Circuit Court for Prince George's County
Case No. CAD16-30253

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2405

September Term, 2019

ADEPOJU OLARINDE

v.

KEHINDE KOREDE

Fader, C.J.,
Berger,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: August 20, 2020

Appellant, Adepoju Olarinde ("Father"), appeals the grant of custody of his two youngest children to their mother, appellee, Kehinde Korede ("Mother"). He presents two questions[1] for our review, which we have consolidated and rephrased as one:

> Did the Circuit Court for Prince George's County err as a matter of law in determining that Maryland was the children's home state?

For the reasons that follow, we answer that question "no" and affirm the circuit court's decision.

FACTUAL AND PROCEDURAL BACKGROUND

The parties, both of whom are dual citizens of Nigeria and the United States, married in August of 1997 in Nigeria. While residing as a couple in Nigeria, two children were born: a daughter, O.O., in 1998, and a son, S.O., in 2001. The family moved to Maryland, in 1999, where two more children were born: a daughter, D.O., in 2007, and a son, J.O., in 2008.

[1] Appellant asked:

> I. Did the Circuit Court for Prince George's County[,] Maryland err as a matter of law when it entered a custody and child support order in February 2017 regarding children who have not resided in the county and the United States for two years preceding the date of the entry of that order?
>
> II. Did the Circuit Court for Prince George's County[,] Maryland err as a matter of law when it denied the motion of the Appellant to vacate and/or dismiss the custody and child support order entered in February 2017 for lack of subject matter jurisdiction, and further ordered the Appellant to return the two minor children to the United States within 60 days from the December 19 order?

Both testified to incidents of domestic violence during their marriage, and in either 2009 or 2010,[2] Father went back to Nigeria, continuing to return to Maryland for months at a time. When in Maryland, he has worked as a licensed practical nurse and carried on a business of purchasing "used cars" in the United States to sell in Nigeria.

In 2010, the oldest son, S.O., with the consent of both parents, went to Nigeria with Father; he returned to Maryland in 2017. In 2012, the oldest daughter O.O. moved to Nigeria to attend law school, and has since returned to Maryland. Both are now emancipated.

On August 2, 2016, Father filed a Complaint for Absolute Divorce from Mother in the circuit court, seeking sole physical custody and sole legal custody of the then three minor children, S.O. being fifteen at that time. Father stated in his complaint that the children were living with him in Nigeria. In Mother's answer to the complaint, she indicated that the children were "with [Father] by force." In her counter-complaint, she requested an absolute divorce and sole custody of the three minor children.

The First Hearing

On January 17, 2017, a hearing was held on Father's complaint and Mother's counter-complaint. Mother and Father were both self-represented and no other witnesses were called to testify. Father testified that, in the past, Mother had "neglect[ed] the children" and that they were taken into foster care when he was in Nigeria. According to

[2] At the 2017 hearing, Father testified that he returned to Nigeria in 2009; in his brief, he states that it occurred in 2010.

Father, when he returned to the United States, social services "gave [the two youngest children] back to [him]," and the children asked "to come [to] Nigeria."[3] When the court inquired about where the children were and their care, the following exchange ensued:

> THE COURT: So who is watching the child in Nigeria when you are in the United States?
>
> [FATHER]: My mom, my siblings, taking care of them. And I have a housekeeper taking care of them.

Mother's account was different. She testified that in 2015, she and the two younger children were in Nigeria visiting family that included the two children spending a few days with their siblings. She planned to return to Maryland with the children, but was not able to because Father physically attacked her and kept the children in Nigeria. She further

[3] In regard to the social services situation, the court found:

> There was a CPS violation . . . noted years ago in 2010, where there was an allegation against mom because mom left, at that time, the oldest child alone. And child protective services rightfully stood in and thought the child was too young to be left alone.
>
> In hearing it, what happened and I do find, that dad had left again, the country. And left mom alone with the children and she was torn between having to work to feed the children or staying at that time – because it was years ago with the oldest child. In reading the CPS report it did allow liberal visitation with mom. There was nothing, any injuries to the child. It was the fact mom wasn't home. And since then mom has maintained custody of the children.
>
> I do know I saw it was there but I don't find that to be much of a consequence. In that situation, mom was in a rock and hard place. Once it happened she rectified it and was able to get somebody to watch the child.

