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ADVANCE SHEET HEADNOTE

November 7, 2022

2022 CO 51

No. 22SC86, *R.W. and H.W. v. People in Interest of E.W.* – Dependency, Permanency, and Termination Factors; Children in Need of Aid – “Home State” of Child – Removal to Another State.

E.W., a minor, lived in Colorado with her parents when she was adjudicated dependent and neglected pursuant to the Children's Code, § 19-3-102, C.R.S. (2022). At the time, Colorado was E.W.'s home state and the juvenile court had initial jurisdiction over the matter under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), § 14-13-201, C.R.S. (2022). E.W. was then placed in an out-of-state placement through the Interstate Compact on the Placement of Children (“ICPC”), § 24-60-1801, C.R.S. (2022). Shortly thereafter, both parents separately left Colorado. No other court asserted jurisdiction over E.W. The juvenile court ultimately terminated the parent-child legal relationship as to both parents.

The Colorado Supreme Court considers whether a Colorado court loses jurisdiction over a child-custody case simply by virtue of all parties leaving the

state. Reading the UCCJEA, ICPC, and Children's Code together, the court concludes that it does not and affirms the division's decision that the juvenile court had jurisdiction to enter the termination order.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

22 CO 51

Supreme Court Case No. 22SC86
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA1724

Petitioners:

R.W. and H.W.,

v.

Respondent:

The People of the State of Colorado,

In the Interest of Minor Child:

E.W.

Judgment Affirmed

en banc

November 7, 2022

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JUSTICE HART delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR, and JUSTICE BERKENKOTTER**] joined.

JUSTICE HART delivered the Opinion of the Court.

¶1 This case requires us to consider the interaction among three different but related statutory schemes. Specifically, we consider what should happen when (1) a Colorado court obtains initial jurisdiction over a child under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), § 14-13-201, C.R.S. (2022); (2) that court adjudicates the child neglected or dependent pursuant to the Children’s Code, § 19-3-102, C.R.S. (2022); (3) the child is then placed in an out-of-state placement through the Interstate Compact on the Placement of Children (“ICPC”), § 24-60-1801, C.R.S. (2022); (4) the parents subsequently move out of state; and (5) no other state court has asserted jurisdiction over the child. Does the Colorado court lose jurisdiction simply because the child and the parents have separately left Colorado? Reading these statutory provisions together, we conclude that it does not. Instead, in the circumstances presented here, the Colorado court retains jurisdiction over the child.

I. Facts and Procedural History

¶2 In September 2018, E.W. (“the Child” or “E.W.”) was nine months old and living with her parents in Colorado, where she had been living since birth. That month, police responded to a domestic violence incident at the family home. While there, police observed that the home was cluttered with trash and debris and that it smelled like urine and feces. On a follow-up visit, a caseworker

observed that both parents appeared to be under the influence of alcohol or drugs and that E.W. appeared malnourished. E.W. was taken to the hospital, where she tested positive for methamphetamine and exhibited other signs of neglect.

¶3 The El Paso Department of Human Services (“Department”) filed a petition in dependency and neglect based on this evidence. E.W. was adjudicated dependent and neglected and placed in a foster home in Colorado. Both parents were referred to services to treat substance abuse and were put on a family services plan. Both struggled to engage with their treatment plans.

¶4 Father requested that the Department explore a kin-like placement in Montana, where he was originally from and where he had friends and family who might be willing to care for E.W. After an investigation pursuant to the ICPC, the Department located a suitable kin-like placement in Montana. The court approved the ICPC placement, ordered that the Department retain custody of E.W., and noted that it retained jurisdiction over the case.

¶5 In September 2019, the Department notified the court that Father and Mother had both moved to Montana. The court took notice of the parents’ move from Colorado to Montana, further noting that it continued to have “jurisdiction over the subject matter and the parties” and “retain[ed] jurisdiction over this case and its prior orders remain in full force and effect.” Pursuant to those orders, the Department continued its efforts to engage both parents in their treatment plans,

including flying a caseworker to Montana to meet with them in person and obtaining releases to speak with treatment providers in Montana. As had been the case while they were in Colorado, the parents continued to struggle with their treatment plans.

¶6 On July 17, 2020, the court held a hearing on termination of parental rights and terminated the parent-child legal relationship as to both parents. In its order, the court again observed that it “ha[d] jurisdiction over the subject matter and the parties” and that it “shall retain jurisdiction over this case and its prior orders remain in full force and effect” pending the parents’ pursuit of appellate remedies.

¶7 Mother and Father appealed the termination, arguing that (1) the Colorado court lost “exclusive, continuing jurisdiction” over the matter under section 14-13-202(1)(b), C.R.S. (2022), because the Child and the parents had left Colorado; (2) the proceeding to terminate parental rights was a new child-custody proceeding and a modification of a child-custody determination under the UCCJEA, which required the court to reestablish its jurisdiction; and (3) at the time of the termination proceeding, Montana, not Colorado, was the Child’s home state under the UCCJEA.

