dismiss is to dispose of a case on the basis of issues of law or easily proved issues of fact.” *Hertel v. Sullivan*, 261 Ill. App. 3d 156, 160 (1994). We review *de novo* a trial court’s ruling on a motion to dismiss based on section 2-619. *In re Marriage of Diaz*, 363 Ill. App. 3d 1091, 1094 (2006).

¶ 22 A. Background

¶ 23 The UCCJEA “was promulgated to end custody jurisdictional disputes between states, to promote cooperation between states in determining custody issues, and to enhance the ability of states to enforce custody orders expeditiously.” *Fleckles v. Diamond*, 2015 IL App (2d) 141229, ¶ 32 (quoting *In re Joseph V.D.*, 373 Ill. App. 3d 559, 561 (2007)). Once a state makes an initial child custody determination, the statute gives the state exclusive continuing jurisdiction. *Id.*; 750 ILCS 36/202(a) (West 2014).

¶ 24 Sections 201(a), (b), and (c) of the UCCJEA provide:

“(a) Except as otherwise provided in Section 204 [*i.e.*, temporary emergency jurisdiction], a court of this State has jurisdiction to make an *initial* child-custody determination only if:

(1) 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 six 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;

(2) a court of another state does not have jurisdiction under paragraph (1), 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 under Section 207 or 208, and:

(A) 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

(B) *substantial evidence* is available in this State concerning the child’s care, protection, training, and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) 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 under Section 207 or 208; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.” (Emphases added.) 750 ILCS 36/201 (West 2014).

¶ 25 Section 102(7) of the UCCJEA contains the definition of “home state”:

“ ‘Home state’ means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. *A period of temporary absence* of any of the mentioned persons *is part of the period.*” (Emphases added.) 750 ILCS 36/102(7) (West 2014).

¶ 26 Section 102(7)’s reference to “lived from birth” has been construed to mean the place where the child occupies a home. *In re D.S.*, 217 Ill. 2d 306, 317 (2005). The statute defines “Commencement” as “the filing of the first pleading in a proceeding.” 750 ILCS 36/102(5) (West 2014).

¶ 27 B. If the Child-Custody Proceeding Commenced in 2014

¶ 28 Generally, we first determine if Illinois is the children’s home state. Section 102(7) of the UCCJEA requires that we look at the six months immediately preceding the date a custody proceeding is commenced. 750 ILCS 36/102(7) (West 2014). Here, however, because the parties filed dissolution petitions in 2013 and 2016 and because the earlier petition resulted in a 2014 temporary custody order, we must first assess the effect of that order.

¶ 29 In November 2013, Asim petitioned in Du Page County for dissolution of the parties' marriage. A temporary custody and visitation agreed order was entered in January 15, 2014, but, by agreement, Asim voluntarily withdrew the petition in July 2014. Seema argues that the January 2014 temporary custody order constituted an initial custody determination under section 202 of the UCCJEA and, from that point forward, Illinois had exclusive continuing jurisdiction. See 750 ILCS 36/202(a) (West 2014) ("a court of this State which has made a child-custody determination consistent with Section 201 *** has exclusive, continuing jurisdiction over the determination until:" (1) an Illinois court determines that neither the child or parents have a significant connection with Illinois and that no substantial evidence is available in Illinois concerning the child's care, protection, etc.; or (2) an Illinois court or court of another state determines that the child and the parents do not presently reside in Illinois). We agree that the temporary custody order constituted an initial child-custody determination under the UCCJEA. See 750 ILCS 36/102(3) (West 2014) (defining "child-custody determination" to include temporary custody orders). Although the Illinois Marriage and Dissolution of Marriage Act provides that temporary custody orders entered pursuant to that statute terminate when a dissolution petition is dismissed (750 ILCS 5/501(d)(3) (West 2014)), this statute has no bearing on the question whether Illinois continued to have jurisdiction over the child-custody determination under the UCCJEA. However, contrary to Seema's claims, section 202(a) of the UCCJEA provides that Illinois does *not* continue to have jurisdiction where a court, as here, finds that neither the children nor the parties have a significant connection with Illinois, a finding we uphold below.