testified that Father and his "new wife"[4] were preventing any communications between her and the children. She stated:

> [I] [j]ust want my children. That's the only thing. The divorce is okay. I want my children. He is not [t]here. He stay[s] here a lot. Anything can happen. No family is there. It's the new wife there and mistreating them[.]

The court's findings included:

> I do find and it's relevant to me, I do believe mom to be more credible than dad with this version that she did take the children to Nigeria and that dad basically took the child[ren].[5] And I do not find that there was consent for dad to keep the two minor children in Nigeria.
>
> * * *
>
> [D]ad travels back and forth to Nigeria. The two youngest children stay with mom. Mom took the children – I find this – to Nigeria over the holidays to visit relatives. And I do find that dad took the children through a brother and has kept the children in Nigeria. And mom does not know where her younger -- the two younger children are. And dad has basically hid two children from the mother.
>
> * * *
>
> I find mom has been the primary custodian. Dad disappears for periods of time.
>
> * * *

[4] Mother testified that, when she visited Nigeria in 2015, Father had a "new wife":

> THE COURT: So you are saying he is married to somebody?
>
> [MOTHER]: He is already married. My kids they always – now she block a way to get in contact. I can't call them. I can't talk to them.

[5] During Mother's direct examination of Father, photographs were admitted documenting the bruises and injuries inflicted upon her.

> Mom has not been able to see the children whatsoever. I don't find there was a voluntar[y] abandonment. I quite honestly think that dad took the children without permission.

The circuit court granted Mother primary physical custody of the minor children, and joint legal custody with the Father. Father filed a Petition/Motion to Modify Custody on February 8, 2017, explaining that circumstances had changed and the order was no longer in the best interest of the children because "[a]ll of the children are in Nigeria, school fee, care, hospital care, feeding care are be[in]g taken care [of] by me [Father] up till today[.]" The circuit court denied that motion.

On May 16, 2017, Mother filed a Motion for Modification and/or Contempt because she "travelled to Nigeria to retrieve the children and [Father] will not cooperate or compl[y] with the court order." On September 17, 2019, she filed a Petition for Contempt and Motion to Enforce Court Order, alleging that "[Father] continues to violate the Order," by hiding the children, and has not revealed where they "reside, the school that they attend or who is caring for the children." Mother claimed that "[Father] has essentially kidnapped the minor children, and denied [her] of any access to the minor children, including keeping [her] informed regarding the children's wellbeing, education, and medical needs."

In his October 23, 2019 response to that petition, Father requested the court to dismiss or modify the custody order because the court "had no jurisdiction over the custody of the children." That same day, he also filed a Complaint for Modification of Custody Order, to Vacate and Dismiss Custody Order for Lack of Jurisdiction and to Vacate Order

of Child Support for Lack of Jurisdiction. A hearing was scheduled for December 13, 2019.

The Second Hearing

On December 13, 2019, the circuit court heard testimony from Mother, Father, and their two older children. Mother was again self-represented and Father was represented by counsel. Mother repeated her testimony from the earlier hearing that she and the two minor children vacationed in 2015 in Nigeria to visit family and that Father "took the [minor] children by force" during what was intended to be a few-days visit. When she attempted to retrieve the children, "Father hit [her]] on the head," which she "report[ed] . . . to the police in Nigeria."

