IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE VISITATION OF THE PERSONS OF: J. C. B.; K. R. B.;L. B. B.; and L. A. B., MINORS. _____ PAULA BLOUNT, Appellant, vs. JUSTIN CRAIG BLOUNT, Respondent.	No.: 76831 **JOINT APPENDIX** **VOLUME I**

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Dated this 17th day of December, 2018

/s/ *F. Peter James*

_____

LAW OFFICES OF F. PETER JAMES
F. Peter James, Esq.
Nevada Bar No. 10091
3821 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89102
702-256-0087
Counsel for Appellant

CERTIFICATE OF SERVICE

The following are listed on the Master Service List and are served via the Court's electronic filing and service system (eFlex):

Bradley Hofland, Esq.
Counsel for Respondent

PET
LAW OFFICES OF F. PETER JAMES, ESQ.
F. Peter James, Esq.
Nevada Bar No. 10091
Peter@PeterJamesLaw.com
3821 West Charleston Boulevard, Suite 250
Las Vegas, Nevada 89102
702-256-0087
702-256-0145 (fax)
Counsel for Petitioner

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

In the matter of the Visitation of the Persons of: Jeremiah Caleb Blount, Kaydi Rose Blount, Luna Bell Blount, and Logan Alexander Blount, minors; PAULA BLOUNT, Petitioner, vs. JUSTIN CRAIG BLOUNT, Respondent.	CASE NO. : D-18-571209-O DEPT. NO. : B **PETITION FOR GRANDPARENT VISITATION (NRS 125C.050)**

COMES NOW Petitioner Paula Blount, by and through her counsel, F. Peter James, Esq., who hereby petitions this Honorable Court for visitation rights as to the minor children Jeremiah Caleb Blount, Kaydi Rose Blount, Luna Bell

Blount, and Logan Alexander Blount pursuant to NRS 125C.050. In support of their petition, Petitioner hereby allege and request relief as follows:

1. The minor children at issue, Jeremiah Caleb Blount, Kaydi Rose Blount, Luna Bell Blount, and Logan Alexander Blount, have been residing in the State of Nevada for several months prior to the filing of this Petition.
2. The mother of Jeremiah and Kaydi is Gretchen Bernice Whatoname-Blount (however now deceased December 27, 2017), who is the late daughter-in-law of Petitioner.
3. The children's father is Respondent, Justin Craig Blount (hereinafter "Dad"), who is the son of Petitioner.
4. As Gretchen is deceased, Dad is the sole remaining parent of Jeremiah and Kaydi.
5. Jeremiah and Kaydi lived off and on with Petitioner all of their lives. Dad, Mom, Jeremiah, and Kaydi have all lived with Petitioner.
6. Dad is unreasonably denying / restricting Petitioner's visitation with the children.
7. It is in the children's best interest for Petitioner to have visitation with them.
8. There are strong love, affection, and other emotional ties existing between Petitioner and the children.

9. Petitioner has the capacity and disposition to give love, affection, and guidance to the children, as well as serve as a role model to them.
10. Petitioner will cooperate in providing the children with food, clothing, and other materials needed during the visitation.
11. Petitioner will cooperate in providing the children with healthcare or alternative care recognized and permitted under the law of this State in lieu of healthcare.
12. Petitioner has a strong relationship with the children. The children participated in all holidays and other family gathering with Petitioner. The children (less Logan and Luna) lived with Petitioner off and on all of their lives.
13. Petitioner is morally fit.
14. Petitioner has no mental or physical health issues that would affect her caring for the children.
15. The children (ages 8, 5, 2, and less than a year) are too young to voice their preference; however, Petitioner believes that the children would like to have visitation with her.
16. Petitioner has always been and will continue to be willing and able to facilitate and encourage a close relationship with the children's parent and other relatives.

17. The children have no known medical or other health needs that would be affected by the visitation.

18. Petitioner has previously financially supported Dad, Mom, Jeremiah and Kaydi. Petitioner has purchased clothing, food, and other necessities for the children. Dad, Mom, and the children (less Logan and Luna) have lived with Petitioner.

19. Additional factors in support of Petitioner's request for visitation will be addressed as the occasion arises.

WHEREFORE, Petitioner respectfully requests that the Court permit them reasonable visitation with the children.

Dated this 17 day of May, 2018

LAW OFFICES OF F. PETER JAMES
F. Peter James, Esq.
Nevada Bar No. 10091
3821 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89102
702-256-0087
Counsel for Petitioner

VERIFICATION

Paula Blount deposes and states as follows:

1. That I am the Petitioner in the above entitled action.

2. That I have read the foregoing **PETITION FOR GRANDPARENT VISITATION** and know the contents thereof.

3. That the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe them to be true.

4. Those factual averments contained in said document are incorporated herein as if set forth in full.

5. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct to the best of my knowledge, information, and belief.

P. Blount

PAULA BLOUNT, Petitioner

STATE OF ARIZONA)
) ss:
COUNTY OF MOJAVE)

Elyssa Rae Anderson
Notary Public
Mohave County, Arizona
My Comm. Expires 08-18-18

Subscribed and Sworn to before my by Paula Blount this 14 day of May, 2018

Elyssa Rae Nuñez fka Elyssa Rae Anderson

NOTARY PUBLIC in and for said County and State

MOT

LAW OFFICES OF F. PETER JAMES, ESQ.
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Counsel for Petitioner

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

In the matter of the Visitation of the Persons of: Jeremiah Caleb Blount, Kaydi Rose Blount, Luna Bell Blount, and Logan Alexander Blount, minors; PAULA BLOUNT, Petitioner, vs. JUSTIN CRAIG BLOUNT, Respondent.	CASE NO. : D-18-571209-O DEPT. NO. : B **MOTION FOR TEMPORARY ORDERS** Hearing Date: 07/17/18 Hearing Time: 9:00 AM Oral Argument Requested: YES

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 10 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 10 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE

COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

COMES NOW Petitioner, Paula Blount by and through her counsel, F. Peter James, Esq., who hereby moves this Honorable Court for the following relief:

- Temporary visitation with the minor children at issue;
- For the Court to set an Evidentiary Hearing regarding this matter, open discovery, and set case management deadlines.

This Motion is made and based on the papers and pleadings on file herein, the attached points and authorities, the attached affidavit(s) / declaration(s), the filed exhibit(s), and upon any oral argument the Court will entertain.

Dated this 12 day of June, 2018

LAW OFFICES OF F. PETER JAMES
F. Peter James, Esq.
Nevada Bar No. 10091
3821 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89102
702-256-0087
Counsel for Petitioner

NOTICE OF MOTION

Please take notice that the present Motion shall be heard on the 17 day of July, 2018 at the hour of 9:00 A .m. in Department B of the Eighth Judicial District Court, Family Division, located at 601 North Pecos Road; Las Vegas, Nevada 89101 in courtroom ~~6~~ 07.

Dated this 12 day of June, 2018

LAW OFFICES OF F. PETER JAMES
F. Peter James, Esq.
Nevada Bar No. 10091
3821 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89102
702-256-0087
Counsel for Petitioner

POINTS AND AUTHORITIES

I.

BACKGROUND

Petitioner, Paula Blount (hereinafter "Grandmother"), is requesting visitation of her grandchildren: Jeremiah Caleb Blount, Kaydi Rose Blount, Luna Bell Blount, and Logan Alexander Blount (all minors). Petitioner's son is Respondent, Justin Blount (hereinafter "Dad"). The mother of Jeremiah and Kaydi is Gretchen Bernice Whatoname-Blount (deceased as of December 27, 2017). The mother of Luna and Logan is Stephanie Blount.

The history of the parties and the children is voluminous. It is impossible to tell the whole picture in a narrative. The following narrative is a cursory view into what is happening with this family. The facts in the following section are similarly illustrative.

Grandmother was there the days Jeremiah, Kaydi, and Luna were born. Grandmother arrived the day after Logan's birth.

Prior to Dad cutting off Grandmother from visitation, Kaydi and Jeremiah had lived with Grandmother for extended periods of time off and on since birth. Grandmother had a great relationship with the children until Dad cut Grandmother off all visitation in early February 2018. Dad also cut off Gretchen's family from contact with the children. Dad gave abuse / neglect as the basis for him cutting off Grandmother and Gretchen's family from the children. Dad has at least one arrest for domestic violence (2013-2014). The outcome of this is unknown at this time, though Dad did have to spend time in a halfway house as a result of his arrest.

Grandmother use to be a primary caregiver to Jeremiah and Kaydi. Grandmother was a more maternal figure to the children than a grandmother, given that Dad and Gretchen would leave them (especially Jeremiah and Kaydi) with her for extended periods of time. After Dad was incarcerated for domestic

violence, Gretched left the children with Grandmother. Grandmother provided structure, fun times, and taught them life lessons.

Now and for no reason, Dad has pulled the children away from Grandmother and Gretchen's side of the family. This is a disservice to the children and is not in their best interest.

II.

DISCUSSION

The Court should award Grandmother temporary visitation with the children. The Court should also set this matter for an Evidentiary Hearing, open discovery, and set case management deadlines.

A. THE COURT SHOULD AWARD GRANDMOTHER TEMPORARY VISITATION WITH THE CHILDREN

The Court should award Grandmother temporary visitation with the children. Courts are permitted to award grandparents visitation with grandchildren. *See* NRS 125C.050. Courts are empowered to enter temporary visitation orders as are in the children's best interest. *See* NRS 125C.0045(1). Grandparents wishing to have court-ordered visitation with their grandchildren must satisfy two threshold issues and then have the burden of proof to establish that it is in the grandchildren's best interest for the grandparents to have visitation. *Id.* First, the Grandparents may show that the children's parents are

married but are separated. *See* NRS 125C.050(1). Alternatively, the Grandparents may show that they lived with the children and developed a meaningful relationship with the children. *See* NRS125C.050(2). Then, the Grandparents must show that Dad is unreasonably denying / restricting their visitation with the children. *See* NRS 125C.050(3). Once these threshold requirements are established, then the Grandparents must establish the statute-specific best interest factors, which are as follows:

> 6. In determining whether the party seeking visitation has rebutted the presumption established in subsection 4, the court shall consider:
>
> (a) The love, affection and other emotional ties existing between the party seeking visitation and the child.
>
> (b) The capacity and disposition of the party seeking visitation to:
>
> (1) Give the child love, affection and guidance and serve as a role model to the child;
>
> (2) Cooperate in providing the child with food, clothing and other material needs during visitation; and
>
> (3) Cooperate in providing the child with health care or alternative care recognized and permitted under the laws of this State in lieu of health care.
>
> (c) The prior relationship between the child and the party seeking visitation, including, without limitation, whether the child resided with the party seeking visitation and whether the child was included in holidays and family gatherings with the party seeking visitation.

(d) The moral fitness of the party seeking visitation.

(e) The mental and physical health of the party seeking visitation.

(f) The reasonable preference of the child, if the child has a preference, and if the child is determined to be of sufficient maturity to express a preference.

(g) The willingness and ability of the party seeking visitation to facilitate and encourage a close and continuing relationship between the child and the parent or parents of the child as well as with other relatives of the child.

(h) The medical and other needs of the child related to health as affected by the visitation.

(i) The support provided by the party seeking visitation, including, without limitation, whether the party has contributed to the financial support of the child.

(j) Any other factor arising solely from the facts and circumstances of the particular dispute that specifically pertains to the need for granting a right to visitation pursuant to subsection 1 or 2 against the wishes of a parent of the child.

NRS 125C.050(6).

Grandmother meets each threshold issue, and it is in the children's best interest for them to visit Grandmother.[1]

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[1] The facts delineated herein apply to all of the factors. Facts delineated in the factor itself are illustrative, but not necessarily complete. Grandmother does not want to have the court re-read the same facts over and over.

1. GRANDMOTHER MEETS EACH THRESHOLD ISSUE

Grandmother meets each of the two threshold issues.

Parents of the Child are Separated / The Grandparents Lived with the Child and Have a Meaningful Relationship with the Child

Jeremiah and Kaydi have lived with Grandmother for several extended periods of time since birth, as well as spending a great deal of time with Grandmother outside of living with her. At one point, they lived with Grandmother for over a year straight. Grandmother had always supported Dad and the children, whether financially or emotionally. Grandmother has a strong relationship with the children.

Grandmother had been with Kaydi and Jeremiah for every holiday, birthday, and family event, save for Kaydi's fifth birthday and those that have occurred since Dad cut off Grandmother (and Gretchen's family) from contact with the children. Grandmother and the children have a close bond formed from spending copious amounts of quality time together.

Gretchen (Jeremiah's and Kaydi's mother) passed away last December.

Grandmother is being Unreasonably Denied Visitation

Dad is unreasonably denying Grandmother visitation with the children. Grandmother was a major figure in the children's lives. There is no cause for

Dad to deny her any visitation, let alone shut her out and to shut out all of Gretchen's family.

2. GRANDMOTHER SATISFIES THE BEST INTEREST FACTORS

Grandmother satisfies the statute-specific best interest factors, which are as follows:[2]

(a) The love, affection and other emotional ties existing between the party seeking visitation and the child.

As stated, Grandmother was a central part of the children's lives. The children (especially Jeremiah and Kaydi), have exceptionally strong emotional ties to Grandmother. Grandmother was a central caregiver to Jeremiah and Kaydi and a loving grandmother to Luna and Logan.

When Gretchen passed away, Jeremiah asked Grandmother if he were ever going to see her again. He asked this to Grandmother again a month later in January 2018 and again in early February 2018, which is the last time Grandmother saw the children. On that day, Kaydi said she did not want to stay with Dad, but that she wanted Grandmother to take her.

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[2] The facts stated herein also apply to the factors.

(b) The capacity and disposition of the party seeking visitation to:

(1) Give the child love, affection and guidance and serve as a role model to the child

(2) Cooperate in providing the child with food, clothing and other material needs during visitation

(3) Cooperate in providing the child with health care or alternative care recognized and permitted under the laws of this State in lieu of health care.

Grandmother gives the children plentiful emotional support. Logan was too small for much verbal affection, but was given generous physical affection by Grandmother. A saying Jeremiah and Kaydi have with Grandmother is that she loves them to heaven and back. The children used to say to the moon and back, but Grandmother said that to heaven and back was better as it was further away.

Grandmother has structure with the children, specifically as to Jeremiah and Kaydi. They have rules to follow, bedtimes, and expectations of behavior. Grandmother cooks for the children and rarely gives them candy or soda. Grandmother values education and has provided the children with school supplies and money for other school-related matters. Grandmother paid for the children's after-school care.

Grandmother did bible study with the children nightly, as well as prayers. She does not permit the children to watch inappropriate television or internet matters. Grandmother does not permit violent video games. Grandmother does not permit drinking, drugs, or foul language in her home. Grandmother has extra bedrooms for the children.

Grandmother has taken Jeremiah and Kaydi to the doctor when needed. Grandmother will abide by Dad's wishes as to the medical care of the children.

Dad had blocked much of Grandmother's time with Luna. Grandmother was involved with Luna early on, but then Dad stopped allowing her to see Luna.[3]

(c) The prior relationship between the child and the party seeking visitation, including, without limitation, whether the child resided with the party seeking visitation and whether the child was included in holidays and family gatherings with the party seeking visitation.

Grandmother was with the Jeremiah and Kaydi for every holiday and family gathering, save for two events, to wit: Kaydi's fifth birthday and Easter 2018 (Dad had cut off visitation by then). The children (especially Jeremiah and

[3] Gretchen had custody of Kaydi and Jeremiah. Dad had his subsequent children (Luna and Logan) with Stephanie. It was with Gretchen that Grandmother received the bulk of her visitation with the children.

Kaydi as they are older) have a tremendous bond with Grandmother. They lived with Grandmother for a substantial portion of their lives.

On Easter, Grandmother made Jeremiah's and Kaydi's Easter baskets. Most of the time (all save two), Grandmother arranged the egg-dying with them.

For Christmases, Grandmother and the children's great-grandmother (Grandmother's mother) played Santa Claus for the children. They brought Santa presents and did the children's stockings. For all of the Christmases save 2012, the children spent the night with Grandmother from Christmas Eve to Christmas Day. For 2012, the children came over on Christmas Day.

After Grandmother had bonded with Luna, Dad stopped permitting visits with Luna. Dad then told Grandmother that she could see Luna again. Grandmother, though she dearly wanted visitation with Luna, was hesitant. Grandmother did not want Luna to bond with her—only to be taken away again. To spare Luna the emotional upheaval, Grandmother wanted to be in Luna's life or not. Dad permitted Grandmother to visit with Luna, only to take her away again. Grandmother had opened up a bank account for Luna and puts her Christmas and birthday money in there for her.

(d) The moral fitness of the party seeking visitation.

Grandmother is an upstanding citizen and a good role model. Grandmother is a religious person who studies the bible and prays nightly. With

Dad's permission, she has instilled these values upon the children.

(e) The mental and physical health of the party seeking visitation.

Grandmother has no mental or physical issues which would prevent her from exercising extended visitation with the children. Grandmother is looking forward to having the children with her. Grandmother is a young 57 years old.

(f) The reasonable preference of the child, if the child has a preference, and if the child is determined to be of sufficient maturity to express a preference.

The children are too young to form a preference. If Jeremiah and Kaydi were asked, they would say they want to spend time with Grandmother. The others are too young even for that.

(g) The willingness and ability of the party seeking visitation to facilitate and encourage a close and continuing relationship between the child and the parent or parents of the child as well as with other relatives of the child.

Grandmother respects the parental relationship. Grandmother just wants to visit with her grandchildren. Grandmother has never spoken ill of the children's parents in front of them. Any differences she has with Dad is none of the children's concern.

Grandmother took a central role in cleaning up Dad's house. If she and other relatives did not, his house would have been filthy. When he moved into his first duplex, Grandmother bought their kitchen items—towels, wash rags, dishes, pots and pans, silverware, and the like. Grandmother arranged for the church to donate furniture, a queen-size bed, a futon, and a dining room set. Grandmother paid for part of Jeremiah's crib. When they lived with Grandmother, Jeremiah's crib was in her room.

(h) The medical and other needs of the child related to health as affected by the visitation.

The children have no known medical needs that would be affected by visitation with Grandmother or which would impact her visitation with them. Jeremiah and Kaydi have historically done well in school. They have been well-grounded children. Grandmother is informed that there are some behavior issues with Jeremiah after the death of his mother, followed by a sudden cessation of visitation with Grandmother.

Jeremiah expects promises to be kept. In front of Jeremiah, Dad told me that Grandmother that she would have weekly phone calls with the children and monthly visitation. This has not happened, though Grandmother has tried. Jeremiah is likely upset by this as he expects promises to be kept.

///

(i) The support provided by the party seeking visitation, including, without limitation, whether the party has contributed to the financial support of the child.

As stated, the children have lived with Grandmother (save Luna and Logan). Dad lived with Grandmother as an adult with children. Grandmother has provided copious financial support to the children, and to Dad.

At her house, Grandmother provided the children's toys, bicycles, food, and other needs. Jeremiah has an Avengers bed, while Kaydi has a Princess bed. Grandmother paid for most of their school uniforms and made lunch for them or bought them school lunch. Grandmother made sure the children had a full closet full of clothes.

(j) Any other factor arising solely from the facts and circumstances of the particular dispute that specifically pertains to the need for granting a right to visitation pursuant to subsection 1 or 2 against the wishes of a parent of the child.

Grandmother has been there for the children when even Dad could not care for them. When Dad was arrested in 2013 / 2014 for domestic violence in Arizona, Grandmother made arrangements for the children to see him in the halfway house. Grandmother paid for the hotel rooms and made arrangements with local churches so that the children could visit Dad.

When Dad wanted to divorce Gretchen, Grandmother fronted Dad the money after he asked. When Dad and Stephanie wanted to move to Las Vegas, Grandmother loaned them money to do so.

* * *

Based on the foregoing, the Court should award Grandmother temporary visitation with the children as well as a final order of visitation.

B. THE COURT SHOULD SET AN EVIDENTIARY HEARING IN THIS MATTER, OPEN DISCOVERY, AND SET CASE MANAGEMENT DEADLINES

Grandmother is requesting that the Court set the matter for an Evidentiary Hearing and open discovery. In a grandparent's visitation matter, the Court must hold an evidentiary hearing to evaluate the best interest factors. *See Wallace v. Wallace*, 112 Nev. 1015, 1023, 992 P.2d 541, 545-46 (1996). The Court should also open and set discovery deadlines. *Cf.* NRCP 16.2 *and* NRCP 16.205. The Court should also set case management deadlines. *Cf.* NRCP 16.2(d) *and* NRCP 16.205(d).

As such, the Court should set an Evidentiary Hearing, open discovery, and set case management deadlines.

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III.

CONCLUSION

Based on the foregoing, the Court should enter the following orders:

- Awarding Grandmother temporary visitation with the minor children at issue;
- Setting an Evidentiary Hearing regarding this matter, opening discovery, and setting case management deadlines.

Dated this 12 day of June, 2018

LAW OFFICES OF F. PETER JAMES
F. Peter James, Esq.
Nevada Bar No. 10091
3821 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89102
702-256-0087
Counsel for Petitioner

VERIFICATION

I, Paula Blount under penalties of perjury in accordance with the laws of the State of Nevada, declare and state:

1. That I am the Petitioner in the above-entitled action; and

2. That I have read the document entitled: **MOTION FOR TEMPORARY ORDERS** and know the contents thereof; that the factual averments contained therein are true and correct to the best of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true. I am competent and willing to testify in a court of law as to the facts stated in said document. Those factual averments contained in said document are incorporated herein as if set forth in full.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Dated this 12 day of June, 2018

P. Blount

PAULA BLOUNT

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Paula Blount
Plaintiff/Petitioner

v.
Justin Blount
Defendant/Respondent

Case No. D-18-571209-O

Dept. B

MOTION/OPPOSITION FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☐ **$25** The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-OR-

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

- ☒ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
- ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
- ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
- ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:

- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
- ☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-OR-

☐ **$129** The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ **$57** The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☒**$0** ☐**$25** ☐**$57** ☐**$82** ☐**$129** ☐**$154**

Party filing Motion/Opposition: Plaintiff via F. Peter James, Esq. Date June 12, 2018

Signature of Party or Preparer _____

NOTA
JOHN T. KELLEHER, ESQ.
Nevada State Bar No. 6012
KELLEHER & KELLEHER, LLC
40 S. Stephanie Street, Suite #201
Henderson, Nevada 89012
Telephone (702) 384-7494
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kelleherjt@aol.com

Attorney for Respondent

DISTRICT COURT

CLARK COUNTY, NEVADA

PAULA BLOUNT, Plaintiff, v. JUSTIN CRAIG BLOUNT, Defendant.	CASE NO.: D-18-571209-O DEPT. NO.: B

NOTICE OF APPEARANCE OF COUNSEL

TO: PAULA BLOUNT, Petitioner, and

TO: F. PETER JAMES, ESQ., her attorney:

PLEASE TAKE NOTICE that the law office of Kelleher & Kelleher, LLC has been retained to represent the Respondent, Justin Craig Blount, in the above-entitled matter. All future correspondence, communications and pleadings shall be directed to counsel herein.

DATED this 18 day of June, 2018.

KELLEHER & KELLEHER, LLC.

By: _____
JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
40 S. Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of June, 2018, I deposited a true and correct copy of the above and foregoing NOTICE OF APPEARANCE OF COUNSEL in the United States Mail, postage and addressed as follows:

F. Peter James, Esq.
LAW OFFICES OF F. PETER JAMES, ESQ.
3821 West Charleston Boulevard, Suite 250
Las Vegas, Nevada 89102
Attorney for Petitioner

An employee of Kelleher & Kelleher, LLC

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KELLEHER & KELLEHER LLC
40 S. STEPHANIE STREET, SUITE #201
HENDERSON, NEVADA 89012
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702-256-0087
Attorney for: Petitioner

Electronically Filed
6/22/2018 9:51 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
FAMILY DIVISION CLARK COUNTY, NEVADA

PAULA BLOUNT

Petitioner

JUSTIN CRAIG BLOUNT

Respondent

Case Number: **D-18-571209-O**

Dept/Div: **B**

PROOF OF SERVICE

TINA J. SANCHEZ, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Thursday June 14 2018; 1 copy(ies) of the:

SUMMONS; PETITION FOR GRANDPARENT VISITATION; MOTION FOR TEMPORARY ORDERS

I served the same on Friday June 15 2018 at 06:22PM by:

Serving Respondent JUSTIN CRAIG BLOUNT

Substituted Service, by leaving the copies with or in the presence of: STEPHANIE BLOUNT, WIFE pursuant to NRCP 4(d)(6), as a person of suitable age and discretion residing therein. at the Respondent's Home located at 100 N WALLACE DR, BLDG 12, APT 156, Las Vegas, NV 89107.

Pursuant to NRS 53.045, I declare under the penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.
Executed: Tuesday June 19 2018

Affiant: TINA J. SANCHEZ #R-038221
LEGAL WINGS, INC. - NV LIC #389
1118 FREMONT STREET
Las Vegas, NV 89101
(702) 384-0305, FAX (702) 384-8638

2560087.562499

ANS
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Attorney for Respondents

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Visitation of the Persons of: JEREMIAH CALEB BLOUNT KAYDI ROSE BLOUNT LUNA BELL BLOUNT LOGAN ALEXANDER BLOUNT, minors: PAULA BLOUNT, Petitioner vs. JUSTIN CRAIG BLOUNT, Respondent/CounterPetitioner	Case No: D-18-571209-O Dept: B

ANSWER TO PETITION FOR GRANDPARENT VISITATION

COMES NOW, Respondents Justin Craig Blount, by and through his attorney, John T. Kelleher, Esq of the law office of Kelleher & Kelleher, LLC and hereby files his Answer to Paula Blount's Petition for Grandparent Visitation as follows:

1. Answering the allegations contained in Paragraphs 2, 3, and 4 of Petition on file herein, Respondent/CounterPetitioner admits the allegations contained herein;

2. Answering the allegations contained in Paragraphs 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, Respondent/CounterPetitioner denies the allegations herein.

Wherefore, the Respondent/CounterPetitioner prays for judgment as follows:

1. That the Court deny Petitioner's Request for Visitation with the minor children;

2. That the Court dismiss this action in its entirety;

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DATED this 5 day of July, 2018.

