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Family Law—Parental Kidnapping in Arkansas under the Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act

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NOTE

FAMILY LAW—PARENTAL KIDNAPPING IN ARKANSAS UNDER THE UNIFORM CHILD CUSTODY JURISDICTION ACT AND PARENTAL KIDNAPPING PREVENTION ACT. *Norsworthy v. Norsworthy*, 289 Ark. 479, 713 S.W.2d 451 (1986).

Suzanne Norsworthy filed for divorce in 1984, left her husband in Texas and moved to Arkansas with her 7-year-old daughter, Darlah, in June of 1985. Suzanne had temporary custody of Darlah under a Texas decree entered April 10, 1984. Approximately three and one-half months after the move to Arkansas, Lauren Norsworthy, Darlah's father, contacted Suzanne to say he was coming to Arkansas and would like to visit Darlah. Suzanne agreed.

The following day, Lauren filed for divorce and custody in Texas, came to Arkansas, picked up Darlah (ostensibly for a brief visit), and returned to Texas with her. Suzanne was served with process later that week in the Texas suit Lauren had filed, and so she promptly filed suit for divorce and custody in the Chancery Court of Crittenden County, Arkansas. Lauren moved to dismiss the action, based on a section of the Uniform Child Custody Jurisdiction Act[1] (UCCJA) which provides that a court shall not exercise jurisdiction in a child custody dispute if a proceeding is pending in another state.[2] Alternatively, Lauren asked that the Crittenden County Chancery Court stay its proceeding until the Texas court determined whether or not Texas was the proper forum for the action.

The Arkansas chancery court, holding that it had jurisdiction under the UCCJA,[3] found that Suzanne had custody of Darlah pursuant to the temporary custody order of the district court of Harris

1. ARK. STAT. ANN. §§ 34-2701 to -2726 (Supp. 1985).

2. A court of this State shall not exercise its jurisdiction under this Act . . . if at the time of filing the petition a proceeding . . . was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state . . . .

ARK. STAT. ANN. § 34-2706(a) (Supp. 1985).

3. (a) A court of this State . . . has jurisdiction to make a child custody determination by initial or modification decree if: . . . (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 [1] contestant, have a significant connection with this State,

County, Texas, and entered an order in accordance therewith.[4] The order also directed the immediate return of Darlah to Arkansas. Lauren failed to return the child to Suzanne and the Arkansas court held him in contempt and sentenced him to ninety days in jail. Again relying on the UCCJA as the basis for jurisdiction, and holding further that Arkansas was the most convenient forum under the Act,[5] the chancellor entered a divorce decree in favor of Suzanne, and awarded Suzanne custody of Darlah, child support, and attorney's fees.

Lauren appealed the decision, and the Arkansas Supreme Court modified the decree and remanded the case to chancery court. The supreme court held that even though jurisdiction could be predicated under the UCCJA because it was in the best interest of the child for Arkansas to assume jurisdiction, the Act also mandates that the Arkansas court stay the proceeding and communicate directly with the foreign court to determine which is the more appropriate forum to decide custody.[6] The court also noted that under the Parental Kidnapping Prevention Act of 1980[7] (PKPA) jurisdiction is conferred exclusively upon the child's home state, which in this case was Texas.[8] When the PKPA conflicts with the UCCJA, the preemptive PKPA controls.[9] *Norsworthy v. Norsworthy*, 289 Ark. 479, 713 S.W.2d 451 (1986).

The child custody decree is unique in that the recognition and deference given to it by other states will often determine whether the purposes and effects it seeks to achieve are accomplished. Until recently, some states had relatively relaxed standards relating to custody decree challenges and were "friendly forums" for child snatching

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and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships . . . .

ARK. STAT. ANN. § 34-2703(a)(2) (Supp. 1985).

4. Norsworthy v. Norsworthy, 289 Ark. 479, 481, 713 S.W.2d 451, 453 (1986) (citing ARK. STAT. ANN. § 34-2703(a)(2) (Supp. 1985)).

5. *Id.* at 482, 713 S.W.2d at 453 (citing ARK. STAT. ANN. § 34-2707(a) (Supp. 1985) which provides: "A court which has jurisdiction under this Act . . . to make an initial or modification decree may decline to exercise its jurisdiction . . . if it finds that it is an inconvenient forum. . . .").

6. *Id.* at 485-87, 713 S.W.2d at 455-56; ARK. STAT. ANN. § 34-2706(a) (Supp. 1985). *See supra* note 2.

