

Examples and Explanations

Family Law, Second Edition, Oliphant & Ver Steegh

Publisher page limitations in the second edition restricted the amount of material and number of problems that we could share with student readers. However, the web provides us with the opportunity to provide more expansive explanations of the law to in the chapters and to add more problems for review and reflection. We believe that the additional explanatory material and problems will further enhance a student's ability to master family law and provide an added intellectual boost when preparing for final family law examinations.

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Chapter 7, Section 17: Emergency Jurisdiction - Conferring with Judge Who Issued the Order

Courts continue to be confused when faced with a claimed emergency when a court in another jurisdiction has already issued an initial custody determination. The UCCJEA is a uniform statute that has now been adopted by forty-five states with the goal of creating consistency in interstate child custody jurisdiction and enforcement proceedings. The legislation has also been adopted in the District of Columbia, the Virgin Islands, and is pending in two states. See [http:// www.nccusl.org/Update/uniformact__factsheets/uniformacts-fs-uccjea.asp](http://www.nccusl.org/Update/uniformact__factsheets/uniformacts-fs-uccjea.asp) (last visited June 14, 2007).

As a general rule, the UCCJEA requires that a court shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with the UCCJEA. This reflects the UCCJEA goal of allowing the court that makes the original custody determination to retain exclusive, continuing jurisdiction over that order. The UCCJEA rejects the theory of concurrent modification.

Once a court takes emergency jurisdiction, it is required, upon notice of an existing custody order, to contact the issuing court to facilitate modification or retain jurisdiction. UCCJEA § 204(d). In order for the court that is exercising emergency jurisdiction to modify an existing child support order, it must find that the court that issued the initial custody order has relinquished its continuing, exclusive jurisdiction over the child or its custody proceedings.

Example: Assume that this problem is litigated under the UCCJEA. Assume that Mom and Dad, an unmarried couple, had one child who was born in North Carolina. For a few months mother allowed dad to visit with the child. Dad filed a paternity action in North Carolina to which mother responded by sending the court a letter claiming domestic abuse and stating she was unable to attend the paternity proceeding. The court awarded dad custody of the minor child. Assume that without notice mother moved with the child from North Carolina to another state and did not tell dad where she was residing. After hiring a private investigator, mom was located with the child in Arizona. Dad went to that state where he registered the North Carolina order and asked the Arizona court to enforce the order. Mom responded with domestic abuse complaints and the trial judge, exercising emergency power under the UCCJEA, and without consulting with the North Carolina court, temporarily modified custody to give Mother sole custody of the child. In making its ruling, the family court found that Arizona was the child's home state, that the child had substantial connections with Arizona, and that exercising jurisdiction would be in the child's best interests. It also assumed jurisdiction based on its status as a more convenient forum. Dad appealed the temporary modification ruling. How should an appellate court rule on dad's appeal?

Explanation. This is a pretty easy problem. Here, based on Mother's testimony about domestic violence and the family court's determination of her credibility, the court correctly initially assumed emergency jurisdiction. The court, however, did not contact the North Carolina court, or require that the Mother to return to North Carolina for a modification prior to issuing its temporary modification order. The family court failed to find that North Carolina had relinquished its continuing, exclusive jurisdiction over the child or its custody proceedings. Before it could modify the North Carolina custody order pursuant to the UCCJEA, the family court was required to find that it was making the first custody determination or that either the North Carolina court had relinquished exclusive, continuing jurisdiction or that Mother, Father, and the child had all moved from North Carolina. Several jurisdictions have reached the same result under the UCCJEA. See, e.g., *E.H. v. State*, 23 P.3d 1186, 1191-92 (Alaska 2001) (stating that the court that makes the initial custody order retains jurisdiction until the child no longer has any substantial ties with the state); *In re Bellamy*, 67 S.W.3d 482, 484 (Tex. App. 2002) (same); *Ruth v. Ruth*, 83 P.3d 1248, 1253-54 (Kan. Ct. App. 2004) (same); *Fish v. Fish*, 596 S.E.2d 654, 655-56 (Ga. Ct. App. 2004) (same). Note that the family court findings that Arizona was the child's home state, that the child had substantial connections with Arizona, and that exercising jurisdiction would be in the child's best interests, are factors only found in the UCCJA.

The UCCJEA provision that provides that the state with jurisdiction may decline jurisdiction after consideration of several factors indicating that another state may be a more appropriate forum, does not, however, give a court that does not have jurisdiction, the ability to usurp the authority of the court with exclusive, continuing jurisdiction. Therefore, the more appropriate forum argument is not appropriate. See *Melgar v. Campo*, No. 1 CA-CV 06-0408 (AZ App. Ct. 2007).