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THE IMPACT OF THE UNIFORM CHILD CUSTODY JURISDICTION ACT ON JUVENILE COURT JURISDICTION

by

HON. VIOLA J. TALIAFERRO¹

I. INTRODUCTION

The unfortunate increases in family break-up, juvenile delinquency, children in need of protection from abuse and neglect, and other related social problems have required juvenile courts to assume a more prominent role in regulating social development. Typically, juvenile courts have tremendous discretion to fashion an appropriate disposition to remedy the child's plight, which often includes altering that child's custodial situation to bring about the desired change. However, with an ever increasingly mobile society, more and more affected children are crossing state lines. As a result, when these children, for their various reasons, come before the juvenile court, the court is required to consider jurisdictional issues before it can begin to address the substantive reasons why the juvenile is there to begin with, and how best to address the child's situation to assure he does not return.

This Article will discuss the impact of the Uniform Child Custody Jurisdiction Act ("UCCJA") on juvenile court jurisdiction in Indiana. Part I of this Article will discuss the general jurisdiction of the juvenile courts in Indiana. Part II will discuss the principles of the UCCJA, noting those provisions that expressly limit a non-decreeing court's ability to modify custody orders. Part III will discuss how the UCCJA limits the jurisdiction of juvenile courts to render custody decisions as part of making dispositions in intra-state, inter-state, and international cases, as well as in emergency situations, or when the juvenile court assumes jurisdiction over juvenile delinquents, children in need of services, or paternity determinations.

II. INDIANA JUVENILE COURT JURISDICTION

The exclusive jurisdiction of juvenile courts² over a delinquent child,

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2. In Indiana, there are no separate juvenile courts. Therefore, while I will refer to the juvenile court throughout this Article, the reader should recognize that in Indiana, the juvenile court is merely the circuit court or superior court which is hearing a matter pursuant to the statute granting such courts exclusive jurisdiction over matters involving juveniles. *See* IND. CODE ANN. § 31-6-2-1.1 (West Supp. 1995).

and a child in need of services, is conferred by statute.³ The juvenile court also has jurisdiction over determinations of paternity.⁴ In addition, the juvenile court can exercise jurisdiction over custody determinations in emergency circumstances, such as when the child is abandoned or severely neglected.⁵

The juvenile court retains jurisdiction over a child who is alleged to be delinquent or a child in need of services until the child reaches his twenty-first birthday, or until he is discharged by the court at an earlier time.⁶ Once paternity is established, the parents have the duty to support the child until the child reaches his twenty-first birthday, unless the child is emancipated prior to that date.⁷

In *Indiana ex rel. Camden v. The Gibson Circuit Court*,⁸ the Supreme Court of Indiana held the juvenile court had exclusive jurisdiction over a sixteen year old who was charged with attempted robbery, subject to waiver into adult court.⁹ Writing for the court, Justice Sullivan provided a comprehensive statement of the meaning and purpose of the juvenile court's exclusive jurisdiction.

This exclusive jurisdiction is an integral part of the policy established by our legislature in the Juvenile Code for dealing with the problems of troubled children. That policy requires that, while the legal obligations of the children must be enforced to protect the public, children within the juvenile justice system must be treated as persons in need of care, treatment, rehabilitation and protection. It is a policy grounded in the Progres-

3. See IND. CODE ANN. § 31-6-2-1.1 (West Supp. 1995). Section 31-6-2-1.1 provides in part as follows:

Sec. 1.1 (a) A juvenile court has exclusive original jurisdiction, except as provided in section 1.5 [relating to juveniles charged with felonies] of this chapter, in the following:

(1) Proceedings in which a child, including a child of divorced parents, is alleged to be a delinquent child.

(2) Proceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services.

(3) Proceedings concerning the paternity of a child.

* * *

(6) Proceedings governing the detention of a child before a petition has been filed.

Id.

4. IND. CODE ANN. § 31-6-2-1.1(a)(3) (West Supp. 1995).

5. IND. CODE ANN. § 31-6-2-1.1(a)(2) (West Supp. 1995).

6. IND. CODE ANN. § 31-6-2-3(a)(1) (West Supp. 1995).

7. IND. CODE ANN. § 31-6-6.1-13(e)(1) (West Supp. 1995).

8. *Indiana ex rel. Camden v. The Gibson Circuit Court*, 640 N.E.2d 696 (Ind. 1994).

9. *Id.* at 697.

sive Movement of the late 19th and early 20th centuries, when American society rejected treating juvenile law violators no differently from adult criminals in favor of individualized diagnosis and treatment. Indiana was a leader in this movement. Now nearly a century later, the juvenile court system is being subjected to increased scrutiny: the juvenile to adult criminal court and the entire Juvenile Code itself is being studied for revision.¹⁰

Juvenile court jurisdiction over a child in need of services is also exclusive. In *Guardianship of Bramblett v. Grant County Dept. of Public Welfare*,¹¹ two individuals filed a petition in the circuit court seeking the appointment as guardian *ad litem* of their niece after the child had been adjudicated as a child in need of services by the juvenile court. The circuit court dismissed the petition and the parties appealed. The court of appeals observed that pursuant to Indiana Code § 31-6-2-1(a), the juvenile court had exclusive jurisdiction over the child.¹² Further, pursuant to Indiana Code § 31-6-2-3(a), the juvenile court retained exclusive jurisdiction until the child reached her twenty-first birthday, unless discharged by the juvenile court prior to that date.¹³ Therefore, the court of appeals held that because of the juvenile court's continuing jurisdiction, no other Indiana court could exercise jurisdiction in a proceeding that would conflict in any way with the juvenile court's jurisdiction in a proceeding involving a child in need of services.¹⁴

The statutory authority to file paternity actions in juvenile court was previously granted under the Children Born Out of Wedlock legislation.¹⁵ The purpose of the original statute was to provide a procedure that would ensure that a child who was born out of wedlock would have proper care, support and protection.¹⁶ Public policy favors the establishment of paternity for a child who is born out of wedlock.¹⁷ Clearly the interest of the child and the taxpaying public are best served if the child is supported by the child's parents and not by tax dollars. The child's entitlement to the support of both parents is but one of the reasons why the establishment of paternity is vital to the child's best interest. As a result, Indiana juvenile courts have jurisdiction to make custody determinations as part of their power to hear paternity cases.¹⁸

10. *Id.* at 697-8 (citations omitted).