KELLEHER & KELLEHER, LLC

By: _____
JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
40 S. Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Respondents

RESPONDENT/COUNTERPETITIONER'S COUNTERCLAIM

COMES NOW, Respondents Justin Craig Blount, by and through his attorney, John T. Kelleher, Esq of the law office of Kelleher & Kelleher, LLC and hereby files his Counterclaim against Petitioner/CounterRespondent alleges and states as follows:

1. Respondent is now and for more than six weeks preceding the commencement of this action has been, an actual, bona fide resident of the State of Nevada, and during all said periods of time has been actually, physically and corporeally present, residing and domiciled in the State of Nevada.
2. The Respondent is the natural father of the four minor children at issue, to wit: JEREMIAH BLOUNT; KAYDI BLOUNT; LUNA BLOUNT; and LOGAN BLOUNT.
3. Petitioner's action is barred for lack of personal jurisdiction as neither JEREMIAH BLOUNT nor KAYDI BLOUNT, were residents of Nevada at the time of filing;
2. That both JEREMIAH BLOUNT and KAYDI BLOUNT are "Indian Children" and recognized members of the Hualapai Tribe as defined by 25 U.S.C. § 1903(4);
3. That the Hualapai Tribal Court of the Hualapai Indian Reservation in Peach Springs, Arizona has issued custodial Orders as to the minor children, JEREMIAH BLOUNT and KAYDI BLOUNT, awarding Respondent sole legal custody and sole physical custody of the minor children;
4. That the Hualapai Tribal Court continues to exercise exclusive jurisdiction of

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custody and visitation of the minor children, JEREMIAH BLOUNT and KAYDI BLOUNT, and that this Honorable Court is bound to give full faith and credit to the custodial Orders issued by the Hualapai Tribal Court pursuant to *See* 25 U.S.C. § 1911(d); *see also* NRS 125A.215(2) & (3), NRS 125A.305, 125A.315 & 125A.325;

5. That at the time of filing of this Petition neither JEREMIAH BLOUNT nor KAYDI BLOUNT had resided in the State of Nevada for the requisite six month period pursuant to NRS 125A.305.;

6. That Stephanie Blount is the biological and legal mother of LOGAN BLOUNT and LUNA BLOUNT Petitioner has failed to name STEPHANIE BLOUNT as a party to this action;

7. That the natural parents of LOGAN BLOUNT and LUNA BLOUNT are JUSTIN BLOUNT (Respondent) and STEPHANIE BLOUNT (who was not named in this action), remain married (are not separated or divorced), and have never relinquished or had their parental rights terminated;

8. That there is a presumption that if a parent of the child has restricted visits with the child, hat the granting of a right to visitation to a party seeking visitation is not in the best interests of the child. Herein, both custodial parents assert that visitation between Petitioner and the minor children is not in the children's best interest;

9. That Petitioner has engaged in a slew of harassing, vexatious, and dangerous behavior, all of which have been intended to damage and degrade the relationship between the custodial parents and the minor children;

10. That Petitioner should bear Respondent's attorney's costs and fees in this action;

WHEREFORE, Respondent/Counterpetitioner prays as follows:

1. That Petitioner's underlying Petition be dismissed;

2. That Petitioner's request for visitation be denied;

3. That Petitioner be admonished for her harassing, vexatious, and dangerous

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behavior.

4. That Respondent be awarded attorney's costs and fees in this action.

DATED this 5 day of July, 2018.

KELLEHER & KELLEHER, LLC

JOHN T. KELLEHER, ESQ.
Nevada State Bar No. 6012
40 S. Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Respondent/Counter-petitioner

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CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of July, 2018, a true and correct copy of the above and foregoing ANSWER TO PETITION FOR GRANDPARENT VISITATION was served via electronic service and deposited in the United States Mail, postage prepaid and addressed as follows:

F. Peter James, Esq.
Law Offices of F. Peter James, Esq.
3821 West Charleston Boulevard, Suite 250
Las Vegas, Nevada 89102
peter@peterjameslaw.com
beth@peterjameslaw.com
colleen@peterjameslaw.com
Attorney for Petitioner

An employee of Kelleher & Kelleher, LLC

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VERIFICATION

STATE OF)
) ss.
COUNTY OF)

JUSTIN BLOUNT, being first duly sworn on oath, deposes and says:

That he is the Respondent/Counter-Petitioner in the above-entitled matter; that he has read the above and foregoing Answer and Counterclaim and knows the contents thereof; that the same are true of his knowledge except for those matters stated upon information and belief, and as to those matters, he believes them to be true.

DATED this 5 day of July, 2018.

JUSTIN BLOUNT

SUBSCRIBED AND SWORN to before me
this 5 day of July, 2018.

NOTARY PUBLIC in and for
said County and State.

NOTARY PUBLIC
CHERYL ANDERSON
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. OCT. 15, 2021
No: 09-11390-1

OPPS
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Attorney for Respondents

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Visitation of the Persons of: JEREMIAH CALEB BLOUNT KAYDI ROSE BLOUNT LUNA BELL BLOUNT LOGAN ALEXANDER BLOUNT, minors: PAULA BLOUNT, Petitioner vs. JUSTIN CRAIG BLOUNT, Respondent/CounterPetitioner	Case No: D-18-571209-O Dept: B

OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY ORDERS AND COUNTERMOTION FOR DISMISSAL OF ACTION AND ATTORNEY'S COSTS AND FEES

COMES NOW Respondent, Justin Blount, by and through his attorney, John T. Kelleher, Esq., of the law firm of KELLEHER & KELLEHER LLC, and hereby files her Opposition to Petitioner's Motion for Temporary Orders.

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This Opposition and Countermotion are made and based upon the pleadings on file herein, any exhibits attached hereto, and the oral argument of counsel at the time of the hearing.

DATED this 6 day of July, 2018.

KELLEHER & KELLEHER, LLC.

By: _____

JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
40 South Stephanie Street, Suite 201
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Attorney for Respondent

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POINTS AND AUTHORITIES

I.

STATEMENT OF THE FACTS

Respondent Justin Craig Blount is the natural father of the four minor children at issue, to wit: Jeremiah Blount, born January 19, 2010; Kaydi Blount, born February 19, 2013; Luna Blount, born March 11, 2016; and Logan Blount, born December 14, 2017. The biological mother of Jeremiah Blount (age 8) and Kaydi Blount (Age 5) is Gretchen Whatoname, who passed away December 2017. The biological mother of Luna Blount (Age 2) and Logan Blount (Age 6 months) is Stephanie Blount, Justin Blount's wife.

Not only is Petitioner's request procedurally defective, but fails to incorporate critical facts and entirely disregards Nevada law. As Petitioner has done since the time of Justin and Stephanie's marriage, she has dismissed Stephanie's role as Logan and Luna's mother, focusing solely on bullying her way into the children's lives, despite the opposition of all natural parents.

The parties' history is in fact voluminous, fraught with tension and a grandmother who simply will not allow the children and their parents to live in peace. Since the time of Jeremiah's birth in 2010, Paula has made every effort to undermine the role of Respondents, intervening in the custodial dispute between Justin and Gretchen, and even requesting that the Arizona Court award her custody in lieu of either parent. The Arizona Courts found this as ludicrous a request as any, and did not issue orders as to custody or visitation to Petitioner.

Between 2013 and 2016, Petitioner continued to make efforts to damage the relationship between the natural parents and the children. While Kaydi and Jeremiah did reside in Petitioner's home shortly after their birth, they did so with both of their parents present. Justin, Gretchen, and Jeremiah resided with Petitioner on two occasions, each for a brief period of a few months while they were between leases. (Kaydi has never resided with Petitioner.) Petitioner conveniently fails to

mention this fact in an effort to appear in a more parental role than that of a helpful family member. The fact is, Petitioner refuses to acknowledge or comprehend that she is not a parent to these children. She is a grandmother, albeit one who frequently oversteps boundaries resulting in confusion and distress for the children.

For example, while Jeremiah did stay with Petitioner a few nights each week in late 2015, it was with the understanding that it was strictly for purposes of Jeremiah attending a private school, not due to either parent wanting to be away from their son. Though Justin voiced his objection to this arrangement, Gretchen felt giving Jeremiah the best educational opportunity was of utmost importance. As Peach Springs did not have transportation from the Hualapai Reservation to the private school Jeremiah attended, Gretchen allowed Jeremiah to remain at Petitioner's home during school nights each week. Unfortunately, this arrangement lasted only one semester due to Petitioner's ongoing interference with Gretchen's parenting of the children and insistent demands that both minor children stay with Petitioner during holidays, weekends, vacation time, etc. Shortly after Gretchen terminated this arrangement, she limited Petitioner's contact with the children, advising Petitioner that appropriate boundaries were necessary.

Petitioner's parental interference was not limited to her demands on the children's time however. Justin discovered that Petitioner was surreptitiously indoctrinating Jeremiah with her religious beliefs, despite both Justin and Gretchen advising her that they were not comfortable with her doing so. Both parents made clear to Petitioner that she was not a parent, and while she was permitted to spend time with the children, she was not to make parental decisions. As Petitioner willingly admits in her Motion, she continues to do "nightly bible study" and make other religious references to the children, despite the fact that all parents have advised Petitioner that she is not to force religion on the children.

Additionally, Petitioner frequently interfered in both Gretchen and Justin's custodial time with the children. Not only would Petitioner insist on being present

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for each of Justin's custodial periods, but she would regularly advise Justin that she suspected Gretchen of physically abusing the children. Justin later came to learn that Petitioner only made such allegations to cause strife between the parties' and have the Court involve her in the child exchanges and visits, using Petitioner's home as a "neutral location" for child exchanges. Justin also came to learn that Petitioner had encouraged Gretchen to consent to a termination of parental rights, repeatedly advising her that she could provide the children with a "better life" than either of the natural parents.

In 2016, Justin and his now wife, Stephanie, welcomed their daughter, Luna, and shortly after their son, Logan. Unfortunately, Petitioner's begun engaging in the same harassing and volatile tactics with Stephanie as she did with Gretchen. Not only did Petitioner encourage Stephanie to end her relationship with Justin, but upon learning of Stephanie's pregnancy advised Stephanie that she "did not need any children with Justin" and suggested she terminate her pregnancy. Petitioner has spent a total of four visits with Luna and three with Logan, both of which were supervised. Petitioner has spent no birthdays or holidays with either of these children. On the minimal visits Petitioner has had with Luna and Logan, she has repeatedly made derogatory comments about Stephanie and allowed unknown individuals to hold the children, despite the children being infants. Both Stephanie and Justin have advised Petitioner that this behavior is not acceptable, however Petitioner simply does not care what boundaries the parents establish for their children.

Unfortunately, since Gretchen's untimely passing, Petitioner has ramped up her tactics in an effort to force her way into the children's lives. Prior to bringing forth this Motion, Petitioner conspired with Gretchen's parents (Gretna and Wilfred Whatoname) to hide the children on the Hualapai Indian Reservation Tribe. Petitioner advised Justin and Stephanie that she did not know of the children's location, however she later advised that the maternal grandparents had taken the

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children to the Indian Reservation in an effort to obtain custody. (See Supplemental Exhibit A: Order Denying Motion for Immediate Temporary Custody filed in the Hualapai Juvenile Court, December 29, 2017.) Upon information and belief, the maternal grandparents and Petitioner conspired to obtain a custodial order awarding the maternal grandparents custody over the children, so the children would continue to reside in Arizona, near Petitioner.

In January 2018, Respondent returned to Las Vegas, Nevada where he now resides with all four children and his wife, Stephanie. Over the last several months, the children have opened up to Respondents, regarding physical abuse they experienced while living in Arizona, including Petitioner slapping 8 year old Jeremiah in the face on numerous occasions as a form of discipline. Both Jeremiah and Kaydi expressed concerns over "mean people" visiting them, and accordingly, Respondents advised all extended family that if any such behavior was reported by the children, those family members would no longer visit with the children. Respondents also advised extended family members that while the children were processing the grief of losing their mother and adjusting to their new schedule, visits, phone calls, etc. would be limited to allow the children to settle in without any additional stress.

Unfortunately, Petitioner disregarded this information as well. In February 2018, Respondents through a very small birthday party for both Jeremiah and Kaydi at Texas Station. The Respondents intended to host a few extended family members for lunch, and while they invited Petitioner, they specifically advised her that she was not to invite any other family members. Respondents were extremely careful in who they invited, as the children had expressed negative interactions with specific family members and Respondents hoped to minimize the stress on the children. Despite extremely specific instructions to Petitioner on whom should not be able to attend, Petitioner extended the invitation to these individuals and advised them they were welcome to come to the birthday, (including one adult relative who

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gave the children alcohol and another who had hit the children with a broom.) These individuals did arrive at the birthday party, and elected to be seated at the lunch table next to the children. Upon realizing these individuals were at lunch, Jeremiah sat next to Respondents, becoming distraught and asking to leave. Shortly after this occasion, Respondents advised the Petitioner that there would be no additional contact with the children, until the children's routine was more stable and the remaining family members could respect the boundaries established.

Since February 2018, Petitioner's behavior has become even more unstable. She has repeatedly called Respondents, demanding to speak with the children during school hours and insisting they return her call "immediately." Petitioner has repeatedly asked to sit in on the children's therapy appointments, discuss the children's concerns with their therapist, and receive copies of their medical information. Respondents have explained repeatedly that the children's information is private, that therapy sessions are for the children only, and not even Respondents sit in on the sessions to ensure the children are free to talk their therapist openly. This response has yielded threats, vulgarities, and even phone calls to CPS, alleging that the Respondents have neglected the children.

Due to Petitioner's ongoing volatility and threats, Respondents have advised Petitioner that until she seeks some sort of professional treatment for her behavior she will not be permitted to visit with the children. Rather than make efforts to modify her behavior, Petitioner has doubled down, hoping she can now use the Courts to further harass the Respondents. The Court must unilaterally deny all relief requested by the Petitioner, and admonish her to cease her ongoing interference and threats.

II.

LEGAL ARGUMENT

A. PETITIONER'S MOTION IS PROCEDURALLY DEFECTIVE AS JEREMIAH BLOUNT AND KAYDI BLOUNT WERE NOT RESIDENTS OF

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NEVADA AT THE TIME OF FILING AND BOTH CHILDREN ARE "INDIAN CHILDREN" PURSUANT TO NRS 125A.305.

NRS 125A.085 "Home state" defined. "Home state" means:

1. The state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence from the state, immediately before the commencement of a child custody proceeding.

2. In the case of a child less than 6 months of age, the state in which the child lived from birth, including any temporary absence from the state, with a parent or a person acting as a parent.

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NRS 125A.305 Initial child custody jurisdiction.

1. Except as otherwise provided in NRS 125A.335, a court of this State has jurisdiction to make an initial child custody determination only if:

(a) This State 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 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(b) A court of another state does not have jurisdiction pursuant to paragraph (a) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum pursuant to NRS 125A.365 or 125A.375 and:

(1) 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 State other than mere physical presence; and

(2) Substantial evidence is available in this State concerning the child's care, protection, training and personal relationships;

(c) All courts having jurisdiction pursuant to paragraph (a) or (b) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child pursuant to NRS 125A.365 or 125A.375; or

(d) No court of any other state would have jurisdiction pursuant to the criteria specified in paragraph (a), (b) or (c).

2. Subsection 1 is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

3. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

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(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe...

25 U.S.C.A. § 1903 (West)

25 U.S.C.A. § 1911: Indian tribe jurisdiction over Indian child custody proceedings
Currentness
(a) Exclusive jurisdiction
An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child...

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.
25 U.S.C.A. § 1911 (West)

To begin, at the time of filing this Petition and Motion, Nevada did not serve as the home state of the minor children. The minor children relocated to Nevada on December 29, 2017. Petitioner filed this Petition for Visitation on May 18, 2018, roughly four and a half months after the children relocated from Peach Springs, Arizona. Herein, Nevada is not the Home State of either Jeremiah Blount or Kaydi Blount.

More importantly, both Jeremiah and Kaydi's natural mother is GRETCHEN WHATONAME, who has since passed away. 25 U.S.C.A. § 1903(4) defines an "Indian Child" as a child who's biological parent is a registered member of an Indian tribe. Gretchen was a registered member of the Hualapai Indian Tribe in Peach Springs, Arizona. Between December 2017 and January 2018, the Hualapai Indian Juvenile Court issued Orders awarding Respondent sole custody of Jeremiah and Kaydi, and denying the maternal grandparents' request for custody. 25 U.S.C.A. § 1911 clearly allows the tribal courts to continue exercising exclusive jurisdiction over Indian children, and there has been no indication that the Hualapai Tribe intends to relinquish jurisdiction over this custodial action.

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Additionally, on January 24, 2018, Respondent was awarded custody (legal and physical) of Jeremiah and Kaydi, with no additional visitation being awarded to any third parties. Just as with any other Court of law, the Honorable District Court of Nevada must give full faith and credit to the custodial orders issued through the Hualapai Juvenile Courts, and enforce the custodial arrangements as set forth in that Order. *25 U.S.C.A. § 1911 (West).*

B. PETITIONER'S FAILS TO NAME STEPHANIE BLOUNT (MOTHER TO LUNA BLOUNT AND LOGAN BLOUNT) AS A PARTY TO THIS ACTION.

NRS 125A.345 Notice; opportunity to be heard; joinder.

1. Before a child custody determination is made pursuant to the provisions of this chapter, notice and an opportunity to be heard in accordance with the standards of NRS 125A.255 must be given to all persons entitled to notice pursuant to the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

2. The provisions of this chapter do not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

3. The obligation to join a party and the right to intervene as a party in a child custody proceeding conducted pursuant to the provisions of this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

Herein, it is undisputed that Stephanie Blount is both the natural and legal mother of LUNA BLOUNT (Age 2) and LOGAN BLOUNT (Age less than 1 year.) As she has done since the children's birth, Petitioner entirely and wholly disregards Stephanie's role as the children's mother, caretaker, and physical and legal custodian. Stephanie has never relinquished her rights as to either minor child, nor has she faced any termination proceedings. To ask that custodial orders be made as to Stephanie's two young children, without so much as notice to the mother, is beyond outrageous and indirect contravention of NRS 125A.345.

Stephanie certainly has an interest in this action, in ensuring her children are

safe and cared for, and not exposed to dangerous or unstable individuals. This Honorable Court should not entertain any discussion as to either LUNA or LOGAN BLOUNT, as it would be wholly improper to do so absent the participation of a parent.

NRS 125C.050 Petition for right of visitation for certain relatives and other persons.

1. Except as otherwise provided in this section, if a parent of an unmarried minor child:

(a) Is deceased;

(b) Is divorced or separated from the parent who has custody of the child;

(c) Has never been legally married to the other parent of the child, but cohabitated with the other parent and is deceased or is separated from the other parent; or

(d) Has relinquished his or her parental rights or his or her parental rights have been terminated, the district court in the county in which the child resides may grant to the great-grandparents and grandparents of the child and to other children of either parent of the child a reasonable right to visit the child during the child's minority.

2. If the child has resided with a person with whom the child has established a meaningful relationship, the district court in the county in which the child resides also may grant to that person a reasonable right to visit the child during the child's minority, regardless of whether the person is related to the child.

In regard to Jeremiah and Kaydi Blount, Petitioner is biologically related to the minor children as her adult son is Respondent, Justin Blount. Petitioner's former daughter-in-law and Respondent's ex-wife is deceased, however third party petitions for grandparents are designed to ensure communication between the grandparent and grandchild when the biological child of the grandparent becomes deceased, creating an estrangement between the grandparent and the surviving parent. Petitioner has noted that Gretchen is her former daughter-in-law and she has since passed away, in an effort to substantiate her basis for bringing forth this action. The Court should note that Respondent is Petitioner's biological child, and remains actively opposed to Petitioner having any unsupervised contact with the minor children.

In regard to Logan and Luna Blount, both natural parents are alive. They

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remain married, co-habitating, and have not been found to have relinquished or had their parental rights terminated or limited in any capacity. Neither Luna nor Logan have ever resided with Petitioner, and Petitioner has had minimal contact and no unsupervised contact with either child due to the ongoing safety concerns presented.

C. MAINTAINING A RELATIONSHIP WITH THE PETITIONER DOES NOT SERVE THE CHILDREN'S BEST INTEREST.

6. In determining whether the party seeking visitation has rebutted the presumption established in subsection 4, the court shall consider:

(a) The love, affection and other emotional ties existing between the party seeking visitation and the child.

(b) The capacity and disposition of the party seeking visitation to:

(1) Give the child love, affection and guidance and serve as a role model to the child;

(2) Cooperate in providing the child with food, clothing and other material needs during visitation; and

(3) Cooperate in providing the child with health care or alternative care recognized and permitted under the laws of this State in lieu of health care.

(c) The prior relationship between the child and the party seeking visitation, including, without limitation, whether the child resided with the party seeking visitation and whether the child was included in holidays and family gatherings with the party seeking visitation.

(d) The moral fitness of the party seeking visitation.

(e) The mental and physical health of the party seeking visitation.

(f) The reasonable preference of the child, if the child has a preference, and if the child is determined to be of sufficient maturity to express a preference.

(g) The willingness and ability of the party seeking visitation to facilitate and encourage a close and continuing relationship between the child and the parent or parents of the child as well as with other relatives of the child.

(h) The medical and other needs of the child related to health as affected by the visitation.

(I) The support provided by the party seeking visitation, including, without limitation, whether the party has contributed to the financial support of the child.

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(j) Any other factor arising solely from the facts and circumstances of the particular dispute that specifically pertains to the need for granting a right to visitation pursuant to subsection 1 or 2 against the wishes of a parent of the child. Nev. Rev. Stat. Ann. § 125C.050 (West)

(a) The love, affection and other emotional ties existing between the party seeking visitation and the child.

To begin, Petitioner has no emotional ties to Luna Blount or Logan Blount. She has seen both children on no more than four occasions, has spent no holidays or birthdays with them, and even suggested to Stephanie Blount that she terminate her pregnancies as Justin "did not need more children."

In regard to both Kaydi and Jeremiah Blount, the children have expressed no desire to visit with Petitioner. They do not ask for her, or wish to speak to her when Petitioner calls Respondents repeatedly. Jeremiah recently advised Respondents that on more than one occasion Petitioner has slapped him, as some form of discipline. Neither child has expressed any desire to visit with Petitioner and both children appear relieved that they are no longer being forced to spend time with her.

(b) The capacity and disposition of the party seeking visitation to:

(1) Give the child love, affection and guidance and serve as a role model to the child;

Petitioner is not a suitable role model for the children. While she may love the children, her constant efforts to force religious beliefs on the children cause confusion and distress and her frequent derogatory comments regarding Justin, Gretchen, and Stephanie are damaging.

Petitioner does not recognize boundaries, and her incessant phone calls, damaging comments, and most recently, her decision to randomly appear at Respondent's home, do not show the children healthy boundaries in a relationship.

(2) Cooperate in providing the child with food, clothing and other material needs during visitation; and

While the children have historically visited with Petitioner, they did not

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reside alone with Petitioner for extended periods as alleged. In reality, both Gretchen and Justin, and the children, resided with Petitioner for periods while they were between leases or getting situated after having a new child. Petitioner never served as the children's "maternal figure" though she made efforts to be seen as just that, frequently undermining Gretchen and Justin's relationship with the children.

(3) Cooperate in providing the child with health care or alternative care recognized and permitted under the laws of this State in lieu of health care.

Both Kaydi and Jeremiah are presently attending therapy, to process the grief and trauma of losing their mother, and to overcome behavioral and emotional issues presented. Both children have disclosed that Petitioner slapped Jeremiah on several occasions, that they have "mean relatives", and that they were relieved they did not have to return to Arizona.

Upon learning that the children were enrolled in therapy, Petitioner began asking Respondent when she could attend the children's therapy sessions with them. Respondent informed Petitioner she was not able to do so, as sessions were for the children and their therapist only. Petitioner was adamant that she not only be able to sit on during these therapy sessions, but also be provided copies of medical records, notes, etc. and be permitted to talk to the children about their therapy sessions. Once again, Petitioner lacks any basic sense of boundaries, even asking that the children skip therapy sessions to speak with Petitioner on the phone.

Petitioner alleges that she has "rules to follow, bedtimes, expectations of behavior" and "rarely gives them candy or soda." To be frank with the Court, Petitioner appears to believe she is a parent to the children, and does not understand that as a grandparent her role is limited. She is not responsible for the children's education, religious education, or healthcare, particularly when she directly contradicts the parents in her efforts.

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(c) The prior relationship between the child and the party seeking visitation, including, without limitation, whether the child resided with the party seeking visitation and whether the child was included in holidays and family gatherings with the party seeking visitation.

Jeremiah and Kaydi have visited with Petitioner throughout the year, while Logan and Luna have not spent any holidays with Petitioner. All four children now reside together, and spend holidays with both Stephanie and Justin, and their siblings. While Petitioner had an ongoing relationship with Jeremiah and Kaydi, it was not a healthy relationship, in that Petitioner frequently tried to take on a parental role, even physically disciplining Jeremiah at time.

(d) The moral fitness of the party seeking visitation.

While Petitioner purports to be morally fit, there are serious concerns with Petitioner's behavior, including the degrading statements made about Stephanie and Justin in front of the children.

There is also concern with Petitioner's physical abuse of Jeremiah. Regardless of whether Petitioner feels slapping an eight year old constitutes discipline, it is grossly inappropriate for anyone other than the parent to consider using corporal punishment on the children.

Finally, Petitioner purports to be a "religious person who studies the bible and prays nightly." While this is suitable for Petitioner, all natural parents of the minor children have advised Petitioner that she is not to teach religion to the children, as that is the role of parents and not third parties. Despite the parents' opposition, Petitioner continues to force religion upon the children when she sees them, insisting the children pray, read the bible, etc. Once again, Petitioner has no qualms in totally and completely disregarding the wishes of the parents with regards to the children.

(e) The mental and physical health of the party seeking visitation.

While Petitioner's physical health appears to be ok, there are very serious

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concerns as to her mental health. Her sudden increase in volatile and threatening behavior, including making false allegations to Child Protective Services and Las Vegas Metropolitan Police Department, as well as her demands in attending the children's therapy sessions, incessant phone calls, and recent surprise arrival at Respondent's home, all lead to questions or whether Petitioner is mentally stable.

Additionally, the Petitioner alleges that she is in good health, but fails to advise this Court that through Respondent's youth she abused both drugs and alcohol. While Petitioner may deny this allegation, Respondent was present for such use. Respondent does not want his children exposed to such behavior.

> (f) The reasonable preference of the child, if the child has a preference, and if the child is determined to be of sufficient maturity to express a preference.

The children are 8 years old; 5 years old; 2 years old; and an infant. They are not in a position to articulate a preference as to custody or visitation, however they have expressed relief that they are no longer being forced to see "mean people" in Arizona.

> (g) The willingness and ability of the party seeking visitation to facilitate and encourage a close and continuing relationship between the child and the parent or parents of the child as well as with other relatives of the child.

The primary concern herein is Petitioner's complete and total disregard for the parties' role as parents. Petitioner frequently takes an "I know best" attitude, resulting in confusion and distress for the children. Petitioner makes derogatory comments regarding Respondent and Stephanie, placing the children in an emotional bind. She regularly disregards the parents wishes in everything from religion to third parties caring for the children, making no efforts to respect the parents roles as the primary caretaker.

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(h) The medical and other needs of the child related to health as affected by the visitation.

Both Kaydi and Jeremiah are presently enrolled in therapy. They have faced significant trauma with the loss of their mother, and have recently disclosed physical abuse faced at the hands of "mean relatives" in Arizona. The children are beginning to adjust to their new home, having two younger full-time siblings, etc. and are feeling comfortable and secure with Respondents. There is concern that time with Petitioner will cause the children to regress in their behavior. After the children visited with Petitioner in February 2018, both children had behavioral setbacks, with Jeremiah lashing out physically before disclosing Petitioner's previous physical abuse.

(I) The support provided by the party seeking visitation, including, without limitation, whether the party has contributed to the financial support of the child.

While Petitioner did provide some financial support for the two older children, Justin and Gretchen were by and large the sole financial providers. Justin did have a child support obligation, which he continued to pay. Additionally,

Petitioner has filed bankruptcy on multiple occasions and survives off of credit cards. She has not filed bankruptcy out of medical necessity or other such need, but after frivolously spending money on a BMW and other purchases. Her total disregard for financial responsibility has caused both Jeremiah and Kaydi to question why Respondents can't just "buy whatever they want", again leading to behaviors that Respondents do not want to encourage in their children.

(j) Any other factor arising solely from the facts and circumstances of the particular dispute that specifically pertains to the need for granting a right to visitation pursuant to subsection 1 or 2 against the wishes of a parent of the child. Nev. Rev. Stat. Ann. § 125C.050 (West)

NRS 125C.050 is clear in that there is a presumption that visitation with a third party over the objection of the parents is not in the children's best interests. Petitioner asserts that "in a grandparent's viatication matter, the Court must hold an evidentiary hearing to evaluate the best interests factors." In *Wallace,* the Court

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found that evidence must be taken before ordering grandparent visitation; it does not find that every request for viatication made by a grandparent necessitates an evidentiary hearing. *Wallace v. Wallace*, 112 Nev. 1015, 922 P.2d 541 (1996).

