IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-155

No. COA20-507

Filed 20 April 2021

Onslow County, Nos. 19-JA-102/103/104

IN RE: K.R., K.R., and K.R.

Appeal by Respondent from order entered 31 March 2020 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 23 February 2021.

Benjamin J. Kull for Respondent-Appellant Mother.

Matthew D. Wunsche for guardian ad litem.

Richard Penley for Petitioner-Appellee Onslow County Department of Social Services.

GRIFFIN, Judge.

¶ 1 Respondent-Appellant Mother ("Mother") appeals from the trial court's order adjudicating her three children, Kendrick, Katherine, and Kimberly (together, the "Children"),[1] to be neglected and dependent juveniles and granting full, temporary custody of each child to Petitioner-Appellee Onslow County Department of Social

[1] We use pseudonyms to protect the anonymity of the juveniles and for ease of reading. *See* N.C. R. App. P. 42.

Services ("DSS"). Mother contends that the trial court's order is void because it did not have jurisdiction to modify a prior Ohio initial custody determination. Mother also contends the trial court erred in its order by (1) failing to make the ultimate findings of fact necessary to adjudicate the Children neglected and dependent; and (2) basing its decision to place the Children in the custody of DSS on an incorrect statutory standard. After careful review, we vacate the trial court's order because North Carolina lacked jurisdiction to modify custody.

I. Factual and Procedural History

¶ 2 Mother has three children, Kendrick, Katherine, and Kimberly, who were ages two, four, and five, respectively, at the time the petition in this case was filed. Mother and the Children's father ("Father")[2] married in Florida and later divorced in Ohio. The court of common pleas of Franklin County, Ohio, issued a divorce decree on 12 June 2018 declaring Mother to be the residential parent and legal custodian of the Children. Mother moved with the Children from Ohio to Jacksonville, North Carolina, sometime in July 2019.

¶ 3 On or about 20 August 2019, the Jacksonville Police Department ("JPD") received calls regarding a "domestic violence altercation" between Mother and her boyfriend at a hotel in Jacksonville. Mother's boyfriend reportedly "punched [Mother]

[2] Father was named as a respondent in the adjudication and disposition below but is not a participant in this appeal.

in the face[,]" and then Mother "pointed a [firearm] at" and "attempted to hit [her boyfriend] with her vehicle . . . while the [Children] were present." Based on the calls, the JPD believed Mother was traveling in her vehicle with the Children and the firearm used in the alleged assault.

¶ 4 A lieutenant with the JPD identified Mother's vehicle at a gas station around 2:00 a.m. on August 20. Mother stood outside the vehicle preparing to pump gas. The Children were left unrestrained inside the vehicle. The lieutenant approached Mother's vehicle and asked Mother for her identification; Mother refused to provide identification and became "agitated and was uncooperative." A second officer of the JPD arrived on scene to provide backup. The lieutenant informed Mother that she suspected there may be a firearm in her vehicle. She asked for consent to search the vehicle based on this suspicion. Mother gave consent to search the vehicle and stated "if there [was] a firearm in the vehicle it[was her boyfriend's]." The officer then discovered a firearm in the front passenger area of the vehicle, where Kimberly or Katherine was sitting. The firearm had no safety and was loaded with one round in the chamber. The firearm was not registered to either Mother or her boyfriend.

¶ 5 Mother then took Kendrick, who was two years old at the time, out of the vehicle and leaned against the vehicle door. The lieutenant informed Mother that she was under arrest for (1) assault by pointing a firearm and (2) possession of a firearm by a felon, and asked Mother to "hand [Kendrick] over to [her]." Mother

refused to hand Kendrick to the lieutenant and continued "smushing her son between her chest and the vehicle to keep from being arrested." Mother then sat in the backseat of the vehicle with the Children and refused to exit. This action further delayed her arrest. Mother asked the lieutenant and officer "what was going to happen to her kids" and insisted on "taking her kids to jail with her."

