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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAY 15 2024

JOHN D. HADDEN
CLERK

IN THE MATTER OF: H.M.A. and)
J.H.A., Alleged Deprived Children,)

HAROLD ALLEN,)

Appellant,)

vs.)

STATE OF OKLAHOMA,)

Appellee.)

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Case No. 121,224

APPEAL FROM THE DISTRICT COURT OF
BECKHAM COUNTY, OKLAHOMA

HONORABLE MICHELLE KIRBY ROPER, TRIAL JUDGE

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS

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OPINION BY JAMES R. HUBER, PRESIDING JUDGE:

¶1 Harold Allen (“Father”) appeals the trial court’s March 15, 2023 order terminating his parental rights to H.M.A. and J.H.A.¹ He argues the court lacked subject matter jurisdiction to enter the order under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA” or “the Act”), located at 43 O.S.2021, §§ 551-101 through 551-402. Based on our review of the record and applicable law, we find the record fails to show the court had jurisdiction to enter the order. We reverse the order and remand for further proceedings consistent with this Opinion without addressing the other issues Father raises on appeal.

BACKGROUND

¶2 On August 29, 2020, Aaron Allen with the Beckham County Sheriff’s Office observed Mother’s vehicle traveling at 95 miles per hour on the highway, which was 20 mph over the speed limit. Deputy Allen attempted to pull over her vehicle by activating his lights and later his sirens, but she did not stop for several miles. Instead, Mother’s vehicle moved all over the highway in and out of multiple lanes,

¹ Father and Danielle Eubanks (“Mother”) will be collectively referred to as “Parents.” Mother’s rights have previously been terminated by default and are not at issue in this appeal.

including lanes on the opposite side of the highway, and straddled the center line. When Mother finally pulled over, her vehicle completely left the roadway, going onto the grass, before returning to the shoulder. When Deputy Allen approached the vehicle, Mother screamed at him and refused to exit the vehicle as he commanded. Eventually, Mother exited the vehicle, and her behavior was such that he had to draw his pistol so she would comply enough for him to handcuff her. He noted she was behaving erratically, making irrational statements, and kept mentioning she was using Suboxone, a stimulant. She also gave conflicting statements about whether she was from Arizona or Ohio. Mother also informed Deputy Allen there were children in the vehicle, so he called for backup and waited with Mother until it arrived. He did not want to leave her alone in his patrol car because he was concerned about what she might do if left unattended. When backup arrived, Deputy Allen approached Mother's vehicle and observed the three children in the car: one-year-old J.H.A., two-year-old H.M.A., and six-year-old L.C.H.² In particular, he was concerned when he saw J.H.A. was not clothed and was not buckled into the car seat, which was not attached to the backseat. At the jail, a glass pipe, commonly used to smoke methamphetamine, was found on Mother. She also admitted to using meth, marijuana, and Suboxone. Accordingly, she was arrested for Eluding a Police

² L.C.H. is not part of this appeal; she has a different father with whom she has been reunited in Arizona.

Officer, Child Endangerment, and Possession of Paraphernalia. The children were taken into emergency DHS custody because of Mother's arrest.

¶3 Katrina Geswender, DHS investigator, made contact with the children and noted they were dirty, hungry, and there were essentially no clothing items for them in the vehicle. She also noticed when watching the children interact that L.C.H. was parentified and displaying an unusual level of parenting the other children. Geswender contacted Mother and asked if she would voluntarily agree to place the children in voluntary custody, but she declined. Geswender also talked on the phone with Father, who was in Arizona, several times that day. He was distraught when she explained what happened and said Mother was likely off her medication for mental health issues. Father was willing to send a family member from Arizona to get the kids (because he could not make it) and to voluntarily place the children in DHS custody until a family member arrived. However, during her conversations with Father, he mentioned he and Mother recently had a visit from Arizona Child Protective Services ("CPS") and had been in an argument, involving law enforcement, which is part of why Mother left to go visit family. Geswender was also concerned that Father said he was unaware Mother was off her prescription medication for her mental health issues, despite him stating it was noticeable when she was not taking her medication. Geswender also spoke to other family members who expressed concerns about the household. Upon learning this information,

Geswender was concerned about releasing the children to Father or a family member.

