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UNIFORM CHILD CUSTODY JURISDICTION ACT IN NORTH CAROLINA

I. INTRODUCTION

Each year over 100,000 children are the victims of child-snatching. Child-snatching is an unfortunate scenario in which one parent grabs his or her child and tries to win custody elsewhere or goes underground with the child. In one out of every twenty-two divorces, a child will be snatched by a non-custodial parent. The majority of those children taken are between the ages of three and five. An atmosphere of “seize and run” has developed over the years in child custody disputes in the United States because of the reluctance both of courts and of law enforcement officers to interfere in family squabbles. The old adage “possession is nine parts of the law” has never been so clearly evident as it has been in the area of child custody disputes. More often than not, the parent with physical possession of the child has been granted custody no matter what the circumstances under which possession was obtained.

In a child custody dispute, both the parents and the children suffer emotional upheaval. The real “victims,” however, are the children. The children undergo severe, often irreversible psychological harm when they live in an atmosphere in which they are constantly being “snatched” back and forth between parents who travel to different states seeking custody. The environment in which the children live is unstable at best, and perhaps compara-

1. Pick, Kidnapped, 9 STUDENT LAWYER 28 (1980).
2. Id.
3. Id. at 30.
5. Id. “Until recently, possession of the child was nine parts of the law.”
6. Pick, supra note 1, at 28.
ble to life in a POW or concentration camp at worst.7

Public concern for the plight of children caught up in custody battles has received extensive media coverage in the last few years.8 Psychologists have stressed the need for stability and continuity in the life of a young child already affected by divorce.9 In 1968, the Uniform Child Custody Jurisdiction Act (UCCJA) was formulated in an effort to put a stop to the on-going battles in child custody cases.10 The Act serves a dual purpose: assuring the child a more stable life and removing the incentive to snatch a child to gain legal custody in a court of another state.11

The UCCJA was adopted by North Carolina in July, 1979, and is codified in Chapter 50A of the North Carolina General Statutes.12 In the years since the adoption of the UCCJA in North Carolina, the courts have approached the problems of interstate child custody disputes by reference to the goals and principles of the UCCJA. This comment will examine the changes in North Carolina's judicial approach to custodial disputes since the adoption of the UCCJA, the effect of the Act in North Carolina and the problems which still remain to be resolved under the UCCJA.

II. PRE-UCCJA

Before the passage of the UCCJA, the principle of self-help predominated in child custody cases.13 One parent could easily find a second state which would refuse to give recognition to a custody decree of an out-of-state court and would modify the decree.14 A number of factors contributed to confusion among courts. One of the factors was that the state court was subject to no federal or state law requiring full faith and credit to the custody decree of a sister state.15 In order to protect the best interest of the child, the

7. Id. at 35.
11. Id. at 1244.
13. Foster and Freed, supra note 4, at 36.
15. Id.
decree was modifiable in the state of origin and, therefore, was not due full faith and credit. The United States Supreme Court affirmed this policy in New York ex rel. Halvey v. Halvey.16 This holding was bolstered by other court decisions.17 The cases indicated that the policy of protecting a child’s welfare outweighed any national policy of full faith and credit.18 These decisions helped breed an atmosphere in which self-help was encouraged. Having lost in the first round of custody battle, one need only go to a different state to obtain custody.

Another factor contributing to the widespread reliance on self-help was the United States Supreme Court decision in May v. Anderson,19 which held that one not technically under the personal jurisdiction of the court was not bound by its custody decree. If one of the parents was not personally before the first court, he or she could go to another state and have the decree modified. Justice Jackson predicted the case would reduce the “law of custody to a rule of seize-and-run.”20

Both of the above factors contributed little to the interests of the child; instead they contributed to the interest of the losing parent.21 While paying lip service to the policy of protecting the child, the courts in reality were helping develop an atmosphere which had devastating effects on the child.

