

: No. 708 EDA 2026

We glean the following facts and procedural history from the trial court's opinion and the record. In July 2024, Mother filed a complaint for custody, and received a return receipt signed by Father's agent at 45 E. City Avenue #740, Bala Cynwyd, Pennsylvania. **See** Affidavit of Service, 7/29/24,

Exhibit A. The case was scheduled for a September 2024, custody conciliation conference with a mediator, but Father did not appear. On September 9, 2024, the trial court issued a temporary custody order (“the temporary custody order”) granting Mother sole legal and primary physical custody of Child, and granting Father partial physical custody as the parties agreed. When Father failed to file a praecipe to list the matter for hearing within thirty days, the court’s order became final in October 2024 (“the 2024 final custody order”). Father did not appeal the court’s 2024 final custody order.¹

In June 2025, Mother filed a counseled petition to confirm her relocation with Child (the “relocation petition”). Mother’s counsel attached to her relocation petition an affidavit indicating that on May 8, 2025, counsel sent a notice of proposed relocation to Father via certified mail, restricted delivery, with return receipt requested, to Father’s last known address on file: 45 E. City Avenue #740, Bala Cynwyd, Pennsylvania. **See** Counsel’s Affidavit, 6/11/25, at ¶¶ 4-5. The affidavit stated Father had not provided a new

¹ Father acknowledges he was aware of the September 9, 2024, temporary custody order. In his brief, Father states that the order required all communications between the parties be conducted through “Our Family Wizard,” but asserts that his use of that app “would have presented [him] with a tactical dilemma: routine use of a court-imposed communication channel pursuant to an order entered without proper service of original process risked being characterized . . . as consent to or acquiescence in the underlying jurisdictional posture[.]” Father’s Brief at 18. Father then explains he maintained contact with son for the next seven months while avoiding using Our Family Wizard until April 2025, when Mother insisted on the use of that app. **See id.** at 18-19.

address to the Montgomery County Court of Common Pleas; counsel's certified mail to Father was returned as "not deliverable as addressed" and "unable to forward"; and counsel had also served Father by email at his last known email address, m.anthonylibrizzi@gmail.com. **See id.** at ¶¶ 5-7. The affidavit averred Father had not filed an objection to the proposed relocation and the time to file an objection has passed. **See id.** at ¶¶ 8-9. It also recited Father had not seen, or had contact with, Child since December 2024. **See id.** at ¶ 10. At the end of June 2025, the court listed the case for a conference in August 2025, and mailed notice of the conference to Father at his last known address; the mail was returned to the court as "undeliverable."

Fifty-four days after Mother's petition was docketed, Father filed a counter-affidavit opposing the proposed relocation. **See** Counter-Affidavit of Non-Consent to Relocation, 8/4/25, at 1.² In his counter-affidavit, Father acknowledged that he knew in April 2025 of Mother's planned relocation, but claimed Mother did not properly serve a notice of relocation, and he did not receive notice of the proposed relocation by email until May 28, 2025. **See** Counter-Affidavit on Non-Consent to Relocation, 8/4/25, at 1; Counter-

² That day, Father also filed counter-affidavits entitled: 1) "Procedural Defect Regarding Service"; 2) "Good Faith Support and Parental Conduct"; and 3) "Defamation, Alienation, and Financial Harm."

Affidavit of Procedural Defect Regarding Service, 8/4/25, at 1.³ Father did not provide an updated address with his filing. The court ordered a conference to be held on Mother's petition and Father's counter-affidavits on August 13, 2025. On August 13, 2025, Father filed a praecipe to change his address to 200 Village Center Drive, Freehold, New Jersey ("the New Jersey address");⁴ however, Father failed to appear for the conference that day, and the court scheduled a relocation hearing for October 28, 2025. On August 14, 2025, the court mailed notice of the hearing to Father's updated New Jersey address, and emailed the notice the next day to what the trial court stated was Father's last listed email address: grantor@malrlt.com.⁵ On August 16, 2025, the notice of the hearing sent to Father ***at the New Jersey address he had provided the court*** was returned as "Return to Sender; Attempted Not Known; Unable to Forward." **See** Trial Court Opinion, 4/13/26, at 3.