11. *Guardianship of Bramblett v. Grant County Dept. of Public Welfare*, 495 N.E.2d 798 (Ind. Ct. App. 1986).

12. *Id.* at 798.

13. *Id.*

14. *Id.* at 799.

15. Act of 1941, ch. 112 §§ 8, 9, 1941 IND. LAWS 301 (1941) (amended by Act of 1979, P.L. 277 §§ 1 - 4, 1979 IND. LAWS 1446 (1979). For the modern codification, see IND. CODE ANN. §§ 31-6-6.1-1 - 31-6-6.1-19 (West 1979 & Supp. 1995).

16. Act of 1941, ch. 112 § 1, 1941 IND. LAWS 301 (1941).

17. IND. CODE ANN. § 31-6-6.1-1.5 (West Supp. 1995).

18. *In re Fox*, 514 N.E.2d 638 (Ind. Ct. App. 1987).

In *J.E. v. N.W.S. by S.L.S.*,¹⁹ the mother brought a paternity action as next friend of the child. In 1982, the mother had filed a paternity action against the father, but the child was not party to the action. The 1982 action was dismissed for want of prosecution. In 1988, the mother initiated another paternity action as the child's next friend in the Superior Court of Grant County. The Superior Court took jurisdiction and found against the father, whereupon he filed a Motion to Set Aside Judgment on grounds of *res judicata* resulting from the 1982 action.²⁰ The court dismissed the Motion on the grounds that the child was not a party to the 1982 action and that the 1988 action was not barred by *res judicata*. The court of appeals held that although securing support for a child born out of wedlock was the primary purpose of a paternity action, it was not the only benefit for the child.²¹ Writing for the court, Judge Rucker discussed the benefits flowing to the child is as follows:

A child born out of wedlock who establishes paternity in a timely fashion has certain rights to inherit from his father, as well as certain rights to claim other economic benefits upon the death of his father. These rights, in addition to the right to receive payment of support, are of constitutional dimension and are entitled to protection under the equal protection clause of the United States Constitution.²²

III. THE UNIFORM CHILD CUSTODY JURISDICTION ACT

The National Conference of Commissioners on Uniform State Laws adopted the UCCJA in 1968.²³ Indiana adopted the Act in 1977.²⁴ It is known in Indiana as the Uniform Child Custody Jurisdiction Law, and it is codified at Indiana Code §§ 31-1-11.6 *et seq.* The fifty states, the District of Columbia, and the Virgin Islands have adopted some or all portions of the UCCJA.²⁵

The increased mobility of parents has created problems in states where a parent has seized a child and run to another state to find a more convenient and favorable forum.²⁶ The purpose of the UCCJA was to achieve stability in cases involving child custody disputes, to set up an orderly procedure for settling these disputes, and to prevent forum shopping.²⁷ To achieve these

19. *J.E. v. N.W.S. by S.L.S.*, 582 N.E.2d 829 (Ind. Ct. App. 1991).

20. *Id.* at 830.

21. *Id.* at 831.

22. *Id.* at 831-32 (citations omitted).

23. 9 U.L.A., Prefatory Note (1988).

24. Ind. Acts Pub. L. No. 305 §§ 1 *et seq.* (1977).

25. See 9 U.L.A., *Table of Jurisdictions Wherein Act Has Been Adopted*, at 115-116 (1988 & Supp. 1995).

26. Christopher L. Blakesley, *Child Custody — Jurisdiction and Procedure*, 35 EMORY L.J. 291, 295 (1986).

27. Uniform Child Custody Jurisdiction Act of 1968 § 1 (a)(1) - (9) (1988) (hereinafter

aims, the UCCJA established a scheme to avoid “jurisdictional competition” and permit the forum most likely to have the most information relevant to the case to decide the issues.²⁸

To effectively understand how the UCCJA impacts juvenile court jurisdiction, it is necessary to understand the Act’s basic provisions. The jurisdictional section provides two alternative basis for initial state court exercises of jurisdiction over custody determinations.²⁹ The first and primary basis is

UCCJA § ___); *Yurgel v. Yurgel*, 572 So.2d 1327, 1331 (Fla. 1990). As professor Brigitte Bodenheimer, one of the most highly regarded commentators on UCCJA issues noted, the circumstances requiring UCCJA adoption was the failure of conflicts laws, in that “the traditional approach had treated interstate custody law as a stepchild of conflicts law by withholding the security of the full faith and credit clause, although children need this constitutional support as much or more than money judgment creditors.” Brigitte M. Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modification*, 65 CALIF. L. REV. 978, 983 (1977); *accord* *Sheila L. v. Ronald P.M.*, 465 S.E.2d 210, 217 (W.Va. 1995). Thus, under the prior law, parents could and often did forum shop because custody decrees were not entitled to full faith and credit. Once states adopted the UCCJA, however, foreign custody decrees became entitled to full faith and credit, so long as the foreign court assumed jurisdiction in substantial compliance with the legislation. *Lee v. DeShaney*, 457 N.E.2d 604, 607 (Ind. Ct. App. 1983).

