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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-726

Filed 04 April 2023

Wake County, No. 20CVD1846

CHAD STEIN, Plaintiff,

v.

GEOFFREY CASH-JANKE, Defendant,

v.

CHRISTINA MCMINIS & JOSHUA MCMINIS, Intervenors.

Appeal by plaintiff from order entered 22 December 2021 by Judge Mark Stevens in Wake County District Court. Heard in the Court of Appeals 10 January 2023.

*Dobson Law Firm, PLLC, by Miranda Dues, for plaintiff-appellant.*

*Pro Se, Geoffrey Cash-Janke for defendant-appellee, no brief.*

*Pro Se, Christina McMinis and Joshua McMinis, for intervenors-appellees.*

GORE, Judge.

Plaintiff, Chad Stein, is the biological maternal uncle and adoptive father of V.S. We address the first issue raised by plaintiff in this appeal: whether the trial

court maintained subject matter jurisdiction over this child custody action. Upon review, we vacate and remand the trial court's 22 December 2021 Order for Ex Parte Custody for further findings not inconsistent with this opinion.

I.

A.

The minor child at issue in this case, V.S., was born into a troubled home. The child's biological father, defendant Geoffrey Blake Cash-Janke, has a history of drug abuse and has previously been arrested for drug related offenses. The child's mother, Mary Silk, also struggled with drug addiction. Ms. Silk was found dead in her home from a drug overdose on 8 February 2020. At the time her body was discovered, V.S. had been left alone in his crib for nearly twenty-four hours.

Wake Forest Police initially placed V.S. in the custody of April Stein, the child's biological maternal grandmother, following the death of Ms. Silk. However, the grandmother was deemed legally unfit and unable to have the exclusive care, custody, and control of V.S. due to her history of substance abuse, physical inability to care for the child resulting from medical conditions, and financial incapability of providing for the minor child's basic needs.

Plaintiff Chad Stein, the biological maternal uncle of V.S., came from Ohio to assume the care and control of the minor child at the request of intervenors. On 13 February 2020, he was granted emergency temporary custody of V.S. Plaintiff is married to Jennifer Stein, who is not included as a party to this action. They have

three minor children.

At all relevant times, plaintiff has been a citizen and resident of Summit County, Ohio. Intervenors Christina and Joshua McMinis are citizens and residents of Wake County, North Carolina. Intervenor Christina McMinis is the biological maternal aunt of the minor child, and intervenor Joshua McMinis is her husband. At the time this action was initially filed, defendant Cash-Janke was in the custody of Gwinnett County Department of Corrections, located in Gwinnett County, Georgia.

**B.**

On 28 February 2020, the trial court entered a Temporary Order granting plaintiff primary physical custody of the minor child and granting intervenors secondary physical custody. The trial court recessed the hearing by Administrative Order entered the same day. Plaintiff then brought V.S. back to his home in Ohio.

On 25 February 2021, plaintiff and his wife filed a Petition for Adoption of the minor child, V.S., in the Probate Court of Summit County, Ohio. Following a hearing and Magistrate's Decision entered 9 July 2021, the Ohio court determined that plaintiff and his wife "have proven by clear and convincing evidence that [defendant] has failed without justifiable cause to provide more than de minimis contact with [V.S] for a period of at least one year immediately preceding the filing of the adoption petition . . ." and that defendant "has failed without justifiable cause to provide for the maintenance and support of [V.S.] as required by law or judicial decree for a period of at least one year immediately preceding the filing of the petition." The Ohio

court then concluded that defendant's "consent was not necessary" for plaintiff and his wife to adopt V.S.

On 1 July 2021, Wake County District Court entered an Order for Contempt against plaintiff based on his failure to allow intervenors to exercise their visitation with the minor child as set forth in the 28 February 2020 Temporary Custody Order. On 19 November 2021, the Intervenor filed a subsequent Motion for Contempt, alleging that plaintiff had violated numerous provisions of both the 28 February 2020 Temporary Custody Order and the 1 July 2021 Order for Contempt.

