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## 1998 Survey of Rhode Island Law: Cases: Conflict of Law

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**Conflict of Law.** *Nadeau v. Nadeau*, 716 A.2d 717 (R.I. 1998). In the event of a conflict of laws, the Parental Kidnapping Prevention Act (PKPA) preempts state law founded on the Uniform Child Custody Jurisdiction Act (UCCJA). Thus, if emergency jurisdiction is assumed under state law, that jurisdiction is temporary in nature. Once the emergency abates, proper jurisdiction will be determined by the PKPA.

In *Nadeau v. Nadeau*,<sup>1</sup> the Rhode Island Supreme Court addressed the confusion surrounding two statutes designed to resolve jurisdictional conflict in child custody cases.<sup>2</sup> The Connecticut court made an initial determination in an interstate custody dispute.<sup>3</sup> Because Connecticut's jurisdiction was emergency in nature, it was temporary.<sup>4</sup> Therefore, the supreme court had to decide if Connecticut had an alternate ground of jurisdiction.<sup>5</sup> The Connecticut Superior Court argued it had state law jurisdiction under the UCCJA.<sup>6</sup> In examining the two statutes the court affirmed the Rhode Island Family Court's holding that federal law, the PKPA, preempts the state's law, the UCCJA.<sup>7</sup> Under the PKPA, home-state jurisdiction is preferred.<sup>8</sup> Because Rhode Island is the home state, it has proper jurisdiction to make a permanent determination of the interstate custody issues on the merits.<sup>9</sup>

#### FACTS AND TRAVEL

Sharon and Donald Nadeau, M.D., were married with five children and lived in Coventry, Rhode Island in 1997.<sup>10</sup> In April of 1997, Sharon and the children fled from Coventry and moved to the Connecticut.<sup>11</sup> Sharon had grown up in Connecticut and her parents resided there.<sup>12</sup> Sharon claimed that her husband had

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1. 716 A.2d 717 (R.I. 1998).
  2. *See id.*
  3. *See id.* at 718.
  4. *See id.* at 724.
  5. *See id.* at 725.
  6. *See id.*
  7. *See id.*
  8. *See id.*
  9. *See id.*
  10. *See id.* at 718.
  11. *See id.*
  12. *See id.*

subjected her to years of physical, emotional, and psychological abuse, which caused her to flee Rhode Island.<sup>13</sup>

Sharon petitioned the Connecticut Superior Court, seeking custody of the children, and protection from her husband Donald.<sup>14</sup> The temporary order was granted and the Connecticut Superior Court set a date for a hearing on permanent custody.<sup>15</sup> In addition, Sharon filed for divorce.<sup>16</sup> Shortly thereafter, Donald petitioned the Rhode Island Family Court.<sup>17</sup> He filed for divorce, sought custody of the children, and protection from Sharon.<sup>18</sup> He alleged that Sharon was psychologically incompetent to care for the children.<sup>19</sup> Despite being served with notice of the Connecticut proceedings, Donald did not disclose the status of the proceedings to the Rhode Island Family Court in the divorce complaint.<sup>20</sup> In his custody and protection motions, he noted that Sharon had filed motions in Connecticut, but argued that they were without cause and that the Connecticut Superior Court lacked jurisdiction.<sup>21</sup> The Rhode Island Family Court ordered Sharon to return the children to Rhode Island and granted Donald temporary custody of the children.<sup>22</sup>

With proceedings commenced in both states, the Connecticut Superior Court made its prior temporary order permanent, and granted sole custody to Sharon.<sup>23</sup> There now existed two custody orders in direct conflict with each other. Donald presented a motion to dismiss the Connecticut proceedings in the Connecticut Superior Court for jurisdictional failure.<sup>24</sup> He also petitioned the Rhode Island Family Court for a determination on the jurisdiction issue.<sup>25</sup> The Rhode Island Family Court held that it had proper jurisdiction over all divorce and custody proceedings concerning

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13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

17. *See id.*

18. *See id.*

19. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*

23. *See id.*

24. *See id.* at 719.

25. *See id.*

Sharon, Donald and their children.<sup>26</sup> However, the record lacked evidence that the Rhode Island justice knew about the Connecticut order and proceedings.<sup>27</sup>

Sharon tried to have the Rhode Island proceedings dismissed.<sup>28</sup> At this time, the Rhode Island judge suspended the Rhode Island actions.<sup>29</sup> Pursuant to section 15-14-7 of the UCCJA, the Rhode Island judge attempted to contact the Connecticut court in order to determine the status of the Connecticut action.<sup>30</sup> Because the Rhode Island Court was unsuccessful in its attempts to contact the Connecticut judge, it decided to proceed with the determination of Sharon's motion to dismiss.<sup>31</sup>

The trial judge recognized that the PKPA was enacted to resolve these type of jurisdictional problems.<sup>32</sup> The court held that in cases where state law conflicts with the PKPA, the state law is preempted.<sup>33</sup> In accordance with the PKPA, the trial judge held that regardless of the nature of the jurisdiction exercised by Connecticut, Rhode Island has preference under the PKPA because it is the home state of the children.<sup>34</sup> The judge then held that although the exercise of jurisdiction by Connecticut would be proper if characterized as emergency in nature, that jurisdiction was temporary.<sup>35</sup> Once the emergency abated, Rhode Island would be the proper state under the PKPA to make a final determination concerning any out-of-state orders.<sup>36</sup> In response to the determination by the family court, Sharon petitioned the Rhode Island Supreme Court by writ of certiorari and demanded a stay of the Rhode Island proceedings.<sup>37</sup>

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26. *See id.*

27. *See id.*

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.* at 719-20.

32. *See id.* at 720.

