**[Cite as *Slaughter v. Slaughter*, 2012-Ohio-3973.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
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| Darlene D. Slaughter, nka Dooling, | : | |
| Plaintiff-Appellee, | : | |
| | | No. 11AP-997 |
| v. | : | (C.P.C. No. 07DR-12-4714 |
| Randall Slaughter, | : | (REGULAR CALENDAR) |
| Defendant-Appellant. | : | |

D E C I S I O N

Rendered on August 30, 2012

*Darlene Dooling*, pro se.

*Rion, Rion & Rion, L.P.A., Inc.*, *Jon Paul Rion* and *Nicole Rutter-Hirth*, for appellant.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations

DORRIAN, J.

**{¶ 1}** Defendant-appellant, Randall Slaughter ("appellant" or "father"), appeals from a judgment entered by the Franklin County Court of Common Pleas, Division of Domestic Relations. In its judgment, the court determined that it no longer had subject-matter jurisdiction over child custody matters raised by appellant or by plaintiff-appellee, Darlene D. Slaughter, nka Dooling ("appellee" or "mother"); dismissed appellant's motion for reallocation of parental rights; and granted appellee's motion to "change venue" of the case to a court in Florida, the state in which appellee now resides. We affirm the court's judgment that it lacked subject-matter jurisdiction over the parties' child custody disputes.

## Facts and Procedural History

**{¶ 2}** On December 3, 2007, mother initiated this case by filing a complaint seeking a divorce and custody of the couple's three minor children. She alleged that she was a resident of Ohio and that father had been living in California since September 2007. In his answer and counterclaim for divorce, filed April 9, 2008, father stated that he was a resident of Franklin County and had been a resident of Ohio for more than six months. He further stated that he was currently living in California in connection with his active enlistment in the United States Army prior to an expected deployment to Iraq. Father sought an award of permanent custody of the children or, in the alternative, the entry of a shared-parenting plan.

**{¶ 3}** On May 30, 2008, the court issued a temporary restraining order forbidding mother from moving the children from Ohio. On July 24, 2008, father asserted that mother was no longer living in Ohio and that he believed she had relocated to Florida. On August 4, 2008, mother filed a memorandum acknowledging that she was in Florida but asserting that she was there on a temporary basis to be with her father, who had cancer.

**{¶ 4}** On March 3 and 4, 2010, the domestic relations court conducted a trial on the parties' complaint and cross-claim for divorce, and, on May 7, 2010, the court granted both parties a divorce. (Divorce decree at 17.) In addition, the court named mother legal custodian and residential parent of the parties' three minor children and granted parental visitation to father.

**{¶ 5}** In the divorce decree, the court found as fact that mother had moved from Grove City, Ohio to Florida in May 2008 to "temporarily" care for her terminally ill father and that mother "wishes to remain living with the children in Florida." (Divorce decree at 3.) The court further found that father's military service had ended in August 2009; that, at the time of the trial, he resided with his mother in Dayton, Ohio; that he was enrolled at DeVry University and going to school full time; and that he was seeking employment. The court further stated that father's long-term plans for a permanent residence were unknown but that he expected to live in Dayton for the next two years and had expressed a desire to relocate back to the Franklin County, Ohio area after his expected graduation

in 2011. The court further stated that the three children "would like to return to Grove City, Ohio which they consider their 'home.' " (Divorce decree at 4.)

**{¶ 6}** On September 8, 2010, mother notified the court that, effective October 1, 2010, her address and that of the children would be changing. She noted that her new address in Coral Springs, Florida, would be that of a single-family home within walking distance of the children's current schools. On October 1, 2010, mother notified the court of another address change, also in Coral Springs, Florida.

**{¶ 7}** On December 14, 2010, father filed a relocation notice with the court indicating that he no longer was living in Dayton, Ohio. He advised that he had "returned back to the Army for temporary duty in Fort Bliss, Texas as of 15 November, 2010," but that his "new and current address" was in Las Cruces, New Mexico.

