

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

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TRAVIS VERNON MILLER,

Plaintiff-Appellant,

v

MARISA MARIE SIGNORELLI,

Defendant-Appellee.

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*In re* Guardianship of REM, Minor.

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TRAVIS VERNON MILLER, Guardian of REM,

Petitioner-Appellee,

v

MARISA MARIE SIGNORELLI,

Respondent-Appellant.

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Before: GADOLA, P.J., and RONAYNE KRAUSE and O'BRIEN, JJ.

PER CURIAM.

UNPUBLISHED

October 15, 2020

No. 351951

Macomb Circuit Court

Family Division

LC No. 2019-001375-DC

No. 353326

Macomb Probate Court

LC No. 2018-229380-GM

In Docket No. 351951, Travis Vernon Miller appeals as of right the circuit court's order granting Marisa Marie Signorelli's motion for reconsideration and dismissing the custody case for lack of jurisdiction. In Docket No. 353326, Signorelli appeals as of right the probate court's order denying her motion for reconsideration and reappointing Travis as the full guardian of her son,

REM. We consolidated these cases on appeal.<sup>1</sup> In each case, we remand to the respective court to comply with MCL 722.1204(4) and MCL 722.1206(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq.*

## I. BACKGROUND

REM was born on December 11, 2013. It appears that REM's mother (Signorelli) and father (Michael Evan Miller) were never married. Travis was Michael's brother. On March 23, 2015, the Maricopa County Superior Court of Arizona (the Arizona court) awarded Michael sole custody of REM. In 2015, Michael and REM moved to Michigan. On October 29, 2018, Michael died. Since Michael's death, REM has lived with Travis. When the cases in this appeal commenced, REM had lived in Michigan for approximately four years.

On December 10, 2018, Travis filed a petition for guardianship in the probate court, asserting that a guardianship was necessary because of Michael's death. On January 11, 2019, the probate court appointed Travis as REM's full guardian. On May 2, 2019, Travis filed a complaint for third-party custody of REM in the circuit court, and on June 27, 2019, he filed a motion for interim third-party custody asking for interim custody while the custody proceedings were pending. The circuit court granted interim custody to Travis on July 15, 2019.

On July 24, 2019, Signorelli filed a motion in the circuit court to dismiss the custody case, arguing that Arizona had exclusive jurisdiction over the custody of REM because the Arizona court had entered a previous custody order and Michigan courts did not have statutory authority to modify that order. On August 19, 2019, the circuit court held a hearing during which it agreed with Signorelli and determined that Michigan did not have jurisdiction to modify the Arizona court's custody order. However, because it appeared that Signorelli had abandoned REM, the circuit court found grounds for temporary emergency jurisdiction under MCL 722.1204.

On August 19, 2019, the circuit court entered an order granting Signorelli's motion to dismiss the third-party custody action for lack of jurisdiction, voiding the July 2019 order granting Travis custody on an interim basis, and dismissing the third-party custody case. On August 20, 2019, the probate court, pursuant to a stipulation by the parties, entered an order appointing Travis as the temporary guardian of REM until February 14, 2020, under the court's temporary emergency jurisdiction. On August 29, 2019, the probate court entered an order setting aside the January 2019 order appointing Travis as full guardian of REM.

On October 3, 2019, in the Arizona court, Travis filed a motion to intervene for the purpose of requesting a UCCJEA conference. Travis requested that the Arizona court relinquish jurisdiction because REM and Michael had moved to Michigan in 2015, REM had not seen Signorelli since he left Arizona, and Signorelli had made no arrangements to have REM return to Arizona. On October 14, 2019, in the Arizona court, Signorelli filed a notice of Michael's death and requested an immediate child custody order. On October 18, 2019, in response to Signorelli's request for custody, the Arizona court entered a minute entry stating that it lacked jurisdiction to

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<sup>1</sup> *Miller v Signorelli*, unpublished order of the Court of Appeals, entered June 9, 2020 (Docket Nos. 351951 and 353326).

issue a custody order because, under Arizona law, custody automatically transferred to Signorelli upon Michael's death.