¶4 Accordingly, the trial court entered an order placing the children in emergency DHS custody, and they went to foster care. A show cause order was entered a few days later that continued to grant DHS emergency custody. After the entry of the order, Geswender continued her investigation and made contact with a previous child welfare worker in Arizona, who revealed Parents had five previous child welfare referrals, including a recent, open referral for sexual abuse allegations against Father towards L.C.H. and H.M.A. and that law enforcement was involved in an investigation.³ Geswender also obtained police records showing law enforcement had been called to the home multiple times for domestic disturbances. Given all these concerns, State filed a petition to adjudicate the children deprived, and the children were adjudicated deprived based on Parents' stipulation on September 11, 2020. The court also entered an individualized service plan for Father, requiring him to complete certain tasks and services.

¶5 It appears that around May 2021, Father filed for a divorce against Mother in Arizona. The record indicates the trial court communicated with the Arizona court but does not reveal any detail about the substance of the communication. Around three months later, or on July 30, 2021, the children were removed from foster care

³ Father was never arrested or charged with any crime stemming from these allegations.

in Oklahoma and placed with Father's niece in Arizona, pursuant to the Interstate Compact on the Placement of Children. The children remained in Arizona until March 11, 2022. At that time, Arizona CPS became concerned that Father's niece was allowing the children to frequently stay with their grandmother, who had not been approved by CPS. There were also concerns that the children were staying with Parents, and the police had recently been called to their home after Mother caused extensive property damage. Given these issues, the children returned to Oklahoma.

¶6 State filed a petition to terminate Father's rights shortly thereafter on April 15, 2022. State sought termination under section 10A O.S.2021, § 1-4-904(B)(5) for failure to correct the conditions that served as the basis for the children's deprived adjudication and pursuant to sections 1-4-904(B)(16) and (17) for length of time the children had been in foster care. A jury trial was held February 7-8, 2023. The jury returned verdicts terminating Father's rights under section 1-4-904(B)(5) and under sections 1-4-904(B)(16) and (17). The trial court's order terminating Father's rights was filed on March 15, 2023.

¶7 Father appeals.

STANDARD OF REVIEW

¶8 Whether a trial court has subject matter jurisdiction under the UCCJEA is a question of law this Court reviews *de novo*. *In re the Marriage of Rader*, 2020 OK

106, ¶ 7, 478 P.3d 438. Under such review we have plenary, independent, and nondeferential authority to reexamine the trial court's legal rulings. *Id.*

ANALYSIS

¶9 Father alleges the trial court lacked subject matter jurisdiction under the UCCJEA to enter the termination order and that Arizona has jurisdiction. The children's attorney argues the Act is inapplicable to this case, and the trial court had subject matter jurisdiction to enter the termination order pursuant to the Oklahoma Children's Code ("OCC"), or specifically 10A O.S.2021, § 1-4-101.⁴

¶10 The UCCJEA applies to a child custody proceeding, which is defined by the Act to include dependency and termination of parental rights proceedings. *S.W. v. Duncan*, 2001 OK 39, ¶ 19, 24 P.3d 846 (citing 43 O.S.2021, § 551-102(4)). *See also Matter of Chad S.*, 1978 OK 94, ¶ 13, 580 P.2d 983, abrogated on other grounds by *Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N. C.*, 452 U.S. 18, 101 S. Ct. 2153 (1981) (referring to a deprived proceeding as a dependency proceeding).⁵ The children's attorney is correct that the OCC states the trial court obtains jurisdiction over any child who is or alleged to be deprived upon the filing of a petition, the assumption of the custody of a child, or the issuance of an emergency custody order. 10A O.S.2021, § 1-4-101. However, this provision pertains to a court's personal

⁴ State has not submitted a brief, despite the Oklahoma Supreme Court granting it permission to file one out of time.