**{¶ 8}** On July 18, 2011, mother, acting pro se, filed the motion at issue herein. Her motion, captioned, "Motion for Change of Venue," asked the domestic relations court to order that "venue of this matter be changed to Broward County," Florida. She declared that "[n]either the plaintiff nor the defendant resides in the county where the case is filed," that the costs of continuing to litigate in Ohio would cause her hardship, and that participation in legal proceedings in Ohio would cause her great inconvenience.

**{¶ 9}** On August 12, 2011, while the children were visiting their father in New Mexico, father filed in a New Mexico court an "Emergency Petition to Request Full Custody and Change of Venue." Father represented in his petition that he was "remarried and lives in a spacious home, with plenty of room for all three children, with a fully paid-off mortgage." He requested the New Mexico court to exercise jurisdiction "given that Father Randall Slaughter's abode is located here, that the children desire to remain here, and that Ohio is now forum non-conveniens for both parties." He further acknowledged that mother had filed in Ohio a motion regarding venue and that Ohio was the "site of the original divorce and custody agreement." Although the record before us does not contain a copy of the New Mexico court's entry, it appears that, on or about August 15, 2011, the New Mexico court dismissed the case for lack of jurisdiction.

**{¶ 10}** On August 16, 2011, mother filed in a Florida court an emergency motion seeking a "child pick-up order." On that same day, the Florida court found that it had jurisdiction to entertain the motion in that a "certified out-of-state custody decree has

been presented to this Court with a request for full faith and credit recognition and enforcement under the Parental Kidnapping Prevention Act, 28 U.S.C. Section 1738A." It further found that it "ha[d] jurisdiction to enforce the [Ohio] decree under the UCCJEA [Uniform Child Custody Jurisdiction and Enforcement Act], specifically sections 61.501-61.542, Florida Statutes." (Order to Pick-up Minor Chidren, Exhibit attached to July 18, 2012 Motion to Supplement Record.) The order commanded any law enforcement officer "in this state or in any other state" to immediately take the three Slaughter children into custody and place them in the physical custody of mother.

**{¶ 11}** On September 14, 2011, the Ohio domestic relations court conducted an evidentiary hearing concerning mother's motion seeking a "change of venue" to Florida.[1] On that same day, and immediately preceding the hearing, father filed a motion in the Ohio domestic relations court asking it to reallocate parental rights and child support. Father supported his motion by attaching a sworn affidavit in which he stated that he "currently reside[s] in Las Cruces, New Mexico" and that mother "currently resides in Florida." Both mother and father appeared and testified at the Ohio hearing, where the court received evidence that both parties were remarried; that mother was living in Broward County, Florida, with her husband; and that father had been living since September 2010 in a home titled in his wife's name. Father further testified that, at the time of the hearing, he was attending school in New Mexico, intended to graduate in December 2011, and then move back to Columbus, Ohio. In addition, he testified that "he still holds an Ohio Driver's license." (Statement of the Record pursuant to Appellate Rule 9.)

**{¶ 12}** On October 27, 2011, the Ohio domestic relations court issued a written decision and judgment entry. The court found that mother had resided in Florida with the minor children since May 2008, a period of approximately three and one-half years, and that father had relocated to New Mexico in December 2010. The court observed that the case implicated the federal Parental Kidnapping Prevention Act ("PKPA"), 28 U.S.C. 178A. It noted that the PKPA defined "home state" as "the State in which, immediately preceding the time involved, the child lived with * * * a parent * * * for at least six

[1] Neither party requested that this hearing be transcribed or recorded. The record does contain statements of the evidence and proceedings that were submitted by appellant and the trial court as authorized by App.R. 9.

consecutive months," and that the statutory definition provided that "[p]eriods of temporary absence of any of such persons are counted as part of the six-month or other period." 28 U.S.C. 178A(b)(4). Accordingly, the court concluded that Florida was "the home state of the minor children pursuant to 28 U.S.C. § 1738A(b)(4)" and that it was therefore "proper and necessary for the home state and county of the minor children to have exclusive jurisdiction over the matter." (Decision at 6-7.) Moreover, the domestic relations court concluded that it "no longer has jurisdiction over the parties, the proceedings or the subject matter in this action." It granted mother's motion for "change of venue" and instructed the clerk of courts to "forward all documents" in the Ohio case to the Circuit Court of the Seventeenth Judicial Circuit for Broward County, Florida, Unified Family Court.

