

Circuit Court for Montgomery County
Case No. C-15-JV-23-000468

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1210

September Term, 2024

IN RE: J.E.

Friedman,
Shaw,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 4, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

In this second appeal taken by appellant T.S. (“Mother”) in this matter, we are asked to determine whether the Circuit Court for Montgomery County, sitting as a juvenile court, lacked subject matter jurisdiction to grant J.E., Sr., (“Father”) sole legal and primary physical custody of J.E., Jr., (“J.E.”), whom the court had adjudicated CINA,¹ when there was an existing custody order entered by a court in Texas. For the reasons that follow, we conclude that the juvenile court failed to comply with the procedures outlined in the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) before issuing its custody order. We, therefore, vacate the juvenile court’s order and remand the matter to that court to comply with the procedural requirements of the UCCJEA before entering a new custody order, if appropriate.²

FACTS AND LEGAL PROCEEDINGS

In an Order entered in August of 2022, a Harris County, Texas, court awarded primary physical custody of J.E. to Mother and joint legal custody of J.E. to Mother and Father. The custody order gave Mother the right to “designate the primary residence of the child within Harris County, Texas and counties contiguous thereto and Montgomery

¹ A CINA is a “child in need of assistance” who “requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” MD. CODE, COURTS & JUDICIAL PROCEEDINGS (“CJ”) § 3-801(f).

² Because we hold that the juvenile court lacked subject matter jurisdiction to issue its custody Order and we remand for further proceedings, we do not consider the other issues raised by Mother, asserting that the juvenile court erred in: (1) denying joint legal custody, (2) failing to expressly grant virtual visitation, and (3) ordering her to stay away from J.E.’s daycare and school.

County, Texas[.]” Each parent was prohibited from interfering with the other parent’s time of possession with J.E. and was required to give notice to the other of, among other things, an intended change in address.

In June 2023, Mother moved J.E. from Texas to Maryland in violation of the custody order, asserting that she was escaping from domestic violence. In September 2023, J.E. and his half-brother R.P. came to the attention of the Montgomery County Department of Health and Human Services (“the Department”) after Mother left the children alone in the hotel in which they had been living.³ The Department removed the children from Mother’s custody, placed them in shelter care, and filed a CINA petition in relation to both children.

In October 2023, the juvenile court declared J.E. to be a CINA and imposed conditions to be met by Father before it would place J.E. with him in Texas. By November 2023, Father had completed all but one of those conditions, and his completion of the one remaining condition was delayed for reasons outside of his control. In December 2023, based on the Department’s recommendation and Father’s completion of almost all of his court-ordered services, the juvenile court ordered that J.E. be placed with Father in Texas under an Order of Protective Supervision.

Mother noted a timely appeal of the juvenile court’s decision permitting J.E. to be moved to Texas under Father’s care. In an unreported opinion, this Court concluded that the juvenile court had not made an explicit finding that J.E. would not be subject to further abuse or neglect if placed in Father’s custody, as required by FL § 9-101. We remanded

³ R.P., who does not share a father with J.E., is not involved in this appeal.

the matter to the juvenile court to make that determination on the record and otherwise affirmed the juvenile court’s ruling. *See In re: J.E.*, Case No. 1980, Sept. Term, 2023 (filed July 9, 2024).

Ahead of a review hearing to be held in July of 2024, the Department filed a report recommending that J.E. be released from the juvenile court’s jurisdiction and that his commitment to the Department be rescinded. The Department further recommended that Mother, who had been non-compliant “with all court ordered services and case plan” and had attended only eight of 39 permitted virtual visits with J.E., be granted once-monthly supervised visitation with J.E. and ordered to stay away from Father’s home and from J.E.’s school and daycare facility.