At this hearing, Mother's version of what happened in 2015 was supported by the testimony of the two older children. O.O. testified that Father had "persuaded" the two older children "to request that [the two minor children] come over for a sleep over for a few days," and Mother allowed it. But "when it came time to return[] [the minor children], [Father] went and put them away, like hid them." She further testified:

> I think he had his girlfriend take them I believe or had them stay with one of – somewhere outside of where we live where [Mother] couldn't get to them. Now, every time she came to get them and she came with her family members sometimes and she tried coming alone to plead on her own sometimes, too.
>
> Just, you know, when you're trying to find a solution, you use different avenues to see which one gives you the best results. So that's what she did and he still said no. He wouldn't even want to meet with her and stuff like that. And he did that consistently until – like she did delay her flight for some time, but when she realized she couldn't get them, she had to go[.]

* * *

It was agreed – the terms that were based on that agreement was that they would come over – they came to Nigeria, but the sleepover – they would sleep over for three days, for three days – two nights, three days, and on the third day they would go home. The agreement was not for them to stay with him and base a life and education there. That was never the agreement.

O.O. also testified about Mother's efforts to recover the children:

[FATHER'S COUNSEL]: All right. Since this order came in effect in 2017, has your mother made any efforts to come and get the children?

[O.O.]: Yes, she has, several times. She took the legal route when she saw that the verbal communication one on one was not working. When she saw that having personal contact with him was not working and he was reiterating things to other people the wrong way, she took the legal route.

She filed papers. And I know she filed papers because not from her mouth but from his mouth. He came and stated it several times trying to get us to try and, you know, cover him up in court or try and make statements or recordings and stuff like that so that he can use in evidence – as evidence in court.

* * *

She even contacted the American Embassy and they went in and they went to go and retrieve the children not once, not two but about three times and he had deliberately moved them out of state or told the teachers not to let them talk to them or at all.

The oldest son, S.O., testified about what happened when Mother attempted to pick up the children from Father:

That day I was coming from school. I went to college. It's a school in Nigeria. And when I came back, I noticed – I went to the shop and I noticed that there was blood in the shop. And I asked my sister – asked for my mom because she was apparently there and my dad said she fought with him in which I do not know what, but later I was able to go to see her at the police station because I think she filed a report there.

THE COURT: So you saw your mom at the police station?

[S.O]: Yes.

THE COURT: And what did you see when you got to the police station?

[S.O.]: I saw that she had a huge scar on her face – It was almost to her eye – and there was like a lot of blood. And I also saw her at the hospital.

Father also testified about the American Embassy's involvement:

[FATHER'S COUNSEL]: So was there an issue regarding the enforcement of this order, as far as you remember, back in 2017? Was there a problem with that?

[FATHER]: Actually, apart from the notification that the Court gave, yeah, that excludes who's going to bring the children from Nigeria. Ticketing was not taken care of. Who is going to bring them here? And children ready to come by themselves because we cannot force them.

And also, this one excluded – what I was is just told Judge Nicholas that she going to get a way to get the judgment and enforce in Nigeria. Now, she go to the American Embassy.

* * *

THE COURT: You were with her?

[FATHER]: I was not with her. The American Embassy called me from Nigeria. I was in Nigeria at that time to execute this order that the Court gave them.

At this hearing, when Father's counsel questioned the circuit court's subject matter jurisdiction in the 2017 proceeding, the court observed:

If I believe that she took the children on a visit, that the other two siblings – and then he beats her up and takes the kids, you can't say, well, we don't have jurisdiction because the dad kidnapped the kids and took them to [another jurisdiction].

* * *

> Now he comes in and claims that we have no jurisdiction. I don't buy it because there was no agreement for the kids to stay in Nigeria. It was an agreement to visit Nigeria.
>
> I believed that in 2017 and I believe it today in 2019 that this Court has jurisdiction over these two children and that they have been kept in Nigeria against the agreement of at least one of the parents.

* * *

> I saw pictures of Mom's injuries. I saw pictures of Dad's injuries. I believe Mom's story that Dad actually assaulted Mom because I don't believe that a person would come up and just bite you in the hand for no reason. So that's what I believe happened and he took the children.