**{¶ 13}** On November 14, 2011, appellant filed a timely notice of appeal, setting forth the following assignment of error:

> THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING APPELLEE'S MOTION TO TRANSFER JURISDICTION OF THE POST-DECREE CUSTODY MATTERS TO FLORIDA AS OHIO HAD ORIGINAL AND CONTINUING JURISDICTION OVER THE PARTIES AND CHILDREN.

## Resolution of Legal Issues

**{¶ 14}** The domestic relations court determined that it no longer had subject-matter jurisdiction over issues concerning the custody of the Slaughter children. In reviewing that judgment, we employ a de novo standard of review as determination of subject-matter jurisdiction is a question of law. *Kingsley v. Ohio State Personnel Bd. of Rev.*, 10th Dist. No. 10AP-875, 2011-Ohio-2227, ¶ 27; s*ee also Mulatu v. Girsha*, 12th Dist. No. CA2011-07-051, 2011-Ohio-6226, ¶ 26 (noting that, although a trial court's decisions regarding domestic relations issues are normally reviewed by an appellate court under the abuse-of-discretion standard, "an appellate court reviews de novo the decision of the trial court regarding the existence of subject matter jurisdiction, because such a determination is a matter of law").

**{¶ 15}** We observe, initially, that resolution of this appeal does not require application of the federal PKPA, which mandates that states give full faith and credit to

valid child custody orders of another state. *See* 28 U.S.C. 1738A(a) ("The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State."). As the domestic relations court observed, the United States Supreme Court has discussed the purpose and scope of the PKPA, as follows:

> The Parental Kidnap[p]ing Prevention Act (AKPA or Act) [28 U.S.C. 1738A] imposes a duty on the States to enforce a child custody determination entered by a court of a sister State if the determination is consistent with the provisions of the Act. In order for a state court's custody decree to be consistent with the provisions of the Act, *the State must have jurisdiction under its own local law* and one of five conditions set out in § 1738A(c)(2) must be met. Briefly put, these conditions authorize the state court to enter a custody decree if the child's home is or recently has been in the State, if the child has no home State and it would be in the child's best interest for the State to assume jurisdiction, or if the child is present in the State and has been abandoned or abused. *Once a State exercises jurisdiction consistently with the provisions of the Act, no other State may exercise concurrent jurisdiction over the custody dispute, § 1738A(g), even if it would have been empowered to take jurisdiction in the first instance, and all States must accord full faith and credit to the first State's ensuing custody decree.*

(Emphasis added.) *Thompson v. Thompson*, 484 U.S. 174, 177 (1988).

**{¶ 16}** In this case, neither appellant nor appellee asked the domestic relations court to enforce or modify an order issued by another state, and the PKPA is therefore not directly implicated in this case. It is true that the PKPA may be relevant in future child custody proceedings involving these parties, as we today affirm the judgment of the domestic relations court that it no longer possessed subject-matter jurisdiction over custody matters concerning the Slaughter children. Pursuant to the PKPA,[2] that

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[2] *See* 28 U.S.C. 1738A(f): "A court of a State may modify a determination of the custody of the same child made by a court of another State, if * * * (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination."

*See also* UCCJEA § 203, from which R.C. 3127.17 derives, which provides:

> Except as otherwise provided in Section 204, a court of this State may not modify a child custody determination made by a court of another State

judgment may well be deemed relevant in a court of another state or states in future child custody proceedings concerning the Slaughter children. But the PKPA does not control the issue that was before the domestic relations court, i.e., whether the court had subject-matter jurisdiction to entertain the parties' 2011 motions.

