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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

G.P.,

Respondent,

v.

A.P.,

Appellant.

E054201

(Super.Ct.No. FAMVS1000339)

OPINION

APPEAL from the Superior Court of San Bernardino County. David Proulx,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

M. Oana Filimon for Appellant.

Gregory L. Zumbrunn for Respondent.

A.P. appeals an order denying her petition for the return of her child, J.P., pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, October 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 49 (reprinted at 51 Fed. Reg. 10494 (Mar.

26, 1986)) (the Hague Convention or the Convention),¹ finding that California has jurisdiction to determine custody under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Fam. Code, § 3400 et seq.), and finding that California is not an inconvenient forum for the determination of custody of the child. We will affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY²

A.P., a citizen of Romania, came to the United States on a student visa and continued living and working in California for several years after her three-month visa had expired. In late 2008, she began a relationship with G.P., an American citizen, and moved into his residence in Hesperia. In January 2009, she became pregnant. The couple's relationship deteriorated, and in July 2009, A.P. left California, intending to return to Romania for the birth of her child. However, she stayed with friends in Illinois for a time, and J.P. was born in September 2009, in Park Ridge, Illinois. Although A.P. has always acknowledged that G.P. is the child's father, she did not put his name on the child's birth certificate.³ G.P. and A.P. were not married.

¹ We take judicial notice of the Hague Convention. (Evid. Code, § 452, subd. (c).)

² Throughout her briefing, A.P. states the facts in the light most favorable to her. However, the applicable standard of review requires us to accord deference to the facts as found by the trial court, particularly where the trial court's findings rest on its assessment of the credibility of witnesses. (*Escobar v. Flores* (2010) 183 Cal.App.4th 737, 748 & fn. 6; see additional discussion, *post.*) Consequently, we will set out the historical facts in the light most favorable to the trial court's express and implied factual findings, as reflected in its statement of decision.

³ A.P. later put G.P.'s name on the child's Romanian birth certificate.

On October 15, 2009, A.P. returned to California with J.P. and resumed living with G.P. A.P. testified⁴ that G.P. promised that they would be a family, but that she discovered on her return to California that G.P. had a girlfriend, Cherry, who was living with him. G.P. testified that Cherry had accompanied him to Illinois to pick up A.P. and their son and that A.P. was aware that he did not intend to resume a romantic relationship with her. He offered photographs showing A.P. with Cherry in Illinois and on their trip home to Hesperia. He testified that they agreed that A.P. would live with him for up to one year, until she could “get on her feet.” A.P. occupied a separate bedroom in G.P.’s house, and they alternated weeks providing care for J.P.

On February 2, 2010, A.P. took J.P. and departed for Romania, without G.P.’s knowledge or consent. On February 4, 2010, G.P. filed a parentage petition in the Superior Court of San Bernardino County, seeking sole custody of J.P. with monitored visitation for A.P., and seeking an order that she return the child to California.

While the petition was pending, G.P. visited A.P. in Romania twice, in August and November 2010. In November, he obtained her permission to return to the United States with J.P. A.P. testified that she had authorized G.P. to take the child only for a visit, from November 14, 2010, until February 8, 2011. The notarized parental consent for travel G.P. used to take J.P. from Romania provided that he had A.P.’s permission to take the

⁴ Some of these facts are taken from A.P.’s declaration, which was admissible evidence under the relaxed rules of evidence which apply in cases arising under the Hague Convention. The trial court took judicial notice of A.P.’s petition and memorandum of points and authorities.

child to the United States only from November 14, 2010, until February 8, 2011.

Nevertheless, G.P. testified, based on a handwritten, unnotarized letter of consent which did not contain any restrictions, that they had agreed that J.P. would reside permanently in the United States. He testified that A.P. hoped to move to Canada, after she finished school. A.P. testified that G.P. refused her repeated requests, beginning in January 2011, to return J.P. to Romania. Around the end of January 2011, she filed a custody petition in Romania and a petition under the Hague Convention.

A.P. did not appear in the California parentage/custody action, although G.P. asserted that he had served her. The court granted the petition by default and awarded sole custody to G.P. However, on April 1, 2011, A.P. filed a motion to vacate the judgment on the ground of lack of jurisdiction and on the ground that she had not been served and had no notice of the proceedings. The court granted the motion and set the judgment aside.⁵ It set a hearing to determine issues arising under the Hague Convention and to determine jurisdiction under the UCCJEA.⁶

Following an evidentiary hearing, the court held that Romania did not qualify as the child's habitual residence under the Hague Convention. The court further held that

⁵ Although A.P. contended that she had not been properly served, the court set the judgment aside under Code of Civil Procedure section 473.