¶8 The division rejected these arguments and concluded that the Colorado court could only lose continuing jurisdiction under the UCCJEA if another state attempted to acquire jurisdiction over the Child. Here, because Montana never

sought jurisdiction, the Colorado court never lost continuing jurisdiction under the UCCJEA. The division further found that a termination proceeding is not a new child-custody proceeding, so the juvenile court was not required to reestablish initial jurisdiction. Given these conclusions, the division affirmed the juvenile court's judgment terminating the parent-child legal relationship.

¶9 Mother and Father petitioned this court for certiorari review of the division's judgment. We granted certiorari on this question and also asked the parties to address whether the ICPC's "retention of jurisdiction" provision might form an independent basis for the court's jurisdiction.¹

¹ We granted certiorari on the following questions:

1. [REFRAMED] Whether the district court lacked jurisdiction to enter the termination order under Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA").
2. [ADDITIONAL ISSUE] Whether the Retention of Jurisdiction provision of the Interstate Compact on the Placement of Children ("ICPC"), section 24-60-1802, art. V(a), furnishes a jurisdictional basis for the district court's termination order.

II. Analysis

¶10 We begin by describing the applicable standard of review. We then explain the relevant provisions of the UCCJEA and note that all parties agree the Colorado court had initial jurisdiction over the case under the UCCJEA because Colorado was E.W.’s “home state” when the case commenced. We then consider whether any of the parents’ arguments that the Colorado court lost that initial jurisdiction have merit. We conclude that they do not.

¶11 After the Colorado court made its initial custody determination, it retained exclusive, continuing jurisdiction pursuant to section 14-13-202. The termination hearing was not a new child-custody proceeding requiring the juvenile court to reestablish jurisdiction. As we explained in *People in the Interest of S.A.G.*, 2021 CO 38, ¶ 39 n.3, 487 P.3d 677, 685 n.3, termination is a remedy in a dependency and neglect proceeding, not a separate proceeding requiring independent jurisdiction. Finally, we note that these conclusions, which we reach in interpreting the UCCJEA, are the only way that the statute can be read in harmony with the ICPC and the Children’s Code, and any ambiguity in the language of the UCCJEA must be resolved in light of that fact.

A. Standard of Review

¶12 We review de novo the statutory interpretation of whether a district court has subject matter jurisdiction over a child-custody proceeding. *Brandt v. Brandt*,

2012 CO 3, ¶ 18, 268 P.3d 406, 410. When interpreting a statute, our primary aim is to effectuate the legislature’s intent. *Bill Barrett Corp. v. Lembke*, 2020 CO 73, ¶ 14, 474 P.3d 46, 49. “To determine the legislature’s intent, we look first to the plain language of the statute.” *Bostelman v. People*, 162 P.3d 686, 690 (Colo. 2007). In evaluating the statute’s language, “we look to the entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts, and we apply words and phrases in accordance with their plain and ordinary meanings.” *Lembke*, ¶ 14, 474 P.3d at 49 (quoting *Blooming Terrace No. 1, LLC v. KH Blake St., LLC*, 2019 CO 58, ¶ 11, 444 P.3d 749, 752). Where the plain language is unambiguous, we apply the statute as written. *Delta Air Lines, Inc. v. Scholle*, 2021 CO 20, ¶ 13, 484 P.3d 695, 699.

¶13 However, where a statute is reasonably susceptible to more than one interpretation, we may turn to other interpretive aids to discern the legislature’s intent. *Lewis v. Taylor*, 2016 CO 48, ¶ 20, 375 P.3d 1205, 1209. Among these interpretive aids are the relevant legislative history and any reasonable interpretation of the statute by an enforcing agency. See § 2-4-203, C.R.S. (2022); *Gallion v. Colo. Dep’t of Revenue*, 171 P.3d 217, 221–22 (Colo. 2007).

B. The Colorado Court Retained Jurisdiction Over the Proceeding

¶14 The General Assembly adopted the UCCJEA with the “primary aim of . . . prevent[ing] competing and conflicting custody orders by courts in different

jurisdictions.” *In re M.M.V.*, 2020 COA 94, ¶ 17, 469 P.3d 556, 560. The official comments to the UCCJEA explain that the purpose of the statute is to “[a]void jurisdictional competition and conflict with courts of other States in matters of child custody which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being.” § 14-13-101 cmt. 1, C.R.S. (2022). To this end, the UCCJEA establishes a detailed and comprehensive framework that a court must use when determining whether it can exercise jurisdiction in a child-custody proceeding or whether it must defer to another state’s jurisdiction. *S.A.G.*, ¶ 23, 487 P.3d at 681–82.

¶15 The UCCJEA “prioritizes home state jurisdiction in initial custody determinations.” *Brandt*, ¶ 23, 268 P.3d at 411. For purposes of the UCCJEA, a child’s “home state” is “the state in which a child lived with a parent or a person acting as a parent for at least one hundred eighty-two consecutive days immediately before the commencement of a child-custody proceeding.” § 14-13-102(7)(a), C.R.S. (2022).