An additional factor leading to the self-help atmosphere was the lack of uniformity of decisions pertaining to child custody.22 The decisions were denounced by many as being no better than a “quicksand foundation for analysis of jurisdiction.”23 Courts accepted jurisdiction over the child custody matter using a variety of different tests: physical presence of the child in the state; the parents’ consent to jurisdiction; and the child’s domicile.24 This broad view of jurisdiction over custody matters often resulted in a number of states having concurrent jurisdiction.25 The losing parent merely took the child to another state where he or she could be

20. Id. at 542 (Minton, J., dissenting).
23. Id.
granted custody of the child.

While it was easy for the losing parent to use self-help in the pre-UCCJA climate, not all courts would accept jurisdiction. A number of courts followed the "clean hands" doctrine and refused to consider modification of an out-of-state decree in favor of one who had violated the decree and had abducted the child. Other courts refused to clash with the decisions of courts of other states. Some courts refused to hear cases if the child was not physically before the court. These courts were composed of conscientious judges doing their best simultaneously to seek fairness for all concerned and protect the child.

North Carolina's caselaw, prior to the adoption of the UCCJA, was confused and unstable because of the attempt by courts to make the welfare of the child the "polar star" in custody disputes. Unfortunately, this standard was not uniformly applied. Each court either accepted or rejected jurisdiction on the basis of what it considered was the best interest of the child. Some North Carolina courts were willing to accept jurisdiction and modify an out-of-state decree even if the child was not physically before the court and had never been within the court's jurisdiction. Other courts took the position that if the child itself was in North Carolina, the court could determine custody, even if one or both parents were residents of other states. The focus of jurisdiction was placed on the child and not the parents. Physical presence of the child was sufficient basis for exercise of jurisdiction. The willingness of these courts to protect the child was not dampened by the fact that the child and the parents were domiciled in another state, so long as the child could be deemed a resident of North Caro-

26. Id. at 1215.
27. Id.
28. Crouch, Clearing the Court of Unneeded Custody Disputes, 3(2) Fam. Advocate 6 at 8 (1980).
30. Speck v. Speck, 5 N.C. App. 296, 168 S.E.2d 672 (1969). The "child" was a thirty-four year old mentally and physically disabled male. The court held that the presumption that a child at twenty-one was capable of self-support was rebuttable. In this case, the child's permanent brain damage and poor physical health required continued support past the age of twenty-one.
In contrast, some North Carolina courts refused to exercise jurisdiction if the child was not within the court's jurisdiction. Other courts were hesitant to exercise jurisdiction if the only basis was that the child was domiciled in North Carolina. The courts were careful to find a substantial change in circumstances since the decree was issued and that it was best to change custodians.

If the court was asked to modify a custody decree, a number of North Carolina courts were willing to do so even if another state had granted custody of the child to another person. If the claimant could prove the existence of changed circumstances, courts were willing to modify a decree if such action was considered necessary for the best interest of the child. On the other hand, a number of courts were willing to give full faith and credit to sister state custody decrees and would not accept jurisdiction if another state already had. Some of the courts stressed that full faith and credit was due only if the court found that the other court had jurisdiction and it was in the best interest of the child.

III. Uniform Child Custody Jurisdiction Act

In July, 1979, North Carolina joined the other states which have adopted the UCCJA in some form. Only Massachusetts, New Mexico and South Carolina have refused to adopt the Act, but the Act will govern the return of children to these states.

The UCCJA embodies the principles of comity, continuing jurisdiction and forum non conveniens in an effort to stop forum shopping in child custody disputes. It is designed to "prevent the desperate shifting from one state to another of thousands of innocent children . . . ." Under the UCCJA, only one state will have primary responsibility for a custody case. A second court will intervene only in specific circumstances. Once a court has decided an

34. Coble v. Coble, 229 N.C. 81, 47 S.E.2d 798 (1948).
issue as provided by the UCCJA, all courts in states which have adopted the UCCJA must recognize and enforce the decision.\textsuperscript{41}

The UCCJA marks a shift in the emphasis of policy in the area of child custody. The focus is no longer on what law a court should apply in resolving a custody dispute; instead the focus is on which court is best able to make the decision.\textsuperscript{42} The state with the maximum contact with the child will be the one to determine the case.\textsuperscript{43} This change indicates the UCCJA is definitely child-centered rather than parent-centered.

The UCCJA was enacted to plug three major loopholes in prior child custody law. It eliminates jurisdiction based on physical presence of the child alone; it prohibits modification of custody decrees with limited exceptions; and it requires enforcement of out-of-state decrees.\textsuperscript{44} These loopholes were the major incentives for child-snatchers who sought a "better deal" in another state.