On 23 November 2021, Judge Elinore Marsh Stormer of the Probate Court in Summit County, Ohio, entered an Order purporting to assume exclusive, continuing jurisdiction over V.S. That Order reads:

*"Upon motion by the Petitioners and for good cause shown, this Court states that it has assumed exclusive jurisdiction over the minor child in this matter, to wit: [V.S.] . . . effective February 25, 2020, the date the petition for adoption was filed in this Court. Temporary custody granted in North Carolina is given full faith and credit, however, the child resides in Ohio and he has for over one year."*

The Final Decree of Adoption for V.S. was entered without interlocutory order by Judge Stormer on 13 December 2021.

Judge Mark Stevens of the Wake County District Court ordered Plaintiff to appear in person for the hearing on the Motion for Contempt on 22 December 2021. Plaintiff filed a Motion to Continue, maintaining he was not present in court because

he had been diagnosed with COVID-19, and was not permitted to appear in court pursuant to mandates issued by the Chief Justice of the Supreme Court of North Carolina.

Plaintiff failed to appear, and the trial court elected to hold plaintiff in contempt issuing an Order for his arrest with bond set at \$100,000.00 cash. Intervenor filed a verified Motion seeking temporary and emergency custody of the minor child. The same day, 22 December 2021, the trial court entered its Order for Ex Parte Custody, finding and concluding that:

FINDINGS OF FACT

...

8. North Carolina is the home state of the minor child and this Court has exclusive continuing jurisdiction over the minor child pursuant to N.C.G.S. 50A-202.

...

14. The circumstances of this case render it appropriate for the Court to enter an order granting temporary custody of the minor child to the Intervenor, and the Intervenor are therefore in need of an immediate order placing said child in their custody.

15. Pursuant to N.C.G.S. § 50-13.5(d)(2) and (d)(3), the Intervenor are entitled to an emergency temporary order placing the minor child in their immediate custody due to the Plaintiff's avoidance of the jurisdiction of this Court and the substantial risk that the minor child may be subjected to irreparable physical and/or emotional harm as a result of the Plaintiff's arrest.

16. The Court finds, based upon the Intervenor's verified motion, that circumstances exist which warrant the entry

of an immediate *ex parte* order granting Intervenor temporary custody of the minor child . . . .

17. It is necessary for the safety and welfare of the minor child and in his best interest that *ex parte* temporary custody be placed with Intervenor due to Plaintiff's avoidance of the jurisdiction of North Carolina courts and to stabilize the minor child's environment as a result of the inability of Plaintiff to provide for the physical or emotional needs of the minor child after Plaintiff's arrest.

. . . .

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over this cause of action and the parties to this action.

2. It is in the best interest of the minor child that his custody and control be immediately placed with Intervenor, pending a full hearing on the merits and further orders of this Court.

. . . .

Intervenor then traveled to Ohio and attempted to compel the Sheriff's Department of Summit County to serve the Wake County Order, remove the minor child V.S. from plaintiff's home, and arrest plaintiff. One of the deputies informed intervenors that an Order from a different state could not be executed without approval from a court in Ohio. As recounted by the responding deputy in his field case report, intervenor "Ms. McMinis was not happy with my findings and became belligerent by swearing and stating[,] 'I might as well go shoot up the house', meaning [plaintiff's] house."

Intervenor Christina McMinis was criminally charged with Menacing/Stalking

for the threats she made against plaintiff and his family. On 30 December 2021, an Ohio Magistrate granted plaintiff and each member of his family an *Ex Parte* Civil Protection Order against intervenors. The Ohio court later upheld the Magistrate's decision but denied plaintiff's Petition for Domestic Violence Civil Protection Order on 15 March 2022.

A return hearing for the Wake County District Court Emergency Custody Order was scheduled for 4 January 2022. Although a formal hearing was not conducted at that time, the matter was discussed at length on the record during the calendar call. There was no hearing on the merits of the case, and only jurisdictional matters were discussed. The case was calendared again for a return hearing on 14 February 2022, but it was not heard at that time. The case was calendared one final time on 15 June 2022; the merits of the Emergency Custody Order were not addressed, and the case was temporarily removed from the trial court's calendar. Thus, the Emergency Temporary Custody Order of 22 December 2021 remains in place.

**C.**

“A temporary child custody order is normally interlocutory and does not affect any substantial right which cannot be protected by timely appeal from the trial court's ultimate disposition on the merits.” *Sood v. Sood*, 222 N.C. App. 807, 809, 732 S.E.2d 603, 606 (2012) (citation omitted). However, this Court has already allowed, in part, plaintiff's petition for writ of certiorari filed on 9 February 2022 for the

purpose of reviewing the 22 December 2021 Order for Ex Parte Custody entered by Judge Stevens in Wake County District Court.

