

## **COMMENTARY ON ADOPTION JURISDICTION UNDER THE UCCJEA**

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Adoption is a status, the creation and existence of which is governed exclusively by state statutes. Adoption creates a legal parent-child relationship that does not depend on biology. It requires the termination of the parental rights of the child's existing parents (biological or legal) and the creation of the legal parent-child relationship with adoptive parents. Because the common law did not recognize adoption, states strictly construe statutes. Jurisdiction of the subject matter is a prerequisite for a valid decree of adoption. Jurisdiction is statutory and cannot be conferred by consent or action of the parties. Unfortunately, states have differing, often complex, rules not only about the requisites for jurisdiction, but also about procedures for termination of parental rights and adoption. Attempts to unify and standardize state adoption statutes have been unsuccessful.<sup>1</sup>

If the court has proper jurisdiction, the adoption, as a final judgment, will be entitled to full faith and credit in other states, even if the adoption could not have been granted in the other state.<sup>2</sup> A state cannot refuse to afford full faith and credit, even if the adoption contravenes a state's public policy, if the decree state had the requisite jurisdiction. The United States Supreme Court reversed an Alabama Supreme Court decision which refused to give full faith and credit to a Georgia adoption decree granting a same sex partner second parent status. Even though a second parent adoption could not take place in Alabama without terminating the rights of one partner, Georgia had a statutory grant of jurisdiction over "all matters of adoption." The Georgia court therefore had adjudicatory authority over the subject matter sufficient to entitle its judgment to full faith and credit.<sup>3</sup>

Significant differences in state adoption and jurisdictional laws, coupled with the rule that state courts usually apply their own law to adoption proceedings, has led to forum shopping and complex

jurisdictional questions. A pregnant birth mother may leave her state of residence to give birth; adoptive parents may live in a different state from the one in which the child is born; the father, often unwed, may or may not know about the mother's intended adoption and may be in the state of mother's residence or yet another state.<sup>4</sup> The mother may choose a state with which she has no connection if the state has rules that favor the adoption. A federal statute, the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. 1738A, requires full faith and credit to "custody" decrees of other states made in conformity with the PKPA criteria which gives a priority for home state jurisdiction. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) applies to termination of parental rights proceedings in child in need of care proceedings.<sup>5</sup> When enacting the UCCJEA, only a handful of states included adoption in the definition of "child custody determination" even though an adoption generally involves termination of parental rights and affects the "custody" of children.

Other jurisdictional issues can arise. If the adoption involves a stepparent, there may have been an initial custody order, in which case the UCCJEA continuing jurisdiction provisions may apply. A second state may not entertain a termination action which would have the effect of modifying the respondent parent's visitation rights granted by a state which still has continuing jurisdiction under the PKPA and UCCJEA.<sup>6</sup> If a child is to be placed out of state, the Interstate Compact on the Placement of Children (ICPC) may apply.<sup>7</sup> If the child is an Indian child, the Indian Child Welfare Act applies.<sup>8</sup> These jurisdictional problems are compounded in surrogacy cases, especially if adoption is necessary to establish rights in the intended parents after the child is born.<sup>9</sup>

### **Consent to Adoption, Relinquishment or Involuntary Termination**

Parental rights merit constitutional protection.<sup>10</sup> A parent may voluntarily consent to adoption or relinquish the child to an agency pursuant to a state law. The parent's rights can be

terminated involuntarily by a judicial finding of clear and convincing evidence of abandonment, neglect, or unfitness of the parent. If parents are married, both parents must either consent or have their rights terminated. The child must be “available” for adoption for the court to have jurisdiction to establish parental rights in other persons.

Until the early 1970s, many states required only the consent of the mother of a child born out of wedlock. While recognizing that gender-based distinctions may violate the Equal Protection Clause if they fail to serve important governmental objectives,<sup>11</sup> the United States Supreme Court has indicated that biology alone does not bestow constitutional rights. If a putative father steps up and “demonstrates a full commitment to the responsibilities of parenthood,” his interest in personal contact with his child is entitled to substantial protection under the due process clause.<sup>12</sup> A state, however, may require a biological father to file with a putative father registry<sup>13</sup> or do some other affirmative act to assume responsibility for a child born out of wedlock.<sup>14</sup> Therefore, even when the child is born out of wedlock and even though the mother may consent to the adoption, the father must also consent or have his parental rights properly terminated before the child is “available” for adoption.<sup>15</sup>

The statutory requirement of voluntary consent to adoption is mandatory, jurisdictional, and goes to the heart of the adoption.<sup>16</sup> An invalid consent to adoption is a fundamental flaw that will deprive the court of subject matter jurisdiction.<sup>17</sup> Even if a parent’s consent is unnecessary because he or she has “abandoned” the child, the parent still has rights until a final order and can participate in the adoption proceeding.<sup>18</sup> A court may have an independent obligation to address the existence of subject matter jurisdiction when jurisdiction is questionable, even when neither party raises the issue.<sup>19</sup>

The *Restatement (Second) of Conflict of Laws* Sec. 78 broadly provides that “a state court has power to exercise jurisdiction to grant an adoption if it is in the state of domicile of either the

adopted child or adoptive parent and the adoptive parent and either the adopted child or the child's legal custodian is subject to the court's personal jurisdiction." States, however, apply different rules. Most states require that the adoption petition be filed in the state in which the child is present because the child's custody and parentage are at issue. All states agree that adoptive parents submit themselves to the jurisdiction of the court by filing a petition for adoption with proper consents. That court, however, may not need to have personal jurisdiction over the birth parents. Some states do have jurisdictional residency requirements to preclude nonresidents from filing for adoption.

