

## ALABAMA

*G.P. v. A.A.K.*, 2000496, COURT OF CIVIL APPEALS OF ALABAMA, 2002 Ala. Civ. App. LEXIS 613, July 19, 2002, Released.

[This case was previously briefed, however, the OPINION OF DECEMBER 21, 2001 WAS WITHDRAWN AND THIS OPINION SUBSTITUTED]

As the Court previously noted, the Kentucky courts determined that Alabama should exercise jurisdiction over custody and visitation in this case. Under the UCCJEA, an Alabama court has jurisdiction to modify a child-custody determination when, among other things, the rendering state's court has determined that continuing exclusive jurisdiction no longer exists in that state. Notwithstanding the fact that the Houston Circuit Court had jurisdiction to modify the grandparents' visitation rights as the mother requested, the Court did not have jurisdiction to redetermine, *ab initio*, whether the grandparents should have been granted visitation rights. The court reiterated that the previous visitation judgment "remained a custody determination of the state that issued it" and the constitutionality of statute was not at issue in this case.

The court clarified its previous holding stating that the Houston Circuit Court had the task of exercising its discretion to determine whether to modify the visitation rights granted under the previous judgment and that under Alabama law, determinations regarding a child's best interests never become *res judicata*. The proper role of the Alabama court was "to focus its inquiry on the issues of whether, since the date of the [foreign] decree, there has been a sufficient change of circumstances to warrant a [modification]."

Thus, the court concluded that the Houston Circuit Court should apply Alabama law in determining whether a prospective modification or termination of visitation is in the best interests of the child based upon a material change in circumstances, just as it would in cases not involving a foreign judgment. The court cautioned that the trial court's jurisdiction to modify future visitation should not be equated with the power to "undo" the [foreign] court's judgment by considering the question of the constitutionality of the original court-ordered grandparental visitation, a question that is no longer properly at issue in this particular case. The judgment of the trial court was reversed, and the cause was remanded for further proceedings and/or for the trial court to make findings consistent with this opinion.

## ARKANSAS

*Deluca v. Stapleton*, CA 02-144, COURT OF APPEALS OF ARKANSAS, DIVISION THREE, 2002 Ark. App. LEXIS 514, September 18, 2002, Decided.

Appellant Gina Deluca appealed from the trial court's denial of her petition to modify custody by allowing her to relocate with her minor children to California. The trial court also denied the petition of her ex-husband, appellee Bobby Stapleton, for change of custody. On appeal, Deluca argues that the trial court failed to properly

evaluate the factors to be considered in parental-relocation cases as set forth in [\*Staab v. Hurst\*, 44 Ark. App. 128, 868 S.W.2d 517 \(1994\)](#), and that the decision is clearly erroneous. The court disagreed and affirmed the lower court's decision.

Deluca and Stapleton were married in 1991 and divorced in 1993. Deluca was awarded custody of the parties' two minor children. At the time of the divorce both parties lived in Calico Rock. Deluca later moved to Jonesboro and attended Arkansas State University where she received a bachelor's degree in radiography in 2000. Deluca was employed part-time as a radiology technician at a Jonesboro hospital at the time of the hearing on her petition to relocate. Stapleton worked at Boeing Aircraft, also had a part-time photography business, and lived with his wife Linda in a mobile home next door to his mother outside Calico Rock.

Deluca filed her petition to relocate in October 2000, four months after the trial court had entered an order finding her in willful contempt for violation of prior orders regarding Stapleton's visitation. In her petition to relocate, Deluca asserted that she had finished her college courses in X-ray technology and had the opportunity to earn substantially more at a job she had been offered in her home state of California. The petition was not heard until nearly a year later, on August 9, 2001. The trial judge issued a detailed letter opinion on August 16, 2001, setting out the reasons why he was denying Deluca's petition to relocate. The order was entered four months later, and Deluca timely appealed.

Deluca argues on appeal that the trial court failed to follow the factors set out in [\*Staab v. Hurst, supra\*](#), that she presented overwhelming evidence on the threshold issue of whether the move would result in a real advantage to the family unit as a whole, and that the evidence weighed in her favor on all of the additional factors to be considered after she had met this threshold burden of proof.

In a footnote, the court clarified proper jurisdiction in the event Deluca were permitted to relocate. The court stated that even if Deluca were permitted to relocate to California the Arkansas trial court would retain jurisdiction over any future custody disputes between the parties. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which both Arkansas and California have adopted, is the exclusive method for determining the proper forum in custody disputes involving other jurisdictions. Under the UCCJEA, The only exception to the trial court's continuing jurisdiction is in the event that an emergency exists, in which case California would take emergency jurisdiction to protect the child from actual or threatened mistreatment or abuse.

