

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

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ABRAM ISAAC AMIDON,

Plaintiff-Appellee,

v

ASHLEY NICOLE CLARK,

Defendant-Appellant.

UNPUBLISHED

March 11, 2021

No. 353888

Kalkaska Circuit Court

Family Division

LC No. 18-013030-DC

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Before: REDFORD, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Defendant, Ashley Nicole Clark, appeals by leave granted<sup>1</sup> the final uniform child support order entered on December 30, 2019. We affirm.

**I. FACTUAL BACKGROUND**

Defendant and plaintiff were unmarried but had four children together during their nine-year relationship. The parties agreed early on that defendant would be a stay-at-home mother while plaintiff worked to support the family. The family originally lived in Michigan but in 2016 moved to Texas for plaintiff to pursue a job opportunity. In Texas, defendant initially cared for the children at home and homeschooled them until around May 2018 when the parties decided that defendant could earn more than plaintiff, so they switched roles. Plaintiff testified that starting in July 2018, defendant started coming home less often, stayed out most evenings after work, and sometimes disappeared for days at a time without telling plaintiff her location. Defendant agreed that she stayed away from home because she felt that plaintiff had become judgmental and hostile. Defendant also acknowledged that she started seeing other men, sold nude photos and videos of herself, and engaged in a relationship with a man in Florida who would tell her where to go, how

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<sup>1</sup> *Amidon v Clark*, unpublished order of the Court of Appeals, entered September 29, 2020 (Docket No. 353888).

to dress, and with whom to talk. In November she told plaintiff that she no longer wanted a relationship with him.

The parties sent the children to Michigan to visit their grandparents during December 2018 while the parties remained in Texas and prepared to move because their lease neared its expiration. Defendant told plaintiff that she intended to find a condo for her and the children. Plaintiff returned to Michigan around December 12, 2018, and notified defendant that he intended to stay there with the children permanently. Defendant packed up the family's belongings and returned to Michigan, abandoning her unsigned condo lease and her plan to open a business.

Plaintiff filed a complaint for custody on December 28, 2018. Defendant answered the complaint and moved to dismiss it on the ground that the trial court lacked jurisdiction because Texas was the children's home state. The trial court conducted an evidentiary hearing at which both plaintiff and defendant testified and the trial court admitted and considered documentary evidence. The trial court concluded that it had jurisdiction because the parties and the children were in Michigan, defendant had moved the family's belongings to Michigan, defendant had no connection to Texas because she lacked housing, property, employment, and no family resided in Texas. Further, neither plaintiff nor defendant obtained a Texas driver's license, plaintiff renewed her Michigan driver's license while in Texas, they both remained registered voters in Michigan and never took steps to register to vote in Texas, and they had bank accounts in Michigan. After a contested bench trial, the trial court awarded primary physical custody to plaintiff.

## II. ANALYSIS

### A. JURISDICTION

Defendant first argues that the circuit court did not have jurisdiction over the case because Texas was the children's home state. We disagree.

Absent a factual dispute, this Court reviews de novo, as a question of law, whether a trial court has jurisdiction under the [Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA)]. But even if a court may exercise jurisdiction under the UCCJEA, the decision do so is within the discretion of the trial court, and [will] not be reversed absent an abuse of that discretion. 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. [*Cheesman v Williams*, 311 Mich App 147, 150; 874 NW2d 385 (2015) (quotation marks and citations omitted; alteration in *Cheesman*).]

We review de novo issues of statutory interpretation. *Id.*

The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq.*, provides the exclusive basis for a trial court to take jurisdiction over a child custody action. MCL 722.1201(2). MCL 722.1201 provides:

(1) Except as otherwise provided in section 204,<sup>[2]</sup> a court of this state has jurisdiction to make an initial child-custody determination only in the following situations:

(a) This state is the home state of the child on the date of the commencement of the proceeding,<sup>[3]</sup> 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.

(b) A court of another state does not have jurisdiction under subdivision (a), 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 207 or 208, and the court finds both of the following:

(i) The child and the child's parents, or the child and at least 1 parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(c) All courts having jurisdiction under subdivision (a) or (b) have declined to exercise jurisdiction on the grounds that a court of this state is the more appropriate forum to determine the custody of the child under section 207 or 208.

(d) No court of another state would have jurisdiction under subdivision (a), (b), or (c).

(2) Subsection (1) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child-custody determination.

MCL 722.1102(g) defines "home state" as follows:

"Home state" means 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. In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a parent or person acting as a parent is included as part of the period.

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<sup>2</sup> MCL 722.1204 provides for temporary emergency jurisdiction, which is not relevant to this case.

<sup>3</sup> MCL 722.1102(e) defines "commencement" as "the filing of the first pleading in a proceeding."

