Out of State Issues Relating to Child Custody/Child Support/Foster Care

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FAMILY LAW UPDATE OR FUN WITH UCCJEA AND UIFSA: JURISDICTIONAL PROBLEMS

by

Linda D. Elrod
Richard S. Righter Distinguished Professor of Law
Director, Children and Family Law Center
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** annotations regarding Virginia
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I. Overview

Child custody cases prior to 1968 were marked by forum shopping, repetitive custody litigation, inconsistent judgments, and sometimes parental kidnapping. The traditional view used the law of the state where the child was domiciled. RESTATEMENT, CONFLICT OF LAW 117 (1934). Then courts allowed use of the law of the state that had a substantial interest - marital domicile or current residence of either parent or child. *See* May v. Anderson, 345 U.S. 528 (1953). Before 1968, sole custody was awarded to one party, usually the mother, and the other had "visitation." If the child went to another state for visitation, at the end of the period, the visiting parent might petition the court for sole custody. The Full Faith and Credit Clause of the United States Constitution applies to *final* judgments. Because child custody is modifiable throughout child's minority, courts did not give full faith and credit to sister state decrees. Therefore, the visitation could turn into a relocation. Also if the custodial parent moved to another jurisdiction, which was

fairly freely allowed, the relocation could result in loss of jurisdiction in the decree state. Some states, like Kansas, used comity to recognize sister state decrees.

II. Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act

A. *Uniform Child Custody Jurisdiction Act*, 9 U.L.A. (Part IA) 261 (1999) (UCCJA).

1. Established Four Alternative Co-equal Jurisdictional Bases - Section 3 – Home state - the six month rule; significant connection and substantial evidence; emergency jurisdiction; no other state has jurisdiction.
2. A court could decline jurisdiction for pending litigation, inconvenient forum, and unclean hands.
3. All fifty states enacted the UCCJA. Only Massachusetts still uses it. For commentary on the UCCJA, *see* Brigitte Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207 (1969).

B. *Parental Kidnapping Prevention Act* (PKPA)

A court must enforce an order from another state if the decree state exercised jurisdiction in substantial conformity with the PKPA or under factual circumstances meeting the jurisdictional standards of the PKPA. 28 U.S.C. ' 1738A(a)(1):

1. A custody order is made consistently with the PKPA if the court issuing the order had jurisdiction under its own laws and one of five conditions enumerated in ' 1738A(c)(2) 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.

2. Exclusive Continuing Jurisdiction

Once a state has exercised jurisdiction properly, the initial decree-granting state has exclusive continuing jurisdiction so long as it remains the residence of a child or any contestant. 28 U.S.C. ' 1738A(d)(f).

3. Conflicts

The PKPA requires that one state give full faith and credit to a sister state decree if that state used PKPA criteria.

a. In the event of a conflict between states, the PKPA controls. *See*

Miller-Jenkins v. Miller-Jenkins, 49 Va. App. 88, 637 S.E.2d 330 Miller-Jenkins v Miller-Jenkins, 912 A2d 951, cert den (2007) 550 US 918, 127 S Ct 2130, 167 L Ed 2d 863 and appeal after remand, decision reached on appeal by (2008) 183 Vt 647, 949 A2d 1082, 2008 Vt Unpub LEXIS 25, cert den (2008) 555 US 888, 129 S Ct 306, 172 L Ed 2d 152 and subsequent app (2010) 189 Vt 518, 2010 VT 98, 12 A3d 768 and related proceeding, motion gr, in part, motion den, in part, dismd, in part 2013 U.S. Dist. LEXIS 152846 (DC Vt 2013) - Parental Kidnapping Protection Act (PKPA), 28 USCS § 1738A, was applicable in determining whether Vermont family court that had previously issued temporary custody and visitation order in pending proceeding to dissolve civil union was required to give full faith and credit to later Virginia parentage order determining that former partner of child's biological mother was not child's legal parent; Virginia order was visitation determination under 28 USCS § 1738A(b)(9) because it contained provisions pertaining to visitation, and fact that it arose out of parentage proceeding rather than custody or visitation proceeding did not make PKPA inapplicable. .

See also Ramirez v. Barnet, 384 P.3d 828 (Ariz. Ct. App. 2016).

Mainster v. Mainster, 466 So. 2d 1228 (Fla. Dist. Ct. App. 2d Dist. 1985) - Virginia was child's "home state" under 28 USCS § 1738A(b)(4) where although paternal grandfather took child to Virginia to live with father allegedly without mother's consent, child had been living in Virginia for requisite 6 months preceding father's filing of custody action in Virginia day after mother removed child from father's home and returned to Florida

b. No private right of action under PKPA. *See* Thompson v.

Thompson, 484 U.S. 174 (1988).

III. Uniform Child Custody Jurisdiction and Enforcement Act

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), 9 U.L.A. Part IA 649, tracks the PKPA and adds rules for modification and enforcement. Section 105

makes the UCCJEA applicable to custody decrees from other countries as well as states. All but Massachusetts have enacted the UCCJEA.

A. *Subject Matter Jurisdiction*

1. A court must have subject matter jurisdiction under the provisions of the applicable child custody jurisdiction act (UCCJEA in 49 states) and the Parental Kidnapping Prevention Act.

2. Subject matter cannot be waived nor can it be imposed by consent of the parties.

   Hyat v. Hina, 101 Va. Cir. 245 (Cir. Ct. 2019) – Fairfax Circuit Court refused to entertain child custody in a divorce where both parent consented for the court to litigate the matter because neither parent resided in Virginia nor was Virginia the child's home state.

   See Alfonso v. Skadden, 251 S.W.3d 52 (Tex. 2008); *In re* Ruff, 275 P.3d 1175 (Wash. Ct. App. 2012); Officer v. Blankenship, 555 S.W.3d 449 (Ky. Ct. App. 2018) (even though mother consented to Kentucky's jurisdiction, Oregon was the home state of the children because they had lived there for two years).

3. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination. § 20-146.12 (C)

4. Subject matter jurisdiction is determined at the time of institution of the action. Jurisdiction is established even if the parties move after the date of filing the petition. § 20-146.12 (A)(1)

Where the child was not living in Virginia on the date the proceeding was filed, a court must determine if Virginia was the child's home state at any time during the six months before the filing date, and if so, Virginia would continue to have initial jurisdiction. Prizzia v. Prizzia, 58 Va. App. 137, 707 S.E.2d 461 (2011).

5. Divorce jurisdiction is different. Even if another country has jurisdiction for divorce, it may not have for custody. *See* Mireles v. Veronie, 154 N.E.3d 727 (Oho Ct. App. 2020) (mother and father had lived in Ohio; father filed for divorce after pregnant mother moved out of state – Ohio could grant divorce but not award custody); Sajjad v. Cheema, 51 A.3d 146 (N.J. Super. Ct. App. Div. 2012) (trial court erred in not analyzing child′s home state under UCCJEA even though divorce action in Pakistan - child born in UK in 2003, lived in the United States several years).

Prizzia v. Prizzia, 58 Va. App. 137, 707 S.E.2d 461, (2011) - Hungarian court did not exercise jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child Custody Jurisdiction and Enforcement Act because Hungary was not the "home state" of the child when the wife filed her divorce petition in the Hungarian court since the child had not yet lived in Hungary for six months, and Hungary had not been the home state of the child at any time during the six-month period immediately preceding the date of wife's filing; Hungary did not have jurisdiction pursuant to any of the other potential avenues for obtaining jurisdiction under subsection A of § 20-146.12 because: (1) Virginia retained home state jurisdiction under subdivision A 1 of § 20-146.12; and (2) the Virginia trial court did not decline to exercise jurisdiction on the ground that the Hungarian court was the more appropriate forum in accordance with the requirements of § 20-146.18 or 20-146.19.

If the court lacks subject matter jurisdiction, most courts have found that the order is void, even if several years have passed. A defect in subject matter jurisdiction can be raised at any time by any party or the

court itself. Parisi v. Niblett, 238 A.3d 740 (Conn. App. 2020). There are a couple of states that have not allowed challenges to subject matter jurisdiction many years after the judgment where the parties participated in the process and had opportunities to raise the issue. *See In re* J.W., 267 Cal. Rptr. 3d 554 (Ct. App. 2020); In the Interest of D.S., 602 S.W.3d 504, 517-18 (Tex. 2020).

Morrison v. Bestler, 239 Va. 166, 169-70, 387 S.E.2d 753, 755-56 (1990) - there is a significant difference between subject matter jurisdiction and the other "jurisdictional" elements. Subject matter jurisdiction alone cannot be waived or conferred on the court by agreement of the parties. [Citation omitted]. A defect in subject matter jurisdiction cannot be cured by reissuance of process, passage of time, or pleading amendment. While a court always has jurisdiction to determine whether it has subject matter jurisdiction, a judgment on the merits made without subject matter jurisdiction is null and void. [Citation omitted]. Likewise, any subsequent proceeding based on such a defective judgment is void or a nullity. [Citation omitted].
Even more significant, the lack of subject matter jurisdiction can be raised at any time in the proceedings, even for the first time on appeal by the court *sua sponte.* [Citation omitted]. In contrast, defects in the other jurisdictional elements generally will be considered waived unless raised in the pleadings filed with the trial court and properly preserved on appeal. Rule 5:25.

B. Child Custody Determination

1. *Adoption*

The UCCJA did include adoption but the UCCJEA did not because there was a Uniform Adoption Act, although no state enacted it. Although Kansas and seven other states include adoption in child custody determinations, most states do not.