***Ark. Dep't of Human Servs. v. Cox***, 01-1021, SUPREME COURT OF ARKANSAS, 349 Ark. 205; 82 S.W.3d 806; 2002 Ark. LEXIS 344, June 6, 2002, Opinion Delivered.

The Arkansas Department of Human Services (DHS) appeals orders of the Greene County Probate Court, a temporary guardianship order entered May 16, 2001, a permanent guardianship order entered May 21, 2001, and a September 19, 2001, order. DHS asserts that this case is controlled by the UCCJEA, and that the probate court lacked jurisdiction under the Uniform Act to decide the issue of guardianship, or in the alternative, abused its discretion in failing to decline jurisdiction. DHS also asserts that

the probate court erred when it failed to give full faith and credit to an order from a Florida court to pick up the child.

The Court found that the probate court had jurisdiction to consider the guardianship petition and that the Florida *ex parte* order at issue was void *ab initio* and invalid on its face. Alternatively, the Court stated that had the Florida *ex parte* order been valid, it was not entitled to full faith and credit in that it was never registered or enforced in Arkansas as required under the UCCJEA, and that DHS was without authority to take any action on the order.

This case involves the seizure of a child by DHS without a warrant or order of any court of this state. DHS does not assert that the child was in immediate danger such that they were required to take custody without a warrant or order as allowed under the statutes of this state. In fact, DHS denies taking the child into DHS custody, but rather asserts that the child was taken and held by them in Arkansas under the authority of an *ex parte* order of the State of Florida. DHS relies on an *ex parte* "Order to Take-Into-Custody" issued by the Circuit Court of Osceola County Florida, which was directed to "All and Singular the Sheriff's of the State of Florida or Other Law Enforcement Agencies." The Arkansas Department of Human Services was not mentioned in this order. No notice was provided to Joyce Cox, who was caring for the child. No warrant to take custody was issued by a court of this state under the UCCJEA. DHS simply went to the house and took the child.

According to the testimony of Suzanne Henry, a supervisor for the Department of Human Services, Children and Family Services in Greene County, on May 15 she received a call from her superiors at DHS directing her to "pick up a child" and "hold" her for the State of Florida. The Florida *ex parte* order was faxed to Ms. Henry and Ms. Henry then forwarded the Florida order to Lisa McGee, Deputy Counsel at the Office of Chief Counsel at DHS, for confirmation. Ms. Henry then proceeded to the Cox home on May 15 where the child, Cheyenne was in the physical custody of her paternal grandmother, Joyce Cox. Ms. Henry testified that no notice had been provided to Ms. Cox, and that they simply took the child. Ms. Henry also testified that "when I arrived to pick up the baby she was not in any danger. She was clean, and she looked fine. The room she stayed in was clean." Ms. Henry further testified that on May 16 she informed authorities in Florida that they had Cheyenne.

On May 16, Ms. Cox filed a Petition to Appoint Guardian of Minor Child, which was considered *ex parte* and resulted in an *Ex Parte* Temporary Order of Guardianship granted that day. On May 17, the Temporary Order of Guardianship was faxed to Christine Berger, counsel for DHS. By this order, Ms. Berger and DHS were informed that DHS was ordered "to return the incapacitated person to the physical custody of the petitioner, Joyce Cox, immediately and without delay." DHS did not return the child to Ms. Cox. Ms. Berger and DHS were further given notice in this order that a temporary hearing was to be held the next day at 9:30 a.m.

DHS decided not to comply with the probate court's order and contacted Florida. They delivered Cheyenne to Florida authorities at the Memphis airport on the morning of the hearing such that by the time of the hearing, Cheyenne was out of the State of Arkansas. DHS asserts this case involves a race to the courthouse and because the Florida

*ex parte* order was issued on May 15, and the Arkansas order on May 16, that they decided to follow the earlier Florida *ex parte* order.

DHS asserts further that what occurred in this case is simply a matter for the Florida courts because it arose when a pregnant woman fled Florida to Arkansas to give birth here for the express purpose of depriving Florida of jurisdiction of her child because Florida was about to terminate her parental rights to her other five children in Florida. DHS also asserts that Florida has a pending dependency-neglect proceeding on the family in Florida and has worked with this family since the late 1990s. Therefore, DHS asserts, Florida has interests that should be protected, and Cheyenne can be best served by the Florida courts.

DHS asserts that under the UCCJEA, Florida had jurisdiction. The Court noted that the Parental Kidnapping Prevention Act is applicable and where conflicts exist is preemptive.

The issue in this case is whether the probate court had jurisdiction to decide custody.