Here, Petitioner has made a slew of conclusory statements advising this Court that she is entitled to visits with the children. She outright fails to name Stephanie Blount as a party in this action, and further fails to advise this Court of her erratic and volatile behavior over the past six months. Petitioner will make any and every effort to diminish the role of the children's parents, and appoint herself the children's "primary caretaker." (The Court should note that Petitioner's own pleading announces her belief that the children see her as a "maternal figure" more than a grandparent.)

In the past four months, Petitioner has incessantly called Respondents, shown up at their home despite their refusal to visit with her, and made false allegations to Child Protective Services and Las Vegas Metropolitan Police Department. She has tried to interfere in the children's therapy, and make decisions as to which third party relatives should be around the children, over the parent's objections. Petitioner knows no boundaries, and has no respect for the limitations imposed by Respondent. Allowing Petitioner to proceed with this action only opens the door to further harassment, dragging the children into a volatile and emotionally charged situation which is certainly not in their best interest.

E. RESPONDENT'S SHOULD BE AWARDED ATTORNEY'S COSTS AND FEES IN THIS ACTION.

NRS 18.010 Award of attorney's fees.

1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When the prevailing party has not recovered more than $20,000; or

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(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

Herein, Respondent is entitled to an award of attorney's costs and fees. Petitioner has brought forth this Motion for no other reason than to harass Respondent, and force her way into the children' s lives. Petitioner has made several conclusory statements, however she has omitted critical facts, including her threats, incessant phone calls, and recent calls to Child Protective Services. Petitioner has no respect for Respondent, or the children's mother Stephanie, and believes the Court will allow her to bully her way into a relationship with the children. Respondents have had to defend themselves against this action, and should be awarded every dollar in attorney's costs and fees.

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II.

CONCLUSION

WHEREFORE, Respondent Justin Blount requests that this Honorable Court deny Petitioner's requested relief.

DATED this 6 day of July, 2018.

Submitted by:

KELLEHER & KELLEHER, LLC

By: _____

JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
40 S. Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Respondents

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LAW OFFICES
KELLEHER & KELLEHER LLC
40 S. STEPHANIE STREET, SUITE #201
HENDERSON, NEVADA 89012
(702) 384-7494

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of July, 2018, true and correct copies of the document described as OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY ORDERS AND COUNTERMOTION FOR DISMISSAL OF ACTION AND ATTORNEY'S COSTS AND FEES was served via electronic service and deposited in the United States Mail, postage prepaid and addressed as follows:

F. Peter James, Esq.
LAW OFFICES OF F. PETER JAMES, ESQ.
3821 West Charleston Boulevard, Suite 250
Las Vegas, Nevada 89102
peter@peterjameslaw.com
beth@peterjameslaw.com
colleen@peterjameslaw.com
Attorney for Petitioner

An employee of Kelleher & Kelleher, LLC

LAW OFFICES
KELLEHER & KELLEHER LLC
40 S. STEPHANIE STREET, SUITE #201
HENDERSON, NEVADA 89012
(702) 384-7494

AFFIDAVIT OF JUSTIN BLOUNT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

JUSTIN BLOUNT, being first duly sworn, deposes and states:

1. That I am a competent witness to testify to the matters contained herein and do so of my own personal knowledge, except as to those items on information and belief, and as to those matters I believe the same to be true.

2. I am the Respondent in this action and have read the above and foregoing Opposition, and all factual statements set forth therein are true and correct to the best of my knowledge.

3. That I incorporate all factual statements herein as though restated in their entirety, particularly the section entitled, "Statement of the Facts" in this affidavit pursuant to NRCP 10.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 5 day of July, 2018.

JUSTIN BLOUNT

SUBSCRIBED AND SWORN to before me this
5 day of July, 2018.

NOTARY PUBLIC in and for said County and State

NOTARY PUBLIC
CHERYL ANDERSON
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. OCT. 15, 2021
No: 09-11390-1

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Paula Blount
Plaintiff/Petitioner

v.

Justin Craig Blount
Defendant/Respondent

Case No. D-18-571209-O

Dept. B

MOTION/OPPOSITION FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☐ **$25** The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-OR-

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

- ☒ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
- ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
- ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
- ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:

- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
- ☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-OR-

☐ **$129** The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ **$57** The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☒ **$0** ☐ **$25** ☐ **$57** ☐ **$82** ☐ **$129** ☐ **$154**

Party filing Motion/Opposition: Justin Craig Blount Date _____

Signature of Party or Preparer _____

EXH

JOHN T. KELLEHER, ESQ.
Nevada State Bar No. 6012
KELLEHER & KELLEHER, LLC
40 S. Stephanie Street, Suite 201
Henderson, Nevada 89012
Telephone (702) 384-7494
Facsimile (702) 384-7545
kelleherit@aol.com
Attorney for Respondent

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Visitation of the Persons of: JEREMIAH CALEB BLOUNT KAYDI ROSE BLOUNT LUNA BELL BLOUNT LOGAN ALEXANDER BLOUNT, minors: PAULA BLOUNT, Petitioner vs. JUSTIN CRAIG BLOUNT, Respondent/CounterPetitioner	Case No: D-18-571209-O Dept: B

SUPPLEMENTAL EXHIBITS TO RESPONDENT'S OPPOSITION

COMES NOW, Respondent, Justin Blount, by and through his attorney, John T. Kelleher, Esq., of the law firm of KELLEHER & KELLEHER, LLC and hereby submits the attached documents as Exhibits.

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Exhibit A: LVMPD Welfare Check initiated by Petitioner (JB001)

Exhibit B: Order Vacating Temporary Custody Order and Child Support Order from Hualapai Tribal Reservation (JB002 - JB004)

Exhibit C: Order Denying Motion for Immediate Temporary Custody (JB005)

DATED this 13 day of July, 2018.

KELLEHER & KELLEHER, LLC

By: _____ (Bar No. 13500)
JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
40 S. Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Respondent

LAW OFFICES
KELLEHER & KELLEHER LLC
40 S. STEPHANIE STREET, SUITE #201
HENDERSON, NEVADA 89012
(702) 384-7494

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of July, 2018, I deposited a true and correct copy of the above and foregoing SUPPLEMENTAL EXHIBITS TO RESPONDENT'S OPPOSITION in the United States Mail, postage prepaid and addressed as follows:

F. Peter James, Esq.
LAW OFFICES OF F. PETER JAMES, ESQ.
3821 West Charleston Boulevard, Suite 250
Las Vegas, Nevada 89102
Attorney for Petitioner

_____
An employee of Kelleher & Kelleher, LLC

EXHIBIT "A"

LVMPD - COMMUNICATION CENTER
EVENT SEARCH

EVT : LLV180419001621	TYPE: 439	PRI : 1
LOC : .	BLDG: 12	APT : 156
ADDR: 100 N WALLACE DR	XST :	CITY : LV
CADD:	CNAM: PAULA BLOUNT/ANON	CPHONE: 9283039955
MAP : 0231998	S/B : W2	SRA : F651
P/U : 2W28	OFF1: 16820	OFF2 : 9676
DATE: 2018/04/19	INIT: 10:14:11	AREA : BA
911 : NO	CLSE: 11:45:25	DISP : M

10:14:11	EU		INITIATED BY FRM- TO-LV15973			37	LV15973
10:14:11	CM		Original Location : UNK NAME			37	LV15973
10:14:11	CM		Operator LV/15973 Overrode Priority 2 with 1 Priority			37	LV15973
10:14:11	CM		**WELF CHK ON PRS GRANDCHILDREN // JERMIAH BLOUNT IMJ 8YO & KAYDI BLOUNT			37	LV15973
10:14:11	CM		IFJ // FTR - JUSTIN BLOUNT DOB [redacted]85 WMA 32YO 5'11 MED/HVY BLD POSS			37	LV15973
10:14:11	CM		408/446-METH UNK WEAP // PR CONC'D DUE JUVS LOSING A LOT OF WEIGHT //			37	LV15973
10:14:11	CM		JUVS DAD NOT LETTING ANYONE MAKE CONT W/ JUVS // MALE JUV POSS IN SOME			37	LV15973
10:14:11	CM		Primary Event: MAIN Opened: 18/04/19 10:14			37	LV15973
10:14:11	CM		KIND OF PROGRAM FOR BEHAVIORAL PROB // CONC'D ALSO 424 ON JUVS DUE TO			37	LV15973
10:14:11	CM		PREV W/ JUV FTR // ***DO NOT MENT PR - REQ'G TO BE ANON - REQ'G OFCR CALL			37	LV15973
10:14:11	CM		W/ UPDATE			37	LV15973
10:14:22	EU		L FRM-UNK NAME			15	LV6652
10:16:45	CM		37/ FTR OF JUV IS PRS SON 1016HRS			37	LV15973
10:17:21	CM		37/ PREV 424/D #180228-1370 INV'G FTR FIANCE 1017HRS			37	LV15973
10:19:18	USAS	2W2	100 N WALLACE DR		439	15	LV6652
10:19:18	EU	2W2	PU FRM-	TO-LV/2W2		15	LV6652
10:20:57	USER	2W2	100 N WALLACE DR		439	00	LV16835
10:23:22	UR	2W2	Reassign: 439 LLV180419001660			15	LV6652
11:01:55	USAS	2W28	100 N WALLACE DR		439	15	LV6652
11:01:55	USAS	2W8	100 N WALLACE DR		439	15	LV6652
11:01:55	EU	2W28	PU FRM-	TO-LV/2W28		15	LV6652
11:02:13	USER	2W8	100 N WALLACE DR		439	00	LV16785
11:04:19	USER	2W28	100 N WALLACE DR		439	15	LV6652
11:09:03	USAR	2W28	100 N WALLACE DR		439	00	LV16820
11:14:46	EU		FRM-D TO-12			00	LV16820
11:14:46	EU	2W28	BI FRM-D	TO-12		00	LV16820
11:15:39	USAR	2W8	100 N WALLACE DR		439	00	LV16785
11:44:46	CM		NEG 424. FOOD IS PRESENT AND CHILDREN SHOWED NO SIGNS OF ABUSE. NEG 446.			00	LV16820
11:44:46	CM		SPOKE TO CPS AND THEY STATED THEY HAVE AN OPEN CASE BUT ARE GETTING READY			00	LV16820
11:44:46	CM		TO CLOSE THE CASE.			00	LV16820
11:45:07	USCL	2W8			439	00	LV16785
11:45:25	USCL	2W28			439	00	LV16820
11:45:25	CM		Route Closed: MAIN M				
11:45:25	EU	2W28	D FRM-	TO-M MAIN		00	LV16820
11:45:25	CM		Incident Closed: 18/04/19 11:45				
12:01:36	CM		35/REC FROM PR ADV'D OF UPDATES/1201HRS			35	LV15292

EXHIBIT "B"

THE HUALAPAI TRIBAL COURT
HUALAPAI INDIAN RESERVATION
PEACH SPRINGS, ARIZONA

In the Marriage of:	
Gretchen Whatoname, **Petitioner**	Case No.: **2016-DOM-001**
And	**ORDER VACATING TEMPORARY CUSTODY ORDER AND CHILD SUPPORT ORDER**
Justin Blount, **Respondent.**	

The Court has been advised through Respondent's Ex Parte Motion for Dismissal and Orders filed with the Court on January 11, 2018, of the untimely death of Petitioner Gretchen Whatoname. At a hearing on June 26, 2017, attended by both parties and their legal counsels, the Court entered a decree and order of dissolution of marriage between the parties. In addition, the Court issued a Temporary Custody Order awarding temporary custody of the parties' two minor children to Petitioner pending final determination of child custody. At a previous hearing on June 14, 2016, Respondent was ordered to pay to Petitioner child support in the amount of $75.00 per child, $150.00 total monthly. Respondent requests that the temporary custody and child support orders be vacated and that the Court dismiss all pending matters and close the case.

The Court finds that no previous order has terminated Respondent's parental rights. Because Petitioner was awarded temporary custody of the children and has since deceased, custody of the children should be restored to Respondent and the temporary custody order should be vacated. Additionally, the prior child support order should also be vacated and Respondent's

child support obligation should be terminated. However, the Court notes that on April 18, 2017, Respondent filed a Statement for Initial Hearing in which he requested that certain property (without indicating whether such property was Respondent's sole property or was marital property), allegedly in Petitioner's possession, be returned to him. The property was itemized in Exhibit C attached to that filing. Respondent also requested distribution and allocation to Petitioner of certain debts allegedly incurred by Petitioner during the marriage without Respondent's approval and consent. Because these issues of distribution of debts and property have not yet been resolved, and Respondent did not address those outstanding issues in his ex parte motion, the Court finds it prudent to deny the request to close the case pending a formal submission from Respondent addressing the remaining issues of property and debts.

THEREFORE, IT IS THE ORDER OF THIS COURT that:

1. The Temporary Custody Order entered June 26, 2017 and all subsequent orders affirming and maintaining that order are hereby VACATED.

2. Legal and physical custody of Jeremiah Blount, d.o.b. 01/19/2010, and Kaydi Blount, d.o.b. 02/19/2013, is restored to Respondent Justin Blount, the minors' biological father.

3. The Child Support Order entered June 14, 2016 and all subsequent orders affirming and maintaining that order are hereby VACATED.

4. Respondent's child support obligation for the above-named children is terminated.

5. Upon the filing of a notice and/or motion from Respondent regarding his prior claims concerning certain property and debts, the Court will consider such notice/motion summarily and issue its ruling promptly.

SO ORDERED this 23rd day of January, 2018.

Hon. Jan W. Morris, Chief Judge
Hualapai Tribal Court

I certify a copy was mailed this 24 day of January, 2018 to:

Candace Kane
2364 Wiki Way
Camp Verde, AZ 86322-8566

JB003

Keen Ellsworth, Esq.
777 N. Rainbow Blvd., Ste 270
Las Vegas, NV 89107-1187

by: _____

EXHIBIT "C"

IN THE HUALAPAI JUVENILE COURT
HUALAPAI RESERVATION, ARIZONA

ENTERED
DEC 29 2017

In the Matter of:

Jeremiah Carter Blount, d.o.b. 01/19/10,
Kayli Rose Blount, d.o.b. 02/19/13,
Minors.

And Concerning:

Wilfred Whatoname, Jr. and
Gretna Whatoname,
Petitioners,
and
Justin Blount,
Respondent.

Case No.: 2017-CC-013

ORDER DENYING
MOTION FOR IMMEDIATE
TEMPORARY CUSTODY

The following proceeding or action occurred on the 29th day of DECEMBER, 2017 in this Court:

_____	Initial Hearing	_____	Default Judgment Hearing
_____	Preliminary Hearing	_____	Adjudication Hearing
_____	Review Hearing	_____	Disposition Hearing
_____	Motion Hearing regarding: _____		
_____	OSC Hearing issued to: _____		
XX	Other: SUMMARY REVIEW OF MOTION FOR IMMEDIATE TEMPORARY CUSTODY		

Persons present were:

_____	Petitioner(s)	_____
_____	Minor(s)	_____
_____	Parent(s)/Guardian(s)	_____
_____	Minor's Counsel	_____
_____	Parent/Guardian's Counsel	_____
_____		_____

Evidence/Actions: PETITIONERS FILED A 3RD PARTY PETITION FOR CUSTODY AND A MOTION FOR IMMEDIATE TEMPORARY CUSTODY.

The Court found and ordered: THE MOTION SETS FORTH NO FACTS TO INDICATE THE MINORS ARE SERIOUSLY ENDANGERED. PETITION MERELY STATES THAT MINORS' MOTHER IS NOW DECEASED. IN CASE NO. 2015-DOM-001, COURT ISSUED A TEMPORARY CUSTODY ORDER IN FAVOR OF MOTHER. IF MOTHER IS NOW DECEASED, CUSTODY OF THE CHILDREN MUST BE RESTORED TO THE FATHER. MOTION IS DENIED.

The Court further ordered all parties and counsel to appear before the Court for _ on the _ day of __, 2018 at _:__ _.M.

Date: December 29, 2017

Tribal Court Judge

Distribution of copies: ☐ Minor ☐ Minor's counsel ☐ Parent(s) ☐ Parents' counsel ☐ Prosecutor ☐ Human Services ☐ Health Dept./Social Services ☐ HUDRC ☐ Other: _____

JB005

TRANS

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

In the Matter of the Petition of:	)	CASE NO. D-18-571209-O
	)	DEPT. B
PAULA BLOUNT,	)	
Petitioner(s).	)	

BEFORE THE HONORABLE LINDA MARQUIS

TRANSCRIPT RE: ALL PENDING MOTIONS

TUESDAY, JULY 17, 2018

APPEARANCES:

The Petitioner:	PAULA BLOUNT
For the Petitioner:	F. PETER JAMES, ESQ. 3821 W. Charleston Blvd., Ste. 250 Las Vegas, Nevada 89102
The Respondent:	JUSTIN BLOUNT
For the Respondent:	JOHN T. KELLEHER, ESQ. 40 S. Stephanie St., Ste. 201 Henderson, Nevada 89012

LAS VEGAS, NEVADA TUESDAY, JULY 17, 2018

PROCEEDINGS

(THE PROCEEDING BEGAN AT 09:10:45.)

THE COURT: The matter of Paula Blount versus Justin Blount, D-18-571209-0. The parties are present. Counsel, your appearances for the record.

MR. JAMES: Good morning, Your Honor. Peter James, 10091, here with Paula Blount.

MR. KELLEHER: Good morning, Your Honor. John Kelleher, Bar Number 6012, on behalf of Mr. Blount, Your Honor, who's present.

THE COURT: All right. And who else do you have with you, counsel?

MR. KELLEHER: My client's wife, Your Honor, who is...

THE COURT: Is the natural mother of Luna and Logan?

MR. KELLEHER: Correct.

THE COURT: All right.

MR. KELLEHER: But not -- not a named party.

THE COURT: All right. I'm gonna allow her to stay at counsel table...

MR. JAMES: No objection.

THE COURT: ...because she's the natural mother of two of the four. Everybody have a seat. Counsel, this is a case management conference and also your motion for temporary orders; respondent's opposition and counter motion.

Counsel, have you had an opportunity to talk? Have you resolved anything?

MR. KELLEHER: No, Your Honor.

MR. JAMES: No, Your Honor.

THE COURT: Go ahead, Mr. James.

MR. JAMES: Okay. Your Honor, you've read everything. So I'm just gonna basically summarize what's going on here. Grandma has been very close with the two older children, not so much the two younger ones because dad has kept them from her. The children, the two older ones, have lived with grandma. She's cared for them. She has a very tight bond with them. When her son...

THE COURT: And the respondent acknowledges that for some time they -- they lived with her, the entire family did, when they were between residences. How long was that stay?

MR. JAMES: Oh at one point they stayed for almost a year, at another point, several months. They've been off and on, living with grandma.

THE COURT: I didn't see a reply from you, counsel. Do you deny that, is it Kaydi and Jeremiah, are members of a Native American tribe?

MR. JAMES: Yes, they are.

THE COURT: No, I said, do you deny? You -- you acknowledge that they are?

MR. JAMES: I acknowledge that they are. Yes, Your Honor.

THE COURT: Okay. And so then how do I have jurisdiction if they are members, enrolled members of a Native American tribe.

MR. JAMES: ICWA applies to custody, not to child visitation...

THE COURT: Okay.

MR. JAMES: ...for third parties (indiscernible). Now there's a

UCCJEA applied, because that's for when two natural parents, or legal parents, have a dispute as to which state has jurisdiction. That doesn't apply here. This is visitation. This is where the child is.

THE COURT: Okay. Anything else?

MR. JAMES: In sum, Judge, the other side basically (indiscernible) we need an evidentiary hearing to flush out these issues. I would like to get some temporary visitation for my client at a minimum with the two older children. They have a significant relationship. And they're being denied this with their grandmother. Grandma would also like to be reunited with Luna and Logan, as well. She's had...

THE COURT: Counsel, you didn't name their natural mother as a party, nor did she -- did you serve her. Is that correct?

MR. JAMES: That is correct, Your Honor. We can fix that by amendment if the Court will allow us, if the Court deems are necessary.

THE COURT: Well, she is their natural mother. I mean, she's absolutely a necessary party. I mean, I don't see any other way to get around that. That's concerning to me. Anything else?

MR. JAMES: I'll save the rest for rebuttal, Your Honor. You've read the pleadings.

THE COURT: Okay.

MR. KELLEHER: Your Honor, we're asking that you award attorney's fees and sanctions against, not opposing counsel, but his client. I want to be really clear. You had asked right at the outset that we try and resolve this. When they came into me, we looked at the law right away. And on June 21st, 2018, my office and I spent almost three hours drafting a

two-page letter outlining the law to opposing counsel, who I -- I believe didn't have the full story. But we mapped out that full story...

THE COURT: Right.

MR. KELLEHER: ...very, very clearly. I received zero response. And the reason that you didn't get a reply, Your Honor, is because there is no law supporting their position in...

THE COURT: Well, he -- he said the...

MR. KELLEHER: ...any way, shape...

THE COURT: ...UCCJEA doesn't apply to grandparents' rights.

MR. KELLEHER: It most certainly does, Your Honor. Any custodial, any order that would affect their custody in any way, shape or form, the Court has to have jurisdiction. It's -- it is -- it is a -- to make any order affecting the rights of children, this Court would have to have jurisdiction. Under the UCCJEA, we didn't even have -- we didn't even have that because...

THE COURT: Oh that residency. But enrollment in the tribe...

MR. KELLEHER: Correct, it's two...

THE COURT: ...the tribe is a sovereign.

MR. KELLEHER: Correct, it's a sovereign nation, Your Honor. And it's already made under our statutes, NRS 125A.305, it had already made custodial determinations. It already heard this case. She had already been in that -- in the sovereign nation asking for certain relief, which we've supplied the Court with. All...

THE COURT: And I saw that in your -- in your opposition.

MR. KELLEHER: And all of it was denied. So they have continuing

exclusive juri- jurisdiction to make any orders, any in any way, shape or form dealing with these children. And we've cited that law to opposing counsel. Indian children are given specific rights even above and beyond the normal rights that are provided to another state's continuing exclusive jurisdiction.

But in this case, they're doubly -- they're just doubly wrong because, one, there's continuing exclusive jurisdiction. And, two, when you come to Nevada to make any orders, any orders, that deal with the custody and visitation of a child, right, you have to have UCCJEA jurisdiction. One, they didn't have it because there's already orders somewhere else; and, number two, the children hadn't been here six months, by their own admission.

They try and dance around it in their petition. They say, well, it's been around six months. Well, read the statute. The statute's very clear that at the time of filing, the kids had to have been residents here of Nevada for six months. And they were not. So this Court is completely bereft of any jurisdiction in any way shape or form.

And really, Your Honor, it's frivolous. We put 'em on notice on June 21st, 2018, that the -- that their motion was completely frivolous. Then they name two other children that they're seeking custody and visitation for, right, or certainly visitation. And the argument would be, I suppose, well, the -- the Indian tribe didn't make orders pertaining to them. Right.

Under the UCCJEA, you didn't have any jurisdiction over those children either because they hadn't been here six months. But in any case,

you didn't even name the biological mother that you obviously knew about and you knew that she was living with my client; right? They're married, didn't even bother to name her.

So rather than do the right thing, if you're going to go after the two minor children that -- that -- which the case itself is frivolous. But and as a huge uphill battle to the point where it would be dismissed anyway because you have two natural parents. That's why they didn't name the mom is because when you have two natural parents living together and both parents are against the visitation, there's no chance you're gonna get grandparent visitation, zero. She doesn't meet any of the requirements under 125C.050 for the two youngest children. But in any case, it's 100-percent defective by not naming the mother.

And we put them on notice on June 21st, 2018. I followed up with a phone call to opposing counsel. No response whatsoever. And here we are today.

I want to be really clear, Your Honor, I don't blame opposing counsel. You rely, I guess, on, you know, your clients coming in. But this woman is relentless, Your Honor. She is -- she has cost my client tens of thousands of dollars in Arizona that they don't have. And they came in really distraught over this case with very little money.

And I said, look, let's see if we can work this out with just a letter to opposing counsel, just map out the law. And we got radio silence. Then they come in today and say, oh, no, no. We -- none of this applies to us. I mean, it's patently false. It makes no sense.

If you -- if you listen to their argument, what they're saying

is if we had an order out of New York and the -- and the kids happened to be here for two weeks, that they could run down to the court, this is their argument. They could run down to the court after the kids lived here two weeks and file a motion for grandparents' visitation rights in complete derogation of the order from another state, in this particular case not even a state, a sovereign nation that has specific rules that deal with it.

So respectfully, Your Honor, we're asking that it be dismissed under eight- NRS 18.010. We're asking for fees against the -- the plaintiff for having to come down here today. The Court lacks any jurisdiction in any way, shape or form over the kids that are the subject of this motion.

And with that, unless the Court has questions, Your Honor, I don't have anything further.

THE COURT: Mr. James.

MR. JAMES: Yes, Your Honor. I kind of go in some order of my notes here. The grandmother is not in the tribal action. My client says she was a part of it. It was someone else. It was not her in that action.

THE COURT: Who was it?

MS. BLOUNT: The other grandparents.

MR. JAMES: It was the other grandparents, not her.

THE COURT: She's not a party?

MR. JAMES: Nope.

THE COURT: Okay.

MR. JAMES: Now, basics of UCCJEA...

THE COURT: Does anybody have a copy of that? I mean...

MR. KELLEHER: Yes, we attached...

THE COURT: Counsel, I see your exhibits of your -- of you -- of their divorce action, I believe, or custody action between the biological parents. And then I see another exhibit. My copy is...

MR. KELLEHER: That's the order, Your Honor, from the cat- from the court in -- at the Indian nation...

THE COURT: Right, I see that. But I -- I have difficulty...

MR. KELLEHER: ...dismissing the case against them.

THE COURT: I have difficulty...

MR. KELLEHER: An order...

THE COURT: ...reading the -- and it's not -- counsel, it's just a copy. And I believe the -- I'm looking -- it says, in the matter of Jeremiah Blount and Kaydi Blount, minors, and concerning Will -- Wilfred and Greta. And I can't read the last name. But I'm assuming that is maternal grandparents. Is that correct?

MR. KELLEHER: I believe that is correct, Your Honor, yes.

THE COURT: And Justin Blount, who is biological father.

MR. KELLEHER: Correct.

THE COURT: So that -- so in that case the plaintiff in this case was not a party to the action.

MR. KELLEHER: I don't know if she...

THE COURT: Well, she's not named in the caption.

MR. KELLEHER: Okay. She's not a part of that specific case, Your Honor, no.

THE COURT: Okay. All right.

MR. JAMES: So now...

MR. KELLEHER: I might add that, though, Your Honor, that it makes no difference. It doesn't -- it doesn't matter who's a party to that action, the children are the object of both UCCJEA and custody cases; right? You already have orders from that -- from the Indian nation as to what the custody and visitation should be.

THE COURT: Two orders.

MR. KELLEHER: So one of the...

THE COURT: Two separate actions.

MR. KELLEHER: Two -- two...

THE COURT: Yeah.

MR. KELLEHER: ...separate actions or...

THE COURT: Okay.

MR. KELLEHER: ...two separate orders. So I -- I want to say it's a difference without a distinction.

THE COURT: Okay.

MR. JAMES: (Indiscernible) Your Honor, UCCJEA, this only applies between two parents of a child when two...

THE COURT: Give me the citation...

MR. JAMES: ...different states are...

THE COURT: ...to that.

MR. KELLEHER: Yeah.

THE COURT: Tell me exactly...