**{¶ 17}** We must, rather, decide this case pursuant to the jurisdictional rules established in R.C. Chapter 3127, Ohio's codification of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). The Supreme Court of Ohio has discussed the background and purpose of the UCCJEA, and its predecessor, the Uniform Child Custody Jurisdiction Act ("UCCJA"), as follows:

> "To help resolve interstate custody disputes, the Uniform Child Custody Jurisdiction Act ('UCCJA') was drafted in 1968 and adopted by Ohio in 1977." *Justis v. Justis* (1998), 81 Ohio St.3d 312, 314, 691 N.E.2d 264, citing former R.C. 3109.21 to 3109.37, 137 Ohio Laws, Part I, 359. A purpose of the UCCJA was "to avoid jurisdictional competition and conflict with courts of other jurisdictions" in custody matters. [Citation omitted.] This purpose, however, was defeated by departures from the original text of the UCCJA in many states and by inconsistent decisions by state courts during about 30 years of litigation. See Uniform Child Custody Jurisdiction and Enforcement Act, Prefatory Note (1997), 9 Uniform Laws Ann. 649, 650.
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> To rectify this problem, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") in 1997 to replace the UCCJA. [Citations omitted.] "The most significant change[ ] the UCCJEA makes to the UCCJA is giving jurisdictional priority and exclusive continuing jurisdiction to the home state." Annotation, Construction and Operation of Uniform Child Custody

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> unless a court of this State has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:
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> (1) the court of the other State determines it no longer has exclusive, continuing jurisdiction under section 202 or that a court of this state would be a more convenient forum under section 207; or
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> (2) a court of this State or a court of the other State determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other State.

> Jurisdiction and Enforcement Act (2002), 100 A.L.R.5th 1, 20, Section 2 [b]. The UCCJEA "eliminates a determination of 'best interests' of a child from the original jurisdictional inquiry." [Citation omitted.]
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> Since the conference's adoption of the UCCJEA, over 40 states, including Ohio and West Virginia, as well as the District of Columbia and the Virgin Islands, have repealed their versions of the UCCJA and adopted the UCCJEA. [Citation omitted.] In Ohio, the UCCJEA is codified in R.C. Chapter 3127.

(Emphasis added.) *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, ¶ 20-22.

**{¶ 18}** The UCCJEA was thus developed to resolve issues that had arisen under the first uniform act, the UCCJA. As noted below in the prefatory note to the UCCJEA, the code was drafted to provide states with model state jurisdictional statutes that are consistent with the federal PKPA , thereby enabling states that have adopted the UCCJEA to enter child custody orders that will be entitled to full faith and credit by other states:

> In 1980, the federal government enacted the Parental Kidnap[p]ing Prevention Act (PKPA), 28 U.S.C. § 1738A, to address the interstate custody jurisdictional problems that continued to exist after the adoption of the UCCJA. The PKPA mandates that state authorities give full faith and credit to other states' custody determinations, so long as those determinations were made in conformity with the provisions of the PKPA. The PKPA provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice requirements are similar to those in the UCCJA. There are, however, some significant differences. *For example, the PKPA authorizes continuing exclusive jurisdiction in the original decree State so long as one parent or the child remains there and that State has continuing jurisdiction under its own law*. The UCCJA did not directly address this issue. To further complicate the process, the PKPA partially incorporates state UCCJA law in its language. The relationship between these two statutes became "technical enough to delight a medieval property lawyer."

(Citation omitted.) (Emphasis added.) UCCJEA, Prefatory Note. *See* http://www.law.upenn.edu/bll/archives/ulc/uccjea/final1997act.htm, PDF version at p. 4.

**{¶ 19}** Consistent with the UCCJEA, R.C. 3127.15(A)(1) provides criteria for the *initial* vesting in an Ohio court of jurisdiction over child custody disputes, and provides, in part:

> Except as otherwise provided in section 3127.18[3] of the Revised Code, a court of this state has jurisdiction to make an initial determination in a child custody proceeding * * * if * * * [t]his state is the home state of the child on the date of the commencement of the proceeding.

