IN THE SUPREME COURT OF GUAM

BRIAN KOJI,
Plaintiff-Appellee,

v.

HERLYN NEVES,
Defendant-Appellant.

Supreme Court Case No.: CVA15-017
Superior Court Case No.: DM0717-11

OPINION

Cite as: 2016 Guam 36

Appeal from the Superior Court of Guam
Argued and submitted on May 23, 2016
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, J.:

[1] Defendant-Appellant Herlyn Neves appeals from the trial court's June 25, 2015 Order Regarding Child Custody ("June 2015 Order"), which modified a previous custodial agreement by awarding Plaintiff-Appellee Brian Koji with primary physical custody of the parties' minor child, S.K. Neves argues that the trial court did not base its June 2015 Order on substantial evidence, did not consider the best interest of the child under 19 GCA § 8404, and did not review whether Guam was an "inconvenient forum under the circumstances" pursuant to 7 GCA § 39207. Koji argues the trial court's June 2015 Order was based on substantial evidence, some of which was submitted during previous hearings in anticipation of previous orders, and that the court adequately considered whether Guam was an inconvenient forum and declined to make such a finding.

[2] For the reasons detailed herein, we reverse the trial court's decision to modify the physical custody term of the settlement agreement, vacate the June 2015 Order, and remand for proceedings not inconsistent with this Opinion. We also hold that the trial court's failure to address the inconvenient forum issue raised by Neves under 7 GCA § 39207 was an abuse of discretion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Koji and Neves had a child together, S.K., who was born in Hawaii on November 28, 2006. Koji was stationed in Alaska in 2008 in the course of his employment with the United States Coast Guard. Neves remained in Hawaii with S.K. until 2009. At that point, all three

relocated to Guam together. The relationship between Koji and Neves came to an end in late 2011. Shortly thereafter, Koji filed a Verified Complaint for Custody of S.K. Koji and Neves reached a settlement agreement (the "Agreement") in which the parties agreed to joint legal and physical custody of S.K. The trial court entered judgment, which incorporated the Agreement. In July 2013, Koji moved to modify the Agreement, seeking to become the "primary custodial parent, with visitation provided to [Neves]." Record on Appeal ("RA"), tab 40 at 2 (Def.'s Mot. Modify Child Custody, July 5, 2013).[1]

[4] After receiving Koji's 2013 Motion to Modify Child Custody, the trial court held two hearings on the matter. At the first hearing, in January 2014 (the "January 2014 Hearing"), the trial court heard sworn testimony from both parties and a friend of Koji, Brian Mafnas. Koji testified that despite hundreds of phone calls, he was seldom permitted to speak with his son, his visitation was limited on a trip to San Diego, Neves withheld her son's military I.D. card when S.K. traveled to Guam, and Neves told S.K. numerous inappropriate things. For example, Koji testified that Neves told S.K. he "would not be safe [on Guam] because North Korea was going to bomb Guam," that Koji's other children are "ugly," that the other children's mother is a "whore," and that Koji himself is "gay." Transcript ("Tr.") at 39, 41-42, 50 (Hr'g Mot. Modify Child Custody, Jan. 28, 2014). Neves testified that she did not have access to the Internet in her home, that she did not own an Apple product capable of communicating via FaceTime, and that her phone was not capable of Facebook, Skype, or other internet communication functionality.

[5] Koji admitted four exhibits, including text and e-mail messages from Neves. These text messages showed, among other things, that Neves admitted to telling S.K. that Guam was not

[1] This document seems to be mistitled. Koji, the Plaintiff, brought the motion. Nevertheless, the document is titled as "Defendant's Motion." This was perhaps a typographical error by the Plaintiff when drafting his motion.

safe because North Korea was going to bomb the island. An e-mail showed that Neves communicated to Koji that she told S.K. that Koji's other children are not S.K.'s siblings and he "will never see them as a part of his family." *Id.* at 40-42.

