For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

CHRISTOPHER GAYANICH, Appellant/Plaintiff, v. **BRITTLEY DAWN GAYANICH,** Appellee/Defendant.	)	**S. Ct. Civ. No. 2017-0065** Re: Super. Ct. DI. No. 103/2016 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Denise A. Hinds Roach

Argued: March 13, 2018
Filed: July 18, 2018

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

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OPINION OF THE COURT

HODGE, Chief Justice.

Christopher Gayanich appeals from the Superior Court's grant of Brittley Dawn Gayanich's motion to dismiss his divorce and child custody actions for *forum non conveniens*. For the reasons that follow, we find no error in the Superior Court's holding that the Virgin Islands is an inconvenient forum to hear the child custody portion of the case under the Uniform

Child Custody Jurisdiction and Enforcement Act (hereinafter "UCCJEA"). However, we reverse the Superior Court's *sua sponte* dismissal of the action in its entirety, and remand for findings on whether the Virgin Islands is the proper forum to hear the divorce portion of the case under the general inconvenient forum statute, 5 V.I.C. § 4905.

I. BACKGROUND

This case arises from Christopher Gayanich's action, filed in the Virgin Islands on September 20, 2016, for divorce from Brittley Dawn Gayanich, equitable distribution of the marital estate, and sole physical and legal custody of the parties' two young children. On October 2, 2016, Mrs. Gayanich filed a petition for dissolution of marriage with the District Court of Carter County, Oklahoma, which has been stayed pending the outcome of this proceeding. Further, on October 28, 2016, Mrs. Gayanich filed a motion with the Superior Court of the Virgin Islands to dismiss the action for lack of jurisdiction and *forum non conveniens*, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, codified in the Virgin Islands as 16 V.I.C. § 133. On April 4-5, 2017, the Superior Court held a jurisdictional hearing to determine (1) whether the Virgin Islands was the home state of the parties' children, giving the Superior Court jurisdiction to hear the proceeding, and (2) whether the Virgin Islands is an inconvenient forum and should accordingly decline jurisdiction. Testimony from the hearing, along with various affidavits and exhibits, produced the following evidence.

Mr. and Mrs. Gayanich were married in Oklahoma on June 1, 2013. In 2014 and 2015, the couple welcomed two children who, like their parents, were born in Oklahoma. On January 28, 2016, the family moved to St. Croix so that Mr. Gayanich could manage the Chenay Bay Resort, in which his grandparents held a 45% interest. Once in March and again in August, the children traveled back to Oklahoma with Mrs. Gayanich for a total of approximately five weeks.

In September, 2016, the children flew back to St. Croix with Mr. Gayanich's grandmother, while Mrs. Gayanich remained, and continues to remain, in Oklahoma. Evidence demonstrated that Mrs. Gayanich agreed to let the children return to St. Croix with the understanding that they would fly back to Oklahoma a week later so that the youngest child could undergo dental surgery. The children were never returned to Oklahoma, however, and currently reside with Mr. Gayanich in St. Croix.

Much of the jurisdictional hearing concerned the parties' conflicting positions on whether their travel to St. Croix was merely a temporary absence from Oklahoma, or a permanent move to the Virgin Islands. The Superior Court determined that the parties intended to move to St. Croix from Oklahoma and that, although the children were temporarily absent from St. Croix on two occasions, they had spent the previous six months in St. Croix, thus making the Virgin Islands their "home state" within the meaning of the UCCJEA. Therefore, the Superior Court determined that it had jurisdiction.

Further hearing testimony and affidavits pertained to location of evidence and witnesses. Specifically, Mrs. Gayanich demonstrated that evidence of parenting was based in Oklahoma, including the children's doctor, dentist, and medical records since birth, and potential witnesses regarding childcare. Mrs. Gayanich and her three witnesses traveled to St. Croix for the hearing. Of Mr. Gayanich's ten witnesses, all but himself and his grandparents also traveled to St. Croix for the hearing.