## II.

Plaintiff argues the trial court no longer maintains exclusive, continuing jurisdiction over the minor child V.S., and therefore, does not have subject matter jurisdiction to issue further orders in this case following the initial emergency custody Order of 13 February 2020.

### A.

The Uniform Child-Custody Jurisdiction and Enforcement Act (“UCCJEA”) is a jurisdictional statute that aims to “[a]void jurisdictional competition and conflict with courts of other States in matters of child custody . . . .” N.C. Gen. Stat. § 50A-101 (2021) (Official Comment). “Because a court must have subject matter jurisdiction in order to adjudicate the case before it, a court’s lack of subject matter jurisdiction is not waivable and can be raised at any time.” *In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200 (2020) (quotation marks and citation omitted). “Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal.” *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010) (citation omitted).

### B.

“Jurisdiction under the UCCJEA may be either ‘exclusive, continuing’ or ‘temporary emergency.’” *In re E.J.*, 225 N.C. App. 333, 336, 738 S.E.2d 204, 206



(2013) (citing §§ 50A-201–204 (2011)). Section 50A-201 covers jurisdictional rules for initial child-custody proceedings, and “is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.” § 50A-201(b) (2021). Under § 50A-102(8), an “[i]nitial determination” is defined as “the first child-custody determination concerning a particular child.” § 50A-102(8) (2021).

Section 50A-201 provides that the trial court has jurisdiction to hear child custody issues if one of four enumerated factors is met. The first factor, home state jurisdiction, “has been prioritized over other jurisdictional bases.” § 50-201 (2021) (Official Comment). “‘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.” § 50A-102(7).

The statute provides, in relevant part:

(a) Except as otherwise provided in G.S. 50A-204, 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.

§ 50A-201(a)(1) (2021).

“A court that properly makes an initial determination will have ‘exclusive, continuing jurisdiction’ until the happening of certain enumerated events which

cause the court to lose that jurisdiction.” *In re E.J.*, 225 N.C. App. at 336, 738 S.E.2d at 206 (citing § 50A-202 (2011)). Exclusive, continuing jurisdiction will be lost when, *inter alia*, “[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.” § 50A-202(a)(2) (2021).

“A court that cannot meet the requirements for exclusive, continued jurisdiction may, nevertheless, exercise ‘temporary emergency’ jurisdiction under the UCCJEA.” *In re E.J.*, 225 N.C. App. at 338, 738 S.E.2d at 207 (citing § 50A-204 (2011)). Pursuant to § 50A-204(a):

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.

§ 50A-204(a) (2021) (emphasis added). Further, § 50A-204 “[s]ubsection (d) requires communication between the court of the State that is exercising jurisdiction under this section and the court of another State that is exercising jurisdiction under Sections 201-203.” § 50A-204 (Official Comment). Section 50A-110 “authorizes a court to communicate concerning any proceeding arising under this Act.” § 50A-110 (2021) (Official Comment). “Communication can occur in many different ways . . .” and “is authorized, . . . whenever the court finds it would be helpful.” *Id.*

### C.

In the instant case, there is substantial evidence in the record contradicting

the trial court's conclusion that it maintains "exclusive, continuing jurisdiction" over the minor child. This evidence suggests the trial court lacked such authority to enter its Order for Ex Parte Custody filed 22 December 2021.

Plaintiff is a citizen and resident of Ohio, and V.S. has been a citizen and resident of Ohio continuously since 28 February 2020. On 28 November 2021, the Ohio court entered an Order purporting to "assume[] exclusive jurisdiction over the minor child in this matter . . . from the date the petition for adoption was filed in" the Probate Court of Summit County, Ohio. Plaintiff and his wife adopted V.S. in Ohio on 13 December 2021.

Under § 50A-202(a)(2), exclusive, continuing jurisdiction is lost when "*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." § 50A-202(a)(2) (emphasis added). Under the § 50A-202, "*a remaining grandparent or other third party who claims a right to visitation*, should not suffice to confer exclusive, continuing jurisdiction on the State that made the original custody determination after the departure of the child, the parents and any person acting as a parent." § 50A-202 (Official Comment) (emphasis added); *see also* § 50A-202 (Official Comment) ("If the child, the parents, and all persons acting as parents have all left the State which made the custody determination prior to the commencement of the modification proceeding, considerations of waste of resources dictate that a court in State B, as well as a court in State A, can decide that State A has lost exclusive, continuing jurisdiction.").