7. Pub. L. No. 96-611, §§ 6-10, 94 Stat. 3566, 3568-73 (1980) (codified at 28 U.S.C. § 1738A (1982)).

8. 289 Ark. at 484-85, 713 S.W.2d at 455.

9. *Id.* at 482, 713 S.W.2d at 453.

parents.[10] Even at present, the problem of the "friendly forum" is widespread and has spawned many vicious legal battles, frequently creating inconsistent results.[11]

Article IV, section 1 of the United States Constitution commands that "Full Faith and Credit shall be given in each State to the [judicial proceedings] . . . of every other State."[12] It is obvious that a child custody proceeding is a "judicial proceeding" within the meaning of the "full faith and credit" clause of the Constitution. Despite this fact, non-custodial parents can easily find a "friendly forum" willing to modify a valid custody decree.

The problem of the "friendly forum" arises in that while a decree awarding custody is final on conditions then existing, it may always be modified by a showing of changed circumstances.[13] The United States Supreme Court, in *New York ex rel. Halvey v. Halvey*,[14] held that custody decrees are not entitled to "full faith and credit" since a sister state should have "as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered."[15] Thus, sister states are free to modify existing custody decrees under the same circumstances that would have warranted modification in the original granting state.[16]

Prior to the advent of the UCCJA and PKPA, Arkansas courts developed general rules of law for determining whether to modify an existing custody decree. A threshold consideration was that of jurisdiction.[17] The supreme court consistently held that the physical pres-

10. Note, *The Parental Kidnapping Prevention Act: Application and Interpretation*, 23 J. FAM. L. 419, 428 (1985).

11. *See, e.g.*, Maxie v. Fernandez, 649 F. Supp. 627 (E.D. Va. 1986) (conflicting decrees from Virginia and the District of Columbia); Alexander v. Ferguson, 648 F. Supp. 282 (D. Md. 1986) (conflicting decrees from New York and Maryland); Davis v. Davis, 638 F. Supp. 862 (N.D. Ill. 1986) (conflicting decrees from Illinois and Minnesota); Wyman v. Larner, 624 F. Supp. 240 (S.D. Ind. 1985) (conflicting decrees from Colorado and Indiana).

12. U.S. CONST. art. IV, § 1. *See also*, 28 U.S.C. § 1738 (1982).

13. Hamilton v. Anderson, 176 Ark. 76, 78, 2 S.W.2d 673, 674 (1928); Jackson v. Jackson, 151 Ark. 9, 13, 235 S.W. 47, 48-49 (1921); Weatherton v. Taylor, 124 Ark. 579, 582, 187 S.W. 450, 451 (1916).

14. 330 U.S. 610 (1947).

15. *Id.* at 614-15. *Accord* May v. Anderson, 345 U.S. 528 (1953).

16. Another view has been expressed by the Arkansas courts in support for a denial of full faith and credit for custody decrees. The supreme court in Tucker v. Turner, 195 Ark. 632, 639, 113 S.W.2d 508, 511 (1938) stated that the full faith and credit clause applied only to foreign judgments relating to property and because children were wards of the court and not property, the full faith and credit clause was therefore inapplicable. The supreme court has cited this view with acceptance as recently as 1976. Bonds v. Lloyd, 259 Ark. 557, 561, 535 S.W.2d 218, 220 (1976).

17. The three bases of jurisdiction as stated by the court in Edrington v. Fitzgerald, 257

ence of the child within Arkansas was a sufficient basis upon which to exercise jurisdiction in determining whether there should be a change in custody.[18] It reasoned that the state in which a child is physically present has the most immediate concern with the child and may be the best qualified jurisdiction to determine the child's welfare.[19] In *Keneipp v. Phillips*,[20] the Arkansas Supreme Court stated that "the general rule, as well as that declared here by this court, is that . . . when the domicile of a child [changes] and it becomes a citizen of another state . . . such child is no longer subject to the control of the courts of the first state."[21]

Once a custody decree has been entered, the general rule is that the parent seeking modification must show a change in circumstances sufficient to warrant the change sought.[22] Accordingly, the supreme court has refused to enforce modifications made by courts in other states, where there was no proper showing of changed circumstances to warrant the modification ordered.[23] The Arkansas Supreme Court in *Bonds v. Lloyd*[24] found that the paramount consideration in awarding custody of children is the best interest and welfare of the child.[25] Changed circumstances are determined primarily in light of the welfare and best interest of the child, and not as a reward or punishment for the parents.[26]

Another consideration in the modification of a custody decree

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Ark. 61, 65, 514 S.W.2d 712, 714 (1974), are domicile of child in the state, or presence of child in the state, or personal jurisdiction over the contending parties.