⁶ Although A.P. had not filed a petition in the superior court under the Hague Convention at that point, the court had been made aware that A.P. had initiated proceedings under the Convention in Romania. She filed a petition in the superior court seeking return of the child under the Convention on June 6, 2011. The district attorney also filed a Hague Convention petition on June 1, 2011.

California properly exercised jurisdiction over the custody dispute and that it has exclusive, continuing jurisdiction under the provisions of the UCCJEA.

A.P. filed a timely notice of appeal.

LEGAL ANALYSIS

1.

SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT’S FINDING THAT ROMANIA WAS NOT THE CHILD’S HABITUAL RESIDENCE

Standard of Review

In cases arising under the Hague Convention, the appellate court generally applies a deferential standard of review to the trial court’s findings of fact and determines questions of law, including the interpretation of the Convention, de novo. (*Maurizio R. v. L.C.* (2011) 201 Cal.App.4th 616, 633-634.) California cases differ as to whether the correct standard is the federal “clear error” or “clearly erroneous” standard or California’s “substantial evidence” rule. (*Ibid.*; see also *Escobar v. Flores, supra*, 183 Cal.App.4th at p. 748.) Although phrased differently,⁷ the two standards are substantially similar, in that

⁷ The “familiar and highly deferential substantial evidence standard of review” “calls for review of the entire record to determine whether there is any substantial evidence, contradicted or not contradicted, to support the findings below. We view the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences and resolving all conflicts in its favor. [Citations.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Under the federal standard, “[a] finding is “clearly erroneous” [only] when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” (*Anderson v. Bessemer City* (1985) 470 U.S. 564, 573.) “This standard plainly does not entitle a

[footnote continued on next page]

both require appellate deference to the trial court's factual findings, particularly where the trial court's findings rest on its assessment of the credibility of witnesses. (*Escobar v. Flores, supra*, at p. 748 & fn. 6.) Where review of factual findings is called for, we will apply the substantial evidence rule.

The Evidence Supports the Finding That G.P. Did Not Wrongfully Remove the Child From Romania Because the United States, Not Romania, Was the Child's Habitual Residence.

The Hague Convention, as implemented by the International Child Abduction Remedies Act (42 U.S.C. § 11601 et seq.), was adopted in an effort “to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.” (Hague Convention, Preamble; *Mozes v. Mozes* (9th Cir. 2001) 239 F.3d 1067, 1069-1070.) “To deter parents from crossing international boundaries to secure a more favorable forum for the adjudication of custody rights, the Convention provides for the prompt return of a child who is ‘wrongfully removed to or retained in’ any country that has signed on to the Convention. [Citations.] It thus provides a means by which to restore the status quo when one parent unilaterally removes the child from the child’s country of habitual residence and/or retains the child in a new jurisdiction. [Citation.]” (*In re Marriage of Forrest & Eaddy*

[footnote continued from previous page]

reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently.” (*Ibid.*)

(2006) 144 Cal.App.4th 1202, 1210.) Both the United States and Romania are signatories to the Convention.⁸

In order to determine whether the unilateral removal or retention of a child is wrongful within the meaning of the Hague Convention, the court must first establish the child's habitual residence. (*Mozes v. Mozes, supra*, 239 F.3d at p. 1070.) Here, A.P. contends that Romania was J.P.'s habitual residence and that G.P. wrongfully retained J.P. when he refused to return the child to Romania after what she contended was to be a temporary visit to California. The trial court, however, found that Romania was not J.P.'s habitual residence. The trial court did not expressly find that either California or the United States was J.P.'s habitual residence. In light of the parents' assertions that either California or Romania was J.P.'s habitual residence, however, we can infer from the statement of decision that the court found that California, and therefore the United States, was J.P.'s habitual residence at the time A.P. took him to Romania and that it remained his habitual residence despite his sojourn in Romania.⁹

Under the Convention, habitual residence is a mixed question of law and fact. (*Ruiz v. Tenorio* (11th Cir. 2004) 392 F.3d 1248, 1251-1252.) We accept the trial court's factual findings if they are supported by substantial evidence, "but with regard to the

⁸ Hague Conference on Private International Law
<http://www.hcch.net/index_en.php?act=conventions.status&cid=24> (as of Dec. 14, 2012).

