

father in South Carolina. The child continued to reside with her father until February 2005.

{¶13} On February 7, 2005, K.R.J. came to Ohio and began residing with her maternal grandmother. On February 16, 2005, K.R.J.'s grandmother filed a complaint for the allocation of parental rights and responsibilities with the Clermont County Juvenile Court. Father was served with a copy of the complaint, but failed to file a responsive pleading. Father did not attend the subsequent custody hearing, on April 5, 2005, after being served and receiving notice of the hearing.

{¶14} At the April 5, 2005 hearing, K.R.J., her grandmother, her maternal aunt, and her mother all agreed that custody of K.R.J. should be awarded to her grandmother.¹ The juvenile court issued an order the same day granting temporary custody of K.R.J. to her grandmother. The juvenile court also made the Milford School District K.R.J.'s home district. The juvenile court did not issue a support order at that time.

{¶15} On December 13, 2005, the Clermont County Child Support Enforcement Agency (CCCSEA) filed a motion to establish support for K.R.J. Although father was served with a copy of the motion, he failed to respond to it or to appear at the support hearing. On February 6, 2006, the juvenile court issued an order which required father to pay \$495.96 per month in support for K.R.J. The support order terminated on May 26, 2009, after K.R.J. turned 18 and graduated from high school.

{¶16} On May 27, 2009, father was indicted on two counts of nonsupport of dependents. Father filed a motion to set aside the April 5, 2005 order awarding temporary custody of K.R.J. to her grandmother. The juvenile court denied the motion

1. It appears that mother was unable to assume custody of K.R.J., because she was in the Clermont County jail and/or facing some sort of a sentence.

and father appealed, arguing a single assignment of error.

{¶17} "THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SET ASIDE THE COURT'S ORDER OF APRIL 5, 2005."

{¶18} In his sole assignment of error, father asserts two separate issues. First, father maintains the juvenile court did not have subject matter jurisdiction over the custody action filed by K.R.J.'s grandmother. Second, father argues that the juvenile court abused its discretion when it denied father's motion to set aside the temporary custody order. We do not agree.

{¶19} We first note that the contested order was entered on April 5, 2005. The law in effect governing jurisdiction over this matter was under the former Uniform Child Custody Jurisdiction Act (UCCJA) which was adopted by Ohio in 1977, and codified at former R.C. 3901.21 to 3109.37. *Justis v. Justis*, 81 Ohio St.3d 312, 314, 1998-Ohio-626. Although the UCCJA was repealed less than a week later on April 11, 2005, when Ohio adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), now codified at R.C. 3127.01 et seq., the UCCJEA specifies a "custody determination that was commenced before the effective date of this section is governed by the law in effect at the time the motion or other request was made." R.C. 3127.53. Therefore, we must review the jurisdictional issues in this case under the UCCJA. *A.S. v. D.G.*, Clinton App. No. CA2006-05-017, 2007-Ohio-1556, ¶20.

{¶110} "The purpose of the UCCJA is to avoid jurisdictional conflict and to promote cooperation between state courts in custody matters so that a decree is rendered in the state that can best decide the best interest of the child." *State ex rel. Aycock v. Mowrey* (1989), 45 Ohio St.3d 347, 349. See, also, *In re Adoption of Asente*, 90 Ohio St.3d 91, 102, 2000-Ohio-32. "In effect, the [UCCJA] generally limits interstate interference in custody proceedings." *Aycock* at 349. Moreover, the UCCJA specifically

states "[i]f a court of another state has made a parenting decree, a court of this state shall not modify that decree, unless it appears to the court of this state that the court that rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with sections 3109.21 to 3109.36 of the Revised Code, or has declined to assume jurisdiction to modify the decree, and the court of this state has jurisdiction." R.C. 3109.31(A). However, within the UCCJA there are exceptions to the general prohibition against interstate interference in custody matters, some of which are found at R.C. 3109.22(A)(1) through (4). *Aycock* at 349.