### **UCCJA, PKPA and Adoption**

In 1968, the National Conference of Commissioners on Uniform State Laws, now also known as the Uniform Law Commission, proposed the Uniform Child Custody Jurisdiction Act (UCCJA), 9 U.L.A. (Pt. I) 115. The Commissioners hoped to discourage continued controversies over child custody, to deter child abductions, to promote interstate cooperation and communication in adjudicating child custody matters, and to facilitate the enforcement of custody decrees of sister states.<sup>20</sup> The UCCJA, enacted in all fifty states by 1983, provided four alternative co-equal bases for initial custody jurisdiction: Home state, significant connection and substantial evidence, emergency, and the absence of jurisdiction in any other state. The UCCJA, however, did not specify which proceedings were covered. Although a couple of courts excluded adoptions, most courts assumed that UCCJA applied to adoptions.<sup>21</sup> Indeed, the Reporter who drafted the Uniform Adoption Act indicates that the UCCJA applies to adoptions.<sup>22</sup>

In 1980, Congress enacted the Parental Kidnapping Prevention Act to cure the potential concurrent jurisdiction problems of home state and significant connection which the UCCJA had failed to resolve. The PKPA broadly applies to "any proceeding for a custody or visitation determination."<sup>23</sup> It defines a "custody determination" as "a judgment, decree or other order of a

court proceeding for the custody of a child, and includes permanent and temporary orders, initial orders and modifications.”<sup>24</sup> The PKPA defines “physical custody” as “actual possession and control of the child.” PKPA then prioritizes home state jurisdiction:

Every State shall enforce \* \* \* and shall not modify except as provided in subsections (f), (g), and (h) of this section any custody \* \* \* or visitation determination made consistently with the provisions of this section by a court of another state.

\* \* \*

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

**(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child’s present or future care, protection, training, and personal relationships;**

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c) (1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child. \* \* \*

(g) 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.<sup>25</sup>

As a federal statute, the PKPA preempts state law, including the UCCJA. PKPA applies to *all* interstate custody disputes. The PKPA mandates full faith and credit to a sister state custody

order that substantially complies with the PKPA provisions.<sup>26</sup> Under the PKPA, a state should not exercise “significant connection” jurisdiction if another state is the child’s home state. If a state does exercise custody jurisdiction in such a situation, and the home state also renders a custody order, the home state order would be the one entitled to full faith and credit.<sup>27</sup> By itself, the PKPA does not preclude the possibility of conflicting *initial* custody decrees.<sup>28</sup>

The strong argument is that adoptions are a child custody determination within the meaning of the PKPA.<sup>29</sup> Noting that the PKPA has been relied upon in a dependency proceeding which resulted in a change of custody of the child, Professor Homer Clark in his treatise noted:

\* \* \* the obvious need for authoritative jurisdictional rules, one may reasonably conclude that the statutes (UCCJA/PKPA) should apply both to adoptions and to decrees terminating parental rights voluntarily and involuntarily.<sup>30</sup>

### **Uniform Adoption Act**

In 1994, the Uniform Law Commission adopted the Uniform Adoption Act.<sup>31</sup> The jurisdictional provisions for subject matter jurisdiction were different from the UCCJA. “The Uniform Adoption Act modified the home state provision to include “a prospective adoptive parent” as one of the identified individuals with whom the child has lived – not “from birth” as the UCCJA required, but “from soon after birth – and who may commence adoption proceedings.”<sup>32</sup> The UAA’s underlying goal is to have the adoption proceedings heard in the forum closest to, and with the most substantial evidence about, the prospective adoptive family. The Reporter Joan Hollinger and Herma Hill Kay thought that the PKPA did not apply to adoptions because adoptions were covered under the full faith and credit clause before the PKPA was enacted. While that is true, as noted above, almost all states that have considered the issue under the PKPA have found that adoptions are custody determinations under the PKPA.

UAA Section 3-101 bars a court from exercising jurisdiction if a proceeding for adoption or

custody has been commenced by a state with jurisdiction under the UCCJA. The UAA also requires if an adoption is denied or set aside, the court is to determine “custody” of the child. UAA Sec. 3-704. Those proceedings would clearly have been subject to UCCJA.