³ Although dated June 27, 2025, Father's counter-affidavits were not docketed until August 4, 2025. Further, although Father did not state the email address by which he received service, Mother's counsel's affidavit stated the email with the petition went to Father at his last known email address, m.anthonylibrizzi@gmail.com.

⁴ Father's praecipe to change address listed the following address: "Grantor's Office 200 Village Center Drive, Freehold, Nation New Jersey. Near [07728-9998]". Underneath his signature, Father listed his name and an address without the references to "Nation" or "Near" that he included in his praecipe to change address.

⁵ It is not clear from the record when Father provided this email address to the court.

On October 20, 2025, Mother filed a pre-trial statement in which she asserted she had already relocated to Western New York. **See** Pre-Trial Statement, 10/20/25, at 3. The night before the scheduled October 28, 2025, hearing, Father filed an emergency motion to permit remote appearance; Father attached to that motion a "Verified Contact Information and Consent to Email Service," and provided Father's address as 200 Village Center Drive #6254, Freehold, New Jersey, and his email address as grantor@malrlt.com. **See** Motion for Remote Appearance, 10/27/25, Exhibit RA-C; Verified Contact Information and Consent to Email Service. On October 28, 2025, at 3:50 a.m., the day of the hearing, Father filed a pre-trial statement and "special appearance" asserting he had not properly been served with notice of the hearing via certified mail, and the court lacked personal jurisdiction or subject matter jurisdiction. **See** Father's Pre-Trial Statement, 10/28/25, at 2-3.

Father did not appear in person at the October 28, 2025, hearing; Mother's counsel provided the court with an email from Father received at 3:53 a.m. that morning, in which Father stated he had been improperly served, and attached a pre-trial statement and his motion to permit remote appearance. The court granted Father's request to appear remotely, and Father participated by audio link. The trial court summarized the hearing as follows:

On the morning of trial, the court received notice of Father's email to Mother's counsel on Tuesday, October 28, 2025, at 3:53 a.m. alleging that Mother's counsel had improperly served him with documents for the trial and informing counsel that he had a [sic]

filed an emergency motion to permit remote appearance and his own pre-trial statement and exhibits with the court on that same day. The court then received Father's emergency motion to permit remote appearance and other documents, including his pre-hearing statement and exhibits that he filed on the court administration docket on October 27, 2025, at 8:24 p.m. In his emergency motion to permit remote appearance, Father failed to articulate any reason why he could not appear in person in compliance with the court's [scheduling] order of August 14, 2025 that was sent to him via certified mail at the address he provided on August 13, 2025[,] . . . and via electronic mail at grantor@malrlt.com.

* * * * *

. . . [T]he court sent Father a link on the Zoom platform to inquire further regarding his failure to appear in person and his request to appear remotely. That [Z]oom link was sent to the email address grantor@malrlt.com. Father responded and appeared, but only via phone — not video. During this on-the-record inquiry Father clarified that his email to Mother's counsel was asserting that Mother's counsel had not properly served him with Mother's pre-hearing statement five business days in advance as required by this court's scheduling order.

Father's challenge to Mother's counsel demonstrates that he had received the court's short list order [for a conference on August 13, 2025] and scheduling order [of the October 28, 2025, hearing on Mother's relocation petition]. However, he could not explain to the court why he could not appear in person and had failed to file his own pre-hearing statement five days in advance of trial. When the court asked Father regarding why he had failed to appear in person given his notice of the hearing date since on or about August 14, 2025, Father could not articulate a reason other than that his appearance via phone was a "special appearance not conceding personal jurisdiction," "reserving his right to objections regarding jurisdiction," and not an act of "consent to participate in the proceedings."

See Order, 10/28/25, at 1 n.1 (some capitalization omitted).⁶ The trial court thereafter concluded Father engaged in a willful failure to appear and participate in the relocation hearing, denied his counter-affidavits challenging Mother's relocation petition, and granted Mother's request to relocate to Niagara Falls, New York. **See id.** at 1-2 & n.1 (the "relocation order").