In this case, neither Michigan nor Texas qualified as the children's home state pursuant to MCL 722.1201(1)(a). Michigan was not the children's home state because the children had lived in Texas for over two years, they were homeschooled there, and the youngest child had only ever lived in Texas. Further, the children were only in Michigan for 27 days before the commencement of the action, not the six months required under MCL 722.1102(g). And because the children had already been in Michigan for 27 days prior to the commencement of the action, they did not live in Texas for at least six consecutive months *immediately* before the commencement of the proceeding.

Pursuant to MCL 722.1201(1)(b), if a child has no established home state and no other state has jurisdiction under subdivision (a), the circuit court may establish "significant connection" jurisdiction under MCL 722.1201(1)(b), which provides, in relevant part, that jurisdiction of a child custody action is proper in Michigan when:

A court of another state does not have jurisdiction under subdivision (a), 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 207 or 208,<sup>[4]</sup> and the court finds both of the following:

(i) The child and the child's parents, or the child and at least 1 parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

In *Nash v Salter*, 280 Mich App 104,109-111; 760 NW2d 612 (2008), this Court construed the pertinent language of MCL 722.1201 and held that so-called "significant connection" jurisdiction in this state under MCL 722.1201(1)(b) is appropriate only if the trial court "first establishes: (1) there is no 'home state' as that term is used in MCL 722.1201(1)(a), or (2) 'a court of the home state of the child has declined to exercise jurisdiction . . . ' MCL 722.1201(1)(b)." The phrase "significant connection" is not statutorily defined by the UCCJEA. See *White v Harrison-White*, 280 Mich App 383, 390; 760 NW2d 691 (2008). However, this Court interpreted the phrase in *White*, stating:

[T]he significant connection that permits exercise of exclusive, continuing jurisdiction under MCL 722.1202(1)(a) exists where one parent resides in the state, maintains a meaningful relationship with the child, and, in maintaining the relationship, exercises parenting time in the state. Our interpretation of the phrase "significant connection" comports with that of a majority of jurisdictions, the plain and ordinary meaning of the phrase, and the overarching purpose of the UCCJEA to prevent jurisdictional disputes by granting exclusive, continuing jurisdiction to

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<sup>4</sup> Sections 207 and 208 address when a court with UCCJEA jurisdiction may decline to exercise jurisdiction on the basis of an inconvenient-forum determination or unjustifiable conduct of the parties, respectively. MCL 722.1207; MCL 722.1208.

the state that entered the initial custody decree, so long as the relationship between the child and the parent residing in the state does not become so attenuated that the requisite significant connection no longer exists. Our interpretation of “significant connection” is neither so narrow that it requires “maximum rather than minimum contact” with the state, nor is it so broad that it primarily focuses on the residency of the noncustodial parent. [*Id.* at 394 (citations omitted).]

In this case, the children and their parents had significant connection with this state other than mere physical presence. The parties testified at the evidentiary hearing that the family had no residence in Texas, all their personal belongings were in Michigan, their extended families on both sides resided in Michigan, both plaintiff and defendant had employment in Michigan, the children were enrolled and attended school in Michigan, and the parties had severed any connection to Texas that they had. Further, plaintiff satisfied the significant connection test described in *White*. Plaintiff resided in Michigan, exercised in-state parenting time, and maintained a meaningful relationship with the children because he served as their sole custodial parent for the entire time the children lived in Michigan. Therefore, plaintiff established that he had significant connections with the state other than mere physical presence pursuant to MCL 722.1201(1)(b)(i). Substantial evidence existed concerning the children’s care, protection, training, and personal relationships in Michigan as required under MCL 722.1201(b)(ii). The circuit court took judicial notice of a home study conducted by the Department of Health and Human Services that found that the home where the children lived with plaintiff was suitable. Plaintiff testified about the children’s school programs, activities, and church involvement in Michigan, as well as the children’s interactions with extended family. Michigan residents provided testimony regarding the parties’ relationship with the children and the children’s home life in Michigan. Further, the parties spent the majority of their lives in Michigan, and only about three years of the children’s lives were spent in Texas. Overall, the circuit court did not err by finding that jurisdiction in Michigan was proper pursuant to MCL 722.1201(1)(b).

## B. PHYSICAL CUSTODY

Defendant also argues that the trial court abused its discretion by awarding primary physical custody of the children to plaintiff because finding that such custody served the children’s best interests was against the great weight of the evidence. We disagree.

In *Lieberman v Orr*, 319 Mich App 68, 76-77; 900 NW2d 130 (2017) (quotation marks and citations omitted), this Court explained

All custody orders must be affirmed on appeal unless the circuit court’s findings were against the great weight of the evidence, the circuit court committed a palpable abuse of discretion, or the circuit court made a clear legal error on a major issue.