**{¶ 20}** "Home state" for purposes of R.C. Chapter 3127 is defined in R.C. 3127.01(B)(7) as follows:

> "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 preceding the commencement of a child custody proceeding and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

**{¶ 21}** In the case before us, mother commenced the divorce proceedings on December 7, 2007, when she filed her initial complaint seeking a divorce and custody of the three Slaughter children. Neither party disputes that both parents and the children lived in Ohio at that time. Ohio was therefore the children's "home state" for purposes of the initial vesting of jurisdiction over matters concerning their custody. In fact, appellant concedes that the Ohio domestic relations court's jurisdiction was proper at the time it entered the divorce decree.

**{¶ 22}** Accordingly, the case before us does not present the question whether Ohio had *initial* jurisdiction to issue its original custody order. Rather, this case presents a question of the *duration* of the domestic relations court's jurisdiction after it was initially established. The question of the duration of a court's jurisdiction over custody matters is determined pursuant to R.C. 3127.16, which provides:

> Except as otherwise provided in section 3127.18 of the Revised Code,[4] a court of this state that has made a child custody determination consistent with section 3127.15 or 3127.17 of

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[3] R.C. 3127.18 authorizes the exercise of temporary emergency jurisdiction in prescribed circumstances.

[4] R.C. 3127.18 authorizes the exercise of temporary emergency jurisdiction in prescribed circumstances and is not relevant in this case.

> the Revised Code *has exclusive, continuing jurisdiction* over the determination *until the court* or a court of another state *determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.*"

(Emphasis added.)

**{¶ 23}** Appellant's assignment of error posits that the domestic relations court abused its discretion in finding that it lacked jurisdiction over the parties' post-decree motions, arguing that Ohio had "original and continuing jurisdiction over the parties and children." But appellant's argument fails because R.C. 3127.16 establishes that the exclusive and continuing jurisdiction of a state court terminates at the point in time at which that court (here, the Ohio domestic relations court) determines that "the child, the child's parents and any person acting as a parent do not presently reside" in Ohio.

**{¶ 24}** In 2008, the Second District Court of Appeals decided a case analogous to this one. In *Lafi v. Lafi*, 2d Dist. No. 2007 CA 37, 2008-Ohio-1871, a mother and father were divorced in Ohio in 2000. In 2005, the Ohio court awarded father visitation. At that time, the father lived in Ohio, but the mother and their child were living in Michigan. The father moved to Kentucky in October 2006. In October 2007, the father filed in Ohio a motion seeking to have the mother held in contempt. The mother challenged the jurisdiction of the Ohio court, asserting that "because none of the parties lived in Ohio, the UCCJEA divested the common pleas court of jurisdiction to hear the matter." *Id.* at ¶ 4. The common pleas court agreed. In affirming, the court of appeals observed that, "under the UCCJEA, [the common pleas court] did not have jurisdiction to hear the contempt motion because none of the parties lived in Ohio and another state's court had jurisdiction over the matter." *Id.* at ¶ 5.

**{¶ 25}** Consistent with the court's holding in *Lafi*, the Comment to Section 202 of the UCCJEA (the precursor to R.C. 3172.16) provides:

> This is a new section addressing continuing jurisdiction. Continuing jurisdiction was not specifically addressed in the UCCJA. Its absence caused considerable confusion, particularly because the PKPA, § 1738(d), requires other States to give Full Faith and Credit to custody determinations made by the original decree State pursuant to the decree State's continuing jurisdiction so long as that State has

> jurisdiction under its own law and remains the residence of the child or any contestant.
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> * * *
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> Continuing jurisdiction is Last when the child, the child's parents, and any person acting as a parent no longer reside in the original decree State. The exact language of subparagraph (a)(2)[5] was the subject of considerable debate. Ultimately the Conference settled on the phrase that "a court of this State or a court of another State determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State" to determine when the exclusive, continuing jurisdiction of a State ended. The phrase is meant to be identical in meaning to the language of the PKPA which provides that full faith and credit is to be given to custody determinations made by a State in the exercise of its continuing jurisdiction when that "State remains the residence of ..." * * * The phrase "remains the residence of" in the PKPA has been the subject of conflicting case law. It is the intention of this Act that paragraph (a)(2) of this section means that the named persons no longer continue to actually live within the State. Thus, unless a modification proceeding has been commenced, when the child, the parents, and all persons acting as parents physically leave the State to live elsewhere, the exclusive, continuing jurisdiction ceases.

