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Domestic Relations Journal of Ohio

July/August 2004

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Legislative Report

Uniform Child Custody Jurisdiction and Enforcement Act

Sub. S. B. 185-Passed by the Senate

Pending before the Ohio General Assembly is Substitute Senate Bill 185 which would replace Ohio's current version of the Uniform Child Custody Jurisdiction Act (UCCJA)¹ with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).² The UCCJEA has been adopted by 37 jurisdictions³ and is pending in 10 others.⁴ The UCCJA was intended primarily to prevent child snatching for the purpose of forum shopping following a divorce action. While the UCCJA was adopted as law by all 50 states, the District of Columbia, and the U.S. Virgin Islands, many adoptions varied from the text of the uniform act as approved by the National Conference of Commissioners on Uniform State Law and 30 years of judicial interpretation have produced substantial inconsistencies between the jurisdictions thus thwarting the goals of the UCCJA in many instances.

Moreover, Congress enacted the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. §1738A in 1980 to address interstate custody continuing jurisdictional issues. The PKPA mandates that the states give full faith and credit to other states' custody determinations so long as those determinations were made consistent with the PKPA. While there were many parallels between the UCCJA and the PKPA, there were some significant differences, especially regarding the continuing exclusive jurisdiction of the original decree state.

In order to harmonize the UCCJA and the PKPA, and to address other issues not specifically provided for in those two acts, the Commissioners adopted the UCCJEA in 1997. The major distinctions between the UCCJA and UCCJEA follow:

Type of proceedings included

The UCCJA defined 'parenting proceedings' as including those in which 'a parenting proceeding is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings.'⁵ The UCCJEA clarifies such proceedings to include divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence. Specifically, excluded from the UCCJEA are juvenile delinquency actions, contractual emancipation, and adoptions.

Priority for home state jurisdiction

The UCCJA lists four possible grounds for jurisdiction, without prioritization: (1) home state jurisdiction⁶; (2) significant connection jurisdiction; (3) more appropriate forum jurisdiction; and (4) necessary jurisdiction. The PKPA prioritizes home state jurisdiction by requiring full faith and credit be given to a child custody determination by a state that exercises initial jurisdiction as a 'home state.' Thus, under the UCCJA, a custody determination based upon significant connection jurisdiction may have to be enforced even though it would be denied enforcement under the PKPA. The UCCJEA resolves this inconsistency by prioritizing home state jurisdiction.

Clarification of emergency jurisdiction

The UCCJA does not specify that emergency jurisdiction may be exercised to protect the child on a temporary basis until the court with appropriate jurisdiction issues a permanent order nor does it specifically refer to violence against the parent of a child or against the sibling of a child. Conflicting orders holding that there is no time limit on an order based upon emergency jurisdiction have ensued consequently; nor did the UCCJA anticipate state domestic violence statutes providing for ‘stay away’ orders involving custody determinations. The UCCJEA emphasizes the temporary nature of emergency jurisdiction orders by requiring the order to specify the length of time the court considers adequate for a party to obtain an order from the state with jurisdiction. Further, the UCCJEA provides that a state may take emergency jurisdiction if the child is present in the state and has been abandoned or if a sibling of the child or a parent has been threatened with mistreatment or abuse.

Continuing exclusive jurisdiction for the initiating state

The UCCJA does not clearly enunciate when a state may modify the decree of the initiating state; this has led to conflicting decrees. Moreover, the UCCJA does not provide specific guidance for the determining when the initiating state has relinquished jurisdiction. The UCCJEA provides that the continuing jurisdiction of the initiating state is exclusive and continues until either: (1) the state determines that the child and at least one parent no longer have a substantial connection with the state, or (2) any court determines that neither the child nor *both* of the child's parents reside in the initiating state. Unlike the UCCJA which allows a state seeking to modify an existing order to determine whether the initiating state retains jurisdiction, the UCCJEA places this authority with the initiating state.

Enforcement provisions are expanded and clarified

Under the UCCJA a state may enforce another state's decree if it was decided pursuant to the standards of the enforcing state. Because the UCCJEA includes a broader definition of custody determinations than the UCCJA, more orders will be subject to enforcement under the UCCJEA. Furthermore, the UCCJEA provides a new range of enforcement remedies including temporary parenting time orders, expedited enforcement of the determination, physical production of the child, and authorization of county prosecutors to assist in enforcement.

A court will have authority under the UCCJEA to issue a temporary parenting time order to make up for lost time. The order, however, will be effective only for the period of time necessary to allow the initiating court to issue an order. Expedited enforcement hearings within a short period of time- 24 hours if possible- may result in an order for immediate physical custody of the child. A remedy along the lines of habeas corpus may result in a warrant to take physical custody of the child upon a finding that the child is likely to suffer serious physical harm or be removed from the state. Finally, county prosecutors may take actions under the UCCJEA to locate a child, return the child to a parent, and to enforce a custody order.

The UCCJEA also makes several further changes to the factual pleadings requirements and registration of foreign decrees, and treats foreign countries and Indian tribes as states for the purpose of applying the various remedies contained within the act.

Sub. S.B. 185 was passed by the Senate on May 25, 2004. It has yet to be assigned to a House Committee.

Footnotes

¹ R.C. 3109.21 *et seq.*

- 2 The purpose of this article is to provide an introduction to the UCCJEA. A subsequent article in the DRJO will provide a section-by-section analysis of the differences between current Ohio law and the proposed statute.
- 3 Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington and West Virginia.
- 4 Indiana, Louisiana, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania, South Carolina, U.S. Virgin Islands and Wyoming.
- 5 R.C. 3109.21(C).
- 6 'Home state' is defined as the state in which a child resides for six months prior to the commencement of the proceeding with a parent or a persona acting as a parent. R.C. 3109.22(A)(2).

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