At the review hearing, the Department maintained its recommendation that the case be closed. The child’s attorney and Father’s attorney both agreed with the Department’s recommendation. Mother’s attorney disagreed, however, arguing that there was a CINA finding that Father and Mother had both been parties to domestic violence in Texas, that there was an existing Texas custody order granting physical custody of J.E. to Mother, and that no one had been supervising Father and J.E. in Texas to verify that Father’s positive representations to the Department were accurate.⁴

⁴ Mother’s attorney complained that since J.E. had been placed with Father under the Order of Protective Supervision, no one in Texas had been supervising the matter despite the juvenile court’s request that the Department contact Texas CPS to put “courtesy supervision of the case” in place in Texas. The Department and the child’s attorney advised the juvenile court that although the Department had attempted to communicate with its Texas counterpart, that agency had responded that in the absence of an Interstate Compact on the Placement of Children agreement, it would take no further action.

At the conclusion of the hearing, the juvenile court explicitly found that: (1) Father was compliant with his case plan and had completed all court-ordered services; (2) there was no likelihood of abuse or neglect of J.E. by Father; (3) J.E. was safe with Father; and (4) it was in J.E.’s best interest to be with Father. The juvenile court further found that Mother had: (1) not been compliant with court-ordered services; (2) participated in only eight visits with J.E. of 39 offered by the Department; and (3) made no progress toward mitigating the causes necessitating the court’s intervention. The juvenile court declared that J.E. was no longer a CINA, placed the child in Father’s physical and legal custody, terminated its jurisdiction over the matter, and closed the case. The juvenile court’s July 25, 2024, written order further provided that: (1) Mother would be permitted once-monthly supervised visitation with J.E. at a Texas visitation center; (2) Mother may not call, email, or text Father; and (3) Mother must stay away from Father’s home and work and J.E.’s daycare and school. The juvenile court entered a separate custody order granting Father primary physical and sole legal custody of J.E. the same day.

Mother noted a timely appeal from the juvenile court’s orders.

DISCUSSION

On appeal, Mother contends that the juvenile court lacked subject matter jurisdiction to issue a permanent custody order because Texas, not Maryland, was J.E.’s home State and the Texas custody order remained in effect and was entitled to enforcement under the UCCJEA unless the Texas court, after conference with the juvenile court, relinquished its jurisdiction. Because no such conference or relinquishment had occurred, Mother asserts and the Department concedes, the juvenile court’s custody order must be vacated. We

agree. Nonetheless, as the Department points out, although the juvenile court lacked jurisdiction to modify permanently the Texas custody order, that jurisdictional defect can be cured on remand if the juvenile court follows the procedures outlined in the UCCJEA.

STANDARD OF REVIEW

“Whether the [juvenile] court correctly asserted jurisdiction is an issue of statutory interpretation that we review *de novo* to determine whether [it] was legally correct.” *Cabrera v. Mercado*, 230 Md. App. 37, 80 (2016). The issue of a lack of subject matter jurisdiction can be raised at any time, even for the first time on appeal. *Lewis v. State*, 229 Md. App. 86, 101 (2016).

ANALYSIS

The UCCJEA—enacted in Maryland in 2004 and currently codified at § 9.5-101 *et seq.* of the Family Law Article (“FL”)—dictates which State has subject matter jurisdiction over a child custody dispute that spans multiple States. FL § 9.5-101 *et seq.* “This Court has recognized that ‘[t]he UCCJEA, governing custody and visitation, ... w[as] established to provide systematic and harmonized approaches to urgent family issues in a world in which parents and guardians, who choose to live apart, increasingly live in different [S]tates and nations.’” *Cabrera*, 230 Md. App. at 73-74 (quoting *Friedetzky v. Hsia*, 223 Md. App. 723, 726-27 (2015)). One of the primary goals of the UCCJEA is to establish a uniform jurisdictional standard to prevent jurisdictional conflicts between Maryland courts and courts of other States with respect to custody determinations regarding a child who has been relocated either to or from Maryland. *Pilkington v. Pilkington*, 230 Md. App. 561, 578-79 (2016).