On November 7, 2025, Father filed a "Notice," demanding findings relating to jurisdiction and notice, and one day later, filed a motion to compel a series of jurisdictional findings. Father also filed a motion to vacate the court's September 2024 temporary custody order, and the October 28, 2025, relocation order for lack of notice and opportunity to be heard. **See** Father's Motion to Vacate, 11/8/25. One day after that, Father filed a motion to compel proof of authority of Mother's counsel. On November 24, 2025, the court scheduled a conference on Father's motions for January 28, 2026. Although the notices and motions Father filed appeared to seek, among other things, reconsideration of the October 28, 2025, relocation order, the trial court apparently considered the filings to be separate petitions. **See** Trial Court Opinion, 4/13/26, at 11 (noting Father did not file a petition to reconsider the relocation order). In any event, the trial court did not expressly grant

⁶ Father was required to ensure the presence in the record of all documents and transcripts necessary to resolve the issues on appeal. **See** Note to Pa.R.A.P. 1921 (stating that [u]ltimate responsibility for a complete record rests with the party raising an issue that requires appellate court access to record materials"). Father failed to ensure the presence in the record of a transcript of the October 28, 2025, hearing.

reconsideration of, or vacate, the relocation order, and Father did not timely appeal the relocation order.

On January 28, 2026, the court conducted a “short list conference” on the jurisdictional and service issues Father raised. **See** N.T., 1/28/26, at 8-9. Father argued he had been “prevented” from participating in prior proceedings by defective service. **Id.** at 8. He challenged the court’s ability to make findings on the record of Child’s home state, and Mother’s counsel’s authority to represent her. **See id.** at 14-16. Father asserted his failure to appeal the relocation order was “irrelevant” because his jurisdictional and service issues would render that order void. **See id.** at 15-16. On February 6, 2026, the trial court issued an order denying Father’s motions and transferring jurisdiction over the case to Niagara County, New York, where Mother had resided for more than six months.⁷ Father timely appealed from the February 6, 2026 order, which he asserted subsumed rulings made on January 28, 2026. **See** Father’s Notice of Appeal, 3/9/25. Father and the trial court complied with Pa.R.A.P. 1925.

On appeal, Father raises four issues for our review:

1. Did the trial court err as a matter of law in entering its February 6, 2026 transfer order, where (a) the trial court’s underlying home-state determination under 23 Pa.C.S.[A.] § 5421 rested on judicial notice of [Mother’s] pleadings and

⁷ Although the hearing was listed as a “conference,” the trial court swore in both Father and Mother. **See** N.T., 1/28/26, at 2-3. Mother stated she had lived in Montgomery County since 2006, and for Child’s life, but moved to New York in July 2025. **See id.** at 29-30.

on representations made at a January 28, 2026 conference the trial court itself declared was “not an evidentiary hearing,” rather than on testimony, documentary evidence, or any other competent evidentiary basis; (b) the trial court invoked 23 Pa.C.S.[A.] § 5423 – which governs jurisdiction to modify a child custody determination originally entered in another state and has no application to a Pennsylvania-originated custody matter – as authority to transfer the case; and (c) the trial court declined to exercise jurisdiction without invoking or applying 23 Pa.C.S.[A.] § 5427 (Inconvenient Forum), the operative statute, which commands consideration of eight enumerated factors before any such declination, and addressed only one of the eight factors while omitting the other seven?