[6] At the second hearing, in March 2014 (the "March 2014 Hearing"), both parties again testified. Koji testified that his tour of employment in the Coast Guard would be ending in the summer of 2015 and that he intended to transfer "as close[] to [S.K.] as possible." *Id.* at 58. Koji also admitted evidence of Facebook posts made on Neves's account using an Apple device that showed that Neves had access to such a device and the ability to connect to the Internet. At the conclusion of the March 2014 hearing, the court warned Neves to follow the Agreement and allow Koji and S.K. to communicate through Skype or FaceTime. The court admonished Neves to stop her negative behavior but concluded that the evidence did not support a substantial change in circumstances.

[7] After hearing the parties' evidence, the court issued its Order (the "May 2014 Order"), modifying the Agreement by imposing a number of terms on both parties. The May 2014 Order required, among other things, the parties to agree on a fixed schedule for internet communication between Koji and S.K.; not to interfere with the agreed communication schedule; to conduct themselves responsibly and not to alienate S.K.'s affection toward the other parent; to use their best efforts to foster a loving relationship with each parent; and not to obstruct the other parent's right of companionship with the minor children or disparage the other parent in front of the minor children. Importantly, however, the May 2014 Order did not modify the physical custody term of the Agreement, leaving such custody with Neves.

[8] In 2015, Koji filed a Renewed Motion to Modify Child Custody, based on the argument that Neves, against the best interests of S.K., violated the Agreement and the trial court's May 2014 Order:

> Despite [the trial c]ourt's May 2014 Order, [Neves] continuously and repeatedly has interfered with the communications between father and child. She has refused to adhere to the Skype schedule. She has interrupted conversations on numerous occasions. She has monitored Skype and phone conversations to the point of feeding [S.K.] answers or refusing to keep the conversation going long enough for [Koji] to tell his son that he loves him and say goodbye properly.
>
> [Neves] continues to disparage [Koji] right in front of their child. [Neves] has even encouraged disrespectful behavior in [S.K.] as to his father and siblings. . . .
>
> [Neves] has taken the child out of United States territory without any consent or even notification to his father. Moreover, the child has expressed a strong desire to simply remain in [Koji's] primary custody and care.
>
> For all the foregoing reasons, . . . [Koji] respectfully requests [the trial court to] modify child custody and award [Koji] sole primary physical or residential custody of the child . . . .

RA, tab 69 at 4-5 (Pl.'s Renewed Mot. Modify Child Custody, Mar. 11, 2015).

[9] The trial court held a hearing on the matter (the "April 2015 Hearing"). The hearing consisted primarily of the court's inquiry into the changed circumstances of Koji moving to California from Guam:

> THE COURT: [L]et me ask first, Mr. Koji, how long are you going to be in Los Angeles?
>
> MR. KOJI: I will be there, approximately, four to five years.
>
> . . . .
>
> THE COURT: . . . . And this will take place when?
>
> MR. KOJI: I will depart Guam on July 4th.
>
> . . . .

> THE COURT: And you're going to be staying where?
>
> MR. KOJI: Right now I'm looking at the San Pedro area, so, as before I get out there, I'll be looking for apartments to . . . to move into.
>
> . . . .
>
> THE COURT: What's your report date, Mr. Koji?
>
> MR. KOJI: My report date is on the 6th, which is Monday.
>
> THE COURT: Of July?
>
> MR. KOJI: Yes. And then I go on – I report to Support . . . and then I go on, I believe, it's a week or so of leave that will allow me to . . . to find a place to live and to sign the lease. I will be picking up [S.K.] on . . . July 5th . . . . I'll be picking him up in San Diego, as per the current custody agreement, because I have summertime visitation.