28. Lucy S. McGough & Anne R. Hughes, *Chartered Territory: The Louisiana Experience with the Uniform Child Custody Jurisdiction Act*, 44 LA. L. REV. 19, 28 (1983). The UCCJA rejects the “in rem” model as a basis for jurisdiction, because the “short term or temporary presence of a child within a state is not likely to yield the best factual environment” to resolve the custody determination. *Id.* Therefore, the UCCJA operates on a hierarchy of jurisdictional bases from which a particular state court can ascertain whether it has the power to decide a case in a way that will be recognized by other states. *Id.*

29. UCCJA § 3 (1988). Section 3 provides:

(a) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) this State (I) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child’s home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this State; or

(2) it is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child’s present or future care, protection, training, and personal relationships; or

(3) the child is physically present in this State and (I) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected [or dependent]; or

(4)(I) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or (3), or another state has declined

“home state” jurisdiction.³⁰ The second basis for jurisdiction is grounded on the parties’ “significant connections” with the forum state.³¹ So long as no custody order has been issued by any court, the forum state may exercise jurisdiction to make an initial custody order on either of the above two grounds.

The issues become somewhat more complicated when a court has already issued a custody order, and a party seeks to modify that custody order in another state. In cases requesting modification, the forum state may exercise jurisdiction only if the rendering court no longer has jurisdiction, or has declined to exercise its jurisdiction.³² However, if the rendering court still has jurisdiction under the UCCJA continuing jurisdiction provision, no other court may alter that custody determination.³³ In other words, if a custody order is in place and the foregoing conditions apply, the forum state lacks jurisdiction to hear the petition and modify the order.³⁴

The UCCJA is applicable to all cases involving the custody and visitation of a child.³⁵ Exercises of juvenile court jurisdiction over children in need of services, delinquency, and paternity issues are all within the purview of the UCCJA, when these proceedings require the juvenile court to make an initial custody determination, or modify an existing custodial situation.³⁶ However, both the provisions and purpose of the UCCJA place limits on the juvenile courts’ jurisdiction over the foregoing types of cases.³⁷

to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

Id.

30. UCCJA § 3(a)(1) (1988). The UCCJA defines “home state” as the state “in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as a parent, for at least 6 consecutive months.” UCCJA § 2(5) (1988).

31. UCCJA § 3(a)(2) (1988).

32. UCCJA § 14(a) (1988). In addition to the jurisdictional limits placed by the statute, the court must also properly obtain personal jurisdiction over the absent parent, according to the rules for service of process, and a failure to do so will void the custody order. UCCJA § 5 (1988); *Helmert v. Sortino*, No. 950243, 1996 WL 159827, at *3 (N.D., April 8, 1996).

33. *Id.*

34. *Loyd v. Loyd*, 452 N.W.2d 910 (Mich. Ct. App. 1990).

35. *Cabanaw v. Cabanaw*, 648 N.E.2d 694, 698 (Ind. Ct. App. 1995) (the UCCJA is the exclusive method for determining whether a court has subject matter jurisdiction over interstate custody disputes).

36. UCCJA § (2), (3) (1988). *See also In re C.O.*, 856 P.2d 290 (Okla. Ct. App. 1993) (holding that adjudication of a child as a “deprived child” is within the definition of “custody proceeding” under the UCCJA).

37. The federal Parental Kidnapping Prevention Act (“PKPA”) also has relevance in interstate custody disputes. *See* 28 U.S.C. § 1738A (1994). However, because the PKPA deals primarily with enforcement, by requiring full faith and credit be given to custody orders,

Most of the cases that invoke the provisions of the Uniform Child Custody Jurisdiction Act are dissolution or post-dissolution matters. However, it is not uncommon for one or both of the parties to seek a modification of a prior custody decree from a juvenile court in those cases where there is an emergency, the pretext of an emergency, or when the juvenile court takes jurisdiction over a minor child pursuant to its exclusive jurisdiction regarding delinquency, paternity, or children in need of services proceedings. For that reason, it is important to understand how the Uniform Child Custody Jurisdiction Act limits the jurisdiction of the juvenile courts to make custody decisions as part of its normal decision making process.

IV. UCCJA IMPACTS ON STATE COURT JURISDICTION

A. *Standing to Invoke the UCCJA*

The UCCJA applies to parents and those acting as a parent for purposes of custody jurisdiction. However, the UCCJA also applies to parties other than parents, e.g., grand-parents and step-parents, who are seeking custody and visitation rights with children who are related through birth or marriage.³⁸

In *Caban v. Healey*,³⁹ a step-mother sought custody of her step-daughter.⁴⁰ The trial court did not award custody to the step-mother but did award visitation.⁴¹ The father objected to the award of visitation. The step-mother invoked the jurisdiction of the UCCJA even though both parties lived in the same state.⁴² The step-mother argued that the UCCJA applied because she

a discussion of its provisions is beyond the scope of this Article. For a discussion of the relationship between the UCCJA and the PKPA, see Russell M. Coombs, *Interstate Custody Jurisdictions, Recognition, and Enforcement*, 66 MINN. L. REV. 711 (1982). See also Sheila L. v. Ronald P.M., 465 S.E.2d 210, 217-22 (W.Va. 1995).

38. See, e.g., Mary C. Rudasil, *Grandparents Raising Grandchildren: Problems and Policy from an Illinois Perspective*, 3 ELDER L.J. 215 (1995) (discussing UCCJA jurisdiction issues that inevitably arise when a child's grandparent seeks a custody determination).

39. *Caban v. Healey*, 634 N.E.2d 540 (Ind. Ct. App. 1994).