### **Uniform Child Custody Jurisdiction and Enforcement Act**

In 1997, the Uniform Law Commission approved the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), 9 U.L.A. (Part I A) 649 (1999), which has now been adopted in 49 states. Only Massachusetts still uses the UCCJA. Unlike the UCCJA, the UCCJEA is consistent with the PKPA and gives priority to home-state jurisdiction. The UCCJEA parroted the PKPA for bases for jurisdiction. The UCCJEA also specifies that its provisions apply to *all* proceedings in which legal custody, physical custody, or visitation is an issue. UCCJEA Section 102(4) defines child custody proceeding as

a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement \* \* \*<sup>33</sup>

The UCCJEA on its face applies to termination of parental rights cases, presumably in private actions as well as public actions.<sup>34</sup> Paternity proceedings have two aspects: the determination of parentage for support purposes and the award of custody and visitation/parenting time. A determination of paternity itself is covered under the Uniform Interstate Family Support Act, requiring personal jurisdiction over the alleged father.<sup>35</sup> The custody and visitation aspects, however, are child custody proceedings under the UCCJEA. An Arizona case illustrates the point. A child was born on October 27, 2014. The father filed a paternity action with a motion for emergency temporary custody orders on October 30, 2014. The Arizona court issued a temporary order on November 4 and set the matter for hearing. The mother moved to dismiss because she had

arranged for the child's adoption, the child had been taken to New York on October 30, and adoption proceedings had been initiated. The father, who did get notice, did not appear in New York to object and the New York court granted the adoption on February 3, 2015. The mother argued the New York adoption was entitled to full faith and credit under the PKPA. The Arizona Court of Appeals held that Arizona was the home state at the time the father filed his paternity and custody action. PKPA bars a state from exercising jurisdiction when a custody proceeding is pending in another state and that state is "exercising jurisdiction consistently" with the PKPA. Signing a consent to adoption is not the same thing as filing an action. Therefore, New York was not exercising jurisdiction consistent with the PKPA and its order was not entitled to full faith and credit.<sup>36</sup> Other states have found that if a proceeding is pending in one state which properly has PKPA jurisdiction, another state cannot entertain an adoption.<sup>37</sup> On the other hand, a Colorado mother went to Utah to have the baby and relinquished custody to Illinois adoptive parents days before the Colorado biological father filed his action for paternity and custody in Utah. The Utah Supreme Court found that Utah was not the child's home state and no one had a significant connection with Utah on the date the father's action was filed.<sup>38</sup>

Adoption jurisdiction is not so clear. UCCJEA Section 103 states that UCCJEA does not govern adoption proceedings or a proceeding pertaining to the authorization of emergency medical care for a child. The Comment indicates that this is because the Uniform Adoption Act (UAA 1994) covers it and states will either enact it or similar provisions. The Comment goes on to state that it may be necessary to apply the UCCJEA in an adoption proceeding. Noting that "some of the most difficult, and intractable, interstate cases involve adoptions," Reporter for the UCCJEA Robert Spector said: "Adoptions are not covered by the UCCJEA because the leadership of the ULC at the time told the drafting committee of the UCCJEA that we could not include adoptions. At the time the Uniform Adoption Act was only four years old and states were to be encouraged to adopt that

act’s jurisdiction principles. The drafting committee of the UCCJEA was not pleased with the decision of the leadership.”<sup>39</sup> Bob Spector, the Reporter for the UCCJEA, suggests the basic fix is to amend Section 103 to remove adoptions from the excluded proceedings and at the same time add adoptions to the list of covered custody determinations in Section 102(4).<sup>40</sup>

A few states, however, did include adoption when they enacted the UCCJEA – District of Columbia, Kansas, New Mexico,<sup>41</sup> Oklahoma, and Wisconsin. Several courts have concluded that both the PKPA and UCCJEA apply to adoption proceedings.<sup>42</sup> The Utah Supreme Court, for example, decided that adoptions did constitute a custody proceeding for purposes of the PKPA and the PKPA did not limit the subject matter jurisdiction of state courts.<sup>43</sup> The court found that the PKPA, by its plain language, applies to adoption proceedings:

[We must decide whether] adoption proceedings fall within the “any proceeding for a custody determination” provision of the PKPA. Adoption proceedings are replete with court-made determinations of who will have “actual possession and control of” a child. Under the Utah Code, a final adoption decree divests a natural parent of all parental rights, including the right of custody, and bestows those parental rights, including the right of custody, on the adoptive parent or parents. \* \* \* [I]f satisfied that the interests of the child will be promoted by the adoption, [the court] shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.” \* \* \* Under this rubric, when considering an adoption petition, a court must necessarily determine who will have “actual possession and control of [the] child.” Put another way, an adoption proceeding works the ultimate custody determination by severing any ties between a child and his or her biological parents and vesting permanent custody—both “physical” and “legal”—of the child with the adoptive parents.