Tr. at 3-6 (Hr'g Renewed Mot. Modify Child Custody, Apr. 27, 2015). After its questions, the trial court arrived at its decision, stating that it considered the renewed motion pleadings and opposition as well as the changed circumstances of Koji's move to California:

> The [c]ourt is directed by 19 GCA [§ 8404], in total, and as I've said I have thoroughly reviewed all the pleadings in the renewed motion, the opposition that replied there are two, and the Court does find it's in the best interest – First of all the Court has found that circumstances have changed such that there is an impending permanent move being made by Mr. Koji . . . . [H]e is moving to the Los Angeles, California area, he'll be there for four to five years, approximately. . . .
>
> The Court finds this in the best interest of the child to grant the motion and award primary physical custody to Mr. Koji, and with visitation to Ms. Neves . . . .

Id. at 7.

[10] Following the hearing, the trial court issued the June 2015 Order, stating:

> After reviewing the evidence presented, the declarations, and exhibits filed with the court; relying on 19 GCA § 8404 [sic] the court found a change in circumstances based on [Koji] moving to California; and, that it was in the best interest of the child to modify custody; it is hereby ordered:

> 1. The parties continue to have joint legal custody of the child. [Koji] is to have primary physical custody and [Neves] have reasonable visitation.

RA, tab 87 at 1 (Order Re: Child Custody, June 25, 2015). Neves timely appealed the trial court's order.

II. JURISDICTION

[11] An order determining child custody is considered a "final order." *See* 7 GCA § 39314 (2005) ("An appeal may be taken from a final order in a proceeding under this Article . . . ."). Therefore, "'[t]his court has jurisdiction over appeals from child custody orders' pursuant to Title 7 GCA § 3107(b)." *Howerton v. Howerton*, 2004 Guam 8 ¶ 5 (quoting *Lanser v. Lanser*, 2003 Guam 14 ¶ 8); *see also* 7 GCA § 3107(b) (2005) ("The Supreme Court shall have jurisdiction of all appeals arising from . . . final orders of the Superior Court in . . . civil cases and proceedings."); 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-254 (2016)).

III. STANDARD OF REVIEW

[12] This court summarized our standard of review for issues related to child custody orders in *Howerton*:

> We review child custody orders for an abuse of discretion, keeping in mind the best interests of the child. Under this standard, we do not substitute our own judgment for that of the trial court; instead, we determine "whether substantial evidence supports the trial court's decision." "Substantial evidence is relevant evidence that a reasonable person may accept as sufficient to support a conclusion, even if inconsistent conclusions may be drawn from the evidence."

2004 Guam 8 ¶ 6 (internal citations omitted) (quoting *Lanser v. Lanser*, 2003 Guam 14 ¶¶ 15, 18).

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IV. ANALYSIS

A. The Trial Court's June 2015 Custody Modification was not Based on Substantial Evidence

[13] Neves first argues on appeal that the June 2015 Order should be vacated because the trial court did not base the order on substantial evidence. Appellant's Am. Br. at 10 (Nov. 19, 2015). She contends that the court's ruling was improperly based on the singular fact that Koji planned to move to California and that the trial court did not consider the best interest of the child under 19 GCA § 8404. *See id.* at 16.

[14] Koji argues the trial court's June 2015 Order was based on substantial evidence. *See* Appellee's Br. at 11-13 (Nov. 25, 2015). He posits the court was able to consider declarations filed by both parties and "was not required to hold another trial-like motion hearing as it did in 2014." *Id.* at 11. He also argues the court explicitly considered section 8404 in reaching its decision. *Id.* at 13.

[15] When sitting as an arbiter of the facts and proceeding without a jury, the trial court is required to make explicit factual findings. Guam R. Civ. P. 52(a). Rule 52(a) states the following:

> In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon . . . . Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

Id. "Findings of fact are made on the basis of evidentiary hearings and usually involve credibility determinations, which is why they are reviewed deferentially under the clearly erroneous standard." *Fargo Pac., Inc. v. Korando Corp.*, 2006 Guam 22 ¶ 25 (citing *Rand v. Rowland*, 154 F.3d 952, 957 n.4 (9th Cir. 1998)).

