STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2008

In re the Matter of: Khaled Nasr, petitioner,
Respondent,

vs.

Marcelle Youssef El-Harke, a/k/a Marcelle Youssef Hark,
Appellant.

Filed June 6, 2011
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-FA-09-7285

John De Walt, Gary A. Debele, Walling, Berg & Debele, P.A., Minneapolis, Minnesota (for respondent)

Christopher J. Zewiske, Ormond & Zewiske, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Harten, Judge.*

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

Appellant-mother challenges a district court order that grants recognition and enforcement of a Lebanese court's child-custody order. We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Appellant-mother Marcelle Youssef El-Harke, a/k/a Marcelle Youssef Hark, and respondent-father Khaled Nasr were married in Lebanon by the Greek Orthodox Church in September 2003. They are the parents of a son born on August 18, 2004. Father is a Lebanese citizen. Both mother and the child have dual United States and Lebanese citizenship. Before August 2009, the parties lived in both Lebanon and Kuwait, but it is not clear from the record when they resided in each country.

On August 18, 2009, without notifying father, mother left Lebanon with the child and traveled to the United States. On August 26, 2009, mother petitioned for an order for protection (OFP) for herself and on behalf of the child, accusing father of domestic abuse. The district court issued an OFP against father, and father brought a motion to dismiss for lack of personal jurisdiction. On January 28, 2010, the district court issued an order finding that mother "suffers continued emotional distress in Minnesota, based on [father's] actions in Lebanon." However, the district court also found that it did not have personal jurisdiction over father because he lacked minimum contacts with Minnesota and consequently dismissed mother's petition and vacated the OFP.

On August 28, 2009, father petitioned the Greek Orthodox Holy Church in Lebanon (Lebanese court) for an emergency order requiring the return of the minor child to Lebanon. The Lebanese court issued an order on September 2, 2009, which ordered mother to return to Lebanon with the minor child and ruled that the parties would exercise parenting time on an alternating-week basis. On October 15, 2009, father filed a petition in Hennepin County for the enforcement of the September 2, 2009 Lebanese

order. The district court dismissed father's petition for enforcement because mother did not receive proper notice of the Lebanese proceeding.

In November 2009, father filed for a divorce in Lebanon and sought custody of the child. Mother received proper notice of the Lebanese proceeding and made multiple appearances through counsel. On June 25, 2010, the Lebanese court issued an order upholding and reaffirming the September 2, 2009 order.

In August 2010, father petitioned the Minnesota district court for recognition and enforcement of the June 25, 2010 Lebanese order. The district court held a hearing on the matter. At the hearing, mother argued that the Lebanese order was not entitled to registration and enforcement because, under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the Lebanese court lacked subject-matter jurisdiction. On October 18, 2010, the district court concluded that the Lebanese court exercised jurisdiction in substantial conformity with the jurisdictional standards of the UCCJEA and issued an order granting father's petition for recognition and enforcement of the Lebanese order. This appeal followed.

D E C I S I O N

Applying the UCCJEA involves questions of subject-matter jurisdiction, which this court reviews de novo. *Schroeder v. Schroeder*, 658 N.W.2d 909, 911 (Minn. App. 2003).

The UCCJEA provides that "a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this [act] must be recognized and enforced," unless "the child custody law of

[the] foreign country violates fundamental principles of human rights." Minn. Stat. § 518D.105(b)-(c) (2010). The substantive standards relating to child custody and visitation are not relevant to the issue of whether a court has the authority under the UCCJEA to exercise jurisdiction. *See* UCCJEA Prefatory note cmt.5, 9 U.L.A. 652 (1999) ("The UCCJEA eliminates the term 'best interests' in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children."). Accordingly, the threshold question before us is whether the Lebanese court exercised jurisdiction "in substantial conformity with the jurisdictional standards" of the UCCJEA.