MR. KELLEHER: Show me where it's in here.

THE COURT: ...what -- where you're looking so I can look that up.

Tell me.

MR. JAMES: I -- I didn't have a chance to brief this. If I were to brief this...

THE COURT: But, I mean, that should have been in your reply and in your petition because jurisdiction is a big issue here. I need to know the specific -- what you're relying on.

MR. JAMES: Your Honor, I would've had one day to get a brief.

THE COURT: Look, you know I get briefs in about two minutes before a hearing. So, you know, this is your petition. Jurisdiction is an issue. You know it's an issue. I need to know what citation we're looking at.

MR. JAMES: Okay. UCCJEA applies. This is the basic overall concept of UCCJEA.

THE COURT: So U...

MR. JAMES: You have two...

THE COURT: Hold on.

MR. JAMES: ...natural...

THE COURT: Stop.

MR. JAMES: ...parents.

THE COURT: So two separate issues. Does the UCCJEA is not accepted by most sovereign nations and American Indian tribes. Does the Hualapai Nation recognize UCCJEA, number one?

MR. KELLEHER: Yes.

MR. JAMES: I believe they do, Your Honor.

THE COURT: Okay. That would be unique, right, because most tribes do not? Do you have the specific citation to their code that tells me they

accept it?

MR. JAMES: No, Your Honor. I would like to brief this. Now, Your Honor, I do not want to be in violation of rules having one day to file a brief to come in here, and I've had this happen before, where I filed briefs within five days of a hearing and the Court's just stricken them. So with these being legal issues, we can brief. And Your Honor can give a minute order ruling.

THE COURT: Okay. Listen. Look. We're all coming back. I'm not giving a minute order ruling. We're seeing you back in one week. I'll have briefs within 72 hours. Here are the main issues as I see them so that you understand what I need from you.

Number one, I am shocked and surprised to learn that the Hualapai Nation accepts the UCCJEA, as most tribes do not. There are two cases in which the Hualapai Nation, which this Court recognizes as a sovereign nation, has accepted jurisdiction over these children. I have two orders. I'd like to see a bit more. I'm concerned about the six -- that we're not at six months. I'm concerned that we haven't named natural mother for two of the children, that she hasn't been served, that she hasn't been named. Those things concern me. I think that jurisdiction is the pivotal dispositive issue. And I'm not sure that I'll have to get to it much more. So I'll see everybody back in one week.

Mr. Kelleher.

MR. KELLEHER: Just very briefly, Your Honor.

THE COURT: Yes.

MR. KELLEHER: Because my clients really don't have the money for

this. And this is just a delay. If I could just read you this. It says -- it's a -- it's a federal statute that we cited (indiscernible). It's 25 U.S.C.A. Section 1911. It's right in our motion. It says, Indian tribe jurisdiction over Indian child custody proceedings, currentness, exclusive jurisdiction. An Indian tribe shall have jurisdiction, exclusive as to any state over any child custody proceedings involving an Indian child who resides or is domiciled within the reservation of such tribe except where such jurisdiction is otherwise vested in the state by existing federal law. Where an Indian is otherwise -- I'm sorry. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction notwithstanding the residence or domicile of the child. All right. The bottom line is the -- those...

THE COURT: But he -- Mr. James is saying that that is for custody and not visitation.

MR. KELLEHER: Well -- well what...

THE COURT: And I'm not sure that the federal law makes a distinction like Nevada makes a distinction. I'm really concerned.

You know, I don't want to do your work for you, Mr. James. I'm not gonna allow you to -- and I understand Mr. Kelleher's concern that his -- his clients don't have the money for Mr. Kelleher to make another appearance. I get that. And -- and that's unfortunate. It looks like there's other things going on with the tribe. I think that should I reject...

MR. KELLEHER: Can I just...

THE COURT: Hold on. Should I reject petitioner's request that

attorney's fees and costs and perhaps sanctions against the petitioner are appropriate in this case especially in light of -- especially if what Mr. Kelleher said was true, that he sent a three-page letter outlining the history of what's been going on? It really concerns me.

And -- and, Mr. Kelleher, I -- I know it's difficult. But this is a jurisdictional issue. I hate to issue an order or go any further and step on the rights of -- of the sovereign nation without the appropriate jurisdiction.

And I don't have enough, Mr. James, distinction between visitation and custody. While we find it a distinction, it may not be a distinction in the UCCJEA. And so -- but notwithstanding that, the six months hasn't been met. And, you know, at best we're talking about two children because natural mother of the other two hasn't been served or named. But I recognize, the Court recognizes her fundamental right to be heard in this matter. So I'm gonna allow her to sit at counsel table and be represented during this initial motion relative to jurisdiction.

So I will see everybody back on July 25th at 10:30.

MR. KELLEHER: Your Honor, could we waive my client's appearance?

THE COURT: Absolutely.

MR. KELLEHER: Okay. Thank you, Your Honor.

THE COURT: Does that date work for everybody?

MR. JAMES: Works for me, Your Honor.

THE COURT: All right. We'll see you then. Thank you.

MR. JAMES: Thank you.

MR. KELLEHER: And, Your Honor, I'm sorry, that -- the reply brief is

due in 72 hours?

THE COURT: He needs to file -- and you can file something else, counsel, as well. I -- I need more statutes, more information, before I make a decision as to jurisdiction.

MR. KELLEHER: Thank you, Your Honor.

THE COURT: Thank you.

(THE PROCEEDING ENDED AT 09:27:34.)

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.

Sherry Justice

SHERRY JUSTICE,
Transcriber II

EXH

JOHN T. KELLEHER, ESQ.
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Henderson, Nevada 89012
Telephone (702) 384-7494
Facsimile (702) 384-7545
kelleherit@aol.com
Attorney for Respondent

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Visitation of the Persons of: JEREMIAH CALEB BLOUNT KAYDI ROSE BLOUNT LUNA BELL BLOUNT LOGAN ALEXANDER BLOUNT, minors: PAULA BLOUNT, Petitioner vs. JUSTIN CRAIG BLOUNT, Respondent/CounterPetitioner	Case No: D-18-571209-O Dept: B

SECOND SUPPLEMENTAL EXHIBITS TO RESPONDENT'S OPPOSITION

COMES NOW, Respondent, Justin Blount, by and through his attorney, John T. Kelleher, Esq., of the law firm of KELLEHER & KELLEHER, LLC and hereby submits the attached documents as Exhibits.

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Exhibit D: Letter to F. Peter James, Esq. dated June 21, 2018 (JB006 - JB008).

DATED this 17 day of July, 2018.

KELLEHER & KELLEHER, LLC

By: _____
JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
40 S. Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of July, 2018, I deposited a true and correct copy of the above and foregoing SECOND SUPPLEMENTAL EXHIBITS TO RESPONDENT'S OPPOSITION in the United States Mail, postage prepaid and addressed as follows:

F. Peter James, Esq.
LAW OFFICES OF F. PETER JAMES, ESQ.
3821 West Charleston Boulevard, Suite 250
Las Vegas, Nevada 89102
Attorney for Petitioner

_____
An employee of Kelleher & Kelleher, LLC

LAW OFFICES
KELLEHER & KELLEHER LLC
40 S. STEPHANIE STREET, SUITE #201
HENDERSON, NEVADA 89012
(702) 384-7494

EXHIBIT "D"

KELLEHER & KELLEHER

June 21, 2018

Via Facsimile: (702) 256-0145
F. Peter James, Esq.
Law Offices of F. Peter James, Esq.
3821 West Charleston Blvd., Ste. 250
Las Vegas, NV 89102

Re: Paula Blount v. Justin Craig Blount
Case No. D-18-571209-O

Dear Mr. James:

I have been hired to represent respondent, Justin Craig Blount (Justin), in the above-referenced matter. We are in receipt of petitioner, Paula Blount's (Paula), Summons (Domestic), Petition for Grandparent Visitation (NRS 125C.050) (which is not signed or dated, and has no file stamp on it), and the Motion for Temporary Orders (filed on June 12, 2018). Even though you filed the motion for Paula, I am sending this letter pursuant to EDCR 5.501 to attempt resolution of this matter before filing a response to the papers you filed with the court.

I ask, on behalf of Justin, that you please voluntarily dismiss the Petition for Grandparent Visitation (NRS 125C.050), and the Motion for Temporary Orders. There are serious jurisdictional issues with your case. First, Nevada is not the "home state" of any of Paula's grandchildren with whom she seeks visitation rights. *See* NRS 125A.085 (" 'Home state' means: 1. The state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence from the state, immediately before the commencement of a child custody proceeding."). Paula's grandchildren have not lived in Nevada with their parents, Justin and Stephanie, for 6 consecutive months "immediately before the commencement" of this action. They moved to Nevada with their parents on December 29, 2017. So, Paula's petition and motion fail to meet the jurisdictional requirements of NRS 125A.305.

Furthermore, Paula's grandchildren are Indian children as defined by 25 U.S.C. § 1903(4). They are members of the Hualapai Indian tribe. Shortly before Gretchen Whatoname, Justin's ex-wife and Jeremiah Blount and Kaydi Blount's biological mother died, the Hualapai Tribal Court granted Gretchen temporary custody of the children (Jeremiah and Kaydi) as part of the divorce decree. After Gretchen died, the Hualapai Tribal Court vacated that temporary order and gave Justin full legal and physical custody of Jeremiah and Kaydi. That order from the Hualapai Tribal Court in Peach Springs, AZ was entered on January 24, 2018. Nevada state courts are required to give such orders from an Indian tribe full faith and credit. *See* 25 U.S.C. § 1911(d); *see also* NRS 125A.215(2) & (3). And the Hualapai Tribal Court has exclusive,

continuing jurisdiction over matters such as these, *e.g.*, child custody and visitation rights issues. *See e.g.*, NRS 125A.305, 125A.315 & 125A.325.

Paula also has no right to petition the court for visitation rights with regard to Luna Bell Blount and Logan Alexander Blount. Luna and Logan's parents are Justin and Stephanie Blount. Justin and Stephanie are still alive, they are married, they are not separated, and they have never relinquished or had terminated their parental rights. Therefore, Paula has no right to petition the court for visitation rights with regard to Luna and Logan. *See* NRS 125C.050(1)(a)-(d).

In light of the jurisdictional defects and the fact that Paula has no right to petition to the court for visitation rights with regard to Luna and Logan, I am asking that you voluntarily dismiss the Petition for Grandparent Visitation (NRS 125C.050), and the Motion for Temporary Orders that you filed.

I appreciate your time and attention to this matter, and I look forward to hearing from you soon.

Sincerely,

KELLEHER & KELLEHER, LLC

John T. Kelleher, Esq.

cc: client

TX Result Report

P 1
06/21/2018 07:34
Serial No. A8KN011005352
TC: 148583

Addressee	Start Time	Time	Prints	Result	Note
7022560145	06-21 07:33	00:00:31	002/002	OK	

Note TMR:Timer TX, POL:Polling, ORG:Original Size Setting, FME:Frame Erase TX,
DDS:Page Separation TX, MIX:Mixed Original TX, CALL:Manual TX, CSRC:CSRC,
FWD:Forward, PC:PC-FAX, BND:Double-Sided Binding Direction, SP:Special Original;
FCODE:F-code, RTX:RG-TX, RLY:Relay, MBX:Confidential, BOL:Bulletin, SIP:SIP Fax;
IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF,
TEL: NX from TEL, NG: Other Error, CONT:Continue, NO ANS: No Answer,
REFUSE: Receipt Refused, BUSY: Busy, M-FULL:Memory Full, LOVR:Receiving length Over,
POVR:Receiving page Over, FIL:File Error, DC:Decode Error, MDN:MDN Response Error,
DSN:DSN Response Error, PRINT:Compulsory Memory Document Print,
DEL:Compulsory Memory Document Delete, SEND:Compulsory Memory Document Send.

KELLEHER & KELLEHER

June 21, 2018

Via Facsimile: (702) 256-0145
F. Peter James, Esq.
Law Offices of F. Peter James, Esq.
3821 West Charleston Blvd., Ste. 250
Las Vegas, NV 89102

Re: Paula Blount v. Justin Craig Blount
Case No. D-18-571209-O

Dear Mr. James:

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Electronically Filed
7/19/2018 4:43 PM
Steven D. Grierson
CLERK OF THE COURT

BREF

LAW OFFICES OF F. PETER JAMES, ESQ.
F. Peter James, Esq.
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702-256-0087
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Counsel for Petitioner

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

In the matter of the Visitation of the Persons of: Jeremiah Caleb Blount, Kaydi Rose Blount, Lune Bell Blount, and Logan Alexander Blount, minors; PAULA BLOUNT, Petitioner, vs. JUSTIN CRAIG BLOUNT, Respondent.	CASE NO. : D-18-571209-O DEPT. NO. : B **BRIEF AS TO JURISDICTIONAL ISSUES AND RELATED MATTERS**

COMES NOW Petitioner, Paula Blount, by and through her counsel, F. Peter James, Esq., who hereby submits her brief, as requested by the Court, as to the jurisdictional and related matters.[1]

POINTS AND AUTHORITIES

Respondent has made numerous arguments regarding jurisdiction and other matters that are **simply not accurate**. The major issues are addressed herein.

The Eighth Judicial District Court has jurisdiction over this Grandparents Visitation action and it is the proper venue

NRS 125C.050 (the "Grandparent Visitation statute") provides in relevant part as follows:

> 1. Except as otherwise provided in this section, if a parent of an unmarried minor child:
>
> (a) Is deceased;
>
> (b) Is divorced or separated from the parent who has custody of the child;
>
> (c) Has never been legally married to the other parent of the child, but cohabitated with the other parent and is deceased or is separated from the other parent; or

[1] Petitioner is only addressing a few issues as that is what the Court directed and gave leave to file. Petitioner is happy to address any remaining issues, specifically items in the Opposition / Countermotion. Without leave of the Court, Petitioner may not respond due to the 5 day rule.

> (d) Has relinquished his or her parental rights or his or her parental rights have been terminated,
>
> the district court **in the county in which the child resides** may grant to the great-grandparents and grandparents of the child and to other children of either parent of the child a reasonable right to visit the child during the child's minority.

(emphasis added).

Given the clear language of the Grandparent Visitation statute, the Eighth Judicial District Court, Family Division has jurisdiction over the minor children at issue as to Petitioner's request for visitation.[2]

Respondent argues that the UCCJEA applies to this matter. This argument is wholly without merit.

As a preliminary matter, the Grandparent Visitation statute specifically gives this Court jurisdiction as the children reside in Clark County, Nevada. The statute does this without reference to the UCCJEA—it simply gives jurisdiction to this Court when the children reside in Clark County, Nevada.

Moreover, the UCCJEA applies to custody determinations between parents. *See* NRS Chapter 125A; *see genearlly* Exhibits at 1-130, and *specifically*

[2] The Grandparent Visitation statute also gives the Court jurisdiction over any other children of either parent and to award Petitioner visitation with any other children of Petitioner. This negates the argument that Petitioner does not have a proper cause of action for visitation with Luna and Logan.

at 3-8, 79-83. The entire purpose of the UCCJEA is to determine the state that has jurisdiction to hear a custody dispute between two parents or people requesting custodial rights. As Respondent is the only natural parent of Kaydee and Jeremiah, there is no UCCJEA issue as there are no longer two parents with competing states over which jurisdiction might be contested. As the sole remaining parent of Kaydee and Jeremiah, there is no conflict between states; thus, the UCCJEA does not apply.

As to Logan and Luna, both Respondent and the children's mother live in Clark County, Nevada. As such, Nevada has UCCJEA jurisdiction—though it is not needed for a Grandparent Visitation action. *See* NRS 125C.050.

NRS 125A.305 defines the rule for initial child custody determination jurisdiction, in order of priority. The statue provides for four different methods of determining jurisdiction, the first being the highest priority and preferred method of determination, the last being the lowest priority and limited in its scope.

NRS 125A.305 states:

> 1. Except as otherwise provided in NRS 125A.335, a court of this State has jurisdiction to make an initial child custody determination only if:
>
> (a) This State 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 6 months before the commencement of the

proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(b) A court of another state does not have jurisdiction pursuant to paragraph (a) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum pursuant to NRS 125A.365 or 125A.375 and:

(1) 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 State other than mere physical presence; and

(2) Substantial evidence is available in this State concerning the child's care, protection, training and personal relationships;

(c) All courts having jurisdiction pursuant to paragraph (a) or (b) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child pursuant to NRS 125A.365 or 125A.375; or

(d) No court of any other state would have jurisdiction pursuant to the criteria specified in paragraph (a), (b) or (c).

2. Subsection 1 is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

3. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Here, there is no home state of the children, Nevada has initial jurisdiction under the significant contact method, no other state has the ability to decline jurisdiction, and no other state but Nevada can establish initial jurisdiction.

1. "Home State" Method of Determination.

The "home state" is defined as:

> The state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence from the state, immediately before the commencement of a child custody proceeding.

NRS 125A.085. However, the purported home state must also maintain at least one parent residing in the said state. *See* NRS 125A.305(1)(a). This is the difference between merely meeting the definition of home state and having home state jurisdiction. Thus, a child's "home state" status has priority over the other three methods of obtaining jurisdiction by any state if a parent or person acting as a parent continues to live in the state. *Id.*

Here, no state has home state jurisdiction. All of the children and all of the parents ceased residing in the State of Arizona in or about December 2017. So, Arizona does not have initial child custody jurisdiction by the home state method. Nevada does not have home state jurisdiction as the children have not resided in Nevada for at least six months prior to the filing of this action, though the UCCJEA does not apply to Grandparent Visitation actions. There are no other states which could have home state jurisdiction.

So, no state has home state jurisdiction over the children.

2. "Significant Connection" Method of Determination.

Nevada has jurisdiction under the significant connection method. See NRS 125A.305(1)(b).

Where the parents move with their children to a new state, the new state may take jurisdiction to make the initial determination. *See Friedman v. Eighth Judicial District Court*, 127 Nev. 842, 849-50, 264 P.3d 1161, 1167 (2011). In such instances, the "home state" method of determination gives way to a determination based upon the second method: that the children and at least one parent have a "significant connection with this state" and "substantial evidence is available in this state concerning the child's care, protection, training and personal relationships." NRS 125A.305(b); *see also Friedman*, 127 Nev. at 849-50, 264 P.3d at 1167-68.

At the time the present action was filed, Nevada (and no other state) possessed strong and significant connections to both parents and the children. Both parents moved from Arizona to Nevada in December 2017. The parents moved to Nevada with the intent to stay here. The parents intended not to return to Arizona when they moved to Nevada.

As such, only Nevada can establish initial UCCJEA jurisdiction under the significant connection method.

3. "All Other Courts have Declined Jurisdiction" Method of Determination.

The third method of determination of jurisdiction requires that before any state may take jurisdiction, assuming no state has "home state" status and another state has superior claim to jurisdiction, is that all other states must affirmatively decline jurisdiction under the first two methods.

Here, no other state at issue has even been asked to assert initial UCCJEA jurisdiction. It would be unreasonable to require a party to ask the State of Arizona to take jurisdiction as the parents moved from Arizona in December 2017 with the intent not to return there.

So, no other state has been asked to assert jurisdiction. As such, no other state could have declined jurisdiction. As stated herein, Arizona could not exercise either home state or significant connection jurisdiction.

4. "Catch-all" Method of Determination.

The fourth and final method of determination relies upon the case where "no court of any other state would have jurisdiction" under any of the preceding methods. As stated, no state has home state jurisdiction. Only Nevada can have significant contact jurisdiction. Arizona has not been asked to assert initial jurisdiction, and rightfully so.

As such, only Nevada qualifies under the catch-all method.

* * * *

For the foregoing reasons, Nevada has UCCJEA jurisdiction over the children.

This argument is entirely moot, however, as UCCJEA jurisdiction applies to custody, not grandparent visitation. NRS 125C.050 specifically provides that the Court has jurisdiction to over Grandparent Visitation actions when the children reside in Clark County, Nevada, which is the case here.

ICWA

The Indian Child Welfare Act ("ICWA"), 25 USC 1901, *et seq.*, does not apply to Grandparent Visitation actions.

> The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

25 USC § 1902; *see also Matter of Baby Girl Doe*, 865 P.2d 1090 (Mont. 1993).

Indian tribes have limited jurisdiction over child custody matters.

(a) Exclusive jurisdiction

> An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

25 USC § 1911.

Here, the children at issue do not reside and are not domiciled within a reservation. As such, the tribe will not have exclusive jurisdiction. Further, child custody proceedings are defined as foster care placement proceedings, termination of parental rights, preadoptive placement, and adoptive placement. *See* 25 USC § 1903(1). None of these are at issue here as this is a grandparent visitation action. Further, even when an Indian grandparent requests *custodial* rights of a child against the wishes of a non-Indian parent, ICWA does not apply. *See e.g. Application of Berltelson*, 617 P.2d 121, 125-26 (Mont. 1980). *A fortiori*, ICWA does not apply to mere grandparent visitation actions as the policies of ICWA are not infringed upon by a request for grandparent visitation.

Assuming the tribe has jurisdiction over grandparent visitation (which it does not), the issue would become a choice between Nevada and the tribe as to who is to hear this matter. For the purpose of applying NRS 125A.005 to 125A.395 (UCCJEA General Provisions through Jurisdiction), Nevada treats Indian tribes like any other state of the United States. *See* NRS 125A.215(2). As stated, Nevada is the only state / tribe that could still have UCCJEA jurisdiction—though the UCCJEA does not apply to grandparent visitation.

As such, this Court has jurisdiction to adjudicate this action.

Joinder of Respondent's Wife

Respondent's wife and mother of Luna and Logan (Stephanie Blount) should be added as a party to this case. NRCP 19 provides in relevant part as follows:

> **(a) Persons to Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

Here, Respondent's wife and mother of Luna and Logan was inadvertently not added as a party in the Petition. Petitioner requests that the Court give leave to add her as a party. The proposed Amended Petition is included in the Exhibits.

There is no prejudice to Respondent or Stephanie as both were present at the initial hearing and both were concurrently aware of this matter. Correcting the named parties is a procedural matter with a simple remedy.

CONCLUSION

In sum, this Court has jurisdiction over this action. The UCCJEA does not apply. ICWA does not apply. If either UCCJEA or ICWA (or both) did apply, then this Court would still have jurisdiction over this matter, as stated herein. Respondent's arguments to the contrary are wholly meritless. The Court should also permit entry of the Amended Petition, which is mandatory by Rule.

Dated this 19th day of July, 2018

/s/ *F. Peter James*

_____

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CERTIFICATE OF SERVICE

I certify that on this 19th day of July, 2018, I caused the above and foregoing document entitled **BRIEF AS TO JURISDICTIONAL ISSUES AND RELATED MATTERS** to be served as follows:

[x] pursuant to EDCR 8.05(A), EDCR 8.05(F), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

[x] pursuant to EDCR 7.26 / NEFCR 9, to be sent via facsimile / email;

to the attorney(s) / party(ies) listed below at the address(es), email address(es), and/or facsimile number(s) indicated below:

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By: /s/ *F. Peter James*
_____
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EXHS

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DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

In the matter of the Visitation of the Persons of: Jeremiah Caleb Blount, Kaydi Rose Blount, Lune Bell Blount, and Logan Alexander Blount, minors; PAULA BLOUNT, Petitioner, vs. JUSTIN CRAIG BLOUNT, Respondent.	CASE NO. : D-18-571209-O DEPT. NO. : B **EXHIBITS IN SUPPORT OF BRIEF AS TO JURISDICTIONAL ISSUES AND RELATED MATTERS**

The attached exhibits are brought in support of Petitioner's Brief as to Jurisdictional Issues and Related Matters.

/ / /

/ / /

Table of Exhibits

Exhibit Description	Bates Number
UCCJEA (1997) with comments by the National Conference of Commissioners on Uniform State Laws	1-73
UCCJEA (2013) with comments by the National Conference of Commissioners on Uniform State Laws	74-130
Proposed Amended Petition	131-136

Dated this 19th day of July, 2018

/s/ *F. Peter James*

_____

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Counsel for Respondent

By: /s/ *F. Peter James*
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An employee of the Law Offices of F. Peter James, Esq., PLLC

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (1997)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR
ENACTMENT IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-SIXTH YEAR
IN SACRAMENTO, CALIFORNIA
JULY 25 - AUGUST 1, 1997

WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
Nashville, Tennessee, February 4, 1998

November 20, 1998

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (1997)

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Child Custody Jurisdiction and Enforcement Act (1997) was as follows:

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Copies of this Act may be obtained from:

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UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT (1997)

PREFATORY NOTE

This Act, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), revisits the problem of the interstate child almost thirty years after the Conference promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJEA accomplishes two major purposes.

First, it revises the law on child custody jurisdiction in light of federal enactments and almost thirty years of inconsistent case law. Article 2 of this Act provides clearer standards for which States can exercise original jurisdiction over a child custody determination. It also, for the first time, enunciates a standard of continuing jurisdiction and clarifies modification jurisdiction. Other aspects of the article harmonize the law on simultaneous proceedings, clean hands, and forum non conveniens.

Second, this Act provides in Article 3 for a remedial process to enforce interstate child custody and visitation determinations. In doing so, it brings a uniform procedure to the law of interstate enforcement that is currently producing inconsistent results. In many respects, this Act accomplishes for custody and visitation determinations the same uniformity that has occurred in interstate child support with the promulgation of the Uniform Interstate Family Support Act (UIFSA).

Revision of Uniform Child Custody Jurisdiction Act

The UCCJA was adopted as law in all 50 States, the District of Columbia, and the Virgin Islands. A number of adoptions, however, significantly departed from the original text. In addition, almost thirty years of litigation since the promulgation of the UCCJA produced substantial inconsistency in interpretation by state courts. As a result, the goals of the UCCJA were rendered unobtainable in many cases.

In 1980, the federal government enacted the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C. § 1738A, to address the interstate custody jurisdictional problems that continued to exist after the adoption of the UCCJA. The PKPA mandates that state authorities give full faith and credit to other states' custody determinations, so long as those determinations were made in conformity with the provisions of the PKPA. The PKPA provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice

requirements are similar to those in the UCCJA. There are, however, some significant differences. For example, the PKPA authorizes continuing exclusive jurisdiction in the original decree State so long as one parent or the child remains there and that State has continuing jurisdiction under its own law. The UCCJA did not directly address this issue. To further complicate the process, the PKPA partially incorporates state UCCJA law in its language. The relationship between these two statutes became "technical enough to delight a medieval property lawyer." Homer H. Clark, *Domestic Relations* § 12.5 at 494 (2d ed. 1988).

As documented in an extensive study by the American Bar Association's Center on Children and the Law, *Obstacles to the Recovery and Return of Parentally Abducted Children* (1993) (*Obstacles Study*), inconsistency of interpretation of the UCCJA and the technicalities of applying the PKPA, resulted in a loss of uniformity among the States. The Obstacles Study suggested a number of amendments which would eliminate the inconsistent state interpretations and harmonize the UCCJA with the PKPA.

The revisions of the jurisdictional aspects of the UCCJA eliminate the inconsistent state interpretations and can be summarized as follows:

1. Home state priority. The PKPA prioritizes "home state" jurisdiction by requiring that full faith and credit cannot be given to a child custody determination by a State that exercises initial jurisdiction as a "significant connection state" when there is a "home State." Initial custody determinations based on "significant connections" are not entitled to PKPA enforcement unless there is no home State. The UCCJA, however, specifically authorizes four independent bases of jurisdiction without prioritization. Under the UCCJA, a significant connection custody determination may have to be enforced even if it would be denied enforcement under the PKPA. The UCCJEA prioritizes home state jurisdiction in Section 201.