Even adoption proceedings that do not result in a final adoption decree often implicate custody of the child. For example, Utah’s adoption statutes contemplate that custody determinations will be made in the course of an adoption proceeding, even perhaps before a final decree is issued. \* \* \* (“*Except as otherwise provided by the court*, once a petitioner has received the adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the custody and control of the adoptee ....” (emphasis added)). Similarly, the Uniform Adoption Act (the UAA), upon which many states have modeled their adoption statutes, provides several such instances. For example, section 3–204 states that in a contested adoption, the “court shall make an interim order for custody of a minor adoptee according to the best interest of the minor.” The UAA also states that, in the event

the court “set[s] aside” the parent's consent, “the court shall order the return of the minor to the custody of the individual and dismiss a proceeding for adoption.” \* \* \*  
\*These actions cannot be viewed as anything other than “custody determinations” under the PKPA's broad definition of that phrase. \* \* \*.<sup>44</sup>

In contrast, California determined that the UCCJEA did not apply to adoption proceedings when a mother and her husband petitioned to terminate the father’s parental rights for a stepparent adoption. In the case, however, the mother had sole custody under a New York order, the father had no court-ordered visitation and had not seen the child since 2011.<sup>45</sup>

Even if a state included adoptions, there can be problems. Although the Kansas legislature included adoption when it enacted the UCCJEA, it later amended a provision for jurisdiction in the adoption code. In a 2013 case, the Kansas Supreme Court found that the jurisdiction provision of the adoption statute, as a specific statute, rather than the UCCJEA, controlled the determination of jurisdiction in adoption proceedings where an adoption or child-custody proceeding involving the child is pending in another state or where the court of another state has already made a child custody determination.<sup>46</sup> The 2018 Kansas legislature amended the jurisdictional provision to clarify that jurisdiction over proceedings under the Kansas adoption law, including a proceeding to terminate parental rights under the adoption code, is governed by UCCJEA, except that the notice provisions of the adoption code apply.<sup>47</sup>

### **Jurisdictional Issues Involving Infants**

The UCCJEA defines the home state as “the state in which the child lived from birth with a parent.” One issue arises when a pregnant woman has lived in one state, often with the father of the child, but leaves the state intentionally to give birth in another state. Another issue arises when a child is born in one state but is taken to another state within a few days of birth to be placed with adoptive parents there. This can implicate the Interstate Compact on the Placement of Children as well as state adoption jurisdictional laws that may differ from the UCCJEA.

A state cannot obtain jurisdiction based on a pregnant woman living in the state before the child is born. Twelve of fourteen states that considered the issue have held that custody jurisdiction cannot exist before a child is born.<sup>48</sup> A putative father has neither the right nor the ability to restrict a pregnant woman from her constitutionally protected liberty and right to travel to another state.<sup>49</sup> The New York court held it lacked jurisdiction to adjudicate custody where the mother had moved to Minnesota, given birth and continued to reside there because Minnesota was the child's home state.<sup>50</sup> Likewise, an Illinois court determined that it lacked jurisdiction over the child's custody even though the mother lived in Illinois until just before the child was born. The birth of the child in Colorado after the mother moved there meant that the child's home state was Colorado.<sup>51</sup>

A state can become a newborn child's home state almost as soon as the child is born. New York found it was the home state based on a literal construction of the statute since the mother gave birth February 23, 2013, and lived there continuously until she filed for custody two days later. Even though the father had filed a paternity petition in November, 2012, the child had not been born yet so California did not have jurisdiction "substantially in conformity" with the UCCJEA.<sup>52</sup>

Indiana and Kentucky appear to allow prebirth actions. An Indiana court determined that Indiana could issue a visitation order for a child prior to birth because no other state would have jurisdiction even though the child was born in Canada and never lived in Indiana.<sup>53</sup> This case seems at odds with the majority view.

Generally, to establish home state status, the mother must live with the infant for a period of time. Where a mother and newborn lived in Florida for two weeks after the birth, the Florida court held that Florida became the child's home state.<sup>54</sup> Merely giving birth in a state's hospital and leaving immediately does not create home state status.<sup>55</sup> Illinois had subject matter jurisdiction to adjudicate wardship of a child born to an Illinois resident in an Indiana hospital because she went into labor while driving through the state. The Illinois Supreme Court noted that "when we speak of where a

mother and newborn baby ‘live,’ they do not speak of the maternity ward.”<sup>56</sup> This is consistent with cases that find that if a mother gives birth in a hospital in one state but takes the child to live in another state, the latter is the home state.<sup>57</sup>

Where a child was born in Hawaii, remained there for six weeks before the mother took him to California, and the mother intended to return to Hawaii to live, Hawaii was the home state. The father filed a custody action the day after the mother and child arrived in California. The court rejected his argument that the mother had intended to return to California so her departure was a “temporary absence.”<sup>58</sup>

When a baby is born in one state, but within days of birth is transported to another state, the baby may have no home state.<sup>59</sup> Utah lacked home state jurisdiction to hear a custody case where the mother and putative father were Colorado residents and mother had traveled to Utah to give birth. She then relinquished her rights to Illinois prospective adoptive parents and returned to Colorado. The Illinois adoptive parents moved with the child to Illinois eight days after birth. At the time when the putative father filed his action in Utah twelve days after birth, neither the child nor a person acting as a parent were present in Utah.<sup>60</sup>