Under the UCCJEA, unless an emergency situation is involved, a court has jurisdiction to make an initial child-custody determination only if certain factual circumstances are met. Minn. Stat. § 518D.201(a) (2010). One of those circumstances is that the state is the child's "home state" on the date the proceeding is commenced, or was the child's home state within the preceding six months and the child is absent from the state, but a parent or person acting as a parent continues to live in the state. Minn. Stat. § 518D.201(a)(1). The term "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"; a period of temporary absence from the state does not affect determination of the home state. Minn. Stat. § 518D.102(h) (2010).

The district court found that Lebanon was the child's home state within six months before commencement of the Lebanese proceeding, that the child was absent from

Lebanon, and that his father continues to live in Lebanon. Mother does not dispute that Lebanon was the child's home state or that the child was absent from Lebanon. However, she argues that the district court's finding that father continues to live in Lebanon is clearly erroneous and that the district court's interpretation of the phrase "continues to live" put too much emphasis on the word "live" and not enough emphasis on the word "continues."

Continues to live

"This court reviews questions of jurisdiction and interpretation of statutes de novo." *In re Welfare of S.R.S.*, 756 N.W.2d 123, 126 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008). "When no special or technical definition of a term is provided in a statute, we are to construe the term according to its common meaning and usage." *Schisel v. Schisel*, 762 N.W.2d 265, 269 (Minn. App. 2009); *accord* Minn. Stat. § 645.08(1) (2010). In addition, because uniform laws are intended to encourage common interpretation among jurisdictions that enact them, "we give great weight to other states' interpretations of a uniform law." *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (citation omitted); *accord* Minn. Stat. § 645.22 (2010).

Black's Law Dictionary 934 (6th ed. 1990) [hereinafter Black's] states that "[t]o live in a place, is to reside there, to abide there, to occupy as one's home." It defines "reside" as "[l]ive, dwell, abide, sojourn, stay, remain, lodge . . . [or] have a settled abode for a time." *Black's*, *supra*, at 1308. *The American Heritage Dictionary of the English Language* 1535 (3d ed. 1992) [hereinafter *American Heritage Dictionary*] defines

"reside" as "[t]o live in a place permanently or for an extended period," and it defines "live" as "[t]o reside, dwell." *American Heritage Dictionary*, *supra*, at 1052.

In *Ex parte Pierce*, 50 So. 3d 447, 454 (Ala. Civ. App. 2010), which is cited in the district court's order, the Alabama court recognized that the legislature was aware of the term "resident" because that term is used in other parts of the UCCJEA. As a result, the court concluded that the legislature's decision to use "continues to live" in place of "resident" "indicates the legislature's intention that the phrase 'continues to live' not be afforded the same interpretation as 'resident.'" *Pierce*, 50 So. 3d at 455; *see also Garcia v. Gutierrez*, 217 P.3d 591, 595 n.3 (N.M. 2009) (interpreting "'continues to live' by its plain meaning, and not as a synonym for 'residency' or 'domicile'—both terms which carry legal meaning different from merely *living* in a location").

In interpreting the term "home state," the Texas supreme court stated:

> The word "lived" strongly connotes physical presence. *See Webster's Third New International Dictionary* 1323 (1961) (defining "live" as "to occupy a home"). We think it significant that the Legislature chose the word "lived" as opposed to "resided" or "was domiciled." The test for "residence" or "domicile" typically involves an inquiry into a person's intent. In our view, the Legislature used the word "lived" "precisely to avoid complicating the determination of a child's home state with inquiries into the states of mind of the child or the child's adult caretakers.

Powell v. Stover, 165 S.W.3d 322, 326 (Tex. 2005) (citation and quotation omitted).

The district court found that father lives and works in Kuwait and also lives and works in Lebanon, that father lived in Lebanon with mother and the child for some periods of time, including immediately before their departure in August 2009, and that

father currently lives, at least sometimes, in Lebanon. Mother argues that the district court's findings are not supported by evidence in the record.