The Court discredits the dissent in this case by stating that the dissent fails to consider that under the UCCJEA, no child-custody determination order may be enforced in a foreign state if there was no notice and an opportunity to be heard when the child-custody determination order was issued in the rendering state, and that under the UCCJEA, notice and an opportunity to be heard must be provided in the foreign state before the child may be removed from its home under a foreign child-custody determination order. The Court further states that the dissent focuses upon significant connections, and cites to cases under the old UCCJA, failing to recognize that the changes in the UCCJEA focusing on home state as the primary determiner of jurisdiction encourages cooperation between sister states and reduces jurisdictional contests.

The Court explains that under the old UCCJA, there was a temptation to apply a significant-connection analysis in an attempt to override the "home state" analysis and secure jurisdiction. Since passage of the Parental Kidnapping Prevention Act of 1980, use of significant connection jurisdiction is limited to three primary circumstances: (1) in initial custody determinations when the child has no home state; (2) when a court with home state jurisdiction has declined to exercise jurisdiction; and (3) when significant connection jurisdiction is used in conjunction with continuing jurisdiction to allow a state that issued a custody order to modify it.

The UCCJEA allows a court to assume jurisdiction in an initial child-custody determination based on significant connection only if the child has no home state. The Court found that Arkansas was the home state as conceded by DHS. It was undisputed that Cheyenne was born in Arkansas and had never been in Florida as of May 15, when the Florida court purported to issue an *ex parte* order to take Cheyenne into custody.

The Court also states that one of the purposes of the UCCJEA is to avoid relitigation of child-custody determinations in other states. Before a child-custody determination may be made, notice and an opportunity to be heard must be provided to persons who would be notified under state law, and specifically includes parents and persons having physical custody or who are acting as a parent. Thus, the court

concluded that the *ex parte* Florida order for custody was not enforceable under the UCCJEA or otherwise in Arkansas. The required notice and opportunity to be heard were not provided in the Florida *ex parte* proceedings.

The Orders of the Probate Court were affirmed.

## CALIFORNIA

**Holder v. Holder**, No. 01-35467, No. 01-35519, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 2002 U.S. App. LEXIS 18336; 2002 Cal. Daily Op. Service 8169; 2002 Daily Journal DAR 10304, April 3, 2002, Argued and Submitted, Seattle, Washington, September 6, 2002, Filed.

Hague Convention case.

**Robert N. v. Serona** Y., F039911, COURT OF APPEAL OF CALIFORNIA, FIFTH APPELLATE DISTRICT, 2002 Cal. App. Unpub. LEXIS 8340, August 23, 2002, Filed, NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 977(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 977(B). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED OF RULE 977.

Negative treatment

**In re Schmidt**, C040583, C040942, C040966, COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT, 2002 Cal. App. Unpub. LEXIS 7016, July 29, 2002, Filed, NOT TO BE PUBLISHED CALIFORNIA RULES OF COURT, RULE 977(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 977(B). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR PURPOSES OF RULE 977.

Negative treatment

**Adoption of Jonah C.**, B152070, B160089, COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE, 2002 Cal. App. Unpub. LEXIS 6932, July 26, 2002, Filed, NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 977(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 977(B). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR PURPOSES OF RULE 977.

Negative treatment

***In re C. T.***, D039130, COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE, 100 Cal. App. 4th 101; 121 Cal. Rptr. 2d 897; 2002 Cal. App. LEXIS 4399; 2002 Cal. Daily Op. Service 6323; 2002 Daily Journal DAR 7895, July 16, 2002, Filed.

In 1994 C. was born in Arkansas to Leslie and Rodney. In 1996 they separated. In 1998 an state court granted Rodney primary physical custody of C. and approved Leslie's visitation with C. every other weekend and three weeks in the summer.

During C.'s July 2001 summer visit with Leslie in California, C. told her stepfather that while in Rodney's custody in Arkansas he had sexually molested her. As a result of C.'s disclosure, Leslie sought a restraining order in the California family court to retain C. in California and prevent her return to Rodney's custody in Arkansas. A temporary restraining order was issued in mid-July 2001. The continued order to show cause hearing for a permanent restraining order was scheduled in the family court for later in the month of August and the family court advised the Arkansas court California was assuming emergency jurisdiction over C.

Before the order to show cause hearing set for late August, the San Diego County Health and Human Services Agency (the Agency) filed a petition on C.'s behalf in the California juvenile court, alleging she had been sexually abused by Rodney. At the detention hearing held the same day, the juvenile court found the Agency had made a prima facie showing and declared it was exercising emergency jurisdiction over her.

In September 2001 Rodney asked the juvenile court to hold an evidentiary hearing to determine whether the court was properly taking emergency jurisdiction over C.

