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How the Legal System Resolves Custody Cases Involving Multiple States

by Brian L. Bly

During the second half of the twentieth century, a problem began to emerge among the various state courts of America that hear child custody disputes: multiple cases, in different states, involving the same children. In some instances, two parents would file cases in different states, unaware of the other filing. Other parents knowingly filed duplicate cases, unhappy with the ruling in the first court, and hoping for a different result in the second. In a significant portion of these cases, judges in different states issued conflicting orders, unaware of the existence of the other case. The problem was getting worse, and action was needed.

To help resolve interstate custody disputes, the Uniform Child Custody Jurisdiction Act ('UCCJA') was drafted in 1968, and was adopted by Ohio in 1977.¹ The purpose of the UCCJA was to avoid jurisdictional competition and conflict with courts of other jurisdictions in custody matters.² "To bolster the effectiveness of the UCCJA, Congress passed the Parental Kidnapping



Prevention Act ('PKPA'), Section 1738A, Title 28, U.S. Code, in 1980, mandating that states afford full faith and credit to valid child custody orders of another state court."³ Whenever the Ohio version of the UCCJA conflicted with the PKPA, the PKPA prevailed.⁴ Under the PKPA, a "court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination."⁵

The purpose of the UCCJA, however, was defeated by departures from the original text of the UCCJA in many states and by inconsistent decisions by state courts.⁶ To rectify this problem, in 1997 the National Conference of Commissioners on Uniform State Laws came up with a strengthened version, called the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") to replace the UCCJA.⁷ The primary purpose of the UCCJEA, like its predecessor, continues to be "avoiding the jurisdictional competition and conflict that flows from hearings in competing states."⁸ Today, the UCCJEA has been adopted by every U.S. State except for Massachusetts. The UCCJEA has also been adopted by most U.S. territories (but notably not in Puerto Rico).

Where should cases properly be filed under the UCCJEA?

Under the UCCJEA, exclusive and continuing jurisdiction is vested in the child's "home state," defined 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 preceding the commencement of a child custody proceeding and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period."⁹

Can a parent who is unhappy with a ruling in another state seek a different result in court in Ohio?

No. The Ohio Supreme Court has held: "an Ohio court patently and unambiguously lacks jurisdiction to proceed in a child-custody case commenced when a child-custody case is already pending in a court of another state and that court is exercising jurisdiction consistently with the Parental Kidnapping Prevention Act ("PKPA"), Section 1738A, Title 28, U.S. Code, and the state's version of the Uniform Child Custody Jurisdiction Act ("UCCJA")."¹⁰

May a parent decline to inform a court that a case is already pending in another state?

No. Each UCCJEA state requires the parent to disclose the existence of other cases involving the same child(ren), at the outset. In Ohio, parents must complete a sworn affidavit, including information on any other cases in Ohio or any other state, upon filing any new child custody case.¹¹

What if a parent flees to another state with a child already subject to an existing order?

The UCCJEA allows for the parent in the first state to obtain help from the courts of the second state, to enforce the order from the first state. This does not change even if the child is (unlawfully) kept in the second state for more than six months.

What if a parent alleges abuse?

Allegations of abuse by the other parent are somewhat common in custody cases. Occasionally, a parent will exaggerate or lie about abuse, in order to attempt to gain an advantage. Neither the UCCJEA nor its predecessor allow for jurisdiction to be conferred based on a state only on allegations of abuse. In *State ex rel. Morenz v. Kerr*, 104 Ohio St.3d 148, 2004-Ohio-6208 at ¶28, the Ohio Supreme Court agreed with a case from the State of Colorado, *G.B. v. Arapahoe Cty. Court* (Colo.1995), 890 P.2d 1153 at 1160. In that Colorado case, two parents were litigating a custody case in the State of California. The mother initiated proceedings in Colorado, alleging abuse, which were designed to change custody in the mother's favor. The Colorado court held:

This case is exactly the type of case to which the UCCJA was intended to apply. The mother wrongfully refused to return (the child)... and then the mother, and not the State, initiated proceedings in Colorado which were designed to change custody of (the child) in the mother's favor. We realize that the mother alleges that her actions were necessary to protect (the child) from abuse. However, **if we were to allow Colorado to assert jurisdiction as soon as the parties allege abuse, it would permit the parties to circumvent the requirements of and the policies behind the UCCJA.** Additionally, **the**

mother has had a chance to present her abuse allegations before the California court.¹²

Ohio law does provide for Temporary Emergency Jurisdiction in certain circumstances. Ohio Revised Code §3127.18(D) states:

A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of a state having jurisdiction under sections 3127.15 to 3127.17 of the Revised Code or a similar statute of another state, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to sections 3127.15 to 3127.17 of the Revised Code, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Simply states, the UCCJEA does not allow for competing child custody cases in multiple states. Nor does it aid parents who would move from state-to-state, until they obtain a desired ruling. This is the UCCJEA's primary purpose. Once a state court properly exercises jurisdiction under the UCCJEA, other state courts have no jurisdiction to proceed on custody issues (beyond registration and enforcement of the existing order).

If you have a question involving a child custody matter, contact Nicola, Gudbranson & Cooper for advice from one of our attorneys.

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¹ *Justis v. Justis* (1998), 81OhioSt.3d 312, 314, 691 N.E.2d 264, citing R.C. 3109.21 to 3109.37, 137 Ohio Laws, Part 1, 359

² *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶12, quoting *In re Palmer* (1984), 12 Ohio St.3d 194, 196, 12 OBR 259, 465 N.E.2d 1312.

³ *Justis v. Justis* (1998), 81 Ohio St.3d 312 at 315, 691 N.E.2d 264.

⁴ *State ex rel. Seaton v. Holmes*, 100 Ohio St.3d 265, 2003-Ohio-5897, 798 N.E.2d 375, ¶16.

⁵ Section 1738A(g), Title 28, U.S. Code

⁶ See Uniform Child Custody Jurisdiction and Enforcement Act, Prefatory Note (1997), 9 Uniform Laws Ann. 649, 650

⁷ Prefatory Note, 9 Uniform Laws Ann. 649, 650; *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, 883 N.E.2d 420, ¶20 citing *Watson v. Watson* (2006), 272 Neb. 647, 651, 724 N.W.2d 24

⁸ *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, 883 N.E.2d 420 at ¶38.

⁹ Ohio Revised Code 3127.01(B)(7)

¹⁰ *State ex rel. Morenz v. Kerr*, 104 Ohio St.3d 148, 2004-Ohio-6208, ¶1.

¹¹ Ohio Revised Code 3127.23

¹² *State ex rel. Morenz v. Kerr*, 104 Ohio St.3d 148, 2004-Ohio-6208 at ¶28 quoting *G.B. v. Arapahoe Cty. Court* (Colo.1995), 890 P.2d 1153 at 1160 (emphasis added).