18. Bonds v. Lloyd, 259 Ark. 557, 560, 535 S.W.2d 218, 220 (1976); Edrington v. Fitzgerald, 257 Ark. 61, 65, 514 S.W.2d 712, 714 (1974); Shaw v. Shaw, 251 Ark. 665, 673, 473 S.W.2d 848, 852 (1971).

19. Bonds v. Lloyd, 259 Ark. 557, 561, 535 S.W.2d 218, 220 (1976).

20. 210 Ark. 264, 196 S.W.2d 220 (1946).

21. *Id.* at 267, 196 S.W.2d at 222. *See also* Edrington v. Fitzgerald, 257 Ark. 61, 70, 514 S.W.2d 712, 716 (1974); Tucker v. Turner, 195 Ark. 632, 637, 113 S.W.2d 508, 511 (1938).

22. Pyle v. Pyle, 254 Ark. 400, 402-03, 494 S.W.2d 117, 119 (1973); Frazier v. Merrill, 237 Ark. 242, 245-46, 372 S.W.2d 264, 267 (1963); Hamilton v. Anderson, 176 Ark. 76, 78, 2 S.W.2d 673, 674 (1928); *but see* Sanders v. Sanders, 1 Ark. App. 216, 222, 615 S.W.2d 375, 379 (1981) ("If the welfare of the child so requires, a decree may be modified without a change in circumstances.")(quoting Phelps v. Phelps, 209 Ark. 44, 189 S.W.2d 617 (1945)).

23. Keneipp v. Phillips, 210 Ark. 264, 268, 196 S.W.2d 220, 222-23 (1946). *See also* Frazier v. Merrill, 237 Ark. 242, 372 S.W.2d 264 (1963) (upholding a foreign modification decree challenged for lack of changed circumstances). *But see* Sanders v. Sanders, 1 Ark. App. 216, 615 S.W.2d 375 (1981) (holding that if the welfare of the child so requires, a decree may be modified without a change in circumstances).

24. 259 Ark. 557, 535 S.W.2d 218 (1976).

25. *Id.* at 560, 535 S.W.2d at 220.

26. Caldwell v. Caldwell, 156 Ark. 383, 386, 246 S.W. 492, 493 (1923). *See also* Tucker v. Turner, 195 Ark. 632, 638, 113 S.W.2d 508, 511 (1938); Hamilton v. Anderson, 176 Ark. 76, 79, 2 S.W.2d 673, 674 (1928).

was the circumstances surrounding the issuance of the existing decree sought to be changed.[27] For example, if the court that rendered the original decree lacked jurisdiction to do so, the decree was invalid and not binding on the parties involved.[28] Consequently, the court in which the modification was sought was free to decide the custody issue in the best interest of the child.[29]

These rules conferred wide discretion upon the Arkansas courts to modify foreign custody and modification decrees.[30] The traditional willingness of states to find changed circumstances and modify custody decrees from other states encouraged parents to abduct children and flee across state lines in search of a "friendly forum."[31]

In an effort to redress this situation, the National Conference of Commissioners on Uniform State Laws drafted the Uniform Child Custody Jurisdiction Act.[32] The UCCJA has now been adopted in some form by all fifty states and the District of Columbia.[33] Arkansas adopted the uniform act in 1979.[34]

The general purposes of the UCCJA are to: (1) avoid jurisdictional competition and conflict with courts of other states;[35] (2) promote cooperation with courts of other states;[36] (3) assure that litigation takes place in the state in which the child and his family have the closest connection;[37] (4) discourage continuing controversy over child custody in the interest of greater home environment stability and family relationship security;[38] (5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;[39] (6) avoid re-litigation of foreign custody decisions when fea-

27. *See* cases cited *supra* note 22.

28. Cooper v. Cooper, 229 Ark. 770, 771-72, 318 S.W.2d 587, 588 (1958).

29. *Id.* at 772, 318 S.W.2d at 589.

30. *Bonds*, 259 Ark. at 562-63, 535 S.W.2d at 221.