* * *

> Mom went back. She filed what's called domestic violence orders. What happened is they go in front of the judge. The incident occurred in Nigeria, the U.S. has no jurisdiction over a domestic violence issue that occurred in Nigeria, so that was denied. Mom was trying to get custody of the kids, but there was no – they could never get service on Dad because Dad was in Nigeria.

After hearing testimony from the parties and their two older children, the court ordered Father "to bring back the children within 60 days to the United States."

STANDARD OF REVIEW

"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." *Cabrera v. Mercado*, 230 Md. App. 37, 80 (2016) (citing *Breslin v. Powell*, 421 Md. 226, 277 (2001)); *see Pilkington v. Pilkington*, 230 Md. App. 561, 581 (2016) ("We review *de novo* whether a trial court interpreted a jurisdictional statute correctly.").

DISCUSSION

Contentions[6]

Father contends that, under Maryland's Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), the circuit court "did not have subject matter jurisdiction to enter a custody order and child support order" over children who had not resided in Maryland since sometime in 2015.

Analysis

"Whenever a child custody dispute in Maryland involves another state or another country, the [UCCJEA, Maryland Code (1984, 2019 Repl. Vol.), Family Law ("FL"), § 9.5-101 *et seq.*] is implicated."[7] *Toland v. Futagi*, 425 Md. 365, 370 (2012). Enacted in Maryland on October 1, 2004, the UCCJEA replaced the Uniform Child Custody Jurisdiction Act ("UCCJA"), FL § 9–223 (1984, 1999 Repl. Vol.).[8] The Comment to

[6] Mother has not filed a brief in this case and did not appear for oral argument.

[7] Section 9.5-104 of the Maryland UCCJEA instructs that "[a] court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Subtitles 1 and 2 of this title." FL § 9.5-104(a). Subtitle 1 includes the Maryland UCCJEA's definition of home state. *See* FL § 9.5–101(h). Subtitle 2 includes the Maryland UCCJEA's jurisdictional provisions. *See* FL §§ 9.5–201–9.5–204. "[T]he plain meaning of the UCCJEA makes clear that the term 'state' applies to foreign nations[.]" *Garg v. Garg*, 163 Md. App. 546, 594 (2005), *rev'd on other grounds*, 393 Md. 225 (2006).

[8] The UCCJA was promulgated by the Uniform Laws Commission in 1968 for the purpose of "discourag[ing] interstate kidnapping of children by their non-custodial parents." The National Conference of Commissioners on Uniform State Laws, Uniform Law Commission, http://www.uniform laws.org.

Section 101 of the UCCJEA states that it "should be interpreted according to [UCCJA's] purposes which are to":

> (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.

UCCJEA, 9 Part 1A U.L.A. § 101, cmt. (1999) (emphasis added).[9] *See Cabrera*, 230 Md. App. at 74 ("A chief function of the [Model UCCJEA] is to 'deter abductions of children.'" (quoting Model Act, § 101 cmt., 9 U.L.A. Part 1A, at 657 (1997))).

We have observed that:

> The Prefatory Note to the U.C.C.J.A. notes a growing public concern over the fact that thousands of children are shifted from state to state and from one family to another each year while their parents or other persons battle over their custody in courts of various states. Snatching children has become all too commonplace in our mobile society. Possession of the child has historically given one an enormous tactical advantage.

[9] 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*, 230 Md. App. at 70 ("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)).

Malik v. Malik, 99 Md. App. 521, 530 (1994) (quoting John F. Fader, II & Richard P. Gilbert, Maryland Family Law 167 (1990)); *see also In re Kaela C.*, 394 Md. 432, 453 (2006) (citations omitted) ("The [UCCJA] was promulgated . . . to address . . . the rampant kidnap[p]ing of children by parents looking to relitigate custody determinations in a more favorable forum, a tactic known as 'seize and run.'").

The UCCJEA dictates which state has subject matter jurisdiction over a child custody dispute involving multiple states. FL § 9.5–101 *et seq.*; *see Cabrera*, 230 Md. App. at 73–74. "Jurisdiction or its exercise under both the UCCJA and UCCJEA is a threshold legal issue that the law requires be resolved expeditiously[.]" *Garg v. Garg*, 393 Md. 225 (2006).