¶ 30 We also reject Seema's assertion that Asim should have filed a petition to relinquish jurisdiction pursuant to section 202(a)(1) or (a)(2), not a motion to dismiss based on lack of

jurisdiction to make an initial custody determination. She cites no authority for this assertion and thus it is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb.6, 2013) (argument in brief shall contain citation to authorities relied upon); *Adler v. Greenfield*, 2013 IL App (1st) 121066, ¶ 59 (failure to support argument with citation to legal authority results in forfeiture of the argument on appeal).

¶ 31 The custody proceeding commenced in January 2014 with the temporary custody order (that was subsequently dismissed), and Illinois had jurisdiction until the trial court in this case found that the parties have significant connections with Arizona, a finding we affirm below.

¶ 32 C. Home State Analysis – 2016 Commencement

¶ 33 Even if the child custody proceeding commenced later, specifically, in 2016, when Seema and Asim filed their respective dissolution petitions in Illinois and Arizona, our conclusion remains the same—Illinois does not have jurisdiction.

¶ 34 The parties dispute how to analyze the children’s residency during the relevant periods. Asim’s position below was that the trips to Illinois were temporary absences from Arizona and did not have the effect of reducing the parents’ or children’s Arizona residency period. See 750 ILCS 36/102(7) (West 2014) (“A period of temporary absence of any of the mentioned persons is part of the [home state] period.”). Seema’s position is that the absences were not temporary.

¶ 35 Here, the Du Page custody proceeding was commenced on May 23, 2016, when Seema filed a dissolution petition and sought custody of the children. Thus, the relevant time period is November 23, 2015, to May 23, 2016. During this period, Noha spent 80 days in Illinois and 100 days in Arizona. Under Asim’s approach, Noha spent the requisite period in Arizona because the Illinois days were temporary absences because the family lived in Arizona. By Seema’s count, Noha did not spend six consecutive months in Illinois and, thus, Illinois is not

her home state. Turning to Yusuf, he was born on December 16, 2015, in Arizona and was less than six months old during this period. He lived 60 out of 157 days (or 38% of the time) in Illinois and 97 out of 157 days (or 62% of the time) in Arizona. By Asim's count, Arizona is Yusuf's home state because he was born there and his Illinois trips were temporary absences (and, he spent most of his time in Arizona during that period). Under Seema's analysis, Yusuf did not spend most of this period in Illinois, and Illinois is not his home state. In summary, Asim's position is that the children's home state is Arizona, and Seema's position is that neither state is the children's home state.

¶ 36 Next, because Asim filed a dissolution petition in Arizona, we determine if Arizona is the children's home state. Asim filed his dissolution petition there on June 16, 2016, and, therefore, the relevant time period is December 16, 2015, to June 16, 2016. During this period and as noted in Seema's filings, Noha spent 96 days in Illinois and 84 days in Arizona. Asim's position was that Arizona is Noha's home state because the family lived in Arizona, and the Illinois visits were temporary. Seema contends that Arizona is not Noha's home state because she did not spend six consecutive months in Arizona during this period. As to Yusuf, he spent 84 days in Illinois during this period and 96 days in Arizona. Asim argued that Arizona was Yusuf's home state, relying again on the temporary-absence provision. Seema again counts the two states separately and argues that Yusuf did not spend six consecutive months in Arizona, and, therefore, Arizona is not his home state.

