UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2120

September Term, 2016

LYDANET SMITH HERNANDEZ

v.

LUIS PITA MATIENZO

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Nazarian, J.

Filed: May 19, 2017

Lydanet Smith Hernandez ("Mother") contends that the Circuit Court for St. Mary's County erred in denying her Emergency Motion for Modification of a Registered Order and Request for a Hearing and her subsequent Motion to Alter or Amend Judgment. She argues that the court should have exercised emergency temporary jurisdiction under both the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") and the Parental Kidnapping Prevention Act ("Parental Kidnapping Statute") and modified the terms of Luis Pita Matienzo's ("Father") visitation. We affirm.

I. BACKGROUND

Mother and Father have one child, A.P., who was born in Puerto Rico in 2004. The parents' relationship ended at some point, and in 2010 and 2011, the parties litigated custody issues in the Commonwealth of Puerto Rico General Court of Justice, Court of First Instance, Superior Court of Fajardo (the "Puerto Rican Court"). Most relevantly for our purposes, the Puerto Rican Court entered an order (the "Initial Custody Order") on July 11, 2011 that awarded sole custody of A to Mother, authorized Mother to move A to Maryland, and authorized Mother to make all medical and educational decisions for A. The court granted "father-child interaction" through telephone calls and email or video conference, and ordered that the case be reevaluated in seven months. It is unclear from the record whether the case was reevaluated within the prescribed time period, but the record does reveal numerous hearings in the time since.

Mother eventually filed a Request for Registration of a Foreign Custody Order in the circuit court and, after receiving no response from Father, the court registered the Initial

Custody Order on August 6, 2014. A few weeks later, though, Father filed a Motion Requesting Nullity of Registering Orde[r], contending that he had responded to the Notice of Registration by Special Appearance and that the court registered the Initial Custody Order improperly because it was not a final custody determination (the order had been modified on March 7, 2013, in an order we'll call the Final Disposition Order). Father also asked for sanctions, alleging that Mother knowingly had asked the court to register an invalid custody order. In addition, he alerted the court that on February 3, 2014, he had filed the first of several Motions for Contempt against Mother in Puerto Rico for failing to comply with that court's visitation order, and that contempt proceedings were still pending against Mother there. A hearing was scheduled on Father's motion, but he ultimately withdrew it and filed his own Request for Registration of a Foreign Child Custody Determination, which sought to substitute the Final Disposition Order, which granted visitation to Father during A's summer vacation, Christmas break, and Easter Week, and also clarified that Mother retained custody of A but that parental rights were shared.

On April 13, 2015, Mother filed a Motion to Dismiss Father's Request. She contended that service was improper and that new facts had developed that required the court to exercise emergency temporary jurisdiction. The court ultimately registered the Final Disposition Order on May 18, 2015.

On September 28, 2016, Mother filed an Emergency Motion for Modification of Registered Order and Request for a Hearing, and the court held an evidentiary hearing the next day. Mother testified that in July 2013, A went to Puerto Rico during her summer

vacation to see Father and, at some point during her stay, Father sexually abused her on two different occasions (although she did not inform Mother about the abuse until April 2014). Pursuant to the Final Disposition Order, A's next scheduled visit with Father was to take place in Puerto Rico during her 2013 Christmas break, but she refused to go and Father came to Maryland instead. According to Mother, A ran to her bedroom and began to cry when Father arrived. Because, she says, she didn't know about the abuse, Mother encouraged A to spend time with Father, which A did reluctantly, but A insisted that the visits take place during the day and she refused to spend the night with him. After the visits, of which there were five, A returned home crying and it took Mother approximately twenty minutes to calm her down.

A's next visit with Father was supposed take place in Puerto Rico during Easter Week of 2014, but again she refused to go. The night before A was supposed to leave for the trip, Mother said that A told her about the abuse that had happened during the July 2013 visit. After learning about the incident, Mother called Father to inform him that she knew about the abuse and that A would not be travelling to Puerto Rico to visit him. Father denied the abuse and accused Mother of telling A to make the accusations.