Virginia does not include adoption under the UCCJEA - § 20-146.2 - This act does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

[Comments - Children that are the subject of interstate placements for adoption or foster care are governed by the Interstate Compact on the Placement of Children (ICPC). The UAA § 2-107 provides that the provisions of the compact, although not jurisdictional, supply the governing rules for all children who are subject to it. As stated in the Comments to that section: "Once a court exercises jurisdiction, the ICPC helps determine the legality of an interstate placement." For a discussion of the relationship between the UCCJA and the ICPC see J.D.S. v. Franks, 893 P.2d 732 (Ariz. 1995) holding UCCJA controls jurisdiction and not ICPC.]

The PKPA requires full faith and credit to any custody decree made in accordance with the PKPA. A decision vacating an adoption is entitled to full faith and credit. *See In re* N.D., 142 N.E.3d 1225 (Ohio Ct. App. 2020). Additionally, if a birth father files a paternity action while a state has jurisdiction over an infant, the court in the state where adoptive parents have taken the child must give full faith and credit to the paternity judgment. *See* B.V. v. J.M., 306 So. 3d 38 (Ala. Civ. App. 2020). Additionally, if an adoption involves a termination of parental rights following an adjudication that the child is in need of care and a parent has visitation, the UCCJEA is implicated. The termination of parental rights must take place in the state having continuing exclusive jurisdiction. In all states a child in need of care action falls under the UCCJEA. *See In re* M.M.V., 469 P.3d 556 (Colo. App. 2020).

Baby E.Z. v. T.I.Z, 266 P.3d 702 (2011), cert. denied, 565 U.S. 1260 (2012) - Where unmarried parents gave birth to child in Virginia, birth mother consented to adoption in Virginia and adoptive parents moved to

Utah where they filed petition for adoption; meanwhile Virginia court issued order granting birth father child custody; Supreme Court of Utah held that 28 USCS § 1738A applied to adoption proceedings but did not operate to divest district courts of Utah their constitutional authority to decide adoption cases; when appellant birth father filed motion to intervene in Utah adoption proceeding, he waived application of PKPA by failing to raise it in district court.

2. *Embryos*

An unusual case arose when one donor of two embryos attempted to use the Louisiana Human Embryo Statute. The mother (Sofia Vergara) is a resident of California; the father (Nick Loeb) is a citizen of Florida with a residence in New York City. While engaged in 2012, the parties did in vitro a couple of times. When they split up, the mother wanted to destroy the embryos; the father wanted to implant them. The father lost every suit and decided to try Louisiana. In a 29 page opinion, the court found, among other things, it had no jurisdiction.

C. Bases for Jurisdiction- Initial Decree

UCCJEA Section 201 (§ 20-146.12) sets out the basic jurisdictional requirements.

1. ***Home state.***

This is the home of the child on the date of the commencement of the proceeding, or within six months before the commencement of the proceeding and the child is absent but a parent or person acting as a parent continues to live in the state. *See* Rosen v. Celebreeze, 83 N.E.2d 420 (Ohio 2008); Chamberlin v. Chamberlin, 176 So. 3d 1118 (La. Ct. App.

2015); Duckett v. Goforth, 649 S.E.2d 72 (S.C. Ct. App. 2007); Rhoads v. Rhoads, 209 S.W.3d 24 (Mo. Ct. App. 2006) (lived means physically present, not legal residence).

a. Infant - Place of birth. *See* Baker v. Tunney, 201 So. 3d 1235 (Fla. Dist. Ct. App. 2016); Fleckles v. Diamond, 35 N.E.3d 176 (Ill. App. Ct. 2015); Castro v. Castro, 818 N.W.2d 753 (N.D. 2012) (court erred in dismissing mother's custody action since child was born in North Dakota and lived there the 6 months since birth even though father started action in Illinois where he lived – Illinois not exercising jurisdiction in conformity with UCCJEA). *In re* Kalbes, 733 N.W.2d 648 (Wis. Ct. App. 2007).

§ 20-146.1. Definitions (Home State)

In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned.

b. UCCJEA does not confer jurisdiction over unborn child. Arnold v. Price, 365 S.W.3d 455 (Tex. App 2011). So unwed father could not file an action in California when pregnant woman had relocated to New York, had the child, and filed for custody two days later. *In re* McK v. Bode, 974 N.Y.S.2d 434 (App. Div. 2013) (New York was child's home state).

c. Temporary absences do not count. States have been adopting a "totality of circumstances" test (as opposed to duration or intent) to

determine if the absence is "temporary." Among the factors to review are:

(1) physical presence of the child;

(2) integration of the child into the current community;

(3) duration of the absence;

(4) the parties' living arrangements;

(5) the location of the child's other family members;

(6) the frequency of relocation; and

(7) the parties' intentions. *See In re* Marriage of Schwartz & Battini, 410 P.3d 319 (Or. Ct. App. 2017); *In re* Parenting of B.K., 425 P.3d 703 (Mont. 2018). *See also* Adams v. Adams, 432 S.W.3d 49 (Ark. Ct. App. 2014); Garba v. Ndiaye, 132 A.3d 908 (Md. Ct. Spec. App. 2016).

§ 20-146.1. Definitions (Home State) - A period of temporary absence of any of the mentioned persons is part of the six month period.

§ 20-146.12 (A)(1) This Commonwealth is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth.

Sekerez v. Bravo, 1998 Va. App. LEXIS 663 (Va. Ct. App. Dec. 22, 1998) - Virginia had jurisdiction in a child custody proceeding where: (1) the parties resided in Virginia at the time the child was born; (2) the child's connections with Indiana arose only through the mother's unilateral decision to return to her family home, taking the child with her from Virginia; and (3) Virginia was the child's home state at the

time the mother removed him from Virginia and the father filed his custody proceeding.

2. ***Significant Connection.***

A court may assume jurisdiction *if no state has home state jurisdiction* or *if the home state declines jurisdiction* on the basis of an inconvenient forum, and (A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with the state other than mere physical presence; and (B) substantial evidence is available in the state concerning the child's care, protection, training, and personal relationships. *See In re* Diaz, 845 N.E.2d 935 (Ill. App. Ct. 2006).

3. All courts having jurisdiction under home state or significant connection have declined to exercise jurisdiction on the ground that a court of the petitioned state is the more appropriate forum.

4. No court of any other State would have jurisdiction.

§ 20-146.12 (A)(2) - A court of another state does not have jurisdiction under subdivision 1, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under § 20-146.18 or § 20-146.19, and (i) *the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this Commonwealth other than mere physical presence* and (ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training, and personal relationships;

D. Emergency Jurisdiction

§ 20-146.15. Temporary emergency jurisdiction

UCCJEA Section 204 allows a court to take temporary emergency jurisdiction if **the child is present in this State** and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

1. Domestic violence. *See* Schultz v. Schultz, 187 P.3d 1234 (Idaho 2008).

   UCCJEA is the exclusive means to determine jurisdiction over a child, which includes custody and/or visitation orders made in a domestic violence proceeding and applies to custody determinations made in a foreign country even if the competing forum has not adopted the UCCJEA.

2. Temporary order. If the court issues a temporary protective order that expires at the end of a certain time period, the court cannot thereafter extend the order. The parent should have brought the action in the state which has jurisdiction. *In re* N.U., 369 P.3d 984 (Kan. App. 2016).

3. If there is no previous enforceable custody determination and a proceeding has not been commenced in the state having jurisdiction, the emergency determination remains in effect until an order is obtained from a court of the state having jurisdiction. If such a child-custody proceeding has not been or is not commenced, the emergency determination becomes final, if it so provides and the state becomes the child's home state. *In re* K.L.B., 56 Kan. App. 2d 561, 369 P.3d 984 (2016).

4. A court taking emergency jurisdiction **must** communicate with the court that has jurisdiction. *See* Melgar v. Campo, 161 P.3d 1269 (Ariz. Ct. App. 2007). The Kansas Court of Appeals found Kansas lacked jurisdiction to terminate a father's rights when the court had exercised emergency jurisdiction for 21 months without communicating with the Texas court. *In re* P.J.B., No. 115,472, 2017 WL 945654 (Kan. App. Mar. 10, 2017). A court asserting temporary emergency jurisdiction cannot enter permanent orders without following the procedures set forth in the UCCJEA. *In re* Ruff, 275 P.3d 1175 (Wash. Ct. App. 2012); S.C. v. J.T.C., 47 So. 3d 1253, 1257-58 (Ala. Civ. App. 2010); *In re* Interest of Maxwell T., 721 N.W.2d 676 (Neb. Ct. App. 2006).

5. Emergency jurisdiction cannot be used to reopen and modify a decided custody dispute where another court has continuing exclusive jurisdiction and there is no emergency. *In re* A.A., 51 Kan. App. 2d 561, 369 P.3d 984 (2015).

Key v. Key, No. 1079-04-1, 2004 Va. App. LEXIS 608, at *12 (Ct. App. Dec. 14, 2004) - Code § 20-146.15, referenced in Code § 20-146.13(A) as a potential basis for jurisdiction, is inapplicable. That code section deals with temporary emergency jurisdiction in cases in which, *inter alia*, "the child is present in this Commonwealth." Code § 20-146.15(A). **Here, it is undisputed that the parties' children were in Maryland**, and Code § 20-146.15 does not apply.