2. Clarification of emergency jurisdiction. There are several problems with the current emergency jurisdiction provision of the UCCJA § 3(a)(3). First, the language of the UCCJA does not specify that emergency jurisdiction may be exercised only to protect the child on a temporary basis until the court with appropriate jurisdiction issues a permanent order. Some courts have interpreted the UCCJA language to so provide. Other courts, however, have held that there is no time limit on a custody determination based on emergency jurisdiction. Simultaneous proceedings and conflicting custody orders have resulted from these different interpretations.

Second, the emergency jurisdiction provisions predated the widespread enactment of state domestic violence statutes. Those statutes are often invoked to keep one parent away from the other parent and the children when there is a threat

of violence. Whether these situations are sufficient to invoke the emergency jurisdiction provision of the UCCJA has been the subject of some confusion since the emergency jurisdiction provision does not specifically refer to violence directed against the parent of the child or against a sibling of the child.

The UCCJEA contains a separate section on emergency jurisdiction at Section 204 which addresses these issues.

3. Exclusive continuing jurisdiction for the State that entered the decree. The failure of the UCCJA to clearly enunciate that the decree-granting State retains exclusive continuing jurisdiction to modify a decree has resulted in two major problems. First, different interpretations of the UCCJA on continuing jurisdiction have produced conflicting custody decrees. States also have different interpretations as to how long continuing jurisdiction lasts. Some courts have held that modification jurisdiction continues until the last contestant leaves the State, regardless of how many years the child has lived outside the State or how tenuous the child's connections to the State have become. Other courts have held that continuing modification jurisdiction ends as soon as the child has established a new home State, regardless of how significant the child's connections to the decree State remain. Still other States distinguish between custody orders and visitation orders. This divergence of views leads to simultaneous proceedings and conflicting custody orders.

The second problem arises when it is necessary to determine whether the State with continuing jurisdiction has relinquished it. There should be a clear basis to determine when that court has relinquished jurisdiction. The UCCJA provided no guidance on this issue. The ambiguity regarding whether a court has declined jurisdiction can result in one court improperly exercising jurisdiction because it erroneously believes that the other court has declined jurisdiction. This caused simultaneous proceedings and conflicting custody orders. In addition, some courts have declined jurisdiction after only informal contact between courts with no opportunity for the parties to be heard. This raised significant due process concerns. The UCCJEA addresses these issues in Sections 110, 202, and 206.

4. Specification of what custody proceedings are covered. The definition of custody proceeding in the UCCJA is ambiguous. States have rendered conflicting decisions regarding certain types of proceedings. There is no general agreement on whether the UCCJA applies to neglect, abuse, dependency, wardship, guardianship, termination of parental rights, and protection from domestic violence proceedings. The UCCJEA includes a sweeping definition that, with the exception of adoption, includes virtually all cases that can involve custody of or visitation with a child as a "custody determination."

5. Role of "Best Interests." The jurisdictional scheme of the UCCJA was designed to promote the best interests of the children whose custody was at issue by discouraging parental abduction and providing that, in general, the State with the closest connections to, and the most evidence regarding, a child should decide that child's custody. The "best interest" language in the jurisdictional sections of the UCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that "best interests" considerations should override jurisdictional determinations or provide an additional jurisdictional basis.

The UCCJEA eliminates the term "best interests" in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children.

6. Other Changes. This draft also makes a number of additional amendments to the UCCJA. Many of these changes were made to harmonize the provisions of this Act with those of the Uniform Interstate Family Support Act. One of the policy bases underlying this Act is to make uniform the law of interstate family proceedings to the extent possible, given the very different jurisdictional foundations. It simplifies the life of the family law practitioner when the same or similar provisions are found in both Acts.

Enforcement Provisions

One of the major purposes of the revision of the UCCJA was to provide a remedy for interstate visitation and custody cases. As with child support, state borders have become one of the biggest obstacles to enforcement of custody and visitation orders. If either parent leaves the State where the custody determination was made, the other parent faces considerable difficulty in enforcing the visitation and custody provisions of the decree. Locating the child, making service of process, and preventing adverse modification in a new forum all present problems.

There is currently no uniform method of enforcing custody and visitation orders validly entered in another State. As documented by the *Obstacles Study*, despite the fact that both the UCCJA and the PKPA direct the enforcement of visitation and custody orders entered in accordance with mandated jurisdictional prerequisites and due process, neither act provides enforcement procedures or remedies.

As the *Obstacles Study* pointed out, the lack of specificity in enforcement procedures has resulted in the law of enforcement evolving differently in different jurisdictions. In one State, it might be common practice to file a Motion to Enforce or a Motion to Grant Full Faith and Credit to initiate an enforcement proceeding. In

another State, a Writ of Habeas Corpus or a Citation for Contempt might be commonly used. In some States, Mandamus and Prohibition also may be utilized. All of these enforcement procedures differ from jurisdiction to jurisdiction. While many States tend to limit considerations in enforcement proceedings to whether the court which issued the decree had jurisdiction to make the custody determination, others broaden the considerations to scrutiny of whether enforcement would be in the best interests of the child.

Lack of uniformity complicates the enforcement process in several ways: (1) It increases the costs of the enforcement action in part because the services of more than one lawyer may be required – one in the original forum and one in the State where enforcement is sought; (2) It decreases the certainty of outcome; (3) It can turn enforcement into a long and drawn out procedure. A parent opposed to the provisions of a visitation determination may be able to delay implementation for many months, possibly even years, thereby frustrating not only the other parent, but also the process that led to the issuance of the original court order.

The provisions of Article 3 provide several remedies for the enforcement of a custody determination. First, there is a simple procedure for registering a custody determination in another State. This will allow a party to know in advance whether that State will recognize the party's custody determination. This is extremely important in estimating the risk of the child's non-return when the child is sent on visitation. The provision should prove to be very useful in international custody cases.

Second, the Act provides a swift remedy along the lines of habeas corpus. Time is extremely important in visitation and custody cases. If visitation rights cannot be enforced quickly, they often cannot be enforced at all. This is particularly true if there is a limited time within which visitation can be exercised such as may be the case when one parent has been granted visitation during the winter or spring holiday period. Without speedy consideration and resolution of the enforcement of such visitation rights, the ability to visit may be lost entirely. Similarly, a custodial parent must be able to obtain prompt enforcement when the noncustodial parent refuses to return a child at the end of authorized visitation, particularly when a summer visitation extension will infringe on the school year. A swift enforcement mechanism is desirable for violations of both custody and visitation provisions.

The scope of the enforcing court's inquiry is limited to the issue of whether the decree court had jurisdiction and complied with due process in rendering the original custody decree. No further inquiry is necessary because neither Article 2 nor the PKPA allows an enforcing court to modify a custody determination.

Third, the enforcing court will be able to utilize an extraordinary remedy. If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

Finally, there is a role for public authorities, such as prosecutors, in the enforcement process. Their involvement will encourage the parties to abide by the terms of the custody determination. If the parties know that public authorities and law enforcement officers are available to help in securing compliance with custody determinations, the parties may be deterred from interfering with the exercise of rights established by court order.

The involvement of public authorities will also prove more effective in remedying violations of custody determinations. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the public authorities as an enforcement agency will help ensure that this remedy can be made available regardless of income level. In addition, the public authorities may have resources to draw on that are unavailable to the average litigant.

This Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation of the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. The Act does not mandate that public authorities be involved in all cases. Not all States, or local authorities, have the funds necessary for an effective custody and visitation enforcement program.

UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT (1997)

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

Comment

Section 1 of the UCCJA was a statement of the purposes of the Act. Although extensively cited by courts, it was eliminated because Uniform Acts no longer contain such a section. Nonetheless, this Act should be interpreted according to its purposes which are to:

(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;

(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;

(3) Discourage the use of the interstate system for continuing controversies over child custody;

(4) Deter abductions of children;

(5) Avoid relitigation of custody decisions of other States in this State;

(6) Facilitate the enforcement of custody decrees of other States;

SECTION 102. DEFINITIONS. In this [Act]:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual who has not attained 18 years of age.

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [Article] 3.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a State to establish, enforce, or modify a child-custody determination.

(7) "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.

(8) "Initial determination" means the first child-custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child-custody determination for which enforcement is sought under this [Act].

(10) "Issuing State" means the State in which a child-custody determination is made.

(11) "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

[(16) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a State.]

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Comment

The UCCJA did not contain a definition of "child." The definition here is taken from the PKPA.

The definition of "child-custody determination" now closely tracks the PKPA definition. It encompasses any judgment, decree or other order which provides for the custody of, or visitation with, a child, regardless of local terminology, including such labels as "managing conservatorship" or "parenting plan."

The definition of "child-custody proceeding" has been expanded from the comparable definition in the UCCJA. These listed proceedings have generally been determined to be the type of proceeding to which the UCCJA and PKPA are applicable. The list of examples removes any controversy about the types of proceedings where a custody determination can occur. Proceedings that affect access to the child are subject to this Act. The inclusion of proceedings related to protection from domestic violence is necessary because in some States domestic violence proceedings may affect custody of and visitation with a child. Juvenile delinquency or proceedings to confer contractual rights are not "custody proceedings" because they do not relate to civil aspects of access to a child. While a determination of paternity is covered under the Uniform Interstate Family Support Act, the custody and visitation aspects of paternity cases are custody proceedings. Cases involving the Hague Convention on the Civil Aspects of International Child Abduction have not been included at this point because custody of the child is not determined in a proceeding under the International Child Abductions Remedies Act. Those proceedings are specially included in the Article 3 enforcement process.

"Commencement" has been included in the definitions as a replacement for the term "pending" found in the UCCJA. Its inclusion simplifies some of the simultaneous proceedings provisions of this Act.

The definition of "home State" has been reworded slightly. No substantive change is intended from the UCCJA.

The term "issuing State" is borrowed from UIFSA. In UIFSA, it refers to the court that issued the support or parentage order. Here, it refers to the State, or the court, which made the custody determination that is sought to be enforced. It is used primarily in Article 3.

The term "person" has been added to ensure that the provisions of this Act apply when the State is the moving party in a custody proceeding or has legal custody of a child. The definition of "person" is the one that is mandated for all Uniform Acts.

The term "person acting as a parent" has been slightly redefined. It has been broadened from the definition in the UCCJA to include a person who has acted as a parent for a significant period of time prior to the filing of the custody proceeding as well as a person who currently has physical custody of the child. In addition, a person acting as a parent must either have legal custody or claim a right to legal custody under the law of this State. The reference to the law of this State means that a court determines the issue of whether someone is a "person acting as a parent" under its own law. This reaffirms the traditional view that a court in a child custody case applies its own substantive law. The court does not have to undertake a choice-of-law analysis to determine whether the individual who is claiming to be a person acting as a parent has standing to seek custody of the child.

The definition of "tribe" is the one mandated for use in Uniform Acts. Should a State choose to apply this Act to tribal adjudications, this definition should be enacted as well as the entirety of Section 104.

The term "contestant" as has been omitted from this revision. It was defined in the UCCJA § 2(1) as "a person, including a parent, who claims a right to custody or visitation rights with respect to a child." It seems to have served little purpose over the years, and whatever function it once had has been subsumed by state laws on who has standing to seek custody of or visitation with a child. In addition UCCJA § 2(5) of the which defined "decree" and "custody decree" has been eliminated as duplicative of the definition of "custody determination."

SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW. This [Act] does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Comment

Two proceedings are governed by other acts. Adoption cases are excluded from this Act because adoption is a specialized area which is thoroughly covered by the Uniform Adoption Act (UAA) (1994). Most States either will adopt that Act or will adopt the jurisdictional provisions of that Act. Therefore the jurisdictional provisions governing adoption proceeding are generally found elsewhere.

However, there are likely to be a number of instances where it will be necessary to apply this Act in an adoption proceeding. For example, if a State adopts the UAA then Section 3-101 of the Act specifically refers in places to the Uniform Child Custody Jurisdiction Act which will become a reference to this Act. Second, the UAA requires that if an adoption is denied or set aside, the court is to determine the child's custody. UAA § 3-704. Those custody proceedings would be subject to this Act. See Joan Heifetz Hollinger, The Uniform Adoption Act: Reporter's Ruminations, 30 Fam.L.Q. 345 (1996).

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).

Proceedings pertaining to the authorization of emergency medical care for children are outside the scope of this Act since they are not custody determinations. All States have procedures which allow the State to temporarily supersede parental authority for purposes of emergency medical procedures. Those provisions will govern without regard to this Act.

SECTION 104. APPLICATION TO INDIAN TRIBES.

(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this [Act] to the extent that it is governed by the Indian Child Welfare Act.

[(b) A court of this State shall treat a tribe as if it were a State of the United States for the purpose of applying [Articles] 1 and 2.]

[(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3.]

Comment

This section allows States the discretion to extend the terms of this Act to Indian tribes by removing the brackets. The definition of "tribe" is found at Section 102(16). This Act does not purport to legislate custody jurisdiction for tribal courts. However, a Tribe could adopt this Act as enabling legislation by simply replacing references to "this State" with "this Tribe."

Subsection (a) is not bracketed. If the Indian Child Welfare Act requires that a case be heard in tribal court, then its provisions determine jurisdiction.

SECTION 105. INTERNATIONAL APPLICATION OF [ACT].

(a) A court of this State shall treat a foreign country as if it were a State of the United States for the purpose of applying [Articles] 1 and 2.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3.

(c) A court of this State need not apply this [Act] if the child custody law of a foreign country violates fundamental principles of human rights.

Comment

The provisions of this Act have international application to child custody proceedings and determinations of other countries. Another country will be treated as if it were a State of the United States for purposes of applying Articles 1 and 2 of this Act. Custody determinations of other countries will be enforced if the facts of the case indicate that jurisdiction was in substantial compliance with the requirements of this Act.

In this section, the term "child-custody determination" should be interpreted to include proceedings relating to custody or analogous institutions of the other country. See generally, Article 3 of The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. 35 I.L.M. 1391 (1996).

A court of this State may refuse to apply this Act when the child custody law of the other country violates basic principles relating to the protection of human rights and fundamental freedoms. The same concept is found in of the Section 20 of the Hague Convention on the Civil Aspects of International Child Abduction (return of the child may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms). In applying subsection (c), the court's scrutiny should be on the child custody law of the foreign country and not on other aspects of the other legal system. This Act takes no position on what laws relating to child custody would violate fundamental freedoms. While the provision is a traditional one in international agreements, it is invoked only in the most egregious cases.

This section is derived from Section 23 of the UCCJA.

SECTION 106. EFFECT OF CHILD-CUSTODY DETERMINATION. A child-custody determination made by a court of this State that had jurisdiction under this [Act] binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard.

As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

Comment

No substantive changes have been made to this section which was Section 12 of the UCCJA.

SECTION 107. PRIORITY. If a question of existence or exercise of jurisdiction under this [Act] is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

Comment

No substantive change was made to this section which was Section 24 of the UCCJA. The section is placed toward the beginning of Article 1 to emphasize its importance.

The language change from "case" to "question" is intended to clarify that it is the jurisdictional issue which must be expedited and not the entire custody case. Whether the entire custody case should be given priority is a matter of local law.

SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the State in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the State in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Comment

This section authorizes notice and proof of service to be made by any method allowed by either the State which issues the notice or the State where the notice is received. This eliminates the need to specify the type of notice in the Act and therefore the provisions of Section 5 of the UCCJA which specified how notice was to be accomplished were eliminated. The change reflects an approach in this Act to use local law to determine many procedural issues. Thus, service by facsimile is permissible if allowed by local rule in either State. In addition, where special service or notice rules are available for some procedures, in either jurisdiction, they could be utilized under this Act. For example, if a case involves domestic violence and the statute of either State would authorize notice to be served by a peace officer, such service could be used under this Act.

Although Section 105 requires foreign countries to be treated as States for purposes of this Act, attorneys should be cautioned about service and notice in foreign countries. Countries have their own rules on service which must usually be followed. Attorneys should consult the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 36, T.I.A.S. 6638 (1965).

SECTION 109. APPEARANCE AND LIMITED IMMUNITY.

(a) 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 State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A

party present in this State who is subject to the jurisdiction of another State is not immune from service of process allowable under the laws of that State.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this [Act] committed by an individual while present in this State.

Comment

This section establishes a general principle that participation in a custody proceeding does not, by itself, give the court jurisdiction over any issue for which personal jurisdiction over the individual is required. The term "participate" should be read broadly. For example, if jurisdiction is proper under Article 2, a respondent in an original custody determination, or a party in a modification determination, should be able to request custody without this constituting the seeking of affirmative relief that would waive personal jurisdictional objections. Once jurisdiction is proper under Article 2, a party should not be placed in the dilemma of choosing between seeking custody or protecting a right not to be subject to a monetary judgment by a court with no other relationship to the party.

This section is comparable to the immunity provision of UIFSA § 314. A party who is otherwise not subject to personal jurisdiction can appear in a custody proceeding or an enforcement action without being subject to the general jurisdiction of the State by virtue of the appearance. However, if the petitioner would otherwise be subject to the jurisdiction of the State, appearing in a custody proceeding or filing an enforcement proceeding will not provide immunity. Thus, if the non-custodial parent moves from the State that decided the custody determination, that parent is still subject to the state's jurisdiction for enforcement of child support if the child or an individual obligee continues to reside there. See UIFSA § 205. If the non-custodial parent returns to enforce the visitation aspects of the custody determination, the State can utilize any appropriate means to collect the back-due child support. However, the situation is different if both parties move from State A after the determination, with the custodial parent and the child establishing a new home State in State B, and the non-custodial parent moving to State C. The non-custodial parent is not, at this point, subject to the jurisdiction of State B for monetary matters. See *Kulko v. Superior Court*, 436 U.S. 84 (1978). If the non-custodial parent comes into State B to enforce the visitation aspects of the determination, the non-custodial parent is not subject to the jurisdiction of State B for those proceedings and issues requiring personal jurisdiction by filing the enforcement action.

A party also is immune from service of process during the time in the State for an enforcement action except for those claims for which jurisdiction could be based on contacts other than mere physical presence. Thus, when the non-custodial parent comes into State B to enforce the visitation aspects of the decree, State B cannot acquire jurisdiction over the child support aspects of the decree by serving the non-custodial parent in the State. Cf. UIFSA § 611 (personally serving the obligor in the State of the residence of the obligee is not by itself a sufficient jurisdictional basis to authorize a modification of child support). However, a party who is in this State and subject to the jurisdiction of another State may be served with process to appear in that State, if allowable under the laws of that State.

As the Comments to UIFSA § 314 note, the immunity provided by this section is limited. It does not provide immunity for civil litigation unrelated to the enforcement action. For example, a party to an enforcement action is not immune from service regarding a claim that involves an automobile accident occurring while the party is in the State.

SECTION 110. COMMUNICATION BETWEEN COURTS.

(a) A court of this State may communicate with a court in another 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.

Comment

This section emphasizes the role of judicial communications. It authorizes a court to communicate concerning any proceeding arising under this Act. This includes communication with foreign tribunals and tribal courts. Communication can occur in many different ways such as by telephonic conference and by on-line or other electronic communication. The Act does not preclude any method of communication and recognizes that there will be increasing use of modern communication techniques.

Communication between courts is required under Sections 204, 206, and 306 and strongly suggested in applying Section 207. Apart from those sections, there may be less need under this Act for courts to communicate concerning jurisdiction due to the prioritization of home state jurisdiction. Communication is authorized, however, whenever the court finds it would be helpful. The court may authorize the parties to participate in the communication. However, the Act does not mandate participation. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls often have to be made after-hours or whenever the schedules of judges allow.

This section does require that a record be made of the conversation and that the parties have access to that record in order to be informed of the content of the conversation. The only exception to this requirement is when the communication involves relatively inconsequential matters such as scheduling, calendars, and court records. Included within this latter type of communication would be matters of cooperation between courts under Section 112. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

The second sentence of subsection (b) protects the parties against unauthorized ex parte communications. The parties' participation in the communication may amount to a hearing if there is an opportunity to present facts and jurisdictional arguments. However, absent such an opportunity, the participation of the parties should not to be considered a substitute for a hearing and the parties must be given an opportunity to fairly and fully present facts and arguments on the jurisdictional issue before a determination is made. This may be

done through a hearing or, if appropriate, by affidavit or memorandum. The court is expected to set forth the basis for its jurisdictional decision, including any court-to-court communication which may have been a factor in the decision.

SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another State, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another State. The court on its own motion may order that the testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that State. A court of this State shall cooperate with courts of other States in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another State to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Comment

No substantive changes have been made to subsection (a) which was Section 18 of the UCCJA.

Subsections (b) and (c) merely provide that modern modes of communication are permissible in the taking of testimony and the transmittal of documents. See UIFSA § 316.

SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.

(a) A court of this State may request the appropriate court of another State to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that State;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another State, a court of this State may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request

by a court or law enforcement official of another State, the court shall forward a certified copy of those records.

Comment

This section is the heart of judicial cooperation provision of this Act. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other States and may assist courts of other States.

The provision on the assessment of costs for travel provided in the UCCJA § 19 has been changed. The UCCJA provided that the costs may be assessed against the parties or the State or county. Assessment of costs against a government entity in a case where the government is not involved is inappropriate and therefore that provision has been removed. In addition, if the State is involved as a party, assessment of costs and expenses against the State must be authorized by other law. It should be noted that the term "expenses" means out-of-pocket costs. Overhead costs should not be assessed as expenses.

No other substantive changes have been made. The term "social study" as used in the UCCJA was replaced with the modern term: "custody evaluation." The Act does not take a position on the admissibility of a custody evaluation that was conducted in another State. It merely authorizes a court to seek assistance of, or render assistance to, a court of another State.

This section combines the text of Sections 19-22 of the UCCJA.

[ARTICLE] 2
JURISDICTION

SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.

(a) Except as otherwise provided in Section 204, a court of this State has jurisdiction to make an initial child-custody determination only if:

(1) this State 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 State but a parent or person acting as a parent continues to live in this State;

(2) a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under Section 207 or 208, 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 this State other than mere physical presence; and

(B) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under Section 207 or 208; or

(4) no court of any other State would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

Comment

This section provides mandatory jurisdictional rules for the original child custody proceeding. It generally continues the provisions of the UCCJA § 3. However, there have been a number of changes to the jurisdictional bases.

1. Home State Jurisdiction. The jurisdiction of the home State has been prioritized over other jurisdictional bases. Section 3 of the UCCJA provided four independent and concurrent bases of jurisdiction. The PKPA provides that full faith and credit can only be given to an initial custody determination of a "significant connection" State when there is no home State. This Act prioritizes home state jurisdiction in the same manner as the PKPA thereby eliminating any potential conflict between the two acts.

The six-month extended home state provision of subsection (a)(1) has been modified slightly from the UCCJA. The UCCJA provided that home state jurisdiction continued for six months when the child had been removed by a person seeking the child's custody or for other reasons and a parent or a person acting as a parent continues to reside in the home State. Under this Act, it is no longer necessary to determine why the child has been removed. The only inquiry relates to the status of the person left behind. This change provides a slightly more refined home state standard than the UCCJA or the PKPA, which also requires a determination that the child has been removed "by a contestant or for other reasons." The scope of the PKPA's provision is theoretically narrower than this Act. However, the phrase "or for other reasons" covers most fact situations where the child is not in the home State and, therefore, the difference has no substantive effect.

In another sense, the six-month extended home state jurisdiction provision is this Act is narrower than the comparable provision in the PKPA. The PKPA's definition of extended home State is more expansive because it applies whenever a "contestant" remains in the home State. That class of individuals has been

eliminated in this Act. This Act retains the original UCCJA classification of "parent or person acting as parent" to define who must remain for a State to exercise the six-month extended home state jurisdiction. This eliminates the undesirable jurisdictional determinations which would occur as a result of differing state substantive laws on visitation involving grandparents and others. For example, if State A's law provided that grandparents could obtain visitation with a child after the death of one of the parents, then the grandparents, who would be considered "contestants" under the PKPA, could file a proceeding within six months after the remaining parent moved and have the case heard in State A. However, if State A did not provide that grandparents could seek visitation under such circumstances, the grandparents would not be considered "contestants" and State B where the child acquired a new home State would provide the only forum. This Act bases jurisdiction on the parent and child or person acting as a parent and child relationship without regard to grandparents or other potential seekers of custody or visitation. There is no conflict with the broader provision of the PKPA. The PKPA in § (c)(1) authorizes States to narrow the scope of their jurisdiction.

2. Significant connection jurisdiction. This jurisdictional basis has been amended in four particulars from the UCCJA. First, the "best interest" language of the UCCJA has been eliminated. This phrase tended to create confusion between the jurisdictional issue and the substantive custody determination. Since the language was not necessary for the jurisdictional issue, it has been removed.

Second, the UCCJA based jurisdiction on the presence of a significant connection between the child and the child's parents or the child and at least one contestant. This Act requires that the significant connections be between the child, the child's parents or the child and a person acting as a parent.

Third, a significant connection State may assume jurisdiction only when there is no home State or when the home State decides that the significant connection State would be a more appropriate forum under Section 207 or 208. Fourth, the determination of significant connections has been changed to eliminate the language of "present or future care." The jurisdictional determination should be made by determining whether there is sufficient evidence in the State for the court to make an informed custody determination. That evidence might relate to the past as well as to the "present or future."

Emergency jurisdiction has been moved to a separate section. This is to make it clear that the power to protect a child in crisis does not include the power to enter a permanent order for that child except as provided by that section.

Paragraph (a)(3) provides for jurisdiction when all States with jurisdiction under paragraphs (a)(1) and (2) determine that this State is a more appropriate forum. The determination would have to be made by all States with jurisdiction

under subsection (a)(1) and (2). Jurisdiction would not exist under this paragraph because the home State determined it is a more appropriate place to hear the case if there is another State that could exercise significant connection jurisdiction under subsection (a)(2).

Paragraph (a)(4) retains the concept of jurisdiction by necessity as found in the UCCJA and in the PKPA. This default jurisdiction only occurs if no other State would have jurisdiction under subsections (a)(1) through (a)(3).

Subsections (b) and (c) clearly State the relationship between jurisdiction under this Act and other forms of jurisdiction. Personal jurisdiction over, or the physical presence of, a parent or the child is neither necessary nor required under this Act. In other words neither minimum contacts nor service within the State is required for the court to have jurisdiction to make a custody determination. Further, the presence of minimum contacts or service within the State does not confer jurisdiction to make a custody determination. Subject to Section 204, satisfaction of the requirements of subsection (a) is mandatory.

The requirements of this section, plus the notice and hearing provisions of the Act, are all that is necessary to satisfy due process. This Act, like the UCCJA and the PKPA is based on Justice Frankfurter's concurrence in *May v. Anderson*, 345 U.S. 528 (1953). As pointed out by Professor Bodenheimer, the reporter for the UCCJA, no "workable interstate custody law could be built around [Justice] Burton's plurality opinion ... . Bridgette Bodenheimer, The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws, 22 Vand.L.Rev. 1207,1233 (1969). It should also be noted that since jurisdiction to make a child custody determination is subject matter jurisdiction, an agreement of the parties to confer jurisdiction on a court that would not otherwise have jurisdiction under this Act is ineffective.

SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.

(a) Except as otherwise provided in Section 204, a court of this State which has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this State determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in

this State concerning the child's care, protection, training, and personal relationships; or

(2) a court of this State or a court of another State determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(b) A court of this State which 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 Section 201.

Comment

This is a new section addressing continuing jurisdiction. Continuing jurisdiction was not specifically addressed in the UCCJA . Its absence caused considerable confusion, particularly because the PKPA, § 1738(d), requires other States to give Full Faith and Credit to custody determinations made by the original decree State pursuant to the decree State's continuing jurisdiction so long as that State has jurisdiction under its own law and remains the residence of the child or any contestant.