{¶11} Pursuant to R.C. 3109.22(A), Ohio courts are permitted to exercise jurisdiction over a custody proceeding where one of the following situations is applicable:

{¶12} "(1) This state is the home state of the child at the time of commencement of the proceeding, or this state had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a parent who claims a right to be the residential parent and legal custodian of a child or by any other person claiming his custody or is absent from this state for other reasons, and a parent or person acting as parent continues to live in this state;

{¶13} "(2) It is in the best interest of the child that a court of this state assumes jurisdiction because the child and his parents, or the child and at least one contestant, have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

{¶14} "(3) The child is physically present in this state and either has been abandoned or it is necessary in an emergency to protect the child because he has been

subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent;

{¶15} "(4) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with division (A) (1), (2), or (3) of this section, or a court in another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to make a parenting determination relative to the child, and it is in the best interest of the child that this court assume jurisdiction."

{¶16} Generally, a juvenile court's determination that it has authority to exercise jurisdiction over a custody decision or that it is an inconvenient forum for such a decision is subject to review under an abuse of discretion standard. See *Bowen v. Britton* (1993), 84 Ohio App.3d 473, 478. However, where there is a question of law regarding the *existence* of a juvenile court's subject matter jurisdiction, we review the matter de novo. See *Yazdani-Isfehiani v. Yazdani-Isfehiani*, 170 Ohio App.3d 1, 2006-Ohio-7105, ¶20.

{¶17} In its April 5, 2005 decision, the juvenile court did not identify its reason(s) for exercising jurisdiction over K.R.J.'s custody determination. However, in its December 28, 2009 decision denying father's motion to set aside the temporary custody order, the juvenile court found, with regard to the issue of subject matter jurisdiction, that (1) "the child, the Maternal Grandmother, and the child's Mother all resided in Clermont County, Ohio," and (2) according to grandmother's affidavit filed with her custody motion, that father had asked her to come and pick up K.R.J. because father had "put the child 'out of his house.'" Based on these facts the juvenile court said "clearly [it] had jurisdiction to consider said Motion [for Custody]."

{¶18} Father argues the juvenile court lacked subject matter jurisdiction to issue the April 5, 2005 temporary custody order, because none of the four jurisdictional

prerequisites of R.C. 3109.22(A) were applicable to the proceedings. First, father maintains that R.C. 3109.22(A)(1) did not vest the juvenile court with jurisdiction, because South Carolina, rather than Ohio, was K.R.J.'s home state, pursuant to R.C. 3109.21(E).² Second, father argues that R.C. 3109.22(A)(2) was inapplicable because K.R.J. had no significant connection to the state of Ohio. Third, father asserts that he did not abandon his daughter, nor did he subject her to or threaten her with abuse or mistreatment, or otherwise cause her to be neglected or dependent pursuant to R.C. 3109.22(A)(3). Father also points out that grandmother's affidavit stated specifically that he did not intend to relinquish custody of his daughter. Finally, father states that R.C. 3109.22(A)(4) is inapplicable because at least two other states -- North Carolina and South Carolina -- would have had jurisdiction over the matter, and North Carolina had never relinquished jurisdiction. Because the juvenile court failed to engage in a proper analysis to determine whether it could exercise jurisdiction to render the temporary custody order, father maintains the juvenile court lacked subject matter jurisdiction, making the April 5, 2005 temporary custody order void ab initio. See *Squires v. Squires* (1983), 12 Ohio App. 3d. 138, 141.

{¶19} While it is preferable for a court to state its reasons for assuming jurisdiction over a custody matter where there is an existing foreign custody determination, we find that there is no express requirement in the UCCJA that a court articulate its reasoning for exercising its jurisdiction. This is especially true where, as in this case, father failed to appear, file objections, or request further findings of fact and conclusions of law regarding jurisdiction after the juvenile court imposed the temporary custody order. Cf. *A.S. v. D.G.*, 2007-Ohio-1556, ¶20, fn. 1.

2. R.C. 3109.21(E) states in pertinent part, "[h]ome state' means the state in which the child, immediately preceding the time involved, lived with the child's parents, a parent, or a person acting as parent, for at least six consecutive months * * *."

{¶20} Father is correct in that neither R.C. 3109.22(A)(1) or (4) vested the juvenile court with jurisdiction to issue the temporary custody order. However, the record establishes the juvenile court did have jurisdiction pursuant to R.C. 3109.22(A)(2) and (3).