Both parties introduced evidence of their relative financial circumstances. Mrs. Gayanich testified that she is a part-time cosmetologist licensed in Oklahoma and also does embroidery work part-time. Mrs. Gayanich's mother testified that her daughter recently became a tutor working full school hours, although she has primarily been a stay-at-home mom for most of the

children's life. Testimony from Mrs. Gayanich's mother also revealed that Mrs. Gayanich has no savings left, that Mrs. Gayanich's parents have been financing the litigation, and that, as a result, they too have no savings left. Mr. Gayanich, on the other hand, makes approximately $48,000 yearly before taxes. His grandmother testified that while Mr. Gayanich pays for some of the litigation costs, she also contributes. Finally, the evidence revealed that the assets and debts jointly held by the parties are located in Oklahoma, including a house still under construction, a bank account, a Dodge Durango, and items stored in trailers from the home the parties occupied, which is owned by and located on Mr. Gayanich's grandparents' 8,000-acre ranch in Oklahoma.

On June 28, 2017, the Superior Court entered an order granting Mrs. Gayanich's motion to dismiss, finding that Oklahoma was the more appropriate forum to hear the child custody and divorce actions, and transferred the case to the 20th Judicial District of Oklahoma for further disposition. *Gayanich v. Gayanich*, 66 V.I. 205, 217 (V.I. Super. Ct. 2017). Mr. Gayanich filed a timely notice of appeal with this Court on July 26, 2017. V.I. R. APP. P. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

This Court has appellate jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d); *see also* 4 V.I.C. § 32(a) (granting this Court jurisdiction over "all appeals arising from final judgments, final decrees or final orders of the Superior Court"). Because the Superior Court's June 28, 2017 order granting Mrs. Gayanich's motion to dismiss for *forum non conveniens* was a final order, this Court has jurisdiction over this appeal. *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 434 (V.I. 2013) (observing that a Superior Court order that "resolve[s] all outstanding claims between the parties . . . qualifies as a final judgment" for purposes of 4 V.I.C. § 32(a)).

This Court exercises *de novo* review of the Superior Court's application of law, and reviews factual findings for clear error. *St. Thomas—St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007). Although not yet considered by this Court on appeal, the appropriate standard of review for the Superior Court's grant of a motion to dismiss for *forum non conveniens* is abuse of discretion. *See Arthur v. Arthur*, 452 A.2d 160, 161 (D.C. 1982); *Corning v. Corning*, 563 A.2d 379, 380 (Me. 1989). Additionally, this Court reviews questions of statutory construction *de novo*. *Smith v. Henley*, 67 V.I. 965, 970 (V.I. 2017).

B. Inconvenient Forum

Chapter 4, title 16 of the Virgin Islands Code—which codified the Uniform Child Custody Jurisdiction and Enforcement Act in the Virgin Islands[1]—provides that "[a] court of this [Territory] which has jurisdiction under this chapter to make a child-custody determination 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." 16 V.I.C. § 133(a). Pursuant to subsection §133(b), "[b]efore determining whether it is an inconvenient forum," the trial court "shall consider whether it is appropriate for a court of another State to exercise jurisdiction." To make this determination, "the [trial] court shall allow all parties to submit information and *shall consider all relevant factors, including*:

[1] The UCCJEA has been adopted by forty-nine states, as well as the Virgin Islands, District of Columbia, and Guam. 2 MELISSA L. BREGER ET AL., N.Y. LAW OF DOMESTIC VIOLENCE § 4:5 (3d ed. 2013) Massachusetts has adopted a modified version of the prior Uniform Child Custody Jurisdiction Act ("UCCJA") which conforms with the Parental Prevention Kidnapping Act ("PKPA") but has limited remedies for victims of domestic violence. MASS. GEN. LAWS ANN. 209B § 2.

> (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 this State;
> (3) the distance between the court in this State 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."

16 V.I.C. § 133(b)(1)-(8) (emphasis added).

Declining to exercise jurisdiction, the Superior Court explained that, after reviewing all applicable factors, it found the following most relevant: (1) the length of time the children have resided outside the Virgin Islands; (2) the relative financial circumstances of the parties; and (3) the nature and location of the evidence required to resolve the pending litigation. The Superior Court's analysis concluded that, while the first of these three factors did not favor either party, the remaining two supported Mrs. Gayanich's contention that Oklahoma was the more appropriate forum.