2. Did the trial court violate [Father’s] right to procedural due process under the Fourteenth Amendment, as applied through the standards articulated in ***Stanley v. Illinois***, 405 U.S. 645 (1972), ***Santosky v. Kramer***, 455 U.S. 745 (1982), and ***Troxel v. Granville***, 530 U.S. 57 (2000), where (a) original process was never effectuated under 231 Pa. Code Rule 1930.4(b)(1) before the trial court entered orders affecting [Father’s] fundamental liberty interest in his relationship with his son; (b) the trial court permitted [Father] to appear at the October 28, 2025 protracted relocation hearing for inquiry purposes only, and then characterized [Father’s] compliance with that limitation as “willful failure to appear and participate” warranting a default order; (c) the trial court entered the October 28, 2025 default relocation order without addressing the four sworn opposition affidavits [Father] had filed eighty-five days earlier at Sequence No. 19; and (d) the trial court has never conducted any record-based analysis of the sixteen statutory custody factors under 23 Pa.C.S.[A.] § 5328(a) or of the ten statutory relocation factors under 23 Pa.C.S.[A.] § 5337(h) at any stage of these proceedings?
3. Did the trial court err in its construction of 23 Pa.C.S.[A.] § 5409 by holding that the statute’s limited-appearance immunity does not apply to appearances made in connection with a modification proceeding within an existing custody action, where the statute’s plain text expressly extends its protection to “[a] party to a child custody proceeding, including a modification proceeding,” and the

trial court's contrary construction renders the express enumeration of "modification proceeding" surplusage in violation of fundamental canons of statutory construction?

4. Is the February 6, 2026 order on appeal an independently appealable final order under Pa.R.A.P. 341(b)(1), and are the trial court's defenses of timeliness, waiver, and harmless error inapplicable, where (a) the February 6[, 2026] order resolved [Father's] post-judgment motions challenging the jurisdictional foundation of the underlying proceedings (Sequences 30, 31, 32) and effected a new disposition by transferring jurisdiction and venue to another state; (b) subject-matter jurisdiction may be raised at any stage of the proceedings and cannot be waived by passage of time or by good-faith citation error in a Concise Statement of Errors; and (c) the trial court's failures to perform the statutory analyses commanded by 23 Pa.C.S.[A.] §§ 5421, 5422, 5427, 5328(a) and 5337(h) are structural defects in the proceedings rather than trial errors subject to harmless error review?

See Father's Brief at 10-12.

Father frames his first question presented as one issue, but states multiple subclaims concerning: (1) various aspects of subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), 23 Pa.C.S.A. §§ 5401-5482, (2) the trial court's conflation of the UCCJEA and the notice provisions of 23 Pa.C.S.A. § 5337, and (3) the trial court's decision to relinquish UCCJEA jurisdiction and order a transfer to New York. We address these arguments *seriatim*.

Father initially challenges the trial court's jurisdiction over the custody proceeding because the trial court allegedly failed to determine Pennsylvania was Child's home state when Mother initiated custody proceedings. **See** Father's Brief at 27-31. Although Father does not explicitly state whether he

challenges the 2024 temporary and final custody order or the relocation order, he devotes most of his discussion to the relocation order.

Under the Pennsylvania UCCJEA, a court has jurisdiction to make an initial child custody determination if, *inter alia*, the Commonwealth “is the home state of the child on the date of commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding[.]” **See** 23 Pa.C.S.A. § 5421(a)(1).⁸ Following a court’s exercise of jurisdiction over a custody matter, the court has “exclusive, continuing jurisdiction over the determination” until a court of this Commonwealth determines that substantial evidence no longer supports jurisdiction or a court in another state determines the child, its parents and any persons acting as parents, do not presently reside in the Commonwealth. 23 Pa.C.S.A. § 5422(a)(1)-(2).

The trial court states that in its February 6, 2026, order it took judicial notice that Child’s residence was in Montgomery County from the time of birth, and Mother testified she and Child lived in Montgomery County at the time of commencement of custody proceedings. **See** Trial Court Opinion, 4/13/26, at 6-7 (citing N.T., 1/28/26, at 28-29). It concludes that at the time of Mother’s

⁸ The standard of review in determining whether a court has subject matter jurisdiction is *de novo*, and the scope of review is plenary. **See S.K.C. v. J.L.C.**, 94 A.3d 402, 406 (Pa. Super. 2014).

initial custody petition and petition for relocation, Pennsylvania was Child's home state. ***See id.*** at 7.