Section 9.5-201, which governs a court's jurisdiction to make an initial custody determination, provides:

> (a) Except as otherwise provided in § 9.5-204[10] of this subtitle, a court of this State has jurisdiction to make an initial child custody determination only if:
>
> (1) this State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;
>
> (2) a court of another state does not have jurisdiction under item (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under § 9.5-207 or § 9.5-208 of this subtitle[.]

[10] Section 9.5-204 provides for "temporary emergency jurisdiction" under certain circumstances for a child present in the State who has been abandoned or is "subjected to or threatened with mistreatment or abuse."

FL § 9.5–201(a)(1)–(2).

To determine jurisdiction and the propriety of its exercise under the UCCJEA, a court engages in a three-step process:

> *First*, it must ascertain whether it has jurisdiction.
>
> *Second*, it must determine whether there is a custody proceeding pending or a decree in another state which fits the definition of 'home state.' If so, the court must usually decline its jurisdiction, except in the case of an emergency.
>
> *Third*, assuming the court has jurisdiction and there is not a proceeding pending or a decree, the court must determine whether to exercise its jurisdiction if there is a more convenient forum.

Fader's Family Law §8.5(b) (2019).

The UCCJEA defines home state for minor children over the age of six months, as "the state in which a child lived with a parent . . . for at least 6 consecutive months, including any temporary absence, immediately before the commencement of a child custody proceeding[.]" FL § 9.5–101(h)(1). This provision is similar the UCCJA definition of home state, which:

> was introduced to provide protection for a parent who remains in the home state after the other parent has taken the child away. In enacting [this] provision, the drafters of the act were attempting to mitigate the advantage enjoyed by the party who has physical possession of the child. Jeff Atkinson, Modern Child Custody Practice § 3.12, 192 (1986). The Commissioners' Note to the [UCCJA] § 3 states: "The main objective [of the six month home state window] is to protect a parent who has been left by his spouse taking the child along[.]"

Malik v. Malik, 99 Md. App. 521, 529 (1994). *See In re Adoption No. 10087 in Circuit Court for Montgomery Cty.*, 324 Md. 394, 410–11 (1991) (internal citation omitted) ("The

resolution of cases must not provide incentives for those likely to take the law into their own hands. Thus, those who obtain custody of children unlawfully . . . must be deterred. Society may not reward, except at its peril, the lawless because the passage of time has made correction inexpedient.").[11]

The "6 consecutive months" in the "home state" definition includes "any temporary absence." FL § 9.5–101(h)(1). In *Garba v. Ndiaye*, 227 Md. App. 162, 173–74 (2016), *cert. denied*, 448 Md. 30 (2016), we explained that:

[11] Both *Malik* and *In re Adoption No. 10087* were interpreting the UCCJA, which defined "home state" as:

> the state in which the child, immediately preceding the time involved, lived with the child's parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 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 are counted as part of the 6–month or other period.

Maryland Code (1999), Section 9–201(f) of the Family Law Article (repealed by Acts 2004, c. 502. Section 1, eff. Oct. 1, 2004).

Under Section 9-204(a)(1) of the Maryland UCCJA, a court had jurisdiction to enter a custody determination by "initial decree" or "modification decree" if:

> this State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of the child's removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this State.

Maryland Code (1999), Section 9–204(a)(1) of the Family Law Article.

> courts have developed three tests to determine whether absences are temporary or permanent: duration, intent, and totality of the circumstances. Some courts focus solely on the length of the absence. Other courts consider the intent of the parties, specifically whether parties intended to be away for a limited amount of time and which state they viewed as their place of permanent domicile.