The purposes of the Act are: to avoid jurisdictional competition among the courts; to promote cooperation with courts of other states; to assure that litigation concerning the custody of a child takes place in the state with the closest connection with the child; to discourage continuing controversies over child custody; to deter abductions and unilateral removal of children; to deter abductions and unilateral removal of children; to promote litigation of custody decisions; to promote and expand the exchange of information among the courts of the various states and provide for uniformity of law.\textsuperscript{45} A court is to approach each custody decision

\begin{itemize}
\item \textsuperscript{41} S. KATZ, \textit{CHILD SNATCHING: THE LEGAL RESPONSE TO THE ABDUCTION OF CHILDREN} 25 (1981).
\item \textsuperscript{42} \textit{Id.} at 83.
\item \textsuperscript{43} \textit{Id.} at 16.
\item \textsuperscript{44} Bodenheimer, \textit{Interstate Custody: Initial Jurisdiction and Continuing Jurisdiction under the UCCJA}, 14 FAM. L. Q. 203 at 204 (1981).
\item \textsuperscript{45} N.C. GEN. STAT. \textsection 50A-1 (Supp. 1979):
\begin{enumerate}
\item The general purposes of this Chapter are to:
\begin{itemize}
\item (1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
\item (2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;
\item (3) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and the child's family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of this State decline the exercise of ju-
\end{itemize}
\end{itemize}
\end{itemize}
with these purposes in mind and strive to render a decision which will further these goals.

Multiple and concurrent jurisdiction, which leads to a tug of war between state courts, has been replaced with strictly limited jurisdiction. A North Carolina court has initial jurisdiction to make a custody award in the following circumstances. Initial jurisdiction is primarily vested in the “home state” of the child. The “home state” is that state in which the child, immediately preceding the time involved, lived with a parent at least six consecutive months. If the child is less than six months old, the home state is the state where the child has lived since birth with any of the persons involved in the suit. North Carolina would also be deemed the “home state” if it was the child’s home state within six months before the proceeding and the child is absent from North Carolina because of removal by another claiming custody and the parent or person acting as parent continues to live in North Carolina.

This jurisdiction when the child and the child’s family have a closer connection with another state.

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) Avoid re-litigation of custody decisions of other states in this State insofar as feasible;

(7) Facilitate the enforcement of custody decrees of other states;

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this State and those of other states concerned with the same child; and

(9) Make uniform the law of those states which enact it.

46. BLACKWELL, FAMILY LAW HANDBOOK FOR NORTH CAROLINA-1980 § 5 (1980).


“Home state” means the state in which the child immediately preceding the time involved lived with the child’s parents, parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period.[47]

48. Id. at § 50A-3(a)(1).

A court of this State authorized to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) This State . . . had been the child’s home state within six
provision is necessary to protect victims of child-snatching.

Initial jurisdiction is also met if the child and parents or the child and one parent have "significant connections" with North Carolina and if there is substantial evidence relevant to the child's protection, care, training and personal relationships in North Carolina. North Carolina would obtain initial jurisdiction because it is in the best position to gather the needed information to make an informed decision concerning the child even if it does not technically qualify as the "home state." This provision must be interpreted strictly. The purposes of the Act limit jurisdiction. The court must exercise jurisdiction on this basis only in the child's best interest, rather than in the interests and convenience of the parties. A state should accept jurisdiction under this provision only if it has the maximum contact possible with the child.

These two bases of jurisdiction are designed to insure that the court issuing a custody decree is the one best able to determine the needs of the child. A "home state" or closely connected state is in a far better position to make such a determination than a state which by chance was the one to which the parent chose to flee.

A third basis for jurisdiction is emergency jurisdiction. Jurisdiction can be obtained if the child is physically present in North Carolina and has been abandoned or there is an emergency in

months before commencement of the proceeding and the child is absent from this state because of the child's removal or retention by a person claiming the child's custody or for other reasons, and a parent or person acting as parent continues to live in this State[.]

49. Id. at § 50A-3(a)(2).

A court of this State authorized to decide custody matters has jurisdiction to make a child custody determination by initial or modification decree if: . . . (2) It is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and the child's parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence relevant to the child's present or future care, protection, training, and personal relationships[.]