Mr. Gayanich argues that the Superior Court committed reversible error by failing to consider all relevant factors. Specifically, he claims that the Superior Court abused its discretion by (1) not analyzing all eight statutory factors; (2) by impermissibly considering the financial aid the parties' have received from their families when analyzing their relative financial circumstances; (3) by analyzing "irrelevant" factors relating to the nature and location of evidence; (4) by failing to "meaningfully consider" alternative methods for taking evidence as permitted in 16 V.I.C. § 125; and (5) by dismissing the entire divorce action after only receiving

argument on the issue of child custody. (Appellant's Br. At 5.) We disagree with Mr. Gayanich on all but his final contention.

i. Relevant Factors

"The first rule of statutory interpretation is 'that when the statutory language is plain and unambiguous, no further interpretation is required.'" *Smith*, 67 V.I. at 972 (quoting *Codrington v. People*, 57 V.I. 176, 185 (V.I. 2012)). Here, the contested language in section 133(b) is "the [trial] court . . . shall consider all relevant factors, including: . . .[.]" 16 V.I.C. § 133(b) (emphasis added). It is well-established that the word "'*shall*' normally serves to create an obligation impervious to judicial discretion[,]" rather than "*may*," which is suggestive. *Shoy v. People*, 55 V.I. 919, 927 (V.I. 2011). Basic English grammar dictates that a colon precedes a list, which expands upon and explains the content of the clause preceding it. *See* John H. Ridge, *Five Punctuation Mistakes We Commonly Make*, Wyo. Law., Feb. 2017, at *50. The addition of the word "*including*," rather than the phrase "*such as*" indicates that, at minimum, the trial court must consider the factors included in section 133(b)(1)-(8). *See* 1 V.I.C. § 42 ("Words and phrases shall be read with their context and shall be construed according to the common approved usage of the English Language."). Indeed, this was exactly what the Court of Appeals of Georgia held when interpreting its codification of the UCCJEA, which is identical to section 133(b). *Murillo v. Murillo*, 684 S.E.2d 126, 128 (Ga. Ct. App. 2009) (finding abuse of discretion where the lower court failed to make specific findings on the record and had not considered all eight factors in accordance of the statute when it declined jurisdiction). The adjective "*relevant*," however, is the determinative statutory language modifying section 133(b)'s instruction, changing it from a compulsory analysis of all eight enumerated eight factors to a discretionary analysis of only the relevant ones.

Mrs. Gayanich argues that section 133(b) instructs the trial court to consider only the enumerated factors *that are relevant* to the unique fact-pattern before it. This Court agrees. The inverse interpretation would imply that all eight factors are always relevant. Such an illogical stance assumes that the Virgin Islands Legislature, when codifying the UCCJEA, pre-determined that factors 1-8 are invariably relevant—even in cases where they do not apply. Relying heavily on *Murillo*, Mr. Gayanich would have this Court declare exactly that illogical interpretation. His interpretation of section 133(b) assumes that a trial court will commit reversible error if it does not analyze whether domestic violence has occurred—the first of the eight enumerated factors—even where, as here, the parties present no evidence of domestic violence. We are unpersuaded by Mr. Gayanich's argument that a failure to undertake this exercise in futility is an abuse of discretion by the trial court. [2] *See In re L.O.F.*, 62 V.I. 655, 661 (V.I. 2015) (cautioning that this Court will not interpret a statute in such a way as to bring about "absurd consequences inconsistent with the Legislature's intent") (quoting *Gilbert v. People*, 52 V.I. 350, 356 (V.I. 2009)).

The Supreme Court of Maine, interpreting a codification of the UCCJEA identical to section 133(b), addressed this matter directly in *Shanoski v. Miller*, 780 A.2d 275, 280-81 (Me. 2001). Like Mr. Gayanich, the appellant in *Shanoski* made the "general argument, regarding all of the factors, that the court should have addressed each factor, made specific findings on each

[2] Apart from *Murillo*, the cases Mr. Gayanich cites to support his contention that the Superior Court committed reversible error by not expressly analyzing all eight statutory factors in its opinion do not turn on the same principle. Rather, they find error where the lower court dismissed for *forum non conveniens* after not providing the parties an opportunity to present evidence, and after providing no analysis on any of the factors. *See Watson v. Watson*, 724 N.W.2d 24, 32 (Neb. 2006); *Prizzia v. Prizzia*, 708 S.E.2d 461, 469 (Va. Ct. App. 2011).

factor, and concluded which factors weighted in favor of or against declining to exercise jurisdiction." *Id*. at 280. The Court disagreed, explaining that,

> The inconvenient forum statute . . . does not expressly require the court to make findings of fact and conclusions of law for each factor. The statutory requirement is for a court to consider the factors . . . We have not, by case law, required trial courts to specifically enumerate their findings on each factor in those situations in which there are statutory factors to be considered . . . We require trials courts to make findings that are sufficient to inform the parties of the court's reasoning and sufficient for effective appellate review.