The third test, which this Court adopted in *Drexler v. Bornman*, 217 Md. App. 355, *cert. denied*, 440 Md. 116 (2014),[12] is the more flexible totality of the circumstances approach in which a court:

> examine[s] all the circumstances surrounding [the] absence, an analysis that encompasses these considerations: the duration of the absence and whether the parties intended the absence to be permanent or temporary, as well as 'additional circumstances that may be presented in the multiplicity of factual settings in which child custody jurisdictional issues may arise. We embraced this approach over more rigid tests because it "provides courts with the necessary flexibility" to make child custody jurisdiction determinations, *Drexler*, 217 Md. App. at 363, and to assign the appropriate weight to each factor.

[12] In *Drexler*, we "agree[d] with those state appellate courts that have concluded that the proper way to determine if a child's absence from a state is a 'temporary' one, under the [UCCJEA], is to examine all of the circumstances surrounding that absence." *Id.* at 362. In that case, the child had lived between Maryland and Indiana throughout his life. He lived in Indiana for a year and five months prior to the custody action, which was filed in Maryland by the maternal grandparents. *Id.* at 357, 359. In the six months prior to the filing, the mother and child had spent a week in Maryland, and we were asked to decide if that absence from Indiana was temporary. *Id*. at 357. Testimony indicated that the mother moved from Indiana because the "relationship with her girlfriend had begun to 'deteriorate,'" and that when the mother and child moved to Maryland, she left personal items in Indiana in storage. *Id.* at 358. The grandmother testified that the mother intended to stay in Maryland at the time of her move. *Id.* When the mother reconciled with her girlfriend after her relocation to Maryland, she returned to Indiana with the child. *Id.* at 358–59.

Adopting the totality of the circumstance test, and noting that the mother has taken "no steps to finalize or formalize her intent to stay in Maryland," we held that the child's stay in Maryland was a "temporary absence" from Indiana and, thus, counted as part of the six months for determining the child's "home state" under the UCCJEA. *Id.* at 365.

Id. at 173–74 (cleaned up).

Using a "totality of the circumstances" analysis, and viewing "the purpose of Mother's travels in this case from the objective and undisputed facts before the circuit court," we concluded in *Garba* that the reason for the extended absences of the child from Maryland was more important than the length of those absences and that the child's absences from Maryland were temporary absences. *Id.* at 174. (citation omitted).

We explained:

> Mother owns (and never sold) a house in Maryland, pays taxes in Maryland, and leaves Maryland for work. Mother's postings to Africa are a fundamental feature of her job with the United Nations and are, by design, temporary—she went to each country for a year at a time, each assignment was finite in duration, and Mother has been posted to at least three different countries over the life of this case. Mother's absences from Maryland (incidentally, the state she claimed in this complaint as her domicile) flowed from the structure of her employment, and there is no suggestion in this record that she planned to change careers or not to return to Maryland.

We held that the facts "support[ed] a finding that Mother's and therefore [the child's] absences during the period before filing were temporary, and therefore that Maryland [was] the home state for the purposes of the UCCJEA." *Id.* at 175.

In this case, Maryland[13] was the home state of the two younger children when Mother travelled with them to Nigeria in 2015.[14] The evidence supports the trial court's finding that the trip was intended as a visit or vacation for a short period of time. When

[13] Father originated his divorce and custody action in the Circuit Court for Prince George's County—the county where Mother resided and where Father was residing and working for at least six months prior to and during the 2017 proceedings. And there is no evidence of a custody proceeding pending or a decree in any other jurisdiction.

[14] In *Pilkington v. Pilkington*, 230 Md. App. 561 (2016), cited for support by Father in his brief, the father was a member of the U.S. Army stationed in Germany when he married mother, a German national. They moved from Germany to Colorado, "where they divorced two years later and entered into a court-ordered custody plan" for the couple's child. *Id* at 565. In 2014, mother took the child to Germany for what was supposed to be a one-month vacation, but "then decided unilaterally to stay in Germany" and enroll the child in school there, in violation of the Colorado court's custody order." *Id*. at 565. A year and a half later, mother allowed the child to visit the father who was now living in Maryland. With the child in his physical custody, father filed an emergency custody petition in the Circuit Court for Harford County. *Id.* at 565.