Within one month of learning of the abuse, Mother took A to the Center for Children, where she was diagnosed with Post Traumatic Stress Disorder ("PTSD") and underwent therapy for eight months. Mother was contacted by the Department of Social Services in Maryland, but to her knowledge the Department did not complete its investigation because it was unable to interview Father. Mother then traveled to Puerto

Rico to file a criminal complaint against Father. No charges were filed against him, however—instead, Father filed a contempt complaint against Mother, alleging that she had interfered with his visitation rights. Mother stayed in Puerto Rico for a week after filing the complaint, then returned to Maryland. The Puerto Rican Court ordered her to return to Puerto Rico with A to participate in a contempt proceeding, which took place on June 30, 2016.

While Mother and A were in Puerto Rico, they participated in two reunification therapy sessions with a social worker. Father did not participate in the first therapy session, but was present for the second. A did not know that her father was going to be there and when she saw him, she became very "nervous" and "frightened" and did not want to go into the therapy room. A eventually entered the room on the condition that her mother also be present, but still refused to participate in the session. The social worker grew angry and called Mother into her office to admonish her for not cooperating.

Mother returned home on July 20, 2016. When she arrived, she found out that the Puerto Rican Court had issued an order requiring her to stay in Puerto Rico until August 20, 2016 to participate in reunification therapy and further court proceedings. The Puerto Rican Court held her in contempt for leaving, held a hearing on September 23, 2016 in her absence, and then issued an order requiring Mother and A to appear at the social worker's office on September 26, 2016 at 9:00 AM. Mother said that she did not receive the court's order, but did receive an email that contained the same information as the order from the court's judicial clerk on September 26, 2016. Mother testified that she did not want A to

visit Father because she feared that something worse would happen. Mother also testified that other than the two incidents of abuse that occurred in July 2013, she was not aware of any other incidents of sexual abuse, but that Father yelled at and criticized A.

Mother also called Dr. Karen Ray, a licensed clinical professional counselor and the director of Watershed Counseling Services whom the court qualified as an expert, to testify at the hearing. Dr. Ray described a forensic evaluation she conducted on A in September 2016 and the report she generated from her findings, which the court admitted into evidence. According to Dr. Ray, A suffers from "unspecified anxiety disorder" and had likely suffered from PTSD after the incident took place. Dr. Ray testified to a reasonable degree of psychological certainty that something happened during the July 2013 visit that made A fearful of being with her father, that her story of the abuse was credible, and that she "looks like a child who's been sexually molested." Dr. Ray recommended that A not be forced to visit or live with her father.

At the close of the hearing, Mother asked the court to assume emergency temporary jurisdiction of the case and to modify the registered Final Disposition Order in a manner consistent with Dr. Ray's recommendations, *i.e.*, to eliminate any requirement that A visit or live with Father. There was some confusion as to whether the court needed to assume emergency temporary jurisdiction because, the court reasoned, it already had home state jurisdiction—the Final Disposition Order had been registered in Maryland and A had lived here since 2011. The court acknowledged that it needed to consult with the Puerto Rican

Court before issuing an order, but that it was prepared to issue an order in conformity with Dr. Ray's recommendations.

After consulting with the Puerto Rican Court, the circuit court held a follow-up hearing on October 11, 2016. During that hearing, the court explained that it was denying the Emergency Motion for Modification because the court had learned through its consultation with the Puerto Rican Court that the sexual abuse allegations had already been litigated fully there, and that the Puerto Rican Court had found that Mother had failed to prove that Father had abused A. The Puerto Rican Court had relied on three experts, all of whom had concluded that Father did not abuse A and that, in fact, Mother was harming A by "manipulating [her] to make her believe that [the abuse] happened." As a result, the circuit court concluded that Mother was "forum shopping" in hopes of getting a different result, and that although the court found the evidence "very compelling," it had only heard one side of the story and, as such, it would be "inappropriate for [the court] to do anything further." In response to this decision, Mother filed a Motion to Alter or Amend Judgment and Request for a Hearing on October 24, 2016, which the circuit court denied on November 16, 2016. This timely appeal followed.