Following our review, we discern no basis to grant relief. The record demonstrates that the trial court entered the temporary custody order in September 2024, based on Mother's Petition for Custody, which asserted Child has lived his entire life in Pennsylvania. ***See*** Complaint for Custody, 7/25/24, at 1-2 (unnumbered). That order became final in October 2024, and Father did not appeal it despite his admitted knowledge of the proceedings (***see supra*** n.1). Father does not cite any place in the more than one-year course of custody proceedings where he factually disputed Mother's assertion of Child's residence in Montgomery County, despite his filing of counter-affidavits of non-consent to relocation and other documents in the trial court, as well as intermittently participating in court proceedings, including the October 28, 2025, hearing. Notably, Father himself concedes in his brief that by the time Mother filed her relocation petition in July 2025, "the contested question was no longer where the child *had been* born and reared[.]" Father's Brief at 32. That the trial court did not make a formal finding on an undisputed fact is not a basis for relief.

As the trial court notes, Father never challenged the original custody order and it became final in October 2024. See Trial Court Opinion, 4/13/26, at 1. We agree with the trial court, which refused to countenance Father's belated attempt to challenge a previously undisputed jurisdictional fact as part

of a stratagem to circumvent the adjudication of Mother's petitions, without apparent concern for the best interests of the child; instead, the court addressed only Father's preserved claims. For all of these reasons, the trial court did not err by exercising jurisdiction over Mother's initial custody petition. **See** 23 Pa.C.S.A. § 5422(a) (providing that a Pennsylvania court retains jurisdiction over a child custody determination until neither the child, nor the child and one parent lack a significant connection with the Commonwealth). Moreover, because there is no factual dispute Mother was living with Child in Pennsylvania in June 2025, when she filed her relocation petition, the trial court retained jurisdiction over that petition. **See T.D. v. M.H.**, 219, 1190, 1197 (Pa. Super. 2019) (stating the trial court relies on the factual circumstances as they existed at the time the petition was filed).

In his next subclaim, Father asserts the court conflated the jurisdiction provisions of the UCCJEA and the notice provisions of the statute governing relocation, 42 Pa.C.S.A. § 5337. **See** Father's Brief at 31-33 (citing, *inter alia*, 23 Pa.C.S.A. § 5337(c)(3)). Father failed to raise this claim in his Rule 1925(b) statement and the trial court did not address it. Accordingly, the claim is waived. **See** Pa.R.A.P. 1925(b)(4)(vii) (stating that "issues not included in the [1925(b)] Statement . . . are waived").

Father further asserts the trial court cited the wrong statutory provision when it transferred the case to New York and failed to perform a mandatory analysis concerning an independent forum under the UCCJEA. **See** Father's

Brief at 33-36. However, in his 1925(b) statement, Father asserted only that the trial court failed to confirm its own jurisdiction before issuing final judgment. **See** Father's 1925(b) Statement, 3/9/26, at 3 (citing, *inter alia*, "**B.A.S. v. J.S.**, 192 A.3d 385").⁹ Thus, he did not preserve claims regarding transfer or an inconvenient forum under the UCCJEA. Accordingly, the claim is waived and we will not address it. **See** Pa.R.A.P. 1925(b)(4)(vii).¹⁰

In his second issue, Father again raises multiple claims, the first of which challenges the service of process in this case. **See** Father's Brief at 36-40. After discussing the constitutionally protected nature of the right to raise one's

⁹ As the trial court states, a decision under the name "**B.A.S. v. J.S.**" does not appear to exist, and Father's citation to the Atlantic Report refers to a Vermont Supreme Court workers' compensation case.

¹⁰ An appellate court will affirm the trial court's decision where any valid reason for doing so appears in the record. **See Coker v. S.M. Flickinger Co., Inc.**, 625 A.2d 1181, 1187 (Pa. 1993); **see also Generation Mortg. Co. v. Nguyen**, 138 A.3d 646, 651 n. 4 (Pa. Super. 2016) (stating this Court is not constrained to affirm on the grounds relied upon by the trial court).