On appeal, mother challenged that circuit court's jurisdiction, arguing that Germany, not Maryland, was the child's "home state" under the UCCJEA "because [the child] lived there for more than six months prior to [father's] commencement of the underlying action and the Maryland UCCJEA treats foreign countries as states for the purposes of the subtitles and define home state and establish jurisdiction." *Id*. at 585. This Court agreed:

> Maryland was not [child's] home state because [the child] was only in Maryland for about three months before his father instituted the underlying action. Because those three months fall far short of the six months that the Maryland UCCJEA requires, [Child's] stay in Maryland for summer vacation did not render Maryland the home state under FL § 9.5–201(a)(1).

Pilkington differs from this case because Maryland never qualified as the child's home state. In other words, Maryland could not establish or expand home state jurisdiction based on a party's wrongful or unlawful behavior even if an existing home state status would not be lost as a result of such behavior. *Id.* at 588–90.

she went to Nigeria, mother, rather than withdrawing the children from their school in Maryland, notified the school that they would return on January 14, 2015.

But when Mother attempted to pick up the minor children to return to Maryland, Father physically attacked and injured her, hid the children and would not disclose their whereabouts. As the circuit court stated, Mother tried, albeit unsuccessfully, to have the children returned from Nigeria.[15] When she returned to Maryland, she sought a domestic violence order that included an award of custody. According to the circuit court:

> What happened is they go in front of the judge. The incident occurred in Nigeria, the U.S. has no jurisdiction over a domestic violence issue that occurred in Nigeria, so that was denied. Mom was trying to get custody of the kids, but . . . they could never get service on Dad because Dad was in Nigeria.

The circuit court concluded that Father had unilaterally retained the minor children without Mother's consent, and had prevented their return to their home in Prince George's County. The circuit court clearly considered and weighed all the circumstances surrounding the children's absence from Maryland, and, as did the Court in *Garba*, concluded that the reason for their absence from Maryland was more important in the temporary absence calculus than the temporal extent of that absence. We agree.

[15] Although it does not impact the jurisdiction determination, we note that "Nigeria is not a signatory to the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention), nor are there any bilateral agreements in force between Nigeria and the United States concerning international parental child abduction." U.S. Dep't of State, Bureau of Consular Affairs (last visited Aug. 18, 2019), https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/International-Parental-Child-Abduction-Country-Information/Nigeria.html.

Cases from our sister courts also support the proposition that wrongdoing by a parent in transporting or detaining a child in another jurisdiction does not necessarily deprive a state of home-state status and that such an absence may be treated as a "temporary absence" under the UCCJEA. For example, *Ogawa v. Ogawa*, 221 P.3d 699 (Nev. 2009) involved an international child custody dispute and divorce action between the father, who resided in Japan with the parties' three children, and the mother, who lived in Nevada. *Id*. at 662. At issue was whether Nevada had home state jurisdiction under the UCCJEA. *Id.* at 662. Mother filed the custody action when the children had been absent from Nevada and living in Japan for eight months. *Id.* The Supreme Court of Nevada held that, "[a]lthough the children had been absent from the state for eight months when respondent filed her custody action, the testimony and evidence supported that the children left Nevada for a three-month vacation, and under the UCCJEA, such temporary absences do not interrupt the six-month pre-complaint residency period necessary to establish home state jurisdiction." *Id.* at 700.

In *Michael McC v. Manuela A*, 48 A.D.3d 91 (2007), the child had lived in New York for nineteen months when the mother's flight to Italy in violation of a court order occurred. The Supreme Court, Appellate Division, First Department of New York stated:

> [A] state is considered to be the child's "home state" pursuant to DRL 75–a(7) [the same definition of "home state" under Maryland's UCCJEA], where the child has been wrongfully removed to another jurisdiction. In such instances, the child's stay outside of New York is considered as nothing more than a period of temporary absence and as part of the six-month period.

