



UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

— Summary —

In 1968, the Uniform Law Commissioners promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state had adopted this Uniform Act. UCCJA was designed to discourage interstate kidnapping of children by their non-custodial parents. Before the UCCJA, it was a common practice for non-custodial parents to take children across state lines. They hoped to find sympathetic courts willing to reverse unfavorable custody orders. In too many cases, they were successful.

The UCCJA operates upon novel principles that 1) establish jurisdiction over a child custody case in one state; and, 2) protect the order of that state from modification in any other state, so long as the original state retains jurisdiction over the case. If a non-custodial parent cannot take a child to another state and petition the court of that state for a favorable modification of an existing custody order, the incentive to run with the child is greatly diminished.

In 1981, Congress adopted the Parental Kidnapping Prevention Act (PKPA) for much the same purpose. The peculiarities of prior law, allowing easy modification of custody orders, were largely peculiarities in the interpretation of the Full Faith and Credit Clause of the Constitution of the United States. The Parental Kidnapping Prevention Act was an effort to put the weight of full faith and credit behind the principles of the Uniform Child Custody Jurisdiction Act. But there are some differences between the two acts, rooted in disagreements over application of jurisdictional principles. There are two main differences. The UCCJA does not give first priority to the “home state” of the child in determining which state may exercise jurisdiction over a child custody dispute. The PKPA does. The PKPA also provides that once a state has exercised jurisdiction, that jurisdiction remains the continuing, exclusive jurisdiction until every party to the dispute has exited that state. The UCCJA simply states that a legitimate exercise of jurisdiction must be honored by any other state until the basis for that exercise of jurisdiction no longer exists. In practice, the two acts tend to work together for the most part, but the differences do confuse the adjudication and settlement of child custody disputes in certain cases.

Neither the UCCJA nor the PKPA address another important issue, interstate enforcement of child custody orders (including visitation provisions). There have been provisions in the law of the states to permit interstate enforcement of child support orders since the 1950's. The Uniform Law Commissioners promulgated the Uniform Interstate Family Support Act to provide for even more effective interstate enforcement of child support orders in 1992. Interstate enforcement of child custody orders, therefore, remains a last frontier that needs to be crossed in order to make the law pertaining to children's needs complete.

In 1997, the Uniform Law Commissioners have promulgated a new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). It does two very important things. It reconciles UCCJA principles with the PKPA. It adds interstate civil enforcement for child custody orders. The UCCJEA replaces the UCCJA.

THE OBJECTIVE OF THE UCCJEA

The UCCJEA, the UCCJA and the PKPA are necessary because Americans are a mobile people who seldom stay in one state. Child custody disputes between parents, which arise when there is a divorce or when unmarried biological parents want to have custody adjudicated in a court, are impacted by that very mobility. When parents and children live and have lived in one state, the courts of that state may take jurisdiction over any child custody

matter without question. But it is common for a parent to live in a different state from the one in which the other parent and the child live. More than one state may have the power to adjudicate a dispute between them. If more than one state does exercise its power, the competing decisions simply confuse, rather than conclude the dispute.

Child custody orders also have a quality that exaggerates the problem. They are modifiable orders, subject to reconsideration and change, until the children subject to them reach the age of majority. Circumstances may change between the parties governed by an order, and that may require a court to change the order - to modify it. A common scenario involves a child custody order issued in a state where the parents and the child lived together before the parents divorce each other. Then the custodial parent moves with the child to another state. If there is a need to modify the order, in which state can that modification take place? And if the second state purports to modify the order from the first state, which order is to be recognized and enforced in the first state and in every other state in the United States?

When there were no clear answers to these questions, the result was parental kidnapping of children to exploit the confusion. The UCCJEA, and the UCCJA and the PKPA before it, tries to answer these very important questions. It answers by establishing clear bases for taking jurisdiction and by providing rules that discourage competing child custody orders.

HOME STATE PRIORITY

In the UCCJA, there are four principles, or bases, for taking jurisdiction over a child custody dispute. These are child's home state; significant connection between state and parties to a child custody dispute; emergency jurisdiction when the child is present and the child's welfare is threatened; and, presence of the child in the event there is no other state with another sound basis for taking jurisdiction. (The term "taking jurisdiction" simply means that a state's courts have a good reason for summoning the contestants to come before them to adjudicate the dispute no matter where they reside. If there is jurisdiction, the court's orders are valid and enforceable.)

The original drafters of the UCCJA always thought that the home state of the child was the best state within which to find the information for making a custody decision in the best interests of the child. But it was also assumed that once a court took jurisdiction on any other acceptable basis, that state should be able to proceed without delaying to determine if some other state has home state status.

