

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

In re: A.N.D.	:	Case No. 24CA4089
	:	
Minor Child Custody.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
	:	
	:	RELEASED: 10/28/2025

APPEARANCES:

Adrienne Buckler Callihan, Buckler Callihan Law, LLC, Portsmouth, Ohio, for appellant.

Marie Hoover, Hoover Law Group LLC, Portsmouth, Ohio, for appellee.

Wilkin, J.

{¶1} Kimberly and Everett Cole, Jr., (the “Coles”) appeal a judgment of the Scioto County Court of Common Pleas, Juvenile Division (“juvenile court”), that vacated prior orders granting them both ex parte emergency and legal custody of the minor child, A.N.D., and that further dismissed the entire case for lack of jurisdiction.

{¶2} The Coles assert that the juvenile court erred in dismissing their motions for ex parte and legal custody of A.N.D. for lack of jurisdiction. After reviewing the parties’ arguments, the applicable law, and the record, we agree with the trial court’s determination that it lacked jurisdiction to issue a child custody order regarding A.N.D. Therefore, we overrule the Coles’ sole assignment of error and affirm the juvenile court’s judgment.

FACTS AND PROCEDURAL BACKGROUND

{¶3} The Coles claim to be A.N.D.’s paternal grandparents. Chad Dunn (“Dunn”), the Coles’ son, claims to be A.N.D.’s biological father. However, there is no

evidence in the record that Dunn has legally established that he is A.N.D.'s biological father, such as a parentage action.

{¶4} Appellee, Jamie Johnson ("Mother"), is A.N.D.'s biological mother. She has been married to Douglas Johnson since 2004. A.N.D. was born in 2017. Therefore, Douglas Johnson is presumed to be A.N.D.'s legal father.

{¶5} On January 19, 2024, the Coles filed a motion for ex parte emergency custody of A.N.D. The motion alleged that for a majority of A.N.D.'s life, she resided with Mother and Dunn in a home located in Scioto County, Ohio. The house was owned by the Coles and was located in close proximity to the Coles' home. The motion claimed that "almost every day" the Coles cared for A.N.D., as well as paid for diapers, clothes, etc., while she lived nearby.

{¶6} The motion further alleged that as time went on Dunn and Mother neglected their home in Scioto County, including allowing it to become infested with fleas. The Coles became concerned for A.N.D.'s safety and confronted Mother and Dunn about the situation. The Coles asserted that they became "irate" to the extent that Dunn became violent with his mother Kimberly Cole, who subsequently acquired a Civil Protective Order against him.

{¶7} The motion maintained that after this incident, Mother, Dunn, and A.N.D. left their home in Scioto County and relocated between various states, such as South Carolina, Florida, and Colorado, staying in each for only a few months. The Coles claimed that A.N.D. was often left in "run-down" hotels while her parents worked and was often truant from school. The motion further alleged that both Mother and Dunn

struggled with mental health and drug addiction and that Mother used drugs during A.N.D.'s entire life.

{¶8} The Coles received messages from Mother's brother-in-law, Derrick Ryan Cole ("Ryan") who lived in Colorado. Ryan was concerned about A.N.D. because of Mother's drug addiction. He asserted that Mother "constantly [left] the child with him, [would] often just leave without telling anyone, and that the child [would] cry because she [didn't] know where her parents [were]."

{¶9} The motion further claimed that "[Dunn] and Mother [had] not been in a romantic relationship for several months." Dunn believed that A.N.D. was in danger being with Mother. Dunn also agreed that the Coles should have custody of A.N.D. and signed a form consenting for them to do so.

{¶10} The Coles argued that the juvenile court had jurisdiction to consider their motion pursuant to the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA). The Coles claimed that under the UCCJEA, Ohio was A.N.D.'s "home state," or, alternatively, that A.N.D. had significant connections with Ohio. On January 23, 2024, the court issued a judgment entry granting the Coles emergency custody of A.N.D. and set a probable cause hearing for the next day.