In an unusual case, a pregnant mother, father and son lived in West Virginia. When the father filed for divorce, the mother took the son to Missouri, where she gave birth to a daughter and filed a custody action. A West Virginia court entered a custody decree in the divorce action. Because West Virginia was the home state of one child, the court found that logically any dissolution action involving minor children must necessarily determine custody of all children of the marriage, including those born after the initial divorce filing. Missouri enforced the West Virginia custody decree as to both children.<sup>61</sup>

Where there is no home state, the UCCJEA’s significant connection jurisdiction may be available. A Vermont decision is illustrative. Although the child was born in New York where both

parents lived, the father took the one- week-old child to Vermont to reside permanently with the father and the paternal grandparents. The court found there was no home state. Vermont, however, could exercise significant connection jurisdiction and did not have to rely solely on the emergency jurisdiction provision.<sup>62</sup> Similarly, child who was born in Illinois and placed for adoption in South Carolina when she was four days old did not have a home state but did have a significant connection to South Carolina.<sup>63</sup>

### **Assisted Reproduction Technology**

Surrogacy and contracts made for assisted reproduction may cause some interesting interpretations. In one case two Texas men entered into a surrogacy contract in California. Before the child was born, the couple obtained a stipulated judgment providing that both same-sex partners would be parents, both would be listed on the birth certificate, both would be awarded custody upon birth, and neither the surrogate nor her husband would have any parental rights. Two months after birth, the men took custody of the child and moved to Texas. A few years later the men separated and the nonbiological father sued for joint custody and registered the California parenting agreement pursuant to registration under the UCCJEA. The Texas court found that the California judgment qualified as a proper “child custody determination” under the UCCJEA because it foreclosed the surrogate and her husband from claiming custody. The effect of the judgment had been stayed until after the birth of the child. Because the child was born in California and no other state could assert custody, jurisdiction did attach and the judgment became effective.<sup>64</sup>

A Massachusetts case likewise gave effect to contractual provisions in an assisted reproduction context. There the genetic parents who lived in Connecticut brought an action for prebirth judgments of parentage and for issuance of a prebirth record of birth. The child was to be born in a Massachusetts hospital pursuant to a contract with a gestational carrier and her husband who lived in New York. The contract provided that Massachusetts law would apply. The

Massachusetts court found that the probate court had subject matter jurisdiction in questions of law and equity concerning parentage and personal jurisdiction of parties due to their stipulation and gave effect to the choice of law provision.<sup>65</sup>

### **Conclusion**

Even if a state has not specifically included adoption as a child custody determination under the UCCJEA, the Parental Kidnapping Prevention Act (PKPA) requires full faith and credit only to “custody determinations” made consistent with the PKPA jurisdictional requirements, which are essentially duplicated within the UCCJEA. The PKPA does not exclude adoption proceedings. Adoption proceedings involve the custody of the child, both in terminating rights of one set of parents and creating rights in another set of parents. Federal law preempts. The PKPA requires that if there is a home state, that state should issue the adoption decree or it may not be entitled to full faith and credit.

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<sup>1</sup> The Uniform Adoption Act, 9 ULA, Part I (Supp. 1995), was enacted partially in Vermont. The UAA became a Model act after there were no other adoptions. Its predecessor, the Uniform Adoption Act of 1953, was enacted less than ten states. For an example of the dispute about adoption generally and the UAA in particular, see Joan Heifetz Hollinger, *The Uniform Adoption Act: Reporter's Ruminations*, 30 FAM. L. Q. 345, 346-351 (1996).

<sup>2</sup> U.S. Const. Art. IV., Sec. 1 provides “Full Faith and Credit shall be given in each state to the public Acts, Records, and Judicial Proceedings of every other State.” An adoption decree entitled to full faith and credit is also entitled to enforcement under the Uniform Enforcement of Foreign Judgments Act (UEFJA) upon compliance with certain filing requirements.

<sup>3</sup> *V.L. v. E.L.*, 136 S. Ct. 1017 (2016).

<sup>4</sup> See *Nevares v. Adoptive Couple*, 384 P.3d 213 (Utah 2016) (finding Utah lacked jurisdiction where mother and putative father were Colorado residents, mother went to Utah to give birth in 2010 and returned to Colorado; child moved to Illinois with adoptive parents eight days after birth; no one had connection to Utah at time putative father filed his action 12 days after birth).

<sup>5</sup> See e.g. *In re A.A.* 354 P.3d 1205 (Kan. App. 2015).

<sup>6</sup> *Anthony H. v. Matthew G.*, 725 S.E.2d 132 (Ct. App. 2012) (Georgia had home state jurisdiction to enter the initial custody decree and has exclusive continuing jurisdiction under the UCCJEA; therefore, the PKPA and UCCJEA preclude South Carolina from terminating the father's parental rights and granting stepparent's adoption); *In re J.A.P.*, 721 S.E.2d 253 (N.C. Ct. App. 2012) (North Carolina lacked jurisdiction to terminate father's parental rights because New Jersey retained continuing exclusive jurisdiction).