Bennett v. Bennett-Smith, No. 1852-07-1, 2008 Va. App. LEXIS 395, at *1 (Ct. App. Aug. 12, 2008) – The appellate court held that the trial court's jurisdiction was not limited by Va. Code Ann. § 20-146.15 as the grandparents failed to advise the court of an alternative jurisdiction. The grandparents could not file for custody in Virginia, fail to advise the Virginia courts of their position that a child custody proceeding had

previously been filed in Kansas, litigate the custody matter in Virginia, and then argue that Virginia courts only had temporary emergency jurisdiction. Kansas no longer had exclusive, continuing jurisdiction under Va. Code Ann. § 20-146.13. The trial court had temporary emergency jurisdiction, and jurisdiction based upon the pursuit of custody by the grandparents in Virginia. The finding that the parent was not unfit was proper. The parent and the grandparents had a temporary agreement, whereby the grandparents would care for the child while the parent was at Naval boot camp and would return the child to the parent upon her completion of boot camp. The parties abided by that agreement. The finding that the parent did not voluntarily relinquish custody was proper. The grandparents failed to rebut the parental presumption in favor of the parent.

E. Declining Jurisdiction

1. Pending case in another jurisdiction

   Courts are prohibited from exercising jurisdiction over child custody questions when at the time of filing of the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction *substantially in conformity with that state's law*. *See* Cox v. Cantrell, 866 N.E.2d 798 (Ind. Ct. App. 2007); Jones v. Whimper, 727 S.E.2d 700 (N.C. Ct. App. 2012) (finding trial court properly declined to exercise jurisdiction where there was a pending action in New Jersey which had home state jurisdiction).

2. Inconvenient Forum

   Under Section 207, a court that has jurisdiction may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum and a court of another State is a more appropriate forum. The court looks

at the following:

a. whether domestic violence has occurred and is likely to continue and which State could best protect the parties and the child (Stoneman v. Drollinger, 64 P.3d 997 (Mont. 2003); *In re* T.R., 792 S.E.2d 197 (N.C. Ct. App. 2016); Rice v. McDonald, 390 P.3d 1133 (Alaska 2017);

b. length of time the child has resided outside State;

c. the distance between the court in this State and the court in the State that would assume jurisdiction. Symington v. Symington, 167 P.3d 658 (Wyo. 2007);

d. the relative financial circumstances of the parties;

e. any agreement of the parties as to which State should assume jurisdiction;

f. the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

g. the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence. Kevin McK. v. Elizabeth A. E., 54 N.Y.S.3d 17 (App. Div. 2017) (finding Mississippi was more convenient forum for father's petition to modify custody and enforce visitation after mother and child relocated to Mississippi); and

h. the familiarity of the court of each State with the facts and issues in

the pending litigation. *See* Hogan v. McAndrew, 131 A.3d 717 (R.I. 2016); Duckett v. Goforth, 649 S.E.2d 72 (S.C. Ct. App. 2007); Griffith v. Tressel, 92 A.2d 702 (N.J. Super. Ct. App. Div. 2007).

Swalef v. Anderson, 50 Va. App. 100, 646 S.E.2d 458, (2007) - The mother and father had lived in Virginia. The mother later left Virginia and went to live with an Indian tribe, of which she was a member, on a reservation in Minnesota. The mother filed for divorce in a Minnesota state court. The father claimed that the Minnesota court lacked jurisdiction. The Minnesota court ruled that because of prior proceedings in Virginia, the Virginia court had continuing jurisdiction unless the Virginia court declined jurisdiction. The father then filed proceedings in Virginia, but the trial court there eventually declined to exercise jurisdiction. Indeed, the trial court found that the best interests of the children dictated that the tribal court, which had all of the current information regarding the children, was the most convenient forum regarding issues surrounding the children. On appeal, the appellate court rejected the father's contention that the Virginia court had to retain jurisdiction over the matter, as it noted that Va. Code Ann. § 20-146.18(B) allowed a Virginia court to decline jurisdiction over a matter in favor of a more convenient forum. It also noted that the father defaulted on his objection to the tribal court's jurisdiction.

Prizzia v. Prizzia, 58 Va. App. 137, 707 S.E.2d 461 (2011) - Trial court erred in properly declining to exercise its jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, § 20-146.18 or 20-146.19 because the trial court made no specific determination that Virginia was an inconvenient forum under the circumstances or that a Hungarian court was a more appropriate forum, and the trial court did not allow the parties to present all relevant evidence, as the husband requested, on the issue of whether it was more appropriate for the Hungarian court to exercise jurisdiction; there was no evidence that Virginia had home state jurisdiction because the husband had engaged in unjustifiable conduct, and the trial court did not make that finding or base its decision to decline to exercise jurisdiction on § 20-146.19

3. Unjustifiable Conduct

Section 208 provides that a court with jurisdiction shall decline jurisdiction if the person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, unless:

a. the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

b. the court with proper jurisdiction declines because it finds it is an inconvenient forum; or

c. no other state has jurisdiction. *See In re* Lewin, 149 S.W.3d 727 (Tex. Ct. App. 2004).

§ 20-146.19 (C) -If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection A [unjustifiable conduct], it shall assess against the party seeking to invoke its jurisdiction necessary and **reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings**, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this Commonwealth unless authorized by law other than this act.

Tyszcenko v. Donatelli, 53 Va. App. 209, 670 S.E.2d 49, 2008 Va. App. LEXIS 569 (2008) - Given that subsection A of § 20-146.33 and subsection C of this section are the only statutes in the Uniform Child Custody Jurisdiction and Enforcement Act that provide for a presumptive entitlement to attorney's fees, it is clear that the legislature did not intend to require an award of attorney's fees in non-enforcement and non-§ 20-146.19 proceedings.

4. Communication between Courts

Section 110 provides for communication between courts in different states concerning custody proceedings. The parties must be permitted to participate in the communication, or if not permitted to participate, be given an opportunity to present facts and legal arguments before a decision on jurisdiction is made. *See* Brandt v. Brandt, 268 P.3d 406 (Colo. 2012).

§ 20-146.9. Communication between courts.

A. Before finding and exercising jurisdiction, a court of this Commonwealth shall communicate with the court appearing to have jurisdiction in any other state concerning a proceeding arising under this act.

B. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

C. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

D. Except as otherwise provided in subsection C, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

E. For the purposes of this section, *"record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

F. *Continuing Exclusive Jurisdiction*

Section 202 of the UCCJEA provides for exclusive continuing jurisdiction in the original forum state until

1. A court of *this state* determines that neither the child, the child's parents, and any person acting as a parent have a significant connection with this state and substantial evidence concerning the child's care, protection and training is no longer available or a court determines that the child and all parties have left the state. *See* Harvey v. Harvey, 303 So. 3d 357 (La. Ct. App. 2020) (Louisiana court lacked jurisdiction to change physical custody where Florida had continuing exclusive jurisdiction); Billhime v. Billhime, 952 A.2d 1174 (Pa. Super. Ct. 2008); State ex rel. Klein v. Winegar, 893 N.W.2d 741 (N.D. 2017) (North Dakota retained jurisdiction even though child lived out of state five years because child continued to visit mother and there was substantial evidence); Wallace v. Wallace, 224 S.W.3d 587 (Ky. Ct. App. 2007); Roach v. Breeden, 777 S.E.2d 689 (Ga. Ct. App. 2015); *In re* Sheys, 120 A.3d 150 (N. H. 2015).

2. Even if all parties leave the state, if the absence is considered "temporary," the decree state may retain jurisdiction. *See* Mouritsen v. Mouritsen, 459 P.3d 476 (Alaska 2020) (post decree, military father with joint physical custody was stationed in South Carolina; the mother and children moved to facilitate the shared parenting. Finding that the father at all times intended to return to Alaska, the court interpreted found that exclusive continuing jurisdiction remained in Alaska).

3. A temporary custody order entered in a mother's Maryland domestic violence protection action against her child's father was considered an

initial custody determination so Maryland had exclusive continuing jurisdiction even though mother fled with child to Puerto Rico. *See* Cabrera v. Mercado, 146 A.3d 567 (Md. Spec. Ct. App. 2016).

4. If one state has entered an interim parenting plan, that state retains jurisdiction. *In re* Ruff, 275 P.3d 1175 (Wash. Ct. App. 2012) (finding that Montana which entered interim order and where father still lived retained jurisdiction even though mother and child had lived in Washington since 2003).

5. *A court* determines that the child and all contesting parties have left the jurisdiction. *See* Friedman v. Eighth Jud. Dist. ex rel. County of Clark, 264 P.3d 1161 (Nev. 2011) (even though parties's divorce decree provided for continuing jurisdiction in Nevada, Nevada lost jurisdiction when all parties moved to California). *See also* Brandt v. Brandt, 268 P.3d 406 (Colo. 2012).

   The comments to UCCJEA indicate jurisdiction is lost if all leave the state. However, Mississippi decided that when a mother moved back to the decree state Arizona before father filed in Mississippi to modify the Arizona order, Arizona had exclusive continuing jurisdiction. Edwards v. Zyla, 207 So.3 1232 (Miss. 2016).

6. Party petitioning a new state to assume jurisdiction to modify a child custody order bears the burden of proving, not only that the new state would have jurisdiction to enter an initial child custody order, but that the issuing state has lost or declined to exercise jurisdiction as well. Brandt v.

Brandt, 268 P.3d 406 (Colo. 2012) (operative term "presently reside,@ as used in UCCJEA provisions relating to a non-issuing state's jurisdiction to modify custody decree, is not equivalent to "currently reside@ or "physical presence,@ but necessitates an inquiry into totality of circumstances that make up domicile; trial court order that assumed jurisdiction to modify Maryland degree, on basis that child and parents purportedly did not presently reside in Maryland, could not be premised solely on mother's absence from Maryland on military assignment).