This section provides the rules of continuing jurisdiction and borrows from UIFSA as well as recent UCCJA case law. The continuing jurisdiction of the original decree State is exclusive. It continues until one of two events occurs:

1. If a parent or a person acting as a parent remains in the original decree State, continuing jurisdiction is lost when neither the child, the child and a parent, nor the child and a person acting as a parent continue to have a significant connection with the original decree State and there is no longer substantial evidence concerning the child's care, protection, training and personal relations in that State. In other words, even if the child has acquired a new home State, the original decree State retains exclusive, continuing jurisdiction, so long as the general requisites of the "substantial connection" jurisdiction provisions of Section 201 are met. If the relationship between the child and the person remaining in the State with exclusive, continuing jurisdiction becomes so attenuated that the court could no longer find significant connections and substantial evidence, jurisdiction would no longer exist.

The use of the phrase "a court of this State" under subsection (a)(1) makes it clear that the original decree State is the sole determinant of whether jurisdiction continues. A party seeking to modify a custody determination must obtain an order from the original decree State stating that it no longer has jurisdiction.

2. Continuing jurisdiction is lost when the child, the child's parents, and any person acting as a parent no longer reside in the original decree State. The exact language of subparagraph (a)(2) was the subject of considerable debate. Ultimately the Conference settled on the phrase that "a court of this State or a court of another State determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State" to determine when the exclusive, continuing jurisdiction of a State ended. The phrase is meant to be identical in meaning to the language of the PKPA which provides that full faith and credit is to be given to custody determinations made by a State in the exercise of its continuing jurisdiction when that "State remains the residence of ... ." The phrase is also the equivalent of the language "continues to reside" which occurs in UIFSA § 205(a)(1) to determine the exclusive, continuing jurisdiction of the State that made a support order. The phrase "remains the residence of" in the PKPA has been the subject of conflicting case law. It is the intention of this Act that paragraph (a)(2) of this section means that the named persons no longer continue to actually live within the State. Thus, unless a modification proceeding has been commenced, when the child, the parents, and all persons acting as parents physically leave the State to live elsewhere, the exclusive, continuing jurisdiction ceases.

The phrase "do not presently reside" is not used in the sense of a technical domicile. The fact that the original determination State still considers one parent a domiciliary does not prevent it from losing exclusive, continuing jurisdiction after the child, the parents, and all persons acting as parents have moved from the State.

If the child, the parents, and all persons acting as parents have all left the State which made the custody determination prior to the commencement of the modification proceeding, considerations of waste of resources dictate that a court in State B, as well as a court in State A, can decide that State A has lost exclusive, continuing jurisdiction.

The continuing jurisdiction provisions of this section are narrower than the comparable provisions of the PKPA. That statute authorizes continuing jurisdiction so long as any "contestant" remains in the original decree State and that State continues to have jurisdiction under its own law. This Act eliminates the contestant classification. The Conference decided that a remaining grandparent or other third party who claims a right to visitation, should not suffice to confer exclusive, continuing jurisdiction on the State that made the original custody determination after the departure of the child, the parents and any person acting as a parent. The significant connection to the original decree State must relate to the child, the child

and a parent, or the child and a person acting as a parent. This revision does not present a conflict with the PKPA. The PKPA's reference in § 1738(d) to § 1738(c)(1) recognizes that States may narrow the class of cases that would be subject to exclusive, continuing jurisdiction. However, during the transition from the UCCJA to this Act, some States may continue to base continuing jurisdiction on the continued presence of a contestant, such as a grandparent. The PKPA will require that such decisions be enforced. The problem will disappear as States adopt this Act to replace the UCCJA.

Jurisdiction attaches at the commencement of a proceeding. If State A had jurisdiction under this section at the time a modification proceeding was commenced there, it would not be lost by all parties moving out of the State prior to the conclusion of proceeding. State B would not have jurisdiction to hear a modification unless State A decided that State B was more appropriate under Section 207.

Exclusive, continuing jurisdiction is not reestablished if, after the child, the parents, and all persons acting as parents leave the State, the non-custodial parent returns. As subsection (b) provides, once a State has lost exclusive, continuing jurisdiction, it can modify its own determination only if it has jurisdiction under the standards of Section 201. If another State acquires exclusive continuing jurisdiction under this section, then its orders cannot be modified even if this State has once again become the home State of the child.

In accordance with the majority of UCCJA case law, the State with exclusive, continuing jurisdiction may relinquish jurisdiction when it determines that another State would be a more convenient forum under the principles of Section 207.

SECTION 203. JURISDICTION TO MODIFY DETERMINATION.

Except as otherwise provided in Section 204, a court of this State may not modify a child-custody determination made by a court of another State unless a court of this State has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:

(1) the court of the other State determines it no longer has exclusive, continuing jurisdiction under Section 202 or that a court of this State would be a more convenient forum under Section 207; or

(2) a court of this State or a court of the other State determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other State.

Comment

This section complements Section 202 and is addressed to the court that is confronted with a proceeding to modify a custody determination of another State. It prohibits a court from modifying a custody determination made consistently with this Act by a court in another State unless a court of that State determines that it no longer has exclusive, continuing jurisdiction under Section 202 or that this State would be a more convenient forum under Section 207. The modification State is not authorized to determine that the original decree State has lost its jurisdiction. The only exception is when the child, the child's parents, and any person acting as a parent do not presently reside in the other State. In other words, a court of the modification State can determine that all parties have moved away from the original State. The court of the modification State must have jurisdiction under the standards of Section 201.

SECTION 204. TEMPORARY EMERGENCY JURISDICTION.

(a) A court of this State has 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.

(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 Sections 201 through 203, 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 Sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination made under this section becomes a final determination, if it so provides and this State 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 Sections 201 through 203, any order issued by a court of this State 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 under Sections 201 through 203. The order issued in this State remains in effect until an order is obtained from the other State within the period specified or the period expires.

(d) A court of this State which 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 Sections 201 through 203, shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to Sections 201 through 203, 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.

Comment

The provisions of this section are an elaboration of what was formerly Section 3(a)(3) of the UCCJA. It remains, as Professor Bodenheimer's comments to that section noted, "an extraordinary jurisdiction reserved for extraordinary circumstances."

This section codifies and clarifies several aspects of what has become common practice in emergency jurisdiction cases under the UCCJA and PKPA. First, a court may take jurisdiction to protect the child even though it can claim neither home State nor significant connection jurisdiction. Second, the duties of States to recognize, enforce and not modify a custody determination of another State do not take precedence over the need to enter a temporary emergency order to protect the child.

Third, a custody determination made under the emergency jurisdiction provisions of this section is a temporary order. The purpose of the order is to protect the child until the State that has jurisdiction under Sections 201-203 enters an order.

Under certain circumstances, however, subsection (b) provides that an emergency custody determination may become a final custody determination. If there is no existing custody determination, and no custody proceeding is filed in a State with jurisdiction under Sections 201-203, an emergency custody determination made under this section becomes a final determination, if it so provides, when the State that issues the order becomes the home State of the child.

Subsection (c) is concerned with the temporary nature of the order when there exists a prior custody order that is entitled to be enforced under this Act or when a subsequent custody proceeding is filed in a State with jurisdiction under Sections 201- 203. Subsection (c) allows the temporary order to remain in effect only so long as is necessary for the person who obtained the determination under this section to present a case and obtain an order from the State with jurisdiction under Sections 201-203. That time period must be specified in the order. If there is an existing order by a State with jurisdiction under Sections 201-203, that order need not be reconfirmed. The temporary emergency determination would lapse by its own terms at the end of the specified period or when an order is obtained from the court with jurisdiction under Sections 202-203. The court with appropriate

jurisdiction also may decide, under the provisions of 207, that the court that entered the emergency order is in a better position to address the safety of the person who obtained the emergency order, or the child, and decline jurisdiction under Section 207.

Any hearing in the State with jurisdiction under Sections 201-203 on the temporary emergency determination is subject to the provisions of Sections 111 and 112. These sections facilitate the presentation of testimony and evidence taken out of State. If there is a concern that the person obtaining the temporary emergency determination under this section would be in danger upon returning to the State with jurisdiction under Sections 201-203, these provisions should be used.

Subsection (d) requires communication between the court of the State that is exercising jurisdiction under this section and the court of another State that is exercising jurisdiction under Sections 201-203. The pleading rules of Section 209 apply fully to determinations made under this section. Therefore, a person seeking a temporary emergency custody determination is required to inform the court pursuant to Section 209(d) of any proceeding concerning the child that has been commenced elsewhere. The person commencing the custody proceeding under Sections 201-203 is required under Section 209(a) to inform the court about the temporary emergency proceeding. These pleading requirements are to be strictly followed so that the courts are able to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Relationship to the PKPA. The definition of emergency has been modified to harmonize it with the PKPA. The PKPA's definition of emergency jurisdiction does not use the term "neglect." It defines an emergency as "mistreatment or abuse." Therefore "neglect" has been eliminated as a basis for the assumption of temporary emergency jurisdiction. Neglect is so elastic a concept that it could justify taking emergency jurisdiction in a wide variety of cases. Under the PKPA, if a State exercised temporary emergency jurisdiction based on a finding that the child was neglected without a finding of mistreatment or abuse, the order would not be entitled to federal enforcement in other States.

Relationship to Protective Order Proceedings. The UCCJA and the PKPA were enacted long before the advent of state procedures on the use of protective orders to alleviate problems of domestic violence. Issues of custody and visitation often arise within the context of protective order proceedings since the protective order is often invoked to keep one parent away from the other parent and the children when there is a threat of violence. This Act recognizes that a protective order proceeding will often be the procedural vehicle for invoking jurisdiction by authorizing a court to assume temporary emergency jurisdiction

when the child's parent or sibling has been subjected to or threatened with mistreatment or abuse.

In order for a protective order that contains a custody determination to be enforceable in another State it must comply with the provisions of this Act and the PKPA. Although the Violence Against Women's Act (VAWA), 18 U.S.C. § 2265, does provide an independent basis for the granting of full faith and credit to protective orders, it expressly excludes "custody" orders from the definition of "protective order," 22 U.S.C. § 2266.

Many States authorize the issuance of protective orders in an emergency without notice and hearing. This Act does not address the propriety of that procedure. It is left to local law to determine the circumstances under which such an order could be issued, and the type of notice that is required, in a case without an interstate element. However, an order issued after the assumption of temporary emergency jurisdiction is entitled to interstate enforcement and nonmodification under this Act and the PKPA only if there has been notice and a reasonable opportunity to be heard as set out in Section 205. Although VAWA does require that full faith and credit be accorded to ex parte protective orders if notice will be given and there will be a reasonable opportunity to be heard, it does not include a "custody" order within the definition of "protective order."

VAWA does play an important role in determining whether an emergency exists. That Act requires a court to give full faith and credit to a protective order issued in another State if the order is made in accordance with the VAWA. This would include those findings of fact contained in the order. When a court is deciding whether an emergency exists under this section, it may not relitigate the existence of those factual findings.

SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.

(a) Before a child-custody determination is made under this [Act], notice and an opportunity to be heard in accordance with the standards of Section 108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This [Act] does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this [Act] are governed by the law of this State as in child-custody proceedings between residents of this State.

Comment

This section generally continues the notice provisions of the UCCJA. However, it does not attempt to dictate who is entitled to notice. Local rules vary with regard to persons entitled to seek custody of a child. Therefore, this section simply indicates that persons entitled to seek custody should receive notice but leaves the rest of the determination to local law. Parents whose parental rights have not been previously terminated and persons having physical custody of the child are specifically mentioned as persons who must be given notice. The PKPA, § 1738A(e), requires that they be given notice in order for the custody determination to be entitled to full faith and credit under that Act.

State laws also vary with regard to whether a court has the power to issue an enforceable temporary custody order without notice and hearing in a case without any interstate element. Such temporary orders may be enforceable, as against due process objections, for a short period of time if issued as a protective order or a temporary restraining order to protect a child from harm. Whether such orders are enforceable locally is beyond the scope of this Act. Subsection (b) clearly provides that the validity of such orders and the enforceability of such orders is governed by the law which authorizes them and not by this Act. An order is entitled to interstate enforcement and nonmodification under this Act only if there has been notice and an opportunity to be heard. The PKPA, § 1738A(e), also requires that a custody determination is entitled to full faith and credit only if there has been notice and an opportunity to be heard.

Rules requiring joinder of people with an interest in the custody of and visitation with a child also vary widely throughout the country. The UCCJA has a separate section on joinder of parties which has been eliminated. The issue of who is entitled to intervene and who must be joined in a custody proceeding is to be determined by local state law.

A sentence of the UCCJA § 4 which indicated that persons outside the State were to be given notice and an opportunity to be heard in accordance with the provision of that Act has been eliminated as redundant.

SECTION 206. SIMULTANEOUS PROCEEDINGS.

(a) Except as otherwise provided in Section 204, a court of this State may not exercise its jurisdiction under this [article] if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another State having jurisdiction substantially in conformity with this [Act], unless the proceeding has been terminated or is stayed by the court of the other State because a court of this State is a more convenient forum under Section 207.

(b) Except as otherwise provided in Section 204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 209. If the court determines that a child-custody proceeding has been commenced in a court in another State having jurisdiction substantially in accordance with this [Act], the court of this State shall stay its proceeding and communicate with the court of the other State. If the court of the State having jurisdiction substantially in accordance with this [Act] does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another State. If a proceeding to enforce a child-custody determination has been commenced in another State, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other State enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement; or

(3) proceed with the modification under conditions it considers appropriate.

Comment

This section represents the remnants of the simultaneous proceedings provision of the UCCJA § 6. The problem of simultaneous proceedings is no longer a significant issue. Most of the problems have been resolved by the prioritization of home state jurisdiction under Section 201; the exclusive, continuing jurisdiction provisions of Section 202; and the prohibitions on modification of Section 203. If there is a home State, there can be no exercise of significant connection jurisdiction in an initial child custody determination and, therefore, no simultaneous proceedings. If there is a State of exclusive, continuing jurisdiction, there cannot be another State with concurrent jurisdiction and, therefore, no simultaneous proceedings. Of course, the home State, as well as the State with exclusive, continuing jurisdiction, could defer to another State under Section 207. However, that decision is left entirely to the home State or the State with exclusive, continuing jurisdiction.

Under this Act, the simultaneous proceedings problem will arise only when there is no home State, no State with exclusive, continuing jurisdiction and more than one significant connection State. For those cases, this section retains the "first in time" rule of the UCCJA. Subsection (b) retains the UCCJA's policy favoring judicial communication. Communication between courts is required when it is determined that a proceeding has been commenced in another State.

Subsection (c) concerns the problem of simultaneous proceedings in the State with modification jurisdiction and enforcement proceedings under Article 3. This section authorizes the court with exclusive, continuing jurisdiction to stay the modification proceeding pending the outcome of the enforcement proceeding, to enjoin the parties from continuing with the enforcement proceeding, or to continue the modification proceeding under such conditions as it determines are appropriate. The court may wish to communicate with the enforcement court. However,

communication is not mandatory. Although the enforcement State is required by the PKPA to enforce according to its terms a custody determination made consistently with the PKPA, that duty is subject to the decree being modified by a State with the power to do so under the PKPA. An order to enjoin the parties from enforcing the decree is the equivalent of a temporary modification by a State with the authority to do so. The concomitant provision addressed to the enforcement court is Section 306 of this Act. That section requires the enforcement court to communicate with the modification court in order to determine what action the modification court wishes the enforcement court to take.

The term "pending" that was utilized in the UCCJA section on simultaneous proceeding has been replaced. It has caused considerable confusion in the case law. It has been replaced with the term "commencement of the proceeding" as more accurately reflecting the policy behind this section. The latter term is defined in Section 102(5).

SECTION 207. INCONVENIENT FORUM.

(a) A court of this State which has jurisdiction under this [Act] to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another State to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;

(2) the length of time the child has resided outside this State;

(3) the distance between the court in this State and the court in the State that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which State should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each State with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another State is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper.

(d) A court of this State may decline to exercise its jurisdiction under this [Act] if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

Comment

This section retains the focus of Section 7 of the UCCJA. It authorizes courts to decide that another State is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties. If so, the court may defer to the other State.

The list of factors that the court may consider has been updated from the UCCJA. The list is not meant to be exclusive. Several provisions require comment. Subparagraph (1) is concerned specifically with domestic violence and other matters affecting the health and safety of the parties. For this purpose, the court should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse. If domestic violence or child abuse has occurred, this factor authorizes the court to consider which State can best protect the victim from further violence or abuse.

In applying subparagraph (3), courts should realize that distance concerns can be alleviated by applying the communication and cooperation provisions of Sections 111 and 112.

In applying subsection (7) on expeditious resolution of the controversy, the court could consider the different procedural and evidentiary laws of the two States, as well as the flexibility of the court dockets. It also should consider the ability of a court to arrive at a solution to all the legal issues surrounding the family. If one State has jurisdiction to decide both the custody and support issues, it would be desirable to determine that State to be the most convenient forum. The same is true when children of the same family live in different States. It would be inappropriate to require parents to have custody proceedings in several States when one State could resolve the custody of all the children.

Before determining whether to decline or retain jurisdiction, the court of this State may communicate, in accordance with Section 110, with a court of another State and exchange information pertinent to the assumption of jurisdiction by either court.

There are two departures from Section 7 of the UCCJA. First, the court may not simply dismiss the action. To do so would leave the case in limbo. Rather the court shall stay the case and direct the parties to file in the State that has been found to be the more convenient forum. The court is also authorized to impose any other conditions it considers appropriate. This might include the issuance of temporary custody orders during the time necessary to commence a proceeding in the designated State, dismissing the case if the custody proceeding is not commenced in the other State or resuming jurisdiction if a court of the other State refuses to take the case.

Second, UCCJA, § 7(g) which allowed the court to assess fees and costs if it was a clearly inappropriate court, has been eliminated. If a court has jurisdiction under this Act, it could not be a clearly inappropriate court.

SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) Except as otherwise provided in Section 204 [or by other law of this State], if a court of this State has jurisdiction under this [Act] because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the State otherwise having jurisdiction under Sections 201 through 203 determines that this State is a more appropriate forum under Section 207; or

(3) no court of any other State would have jurisdiction under the criteria specified in Sections 201 through 203.

(b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under Sections 201 through 203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), 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 State unless authorized by law other than this [Act].

Comment

The "Clean Hands" section of the UCCJA has been truncated in this Act. Since there is no longer a multiplicity of jurisdictions which could take cognizance of a child-custody proceeding, there is less of a concern that one parent will take the child to another jurisdiction in an attempt to find a more favorable forum. Most of the jurisdictional problems generated by abducting parents should be solved by the prioritization of home State in Section 201; the exclusive, continuing jurisdiction provisions of Section 202; and the ban on modification in Section 203. For example, if a parent takes the child from the home State and seeks an original custody determination elsewhere, the stay-at-home parent has six months to file a custody petition under the extended home state jurisdictional provision of Section 201, which will ensure that the case is retained in the home State. If a petitioner for a modification determination takes the child from the State that issued the original custody determination, another State cannot assume jurisdiction as long at the first State exercises exclusive, continuing jurisdiction.

Nonetheless, there are still a number of cases where parents, or their surrogates, act in a reprehensible manner, such as removing, secreting, retaining, or restraining the child. This section ensures that abducting parents will not receive an advantage for their unjustifiable conduct. If the conduct that creates the jurisdiction is unjustified, courts must decline to exercise jurisdiction that is inappropriately invoked by one of the parties. For example, if one parent abducts the child pre-decree and establishes a new home State, that jurisdiction will decline to hear the case. There are exceptions. If the other party has acquiesced in the court's jurisdiction, the court may hear the case. Such acquiescence may occur by filing a pleading submitting to the jurisdiction, or by not filing in the court that would otherwise have jurisdiction under this Act. Similarly, if the court that would have jurisdiction finds that the court of this State is a more appropriate forum, the court may hear the case.

This section applies to those situations where jurisdiction exists because of the unjustified conduct of the person seeking to invoke it. If, for example, a parent in the State with exclusive, continuing jurisdiction under Section 202 has either restrained the child from visiting with the other parent, or has retained the child after visitation, and seeks to modify the decree, this section in inapplicable. The conduct of restraining or retaining the child did not create jurisdiction. Jurisdiction existed under this Act without regard to the parent's conduct. Whether a court should decline to hear the parent's request to modify is a matter of local law.

The focus in this section is on the unjustified conduct of the person who invokes the jurisdiction of the court. A technical illegality or wrong is insufficient to trigger the applicability of this section. This is particularly important in cases involving domestic violence and child abuse. Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case should not be automatically dismissed under this section. An inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another State to establish jurisdiction has engaged in unjustifiable conduct and the new State must decline to exercise jurisdiction under this section.

Subsection (b) authorizes the court to fashion an appropriate remedy for the safety of the child and to prevent a repetition of the unjustified conduct. Thus, it would be appropriate for the court to notify the other parent and to provide for foster care for the child until the child is returned to the other parent. The court could also stay the proceeding and require that a custody proceeding be instituted in another State that would have jurisdiction under this Act. It should be noted that the court is not making a forum non conveniens analysis in this section. If the conduct is unjustifiable, it must decline jurisdiction. It may, however, retain jurisdiction until a custody proceeding is commenced in the appropriate tribunal if such retention is necessary to prevent a repetition of the wrongful conduct or to ensure the safety of the child.

The attorney's fee standard for this section is patterned after the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). The assessed costs and fees are to be paid to the respondent who established that jurisdiction was based on unjustifiable conduct.

SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.

(a) [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] [In] a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and 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; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other State that could affect the current proceeding.

[(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.]

Comment

The pleading requirements from Section 9 of the UCCJA are generally carried over into this Act. However, the information is made subject to local law on the protection of names and other identifying information in certain cases. A number of States have enacted laws relating to the protection of victims in domestic violence and child abuse cases which provide for the confidentiality of victims names, addresses, and other information. These procedures must be followed if the child-custody proceeding of the State requires their applicability. See, e.g., California Family Law Code § 3409(a). If a State does not have local law that provides for protecting names and addresses, then subsection (e) or a similar provision should be adopted. Subsection (e) is based on the National Council of Juvenile and Family Court Judge's, Model Code on Domestic and Family Violence § 304(c). There are other models to choose from, in particular UIFSA § 312.

In subsection (a)(2), the term "proceedings" should be read broadly to include more than custody proceedings. Thus, if one parent was being criminally prosecuted for child abuse or custodial interference, those proceedings should be

disclosed. If the child is subject to the Interstate Compact on the Placement of Children, facts relating to compliance with the Compact should be disclosed in the pleading or affidavit.

Subsection (b) has been added. It authorizes the court to stay the proceeding until the information required in subsection (a) has been disclosed, although failure to provide the information does not deprive the court of jurisdiction to hear the case. This follows the majority of jurisdictions which held that failure to comply with the pleading requirements of the UCCJA did not deprive the court of jurisdiction to make a custody determination.

SECTION 210. APPEARANCE OF PARTIES AND CHILD.

(a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to Section 108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay

reasonable and necessary travel and other expenses of the party so appearing and of the child.

Comment

No major changes have been made to this section which was Section 11 of the UCCJA. Language was added to subsection (a) to authorize the court to require a non-party who has physical custody of the child to produce the child.

Subsection (c) authorizes the court to enter orders providing for the safety of the child and the person ordered to appear with the child. If safety is a major concern, the court, as an alternative to ordering a party to appear with the child, could order and arrange for the party's testimony to be taken in another State under Section 111. This alternative might be important when there are safety concerns regarding requiring victims of domestic violence or child abuse to travel to the jurisdiction where the abuser resides.

[ARTICLE] 3

ENFORCEMENT

SECTION 301. DEFINITIONS. In this [article]:

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

Comment

For purposes of this article, "petitioner" and "respondent" are defined. The definitions clarify certain aspects of the notice and hearing sections.

SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTION. Under this [article] a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

Comment

This section applies the enforcement remedies provided by this article to orders requiring the return of a child issued under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq., implementing the Hague Convention on the Civil Aspects of International Child Abduction. Specific mention of ICARA proceedings is necessary because they often occur prior to any formal custody determination. However, the need for a speedy enforcement remedy for an order to return the child is just as necessary.

SECTION 303. DUTY TO ENFORCE.

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] and the determination has not been modified in accordance with this [Act].

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another State. The remedies provided in this [article] are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

Comment

This section is based on Section 13 of the UCCJA which contained the basic duty to enforce. The language of the original section has been retained and the duty to enforce is generally the same.

Enforcement of custody determinations of issuing States is also required by federal law in the PKPA, 28 U.S.C. § 1738A(a). The changes made in Article 2 of this Act now make a State's duty to enforce and not modify a child custody determination of another State consistent with the enforcement and nonmodification provisions of the PKPA. Therefore custody determinations made by a State pursuant to the UCCJA that would be enforceable under the PKPA will generally be enforced under this Act. However, if a State custody determination made pursuant to the UCCJA would not be enforceable under the PKPA, it will also not be enforceable under this Act. Thus a custody determination made by a "significant connection" jurisdiction when there is a home State is not enforceable under the PKPA regardless of whether a proceeding was ever commenced in the home State. Even though such a determination would be enforceable under the UCCJA with its four concurrent bases of jurisdiction, it would not be enforceable under this Act. This carries out the policy of the PKPA of strongly discouraging a State from exercising its concurrent "significant connection" jurisdiction under the UCCJA when another State could exercise "home state" jurisdiction.

This section also incorporates the concept of Section 15 of the UCCJA to the effect that a custody determination of another State will be enforced in the same manner as a custody determination made by a court of this State. Whatever remedies are available to enforce a local determination can be utilized to enforce a custody determination of another State. However, it remains a custody determination of the State that issued it. A child-custody determination of another State is not subject to modification unless the State would have jurisdiction to modify the determination under Article 2.

The remedies provided by this article for the enforcement of a custody determination will normally be used. This article does not detract from other remedies available under other local law. There is often a need for a number of remedies to ensure that a child-custody determination is obeyed. If other remedies would easily facilitate enforcement, they are still available. The petitioner, for example, can still cite the respondent for contempt of court or file a tort claim for intentional interference with custodial relations if those remedies are available under local law.

SECTION 304. TEMPORARY VISITATION.

(a) A court of this State which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:

(1) a visitation schedule made by a court of another State; or

(2) the visitation provisions of a child-custody determination of another State that does not provide for a specific visitation schedule.

(b) If a court of this State makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in [Article] 2. The order remains in effect until an order is obtained from the other court or the period expires.

Comment

This section authorizes a court to issue a temporary order if it is necessary to enforce visitation rights without violating the rules on nonmodification contained in Section 303. Therefore, if there is a visitation schedule provided in the custody determination that was made in accordance with Article 2, a court can issue an order under this section implementing the schedule. An implementing order may include make-up or substitute visitation.

A court may also issue a temporary order providing for visitation if visitation was authorized in the custody determination, but no specific schedule was included in the custody determination. Such an order could include a substitution of a specific visitation schedule for "reasonable and seasonable."

However, a court may not, under subsection (a)(2) provide for a permanent change in visitation. Therefore, requests for a permanent change in the visitation schedule must be addressed to the court with exclusive, continuing jurisdiction under Section 202 or modification jurisdiction under Section 203. As under Section 204, subsection (b) of this section requires that the temporary visitation order stay in effect only long enough to allow the person who obtained the order to obtain a permanent modification in the State with appropriate jurisdiction under Article 2.

SECTION 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION.

(a) A child-custody determination issued by a court of another State may be registered in this State, with or without a simultaneous request for enforcement, by sending to [the appropriate court] in this State:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

(2) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the

court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under [Article] 2;

(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a 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.