“The [UCCJEA] prohibits concurrent jurisdiction between two [S]tates to limit the occurrence of different [S]tates creating competing custody awards.” *Pilkington*, 230 Md. App. at 579. The UCCJEA defines four types of jurisdiction: 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. The UCCJEA applies to all child custody proceedings, including CINA proceedings. FL § 9.5-101(e). When another State has previously issued a custody order, these provisions restrict a juvenile court’s subject matter jurisdiction. “Just as the authority to make an initial custody determination is exclusive to a single [S]tate, only a single [S]tate may possess authority to modify an existing custody determination.” *Pilkington*, 230 Md. App. at 579. Additionally, the UCCJEA discourages a State from exercising jurisdiction when it is not the most convenient forum in which to do so. *Id.*; FL § 9.5-207.

Ordinarily, the home State of a 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 [S]tate of the child on the date of the commencement of the proceeding[.]”). The UCCJEA defines home State for minor children over the age of six months, as “the [S]tate 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 provides for 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 lasts only until an order is obtained from the State having initial jurisdiction. *Pilkington*, 230 Md. App. at 582-83.

It is unclear exactly when Mother brought J.E. to Maryland, but the record supports a finding that it was in approximately June 2023. Thus, in September 2023 when Mother left her young children alone in a hotel room and refused to return when asked—necessitating their removal to shelter care and prompting the filing of a CINA petition—J.E. had not lived here more than six months. There appears to be no real dispute that, prior to his removal to Maryland, J.E. had lived in Texas his entire life. Under the UCCJEA, Texas was J.E.’s home State, and indeed, that is precisely what the Texas court determined in its custody order. Under the circumstances at the time, however, the juvenile court permissibly assumed temporary emergency jurisdiction under FL § 9.5-204(a). *See Pilkington*, 230 Md. App. at 585. But because there was a previous child custody determination that was entitled to enforcement, the juvenile court’s order was only effective until an order was obtained from Texas. FL § 9.5-204(c)(2). By awarding sole legal and physical custody to Father and closing the CINA case, the juvenile court modified the existing Texas custody order, thereby taking actions outside the purview of temporary emergency jurisdiction and establishing impermissible concurrent jurisdiction with Texas. *Pilkington*, 230 Md. App. at 583.

Here, Texas had jurisdiction to make the initial child custody determination and remained J.E.’s home State at the commencement of the CINA matter in Maryland. Before issuing what amounted to a modification of the Texas court’s custody order, the juvenile

court was required to “communicate with the court [in Texas] to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.” FL § 9.5-204(d)(2). This it did not do. The juvenile court, therefore, did not satisfy the procedural requirements of the UCCJEA.

Maryland had no jurisdiction to decide the issue of custody unless the Texas court determined that “it no longer [had] exclusive, continuing jurisdiction under § 9.5-202 ... or that a court of this State would be a more convenient forum under § 9.5-207.” FL § 9.5-203 (1). The Texas court was not given the opportunity to make this determination. We conclude that the juvenile court exceeded the jurisdictional restraints imposed under the UCCJEA by entering an order that modified a foreign jurisdiction’s existing custody order when Maryland was not J.E.’s home State and there was no other jurisdictional basis to modify an existing order under FL § 9.5-203. We, therefore, vacate the juvenile court’s custody order and remand the case with instructions that the juvenile court limit itself to the authority contained in and follow the procedures outlined by the UCCJEA before issuing a new custody order, if appropriate after taking those actions. *See Pilkington*, 230 Md. App. at 566.

**CUSTODY ORDER ENTERED BY THE
CIRCUIT COURT FOR MONTGOMERY
COUNTY, SITTING AS A JUVENILE
COURT, VACATED; CASE REMANDED
TO THAT COURT TO TAKE FURTHER
ACTION IN ACCORDANCE WITH THIS
OPINION; COSTS TO BE PAID BY
APPELLEES.**