⁵ This case does not fall within the exceptions to the Act. *See* 43 O.S.2021, § 551-103.

jurisdiction over the child, i.e., the court's power to render a binding decision regarding the child. *Hammer v. State*, 2022 OK 80, ¶ 5, 519 P.3d 91 (Kane, V.C.J., specially concurring); *see also Montgomery v. Airbus Helicopters*, 2018 OK 17, ¶ 15, 414 P.3d 824 (defining personal jurisdiction). In contrast, the UCCJEA pertains to the court's subject matter jurisdiction. *In re the Marriage of Rader*, 2020 OK 106, ¶ 7.⁶ Thus, the UCCJEA applies to this case.⁷

¶11 Preliminarily, we note that while Father raises the issue of the trial court's jurisdiction under the Act, he fails to provide a cohesive argument and provides no citations to the record to support his argument. Regardless, we are duty bound to inquire into our jurisdiction and that of the trial court. *See Hall v. The GEO Group, Inc.*, 2014 OK 22, ¶ 12, 324 P.3d 399. In making this inquiry, we are not bound by the trial court's jurisdictional findings but must independently judge the basis for exercising jurisdiction. *In re the Marriage of Jones*, 2018 OK CIV APP 68, ¶ 25, 430 P.3d 544 (citing *Joliff v. Joliff*, 1992 OK 38, ¶ 7, 829 P.2d 34 (finding trial

⁶ Arguably, the UCCJEA does not confer subject matter jurisdiction as the trial court had the power to adjudicate the type of controversy at issue. *See Hammer*, 2022 OK 80, ¶ 9 (Kane, V.C.J., specially concurring). *See also In re A.N.O.*, 2004 OK 33, ¶ 9, 91 P.3d 646 (defining subject matter jurisdiction). Rather, the Act determines which state is permitted to exercise subject matter jurisdiction in the proceedings the Act covers. *Id.* However, there is no binding authority making this distinction, and the Oklahoma Supreme Court has analyzed the issue simply as "[w]hether a trial court has subject matter jurisdiction under the UCCJEA. . . ." *In re the Marriage of Rader*, 2020 OK 106, ¶ 7.

⁷ The UCCJEA is a uniform act that has been adopted by 49 states, including Arizona. *Phillip G. v. Korbin-Steiner in & for Cnty. of Maricopa*, 542 P.3d 664, 668 (Ariz. Ct. App. 2023). Because it is a uniform act, we cite cases from other jurisdictions as persuasive authority on issues the Oklahoma Supreme Court has not specifically addressed. *See* 43 O.S.2021, § 551-401.

court lacked subject matter jurisdiction under the Uniform Child Custody Jurisdiction Act, applicable before the Legislature enacted the UCCJEA in 1998)).

¶12 Adherence to and satisfaction of the UCCJEA's mandatory prerequisites are what allow a court of this state to exercise subject matter jurisdiction. *Id.* at ¶ 28 (citing *Joliff*, 1992 OK 38, ¶ 7). In the present case, however, the trial court made no specific findings applying the Act's multi-layered approach to jurisdiction to this case. While neither the plain text of the UCCJEA nor Oklahoma Supreme Court authority explicitly require the trial court to make specific findings of fact demonstrating its jurisdiction under the Act, this is the best practice. Regardless, we will review the record to determine if it shows the jurisdictional prerequisites of the Act were satisfied when the court exercised jurisdiction. *See Hall*, 2014 OK 22, ¶ 19 (dismissing a case due to lack of jurisdiction when the record did not show plaintiff had complied with certain notice provisions that were a jurisdictional prerequisite to filing suit under the Governmental Tort Claims Act based on the Court's *sua sponte* jurisdictional review). *See also Matter of L.T.*, 843 S.E.2d 199, 200-01 (N.C. 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."). In making our jurisdictional inquiry, we first provide a general

overview of the UCCJEA's relevant jurisdictional prerequisites and then consider whether the record shows they were met in this case.