The great weight of the evidence standard applies to all findings of fact. A trial court’s findings regarding the existence of an established custodial environment and regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. An abuse of discretion standard applies to the

trial court's discretionary rulings such as custody decisions. Questions of law are reviewed for clear legal error. A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law. [.]

## 1. CUSTODIAL ENVIRONMENT

Defendant first argues that the circuit court's finding that plaintiff had the established custodial environment rather than with her lacked evidentiary support. We disagree.

MCL 722.27(1)(c) provides, in relevant part:

The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

Defendant argues that the great weight of the evidence established that she provided a custodial environment because she had been the primary stay-at-home parent for the majority of the parties' relationship. The record reflects and the parties acknowledged, however, that their roles switched in May 2018, when plaintiff became the primary stay-at-home parent. Although defendant testified that she continued to do housework while working full-time, the circuit court did not find her testimony credible, particularly in light of her admissions that she would not return home after work for days at a time. Contrary to defendant's assertion that plaintiff had no custodial relationship prior to May 2018, testimony established that plaintiff had been actively involved in rearing the children for their entire lives and lived with them as a family unit. Plaintiff had an established custodial relationship with the children for their entire lives and became the primary caregiver when defendant chose to pursue her own passions, stay away from the family after July 2018, and generally seek her own personal life without regard for the children.

Defendant argues that plaintiff had no legal right to withhold the children from her in Michigan without her consent, and argues that the circuit court rewarded this misconduct by granting plaintiff custody. The evidence, however, established that defendant deliberately chose to stay away from the family for multiple days, leaving the children in the sole care of plaintiff. The circuit court's decision did not reward the illegal conduct of a parent with no rights to his children, but served to maintain the status quo of custodial care that the children had been living in during the months preceding the hearings.

Finally, defendant argues that the circuit court relied on evidence of her personal life to slander and defame her. However, the circuit court's opinion shows that the court did not highlight defendant's personal life to pass moral judgment on her. To the contrary, the circuit court noted that, pursuant to *Fletcher v Fletcher*, 447 Mich 871, 886; 526 NW2d 889 (1994), evidence of a parent's personal private life which was unknown to the children has no bearing on that parent's

moral fitness. In this case, the circuit court highlighted defendant's private behavior to establish that defendant was distracted with her own activities and left plaintiff to provide the custodial environment, not to shame defendant.

## 2. BEST-INTEREST FACTORS

Defendant next argues that the circuit court's finding that none of the best-interest factors favored her was against the great weight of the evidence. We disagree.

If an established custodial environment exists, the circuit court must find by clear and convincing evidence it is in the children's best interests to change it. MCL 722.21(1)(c). MCL 722.23 provides:

As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

Defendant first argues that the circuit court was biased against her throughout its analysis of the best-interest factors because it gave a substantial amount of weight to her private life. The record, however, indicates that the circuit court highlighted evidence of defendant's personal life, not to show that defendant's behavior was morally objectionable, but to demonstrate her tendency to minimize her accountability for her actions and paint herself in a light more flattering than true. Specifically, in its analysis of factor (b), the circuit court pointed to defendant's private activity to explain its conclusion that "[s]ince May, 2018, the Defendant has been absent as a parent, distracted with other individuals and activities, focused only on herself and time alone, and not engaged in helping to raise the children." Similarly, in its analysis of factor (l), the circuit court discussed evidence of defendant's private life to explain its conclusion that defendant was dishonest in her testimony to present herself in a more favorable light. Therefore, the circuit court did not use evidence of defendant's personal life to make a biased attack against defendant. Rather it objectively analyzed the evidence before it to weigh the factors for its decision.

Defendant argues that the circuit court's findings regarding factors (c), (d), (e), and (h) all impermissibly turned on the fact that plaintiff illegally absconded with the children. However, as previously discussed, the circuit court was not persuaded by defendant's argument that plaintiff had no legal basis for custody. Rather, the circuit court found that defendant had voluntarily chosen to spend time away from home and leave plaintiff to care for the children. Further, regardless of whether plaintiff "absconded" with the children, he still maintained physical custody of them since December 2018 and continued to provide for their care and custody. He financially supported the children, took them to doctor appointments, enrolled them in school, and engaged them in community activities, while defendant offered no financial support. Therefore, the great weight of the evidence supported the circuit court's findings that factors (c), (d), (e), and (h) favored plaintiff.

The circuit court's findings were supported by the great weight of the evidence, and we find no palpable abuse of discretion. Further, the circuit court did not commit any clear legal error.

Affirmed.

/s/ James Robert Redford  
/s/ David H. Sawyer  
/s/ Mark T. Boonstra