[16] The trial court did not enter written findings of fact at any stage of the litigation. At the close of the April 2015 Hearing, the court stated that Koji's relocation to California constituted changed circumstances and that, given these circumstances, modifying the Agreement to award primary physical custody to Koji was in the best interest of S.K. RA, tab 81 at 7 (Tr. Hr'g Mot. Modify Child Custody, Apr. 27, 2015). This statement contained both the factual finding that Koji planned to move to California as well as the legal conclusion that a custody modification was necessary for the best interest of S.K.

[17] Both parties submitted sworn declarations in anticipation of the June 2015 Order. *See* RA, tab 66 (Decl. Brian Koji, Mar. 11, 2015); RA, tab 74 at 2-21 (Decl. Jeffrey A. Cook Re: Filing of Electronic Signature (Decl. Herlyn Neves), Apr. 8, 2015). Koji declared that he had arranged to relocate to California, and that Neves was acting against S.K.'s best interest by violating the Agreement in a number of ways, such as disparaging Koji in front of S.K., interfering in phone conversations between Koji and S.K., taking S.K. on a vacation without notifying Koji, and denying requests by Koji to have S.K. for overnight stays. *See* RA, tab 66 ¶¶ 6, 10-23 (Decl. Brian Koji). In her declaration, Neves refuted Koji's assertions with detailed assertions of her own in support of her position that no changed circumstances had occurred to warrant a change in custody. RA, tab 74 ¶¶ 11-23 (Decl. Jeffrey A. Cook Re: Filing of Electronic Signature (Decl. Herlyn Neves)).

[18] These declarations presented the trial court with contradictory factual assertions. The court, however, failed to address these competing assertions and cited only Koji's representation that he was relocating to California as the basis for its best interest determination. RA, tab 81 at 7 (Tr. Hr'g Mot. Modify Child Custody, Apr. 27, 2015). When looking to the record on appeal

for substantial evidence that would support the June 2015 Order, we do not engage in fact-finding, judge the credibility of witnesses, or reweigh the evidence. *See* Guam R. Civ. P. 52(a) ("[D]ue regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."); *Howerton*, 2004 Guam 8 ¶ 6 ("[W]e do not substitute our own judgment for that of the trial court; instead, we determine whether substantial evidence supports the trial court's decision." (internal quotation marks omitted)). Accordingly, we will not consider the remaining representations of either party as support for this legal conclusion because to do so would require this court to attempt to estimate what evidence the trial court found credible or persuasive. If the trial court gives weight to additional evidence when making a determination, it has a duty to make findings of fact based on that evidence and expressly state those findings upon which its decision relies. Guam R. Civ. P. 52(a).

[19] Koji also argues the trial court was not required to hold "another trial-like motion hearing as it did in 2014" because evidence was "already put forth to the Court in the determination of the July 5, 2013 Motion." *See* Appellee's Br. at 11-12. This argument invites us to consider evidence submitted during and prior to the January 2014 and March 2014 Hearings.

[20] At the close of the March 2014 Hearing, the court found that no substantial change in circumstances had occurred that would justify modifying the Agreement. Tr. at 96 (Hr'g Mot. Modify Child Custody, Mar. 26, 2014) ("I'm giving you a chance at this point in finding that what's happened so far is not a substantial change in circumstances."). This finding was, in effect, a legal conclusion based on the evidence before the trial court. However, the court did not expressly state findings of fact.

[21] Under the doctrine of implied findings, when the trial court does not issue findings of fact, we must imply findings necessary to support the judgment. *See, e.g.*, *Queen v. RBG USA, Inc.*, 495 S.W.3d 316, 321 (Tex. App. 2016) (citing *Black v. Dallas Cnty. Child Welfare Unit*, 835 S.W.2d 626, 630 n.10 (Tex. 1992)); *Fladeboe v. Am. Isuzu Motors Inc.*, 58 Cal. Rptr. 3d 225, 237 (Ct. App. 2007), *as modified* (Apr. 24, 2007) (citing *Sammis v. Stafford*, 56 Cal. Rptr. 2d 589, 593 (Ct. App. 1996)). "[U]nless the trial court makes specific findings of fact in favor of the losing plaintiff, we presume the trial court found plaintiff's evidence lacks sufficient weight and credibility to carry the burden of proof." *Bookout v. State ex rel. Dep't of Transp.*, 113 Cal. Rptr. 3d 356, 362 (Ct. App. 2010), *as modified* (July 28, 2010) (citing *Rodney F. v. Karen M.*, 71 Cal. Rptr. 2d 399, 404 (Ct. App. 1998); *Kunzler v. Karde*, 167 Cal. Rptr. 425, 427 (Ct. App. 1980)).