1. Overview of jurisdiction under the UCCJEA

¶13 The Act provides three basic ways a state can establish jurisdiction over a case involving a child: 1) a state can have jurisdiction to make an initial child custody determination, 2) a state can have jurisdiction to modify a child custody determination made by another state, or 3) a state can have temporary emergency jurisdiction ("TEJ"). See 43 O.S.2021, §§ 551-201 through 204. The provisions regarding the court's initial determination jurisdiction and TEJ are relevant to this case.

A. Initial determination jurisdiction

¶14 Except as otherwise provided in section 551-204 pertaining to TEJ, 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 (6) 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;
2. A court of another state does not have jurisdiction under paragraph 1 of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under [section 551-207], and:
 - a. the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant

connection with this state other than mere physical presence, and

b. substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

3. All courts having jurisdiction under paragraph 1 or 2 of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under [section 551-207]; or

4. No court of any other state would have jurisdiction under the criteria specified in paragraph 1, 2, or 3 of this subsection.

Id. at § 551-201.⁸

¶15 In making an initial child custody determination, the UCCJEA prioritizes the jurisdiction of the child's home state, which is defined as "the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding." *Id.* at § 551-102(7). Moreover, once an initial custody determination is made by a court of this state under section 551-201, that court has exclusive continuing jurisdiction until it determines: 1) neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care,

⁸ These jurisdictional bases are often referred to as home state jurisdiction, significant connection jurisdiction, more appropriate forum jurisdiction, and default jurisdiction. *See In re Teagan K.-O.*, 242 A.3d 59, 71 (Conn. 2020).

protection, training, and personal relationships; or 2) 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 the state. *Id.* at § 551-202.

B. TEJ

¶16 Under section 551-204, a court of this state has TEJ if the child is present in this state and either the child has been abandoned or the exercise of TEJ is necessary in an emergency to protect the child from mistreatment or abuse. A custody determination made under the TEJ provisions is generally temporary, with the purpose of the order being to protect the child until the state with initial custody jurisdiction or modification jurisdiction enters an order. *Comment to § 204 of the UCCJEA.* Under certain circumstances, though, an emergency custody determination may become final. *Id.* Specifically, if there is no previous child custody determination and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 551-201 through 203, “a child custody determination made [pursuant to the court’s TEJ] remains in effect until an order is obtained from a court of a state having jurisdiction under [sections 551-201 through 203].” *Id.* at § 551-204(B). If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under [sections 551-201 through 203], “a child custody determination made under this section *becomes a*

final determination, if it so provides and this state becomes the home state of the child.” Id. (emphasis added).

¶17 Contrastingly, if there is a previous child custody determination that is entitled to be enforced under the Act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 551-201 through 203, “any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the State having jurisdiction under [those sections].” *Id.* at § 551-204(C). The order issued in this state only remains in effect until an order is obtained from the other state within the period specified or the period expires. *Id.*

¶18 Thus, after entering an emergency order securing a child’s safety, a critical part of the trial court’s analysis of whether it may continue to exercise TEJ is to inquire if any court has made a “child custody determination” or if a “child custody proceeding” has been commenced in a court of another state regarding the same children. *See In re the Marriage of Rader*, 2020 OK 106, ¶ 16. Moreover, if after the court’s initial inquiry, the court exercising TEJ becomes informed that a child custody proceeding has been commenced in, or a child custody determination has been made by a court having jurisdiction under sections 551-201 through 203, this State’s court “shall immediately communicate with the other court.” *Id.* at § 551-204(D). In that situation, a court’s TEJ can ripen into initial determination

