

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1000

September Term, 2016

CHENELLE OPOKU

v.

CLAYTON DUCKETT

Leahy,
Friedman,
Davis, Arrie W.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: May 1, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case highlights the complexities of child custody disputes spanning two jurisdictions and the application of the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”). Chenelle Opoku, a Washington, D.C. resident, (“Appellant”) and Clayton Duckett, a Maryland resident, (“Appellee”) have two minor children—E.D. and I.D.^{1,2} Prior to this custody dispute, the children lived with Opoku in Washington, D.C. During a weekend visit in Maryland with Duckett, the children expressed that they did not want to return to their mother’s home for fear of abuse. Duckett immediately filed a petition for protection from domestic violence against Opoku in the Circuit Court for Prince George’s County on March 9, 2015. Four days later, on March 13, 2015, Opoku filed a complaint for custody in the Superior Court of the District of Columbia.

These nearly simultaneous filings form the genesis of the jurisdictional issue we must decide in this appeal—whether Maryland or Washington, D.C.³ properly asserted jurisdiction under the UCCJEA to enter a custody determination for E.D. and I.D. For the reasons set forth herein, we hold that the Circuit Court for Prince George’s County did not have jurisdiction under the Maryland UCCJEA to enter the June 15, 2016 custody order from which Appellant noted her timely appeal to this Court.

¹ Appellant is also known as Chenille Billings and Chenille Billings-Opoku.

² Duckett did not file a brief on appeal.

³ D.C. is considered a state under the UCCJEA. Maryland Code (1984, 2012 Repl. Vol., 2016 Supp.), Family Law Article (“FL”), § 9.5-101(p).

BACKGROUND⁴

Opoku and Duckett are the biological parents of their minor children, E.D., born December 11, 2003, and I.D., born November 26, 2004. Opoku and Duckett were never married. Since 2010, E.D. and I.D. had been residing with Opoku in Washington, D.C. It is unclear from the record where E.D. and I.D. were residing before 2010.

Maryland: Duckett’s Petition for a Protective Order

During a weekend visit in March 2015, the children explained that they did not want to return to their mother’s home for fear of abuse. Instead of returning the children to their mother, Duckett immediately filed a petition for protection from domestic violence against Opoku in the Circuit Court for Prince George’s County on March 9, 2015. The circuit court granted a temporary protective order that same day.

Washington, D.C.: Opoku’s Petition for Custody

Four days later, on March 13, 2015, Opoku filed a complaint for custody in the D.C. Superior Court.⁵

⁴ Although we have reviewed the record as a whole, “[i]t is unnecessary to recite the underlying facts in any but a summary fashion because for the most part they [otherwise] do not bear on the issues we are asked to consider.” *Teixeira v. State*, 213 Md. App. 664, 666 (2013) (citations and internal quotation marks omitted); *accord Hill v. State*, 418 Md. 62, 66–67 (2011).

⁵ The Washington, D.C. UCCJEA is codified at D.C. Code § 16-4601.01 *et seq.*

Maryland: Final Protective Order Proceeding

After a merits hearing on March 16, 2015, the circuit court granted Duckett a final protective order effective until March 17, 2016. In that order, the circuit court granted custody of E.D. and I.D. to Duckett, and granted supervised visitation to Opoku. The children had been living with Duckett since he filed the petition for protective order, and they continued to do so after the circuit court granted custody of the children to Duckett under the final protective order.

Washington, D.C.: Initial Hearing on Opoku’s Custody Petition

The D.C. Superior Court held an initial hearing on Opoku’s petition for custody on May 14, 2015. The D.C. Superior Court stayed its proceedings, presumably because it knew about the active protective order proceeding in Maryland and recognized that the UCCJEA prohibits concurrent jurisdiction between two states. *See* FL § 9.5-206(a).

First Appeal to this Court

On April 15, 2015, Opoku filed her first appeal to this Court from the final protective order issued by the circuit court. A panel of this Court summarized the circumstances that led Duckett to file the petition for a protective order:

[In his petition, Duckett] alleged that [E.D.] and [I.D.] told him and their paternal grandmother, Patricia Duckett, that they had been abused by their mother. Duckett’s petition for protection from child abuse included the following allegations: (1) [Opoku] made [E.D.] put his head between the mattress and box spring “while she whooped” him; which caused [E.D.] to have trouble breathing and to have a sore neck for a week; (2) On an unspecified date, [Opoku] became upset with [I.D.] and told him to get out of her house because she did not want to deal with him anymore; (3) After “kicking [I.D.] out” of the house, [Opoku] left and went to the store but

when she returned, [I.D.] was with a police officer; (4) [Opoku] choked and punched [I.D.] causing his nose to bleed and, according to Duckett, this was not the first time [Opoku] choked [I.D.]; (5) When [Opoku] “whoops” [I.D.], she makes him lay across the bed while she sits on his head and “whoops” him; (6) [Opoku] “whoops” [E.D.] and [I.D.] with a back scratcher, paint stirrer, switches, and a bamboo stick; (7) [E.D.] and [I.D.] are left at home “a lot” and are not allowed to go to sleep until [Opoku] gets home around 9–10 p.m.; (8) [I.D.] told Duckett that on one occasion his mother was angry and could not find “the normal items she whoops them with,” so she started hitting him with her hands. (9) Once, [I.D.] fell to the ground and [Opoku] “began kicking him,” which caused [E.D.] to become so scared and upset that he hid in the bathroom; and, (10) [Opoku] told [E.D.] and [I.D.] that she understands why the lady on the news chopped up her kids and put them in the freezer.

Billings v. Duckett, No. 280, September Term 2015, slip op. at 2–3 (filed Dec. 4, 2015) (unreported).

In its decision, issued on December 4, 2015, this Court held that the circuit court had temporary emergency jurisdiction to issue the final protective order pursuant to FL § 9.5-204(a) and FL § 4-506. *Id.* at 10–11.⁶ However, this Court vacated the protective

⁶ The opinion states that in 2007, Opoku brought assault charges against Duckett in the District Court of Maryland for Prince George’s County. It also contains mention of a concomitant protective order in favor of Opoku awarding “temporary custody” of E.D. and I.D. to Opoku. The 2007 proceedings were not included in the instant appeal, nor has Opoku even mentioned a 2007 protective order. Maryland Judiciary Case Search reveals only that assault charges were brought in 2007 and that a *nolle prosequi* was entered in the case. Our search did not uncover any other orders. We note that, according to Maryland Judiciary Case Search, Duckett later filed a petition for custody in 2008, and a petition for visitation in 2010, but both cases were dismissed without any custody or visitation determinations for lack of prosecution. Because there is no direct evidence of a 2007 protective order, we must begin our jurisdictional analysis in this case with the timeline that begins with the protective order filed by Duckett on March 9, 2015 in the circuit court and the custody petition filed by Opoku on March 13, 2015 in the D.C. Superior Court.

We note, however, that because the earlier opinion by this Court found that
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order and, pursuant to Maryland Rule 8-604(d)(1), “remand[ed] the case for further consideration of the issue of which parent shall have custody of the children and the right of visitation for the non-custodial parent.”⁷ *Id.* 15–16. The circuit court was instructed to make findings with respect to two issues. First, the circuit court was to “determine the nature of [Opoku’s] whippings, whether they constituted reasonable corporal punishment, and whether the evidence supported a finding of serious physical harm or fear of imminent serious physical harm.” *Id.* at 14. Second, the circuit court was “to determine whether the boys’ father had abused them and [to] make a specific finding as to whether there was any likelihood of further abuse by Duckett.” *Id.* at 15.

Maryland had temporary emergency jurisdiction over this case under FL § 9.5-204, to the extent that the Court mentioned a protective order that awarded “temporary custody,” it must have established that that order was also granted under temporary emergency jurisdiction. An initial custody determination under the assertion of temporary emergency jurisdiction does not give exclusive, continuing jurisdiction to a court in Maryland. *See* FL § 9.5-202(a). Therefore, even if there was a protective order granting “temporary custody” in 2007, it would have no bearing on the outcome of the instant appeal.

⁷ Maryland Rule 8-604(d)(1), in pertinent part, provides:

If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

Washington, D.C.: D.C. Superior Court Custody Proceeding Resumed

Once a panel of this Court vacated the circuit court’s grant of child custody under the protective order, the D.C. Superior Court lifted the stay and resumed proceedings. The D.C. Superior Court issued a temporary custody order on December 15, 2015. The order granted the parties: joint physical custody of E.D. and I.D., with Duckett having primary physical custody; joint legal custody, with Duckett having final-decision making authority; and visitation on alternate weekends to Opoku.⁸

Maryland: Remanded Proceedings in the Circuit Court

On remand, the circuit court scheduled a proceeding on April 15, 2016, pursuant to this Court’s December 4, 2015 opinion. The children remained in their father’s care during this time. Opoku filed a motion to dismiss on April 13, 2016. In this motion, Opoku asserted that the circuit court lacked jurisdiction to hear the case because Washington, D.C. was the children’s home state, and notified the circuit court of the child custody proceeding in the D.C. Superior Court. At the April 15, 2016 hearing, neither party was represented by counsel. After hearing each party’s arguments on the motion, the circuit court denied Opoku’s motion on the grounds that it had jurisdiction because Duckett is a Maryland resident. After the circuit court denied Opoku’s motion to dismiss, she moved for a continuance as neither party was prepared to present evidence. The

⁸ The record before us indicates that the parties were scheduled to appear for a status hearing on February 19, 2016. The record does not contain additional information regarding the D.C. Superior Court’s custody proceedings.

circuit court granted Opoku’s motion for a continuance, continuing the proceeding until May 16, 2016 to allow the parties time to retain counsel and gather evidence to present at the hearing.