Findings of fact must be upheld unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *see Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992) (applying clearly-erroneous standard to maintenance determination). Factual findings are clearly erroneous when they are manifestly against the weight of the evidence or not reasonably supported by the evidence as a whole. *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985). We view the record in the light most favorable to the district court's findings of fact. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id*. When there is conflicting evidence, this court defers to the district court's determinations of credibility. *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004).

The record includes mother's affidavit from the Lebanese proceeding, stating that father "distributed his life between Lebanon and Kuwait, giving 70% of it to be spent in Kuwait, while the remaining 30% were affected to be lived in Lebanon." Based on this evidence, the district court concluded that father continues to live, at least sometimes, in Lebanon.

Mother argues that

> this finding is unsupported by any agreement of the parties as to where [father] currently lives. It is based entirely upon a statement made by [mother] in the Lebanese pleadings that set forth the parties lifestyle from the time they were married until she moved with the minor child to the United States.

Mother further claims that her "statement is completely irrelevant as to [father's] current living arrangement and whether or not he currently 'lives' in Lebanon as contemplated in the statute." But mother ignores the fact that the UCCJEA focuses on whether father "continues to live" in Lebanon upon commencement of the proceeding.

Mother also points out that the same district court judge issued an order in the parties' legal-separation proceeding on March 1, 2010, which found that "[father] is a citizen of Lebanon; however, according to all evidence in the record, he currently resides in Kuwait." But the finding in that case was based on a different record. Also, the meaning of the phrase "continues to live" is different from the terms "reside" or "domicile," which both require intent to remain in a place.

Based on the evidence in this record, the district court concluded that the Lebanese court exercised "jurisdiction 'under factual circumstances in substantial conformity with the jurisdictional standards' of the UCCJEA." *Compare Paillier v. Pence*, 50 Cal. Rptr. 3d 459, 465 (Cal. Ct. App. 2006) (concluding that French trial court exercised jurisdiction in substantial conformity with the UCCJEA when France was the home state of the child within the meaning of the UCCJEA throughout the French proceedings) *with Bellew v. Larese*, 706 S.E.2d 78, 81 (Ga. 2011) (concluding that Italian court's exercise of jurisdiction was not in substantial conformity with the jurisdictional standards of the UCCJEA when the court "undertook no analysis of the home state of the child, or of any other factors that could be considered a substitute for such"). The district court did not err in determining that the Lebanese court exercised jurisdiction in substantial conformity with the jurisdictional requirements of the UCCJEA.

Child custody law of a foreign country violates fundamental principles of human rights

Even if the Lebanese court exercised jurisdiction in substantial conformity with the jurisdictional requirements of the UCCJEA, Minn. Stat. § 518D.105(c) (2010) provides that "[a] court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights."

Mother argues that she submitted evidence showing that Lebanese law violates fundamental principles of human rights and that this evidence was erroneously excluded by the district court as hearsay. It is not necessary for this court to address whether mother's evidence was erroneously excluded because the excluded evidence provided no information about the Lebanese child-custody laws. *See* UCCJEA § 105 cmt., 9 U.L.A. 662 (1999) ("In applying subsection (c), the court's scrutiny should be on the child custody law of the foreign country and not on other aspects of the other legal system.").

The district court found that "[m]other's submissions provide scant information of the Lebanese child custody laws." Mother urges this court to find that the burden of production in this situation should be on father because he is more likely to have access to this information. But because mother has cited no legal authority that supports this claim, and prejudicial error is not apparent on mere inspection, we will not address this argument. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.").

Mother also argues that the Lebanese order should not be enforced because it requires her to return the child to Lebanon, which is not a signatory of the Hague Convention on the Civil Aspects of International Child Abduction. However, mother cites no authority that indicates that whether a country is a signatory to the Hague Convention is relevant when considering whether a foreign order must be recognized and enforced by this state.

Affirmed.