¶ 37 In summary, under Asim's approach, the children's home state is Arizona and the analysis ends there because Illinois does not have jurisdiction. Under Seema's approach, because neither child lived in Illinois or Arizona for at least six consecutive months prior to commencement of a child-custody proceeding, neither state became either child's home state

under section 201(a)(1) of the UCCJEA. See *In re Marriage of Diaz*, 363 Ill. App. 3d 1091, 1098 (2006). Having determined that neither Illinois nor Arizona is either child’s home state (if Seema’s reasoning applies), we turn next to the significant-connection analysis in section 201(a)(2) of the UCCJEA. *Id.*

¶ 38 D. Significant-Connection Analysis

¶ 39 Section 201(a)(2) provides that Illinois court can exercise jurisdiction if: (1) Noha and Yusuf and at least one of their parents have a *significant connection* with Illinois other than mere physical presence; and (2) *substantial evidence* is available in Illinois concerning the children’s care, protection, training, and personal relationships. 750 ILCS 36/201(a)(2) (West 2014). We conclude that the trial court did not err in finding that the parties “settled” in Arizona and intended to make Arizona their home.

¶ 40 Seema notes that she and Asim were born, raised, and married in Illinois and that their older child, Noha, was born in Illinois. She characterizes the parties’ Arizona residency as temporary, but offers no facts to support this assertion. Seema notes that, while Asim lived in Arizona during his residency, she and Noha lived in Illinois with Seema’s relatives for nearly one year until August 2014. Seema contends that her and Noha’s move to Arizona in August 2014 was temporary, as reflected in the fact that she and Asim continued to maintain Illinois driver’s licenses (although she also had an Arizona license), Asim was registered to vote in Illinois, and they maintained health care providers for the children in Illinois (but also in Arizona). She also notes that Asim listed Illinois as his residence in his medical license filings. When the children returned to Illinois to stay with their grandmother, the grandmother cared for the children “so that the parents could focus on their education and careers”; they were not, according to Seema, brief interstate visits.

¶ 41 Seema relies in *Diaz*. In that case, the court held that the trial court erred in granting the respondent's 2-619 motion to dismiss for lack of jurisdiction because, while the minor did not have a "home state," Illinois had jurisdiction based on her significant contacts with the state under section 201(a)(2) of the UCCJEA. *Diaz*, 363 Ill. App. 3d at 1100. The court noted that the parties were married in Illinois and that the wife resided in Illinois and returned to Illinois periodically throughout the marriage when the parties separated. *Id.* at 1099-1100. The *Diaz* court also noted that the wife's mother resided in Illinois and the parties' daughter was born in Illinois. *Id.* at 1100. The wife and the minor lived with the wife's mother in Illinois periodically and the wife relied on her mother to assist with the minor's care and support. *Id.* The *Diaz* court also noted that the wife attended counseling in Illinois, attended parenting classes, obtained career training and found employment and independent housing. *Id.* Accordingly, the court held that the wife and minor had significant connections with Illinois and that there was substantial evidence of the minor's care, protection, and personal relationships in Illinois. *Id.* Thus, Illinois had jurisdiction to make an initial child-custody determination. *Id.*

¶ 42 We reject Seema's argument that this case is very similar to *Diaz* and her claim that the move to Arizona was temporary. Most significantly, the wife in *Diaz* relocated her life in Illinois and obtained employment, housing, and other support services in this state. Here, in contrast, Seema's career and home were in Arizona, where she worked as an emergency physician and where she and Asim rented two homes, until she filed the dissolution petition. According to her own pleadings, the visits to Illinois resulted from her and Asim's "inability to find proper daycare" in Arizona. The parties filed Arizona tax returns in 2015 and no Illinois returns that year. They were both licensed in Arizona and the children had a pediatrician there. Seema's allegations that the move to Arizona was temporary and that the parties always intended to return

to Illinois are conclusory, and she provides only the following support for them—the facts that Asim had an Illinois driver’s license, he was registered to vote in Illinois, and he listed his parents’ address as the mailing address in his medical license filings. These facts do not show that the family has a significant connection with Illinois other than mere physical presence. See 750 ILCS 36/201(a)(2) (West 2014).

¶ 43 We also reject Seema’s argument that the trial court should have conducted an evidentiary hearing, because there were disputed issues concerning whether or not the Illinois visits were temporary. She asserts that the trial court erred in deciding disputed factual issues merely on the affidavits. We reject this claim because, again, Seema has offered no factual support for her allegations. *Diaz*, 363 Ill. App. 3d at 1098.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 46 Affirmed.