{¶21} In her motion for temporary custody, grandmother wrote the following statement in the section regarding reasons for requesting custody:

{¶22} "The defendant put [K.R.J] out of his house. I was told to come get her and she was to come live with me. The defendant doesn't want to relinquish custody but expects me to take care of her and enroll her in school. I cannot do so without some sort of custody." Furthermore, the following also appears in the record of the April 5, 2005 hearing:

{¶23} "[MATERNAL AUNT]: I take care of my mother and I run [K.R.J] to her functions.

{¶24} "* * *

{¶25} "THE COURT: Alright. Now, prior to her coming to live with you, what school district did she go to?

{¶26} "[MOTHER]: She was in South Carolina.

{¶27} "THE COURT: Oh, South Carolina, okay. And you're now in Milford Schools?

{¶28} "[GRANDMOTHER]: Yes.

{¶29} "THE COURT: Milford School District will be the home district. No support order at this time. What about the father, does he pay support?

{¶30} "[GRANDMOTHER]: No, he doesn't. He paid it to me when I had custody of [K.R.J] prior and when he took custody of K.R.J. he didn't require it of me. I was on disability at the time. So I don't think none of us are really worried about that right now.

Health insurance for her is something we're going to have to . . .

{¶31} "THE COURT: Probably apply for a medical card.

{¶32} "[GRANDMOTHER]: Yeah, that's good.

{¶33} "THE COURT: Unless he has it.

{¶34} "[GRANDMOTHER]: No, that's one of the reasons that she's here."

{¶35} First, the record demonstrates that it was in the best interest of K.R.J. that the juvenile court assumed jurisdiction, pursuant to R.C. 3109.22(A)(2). K.R.J. and grandmother had a significant connection to Ohio because grandmother and K.R.J.'s aunt were both residents of Ohio. In addition, there was evidence that K.R.J. had an additional connection to Ohio because her mother was in jail in Clermont County. See *Matter of Buttery* (Nov. 14, 1988), Butler App. No. 88-02-029, at 5 (finding a significant connection with Ohio where mother was facing a two-to-15-year sentence). In addition, there was also evidence concerning K.R.J.'s present or future care, protection, training and personal relationships within Ohio. It was grandmother's intention to ensure K.R.J. had a home to live in, received an education, and was provided with medical care. In addition, it is clear from the record that K.R.J. was presently attending "functions," which demonstrated K.R.J. had begun to fashion her own personal relationships within the state of Ohio. Therefore, we find the juvenile court had jurisdiction to issue the temporary custody order pursuant to R.C. 3109.22(A)(2).

{¶36} Second, the record establishes that the juvenile court had jurisdiction pursuant to R.C. 3109.22(A)(3). K.R.J. was physically present in the state, because her father had "put [her] out of his house." We do not find evidence that father "abandoned" K.R.J., because the juvenile court could not have known on April 5, 2005 whether K.R.J.'s presence in Ohio was temporary or permanent in nature, and because grandmother stated father did not intend to relinquish custody. Nevertheless, there is

evidence that it was necessary in an emergency for the juvenile court to protect K.R.J., because the record shows she was neglected by her father.

{¶37} Although neglect is not defined in the UCCJA, we note that in the Ohio Revised Code one of the definitions for neglect includes "any child * * * [w]hose parents, guardian, or custodian neglects the child *or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being* * * *." (Emphasis added.) R.C. 2151.03(A)(3). In this case, father refused to provide K.R.J. with a home to live in, monetary support, an education, or medical insurance. Indeed, grandmother's custody complaint even stated that father expected grandmother to take care of K.R.J. and enroll her in school. Without the temporary custody order grandmother could not have properly cared for K.R.J. or made certain she received an education and/or proper medical care when needed. Therefore, we find the juvenile court also had jurisdiction to issue the temporary custody order pursuant to R.C. 3109.22(A)(3).

{¶38} In his second issue on appeal, father also argues the juvenile court abused its discretion when it denied his Civ.R. 60(B) motion for relief from judgment.