⁹ An appellate court will infer necessary findings which were omitted from a statement of decision unless the omission was timely brought to the attention of the trial court. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58-59.)

ultimate issue of habitual residency, the appellate court will review de novo, ‘considering legal concepts in the mix of facts and law and exercising judgment about the values that animate legal principles.’ [Citation.]” (*Id.* at p. 1252, italics omitted.)

The central principle of the Convention is the prevention of removal of a child from its country of habitual residence by one parent in derogation of the custody rights of the other parent. (*Mozes v. Mozes, supra*, 239 F.3d at p. 1071.) “Habitual residence” is not defined in the Convention itself, and courts have concluded that it is not a term with a technical legal definition. (*Id.* at pp. 1071-1072.) Rather, all that is necessary to establish a habitual residence is that “the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.” (*Ruiz v. Tenorio, supra*, 392 F.3d at p. 1252.) And, the habitual residence of an infant or a young child is determined solely with reference to the settled intentions of the child’s parents. (*Holder v. Holder* (9th Cir. 2004) 392 F.3d 1009, 1020-1021.) If the parents resided together with the child with the intention of permanence, neither parent can unilaterally change the child’s habitual residence. (*Id.* at p. 1020.)

Here, viewed in the light most favorable to the judgment, the evidence supports the conclusion that the United States was J.P.’s habitual residence at the time A.P. took him to Romania. Although A.P. had intended to return to Romania before she gave birth, circumstances prevented her from doing so. After J.P.’s birth, A.P. agreed to return to California from Illinois for the purpose of jointly raising the child with G.P. It does not matter whether she did so because, as she testified, she believed that G.P. wanted them to

be a family, or because, as G.P. testified, A.P. wanted J.P. to be raised in the United States. Under either scenario, it is undisputed that at that time, the parents shared a settled intention to raise J.P. in the United States, whether living together or separately. That A.P. later changed her mind and decided to return to Romania is not sufficient to invalidate that conclusion.¹⁰ Consequently, from October 2009 at least until February 2010, the United States was J.P.'s habitual residence for purposes of the Convention.

The next question is whether, by the time G.P. took the child back to the United States from Romania and refused to return him, Romania had become the child's habitual residence, as A.P. asserts. The answer is "no." Absent exceptional circumstances, an infant cannot acquire a new habitual residence "in the absence of shared parental intent." (*Holder v. Holder, supra*, 392 F.3d at pp. 1020-1021 & fn. 11.) It is abundantly clear that G.P. did not share A.P.'s intent to make Romania the child's habitual residence. That conclusion is not altered by the fact that J.P. began to talk while living in Romania and had become "completely settled and integrated in Romanian's [*sic*] life and culture," as A.P. asserted. By November 2010, when G.P. removed the child from Romania, J.P. was only 14 months old. An older child who has lived for a significant period of time in a country other than his or her original habitual residence may develop significant cultural

¹⁰ At oral argument, A.P. contended that a different conclusion is compelled because G.P. fraudulently induced her to return to California by stating that they would be a family, when in fact he already had a new live-in girlfriend. She did not make that contention in her briefing, however, and we decline to address it, except to note that substantial evidence supports the conclusion that A.P. knew about G.P.'s new relationship before she returned to California. (See discussion in Statement of Facts, *ante*, at p. 3.)

attachments to the new country, which may then be determined to be the child's habitual residence, even in the absence of shared parental intent. (*Holder v. Holder, supra*, at pp. 1020-1021.) This does not, however, apply to a child as young as J.P., who was simply too young to form his own sense of cultural attachment. (*Ibid.*)

A.P. relies on *Kijowska v. Haines* (7th Cir. 2006) 463 F.3d 583, in which the court held that Poland was the habitual residence of a child born in the United States but unilaterally removed to Poland by the mother when the child was two months old. Like A.P., the mother in that case had come to the United States on a student visa but failed to leave the country when the visa expired. After the visa expired, she became pregnant and gave birth to her daughter in the United States. Two months later, she took the child and returned to Poland. The child's father had "disavowed seeking custody of the infant." (*Id.* at p. 586.) She later returned to the United States, apparently believing there was a prospect of reconciling with the child's father. When she arrived at the Detroit airport, immigration authorities refused her entry into the United States and turned the child over to the father, who had obtained an ex parte order from an Illinois state court granting him custody. On her return to Poland, the mother filed suit under the Convention. (*Ibid.*)