Comment

This remainder of this article provides enforcement mechanisms for interstate child custody determinations.

This section authorizes a simple registration procedure that can be used to predetermine the enforceability of a custody determination. It parallels the process in UIFSA for the registration of child support orders. It should be as much of an aid to pro se litigants as the registration procedure of UIFSA.

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.

SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION.

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another State.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with [Article] 2, a registered child-custody determination of a court of another State.

Comment

A registered child-custody determination can be enforced as if it was a child-custody determination of this State. However, it remains a custody determination of the State that issued it. A registered custody order is not subject to modification unless the State would have jurisdiction to modify the order under Article 2.

SECTION 307. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under this [article] is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another State having jurisdiction to modify the determination under [Article] 2, the enforcing court shall immediately communicate with the modifying court. The

proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Comment

The pleading rules of Section 308, require the parties to disclose any pending proceedings. Normally, an enforcement proceeding will take precedence over a modification action since the PKPA requires enforcement of child custody determinations made in accordance with its terms. However, the enforcement court must communicate with the modification court in order to avoid duplicative litigation. The courts might decide that the court with jurisdiction under Article 2 shall continue with the modification action and stay the enforcement proceeding. Or they might decide that the enforcement proceeding shall go forward. The ultimate decision rests with the court having exclusive, continuing jurisdiction under Section 202, or if there is no State with exclusive, continuing jurisdiction, then the decision rests with the State that would have jurisdiction to modify under Section 203. Therefore, if that court determines that the enforcement proceeding should be stayed or dismissed, the enforcement court should stay or dismiss the proceeding. If the enforcement court does not do so, the court with exclusive, continuing jurisdiction under Section 202, or with modification jurisdiction under Section 203, could enjoin the parties from continuing with the enforcement proceeding.

SECTION 308. 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 attorney's 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 and confirmed under Section 305, 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 Section 312, 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 and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

(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; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, 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 and confirmed under Section 304, but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

Comment

This section provides the normal remedy that will be used in interstate cases: the production of the child in a summary, remedial process based on habeas corpus.

The petition is intended to provide the court with as much information as possible. Attaching certified copies of all orders sought to be enforced allows the

court to have the necessary information. Most of the information relates to the permissible scope of the court's inquiry. The petitioner has the responsibility to inform the court of all proceedings that would affect the current enforcement action. Specific mention is made of certain proceedings to ensure that they are disclosed. A "procedure relating to domestic violence" includes not only protective order proceedings but also criminal prosecutions for child abuse or domestic violence.

The order requires the respondent to appear at a hearing on the next judicial day. The term "next judicial day" in this section means the next day when a judge is at the courthouse. At the hearing, the court will order the child to be delivered to the petitioner unless the respondent is prepared to assert that the issuing State lacked jurisdiction, that notice was not given in accordance with Section 108, or that the order sought to be enforced has been vacated, modified, or stayed by a court with jurisdiction to do so under Article 2. The court is also to order payment of the fees and expenses set out in Section 312. The court may set another hearing to determine whether additional relief available under this state's law should be granted.

If the order has been registered and confirmed in accordance with Section 304, the only defense to enforcement is that the order has been vacated, stayed or modified since the registration proceeding by a court with jurisdiction to do so under Article 2.

SECTION 309. SERVICE OF PETITION AND ORDER. Except as otherwise provided in Section 311, the petition and order must be served, by any method authorized [by the law of this State], upon respondent and any person who has physical custody of the child.

Comment

In keeping with other sections of this Act, the question of how the petition and order should be served is left to local law.

SECTION 310. HEARING AND ORDER.

(a) Unless the court issues a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to immediate physical

custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, 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 and confirmed under Section 305 but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

(b) The court shall award the fees, costs, and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of [law enforcement officials], and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this [article].

Comment

The scope of inquiry for the enforcing court is quite limited. Federal law requires the court to enforce the custody determination if the issuing state's decree was rendered in compliance with the PKPA. 28 U.S.C. § 1738A(a). This Act requires enforcement of custody determinations that are made in conformity with Article 2's jurisdictional rules.

The certified copy, or a copy of the certified copy, of the custody determination entitling the petitioner to the child is prima facie evidence of the issuing court's jurisdiction to enter the order. If the order is one that is entitled to be enforced under Article 2 and if it has been violated, the burden shifts to the respondent to show that the custody determination is not entitled to enforcement.

It is a defense to enforcement that another jurisdiction has issued a custody determination that is required to be enforced under Article 2. An example is when one court has based its original custody determination on the UCCJA § 3(a)(2) (significant connections) and another jurisdiction has rendered an original custody determination based on the UCCJA § 3(a)(1) (home State). When this occurs, Article 2 of this Act, as well as the PKPA, mandate that the home state determination be enforced in all other States, including the State that rendered the significant connections determination.

Lack of notice in accordance with Section 108 by a person entitled to notice and opportunity to be heard at the original custody determination is a defense to enforcement of the custody determination. The scope of the defense under this Act is the same as the defense would be under the law of the State that issued the notice. Thus, if the defense of lack of notice would not be available under local law if the respondent purposely hid from the petitioner, took deliberate steps to avoid service of process or elected not to participate in the initial proceedings, the defense would also not be available under this Act.

There are no other defenses to an enforcement action. If the child would be endangered by the enforcement of a custody or visitation order, there may be a basis for the assumption of emergency jurisdiction under Section 204 of this Act. Upon the finding of an emergency, the court issues a temporary order and directs the parties to proceed either in the court that is exercising continuing jurisdiction over

the custody proceeding under Section 202, or the court that would have jurisdiction to modify the custody determination under Section 203.

The court shall determine at the hearing whether fees should be awarded under Section 312. If so, it should order them paid. The court may determine if additional relief is appropriate, including requesting law enforcement officers to assist the petitioner in the enforcement of the order. The court may set a hearing to determine whether further relief should be granted.

The remainder of this section is derived from UIFSA § 316 with regard to the privilege of self-incrimination, spousal privileges, and immunities. It is included to keep parallel the procedures for child support and child custody proceedings to the extent possible.

SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 308(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Comment

The section provides a remedy for emergency situations where there is a reason to believe that the child will suffer imminent, serious physical harm or be removed from the jurisdiction once the respondent learns that the petitioner has filed an enforcement proceeding. If the court finds such harm exists, it should temporarily waive the notice requirements and issue a warrant to take physical custody of the child. Immediately after the warrant is executed, the respondent is to receive notice of the proceedings.

The term "harm" cannot be totally defined and, as in the issuance of temporary retraining orders, the appropriate issuance of a warrant is left to the circumstances of the case. Those circumstances include cases where the respondent is the subject of a criminal proceeding as well as situations where the respondent is

secreting the child in violation of a court order, abusing the child, a flight risk and other circumstances that the court concludes make the issuance of notice a danger to the child. The court must hear the testimony of the petitioner or another witness prior to issuing the warrant. The testimony may be heard in person, via telephone, or by any other means acceptable under local law. The court must State the reasons for the issuance of the warrant. The warrant can be enforced by law enforcement officers wherever the child is found in the State. The warrant may authorize entry upon private property to pick up the child if no less intrusive means are possible. In extraordinary cases, the warrant may authorize law enforcement to make a forcible entry at any hour.

The warrant must provide for the placement of the child pending the determination of the enforcement proceeding. Since the issuance of the warrant would not occur absent a risk of serious harm to the child, placement cannot be with the respondent. Normally, the child would be placed with the petitioner. However, if placement with the petitioner is not indicated, the court can order any other appropriate placement authorized under the laws of the court's State. Placement with the petitioner may not be indicated if there is a likelihood that the petitioner also will flee the jurisdiction. Placement with the petitioner may not be practical if the petitioner is proceeding through an attorney and is not present before the court.

This section authorizes the court to utilize whatever means are available under local law to ensure the appearance of the petitioner and child at the enforcement hearing. Such means might include cash bonds, a surrender of a passport, or whatever the court determines is necessary.

SECTION 312. COSTS, FEES, AND EXPENSES.

(a) The court shall award the prevailing party, including a State, necessary and reasonable expenses incurred by or on behalf of the party, 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 or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a State unless authorized by law other than this [Act].

Comment

This section is derived from the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). Normally the court will award fees and costs against the non-prevailing party. Included as expenses are the amount of investigation fees incurred by private persons or by public officials as well as the cost of child placement during the proceedings.

The non-prevailing party has the burden of showing that such an award would be clearly inappropriate. Fees and costs may be inappropriate if their payment would cause the parent and child to seek public assistance.

This section implements the policies of Section 8(c) of Pub.L. 96-611 (part of the PKPA) which provides that:

> In furtherance of the purposes of section 1738A of title 28, United States Code [this section], as added by subsection (a) of this section, State courts are encouraged to –
> (2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination ... .

The term "prevailing party" is not given a special definition for this Act. Each State will apply its own standard.

Subsection (b) was added to ensure that this section would not apply to the State unless otherwise authorized. The language is taken from UIFSA § 313 (court may assess costs against obligee or support enforcement agency only if allowed by local law).

SECTION 313. RECOGNITION AND ENFORCEMENT. A court of this State shall accord full faith and credit to an order issued by another State and consistent with this [Act] which enforces a child-custody determination by a court

of another State unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2.

Comment

The enforcement order, to be effective, must also be enforced by other States. This section requires courts of this State to enforce and not modify enforcement orders issued by other States when made consistently with the provisions of this Act.

SECTION 314. APPEALS. An appeal may be taken from a final order in a proceeding under this [article] in accordance with [expedited appellate procedures in other civil cases]. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

Comment

The order may be appealed as an expedited civil matter. An enforcement order should not be stayed by the court. Provisions for a stay would defeat the purpose of having a quick enforcement procedure. If there is a risk of serious mistreatment or abuse to the child, a petition to assume emergency jurisdiction must be filed under Section 204. This section leaves intact the possibility of obtaining an extraordinary remedy such as mandamus or prohibition from an appellate court to stay the court's enforcement action. In many States, it is not possible to limit the constitutional authority of appellate courts to issue a stay. However, unless the information before the appellate panel indicates that emergency jurisdiction would be assumed under Section 204, there is no reason to stay the enforcement of the order pending appeal.

SECTION 315. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL].

(a) In a case arising under this [Act] or involving the Hague Convention on the Civil Aspects of International Child Abduction, the [prosecutor or other appropriate public official] may take any lawful action, including resort to a

proceeding under this [article] or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

(1) an existing child-custody determination;

(2) a request to do so from a court in a pending child-custody proceeding;

(3) a reasonable belief that a criminal statute has been violated; or

(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A [prosecutor or appropriate public official] acting under this section acts on behalf of the court and may not represent any party.

Comment

Sections 315-317 are derived from the recommendations of the *Obstacles Study* that urge a role for public authorities in civil enforcement of custody and visitation determinations. One of the basic policies behind this approach is that, as is the case with child support, the involvement of public authorities will encourage the parties to abide by the terms of the court order. The prosecutor usually would be the most appropriate public official to exercise authority under this section. However, States may locate the authority described in the section in the most appropriate public office for their governmental structure. The authority could be, for example, the Friend of the Court Office or the Attorney General. If the parties know that prosecutors and law enforcement officers are available to help secure the return of a child, the parties may be deterred from interfering with the exercise of rights established by court order.

The use of public authorities should provide a more effective method of remedying violations of the custody determination. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the prosecutor or other government official as an enforcement agency will help ensure that remedies of this Act can be made available regardless of

income level. In addition, the prosecutor may have resources to draw on that are unavailable to the average litigant.

The role of the public authorities should generally not begin until there is a custody determination that is sought to be enforced. The Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. This Act does not mandate that the public authorities be involved in all cases referred to it. There is only so much time and money available for enforcement proceedings. Therefore, the public authorities eventually will develop guidelines to determine which cases will receive priority.

The use of civil procedures instead of, or in addition to, filing and prosecuting criminal charges enlarges the prosecutor's options and may provide a more economical and less disruptive means of solving problems of criminal abduction and retention. With the use of criminal proceedings alone, the procedure may be inadequate to ensure the return of the child. The civil options would permit the prosecutor to resolve that recurring and often frustrating problem.

A concern was expressed about whether allowing the prosecutor to use civil means as a method of settling a child abduction violated either DR 7-105(A) of the Code of Professional Responsibility or Model Rule of Professional Responsibility 4.4. Both provisions either explicitly or implicitly disapprove of a lawyer threatening criminal action to gain an advantage in a civil case. However, the prohibition relates to threats that are solely to gain an advantage in a civil case. If the prosecutor has a good faith reason for pursuing the criminal action, there is no ethical violation. See *Committee on Legal Ethics v. Printz*, 416 S.E. 2d 720 (W.Va. 1992) (lawyer can threaten to press criminal charges against a client's former employee unless employee made restitution).

It must be emphasized that the public authorities do not become involved in the merits of the case. They are authorized only to locate the child and enforce the custody determination. The public authority is authorized by this section to utilize any civil proceeding to secure the enforcement of the custody determination. In most jurisdictions, that would be a proceeding under this Act. If the prosecutor proceeds pursuant to this Act, the prosecutor is subject to its provisions. There is nothing in this Act that would prevent a State from authorizing the prosecutor or other public official to use additional remedies beyond those provided in this Act.

The public authority does not represent any party to the custody determination. It acts as a "friend of the court." Its role is to ensure that the custody determination is enforced.

Sections 315-317 are limited to cases covered by this Act, i.e. interstate cases. However, States may, if they wish, extend this part of the Act to intrastate cases.

It should also be noted that the provisions of this section relate to the civil enforcement of child custody determinations. Nothing in this section is meant to detract from the ability of the prosecutor to use criminal provisions in child abduction cases.

SECTION 316. ROLE OF [LAW ENFORCEMENT]. At the request of a [prosecutor or other appropriate public official] acting under Section 315, a [law enforcement officer] may take any lawful action reasonably necessary to locate a child or a party and assist [a prosecutor or appropriate public official] with responsibilities under Section 315.

Comment

This section authorizes law enforcement officials to assist in locating a child and enforcing a custody determination when requested to do so by the public authorities. It is to be read as an enabling provision. Whether law enforcement officials have discretion in responding to a request by the prosecutor or other public official is a matter of local law.

SECTION 317. COSTS AND EXPENSES. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the [prosecutor or other appropriate public official] and [law enforcement officers] under Section 315 or 316.

Comment

One of the major problems of utilizing public officials to locate children and enforce custody and visitation determinations is cost. This section authorizes the prosecutor and law enforcement to recover costs against the non-prevailing party. The use of the term "direct" indicates that overhead is not a recoverable cost. This section cannot be used to recover the value of the time spent by the public authorities' attorneys.

[ARTICLE] 4
MISCELLANEOUS PROVISIONS

SECTION 401. APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 402. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 403. EFFECTIVE DATE. This [Act] takes effect .....

SECTION 404. REPEALS. The following acts and parts of acts are hereby repealed:

(1) The Uniform Child Custody Jurisdiction Act;

(2) .....

(3) .....

SECTION 405. TRANSITIONAL PROVISION. A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody

determination which was commenced before the effective date of this [Act] is governed by the law in effect at the time the motion or other request was made.

Comment

A child custody proceeding will last throughout the minority of the child. The commencement of a child custody proceeding prior to this Act does not mean that jurisdiction will continued to be governed by prior law. The provisions of this act apply if a motion to modify an existing determination is filed after the enactment of this Act. A motion that is filed prior to enactment may be completed under the rules in effect at the time the motion is filed.

UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT (WITH 2013 AMENDMENTS PERTAINING TO INTERNATIONAL PROCEEDINGS)*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SECOND YEAR
BOSTON, MASSACHUSETTS
JULY 6 - JULY 12, 2013

AMENDMENTS ONLY VERSION

WITH LEGISLATIVE NOTE, PREFATORY NOTE, AND COMMENTS

***Released for information purposes only; not for enactment.**

February 5, 2016

UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT (WITH 2013 AMENDMENTS PERTAINING TO INTERNATIONAL PROCEEDINGS)

The Uniform Child-Custody Jurisdiction and Enforcement Act (with 2013 Amendments Pertaining to International Proceedings) is released for information purposes only. The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for Protection of Children has not yet been ratified in the United States.

Please contact the Uniform Law Commission for further information before considering enactment of the Uniform Child-Custody Jurisdiction and Enforcement Act.

LEGISLATIVE NOTE
(Amendments Only Version)

This version of the Uniform Child Custody Jurisdiction and Enforcement Act contains only those amendments that are necessary for a state to adopt in order to implement the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for Protection of Children.

The language of these amendments, particularly in a completely new Article IV, is consistent with the current approach of the Uniform Law Commission's Committee on Style. Therefore those sections in Article IV that are parallel to sections in Article I through III are worded differently than their earlier counterparts. The current style approach of the Uniform Law Commission is somewhat different that that used in 1997 when the UCCJEA was originally promulgated. For example, the word "state" is no longer capitalized. Neither is the word "act". The word "on" is used rather than "upon", etc. These linguistic changes are stylistic only. No substantive change is intended.

Should a state wish to update its version of the UCCJEA to reflect the current style convention of the Uniform Law Commission, a complete draft is available at http://www.uniformlaws.org/shared/docs/hague_convention_on_protection_of_children/UCCJEA2013_Amended_Final.pdf

UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT (WITH 2013 AMENDMENTS PERTAINING TO INTERNATIONAL PROCEEDINGS)

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UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT (WITH 2013 AMENDMENTS PERTAINING TO INTERNATIONAL PROCEEDINGS)

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UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT (WITH 2013 AMENDMENTS PERTAINING TO INTERNATIONAL PROCEEDINGS)

PREFATORY NOTE

I.
FROM THE UCCJA TO THE UCCJEA

In 1997 the Uniform Law Commission revisited the problem of the interstate child when it promulgated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as a replacement for the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJA was adopted as law in all 50 states, the District of Columbia, and the Virgin Islands. A number of adoptions, however, significantly departed from the original text. In addition, almost thirty years of litigation since the promulgation of the UCCJA produced substantial inconsistency in interpretation by state courts. As a result, the goals of the UCCJA were rendered unobtainable in many cases.

In 1980, the federal government enacted the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C.A. §1738A, to address the interstate custody jurisdiction and enforcement problems that continued to exist after the adoption of the UCCJA. The PKPA mandates that state authorities give full faith and credit to other states' custody determinations, so long as those determinations were made in conformity with the provisions of the PKPA. The PKPA provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice requirements were similar to those in the UCCJA. There were, however, some significant differences.

As documented in an extensive study by the American Bar Association's Center on Children and the Law, Obstacles to the Recovery and Return of Parentally Abducted Children (1993), inconsistency of interpretation of the UCCJA and the technicalities of applying the PKPA, resulted in a loss of uniformity among the states. The Obstacles Study suggested a number of amendments which would eliminate the inconsistent state interpretations and harmonize the UCCJA with the PKPA.

The UCCJEA revisions of the jurisdictional provisions of the UCCJA eliminated the inconsistent state interpretations and can be summarized as follows:

1. Home state priority. Rather than four concurrent bases of jurisdiction, the UCCJEA prioritized home state jurisdiction over all other bases thereby conforming the UCCJEA to the PKPA.
2. Clarification of emergency jurisdiction. This jurisdictional basis was clarified to make it clear that it provided jurisdiction only on a temporary basis and was specifically made applicable to state domestic violence protective order cases.
3. Exclusive continuing jurisdiction for the state that entered the decree. The UCCJEA made it explicit that the state that made the original custody determination retained exclusive continuing jurisdiction over the custody determination so long as that state remained the residence of a parent, the child, or a person acting as a parent.

4. Specification of what custody proceedings are covered. These provisions extended the coverage of the UCCJEA to all cases, except adoptions, where a child custody determination was made. This eliminated the substantial ambiguity of the UCCJA concerning which proceeding were covered.
5. Role of "Best Interests." The UCCJEA eliminated the term "best interests" in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody of and visitation with children.

The UCCJEA also enacted specific provisions on the enforcement of custody determinations for interstate cases. First, there is a simple procedure for registering a custody determination in another state. This allows a party to know in advance whether that state will recognize the party's custody determination. This is extremely important in estimating the risk of the child's non-return when the child is sent on visitation to another state.

Second, the Act provided a swift remedy along the lines of habeas corpus. Time is extremely important in visitation and custody cases. If visitation rights cannot be enforced quickly, they often cannot be enforced at all. This is particularly true if there is a limited time within which visitation can be exercised such as may be the case when one parent has been granted visitation during the winter or spring holiday period. Without speedy consideration and resolution of the enforcement of such visitation rights, the ability to visit may be lost entirely. Similarly, a custodial parent must be able to obtain prompt enforcement when the noncustodial parent refuses to return a child at the end of authorized visitation, particularly when a summer visitation extension will infringe on the school year. A swift enforcement mechanism is desirable for violations of both custody and visitation provisions.

Third, the enforcing court will be able to utilize an extraordinary remedy. If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

Finally, there is a role for public authorities, such as prosecutors, in the enforcement process. Their involvement will encourage the parties to abide by the terms of the custody determination. If the parties know that public authorities and law enforcement officers are available to help in securing compliance with custody determinations, the parties may be deterred from interfering with the exercise of rights established by court order.

II.
THE 1996 HAGUE CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN

At the same time that the Uniform Law Commission was revising the UCCJA, the Hague Conference on Private International law was revising the 1961 Convention on the Protection of Minors. The 1961 Convention was adopted by a number of European countries and was utilized to recognize custody determinations. However, no common law country ratified the convention. The Hague Conference decided that a revised convention on jurisdiction and judgments with

regard to minors might attract more countries as signatories. This resulted in the 1996 Convention which established international standards for jurisdiction, choice of law, and enforcement of judgments in cases regarding measures taken for the protection of minors.

There are significant differences between the UCCJEA and the 1996 Convention. However, the purposes of the two are very similar. They are both designed to allocate judicial competence to decide cases involving child custody and visitation. Both documents provide for enforcement of custody and visitation determinations of other states or countries when made in accordance with the jurisdictional principles of the document. The differences are in the details of how it is to be accomplished.

There is a large part of the 1996 Convention that is devoted to country to country cooperation. There is a small role for a national central authority in carrying out the cooperation provisions of the Convention. Most of the cooperation provisions are ultimately directed to the "competent authority" which would be the appropriate entity under local law for carrying out the particular function referred to in the 1996 Convention. This means that the central authority in the United States will delegate these functions to local authorities. These cooperation problems are addressed in the federal implementing legislation.

III.
THE INTERNATIONAL CUSTODY CASE

The international child custody case, like the international child support case, has always been the marginal case in the multi-state system. However, with increasing globalization, the international case has been assuming more importance. The international case was dealt with in both the UCCJA and the UCCJEA.

A. THE UCCJA

Section 23 of the UCCJA provided that the general policies of that Act applied to foreign country custody determinations. Foreign custody determinations were to be recognized and enforced if they were made consistently with the UCCJA and there was reasonable notice and opportunity to be heard. There were two types of issues that arose under this section. The first was whether a United States court would defer to a foreign tribunal when that tribunal would have jurisdiction under the UCCJA and the case was filed first in that tribunal. The second issue was whether a state of the United States would recognize a custody determination made by a foreign tribunal.

On the first issue, the UCCJA was ambiguous and only required application of the "general policies" of the Act. Frequently courts in the United States would apply the same jurisdictional principles to international cases that they would apply in interstate cases. For example, in *Superior Court v. Plas*, 202 Cal.Rptr. 490 (Cal. Ct. App. 1984), the mother filed for custody when she had only been in California with her child for four months. The child was born in France and was raised and lived there with his family until shortly before the California hearing. The court determined that California lacked jurisdiction to hear the case and, even if it had jurisdiction, it should have deferred to France as the most convenient forum. However, not

all states followed the same practice. For example, the Oregon Court of Appeals in Horiba v. Horiba, 950 P.2d 340 (Or. Ct. App. 1997), refused to defer to a pending Japanese proceeding since Japan was not a "state" under the definition of "state" in the UCCJA.

With respect to the second issue, most American states enforced foreign custody orders if made consistently with the jurisdictional standards of the UCCJA and reasonable notice and opportunity to be heard were afforded all participants. However, Missouri, New Mexico and Ohio refused to enact Section 23 of the UCCJA. Indiana formerly had a provision which seemed to affirmatively require the state to not recognize and enforce a foreign custody order. These provisions undermined the UCCJA principles of recognition and enforcement of custody determinations by countries with appropriate jurisdiction under the UCCJA and created obstacles to the return of children that were illegally abducted.

B. THE UCCJEA

Section 105(a) of the UCCJEA provided that a foreign country will be treated as if it is a state of the United States for the purposes of applying Articles I and II of the UCCJEA. This meant that the scope and cooperation principles of Article I as well as the jurisdiction provisions of Article II apply to foreign countries in the same way that they apply to states of United States. Thus communication between a tribunal of the United States and a tribunal in a foreign country is mandatory in cases concerning emergency jurisdiction under Section 204 and simultaneous proceedings under Section 206. Otherwise tribunals in the United States may communicate with tribunals in foreign countries whenever it would be appropriate to communicate with tribunals in the United States under Section 110.

Section 105(b) required tribunals in the United States to recognize foreign custody determinations if the facts and circumstances of the case indicate that the foreign custody determination was made in substantial conformity with the jurisdictional provisions of the UCCJEA. However, in Section105(c) a United States court was given the discretion not to apply the UCCJEA if the child custody law of a foreign country violated fundamental principles of human rights. The language of the section was taken from the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The drafting committee of the UCCJEA did not attempt to define what aspects of a foreign custody law would violate fundamental principles of human rights. The committee considered a hypothetical case where the foreign custody law awarded custody of children automatically to the father. When asked to decide whether such a provision violated fundamental principles of human rights, the committee, along with the advisors and observers, could not agree. Therefore the application of that provision was left to the courts to determine on a case by case basis.

Application of Section105 does not seem to have presented much of a problem for courts since the enactment of the UCCJEA. In particular, it does not appear that enforcement has been denied on the basis of a violation of fundamental principles of human rights. The effect of Section 105 is to ensure that all foreign custody determinations that are made in conformity with UCCJEA jurisdictional standards are enforced in the United States. Ratification of the 1996 Convention is therefore not necessary for enforcement of foreign custody decrees in the United

States; ratification is necessary in order for United States custody determinations to be enforced in other countries.

IV.
THIS REVISION

The purpose of this revision to the UCCJEA is to amend the act to incorporate the 1996 Hague Convention. The United States has signed the Convention and the revision of this Act will constitute part of the implementing legislation. The rest of the Convention will be implemented at the federal level.

This version makes minimal substantive changes to Articles 1 and 2, thereby basically keeping those article as originally written. Almost every section which could possibly apply to proceedings under the Convention is placed in Article 4 and rewritten with appropriate terminology, except for the recognition and enforcement provisions of Article 3. While it is possible to set out in Article 4 the Article 3 registration and enforcement sections, it was decided to simply incorporate them by reference.

There are two major documents that should be used in interpreting the provisions of the 1996 Convention. The first is the Report by Professor Paul Lagarde who was the reporter for the Convention. The second is the Practical Handbook on the operation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. The Sixth Meeting of the Hague Conference's Special Commission on the practical operation of the 1980 Hague Child Abduction Convention approved it and thus the Handbook provides a source for authoritative interpretations of the Convention to be used along with the Report. Both documents may be downloaded from the website of Hague Conference at www.hcch.net.

Each comment indicates which Article of the Convention is the source of the particular section and also makes reference to the appropriate section of the Report and the Practical Handbook.

Since this revision of the UCCJEA is designed to implement the 1996 Convention, it follows that the revision will have no effect until the Convention is ratified by the Senate and implementing legislation is passed by Congress. At that time the states will no doubt be required to enact this version of the UCCJEA as part of the implementing process.