<sup>7</sup> The Interstate Compact for the Placement of Children, to which all states are a party, applies to interstate placements. It does not apply if the birth parents, child and adoptive parents are all in one state. Compare *In re Adoption of Baby Boy S.*, 912 P.2d 761 (Kan. Ct. App. 1996) (noting mother has constitutional right to travel to seek medical care in another state) with *In re Baby Girl \_\_\_*, 850 S.W.2d 64 (Mo. 1993) (setting aside an adoption for failure to comply with ICPC and Missouri law regarding termination of parental rights when a Missouri-resident birth mother signed a Kansas consent in Kansas for an adoption by a Kansas couple without submitting an ICPC application). For a discussion of some of issue with ICPC, see Robert G. Spector & Cara N. Rodriguez, *Jurisdiction Over Children in Interstate Placement: The UCCJEA, Not the ICPC, is the Answer*, 41 FAM. L. Q. 145 (2007).

<sup>8</sup> See *Mississippi Band of Choctaw v. Holyfield*, 490 U.S. 30 (1989). See also *In re Adoption of B.B.*, 417 P.3d 1 (Utah 2017) (Indian father has “legal” custody because of paternity; was entitled to notice; and had standing to intervene in adoption proceeding after Indian mother relinquished her parental rights and misrepresented who the father was).

<sup>9</sup> *In re Matter of Adoption of J.*, 72 N.Y.S.3d 811 (Misc. 2018) (finding court did not have authority to approve biological father's petition to adopt his son who was conceived pursuant to an illegal surrogacy contract).

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<sup>10</sup> *Santosky v. Kramer*, 455 U.S. 745, 753, 759-60 (1982).

<sup>11</sup> *Caban v. Mohammed*, 441 U.S. 380, 388 (1979). *See also* *Sessions v. Morales-Santana*, 137 S. Ct. 1678 (2017) (finding it unconstitutional to treat children born out of wedlock differently based on whether they are born to a citizen mother or citizen father).

<sup>12</sup> *Lehr v. Robertson*, 463 U.S. 248, 261 (1983). *See also* *Stanley v. Illinois*, 405 U.S. 645 (1972); *Quilloin v. Walcott*, 434 U.S. 246 (1978); *Michael H. v. Gerald D.*, 491 U.S. 110 (1989).

<sup>13</sup> *See Frank R. v. Mother Goose Adoptions*, 402 P.3d 996 (Ariz. 2017) (finding mother's deception and misconduct did not excuse father's failure to file in the putative father registry which resulted in severance of his parental rights); *A.A.F. v. Dept. of Children and Families*, 211 So. 3d 271 (Fla. Dist. Ct. App. 2017) (father's failure to file in Putative Father Registry precluded him from intervening in adoption); *In re Williams*, 800 S.E.2d 34 (Ga. Ct. App. 2017) (father who did not sign putative father registry was not entitled to notice of adoption); *In re Adoption and Paternity of K.A.W.*, 99 N.E.3d 724 (Ind. Ct. App. 2018) (incarcerated father's failure to file with the putative father registry within the time period constitute irrevocable implied consent to adoption); *In re Baby Girl S.*, 407 S.W.3d 904 (Tex. App. Dallas 2013) (upholding constitutionality of statute allowing termination without notice if father fails to file with paternity registry); *In re Adoption of J.S.*, 358 P.3d 1009 (Utah 2014) (due process is satisfied if father was given meaningful chance or reasonable opportunity; father must strictly comply with the procedures and was not allowed to intervene in adoption because he failed to comply with the affidavit requirement even though he had filed an action for custody).

<sup>14</sup> *In re Adoption of C.L.*, 427 P.3d 951 (Kan. 2018) (father must have a "real world opportunity" to assume the responsibilities of a parent where he was not notified of baby until a couple days after birth). *See also* *In re C.L.S.*, 252 P.3d 556 (Colo. App. 2011), cert. denied 2011 WL 2535031 (Colo. 2011) (mother's intentional misrepresentation that she did not know father's identity and whereabouts unconstitutionally deprived the father of his opportunity to contest termination of his parental rights); *Jeremiah J. v. Dakota D.*, 826 N.W.2d 242 (Neb. 1013) (mother may not deliberately misrepresent information about the child's birth to prevent biological father from timely objecting).

<sup>15</sup> *In re St. Vincent's Servs., Inc.* 841 N.Y.S.2d 834, 844 (Fam. Ct. 2007).

<sup>16</sup> *See* *Brown v. Baby Girl Harper*, 766 S.E.2d 375, 378 (S.C. 2014); *In re Adoption of Keith MW.*, 79 P.3d 623, 629 (Alaska 2003). The rationale is based in justiciability, because in the eyes of the law, no child has been made available for adoption

<sup>17</sup> *In re Adoption of B.B.*, 417 P.3d 1 (Utah 2017).

<sup>18</sup> *In re Adoption of Douglas*, 45 N.E.3d 595 (Mass. 2016); *In re Adoption of Madysen S.*, 879 N.W.2d 34 (Neb. 2016) (even after finding of abandonment makes consent to adoption unnecessary, parent retains parental rights and has standing to contest whether adoption is in the best interests of the child).