In October 2001 the court made a true finding that C. was a person described in section 300, subdivision (d). Shortly thereafter, the court contacted the Arkansas court, which "refused to allow [the California] court to have further jurisdiction over the matter," and requested the matter be transferred to Arkansas. The Arkansas court agreed that C.'s custody would remain with Leslie. In November the California court placed C. with Leslie pending further order of the Arkansas court, to which it sent a copy of the file and transcripts, and terminated the California court's jurisdiction over C.

All parties agreed that the UCCJEA applied and the California court was required to follow such provisions when presented with a child custody dispute subject to a sister state custody order. Under section 3424 a California court may enter a child custody order for a child subject to an existing sister state custody order only if it finds an emergency necessitating protection of the child from mistreatment or abuse and the order is limited in time to a specified period. Except as authorized by section 3424, a California court may not make an initial custody order or modify a sister state child custody order unless prescribed conditions exist.

Under California law, "when a petition contains allegations of an emergency situation, it is proper for a court to issue an interim custody order to protect the child

pending a hearing." No party contends the court did not have the authority at the detention hearing to enter an order temporarily detaining C. with Leslie. At the dependency jurisdictional hearing here the parties were properly noticed, testimonial and documentary evidence was introduced and considered, and the juvenile court found true that C. had been or there was a substantial risk she would be sexually abused by Rodney.

The juvenile court then issued an order placing C. with Leslie pending further order by the Arkansas court. Under section 3424, subdivision (c), the custody order should have been limited to a duration determined after consultation with the Arkansas court. By not limiting the duration of the custody order, the California court erred, however, the court found that because the California court terminated jurisdiction, the failure to limit the duration of the custody order was not prejudicial.

The court also found that the California juvenile court erred when it did not sooner contact the Arkansas court. The error however, was not prejudicial. The court reasoned that although the statute states the court *shall* immediately contact the other court, it does not provide any penalty for noncompliance. Thus, the court concluded that when a statute does not provide any consequence for noncompliance, the language should be considered directory rather than mandatory.

The order placing C. with Leslie and terminating jurisdiction was affirmed.

## CONNECTICUT

**Lord v. Lord**, CV010380279, SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF FAIRFIELD, AT BRIDGEPORT, 2002 Conn. Super. LEXIS 2748, August 20, 2002, Decided, August 20, 2002, Filed, THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

The parties to this action were divorced on July 29, 1998. The plaintiff brought this action against his former wife alleging breach of the parties' separation agreement (first count), violation of his right to give prior consent to tape-record his telephone conversations in violation of § 52-570d (second count), negligent infliction of emotional distress (third count), and intentional infliction of emotional distress (fourth count). Only, the first count is relevant to the UCCJEA.

On July 29, 1998, the plaintiff and the defendant entered into a separation agreement. Clause 15.1 provides that "all matters affecting the interpretation of this Agreement and the rights of the parties hereto shall be governed by the laws of the State of Connecticut. Connecticut shall retain jurisdiction over the parties and this Agreement." The husband contends that the parties separation agreement was violated by the wife when she sought modification in New York.

The court granted summary judgment in favor of the wife as to the first count, stating "if parties could consent to jurisdiction in any forum, provisions of the UCCJEA

itself would be meaningless.” Further, parties cannot confer subject matter jurisdiction upon a court, because to do so would contravene parts of the UCCJEA. Parties may waive or consent only to personal jurisdiction. In conclusion, so as not to invalidate other provisions of the UCCJEA, the court interpreted the provision of the parties' agreement to apply to personal jurisdiction only.

The court granted summary judgment in favor of the wife as to the first count.

## **MICHIGAN**

*Young v. Punturo*, No. 223586, COURT OF APPEALS OF MICHIGAN, 252 Mich. App. 47; 651 N.W.2d 122; 2002 Mich. App. LEXIS 905, December 4, 2001, Submitted, June 25, 2002, Decided.

Plaintiff Wanda Young, appeals by leave granted from the February 22, 1999, order of the Grand Traverse Circuit Court that denied plaintiff's motion to dismiss a parenting time review pending in the circuit court. Plaintiff asserts the circuit court erred in finding that under the Uniform Child Custody Jurisdiction Act (UCCJA), Michigan had jurisdiction over the parenting time dispute in this case.

In September 1992, plaintiff filed for divorce in the Grand Traverse Circuit Court. In October 1992, plaintiff and the children, one boy, aged five, and one girl, aged eleven months, moved to Tuscaloosa, Alabama, with defendant's consent and the court's permission. The divorce judgment was entered on June 4, 1993. Under the provisions of the judgment, plaintiff was granted physical custody of the children while defendant was granted "reasonable visitation as the parties may mutually agree and arrange with advance notice." It was undisputed that plaintiff and the children have lived in Alabama continuously since October 1992. It was also undisputed that while defendant exercised parenting time in Michigan, he frequently spent time with the children in Alabama, as well as in Florida, where he would take the children for spring break and extended vacations.