{¶11} On January 24, 2024, the court held a probable cause hearing and Kimberly Cole (Kimberly) was the sole witness. In large part, her testimony supported the assertions made in the Coles' motion for emergency custody, e.g., Kimberly was Dunn's biological mother; Dunn was A.N.D.'s biological father; A.N.D. was seven years old; Mother and Dunn fled the state with A.N.D., who was approximately four years old, and have been moving from state to state ever since. Kimberly further asserted that

Ryan had informed her that Mother was using drugs and leaving A.N.D. unattended or would drop her off with drug users. She further claimed that A.N.D. was often truant from school. Kimberly maintained that she feared for the safety of A.N.D. being around drug use.

{¶12} Kimberly testified that Dunn had moved back to Ohio. She asserted that Dunn consented to the Coles acquiring custody of A.N.D. and he waived service.

{¶13} The trial court found there was probable cause to grant the Cole's ex parte emergency custody for A.N.D. Thus, the court ordered that temporary custody of A.N.D. be vested in the Coles.

{¶14} On April 8, 2024, the trial court held a permanent custody hearing. Service of Notice of the hearing on Mother failed and she did not appear at the hearing.¹ Kimberly was again the Coles' sole witness. She offered little additional testimony regarding why she and her husband should be vested with legal custody of A.N.D. Instead, she explained their unsuccessful efforts made to track A.N.D. through several states. She also testified that Dunn attempted suicide on more than one occasion.

{¶15} The court issued an entry finding Mother and Dunn to be "unfit and unsuitable" parents to A.N.D. The court further found that it was in A.N.D.'s best interest for the Coles to be vested with legal custody. Thus, the court awarded the Coles legal custody of A.N.D.

{¶16} On May 25, 2024, Mother filed a motion seeking relief from the judgment that granted custody of A.N.D. to the Coles under Civ.R. 60(B). Mother claimed that she and A.N.D. had not lived in Ohio since May 22, 2020, contrary to the Coles claim

¹ The record indicates that the Coles unsuccessfully attempted service by certified mail on Mother at a Denver address. Consequently, they then published/posted notice of their custody action.

that they had come to Ohio in November 2023. Therefore, she argued the juvenile court did not have jurisdiction to rule on A.N.D.'s custody. Mother further asserted that based on the court's lack of jurisdiction, she had a meritorious defense under Civ.R. 60(B) to the Coles' motion for legal custody. Finally, Mother argued that she sought relief within a reasonable time. She claimed that she was not aware that the Coles had been awarded custody of A.N.D., and that after learning of such, she promptly filed a motion for relief from judgment.

{¶17} On May 28, 2024, the Coles filed a memorandum contra to Mother's Civ.R. 60(B) motion seeking relief from custody judgment. The Coles maintained that the juvenile court had jurisdiction to issue the orders for custody pursuant to UCCJEA, R.C. 3127.15.

{¶18} The Coles claimed that contrary to her assertion, Mother was aware of the hearings as evidenced by posts that she made on Facebook indicating that she had known about the motion for emergency custody since at least February 2024. Therefore, because Ohio was A.N.D.'s home state, or alternately because A.N.D. had significant connections to Ohio, the juvenile court had jurisdiction under the UCCJEA to issue the emergency custody order, as well as the entry that vested legal custody of A.N.D. with the Coles. Accordingly, the Coles moved the court to overrule Mother's motion to dismiss its custody judgments.

{¶19} On July 18, 2024, the court issued a judgment finding that it "did not have jurisdiction over the subject Child, as the [Coles] had no first-hand knowledge of any contact that the child nor the [Mother] had with Scioto County, when it issued its previous orders granting custody to the [Coles]." Thus, the court vacated its order of

emergency custody and its entry granting custody of A.N.D. to the Coles for want of jurisdiction and ultimately dismissed the case for lack of jurisdiction. It is this judgment that the Coles appeal.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN DISMISSING APPELLANTS' MOTION FOR EX PARTE EMERGENCY AND LEGAL CUSTODY, AFTER FIRST GRANTING IT, INASMUCH AS THE COURT'S DECISION DISMISSED APPELLANT'S MOTION ON THE GROUNDS THAT THE COURT LACKED PERSONAL OR SUBJECT MATTER JURISDICTION.