According to Judge Stormer's Ohio court Order, jurisdiction was assumed to be proper in Ohio upon Ohio's failure to communicate with our state a request to relinquish jurisdiction in accordance with the UCCJEA.

At the hearing held on 4 January 2022 in Wake County District Court, the following discussion of jurisdictional matters occurred on the record:

[COUNSEL FOR PLAINTIFF]: I think there's a subsequent issue too. There's been a protective order issued in Ohio because of some statements that one of the intervenors made to either law enforcement or Mr. Stein, himself, involving shooting up the residence. So at this point, . . . there's a protective order in Ohio preventing Ms. McMinis from being around the minor child.

. . .

THE COURT: I need a copy of that order.

[COUNSEL FOR PLAINTIFF]: I will have it emailed this morning.

THE COURT: I mean, the problem that we have here is that North Carolina has continuing jurisdiction on the custody matter, and we've already tried – we've already talked about that. And I think your client may be under the impression that Ohio has jurisdiction, or at least that was the representation that your associate made in court to me the other day, and we've got to – I mean, until this order is set aside or otherwise modified, I mean, we've got to figure out how to make this work.

. . .

I share some of the frustrations in that this is a case where I haven't had a conversation with any judge about, you know, UCCJEA, about how we need to proceed, and so I've got my thing going on here, and apparently they have their thing going on up there. And . . . either that order that

gives [plaintiff] full custody in Ohio either hasn't been set aside or is still in effect, and I know that came up in the last hearing. So we just – we've got to resolve this somehow, and somebody's got to – because we've got two separate things going on right now.

So y'all just hang tight. We can have a brief bench conference after I'm done. We'll get a date, and then maybe we'll figure out what our next steps are as far as do we need to set a hearing with an Ohio judge, do I need to be involved in trying to sort out that [indiscernible] –

. . .

[O]bviously we're just stuck right now until we get some sort of clarity as far as . . . what's happening . . . . I think we still have jurisdiction because I haven't released it yet. Ohio may think the same thing, but I haven't had a conversation, so I don't know, and we'll just need to get that straightened out.

. . .

All right. So we're going to do two separate things in this. The first matter is . . . that the show cause is going to be set on March the 16th. Okay? That's just when we can get that heard, and then we're going to have the trial on June the 16th for the actual trial on custody.

Now, between now and then, we've got to straighten some of this stuff out, okay? I need . . . a copy of the DVPO or whatever order is in place . . . . [Y]ou all can gather some information about that to the extent that it has anything to do with our case. . . . I need that information for one, then also we need to have a conversation, at the very least, trying to figure out this UCCJEA information about the jurisdictional issues that have arisen in this case. And so to the extent that you have communication with lawyers in Ohio, or there's been some action as it relates to that, or if there's a trial court administrator or somebody who we can get in conversation with so we can get this thing moving. That's all I can do because I think what's going to happen

is, eventually, we're going to wind up flustered about that anyway until we – 'till we get it resolved.

...

[COUNSEL FOR INTERVENORS]: And so is Your Honor wanting to have a conference with Ohio prior to the March date?

THE COURT: I hope we can. I think we need to. Obviously there's – the issue that we have is . . . [intervenors] believe that our custodial arrangement controls, and [plaintiff] . . . believes Ohio custody controls, and I don't know[,] . . . my recollection was that somebody was going to set aside something. And you know, I don't know what happened, but I know there was – maybe [intervenors] weren't noticed about that. I'm not sure, so I just need to have a conversation where we can figure out –

[COUNSEL FOR INTERVENORS]: Well, . . . I can give Your Honor a little bit more information on that. . . . [M]y clients were represented . . . at the adoption hearing in December, and the adoption was granted in favor of [plaintiff]; however, the decree specifically says . . . the custodial arrangement in North Carolina was remaining in place and that they were deferring to North Carolina on that.