[22] While evidence was presented at the January 2014 and March 2014 Hearings that support the conclusion that Neves violated the terms of the Agreement, contradictory evidence was also presented that supports the conclusion that Neves did not violate the terms of the Agreement. *See generally* Tr. (Hr'g Mot. Modify Child Custody, Jan. 28, 2014) (including testimony refuting Koji's accusations); Tr. (Hr'g Mot. Modify Child Custody, Mar. 26, 2014) (including testimony refuting Koji's accusations). The trial court did not make express findings of fact that would suggest that it found Koji's evidence sufficiently persuasive or credible to modify physical custody in his favor. In fact, the court concluded at the March 2014 Hearing that Neves's actions until that point did not constitute a "substantial change in circumstances" that would necessitate custody modification. Tr. at 91-96 (Hr'g Mot. Modify Child Custody, Mar. 26, 2014). Further, the court's May 2014 Order ruled in favor of Neves on the issue of modification of physical

custody. RA, tab 64 (Order After Hr'g, May 8, 2014). Without specific findings to indicate otherwise, we must presume the trial court found Koji's evidence lacked sufficient weight and credibility to carry his burden of proof to modify custody. *See Bookout*, 113 Cal. Rptr. 3d at 362. Because the trial court did not expressly state findings with regard to the physical custody of S.K. when issuing its May 2014 Order, we must determine those findings that would have been necessary and sufficient to support the decision and attribute said findings to the trial court.

[23] The court ruled in favor of Neves on the issue of physical custody in the May 2014 Order. RA, tab 64 (Order After Hr'g). For that reason, we imply a finding that Neves was not in violation of the Agreement prior to that Order. We also imply a finding that her custody of S.K. was in the child's best interest at that time. We will not imply findings in favor of Koji's evidence. If the trial court was persuaded by contrary facts, it had a duty to make such findings orally or in writing. Guam R. Civ. P. 52(a). Giving consideration to the implied findings, we must interpret the evidence presented at the January 2014 and March 2014 Hearings in favor of Neves. *See Bookout*, 113 Cal. Rptr. 3d at 362 (citation omitted).

[24] We note that the trial court admonished Neves during the March 2014 hearing, warning her that it was prepared to return to the issue of whether she had adhered to the terms of the Agreement at a future date:

> So, Ms. Neves, I want to give you a clear warning that you need to follow the agreement; all right? And that means you're going to allow for Skype or FaceTime access. . . .
>
> I just sense that there's a lot of anger or resentment that you may have for Mr. Koji, for whatever reason, and that has to stop, in terms of how it's going to affect his ability to communicate with your son. Okay?
>
> . . . .

> I'm not taking your son away from you, but you need to follow this agreement, because if we come back again – because I'm hearing the same spiel, then the court would have no recourse but then to go ahead and find that there's a substantial change in circumstances that would warrant a change in custody, because that's the only way that I can enforce your ability to follow this agreement, which is already in the best interest of your child.
>
> . . . .
>
> Ms. Neves, this is – it's got to end here, all right? . . .
>
> . . . .
>
> . . . You've got to squash it . . . . I'm giving you a chance at this point in finding that what's happened so far is not a substantial change in circumstances. . . .
>
> So, I don't want to come back in a few months and hear that you're still frustrating communication.

Tr. at 91-96 (Hr'g Mot. Modify Child Custody, Mar. 26, 2014). Despite this admonishment, the trial court failed to make specific factual findings in favor of Koji on the issue of custody modification.

