SJC-13758

CARE AND PROTECTION OF FARAJ.[1]

Hampden. May 7, 2025. – August 8, 2025.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges, Dewar, & Wolohojian, JJ.

Child Custody Jurisdiction Act. Jurisdiction, Custody of child, Care and protection of minor, Nonresident, Juvenile Court. Juvenile Court, Jurisdiction. Minor, Custody, Care and protection. Parent and Child, Custody, Care and protection of minor. Practice, Civil, Care and protection proceeding, Motion to dismiss. Department of Children & Families.

Petition filed in the Hampden County Division of the Juvenile Court Department on July 29, 2024.

A motion to dismiss was heard by Patricia M. Dunbar, J., and a hearing on jurisdiction was had before Carol A. Shaw, J.

An application for leave to prosecute an interlocutory appeal was allowed in the Appeals Court by Vickie L. Henry, J. The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Sherrie Krasner for the child.
Nathan Bench for the mother.
Dana Chenevert for the father.
Julie A. Gallup for Department of Children and Families.

[1] A pseudonym.

Andrew L. Cohen & Ann Balmelli O'Connor, Committee for Public Counsel Services, for children and family law division of the Committee for Public Counsel Services, amicus curiae, submitted a brief.

WENDLANDT, J. This case presents the question whether the Juvenile Court had jurisdiction under the Massachusetts Child Custody Jurisdiction Act, G. L. c. 209B (MCCJA), over a child born in Connecticut to parents who live in Connecticut. In the circumstances of this case, we concluded that it did not. Accordingly, we issued a decision on May 8, 2025, and a rescript order on June 5, 2025, remanding this matter to the Juvenile Court for entry of a judgment dismissing this care and protection case for lack of jurisdiction. This opinion states the reasons for our conclusion.[2]

1. Background. a. Facts. Faraj (child), the child in this matter, was born in July 2024, in a Connecticut hospital. Six months earlier, the child's mother (mother), who had resided in Massachusetts, began living in the Connecticut home of the mother of the child's father (father) on a part-time basis. That same month, the Massachusetts Department of Children and Families (department) learned that the mother was pregnant. The department had a lengthy history with the mother; over the

[2] We acknowledge the amicus curiae letter submitted by the children and family law division of the Committee for Public Counsel Services.

course of more than twenty-two years, the department had removed each of the mother's seven other children from her custody after, inter alia, the children were exposed to domestic violence against the mother by her previous partners.[3]

Months before the child's birth, the mother enrolled in a Connecticut healthcare program that required proof of residency in Connecticut. Until mid-March 2024, the mother worked in Brookfield, Massachusetts; she testified that she split her time between her Brookfield apartment and Connecticut.

On March 18, 2024, the mother reported an incident of domestic violence involving the father to the Brookfield police department. She told officers that, while arguing about their unborn child, the father threatened her with a kitchen knife, choked her, and threatened to decapitate her and the child with a machete. When the mother attempted to leave their apartment, the father punched her face and stomach, threw her onto the bed with such force that the bedframe broke, threatened her again, and took away her cell phone. The mother walked to the police station to report the incident and was granted an emergency restraining order; responding officers observed a machete among

[3] The mother also had a history of alcohol use disorder, and the absence of a sober caretaker contributed to care and protection actions concerning three of the mother's other children.

the father's possessions when they attempted to arrest him that evening. The mother recanted her allegations and allowed the restraining order to lapse. In view of this incident with the father and the mother's history with the department, it appeared to the department that the child was likely to experience harmful exposure to domestic violence once born.

In April 2024, approximately three months before the child's birth, the mother moved into a domestic violence shelter in Connecticut. She informed the department that she had relocated permanently to Connecticut; the mother's decision was motivated, in part, by her belief that the department would be unable to remove the child from her if she lived outside Massachusetts. In turn, the department, aware that the mother had received prenatal care at a Connecticut hospital, asked the hospital to notify the department when the child was born.

The Connecticut hospital complied and, on the day before the child's birth in July 2024, informed the department that the mother had been admitted and that labor was scheduled to be induced. The department called the Connecticut Department of Children and Families (Connecticut department) public tipline and told the worker who answered that the department intended to take emergency custody of the child upon his birth.

