

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1521**

In The Matter of:

Ellen Sue Laas Ewald, et al., petitioners,
Respondents,

vs.

Nina Laas Ewald Nedrebo,
Appellant.

**Filed May 5, 2025
Reversed and remanded
Bjorkman, Judge**

Hennepin County District Court
File No. 27-FA-20-2018

Gary A. Debele, Sydnie Peterson, Messerli | Kramer, Minneapolis, Minnesota (for respondents)

John C. Gunderson, Chad McKenney, Donohue McKenney Ltd., Maple Grove, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Bjorkman, Judge; and Halbrooks, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-mother challenges the district court's order denying her motion to dismiss this grandparent-visitation matter for lack of subject-matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, Minn. Stat. §§ 518D.101-.317 (2024) (UCCJEA). She argues that Minnesota does not have jurisdiction under the UCCJEA because (1) she and the child no longer reside in Minnesota and (2) this matter involves grandparent visitation, not custody. She also asserts that grandparent visitation cannot interfere with her right to parent. Because we agree that the change of residence terminates Minnesota jurisdiction, we reverse and remand for dismissal.

FACTS

Appellant Nina Laas Ewald Nedrebo (mother) is the mother of M.T.N. (child), who is now nine years old. Mother has sole legal and physical custody of child. Respondents Ellen Sue Laas Ewald and Terje Mikalsen are mother's mother and stepfather, respectively, and child's maternal grandparents (grandparents).

Mother and child lived with grandparents in their Minnesota home from December 2016 until August 2019, when mother and child moved to their own apartment in Minnesota. The following April, grandparents filed a petition seeking third-party custody of child. They later added a request for grandparent visitation. In a November 2021 order, the district court denied their third-party-custody petition but granted them visitation with child. Grandparents did not appeal.

In June 2022, mother moved to Massachusetts with child. Thereafter, grandparents filed a motion asking the district court to prevent mother from moving under Minn. Stat. § 518.175 (2024) because of the grandparent-visitation order. Mother moved to modify the order to have grandparent visitation take place principally in Massachusetts. The district court determined that it had exclusive continuing jurisdiction under the UCCJEA, denied grandparents' motion, and largely granted mother's motion, modifying the visitation schedule and requiring that visitation take place in Massachusetts. Grandparents appealed, challenging the district court's decision not to limit mother's right to move child out of state because of the grandparent-visitation order. We affirmed. *Ewald v. Nedrebo*, 999 N.W.2d 546, 550-51 (Minn. App. 2023), *rev. denied* (Minn. Feb. 28, 2024).

In June 2024, grandparents moved the district court to clarify the grandparent-visitation schedule and address communication issues. A hearing was set for July 23. Mother did not file a substantive response to the motion but, on July 22, filed a motion to dismiss, arguing that Massachusetts now has jurisdiction, not Minnesota. The district court denied mother's motion, explaining that (1) it was untimely; (2) the court previously concluded that it had exclusive continuing jurisdiction over this matter; and (3) it was adhering to that determination because child "has spent a substantial more amount of time here in the state of Minnesota than the current state of Massachusetts," and grandparents, whose visitation order is at issue, continue to reside in Minnesota. And the court then granted grandparents' motion.

Mother appeals.

DECISION

Under the UCCJEA, a Minnesota court that has made or modified a “child custody determination” has “exclusive, continuing jurisdiction” over that determination until:

- (1) a court of this state determines that the child, the child’s parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child’s care, protection, training, and personal relationships; or
- (2) a court of this state or a court of another state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in this state.

Minn. Stat. § 518D.202(a). We review interpretation of the UCCJEA de novo. *Skyberg v. Orlich*, 10 N.W.3d 303, 308 (Minn. App. 2024). In doing so, if the statutory language is plain and unambiguous, we simply enforce that plain meaning. *Id.*

Mother argues that Minnesota lacks jurisdiction under the UCCJEA because she and child no longer reside here.¹ She notes that the district court focused on the significant-connection analysis under Minn. Stat. § 518D.202(a)(1) and did not address Minn. Stat. § 518D.202(a)(2). She contends that, under the latter provision, Minnesota no longer has jurisdiction because she and child do not presently reside in this state.

¹ Mother also contends that Minnesota cannot have continuing jurisdiction under Minn. Stat. § 518D.202(a) because that statute addresses jurisdiction over a “child custody determination” and the only determination at issue concerns grandparent visitation, not custody. This argument is unavailing. The UCCJEA defines a “child custody determination” as “a judgment, decree, or other order of a court providing for the legal custody, physical custody, or *visitation* with respect to a child.” Minn. Stat. § 518D.102(d) (emphasis added). Because the determination at issue concerns grandparent visitation, it is plainly within the scope of the UCCJEA.

Grandparents do not dispute that mother and child no longer reside in Minnesota. Instead, they argue that their own continued residence in Minnesota is a sufficient jurisdictional hook because they are “person[s] acting as a parent.” *See* Minn. Stat. § 518D.202(a)(2). This argument is unavailing for two reasons.