¶ 6 The lieutenant and officer gave Mother "numerous opportunities to call someone, family member or friend, to pick up [the Children]." Mother called her mother, the Children's maternal grandmother ("Grandmother"), "to make arrangements for [Grandmother] to come retrieve [the Children]." Grandmother answered the call but would not have been able to retrieve the children that morning because Grandmother lives in Louisiana. Mother also called "numerous other people" but was unable to find someone to pick up the Children. A social worker with DSS arrived at the scene later in the morning of August 20, several hours after the lieutenant first engaged Mother. The social worker took emergency custody of the children, and the officer and lieutenant arrested Mother.

¶ 7 On 20 August 2019, DSS filed a single juvenile petition alleging that the Children were neglected and dependent. The petition did not allege North Carolina was the home state of the Children but alleged that North Carolina had emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). The court placed the Children into non-secure custody the same day.

¶ 8 On 8 October 2019, DSS filed a judicial order from an Ohio court, which acknowledged that Ohio had jurisdiction over custody of the children due to the June 2018 Ohio divorce decree between Mother and Father and released Ohio's jurisdiction in this matter to North Carolina. In December 2019, DSS placed the Children with their paternal grandparents in Florida where they continued to reside at the time of the adjudication and disposition hearing in this case.

¶ 9 On 3 March 2020, the trial court in Onslow County, North Carolina, held adjudication and disposition hearings regarding DSS's Petition. Following the hearings, the court entered an order (the "Order") finding each of the Children to be a neglected and dependent juvenile, and granting full, temporary custody of the Children to DSS. Mother appeals.

II. Analysis

¶ 10 Mother argues the trial court's Order is void because North Carolina lacked subject matter jurisdiction to modify the initial custody determination decreed by the Ohio court. We agree that North Carolina did not have modification jurisdiction under the UCCJEA and therefore vacate the Order.

¶ 11 North Carolina district courts have "'exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent'" pursuant to the North Carolina Juvenile Code, but our courts must also have jurisdiction under the UCCJEA and the Parental Kidnapping Prevention Act to

adjudicate juvenile petitions. *In re J.H.*, 244 N.C. App. 255, 259–60, 780 S.E.2d 228, 233 (2015) (quoting N.C. Gen. Stat. § 7B-200 (2011)) (citation omitted). This Court generally determines jurisdiction based on the circumstances as they existed at the time the petition which commenced the proceedings was filed, and "we are not restricted to consideration of the jurisdictional basis cited by the trial court." *In re T.N.G.*, 244 N.C. App. 398, 402–03, 781 S.E.2d 93, 97 (2015) (citations omitted). Accordingly, "[w]hether the trial court has jurisdiction under the UCCJEA is a question of law subject to *de novo* review." *In re J.H.*, 244 N.C. App. at 260, 780 S.E.2d at 233.

¶ 12 Under the UCCJEA, once a court makes a custody determination, that court has continuing, exclusive jurisdiction over the custody of the juveniles. *See* N.C. Gen. Stat. § 50A-202(a) (2019) (codifying as North Carolina law the UCCJEA rule that "a court of this State which has made a child-custody determination . . . has exclusive, continuing jurisdiction over the determination"). A North Carolina court may issue a temporary modification to another state's prior custody determination in an emergency circumstance:

> A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

N.C. Gen. Stat. § 50A-204(a) (2019); N.C. Gen. Stat. § 50A-204(b) (2019) (explaining

that orders issued under subsection (a) remain in effect only until (1) "a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203" enters a new order or (2) a reasonably adequate period of time to obtain an order from that state expires). Otherwise, a North Carolina court may only modify another state's custody determination where (1) North Carolina can fulfill the UCCJEA's initial jurisdictional requirements itself under N.C. Gen. Stat. §§ 50A-201(a)(1) or (a)(2), and (2) the other state releases its jurisdiction to North Carolina or either court determines the children and their parents no longer reside in the other state. N.C. Gen. Stat. § 50A-203 (2019).

¶ 13 In the present case, the Record shows, and neither party disputes, that North Carolina had temporary emergency jurisdiction under N.C. Gen. Stat. § 50A-204 to grant nonsecure custody of the Children to DSS on 20 August 2019. At that time, Mother had been arrested by the JPD; the events leading to Mother's arrest subjected both Mother and the Children to possible mistreatment or abuse; and all identified kinship placements, namely Father and Grandmother, lived in distant states and were not immediately available to care for the Children.