A court of this State authorized to decide custody matters has jurisdiction to make a child custody determination by initial or modification decree if: . . . (3) The child is physically present in this State and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent[.]
which the child needs protection because he has been subjected to or is threatened with harm. This basis should be used only in extraordinary circumstances and only for temporary orders pending action by a state with the requisite jurisdiction. This provision embodies the *parens patriae* doctrine which enables a state to take measures concerning the protection of a child within its borders. A charge of mistreatment of a child is deemed justification to intrude in the judicial proceedings of another state. This emergency doctrine is the only exception to the mandate that physical presence of the child alone is not a sufficient basis for jurisdiction. Physical presence is usually insufficient because the Act limits jurisdiction to the courts with maximum access to the facts.

The fourth basis for initial jurisdiction is the catch-all provision. Jurisdiction exists if no other state has jurisdiction under the other three bases or if another state has declined jurisdiction on the basis that North Carolina is the more appropriate forum.

Jurisdiction must be declined if at the time of filing of the action for custody in North Carolina a proceeding concerning custody was pending in a court of another state exercising jurisdiction in conformity with the UCCJA. This refusal to exercise jurisdiction is mandatory unless the other court stays its own proceedings.

53. *Id.* at 1229.
54. N.C. GEN. STAT. § 50A-3(b) (Supp. 1979).
Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.
A court of this state authorized to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if: . . . (4) (i) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.
57. *Id.* at § 50A-6(a). If at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Chapter, a court of this State shall not exercise its jurisdiction under this Chapter, unless the proceeding is stayed by the court of the other state because this State is a more appropriate forum or for other reasons.
because North Carolina is a more appropriate forum. This provision is designed to assure cooperation among the state courts and reduce the amount of judicial competition. The court does have the power to determine if the other court is in conformity with the UCCJA.

A court may decline jurisdiction if it determines it is an inconvenient forum and another state is a more appropriate forum. This rule sets out the various factors to be considered in determining if North Carolina is an inconvenient forum under the circumstances of the individual case. Ideally, the court will use judicial restraint and choose not to exercise jurisdiction if another state is in a better position to determine custody.

Jurisdiction may also be declined if the plaintiff seeking an initial decree has wrongfully taken the child from another state or has committed some other reprehensible act making it just and proper to decline jurisdiction. This provision embodies the "clean hands" doctrine. The incentive to child-snatch will be lessened if the child-snatcher finds the courthouse door closed because he/she has "unclean" hands. The provision will deter child-snatchers, however, only if the courts stand behind the Act and refuse to accept jurisdiction.

58. Id.
61. Id. at (c). In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:
   (1) If another state is or recently was the child's home state;
   (2) If another state has a closer connection with the child and the child's family or with the child and one or more of the contestants;
   (3) If substantial evidence relevant to the child's present or future care, protection, training, and personal relationships is more readily available in another state;
   (4) If the parties have agreed on another forum which is no less appropriate; and
   (5) If the exercise of jurisdiction by a court of this State would contravene any of the purposes in G.S. 50A-1.
63. N.C. GEN. STAT. § 50A-8. "(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances."
64. Bodenheimer, supra note 44, at 210.
The only court with jurisdiction to modify an existing custody decree is the court which rendered it. If no other state has the power to modify the decree and must recognize the continuing jurisdiction (which is exclusive) of the prior state unless that state declines to exercise its modification jurisdiction or all the parties and the child have left the state. Only the state of continuing jurisdiction has the power to modify and it alone can decide whether or not to exercise jurisdiction.

The aforementioned rules are supplemented by provisions for the imposition of costs, notice to parties and other rules for communication and assistance among courts of different states. In sum, the Act is designed to eliminate the incentive to child-snatch with a common sense approach to the problems and to shift the focus of the attention to the real party in interest—the child.

IV. APPLICATION OF THE UCCJA IN NORTH CAROLINA

Since the adoption of the UCCJA in North Carolina, the approach of the courts to child custody disputes has been modified. Instead of automatically exercising jurisdiction, the courts have expressed a willingness to use the principles and rules set out in the UCCJA. The UCCJA has fostered a new attitude toward exercise of jurisdiction. The courts have been forced to learn to accommodate the difference between a lack of jurisdiction and the non-exercise of jurisdiction. While the court may technically have jurisdiction over the parties, it must refuse to exercise the jurisdiction if the child is before the court as a result of kidnapping or wrongful retention in the state.