40. This case was the "result of a bitter divorce and custody dispute" between the child's biological father and his second wife. *Id.* at 541. The child's biological mother died, and when the father re-married, he and the child's step-mother shared parenting responsibilities. When the father sought to divorce his second wife, she petitioned the dissolution court for custody of the child. *Id.*

41. *Id.*

42. *Id.* at 542. Under IND. CODE ANN. § 31-1-11.5-2(c) a "child" is defined as "a child or children of both parties to the marriage and includes children born out of wedlock to the parties." Indiana courts have construed this to mean that a court lacks jurisdiction to determine custody where the child was not a child of *both* parties to the marriage. *Indiana ex rel. McCarroll v. Marion County Superior Court No. 1*, 515 N.E.2d 1124, 1125 (Ind. 1987). In *Caban*, the child was not a child of both parties in that the child's stepmother was not her biological mother.

was a “person, other than a parent” who was seeking a determination of custody.⁴³ The court of appeals rejected this argument holding:

The general purpose of the UCCJA is to promote cooperation and avoid competition with the courts of *other* states in determining the proper forum for child custody disputes. Indiana adopted the UCCJA in 1977, making it the exclusive method of determining the subject matter jurisdiction of a court in a custody dispute with an *interstate* dimension.⁴⁴

As a result, the UCCJA provided no jurisdictional basis upon which the step-mother could rely in that case.⁴⁵

Notwithstanding the court’s lack of jurisdiction to award custody, the court of appeals found that it had jurisdiction to award the step-mother visitation rights.⁴⁶ The court of appeals concluded that the trial court could award visitation rights to third parties if a custodial and parental relationship had been established and the visitation was in the child’s best interest.⁴⁷ In *Cabin*, the court of appeals found the authority to award visitation to third parties based on common law doctrines, rather than on power conferred by the laws governing dissolution of marriage actions.⁴⁸

In *Stambolija v. Stambolija*,⁴⁹ the Indiana court of appeals used the significant connection test to reverse the lower court’s finding of continuing jurisdiction under the UCCJA.⁵⁰ In 1989, an Indiana court granted the parents’ divorce and awarded custody of the children to the father. Immediately thereafter, the father and the children moved to Michigan where they were living when the mother died in 1993. The mother was a lifelong resident of Indiana and had exercised regular visitation with the minor children until her death. Her parents had access and opportunity to visit with the children when their daughter was exercising visitation. Following their daughter’s death, the grandparents initiated an action in Indiana seeking visitation rights.⁵¹ The

43. *Caban*, 634 N.E.2d at 542.

44. *Id.* (citations omitted) (emphasis added). The UCCJA does not directly grant trial courts the authority to determine custody. *Williams v. Williams*, 555 N.E.2d 142, 145 (Ind. 1990). “The jurisdictional limitations imposed by the UCCJA are not equivalent to declarations of subject matter jurisdiction, but rather are refinements of the ancillary capacity of a trial court to exercise authority over a particular case.” *Id.* Therefore, where the Indiana trial court lacks jurisdiction under *McCarroll* to award custody to a non-biological parent, the UCCJA does nothing to alter that result. *Francis v. Francis*, 654 N.E.2d 4, 6 (Ind. Ct. App. 1995).

45. *Caban v. Healey*, 634 N.E.2d 540, 542 (Ind. Ct. App. 1994).

46. *Id.* at 543.

47. *Id.*

48. *Id.*

49. *Stambolija v. Stambolija*, 643 N.E.2d 5 (Ind. Ct. App. 1994).

50. *Id.* at 7.

51. *Id.* at 6.

court of appeals found that upon the mother's death, the original parties to the dissolution proceeding were no longer present in Indiana.⁵² As result, the children no longer had any significant connection with Indiana.⁵³ Therefore, under the significant connection prong of the UCCJA, Michigan was the most appropriate forum and consequently, the Indiana court lacked jurisdiction.⁵⁴

*In re R.L.W.*⁵⁵ addressed the rights of putative fathers. In that case, the putative father initiated a paternity action in Indiana after the mother had left the state with the child. While the mother conceded Indiana was the child's home state, she argued that the putative father did not qualify as a "parent" under UCCJA because "he [was] merely the putative father, has never been married to [the] mother, and paternity has never been established" and therefore, the Indiana court lacked jurisdiction.⁵⁶ Relying on the purpose of the UCCJA to prevent child snatching, the court held that the father qualified as a "parent" under the Act because he had acted as a parent, in addition to having filed the paternity action.⁵⁷ As a result, a father does not have to have been married to the mother, nor have previously established paternity in a prior judicial proceeding to have standing under the UCCJA.⁵⁸

B. *Intra-state Conflicts*

Even though dissolution and post-dissolution cases have separate grants of jurisdictional authority, a discussion of the applicability of UCCJA to state court jurisdiction is vital to a complete understanding of the limitations of jurisdiction imposed by the UCCJA on all courts exercising jurisdiction over custody and visitation issues. For example, courts that exercise jurisdiction over dissolution and post-dissolution matters are without jurisdiction to issue orders modifying custody or visitation once a child in need of services or a

52. *Id.* at 7.

53. *Id.*

54. *Id.* Problems surrounding significant connections also arise quite often where one parent absconds with the child. In *Marriage of Ben-Yehoshua*, the California Court of Appeals held that where the custodial parent seeks refuge in the forum state, and her only contact with that state is her and her children's physical presence within, without more, such contacts are insufficient to establish the requisite "significant connection" with the forum state to support jurisdiction. 154 Cal. Rptr. 80, 84 (Cal. Ct. App. 1979). This result is in accord with *Ashburn v. Ashburn*, where the Indiana Court of Appeals held that a parent cannot establish "home state" jurisdiction by deception, e.g., sneaking the child to another state without telling the parent entitled to custody she was leaving. 661 N.E.2d 39, 42 (Ind. Ct. App. 1996). However, the Indiana court will retain jurisdiction over such a case under significant connection in that the child has no "home state" where the parent removes the child from Indiana by deception. *Id.*

55. *In re R.L.W.*, 643 N.E.2d 367 (Ind. Ct. App. 1994).

56. *Id.* at 369.