Id. (internal citations omitted). The Maryland Court of Appeals took a similar stance in *Miller v. Miller*, 52 A.3d 53, 74 (Md. Ct. App. 2012), stating that the UCCJEA "sets out eight factors, *the relevant ones of which* [the statute] requires the court to consider when addressing the question of the convenience of the forum," and finding no abuse of discretion where "the ruling was grounded in the inconvenient forum arguments that counsel[] made . . . but[] also[] implicitly, it reflects an understanding and appreciation of some of the relevant factors, *i.e.* [factors 2, 3, 6, 7, and 8]"). (emphasis added).

As the more effectual approach, this Court concurs with the *Shanoski* interpretation of the UCCJEA. *See Ottley v. Estate of Bell*, 61 V.I. 480, 489 n.10 (V.I. 2014) ("When statutes from other jurisdictions are substantially similar to a Virgin Islands statute, this Court may look for guidance at how that jurisdiction's courts have interpreted the similar statute.") (citations omitted). Specifically, we hold that when analyzing section 133(b), the trial court should consider all eight enumerated factors but need only meaningfully address the relevant enumerated factors—*i.e.* those presented in the fact pattern developed by the parties—and any other non-enumerated factors the court deems relevant. *See Ramsey v. Ramsey*, 995 So.2d 881, 887 (Ala. Civ. App. 2008) ("We note that, although a trial court is required to consider the enumerated factors, not all factors will be implicated in every case, and the statute permits the

trial court to consider other nonenumerated factors it may deem relevant."); *Symington v. Symington*, 167 P.3d 658, 660 (Wyo. 2007) ("The [trial] court must consider all relevant factors, not just those articulated in the [UCCJEA]."); *see also* NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT § 207 cmt. (1997) ("This list is not meant to be exclusive.").

Here, the Superior Court expressly analyzed three factors implicated by, and relevant to, the case at bar: the length of time the children resided outside of Oklahoma, the parties' relative financial circumstances, and the nature and location of evidence required to resolve the pending litigation. As in *Shanoski*, the Superior Court provided "findings that are sufficient to inform the parties of the court's reasoning and sufficient for effective appellate review." *Shanoski*, 780 A.2d at 280; *see also Cabrera v. Mercado*, 146 A.3d 567, 601 (Md. Ct. Spec. App. 2016) ("[The UCCJEA] only requires that the court *consider* [the statutory] factors, and we decline to graft onto the statute a requirement that the judge must state a finding as to each factor [on] the record."). Because the Superior Court's conclusion was neither arbitrary nor irrational, we conclude that the Court did not abuse its discretion when it found that the Virgin Islands is a *forum non conveniens* for the custody matter, since it granted both parties an opportunity to present evidence on the matter, and it analyzed the relevant factors. *See People v. Todmann*, 53 V.I. 431, 441 (V.I. 2010) ("In order to justify reversal under an abuse of discretion standard, a trial court's analysis and resulting conclusion must be arbitrary or irrational.") (citing *United States v. Universal Rehab. Servs. (PA), Inc.*, 205 F.3d 657, 665 (3d Cir. 2000) (alterations omitted)).

ii. Considered Statutory Factors

Despite Mr. Gayanich's blanket claim that the Superior Court erred by not explicitly addressing all eight section 133(b) factors in its analysis, he does not provide any argument for why the remaining unanalyzed factors are dispositive. Instead, Mr. Gayanich takes issue with the Superior Court's factual determinations regarding the factors it expressly analyzed.

First, Mr. Gayanich asserts that the Superior Court incorrectly interpreted the language of section 133(b)(4) by taking into account the financial assistance both parties have received, and expect to receive, from their family, rather than limiting the inquiry to the parties' individual income and assets alone. This Court has expressed that when reading the provisions of a statute, "the words and phrases of the statute should be given effect according to their plain and ordinary meaning." *In re Adoption of Sherman*, 49 V.I. 452, 463 (V.I. 2008) (quoting *In re Adams*, 473 N.W.2d 712, 714 (Mich. Ct. App. 1991)); 1 V.I.C. § 42. According to the Merriam-Webster dictionary, "*circumstance*" in an economic context means "the sum of essential and environmental factors (as of an event or situation)." *Circumstance*, MERRIAM-WEBSTER.COM, *available at* https://www.merriam-webster.com/dictionary/circumstance (last visited Mar. 7, 2018). This Court has clarified that we "must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id*. at 464 (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). We therefore must assume that if the Legislature, when it codified the UCCJEA, had intended to limit the scope of the section 133(b)(4) inquiry to the parties' individual income and assets (rather than to their broader financial circumstances), it would have included that specific language. By instead including the term "financial circumstances," we conclude that the Legislature intended the Superior Court to consider all financial *factors*, which logically includes financial assistance from other individuals. *See Shanoski*, 780 A.2d at 279 (taking the fact that "[Appellee's] income was approximately $25,000

