

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LOUIS CHRIST CHRISTOPOULOS,  
Appellant,  
vs.  
TIFFANY G. GARDELLA,  
Respondent.

No. 69814

**FILED**

AUG 11 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY J. Hendrick  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

This is an appeal from a district court order vacating a child custody order for lack of jurisdiction. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

The question in this appeal is whether the district court erred by concluding that Michigan, rather than Nevada, had jurisdiction to make an initial child custody determination as to the parties' minor child. *See Ogawa v. Ogawa*, 125 Nev. 660, 667-68, 221 P.3d 699, 704 (2009) (explaining that the district court's subject matter jurisdiction presents a question of law subject to de novo review). And the resolution of that question turns on whether either Michigan or Nevada was the child's "home state" when the underlying proceeding was commenced or within six months before the commencement of the proceeding. *See* NRS 125A.305(1)(a); *see Ogawa*, 125 Nev. at 668, 221 P.3d at 704 ("The UCCJEA thus elevates the 'home state' to principal importance in custody determinations."). To determine a child's home state, the court must look to where the child resided for the six consecutive months before the institution of the proceeding, "including any temporary absence." NRS 125A.085(1); *Ogawa*, 125 Nev. at 662, 221 P.3d at 700.

Here, appellant Louis Christ Christopoulos asserts that the child lived in Nevada during the relevant time period, which includes a temporary absence while she was in Michigan. Respondent Tiffany G. Gardella, on the other hand, contends that the time the child spent in Nevada was only a temporary absence from Michigan, which she asserts is where the child actually lived. If Christopoulos is correct, then Nevada was the child's home state when he commenced the proceeding; and if Gardella is correct, then Michigan was the child's home state.<sup>1</sup> See NRS 125A.085(1); see *Ogawa*, 125 Nev. at 662, 221 P.3d at 700 (explaining that "temporary absences do not interrupt the six-month pre-complaint residency period necessary to establish home state jurisdiction").

In concluding that it lacked jurisdiction, the district court found that the parties had "a divergence of opinions" as to where the child would be residing, but regardless, that the time in Michigan was "not incidental." But the question for determining which state is the child's home state is not whether the absence was incidental; it is whether the absence was temporary.<sup>2</sup> See NRS 125A.085(1); *Ogawa*, 125 Nev. at 662,

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<sup>1</sup>At least one other option also exists. If the child moved to Nevada six months before the proceeding was commenced and moved back to Michigan within the six month period, then it may be that neither Michigan nor Nevada was the child's home state, and the court would need to look beyond the home state provision to determine which court has jurisdiction. See NRS 125A.305(1)(b) (recognizing the possibility that no state has home state jurisdiction to make an initial child custody determination).

<sup>2</sup>While it is not clear whether the district court's use of the word incidental instead of temporary might have been a clerical error, as opposed to application of the wrong standard, we are constrained to consider the order that we have before us.

221 P.3d at 700. And the court did not resolve the question of whether the return to Michigan was temporary. Moreover, the court did not make any findings as to whether the child was actually living in Nevada or whether she had only come here temporarily from Michigan. In light of the parties' dispute as to the child's residence and the absence of any findings by the district court resolving that dispute, we cannot affirm the district court's conclusions that it lacked jurisdiction and that jurisdiction properly lies in Michigan. See NRS 125A.085(1); NRS 125A.305(1)(a); *Ogawa*, 125 Nev. at 667-68, 221 P.3d at 704. Accordingly, we reverse the district court's order and remand this matter to the district court for further proceedings consistent with this order.<sup>3</sup>

It is so ORDERED.<sup>4</sup>

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

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

  
\_\_\_\_\_, J.  
Silver

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<sup>3</sup>In light of proceedings that are apparently ongoing in Michigan, on remand, the district court should communicate with the Michigan court as permitted by the UCCJEA. See NRS 125A.275.

<sup>4</sup>Because we reverse for the reasons stated in this order, we do not reach the parties' remaining appellate arguments.

cc: Hon. William S. Potter, District Judge, Family Court Division  
Louis Christ Christopoulos  
Huggins Law Office  
Eighth District Court Clerk