THE COURT: Okay. . . . I need a copy of that agreement . . . . [W]hat's been represented to me is that [plaintiff] believes that he has full custody and that – so that is not consistent with what was represented to me. And of course, I'm hearing it, like, double, third-hand, so I don't know. . . . But we've got to get this straightened out because we're going to wind up in the same situation at the show cause hearing unless we have a definitive ruling between me and Ohio as far as what we have. And I just don't have the information that I need.

Based on this exchange during the 4 January 2022 proceeding, it is apparent that: (i) the trial court does not have a copy of all relevant Ohio court orders; (ii) the

Ohio court never contacted Wake County District Court prior to entry of any Ohio court order or the adoption decree; and crucially (iii) the trial court is not clear on whether North Carolina or Ohio has exclusive, continuing jurisdiction to make further custody determinations in this matter.

“The trial court is not required to make specific findings of fact demonstrating its jurisdiction under the UCCJEA, but the record must reflect that the jurisdictional prerequisites in the Act were satisfied when the court exercised jurisdiction.” *In re L.T.*, 374 N.C. at 569, 843 S.E.2d at 200-01 (citation omitted). Our Supreme Court has held that “[w]hen the record shows a lack of jurisdiction in the lower court, the appropriate action on the part of the appellate court is to arrest judgment or vacate any order entered without authority.” *State v. Petersilie*, 334 N.C. 169, 175, 432 S.E.2d 832, 836 (1993) (quoting *State v. Felmet*, 302 N.C. 173, 176, 273 S.E.2d 708, 711 (1981)).

### III.

Accordingly, we vacate the Order filed 22 December 2021 and remand this case for findings of fact based on competent evidence to support the trial court’s conclusion of law that it maintains exclusive, continuing subject matter jurisdiction over this action. Considering our resolution of this matter, above, it is unnecessary to address plaintiff’s remaining arguments.

VACATED AND REMANDED.

STEIN V. CASH-JANKE

*Opinion of the Court*

Judge ARROWOOD concurs.

Judge WOOD dissents by separate opinion.

Report per Rule 30(e).



WOOD, Judge, dissenting.

Because the Wake County District Court has not relinquished jurisdiction over the minor child in this matter or closed the case, and the Ohio court did not properly assume jurisdiction, North Carolina possesses exclusive, continuing jurisdiction over this custody matter. Therefore, I respectfully dissent from the majority opinion.

A chronology of the proceedings leading to this appeal may be helpful for a proper understanding of the jurisdictional elements here.

In 2018, the child was born in North Carolina. On 8 February 2020, the child’s mother was found dead. With the father in prison, physical custody of the child was given that same day to the child’s maternal grandmother who also lived in North Carolina.

On 13 February 2020, the Wake County District Court awarded emergency temporary custody to Plaintiff, a maternal uncle of the child, due to grandmother’s “history of substance abuse, her physical inability to care for the child as a result of medical conditions, and [being] financial[ly] incapable of providing for the basic needs of a minor child.” Plaintiff took the child to Ohio where he and his family lived. On 28 February 2020, the Wake County District Court entered a Temporary Order granting Plaintiff primary physical custody of the minor child and granting Intervenor, maternal aunt and uncle of the child, secondary physical custody

through visitation. In both orders, the trial court specifically ordered that it “retains jurisdiction to of [sic] this matter to enter further Orders regarding the custodial relationship of the parties.”

Approximately one year later, on 25 February 2021, Plaintiff filed a petition in Ohio to adopt the child. In the petition, Plaintiff materially misrepresented the 28 February 2020 custody order when Plaintiff stated “[t]he minor is living in the home of the petitioner, and was placed therein for adoption on the 28 day of February 2020 by Wake County, North Carolina District Court.” This evidences an intention to evade this state’s jurisdiction. The Intervenors claimed that Plaintiff was not abiding by the 28 February 2020 order around this time and filed a contempt action against Plaintiff with the Wake County District Court. A hearing was held 31 March 2021, and Judge Stevens issued a contempt order against Plaintiff on 1 July 2021.

On 22 September 2021, Intervenors filed another motion for contempt against Plaintiff alleging Plaintiff had still not complied with the custody order. On 1 October 2021, the Wake County District Court issued an order to show cause against Plaintiff due to continued defiance of the 28 February 2020 order. A hearing was scheduled for 4 January 2022.