annually, and her parents, who are described as wealthy by [Appellant], have assisted [Appellee] with litigation costs" into account when analyzing the "parties' relative financial circumstances" under the UCCJEA). We therefore conclude that the Superior Court did not abuse its discretion when it considered the assistance the parties' received from their families when weighing section § 133(b)(4).

Second, Mr. Gayanich contends that the Superior Court misapplied section 133(b)(6) by analyzing irrelevant factors and overlooking essential evidence. Specifically, Mr. Gayanich finds the following factors irrelevant to the Superior Court's analysis regarding the nature and location of evidence: "(1) both parties are originally from Oklahoma, (2) both parties' extended families reside in Oklahoma, (3) the parties were married in Oklahoma, (4) the parties resided on property owned by [Mr. Gayanich's] family in Oklahoma after their marriage, and (5) that the majority of witnesses for both parties, despite [his] assertion to the contrary, reside in Oklahoma." Appellant's Br. At 19. Mr. Gayanich also argues that the Superior Court overlooked his claim that he has a list of St. Croix-based witnesses that is equally as long as Mrs. Gayanich's Oklahoma-based witnesses.

This Court finds that the Superior Court did not commit any reversible error by taking these factors into account when analyzing section 133(b)(6). Each factor can be construed to support the conclusion that the majority of witnesses and evidence of parenting is located in Oklahoma, thus indicating that litigation of the underlying child custody matter is more appropriate there. *See Shanoski*, 780 A.2d at 279-80 (finding evidence that "care providers, teachers, and others who have had significant longstanding contact with the child" were located in North Carolina weighed in favor of litigation in that State).

Although Mr. Gayanich portrays this argument as a claim that the Superior Court misapplied statutory language to facts, the spirit of this argument is merely his disagreement with how the Superior Court weighed the evidence. This Court will "only reverse a [trial court's] factual determination as being clearly erroneous if it is completely devoid of minimum evidentiary support or bears no rational relationship to the supportive evidentiary data." *In re Estate of Small*, 57 V.I. 416, 428 (V.I. 2012). Because the Superior Court's factual conclusion—that the nature and location of the evidence required to resolve the pending litigation favors jurisdiction in Oklahoma—bears a rational relationship with the evidentiary data, we find no error.

iii. Other Factors

Mr. Gayanich also argues that the Superior Court committed reversible error by failing to meaningfully consider alternative methods for taking evidence remotely, specifically 16 V.I.C. § 125(a)-(c). Section 125(a)-(c) provides that, at the discretion of the trial court, a party in a child custody proceeding may offer witness testimony via deposition or other telephonic or audiovisual means.[3] In a footnote, the Superior Court explained that "[a]lthough Mr. Gayanich

[3] The full text of 16 V.I.C. § 125 is as follows:

> (a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another State, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another State. The court on its own motion may order that the testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which the testimony is taken.
>
> (b) A court of this State may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that State. A court of this State

refers to the Court's ability to utilize flexible methods of taking testimony pursuant to 16 V.I.C. §125(a) and (b), this Court finds that in this instance, both parties would be disadvantaged by proceeding with litigation in the USVI." (J.A. 16.) While acknowledging the UCCJEA does not *require* the trial court to allow telephonic testimony, Mr. Gayanich contends that because the Superior Court did not explain its reasoning in the footnote, it did not adequately address that factor. We disagree.