The cases which have been decided since the adoption of the UCCJA in North Carolina indicate the willingness of North Carolina courts to follow the UCCJA principles. As long as another

65. N.C. GEN. STAT. § 50A-14(a). If a court of another state has made a custody decree, a court of this State shall not modify that decree unless (1) it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Chapter or has declined to assume jurisdiction to modify the decree and (2) the court of this State has jurisdiction.
68. Bates and Holmes, supra note 50, at 78.
state does not have pending litigation over the custody matter, North Carolina courts are still willing to exercise jurisdiction. In *McAninch v. McAninch*,\(^70\) for example, the Court exercised jurisdiction over a custody matter when the facts showed that Florida had not conducted any hearing on the custody matter.

The exercise of emergency jurisdiction under the UCCJA has been restrained. Only in the case of a genuine emergency has the court been willing to hear a case. In *King v. Demo*,\(^71\) the Court modified an earlier Colorado decree when both the child and the father were in North Carolina and an emergency existed which threatened the child.

Before a court will be allowed to modify a decree, the court must find that such action is in the best interest of the child and some change of circumstances exists to warrant the modification. In *Williams v. Richardson*,\(^72\) the trial court had modified a decree without specifically finding that such a modification was in the best interest of the child. Virginia had awarded custody of the children to the mother with visitation rights for the father. The mother, children and second husband moved to North Carolina. The father was later successful in having custody granted to him because the Virginia court held the mother in contempt for denial of visitation rights. The father then moved to Georgia with the children. The mother sought to obtain custody of the children in North Carolina after she had gone to Georgia and kidnapped one of the children. The North Carolina trial court gave temporary and later permanent custody to the mother on the basis that such action was best for the children. The North Carolina Court of Appeals held that while the trial court technically did have jurisdiction to modify because Virginia’s jurisdiction had ended under the UCCJA when all the parties moved out of state, it was in error when it accepted jurisdiction because the record failed to show it was in the best interest of the children.\(^73\) Under the principles of the UCCJA, the court must be certain its exercise of jurisdiction is supported by the facts.

When presented with a request to modify a decree issued by another state, the courts have been reluctant to exercise jurisdic-


\(^{71}\) 40 N.C. App. 661, 253 S.E.2d 616 (1979).


\(^{73}\) *Id.*
tion and normally accord full faith and credit to an out-of-state decree unless the plaintiff can present convincing evidence of a true need to modify. In *Robertson v. Smith,* the Court refused to modify a prior Texas decree and held full faith and credit must be given to the decree. In *Lynch v. Lynch,* the Supreme Court of North Carolina held the Appeals Court erred in denying full faith and credit to an Illinois decree which had awarded custody to the wife. The wife filed for divorce in Illinois in 1977. The husband left Illinois with the child without the mother’s consent and filed for divorce and custody of the child one year later in North Carolina. The mother counter-petitioned for divorce, temporary custody and child support in Illinois. A North Carolina district court granted temporary custody to the father in June 1978. Meanwhile, the Illinois court held the father in default for failure to answer the wife’s petition, granted the divorce and gave full custody to the mother while ordering the father to return the child to Illinois. The mother then asked the North Carolina court to dismiss the father’s divorce action and set aside its custody decree because of the Illinois decree. The North Carolina court dismissed the divorce action but refused to give full faith to the Illinois custody decree. The Court held that it was an error to deny full faith to the Illinois judgment which was a permanent, final determination of custody by a court with proper jurisdiction. Under the Illinois law a permanent custody order is final as to the circumstances existing at the time rendered. The Illinois court had shown no intent that the order was temporary and retained jurisdiction over the matter. The district court had no authority to modify the custody decree. Even though the child was physically present in North Carolina, the father had failed to present evidence that there was any reason for North Carolina to exercise its jurisdiction. He failed to prove the existence of an emergency or that the child had been abandoned.

The North Carolina courts have shown a willingness to follow the principles of the UCCJA. The focus has shifted from the parents to the child, and the courts decline to exercise jurisdiction if another state has a closer connection with the family and the child and has more readily available evidence. In *Pope v. Jacobs,* the Court declined to exercise jurisdiction when it was determined that Michigan was the home state and had a closer connection with the

child, even though the child was physically present in North Carolina. The Court followed the purposes of the UCCJA to avoid jurisdictional complications and promote cooperation among the states. Michigan had been involved in the custody dispute since 1971 and all the evidence concerning the care, training, and protection of the child was in Michigan. In the best interest of the child Michigan should resolve the matter instead of having the decision delayed by North Carolina efforts to obtain needed information.