(Emphasis added.) Uniform Child Custody Jurisdiction and Enforcement Act, Prefatory Note. *See* http://www.law.upenn.edu/bll/archives/ulc/uccjea/final1997act.htm, PDF version at 27.

**{¶ 26}** We note that, when interpreting Ohio statutes based on uniform codes, the Supreme Court of Ohio has found persuasive the official comments provided with the codes. The court has observed, for example, that " 'it is desirable to conform our interpretations of the Uniform Commercial Code to those of our sister states.' [Citation omitted]. Relying on the official comments to the UCC helps to achieve this uniformity, as does reviewing case law that has previously interpreted particular provisions. *Casserlie v. Shell Oil Co.*, 121 Ohio St.3d 55 (2008), ¶ 18." *Prouse, Dash & Crouch, L.L.P. v. DiMarco*, 116 Ohio St.3d 167 , 2007-Ohio-5753, ¶ 12.

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[5] Ohio did not enact Section 202 of the UCCJEA in its entirety. Rather, R.C. 3127.16 incorporated only subsection (a)(2) of Section 202.

**{¶ 27}** The foregoing authority makes it clear that the determinative fact in this case was whether either appellant or appellee or any of their children were residents of Ohio at the time appellee filed her motion to transfer venue. If none of these individuals was a resident of Ohio at that time, the domestic relations court no longer had continuing jurisdiction. The domestic relations court found that none of these individuals were residents of Ohio at that time. We agree.

**{¶ 28}** The Supreme Court of Ohio has observed that, although the term "resident" appears in many sections of the Ohio Revised Code, the General Assembly has not specifically defined the term for general purposes. *Prouse, Dash & Crouch* at ¶ 7-9. The Supreme Court has acknowledged that the "case law, statutes, and rules are in accord that the intention of a person is a significant factor in determining where he or she legally resides." *Id.* at ¶ 10. But the court concluded that, for purposes of R.C. 3105.03 (which establishes a residency requirement for purposes of filing an action for divorce), a person's status as an Ohio resident is terminated when his or her actions manifest an intent to make a home in another state. *Id.* at ¶10, citing *Barth v. Barth,* 113 Ohio St.3d 27, 2007-Ohio-973.

**{¶ 29}** Father acknowledges that both his ex-wife and all of the children were residents of Florida and that he was living in New Mexico. He argues, however, that he had moved to New Mexico simply to complete his schooling, that his relocation was "temporary," and that he possessed an intent to return to Ohio when his schooling was finished. He claims that the trial court abused its discretion in determining that he was a New Mexico resident because he possessed an intent to return to Ohio and, therefore, remained a "resident" of Ohio. He further argues that, because he—a parent—was a resident of Ohio, the Ohio domestic relations court's exclusive, continuing jurisdiction remained in effect, allowing that court to entertain the parties' 2011 motions. We reject father's argument for several reasons.

**{¶ 30}** In deciding that father had Last his status as a resident of Ohio for purposes of R.C. 3127.16, we act consistently with the official comment to Section 202 of the UCCJEA, the precursor to R.C. 3127.16. The drafters of the UCCJEA expressly rejected the premise that traditional principles governing determination of domicile, as opposed to

residence, should apply in determining jurisdiction over child custody matters under the Act, observing that:

> [W]hen the child, the parents, and all persons acting as parents *physically leave the State to live elsewhere*, the exclusive, continuing jurisdiction ceases.
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> The phrase "do not presently reside" is not used in the sense of a technical domicile. The fact that the original determination State still considers one parent a domiciliary does not prevent it from Lasing exclusive, continuing jurisdiction after the child, the parents, and all persons acting as parents have moved from the State.[6]

(Emphasis added.) Uniform Child Custody Jurisdiction and Enforcement Act, Prefatory Note. *See* http://www.law.upenn.edu/bll/archives/ulc/uccjea/final1997act.htm, at 27.