[25] Title 19 GCA § 8404 states in pertinent part:

> (1) In actions for . . . any . . . proceeding where there is at issue a dispute as to the custody of a minor child, the court may, during the minority of the child, make such order for the custody of such minor child as may seem necessary or proper. In awarding the custody, the court is to be guided by the following standards, considerations and procedures:
>
> > (a) Custody should be awarded to either parent according to the best interest of the child.
> >
> > . . . .
> >
> > (f) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify such modification or change, and whenever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award.

19 GCA § 8404(1)(a), (f) (2005).

[26] The trial court acknowledged its duty to adhere to 19 GCA § 8404 and made a finding regarding the best interest of S.K. at the conclusion of the April 2015 hearing. RA, tab 81 at 7 (Tr. Hr'g Mot. Modify Child Custody, Apr. 27, 2015) ("First of all the Court has found that circumstances have changed such that there is an impending permanent move . . . this is in the best interest of the child to grant the motion . . . ."). Neves's counsel sought clarification on the court's findings at the hearing:

> COUNSEL: Your Honor, just so we're clear. . . . The finding of the Court have [sic] changed circumstances is the fact that Mr. Koji is moving to California?
>
> THE COURT: Correct.
>
> COUNSEL: That's it?
>
> THE COURT: Uh-hum.
>
> COUNSEL: Okay[.]

Id. at 10. The court reiterated its ruling in the June 2015 Order:

> After reviewing the evidence presented, the declarations, and exhibits filed with the court; relying on [19 GCA § 8404] the court found a change in circumstances based on [Koji] moving to California; and, that it was in the best interest of the child to modify custody . . . .

RA, tab 87 at 1 (Order Re: Child Custody).

[27] We must now determine whether the court's best interest determination—that the changed circumstance of Koji's relocation necessitated a physical custody modification—was supported by substantial evidence. *See Howerton*, 2004 Guam 8 ¶ 6. As discussed above, we decline Koji's request to give weight to the evidence he presented at the January 2014 and March 2014 Hearings.

[28] The trial court declared in its June 2015 Order that its best interest determination was based on "the evidence presented, the declarations, and exhibits filed . . . ." RA, tab 87 at 1 (Order Re: Child Custody). However, the court did not make express factual findings based on any evidence beyond the 2015 testimony regarding Koji's relocation. Therefore, we are asked to determine whether Koji's relocation to California was substantial evidence that a reasonable person may accept as sufficient to support the conclusion that it was in the best interest of S.K. to modify custody. *See Howerton*, 2004 Guam 8 ¶ 6 (citing *Lanser*, 2003 Guam 14 ¶¶ 15, 18). This question must be considered in light of the implied findings discussed above. When we consider that Koji's evidence lacked sufficient weight and credibility to carry his burden of proof to modify custody in 2014, we are not convinced that his relocation significantly rebalanced the weight of the evidence in his favor in 2015.

[29] We acknowledge Koji's argument that the trial court was "not required to hold another trial-like motion hearing as it did in 2014." Appellee's Br. at 11. This argument has some merit to the extent that the trial court need not rehear the body of evidence presented at previous hearings in order to consider that evidence in a later order. However, as cited above, when a trial court is persuaded by certain evidence admitted by a losing plaintiff, it has a duty to make factual findings that reflect this view. If it does not make contrary findings, we will not make those findings in its stead. Without express findings, this court must imply findings necessary to support the trial court's ruling. In this case, even though the trial court admonished Neves, it ruled in her favor on the issue of modification of physical custody. The court did not find facts that would provide substantial evidence to support its subsequent modification. When we add

the fact of Koji's relocation, we are not convinced that it substantially supports the trial court's June 2015 decision to modify custody.

[30] We find that the evidence before the trial court at the time of the June 2015 Order was not substantial evidence that a reasonable person might accept as sufficient to support the conclusion that a physical custody modification was necessary. The court's decision to modify physical custody based solely on the fact that Koji intended to move to California with no additional findings of fact was an abuse of discretion.