The Seventh Circuit held that despite the child's birth in the United States, this country was not the child's habitual residence. The court acknowledged existing authority that the habitual residence of an infant is normally established with reference to the parents' shared settled intent as to where they would reside. However, the court held that where, as in that case, the parents had no shared settled intent because they were

estranged at the time of the child's birth, the court must look to other facts to determine the question of the child's habitual residence. (*Kijowska v. Haines, supra*, 463 F.3d at p. 587.) Analyzing the specific facts before it, the court concluded that because both the baby and the mother were Polish citizens and the mother was "merely a temporary sojourner in the United States," the United States was not the mother's habitual residence. Further, the baby's "brief sojourn in the United States . . . hardly warranted an inference that she had obtained a residence separate from that of her mother, which was of course Poland." (*Ibid.*) The court also held that "it [is] impossible to reconcile [the father's] initial disavowal of custody over [the baby], and [the mother's] expectation . . . that she would be returning with [the baby] to Poland, with [the baby's] having acquired a habitual residence in the United States." (*Id.* at p. 588.)

The circumstances here are quite different, most particularly because before A.P. decided to return to Romania, she and G.P. did share a settled intent to raise J.P. in the United States, and, far from disavowing custody over J.P., G.P. actively sought to raise his son and was actually exercising custody.

A.P. also contends that the trial court erred in finding that G.P., as the natural father, had equal custodial rights. She contends that the trial court should not have determined custody, because a Hague Convention action is not a "vehicle for litigating the merits of a custody dispute," but also contends that the trial court should have analyzed *her* right to custody rather than analyzing G.P.'s custody rights. The court did not, however, determine the parents' custody rights. Rather, it limited its custody

determination to finding that California has jurisdiction over the *question* of J.P.'s custody. With respect to the Hague Convention petition, the only question relating to custody is whether G.P. was exercising custody over J.P. when A.P. removed the child from the country such that A.P. wrongfully interfered with G.P.'s custody rights. (*Mozes v. Mozes, supra*, 239 F.3d at pp. 1073, 1084-1085.) Even though G.P. was not listed as the father on J.P.'s birth certificate and had not taken any action to be officially declared the child's father before A.P. left the country, A.P. acknowledged that G.P. was the child's father. And, it was undisputed that he was actually exercising custody from October 2009 until February 2010, when A.P. unilaterally removed the child to Romania.

For all of these reasons, substantial evidence supports the trial court's conclusion that Romania was not J.P.'s habitual residence, its implied conclusion that the United States was at all times J.P.'s habitual residence, and its conclusion that G.P. did not violate the terms of the Convention by retaining J.P. in the United States over A.P.'s objections.

2.

THE COURT PROPERLY EXERCISED JURISDICTION UNDER THE UCCJEA

The Trial Court Properly Accepted the District Attorney's Memorandum Setting Forth His Legal Analysis of the Issue of Jurisdiction.

A.P. raises several issues concerning the trial court's finding that California courts had jurisdiction to determine J.P.'s custody, under the UCCJEA. Her first contention is that the court abused its discretion by relying on the San Bernardino District Attorney's

legal analysis on the question of jurisdiction. She asserts that when in May 2011, the District Attorney “made its formal request to the court to file Petition for Return of the Child under Hague Convention and analysis under UCCJEA,” the court already knew the whereabouts of the child and thus the District Attorney should not have been allowed to act under Family Code section 3130.¹¹

Section 3130 provides: “If a petition to determine custody of a child has been filed in a court of competent jurisdiction, or if a temporary order pending determination of custody has been entered in accordance with Chapter 3 (commencing with Section 3060), and the whereabouts of a party in possession of the child are not known, or there is reason to believe that the party may not appear in the proceedings although ordered to appear personally with the child pursuant to Section 3430, the district attorney shall take all actions necessary to locate the party and the child and to procure compliance with the order to appear with the child for purposes of adjudication of custody. The petition to determine custody may be filed by the district attorney.”

Section 3455 provides: “(a) In a case arising under this part or involving the Hague Convention on the Civil Aspects of International Child Abduction, a district attorney is authorized to proceed pursuant to Chapter 8 (commencing with Section 3130) of Part 2. [¶] (b) A district attorney acting under this section acts on behalf of the court and may not represent any party.” Here, although section 3455 clearly authorized the

¹¹ All further statutory citations refer to the Family Code unless another code is specified.

district attorney to file its petition under the Hague Convention, neither it nor section 3130 explicitly authorized the district attorney to file his analysis of jurisdiction under the UCCJEA.¹² However, we are not aware of any rule which precludes a trial court from accepting what is essentially an amicus brief on a legal issue, particularly when the brief has been served on the parties and the parties have also had an opportunity to brief the legal issues pertinent to their dispute. And, because A.P. did not object below to the filing of the brief, she has forfeited any contention on appeal concerning the court's reliance on the brief. In any event, because this court will independently determine the whether the trial court had subject matter jurisdiction (see below), any error in the court's ruling will be addressed.