<sup>19</sup> *Nevares v. Adoptive Couple*, 384 P.3d 213 (Utah 2016); *People ex rel. J.G.C.*, 318 P.3d 576, 578

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(Colo. App. 2013) (requiring supplemental briefing on “the district court's jurisdiction to determine the nonpaternity of [the] presumptive father,” concluding that “the district court lacked subject matter jurisdiction to make a paternity determination”); *see also In re Adoption of L.D.S.*, 155 P.3d 1, 8 (Okla. 2006), *as supplemented on reh'g*, No. 250 (Mar. 6, 2007).

<sup>20</sup> Brigitte Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207 (1969).

<sup>21</sup> *See* N.O.G.A. v. N.O.G.A., 443 N.E.2d 1142 (Ill. App. Ct. 1982); *E.E.B. v. D.A.*, 446 A.2d 871 (N.J. 1982); *Adoption of Asente*, 734 N.E.2d 1224 (Ohio 2000); *Oregon ex rel. Torres v. Mason*, 848 P.2d 592 (Or. 1993); *In re Adoption of K.S.*, 581 A.2d 659 (Pa. Super. 1990).

<sup>22</sup> Reporter Joan H. Hollinger, Memo to the Drafting Committee of the Uniform Adoption Act in advance of its November 13-15, 1992 drafting committee meeting, at 55: “Can we rewrite the language of the UCCJA? Willoughby and others object to the phrase, “if it appears to the court of this state that . . .” Should we say, “if the court finds”? Since our August meeting, *I’ve discovered more cases that agree that the UCCJA should be applicable to adoption proceedings.*” [Emphasis added].

<sup>23</sup> 28 U.S.C. § 1738A(g).

<sup>24</sup> 28 U.S.C. § 1738A(b) (3).

<sup>25</sup> 28 U.S.C. § 1738A.

<sup>26</sup> U.S.C. §1738A(a).

<sup>27</sup> *Miller v. Mills*, 64 So. 3d 1023 (Miss. Ct. App. 2011) (neither the Full Faith and Credit Clause nor the UCCJEA entitled a Louisiana unwed father to register his Louisiana visitation order in Mississippi where Mississippi, not Louisiana, was the child’s home state).

<sup>28</sup> *See, e.g., In re Glanzner*, 835 S.W.2d 386 (Mo. App. 1992).

<sup>29</sup> *See Baby Girl Clausen*, 502 N.W.2d 649 (Mich. 1993); *Barry E. v. Ingraham*, 371 N.E.2d 492 (N.Y. 1977) (finding Mexican order of adoption of child born in New York to a New York mother and adopted by a New York couple violated of public policy and would not be recognized under principles of comity).

<sup>30</sup> HOMER H. CLARK, JR., *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES*, § 20.3. (2D ED. 1987).

<sup>31</sup> Uniform Adoption Act, 9 (1A) U.L.A. 11 (1999).

<sup>32</sup> Herman Hill Kay, *Adoption in the Conflict of Laws: The UAA, not the UCCJA, is the Answer*, 84 CAL. L. REV. 703, 713-714 (1996).

<sup>33</sup> *See In re Marriage of Fernandez-Abin*, 120 Cal. Rptr. 3d 227 (Ct. App. 2011) (finding a trial court's determination to include parties' children within the scope of the protective order for wife in a Domestic Violence Protection Act action was a child custody determination and the court could

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exercise temporary emergency jurisdiction as long as is necessary to protect the child from abuse).

<sup>34</sup> See N. N. MEX. STAT. ANN. § 40-10A-102(4) states....termination of parental rights whether filed alone or with an adoption proceeding.” See also *Angel B. v. Vanessa J.*, 316 P.3d 1257 (Ariz. Ct. App. 2014).

<sup>35</sup> *Powers v. Wagner*, 716 S.E.2d 354 (N.C. Ct. App. 2011) (finding Florida paternity and support order not to be a custody determination); *Foster v. Wolkowitz*, 785 N.W.2d 59 (Mich. 2010) (an acknowledgement of paternity did not constitute a custody determination because it was not a “judgment, decree, or other court order providing for legal custody”).

<sup>36</sup> *In re Ramirez v. Barnet*, 384 P.3d 828 (Ariz. Ct. App. 2016).

<sup>37</sup> *In re Adoption of L.C.*, 706 N.W.2d 90 (S.D. 2005).

<sup>38</sup> *Navares v. Adoptive Couple*, 384 P.3d 221 (Utah 2016). See also *In re Adoption of Baby Boy M.*, 193 P.3d 520 (Kan. Ct. App. 2008). The unwed mother and father lived and dated in Wisconsin. When mother became pregnant, father refused to marry her and she moved to Kansas without telling him and had the baby on April 3, 2007. Mother relinquished her rights to an adoptive couple from New Mexico. On April 4, 2007, father filed an action in Wisconsin for custody. On April 6, 2007, the adoptive parents filed to terminate father’s rights. The Kansas trial judge terminated the father’s rights and granted the adoption. The appellate court found that Wisconsin was not the home state on April 4, 2007, but either Kansas or New Mexico. While Kansas had jurisdiction, the case was reversed and remanded for the trial court to examine the “inconvenient forum” factors to determine which court should have taken jurisdiction. Additionally, the trial court failed to make sufficient findings that the father had not tried to support and exercise his parental rights.