At the proceeding on May 16, 2016, neither party was represented by counsel, but each party offered witnesses and presented evidence. On June 15, 2016, the circuit court issued a written opinion and order, finding that E.D. and I.D. were credible and that “the act of placing a head under a mattress and a whipping that leaves a scar [referring to Opoku’s actions toward her children] is not reasonable discipline and that the children were in reasonable fear of further bodily harm.” The circuit court also found that “Duckett’s use of physical discipline [wa]s reasonable.” The circuit court determined, after further consideration of the two issues identified by this Court, that its prior custody and visitation arrangement—custody to Duckett and visitation to Opoku—was appropriate.

Opoku timely noted an appeal on July 15, 2016, presenting the following questions and issue:

1. “Did the [circuit court] err in not establishing grounds for continuing, exclusive jurisdiction in accordance with the Uniform Child Custody Jurisdiction [and] Enforcement Act?”
2. “Did the [circuit court] err in its determination of whether the evidence was more convincing than that which was offered in opposition to it?”
3. “The [circuit court] erred in statements made in the Opinion and Order.”

We do not reach all of the questions Opoku raises because the first, regarding

jurisdiction, is dispositive.

DISCUSSION

I.

Jurisdiction Under the UCCJEA

Opoku contends that the circuit court improperly denied her motion to dismiss the remanded child custody proceeding when it determined erroneously that it had jurisdiction on the grounds that Duckett was a Maryland resident. Opoku maintains that the circuit court lacked jurisdiction to hear the remanded child custody proceeding and to render a custody determination because Washington, D.C. is the children’s home state. She filed a petition for custody in the D.C. Superior Court, and the D.C. Superior Court issued a temporary custody order on December 15, 2015 after this Court vacated the protective order.⁹

⁹ Opoku also argues that, pursuant to FL § 9.5-206(a), the circuit court erred in denying her motion to dismiss the remanded custody proceeding when the circuit court had knowledge of the “pending” custody petition in the D.C. Superior Court. Opoku further contends that, pursuant to FL § 9.5-206(b)(1), the circuit court was required to examine all court documents and other information—referring to the documents related to the D.C. Superior Court proceeding—before presiding over the remanded custody proceeding.

FL § 9.5-206, in pertinent part, provides:

(a) Except as otherwise provided in § 9.5-204 of this subtitle, *a court of this State may not exercise its jurisdiction under this subtitle if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this title*, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under § 9.5-207 of this

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“Whether the trial court correctly asserted jurisdiction is an issue of statutory interpretation that we review *de novo* to determine whether the court was legally correct.” *Cabrera v. Mercado*, 230 Md. App. 37, 80 (2016) (citing *Breslin v. Powell*, 421 Md. 226, 277 (2001)).

The Maryland UCCJEA—enacted in Maryland in 2004—dictates which state has subject matter jurisdiction over a child custody dispute that spans multiple states. FL § 9.5-101 *et seq.*; *see Cabrera*, 230 Md. App. at 73–74. As we discussed in *Pilkington v. Pilkington*, the UCCJEA curtails a state’s subject matter jurisdiction. 230 Md. App. 561, 579 (2016). The Maryland UCCJEA’s key jurisdictional provisions control when a state

subtitle.

(b)(1) Except as otherwise provided in § 9.5-204 of this subtitle, *a court of this State, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties* under § 9.5-209 of this subtitle.

(Emphasis added).

Opoku incorrectly applies subsection (a). As we stated *supra*, the UCCJEA prohibits concurrent jurisdiction between two states. Subsection (a) of FL § 9.5-206 prohibits Maryland courts from asserting jurisdiction when an existing custody proceeding is pending in another state. Here, the “commencement of the proceeding” occurred on March 9, 2015—the date on which Duckett filed the petition for protective order in the Circuit Court for Prince George’s County. As of March 9, 2015, there was no custody proceeding pending in the D.C. Superior Court, or any other state. The remanded proceeding held on May 16, 2016 in the circuit court was a continuation of the proceeding initiated on March 9, 2015, not a separate proceeding as Opoku implicitly asserts. Accordingly, the circuit court did not err in denying her motion to dismiss the remanded proceeding on this ground.