¶ 14 Nonetheless, North Carolina was still obligated to meet the requirements of N.C. Gen. Stat. § 50A-203 before entering its subsequent order permanently modifying the Ohio initial custody determination. The Record includes the Ohio court's order formally releasing its jurisdiction to North Carolina district courts.

However, based on the Record before this Court, North Carolina could not fulfill the UCCJEA's initial jurisdictional requirements under N.C. Gen. Stat. §§ 50A-201(a)(1) or (a)(2).

¶ 15 The trial court determined that North Carolina was "the home state of the [Children] and ha[d] jurisdiction to make a child custody determination" under N.C. Gen. Stat. § 50A-201(a)(1). We disagree. N.C. Gen. Stat. § 201(a)(1) describes "home state jurisdiction," which allows a North Carolina court to make an initial custody determination where North Carolina is the "home state" of the child, or has been in the six months before the proceedings were commenced, and where at least one parent still resides in this State. N.C. Gen. Stat. § 50A-201(a)(1) (2019). "Home state" is defined 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 before the commencement of a child-custody proceeding." N.C. Gen. Stat. § 50A-102(7) (2019).

¶ 16 Mother moved with the Children from Ohio to North Carolina sometime in July of 2019. The petition in this case was filed on 20 August 2019. Though Mother continued to reside in North Carolina during the proceedings, the Record evidence shows the Children never lived in North Carolina for a consecutive period of six months at any point prior to the filing of the petition commencing this case. At most, the Children were present in North Carolina for about a month and a half prior to the filing of the petition. We hold that the facts of this case do not show that North

Carolina was the Children's home state at the time the petition commencing the proceedings was filed.

¶ 17 We also hold that North Carolina did not have jurisdiction under N.C. Gen. Stat. § 50A-201(a)(2) at the time the petition commencing the present proceedings was filed. N.C. Gen. Stat. § 50A-201(a)(2) describes what our Courts have called "significant connection jurisdiction," which allows a North Carolina court to make an initial custody determination where, in relevant part, (1) a court in the child's actual home state declines to exercise jurisdiction and (2) the child and at least one parent "have a significant connection with this State other than mere physical presence; and [s]ubstantial evidence is available in this State concerning the child's care, protection, training, and personal relationships." N.C. Gen. Stat. § 50A-201(a)(2); *Gerhauser v. Van Bourgondien*, 238 N.C. App. 275, 295, 767 S.E.2d 378, 390 (2014). The standard of "substantial evidence" required by N.C. Gen. Stat. § 50A-201(a)(2) "goes beyond the standard of 'more than a scintilla' or 'any competent evidence[,]'" "seeking to find the real circumstances of the child's welfare." *See Holland v. Holland*, 56 N.C. App. 96, 100, 286 S.E.2d 895, 898 (1982) (citation omitted) (discussing identical language in a prior version of the UCCJEA statute). "The 'substantial' evidence required by the statute, therefore, must be such as would enable the trial court to look to sources within the state that could address each of the statutory aspects of the child's interest, care, protection, training, and personal

relationships." *Id.*

¶ 18 In this case, the evidence in the Record speaks primarily to the August 20 incident in the gas station parking lot. The only evidence of the Children's life in North Carolina prior to the commencement of the proceedings suggests that they lived in a hotel for approximately a month, were subjected to a domestic violence altercation between their Mother and their Mother's boyfriend, and were in North Carolina when their Mother was arrested. The Record contains no other evidence, much less substantial evidence, of the Children's "interest, care, protection, training, and personal relationships" in this State suggesting that the Children had any significant connections to North Carolina. *Id*. The evidence tended to show that Mother's extended family lived in Louisiana. Mother told the officers she was on her way to Grandmother's home in Louisiana when she was arrested and contacted Grandmother. Father and the Children's paternal grandparents lived in Florida, and the Children were placed with the paternal grandparents after the petition was filed. Based upon the Record before us, there was no evidence of the Children's "interest, care, protection, training, and personal relationships" in North Carolina beyond the facts immediately preceding and during Mother's arrest. *Id*.

