

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JARRID FAULKNER,

Plaintiff-Appellee,

v

BREANA CRUZ,

Defendant-Appellant.

UNPUBLISHED

June 11, 2020

No. 351409

Kent Circuit Court

LC No. 19-008822-DC

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Before: CAMERON, P.J., and BOONSTRA and LETICA, JJ.

PER CURIAM.

Defendant appeals by right the trial court’s October 25, 2019 order granting plaintiff’s motion to accept jurisdiction, establish custody, and modify parenting time. We affirm.

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

Plaintiff and defendant have twin sons, but never married. On August 13, 2008, the Court of Common Pleas Juvenile Division in Montgomery County, Ohio established plaintiff as the legal father of the children and determined a child support schedule. On December 22, 2008, the Ohio court awarded plaintiff parenting time from Thursday to Sunday every third weekend of each month, two weeks of parenting time in the summer, and every other holiday. At that time, defendant resided in Ohio with the children and plaintiff resided in Michigan.

In 2010, defendant and the children moved to Michigan. For the next nine years, plaintiff and defendant “co-parented” their children and resided in the same home in Michigan. The children attended school in Michigan and were involved in school activities. The children’s pediatrician and dentist were also located in Michigan.

In September 2019, defendant unilaterally moved to Ohio with the children, and enrolled the children in school there. On October 1, 2019, plaintiff filed a request with the Kent County (Michigan) Circuit Court to accept jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq.*, and for a child custody determination. Plaintiff also filed a motion requesting that the trial court accept jurisdiction, establish joint legal custody of the children, award plaintiff primary physical custody, and order that the children be

returned to Michigan and be re-enrolled in school there. In response, defendant argued that jurisdiction was proper in Ohio, not Michigan.

After a hearing on the jurisdictional issue, the trial court contacted the Ohio court, and subsequently entered an October 20, 2019 order accepting jurisdiction. The court later held a hearing on the remaining issues raised in plaintiff's motion. On October 25, 2019, the trial court "awarded joint legal and joint physical custody of the minor children," granted plaintiff "extended parenting time with the minor children," ordered "that the minor children shall immediately be re-enrolled and attend Byron Center Public Schools," restricted parenting time under the Hague Convention, and restricted the movement of the children's domicile to within a 100-mile radius. Defendant filed an objection to the transfer of jurisdiction with the Ohio court; that court entered an order on December 20, 2019 denying the objection and stating that it did not possess exclusive jurisdiction over the child custody dispute because the children had resided in Michigan for the previous 9 years.

This appeal followed.<sup>1</sup>

## II. SUBJECT-MATTER JURISDICTION

Defendant argues that the trial court lacked subject-matter jurisdiction under the UCCJEA to issue an order granting joint legal and physical custody. We disagree.

"The question whether a court has subject-matter jurisdiction to hear a particular claim is a question of law that we review de novo." *Jamil v Jahan*, 280 Mich App 92, 99-100; 760 NW2d 266 (2008). "However, the determination whether to exercise jurisdiction under the UCCJEA is within the discretion of the trial court and will not be reversed absent an abuse of that discretion." *Id.* at 100. An abuse of discretion exists when the trial court's decision results in an outcome outside the range of principled outcomes. *Id.*

The UCCJEA prescribes the powers and duties of the court in a child custody proceeding involving a party or proceeding outside of Michigan. *Fisher v Belcher*, 269 Mich App 247, 260; 713 NW2d 6 (2005). "Michigan adopted the [UCCJEA] to provide standards to determine: (1) whether a state could take jurisdiction of a child-custody dispute, (2) whether other states were prohibited from subsequently taking jurisdiction, (3) enforcement of a custody decision, and (4) when modification of a child-custody decision was permitted." *Atchison v Atchison*, 256 Mich

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<sup>1</sup> This Court has denied multiple motions filed by defendant to stay proceedings pending this appeal. See *Faulkner v Cruz*, unpublished order of the Michigan Court of Appeals, entered November 15, 2019 (Docket No. 351409); *Faulkner v Cruz*, unpublished order of the Michigan Court of Appeals, entered February 24, 2020 (Docket No. 351409). This Court also denied defendant's motion for peremptory reversal of the trial court's order. See *Faulkner v Cruz*, unpublished order of the Court of Appeals, entered December, 13, 2019 (Docket No. 351409). As discussed later in this opinion, the trial court subsequently issued an order in March 2020 granting plaintiff sole physical and legal custody; that order is not the subject of this appeal.