Section 133 entrusts the Superior Court with the discretion to weigh relevant factors and, so long as the court's findings are rooted in minimal evidentiary support, this Court cannot disturb that judgment. *See Ramsey*, 995 So.2d at 886-87 ("[I]t is well established that, in the absence of specific findings of fact concerning an issue, we must presume that the trial court made those findings that would support its judgment, unless those findings would be clearly erroneous."). It is also unclear why Mr. Gayanich believes this factor should weigh in favor of litigation in St. Croix, considering that Oklahoma has an identical statute, OKLA. STAT. tit. 43, § 551-111, which would allow Mr. Gayanich's St. Croix-based witnesses to testify remotely in the same manner as Mrs. Gayanich's Oklahoma-based witnesses could testify under section 125. This Court therefore concludes that the Superior Court was well within its discretion to hold that despite the option of alternative modes of testimony that section 125 provides, this factor did not weigh in favor of litigation in St. Croix. *See Shanoski*, 780 A.2d at 280 (finding that North

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> shall cooperate with courts of other States in designating an appropriate location for the deposition or testimony.
>
> (c) Documentary evidence transmitted from another State to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

16 V.I.C. § 125(a)-(c).

Carolina was a more convenient forum and noting that the Maine witnesses could testify by deposition or telephonically).

iv. Dismissal

Finally, Mr. Gayanich argues that the Superior Court committed reversible error when it dismissed his entire case, rather than just the child custody portion of the divorce action.[4] We agree. The Superior Court hearing and opinion focused on whether the court had jurisdiction to determine child custody issues under the UCCJEA, and whether the Virgin Islands is an inconvenient forum pursuant to the UCCJEA. Apart from Mrs. Gayanich's motion to dismiss for lack of general or specific jurisdiction, neither party addressed the claim for divorce and equitable distribution of marital property in briefing or hearing below.

In addition to the child custody-specific *forum non conveniens* provision of the UCCJEA, title 5, section 4905 of the Virgin Islands Code extends a general inconvenient forum statute to cases filed in this Territory. Pursuant to 5 V.I.C. § 4905, "[w]hen the court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or

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[4] The Superior Court memorandum opinion and order states:

> Thereby, for the reasons stated in the above Opinion, it is so ORDERED:
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> 1. That the USVI is the home state of the children pursuant to 16 V.I.C. Chapter 4.
>
> 2. That the Motion to Dismiss for *Forum non conveniens* is GRANTED, and this case hereby transferred to the 20th Judicial District in Oklahoma for further disposition.
>
> 3. That the USVI has declined jurisdiction, and therefore this matter as it relates to the USVI is CLOSED.

(J.A. 16-17.)

dismiss the action in whole or in part on any conditions that may be just."[5] The question here is whether the Superior Court acted within its discretion when it *sua sponte* dismissed the divorce action—presumably under section 4905—rather than only dismissing the child custody matter that the parties argued under the UCCJEA. The Supreme Court of North Dakota provides an affirmative answer; applying an inconvenient forum statute identical section 4905, it found that "a trial court may make a *forum non conveniens* ruling *sua sponte*." *Commonwealth Land Title Ins. Co. v. Pugh*, 555 N.W.2d 576, 579 (N.D. 1996). Here, not only did the Superior Court dismiss the divorce action without argument from either party on that issue, it also did so without reference to section 4905. Nevertheless, some courts have found no error under similar circumstances as long as the facts in the record and discussion set forth below provide findings that are sufficient to inform the parties of the trial court's reasoning, and are sufficient for effective appellate review. *See Shanoski*, 780 A.2d at 280; *c.f. Hipps v. Cabrera*, 170 A.3d 199, 209-10 (D.C. Ct. App. 2017) (finding that "although the court did not explicitly invite submissions pertinent to the [UCCJEA] factors, it heard relevant evidence at the [hearing]," and

[5] Although this Court has yet to address an appeal under 5 V.I.C. § 4905, other Virgin Islands courts have outlined the elements warranting dismissal under the statute. *See e.g., Dickson v. Hertz Corp.*, 559 F.Supp. 1169, 1177 (D.V.I. 1983) ("The exercise of that discretion is to be determined by reference to the following criteria: (a) amenability of the parties to personal jurisdiction in other states in any alternative forum; (b) convenience to the parties and witnesses of trial in the forum and in any alternative forum; (c) differences in conflict of law rules applicable in the forum and in any alternative forum; or (d) any other factors which have a substantial bearing upon the selection of a convenient, reasonable and fair place of trial."); *Tuky Air Transport v. Edinburgh Ins. Co., Ltd.*, 19 V.I. 238, 245 (D.V.I. 1982) ("This provision is consistent with the view that the exercise of the power to dismiss an action on the basis of *forum non conveniens* is entirely within the discretion of the Court.") (not reported in *Federal Supplement*). Additionally, the Virgin Islands Rules of Civil Procedure, adopted April 3, 2017, provides the trial court broad discretion to consolidate actions that involve a common question of law or fact for convenience, to avoid prejudice, or to expedite and economize proceedings. V.I. R. CIV. P. 42(a)-(b).

therefore the court did not abuse its discretion when it *sua sponte* relinquished jurisdiction under the UCCJEA, even though it did not identify the statute in its opinion).