57. *Id.*

58. *Id.*

delinquency petition has been initiated in juvenile court.⁵⁹

In *P.B. v. T.D.*,⁶⁰ a non-custodial parent filed a petition in the Elkhart Superior Court seeking custody of her children several days *after* the Elkhart Circuit Court—Juvenile Division had adjudicated one of the children as a child in need of services.⁶¹ At the time the non-custodial parent filed the petition in the superior court, the circuit court had neither discharged the child, nor granted a motion to transfer to the superior court. The court of appeals held that absent a juvenile court order discharging the parties or an order transferring the cause from the circuit court, the superior court did not have jurisdiction over the petition to modify custody once the child in need of services proceeding was initiated.⁶²

The importance of the UCCJA in settling interstate disputes involving a child applies equally to jurisdictional disputes that arise between courts in the same state. In cases where a court has granted a dissolution and retains continuing jurisdiction over issues of support and visitation with a minor child, a court in the same jurisdiction or in the same state is without authority to exercise jurisdiction over these issues except in cases of temporary or emergency situations.

For example, in *Indiana ex rel. Meade v. Marshall Superior Court II*,⁶³ the children's parents were divorced in the Marshall Circuit Court. As part of its decree, the circuit court ordered joint custody.⁶⁴ After serious personal conflicts between the mother and the husband's second wife, the second wife sought a temporary restraining order against the children's biological mother from the superior court in the same county where the dissolution was granted.⁶⁵ The Indiana Supreme Court held that the circuit court had continuing jurisdiction over the custody and visitation issues pertaining to the children and absent extraordinary circumstances, the superior court could not exercise jurisdiction over an action that sought to resolve or modify the order of the circuit court.⁶⁶

59. *P.B. v. T.D.*, 504 N.E.2d 1042 (Ind. Ct. App. 1987), *rev'd on other grounds*, 507 N.E.2d 992 (Ind. Ct. App. 1987).

60. *Id.*

61. *Id.*

62. *Id.* at 1043.

63. *Indiana ex rel. Meade v. Marshall Superior Court II*, 644 N.E.2d 87 (Ind. 1994).

64. *Id.* at 88.

65. *Id.* The second wife later modified her request and asked the superior court to allow the mother to see her children, but prohibit her from visiting the children at the second wife's home or calling them on the second wife's business phone.

66. *Id.* at 89. It is interesting to note that in this case, the Indiana Supreme Court resolved the jurisdictional dispute on the internal law of Indiana, without reference to the UCCJA. *Id.* In so holding, the court resolved the issue based on principles of comity, judicial efficiency, and fairness to the litigants. *Id.* at 88-9.

C. *Inter-state Conflicts*

Indiana courts retain jurisdiction over children in need of services under the UCCJA until the child reaches twenty-one, or is earlier discharged, and such jurisdiction will deprive another state of jurisdiction to modify the child's custodial situation.⁶⁷ In addition, Indiana courts are often required to decide which of two competing states may appropriately exercise jurisdiction in other contexts.

*Wilcox v. Wilcox*⁶⁸ involved a jurisdictional dispute between the States of Indiana and Tennessee. When the parents' marriage was dissolved in 1989, they agreed the Indiana Court would retain continuing jurisdiction over custody matters and the mother could move with the children to any place in the United States. The mother and the children moved to Tennessee shortly after the dissolution was granted. Not long thereafter, the mother filed a petition in Tennessee seeking to modify the custody order. In 1991, the father obtained an *ex parte* order from the dissolution court in Indiana awarding him custody. Meanwhile, the Tennessee trial court awarded custody to the mother (which was later reversed on appeal). On appeal in Indiana, the mother argued Tennessee was the home state because the children have resided in Tennessee for more than six months.⁶⁹ The Indiana court of appeals held that jurisdiction was in Indiana because the Indiana court was the dissolution court and, not having declined to exercise continuing jurisdiction, under the UCCJA Indiana retained exclusive jurisdiction over the children's custody.⁷⁰ As a result, the issue of whether Tennessee was the "home state" under the UCCJA was irrelevant.⁷¹

67. See, e.g., *In re, C.B.*, 616 N.E.2d 763 (Ind. Ct. App. 1993).

68. *Wilcox v. Wilcox*, 635 N.E.2d 1131 (Ind. Ct. App. 1994).

69. *Id.* at 1134.

70. *Id.* at 1135. The mother also argued that under the PKPA, the Indiana court forfeited its jurisdiction by issuing the *ex parte* custody order without giving her notice and an opportunity to be heard. *Id.* The court of appeals resolved this issue by holding that because the *ex parte* order was only temporary, and further, because the mother did have notice before the court decided the issue of permanent custody, the notice she received was reasonable under both the PKPA and the UCCJA. *Id.* However, the court of appeals did find that by delaying the hearing on permanent custody by fifteen months after entering the *ex parte* modification order, the trial court committed reversible error. *Id.* at 1137.

71. *Id.* In *Smith-Helstrom*, the Nebraska dissolution court modified its earlier custody order after the custodial parent moved to Colorado. *Smith-Helstrom v. Yonker*, 544 N.W.2d 93 (Neb. 1996). Once there, the mother filed a petition to modify custody, and the Colorado court took jurisdiction. The father unsuccessfully appealed the jurisdictional issue in Colorado. Thereafter, in violation of the Colorado decree, the father took his child back to Nebraska. The mother filed a petition in the Nebraska dissolution court to modify custody, which was denied. The Nebraska Supreme Court held that even though Colorado was the child's home state under both the Nebraska and Colorado UCCJAs, exclusive continuing jurisdiction in Nebraska was not affected because "significant connection jurisdiction continued in the state of the prior decree where the court of record and other evidence exists and where one parent