jurisdiction under section 551-201 if the home state's court declines jurisdiction, and the court exercising TEJ meets the other requirements of section 551-201, listed above, pertaining to the child's connections with the state. *See, e.g., Interest of A.W.*, 493 P.3d 298, 308 (Kan. Ct. App. 2021); *In re J.C.*, 832 S.E.2d 91, 100 (W. Va. 2019); *N.B. v. Dep't of Child. of Fams.*, 274 So. 3d 1163, 1169 (Fla. Dist. Ct. App. 2019); *In re Gino C.*, 169 Cal. Rptr. 3d 193, 198 (Cal. Ct. App. 2014); *In re E.D.*, 812 N.W.2d 712, 721 (Iowa Ct. App. 2012).

2. Review of the record for compliance with the UCCJEA

¶19 In view of the above provisions of the Act, we consider whether the record reflects the prerequisites for jurisdiction were met in this case. As detailed above, the record shows in August 2020, Parents were married and living in Arizona with the children. After a fight between them, Mother left Arizona with the children, purportedly to visit family in Ohio. While Mother and the children were passing through Oklahoma, Mother was arrested after engaging in a high-speed pursuit with police with the children in the car. DHS contacted Father in Arizona, but he was unable to retrieve the children. While speaking to Father, DHS learned that law enforcement had been involved in the fight that happened right before Mother left with the children, which caused concern. It was also concerning that Father mentioned he and Mother had a recent visit from Arizona CPS, that family members had concerns about the household, and that Father had reportedly had not noticed

Mother was off her mental health medications. Thus, the children were taken into emergency DHS custody in Oklahoma, and DHS maintained emergency custody after a show cause hearing on August 31, 2020. Under these facts, Arizona was the home state, and the trial court had TEJ to enter the emergency order under section 551-204 because the children were present in Oklahoma, and the exercise of TEJ was necessary to protect the children from mistreatment or abuse.

¶20 An order adjudicating the children deprived was entered 11 days later, on September 11, 2020. As noted above, whether the court was properly exercising its TEJ at the time of the adjudication order depends on whether a child custody determination had been previously made in Arizona or whether one was commenced in Arizona after Oklahoma exercised its TEJ. Significantly, there is no indication in the record that the court made this crucial inquiry before entering the adjudication order, and parts of the record do not support this conclusion. For instance, the DHS emergency custody affidavit included Mother's statement that the children had never been taken into custody by Arizona CPS. However, that does not completely answer the question of whether a child custody determination, which includes multiple types of proceedings, had ever been made by any Arizona court. This is particularly concerning because during trial, Geswender testified that the children had been in a guardianship in Arizona in 2018, which is a child custody proceeding under the UCCJEA. *See* 43 O.S.2021, § 551-102(4). While the witness may have misspoken,

the testimony begs the question of whether there was in fact a child custody determination/proceeding commenced in an Arizona court before the trial court entered its adjudication order.

¶21 Additionally, we note that under the UCCJEA, State and Father either in their first pleading or in an affidavit, were required to give reasonably ascertainable information about any proceeding that could affect the current proceeding, and the court had the authority to *sua sponte* stay the proceedings until this information was provided.⁹ *See id.* at §§ 551-209(A) and (B). Neither the record nor the docket

⁹ Specially, section 551-209(A) provides:

A. In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

1. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;
2. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and, if so, identify the court, the case number, and the nature of the proceeding; and
3. Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with the child and, if so, the names and addresses of those persons.

shows this requirement, intended to aid the court in its jurisdictional inquiry, was met.

¶22 In view of the record before us, we cannot find there was no previous child custody determination/proceeding commenced in an Arizona court at the time the trial court entered its adjudication order. This is significant because if there had been a prior custody determination or proceeding commenced in Arizona, the trial court would not have TEJ to enter the adjudication order. Given the children's deprived adjudication was a statutory prerequisite for terminating Father's rights under 10A O.S.2021, § 1-4-904(A), the trial court also would have lacked jurisdiction to enter the order terminating Father's rights. Thus, we reverse the March 15, 2023 termination order and remand this case to the trial court to make the factual determination of whether a child custody determination had been made or a proceeding had been commenced in an Arizona court before the entry of the adjudication order.