App 531, 535; 664 NW2d 249 (2003). MCL 722.1201(1) states that a Michigan court has jurisdiction to make an initial custody determination when:

(a) 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 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. [*Jamil*, 280 Mich App at 100, quoting MCL 722.1201(1).]

Michigan was the children's home state for the nine years immediately preceding defendant's relocation of the children to Ohio, and within 6 months of the time that plaintiff commenced proceedings and requested that the trial court accept jurisdiction under the UCCJEA. At that time, plaintiff continued to reside in Michigan. Michigan was therefore the children's home state under MCL 722.1201(1). See also *Jamil*, 280 Mich App at 100 (holding that Michigan was the children's home state under MCL 722.1201(1)(a) because the children had resided in Michigan for two years before custody proceedings were initiated).

Nonetheless, defendant asserts that the Michigan trial court lacked jurisdiction because an initial custody determination had been entered in Ohio and the Ohio court has not relinquished jurisdiction. We disagree. "Once a court of another state has rendered a child-custody determination, a Michigan court shall not modify this order, MCL § 722.1203, unless certain criteria are established." *Atchison*, 256 Mich App at 537. MCL 722.1203 states:

Except as otherwise provided in section 204 [MCL 722.1204], a court of this state shall not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial child custody determination under section 201(1)(a) or (b) [MCL 722.1201] and either of the following applies:

(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 202 [MCL 722.1202] or that a court of this state would be a more convenient forum under section 207 [MCL 722.1207].

(b) A court of this state or a court of the other state determines that neither the child, nor a parent of the child, nor a person acting as a parent presently resides in the other state. [*Id.* quoting MCL 722.1203.]

As discussed, the trial court had jurisdiction under MCL 722.1201(1)(a) to make an initial custody determination. The question then becomes, under MCL 722.1203(a), whether the Ohio court has determined that it no longer has exclusive, continuing jurisdiction.<sup>2</sup> We conclude that

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<sup>2</sup> Plaintiff argues that the Ohio court never made a child-custody determination, but only established paternity and parenting time. In that event, MCL 722.1203 arguably would not apply because the trial court would not be modifying a child custody order of a court of another state. We find it unnecessary to resolve this question, because regardless of whether the Ohio court made

the Ohio court determined that it did not have exclusive, continuing jurisdiction over the matter because both parents and the children had lived in Michigan for the preceding nine years.

The trial court entered an order on October 22, 2019 accepting jurisdiction. The order stated that the “this Court has consulted with Magistrate Randal Knight, in the Common Pleas Court of Montgomery County, Ohio, Juvenile Division pursuant to the UCCJEA [and] [b]oth Courts agree that Kent County Circuit Court in the State of Michigan is the more appropriate forum due to the family residing in Kent County since 2010.” In addition, the Ohio court has entered orders dismissing a motion filed by defendant seeking a change of custody, denying defendant’s motion to retain jurisdiction in Ohio, denying defendant’s objection to the transfer of jurisdiction to Michigan, and stating that it no longer has exclusive jurisdiction and that jurisdiction was proper in Michigan because the children had resided in Michigan for the past nine years. Therefore, under MCL 722.1203, the trial court had jurisdiction to enter an order awarding joint legal and physical custody.

### III. CUSTODY ORDER

Defendant also argues that even if jurisdiction is proper in Michigan, the trial court erred by modifying the existing Ohio custody order without first holding an evidentiary hearing and making the required findings, including as to proper cause or change of circumstances and the children’s best interests. We conclude that this issue is moot because the challenged order is no longer in effect.