The following day, the child was born, and the Connecticut hospital informed the department. Department social workers

went to the Connecticut hospital where the parents and the child were together and took emergency custody of the child. The parents thereafter left the hospital.

b. Procedural history. Two days after the child's birth in Connecticut, the department filed a care and protection petition in the Juvenile Court, seeking temporary custody of the child. A Juvenile Court judge (first judge) granted the department temporary custody the same day. No representative of Connecticut was at the hearing, and the first judge made no determination as to the basis for jurisdiction in Massachusetts.

At a hearing before a different Juvenile Court judge (second judge) on August 12, 2024, the mother moved to dismiss the petition, contending that the Juvenile Court lacked jurisdiction. Following several days of hearings, the second judge determined that the Juvenile Court had default jurisdiction pursuant to G. L. c. 209B, § 2 (a) (2), discussed infra. The second judge notified the parties that she would "coordinate a hearing with Connecticut." See G. L. c. 209B, § 7 (a), (c).

Following orders from the single justice of the Appeals Court, the first judge (to whom the matter had been reassigned), held another hearing on the jurisdictional question. The first judge then sent a letter requesting a joint conference to resolve the jurisdictional issues to a judge of the Connecticut

Superior Court for Juvenile Matters (Connecticut judge). The first judge and the Connecticut judge held two joint conferences in March 2025.

In declining to exercise jurisdiction, the Connecticut judge indicated that Connecticut would revisit its position should the Massachusetts case be dismissed. In a letter memorializing her decision, the Connecticut judge stated that Connecticut would be an inconvenient forum for the matter because, inter alia, the department had already initiated a care and protection case and possessed records and familiarity with the parents that the Connecticut department did not have. The Connecticut judge summarized: "Essentially, this case would have to start from scratch in Connecticut whereas proceedings have been ongoing in Massachusetts for over seven months now . . . ."

Thereafter, the first judge concluded that the Juvenile Court had "appropriate forum" jurisdiction under G. L. c. 209B, § 2 (a) (4), discussed infra; the judge determined that the child did not have a "home state" as defined in the MCCJA because the child's eighteen hours with the parents in the hospital's "labor and delivery floor . . . [was] not sufficient to establish Connecticut as the [c]hild's home state." The judge further found that "neither [m]other nor [f]ather had established a residence in Connecticut, though [m]other had a

place to stay [in Connecticut]," and that Connecticut had declined jurisdiction.

The single justice of the Appeals Court allowed the parents' and the child's joint motion to permit interlocutory appeal of the jurisdictional question. We transferred the case to this court on our own motion.

2. Discussion. a. Standard of review. "Jurisdictional questions are questions of law, which we review de novo." Bask, Inc. v. Municipal Council of Taunton, 490 Mass. 312, 316 (2022). We likewise "review questions of statutory interpretation de novo." Conservation Comm'n of Norton v. Pesa, 488 Mass. 325, 331 (2021). "The general and familiar rule is that a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." Id., quoting Commissioner of Revenue v. Dupee, 423 Mass. 617, 620 (1996).

b. Child custody statutory framework. "In Massachusetts, jurisdiction over child custody proceedings possibly involving the jurisdictional claims of other States is determined according to" the MCCJA. Custody of Brandon, 407 Mass. 1, 5 (1990), citing G. L. c. 209B. Under the MCCJA, "a court must

determine whether it has the power to exercise jurisdiction in a custody proceeding and, if so, whether it should exercise that power under the standards provided in the" act. Id.

Enacted in 1983, the MCCJA is a version of the Uniform Child Custody Jurisdiction Act and is intended to "encourage cooperation and avoidance of jurisdictional conflict between courts of different States in order to protect a child's welfare when litigating custody matters." Custody of Victoria, 473 Mass. 64, 68 (2015), citing St. 1983, c. 680, § 2 (a). See Custody of Victoria, supra, quoting Thompson v. Thompson, 484 U.S. 174, 180-181 (1988) (discussing prior regime where State courts often failed to give full faith and credit to custodial decisions of other States, leading to "national epidemic of parental kidnapping" and jurisdictional deadlocks). To that end, the MCCJA permits a Massachusetts judge to "communicate and exchange information with a court or courts of any other relevant jurisdiction." G. L. c. 209B, § 7 (c).

Pertinent here, a Massachusetts court has jurisdiction to make a child custody determination "only if one of the following four requirements [is] met," Custody of Victoria, 473 Mass. at 68:

> "(1) the commonwealth (i) is the home state of the child on the commencement of the custody proceeding, . . . ; or
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> "(2) it appears that no other state would have jurisdiction under paragraph (1) and it is in the best interest of the

> child that a court of the commonwealth assume jurisdiction because (i) the child and his or her parents . . . have a significant connection with the commonwealth, and (ii) there is available in the commonwealth substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or
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> "(3) the child is physically present in the commonwealth and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child from abuse or neglect or for other good cause shown . . . ; or
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> "(4) (i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (1), (2) or (3), or another state has declined to exercise jurisdiction on the ground that the commonwealth is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that a court of the commonwealth assume jurisdiction."