As for the circuit court’s obligations under FL § 9.5-206 (b)(1), Opoku has not demonstrated that the circuit court failed to examine any documents Opoku provided throughout the proceedings. Regardless, a failure to examine documents is not grounds for dismissing a proceeding in this context.

confronted with a custody action may exercise initial jurisdiction, FL § 9.5-201; exclusive, continuing jurisdiction, FL § 9.5-202; jurisdiction to modify an existing custody order, FL § 9.5-203; and temporary emergency jurisdiction, FL § 9.5-204. *Id.* at 578 (quotations omitted).

Ordinarily, the home state of the child has exclusive subject matter jurisdiction over a custody dispute. *See* FL § 9.5-201(a)(1) (“[A] court of this State has jurisdiction to make an initial child custody determination only if . . . this State is the home state of the child on the date of the commencement of the proceeding[.]”). The Maryland UCCJEA defines home state for minor children over the age of six months, as “the state in which a child lived with a parent . . . for at least 6 consecutive months, including any temporary absence, immediately before the commencement of a child custody proceeding[.]” FL § 9.5-101(h)(1). When Maryland is not a child’s home state, the UCCJEA confers temporary emergency jurisdiction to Maryland courts under certain scenarios. Maryland courts have 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.” FL § 9.5-204(a). This type of jurisdiction, as the provision’s title connotes, is only temporary. *Pilkington*, 230 Md. App. at 582–83. A child custody determination made when a Maryland court is sitting with temporary emergency jurisdiction “remains in effect until an order is obtained from a court of a state having jurisdiction under §§ 9.5-201 through 9.5-203 of this subtitle.” FL § 9.5-

204(b)(1).

In this case, we are presented with a direct application of FL § 9.5-204(b)(1) (temporary emergency jurisdiction). At the time Duckett filed his petition for a temporary protective order on March 9, 2015, the children had been residing in Washington, D.C. with Opoku since 2010; and “there [wa]s no previous child custody determination [for the children] that [wa]s entitled to be enforced under this title[.]” FL § 9.5-204(b)(1). Because the children resided in Washington, D.C. with Opoku for the six month period prior to the filing of the protective order on March 9, 2015, Washington, D.C. is the home state under FL § 9.5-101(h)(1).

This Court had already determined in *Billings, supra*, that Maryland had temporary emergency jurisdiction under FL § 9.5-204(a) to issue the March 2015 protective order, which included child custody determinations.¹⁰ *See Billings*, slip op. at 10–11. However, this jurisdiction was only effective until a child custody determination was made in the children’s home state. *See* FL § 9.5-204(b)(1). Opoku filed a custody action in the D.C. Superior Court on March 13, 2015—four days after Duckett initiated

¹⁰ Opoku also asserts, overlooking the first clause of FL § 9.5-202(a) (exclusive, continuing jurisdiction), that Maryland cannot have exclusive, continuing jurisdiction because a panel of this Court vacated the circuit court’s protective order. We note that Opoku did not fully develop this argument so we are presuming that this was her contention. Opoku is correct in her conclusion that Maryland does not have exclusive, continuing jurisdiction, but she is not correct in her reasoning. The first clause of FL § 9.5-202(a)—“Except as otherwise provided in § 9.5-204 of this subtitle”—holds the proper rationale. Under FL § 9.5-204, the UCCJEA does not confer exclusive, continuing jurisdiction to a Maryland court that issued a custody determination while asserting temporary emergency jurisdiction.

the temporary protection order proceeding in Maryland—and, after this Court vacated the protective order on appeal, the D.C. Superior Court issued a custody order on December 15, 2015. After hearing each party’s arguments on the motion to dismiss and learning of the order entered in Washington D.C., the circuit court erred in denying Opoku’s motion on the ground that it had jurisdiction because Duckett is a Maryland resident.

We hold that Maryland’s temporary emergency jurisdiction over the custody of E.D. and I.D. under the Maryland UCCJEA terminated as of December 15, 2015. We acknowledge that, on remand, the circuit court attempted to follow the remand instructions contained in this Court’s opinion filed December 4, 2015; however, the intervening child custody order issued by the D.C. Superior Court on December 15, 2015 divested the circuit court of jurisdiction over the custody of E.D. and I.D. We vacate the circuit court’s custody order with instructions to the circuit court to dismiss the case.

**ORDER OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
DATED JUNE 15, 2016 VACATED.
CASE REMANDED TO THE
CIRCUIT COURT FOR PRINCE
GEORGE’S COUNTY WITH
INSTRUCTIONS TO DISMISS. THE
PARTIES TO PAY THEIR OWN
COSTS.**