On 15 November 2021, Plaintiff filed a Motion for Forum Non-Conveniens, which was denied by the Wake County District Court on 24 November 2021. It held that “North Carolina is the appropriate forum in which this and all subsequent matters related to this cause shall be heard; and [t]hat North Carolina has continuous

and exclusive jurisdiction over this matter and the parties.”

Despite the ongoing proceedings in North Carolina and the denial of Plaintiff’s Motion for Forum Non-Conveniens, on 28 November 2021, a court in Ohio issued an order purporting to possess jurisdiction over the child. Shortly after, the Ohio court granted Plaintiff’s petition for adoption in a 13 December 2021 decree.

Plaintiff was ordered to appear in person before the Wake County District Court on 20 December 2021 after a 19 November 2021 motion for contempt. Plaintiff failed to appear in court on that day though his counsel was present. The trial court again ordered Plaintiff to appear on 22 December 2021, but Plaintiff failed to appear on that day as well. The court issued an Order for Plaintiff’s arrest and set a \$100,000 cash bond. On 22 December 2021, Intervenor’s filed a motion for emergency *ex parte* custody of the child in Wake County District Court. That same day, the trial court granted *ex parte* custody of the child to Intervenor’s citing “Plaintiff’s avoidance of jurisdiction of North Carolina courts.” The *ex parte* order noted that “North Carolina is the home state of the minor child and this Court has exclusive continuing jurisdiction over the minor child.”

During the show cause hearing on 4 January 2022, Plaintiff’s attorney discussed the supposed jurisdictional conflict between North Carolina and Ohio in this case. Before the trial court could enter an Order following the hearing, Plaintiff appealed the 22 December 2021 *ex parte* emergency custody order claiming that North Carolina did not possess jurisdiction over the child under this state’s version

of the UCCJEA. This appeal is interlocutory.

Orders entered by a court that lacks subject matter jurisdiction are void. *Am. Inst. of Mktg. Sys., Inc. v. Willard Realty Co.*, 277 N.C. 230, 233-34, 176 S.E.2d 775, 776-77 (1970). Therefore, an early inquiry in every case should be whether the court has the requisite jurisdiction to proceed in the matter. As the majority implies from its discussion of exclusive, continuing jurisdiction, North Carolina possessed initial child-custody jurisdiction when the Wake County District Court granted temporary custody of the child on 28 February 2020, shortly after the temporary, emergency custody order of 13 February 2020. A trial court of this state possesses initial child-custody jurisdiction when, among other considerations, “[t]his State is the home state of the child on the date of the commencement of the proceeding.” N.C. Gen. Stat. § 50A-201(a)(1) (2022). Our UCCJEA defines a child’s “[h]ome 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 before the commencement of a child-custody proceeding.” § 50A-102(7).

The trial court noted in its 28 February 2020 order that the child was born in 2018 in North Carolina and that the child’s mother died about 8 February 2020. In the absence of other findings as to the child’s residency, these two findings were sufficient to establish the child’s continued residency in North Carolina until the mother’s death. *See In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200-01 (2020) (“The trial court is not required to make specific findings of fact demonstrating its

jurisdiction under the UCCJEA, but the record must reflect that the jurisdictional prerequisites in the Act were satisfied when the court exercised jurisdiction.”). Since the child lived in this state “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,” this state was the child’s home state for the purposes of establishing initial child-custody jurisdiction under Section 50A-201 of our General Statutes.

Though Plaintiff contests this initial child-custody jurisdiction by claiming that the child had temporarily resided in Georgia for eight months prior to returning to North Carolina when the child’s mother died, the record is devoid of such information. I also note, as the trial court did, that “[t]he parties waive[d] further findings of fact” in the 28 February 2020 order before the trial court exercised “jurisdiction over the parties and the subject matter.” “This Court presumes the trial court has properly exercised jurisdiction unless the party challenging jurisdiction meets its burden of showing otherwise.” *Id.* at 569, 843 S.E.2d at 200. Plaintiff here has not met this burden.

