

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER COMBS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
SANDRA L. POMRENZE, DISTRICT
JUDGE,
Respondents,
and
HEATHER GJERDE,
Real Party in Interest.

No. 70709

FILED

OCT 17 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus or prohibition challenging a district court order denying a motion for temporary custody based on lack of jurisdiction.

On April 1, 2016, petitioner Christopher Combs filed the underlying complaint for child custody against real party in interest Heather Gjerde. Combs, a California resident, also filed a motion for temporary custody alleging that Gjerde had moved with the child from Nevada to Tennessee in February 2016 without his knowledge. On May 26, 2016, the district court entered an order concluding that it lacked jurisdiction under the Uniform Child Custody Jurisdiction and

Enforcement Act (UCCJEA), NRS Chapter 125A, because the parties and the child did not reside in Nevada at the time the action was commenced, and the court indicated that Combs' remedy was in Tennessee. The district court declined to dismiss the case and instead temporarily denied Combs' motion and left the case open for six months to allow Combs to file this writ petition. In his petition, Combs contends that the district court has jurisdiction to make the initial custody determination because no other state had such jurisdiction under NRS 125A.305(1) at the time his complaint was filed, and he requests an order directing the district court to immediately resume the custody proceedings.

NRS 125A.305(1) sets forth several criteria to determine whether a court has jurisdiction to make an initial custody determination. *See Kar v. Kar*, 132 Nev., Adv. Op. 63, ___ P.3d ___ (2016). At the time Combs commenced the custody proceeding in April 2016, the child had been absent from Nevada for two months and neither parent continued to live in Nevada for purposes of home state jurisdiction under NRS 125A.305(1)(a), and no other court with jurisdiction had declined to exercise it as required by NRS 125A.305(1)(c). Nevertheless, the district court may have had jurisdiction under NRS 125A.305(1)(b) if it determined that Tennessee did not have home state jurisdiction or had declined to exercise jurisdiction, and that the child and Gjerde had a significant connection with Nevada and there was substantial evidence available in Nevada concerning the child's care. Additionally, under NRS 125A.305(1)(d), the Nevada court had jurisdiction as a last resort if no other state court would have jurisdiction under the criteria in NRS 125A.305(1)(a)-(c), discussed above. Because the district court erroneously

determined that Nevada's jurisdiction ended the moment Gjerde and the child left Nevada, the district court failed to consider whether it had jurisdiction under either NRS 125A.305(1)(b) or NRS 125A.305(1)(d). See *Friedman v. Eighth Judicial Dist. Court*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011) (providing that jurisdiction under the UCCJEA is a question of law subject to de novo review). Those criteria involve factual determinations best addressed by the district court in the first instance.¹ See *Kar*, 132 Nev., Adv. Op. 63, ___ P.3d at ___.

As the district court has declined to dismiss the case, Combs has no adequate legal remedy available at this time, see NRAP 3A(b)(1) (allowing an appeal from a final judgment), and writ relief is warranted, see NRS 34.160 (stating that a writ of mandamus may issue to compel the performance of an act require by law). Cf. *Smith v. Eighth Judicial District Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997) (indicating a

¹Combs argued below and in his writ petition with this court that Gjerde's wrongful removal of the child from Nevada may be considered a temporary absence from the state for purposes of establishing Nevada as the child's home state when the proceeding commenced under NRS 125A.305(1)(a). See NRS 125A.085 (defining "home state" to include temporary absences when calculating the six-month time frame); cf. *Ogawa v. Ogawa*, 125 Nev. 660, 704-05, 221 P.3d 699, 668-69 (2009) (describing analytical framework for determining home state, including consideration of temporary absences). Because the district court's written order does not address this issue, we decline to do so here.

writ petition may be entertained where the facts are not disputed and clear legal authority requires the court to dismiss the action). Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its May 26, 2016, Order that denied Combs' motion for temporary custody and to resume the custody proceedings consistent with this order.

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
Ghandi Deeter Blackham
Heather Gjerde
Eighth District Court Clerk