In *Ward v. Ward*,⁷² the parties were each awarded custody of one of the two marital children. The marriage was dissolved in Georgia and the Georgia court entered the custody order. The father and one child remained in Georgia, while the mother and the other child (Sean) moved to Indiana. Subsequently, the mother returned to Georgia, leaving Sean in the care of relatives in Indiana. Approximately two years later, the father filed a petition in the Georgia dissolution court seeking custody of Sean. Georgia dismissed the petition for lack of jurisdiction, finding that because Sean had been living in Indiana for two years Indiana was the state with the most significant connection under the UCCJA.⁷³ The father then initiated a proceeding for custody in Indiana.⁷⁴ The Indiana court held, which was affirmed on appeal, that because the Georgia court declined to exercise continuing jurisdiction, and because jurisdiction in the Indiana circuit court was otherwise proper, the Indiana circuit court had jurisdiction to hear the modification petition.⁷⁵

Sometimes resolution of interstate custody disputes requires courts to construe the "home state" language in the UCCJA and to further decide whether one of the competing states has already exercised jurisdiction. In *Stephens v. Stephens*⁷⁶ the Indiana Court of Appeals answered these two questions.

In *Stephens*, the mother was a lifelong resident of Kentucky, while the father was a lifelong resident of Indiana. The couple's child was born in Kentucky. Approximately eight weeks after birth, the child and the mother moved to Indiana and lived there with the father for about one year. The parties separated and the mother and the child returned to Kentucky. On the same day the mother returned to Kentucky, she filed in the Kentucky court a document known as a "Domestic Violence Emergency Protection Order and Summons" against the father. Four days later, the father filed in Indiana for custody of the child. In this case either state could have been the child's home state.⁷⁷ Kentucky's order stated that the protective order was issued in con-

or another contestant continues to reside. Only when the child and all parties have moved away is deference to another state's continuing jurisdiction no longer required." *Smith-Helstrom*, 544 N.W.2d at 93. *Accord* *Campbell v. Johnson*, No. 95-01945, 1996 WL 164634, at *1 (Fla. Ct. App., April 10, 1996). As a result, the Colorado court lacked jurisdiction to modify the child's custody. *Smith-Helstrom*, 544 N.W.2d at 93.

72. *Ward v. Ward*, 611 N.E.2d 167 (Ind. Ct. App. 1993).

73. *Id.* at 169.

74. *Id.* at 168.

75. *Id.* at 169.

76. *Stephens v. Stephens*, 646 N.E.2d 682 (Ind. Ct. App. 1995).

77. Recall that under the UCCJA, a child's "home state" for jurisdictional purposes is the state where the child is presently found, or the state wherein the child had been residing "six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming custody," and one of the child's

formity with the provisions of their Uniform Child Custody Jurisdiction Law, and the Indiana Court of Appeals found it had in fact been issued in substantial conformity with the Kentucky version of the UCCJA.⁷⁸ Therefore, the Indiana court held that even though both Indiana and Kentucky had initial concurrent subject matter jurisdiction, because the Kentucky court took jurisdiction before the Indiana court, the Indiana court properly dismissed the father's petition.⁷⁹

The trial court's ability to award attorney fees in child custody modification proceedings was raised in *Roberts v. Johnson*.⁸⁰ In *Roberts*, the parties were divorced in Kentucky in 1989, whereupon they both left. Johnson (the mother) and the children moved to Indiana and lived there continuously for two years before Roberts (the father) filed a petition seeking custody of the children. The father's petition was denied, and he was ordered to pay a portion of the mother's attorney fees. The father argued that monetary awards, including the award of attorney fees, were expressly prohibited by UCCJA.⁸¹ The court of appeals held that the exclusion of monetary awards over issues of support and alimony under UCCJA was done to limit the Act's provisions to resolving disputes involving custody and visitation issues.⁸² The court of appeals reasoned that because the UCCJA applies only to limit the court's jurisdiction that otherwise exists under state law, and then only as that jurisdiction bears on custody disputes, the UCCJA can in no way restrict the authority of a state court to award attorney's fees in a case not involving a custody determination.⁸³ Therefore, because Indiana courts have authority to award attorneys fees under Indiana law independent of the UCCJA, by awarding the mother her attorneys' fees the court committed no error.⁸⁴

parents continues to reside in that state. IND. CODE ANN. § 31-1-11.6-3(a)(1) (West 1979 & Supp. 1995).

78. *Stephens*, 646 N.E.2d at 687.

79. *Id.* at 685-7. The court of appeals' ruling in *Stephens* follows what is normally called the "first in time" rule for invoking custody jurisdiction under the UCCJA. See *D'Agnese v. D'Agnese*, No. 2466-94-2, 1996 WL 118087, at *3 (Va. Ct. App., Mar. 19, 1996). Under this rule, when the courts of two different states have initial concurrent subject matter jurisdiction, the court which takes jurisdiction first is entitled to deference. Brigitte M. Bodenheimer, *Interstate Custody: Initial Jurisdiction and Continuing Jurisdiction under the UCCJA*, 14 FAM. L.Q. 203, 210-11 (1981).

80. *Roberts v. Johnson*, 625 N.E.2d 1288 (Ind. Ct. App. 1993).

81. *Id.* at 1290.

82. *Id.*

83. *Id.*

84. *Id.* at 1291. Refusing to permit the UCCJA to preempt other substantive provisions of Indiana law, as the court of appeals did in *Roberts*, is entirely consistent with the drafters intent that the UCCJA apply solely to interstate custody determinations.

D. International Conflicts

Jurisdictional conflicts in custody determinations are not limited to actions as between states, or courts within the same state, but extend as well to questions involving international law. When one of the child's parents is domiciled in a foreign country, the forum court is often required to consider the foreign sovereign's law as it relates to the UCCJA.