After a trial court makes an initial child-custody determination consistent with Subsection 201 of our UCCJEA, the trial court maintains “exclusive, continuing jurisdiction over the determination.” § 50A-202(a). This is consistent with another principle; “[o]nce jurisdiction of the [trial] court attaches to a child custody matter, it exists for all time until the cause is fully and completely determined.” *Waly v. Alkamary*, 279 N.C. App. 73, 84, 864 S.E.2d 763, 771 (2021) (quoting *In re Searce*,

81 N.C. App. 531, 538-39, 345 S.E.2d 404, 409 (1986)). A party need not wait, however, for the case to close before pursuing a custody matter in another jurisdiction. The trial court itself may relinquish its exclusive, continuing jurisdiction in several ways. The trial court may relinquish its jurisdiction if it “determines that neither the child, the child’s parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child’s care, protection, training, and personal relationships.” § 50A-202(a)(1). Jurisdiction may also be relinquished if the trial court “determines that the child, the child’s parents, and any person acting as a parent do not presently reside in this State.” § 50A-202(a)(2). Further, the trial court may relinquish its jurisdiction if it “determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum.” § 50A-207(a).

Here, the Wake County District Court never indicated in any of its orders that it intended to close the case or relinquish jurisdiction. To the contrary, the trial court indicated that it “retains jurisdiction to of [sic] this matter to enter further Orders regarding the custodial relationship of the parties.” Further, it denied Plaintiff’s Motion for Forum Non-Conveniens, asserting “North Carolina is the appropriate forum in which this and all subsequent matters related to this cause shall be heard; and [t]hat North Carolina has continuous and exclusive jurisdiction over this matter and the parties.” In its later 22 December 2021 *ex parte* custody order, the trial court

specifically stated that “North Carolina is the home state of the minor child and this Court has exclusive continuing jurisdiction over the minor child.” None of these assertions are consistent with the relinquishment of jurisdiction.

The Official Comment to Section 50A-202 is instructive here.

Jurisdiction attaches at the commencement of a proceeding. If State A had jurisdiction under this section at the time a modification proceeding was commenced there, it would not be lost by all parties moving out of the State prior to the conclusion of proceeding. State B would not have jurisdiction to hear a modification unless State A decided that State B was more appropriate under Section 207.

§ 50A-202 (Official Comment). Because the Wake County District Court did not relinquish its jurisdiction, we next look to whether jurisdiction was otherwise appropriately taken by another state’s court.

In certain situations, the exclusive, continuing jurisdiction of a trial court of this state may be assumed by the trial court of another state without approval from a court of this state. To do so, the trial court of another state must “determine[] that the child, the child’s parents, and any person acting as a parent do not presently reside in this state.” § 50A-202(a)(2). This determination should be encapsulated in “a judgement, decree, or other order of a court.” § 50A-102(3). It is also possible, as with a trial court of this state, that the trial court of another state may exercise temporary, emergency jurisdiction if the child is present in that state and “has been abandoned or it is necessary in an emergency to protect the child.” § 50A-204(a).

However, in this latter situation, the jurisdiction is only temporary, and the trial courts should “immediately communicate with” each other “to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.” § 50A-204(d).

Here, the Ohio court purported to assume jurisdiction from this state in its 28 November 2021 order. It stated,

Upon motion by the Petitioners and for good cause shown, this Court states that it has assumed exclusive jurisdiction over the minor child in this matter, to wit: [child], effective February 25, 2020, the date the petition for adoption was filed in this Court. Temporary custody granted in North Carolina is given full faith and credit, however, the child resides in Ohio and [the child] has for over one year.<sup>1</sup>

While the Ohio court found that the child resided in Ohio for over one year, it did not make any findings as to the residency of the child’s parents or persons acting as the child’s parents.<sup>2</sup> Therefore, pursuant to Section 50A-202(a)(2), the Ohio court failed to assume jurisdiction from the Wake County District Court. Furthermore, there is no reference in the Ohio orders to the Intervenors, who possessed secondary custody

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<sup>1</sup> This order contains a typo. The adoption proceeding began in 2021—not 2020.

<sup>2</sup> It is possible that the Ohio court attempted to frame the Wake County District Court’s 28 February 2020 temporary custody order as one supported by only temporary, emergency jurisdiction. This would allow the Ohio court to assume its own jurisdiction more easily. However, as explained above, this state possessed initial child-custody jurisdiction when it entered the 28 February 2020 temporary custody order, and, therefore, the Ohio court must contend with this state’s exclusive, continuing jurisdiction. The “temporary” language of the 28 February 2020 temporary custody order should not be confused with the temporary, emergency jurisdiction which supported the initial 13 February 2020 emergency custody order.



through visitation and continued to reside in North Carolina.