¶23 Assuming the trial court finds there was not a prior Arizona custody determination/proceeding commenced at the time of the adjudication order, we find the record before us still does not show the court had jurisdiction under the UCCJEA to terminate Father's parental rights. Notably, upon a finding there was not a prior Arizona custody determination/proceeding commenced, the issue becomes whether the court's TEJ ripened into home state jurisdiction under section 551-204(B) after

the entry of the adjudication order. Under section 551-204(B), the adjudication order only becomes a final child custody determination that would allow TEJ to ripen into home state jurisdiction “if it so provides[.]” Based on this plain language of the statute, we find the adjudication order was not a final determination within the meaning of the UCCJEA because it did not so provide. Thus, after the entry of the adjudication order, the trial court continued to only exercise TEJ rather than home state jurisdiction.

¶24 While exercising its TEJ after the entry of the adjudication order, the record indicates Father filed for a divorce against Mother in Arizona around May 2021.¹⁰ The record contains a hand-written note on a permanency review order that states the trial court conferred with an Arizona judge regarding the pending divorce. However, neither the note nor any other part of the record provides any detail about the communication, including whether Arizona declined jurisdiction or whether the other requirements of section 551-201(A)(2) (regarding the children’s connections with Oklahoma) had been met at that time. Indeed, Father testified at trial that the Arizona court awarded him, as opposed to Mother, custody of the children.

¶25 Additionally, it is unclear from the record and the docket whether the UCCJEA’s requirements for such communication between the courts were met.

¹⁰ The record also indicates Father obtained a protective order against Mother in Arizona, though it is unclear if the children were a subject of this order.

Specifically, a record is required to be made of the communication, unless the conversation was strictly about logistical issues like scheduling. *Id.* at § 551-110. A record is defined by the Act as “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.” *Id.* The UCCJEA also provides that the court may allow the parties to participate in the communication, and if the parties are unable to participate, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. *Id.*¹¹ Thus, based on the record before us, we cannot find Arizona declined jurisdiction in favor of Oklahoma, much less based on a communication that complied with the Act. Accordingly, we cannot find Oklahoma had jurisdiction to enter the order terminating Father’s parental rights for this additional reason.

¶26 On remand, the trial court should determine whether Arizona declined jurisdiction during the communication between the courts in May 2021 and whether a record of this communication was made in accordance with the Act’s requirements. If the court determines these requirements were not met, the court shall communicate with the Arizona court in compliance with section 551-110 to determine whether

¹¹ Although it appears from the record that Arizona CPS acquiesced in Oklahoma’s continued exercise of its purported TEJ, this is insufficient under the UCCJEA. Under the plain language of the Act, “a court of the home state,” rather than a state agency of the home state, must decline jurisdiction. *See id.* at § 551-201(A)(2). *See also Interest of A.W.*, 493 P.3d 298, 306 (Kan. Ct. App. 2021); *In re J.C.*, 832 S.E.2d 91, 99 (W. Va. 2019). There is nothing in the record showing an Arizona court declined jurisdiction.

Arizona will now decline jurisdiction in favor of Oklahoma. Assuming Arizona now declines jurisdiction, and the trial court finds that before the entry of its adjudication order there *had* been a custody determination made or proceeding commenced in Arizona, the trial court must conduct *both* an adjudication hearing and a new trial on the termination of Father's rights.¹² Assuming Arizona now declines jurisdiction, and the trial court finds there had *not* been a prior custody determination made or proceeding commenced in Arizona before its adjudication order, *only* a new trial on the termination of Father's rights must be held. If an Arizona court refuses to decline jurisdiction under either scenario, the court may continue to exercise its TEJ to ensure the children are returned to Arizona.