31. *Parental Kidnapping Prevention Act of 1979: Joint Hearing on S. 105 Before the Subcomm. on Criminal Justice of the Senate Comm. on the Judiciary and the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources*, 96th Cong., 2d Sess. 48 (1980) [hereinafter *PKPA Hearing*] (statement of Paul Michel). *See also* Blakesley, *Child Custody—Jurisdiction and Procedure*, 35 EMORY L.J. 291, 295-96 (1986).

32. 9 U.L.A. 111-70 (1979). *See also* Blakesley, *supra* note 31, at 296-97.

33. Walker & Freed, *Family Law in the Fifty States: An Overview*, 18 FAM. L.Q. 369, 428 (1985).

34. Act of Feb. 9, 1979, No. 91, 1979 Ark. Acts 204 (codified at ARK. STAT. ANN. §§ 34-2701 to -2726 (Supp. 1985)).

35. ARK. STAT. ANN. § 34-2701(a)(1) (Supp. 1985).

36. *Id.* § 34-2701(a)(2) (Supp. 1985).

37. *Id.* § 34-2701(a)(3) (Supp. 1985).

38. *Id.* § 34-2701(a)(4) (Supp. 1985).

39. *Id.* § 34-2701(a)(5) (Supp. 1985).

sible;[40] (7) facilitate enforcement of decrees of other states;[41] (8) promote and expand the exchange of information between two states concerned with the same child;[42] and (9) make uniform the law of those states that enact it.[43]

To further these purposes, the UCCJA sets forth four jurisdictional bases for determining a custody dispute.[44] An Arkansas court may exercise jurisdiction under the UCCJA when:

(1) Arkansas is the home state of the child (defined as the state in which the child resided for at least six months immediately preceding the time involved, including periods of temporary absence),[45] or had been the home state of the child prior to his removal or retention by another claiming custody, and a parent or guardian continues to live in this state;[46] or

(2) it is in the best interest of the child that an Arkansas court assume jurisdiction because the child and at least one of the contestants have significant connections with this state and there is substantial evidence available concerning the child's present or future care, protection, training and personal relationships;[47] or

(3) the child is physically present in the state, and the child has been abandoned or it is necessary in an emergency to protect the child;[48] or

(4) (i) it appears that no other state would have jurisdiction under prerequisites in accordance with the paragraphs above or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody, and (ii) it is in the best interest of the child that this court assume jurisdiction.[49]

The two principal bases of jurisdiction under the Act are the home

40. *Id.* § 34-2701(a)(6) (Supp. 1985).

41. *Id.* § 34-2701(a)(7) (Supp. 1985).

42. *Id.* § 34-2701(a)(8) (Supp. 1985).

43. *Id.* § 34-2701(a)(9) (Supp. 1985).

44. *Id.* § 34-2703(a) (Supp. 1985).

45. *Id.* § 34-2702(5) (Supp. 1985).

46. *Id.* § 34-2703(a)(1) (Supp. 1985). The supreme court noted in Davis v. Davis, 285 Ark. 403, 407-08, 687 S.W.2d 843, 846 (1985), that when none of the parties reside in the state of the original decree or the state of the original decree no longer has jurisdiction under the UCCJA standards, the child's home state is the proper forum for litigation.

47. ARK. STAT. ANN. § 34-2703(a)(2) (Supp. 1985). *See supra* note 3.

48. *Id.* § 34-2703(a)(3) (Supp. 1986). Arkansas has limited the applicability of this section to extreme or extraordinary situations where the immediate health and welfare of the child is at stake. Caskey v. Pickett, 274 Ark. 383, 386, 625 S.W.2d 473, 475 (1981). Thus, it is rarely invoked as a basis for jurisdiction.

49. ARK. STAT. ANN. § 34-2703(a)(4) (Supp. 1985).

state and significant connection/substantial evidence bases.[50] Conflicts arise between these two sections because the latter is broad enough to confer jurisdiction on one state even though another state remains the home state of the child.[51] In other words, situations can and do arise where two states have concurrent and conflicting jurisdiction.[52] For example, in *Sanders v. Sanders*,[53] the Arkansas Court of Appeals exercised jurisdiction under the "significant connection/substantial evidence" basis, even though the child had been in Arkansas less than six months and California remained the child's home state under the UCCJA.[54] Both California and Arkansas possessed jurisdiction under the Act.