Ruppen v. Ruppen,⁸⁵ involved a custody dispute between a mother, who was a citizen of the United States, and a father who was a citizen of Italy. In 1987, the parties were married in Indiana and immediately moved to Italy. Although the couples' two children enjoyed dual citizenship, they had always lived in Italy, except for occasional visits to the maternal grandparents in Indiana.⁸⁶ In May 1992, the mother and the children returned to Indiana. The mother intended to file for divorce as soon as she satisfied the residency requirements. Ninety-seven days after her return to Indiana, she filed for dissolution, support, custody, and a temporary restraining order against the father. The father came to Indiana and filed a writ of habeas corpus requesting that custody be awarded to him so the custody issue could be determined in Italy. The trial court granted the writ and dismissed the mother's petition, whereupon the father returned to Italy with the children.⁸⁷ The Indiana court of appeals held that under principles of comity favoring recognition of a foreign sovereign's jurisdiction, Italy was a state for purposes of Indiana's Uniform Child Custody Jurisdiction Law.⁸⁸ Further, the court held that Italy was the children's home state pursuant to Ind. Code § 31-1-11.6-2(5).⁸⁹ Therefore, for the mother to establish Indiana jurisdiction, she would have had to show either that Italian courts did not have jurisdiction under Italian law to determine custody, or that she would be denied due process if required to litigate the custody issue in Italy.⁹⁰

85. *Ruppen v. Ruppen*, 614 N.E.2d 577 (Ind. Ct. App. 1993).

86. *Id.* at 580.

87. *Id.*

88. *Id.* at 582. *But see* *Ivaldi v. Ivaldi*, 672 A.2d 1226, 1231 (N.J. Super. 1996) (UCCJA does not require court to defer to the jurisdiction of a foreign country in an original proceeding). The court of appeals observed that under a strict reading of the UCCJA, Italy is not a "state." *Rupen*, 614 N.E.2d at 582. However, the court chose to recognize as overriding the broad purpose of the Act, which was to eliminate "incentive[s] to 'snatch' one's child." *Id.* To effect this purpose, the court reasoned that a child's "home state" could be a foreign country. *Id.*

89. *Id.* *Accord* *Hosain v. Malik*, 671 A.2d 988 (Md. Ct. App. 1996) (refusing to exercise jurisdiction on principles of comity over a custody dispute where a Pakistani court had already issued a custody order in substantial conformity with the UCCJA).

90. *Ruppen v. Ruppen*, 614 N.E.2d 577 (Ind. Ct. App. 1993). The court held the mother could meet neither of the required burdens, and affirmed that Indiana lacked jurisdiction to determine custody. *Id.* at 583. However, the court reversed the granting of the writ of *habeas corpus*, finding that because no prior custody order had been issued, both parents were entitled

E. Emergency Jurisdiction

*In re E.H.*⁹¹ held that a court exercising jurisdiction over a child in need of services must exercise such jurisdiction in accordance with the UCCJA.⁹² In January 1988, the parties were divorced in Texas. Two children were born of the marriage and both parties were named as "Joint Managing Conservators" of the children, with primary custody awarded to the mother. The father remained in Texas and the mother and the children moved to Indiana. The mother claimed the father sexually abused the children in October 1988, when he was exercising visitation in Indiana.⁹³ The Indiana Office of Family and Children (the Welfare Department) investigated but was unable to substantiate the report of sexual abuse.⁹⁴ In December 1988, the mother filed a petition in Texas to modify or terminate the father's visitation rights. The father counter-claimed for modification of visitation and support. The Texas court dismissed the mother's petition but retained jurisdiction over the counter-claim.⁹⁵

Following the dismissal of her petition in Texas, the mother on December 19, 1988, filed a petition in Indiana for modification of the dissolution decree and the Department of Welfare filed a petition alleging children in need of services (CHINS) in Indiana juvenile court, based on the allegation of sexual abuse by the father.⁹⁶ The father sought to have the CHINS proceeding in juvenile court dismissed, based on its lack of jurisdiction to interfere with the Texas court's continuing jurisdiction over the children's custody.⁹⁷ Moreover, the Texas court requested that the Indiana court stay its proceedings until the Texas court could rule on the original counter-claim.⁹⁸

to equal custody under Ind. Code § 31-1-11.5-21, and therefore by granting the writ, the trial court violated the statutory presumption of equal rights. *Id.* at 584.

91. *In re E.H.*, 612 N.E.2d 174 (Ind. Ct. App. 1993), *aff'd*, 624 N.E.2d 471 (Ind. 1993).

92. *Id.* at 182. Occasionally, parents upset with the rendering court's custody order will seek ways to circumvent the strict jurisdictional prerequisites that follow continuing jurisdiction under the UCCJA. Bodenheimer, *supra* note 79, at 225. Most subterfuges to the UCCJA are quickly recognized and disposed of because to permit courts to make custody decisions on such a transitory basis would seriously undermine the purposes of both the UCCJA and the PKPA. *Ex parte J.R.W.*, 667 So.2d 74 (Ala. 1994); *Young v. District Court of Boulder County*, 570 P.2d 249 (Colo. 1977). One of the most common circumvention techniques is to proclaim the existence of an emergency, e.g., sexual abuse by the custodial parent, thereby invoking the emergency exception to the forum state's lack of jurisdiction. *Id.*

93. *In re E.H.*, 612 N.E.2d 174, 177 (Ind. Ct. App. 1993), *aff'd*, 624 N.E.2d 471 (Ind. 1993).

94. *Id.*

95. *Id.*

96. *Id.* at 178.