The North Carolina Court of Appeals decided to exercise jurisdiction in *Davis v. Davis* even though another state had rendered a decree, because the Court felt that the other state had not followed the principles of the UCCJA when it exercised jurisdiction. The Court stressed the importance of interpreting the UCCJA to accomplish its purposes. California had accepted jurisdiction and awarded custody to the mother even though she and the children had only been in California for one month. The family had lived in North Carolina for ten years, 1968-1978, prior to the filing of the action and the children had lived in North Carolina since the filing of the suit except for the period in which the mother took them to California against the father's consent. California had exercised its jurisdiction, but the North Carolina court was under a duty to examine the facts and determine if California was exercising jurisdiction in conformity with the UCCJA. The purposes of the UCCJA required the court to go beyond the dates and residences and consider the children's history, best interest and the conduct of the parents. Upon consideration, the Court decided that North Carolina was the "home state" of the children and the most connected state; therefore, California should not have exercised its jurisdiction. It was not the home state; it was not closely connected nor was there substantial evidence to determine what would be the best for the children in California; and the mother's conduct indicated she had not dealt with the dispute with "clean hands." Since the decree had been made under circumstances which were not in accord with the UCCJA, the North Carolina court was under no obligation to enforce it.

The courts have also applied the principles of the UCCJA to decline jurisdiction in favor of a state which has not adopted the UCCJA if the state was exercising jurisdiction under standards

78. Id. at 413.
79. Id. at 411.
which meet the principles of the UCCJA. Even though the UCCJA is not reciprocal, in 

Nabors v. Farrell the Court held that it was error for the trial court to exercise jurisdiction over modification of a custody decree when a petition for modification was pending in Massachusetts, the state which had issued the original decree

(Massachusetts has not adopted the UCCJA). The factual circumstances indicated that Massachusetts was exercising jurisdiction in accord with the standards of the Act. Massachusetts had significant connections with both the family and the child. Substantial evidence regarding the child’s welfare was available in the state, and it was in the best interest of the child for Massachusetts to exercise jurisdiction. The trial court should have dismissed the modification action for lack of jurisdiction.

North Carolina has indicated a willingness to follow the actions of other states which have used the UCCJA to stop child-snatching and has refused to become a party in a case of child-snatching. Georgia in particular has applied the principles of the UCCJA strictly and has warned parents that it will not be a sanctuary for child snatchers. Fewer parents will be inclined to resort to self-help if they discover the court doors are closed to them in other states.

V. PROBLEMS WITH THE UCCJA

While the UCCJA is definitely a step in the right direction to preclude child-snatching, it is not without weaknesses. One of the weaknesses is that the states have only partially and selectively adopted the Act while it was designed to work as an integrated whole. The application of isolated sections of the Act may cause a breakdown in the amount of cooperation and help between the dif-

81. N.C. GEN. STAT. § 50A-6(a), supra note 57.
fferent states. This weakness can be mitigated by stressing to state legislatures the importance of the Act as an integrated whole and the dangers which are inherent in piece-meal incorporation without regard for the meaning of the language. The problem of child-snatching is a major one and is presently at the head of the list of problem areas for state legislatures. With effective pressure from the public, the legislators can be persuaded to forgo individual "tailoring" of the Act and join in an effort to have the Act applied consistently by all jurisdictions.

Another weakness of the Act is that it relies too much on judicial discretion. A number of the rules can be interpreted in various ways. The use of the "significant connection" doctrine and the emergency doctrine can differ depending on whether the court follows the parens patriae idea or is willing to have confidence in the ability of a sister state to protect the child. The doctrines of "clean hands" and forum non conveniens allow great discretion. As a result, courts fail to exercise jurisdiction when they should and exercise it when they should not. Courts are also afforded wide discretion in determining whether other jurisdictions have complied with the UCCJA thereby obligating application of full faith and credit to the decree. A possible solution to the problem of unbridled discretion is to encourage trial judges to change their attitudes. While the tendency is to protect the "local" person, the major concern of the judges should be to carry out the intent of the UCCJA even if it means closing the door to a local parent. The welfare of the child should be paramount and a judge's decision to accept jurisdiction should reflect this concern. If it would be in the child's best interest for another state to determine custody, the court should refuse jurisdiction even if it technically has the power to exercise jurisdiction.