§ 20-146.13. Exclusive, continuing jurisdiction –
A. Except as otherwise provided in § 20-146.15, a court of the Commonwealth that has made a child custody determination consistent with § 20-146.12 or 20-146.14 has exclusive, continuing jurisdiction ***as long as the child, a parent of the child, or any person acting as a parent of the child continues to live in the Commonwealth.***

B. A court of the Commonwealth that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under § 20-146.12.

G. *Enforcing Custody Order*

To be entitled to enforcement, the order must be valid. A Texas court properly refused enforcement of child custody provisions of a default divorce decree where it lacked subject matter jurisdiction to enter those provisions. *See* Alfonso v. Skadden, 251 S.W.3d 52 (Tex. 2008) (Spain, not Texas, was child's home state).

See Miller-Jenkins v. Miller-Jenkins, 276 Va. 19, 661 S.E.2d 822 (2008) – After dissolution of a civil union in Vermont, a biological mother sought sole custody of a child. The Court of Appeals of Virginia reversed the circuit court's custody order. The biological mother challenged her former partner's attempt to register the out-of-state custody order. The Court of Appeals reversed the circuit court's judgment that reversed the decision to register the custody order. The biological mother

appealed. The issue was whether the lower court erred in directing the circuit court to register a custody and visitation order rendered by an out-of-state court, based on the lower court's previous holding in the same custody and visitation dispute that the federal Parental Kidnapping Prevention Act, 28 U.S.C.S. § 1738A, required that Commonwealth courts give full faith and credit to the out-of-state order. The biological mother's request to consider the effect of the Virginia Marriage Amendment was rejected as she had not asked the lower court to consider the Amendment and did not assign error on that basis. Each of the issues the biological mother presented in the present appeal was addressed and resolved in the first Virginia appeal. Thus, the law of the case doctrine prevented her from reasserting the issues she raised in the present appeal because each of those issues was finally decided by the first appeal, which she failed to perfect in the appellate court. The two appeals were part of the same litigation seeking to resolve the single question of which custody order governed the parties' custody and visitation dispute. The merits of the underlying issues were not reached. The Court of Appeal judgment was affirmed requiring the Vermont visitation order to be registered in Virginia.

In re Smith, No. L07-0886, 2007 Va. Cir. LEXIS 3094 (Cir. Ct. May 30, 2007) Mary Commander was the GAL. Judge Poston presided. The child was at the Pines Treatment Center in Norfolk, Va. Child was sent there from North Carolina DSS where a North Carolina Court took emergency jurisdiction over the child due to abuse and neglect by the father who appeared to be a resident of North Carolina but a domiciliary of Texas. The father sought to register Texas custody order in Virginia for enforcement. The Texas custody order was entered ex parte after the North Carolina order was entered and provided that the Pines Treatment Center hand over the child. The father failed to advise both Virginia and the Texas courts of North Carolina's involvement. Judge Poston declined to register the Texas order for the following reasons: Texas was not Joshua's home state; North Carolina had continuing exclusive jurisdiction; that North Carolina never declined to exercise jurisdiction; and the father's unjustifiable conduct precluded Texas from obtaining jurisdiction.

H. *Recognition of sister state decrees*

UCCJEA ' 303 provides that a court shall recognize *and enforce* (not modify) a child custody determination from another state if the latter court exercised jurisdiction in substantial conformity with the UCCJEA. The orders entitled to enforcement include temporary emergency orders, foreign custody orders, tribal custody orders, registered orders and the custody and visitation provisions of a

domestic violence civil order.

1. Registration - § 20-146.26

Registration can be done without requesting enforcement. The person wishing to register must send

a. a letter requesting registration,

b. two copies, including one certified copy, of the determination,

c. an affidavit that the order has not been modified; and

d. the name and address of the person seeking registration and any parent or person who has been awarded custody or visitation in the determination sought to be registered.

> [Comments] - A custody determination can be registered without any accompanying request for enforcement. This may be of significant assistance in international cases. For example, the custodial parent under a foreign custody order can receive an advance determination of whether that order would be recognized and enforced before sending the child to the United States for visitation. Article 26 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, 35 I.L.M. 1391 (1996), requires those States which accede to the Convention to provide such a procedure.

The court shall file the custody determination as a foreign judgment. Courts are requiring strict compliance. Where the father failed to file certified copies of default custody orders from a Shar'ia court in Jerusalem granting him custody, the North Carolina lacked subject matter jurisdiction to enforce the orders. See Hamdan v. Freitekh, 844 S.E.2d 338 (N.C. Ct. App. 2020).

Persons named must be given notice to give them an opportunity to contest by filing notice of contest within twenty days of service. The only defenses are that notice was not properly given or the court lacked jurisdiction in initial determination, or the order has been stayed or vacated.

A California judgment establishing the parental relationship of a non-biological father who had been a same-sex partner of the biological father of a child born to a surrogate mother in California was a child custody determination entitled to registration in Texas. Berwick v. Wagner, 336 S.W.3d 805 (Tex. App. 2011).

Morrison v. Morrison, 57 Va. App. 629, 704 S.E.2d 617, 2011 Va. App. LEXIS 43 (2011) - Circuit court did not err in refusing to register and enforce a 2003 Michigan divorce decree awarding the mother sole legal and physical custody of the daughter because the 2003 Michigan decree was modified by both a July 2008 visitation modification order and a 2008 Michigan custody modification order.

2. Expedited enforcement

A hearing to produce a child must be held on the next judicial day after service of the order unless that date is impossible. UCCJEA ' 308(c).

3. If the child is immediately likely to suffer serious physical harm or be removed from this state, the court may issue an ex parte warrant to take possession of the child. UCCJEA ' 311(a).

4. If a parent has been denied visitation, as part of the remedy, the court may order make-up visitation or issue a temporary order enforcing the visitation schedule made by a court in another state. UCCJEA ' 304(a).

5. Additional remedies may be available under state law -- contempt of court, fines, a bond, tort damages, alternative dispute resolution. UCCJEA ' 303(b).

6. Petitioner is entitled to immediate custody of the child unless the respondent establishes that the child custody determination has not been registered and that:

   a. Issuing court lacked jurisdiction to enter custody order

   b. Child custody determination for which enforcement is being sought has been vacated, stayed or modified by state with jurisdiction to do so.

   c. The respondent was entitled to notice, but notice was not given in accordance with the act. UCCJEA ' 310(a).

There have been few appellate decisions dealing with the enforcement provisions of the UCCJEA.

Prashad v. Copeland, 55 Va. App. 247, 685 S.E.2d (2009) - Case was only about the registration of custody and visitation orders from another state under the provisions of the Parental Kidnapping Prevention Act and Virginia law and as the custody orders were made consistently with the provisions of the Parental Kidnapping Prevention Act, Virginia must extend full faith and credit to the custody orders; as neither party was asking the court to recognize the relationship of the biological father and the father named on the birth certificate as a valid marriage in the Commonwealth and the custody orders

did not arise from fathers' relationship being treated as a marriage, the Defense of Marriage Act, 28 U.S.C.S. § 1738C, was inapplicable. The named father's custodial and visitation rights arose, not out of his relationship with the biological father, but out of his relationship with the child; accordingly, the mother's arguments regarding the Virginia's Marriage Amendment, Va. Const., Art. I, § 15A, and the Marriage Affirmation Act, § 20-45.3, failed.

IV. UNIFORM INTERSTATE FAMILY SUPPORT ACT

A. *History*

To impose an obligation for child support, the court must have personal jurisdiction over the obligor. Kulko v. Superior Court of California, 436 U.S. 84 (1978). For interstate enforcement prior to 1995, there were two acts - Uniform Reciprocal Enforcement of Support Act (URESA) (1950) and Revised Act (RURESA) (1968). Uniform Interstate Family Support Act (1991) 1996 – PRWORA mandated states adopt (2001 am. – expanded long arm). 2008 am. to ratify Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance. *See* Tompkins v. Tompkins, 597 S.W.3d 99 (Ark. Ct. App. 2020) (Arkansas court had personal jurisdiction over the father even though the child had lived in Germany with the mother for several years. The court had subject matter jurisdiction to establish a support order upon the mother's request, absent an existing order elsewhere).

B. *Initial Jurisdiction – Personal*

1. Va. Code Ann. § 20.-88.35
2. Uniform Interstate Family Support Act § 201(a)

* * *

(1) the individual is personally served * * *within this State;
(2) the individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
(3) the individual resided with the child in this State;
(4) the individual resided in this State and provided prenatal expenses or support for the child;
(5) the child resides in this State as a result of the acts or directives of the individual;
(6) the individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse;

(7) [the individual asserted parentage in the [putative father registry] * * *; or (8)] there is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

Franklin v. Dep't of Soc. Servs., Div. of Child Support Enf't ex rel. Franklin, 27 Va. App. 136, 147 n.5, 497 S.E.2d 881, 886 (1998) - Husband further contends he lacks the minimum contacts with Virginia necessary for the exercise of personal jurisdiction. "'It is essential in each case that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within'" Virginia. *Kulko v. Superior Court*, 436 U.S. 84, 94, 56 L. Ed. 2d 132, 98 S. Ct. 1690 (1978) (citation omitted). We have held that husband's acts (Domestic Violence) resulted in the children's residence in Virginia.

C. Continuing Jurisdiction

UIFSA, like UCCJEA, uses the principle of continuing, exclusive jurisdiction. If the state properly had jurisdiction to issue the child support order and one party or the child continues to reside in the state. Even if the state is not the residence of the obligor, the parties can make a written consent to jurisdiction. UIFSA Section
205. See also Harvey v. Harvey, 432 So. 3d 786 (La. Ct. App. 2020) (Louisiana court lacked jurisdiction under UIFSA to modify the Florida child support order where the mother and children were still in Florida).