On January 12, 1999, defendant wrote to the Grand Traverse Circuit Court to schedule a parenting time review hearing and to establish a parenting time schedule. In response to this filing, on January 19, 1999, plaintiff filed a petition to modify the divorce decree in the Tuscaloosa County Circuit Court in the state of Alabama. On January 20, 1999, an order was entered in the Grand Traverse Circuit Court directing plaintiff to appear on February 2, 1999, before for a review of the parenting time schedule.

On February 1, 1999, plaintiff filed a special appearance with the Grand Traverse Circuit Court. On February 2, 1999, plaintiff filed an ex parte motion in the Grand Traverse Circuit Court seeking suspension of the parenting time review scheduled for that same date. The motion was denied. On February 12, 1999, plaintiff filed a motion in the Grand Traverse court to dismiss the parenting time review proceeding. Plaintiff contended in her motion that the Alabama court rather than the Michigan court had jurisdiction over all custody and parenting time determinations. Plaintiff also contended that even if the Michigan court did have jurisdiction over the matter, §§ 656 and 657 of the UCCJA mandated that the Michigan court defer any exercise of jurisdiction until both

courts had communicated to determine the more appropriate forum to decide this parenting time dispute.

The Michigan court relied on the provision in the 1993 divorce judgment that stated that the Grand Traverse Circuit Court "shall retain jurisdiction over the parties of this action until the minor children reach the age of 18 years, or graduate from high school, whichever shall later occur," to hold that Michigan retained jurisdiction over parenting time disputes between the parties. The Michigan Court also found that the Alabama court should have stayed proceedings until the Michigan court declined jurisdiction. On February 23, 1999, the Michigan court entered an order that made the following findings: (1) on the basis of the language of the judgment of divorce, Michigan retained jurisdiction over the parenting time dispute; (2) defendant had requested a parenting review before plaintiff filed her Alabama petition to modify the judgment; and (3) because § 656 of the UCCJA states that "a court of one state may not exercise [] jurisdiction if, at the time of filing of the petition, a proceeding concerning the custody of the . . . children is pending in a court of another state," Alabama should not have exercised jurisdiction "unless and until" the Michigan court stayed its proceedings because Alabama "would be a more convenient forum." The Michigan court then went on to find that Alabama was not a more convenient forum and indicated that pursuant to an investigation and report, an order modifying the judgment of divorce would issue. On February 25, 1999, the Michigan court entered an order modifying the judgment of divorce by awarding defendant parenting time with the children every summer vacation.

Defendant then filed a motion in the Alabama court seeking dismissal of plaintiff's petition for lack of jurisdiction. In an order dated March 25, 1999, the Alabama court denied the motion, finding again that, pursuant to the UCCJA, Alabama had jurisdiction over the custody dispute and that because the children had lived in Alabama since 1992, the children's medical records, school records, and evidence regarding "the care, protection, training and personal relationships of the children" were in Alabama, it was evident that Alabama was the more convenient forum to decide this issue. Defendant moved for reconsideration of this order and plaintiff petitioned for a specified summer parenting time schedule. On May 10, 1999, the Alabama court denied defendant's reconsideration motion and ordered that defendant would exercise his summer parenting time from July 1, 1999, through August 4, 1999.

On June 3, 1999, the Michigan court found plaintiff in contempt "for failing to provide parenting time between defendant and the children and assessed plaintiff \$250 in costs. In a hearing held on October 1, 1999, plaintiff challenged the contempt finding, contending that because the Alabama court continued to exercise jurisdiction, Michigan did not have jurisdiction under the UCCJA, and that because plaintiff was in compliance with the orders of the Alabama court, she could not be held in contempt for violation of orders entered by the Michigan court. These challenges were rejected by the Michigan court.

Effective January 1, 2000, Alabama repealed the UCCJA in favor of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). However, because this dispute arose in late 1998 and early 1999, it is clear that, at all relevant times, both states resolved jurisdiction disputes regarding custody pursuant to their respective versions of the UCCJA.

The court found that the Grand Traverse Circuit Court erred in finding that it had jurisdiction over the parenting time dispute in this case. Accordingly, the Grand Traverse Circuit Court's February 23, 1999, order finding that it had jurisdiction over this dispute, its February 25, 1999 order modifying the divorce decree, and its June 3, 1999, and November 4, 1999, orders finding plaintiff in contempt were reversed. Further, the court remanded with instructions that the case be dismissed for lack of jurisdiction.

The order of the circuit court was reversed and remanded with instructions that this case be dismissed for lack of jurisdiction.

## **MINNESOTA**

**Sisson v. Nye**, C1-02-260, COURT OF APPEALS OF MINNESOTA, 2002 Minn. App. LEXIS 1068, September 17, 2002, Filed, THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. STAT. § 480A.08, SUBD. 3 (2000).

Appellant wife challenges the district court's order granting respondent husband a modification of child support first established by judgment and decree of a California district court. Wife argues that the district court lacked jurisdiction to modify the California order and that husband failed to show a substantial change in the parties' circumstances rendering the current support award unfair or unreasonable.

As to jurisdiction regarding visitation, the court remanded the case for reconsideration consistent with the UCCJEA.

**Olson v. Olson**, C7-02-344, COURT OF APPEALS OF MINNESOTA, 2002 Minn. App. LEXIS 1060, September 10, 2002, Filed, THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. STAT. § 480A.08, SUBD. 3 (2000).

On appeal from an order for protection in this domestic-abuse proceeding, appellant-father, a resident of Michigan, challenges the referee's determination that Minnesota has jurisdiction. He also challenges the referee's exercise of jurisdiction, alleging both that the referee failed to determine whether Minnesota was an inconvenient forum and that exercising jurisdiction was improper because custody-related proceedings were pending in Michigan.

The court concluded that Minnesota had jurisdiction pursuant to the UCCJEA and that the question of whether Minnesota was an inconvenient forum was not properly before the court.

**Clark v. Clark**, C4-02-141, COURT OF APPEALS OF MINNESOTA, 2002 Minn. App. LEXIS 921, July 30, 2002, Filed, THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. STAT. § 480A.08, SUBD. 3 (2000).

Respondent-father moved to modify appellant-mother's child support obligation. A child support magistrate determined that a substantial change in circumstances had rendered mother's existing child support obligation unreasonable and unfair and increased the obligation. The district court dismissed mother's motion for review with prejudice. Mother argues the child support magistrate did not have jurisdiction over the parties to modify her child support obligation.

Mother argues the child support magistrate, and the district court, did not have jurisdiction to modify her child support obligation because Minnesota's version of the UCCJEA precludes subject matter jurisdiction over the parties in Minnesota. Mother argues, among other things, that the district court failed to address her argument that Minnesota was no longer the "home state" of the parties' children. When the district court dismissed mother's motion for review, it concluded that it had jurisdiction over the child support issue. It recognized that mother had brought an action in North Carolina to re-open the original judgment; however, the court noted that mother wrongfully filed the North Carolina action when she absconded with the children after her summer visitation ended. It therefore concluded that mother's jurisdictional argument was without merit.

The court concluded that the child support magistrate and district court had subject matter jurisdiction to modify mother's child support obligation. Further, the court stated that the UCCJEA does not apply in this case. The UCCJEA applies to child-custody determinations, child-custody proceedings. The child support magistrate's order modified mother's child support obligation; the order did not address custody issues.

The district court order was affirmed.

## **NEW YORK**

**In re Tyler S.**, N 22745/01, FAMILY COURT OF NEW YORK, KINGS COUNTY, 2002 N.Y. Misc. LEXIS 1276, August 11, 2002, Decided.

Not applicable

**Vernon v. Vernon**, 824, SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT, 746 N.Y.S.2d 284; 2002 N.Y. App. Div. LEXIS 7855, August 8, 2002, Decided, August 8, 2002, Entered.

The court found that New York properly asserted subject matter jurisdiction to determine this custody dispute since the child was born in New York, the parties were married and divorced in New York, the father continued to reside in New York, and the child has visited him there. Thus, the substantial connection test was met.

Order of the Supreme Court affirmed.

## **NORTH CAROLINA**

**David v. Ferguson**, NO. COA02-84, COURT OF APPEALS OF NORTH CAROLINA, 2002 N.C. App. LEXIS 1176, September 18, 2002, Heard in the Court of Appeals, October 15, 2002, Filed.

The court found that in the instant case, the facts clearly revealed that for a period of at least six months immediately preceding the commencement of this proceeding, from June 2000 to January 2001, the children lived with plaintiff in North Carolina. Thus, based on this fact, the trial court was vested with jurisdiction to make an initial custody determination, as North Carolina was the home state of the children.

***In re Brode***, NO. COA01-214, COURT OF APPEALS OF NORTH CAROLINA, 566 S.E.2d 858; 2002 N.C. App. LEXIS 901, December 6, 2001, Heard In the Court of Appeals, August 6, 2002, Filed.

Steven W. Brode was born 19 August 1991 in the state of Texas to respondent William Harvey and Beverly Brode Owen. While other children were born to Harvey and Owen, these children are not the subject of this appeal.

Harvey and Owen lived together in Texas as domestic partners. In 1997, Children's Protection Services of Montgomery County, Texas, filed a petition in the district court to determine the parent-child relationship between Harvey, Owen and the Brode children. By order entered 31 July 1998, the District Court of Montgomery County appointed Harvey sole managing conservator of Steven, having all the incidents of sole legal custody. By that same order, Owen was appointed as Steven's possessory conservator with visitation as agreed to by Harvey. After entry of this order, Steven resided with Harvey at Harvey's parents' home in Barcarolle, Texas.

In or about August 1999, Owen made an unannounced visit to Harvey's home. She falsely told Harvey's father that visitation was permitted; thereafter, she abducted Steven and never returned him to Harvey. Owen subsequently moved to Caswell County, North Carolina, bringing Steven and the other children with her. Harvey made efforts to ascertain Owen's whereabouts, including seeking assistance from Texas officials. Harvey ceased efforts to locate Owen and the children after becoming discouraged that assistance would not be forthcoming from Texas officials.

In August 2000, Caswell County Department of Social Services (DSS) filed a petition alleging Steven to be a neglected and dependent juvenile. The petition asserted that Steven Brode did not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; that he had been abandoned; and, that he lived in an environment injurious to his welfare. At an adjudication hearing held 25 September 2000, the trial court found Steven to be a neglected and dependent juvenile and placed Steven in DSS custody. Harvey appeals.

Respondent-Appellant Harvey assigns as error the trial court's failure to grant full faith and credit to the Texas order granting custody of Steven Brode to respondent-appellant Harvey.

This case requires the examination the interplay of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the North Carolina Juvenile Code, and the Parental Kidnapping Prevention Act (PKPA).

North Carolina's jurisdiction over child custody matters is also governed by the PKPA. The PKPA represents Congress's attempt to create a uniform standard among the states in their exercise of jurisdiction over interstate custody disputes. The PKPA provides that "every State shall enforce . . . and shall not modify . . . any custody determination or visitation determination made . . . by a court of another State." [28](#)

[U.S.C.A. § 1738A](#)(a) (2002). The act further provides that "the jurisdiction of a court of a State which has made a child custody determination or visitation determination . . . continues as long as . . . such State remains the residence of the child or of any contestant." [28 U.S.C.A. § 1738A](#)(d) (2002). Modifications of another state's custody determination may only be made if the modifying state "has jurisdiction to make such a child custody determination; and the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination." [28 U.S.C.A. § 1738A](#)(f) (1994). To the extent a state custody statute conflicts with the PKPA, the federal statute controls. Although the PKPA does not include within its definition section any reference to neglect, abuse, or dependency proceedings," our court has previously held that the PKPA *does* apply "to all interstate custody proceedings affecting a prior custody award by a different State, including [abuse,] neglect and dependency proceedings."

The Court noted that when a prior custody order exists, a court cannot ignore the provisions of the UCCJEA and the PKPA. Although a trial court may invoke emergency jurisdiction under the UCCJEA, such jurisdiction is only temporary in nature and does not empower the trial court to enter a permanent custody order. Further, when it is discovered that a previous child custody determination has been made by another court, the provisions of [N.C.G.S. § 50A-204\(c\)](#)-(d), and the PKPA, set the parameters for addressing any custody determination. The Court found that the order entered by the trial court in the instant case does not comply with our statutory framework.

First, the court found that the order entered by the trial court was not a temporary order as required by [N.C.G.S. § 50A-204\(a\)](#). The heading of the judgment is titled "Order" and the directives are noted to be "Ordered, Adjudged and Decreed." The order is void of any language to indicate that it is temporary in nature. Second, the trial court had notice of the existence of a prior custody decree awarding Harvey custody of Steven Brode. The custody order entered in Texas outlines the rights and duties of a sole managing conservator, which appear to encompass those duties that would award sole legal custody of the juvenile.

The court found that pursuant to [N.C.G.S. § 50A-204\(d\)](#), after having notice of the prior custody order, and upon entry of a temporary custody order, the trial court should have immediately contacted the Texas court to determine their willingness to assume jurisdiction.

Likewise, with respect to the parameters of the PKPA, the act precludes states from modifying child custody orders of other states unless the court of the other State no longer has jurisdiction, or it has declined to exercise its jurisdiction. The court held that the trial court's order was inconsistent with the requirements of the PKPA as the order did not defer adjudication on the merits pending notice from Texas concerning jurisdiction in the matter.

The judgment of the trial court was vacated and on remand, the trial court was directed to contact the Texas court to determine whether that court desires to exercise jurisdiction in this matter. Only if the Texas court declined to exercise jurisdiction, could the trial court proceed on the merits of the DSS petition and issue a final custody determination.

***In re Poole***, NO. COA01-871, COURT OF APPEALS OF NORTH CAROLINA, 568 S.E.2d 200; 2002 N.C. App. LEXIS 775, April 23, 2002, Heard In the Court of Appeals, July 16, 2002, Filed.

Bernard Poole (Respondent) appeals an adjudication and disposition order entered 30 April 1997 adjudicating his daughter Raven Poole (Raven) dependent and awarding legal and physical custody of Raven to her maternal aunt and uncle, Jamesetta and Dwight Nixon

In a petition dated 7 October 1996, the Cumberland County Department of Social Services (Petitioner) alleged Raven to be a dependent and neglected juvenile. The petition named the mother and Respondent as the "parent/guardian/custodian/caretaker(s)." The petition stated the mother's address but listed Respondent's address as "unknown." A summons was not issued to Respondent; thus he was never served with a summons and a copy of the petition, personally or by publication. The trial court entered a temporary nonsecure order dated 20 December 1996 granting legal and physical custody of Raven to the Nixons. Thereafter, on 30 April 1997, the trial court entered an order adjudicating Raven to be a dependent juvenile and awarded legal and physical custody to the Nixons.

On 2 May 2000, Respondent filed a motion to dismiss the dependency adjudication/disposition due to "lack of . . . valid service of process." The motion was denied by the trial court in an order filed 30 November 2000.

The dispositive issue in this case is whether the issuance and service of a summons on each parent is a prerequisite to the trial court's authority to enter an adjudicatory and dispositional order addressing the abuse, neglect, or dependency of a juvenile.

The Court found that the UCCJEA applies to abuse, neglect, and dependency actions under chapter 7B; and it requires notice to both parents. The Court further stated that the UCCJEA applies to all child-custody determinations arising out of child-custody proceedings. *See* N.C.G.S. § 50A-102(3)-(4) (2001). The statutory definition of child-custody proceedings includes proceedings for neglect, abuse and dependency and makes no reference that these proceedings are limited to interstate matters. The court noted the practical necessity of compliance with the UCCJEA as the official comment to section 50A-205 states that an order is entitled to interstate enforcement and nonmodification under this Act only if there has been notice and an opportunity to be heard.

The Court concluded that, although the father was listed in the petition, a summons was not issued to or served on him. Thus, the trial court did not have the authority to enter the 30 April 1997 order adjudicating Raven to be a dependent juvenile and granting permanent custody to the Nixons. Accordingly, the April 30, 1997 order and any subsequent dispositional orders were vacated.

## TENNESSEE

***P.E.K. v. J.M.***, No. M2001-02190-COA-R3-CV, COURT OF APPEALS OF TENNESSEE, AT NASHVILLE, 2002 Tenn. App. LEXIS 597, August 15, 2002, Filed.

## TEXAS

**In re McCormick**, NO. 07-02-0257-CV, COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT, AMARILLO, 2002 Tex. App. LEXIS 6509, August 30, 2002, Decided.

**In re Calderon-Garza**, No. 08-01-00496-CV, COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO, 81 S.W.3d 899; 2002 Tex. App. LEXIS 4591, June 27, 2002, Decided.

The court determined that Texas was the home state for purposes of the UCCJEA based the fact that Texas was the child's home state when the father filed his paternity suit, the child was born in El Paso, Texas on January 27, 2001, and he lived in Texas with his mother from his birth until March 25, 2001 when he was taken to Mexico. Although the child no longer lived in Texas on March 26, 2001--the date of commencement of the paternity suit--he had resided in Texas for the entirety of his life immediately before that date. Consequently, the court concluded that Texas was his home state.

**In the Interest of Brilliant**, No. 08-01-00054-CV, COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO, 2002 Tex. App. LEXIS 4390, June 20, 2002, Decided.

In this case the mother, father, and child (Kaylee) were former residents of Massachusetts, all of whom "relocated" to Texas. The mother and father never married and the mother moved to Texas for a period of 45 days with the father who was raised in El Paso. When the mother expressed her intent to return to Massachusetts, the father filed suit and obtained a temporary restraining order prohibiting the removal of the child from the jurisdiction of the court. Although she was duly served, the mother left Texas with the child and returned to Massachusetts, later claiming that her relocation to Texas was merely a temporary absence. The trial court denied the mother's plea to the jurisdiction and subsequently entered a default judgment naming the father as sole managing conservator.

Both parties agree that Texas was not Kaylee's home state as she had not resided here for the requisite six month period. The mother contends that Massachusetts has home state status because her 45-day residence in Texas was merely a "temporary absence."

The court concluded that at the time the father filed suit, all the parties were living in Texas. Hence, Texas had jurisdiction under the UCCJEA.,

Default judgment reversed and remanded for a trial on the merits.

## WASHINGTON

**Maughan v. Maughan**, No. 50639-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 53 P.3d 535; 2002 Wash. App. LEXIS 2150, September 9, 2002, Filed