**{¶ 31}** The evidence in the case before us supports the conclusion that father had "physically left [Ohio] to live elsewhere." First, father was no longer transient due to obligations of military service. *Compare Brandt v. Brandt*, 268 P.3d 406 (Sup.Ct.Colo.2012). Moreover, there is no indication in the record that father owns or leases residential real property in Ohio. Rather, father had remarried and had been living since at least December 2010 in a home in New Mexico owned by his wife. These facts strongly support the conclusion that father had become a New Mexico resident. *See Prouse, Dash & Crouch* (finding the fact that an individual continued to live in Canada

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[6] This court has recently discussed the difference between the legal terms "residency" and "domicile":

> Residency is not the same as domicile. Domicile connotes a "fixed, permanent home to which one intends to return and from which one has no present purpose to depart." An individual can only have one domicile, and he or she does not have to be physically present at his or her domicile in order to keep the same.
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> However, one can have more than one residence. A residence has been defined as a "place of dwelling," and it requires, "the actual physical presence at some abode coupled with an intent to remain at that place for some period of time. * * * Thus, the term "residence" connotes an element of permanency rather than a location where one simply visits for a period of time.

(Citations omitted.) *State ex rel. Crisp. v. Indus. Comm.* 10th Dist. No. 10AP-438, 2012-Ohio-2077, ¶ 13, quoting *In re Estate of Andrew Anderson*, 7th Dist. No. 05 Mo. 14, 2007-Ohio-1107.

suggested that he is not an Ohio resident); *In re Marriage of Nurie*, 176 Cal.App.4th 478, 500 (2009) ("While a parent's bare intent to return to the decree state may not be sufficient for retention of jurisdiction if he has otherwise moved from the state * * * if he maintains a functioning resident in the decree state, available for his own use at all times, he continues to 'presently reside' in that state" for purposes of UCCJEA.); *Russell v. Cox*, 383 S.C. 215 (2009) (affirming finding that father had not abandoned his residency in the state of Georgia for purposes of the UCCJEA despite currently living in South Carolina, father owned real estate in Georgia, was registered to vote in Georgia, continued to hold a Georgia driver's license, received his paycheck as a resident of Georgia, was enrolled as a full-time student in Georgia, and had represented on a student loan application that his legal residence was Georgia); *Staats v. McKinnon*, 206 S.W.3d 532 (Tenn.Ct.App.2006) (Under the UCCJEA "determining where an individual 'presently reside[s]' does not involve a technical inquiry into the individual's legal domicile under state law. [Citation omitted.] Rather, the sole question is whether the relevant individuals 'continue to actually live within the state' or have 'physically le[ft] the state to live elsewhere.' "); *In re Marriage of Akula*, 404 Ill.App.3d 350, 359 (2010) (finding that term "residing" for purposes of UCCJEA connotes some degree of permanency beyond a temporary sojourn and that recognition by a foreign court that the mother, father, and child are "now ordinarily residing" in foreign country necessarily implied that they did not "presently reside" in Illinois). *See also Brandt* (determination of whether a parent "presently resides" in a state requires inquiry into totality of circumstances; "presently resides" as used in UCCJEA means more than mere physical presence in a state).

**{¶ 32}** Accordingly, and assuming arguendo, that father indeed had an intent to return to Ohio, that intent does not compel the conclusion that he remained a resident of Ohio after moving out of his mother's home in Ohio and eventually moving in with his new wife in her home in New Mexico. Nor does the additional fact that father had not obtained a New Mexico driver's license but rather retained a valid Ohio driver's license persuade us that he remained an Ohio resident. These two facts, the only facts proffered by father in support of his contention that he was a resident of Ohio, are insufficient to establish that father remained an Ohio resident on September 14, 2011, when the

domestic relations court considered whether its subject-matter jurisdiction remained on-going.