II. DISCUSSION

Mother contends on appeal that the trial court erred in denying her Emergency Motion for Modification of a Registered Order and Request for a Hearing as well as her Motion to Alter or Amend Judgment.[1] She characterizes the case in jurisdictional terms,

[1] In her brief, Mother phrased the Questions Presented as follows:

that the court "erred as a matter of law in ruling that the State of Maryland did not have temporary emergency jurisdiction under the UCCJEA" and "§ 1738(A)(c) of the [Parental Kidnapping Statute]," and in "failing to resolve the emergency and protect the safety of the child as required by §9.5[-]204(d) of the UCCJEA." Father counters that the circuit court did not err in its ruling because the court did not make specific findings that he abused the minor child and, as such, had nothing to protect her from nor any reason to assume emergency temporary jurisdiction. We see this less as a question of whether the circuit court *could* have exercised jurisdiction—it could have—but rather whether it *should* have done so on these facts. That turns on whether Mother should be permitted to raise anew in Maryland the abuse allegations she litigated unsuccessfully in Puerto Rico, and we agree with the circuit court that she shouldn't.

> 1. Whether the trial court erred as a matter of law in ruling that the State of Maryland did not have temporary emergency jurisdiction under the UCCJEA where the trial court made specific factual findings that the child was present in the State of Maryland and was subject to physical and mental abuse in Puerto Rico?
>
> 2. Whether the trial court erred as a matter of law in failing to resolve the emergency and protect the safety of the child as required by §9.5 204(d) of the UCCJEA?
>
> 3. Whether the trial court erred as a matter of law in ruling that the State of Maryland did not have temporary emergency jurisdiction under § 1738(A)(c) of the Parental Prevention Kidnapping Act where the trial court made specific factual findings that the child was present in the State of Maryland and was subject to physical and mental abuse in Puerto Rico?

In 2004, Maryland adopted the UCCJEA as Title 9.5 of the Maryland Family Law Article ("FL") to replace the Uniform Child Custody Jurisdiction Act ("UCCJA"), FL § 9-202 to 224. The Comment to Section 101 of the UCCJEA borrows language from the UCCJA and sets forth the uniform law's underlying purpose:

> (1) Avoid jurisdictional competition and conflict with courts of other States in matters of child custody which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being.
>
> (2) Promote cooperation with the courts of other States to the end that a custody decree is rendered in that State which can best decide the case in the interest of the child;
>
> (3) Discourage the use of the interstate system for continuing controversies over child custody;
>
> (4) Deter abductions of children;
>
> (5) **Avoid relitigation of custody decisions of other States in this State**; [and]
>
> (6) **Facilitate the enforcement of custody decrees of other States**.

(Emphasis added). Similarly, the Parental Kidnapping Statute, a federal statute enacted by Congress in 1980 that applies to every United States jurisdiction including Puerto Rico, aims to facilitate the enforcement of custody orders of other states and prevent forum shopping. *See Cabrera v. Mercado*, 230 Md. App. 37, 70 (2016) ("Congress enacted the Parental Kidnapping Statute . . . in response to the quasi-accepted practice of 'child snatching' to obtain a favorable custody determination in another jurisdiction." (citations

omitted)). Both Acts set forth the criteria by which courts determine which state has jurisdiction over a custody proceeding and for which purpose(s).