{¶20} In their sole assignment of error, the Coles claim that appellate review of whether a court has subject matter jurisdiction is de novo. However, they argue, if subject matter jurisdiction over a child's custody case is established, then a trial court's decision to exercise said jurisdiction pursuant to UCCJEA is reviewed for an abuse of discretion.

{¶21} The Coles claim that the court had jurisdiction to address A.N.D.'s custody under UCCJEA, codified in R.C. Chapter 3127. This chapter specifies four jurisdictional bases for a court to have subject matter jurisdiction over a child's custody: (1) home state jurisdiction, (2) significant-connection jurisdiction, (3) jurisdiction because of the declination of jurisdiction, and (4) default jurisdiction.

{¶22} The Coles first argue that the juvenile court had jurisdiction to address A.N.D.'s custody because Ohio was her home state under R.C. 3127.15(A)(1). The Coles acknowledge that R.C. 3127.01(B)(7) defines "home state" as "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." Despite this "immediately preceding" language, the Coles claim that the Supreme Court

decision in *Celebrezze*, 2008-Ohio-853, held a child must be in the state at some point in time six months prior to the commencement of the custody proceeding, but it need not necessarily immediately precede the commencement of the custody proceeding. The Coles claim that A.N.D. was in Ohio for a “short period of time” in “November 2023, or possibly even late October 2023,” This stay was within six months of the date that the Coles filed their motion for emergency custody, which was January 19, 2024, so the court had jurisdiction under R.C. 3127.15(A)(1) because Ohio was A.N.D.’s home state.

{¶23} Alternatively, if Ohio is not A.N.D.’s home state, the Coles argue that the juvenile court had jurisdiction because A.N.D. had substantial connections with Scioto County, Ohio. They claim Scioto County is where the minor child has resided the longest and it’s where her extended family lives. The child and both parents have deep ties to the county. Also, the Coles argue that their son, whom they claim is the minor child’s father, was residing in the county at the time of their filing. Thus, the Coles claim that the court had significant-connection jurisdiction under R.C. 3127.15(A)(2).

{¶24} The Coles maintain that if the juvenile court did not have significant-connection jurisdiction, it still had jurisdiction under R.C. 3127.15(A)(3). This provision states that if other courts with jurisdiction declined to exercise it because Ohio is deemed the more appropriate forum for custody matters involving A.N.D., then Ohio courts would have jurisdiction under R.C. 3127.15(A)(3). The Coles claim that they contacted attorneys in Colorado and South Carolina who told them that those respective states would not have jurisdiction over this case. Therefore, they argue that the Scioto County Juvenile Court had jurisdiction over A.N.D. under R.C. 3127.13(A)(3).

{¶25} Finally, if the juvenile court lacked jurisdiction over A.N.D.’s custody under the previous three subsections of R.C. 3127.15(A), then it had jurisdiction under R.C. 3127.15(A)(4), which provides that if no court of any other state had jurisdiction under the criteria specified in divisions (A)(1), (2), or (3) of this section, Ohio courts would have jurisdiction. The Coles argue that in a case like this one, where the family has established a pattern of moving from state to state, often staying only days or weeks at each location, never establishing a “home state” elsewhere, makes Ohio the only feasible forum for A.N.D. Therefore, the juvenile court had jurisdiction over A.N.D. under R.C. 3127.14(A)(4).

{¶26} In response, Mother first asserts that Civ.R. 3 requires a litigant to file a “complaint” to invoke the jurisdiction of a court. She argues the Coles only filed a “motion” never a complaint. That failure precluded the trial court from acquiring jurisdiction to hear their case.