¶16 Generally, once a court has made an initial child-custody determination consistent with section 14-13-201, it retains “exclusive, continuing jurisdiction over the determination.” § 14-13-202(1). However, a court may lose its exclusive, continuing jurisdiction if:

(a) A court of this state determines that 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; or

(b) 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.

§ 14-13-202(1)(a)–(b).

¶17 Here, the parties do not dispute that the Colorado court had home-state jurisdiction when it initially adjudicated E.W. dependent and neglected.

¶18 What the parties do dispute is whether the juvenile court lost its exclusive, continuing jurisdiction over the proceeding after the Child was placed in Montana pursuant to the ICPC and the parents moved to Montana with no intention of returning to Colorado. The parents argue that the plain language of section 14-13-202(1)(b), providing that the court loses its exclusive, continuing jurisdiction if a court determines that the child and the child's parents no longer live in the state, means that as soon as the family members left Colorado, the court lost jurisdiction. The parents argue that the court was required at that point to “determine” that they and the Child had left the state and that the court no longer had jurisdiction over the proceeding.

¶19 While this argument has some surface appeal when considering the language of section 14-13-202 in isolation, it is inconsistent with the purpose of the

UCCJEA, our prior case law, and the other statutory schemes – the ICPC and the Children’s Code – relevant to this dispute.

¶20 First, the UCCJEA was enacted to avoid jurisdictional disputes among states as to the authority to determine custody of a child. There is no other jurisdiction asserting a right to make a custody determination as to E.W. The notion that the Colorado court, having initially obtained jurisdiction under the UCCJEA, would simply lose that jurisdiction when no other state claimed jurisdiction, is untenable. It would leave the child, now adjudicated dependent and neglected, subject to no court’s jurisdiction. Additionally, comment 2 of section 14-13-202 recognizes that this is not the import of this provision by explaining: “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.”

¶21 Second, as we explained quite recently in *S.A.G.*, “[I]n Colorado, a motion to terminate parental rights after a child has been adjudicated dependent and neglected is a request for a remedy, not the start of a second proceeding.” ¶ 39 n.3, 487 P.3d at 685 n.3. The court was not, therefore, obligated to reassess whether it would have “initial” jurisdiction in order to conduct the termination hearing at the time of that hearing. It had properly acquired initial jurisdiction when the proceeding commenced, and it retained exclusive, continuing jurisdiction because

no alternate state asserted a competing, valid claim. The parents argue that, if a Montana court were to assert jurisdiction over E.W. today, Montana would be the child's home state for purposes of that proceeding. We decline to answer this question because it is beside the point. No proceeding has been commenced in a Montana court, and there is no suggestion that Montana is seeking to assert jurisdiction.

¶22 Third, our conclusion that the court retained exclusive, continuing jurisdiction is bolstered by consideration of how the UCCJEA operates with the ICPC and the Children's Code. Once the Colorado court had appropriately obtained jurisdiction under the UCCJEA, it had authority to adjudicate E.W.'s status pursuant to the Children's Code, which provides that "the jurisdiction of the court over any child or youth adjudicated as neglected or dependent shall continue until the child or youth becomes eighteen and one-half years of age unless earlier terminated by court order." § 19-3-205(1), C.R.S. (2022). This grant of continuing jurisdiction, absent a court order, is inconsistent with the parents' argument that their mere departure from Colorado divested the court of jurisdiction.

¶23 The ICPC's "retention of jurisdiction provision" also supports this conclusion. That provision explains that when a child is placed in another state pursuant to the ICPC,

[t]he sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state.

§ 24-60-1802, art. V(a), C.R.S. (2022). Article II of that statute defines “sending agency” as “a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; *a court of a party state . . .* or other entity which sends, brings, or causes to be sent or brought any child to another party state.” *Id.* at art. II(b) (emphasis added). While there is no indication that the ICPC could form the basis for initial jurisdiction over the Child, the retention of jurisdiction provision is inconsistent with the parents’ assertion that the Colorado court simply lost jurisdiction by virtue of their move.² Interpreting the ICPC together with the Children’s Code and the UCCJEA, we conclude that the court retained jurisdiction over the proceeding and was authorized to enter the order terminating parental rights.

² Because we conclude that the court retained exclusive, continuing jurisdiction over the proceeding under the UCCJEA, we decline to consider whether the ICPC would form an independent basis for jurisdiction. We emphasize that these statutes must be read together when they are operating together in a dependency and neglect case with an interstate placement.

III. Conclusion

¶24 A court that has obtained initial jurisdiction to adjudicate a child-custody proceeding under the UCCJEA does not automatically lose jurisdiction under section 14-13-202(b) by virtue of all parties leaving the state. In the circumstances presented here, the Colorado court appropriately exercised its exclusive, continuing jurisdiction when it terminated parental rights in this proceeding.

¶25 Accordingly, we affirm the division's decision that the juvenile court had jurisdiction to enter the termination order.