Mother sought here to invoke the temporary emergency jurisdiction of the Maryland courts for the purpose of modifying an existing custody order. The UCCJEA provides for emergency temporary jurisdiction "if the child is present in this State and . . . it is necessary in an emergency to protect the child because the child . . . is subjected to or threatened with mistreatment or abuse." FL § 9.5-204(a). Similarly, the Parental Kidnapping Statute provides for jurisdiction if "the child is physically present in [the] State and . . . it is necessary in an emergency to protect the child because the child . . . has been subjected to or threatened with mistreatment or abuse." 28 U.S.C. § 1738(A)(c)(2)(C). We review *de novo* whether a trial court interpreted a jurisdictional statute correctly. *Cabrera*, 230 Md. App. at 79–81 (2016) ("Whether the trial court correctly asserted jurisdiction is an issue of statutory interpretation that we review *de novo* to determine whether the court was legally correct." (citation omitted)).[2]

We disagree that the circuit court erred as a matter of law in ruling that Maryland did not have temporary emergency jurisdiction under both the UCCJEA and § 1738(A)(c) of the Parental Kidnapping Statute—not least because the court never said that it lacked temporary emergency jurisdiction. Rather, the court found that because the issue of abuse

[2] Father asserts, erroneously, that the standard of review is abuse of discretion, citing *Harris v. Melnick*, 314 Md. 539, 552 (1989). *Cf., e.g.*, *Pilkington v. Pilkington*, 230 Md. App. 561, 581 (2016) ("We review *de novo* whether a trial court interpreted a jurisdictional statute correctly." (citation omitted).

had already been fully litigated in Puerto Rico, it would be inappropriate, and contrary to the intent of both Acts, to disregard the Superior Court's findings and rule anew:

> Puerto Rico began the process; and I assume, based on the notes I'm reading, that was because Mom notified the Puerto Rican court about her allegations, did not bring something here. So she chose her forum, basically, and participated in all of these proceedings that I have just described.
>
> So the only thing that would be for the Maryland court to do, which is what I guess is being asked by [Mother], is to basically second-guess and overrule the Puerto Rico court and do it all over again and, in her hopes, come to a different conclusion. I don't think I can do that.
>
> That is forum shopping, which is something that [the Puerto Rican Court judge] suggested [Mother] is doing in trying to get a different result from a different judge. And that would be very inappropriate for me to do.
>
> When you take advantage of court proceedings and judges and judges' experts and so forth, you may not like the result, but that does not give you the ability to go to another forum and ask to do it all over again to try to get a different result.
>
> So based on that, based on the fact that in a legal sense the Puerto Rican court does have jurisdiction and [Mother] agreed and acquiesced in using that forum and using all of the procedures in that forum, then I see nothing that I can do at this point.
>
> I found the testimony, the evidence, very compelling; but I only heard one side. And so did the social worker who testified, only heard one side. So I think that it would be inappropriate for me to do anything further.

Had the circuit court asserted emergency temporary jurisdiction and modified the Registered Custody Order, it would not only have allowed Mother a second bite at this

apple, but also would have entered an order that conflicted directly with the operative Puerto Rico order—the very problems the UCCJEA and the Parental Kidnapping Statute aim to prevent. *See Pilkington v. Pilkington*, 230 Md. App. 561, 579 (2016) ("The [UCCJEA] prohibits concurrent jurisdiction between two states to limit the occurrence of different states creating competing custody awards." (citation omitted)); *Cabrera*, 230 Md. App. at 70–71 (explaining that the Parental Kidnapping Statute was intended to resolve the problem of state courts "declin[ing] to extend full faith and credit to existing custody determinations in other jurisdictions." (citation omitted)). The court also recognized that Mother had appealed the Puerto Rican Court's decision and that the appellate court there had declined to grant expedited certiorari review or intervene, despite also finding that the lower court had erred in restricting the minor child's therapy to Puerto Rico and ordering her to remain there.