Va. Code Ann. § 20.-88.39 – CEJ for modification
Va. Code Ann. § 20.-88.40 – CEJ for Enforcement

Meyers v. Meyers, 2003 Va. App. LEXIS 628 (Va. Ct. App. Dec. 9, 2003) - Although a Virginia juvenile and domestic relations (JDR) district court erred by entering an order which increased the amount of child support a father was required to pay under an order issued by a Florida court, the JDR court did not have the power to order the father's ex-wife to repay amounts she received under the erroneous order.

Nordstrom v. Nordstrom, 50 Va. App. 257, 259, 649 S.E.2d 200, 201 (2007) -
On appeal, the father contended that the trial court erroneously determined it had jurisdiction under Virginia's version of the Uniform Interstate Family Support Act, Va. Code Ann. §§ 20-88.32 to -88.82, to modify the Virginia support order when neither the parents nor the child continued to reside in Virginia. He also sought an order of restitution for what he alleged were overpayments of child support made pursuant to the erroneous order, and an award of attorney's fees and costs on appeal. The appeals court held that trial court lacked jurisdiction to modify. Specifically, when the mother requested modification in 2006, the trial court's 2004 order was the only child support order in existence and, thus, was the controlling order. Hence, the trial court had continuing, exclusive jurisdiction to modify that order if the requirements of Va. Code Ann. § 20-88.39(A)(1) or (2) were satisfied. But, neither applied. The appeals court then vacated the modification order and dismissed the mother's motion. It also refused to award the father restitution, as it lacked any authority to award the same. Finally, it declined the father's request for an award of attorney's fees and costs.

Residence

Alaska which made the divorce, custody and support orders determined that the term "presently resides" in UCCJEA and UIFSA provisions governing exclusive, continuing jurisdiction should be interpreted consistently with "residency" under Alaska law. Father intended to return to Alaska at end of military deployment so the parties' physical presence in South Carolina did not deprive the Alaska court of exclusive, continuing jurisdiction. Mouritsen v. Mouritsen, 459 P.3d 476 (Alaska 2020). *See also* Berry v. Coulman, 440 P.3d 264 (Alaska 2019).

Kansas case - URESA , UIFSA and FFCCSOA

Where all parties lived in Kansas when the child support order was entered in 1991 and the mother and children continued to live in Kansas, Kansas retained exclusive continuing jurisdiction. Even though California where father was living entered a support order against him and he made some payments, the order was void. The parties did not consent in writing to the jurisdiction of the California court. The district court could not order income withholding or an award of arrearages of $80,000 based on the void California order. *In re* Henson, 464 P.3d 963 (Kan. Ct. App. 2020).

D. UIFSA Registration of Other State Order

UCCJEA and UIFSA are different – custody and support are not the same.

The mother properly registered a Florida child custody order in North Carolina, but it was found insufficient to register a foreign child support order. The mother filed the petition to register but the Virginia father, as nonregistering party, was entitled to notice. The court rejected her "substantial compliance" argument because the petition in form and substance was a petition to register a foreign custody order. The mother did not follow UIFSA requirements. The mother argued that child custody and support were in the same order. But father objected to registration of support. The North Carolina court summed it up:

. . . Mother's arguments overlook the essential differences in registration of foreign orders under the UCCJEA and UIFSA. For purposes of child custody, the focus is on the residence of the children, and personal jurisdiction over a parent is not required. . . For purposes of child support modification and enforcement, the focus is on the residence of the obligor, since the obligee who is seeking enforcement normally registers the order in the state of the obligor's residence so the court will have personal jurisdiction over the obligor. . . .

> **UIFSA Relationship to UCCJEA.** Jurisdiction for modification of child support under subsections (a)(1) and (a)(2) is distinct from modification of custody under the federal Parental Kidnapping Prevention Act (PKPA), 42
> U.S.C. § 1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) §§ 201-202. These acts provide that the court of exclusive, continuing jurisdiction may "decline jurisdiction." ***Declining jurisdiction, thereby creating a potential vacuum, is not authorized under UIFSA.*** Once a controlling child-support order is established under UIFSA, at all times thereafter there is an existing order in effect to be enforced. Even if the issuing tribunal no longer has continuing, exclusive jurisdiction, its order remains fully enforceable until a tribunal with modification jurisdiction issues a new order in conformance with this article. [Emphasis added]

> UIFSA and UCCJEA seek a world in which there is but one order at a time for child support and custody and visitation. Both have similar restrictions on the ability of a tribunal to modify the existing order. The major difference between the two acts is that the basic jurisdictional nexus of each is founded on different considerations. UIFSA has its focus on the personal jurisdiction necessary to bind the obligor to payment of a child- support order. UCCJEA places its focus on the factual circumstances of the child, primarily the "home state" of the child; personal jurisdiction to bind a party to the custody decree is not required. An example of the disparate consequences of this difference is the fact that a return to the decree state does not reestablish continuing, exclusive jurisdiction under the UCCJEA. *See* UCCJEA § 202. Under similar facts UIFSA grants the issuing tribunal continuing, exclusive jurisdiction to modify its child- support order if, at the time the proceeding is filed, the issuing tribunal "is the residence" of one of the individual parties or the child. *See* Section 205.

The court upheld father's motion to dismiss the mother's registration under UIFSA. Halterman v. Halterman, 855 S.E.2d 812 (N.C. Ct. App. 2021).

Kansas Strict Compliance?

A Kansas case involved an unwed father who was a member of the Miami Heat who had a Florida child support order. The mother and child had moved to Kansas. When the father retired and moved out of Florida, he attempted to reduce his child support obligation by registering the Florida judgment but failed to attach the two certified copies of the support order. Even though the mother failed to contest the registration within 20 days, the court found that she could challenge the court's subject matter jurisdiction under UIFSA. The failure to file the certified copies meant the court lacked jurisdiction to modify the award. The Court of Appeals stated that the process of transferring continuing, exclusive jurisdiction over an out-of-state child support order requires the party seeking to transfer the case to Kansas to register the out-of-state order, meet residency and notification requirements, and demonstrate a need to transfer the case. Chalmers v. Burrough, 472 P.3d 586 (Kan. Ct. App. 2020), rev. granted Nov. 2020, oral argument heard May 27, 2021.

A strong dissent noted there is a difference between subject matter jurisdiction over a type or class of cases and judicial authority to adjudicate a specific legal dispute between specified parties. Registration alone is not enough to permit a court to modify an out-of-state support order. The party seeking modification of the order also must show: (1) the payor of the support, the recipient of the payments, and the child for whose benefit the support is due no longer reside in the state that issued the order; (2) he or she is not a resident of the state in which modification is sought; and (3) the district court can exercise personal jurisdiction over the party who is not seeking modification. All of those requirements were met.

Courts derive their subject matter jurisdiction over child support from legal sources external to the UIFSA. UIFSA provides both an orderly mechanism for a court in one state to enforce and (sometimes) modify a particular support order issued by a court in another state and a check on a party to a support order trying to obtain a more favorable order in a second state. These worthy goals are advanced through "claim-processing" rules and not manipulation of subject matter jurisdiction. To enforce or modify an out-of-state support order, the party seeking court intervention must successfully register the order. Registration triggers the court's authority to enforce the order and is a condition precedent for a request to modify the order. As such, registration is simply a procedural gateway for a court to exercise authority over the specific order and the parties bound by that order. The drafters of the UIFSA intended nothing more. They describe registration as "a process, and the failure to register does not deprive an

otherwise appropriate forum of subject matter jurisdiction." See UIFSA, § 601, comment at 73 (rev. 2008).* * * Similarly, the procedures permitting a court to modify an out-of-state support order after it has been registered reflect claims-processing rules and not a grant of subject matter jurisdiction. Those procedures bear none of the hallmarks of subject matter jurisdiction. First, of course, they pertain to a specific support order and the parties to it, rather than a class or kind of legal dispute. Second, they do no more than expand a court's authority from simply enforcing a given order to modifying it. That would be a bizarrely bifurcated and truncated subject matter jurisdiction, breaking with all conventional notions of the concept. Finally, under the UIFSA, the parties can give mutual consent to a court to modify an out-of-state support order, if the child resides in the modifying state or that court can exercise personal jurisdiction over a party to the order. See K.S.A. 2019 Supp. 23- 36,611(a)(2). But subject matter jurisdiction is a form of judicial power that cannot be conferred through the parties' consent. The Washington Supreme Court has recognized that UIFSA grants courts the authority to modify a support order but expressly rejected the argument modification of a given order entailed the exercise of subject matter jurisdiction. The systemic force of the UIFSA comes from its universal adoption across all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands—not from some regulation of the subject matter jurisdiction of those courts. * * *

The dissent also noted the division of authority on whether compliance with the requirements for registration or modification of an out-of-state support order are conditions precedent for subject matter jurisdiction or simply for judicial authority over the particular order and the parties to it. * * * Cases coming down on the side of subject matter jurisdiction join *Auclair* in the rabbit hole with their summary conclusions and lack of analysis. * * * Cases rejecting subject matter bars do so after assessing the legal principles governing jurisdiction. * * * The dissent suggests we should align with those courts rejecting the idea that the failure to comply with the registration requirements of the UIFSA strips a court of subject matter jurisdiction. I agree.