97. *Id.*

98. *Id.*

The foregoing notwithstanding, the Indiana juvenile court exercised jurisdiction and found that the children were in need of services, and the father appealed.⁹⁹ The court of appeals held that courts exercising jurisdiction over children in need of services must exercise such jurisdiction in accordance with the provisions of the UCCJA.¹⁰⁰ Therefore, even though the Indiana juvenile court is vested with exclusive jurisdiction over all issues in a CHINS proceeding under Indiana Code § 31-6-2-1.1, such jurisdiction is subject to the limitations imposed on all state courts by the UCCJA.¹⁰¹

The primary function of a CHINS action is to provide the government with a means to respond to “emergency situations involving children unlikely to be helped without court intervention.”¹⁰² However, under the CHINS stat-

99. *Id.*

100. *Id.* at 182. To support its holding, the court of appeals principally relied on *In re Lemond*. In *Lemond*, the Indiana Supreme Court approved of the juvenile courts exercising emergency jurisdiction under the UCCJA in a CHINS proceeding. *In re Lemond*, 413 N.E.2d 228, 245-46 (Ind. 1980).

101. *In re E.H.*, 612 N.E.2d 174, 177 (Ind. Ct. App. 1993), *aff'd*, 624 N.E.2d 471 (Ind. 1993). In so holding, the court of appeals found that both the UCCJA, and IND. CODE ANN. § 31-6-2-1 can be read harmoniously to give both statutes their full effect. *Id.* at 181. The court of appeals adopted the argument of *amicus curiae* in *Lemond*, which argued in relevant part:

The provisions from both laws can be construed *in pari materia* to effectuate the similar policies of both if the juvenile court assumes temporary jurisdiction only for the duration of the emergency and terminates its jurisdiction after the emergency has passed. The jurisdiction in the juvenile court should be invoked only in a true emergency and should be exercised upon the receipt of sound evidence as to the nature of the emergency by the juvenile court order.

Id. Pursuant to the State’s *parens patriae* power and the emergency jurisdiction section of the UCCJA permit courts to exercise jurisdiction where the child is either abandoned or severely neglected in the forum state. UCCJA § 3(a)(3) (1988); Henry H. Foster, *Child Custody Jurisdiction: UCCJA and PKPA*, 27 N.Y.L. SCH. L. REV. 297, 337 (1981). In Indiana, the CHINS statute is similarly designed to give Indiana juvenile courts the power to remedy situations where the child is suffering from a serious emergency. IND. CODE ANN. §§ 31-6-4-3, 31-6-4-4 (West 1979 & Supp. 1995). Therefore, where a child is subject to the continuing jurisdiction of a sister state under the UCCJA, it may also be a child in need of services under IND. CODE ANN. § 31-6-4-3. However, following *In re E.H.*, Indiana courts will not compromise either statute by permitting Indiana courts to exercise jurisdiction absent a bona fide emergency. As a result, under *In re E.H.*, when the child is subject to the continuing jurisdiction of another state, the CHINS petitioner will have to meet the jurisdictional standards under both statutes before an Indiana court will take jurisdiction. *In re E.H.*, 612 N.E.2d at 182. Assuming the existence of emergency jurisdiction, the court is then only empowered to make temporary orders affecting custody. *McDow v. McDow*, 908 P.2d 1049, 1051-52 n.2 (Alaska 1996). The requirements for invoking emergency jurisdiction under UCCJA § 3(a)(3) are: 1) physical presence of the child; and 2) existence of an emergency, e.g., abandonment or abuse. *Murphy v. Danforth*, 915 S.W.2d 697, 707 (Ark. 1996). However, such jurisdiction is only temporary, and should not modify a custody order permanently. *Id.*

102. *In re E.H.*, 612 N.E.2d 174, 186 (Ind. Ct. App. 1993), *aff'd*; 624 N.E.2d 471 (Ind. 1993).

ute, the juvenile court's jurisdiction over that child can continue until the child is twenty-one.¹⁰³ As a result, "what begins as a means of remedying an emergency situation may end up as a twenty-one-year-long exercise of control over the child's custodial situation."¹⁰⁴ Explaining the inherent jurisdictional clash between CHINS actions and the UCCJA, the court of appeals observed:

[T]he entirety of CHINS proceedings, from the filing of the initial petition to the final dispositional order, is likely to drastically affect the custodial and visitation rights of the parents in the typical case. Obviously, the primary intent of the CHINS statute is to protect children from the adverse effect of custodial unfitness or deprivation, and not simply to force the family to attend emergency psychological therapy.¹⁰⁵

Given the inherent conflict, one of the two statutes must yield. *In re E.H.* held that it was the CHINS statute that must yield to the UCCJA.¹⁰⁶ Consequently, it directed the juvenile court to defer jurisdiction to the Texas court until that court subsequently agrees to defer jurisdiction to Indiana.¹⁰⁷

V. CONCLUSION

This examination of recent Indiana case law illustrates the limitations imposed by the UCCJA on all courts that exercise jurisdiction in cases involving custody and visitation of children. It is not at all unusual for custody and visitation disputes that originate in dissolution courts in one state end up in the juvenile courts of another. The allegations of child sexual abuse and physical abuse by a non-custodial parent, a custodial parent, or the significant other of one of the parents often occur within a short period of time following a dissolution or the breakup of a live-in relationship. With the increased mobility of parents and children, courts are more often being called on to determine the child's "home state" or decide whether the parties retain a sufficient "significant-connection" with the forum state before that court can exercise jurisdiction.

The juvenile court's exclusive original jurisdiction over children in need of services, delinquent children, children in paternity cases, and its concomitant authority to alter the child's custodial situation often run into interference from the UCCJA. By subordinating the juvenile court's jurisdictional power to the purpose, framework, and policy of the UCCJA, courts have achieved the often elusive stability and consistency in custodial disputes with interstate dimensions.

103. IND. CODE ANN. § 31-6-2-3(a)(1) (West Supp. 1995).

104. *In re E.H.*, 612 N.E.2d at 184.

105. *Id.* at 186.

106. *Id.*

107. *Id.* at 189.