{¶27} Mother next alleges that the Coles lacked standing to file a complaint for custody of A.N.D. because they had no real interest in her. Although the Coles’ son, Chad Dunn, claimed to be A.N.D.’s biological father, he had not filed a parentage action, and he was never married to Mother. Further, the Coles never alleged that A.N.D.’s Mother and Father were unsuitable or unfit to be her legal guardian and they never alleged it was in A.N.D.’s best interest to be in their custody. Thus, Mother claims the Coles had “no real interest” in A.N.D. and no standing to bring this case.

{¶28} Mother also argues that the juvenile court lacked subject matter jurisdiction to address A.N.D.’s custody under the UCCJEA. Mother alleges for the purpose of the UCCJEA that Ohio is not A.N.D.’s home state. Citing R.C. 3127.01(B)(7), Mother

asserts that a child's home state is "the State in which the child lived with a parent for at least six consecutive months immediately preceding the commencement of a child custody proceeding." Mother asserts that the Coles own assertions indicate that A.N.D. was living in Denver, Colorado from "End of November – Present.' " Thus, establishing that the child was not residing in Ohio six consecutive months immediately preceding the filing of their motion for legal custody. Therefore, Mother argues that Ohio cannot be A.N.D.'s "home state" so the court lacked jurisdiction under R.C. 3127.15(A)(1).

{¶29} Mother also claims that A.N.D. does not have "substantial connections" to Ohio for purposes of the UCCJEA. Mother claims that A.N.D. has lived in South Carolina longer than she lived in Ohio. Mother asserts that the Coles reliance on Dunn as being a relative of A.N.D., who lives in Ohio, is misplaced because he has failed to prove he is A.N.D.'s biological father. Finally, the Coles provided no testimony or evidence from any schoolteachers, counselors, therapists or healthcare providers pertaining to A.N.D. Therefore, because A.N.D. lacked significant connections to Ohio, the court lacked jurisdiction over A.N.D. to make a custody determination under R.C. 3127.15(A)(2).

{¶30} Mother also argues that the juvenile court did not have jurisdiction to determine A.N.D.'s custody under R.C. 3127.15(A)(3). Mother claimed that the Coles had only opinions from attorneys in other states that none of those respective state courts would have jurisdiction over A.N.D. To satisfy R.C. 3127.15(A)(3) the Coles needed court decisions declining to exercise jurisdiction over A.N.D., not opinions from attorneys. The Coles presented no such decisions, so the juvenile court herein lacked jurisdiction under R.C. 3127.15(A)(3).

{¶31} Finally, Mother claims that the juvenile court did not have default jurisdiction under R.C. 3127.15(A)(4). Mother argues that A.N.D.’s home state was Texas because she had been living there since January 2024, and before that she lived in South Carolina. Therefore, Mother asserts that the juvenile court lacked subject matter to determine the custody of A.N.D. under the UCCJEA.

{¶32} Mother also claims that the juvenile court lacked personal jurisdiction over her and A.N.D. Mother maintains that after the Coles were unable to perfect service of the motion on her by certified mail, they resorted to service by publication pursuant to Civ.R. 4.4(A)(2)(a)(iii), which permits service by publication “if the party requesting service upon another party is proceeding with a poverty affidavit.” Following that rule, Mother claims that the Coles posted “legal notice” at the Ohio Department of Job and Family Services, the municipal court, and the juvenile court. However, Mother claims that the Coles were not proceeding with a poverty affidavit, nor could they. Mother cited the Coles’ affidavit of basic information, which indicated that their annual income was \$72,000. Therefore, the Coles never acquired service because their posting was invalid.

A. Law

1. Standard of Review

{¶33} This case presents the question of whether the juvenile court had subject-matter jurisdiction over A.N.D.’s custody determination. “The jurisdiction of a court is that power conferred upon it by law, by which the court is authorized to hear, determine and render final judgment in an action, and to enforce its judgment by legal process.” *State ex rel. ACCSEA v. Balch*, 2007-Ohio-7168, ¶ 22 (4th Dist.), citing *Borkosky v.*

Mihailoff, 132 Ohio App.3d 508, 511 (3rd Dist. 1999). The existence of a court's subject matter jurisdiction is a question of law that we review de novo. *Matter of B.M.*, 2017-Ohio-7878, ¶ 7 (4th Dist.), citing *Tewksbury v. Tewksbury*, 2008-Ohio-4600, ¶ 15 (4th Dist.). “[A]n appellate court conducts a de novo review, without deference to the trial court's determination.” *State v. Blanton*, 2018-Ohio-1278, ¶ 50 (4th Dist.)