**{¶ 33}** Moreover, father had as early as December 2010 represented to courts in both Ohio and New Mexico, that he had become a resident of New Mexico. On ecember 14, 2010, father filed a notice of relocation in the Ohio court advising that his residence was in Las Cruces, New Mexico. On August 12, 2011, father represented to a New Mexico court in an emergency petition requesting full custody that he was "remarried and lives in a spacious home with plenty of room for all three children, with a fully paid-off mortgage." Principles of judicial estoppel suggest that we should reject father's current representation that he remained a resident of Ohio and was in New Mexico only temporarily. Judicial estoppel "encompasses the notion that 'a party cannot be permitted to occupy inconsistent positions or to take a position in regard to a matter which is directly contrary to or inconsistent with one previously assumed by him.' " *Alternatives Unlimited-Special, Inc. v. Ohio Dept. of Edn.*, 168 Ohio App.3d 592, 2006-Ohio-4779 (10th Dist.), ¶ 37, quoting *Van Dyne v. Fidelity-Phenix Ins. Co.*, 17 Ohio App.2d 116 (7th Dist.1969).

**{¶ 34}** We conclude that father was not a resident of Ohio for purposes of the UCCJEA on September 14, 2011, nor were mother or their children. Accordingly, and consistent with R.C. 3127.16, we affirm the determination of the domestic relations court that its previous exclusive, continuing jurisdiction had ended.

**{¶ 35}** The domestic relations court ordered its clerk to forward all documents in the case to the unified family court in Broward County, Florida. Subsection (A) of R.C. 3127.09 clearly authorized the court to "communicate with a court in another state concerning a proceeding arising under [Ohio's version of the UCCJEA)" and that communication may include communications concerning court records. R.C. 3127.09(C). Accordingly, Ohio law authorizes the domestic relations court to instruct its clerk to send copies of its court files to other courts, including the Florida court, and the court's instruction to its clerk was therefore appropriate.

**{¶ 36}** R.C. Chapter 3127 does not, however, authorize an Ohio court to "transfer" a case to a court of another state as that term is used in a technical sense. *See Annotation, Construction and Application of Uniform Child Custody Jurisdiction and*

*Enforcement Act's Exclusive, Continuing Jurisdiction Provision—Other Than No Significant Connection/Substantial Evidence,* 60 A.L.R.6th 193, Section 3 (2010) ("On occasion, a court faced with a modification petition involving parties who have all relocated to another state will enter an order that purports to transfer the child custody proceeding to another state. It has been held that there is no authority for this under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), but rather the court may simply determine that the state no longer retained exclusive, continuing jurisdiction over matters pertaining to child custody."). *See also Franza v. Saxon-Kowalsky*, 2009 WL 2253197 (N.J.Super.Ct.App.Div.2009) (trial court has authority to determine that its exclusive, continuing jurisdiction has terminated when neither the child, nor a parent, nor any person acting as a parent presently resides in this state, but no provision exists allowing a state court of one state to transfer the case to a court of another state). It is true that R.C. 3127.21 authorizes an Ohio court with subject-matter jurisdiction, after having first followed the procedures established in that statute, to determine that it has become an inconvenient forum and that a court of another state is a more convenient forum. Even in that circumstance, however, the court is authorized to only *stay* the proceedings of the Ohio case upon condition that a child custody proceeding is promptly commenced in another designated state—not transfer the Ohio case. R.C. 3127.21(C).

**Conclusion**

**{¶ 37}** For the foregoing reasons, appellant's assignment of error is overruled. We affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, insofar as it determined that it no longer had subject-matter jurisdiction over the custody issues raised by appellant and appellee. We further affirm the judgment insofar as it ordered the clerk of courts to provide a copy of the record to the unified family court in Broward County, Florida.

*Judgment affirmed.*

BROWN, P.J., and FRENCH, J., concur.

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