¶27 Alternatively, if after making the necessary factual findings and conducting the analysis specified above, the trial court finds that the UCCJEA's requirements had been met at the time the court entered the adjudication order and the March 15, 2023 order terminating Father's parental rights, the court shall enter a termination order memorializing the jury's verdict that includes its jurisdictional analysis and relevant factual findings, along with all other requirements of a termination order. Father may then exercise his right to appeal both the court's jurisdictional findings

¹² Under this scenario, a new adjudication hearing must be held because Arizona's later declination of jurisdiction cannot cure the jurisdictional defect present at the time of the entry of the adjudication order. *See In re A.T.-I*, 889 S.E.2d 57, 66 (W. Va. 2023).

and determination and the other issues raised in this appeal that we have not addressed, if he so chooses.

CONCLUSION

¶28 In conclusion, we reverse the March 15, 2023 termination order and remand this case to the trial court for proceedings consistent with this Opinion.

¶29 We know this resolution is far from ideal. The children will continue to linger in foster care while the jurisdictional issue is resolved, and potentially, a new adjudication hearing and/or trial will be required to be held. However, a jurisdictional inquiry under the UCCJEA is not concerned with reaching a particular result; it simply asks whether the legal criteria for an exercise of subject matter jurisdiction was met. For that reason, in cases where there is even so much as a hint that the UCCJEA may apply, the trial court should address the jurisdictional question *sua sponte* as early as possible, regardless of whether the issue was raised by a party. Notably, this case is not one with nebulous home-state facts where the trial court needed to be careful of latent jurisdictional questions. Rather, the trial court was aware at the time it first exercised its TEJ that Mother and the children were merely passing through Oklahoma on the way to another destination, and Arizona (where Father was still living) was the children's home state. A thorough, well-documented inquiry into the court's jurisdiction under the UCCJEA should have been made as early in the proceeding as possible, and the court should have been mindful in

complying with the Act throughout the pendency of the case. Well intentioned as it may have been, the trial court potentially over-reached its authority and certainly did not ensure a record was made to allow its termination order to withstand jurisdictional inquiry on appeal, leading to more regrettable and avoidable delay of the children's permanency.

¶30 **REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.**

HIXON, J., concurs, and BLACKWELL, J., concurs in part and dissents in part.

BLACKWELL, J., concurring in part and dissenting in part:

¶1 I agree with the majority that the record fails to show that the trial court had subject matter jurisdiction sufficient to enter the termination order on appeal, and I therefore concur in reversing that order. However, the trial court's jurisdictional infirmity goes much deeper. I therefore respectfully dissent from Court's instructions on remand.

¶2 In my view, the record is clear that the trial court never had *any* jurisdiction except the "Temporary Emergency Jurisdiction" provided in 43 O.S. § 551-204.¹ Such jurisdiction extends only to the entry a temporary custody order to protect the

¹ The majority remands so the trial court can determine if there was a prior custody order or proceeding. But either way, the trial court did not have jurisdiction under § 551-204 to proceed with adjudication, which results in a decidedly non-temporary, non-emergency order. Thus, I see no need to remand for this determination.

child and does not allow the court to enter permanent custody orders.² *See, generally*, 53 A.L.R.6th 419, § 9, *Permanent Custody Determination*. Thus, the trial court’s proceedings below—from adjudication to termination—were all done well in excess of that emergency jurisdiction. Accordingly, I would vacate all orders entered in this case subsequent to the *Order for Temporary Custody* entered on August 31, 2020. Additionally, because based on this record the emergency on which that order was based has long since abated, I would order, absent any relevant intervening events, custody to be immediately restored to the Mr. Allen.

May 15, 2024

² Of course, temporary emergency jurisdiction can develop into “full jurisdiction” if the statutory prerequisites are met. As the majority correctly notes, that did not happen here. If it had, Oklahoma would have “become[] the home state of the child[ren],” 43 O.S. § 551-204(B), and the state could have proceeded with adjudication and subsequent proceedings under § 555-201.