The California Court Properly Exercised Jurisdiction Under the UCCJEA.

A.P. contends that the trial court lacked jurisdiction to issue the order appealed from because at the time the hearing to determine whether California had subject matter jurisdiction, the Romanian court had already acquired jurisdiction and had issued an order of custody in her favor.

The UCCJEA is the exclusive method of determining the proper forum in custody disputes involving other jurisdictions. (*In re A.C.* (2005) 130 Cal.App.4th 854, 860.) Jurisdiction is determined as of the date of commencement of the custody proceeding.

¹² The district attorney's petition under the Hague Convention is not relevant to the court's decision under the UCCJEA. Moreover, the district attorney's petition sought return of the child to Romania, and consequently inured to A.P.'s benefit.

(*Plas v. Superior Court* (1984) 155 Cal.App.3d 1008, 1015, fn. 5.)¹³ The

“commencement of the proceeding” is defined as the date on which the first pleading in a proceeding seeking to determine child custody is filed. (§ 3402, subd. (e).) G.P. filed his action to establish paternity and seeking custody of J.P. on February 4, 2010. A.P.’s custody action in Romania was filed nearly a year later, in late January 2011.

Accordingly, the question is whether jurisdiction existed as of February 4, 2010. We decide that question independently. (*In re A.C., supra*, at p. 860.)

Section 3421 provides that a court of this state has jurisdiction to make an initial child custody determination only if any of the following is or are true:

“(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 six 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 paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true:

¹³ *Plas v. Superior Court, supra*, was an action arising under the predecessor to the UCCJEA, the Uniform Child Custody Jurisdiction Act (the UCCJA). Cases interpreting the UCCJA “may be instructive in deciding cases under the [UCCJEA], except where the two statutory schemes vary. [Citation.]” (*In re A.C., supra*, 130 Cal.App.4th at p. 860.)

“(A) The child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

“(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

“(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428.

“(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).” (§ 3421, subd. (a); see also § 3421, subd. (b).¹⁴)

“Home state” is defined as “the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned.” (§ 3402, subd. (g).) On February 4, 2010, when G.P. filed his action for custody, J.P. was less than six months old. He had not lived in California continuously since birth, nor, obviously, had he lived in Illinois continuously since birth. Accordingly, neither California nor Illinois qualified as the child’s home state at the commencement of the custody proceeding. And, although a foreign country is treated as

¹⁴ “Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.” (§ 3421, subd. (b).)

a state under the UCCJEA (§ 3405, subd. (a)), Romania also did not qualify as J.P.'s home state on February 4, 2010, for the same reason, i.e., because he had not lived there from birth. Indeed, as of that date, J.P. had just arrived in Romania.

Even though California was not J.P.'s home state, however, the California court did have jurisdiction under section 3421, subdivision (a). No other state or country qualified as the child's home state, and the criteria of section 3421, subdivision (a)(2)(A) and (B) were both met. First, J.P. and both of his parents had a significant connection with California "beyond mere presence" in the state. (§ 3421, subd. (a)(2)(A).) J.P. had resided in California with both of his parents for all but one month of his life, his father was a long-time resident of California, and, up until the date his mother chose to leave, or shortly before that date, she had lived in California with the intention of remaining here to raise J.P. along with G.P., if not as a family, then at least as coparents. Second, substantial evidence was available in this state concerning the child's "care, protection, training, and personal relationships." (§ 3421, subd. (a)(2)(B).) Indeed, as of February 4, 2010, evidence concerning the child's care, protection, training and personal relationships existed, if at all, only in California. Finally, California also had jurisdiction because no court of any other state or country would have had jurisdiction under the criteria specified in paragraph (1), (2), or (3) of section 3421, subdivision (a). (§ 3421, subd. (a)(4).)

The UCCJEA's "Unjustifiable Conduct" Provision Does Not Apply.