While not solving all aspects of conflicting jurisdiction, the UCCJA has limited the exercise of jurisdiction based merely on the presence of the child in Arkansas. Except under jurisdictional bases invoked only in extraordinary situations,[55] physical presence of the child in Arkansas, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction upon an Arkansas court.[56] This is contrary to Arkansas decisions rendered prior to adoption of the Act.[57]

Nevertheless, because the UCCJA's flexible provisions can be interpreted so as to permit two states to assert jurisdiction in a custody dispute, the UCCJA fails to deter states that are determined to exercise jurisdiction in order to protect their parochial interests.[58] The existence of concurrent jurisdiction continues to promote forum shopping for the non-custodial parent.[59]

Recognizing that custody disputes are an increasing problem and that judicial decisions have been marked by inconsistencies and con-

50. Biggers v. Biggers, 11 Ark. App. 62, 66, 666 S.W.2d 714, 716 (1984).

51. *See PKPA Hearing, supra* note 31, at 144-45.

52. *PKPA Hearing, supra* note 31, at 144-45.

53. 1 Ark. App. 216, 615 S.W.2d 375 (1981).

54. *Id.*

55. ARK. STAT. ANN. § 34-2703(a)(3), (4) (Supp. 1985). *Cf.* Caskey v. Pickett, 274 Ark. 383, 625 S.W.2d 473 (1981) (§ 34-2703(a)(3) is limited to extreme or extraordinary situations).

56. ARK. STAT. ANN. § 34-2703(b) (Supp. 1985).

57. *See* Bonds v. Lloyd, 259 Ark. 557, 535 S.W.2d 218 (1976) (finding that the state where the child is physically present has the most immediate concern with the child and may be the best qualified jurisdiction to decide custody); Edrington v. Fitzgerald, 257 Ark. 61, 514 S.W.2d 712 (1974) (noting that presence of the child in the state is a valid jurisdictional base); Shaw v. Shaw, 251 Ark. 665, 473 S.W.2d 848 (1971) (noting that a court of this state had the power to make child custody decrees regardless of simultaneous jurisdiction of courts of other states if the child was present and it was in his best interest).

58. Note, *supra* note 10, at 421.

59. *PKPA Hearing, supra* note 31, at 144-45.

flicting results among various jurisdictions,[60] President Carter signed into law the Parental Kidnapping Prevention Act of 1980,[61] on December 28, 1980. The PKPA establishes national standards for determining and resolving jurisdictonal disputes over custody matters, as well as for determining the extent that decrees of one jurisdiction will be given full faith and credit in another jurisdiction.[62]

The PKPA was intended to fill in some of the gaps of the UCCJA.[63] It has been urged that a patent defect of the UCCJA was that it is not mandatory.[64] The UCCJA is merely a uniform draft which any state is free to adopt, model its own statute after, or totally disregard as it chooses. At the time the PKPA was enacted, some states had not yet adopted the UCCJA.[65] These states became child snatching havens for the discontented parent.[66] The PKPA, a federal statute, makes deference to custody decrees mandatory and prevents states which have less rigid requirements under their version of the UCCJA from quickly modifying valid decrees.[67]

The crucial distinction[68] between the UCCJA and the PKPA is that the PKPA gives exclusive jurisdiction to the child's home state.[69] This result is achieved by the mutually exclusive and preferentially ranked jurisdictional bases of the PKPA.[70] The PKPA establishes

60. S. KATZ, CHILD SNATCHING: THE LEGAL RESPONSE TO THE ABDUCTION OF CHILDREN 121 (1981).

61. Pub. L. No. 96-611, 94 Stat. 3568 (codified at 28 U.S.C. § 1738A (1982)).

62. S. KATZ, *supra* note 60, at 121.

63. Note, *supra* note 10, at 426.

64. *Id.* at 420.

65. *Id.* at 420 n.6.

66. *Id.* at 420.

67. 28 U.S.C. § 1738A(a) (1982). Under the supremacy clause of the United States Constitution, U.S. CONST. art. VI, cl. 2, when federal and state statutes conflict, the federal statute will prevail. Mitchell v. Mitchell, 437 So. 2d 122 (Ala. Civ. App. 1982); Tufares v. Wright, 98 N.M. 8, 644 P.2d 522 (1982). Therefore, when the PKPA and UCCJA conflict, the PKPA controls.