B. The Trial Court was Required to Perform an Inconvenient Forum Analysis under 7 GCA § 39207 Because the Issue was Raised

[31] Neves argues the trial court committed reversible error in failing to review whether or not Guam was an inconvenient forum pursuant to 7 GCA § 39207. Appellant's Am. Br. at 22-25. Koji argues the trial court did, in fact, consider whether Guam was an inconvenient forum and simply declined to make such a finding. Appellee's Br. at 15-16.

[32] Guam, like nearly all United States jurisdictions, has adopted the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). *See* 7 GCA §§ 39101-403; Ann K. Wooster, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction Provision*, 57 A.L.R.6th 163, 163 (2010) ("All 50 states as well as the District of Columbia and U.S. Virgin Islands have adopted or introduced legislation to adopt the 1997 Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) . . . ."). This legislation "attempts to foster uniformity among state laws governing jurisdiction over child custody determinations." Wooster, 57 A.L.R. 6th at 163.

[33] The parties do not dispute that Guam had initial home state jurisdiction under 7 GCA § 39201(a) and exclusive, continuing jurisdiction under 7 GCA § 39202(a)[2] The trial court seemed to anticipate that it would lose this jurisdiction after Koji left Guam, but nonetheless impliedly accepted jurisdiction to issue the June 2015 Order modifying custody. In the June 2015 Order, it stated as the final term of the modified Agreement: "Parties agree that the State of California will take over jurisdiction over all matters pertaining to [S.K.] pursuant to the provisions in the UCCJEA." RA, tab 87 at 7 (Order Re: Child Custody). This statement had no effect on the court's then-valid jurisdiction over the controversy but merely reflected an agreement between the parties to raise future conflicts before the courts of California. The statement impliedly accepted that Guam is the appropriate forum for the dispute at issue, having jurisdiction at the time of the issuance of the order, because if the trial court did not have such exclusive, continuing jurisdiction, it would not have had authority to issue the order itself.

[34] Title 7 GCA § 39207(a) states that the trial court "*may* decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum." 7 GCA § 39207(a) (2005) (emphasis added). The issue "may be raised upon motion of a party, the court's own motion, or request of another court." *Id.*

[35] "The word 'may,' when used in a statute, usually implies some degree of discretion." *United States v. Rogers*, 461 U.S. 677, 706 (1983); *see also Isle Royale Boaters Ass'n v. Norton*,

[2] It is undisputed that at least one parent lived on Guam throughout the custody proceedings leading to the June 2015 Order. At the time of entry of the Order, Koji was a Guam resident. Tr. at 5-6 (Hr'g Renewed Mot. Modify Child Custody, Apr. 27, 2015). By living and working on Guam, Koji maintained a significant connection. Koji testified during the April 2015 Hearing that he planned to move to California on July 4, 2015. *Id.* The Order was issued on June 25, 2015.

330 F.3d 777, 783 n.1 (6th Cir. 2003); *Sananap v. Cyfred, Ltd.*, 2011 Guam 22 ¶ 9. However, while use of the word "may" usually implies permissive discretion, "that commonsense principle of statutory construction is by no means invariable . . . and can be defeated by indications of legislative intent to the contrary." *Rogers*, 461 U.S. at 706 (citations omitted).

[36] Neves raised the issue of Guam as a potentially inconvenient forum by requesting that the court perform an inconvenient forum analysis under 7 GCA § 39207. RA, tab 75 at 2 (Def.'s Opp'n Renewed Mot. Modify Child Custody, Apr. 8, 2015). The trial court did not analyze and decide the inconvenient forum issue during its April 2015 Hearing, *see* Tr. 1-12 (Hr'g Mot. Modify Child Custody, Apr. 27, 2015), or within its June 2015 Order, RA, tab 87 at 1-7 (Order Re: Child Custody, June 25, 2015). Therefore, we are asked to determine whether the trial court abused its discretion by declining to expressly undertake an inconvenient forum analysis under 7 GCA § 39207 when the issue was raised by a party.