33. *See id.*

34. *See id.* "The children had resided in Rhode Island for at least six months before moving with their mother to Connecticut." *Id.*

35. *See id.*

36. *See id.*

37. *See id.*

## BACKGROUND

Congress enacted the UCCJA in order to provide rules which would govern jurisdictional disputes in interstate child custody cases.<sup>38</sup> Rhode Island adopted the UCCJA as state law in 1978.<sup>39</sup> Connecticut has also adopted the UCCJA as state law.<sup>40</sup> Congress' goal was to have each state adopt the UCCJA in order to provide uniform rules.<sup>41</sup> Problems arose when some states failed to adopt the statute or adopted the statute with material changes.<sup>42</sup> Those states became havens for parents who kidnapped their children; a non-UCCJA state did not have to follow the jurisdictional guidelines.<sup>43</sup> Congress responded with the PKPA; this federal law required states to conform to each other's pre-existing orders as long as they were consistent with the PKPA.<sup>44</sup>

The finding of consistency is a two-part test. First, the court that enters the initial orders must have state law jurisdiction pursuant to the UCCJA.<sup>45</sup> The court must then fulfill one of the five acceptable conditions set forth in the PKPA.<sup>46</sup> An example of an acceptable basis is where the state is the home state of the child.<sup>47</sup> "Home state" is defined as the place where the child most recently resided for at least six months.<sup>48</sup> Another acceptable basis is if it appears that no other state has home state jurisdiction and it is in the best interests of the child to assume jurisdiction.<sup>49</sup> The best interest may be demonstrated by a significant connection with the state.<sup>50</sup> It is also acceptable for the state to assume jurisdiction if the child is in the state and has been abandoned or is in an emergency situation where he or she may be the victim of abuse.<sup>51</sup> Sat-

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38. *See id.* at 721.

39. *See id.* (citing *Paolino v. Paolino*, 420 A.2d 830, 835 (R.I. 1980)).

40. *See id.* at 719 n.1 (citing Conn. Gen. Stat. § 46b-93 (1994)).

41. *See id.* at 721.

42. *See id.* (citing *Thompson v. Thompson*, 484 U.S. 174, 181 (1988); *Sheila L. v. Ronald P.M.*, 465 S.E.2d 210, 218 (W.Va. 1995)).

43. *See id.* (citing *Thompson*, 484 U.S. at 181).

44. *See id.* (citing *Thompson*, 484 U.S. at 175-76).

45. *See id.* (citing *Thompson*, 484 U.S. at 176-77).

46. *See id.*

47. *See id.* at 722 (citing 28 U.S.C. § 1738A(c)(2)(A)(1996)).

48. *See id.* (citing 28 U.S.C. § 1738A(b)(4)).

49. *See id.* (citing 28 U.S.C. § 1738A(c)(2)(B)).

50. *See id.* (citing 28 U.S.C. § 1738A(c)(2)(C)).

51. *See id.* (citing 28 U.S.C. § 1738A(c)(2)(C)).

isfaction of any one of these conditions results in a proper exercise of jurisdiction under the PKPA.

#### ANALYSIS AND HOLDING

The Rhode Island Supreme Court determined that the Connecticut Superior Court had properly exercised its jurisdiction under the PKPA.<sup>52</sup> Connecticut's exercise was the continuing jurisdiction type, made in response to an emergency situation and continued because the parties remained in the state.<sup>53</sup> The supreme court addressed the family court's characterization of the Connecticut jurisdiction as temporary.<sup>54</sup> The family court relied on *Benda v. Benda*,<sup>55</sup> a recent New Jersey case. Though *Benda* involved the modification of a previously existing custody order, rather than an initial custody order, the court found that the basic principle was the same.<sup>56</sup> Both the UCCJA and the PKPA are designed to prevent conflict.<sup>57</sup> Because of this, an exercise of emergency jurisdiction consistent with both the UCCJA and the PKPA must still not conflict with the preferred home-state jurisdiction in cases where interstate custody is at issue.<sup>58</sup>

The Rhode Island Supreme Court declared that Connecticut's jurisdiction was temporary.<sup>59</sup> It then looked to which state had proper permanent jurisdiction over Sharon and Donald's claims. It is here where the UCCJA and the PKPA conflicted. Under the UCCJA, adopted by Connecticut, jurisdiction is best exercised where it fits the best interest of the child.<sup>60</sup> Sharon argued that Connecticut is in the children's best interests.<sup>61</sup> Under the PKPA, the preference is for home-state jurisdiction.<sup>62</sup> Under this analysis, all parties agreed that the home state was Rhode Island.<sup>63</sup> The supreme court held that federal law, the PKPA, must preempt

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52. *See id.* at 723.

53. *See id.*

54. *See id.*

55. 565 A.2d 1121 (N.J. Super. Ct. App. Div. 1989).

56. *See Nadeau*, 716 A.2d at 724.

57. *See id.* at 721.

58. *See id.* at 724-25.

59. *See id.* at 724.

60. *See id.* at 725.

61. *See id.*

62. *See id.*

63. *See id.*

Connecticut's state law.<sup>64</sup> The court then remanded the case to the family court to hear the custody hearing on the merits, with a clear grant of jurisdiction.<sup>65</sup>

#### CONCLUSION

The Rhode Island Supreme Court settled an important conflict in two interstate custody laws in *Nadeau v. Nadeau*. The court's determination of the preemptive nature of the PKPA is consistent with the intent of Congress to create uniform laws in interstate custody conflicts. By declaring emergency jurisdiction temporary, the supreme court has ensured that the PKPA will provide powerful guidelines for future interstate custody disputes.

Carly E. Beauvais

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64. *See id.* at 725-26.

65. *See id.* at 726.