G. L. c. 209B, § 2 (a) (1)-(4).[4] Under the MCCJA, a child's "home state" is

> "the state in which the child immediately preceding the date of commencement of the custody proceeding resided with his parents, a parent, or a person acting as parent, for at least [six] consecutive months, and in the case of a child less than [six] months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons

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[4] Contrary to the position of the child and the parents, G. L. c. 119, § 1, which sets forth the Commonwealth's "policy" for the protection of children "of the [C]ommonwealth," does not govern the Juvenile Court's jurisdiction over custody matters where, as here, more than one State may have an interest in the child's care. See Redding v. Redding, 398 Mass. 102, 106 (1986) ("The decision of a Massachusetts court to exercise jurisdiction and to make a custody determination must be based solely on G. L. c. 209B"). "Physical presence of the child [in the Commonwealth], while desirable, is not a prerequisite . . . to make a custody determination." G. L. c. 209B, § 2 (c). See G. L. c. 209B, § 2 (b) ("physical presence in the [C]ommonwealth of the child . . . is not alone sufficient to confer jurisdiction").

> are counted as part of the [six]-month or other period." (Emphasis added.)

G. L. c. 209B, § 1. "Viewed broadly, the . . . act grants jurisdiction where Massachusetts is the child's 'home [S]tate,' but also allows a Massachusetts court to exercise jurisdiction when, in the Legislature's judgment, it may be appropriate to do so in the best interests of the child even though [Massachusetts] is not the child's home State." Custody of Victoria, supra, at 69-70.

With this framework in mind, we turn to determining whether the Juvenile Court had jurisdiction as to the child in the present matter.

i. "Home state" jurisdiction. A Massachusetts court has jurisdiction under G. L. c. 209B, § 2 (a) (1), where the Commonwealth is the child's "home state." The department does not contend that Massachusetts is the child's "home state," as defined by the MCCJA; the child, who was less than six months old at the time the care and protection proceeding commenced, was born in Connecticut and never lived in Massachusetts with a parent. See G. L. c. 209B, § 1 (defining "home state" for child less than six months old as State where child lived from birth with parent). To the contrary, as set forth infra, the only State where the child lived from birth with a parent was Connecticut.

ii. Default jurisdiction. Default jurisdiction, as set forth in G. L. c. 209B, § 2 (a) (2), grants jurisdiction to a Massachusetts court where (1) it appears that a child has no "home state" and (2) the child's best interest is served by having a Massachusetts court determine the child's custody.[5] G. L. c. 209B, § 2 (a) (2).

Relying on decisions from our sister jurisdictions construing similar language in their respective jurisdictional statutes regarding child custody, the department contends that the child has no "home state" because his brief hospital stay incident to birth does not alone constitute "living with" a parent for purposes of conferring "home state" jurisdiction. See In re R.L., 4 Cal. App. 5th 125, 139 (2016); In re D.S., 217 Ill. 2d 306, 317 (2005). In the department's view, a child has no "home state" under the MCCJA if a custody proceeding is commenced immediately after the child's birth while the child is

[5] "[I]n contrast to the definition of 'best interest of the child' generally applied in child custody litigation, the phrase as used in this context elevates the value of the child's connections to the Commonwealth in the jurisdiction calculus." Custody of Victoria, 473 Mass. at 71. Specifically, the best interest of the child standard under the MCCJA is met if (1) "the child and his or her parents" "have a significant connection with the [C]ommonwealth," and (2) "substantial evidence concerning the child's present or future care, protection, training, and personal relationships" must be "available in the [C]ommonwealth." Id. at 69, quoting G. L. c. 209B, § 2 (a) (2). Because the child's "home state" is Connecticut, we need not reach the department's arguments regarding these additional conditions.

still in the hospital. The department misapprehends the rationale of the cases upon which it relies.