Afterwards, back in Michigan, Travis filed a motion to reinstate the custody case in the circuit court, asserting that the Arizona court relinquished jurisdiction on the basis of statements it made in its minute entry. On November 20, 2019, the circuit court held a hearing on Travis's motion and determined that, because Michigan was REM's home state, Michigan had jurisdiction and it was proper to reinstate the custody case. Signorelli filed a motion for reconsideration, arguing that the Arizona court never indicated that it did not have jurisdiction over the matter or that it transferred jurisdiction to Michigan. The circuit court granted Signorelli's motion, concluding that it previously erred in determining that Michigan had jurisdiction and that there were no grounds to modify the Arizona court custody order under MCL 722.1203. It therefore dismissed the custody case, which led to the appeal in Docket No. 351951.

After the dismissal of the custody case, Signorelli filed a motion in the probate court to terminate Travis's temporary guardianship. On March 3, 2020, the probate court *sua sponte* reconsidered and vacated its August 29, 2019 order in which it set aside its January 2019 order granting Travis full guardianship. The probate court determined that the Arizona court had in fact relinquished its jurisdiction in the October 2019 minute entry, and therefore, Michigan had jurisdiction over the guardianship matter. Having concluded that it had jurisdiction, the probate court appointed Travis as REM's full guardian. In Docket No. 353326, Signorelli appeals the probate court's decision to award Travis full guardianship.

## II. DOCKET NO. 351951—CUSTODY ACTION

Travis argues that the circuit court erred in dismissing the custody case because the circuit court had jurisdiction under MCL 722.1203(a). 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. "Generally, an appellate court should defer to the trial court's judgment, and if the trial court's decision results in an outcome within the range of principled outcomes, it has not abused its discretion." *Id.*

### A. JURISDICTION UNDER THE UCCJEA

The UCCJEA "governs interstate child custody disputes." *Foster v Wolkowitz*, 486 Mich 356, 364; 785 NW2d 59 (2010). Both Michigan and Arizona have adopted the UCCJEA. MCL 722.1101 *et seq.*; ARS 25-1001 *et seq.*

At issue is MCL 722.1203 of the UCCJEA, which states:

Except as otherwise provided in [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 [MCL 722.1201(1)(a) or (b)] and either of the following applies:

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

The UCCJEA defines a “child-custody determination” as “a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child,” including “a permanent, temporary, initial, and modification order.” MCL 722.1102(c). A child-custody proceeding is defined as “a proceeding in which legal custody, physical custody, or parenting time with respect to a child is an issue,” including “a proceeding for divorce, separate maintenance, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear.” MCL 722.1102(d).

The Arizona court entered a custody order on March 23, 2015, granting Michael sole custody of REM. This order constituted a “child-custody determination” under MCL 722.1102(c) of the UCCJEA. For a Michigan court to modify this order as requested by Travis,<sup>2</sup> one of the conditions listed in MCL 722.1203 must exist. Signorelli continued to live in Arizona, so there is no question that MCL 722.1203(b) does not apply. Thus, the only question is whether MCL 722.1203(a) applies.

For that subsection to apply, and consequently for the circuit court to have jurisdiction to modify the Arizona court’s child-custody determination, (1) “a court of this state [must have] jurisdiction to make an initial child-custody determination under [MCL 722.1201(1)(a) or (b)]” and (2) “[t]he court of the other state [must] determine[] [that] it no longer has exclusive, continuing jurisdiction under [MCL 722.1202] or that a court of this state would be a more convenient forum under [MCL 722.1207].” MCL 722.1203(1).

Under MCL 722.1201, as relevant to this case, a court of this state has jurisdiction to make an initial child-custody determination when “[t]his state is the home state of the child on the date of the commencement of the proceeding[.]” MCL 722.1201(a). The UCCJEA defines “home state” in part as “the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding.” MCL 722.1102(g). When defining “person acting as a parent,” the UCCJEA provides:

“Person acting as a parent” means a person, other than a parent, who meets both of the following criteria:

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<sup>2</sup> The UCCJEA defines “modification” as “a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous child-custody determination concerning the same child, whether or not it is made by the court that made the previous child-custody determination.” MCL 722.1102(k).

(i) Has physical custody of the child or has had physical custody for a period of 6 consecutive months, including a temporary absence, within 1 year immediately before the commencement of a child-custody proceeding.

(ii) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state. [MCL 722.1102(m).]

The UCCJEA defines “physical custody” as “the physical care and supervision of a child.” MCL 722.1102(n).