In *Duwyenie v. Moran*, 207 P.3d 754 (Ariz. Ct. App. 2009), mother was an enrolled member of a Native-American tribe in Arizona, and father was a member of another Native-American tribe in South Dakota. They had a child in 2004 and lived together in Arizona until 2006. *Id.* at 755. When they separated, they agreed to share custody of the child, "with each having him for a week at a time." *Id.* Father asked to have their son for the first week, and mother agreed. *Id.* During that week, father telephoned mother several times, first telling her he was taking their son for a visit to Phoenix for a day, but the following day, that "they were going to stay for 'a couple of days.'" *Id.* Instead, he took the child to South Dakota, where he commenced custody proceedings in a tribal court.[16] *Id.* That court entered an interim custody order granting father sole custody of the child. *Id.* During a visitation in September 2007, mother returned to Arizona with the child in violation of the trial court's order, where she initiated a custody proceeding. *Id.* at 756. The Arizona trial court found that Arizona was the child's home state and accepted jurisdiction. *Id.* On appeal, father argued that the court had "improperly exercised jurisdiction over this matter" in violation of UCCJEA. *Id.* The Arizona appellate court disagreed and concluded that the trial court properly exercised jurisdiction:

> Although [the child] had not lived in Arizona for six months prior to the current proceedings, Arizona was indisputably his home state at the time [father] commenced custody proceedings with the [South Dakota tribal court]. Initial jurisdiction was therefore vested in the Arizona courts. *See* A.R.S. § 25–1031. We are not persuaded that, under the circumstances of this case, Arizona lost its home-state status through [father's] unauthorized—and arguably criminal—conduct in removing CJ from the state. To find

[16] Tribes are "treated as State[s]" under the UCCJEA. FL § 9.5-103(b) provides that a "court of this State shall treat a tribe as if it were a state of the United States."

> otherwise would defeat one of the core purposes of the UCCJEA, the deterrence of child abductions. *See* Uniform Child Custody Jurisdiction and Enforcement Act § 101, cmt., 9 U.L.A. 657 (1999) (UCCJEA should be interpreted according to purposes of its precursor, the Uniform Child Custody Jurisdiction Act (UCCJA), including deterring abductions of children); *Both v. Superior Court*, 121 Ariz. 381, 384, 590 P.2d 920, 923 (1979) (allowing new state to which child wrongfully taken automatically to take jurisdiction defeats purpose of UCCJA to "deter the practice ... of taking the child and fleeing to another jurisdiction")[.]

Id. at 756–57.

In *Curtis v. Curtis*, 574 So.2d 24 (Miss. 1990), which was decided under the UCCJA, the couple, living in Utah, divorced and the mother was awarded custody of the four youngest children. *Id.* at 25. Father sought and received mother's permission for visitation with the children over the President's Day weekend, during which he relocated to Mississippi. *Id.* at 25–26. There, the father filed a complaint in a Mississippi chancery court, seeking modification of the Utah custody decree and a protective order based on a claim of child abuse on the part of the mother. *Id.* at 26. The trial court granted the father the temporary custody of the children, and mother responded by attacking jurisdiction of the Mississippi courts under the UCCJA. *Id.* at 26–27. The Mississippi Supreme Court rejected the father's argument that "because the children have lived in Mississippi for an excess of six consecutive months, Mississippi had become their 'home state,'" because it:

> overlooks the reason why the children were in Mississippi in the first place. They were here because [the father] brought them here in rather clear contravention of the perfectly valid Utah custody decree, and they remained here by virtue of the Chancery Court's custody and protective order.

Id. at 29–30. The court held "[w]ithout hesitation," that "such court ordered involuntary residence does not generate so much as a single tick of the UCCJA's six consecutive months clock." *Id.* at 30.

In short, the totality of the circumstances of this case persuades us that Father's wrongful retention of the minor children in December of 2015 did not deprive Maryland of home state jurisdiction. To borrow from *Duwyenie*, to hold otherwise "would defeat one of the core purposes of the UCCJEA, the deterrence of child abductions." 207 P.3d at 756.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.