An additional weakness is the lack of force behind the Act. While interstate cooperation is desirable, it is not mandatory and one court cannot force its decree on another state if the subsequent court refuses to enforce it. There are no specific enforcement provisions or sanctions in the Act. The sanctions are left within the judges' discretion. Without uniform sanctions, parents

86. Id.
88. Id.
89. Id. at 32.
90. Id.
91. Id.
will still relocate in an area where the punishment is the slightest and the deterrent effect is lessened. One solution to this problem would be for state legislatures to adopt kidnapping statutes which would make it a felony in any state to transport a child out of state in violation of a custody order. If kidnapping were deemed a felony, the abducting parent would be subject to extradition to the state from which the parent fled. Such statutes would work with the UCCJA and eliminate the incentive to relocate in a second state in the hope of a lighter sanction. 92

The UCCJA is of no value if the child is snatched and the parent never starts modification proceedings. Those parents who choose to remain underground are beyond the reach of the Act. 93 This weakness is a major one because children forced to live underground with a new identity and lacking a stable environment are the ones most affected psychologically by child-snatching. The use of federal and state parent locator services is a possible solution for the custodial parent. 94 These services will help the parent-victim who cannot afford to hire a private detective to locate the child.

The risk of punitive modification decrees being issued by the original court and enforced automatically in the other states is another problem. 95 There is no guarantee that the modification decree is being made for the good of the child instead of the "local" parent. The decree should not be used to punish or coerce the other parent. A number of modification decrees are made to discipline the parent for failure to comply with a court order. Such action only adds incentive to kidnap the child and disappear. The amount of discretion allowed the original court for modification must be strictly limited as must be the power of any other state. The ability to modify must be used sparingly. Section fourteen of the UCCJA could be amended to provide rules on the exercise of modification jurisdiction thereby restricting judicial discretion for modification by the original court. 96 It should be made clear that the original court, like any other court, can only make changes if for the good of the child. Any modification should be supported by evidence that it is for the child's best interest and not to vindicate

93. Foster and Freed, supra note 4, at 36.
94. Id. at 37.
95. Sampson, supra note 8, at 31.
96. Id.
the court. As one court has already said, "courts can well survive this offense to their dignity; the children should not, however, suffer further offense to their welfare." 97

A remaining problem is the lack of cooperation among the states. 98 Judges have gone to extremes to find jurisdiction in order to reward a local child-snatcher. Until the judges learn to think according to the principles of the UCCJA, the lack of cooperation among the states will be a recurring problem.

A big weakness of the Act is that it has not been adopted by all the states. So long as any "haven" states exist it will be difficult to surmount the incentive to child-snatch. 99 The only way the UCCJA will work effectively is for all states to join in the effort to prevent child-snatchers using the courts to violate valid custody decrees issued by other states. Campaigns should be instituted in each of the remaining states to encourage the adoption of the UCCJA in those states.

VI. Conclusion

The UCCJA is an effort to remedy the tragedy that exists in child custody disputes today. Efforts are being made to surround the child of a broken home with a sense of continuity, of family and a need to belong because a child can handle anything better than instability. 100 The Act is designed to give as much assurance as possible that the first custody determination will be an informed one made by the court with the closest relationship with the child and his family and that the decision will be enforced by other states without relitigation. To be successful, the Act requires new judicial approaches and trans-state thinking. 101 North Carolina has joined the ranks of the states which have adopted the UCCJA, and thus far the courts have dealt successfully with the application of the Act to child custody disputes, carrying out the intent and purpose of the Act. Efforts must be made to insure the continued application of the principles of the UCCJA in custody disputes in North Carolina. Until some peaceful non-judicial procedure is developed to resolve custody disputes, it remains the job of the

98. Sampson, supra note 8, at 30.
99. S. Katz, supra note 41, at 32.
100. Proceeding of Special Committee on Uniform Divorce and Marriage Act, National Conference of Comm. on Uniform St. Laws, § 98 (Dec. 15-16, 1964).
courts “to hold the line against the tragedies that result from shifting children from state to state in search of a bigger or better ‘share’ of the child.”102

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