We review the trial court’s findings of fact in a child custody case under the great weight of the evidence standard. *In re AP*, 283 Mich App 574, 590; 770 NW2d 403 (2009). “The court’s factual findings are against the great weight of the evidence if the evidence clearly preponderates in the opposite direction.” *Id.* “We review for an abuse of discretion the trial court’s discretionary decisions, such as the award of custody.” *Id.* In child custody cases, an abuse of discretion occurs if “the result [is] so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.” *Shulick v Richards*, 273 Mich App 320, 324; 729 NW2d 533 (2006) (citations omitted). We review for clear error the trial court’s interpretation and application of law. *Id.* “Clear legal error exists when the trial court incorrectly chooses, interprets, or applies the law.” *Id.*

Even if the trial court committed legal error when it entered the October 25, 2019 order, defendant’s argument is moot because, on March 2, 2020, the trial court awarded plaintiff sole physical and legal custody after finding that a change of circumstances had occurred, after holding an evidentiary hearing, and after finding that it was in the children’s best interests.

“The purposes of the Child Custody Act, MCL 722.21 *et seq.*, ‘are to promote the best interests of the child and to provide a stable environment for children that is free of unwarranted custody changes.’ ” *Lieberman v Orr*, 319 Mich App 68, 78; 900 NW2d 130 (2017), quoting

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a child-custody determination, it clearly determined that it did not have exclusive, continuing jurisdiction.

MCL 722.21. “Constant changes in a child’s physical custody can wreak havoc on the child’s stability, as can other orders that may significantly affect the child’s best interests.” *Lieberman*, 319 Mich App at 78. Under MCL 722.27(1)(c), “when seeking to modify a custody or a parenting-time order, the moving party must first establish proper cause or a change of circumstances before the court may proceed to an analysis of whether the requested modification is in the child’s best interests.” *Id.* at 81. “If the movant does not establish proper cause or a change of circumstances, the trial court is prohibited from holding a child custody hearing[.]” *Id.* at 82.<sup>3</sup>

“An evidentiary hearing is mandated before custody can be modified, even on a temporary basis.” *Grew v Knox*, 265 Mich App 333, 336; 694 NW2d 772 (2005). A trial court may not circumvent the hearing requirement through a temporary order. *Mann v Mann*, 190 Mich App 526, 529-530; 476 NW2d 439 (1991). However, a trial court’s error in entering a temporary order without holding an evidentiary hearing does not automatically require reversal of a final order if the trial court later conducted a hearing and properly made the required findings and determinations. *Id.* at 533. In that case, the inquiry is whether the trial court erred when it entered its final order. *Id.* at 534-538. Moreover, an improperly entered custody order can become moot when the order ceases to be in effect. See *Crampton v Crampton*, 178 Mich App 362, 363; 443 NW2d 419 (1989) (stating that a claim that an order was entered in error becomes moot when the order ceases to be in effect). “[A]n issue becomes moot when an event occurs that renders it impossible for the reviewing court to grant relief.” *C D Barnes Assoc, Inc v Star Heaven, LLC*, 300 Mich App 389, 406; 834 NW2d 878 (2013).

In this case, the trial court did not hold an evidentiary hearing or articulate on the record whether proper cause or a change of circumstances existed to warrant the entry of the October 25, 2019 order granting joint legal and physical custody of the children. However, that order is no longer in effect, and the issue is therefore moot. See *Crampton*, 178 Mich App at 363. On February 27, 2020, the trial court held an evidentiary hearing. On March 2, 2020, it issued an oral opinion and held “that there is proper cause or a change in circumstance has been shown to allow for the Court to review custody and that is primarily the mother’s failure to abide by the Court’s order to return the children and to allow plaintiff any contact with his children in furtherance of his desire to be a fully involved father figure to his boys.” The trial court then determined the appropriate standard of review and conducted a best-interest analysis before granting plaintiff sole legal and physical custody. That ruling is not challenged in this appeal, and we are therefore

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<sup>3</sup> As noted, plaintiff argues that the Ohio court never made a custody determination, and that the requirements of MCL 722.27(1)(c) therefore do not apply. Again, however, for the reasons set forth in this opinion, we need not decide that issue.

unable to grant defendant any meaningful relief with regard to the October 25, 2019 order. *C D Barnes Assoc*, 300 Mich App at 406.

Affirmed.

/s/ Thomas C. Cameron  
/s/ Mark T. Boonstra  
/s/ Anica Letica