68. The following are additional distinctions between the UCCJA and the PKPA. The PKPA provides continuing jurisdiction in the original awarding state where the original decree complied with 28 U.S.C. § 1738A, the state continues to have jurisdiction under its own laws, and the child or one of the parents continues to reside there. 28 U.S.C. § 1738A(c)(2)(E), (d) (1982). The PKPA expressly provides that full faith and credit be given to child custody determinations of other jurisdictions while the UCCJA involves a statutory enactment of the common law doctrine of comity. 28 U.S.C. § 1738A (1982). The PKPA makes the Federal Parent Locator Service available in child custody cases and in cases of parental kidnapping. 42 U.S.C. §§ 654, 663 (1982). The PKPA also makes the Federal Fugitive Felony Act applicable to interstate abductions of children, 18 U.S.C. § 1073 note (1982).

69. For a more complete discussion of the PKPA, see Note, *supra* note 10, at 419; Blakesley, *supra* note 31, at 291.

70. *See* 28 U.S.C. § 1738A(c)(2)(A),(B),(C),(D),(E) (1982).

four alternative bases of jurisdiction that closely parallel those found in the UCCJA.[71] However, unlike the UCCJA, significant connection/substantial evidence jurisdiction cannot exist when another state is the child's home state,[72] because the home state is the preferred basis of jurisdiction under the PKPA. Accordingly, at least in theory, only one state may properly exercise jurisdiction over the determination of the custody dispute and child snatching will be of little help to the non-custodial parent.[73] This is so because, even though the PKPA directly applies only to modification proceedings, it indirectly governs initial custody determinations as well, since a custody decree that fails to conform to the PKPA requirements will not be entitled to full faith and credit in another state.[74]

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71. 28 U.S.C. § 1738(A)(c) (1982) provides in pertinent part:

A child custody 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;

(C) the child is physically present in such 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;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

72. 28 U.S.C. § 1738A(c)(2)(B) (1982) allows jurisdiction to be exercised based on the significant connections/substantial evidence test *only* if "it appears that no other state would have jurisdiction under subparagraph (A)," subparagraph (A) being the home state provision.

73. *PKPA Hearing, supra* note 31, at 48.

74. 28 U.S.C. § 1738A(a) (1982) requires that the full faith and credit command of the PKPA be applicable only to a "custody determination made consistently with the provisions of this section." Therefore, the court entering the initial decree must also follow the PKPA provisions in order to avoid having a court of another state modify the original decree without regard to the PKPA.

The interacting provisions of the PKPA and UCCJA were applied by the Arkansas Supreme Court in *Norsworthy v. Norsworthy*[75] to determine whether jurisdiction had been properly exercised by an Arkansas court. In *Norsworthy* a suit for divorce and custody was filed in Texas by the father, and an identical suit was subsequently filed in Arkansas by the mother. In deciding whether the Arkansas chancery court had jurisdiction to issue the decree, the supreme court noted that a primary objective of the UCCJA is to "deter abductions and other unilateral removals of children undertaken to obtain custody awards."[76] This objective would have been thwarted if Lauren Norsworthy were allowed to achieve summary dismissal of a suit filed by the mother in response to his abduction of his daughter merely by having filed suit in Texas before executing the abduction.[77] Such a result would encourage methods of obtaining custody that the UCCJA was plainly designed to prevent.[78]

The supreme court found that the chancery court was not necessarily required to dismiss the suit filed there despite the fact that a similar suit was already pending in Texas. The UCCJA required the court to defer jurisdiction only if the Texas court was exercising jurisdiction substantially in conformity with the UCCJA.[79] The court determined that the record was unclear as to the basis of Texas' jurisdictional claims, since the child had never been to Henderson County, Texas, and there was no evidence of a connection between the child and that county.[80] Nevertheless, though it concluded that dismissal was not required, the supreme court held that the Arkansas chancery court erred in rendering a decree without first communicating with the Texas courts[81] regarding which forum was more appro-

75. 289 Ark. 479, 713 S.W.2d 451 (1986).

76. *Id.* at 483, 713 S.W.2d at 454 (quoting ARK. STAT. ANN. § 34-2701(a)(5) (Supp. 1985)). The statute expressly directs that it be construed to promote its objectives. ARK. STAT. ANN. § 34-2701(b) (Supp. 1985).

77. 289 Ark. at 483, 713 S.W.2d at 454.

78. *Id.*

79. ARK. STAT. ANN. § 34-2706(a) (Supp. 1985).

80. 289 Ark. at 483, 713 S.W.2d at 454.