When Travis filed the third-party custody action on May 2, 2019, REM had been living in Michigan since 2015, and REM had been living with Travis since Michael’s death on October 29, 2018. Travis was caring for and supervising REM, and had been granted full guardianship. Because REM had been living with Travis, a person acting as a parent, for at least six consecutive months immediately before the commencement of the custody action, Michigan was REM’s home state. Consequently, the circuit court had the authority to make an initial child-custody determination under MCL 722.1201(a), and the first requirement of MCL 722.1203(a) was satisfied.

The second requirement of MCL 722.1203(a) is that the court of the other state must determine that either (1) it no longer has exclusive, continuing jurisdiction or (2) a court of this state would be a more convenient forum. According to Travis, the Arizona court determined that it no longer had exclusive, continuing jurisdiction in its October 2019 minute entry. That entry states in relevant part:

The Court lacks authority to issue such an order because, if Father has died, the Court no longer has jurisdiction over the case. Pursuant to *Woodford v Superior Court*, 82 Ariz. 181, 184 (1957), “upon the death of a party who holds legal custody pursuant to a divorce decree, the right of legal custody automatically inures to the surviving parent.” The Supreme Court in *Woodford* also stated that “the death of one of the parties divorced by a judicial decree terminates the continuing power of the court to modify the decree with respect to the custody of the children involved.” 82 Ariz. at 183-84; *Morales v Glenn*, [114] Ariz. 327 (1977).

We disagree with Travis that the Arizona court relinquished its exclusive and continuing jurisdiction in this minute entry. The entry was made in response to Signorelli’s request for custody, and it appears clear from the entry that the court believed it lacked the authority—meaning the jurisdiction—only to issue an order granting Signorelli custody because custody automatically passed at Michael’s death. The entry does not stand for the proposition that the court lacked jurisdiction over further custody disputes. This is supported by a fair reading of *Woodford*, 82 Ariz. at 182-184, and in particular *Woodford*’s statement, “The legal custody so derived continues until it is shown that such survivor is unfit to assume the responsibilities inherent to parenthood,” *id.* at 184. This statement clearly implies that the court’s jurisdiction continues so as to allow for judicial intervention upon a showing that the surviving parent is unfit.

In sum, the minute entry by the Arizona court was not a determination that Arizona no longer had exclusive, continuing jurisdiction, and there is otherwise nothing to suggest that the

Arizona court determined that Michigan would be a more convenient forum. Thus, MCL 722.1203(a) did not grant the circuit court the power to modify the custody order put in place in Arizona, and the circuit court did not err when it dismissed the custody action on the basis that it lacked jurisdiction to modify the Arizona custody order under MCL 722.1203.

#### B. DUTY TO COMMUNICATE

Nevertheless, Travis argues, and we agree, that the circuit court was required to communicate with the Arizona court under MCL 722.1204, the statute governing temporary emergency jurisdiction.

MCL 722.1204 provides, in relevant part:

(1) A court of this state has 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.

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(3) If there is a previous child-custody determination that is entitled to be enforced under this act or if a child-custody proceeding has been commenced in a court of a state having jurisdiction under [MCL 722.1201 to MCL 722.1203], an order issued by a court of this state under this section must specify in the order a period of time that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under [MCL 722.1201 to MCL 722.1203]. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) If a court of this state that has been asked to make a child-custody determination under this section is informed that a child-custody proceeding has been commenced in, or that a child-custody determination has been made by, a court of a state having jurisdiction under [MCL 722.1201 to MCL 722.1203], *the court of this state shall immediately communicate with the other court. . . .* The purpose of a communication under this subsection is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

At the August 19, 2019 hearing in which the circuit court ruled that it lacked jurisdiction to modify the Arizona child custody order, it also found that Signorelli had abandoned REM because (1) she was not caring for him, (2) she was non-responsive upon receiving notice of the guardianship proceedings, and (3) REM was “present with someone else.” For these reasons, the circuit court concluded that it had temporary emergency jurisdiction to maintain a guardianship under MCL 722.1204. Signorelli stipulated to the circuit court taking temporary emergency jurisdiction for the purpose of appointing Travis as temporary guardian. The circuit court, as it was required to do under MCL 722.1204(3), specified that the order would remain in effect for not

more than six months as that was a reasonable time to obtain an order from the Arizona court.<sup>3</sup> Recognizing its responsibility under MCL 722.1204(4), the circuit court also stated:

Now we have to immediately communicate with the Court in which the child custody determination was made. Therefore, we'll have to contact the Maricopa County Superior Court in Arizona to notify them that we have temporary emergency jurisdiction. That we made a finding of that.