Many of the facts supporting dismissal of the child custody matter under the UCCJEA could similarly support dismissal of the divorce action under section 4905, and it is arguable that the Superior Court's analysis provides a sufficient record to inform the parties of its reasoning.[6] Despite other jurisdictions' support of *sua sponte* dismissals for *forum non conveniens*, however, this Court has generally reversed *sua sponte* dismissals where the parties have not had an opportunity to be heard. *See, e.g.*, *Gumbs v. Koopmans*, 66 V.I. 429, 433 (V.I. 2017) (finding that "[t]he Superior Court acted contrary to this Court's precedents when it *sua sponte* adjudicated a res judicata defense that had never been presented by the defendants without providing [the plaintiff] with notice or the opportunity to be heard on that issue"); *In re Reynolds*, 60 V.I. 330, 336 (V.I. 2013) (holding generally that the Superior Court "'commit[s] error by depriving [a party] of her right to be heard' in dismissing an action *sua sponte* without providing notice or a chance to respond'") (alterations in original) (quoting *Brunn v. Dowdye*, 59 V.I. 899, 905 (V.I. 2013)); *Mendez v. Gov't of the V.I.*, 56 V.I. 194, 204-05 (V.I. 2012) (determining that the Superior Court violated Defendant's due process rights when it considered the Government's ex-parte submission pertaining to the court's subject matter jurisdiction without granting Defendant an opportunity to respond). While much of the evidence that Mr. and Mrs. Gayanich presented in

[6] Examples include the fact that: (1) the parties were married in Oklahoma; (2) their children were born in Oklahoma; (3) many of the witness to their union reside in Oklahoma; (4) Mrs. Gayanich has less financial ability to travel for litigation; (5) the property the parties occupied for the majority of their marriage is located in Oklahoma; (6) the house they began building together is in Oklahoma; (7) their Dodge Durango is registered and rests in Oklahoma; (8) they hold a joint bank account in Oklahoma; and, (9) the personal property that once occupied their marital home currently sits in trailers in Oklahoma.

relation to the proper forum for the child custody matter under the UCCJEA could similarly support dismissal of the divorce action under section 4905, the fact remains that the parties did not have the opportunity to address the question of proper forum specifically for the divorce action before the Superior Court *sua sponte* dismissed it. Given this Court's precedent recognizing the right of parties to be given an opportunity to be heard on issues before dispositive rulings, we reverse the Superior Court's judgment insofar as it dismissed the divorce action, and we remand that portion of the matter to the Superior Court to determine its proper forum.[7]

III. CONCLUSION

For the foregoing reasons, this Court holds that the Superior Court did not abuse its discretion when it granted Mrs. Gayanich's motion to dismiss for *forum non conveniens* under the UCCJEA, and we affirm that portion of the judgment. Further, we reverse the Superior Court's *sua sponte* dismissal of the divorce portion of this action, and remand with instructions to determine whether the Virgin Islands is the proper forum to hear that matter after permitting the parties to present evidence on that question.

[7] Moreover, Mr. Gayanich initiated the divorce action under 16 V.I.C. § 106(a) on September 20, 2016, prior to Mrs. Gayanich's October 3, 2016 filing for dissolution of marriage at the District Court of Carter County, Oklahoma. Pursuant to section 106(a), Virgin Islands courts have jurisdiction over divorce actions where the plaintiff has established residency in the Territory for at least six weeks in advance of filing. 16 V.I.C. § 106(a). Mr. Gayanich had resided in the Virgin Islands longer than six weeks before filing his divorce action, and he is therefore entitled to have his divorce resolved in the Virgin Islands, his chosen place of residence. Further, because the Superior Court has jurisdiction over the divorce under section 106(a), and because service of process was properly effected, the Superior Court could only avoid its obligation to hear the divorce action by making specific determinations based on an adequate record that the Virgin Islands was not a convenient forum under 5 V.I.C. § 4905. Since the Superior Court failed to do so in this case, it dismissed Mr. Gayanich's divorce action in error.

Dated this 18th day of July 2018.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court