2. The Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)

{¶34} “R.C. 2151.23(A)(2) provides that the juvenile court has exclusive original jurisdiction to determine custody of a child who is not a ward of a court of this state.” *In re R.M.*, 2013-Ohio-3588, ¶ 78 (4th Dist.). “R.C. 2151.23(F)(1) further provides, however, that a juvenile court must exercise that jurisdiction in accordance with R.C. Chapter 3127, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).” *Id.*, citing *Celebrezze*, 2008-Ohio-853, at ¶ 46.

{¶35} “The UCCJEA defines a trial court's subject-matter jurisdiction to issue a child custody determination.” *Id.* at ¶ 79 (4th Dist.), citing *Celebrezze*, at ¶ 44. The purpose behind the “UCCJEA is to avoid jurisdictional conflict and to promote cooperation between state courts in custody matters so that a decree is rendered in the state that can best decide the best interest of the child.” *Thebeau v. Thebeau*, 2008-Ohio-4751, ¶ 17 (4th Dist.), citing *In re Collins*, 2007-Ohio-4582, ¶ 16.

{¶36} In Ohio, the UCCJEA is codified in R.C. Chapter 3127. R.C. 3127.15(A) sets forth “the exclusive jurisdictional basis for making a child custody determination by a court of this state.” R.C. 3127.15(B). The UCCJEA sets out four types of jurisdiction under which a court has authority to make an initial custody determination.

{¶37} The first is found in R.C. 3127.15(A)(1), which in pertinent part provides that “an Ohio court has jurisdiction to make an initial determination in a child custody proceeding . . . if Ohio was the ‘home state’ of the child six-months before the commencement of the proceeding, the child is absent from the state, and a parent or guardian still lives in Ohio.” *Thebeau*, at ¶ 18. “R.C. 3127.01(B)(7) defines ‘home state,’ in part, as “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.” *Id.*

{¶38} The second is under “R.C. 3127.15(A)(2), which provides:

A court of another state does not have jurisdiction under division (A)(1) of this section or a court of the home state of the child has declined to exercise jurisdiction on the basis that this state is the more appropriate forum under section 3127.21 or 3127.22 of the Revised Code, or a similar statute of the other state, and both of the following are the case:

(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.

(b) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

{¶39} The third is under R.C. 3127.15(A)(3), which provides “All courts having jurisdiction under division (A)(1) or (2) of this section 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 3127.21 or 3127.22 of the Revised Code or a similar statute enacted by another state.”

{¶40} And the fourth is under R.C. 3127.15(A)(4), which provides: No court of any other state would have jurisdiction under the criteria specified in division (A)(1), (2),

or (3) of this section.

{¶41} Thus, “R.C. 3127.15(A) provides four types of jurisdiction, which permits a court to make an initial determination in a child custody proceeding: (1) home-state jurisdiction, (2) significant-connection jurisdiction, (3) jurisdiction because of declination of jurisdiction, and (4) default jurisdiction.” *In.re R.M*, 2013-Ohio-3588, at ¶ 81 (4th Dist.), citing *Celebrezze*, 117, 2008-Ohio-853, at ¶ 46.

A. Analysis

1. Home State Jurisdiction

{¶42} The Coles claim that under the Supreme Court’s decision in *Celebrezze*, a child does not need to be present in their home state *immediately preceding* the commencement of the custody action for the purpose of home-state jurisdiction. 2008-Ohio-853. The Coles averred that A.N.D. and Mother were in South Webster, Ohio “November 2023 -- end of November 2023.” The Coles assert this stay was within six months of the filing of their motion for emergency custody in January.