81. The Court acknowledged that there had also been a suit pending in Harris County, Texas, before either of the two suits at issue (Henderson County, Texas, and Crittenden County, Arkansas) were filed. The court stated that the status of the Harris County suit was not entirely clear, although it was apparently dismissed for failure to prosecute. Although paying little attention to the suit throughout the opinion, in conclusion, the court stated, "We think, therefore, it was incumbent on the Arkansas court before proceeding to a final decree, to enter into direct communication with one or *both* District Courts in Texas to determine . . . which was the better forum to decide custody." *Id.* at 487, 713 S.W.2d at 456 (emphasis added). If the Harris County suit is to be considered, it raises the additional issue of whether the continuing jurisdiction provision of the PKPA would require Arkansas to defer to the

priate.[82] Even when jurisdiction can be maintained under the UCCJA, it requires that once the court is informed of another pending proceeding, it shall stay its proceeding and communicate with the court in which the other proceeding is pending.[83] The court determined that this provision is mandatory, and that the purposes of the UCCJA are not served when a court, with knowledge that the subject matter of child custody is pending in another state, ignores the foreign proceeding.[84] Accordingly, the chancery court was required to stay its proceeding and communicate with the Texas court (or courts)[85] before assuming jurisdiction.

The supreme court also noted that the chancery court did not consider the requirements of the PKPA before rendering the decree.[86] The chancery court based jurisdiction on the significant connection/substantial evidence provision of the UCJA,[87] and although jurisdiction could be properly maintained under that section, Texas was the child's home state under both the UCCJA and the PKPA.[88] Both acts define home state as the state in which the child, immediately preceding the time involved, lived with his parents or a parent for at least six consecutive months, not considering temporary absences.[89] Until Darlah and Suzanne had lived in Arkansas for six consecutive months, Texas remained Darlah's home state. Unlike the UCCJA, in which concurrent jurisdiction can exist in two states under the home state provision[90] and the significant connection/substantial evidence provision,[91] respectively, the PKPA does not recognize significant connection/substantial evidence jurisdiction where another state is the child's home state.[92] Thus, Arkansas could not maintain jurisdiction consistently with the provisions of the PKPA, and a decree ren-

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court in Harris County, Texas. The PKPA provides that a state shall have continuing jurisdiction if the state made a custody determination consistently with the provisions of the PKPA, if that state continues to have jurisdiction under its own laws (the UCCJA), and the state remains the residence of the child or of any contestant. 28 U.S.C. § 1738A(d) (1982).

82. 289 Ark. at 487, 713 S.W.2d at 456.

83. ARK. STAT. ANN. § 34-2706(c) (Supp. 1985).

84. 289 Ark. at 486, 713 S.W.2d at 455. *See also* Bowden v. Bowden, 182 N.J. Super. 307, 440 A.2d 1160 (1982); Bonis v. Bonis, 420 So. 2d 104 (Fla. App. 1982).

85. 289 Ark. at 487, 713 S.W.2d at 456. *See also supra* note 81.

86. 289 Ark. at 482, 713 S.W.2d at 453.

87. *Id.* at 481, 713 S.W.2d at 453.

88. *Id.* at 484, 713 S.W.2d at 455 (citing ARK. STAT. ANN. § 34-2702(5) (Supp. 1985) and 28 U.S.C. § 1738A(b)(4) (1982)).

89. ARK. STAT. ANN. § 34-2702(5) (Supp. 1985); 28 U.S.C. § 1738A(b)(4) (1982).

90. *See* ARK. STAT. ANN. § 34-2703(a)(1) (Supp. 1985).

91. *See Id.* § 34-2703(a)(2) (Supp. 1985).

92. *See* 28 U.S.C. § 1738A(c) (1982). *See also*, 1 J. MCCAHEY, M. KAUFMAN, C. KRAUT & J. ZETT, CHILD CUSTODY AND VISITATION LAW AND PRACTICE § 4.06[1],[2],[3] (1986).

dered inconsistently would not be entitled to full faith and credit in foreign states. Accordingly, the Arkansas Supreme Court remanded the case for further proceedings in accordance with the UCCJA and the PKPA.[93]

The problem of parental kidnapping is greater today than ever before. With the high incidence of divorce prevalent in our society, ten million children have the benefit of only one parent in their household. Because many kidnappings between parents go unreported, accurate statistics are unavailable. However, "it is estimated that between 25,000 and 100,000 children are victims of interstate child snatchings each year."[94]

The *Norsworthy* decision is significant because it shows the Arkansas Supreme Court's willingness to follow the letter of the PKPA and the UCCJA in combatting child snatching. Despite the fact that the PKPA was enacted in 1980, it has been mentioned in only one other Arkansas case.[95] As mentioned earlier, neither party cited the PKPA in their briefs, lending support to the contention that it had been virtually overlooked by the courts until now.