¶ 19 DSS and Appellee guardian ad litem each argue that the Order contains substantial evidence supporting North Carolina's significant connection jurisdiction. In support, the guardian ad litem contends "[t]he facts of this case are nearly identical

to the relevant facts of *In re T.R.*, 250 N.C. App. 386, 792 S.E.2d 197 [2016][.]" In *In re T.R.*, the mother moved with her children, Vanessa and Tina, from Illinois to Florida, then from Florida to North Carolina in June 2014. *Id.* at 387, 792 S.E.2d at 199. The family lived in multiple places within North Carolina, including a migrant worker housing development. *Id.* The department of social services filed a petition in July 2014, about a month after the family moved to North Carolina, which alleged that, at that time, "(1) while [the mother] was at work, Vanessa had been raped by a man in the migrant worker housing development where they lived; (2) Vanessa worked for 11 hours each day doing field work; (3) Vanessa and Tina were often left alone while [the mother] worked; and (4) Tina had reported that [the mother's] boyfriend had touched Tina's genitalia on one occasion." *Id.* An Illinois court released its exclusive jurisdiction obtained from a prior initial custody determination to North Carolina, the children were adjudicated neglected, and the trial court ultimately granted custody of the children to their father and suspended the mother's visitation rights. *Id.* at 388, 792 at 199–200. The mother appealed, and this Court affirmed. *Id.* at 392, 792 at 201–02.

¶ 20 However, the material issue in *In re T.R.* was not the sufficiency of the evidence of the children's significant connections with North Carolina. Rather, the mother solely challenged whether a district court docket entry was sufficient to show that an Illinois court had released its exclusive jurisdiction to North Carolina. *Id.* at 388–91,

792 at 200–01. Whether the record in the case contained substantial evidence of the mother and children's connections with North Carolina was not disputed. *Id.*

¶ 21 Further, the lesser quantity of relevant facts in this case distinguishes it from our decision in *In re T.R.* The record in *In re T.R.* included evidence of the mother's employment, the children's employment, the children's living conditions, and multiple occurrences of sexual abuse within North Carolina which caused the department of social security to file a petition in the case. *Id.* at 387, 792 S.E.2d at 199. The majority of the evidence in this case concerns only a single night when the children were subjected to a possibility of mistreatment. In fact, Mother claimed she was on the way to Grandmother's home in Louisiana when this incident occurred. Though the trial court made 40 findings of fact supporting its adjudication of the Children as neglected and dependent, most of these findings pertain solely to the events which occurred in the gas station parking lot on August 20. Significant connections cannot be established in this case based purely upon facts describing the single occasion giving rise to temporary emergency jurisdiction. The domestic altercation between Mother and her boyfriend and the subsequent events in the gas station parking lot were sufficient to give North Carolina temporary emergency jurisdiction, but were not enough to demonstrate a significant connection as required for this State to maintain jurisdiction to modify the Ohio initial custody determination.

¶ 22 We therefore hold that the trial court's Order is void because North Carolina did not have jurisdiction to modify the Ohio initial custody determination under N.C. Gen. Stat. § 50A-203 and the UCCJEA. Because we hold the North Carolina court did not have jurisdiction to enter the Order, we decline to address Mother's remaining arguments challenging the sufficiency of the Order's adjudicatory findings and the standard employed by the trial court in disposition. *See In re T.M.H.*, 186 N.C. App. 451, 456, 652 S.E.2d 1, 3 (2007) (vacating order terminating parental rights and therefore declining to address appellant's remaining assignments of error).

III. Conclusion

¶ 23 We hold that North Carolina did not have jurisdiction to modify the Ohio initial custody determination under the UCCJEA and N.C. Gen. Stat. § 50A-203. Therefore, we vacate the trial court's Order.

VACATED.

Chief Judge STROUD and Judge MURPHY concur.

Report per Rule 30(e).