The Kansas Supreme Court reversed, agreeing with the dissenting judge. There is a difference between subject matter jurisdiction over a type or class of cases and judicial authority to adjudicate a specific legal dispute between specified parties. Registration alone is not enough to permit a court to modify an out-of-state support order. The party seeking modification of the order also must show: (1) the payor of the support, the recipient of the payments, and the child for whose benefit the support is due no longer reside in the state that issued the order; (2) he or she is not a resident of the state in which modification is sought; and (3) the district court can exercise personal jurisdiction over the party who is not seeking modification. All of those requirements were met. The failure to properly register the out of state child support order did not deprive the district court of subject matter jurisdiction. *Chalmers v. Burrough*, 314 Kan. 1, 494 P.3d 128 (2021).

Rind v. Cafaro, 59 Va. Cir. 167, 2002 Va. Cir. LEXIS 336 (Norfolk June 5, 2002) - Former wife was not permitted to register a purported foreign support order because the circuit court lacked personal jurisdiction over her former husband given that the husband was not personally served in Virginia, he objected to jurisdiction there, he had never resided in Virginia, and he did not fall within any of the categories of the Uniform Interstate Family Support Act, § 20-88.32 et seq., or Virginia's long-arm statute, § 8.01-328.1, that would have allowed the exercise of jurisdiction over him; without such jurisdiction, there was no benefit to registration of the purported order, as a Virginia court could not have enforced it against him.

DCSE and UIFSA (Uniform Interstate Family Support Act) and Hague Convention

The goal is one controlling and enforceable order.

Long Arm Jurisdiction § 20-88.35

1. The individual is personally served with process in the Commonwealth
2. The individual submits to the jurisdiction of the Commonwealth by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any content to person jurisdiction.
3. The individual resided with the child in the Commonwealth.
4. The individual resided in the Commonwealth and paid prenatal expenses or provided support for the child.
5. The child resides in the Commonwealth as a result of the acts or directives of the individual.
6. The individual engaged in sexual intercourse in the Commonwealth and the child may have been conceived by the act of intercourse.
7. The individual asserted parentage of a child in the Virginia birth father registry.
8. The exercise of personal jurisdiction is authorized under Subsection A 8 of § 8.01-328.1.

Paternity and Support-UIFSA Application of Law 20-88.46

Except at otherwise provided in this, a responding tribunal of the Commonwealth **shall** apply the procedural and substantive law generally applicable to similar proceedings originating in the Commonwealth and may exercise all powers and provide all remedies available in those proceedings.

A responding tribunal of the Commonwealth shall determine the duty of support and the amount payable in accordance with the law and support guidelines of the Commonwealth.

Protections: Special Rules of Evidence Under § § 20-88.59, 60 and 61.

- A copy of the record of Child Support payments certified as a true copy of the original by the custodial of the record may be forwarded to a responding tribunal. The copy is evidence of the facts assured in it and is admissible to show whether a payment has been made (A).
- Documentary evidence transmitted from another state to a tribunal of this Commonwealth by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence of an objection based on the means of transmission (E).
- Voluntary acknowledgment of paternity certified as a true copy (J).
- In a proceeding under this chapter, a tribunal of this Commonwealth SHALL permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means or by other electronic means a the designated tribunal or other location in that state. A tribunal of this Commonwealth shall cooperate with the tribunals of other states in designing an appropriate location for the deposition or testimony (F).
- Defense of immunity based on the relationship of husband or wife or parent and child does not apply (I).

A party whose parentage of a child has been previously determined by or pursuant to law may not plead non-parentage as a defense to a proceeding under this chapter.

Registration is a two-step process § § 20-88.66, 20-88.67:

- Registrations
- Confirmation

Available Defenses under 20-88.72 Registration for Enforcement

1. The order was obtained by fraud;
2. The order has been vacated, suspended or modified by a later order;
3. The issuing tribunal has stayed the order;
4. There are defenses under laws of the Commonwealth to the remedies sought;
5. Full or partial payment has been made
6. Statute of Limitations under § 20-88.69;
7. Issuing Tribunal Lacked Jurisdiction;
8. The alleged order is not the controlling order.
9. **Burden of proof on non-registering party § 20-88.72 (A)**

What if a party presents evidence establishing a defense under § 20-88.72?

Not an automatic dismissal of petition.

The tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. An uncontested portion of the order may be enforced by all remedies available.

Effect of Confirmation

§ 20-88.73: “ Confirmation of the registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.”

This includes the amount of arrears, which is also confirmed. After confirmation, a party cannot challenge amount of arrears owed during later enforcement proceedings.

Registration for Modification and Continuing Exclusive Jurisdiction (CEJ) 20-88.39

A State has CEJ if:

- It has issued a child support order and the Custodial Parent, the Non-Custodial Parent or the Child still reside in the state at the time of the filing of the pleading.
- The parties have filed a written consent with the issuing tribunal to allow another state's tribunal to modify the order and assume CEJ.

Effects Of Continuing Exclusive Jurisdiction

The state tribunal which has CEJ has the **sole** and **exclusive** authority to modify the child support order

Registration for Modification-Controlling Order with no CEJ.

Play Away: The party requesting the modification must file in jurisdiction of non-requesting party. § 20-88.76

The Registering State may only modify terms of the controlling order which could be modified by the issuing court. § 20-88.76(c),(d)

Example: Age of Majority is a non-modifiable term.

Code of Virginia
Title 63.2. Welfare (Social Services)
Subtitle III. Social Services Programs
Chapter 10. Interstate Compact on the Placement of Children

§ 63.2-1000. Interstate Compact on the Placement of Children; form of compact

The Governor of Virginia is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia, with any other state or states legally joining therein, a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. Definitions.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for individuals with mental illness, intellectual disability, or epilepsy or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to

law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such cases by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have the power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. Limitations.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any

such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability.

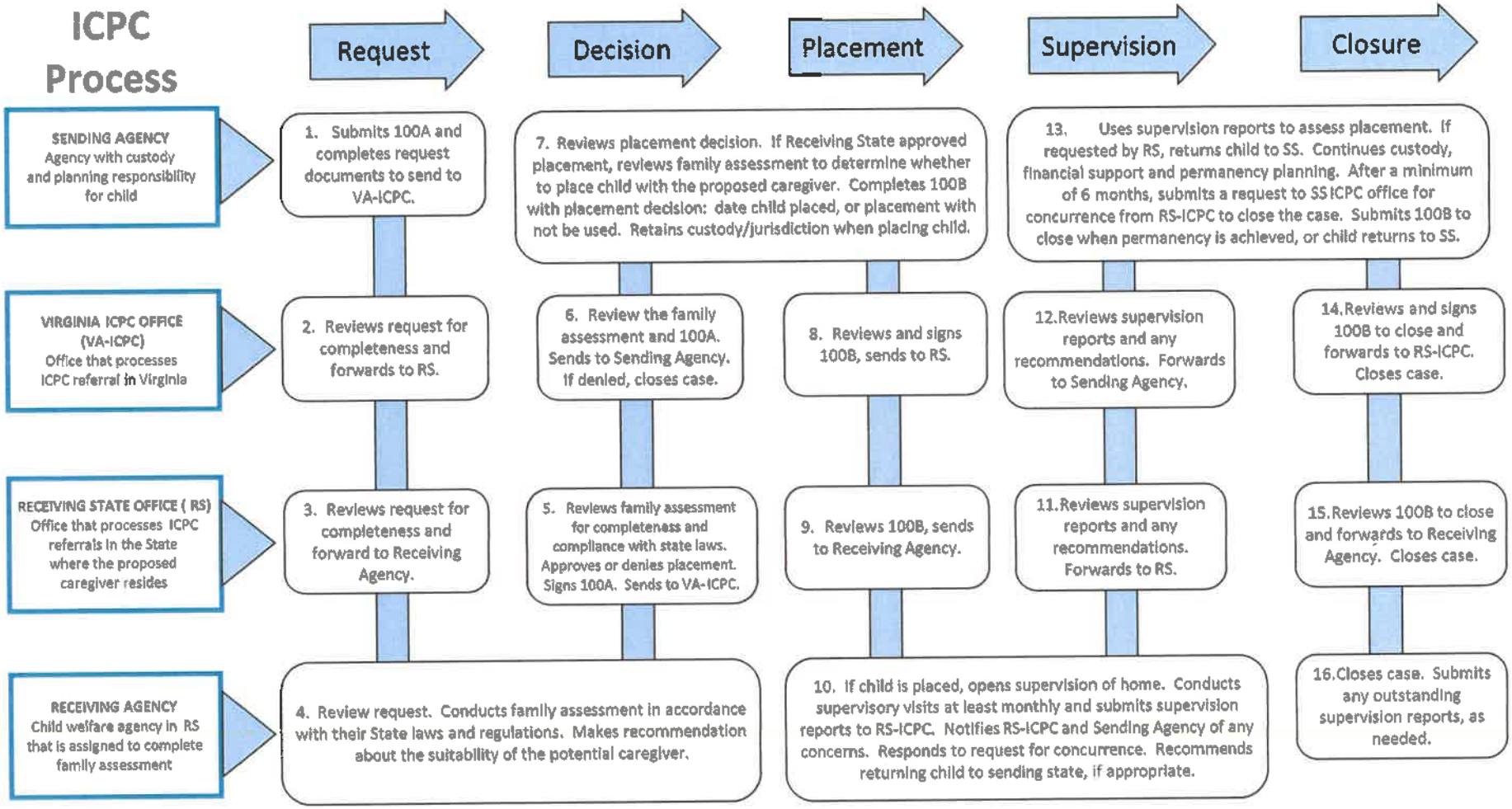
The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

1975, c. 406, § 63.1-219.2; 2002, c. 747;2012, cc. 476, 507.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

ICPC Process



***All documents are sent through the NEICE system.**

Revised 2/17/2022

1. Max and Olthia met on the internet and started dating long distance. Max, an industrial engineer, resides in Sergeant Bluff Iowa and Olthia, a registered nurse, lives in Virginia Beach. After a few months of communicating on the internet, Olthia moves in with Max in Sergeant Bluff. A year later in July 2021, they have a child, Jimmy. Olthia and Max relationship goes "South" so in September 2021, she returns to Virginia Beach and files for custody and support on May 15th 2022. Max is served with a summons to appear at the support hearing when he arrives at the Norfolk International Airport.