Contrary to Father's assertions, he has not demonstrated that the inconvenient forum provision of the UCCJEA implicates subject matter jurisdiction. Moreover, Father cites to "**Steel v. Weisberg**," 535 A.2d 154, 157," but the page citations Father provides for that case appear in: **Hutnik v. Hutnik**, 535 A.2d 151 (Pa. Super. 1987), and **Commonwealth v. Flis**, 535 A.2d 157 (Pa. Super. 1987). We note that there are two cases, **Steel v. Weisberg**, 534 A.2d 814 (Pa. Super. 1987); and **Steel v. Weisberg**, 500 A.2d 428 (Pa. Super. 1985), available on Westlaw; however, neither case supports the proposition he asserts. Therefore, even if not waived by Father's failure to include this claim in his Rule 1925(b) statement, we would further decline to address Father's unsupported argument.

children, Father asserts he was denied due process and a fundamentally fair procedure because original service of process was never effectuated pursuant to Pa.R.Civ.P. 1930.4(b). **See** Father's Brief at 37-38.

The trial court found this claim waived and meritless. It first noted the case law for this challenge Father cited in his 1925(b) Statement, "**C.T. v. J.S.**, 951 A.2d 1220," and "**Frazier v. Gillis**, 807 A.2d 307," do not exist, which it accurately asserts is a basis to deny Father's claim. **See Saber v. Navy Federal Credit Union**, 350 A.3d 965, 970 (Pa. Super. 2026) (determining that claims that lack, *inter alia*, citation to relevant authority, are waived). The court further found Father's assertion in his Rule 1925(b) Statement that service failed to comply with Pa.R.Civ.P. 400, is meritless. It noted that Rule 400 specifically excepts service in certain domestic relations matters, which is governed by Pa.R.Civ.P. 1930.4(b). That statute, provides, in relevant part:

(b) **Service by Mail.**

(1) In domestic relations matters, except Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation matters, a party may serve the original process, a notice or order to appear, if required, and other orders or documents, as necessary, by United States Postal Service (USPS) first class regular and certified mail **to the defendant's last known address**.

- (i) The party serving the original process by mail shall:
 - (A) restrict delivery of the certified mail to the addressee only; and
 - (B) request a return receipt, which may be an electronic return receipt.

(ii) *Completed Service by Mail.* Service of original process is complete when:

- (A) the return receipt bears the defendant's purported signature indicating receipt of the certified mail;
- (B) the return receipt acknowledges delivery of the certified mail to the defendant consistent with USPS policy and the first class regular mail is not returned within 15 days of mailing; or
- (C) USPS returns the certified mail indicating the defendant refused delivery, but the first class regular mail is not returned within 15 days of mailing.

(iii) *Incomplete Service by Mail.*

(A) Service of original process is incomplete when:

(I) USPS returns the certified mail with a notation indicating that the mail was unclaimed by the defendant; or

(II) is otherwise inconsistent with subdivision (b)(1)(ii).

(B) ***If service by mail is incomplete, the party attempting service shall utilize another method pursuant to these rules to effectuate service.***

* * * * *

(i) **Appearance at Hearing or Conference.** A party appearing for a hearing or conference will be deemed to have been served.

See Pa.R.Civ.P. 1930.4(b), (i) (emphasis added). The court then explained that Mother's counsel served Father with custody pleadings by certified mail at his last known address and then used service by email when service by mail was incomplete. **See** Trial Court Opinion, 4/13/26, at 8.

The trial court is correct that Father's Rule 400 claim, supported by non-existent authority, merits no relief. Moreover, it is clear from the record that Father never appealed the October 2024 final custody order, and that claims relating to service related to that order are not the subject of the present appeal. ***Cf. S.S. v. T.J.***, 212 A.3d 1026, 1034 n.1 (Pa. Super. 2019).