In In re D.S., 217 Ill. 2d at 309, the mother fled Illinois and was bound for Tennessee when she unexpectedly went into labor and gave birth in Indiana. The Illinois Supreme Court rejected the mother's contention that Indiana was the child's "home state" under the Illinois version of the uniform child custody act because she and the child had "lived" in the Indiana hospital temporarily following the child's birth. Id. at 317. The Illinois court reasoned that the mother

> "had no connection to Indiana and no intention of remaining there following D.S.'s birth. On the contrary, respondent testified that she is a longtime resident of Illinois who, fearful of losing custody of D.S., intended to move to Tennessee. En route, she entered active labor and checked herself into the nearest hospital, which happened to be in Crawfordsville, Indiana. By itself, this temporary hospital stay in Indiana is simply insufficient to confer 'home state' jurisdiction upon that state."

Id. at 318-319. See In re R.L., 4 Cal. App. 5th at 132-133, 139 (California was not child's "home state," where mother split time between Nevada and Mexico, father lived in Mexico, and only tie to California was that mother had "entered California . . . to give birth to R.L." with hope of eventually settling in California); In re R.P., 966 S.W.2d 292, 300-301 (Mo. Ct. App. 1998) (child's "home state" was not Kansas, where mother lived in Missouri, received healthcare benefits from Missouri Medicaid, and intended to return to Missouri after child's

birth, and sole connection with Kansas was that mother went there to give birth). Cf. Ocegueda v. Perreira, 232 Cal. App. 4th 1079, 1082, 1094-1095 (2015) (where mother who lived and worked in California traveled to Hawaii to give birth and then lived with child in Hawaii for almost six weeks, Hawaii, not California, was child's "home state").

To the extent the department's argument is that a parent's intent to live in a particular State without more does not end the "home state" inquiry, we agree; a parent cannot "intend her way out of an actual living situation -- that is, she cannot confer home state jurisdiction on a state where she does not actually live by declaring an intention to begin living there prospectively."[6] In re M.S., 2017 VT 80, ¶ 48 (Robinson, J., concurring). However, this does not mean that, in determining the "home state" of a child less than six months old, the

[6] See generally In re the Marriage of Miller & Sumpter, 196 S.W.3d 683, 685, 691–692 (Mo. Ct. App. 2006), abrogated on other grounds by Hightower v. Myers, 304 S.W.3d 727, 733 (Mo. 2010) (en banc) (where children lived in Virginia for well over six months preceding initiation of custody proceeding, Virginia was their "home state" notwithstanding fact that mother, who was in military, listed Missouri as her permanent residence, and intended to retire in Missouri); Powell v. Stover, 165 S.W.3d 322, 323-324, 326-328 (Tex. 2005) (where mother and father moved from Texas to Tennessee with child for period of ten months, and then mother returned to Texas with child and initiated custody action, mother's asserted subjective intent to return to Texas during ten-month period did not make Texas child's "home state" because child had actually lived in Tennessee for preceding ten months).

child's physical presence in a State at birth and the parents' "living situation and intentions at the time of the child's birth" are irrelevant. Id. When a parent lives in a single State, does not intend to relocate at the time of the child's birth, and plans to return to the parent's home in that State with the child upon discharge from the hospital, the parent and child live together in that State from the moment the child is born, whether or not they are still in the hospital. See id.

Here, unlike the cases upon which the department relies, the mother and the father had not merely declared an intent to live in Connecticut; nor were they simply passing through Connecticut on a journey elsewhere at the time the mother gave birth to the child. To the contrary, the mother reported before the child's birth that she relocated permanently to Connecticut, had attended prenatal visits in Connecticut, and was enrolled in a Connecticut healthcare plan. The father had lived in Connecticut for years and was living there at the time of the child's birth.[7] The child was born in a Connecticut hospital

[7] As set forth supra, the first judge found that "neither [m]other nor [f]ather had established a residence in Connecticut, though [m]other had a place to stay [in Connecticut]." To the extent this finding suggests that the mother and the father were not living in Connecticut at the time of the child's birth, it is not supported by the record before the first judge. See Custody of Eleanor, 414 Mass. 795, 799 (1993) ("A finding is clearly erroneous when there is no evidence to support it, or when, 'although there is evidence to

and, but for the department's intervention,[8] the child would have returned with the mother to her Connecticut home upon discharge from the hospital.[9] Although the mother had substantial connections to Massachusetts, there was nothing in the record to suggest that, at the time the department filed the petition in

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support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed'" [citation omitted]). Although the record shows that the mother split her time between Connecticut and Massachusetts between January and March 2024, the evidence that the mother was living in Connecticut from at least April 2024, including her enrollment in Connecticut health insurance and residence in a Connecticut domestic violence shelter, was uncontested. The evidence that the father lived in Connecticut throughout this period likewise was uncontested.