The record is devoid, however, of any indication that the circuit court spoke to the Arizona court. See MCL 722.1110(4) (stating that, except as to communications about schedules, calendars, court records, or similar matters, “a record must be made of a communication” between a court of this state and a court of another state concerning a proceeding arising under the UCCJEA).

Travis argues that the circuit court’s failure to immediately contact the Arizona court was not harmless error because had the circuit court communicated with the Arizona court, the Arizona court would have relinquished jurisdiction, thus transferring jurisdiction of the custody proceedings to Michigan.<sup>4</sup> Travis’s argument has merit. Signorelli does not dispute that REM moved to Michigan in 2015 and has lived in Michigan with his paternal relatives since that time. REM left Arizona when he was two years old, and Travis alleges that REM has no relationship with Signorelli and the only family he knows is in Michigan. Because Michigan is REM’s home state, and has been for many years, the Arizona court may have determined that Michigan was a more convenient forum to have jurisdiction over child-custody proceedings pertaining to REM. Had the circuit court contacted the Arizona court as required by MCL 722.1204(4) when taking temporary emergency jurisdiction, the issue of whether the Arizona court chose to relinquish jurisdiction or whether it chose to transfer jurisdiction to Michigan as a more convenient forum would likely have been settled. As stated previously, Arizona entered the initial custody order and maintains exclusive, continuing jurisdiction. Upon communication, if the Arizona court had determined that it would maintain jurisdiction, then Arizona properly had jurisdiction under the UCCJEA. However, if Arizona had determined that Michigan was a more appropriate forum, the circuit court could have retained jurisdiction under the UCCJEA.

Because it is unclear whether the Arizona court would have maintained jurisdiction upon communication with the circuit court, and consequently the issue of jurisdiction could have been settled had this communication occurred, we remand to the circuit court with instructions to

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<sup>3</sup> In the subsequent order for temporary guardianship, the probate court specified that the temporary guardianship would expire on February 14, 2020.

<sup>4</sup> Travis does not argue that the circuit court erred in dismissing the custody order because it had temporary emergency jurisdiction under MCL 722.1204. Travis only argues that the circuit court erred by failing to communicate with the Arizona court under MCL 722.1204(4).

communicate with the Arizona court as required by the UCCJEA to determine whether Arizona intends to maintain jurisdiction or transfer the case to Michigan as the more appropriate forum.<sup>5</sup>

### C. JURISDICTION UNDER THE CHILD CUSTODY ACT

Travis also argues that the circuit court had jurisdiction of the custody case under the Child Custody Act, MCL 722.21 *et seq.* We disagree. This case involves a jurisdictional dispute between two states. The title of the UCCJEA states that the act prescribes “the powers and duties of the court in a child-custody proceeding involving this state and a proceeding or party outside of this state,” see also *Fisher v Belcher*, 269 Mich App 247, 260; 713 NW2d 6 (2005), and it is otherwise clear that the UCCJEA governs whether the circuit court had jurisdiction in a case involving a jurisdictional dispute between two states. MCL 722.1201(2) of the UCCJEA states that MCL 722.1201 “is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.” Thus, the Child Custody Act does not confer jurisdiction on the circuit court in this matter because jurisdiction is determined by the UCCJEA. See *In re Clausen*, 442 Mich 648, 662-663; 502 NW2d 649 (1993) (explaining that the UCCJEA “provides standards for determining whether a state may take jurisdiction of a child custody dispute, and sets forth the circumstances in which the courts of other states are prohibited from subsequently taking jurisdiction, are required to enforce custody decisions of the original state, and are permitted to modify such decisions”) (footnotes omitted).

### III. DOCKET NO. 353326—GUARDIANSHIP ACTION

Signorelli argues that the probate court erred when it appointed Travis as the full guardian of REM. We agree that the probate court lacked jurisdiction to enter a guardianship order, but also conclude that, as in the custody case, the probate court failed to communicate with the Arizona court as required by the UCCJEA.