   UCCJEA Analysis:

   a. Does Virginia have jurisdiction under the UCCJEA to enter a custody order?
   b. Would it make a difference if Olthia filed for custody in September 2021 in Virginia Beach JDR Court?
   c. If Virginia does not have jurisdiction, can Max consent to jurisdiction being in Virginia?

   UIFSA Analysis:

   a. Does Virginia have long arm jurisdiction over Max to enter a support order against him?
   b. Would it matter if Max had committed domestic violence on Olthia and a result she returned to Virginia?

Answer:

UCCJEA Analysis:

a. Does Virginia have jurisdiction under the UCCJEA to enter a custody order? Yes, See Virginia Code § 20-146.12 (A) (1) at first glance, the mother and child have lived in Virginia for over six months at the time of filing of the petition. As such, Virginia is Jimmy's Home state.[i] Max may request Virginia to decline jurisdiction under § 20-146.18 as being an inconvenient forum and that Iowa is a more appropriate forum.[ii] In *Jones*, the Virginia court declined to exercise jurisdiction because for the children lived for a significant period in Greensboro, North Carolina where most of children's caretakers, educators and medical providers resided (best interest of the children/evidentiary reasons).
b. Would it make a difference if Olthia filed for custody in September 2022 in Virginia Beach JDR Court? Yes, the home state analysis looks not at the date of trial but the date of filing the petition. If the petition was filed in September, Jimmy was less than six months old. In accordance with § 20-146.1, the home state would be the state in which the child lived from birth.[iii]
c. If Virginia does not have jurisdiction, can Max consent to jurisdiction being in Virginia? No, subject matter jurisdiction cannot be conferred by either consent or waiver.[iv]

UIFSA Analysis:

a. Does Virginia have long arm jurisdiction over Max to enter a support order against him? No, Virginia does not have long arm jurisdiction. UIFSA long arm statute in Virginia is Va. Code Ann. § 20-88.35. Although Va. Code Ann. 20-88.35(1) indicates that the court does have personal jurisdiction over the nonresident; Va. Code Ann. § 20.-146.8(A) provides immunity to the nonresident party where he/she is attending a custody hearing.[v]
b. Would it matter if Max had committed domestic violence on Olthia and a result she returned to Virginia? Yes, where the child resides in the Commonwealth as a result of the acts or directives of the individual; Va. Code Ann. § 20.-88.35.[vi]

[i] Home state is set out in the definition section of UCCJEA § 20-146.1

"Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

[ii] See *Jones v. Davis*, 87 Va. Cir. 126 (Cir. Ct. 2013)

Nevertheless, even if a court has jurisdiction over a case such as the one before me, either party, the court, or even a court of another state may move the court the decline to exercise its jurisdiction "if [the court] determines that it is an inconvenient forum . . . and that a court of another state is a more appropriate forum." Va. Code § 20-146.18(A). The Code then identifies a number of factors that a Virginia court must consider in determining whether it is an inconvenient forum and a court of another state is a more convenient forum. Va. Code § 20-146.18(B). Va. Code § 20-146.18(B) identifies the following factors that a court "shall" take into consideration when ruling on an inconvenient forum motion: whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child; the length of time the child has resided outside this Commonwealth; the distance between the court in this Commonwealth and the court in the state that would assume jurisdiction; the relative financial circumstances of the parties; any agreement of the parties as to which state should assume jurisdiction; the nature and location of the evidence required to resolve the pending litigation, including testimony of the child; the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and the familiarity of the court of each state with the facts and issues in the pending litigation.

At the same time, as part of the analysis in determining whether Virginia is an inconvenient forum, the Virginia court must also consider the best interests of the child. *Hale v. Hale*, No. 2016-92-3, 1994 Va. App. LEXIS 35, at *10 (Va. App. Feb. 1, 1994). In evaluating the best interests of the child, the court has broad discretion in the factors it considers and the significance it attaches to those factors. Id.

Jones v. Davis, 87 Va. Cir. 126, 127-28 (Cir. Ct. 2013).

[iii] See *Baker v. Tunney*, 201 So. 3d 1235 (Fla. Dist. Ct. App. 2016).

Florida was the child's home state at the time of the filing of the competing petitions because from birth to relocation, the child lived in Florida with both Father and Mother. The child was less than six months old, and the child's home state is where the child lived from birth with a parent or person acting as a parent. *See* § 61.503(7), Fla. Stat. (2015); *Fleckles v. Diamond*, 2015 IL App (2d) 141229, 393 Ill. Dec. 784, 35 N.E.3d 176, 189 (Ill. App. Ct. 2015) (noting that the "UCCJEA gives priority to the jurisdiction of the child's 'home state,' which for a child less than six months old is defined as the birth state" (citation omitted)).

Baker v. Tunney, 201 So. 3d 1235, 1239 (Fla. Dist. Ct. App. 2016).

iv See *Hyat v. Hina*, 101 Va. Cir. 245, 248-49 (Cir. Ct. 2019), the Court's jurisdiction cannot be changed by any one of the parties, nor by a combination between both of the parties, and every effort so to do has been held to be in fraud of the law. The [Court] cannot, under any pretext of acquiescence of the parties, take jurisdiction beyond the limit fixed by law. [The Court's] jurisdiction is given by law alone, and is, in every case, what the law fixes it at. The consent of the parties cannot enlarge it.

Hyat v. Hina, 101 Va. Cir. 245, 248-49 (Cir. Ct. 2019).

[v] Va. Code Ann. § 20.-146.8 A - party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination is not subject to personal jurisdiction in this Commonwealth for another proceeding or purpose solely by reason of having participated, or having been physically present for the purpose of participating, in the proceeding.

[vi] See *Franklin v. Dep't of Soc. Servs., Div. of Child Support Enf't ex rel. Franklin*, 27 Va. App. 136, 497 S.E.2d 881 (1998). The family resided in Africa where the husband committed domestic violence onto the wife. The wife moved to Virginia where the husband's company's corporate offices were. The domestic violence was deemed as such actions that resulted in the wife's move to Virginia.

UCCJEA Hypothetical

Mary and Dave have a special needs child, Susie, who needs care that they cannot provide. They agree to enroll Susie in a school in Alabama that can provide the specialized education that Susie needs in a residential setting. Mary lives near the school and sees Susie every day. Dave lives in Alabama about 1 hour from the school so he cannot see Susie as frequently but is satisfied that Susie is getting the care that she needs. Their Alabama divorce decree states that they have joint legal custody and shared physical custody. Dave gets a job offer in Virginia and moves there. His contact with Susie now consists of weekly FaceTime visits. Dave meets Jessica who moves in with Dave after a month of dating. Jessica expresses concerns to Dave that she thinks that Susie is not doing well based upon what she overhears during the Facetime visits and suggests that the school may no longer be the best place for Susie. At Jessica's insistence, Dave goes to Alabama and signs Susie out of the school. He brings her back to Virginia to live with him and Jessica.

Mary is outraged that Dave would disenroll Susie from the school that they had chosen and that he would do it without consulting with her first. Mary goes to court in Alabama and gets the judge to order that Virginia police assist her in picking up Susie to return her to Alabama. Mary tries to get the local police in Virginia to help her get Susie back, but they refuse since the order is from Alabama. Mary then files an unsworn petition for expedited enforcement of her Alabama order in the juvenile court where Dave is living and asks the court to enter an order to force the police to help her get Susie back.

1. Should the court grant Mary's request and enter an order ordering the police to assist Mary in getting Susie back to Alabama?
2. What if Mary includes a copy of the divorce decree in addition to the pickup order from Alabama with her petition?
3. What if Mary alleges that the court should exercise emergency jurisdiction because Susie is not getting the education and care that she needs in Virginia that she was getting in Alabama as Dave has enrolled Susie in public school in Virginia?

Hypothetical Answers

1. Should the court grant Mary's request and enter an order ordering the police to assist Mary in getting Susie back to Alabama?

   No. Virginia Code Section 20-146.29 provided the procedure for filing for an expedited enforcement of an order of another state. However, the petition must be verified, and Mary's petition was not verified so the court should not grant her request unless she provides a supplemental verified petition. The other issue is whether the pickup order is a "child-custody determination" under the Act. The definition of a "child-custody determination" is a "judgement, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child." Arguably, a pickup order on its own does not comply with the definition of a "child custody-determination."

2. What if Mary includes a copy of the divorce decree in addition to the pickup order from Alabama with her petition along with a verification page?
   Yes, if Mary also complies with the terms of Virginia Code Section 20-146.29(B) which requires certain information be contained in the petition, the court should grant the petition and follow the procedures outlined in Section C of the statute.

3. What if Mary alleges that the court should exercise emergency jurisdiction because Susie is not getting the education and care that she needs in Virginia that she was getting in Alabama as Dave has enrolled Susie in public school in Virginia?
   Maybe. The court must first determine if the facts support that an emergency exists. Under Virginia Code Section 20-146.15, the court must first determine if the "child is present in this Commonwealth and the child has been abandoned" or it is "necessary in an emergency to protect the child because the child, or a sibling or a parent of the child, is subjected to mistreatment or abuse or placed in reasonable apprehension of mistreatment or abuse or there is reasonable apprehension that such person is threatened with mistreatment or abuse." If the Virginia judge finds that there is emergency jurisdiction, since there is a case pending in Alabama, this court must place in the temporary order a period of time to allow Mary and/or Dave to go back to Alabama and have the Alabama court rule on the issue. Further, the Virginia judge and Alabama judge should "immediately communicate to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order."