The PKPA, through its exclusive deference to home state jurisdiction, theoretically defeats concurrent jurisdiction over child custody disputes. However, cases continue to arise in other jurisdictions in which two states have issued conflicting custody decrees, both purporting to be in compliance with the PKPA,[96] in derogation of the objectives of the Act. This has led to suits being filed in federal district courts around the country seeking a determination as to which of the two conflicting state decrees is valid.[97] Federal courts are split as to whether the PKPA was intended to furnish a private cause of action in federal court to enforce decrees rendered under the PKPA. The Courts of Appeals for the Third, Fourth, Fifth, and Eleventh Circuits have held that a federal cause of action exists,[98] while the

93. 289 Ark. at 487, 713 S.W.2d at 456.

94. Note, *supra* note 10 at 419 (citing statement of Senator Mathias, *PKPA Hearings, supra* note 31).

95. O'Daniel v. Walker, 14 Ark. App. 210, 686 S.W.2d 805 (1985).

96. *See, e.g.*, Hickey v. Baxter, 800 F.2d 430 (4th Cir. 1986); Olmo v. Olmo, 646 F. Supp. 233 (E.D.N.Y. 1986).

97. *See, e.g.*, Hickey v. Baxter, 800 F.2d 430 (4th Cir. 1986) (Virginia and Florida); McDougald v. Jenson, 786 F.2d 1465 (11th Cir. 1986) (Florida and Washington); Heartfield v. Heartfield, 749 F.2d 1138 (5th Cir. 1985) (Louisiana and Texas); DiRuggiero v. Rodgers, 743 F.2d 1009 (3d Cir. 1984) (New Jersey and North Carolina); Leyda v. Roach, 650 F. Supp. 951 (S.D. Iowa 1987) (Iowa and Florida); Olmo v. Olmo, 646 F. Supp. 233 (E.D.N.Y. 1986) (New York and Colorado).

98. Hickey v. Baxter, 800 F.2d 430 (4th Cir. 1986); McDougald v. Jenson, 786 F.2d 1465

Courts of Appeals for the Seventh, Ninth, and District of Columbia Circuits have held to the contrary.[99] The United States Supreme Court has granted a writ of certiorari in *Thompson v. Thompson*[100] to decide the question and end the inconsistency among the circuits.

The Arkansas Supreme Court, unlike courts of other states, has shown its determination to avoid conflicting adjudications and to promote cooperation between states, thereby reducing the need for federal court intervention in custody matters. By interpreting the provisions of the UCCJA and PKPA strictly and in good faith, the Arkansas Supreme Court has set itself apart from those states that continue to exercise jurisdiction in contravention of the clearly stated purposes of the UCCJA, thereby increasing the amount of litigation in the federal court system.

Because of the unique factual setting of *Norsworthy*, it could be argued that the PKPA may benefit child snatchers as it possibly has in this case. Although practically correct, the benefit in *Norsworthy* was achieved, not by seeking loopholes in the Act, but through strict application of the law.

Although the result in *Norsworthy* may seem unjust, it shows the Arkansas Supreme Court's determination to follow the letter and spirit of both the UCCJA and PKPA, whatever the outcome. It seems to follow that under the more typical situation, where the child snatcher brings the child into Arkansas from another state seeking a favorable determination from Arkansas courts, the strict interpretation of the PKPA and UCCJA chosen by the Arkansas Supreme Court will prevent Arkansas from becoming a "friendly forum" to child snatching parents seeking to change valid custody decrees.

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(11th Cir. 1986); Heartfield v. Heartfield, 749 F.2d 1138 (5th Cir. 1985); DiRuggiero v. Rodgers, 743 F.2d 1009 (3d Cir. 1984); Flood v. Braaten, 727 F.2d 303 (3d Cir. 1984).

99. Thompson v. Thompson, 798 F.2d 1547 (9th Cir. 1986), *cert. granted*, 107 S. Ct. 964 (1987); Lloyd v. Loeffler, 694 F.2d 489 (7th Cir. 1982); Bennett v. Bennett, 682 F.2d 1039 (D.C. Cir. 1982).

100. Thompson v. Thompson, 798 F.2d 1547 (9th Cir. 1986), *cert. granted*, 107 S. Ct. 964 (1987).