Guardianship proceedings constitute “child-custody proceedings” under the UCCJEA. MCL 722.1102(d). The probate court determined that it had jurisdiction over the guardianship proceedings by way of MCL 722.1203(a). For the reasons explained in section II.A of this opinion,

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<sup>5</sup> Under MCL 722.1204(3), the temporary emergency jurisdiction order entered by a Michigan court only “remains in effect until an order is obtained from the other state within the period specified or the period expires.” While the temporary emergency jurisdiction period may have ended when the Arizona court entered its minute entry stating that Signorelli had custody of REM, this does not change the fact that the circuit court had a duty to *immediately communicate with the other court*. The circuit court’s duty to communicate with the Arizona Court was intended “to resolve the emergency” and “protect the safety of the parties and the child.” MCL 722.1204(4). By neglecting this duty, the circuit court not only prolonged the emergency in this case, but allowed the Arizona court to issue an order without knowledge of the ongoing situation in Michigan, effectively failing to ensure the safety of the parties and the child. We believe the best remedy for the situation now faced is for the circuit court to fulfill its duty of communicating with the Arizona court, and then allowing the case to progress as it should have from the beginning.



the probate court did not have jurisdiction under MCL 722.1203(a) to modify the Arizona custody order and enter an order granting Travis full guardianship.<sup>6</sup>

When the probate court initially appointed Travis temporary guardian, however, the probate court was able to do so on the basis of the temporary emergency jurisdiction permitted under MCL 722.1204. Under MCL 722.1204(4), the probate court had a duty to immediately communicate with the Arizona court, which it apparently failed to do. See MCL 722.1110(4) (requiring the circuit court to make a record of its communication with the court of the other state). For the reasons more fully explained in section II.B of this opinion, it was error for the probate court to not immediately communicate with the Arizona court upon becoming aware of that court's previous child-custody determination, and had it done so, the jurisdictional issues now complained of could have been cured. Thus, as in the custody action, we remand to the probate court with instructions to communicate with the Arizona court to determine whether Arizona intends to maintain jurisdiction or transfer the case to Michigan as the more appropriate forum.

Remanded to the circuit court and probate court for proceedings consistent with this opinion. We retain jurisdiction.

/s/ Michael F. Gadola  
/s/ Amy Ronayne Krause  
/s/ Colleen A. O'Brien

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<sup>6</sup> In reasoning that it had jurisdiction under the UCCJEA, the probate court held that any statements in the Arizona court's October 2019 minute entry suggesting that it retained jurisdiction were obiter dicta. In support of this holding, the probate court cited *Glover v Glover*, 231 Ariz 1, 7; 289 P3d 12 (2012). That case, however, concerns whether a party must register child support provisions of an out-of-state judgment with the Arizona court in compliance with Arizona law in order for the Arizona court to have subject-matter jurisdiction to modify the out of state order. *Id.* at 2-7. And for the reasons explained in section II.A of this opinion, a fair reading of *Woodford*, 82 Ariz at 182-184—the case cited by the Arizona court in its minute entry—makes clear that the Arizona court's statements and its citations to that case were not a determination that it lacked jurisdiction over the entire custody case.

# Court of Appeals, State of Michigan

## ORDER

Travis Vernon Miller v Marisa Marie Signorelli; In re Guardianship of  
REM, Minor

Docket No. 351951; 353326

LC No. 2019-001375-DC; 2018-229380-GM

Michael F. Gadola  
Presiding Judge

Amy Ronayne Krause

Colleen A. O'Brien  
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 14 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the probate court and circuit court shall communicate with the the Maricopa County Superior Court of Arizona as required by MCL 722.1204(4) of the Uniform Child Custody Jurisdiction and Enforcement Act, MCL 722.1101 et seq., to determine whether Arizona intends to maintain jurisdiction or transfer the case to Michigan as the more appropriate forum. The probate court and circuit court shall make a "record" of the communication pursuant to MCL 722.1110(4) and (5), and shall provide that record to this Court immediately after entry. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of any orders entered on remand.

The transcript of any proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

The August 20, 2019 order of the probate court appointing Travis Miller temporary guardian of REM shall remain in effect while these proceedings remain pending.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

October 15, 2020

Date



Chief Clerk