

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON ERIC JOHNSON,  
Appellant,  
vs.  
INA MARIE SCHNITZER,  
Respondent.

No. 78134-COA

**FILED**

SEP 11 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Jason Eric Johnson appeals from a post-custody decree order dismissing the case for lack of jurisdiction. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

The parties were never married, but have one minor child in common. In August 2017, they entered a stipulated custody decree whereby respondent Ina Schnitzer was awarded primary physical custody and was permitted to relocate with the child to California, subject to Jason's parenting time, and the parties shared joint legal custody. In September 2017, Jason surrendered to the California Bureau of Prisons' custody to serve his sentence in an unrelated criminal matter. In October 2017, Ina moved to relocate to Florida and sought sole legal and physical custody of the child based on Jason's incarceration. Ina subsequently withdrew her request to relocate, but after a hearing in November 2017, the district court granted her motion for sole legal and physical custody based on Jason's incarceration. The order modifying custody was entered in February 2018 and, in it, the court indicated that it was anticipated Jason would be released in January 2019, and that after his release he could move to modify custody.

Jason was subsequently released in October 2018 and moved to modify custody. The district court vacated the hearing on his motion and issued an order directing the parties to submit briefing on the matter of jurisdiction, noting that it was unclear whether the district court lost exclusive, continuing jurisdiction when Jason was incarcerated outside of Nevada and Ina lived in California. The parties submitted additional briefing and, again without a hearing, the district court entered an order in January 2019, concluding that because Ina lived in California since the entry of the decree, when Jason was incarcerated outside of Nevada, no parties remained in Nevada such that the court lost exclusive, continuing jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), codified in NRS Chapter 125A. The court noted that it offered no opinion as to which state currently should have jurisdiction under the UCCJEA, and dismissed the case. This appeal followed.

On appeal, Jason challenges the district court's dismissal based on lack of jurisdiction. This court reviews subject matter jurisdiction under the UCCJEA de novo. *Friedman v. Eighth Judicial Dist. Court*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011). "Although de novo, our review properly includes decisions from other UCCJEA states so as to harmonize our law with theirs." *Id.* (citing NRS 125A.605, which provides that "[i]n applying and construing the [UCCJEA], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it").

NRS Chapter 125A governs jurisdiction in child custody matters. NRS 125A.305(2). Once Nevada enters a valid custody decree, it has exclusive, continuing jurisdiction over the matter until, as relevant

here, “[a] court of this state or a court of another state *determines* that the child [and] the child’s parents . . . do not *presently* reside in this state.” NRS 125A.315(1)(b) (emphasis added). Thus, a court must make a finding that the parties no longer presently reside in Nevada before Nevada’s exclusive, continuing jurisdiction ceases. *Id.*; *Kar v. Kar*, 132 Nev. 636, 639, 378 P.3d 1204, 1205 (2016) (“*Once it determined* that the child and the child’s parent’s no longer resided in Nevada, the district court lost exclusive, continuing jurisdiction under NRS 125A.315(1).”) (emphasis added); *Friedman*, 127 Nev. at 851, 264 P.3d at 1168 (“Nevada’s exclusive, continuing jurisdiction ceased *when it found* [the parents and child] no longer resided in Nevada . . . .”) (emphasis added).

Here, it is undisputed that Nevada had jurisdiction to enter the initial custody decree in August 2017 pursuant to NRS 125A.305. It was not until Jason filed his motion to modify in 2018 that the district court considered whether it had exclusive, continuing jurisdiction to modify pursuant to NRS 125A.315. Pursuant to NRS 125A.315, after entering the initial decree, Nevada had exclusive, continuing jurisdiction to modify custody until a court found that neither of the parents, nor the child, presently resided in Nevada. Because no such finding was ever made in this case, Nevada never lost jurisdiction over the custody matter. *See In re Marriage of Nurie*, 98 Cal. Rptr. 3d 200, 220 (Ct. App. 2009) (“It is not the parties’ departure itself that terminates the decree state’s exclusive, continuing jurisdiction. Rather, it is when a ‘court . . . determines’ that all parties have ceased residing there that jurisdiction is lost.”); *State of N.M. v. Donna J.*, 129 P.3d 167, 171 (N.M. Ct. App. 2006) (“An automatic loss of jurisdiction, without any factual determination, would add uncertainty, diminish the oversight ability of the courts, and increase conflicts between

states . . . contrary to the purposes of the UCCJEA.”). While the district court attempted to find that none of the parties resided in Nevada when it modified custody after the November 2017 hearing, at the time the district court made this finding in 2018, Jason resided in Nevada and the district court could no longer conclude that Jason did not “presently reside” in Nevada. *See In re Marriage of Nurie*, 98 Cal. Rptr. 3d at 222 (“Any judicial determination that [the] parties do not ‘presently reside’ in an earlier decree state must be made while the parties are non-resident.”). Accordingly, because no finding was made that none of the parties presently resided in Nevada, Nevada did not lose jurisdiction over the custody matter and the district court erred in concluding it lacked jurisdiction. *See* NRS 125A.315(1)(b); *Friedman*, 127 Nev. at 847, 264 P.3d at 1165.<sup>1</sup>

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<sup>1</sup>We note that when the district court modified custody after the November 2017 hearing, awarding Ina sole physical and legal custody, the court was aware that Jason was serving his sentence out of state. Indeed, the court modified custody at that time based on Jason’s incarceration. However, we cannot construe anything in that order as a finding that none of the parties resided in Nevada for jurisdictional purposes. The record reflects that, at the hearing, the district court inquired about Jason’s residency, asking whether Jason intended to “maintain a Nevada residency” upon his release, to which Jason’s counsel answered affirmatively, and then the court went on to modify custody. This suggests the district court recognized that Jason resided in Nevada at that time and it exercised its jurisdiction by modifying custody. Moreover, had the district court found none of the parties resided in Nevada at that time (which it did not), such that the court would lose exclusive, continuing jurisdiction pursuant to NRS 125A.315(1), the court would have then been required to consider whether it should exercise jurisdiction to modify pursuant to NRS 125A.315(2). *Kar*, 132 Nev. at 639-40, 378 P.3d at 1206 (explaining that once a court determines the parties no longer reside in Nevada and, therefore loses exclusive, continuing jurisdiction under NRS 125A.315(1), the court does not lose all jurisdiction and “may still modify its own prior order” if NRS 125A.315(2) is met, which requires factual findings). Furthermore, even if

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Mathew Harter, District Judge  
Chesnoff & Schonfeld  
Ina Marie Schnitzer  
Eighth District Court Clerk

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the district court had still determined it lacked jurisdiction after considering NRS 125A.315(2), which it did not do, the district court should not have dismissed the case; it would then be required to stay the case while the parties filed in the proper jurisdiction, so as not to "leave the case in limbo." *Id.* at 643, 378 P.3d at 1208.

<sup>2</sup>After the district court modified custody, awarding Ina sole custody, she moved to Florida with the minor child and has since left the country with the child, and is apparently unable to return due to an expired Visa. Ina's counsel has now withdrawn from representation and provided her last known address in Florida and an e-mail address for Ina, but indicated they do not know her current international address.

While a copy of this order will be mailed to Ina at the address on file with this court, *see* NRAP 36(b), we also direct Jason to e-mail a copy of this order to Ina at the e-mail address provided by her prior counsel. Jason has five judicial days from the date of this order to inform this court that the order has been e-mailed as instructed.