[8] We do not suggest that the department's concerns regarding the child's well-being were unfounded. To the contrary, as set forth supra, the mother's lengthy history of domestic violence, the department's experience with her other seven children, and the March 2024 report regarding the father's assault against the mother all gave rise to the department's concerns for the child. Of course, nothing prevented (or currently prevents) the department from coordinating with the Connecticut department in an effort to protect the child. See G. L. c. 119, § 51E ("A child welfare agency of another state may, upon request, and upon the approval of the commissioner, receive a copy of the written report of the initial investigation if the agency has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect").

[9] For at least this reason, the department's reliance on the unpublished Appeals Court case Adoption of Rafael, 99 Mass. App. Ct. 1113 (2021), is misplaced. See id. (mother was Massachusetts resident who traveled to Rhode Island to give birth).

the Juvenile Court, either parent planned to leave Connecticut or that it was a mere "pit stop" on their way to another State.[10]

In these circumstances, Connecticut was the child's "home state" and, accordingly, the Juvenile Court lacked default jurisdiction under G. L. c. 209B, § 2 (a) (2).

iii. Emergency jurisdiction. Pursuant to G. L. c. 209B, § 2 (a) (3), a Massachusetts court has emergency jurisdiction when a child is "physically present" in Massachusetts and either "has been abandoned" or "an emergency" requires intervention to, inter alia, "protect the child from abuse or neglect." Because the child was physically present in Connecticut at the time the department commenced the care and protection proceedings, the department correctly does not maintain that the Juvenile Court had emergency jurisdiction.

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[10] In concluding that the child did not have a "home state" under the MCCJA, the first judge apparently relied on the finding that the "[m]other's attempt to relocate to Connecticut was motivated, at least in part, by her belief that if the [c]hild was born in Connecticut, [the department] would not be able to remove the [c]hild from her care." As previously explained, the mother did not merely attempt to relocate to Connecticut, but actually did so; for months prior to the child's birth, the mother lived in Connecticut. See note 7, supra. The mother's reason for doing so, while lamentable, is only relevant to the MCCJA analysis to the extent it illuminates the permanence of the mother's and child's presence in a particular State. See In re M.S., 2017 VT 80, ¶¶ 45-46 (Robinson, J., concurring).

iv. Appropriate forum jurisdiction. Finally, G. L. c. 209B, § 2 (a) (4), confers appropriate forum jurisdiction to a Massachusetts court where (1) either no State appears to have "home state," default, or emergency jurisdiction or another State with such jurisdiction has declined to exercise it, and (2) the child's best interest is served by having a Massachusetts court determine the child's custody.

As discussed supra, the child's "home state" is Connecticut. Thus, under G. L. c. 209B, § 2 (a) (4), the Juvenile Court was empowered only to exercise appropriate forum jurisdiction after Connecticut "declined to exercise [its 'home state'] jurisdiction on the ground that the [C]ommonwealth is the more appropriate forum to determine the custody of the child." G. L. c. 209B, § 2 (a) (4) (i). Here, at the time the Juvenile Court exercised jurisdiction and issued custody orders, Connecticut had not declined jurisdiction. The Juvenile Court did not have the power to issue custody decisions before Connecticut declined to do so. Compare Adoption of Anisha, 89 Mass. App. Ct. 822, 827 (2016) (Juvenile Court judge "acted well within his statutory and inherent authority" in waiting to make custody decisions until after Tennessee court declined jurisdiction; "[m]ost importantly, no custody decisions were made until jurisdiction in Massachusetts was established").

And, while Connecticut eventually declined jurisdiction, its decision was influenced by the Juvenile Court judges' prior custody orders, which neither judge had the authority to make. In these circumstances, the Juvenile Court did not have appropriate forum jurisdiction.

3. Conclusion. For the foregoing reasons, the Juvenile Court did not have jurisdiction to make custody determinations for the child. See, e.g., Everett v. 357 Corp., 453 Mass. 585, 612 (2009) (it is "a fundamental tenet of law" that lack of jurisdiction is fatal to claims); ROPT Ltd. Partnership v. Katin, 431 Mass. 601, 605 (2000) (where court lacks jurisdiction, "the judgment is void"). Accordingly, we issued a decision on May 8, 2025, and a rescript order on June 5, 2025, remanding this matter to the Juvenile Court for entry of a judgment dismissing this care and protection case for lack of jurisdiction.