Putting aside that the facts underlying the temporary emergency theory occurred in 2013, we agree that Mother's litigation here, however well-intentioned, represented an inappropriate effort to relitigate an unsuccessful claim in a different venue. After receiving an unfavorable judgment in both the Puerto Rican Court and the appellate court in Puerto Rico, Mother sought the opposite result, on the same allegations, in the Maryland courts. The circuit court correctly applied both the UCCJEA and the Parental Kidnapping Statute by giving full faith and credit to the Puerto Rican Court's ruling and preventing this sort of forum shopping. *Pilkington*, 230 Md. App. at 593 ("[T]he Maryland UCCJEA . . . impose[s] on Maryland courts a duty to enforce foreign custody orders." (citing FL § 9.5-

303)); *Cabrera*, 230 Md. App. at 71 ("The [Parental Kidnapping S]tatute provides that a custody determination made consistently with its provisions by one state will receive full faith and credit by another state." (citing 28 U.S.C. § 1738A(a)); *Harris v. Simmons*, 110 Md. App. 95, 109 (1996) ("The UCCJA and the [Parental Kidnapping Statute] compel a state to give full faith and credit to a valid custody decree entered by a sister state.").

Even if the circuit court had found that the abuse occurred, it's not obvious that it could have asserted emergency temporary jurisdiction for the purpose of amending the custody order because the Puerto Rican Court made the initial custody determination and, as such, likely retained continuing jurisdiction under the Parental Kidnapping Statute, 28 U.S.C. § 1738A(d).[3] "[O]nce a state has exercised jurisdiction under the Parental Kidnapping Statute, by making a child custody or visitation determination, that state retains jurisdiction as long as it (1) retains jurisdiction under its own state laws and (2) continues to be the residence of either the child or any contestant." *Cabrera*, 230 Md. App. at 73, 83 (circuit court did not err in entering a temporary emergency order even though simultaneous custody proceedings had been initiated in Puerto Rico because Maryland had initiated the first custody proceeding and thus retained continuing jurisdiction). Further,

[3] 28 U.S.C. § 1738A(d) provides, in pertinent part:

> The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or any contestant.

the circuit court was likely prohibited from asserting jurisdiction under FL § 9.5-206,[4] which precludes a Maryland court from assuming jurisdiction when a court in another state exercising jurisdiction in substantial conformity with the UCCJEA has a pending custody proceeding. *See Gestl v. Frederick*, 133 Md. App. 216, 227 (2000) ("If a [custody] proceeding is pending in another jurisdiction, a Maryland court usually must decline to exercise its jurisdiction."). The question isn't whether the circuit court could have asserted emergency temporary jurisdiction at all, but whether the facts and circumstances of this case compelled the court to do so in a particular manner. Which they didn't, in light of the parallel litigation in Puerto Rico.

For the same reason, the circuit court did not, as Mother claims, fail to protect A pursuant to § 9.5-204(d) of the UCCJEA:

> (d) *Communication with other state court.* – (1) A court of this State that has been asked to make a child custody determination under this section, on being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under §§ 9.5-201 through 9.5-203 of this subtitle, shall immediately communicate with the other court.

[4] FL § 9.5-206 provides, in pertinent part:

> (a) *When other state more appropriate.* – Except as otherwise provided in § 9.5-204 of this subtitle, a court of this State may not exercise its jurisdiction under this subtitle if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this title, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under § 9.5-207 of this subtitle.

> (2) A court of this State that is exercising jurisdiction in accordance with §§ 9.5-201 through 9.5-203 of this subtitle, on being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section **shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child,** and determine a period for the duration of the temporary order.

(Emphasis added). Again, in light of the Puerto Rico litigation, there was no new emergency to be resolved. Nor, as Mother argues, did the circuit court find that Father had abused A. Rather, the court acknowledged that based on the testimony presented at the emergency hearing, before it consulted with the Puerto Rican Court, there was "*prima facie* evidence that the child is threatened with mistreatment or abuse at this time" and, therefore, that the court was "prepared to issue an order that would . . . suspend all visitation between [A] and her father until sufficient and appropriate investigation can be done to determine whether or not [A] is safe with her father." In its next breath, the court stated that it was not going to issue an order until it conferred with the Puerto Rican Court to determine whether the two courts could reach "common ground on this and alleviate the issue of everybody being pulled in two directions." This contact was proper under §9.5-204(d) of the UCCJEA, and the court followed that path.