Next, A.P. appears to contend that the trial court should have declined to exercise jurisdiction because the court should have found that her conduct in removing J.P. from the United States was not wrongful. Even if we assume that A.P.'s conduct was not wrongful for purposes of the UCCJEA, however, we do not understand the relevance of that assumption to the UCCJEA's unjustifiable conduct provision. Section 3428 provides in part, "[I]f a court of this state has jurisdiction under this part *because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct*, the court shall decline to exercise its jurisdiction." (§ 3428, subd. (a), italics added.) A.P. is not the person who sought to invoke the jurisdiction of the California court; G.P. is. Consequently, whether she did or did not engage in unjustifiable conduct by removing J.P. from the country without G.P.'s knowledge or consent, her conduct has no bearing on the court's exercise of jurisdiction.

If, instead, A.P. intended to contend that the court should have declined to exercise jurisdiction because G.P. engaged in unjustifiable conduct by removing J.P. from Romania under false pretenses, as she has asserted, that contention fails as well. In *In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, the court held, with respect to section 3428, subdivision (a), "[T]he legislative choice of the word 'because' in the above quoted portion of the statute is determinative. The statutory language leaves no room for doubt. 'Unjustifiable conduct' requires a court to decline jurisdiction only when the court's jurisdiction is invoked *as a result of* unclean hands, not when one of the party's hands get

dirty after jurisdiction has been properly asserted. This interpretation is not only consistent with the plain language of the statute, but with the intent of the drafters. (See 9 pt. IA West’s U. Laws Ann. [(1999) Prefatory Note to UCCJEA,] com. to § 208, p. 684 [‘If the conduct that *creates* the jurisdiction is unjustified, courts must decline to exercise jurisdiction that is inappropriately invoked by one of the parties.’ (Italics added.)])” (*In re Marriage of Nurie, supra*, at p. 512, original italics omitted, italics added.) Here, G.P. invoked the court’s jurisdiction before he brought J.P. back from Romania, and, as discussed above, the court had subject matter jurisdiction as of the date he filed his petition for custody. Accordingly, it was not his act of bringing J.P. back into California that created jurisdiction.

3.

THE TRIAL COURT WAS NOT REQUIRED TO DETERMINE WHETHER
CALIFORNIA OR ROMANIA WAS THE MORE APPROPRIATE FORUM UNDER
THE UCCJEA

A.P. asked the trial court to decline to exercise jurisdiction because California is an inconvenient forum as provided in section 3427. The court found that California is not an inconvenient forum. On appeal, A.P. contends that the court’s ruling was an abuse of discretion because the court failed to apply all of the factors set forth in section 3427.

Section 3427 provides, in part:

“(a) A court of this state that has jurisdiction under this part 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. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

“(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

“(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 degree of financial hardship to the parties in litigating in one forum over the other.

“(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.

“(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

“(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall 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.”

A trial court’s ruling on inconvenient forum is reviewed for abuse of discretion. (*In re Marriage of Nurie, supra*, 176 Cal.App.4th at p. 513.)

A.P. faults the trial court for not addressing all of the factors a court is directed to consider under section 3427. However, in the statement of decision, the court stated that it had considered all of the factors listed in section 3427, subdivision (b). A.P. did not object that the statement of decision was deficient in any respect. Consequently, this court must infer that the trial court made every factual finding necessary to support the judgment. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134.) The only issue on appeal is whether the record contains substantial evidence to support the implied factual findings. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267.)

To the extent that A.P.’s argument can be read as asserting that the record does not contain substantial evidence to support the trial court’s findings concerning section 3427, her argument fails. First, to the extent that she discusses the evidence, she discusses only the evidence which supports her position, a fundamental violation of the substantial evidence rule: ““A party who challenges the sufficiency of the evidence to support a particular finding must summarize the evidence on that point, favorable and unfavorable, and show how and why it is insufficient. [Citation.]’ [Citation.]” (*Huong Que, Inc. v.*

Luu (2007) 150 Cal.App.4th 400, 409, italics omitted.) Second, she fails to provide citations to the record to support her factual references. Similarly, when she purports to quote statements made by the court to demonstrate that the court abused its discretion, she fails to provide a citation to the record. If a party fails to support an argument with necessary citations to the record, the appellate court may deem the argument waived. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115; see Cal. Rules of Court, rule 8.204(a)(1)(C).) For these reasons, we need not address her argument further.¹⁵

DISPOSITION

The judgment is affirmed. Respondent G.P. is awarded costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.
MILLER
J.

¹⁵ A.P. also asserts that the court abused its discretion in not ceding jurisdiction to Romania because Romania was J.P.'s home state. We have previously held that Romania was *not* J.P.'s home state for purposes of the UCCJEA, so we need not repeat that analysis.