<sup>39</sup> Patricia M. Hoff, *The ABC’s of the UCCJEA: Interstate Child Custody Practice Under the New Act*, 32 FAM. L. Q. 267 (1998).

<sup>40</sup> *Uniform Child-Custody Jurisdiction and Enforcement Act (with Prefatory Note and Comments by Robert G. Spector)* 32 FAM. L. Q. 301, 320-321 (1998).

<sup>41</sup> N.M. STAT. ANN. §40-10A-102(4) states....termination of parental rights whether filed alone or with an adoption proceeding.”

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<sup>43</sup> *In re Adoption of Baby E.Z.*, 244 P.3d 702 (Utah 2011).

<sup>44</sup> *Id.*

<sup>45</sup> *In re Adoption of K.C.*, 203 Cal. Rptr. 3d 110 (Ct. App. 2016) (noting father never went to California to visit although he did travel to Puerto Rico and Ecuador).

<sup>46</sup> *In re Adoption of H.C.H.*, 304 P.3d 1271 (Kan. 2013) (finding specific adoption jurisdiction statute controlled over UCCJEA).

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<sup>47</sup> 2018 Kan. Sess. L. Ch. 118, Sec. 13.

<sup>48</sup> See *Arnold v. Price*, 365 S.W.3d 455 (Tex. App. 2011); *Waltenburg v. Waltenburg*, 270 S.W.3d 308, 316-17 (Tex. App. 2008); *Gray v. Gray*, 139 So. 3d 802 (Ala. Civ. App. 2013) (an unborn child does not have a home state); *In re Custody of Kalbes*, 733 N.W.2d 648 (Wis. Ct. App. 2007) (Wisconsin could exercise home state jurisdiction over a child born in Wisconsin filed two weeks after birth even though there was a pending divorce action in Idaho). See also *In re Marriage of Tonnessen*, 941 P.2d 237 (Ariz. Ct. App. 1997) (finding Arizona to be home state of twins born there even though a divorce case had been pending in Colorado during the pregnancy). Other states holding the same are Arkansas, Connecticut, Colorado, Florida, New York, Ohio, Oklahoma, and Washington.

<sup>49</sup> *Matter of Wilner v. Prowda*, 601 N.Y.S.2d 518 (Sup. 1993) (refusing putative father's request to determine custody of the parties' unborn child and restrain the pregnant wife from leaving New York).

<sup>50</sup> *B.B. v. A.B.*, 916 N.Y.S.2d 920 (Sup. 2011).

<sup>51</sup> *Fleckles v. Diamond*, 35 N.E.3d 176 (Ill. App. Ct. 2015).

<sup>52</sup> *In re McK. v. Bode M.*, 974 N.Y.S.2d 434 (App. Div. 2014) (pregnant mother did not need to file to get permission to move New York where the child had never resided in California and mother had not violated any existing custody order so as to warrant a finding of unjustifiable conduct).

<sup>53</sup> *Barwick v. Ceruti*, 31 N.E.3d 1008 (Ind. Ct. App. 2015).

<sup>54</sup> *Baker v. Tunny*, 201 So. 3d 1235 (Fla. Dist. Ct. App. 2016).

<sup>55</sup> See *In re R.L.* 208 Cal. Rptr. 3d 523 (App. 2016).

<sup>56</sup> *In re D.S.*, 840 N.E.2d 1216 (Ill. 2005).

<sup>57</sup> *Adoption House, Inc. v. AS.R.*, 820 A.2d 402, 409 (Del. Fam. Ct. 2003) (Delaware where child had lived since birth was home state of two month old even though born in a Pennsylvania hospital). See also *In re Interest of Violet T.*, 840 N.W.2d 459 (Neb. 2013) (finding Nebraska lacked jurisdiction to hear neglect case where child was born with drugs in system but as soon as discharged from the hospital had been taken to relatives in Iowa).

<sup>58</sup> *Ocegueda v. Perreira*, 181 Cal. Rptr. 3d 845 (App. 2015).

<sup>59</sup> *In re Baby Girl F.*, 932 N.E.2d 428, 440 (Ill. App. Ct. 2008).

<sup>60</sup> *Nevares v. Adoptive Couple*, 384 P.3d 213 (Utah 2016).

<sup>61</sup> *Blanchette v. Blanchette*, 476 S.W.3d 273 (Mo. 2015).

<sup>62</sup> *In re A.W.*, 94 A.3d 1161 (Vt. 2014).

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<sup>63</sup> Doe v. Baby Girl, 657 S.E.2d 455 (S.C. 2008).

<sup>64</sup> Berwick v. Wagner, 336 S.W.3d 805 (Tex. App. 2011).

<sup>65</sup> Hodas v. Morin, 814 N.E.2d 320 (Mass. 2004).