{¶43} We agree with the Coles claim that *Celebrezze* interpreted R.C. 3127.14(A)(1) as not requiring a child to be present in their home state *immediately preceding* the commencement of a custody proceeding. *Celebrezze* determined that a child can be present in their home state anytime within a six-month period prior to the commencement of the custody proceeding. 2008-Ohio-853 at ¶ 35-41. However, *Celebrezze* did not alter the statutory definition of home-state in R.C. 3127.01(B)(7), which requires a child to be present in their home state “at least *six consecutive months*.” (Emphasis added.) See *Id.* at ¶ 42; See also *In re R.M*, 2013-Ohio-3588, at ¶ 83 (4th Dist.). According to the Coles’ affidavit, A.N.D. was in Ohio for approximately

one month, November 2023, which is insufficient to satisfy the six-consecutive-month stay required by R.C. 3127.01(B)(7) to establish Ohio as her home state.

{¶44} Therefore, we find that the juvenile court did not have home-state jurisdiction over A.N.D.

2. Significant-Connection Jurisdiction

{¶45} The Coles assert that A.N.D. lived most of her life in Scioto County, Ohio, and, while she lived in Ohio, the Coles primarily cared for her. They further claim that she has extended family who lives in Ohio and her father (the Coles' son) resides in Scioto County. Mother was also originally from Ohio.

{¶46} The record shows that A.N.D. was born in 2017 in the state of Ohio. It also shows that Mother and A.N.D. moved out of Ohio in 2020 and have not resided there since. Further, aside from the Coles' testimony that they cared for A.N.D. while she lived in Ohio, we find no additional, substantial evidence in the record pertaining to A.N.D.'s care, protection, training, or personal relationships. And, to the extent that the Coles are representing Dunn to be a relative of A.N.D. who lives in Scioto County, Ohio, we recall that there is no evidence that he has legally been determined to be A.N.D.'s biological father. In sum, we find that the Coles cannot show that A.N.D. has substantial connections to Scioto County, Ohio.

{¶47} Therefore, we conclude that the Coles have failed to show that the juvenile court had significant-connection jurisdiction over A.N.D.

3. Jurisdiction Because of Declination of Jurisdiction

{¶48} Under R.C. 3127.15(A)(3), a court can acquire default jurisdiction only "if another court having jurisdiction had declined to exercise jurisdiction on the ground that

Ohio was the more appropriate forum.” *Philpot v. James*, 2009-Ohio-5306, ¶ 15 (4th Dist.). If “no other court has declined to exercise jurisdiction, [then] no jurisdiction arises under R.C. 3127.15(A)(3)[.]” *Id.* In this case, the record does not indicate that any court from another state, which might have had jurisdiction over A.N.D., declined to exercise it in favor of Ohio as the more appropriate forum.

{¶49} Therefore, we conclude that the juvenile court had no jurisdiction over A.N.D. under R.C. 3127.15(A)(3) because there is no evidence that a court from another state has declined to exercise jurisdiction over her.

4. Default Jurisdiction

{¶50} “Default jurisdiction exists where no state has jurisdiction under the other three bases of jurisdiction.” *Snyder v. Capizzi*, 2024-Ohio-305, ¶ 17 (1st Dist.), R.C. 3127.15(A)(4). In her UCCJEA affidavit, Mother avers that A.N.D. lived in Texas from November 2023 through the present. Until other states can be ruled out as having jurisdiction over A.N.D., no Ohio court can acquire default jurisdiction.

{¶51} Therefore, we conclude that the juvenile court had no default jurisdiction under R.C. 3127.15(A)(4) over A.N.D.

CONCLUSION

{¶52} Thus, we find that the Scioto County Court of Common Pleas, Juvenile Division, did not have jurisdiction to determine A.N.D.’s custody albeit on different grounds than the juvenile court relied upon. Accordingly, we affirm the trial court’s entry of dismissal.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.