First, grandparents did not present this argument to the district court. They asserted that “the fact that [they] still remain in the state of Minnesota gives the Court, just on its face, continuing exclusive jurisdiction,” but did not tie this to the concept of “acting as a parent” or provide any statutory citation for the assertion. On this record, they have forfeited the argument that they are acting as parents. *See Lewis-Miller v. Ross*, 710 N.W.2d 565, 570 (Minn. 2006) (declining to address an issue “neither litigated below nor passed on by the district court”).

Second, grandparents do not meet the statutory definition of a “person acting as a parent.” The statute defines this phrase to mean a nonparent who:

- (1) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; *and*
- (2) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

Minn. Stat. § 518D.102(n) (emphasis added). The UCCJEA defines “physical custody” as “the physical care and supervision of a child.” *Id.* (o). It does not define “legal custody,” but that phrase has been defined in other statutes to mean “the right to determine the child’s upbringing, including education, health care, and religious training.” Minn. Stat. § 518.003, subd. 3(a) (2024).

Grandparents assert that they satisfy the first part of the definition—physical custody—because they acted as child’s de facto physical custodians during the several years that mother and child lived with them, up until shortly before they petitioned for third-party custody of child in April 2020. By taking that position, grandparents ask us to consider the relevant “commencement of a child custody proceeding” to be their April 2020 petition for third-party custody rather than their June 2024 motion to modify grandparent visitation. But treating a matter pertaining to child custody as one continuous proceeding ignores the fact that such matters often (as here) stretch on for years and involve numerous distinct motions and court decisions. It also is contrary to the UCCJEA’s recognition that families may well move from state to state (as mother and child have done), warranting reconsideration of jurisdiction and forum convenience. *See* Minn. Stat. § 518D.202(a) (providing circumstances when initial state loses jurisdiction); *see also* Minn. Stat. §§ 518D.110 (providing for communication between different states’ courts to determine jurisdiction), .207(a) (permitting court with jurisdiction to decline to exercise it based on forum inconvenience). And grandparents’ approach would permit a determination that a person is acting as a parent based on physical custody even if that person (like grandparents) has not acted as a physical custodian for many years. Because of these absurd and unreasonable results, we reject grandparents’ interpretation as untenable. *See* Minn. Stat. § 645.17(1) (2024) (stating presumption that the legislature does not intend an absurd or unreasonable result).

But even if we accepted grandparents’ interpretation of the physical-custody part of the statutory definition, their argument still fails. Mother and child moved out of

grandparents' residence in August 2019; grandparents did not petition for third-party custody until the following April—eight months later. While they “continued to play a major role” in child’s life after August 2019 (as the district court recognized in later awarding them grandparent visitation), child did not live with them, they had no legal claim to physical custody of her, and it is unclear how much physical care and supervision they actually provided to her. As such, the record does not reflect that grandparents had physical custody of child for six consecutive months of the year leading up to their petition.²

As for the legal-custody part of the statutory definition, grandparents acknowledge that no court has awarded them legal custody of child. But they contend that they satisfy this part of the statutory definition because they claimed a right to legal custody in the past. We disagree. The statute uses the present tense “claims.” Minn. Stat. § 518D.102(n). This indicates that grandparents must presently “claim[]” a right to legal custody. They do not. They claimed a right to legal custody in 2020, but the district court rejected that claim on the merits. Grandparents did not appeal that determination, and they do not presently assert a new legal-custody claim. It is simply logical to require a person to have a *present* claim to legal custody to be considered “*acting as a parent.*” And grandparents’ insistence on one static determination of jurisdiction at the initiation of this matter is, as noted above,

² Notably, the standard of six months out of the year “immediately before” the proceeding that grandparents would have to meet to qualify as persons “acting as a parent” under Minn. Stat. § 518D.102(n) is different from the untethered “12 months or more” standard they had to establish for the district court to award them grandparent visitation under Minn. Stat. § 257C.08, subd. 3 (2024).

contrary to the UCCJEA’s recognition that families move across state lines and such moves warrant reconsideration of jurisdiction. *See* Minn. Stat. § 518D.202(a).³

In sum, because it is undisputed that mother and child no longer reside in the state, and grandparents are not “acting as parents” such that their continued residency in Minnesota affects the jurisdictional analysis, Minnesota lacks jurisdiction over the grandparent-visitation order. Accordingly, we reverse and remand for the district court to dismiss.⁴

Reversed and remanded.

³ To bolster their argument that they are “acting as a parent,” grandparents rely on this court’s decision in *Hay v. King*, No. A12-1130 (Minn. App. Jan. 22, 2013), and several decisions from other states. None alter the above analysis. *Hay* is nonprecedential and therefore not binding, and it is not persuasive because it is a divided decision in which the majority expressly focused on the unique facts in that case. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (addressing authoritative value of nonprecedential opinions). And none of the other states’ decisions involve similar circumstances pertinent to physical and legal custody.

⁴ Because we reverse and remand for dismissal based on lack of jurisdiction, we need not address mother’s argument regarding grandparent visitation interfering with her fundamental right to parent.