[37] The first sentence of 7 GCA § 39207(a) states that the trial court "*may decline to exercise its jurisdiction at any time* if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum." 7 GCA § 39207(a) (emphasis added). The second sentence of 7 GCA § 39207(a) indicates legislative intent to limit the permissive discretion of the trial court by providing that "[t]he issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court." *Id.*

[38] A permissive reading of the first sentence, without consideration of the second, would suggest that the trial court has unchecked discretion to deny or ignore a party or another jurisdiction's request to undertake an inconvenient forum analysis. It is not obvious why the

legislature would choose to include the second sentence, specifying that an issue may be raised by various methods, if only to grant unfettered discretion to disregard it.

[39] Nevertheless, the Supreme Court of Appeals of West Virginia, when interpreting an identical West Virginia statute based on the UCCJEA, held that the statute "gives the court possessing jurisdiction *permissive discretion* to determine whether or not it wishes to decline to exercise jurisdiction if it determines that it is an inconvenient forum under the circumstances and the court of another state is a more appropriate forum." *Rosen v. Rosen*, 664 S.E.2d 743, 750 (W. Va. 2008). The court went further to emphasize that "[b]ecause West Virginia is the home state in this action, the family court was under no obligation to even consider whether [the other state at issue] was a more appropriate forum." *Id.* at 750. In *Rosen*, as here, the issue of the home state jurisdiction as an inconvenient forum was raised during trial court proceedings. *See id.* at 746. The West Virginia case, however, is distinguishable to the extent that the court did exercise its discretion and after performing the analysis, determined that West Virginia was a convenient forum. *Id.* at 750. Here, the court failed to address the issue altogether.

[40] Unlike West Virginia's interpretation of their statute, we give meaning to the second sentence of 7 GCA § 39207(a). We agree that our statute grants the trial court permissible discretion to consider whether another state is a more convenient forum. However, we hold that the trial court may not disregard a party's specific request to perform an inconvenient forum analysis pursuant to the statute. Once the issue has been raised,[3] the trial court must perform the 7 GCA § 39207 analysis.

[3] As stated by the terms of the statute, "[t]he issue of inconvenient forum may be raised upon motion of a party . . . or request of another court." 7 GCA § 39207(a).

[41] In performing this analysis, the trial court must first determine whether another court has a valid basis for assertion of jurisdiction. 7 GCA § 39207(b) ("[T]he Superior Court of Guam shall consider whether it is appropriate for a court of another State to exercise jurisdiction."). In making this determination, the court "shall consider all relevant factors, including" the following:

> (1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;
>
> (2) the length of time the child has resided outside Guam;
>
> (3) the distance between the court in Guam and the court in the State that would assume jurisdiction;
>
> (4) the relative financial circumstances of the parties;
>
> (5) any agreement of the parties as to which State should assume jurisdiction;
>
> (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
>
> (7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and
>
> (8) the familiarity of the court of each State with the facts and issues in the pending litigation.

7 GCA § 39207(b). Once the court determines that another court may properly exercise jurisdiction, it must then determine whether Guam is an inconvenient forum. *See* 7 GCA § 39207(c). If Guam is determined to be an inconvenient forum, the court must "stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper." *Id.*

[42] Here, the trial court failed to address the inconvenient forum issue altogether. Its failure to perform the analysis provided by statute, when requested by Neves, was an abuse of discretion.

V. CONCLUSION

[43] We hold the trial court's modification of physical custody was not supported by substantial evidence and therefore resulted in an abuse of discretion. We also hold the terms of 7 GCA § 39207 require performance of an inconvenient forum analysis when the issue is raised at trial. Therefore, the court abused its discretion by disregarding the issue. Accordingly, we **REVERSE** the trial court's decision to modify the Agreement, **VACATE** the June 2015 Order, and **REMAND** for further proceedings not inconsistent with this Opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice