

**THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT:
HOW IT CHANGES THE RESOLUTION OF
INTERSTATE CHILD CUSTODY DISPUTES IN GEORGIA**

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INTRODUCTION

On April 27, 2001 the State of Georgia joined twenty five other states as Governor Roy Barnes signed into law the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which was passed by the Georgia Legislature on the very last day of the General Assembly.¹ This Act represents an updated and improved version of its predecessor, the Uniform Child Custody Jurisdiction Act (UCCJA) which was previously enacted in Georgia in 1978. The UCCJEA replaces the UCCJA and now governs the manner in which Georgia courts will address

¹ ***Although the Act was signed by the Governor on said date, the effective date of the Act is July 1, 2001.*** The following states have adopted the UCCJEA: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Idaho, Iowa, Kansas, Maine, Minnesota, Montana, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia. In 2001, the UCCJEA was introduced in the following states: Florida, Georgia, Hawaii, Illinois, Indiana, Maryland, Mississippi, Missouri, New Jersey, New York. *A Few Facts About . . . The Uniform Child Custody Jurisdiction and Enforcement Act*; (visited April 24, 2001); http://www.nccusl.org/uniform_factsheets/uniformacts-fs-uccjea.htm.

and resolve interstate child custody disputes.² The purpose of the UCCJEA is the same as that of its predecessor: to reduce and resolve interstate conflicts in child custody determinations and to facilitate the determination of which state is the most appropriate forum in which to litigate an interstate child custody dispute.

The UCCJEA, which was adopted in July, 1997 by the National Conference of Commissioners on Uniform States Laws (NCCUSL) and approved by the American Bar Association in February, 1998 is a direct response to the growing number of interstate custody disputes which have arisen in our increasingly mobile society. The constant relocation of families and children from one state to another has undoubtedly led to a substantial increase in multi state custody disputes since more than a single state can claim a legitimate interest in resolving such matters. Thus, it is imperative that the family law practitioner have a clear understanding of the UCCJEA to be able to adequately advise a prospective client how to (and where to) initiate and/or defend an interstate child custody proceeding.

BRIEF OVERVIEW

The UCCJEA clarifies two major areas of child custody jurisdictional disputes. “First , it prioritizes which state should have jurisdiction to resolve the dispute. It clarifies original, continuing, and modification jurisdiction of child custody determinations” and simplifies

²The UCCJEA, as reflected in O.C.G.A. Section 19-9-41(4), defines “child custody proceeding” as a “proceeding in which legal custody, physical custody, or visitation with respect to a child is in issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from family violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3 of this article.” The UCCJEA as adopted in Georgia can be found at http://www.legis.state.ga.us/Legis/2001_02/fulltext/sb118.htm

enforcement of child custody order. Levy, David H. and McCarthy, Nanetta A., *A Critique of the Proposed Uniform Child Custody Jurisdiction and Enforcement Act*, 15 J. Am. Acad. Matrimonial Law. 149 (1998).

The UCCJEA establishes clear criteria for a state to assert jurisdiction over a child custody dispute for the purpose of discouraging other states from taking jurisdiction. This was a problem under the UCCJA since a state could assert any of the following four criteria to assert jurisdiction over an interstate custody dispute: (1) home state; (2) significant connection between state and parties to a child custody dispute; (3) emergency jurisdiction when the child is present and the child's welfare is threatened; and (4) presence of the child in the state when there is no other state which could assume jurisdiction.³

The UCCJEA establishes clear criteria under which a state can assert jurisdiction by not only prioritizing the pertaining criteria, but by also distinguishing between initial custody jurisdiction, modification of custody jurisdiction and temporary emergency jurisdiction. It does so for the purpose of discouraging multiple states from taking jurisdiction at the same time (i.e., "concurrent jurisdiction") which was a recurring problem under the UCCJA as a result of its failure to prioritize the aforementioned four (4) criteria.

In other words, the UCCJEA distinguishes between the proper method for a state to assert jurisdiction, depending on whether it is an initial custody determination or whether it involves a modification of a previous custody Order. Under the UCCJEA, an *initial* custody determination must be made by a court having one of the UCCJEA's four jurisdictional criteria:

³ *Summary: The Uniform Child Custody Jurisdiction and Enforcement Act*; (visited April 24, 2001); http://www.nccusl.org/uniform_summaries/uniformacts-s-uccjea.htm.

(1) Home State Jurisdiction; (2) Significant Connection Jurisdiction; (3) More Appropriate Forum Jurisdiction; and (4) No Other State Jurisdiction / Vacuum Jurisdiction. In an initial custody determination, the UCCJEA gives the “home state” of the minor child priority over any other state which may assert jurisdiction. This is contrary to the UCCJA which essentially allowed for more than one state to claim concurrent jurisdiction under the four criteria previously enumerated herein.

In addition, the UCCJEA clarifies which State will assume jurisdiction over a *subsequent modification* action by affording the State making the initial custody determination with “exclusive continuing jurisdiction.” This is contrary to the UCCJA which permitted concurrent jurisdiction. The UCCJEA provides that the original decree state may determine whether it will exercise jurisdiction over a modification action as long as either the child, a parent, or “person acting as a parent” continues to live in that state. In addition, under the UCCJEA it is not necessary for a state to have personal jurisdiction over the non-resident Defendant. This is significant as Georgia may now assert continuing jurisdiction over the enforcement and modification of both child support and custody matters (Georgia’s Domestic Relations Long Arm Statute as embodied in O.C.G.A. Section 9-10-91 affords continuing personal jurisdiction over a nonresident Defendant in an action involving child support if the nonresident Defendant: (1) maintains a matrimonial domicile in Georgia; or (2) resided in Georgia).⁴

In addition, the UCCJEA facilitates the enforcement of child custody orders across state borders by providing for interstate civil enforcement procedures which were not included in

⁴The Uniform Interstate Family Support Act (UIFSA), as embodied in O.C.G.A. Section 19-11-110, provides nine (9) additional provisions to assert personal jurisdiction over a nonresident Defendant in a proceeding under UIFSA to establish a child support order.

either the UCCJA or PKPA. It addresses the resolution of custody disputes when simultaneous proceedings are taking place in different states and addresses such issues as “the clean hand doctrine” and “forum non conveniens.” Levy and McCarthy, supra at 149.

HISTORY; THREE ACTS, ONE PURPOSE:
THE EVOLUTION OF INTERSTATE CHILD CUSTODY JURISDICTIONAL ACTS

A brief review of the UCCJA and Parental Kidnapping Prevention Act (PKPA) will facilitate a better understanding in obtaining a better understanding of the purposes and goals of the UCCJEA since the latter seeks to reconcile conflicting provisions between the UCCJA and PKPA. In short, the UCCJEA amends certain provisions of the UCCJA in order to resolve conflicting provisions between the UCCJA and Parental Kidnapping Prevention Act (PKPA). The purpose of the UCCJA, which had been previously adopted by all 50 states, was to standardize the rules and procedures governing initial and subsequent determinations of interstate child custody disputes to prevent more than one state from claiming jurisdiction over a particular child custody matter. Levy and McCarthy, supra at 151-153. In addition, the UCCJA sought to prevent one parent from snatching a child following an unfavorable custody determination in an initial divorce or custody action since prior to the adoption of the UCCJA, there was no uniform mechanism to prevent a parent who has lost custody in one state from removing a child to another state and filing a new custody action. Therefore, the UCCJA established specific jurisdictional rules which required, in theory, that a custody case be tried in the state most closely connected to the child. Id.

The UCCJA undoubtedly created the problem of “concurrent jurisdiction” by allowing a state to make a child custody determination based on the existence of any one of the following four (4) factors:

(1) “Home State” (the state in which the child lived for at least 6 months prior to the filing of the action with either or both parents, a parent or a person acting as a parent);

(2) “Significant Connection” / “Best Interest” (best interest of the child for the court to exercise jurisdiction because the child and a parent(s) have a significant connection with the state and there is substantial evidence available in the state concerning the child’s future care);

(3) “Emergency Jurisdiction” (when the child is physically present in a state and the child has either been abandoned or it is necessary to protect the child in an emergency because of past or future mistreatment/abuse); or,

(4) “Vacuum Jurisdiction” (when no other state would have jurisdiction under the preceding three principles and the child is present in said state).

Nelson, Ron W., *The UCCJA and The UCCJEA: A Side-by-Side Comparison*, Divorce Litigation, Volume 10, Number 12 (1998).

Although the UCCJA allowed any court to exercise jurisdiction based on the presence of one of the aforementioned criteria, the UCCJA did not prioritize any of these four factors which thereby permitted more than one state to claim jurisdiction over a custody action (concurrent jurisdiction). While a state could assume jurisdiction over a custody case if the child had been living there for more than six (6) months, another state would be free to claim jurisdiction over the matter based on a significant connection with the child and the parties.

As a result of competing states claiming jurisdiction over a custody matter, and states making alterations to their own versions of the UCCJA, many custody decisions were not recognized or honored by courts of other states which led Congress to enact the PKPA in December, 1980. Zorza, Joan, *The UCCJEA: What It Is and How Does it Affect Battered Women in Child-Custody Disputes*, 27 Fordham Urb. L.J. 909, 911-913 (2000). The PKPA required every state in the nation to give full faith and credit to those Orders which complied with due process (i.e., giving reasonable notice and opportunity to be heard to all contestants,

parents and any other person having physical custody of the child) and the PKPA's jurisdictional requirements. Id.

While the basis under the PKPA for a state to assert jurisdiction over a custody matter includes the jurisdictional bases enumerated in the UCCJA, the PKPA gives clear priority to the state asserting home state jurisdiction. In other words, the PKPA supersedes the UCCJA by only giving full faith and credit to the determinations of "home state" courts or those courts asserting jurisdiction because of significant connection to the child only when there was no "home state." Id.

To address the conflicting principles between the PKPA (only awarding full faith and credit to custody rulings made by a home state or another state when no home state existed) and the UCCJA (allowing a state to make a custody determination pursuant to any one of its four criteria), the UCCJEA was drafted to conform the UCCJA to the PKPA. Id. The inconsistencies between the UCCJA and PKPA were best illustrated in those cases where a state would assume jurisdiction over a custody matter, notwithstanding the fact that a "home state" existed under the terms of the PKPA. Thus, perhaps the most important revision to the UCCJA by the UCCJEA is that priority is now given to the home state over other states claiming jurisdiction thereby increasing the likelihood that such a determination (by the home state) will be granted full faith and credit under the PKPA.

Because the UCCJEA, like the PKPA, gives clear priority to the "home state," any state that is not the "home state" of the child must defer jurisdiction to the "home state" until the "home state" affirmatively refuses to exercise jurisdiction. In the event of an emergency, the UCCJEA allows a state other than the "home state" to assume emergency jurisdiction solely for

the purpose of securing the minor child *until* the “home state,” or another state claiming jurisdiction if no “home state” exists, asserts jurisdiction over the child custody dispute. Hoff, Patricia M., *The ABC’S of the UCCJEA: Interstate-Child-Custody Practice Under the New Act*, 32 Fam. L.Q. 267 (1998).

It was also necessary for the UCCJA to be revised and improved by the UCCJEA since the Act did not effectively resolve certain other issues. These included, but were not limited to:

- (1) whether the forum state must have personal jurisdiction over both parents prior to making a custody determination;
- (2) when a court could modify another state’s custody order; and,
- (3) facilitating the enforcement of custody order in other states.

Levy and McCarthy, *supra* at 153-155. The answers to these questions are addressed below in detail.

INQUIRY: DOES THE UCCJA OR UCCJEA APPLY TO PENDING/FUTURE ACTIONS FILED IN THE STATE OF GEORGIA?

The preliminary question relating to the application of the UCCJEA in Georgia is which actions are subject to the UCCJEA as opposed to the UCCJA. As enumerated in O.C.G.A. Section 19-9-102, a motion or other request for relief under the UCCJEA “which was commenced before the effective date of this article is governed by the law in effect at the time the motion or other request was made.” In other words, an application of the UCCJEA is not retroactive and the UCCJA will still apply to those actions filed before July 1, 2001 (the effective date of the Act).

Even for actions filed before July 1, 2001, it will be inherently difficult for Judges across the State to ignore the principles promoted in the UCCJEA since these undoubtedly will

facilitate an application of the UCCJA. Likewise, it is reasonable to expect attorneys representing clients which will benefit from a retroactive application of the UCCJEA to argue its advantages, while attorneys representing clients benefitting by an application of the UCCJA are likely to have a more difficult time persuading a Court to ignore the principles expounded by the UCCJEA and strictly construe the principles embodied in the UCCJA. Of course, if the party benefitting from the changes in the law is the Plaintiff, a possible alternative would be to dismiss the pending lawsuit and re-file after July 1, 2001.

SUBJECT MATTER JURISDICTION / PERSONAL JURISDICTION AND NOTICE

Since application of the UCCJEA will undoubtedly involve litigants in different states, an issue which immediately arises upon the filing of an interstate custody action is how to give the opposing party proper notice and how to ensure that both personal and subject matter jurisdiction can be asserted in the court where jurisdiction is sought. Although the purpose of the instant analysis is not to undertake a comprehensive analysis of these issues, a brief explanation of these principles is important.

Subject Matter and Personal Jurisdiction

As to subject matter jurisdiction, judgments which are rendered in a court lacking subject matter jurisdiction are null and void; and parties are not even allowed to consent to subject matter jurisdiction. As to personal jurisdiction, due process requires that a party have minimum contacts with the State issuing the judgment, unless it involves a “status determination” (such as a child custody dispute) where personal jurisdiction is not required.⁵

⁵“Status has been defined as a relationship between two persons, which is not temporary in nature, is not terminable at the mere will of either and with which the state is concerned.” Balestrieri v. Maliska, 622 So.2d 561, 563 (Fla. Dist. Ct. App. 1993)(as referred to in Stoner,

Subject matter jurisdiction is satisfied when a court asserts jurisdiction over a child custody dispute by claiming any of the UCCJEA jurisdictional criteria. Nonetheless, asserting personal jurisdiction in a custody dispute could be problematic since an out of state parent may have absolutely no connection to the state asserting jurisdiction and effectuating personal service over the non-resident parent in the state of Georgia may not be possible. Additionally, the Georgia Domestic Relations Long Arm Statute (O.C.G.A. Section 9-10-91) does not cover custody disputes.

The potential problems of attempting to assert personal jurisdiction over a non-resident Defendant are resolved by the UCCJEA. This principle is clearly enumerated in O.C.G.A. Section 19-9-61 (c) which states that “[p]hysical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination” (emphasis supplied). Nonetheless, subject matter jurisdiction is obviously still necessary to apply the UCCJEA even if a court has personal jurisdiction over the parties. “A court that has personal jurisdiction over a parent or child cannot make or modify a custody order unless it has jurisdiction under the Act.” Hoff, supra at 281.

Notwithstanding the specific terms of the UCCJEA which do not require personal jurisdiction over a non-resident Defendant, courts have still considered the constitutionality of this issue. Unsurprisingly, and consistent with the terms of the UCCJEA, a majority of courts addressing whether it is necessary to assert personal jurisdiction over a non-resident in an UCCJEA/UCCJA action have determined that personal jurisdiction over a parent is not

Kelly, “*The Uniform Child Custody Jurisdiction & Enforcement Act*”, 75 N. Dak. L. Rev 301 (1999).

necessary in a custody dispute under the Act. Stoner, Kelly, “*The Uniform Child Custody Jurisdiction & Enforcement Act*”, 75 N. Dak. L. Rev 301, 306-308 (1999).

Notice

In order to satisfy the due process clause of the United States constitution, it is necessary for all parties to be given notice of the proceeding. For persons residing in the state which is asserting jurisdiction, notice must be given pursuant to that state’s notice requirements. For example, in Georgia notice may be given by personal service or acknowledgment. See O.C.G.A. Section 9-11-4. For persons residing out of state, notice must be given in a manner calculated to give actual notice pursuant to either state’s notice requirement. O.C.G.A. Section 19-9-47 states “[n]otice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process *or* by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective” (emphasis supplied).

INITIAL CHILD CUSTODY JURISDICTIONAL CRITERIA

Under the UCCJEA, an initial custody determination must be made by a court having one of the UCCJEA’s four jurisdictional criteria which are prioritized as follows: (1) Home State Jurisdiction; (2) Significant Connection Jurisdiction; (3) More Appropriate Forum Jurisdiction; and (4) No Other State Jurisdiction / “Vacuum Jurisdiction.”

Home State Jurisdiction

The most important change brought about by the UCCJEA in an initial custody determination is the priority it affords to home state jurisdiction; thereby immediately

conforming the UCCJEA to the PKPA and thus ensuring that custody and visitation orders under the UCCJEA will be given full faith and credit by other states under the PKPA. Hoff, supra at 279. In other words, if the child involved in the custody dispute has a home state, only that state may make the initial custody determination, unless the home state declines to assert jurisdiction over the child custody dispute. Zorza, supra at 917. In giving priority to the child's home state, the UCCJEA significantly eliminates the concurrent jurisdiction problem which continuously arose under the UCCJA by allowing the home state to initially determine whether it will assert jurisdiction over the child custody dispute action and for that determination to be dispositive.

The UCCJEA essentially defines a home state as the state where the child lived with both parents, one parent, or an individual assuming the role of a parent, for six (6) consecutive months.⁶ The six month period must have been prior to the commencement of the action, and it includes periods of temporary absence by the child from his/her home state. Stoner, supra at 312. In addition, "a child's home state keeps its status for six months after a child leaves, regardless of why the child has left, provided a parent or person acting as a parent remains in the home state." Zorza, supra at 916.

Significant Connection Jurisdiction

By prioritizing the four jurisdictional criteria upon which a court may assume jurisdiction in an initial custody determination, the UCCJEA requires that a significant connection

⁶O.C.G.A. Section 19-9-41(7) defines "home state" as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the terms means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period."

jurisdiction defer to the home state. “A court may exercise significant connection jurisdiction under the UCCJEA only if the home state declines jurisdiction in its favor or on inconvenience or misconduct grounds, or if there is no home state.” Hoff, supra at 279. A state will be deemed to have a significant connection if there is (1) a significant connection between the child and the state *and* (2) substantial evidence regarding the child’s past, present or future care exists in the state. Stoner, supra at 313.

Notwithstanding the priority given to the home state under the UCCJEA, concurrent jurisdiction is still possible in the event there is no home state. “Prioritizing home state jurisdiction over significant connection jurisdiction greatly reduces but does not eliminate the possibility of two states having jurisdiction at the same time.” Hoff, supra at 280. For example, more than one state can claim a significant connection to the child since under the UCCJEA, “significant connection” includes the past, present, and future care of the child. Thus, it is likely that the state of each parent seeking custody will be able to claim significant connection jurisdiction. When this type of conflict arises, the conflict is resolved in favor of the first filed proceeding. However, since the UCCJEA imposes a requirement that courts where proceedings are pending communicate with each other, it is possible that the court where the proceeding was filed first might defer to the other court. Id at 280-281. Concurrent jurisdiction may also arise under the UCCJEA in those cases when there is no home state, no state with exclusive continuing jurisdiction (explained below) and more than one state with significant connections. Nelson, supra at 252.

In summary, the UCCJEA amends the UCCJA’s “significant connection statute” in three aspects. Stoner, supra at 313-314. First, the term “best interests of the child” has been

eliminated so that there is no confusion between the substantive and jurisdictional issues of the case. Second, the significant connection basis for jurisdiction can only apply when there is no home state or when the home state has declined jurisdiction because it believes the significant connection jurisdiction is the more appropriate forum. Finally, whereas the UCCJA limited the evidence of the significant state to “present or future care,” the UCCJEA expands the type of relevant evidence by focusing on the premise that the jurisdiction with the most evidence should make the custody decision (by including “*past*, present, and future” care). Id. (emphasis supplied).

More Appropriate Forum Jurisdiction

A jurisdiction which is not regarded as the child’s “home state” and does not have significant connections to the child will only be able to assert jurisdiction under the UCCJEA if courts having home state jurisdiction or significant connection jurisdiction have declined to exercise jurisdiction. *Zorza*, supra at 916. This determination may be based on inconvenient forum or misconduct grounds (explained below).

No Other State Jurisdiction / “Vacuum Jurisdiction”

In the event no court has asserted jurisdiction under (1) home state jurisdiction, (2) significant connection jurisdiction, or (3) more appropriate forum principles, a court will be able to assert this type of vacuum jurisdiction. Consistent with the general principles of the UCCJEA, even a court asserting vacuum jurisdiction should not consider the merits of the case when determining whether to exercise jurisdiction. Rather, a court should first analyze whether it has jurisdiction, and only after it has determined that it has jurisdiction, should a court determine the merits of the case. *Hoff*, supra at 280.

Undoubtedly, asserting jurisdiction under this criteria is extremely rare. “This type of jurisdiction would enable a court to take jurisdiction in a custody action between the parents who work for a traveling circus, whose child has never spent, for example, more than two weeks per year in the same state.” Zorza, *supra* at 916-917.

MODIFICATION CHILD CUSTODY JURISDICTIONAL CRITERIA

In addition to prioritizing the criteria under which a court can make an initial custody determination, the UCCJEA also dictates the exact criteria to be applied when an initial custody order is sought to be modified by another court. This was a complicated and somewhat unresolved issue under the UCCJA since the UCCJA failed to clearly establish when a court was able to modify another state’s custody order.⁷

In Georgia however, this issue was somewhat clarified by the applicable case law which stood for two principles: (1) Georgia cannot retain jurisdiction for future custody disputes once it has determined custody. See *Mann v. Malone*, 231 Ga. 397 (1973); and (2) Only the state where the legal custodian of the child resides is able to modify a custody order. See *Yearta v. Scroggins*, 245 Ga. 831 (1980). See Mayoue, John C., *Interstate Child Custody and Child Support Actions: Untangling the Maze* (2001). In addition, cases such as *Garrett v. Garrett*, 267 Ga. 356 (1996) and *Henderson v. Justice*, 237 Ga. App. 284 (1999) clearly pointed out that if a foreign state had continuing jurisdiction (such as that found within the UCCJEA and now referred to as Exclusive Continuing Jurisdiction), then Georgia must defer to the original state

⁷The UCCJA simply required that if a court of another state had previously made a custody order, another state’s court could not modify said Order unless: (1) the court seeking to modify determined that the court rendering the applicable order no longer had jurisdiction under the UCCJA and (2) the new court had jurisdiction under the UCCJA.

until that state declines to exercise jurisdiction.

In order to determine which state is able to modify a custody order, one question must be asked and answered is: “Does the decree state’s law provide for exclusive continuing jurisdiction. Hoff, *supra* at 182. If the answer is yes, a court in the new home state can only assert jurisdiction under two scenarios: (1) The decree state no longer has exclusive continuing jurisdiction; or (2) The state having exclusive continuing jurisdiction declines to exercise jurisdiction because another state would be a more convenient forum to make the determination. See O.C.G.A. Sections 19-9-62 and 19-9-63.⁸

Pursuant to the UCCJEA, a court making an initial custody determination will retain exclusive continuing jurisdiction until that court determines that one of two things has occurred. First, “[a] court of this state determines that neither the child nor the child’s parents or any person acting as a parent has a significant connection with this state *and* that substantial evidence is no longer available in this state concerning the child’s care, protection, training, and personal relationship.” O.C.G.A. Section 19-9-62(a)(1) (emphasis supplied). Second, a court no longer has exclusive continuing jurisdiction if either that court *or* a court of another state seeking to exercise jurisdiction determines that “neither the child nor the child’s parents or any person acting as a parent presently resides in this state.” O.C.G.A. Section 19-9-62(a)(2) (emphasis supplied).⁹

⁸Obviously, the state seeking to assert jurisdiction to modify the existing order would have to establish jurisdiction under the other jurisdictional criteria of the UCCJEA.

⁹O.C.G.A. Section 19-9-41(13) defines ‘person acting as a parent’ as “a person, other than a parent, who: (A) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and (B) Has been awarded legal

A close review of these two statutes reveals the distinction as to which court determines whether exclusive continuing jurisdiction still exists. Whereas only the court exercising continuing exclusive jurisdiction can determine whether a significant connection and substantial evidence exists in its state, a court of another state can make the determination as to whether the child or the child's parents (or any other person acting as a parent) no longer reside in the state previously exercising exclusive continuing jurisdiction.

O.C.G.A. Section 19-9-66 (c) requires that a court, in a proceeding to modify a child custody determination, determine whether an enforcement proceeding has begun in another state. In the event such a proceeding has commenced, the court may (1) stay the proceeding, (2) enjoin the parties from continuing with the enforcement proceeding; or (3) proceed with the modification "under conditions it considers appropriate."

It is also important to recognize that a comment to the UCCJEA suggests that a parent seeking to modify a custody order *must* obtain an order from the original decree state which states that the original state no longer has jurisdiction (this would apply to those instances when a party or child continue to be in the state). UCCJEA 102 comment, 9 U.L.A. 252-253. This requirement essentially eliminates the possibility that a court seeking to modify a custody decree could circumvent the court having exclusive continuing jurisdiction since it is now necessary for the original court to issue an Order releasing its exclusive continuing jurisdiction before the other court is able to assume jurisdiction (although the new state could, as mentioned above, make a determination that no party, child or person acting as a parent still resides in the former state).

custody by a court or claims a right to legal custody under the laws of this state."

In addition, this Comment indicates that exclusive continuing jurisdiction is not reestablished if, after the child, the parents, and all persons acting as parents leave the state, the non-custodial parent returns. Further, and pursuant to O.C.G.A. Section 19-9-62(b), once a state has lost exclusive continuing jurisdiction, it can only modify its previous custody order if it can reassert jurisdiction by making an initial determination consistent with O.C.G.A. Section 19-9-61 (i.e., (1) Home State Jurisdiction; (2) Significant Connection Jurisdiction; (3) More Appropriate Forum Jurisdiction; or (4) No Other State Jurisdiction / Vacuum Jurisdiction).

TEMPORARY EMERGENCY JURISDICTION

The UCCJEA also imposes the law as to when a court can assume jurisdiction in an emergency basis. Under the UCCJA, emergency jurisdiction was given the same priority as the home state for determining when a court could exercise jurisdiction. Since this rationale arguably encouraged parents to allege and resort to allegations of abuse to persuade a court to assume jurisdiction, it was likely that a Court would, out of an abundance of caution, assume jurisdiction to protect the minor child(ren) even though another state could also assert jurisdiction under the other criteria of the UCCJA.¹⁰ Thus, by giving emergency jurisdiction the same priority as “home state” jurisdiction, the UCCJA created the problem of concurrent jurisdiction even in emergency situations.

This problem, in theory, is resolved by the UCCJEA. Under the UCCJEA, emergency jurisdiction has been removed as an initial jurisdictional criteria and assigned a separate section under the act. See O.C.G.A. 19-9-64. The UCCJEA establishes two requirements for a court to

¹⁰See Mayoue, John C. supra, for a further analysis of problems previously arising under the UCCJA when a party would seek to invoke emergency jurisdiction.

assert emergency jurisdiction: (1) the child must be physically present in the state; and (2) “it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.” O.C.G.A. Section 19-9-64(a).

Thus, a state may issue a custody order even though it may not be the “home state” of the child nor have significant connections to the case solely for the purpose of entering a temporary order, since the purpose of allowing the court to claim emergency jurisdiction is to protect the child until a court which has jurisdiction under the other criteria is able to enter an order. “The UCCJEA provides for temporary emergency jurisdiction that can ripen into continuing jurisdiction only if no other state with grounds for continuing jurisdiction can be found, or if found, declines to take jurisdiction.” *Summary, supra*.

In other words, the UCCJEA “clarifies that emergency jurisdiction is intended to be exercised only to protect a child on a temporary basis until a court with appropriate jurisdiction may issue a permanent order, not to be used as an additional basis for jurisdiction.” Mayoue, John C., *supra*. To further decrease the possibility of “concurrent jurisdiction,” the UCCJEA requires that in the event a custody action has been initiated in another state, or an order has been entered in another state claiming jurisdiction, the court exercising temporary emergency jurisdiction “shall immediately communicate with the other court.” O.C.G.A. Section 19-9-64(d).

The duration of the Order issued by a court asserting temporary emergency jurisdiction depends on whether custody has been previously or is presently being litigated in another state. Hoff, *supra* at 284. If there is no prior custody order and no other proceeding has been commenced under the different jurisdictional criteria of the Act (i.e., “initial custody

determination,” “exclusive continuing jurisdiction” or “modification jurisdiction”), the temporary emergency order becomes a final order if it “so provides and this state becomes the home state of the child.” O.C.G.A. Section 19-9-64 (b).

If there is a previous order or a custody proceeding has been commenced in a court asserting jurisdiction under the different jurisdictional criteria of the Act (i.e., “initial custody determination,” “exclusive continuing jurisdiction” or “modification jurisdiction”), the order issued by the court asserting temporary emergency jurisdiction must specify a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction. In addition, the temporary emergency order remains in effect until a subsequent order is obtained from the other state asserting jurisdiction within the time frame specified in the order or the period expires. See O.C.G.A. Section 19-9-64(c). Apart from the aforementioned, the UCCJEA does not elaborate on how long the temporary emergency order should last. Thus, “[h]ow long the order should last is one of several issues to be discussed when the emergency court communicated with the sister state court.” Hoff, supra at 284.

An underlying issue arising in the scenario when a court asserts temporary emergency jurisdiction revolves around whether the factual findings by said court will be given full faith and credit by a court which may assume subsequent jurisdiction as contemplated by the Act. Because the UCCJEA requires that notice and an opportunity to be heard be given to all participants, even when entering temporary emergency orders, the findings made by said court are entitled to full faith and credit. “Thus, a temporary emergency jurisdiction can make a final ruling as to the underlying abuse. It will also halt the practice of re-litigating the abuse finding on the theory that the allegation was only made for tactical advantage or to alienate the child

from the other parent.” Zorza, *supra* at 918.

Even though the UCCJEA allows for a court to assert emergency jurisdiction, it is important to recognize that the Act still requires that proper notice and an opportunity to be heard be given to the opposing party before a child custody determination is made. O.C.G.A. Section 19-9-65 makes this clear by stating that “[b]efore a child custody determination is made under this article, notice and opportunity to be heard in accordance with the standards of Code Section 19-9-47 must be given to all persons entitled to notice under the laws of this state as in a child custody proceeding between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.” The impact of this provision is that by requiring that proper notice be given to all participants, an Order issued by a court asserting emergency jurisdiction under the UCCJEA will comport to the notice requirements of the PKPA and be given full faith and credit by other states.

In conclusion, the temporary emergency jurisdictional provisions of the UCCJEA represent one of the most important advantages of the UCCJEA over the UCCJA. The UCCJEA allows a court to undertake whatever steps are necessary to protect the child, regardless of whether another action is pending in another state, and without taking jurisdiction away from a court that has a stronger basis for asserting jurisdiction under the criteria enumerated in the Act.

DECLINING JURISDICTION

Similar to the UCCJA, the UCCJEA permits for a court with initial jurisdiction, exclusive continuing jurisdiction, or modification jurisdiction to decline to assert jurisdiction

under either of the following grounds: (1) Inconvenient Forum (O.C.G.A. Section 19-9-67); or (2) Unjustifiable Conduct (O.C.G.A. Section 19-9-68).

Inconvenient Forum

A court can decline to assert jurisdiction at any time by determining that it is an inconvenient forum and that a court of another state is a more appropriate forum. O.C.G.A. Section 19-9-67(a). The issue of inconvenient forum can be raised upon motion of a party, the court's own motion or at the request of another court. By allowing another court to assert inconvenient forum, the UCCJEA allows the court asserting temporary emergency jurisdiction to attempt to persuade the court having jurisdiction to decline jurisdiction. In addition, and unlike the UCCJA, under the UCCJEA a Guardian Ad Litem is no longer able to raise the issue of inconvenient forum. Nelson, supra at 252.

Perhaps most importantly, the UCCJEA ensures that the custody litigation will go even if a court declines to assert jurisdiction under inconvenient forum grounds and finds that another court is a more convenient forum. O.C.G.A. Section 19-9-67(c) requires that a court declining to assert jurisdiction stay the proceedings "upon condition that a child custody proceeding be promptly commenced in another state" (naturally, in the state it finds to be the more appropriate forum).

In deciding whether to decline jurisdiction on the grounds of inconvenient forum, the court is required to consider all the relevant factors, including: (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and

the child¹¹; (2) the length of time the child has resided outside of the state; (3) the distance between the inconvenient forum court and the more appropriate forum court; (4) the relative financial circumstances of the parties; (5) any agreement of the parties as to which state should assume jurisdiction; (6) the nature and location of the evidence needed to resolve the case; including the testimony of the child; (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and (8) how familiar each court is with the facts and issues in the pending litigation. O.C.G.A. Section 19-9-67(b)(1-8).

Unjustifiable Conduct

Contrary to the UCCJA, the UCCJEA requires that if a court has jurisdiction, unless it has asserted temporary emergency jurisdiction, it must decline that jurisdiction when a person seeking to assert its jurisdiction has engaged in *unjustifiable conduct*. O.C.G.A. Section 19-9-68 (a) (emphasis supplied). The three exceptions to this rule are: (1) the parents and all persons acting as parents consent to the exercise of jurisdiction by the court; (2) no other state can assert initial jurisdiction, exclusive continuing jurisdiction, or modification jurisdiction; or (3) the court of the state otherwise having jurisdiction determines that this state is the more appropriate forum (i.e., the other court declines jurisdiction for inconvenient forum reasons). O.C.G.A. Section 19-9-68 (a)(1-3).

In order to prevent the person from further engaging in acts of “unjustifiable conduct,” the UCCJEA provides that a court declining to assert jurisdiction under this section can retain

¹¹This factor was not included in the UCCJA list of factors a court could consider in declining jurisdiction under the inconvenient forum grounds. In addition, it is likely that a request for a court to decline jurisdiction based on inconvenient forum will arise in those cases involving domestic abuse where a parent has left one state for another and to return to the other state may threaten his or her welfare. Hoff, supra at 285, note 77.

jurisdiction until jurisdiction is assumed by another court. Further, it allows for the court to “fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct.” O.C.G.A. Section 19-9-68 (b).

Although the entire principle revolves around the term “unjustifiable conduct,” this term is not defined in the UCCJEA’s list of definitions. Nonetheless, and as referred to by Patricia M. Hoff, “[i]t is unjustifiable for parents or their surrogates, to act in a reprehensible manner, such as by removing, secreting, retaining, or restraining a child. In contrast, domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is illegal.” Hoff, supra at 286.¹²

In order to further discourage a party from engaging in unjustifiable conduct, the UCCJA requires that the court assess against the party seeking to invoke its jurisdiction “necessary and reasonable expenses unless the party from whom fees are sought establishes that such an award would be clearly inappropriate. O.C.G.A. Section 19-9-68(c).¹³

¹²The comment to the statute elaborates on the applicability of this principle to situations involving domestic violence by stating as follows:

A technical or illegality or wrong is insufficient to trigger the applicability of this section. This is particularly important in cases involving domestic violence and child abuse. Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case should not be automatically dismissed under this section. An inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another state to establish jurisdiction has engaged in unjustifiable conduct and the new state must decline to exercise jurisdiction under this section.

¹³“Necessary and reasonable expenses” include costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings.

COMMUNICATION AND COOPERATION BETWEEN COURTS

One of the primary purposes of the UCCJEA is to avoid multiple states asserting jurisdiction over a child custody proceeding. Because the UCCJEA prioritizes the criteria that can be asserted during an initial custody determination, and because it differentiates between initial and modification jurisdiction, the UCCJEA reduces the need for courts of different states to communicate with each other. “The times when communication will be required will likely occur when there is no home state, no state with exclusive continuing jurisdiction, more than one significant connection state or, in cases involving temporary emergency jurisdiction.” Zorza, *supra* at 921.

Nonetheless, the UCCJEA clearly promotes communication between courts by authorizing courts to communicate with each other about any proceeding under the UCCJEA. O.C.G.A. Section 19-9-49 (a). In addition the courts will allow the parties to participate in any communications between them; and in the event the parties are not able to participate in such communications, the parties must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. O.C.G.A. Section 19-9-49(b).¹⁴

The UCCJEA facilitates the participation of out of state litigants and witnesses in a custody determination. For example, the Act allows the taking of testimony in another state when a party, child, or witnesses are located out of state. “It is a practical alternative to ordering a party to appear with our without the child . . . a court may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic

¹⁴In addition, courts are required to make a record of their communication and to promptly inform the parties of such communication and grant them access to same. O.C.G.A. Section 19-9-49(d).

means before a designated court or at another location in the state.” Hoff, supra at 287. As the Comment states, the “ability to participate in the proceedings without actually going back to the other state will be especially welcome to victims of domestic violence or child abuse who fear returning to the jurisdiction where the abuser resides.” Id.

Finally, the UCCJEA authorizes courts to seek assistance, or give assistance to a court of another state. See O.C.G.A. Section 19-9-51. This is consistent with the UCCJEA’s principle of providing a prompt resolution to the custody proceeding. Specifically, a court can request a court of another state to hold an evidentiary hearing, order a person to produce or give evidence, forward a certified copy of the transcript of the record of the hearing, order a custody evaluation, or to order a party or any person having physical custody of the child to appear in the proceeding with or without the child. Id.

ENFORCEMENT PROVISIONS¹⁵

One of the most significant problems under the UCCJA is that it does not provide for uniform mechanisms to enforce custody and visitation orders validly entered in another state. Thus, the failure of the UCCJA to provide for such a uniform mechanism undermined the purpose of the UCCJA since a party obtaining a favorable custody order would have substantial difficulty in enforcing visitation and custody provisions once the other party left the state which entered the applicable order.

For a custody order to be entitled to enforcement under the UCCJEA, the court issuing the order must have exercised jurisdiction in “substantial conformity” with the Act or such determination must have been made under factual circumstances meeting the jurisdictional

¹⁵See Appendix for “Model Forms Uniform Child Custody and Enforcement Act”.

standards of the Act. O.C.G.A. Section 19-9-83 (a). In other words, “[t]o encourage swift enforcement, the drafters limited the scope of inquiry to whether the decree court had jurisdiction and complied with due process in rendering the original custody decree.” Levy and McCarthy, *supra* at 163.¹⁶

An overview of the new procedures implemented in the UCCJEA indicate that their purpose is to ensure the prompt and easy enforcement of custody and visitation orders to avoid the need to once again undergo an extensive inquiry into the merits of the particular custody determination. Among the most important mechanisms implemented under the UCCJEA, the following deserve mention and explanation: (1) registration of an out of state custody determination; (2) temporary visitation; (3) expedited enforcement hearings; (4) warrant to take physical custody of child; and (5) civil enforcement of custody orders.

Registration Of An Out Of State Custody Determination

O.C.G.A. Section 19-9-85 enumerates the necessary requirements and procedures to register an out of state custody determination. The UCCJEA allows a party to seek the registration of an order, with or without a simultaneous request for enforcement. Essentially, an individual seeking to register an order must send a letter to the superior court in the appropriate

¹⁶Because it is a requirement that the order sought to be enforced meet the jurisdictional criteria of the UCCJEA, there may be instances where an order entered under the UCCJA is unenforceable under the UCCJEA. For example, an order entered by a state assuming jurisdiction because of significant connection would not be entitled to enforcement under the UCCJEA if there was a home state at the time said Order was entered unless the home state had declined jurisdiction. Hoff, *supra* at 289.

venue requesting registration. Along with said correspondence, it is required that copies be enclosed of the order to be registered (including one certified copy) accompanied by a sworn statement that the order has not been modified and the name and address of any party given custody or visitation by the order.

Once the superior court receives the required information, the order is filed as a foreign judgment and the court serves notice on any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

O.C.G.A. Section 19-9-85 (b)(1-2). A person seeking to contest the registration must request a hearing within 20 days after service of the notice. O.C.G.A. Section 19-9-85 (d). If a hearing is not requested, the order is registered.

In the event a hearing is requested to challenge the validity of the registration, the order shall be registered by the court unless one of the following is established: (1) the issuing court had no jurisdiction to enter the child custody determination; (2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having proper jurisdiction to modify same; or (3) lack of notice and opportunity to be heard to the person contesting jurisdiction provided he/she was entitled to receive notice. O.C.G.A. Section 19-9-85(d)(1-3).

Temporary Visitation

The UCCJEA allows courts to enforce visitation rights in two limited instances without violating the PKPA (which absent appropriate jurisdiction prohibits a court from modifying another state's custody determination by requiring that a court enforce another state's custody determination *according to the express terms of said order*). *Zorza supra* at 933. The first

instance allows a court to provide for make-up visitation time when the visitation contemplated and enumerated in the pertaining order has been obstructed. The second instance allows courts to draft a specific visitation schedule when the order sought to be enforced does not provide for a specific visitation schedule. O.C.G.A. Section 19-9-84.¹⁷

Expedited Enforcement Hearings

The UCCJEA permits expedited enforcement hearings to ensure the prompt enforcement of custody determinations. Stoner, supra at 321, note 128. This remedy has come to be known as “turbo habeus” and “the blitz” (nicknames given it by the drafting committee) since it provides for an enforcement hearing within twenty four hours of service which will result in an order granting the relief sought unless the Respondent establishes one of the following defenses available under the Act: (1) whether the issuing court had jurisdiction to make the order; (2) whether the Respondent received notice in accordance with the standards of the UCCJEA; or (3) whether the order has been vacated, stayed or modified. If the Order has already been registered, only the third defense is available. O.C.G.A. Section 19-9-90.

Warrant To Take Physical Custody of Child

To prevent a parent from fleeing the jurisdiction of the court where enforcement is sought, the UCCJEA allows for the issuance of a warrant to take physical custody of a child upon a finding that the “child is imminently likely to suffer serious physical harm or be removed

¹⁷ “Judges who are asked to grant temporary visitation orders under this section are cautioned against making wholesale changes in sister state orders. The authority granted by this section is limited to making temporary orders to enforce visitation. The enforcement court may communicate with the decree court before entering orders, and there is always the possibility the decree court will defer jurisdiction to the enforcement court on inconvenient forum grounds.” Hoff, supra at 293.

from the state.” O.C.G.A. Section 19-9-91(a). In order to obtain a warrant, the Petitioner is required to file a verified application and provide specific testimony to the Court.¹⁸ Once the court determines that the child will suffer serious physical harm or be removed from the state, a warrant will issue authorizing the immediate taking custody of the child. The petition must be heard on the next judicial day after the warrant is executed, unless that date is not possible. O.C.G.A. § 19-9-91(b).

Civil Enforcement Of Custody Orders

Arguably, the most important provision of the enforcement sections of the UCCJEA is located in O.C.G.A. Section 19-9-95 which authorizes the district attorney to take any lawful action to locate a child, obtain the return of a child, or enforce a child custody determination. In addition, and pursuant to O.C.G.A. Section 19-9-96, law enforcement officials are also allowed to take any lawful action reasonably necessary to locate a child or a party and assist the district attorney’s office with the undertakings provided by O.C.G.A. Section 19-9-95. Notwithstanding these powers, it is important to recognize that the district attorney’s authority under these sections is discretionary and thus, they are not required to fulfill the responsibilities provided to them under this section.

“The objective of these sections is to create an interstate network of prosecutors (or other public officials) who, with both civil and criminal legal tools at their disposal, will be available to locate children, return them to the jurisdiction of the court that is empowered to resolve custody and visitation issues, and to enforce child-custody determination.” Hoff, supra, at 296.

¹⁸The comment to this Section suggests that the taking of testimony from the petitioner may be accomplished either in person, by telephone or by another locally accepted means.

CONCLUSION

An application of the UCCJEA in the State of Georgia will undoubtedly result in a more efficient resolution of interstate child custody disputes since it addresses the problems arising under the UCCJA and PKPA. The Act will substantially decrease the possibility of numerous courts asserting jurisdiction over a child custody dispute by clearly prioritizing the Court that is able to exercise initial and modification jurisdiction. At the same time, the Act addresses the importance of the timely resolution of emergency custody disputes by allowing a court to exercise temporary emergency jurisdiction without the need to assert final jurisdiction over the underlying child custody proceeding.

The arrival in Georgia of the UCCJEA brings Georgia in line with a majority of states, and places Georgia residents on an even plane with non-Georgians. Under the previous law (UCCJA), Georgia had no “continuing jurisdiction” and, once a party and child had been gone from Georgia for more than six (6) months, the remaining Georgian had to travel to the new state to litigate custody or visitation issues (unless service could be effected in Georgia).

As with any other new legislation, it is likely that new problems will arise under the UCCJEA. Nonetheless, the UCCJEA is a substantial improvement over the UCCJA which facilitates the practitioner’s understanding of how to, and where to, file and defend an interstate child custody proceeding.