To the extent Father challenges service of Mother's relocation petition, Father should have appealed the October 2025 relocation order, he did not. ***Cf. J.P. v. J.S.***, 214 A.3d 1284, 1286 (Pa. Super. 2019). To the extent the trial court regarded Father's separate motions and denied relief, Father's own Counter-Affidavit states he received notice of the proposed relocation in May 2025. Moreover, the court sent notice of the October 28, 2025, hearing to the updated address Father had himself provided, and Father actually participated at that hearing, having the day before filed a consent to email service. Thus, pursuant to Pa.R.Civ.P 1930.4(b)(i), Father is deemed to have been served because he attended the hearing. Additionally, the court held a hearing on February 2, 2026, on Father's jurisdictional, service, and other challenges which Father attended by Zoom. Again, we refuse to sanction Father's attempt to invalidate the trial court's jurisdiction where he admitted having received email notice of the hearing, delayed giving the court his mailing address, and then failed to accept service at the address **he** gave the court.

Father next contends, as a sub-issue of his second claim, that the trial court failed to consider the best interest factors identified in 23 Pa.C.S.A. § 5328 in granting custody and failed to consider the relocation factors of 23 Pa.C.S.A. § 5337 at any point in the case. **See** Father's Brief at 40.

The trial court found Father did not appeal from the relocation order, nor did he file a motion for reconsideration, and therefore "waived" his challenge to the October 28, 2025, relocation order. **See** Trial Court Opinion, 4/13/26, at 11. The court further states Father had the opportunity at the October 28, 2025, hearing to oppose Mother's relocation petition but chose to appear "only for a special limited purpose" and the court regarded that as a willful failure to appear, permitting the grant of relocation by default. **See** Trial Court Opinion, 4/13/26, at 11-12.

We agree with the trial court that Father's failure to appeal the relocation order is fatal to the issue. The trial court entered a final order granting relocation on October 28, 2025, after a hearing which defendant attended via Zoom audio after the court graciously granted his last-minute request. Although Father filed subsequent motions, those motions did not toll the time to appeal the relocation order. **Cf. J.P.**, 214 A.3d at 1286; **S.S.**, 212 A.3d at 1034 n.1.¹¹ Thus, the present appeal from the trial court's February 6, 2026

¹¹ Moreover, Father's November motions did not assert error based on the trial court's failure to consider the statutory custody or relocation factors.

order does not cure Father's failure to timely appeal from the October 28, 2025 relocation order.¹² Accordingly, we decline to consider the merits of an issue that should have been presented to this Court in an appeal from the actual October 28, 2025, relocation order.¹³

Father asserts in his third issue that the trial court failed to accord him limited-purpose immunity under 23 Pa.C.S.A. § 5409.¹⁴ He asserts the statute provides a party subject to a child custody proceeding is not subject to the Commonwealth's personal jurisdiction solely by having participated in the proceeding. **See** Father's Brief at 43-47.

¹² Father disputes the assertion that he willfully failed to participate in the October 28, 2025 hearing, noting his filing of four counter-affidavits in which he detailed his concern for, and contact with, his son. **See** Father's Brief at 41-43. Father cannot have it both ways. He had notice and opportunity to participate at the October 28, 2025, hearing but chose to make a limited, remote appearance. His belated request for this Court to regard him as a full attendee entitled to consideration of the substance of his counter-affidavits will not be heard where he continued to assert his unwillingness to be a full participant in the proceedings.

¹³ Father's failure to timely appeal the relocation order and his failure to include a transcript of the October 28, 2025, hearing prevent this Court from reviewing the merits of the trial court's decision on Mother's relocation petition. However, we note with disapproval of the court's use of the term "default judgment" and refer the court to Pa.R.Civ.P. 1915.9.

¹⁴ Section 5409, "Appearance and limited immunity," provides, in relevant part, that a party to a child custody proceeding "is not subject to personal jurisdiction in this Commonwealth for another proceeding or purpose solely by reason of having participated in or have been physically present for the purpose of participating in the proceedings." 23 Pa.C.S.A. § 5409(a).