Code of Virginia
Title 20. Domestic Relations
Chapter 7.1. Uniform Child Custody Jurisdiction and Enforcement Act

§ 20-146.29. Expedited enforcement of child custody; determination.

A. A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

B. A petition for enforcement of a child custody determination must state:

1. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

2. Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this act and, if so, identify the court, the case number, and the nature of the proceeding;

3. Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

4. The present physical address of the child and the respondent, if known;

5. Whether relief in addition to the immediate physical custody of the child and attorneys' fees is sought, including a request for assistance from law-enforcement officials and, if so, the relief sought; and

6. If the child custody determination has been registered under § 20-146.26, the date and place of registration.

C. Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

D. An order issued under subsection C must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under § 20-146.33, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

1. The child custody determination has not been registered under § 20-146.26, and that:

a. The issuing court did not have jurisdiction under Article 2 (§ 20-146.12 et seq.) of this chapter;

b. The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2 (§ 20-146.12 et seq.) of this chapter;

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of § 20-146.7, in the proceedings before the court that issued the order for which enforcement is sought; or

2. The child custody determination for which enforcement is sought was registered under § 20-146.26, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 (§ 20-146.12 et seq.) of

Code of Virginia
Title 20. Domestic Relations
Chapter 7.1. Uniform Child Custody Jurisdiction and Enforcement Act

§ 20-146.15. Temporary emergency jurisdiction.

A. A court of this Commonwealth has temporary emergency jurisdiction if the child is present in this Commonwealth and the child has been abandoned or if it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to mistreatment or abuse or placed in reasonable apprehension of mistreatment or abuse or there is reasonable apprehension that such person is threatened with mistreatment or abuse.

B. If there is no previous child custody determination that is entitled to be enforced under this act and a child custody proceeding has not been commenced in a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, a child custody determination made under this section becomes a final determination, if it so provides and this Commonwealth becomes the home state of the child.

C. If there is a previous child custody determination that is entitled to be enforced under this act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, any order issued by a court of this Commonwealth under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction. The order issued in this Commonwealth remains in effect until an order is obtained from the other state within the period specified or until the period expires.

D. A court of this Commonwealth that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, shall immediately communicate with the other court. A court of this Commonwealth that is exercising jurisdiction pursuant to §§ 20-146.12, 20-146.13 or § 20-146.14, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

2001, c. 305.

UIFSA Hypothetical

A) Jack and Dianne lived together in Indiana and had a child, Amber. In order to get Jack's name on the birth certificate they filed a paternity action in court. Jack signed a paternity affidavit and testified under oath he was the father. Indiana entered a paternity order. Things went sour quickly in the relationship and Jack became physically abusive to Dianne. For her protection, she took the child and fled to Virginia where her sister lived. Jack has never been to Virginia so she felt safe there and her sister was her only family support. A week later, Jack found a new job in New York and moved there. Jack now has doubts he is the father of the child.

The child is one and a half months old and the Dianne needs financial assistance.

1) Where can Dianne file for support? Where is Jurisdiction, Indiana, New York, or Virginia? Why or why not?
2) What state's laws are used to determine the amount and length of support?
3) At the support hearing, can Jack ask for disestablishment of the paternity or request a termination of paternity?
4) Since one of the parties will be out of state for the support hearing, do they have to physically attend in person? What are the UIFSA special rules of evidence that protect the out of state party?

B) Jack got a better job in Indiana and moved back there. Dianne now wants an increase in the support order because he is making more money.

1) Where can Dianne file for an increase? Does it depend on which state issued the current order?
2) What states laws are used to determine the amount and length of support?
3) Are there terms of the current order which may not be modified?

c) Jack has been paying support to Dianne through the New York DCSE to the Virginia DCSE, but not constantly and has arrearage. Dianne would like to have the order registered in Indiana for enforcement. The request to register for enforcement is filed and Jack is provided an arrearage figure in the registration package. He thinks the arrearage is incorrect but decides he will fight it at the show cause hearing that will be filed and so does not challenge the registration which is confirmed. A show cause hearing is set in Indiana after the registration is confirmed.

1) At the show cause hearing in Indiana, can Jack challenge the amount of the arrearage being claimed?
2) Which states payment record is controlling to determine arrearage if they differ?
3) Now that he is in Indiana, can Jack challenge the paternity of Amber at the show cause hearing?
4) Can Jack ask for a decrease if the order has been registered only for enforcement?

Answers

A-1 : Dianne can file in New York because that is the where Jack lives. Dianne could file in Virginia if one of the bases in §20-88.35 are met. In this case, §20-88.35 (5) "The child resides in the Commonwealth as a result of the acts or directives of the individual" could be used because of the acts of abuse. Franklin v. Dep't of Soc. Servs., Div. of Child Support Enf't ex rel. Franklin, 27 Va. App. 136, 497 S.E.2d 881 (1998)

A-2 : §20-88.69 and §20-88.46 The laws of the issuing state applies. If the order is entered in Virginia the VA guidelines and emancipation date is used. If the order is entered in New York, the NY guidelines and emancipation date is used.

A-3 : No, under §20-88.58 Paternity established in another state must be given full faith and credit and non-parentage cannot be plead under UIFSA. Virginia's disestablished procedure under §20-49.10 does not affect paternity determinations in other states since Virginia law does not apply to them.

A-4 : The out of state party does not need to appear. See expanded evidence under §20-88.59

B-1: It depends on what state issued the order. If the order was issued in Virginia, since Dianne still lives there the motion to increase support would be filed there because of CEJ (continuing, exclusive, jurisdiction) §20-88.39 If the order was issued in New York, since there is no CEJ, the play away rule applies and the motion to increase would have to be filed in Indiana. § 20-88.76

B-2 : see answer in A-2

B3-3: Under §20-88.76 (C.) Only terms that are modifiable in the issuing state are modifiable. For example if the New York order was registered in Indiana and a new Indiana order was entered, the New York emancipation date would remain controlling not Indiana's emancipation date.

C-1 : No. All challenges that could be raised under §20-88.72, need to be raised before the registration is confirmed. Per §20-88.73, not raising them precludes further contest at later hearings.

C-2: The payment record from the state agency issuing the order is controlling if there is a disagreement.

C-3; Since paternity was established in Indiana, Jack can certainly file a disestablishment of paternity if Indiana law allows. This would have to be a separate action from the Show Cause because it cannot be raised as a defense in the show cause action. § 20-88.58

C-4: No. Registration for Enforcement does not confer jurisdiction to modify § 20-88.68

UCCJEA/ICPC Hypothetical

Mary and Bob have one child, Nick (age four). Mary and Bob are from Ohio. They have substance abuse challenges and domestic violence issues. Because of their problems, Nick was raised by Grandmother from birth until recently. No court order was entered related to the family's internal arrangements. Because Mary and Bob appeared to be doing better, Grandmother gave Nick to them.

Immediately after receiving Nick, Mary and Bob moved to Virginia Beach to live in a hotel near the water. Mary and Bob cut off contact with Grandmother but she suspected they were not doing well. As a precaution, Grandmother filed a custody petition in Virginia Beach. She tried to get a quick hearing but could only articulate intuition to support an emergency hearing so a regular hearing was set in several months.

Five months after Mary and Bob moved here while Grandmother's custody petition was still pending, CPS was called to their hotel room. The parents were missing and Nick had been left alone. Within his reach were various illegal substances, needles etc., and there was no food in the room. He was dirty and appeared underweight. The CPS worker waited around for hours but the parents didn't return. The CPS worker took Nick into foster care.

The CPS worker filed an Emergency Removal Petition the next morning.

Questions:

1) Does the court have jurisdiction since the child has not lived in VA for over 6 months?
2) Can the court advance the Grandmother's custody petition and hear it? If the court does, has a violation of ICPC occurred?
3) If the Grandmother wants to adopt Nick, must ICPC be utilized when she previously had him in her care? If so, can her ICPC home study be expedited?

Answers:

1) If the court determines that the facts meet the criteria for an emergency under VA Code § 20-146.15, then yes, the court has jurisdiction.
2) The applicable language is: "No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency [complies with all requirements of ICPC]." VA Code § 63.2-1000, Article III.
   Additional language: "Sending agency means a party state, an officer or employee thereof; a subdivision of a party state, an officer or employee thereof; **a court of a party state**; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state." VA Code § 63.2-1000, Article II(b).
3) Based on the language above, yes; the Grandmother's placement would need to proceed through the ICPC vetting process.

   Under Regulation 7, the following placements qualify for an expedited home study process:

   The proposed placement is with a parent, stepparent, grandparent, uncle, aunt, adult sister, adult brother, or guardian AND one of the following is met:
   a) The dependency was unexpected due to a sudden or recent incarceration, incapacitation, or the death of a parent or guardian;
   b) The child who is sought to be placed is age four or younger (this may include order siblings who will be placed in the same home);
   c) The court finds that any child in the sibling group has a substantial relationship with the proposed placement. This means that they have spent more than cursory time together and have established more than a minimal bond; OR
   d) The child is currently in an emergency placement.

   Although Grandmother would qualify for an expedited study under either (b) or (c) above, there is an exception to the exception which indicates that adoptive home studies may not be expedited.