{¶39} "To prevail on a motion to set aside a judgment under Civ.R. 60(B), the moving party must establish all three of the following: '(1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B) (1) through (5); and (3) the motion is made within a reasonable time * * *.'" *In re Adoption of A.N.L.*, Warren App. Nos. CA2004-11-131, CA2005-04-046, 2005-Ohio- 4239, ¶23, quoting *GTE Automatic Electric v. ARC Industries* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus. Absent an abuse of discretion, a juvenile court's decision to grant or deny relief pursuant to Civ.R. 60(B) will not be disturbed by a reviewing court. *Taylor v. Haven* (1993), 91 Ohio App.3d 846,

849.

{¶40} Father maintains he is entitled to relief from judgment, because the juvenile court lacked subject matter jurisdiction over the temporary custody determination, and alternatively because the juvenile court improperly exercised jurisdiction under the UCCJA. Father claims that Civ.R. 60(B)(5), which allows relief based on "any other reason justifying relief from the judgment," is the basis for the motion to set aside the April 5, 2005 temporary custody decision.

{¶41} Allowing relief pursuant to Civ.R. 60(B)(5) "has been narrowly defined and should be granted only in extraordinary situations where the interests of justice demand." *In re Marriage of Watson* (1983), 13 Ohio App.3d 344, 346, citing *Adomeit v. Baltimore* (1974), 39 Ohio App.2d 97, 105. See, also, *Taylor* at 849 (stating the grounds for invoking relief pursuant to Civ.R. 60[B][5] must be substantial). "There is no fixed time period within which a motion for relief under Civ.R. 60(B)(5) must be made." *Watson* at 879. "Such a motion must, however, be made within a 'reasonable time.'" *Id.* "The determination as to what constitutes a 'reasonable time' is for the trial court [to decide] in the exercise of its sound discretion." *Id.* While courts have granted relief from judgment even after lengthy delays, it is usually only allowed under unique circumstances. See, e.g., *Taylor* at 852 (finding a 12-year delay may not be unreasonable where appellant was ordered to pay support for a child that was not his offspring); *Watson* at 345, 347 (finding a four-year delay in requesting relief from a dissolution was not necessarily unreasonable in light of the best interests of the child and the fact that wife concealed pregnancy of second child during the pendency of the divorce); *Klingman v. Klingman* (Nov. 30, 1984), Ottawa App. No. OT-84-12, 1984 WL 14432, * 3-4 (finding five years a reasonable period of time where delay was caused by harassment and promises of reconciliation, and where husband's conduct was violent

and abusive in forcing wife to agree to the terms of a dissolution); *Holt v. Cline* (June 23, 1992), Richland App. No. CA2905, 1992 WL 173368, *2 (finding five years was not per se unreasonable to reopen a paternity judgment where appellant could not have fathered children because of a vasectomy and because appellant was unrepresented by counsel).

{¶42} In its December 28, 2009 entry denying father's motion for relief from judgment, the juvenile court stated:

{¶43} "The Defendant took no legal action, and made no response to any of the pleadings * * *, although he was thoroughly aware of the proceedings as they progressed over the past four [and a half] years since he asked the Maternal Grandmother to come and retrieve the minor child. Clearly this is outside the contemplated scope of a 'reasonable period of time' as set forth in Rule 60(B). The only reason he is pursuing any relief from judgment at this time is as a direct result of his having been indicted in Clermont County, Ohio for criminal nonsupport of the minor child."

{¶44} We find that the juvenile court did not abuse its discretion in denying father's Civ.R. 60(B) motion for relief from judgment, because he failed to file his motion within a reasonable time. Unlike the situations in *Taylor, Watson, Klingman* and *Holt*, we observe that father has failed to present any extraordinary, substantial, or otherwise unique circumstances which would entitle him to relief after four and a half years. Thus, father's Civ.R. 60(B) motion was properly denied.

{¶45} In conclusion, the juvenile court had jurisdiction to enter the April 5, 2005 temporary custody order, and did not abuse its discretion in denying father's Civ.R. 60(B) motion for relief from judgment. Father's sole assignment of error is overruled.

{¶46} Judgment affirmed.

YOUNG, P.J., and POWELL, J., concur.