The trial court correctly stated that Father misread the statute as supporting his limited appearance theory. It clarified the relocation proceeding was “part and parcel of the ongoing custody litigation[.]” **See** Trial Court Opinion, 4/13/26, at 10. It also noted that one of the cases Father cited in his 1925(b) Statement, “**Bouzo v. Bouzo**, 855 A.2d 887,” does not exist, and his other case, “**Wagner v. Wagner**, 768 A.2d 1112, 1120 (Pa. 2001), concerned personal jurisdiction in the context of military retirement payments, and is inapposite. **See** Trial Court Opinion, 4/13/26, at 11.

The trial court did not err. Section 5409 is plainly designed to protect a person from a “bait and switch” type scenario of appearing in a custody action only to face judgment in an **unrelated** matter. **See** Uniform Law Comment to Section 5409 (stating “a party should not be placed in the dilemma of choosing between seeking custody or protecting a right not to be subject to a monetary judgment by a court with no other relationship to the party”). The Comment goes on to note that appearance in the Commonwealth on a custody matter by a non-resident does not provide the court with jurisdiction over the child support aspects of a custody decree. No monetary judgment is at issue here. Plainly, the trial court is correct that there were no unrelated matters here; the hearings here concerned custody and Mother’s right to relocate the Child from Pennsylvania to New York. Accordingly, Father’s limited immunity argument is without merit.

Father's fourth and final argument is that the trial court's February 6, 2026, order is immediately appealable because it resolved post-judgment motions from the October 28, 2025, order, that determined Montgomery County was no longer the proper forum, and transferred the case to another state; and, in any event, he can raise subject matter jurisdiction at any time. He also asserts his right to challenge the absence of the application of the eight-factor analysis. **See** Father's Brief at 47-50.

As previously discussed, there is no merit to Father's subject matter jurisdiction challenge. Further, Father's gamesmanship, *i.e.*, his failure to participate in the substantive proceeding notwithstanding his actual notice of it and participation in the proceedings, which the trial court noted below defeated his challenge to the February 6, 2026 order.¹⁵

Nevertheless, we agree with Father that his appeal from the February 6, 2026, order and the trial court's conclusion it no longer had jurisdiction under the UCCJEA and transfer of the custody matter to New York is properly before this Court. The UCCJEA and our case law make clear the trial court must assess jurisdiction based upon the relevant first pleading in a child custody proceeding, *i.e.*, "[a] proceeding in which legal custody, physical custody or visitation with respect to a child is an issue." 23 Pa.C.S.A. §§ 5402,

¹⁵ Father's brief purports to preserve other claims he does not support with discussion or legal support. **See** Father's Brief at 50-51.

5422; **see *T.D. v. M.H.***, 219 A.3d 1190, 1198 (Pa. Super. 2019). As discussed above, the trial court had jurisdiction under section 5421(a) to issue the 2024 final custody order and the October 28, 2025, relocation order. There was no dispute that when Father filed the underlying motions in November 2025, the trial court still had jurisdiction to resolve those motions. While this Court has no reason to doubt the trial court's belief that jurisdiction would no longer lie in Pennsylvania, it was premature for the trial court to conclude that and to transfer the matter to New York when there were no remaining matters for it to decide after it denied Father's motion.¹⁶ Therefore, we are constrained to strike the portion of the February 6, 2026, order dealing with transfer of jurisdiction to New York.

Order affirmed with the exception of the court's February 6, 2026, relinquishment of jurisdiction and transfer of the case to New York, which we vacate.¹⁷

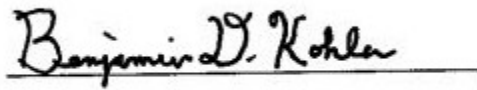
Order affirmed in part, vacated in part.

Jurisdiction relinquished.

¹⁶ Although Mother's counsel referred to the parties no longer having a connection to Pennsylvania, counsel did not move for the court to relinquish jurisdiction.

¹⁷ Although Father challenges the trial court's relinquishment of jurisdiction and transfer of the case, he does not request any specific remedy. Accordingly, there is no basis for a remand of this case to the trial court.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/21/2026