It is likewise obvious that the trial court in Ohio did not intend to exercise temporary, emergency jurisdiction. The Ohio orders do not contain any emergency language, and an adoption order is nevertheless inconsistent with a temporary custody arrangement.

I take this opportunity to remind our courts that the UCCJEA as adopted in both North Carolina and Ohio mandates communication between courts when one court becomes aware of a simultaneous proceeding involving the same parties in another state with similar jurisdiction. § 50A-206(b); Ohio Rev. Code Ann. § 3127.20(B). It does not appear from the record that the Wake County District Court and the Ohio court were in communication with each other here. Much of the confusion surrounding this appeal may have been avoided had the courts communicated with each other.

The circumstances of this case are somewhat analogous to those found in *In re H.L.A.D.* There, the child moved to Alabama with the child's custodial guardians after a trial court of this state awarded the guardians custody of the child. 184 N.C. App. 381, 389, 646 S.E.2d 425, 432 (2007), *aff'd*, 362 N.C. 170, 655 S.E.2d 712. The guardians then sought the termination of parental rights in North Carolina. This Court held that,

[w]hen a court of this State, in an initial custody order, awards custody of a child to custodial guardians who thereafter move out of North Carolina, the courts of this

State maintain exclusive, continuing jurisdiction pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act when the guardians file a petition, in a separate action, for the termination of parental rights.

*Id.* at 382-83, 646 S.E.2d at 428. “The [trial] court did not, at any time, specify that the case as to H.D. was ‘closed.’” *Id.* at 389, 646 S.E.2d at 432. Further, “neither a North Carolina court, nor an Alabama court . . . determined that ‘the child, the child’s parents, and any person acting as a parent do not presently reside in this State.’” *Id.* at 388, 646 S.E.2d at 431 (quoting N.C. Gen. Stat. § 50A-202(a)(2)).

Similarly, the Wake County District Court here never “closed” the child’s case, and no court determined that “the child, the child’s parents, and any person acting as a parent do not presently reside in this State.” Custody litigation was ongoing in this state when the Ohio court attempted to assume jurisdiction. The Wake County District Court even issued a contempt order against Plaintiff due to his failure to abide by the previously entered custody arrangement before the Ohio court entered its jurisdiction and adoption orders. The intervenors maintain a claim to the custody of the child and, in the least, have visitation by virtue of the 28 February 2020 temporary custody order.

The majority points to the 4 January 2022 hearing as evidence that

(i) the trial court does not have a copy of all relevant Ohio court orders; (ii) the Ohio court never contacted Wake County District Court prior to entry of any Ohio court order or the adoption decree; and crucially (iii) the trial court is not clear on whether North Carolina or Ohio has exclusive, continuing jurisdiction to make further custody

determinations in this matter.

These considerations are irrelevant to a determination of jurisdiction.

Even if relevant, “[t]he trial judge’s comments during the hearing as to its consideration of the entire case file, evidence and law are not controlling; the written court order as entered is controlling.” *Fayetteville Publ’g Co. v. Advanced Internet Techs., Inc.*, 192 N.C. App. 419, 425, 665 S.E.2d 518, 522 (2008). The record does not show that the trial court entered an order after the 4 January 2022 hearing. It’s previous *ex parte* order stated that the trial court “has exclusive continuing jurisdiction over the minor child,” and the record supports the court’s conclusion of law. The record further supports the court’s finding that “Plaintiff’s avoidance of jurisdiction of North Carolina courts” allowed it to issue the emergency *ex parte* order. Plaintiff came to North Carolina to take the minor child to Ohio and thereafter refused to return to North Carolina for subsequent hearings in this matter and pursued adoption proceedings in Ohio while custody proceedings in this state were ongoing. It is clear Plaintiff intended to evade the jurisdiction of North Carolina and to cut off the minor child from the Intervenors.

I respectfully disagree with the majority’s reliance on the transcribed discussion during the 4 January 2022 hearing and confusion surrounding this jurisdictional issue. Both the record and the trial court’s orders support the conclusion that North Carolina continues to have exclusive, continuing jurisdiction over the child and this custody matter. Therefore, I would affirm the order of the

STEIN V. CASH-JANKE

*Wood, J., dissenting*

trial court.