After speaking to the judge who presided over the custody hearings in Puerto Rico, though, the circuit court learned that Mother's allegations already had been addressed and resolved, and suggested that Mother had not told the full story of the Puerto Rico litigation at the earlier hearing:

[A] little bit of information was provided [to the court] about what happened in Puerto Rico.

And as it was described to me, there was a social worker who was supposed to evaluate the child, but instead ended up bringing the father in to have a therapy session with the child after only seeing the child once.

And frankly, not very much specific information about what procedurally went on in Puerto Rico; other than that when [Mother] came back to Maryland, she found out at the last minute about a hearing that of course she couldn't attend, and then she has been held in contempt for various things.

So my concern was that as to what exactly had happened in Puerto Rico; what the real proper jurisdiction should be for the case; and what, in fact, ability that the Maryland court would have to step in at this point.

So we left it, I said I needed to take it under advisement; and I was going to talk to the judge in Puerto Rico.

* * *

[The Puerto Rican Court judge] told me that there had been a full-blown hearing held by the court in Puerto Rico; that the court provided or used three separate experts. I don't know if they were specifically social workers or another kind of therapist.

But at any rate, they were experts in the field of this type of thing: of evaluating the child, evaluating relationships, evaluating what had happened, [] and what should be done about it.

That all three of the experts did the evaluations. All three of them concluded that there was no abuse by the father. That, in fact, they feel that [Mother] is manipulating [A] to make her believe that it happened. That there may have been something that happened to her, but it wasn't through her father.

* * *

> As a result of the hearings and the reports from the social workers, the mother agreed that she would facilitate visitation with the father, and then she disobeyed that agreement.
>
> So the judge made a decision. And the expert had recommended that if the mother continues to refuse to obey the facilitation or reunification therapy that had been put in place, then a change in custody should be considered, because it was detrimental to [A].

The court then recapped the events that took place in Puerto Rico:

> The mother notified the court about the father's inappropriate touching in September of 2004 [*sic*], but could not offer sufficient proof to the court. The court ordered family therapy to get to the bottom of the lack of trust between the parents and the child and father.
>
> * * *
>
> [The therapy] did not occur, because the mother went back or stayed in Maryland.
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> When brought back to the court's attention in April of 2015, in May the court ordered the mother and the child to come to Puerto Rico to do the therapy and have a review on June 20 of this year. Mom and child did not go to Puerto Rico, and June 2 [*sic*] the court again ordered them to come for counseling; and this time, they did go.
>
> At the June 20 review, the court ordered that the child had to stay in Puerto Rico to complete the father/child reunification therapy. And at the same time, the mother petitioned the court to reconsider the orders for this therapy and the order for the child to stay in Puerto Rico.
>
> And apparently the mother was ordered on June 21 not to take the child out of Puerto Rico or have the child removed

> from Puerto Rico until further order of the court. The airport was notified, and anyone who violated that would be in contempt of court.
>
> And that is apparently what the mother did: was take the child out of Puerto Rico and come back to Maryland; in the judge's opinion, knowing that she was not supposed to do so.

The court did not find, as a matter of fact, that Father had abused A. To the contrary, after consulting the sibling court in Puerto Rico, the circuit court determined that there was no emergency for it to resolve because the alleged emergency was the subject of existing, and still pending, litigation there. Accordingly, the circuit court did not err in denying Mother's motions.[5] *See Malik v. Malik*, 99 Md. App. 521, 528 (1994) (holding that the circuit court did not have emergency temporary jurisdiction because the evidence presented at the hearing did not persuade the trial judge that the child was in imminent danger).

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

[5] Although the circuit court erroneously suggested that there was concurrent jurisdiction under the UCCJEA in that Maryland had home-state jurisdiction because A had lived there for over six months and the Puerto Rican Court had jurisdiction because it issued the initial custody and visitation order, neither suggestion affected the court's determination that emergency temporary jurisdiction was unwarranted. As such, and because it never sought to do so in any event, we need not address whether the circuit court could have assumed home-state jurisdiction.