But the drafters of the PKPA took the opposite position, regarding "home state" as so significantly better than any other jurisdictional ground, that it should always be the priority ground. Under the PKPA the home state always has the first opportunity to take jurisdiction.

The UCCJEA now supports the PKPA position. Any state that is not the "home state" of the child will defer to the "home state," if there is one, in taking jurisdiction over a child custody dispute. Temporary emergency jurisdiction may be taken, but only long enough to secure the safety of the threatened person and to transfer the proceeding to the home state, or if none, to a state with another ground for jurisdiction.

CONTINUING EXCLUSIVE JURISDICTION

The UCCJEA also provides for continuing exclusive jurisdiction. If a state once takes jurisdiction over a child custody dispute, it retains jurisdiction so long as that state, by its own determination, maintains a significant connection with the disputants or until all disputants have moved away from that state. In contrast, the UCCJA allows jurisdiction to shift if the initial ground for taking jurisdiction ceases to exist. Thus, if a state takes jurisdiction over a child custody dispute because that state is the home state of the child, and the child subsequently establishes a new home state, jurisdiction can shift to the new home state, even if one parent

remains in the child's original home state. The UCCJEA would not allow the jurisdiction to shift in this fashion, keeping it in the original home state so long as the parent remains there.

TEMPORARY EMERGENCY JURISDICTION

Under the UCCJEA, grounds for taking emergency jurisdiction are on an equal footing with the other grounds for taking jurisdiction, including the "home state" ground. If the child is present in a state and there is evidence of abandonment or abuse to or mistreatment of the child, that state can take jurisdiction under the UCCJEA.

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. The child's presence and its abandonment, mistreatment or abuse still trigger the taking of emergency jurisdiction, but threats to siblings or a parent also can trigger the taking of emergency jurisdiction. Because of the priority given to the home state of the child, the home state will most often be the state from which continuing jurisdiction is exercised.

The impact of these changes in the UCCJEA from the UCCJA is to reinforce the impact of the PKPA. Priority for home state jurisdiction, continuing exclusive jurisdiction and temporary emergency jurisdiction mean that orders made pursuant to the UCCJEA will have the full weight of the Full Faith and Credit Clause of the U.S. Constitution behind them.

ENFORCEMENT OF CUSTODY AND VISITATION ORDERS

The UCCJEA also adds enforcement provisions to the jurisdictional provisions. Interstate enforcement of custody and visitation decrees has proved frustrating to parents and to the courts. The UCCJEA requires a state to enforce a custody or visitation order from another state that conforms substantially with this Act. An order from a state that has continuing exclusive jurisdiction, therefore, will surely be enforced.

One enforcement procedure is reminiscent of procedures for enforcement under the Uniform Interstate Family Support Act for interstate spousal and child support orders and the Uniform Enforcement of Foreign Judgments Act, which governs the interstate enforcement of any civil judgment. The basic procedure is to register the out-of-state order. If the registration is not contested, the registered order may be enforced by any means available to enforce a domestic order. This would ordinarily mean using the contempt powers of the court to assure that the custody or visitation order is honored by the parent subject to it.

There is an expedited remedy, however, that also is available. Upon receiving a verified petition, the court orders the party with the child to submit to an immediate hearing (the next judicial day unless impossible) for enforcement. The court may rule with respect to enforcement at the hearing, although there are provisions to allow for extended hearing and standards to contest enforcement. This remedy operates much like habeas corpus, in which the body subject to the writ must be presented immediately to the court.

If there is danger to a child or if it appears that the child will be removed from the enforcing jurisdiction, a petition may also be filed for a warrant to take physical custody of the child along with a petition for an expedited proceeding. If the warrant issues, law enforcement officers will serve the warrant and obtain physical custody of the child.

As a last enforcement device, the UCCJEA gives prosecutors the power to enforce custody or visitation orders, and law enforcement officers the power to locate a child under instructions from prosecutors. These powers give

parents and others who are the victims (along with children) of parental kidnapping the ability to seek help from those who enforce the criminal law. The effect is to provide a complete group of effective remedies.

CONCLUSION

It is not possible to cover all the details of the UCCJEA in a short summary. The best that it can do is point out the impact of major provisions. The UCCJEA does much more to update and streamline the original UCCJA, which was promulgated in 1968. It will provide much better relief for parents and children who suffer from interstate child-custody disputes, and ought to be uniformly adopted in all the states as soon as possible.