Finally this revision to the UCCJEA exists in two versions. One version contains only those amendments to the UCCJEA that are necessary to implements the 1996 Convention. Those sections were then restyled by the Conference's Style Committee. Thus word and punctuation changes in Articles 1, 2 and 3 are the product of the Style Committee and are not intended to have any substantive effect. The second version contains those amendments in addition to a complete stylistic revision of the Act.

UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT (WITH 2013 AMENDMENTS PERTAINING TO INTERNATIONAL PROCEEDINGS)

[ARTICLE] 1.

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act (with 2013 Amendments Pertaining to International Proceedings).

SECTION 102. DEFINITIONS. In this [~~Act~~ [act]:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Authority" means an entity authorized by a convention country to establish, enforce, or modify a decision to which [Article] 4 applies.

(~~2~~) (3) "Child" means an individual who has not attained 18 years of age.

(~~3~~) (4) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, or initial~~,~~ order and a modification ~~order~~. The term does not include an order relating to child support or other monetary obligation of an individual.

(~~4~~) (5) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [Article] 3.

(~~5~~) (6) "Commencement" means the filing of the first pleading in a proceeding.

(7) "Convention" means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, concluded at The Hague on October 19, 1996.

(8) "Convention country" means a foreign country in which the Convention is in force with respect to the United States.

~~(6)~~ (9) "Court" means an entity authorized by ~~under the law of a State~~ a state or nonconvention country to establish, enforce, or modify a child-custody determination.

(10) "Foreign country" means a country, including a political subdivision thereof, other than the United States.

~~(7)~~ (11) "Home ~~State~~ state" means the ~~State~~ 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~~ If a child is less than six months of age, the term means the ~~State~~ 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 mentioned is part of the period.

~~(8)~~ (12) "Initial determination" means the first child-custody determination concerning a particular child.

~~(9)~~ (13) "Issuing court" means the court that makes a child-custody determination for which enforcement is sought under this ~~[Act]~~ [act].

~~(10)~~ (14) "Issuing ~~State~~ state" means the ~~State~~ state in which a child-custody determination is made.

~~(11)~~ (15) "Modification" means a child-custody determination, or a decision to which [Article] 4 applies, that changes, replaces, supersedes, or is otherwise made after a previous

determination or decision concerning the same child, whether or not it is made by the court or authority that made the previous determination or decision.

(16) "Nonconvention country" means a foreign country in which the Convention is not in force with respect to the United States.

(17) "Parental responsibility" means the rights, powers, and obligations of a parent, guardian, or other person with similar responsibility in relation to a child.

~~(12)~~ (18) "Person" means an individual, ~~corporation, business trust,~~ estate, ~~trust, partnership, limited liability company, association, joint venture,~~ business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, ~~public corporation;~~ or ~~any~~ other legal ~~or commercial~~ entity.

~~(13)~~ (19) "Person acting as a parent" means a person, other than a parent, ~~who~~ that:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this ~~State~~ state.

~~(14)~~ (20) "Physical custody" means the physical care and supervision of a child.

(21) "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.

~~(15)~~ (22) "State" means a ~~State~~ state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

[~~(16)~~ (23) "Tribe" means an Indian tribe or band or Alaskan Native village, ~~which is~~

recognized by federal law or formally acknowledged by a ~~State~~ state.]

~~(17)~~ (24) "Warrant" means ~~an~~ a court order ~~issued by a court~~ authorizing a law-enforcement ~~officers~~ officer to take physical custody of a child.

Comment

Related to Convention: Article 1(2); Practical Handbook §2.1; Legarde, ¶¶14, 18.

The term "authority" is used in connection with cases arising under the Convention. Just as it is a "court" that makes a child custody determination under Articles 1-3, so it is an "authority" that makes a decision affecting children that is covered under Article 4 of this act. In article 4 that decision is called a measure of protection and the term is defined there. The term "authority" is broader than "court" in that it includes administrative authorities that, under foreign law, may make decisions regarding a child.

The term "parental responsibility" is taken fairly directly from Article 1(2) of the Convention. The term is purposely broad in the Convention and therefore questions regarding whether a particular issue is to be interpreted as coming within the concept of parental responsibility ought to be resolved in favor of inclusion.

Nothing in these definitions is meant to broaden or restrict the right of a court to appoint an advocate, lawyer, or other representative for the child.

SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW. This ~~[Act]~~ [act] does not govern an adoption proceeding or, except as otherwise provided in Section 416, a proceeding pertaining to the authorization of emergency medical care for a child.

Additional Comment

Proceedings pertaining to emergency medical care for a child are not governed by Articles 1, 2 or 3, but a proceeding pertaining to emergency medical care for a child is a decision within the scope of Article 4.

SECTION 104. APPLICATION TO INDIAN ~~TRIBES.~~ TRIBE.

(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. ~~§~~ Section 1901 et seq., is not subject to this ~~[Act]~~ [act] to the extent ~~that it is~~ governed by the Indian Child Welfare Act.

[(b) A court of this ~~State~~ state shall treat a tribe as if it were a ~~State~~ state of the United

States for the purpose of applying ~~[Articles] 1 and~~ this [article] and [Article] 2.]

[(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this ~~[Act]~~ [act] must be recognized and enforced under [Article] 3.]

SECTION 105. INTERNATIONAL APPLICATION OF [ACT].

(a) A court of this ~~State~~ state shall treat a ~~foreign~~ nonconvention country as if it were a ~~State~~ state of the United States for the purpose of applying ~~[Articles] 1 and~~ this [article] and [Article] 2.

(b) ~~Except as otherwise provided in subsection (c),~~ Recognition and enforcement of a child-custody determination made in a ~~foreign~~ nonconvention country ~~under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under~~ is governed by [Article] 3.

(c) ~~A court of this state need not apply this [Act] if the child-custody law of a foreign country violates fundamental principles of human rights.~~ [Article] 4 governs a proceeding in a court of this state to which the Convention applies.

Additional Comment

Section 105 is now primarily a provision that explains where the governing rules are located. It distinguishes between convention countries which are covered under Article 4 and nonconvention countries that are covered under Articles 2 and 3. Subsection (a) continues the UCCJEA rule that nonconvention countries are to be treated as states in applying Articles 1 and 2. Registration, recognition and enforcement of child-custody determinations from nonconvention countries are governed by Article 3. Subsection (c) informs courts and lawyers to apply Article 4 to cases involving convention countries.

The former subsection (c) which authorized states to decline to recognize a child custody determination of a foreign country if the child-custody laws violated fundamental principles of human rights has been moved to Article 3 and listed as one of the defenses to registration, recognition and enforcement. Article 4 contains its own public policy defense that is applicable to convention country cases.

[ARTICLE] 2.

JURISDICTION

SECTION 211. FINDINGS AND CONCLUSIONS.

(a) If requested by a party, a court of this state that makes or modifies a child-custody determination or orders or modifies a decision with regard to a child to which [Article] 4 applies shall include in the determination or decision the court's findings and conclusions on the following:

(1) the basis for the assumption of jurisdiction by the court;

(2) the manner in which notice and opportunity to be heard was given to each person entitled to notice of the proceeding;

(3) the opportunity for the child to be heard or the reasons why the child was not heard; and

(4) the country of the habitual residence of the child.

(b) A child-custody determination or a decision with regard to a child to which [Article] 4 applies may be supplemented at any time to include the findings and conclusions described in subsection (a) without the supplement being construed as a modification.

Comment

Related to Convention: Article 25; Legarde, ¶131.

This is a new section for Article 2. It is meant to help those parents who contemplate possible foreign enforcement of a child custody determination, or measure of protection, under Article 4, that, when entered, is a solely domestic United States proceeding. It is important that a court not only make the conclusions set out in this section, but also the findings of fact underlying those conclusions. This is because Article 25 of the Convention requires that the convention country that is requested to enforce the custody determination, or measure of protection, is bound by the findings of fact upon which another convention country based its jurisdiction. For example, the convention country where enforcement of a child custody determination or measure of protection is sought may not review the facts upon which the convention country that made the original custody determination based its determination of

habitual residence.

Subsection (b) makes it clear that a child custody determination, or a measure of protection, can be amended or supplemented to include the findings and conclusions without the risk of the amendments being called a modification.

[ARTICLE] 3.

ENFORCEMENT

SECTION 301. DEFINITIONS. In this [article]:

(1) "Petitioner" means a person ~~who~~ that seeks enforcement of an order ~~for return of a child~~ under the Convention, the Hague Convention on the Civil Aspects of International Child Abduction, or a child-custody determination.

(2) "Respondent" means a person against ~~whom~~ which a proceeding has been commenced for enforcement of an order ~~for return of a child~~ under the Convention, the Hague Convention on the Civil Aspects of International Child Abduction, or a child-custody determination.

SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTIONS. Under this [article], a court of this ~~State~~ state may enforce an order ~~for the return of the child~~ made under the Convention or the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

SECTION 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION.

(a) A child-custody determination issued by a court of another ~~State~~ state may be registered in this ~~State~~ state, with or without a simultaneous request for enforcement, by sending to [the appropriate court] in this ~~State~~ state:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be

registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice ~~upon~~ on the persons named pursuant to subsection ~~(a)(3)~~ (a) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this ~~State~~ state;

(2) a hearing to contest the validity of the registered determination must be requested ~~within~~ not later than 20 days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) ~~A person seeking to~~ To contest the validity of a registered order, a person must request a hearing ~~within~~ not later than 20 days after service of the notice required by subsection (b)(2). At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under ~~[Article] 2~~ the standards of

this [act];

(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under ~~[Article] 2~~ the standards of this [act]; ~~or~~

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which registration is sought~~.~~;

(4) the child has been placed in foster care, institutional care, or a similar relationship in this state and the court, or authority, that ordered the placement did so without consultation and without transmitting a report giving the reasons for the placement and this state has not consented to the placement; or

(5) the order sought to be registered is from a nonconvention country whose child custody law violates fundamental principles of human rights.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a 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.

Additional Comment

Related to Convention: Articles 23, 26; 33(1); Practical Handbook §§10.4-10.6; Legarde, ¶¶121-128.

This section generally is the same as the original Section 305. It is referred to in Article 4 as the method by which a "measure of protection" from a convention country is to be registered, recognized and enforced. That means for Article 4 purposes, the terms in this and

other sections of Article 3 need to be thought of in Article 4 terminology. Thus child-custody determination is the equivalent for this section of measure of protection, court is the equivalent of authority, etc.

The Drafting Committee determined that the defense to registration set out in subsection (d)(4), which is found in Article 33(1) of the Convention, ought to be applicable to nonconvention countries as well as convention countries.

In addition, the provision from Section 105(c) of the original UCCJEA has been moved to subsection (d)(5) of this Section as well as comparable provisions in later sections. It is a rule of nonrecognition and therefore more properly belongs with the defenses to registration, recognition and enforcement than in Section 105. The comment to the original UCCJEA Section 105(c) is applicable here:

> The same concept is found in of the Section 20 of the Hague Convention on the Civil Aspects of International Child Abduction (return of the child may be refused if this would not be permitted by the fundamental principles of the requested state relating to the protection of human rights and fundamental freedoms). In applying subsection (c), the court's scrutiny should be on the child custody law of the foreign country and not on other aspects of the other legal system. This Act takes no position on what laws relating to child custody would violate fundamental freedoms. While the provision is a traditional one in international agreements, it is invoked only in the most egregious cases.

Since cases from a convention country have their own public policy defense in Article 4, the terminology was changed here to refer to nonconvention countries only.

SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION.

(a) A court of this ~~State~~ state may grant any relief ~~normally~~ available under the law of this ~~State~~ state to enforce a registered child-custody determination made by a court of another ~~State~~ state.

(b) A court of this ~~State~~ state shall recognize and enforce~~, but may not modify, except in accordance with [Article] 2~~ , a registered child-custody determination of another ~~State~~ state.

(c) A court of this state may modify a registered child-custody determination of another state only in accordance with this [act].

SECTION 307. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under this [article] is commenced in a court of this ~~State~~ state and the court determines that a proceeding to modify the determination is pending in a court of another ~~State~~

state having jurisdiction to modify the determination under ~~[Article] 2~~ the standards of this [act], the enforcing court shall ~~immediately~~ communicate immediately with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

SECTION 308. 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~~ on 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]~~ [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 or authority, 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 attorney's 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 and confirmed under Section 305, the date and place of registration.

(c) ~~Upon~~ On the filing of a petition~~,~~ under this section, 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~~ order payment of fees, costs, and expenses under Section 312, 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 and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under ~~[Article] 2~~ the standards of this [act];

(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~~ the standards of this [act]; ~~or~~

(C) the respondent was entitled to notice, ~~but notice was not given in accordance with Section 108,~~ in the ~~proceedings~~ proceeding before the court that issued the order for which enforcement is sought, but notice was not given in accordance with the standards of

Section 108;

(D) the child has been placed in foster care, institutional care, or a similar relationship in this state, and the court, or authority, that ordered the placement did so without consultation and without transmitting a report giving the reasons for the placement and this state has not consented to the placement; or

(E) the order sought to be enforced is from a nonconvention country whose child custody law violates fundamental principles of human rights; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 304, but has been vacated, stayed, or modified by a court of a ~~State~~ state having jurisdiction to do so under ~~[Article] 2~~ this [act].

Additional Comment

Subsection (d)(2)(D) and (E) have been added as defenses to the enforcement of a child custody determination or measure of protection in the same manner as they are added to Sections 305 and 310. The comment to the revised Section 305 is also applicable here.

SECTION 310. HEARING AND ORDER.

(a) Unless the court issues a temporary ~~emergency~~ order ~~pursuant to~~ under Section 204 or 416, ~~upon~~ on a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under ~~[Article] 2~~ the standards of this [act];

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a ~~State~~ state having jurisdiction to do so under ~~[Article] 2~~ the standards of this [act]; ~~or~~

(C) the respondent was entitled to notice~~, but notice was not given in accordance with the standards of Section 108,~~ in the ~~proceedings~~ proceeding before the court that issued the order for which enforcement is sought, but notice was not given in accordance with the standards of Section 108;

(D) the child has been placed in foster care, institutional care, or a similar relationship in this state, the court or authority that ordered the placement did so without consultation and without transmitting a report giving the reasons for the placement, and this state has not consented to the placement; or

(E) the order sought to be enforced is from a nonconvention country whose child custody law violates fundamental principles of human rights; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305 but has been vacated, stayed, or modified by a court of a ~~State~~ state having jurisdiction to do so under ~~[Article] 2~~ the standards of this [act].

(b) The court shall award the fees, costs, and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of [law enforcement officials], and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify in a proceeding under this [act] refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of

immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this ~~[article]~~ [act].

Additional Comment

The additional comment to the revised Section 305 is equally applicable here.

SECTION 313. RECOGNITION AND ENFORCEMENT. A court of this ~~State~~ state shall accord full faith and credit to an order issued by another ~~State and~~ state which is consistent with this ~~[Act]~~ [act] ~~which~~ and enforces a child-custody determination by a court of another ~~State~~ state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under ~~[Article] 2~~ the standards of this [act].

SECTION 314. APPEALS. An appeal may be taken from a final order in a proceeding under this [article] in accordance with [expedited appellate procedures in other civil cases]. Unless the court ~~enters~~ renders a temporary order under Section 204 or 416, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

[ARTICLE] 4.

PROCEEDINGS UNDER CONVENTION

Introductory Comment

This Article applies exclusively to cases that fall under the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children. It applies to cases between a state of the United States and a foreign country in which the Convention is in force between that foreign country and the United States. It also applies to cases between a state of the United States and a foreign country in which the Convention is not in force to the extent that the Convention requires special treatment for nonconvention countries. The Article has no application to cases between states of the United States.

SECTION 401. DEFINITION. In this [article]:

(1) "Measure of protection" means a decision made by an authority or a court regarding protection of a child. The term:

(A) includes a decision concerning:

(i) the attribution, exercise, termination, delegation, or restriction of parental responsibility;

(ii) a right of custody, including:

(I) a right relating to the care of the child; and

(II) determining the place of residence of the child;

(iii) a right of access or visitation, including the right to take the child for a limited period to a place other than the habitual residence of the child;

(iv) guardianship of the child and any similar relationship;

(v) the designation and function of a person that has charge of the child, represents the child or assists the child;

(vi) governmental supervision of a person that has charge of the child; and

(vii) placement of the child in foster care, institutional care, or a similar relationship; and

(B) does not include a decision concerning:

(i) establishment or contest of a parent-child relationship;

(ii) adoption, including preparatory measures, or annulment or revocation of an adoption;

(iii) the name of the child;

(iv) emancipation of the child;

(v) a support or maintenance obligation;

(vi) a trust or succession;

(vii) a public benefit, including social security;

(viii) a general governmental decision with regard to education or health;

(ix) a measure resulting from an offense committed by the child;

(x) a right of asylum and immigration; or

(xi) property of the child.

(2) "United States" means the states of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Comment

Related to Convention: Articles 3, 4; Practical Handbook §§3.14-3.52; Legarde, ¶¶18-36.

This section defines the term "measure of protection," or "measure." The term "custody determination" which is used with regard to United States orders, or orders from nonconvention countries, in the first three articles of this act is inappropriate in relation to a discussion of the 1996 Convention because the Convention covers much more than custody determinations. The Convention does not itself provide a definition of the term "measure of protection." Therefore term is here defined functionally as is done in the Convention by noting what is and what is not a measure of protection that is covered by the Convention.

The list in Article 3 of the Convention, and therefore in subsection (A) of this section, is opened-ended, which is indicated by using the term "may include." Unlike subsection (A), subsection (B) concerning exclusions is a closed list. The subjects in subsection (B) are covered by law other than this act.

The terms "rights of custody" and "rights of access" appear in the 1980 Hague Convention on the Civil Aspects of International Child Abduction. They are meant to have the same definition in applying this Convention as they have in applying the 1980 Convention. Thus, for example, a *ne exeat* right would be treated as a right of custody under 1996 Convention just as it would under the 1980 Convention. See Abbott v. Abbott, 130 S.Ct. 1983 (2010). The terms are particularly important in the application of Section 413 which concerns wrongful removal and wrongful retention, and are broad enough to include most of the contemporary variations on word choice for custody. Thus "parenting time", "joint custody", "managing conservator" and "shared custody" are all terms used in various states to indicate who is entitled to make decisions concerning the child. If those decisions include rights relating to the care of the child, and, in particular, the right to choose the child's residence, they become a right of custody under the 1980 Convention, as well as the 1996 Convention.

SECTION 402. APPLICATION OF ARTICLE.

(a) Except as otherwise provided in Sections 416, 421, and 422, this [article] applies only in a proceeding in a court of this state:

(1) which involves recognition and enforcement of a measure of protection ordered by an authority in a convention country; or

(2) in which:

(A) a party to the proceeding has a significant connection to a convention country; or

(B) a child who is the subject of the proceeding has a significant connection to a convention country.

(b) If a provision of this [article] is inconsistent with [Articles] 1 through 3, this [article] controls.

Comment

This section operates as a sign-posting for cases with international connections. If a case involves either a child or a party with a significant connection to a convention country this article should be consulted to determine whether it has any applicability to a particular case. In most cases the determinative issue will be that of the habitual residence of the child. If the child is habitually resident in another convention country then, not only does Article 4 generally not apply, the entire UCCJEA is inapplicable because the other convention country will have jurisdiction to determine the measure of protection. However, there will be cases where even if jurisdiction to take a measure of protection is not in the United States, a proceeding under Article 4 could take place. For example, a parent in the United States may file an Article 4 proceeding in which the parent seeks to have the court request a transfer of jurisdiction under Section 415. Conversely, if the habitual residence of the child is in the United States, a parent who has a significant connection to a convention country may wish to file an Article 4 proceeding seeking to have the court transfer the case to that convention country under Section 414. In addition the foreign parent may wish to have information considered for a decision on whether the foreign parent should be allowed access to, or visitation with, the child. The procedure under Article 4 would require the court to consider the information sent by the foreign convention authorities under Section 426.

This article is applicable to all cases where a measure of protection from a convention country is sought to be registered, recognized and enforced.

The term "proceeding in a court of this state" means that this article will apply only to court proceedings, and not to measures that are issued under the Convention that will be determined by administrative agencies and other governmental personnel.

SECTION 403. EFFECT OF MEASURE OF PROTECTION.

(a) A measure of protection ordered by a court of this state that had jurisdiction under this [article] binds a person that:

(1) has:

(A) been served in accordance with law of this state other than this [act];

(B) been notified in accordance with Section 405; or

(C) submitted to the jurisdiction of the court; and

(2) has been given an opportunity to be heard.

(b) A measure of protection that binds a person under subsection (a) is conclusive as to all decided issues of law and fact.

Comment

Except for the provisions on registration, recognition and enforcement, all the sections from Articles 1 and 2 that are applicable to an Article 4 proceeding are set out in full in Article 4. There are appropriate language changes, i.e., changing "child custody determination" to "measure of protection" and "court" to "authority" where required. These language changes do not change the substantive understanding of any section. Therefore these sections should be interpreted in Article 4 as they are interpreted under Articles 1 through 3.

This section is the equivalent of Section 106.

SECTION 404. PRIORITY. If a question of the existence or exercise of jurisdiction under this [article] is raised in a proceeding, on request of a party, the court shall give the question priority on the calendar and determine it expeditiously.

Comment

This section is the equivalent of Section 107.

SECTION 405. NOTICE TO PERSON OUTSIDE STATE.

(a) Notice to a person outside this state required for the exercise of jurisdiction by a court of this state may be given in a manner for service of process prescribed by law of this state other than this [act] or the convention country in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) In a proceeding under this [article], proof of service may be made in the manner prescribed by law of this state other than this [act] or the convention country in which service is made.

(c) Notice is not required for the exercise of jurisdiction under this [article] with respect to a person that submits to the jurisdiction of a court of this state.

Comment

The section is the equivalent of Section 108.

SECTION 406. APPEARANCE AND LIMITED IMMUNITY.

(a) A party to a proceeding under this [article], including a modification proceeding, or a petitioner or respondent to a proceeding to enforce or register a measure of protection is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or having been physically present for the purpose of participating, in the proceeding.

(b) A party subject to personal jurisdiction in this state on a basis other than physical presence is not immune under subsection (a) from service of process in this state. A party present in this state which is subject to the jurisdiction of another state or convention country is not immune under subsection (a) from service of process allowable under the law of that state or

convention country.

(c) Immunity under subsection (a) does not extend to civil litigation based on an act committed by a party while present in this state which is unrelated to the party's participation in a proceeding under this [article].

Comment

This section is the equivalent of Section 109.

SECTION 407. COMMUNICATION BETWEEN COURT AND AUTHORITY.

(a) In a proceeding under this [article], the court may communicate with an authority concerning the proceeding.

(b) The court may allow the parties to participate in a communication under this section. If a party is not able to participate in the communication, the party must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Except as otherwise provided in subsection (d), a record must be made of a communication under this section. The court promptly shall inform the parties of the communication and grant them access to the record.

(d) Communication between the court and an authority on a schedule, calendar, court record, or similar matter may occur without informing the parties under subsection (a). A record need not be made of the communication.

Comment

This section is the equivalent of Section 110.

SECTION 408. TAKING TESTIMONY IN CONVENTION COUNTRY.

(a) In addition to other procedures available to a party, a party to a proceeding under this [article] may offer testimony of an individual located in a convention country, including

testimony of a party or a child, by deposition or other means allowable in this state for testimony taken in another state or foreign country. The court may order that testimony be taken in a convention country and may prescribe the manner in which and the terms on which the testimony is taken.

(b) In a proceeding under this [article], the court may permit an individual residing in a convention country to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated person. The court shall cooperate with the authority of the convention country in designating an appropriate location for the deposition or testimony.

(c) In a proceeding under this [article], documentary evidence transmitted from a convention country to the court by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Comment

This section is the equivalent of Section 111.

SECTION 409. COOPERATION BETWEEN COURT AND AUTHORITY; PRESERVATION OF RECORDS.

(a) In a proceeding under this [article], the court may request the appropriate authority to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence under procedures of the convention country;

(3) order that an evaluation be made of the child involved in the proceeding;

(4) forward to the court a certified copy of the transcript of the record of the hearing, the evidence presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a measure of protection proceeding or any person having

physical custody of the child to appear in the proceeding with or without the child.

(b) In a proceeding under this [article], on request of an authority the court may hold a hearing or render an order described in subsection (a).

(c) The court may assess travel and other necessary and reasonable expenses incurred under subsections (a) and (b) against a party according to law of this state other than this [act].

(d) In a proceeding under this [article], the court shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a measure of protection until the child attains 18 years of age. On request by an authority or law-enforcement official of a convention country, the court shall forward a certified copy of those records.

Comment

This section is the equivalent of Section 112.

SECTION 410. HABITUAL RESIDENCE. In a proceeding under this [article], in determining the country of the habitual residence of a child, the court shall consider all relevant factors, which may include:

(1) whether the child has a home state in the United States;

(2) the extent of the child's ties to a particular country, including the child's social interactions, education, family relationships, peer relationships, and language;

(3) the age and maturity of the child;

(4) whether the presence of the child in a country is time limited or open ended;

(5) the circumstances under which the child is in a country; and

(6) the intent of each person with parental responsibility for the child in determining the habitual residence of the child.

Comment

Practical Handbook §§4.5-4.7, 13.84-13-96.

The term "habitual residence" is used in all conventions promulgated by the Hague Conference on Private International Law and is never defined. Lawyers operating in the civil law systems of continental Europe are accustomed to giving the term slightly different meanings depending on the context where the term is used. In the United States the term appears only in cases interpreting the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The Practical Handbook cautions that:

> In the 1980 Convention the determination that a child is habitually resident in the requesting country is necessary in order for the remedy of that Convention to be applicable and is part of the larger inquiry as to whether there has been a wrongful removal or retention of a child. The role of habitual residence in the 1996 Convention is to assess which country's authorities have jurisdiction to take measures of protection and whether their decisions should be recognized by other contracting countries. Therefore the precedent that has developed under the 1980 Convention is not necessarily applicable to the determination of habitual residence under this article.

On the other hand the English Supreme Court has determined that the term should generally be interpreted the same way regardless if the case concerns the Abduction Convention or the Protection of Children Convention. The English Supreme Court decided that the term "habitual residence' is a fact based determination allowing the court to find the place which reflects some decree of integration by the child in a social and family environment in the country concerned. This in turn depends on a number of factors, including the reasons for the family's stay in the country in question. Re A (Jurisdiction: Return of Child) [2013] UKSC 60 [2014] 1 FLR 111.

This section reflects the same interpretation. It is less of a definition, but rather a provision designed to give guidance to a court in making the determination of the habitual residence of the child. The factors are child focused, rather than being focused on the parents. If thought of in terms of the current split between the federal circuits concerning the interpretation of the term "habitual residence" in the Abduction Convention, this section leans heavily toward the approach of the Sixth Circuit in Robert v. Tesson, 507 F.3d 981 (6th Cir. 2007) rather than the Ninth Circuit's reliance on parental intent in Mozes v. Mozes, 239 F.3d 1067 (9th Cir. 2001). Therefore the intention of the child's parents is listed as the last of the factors to be considered. No determination is made as to when it would be appropriate to consider the parents' intent, however, it will obviously be more important with extremely young children.

The term "home state" in subsection (1) is meant to have the same definition in this article as it has in Articles 1 and 2.

SECTION 411. JURISDICTION TO ORDER OR MODIFY MEASURE OF PROTECTION.

(a) Except as otherwise provided in Section 416, a court of this state has jurisdiction to order or modify a measure of protection only if:

(1) the court has jurisdiction under Section 201 and the United States is the country of the habitual residence of the child;

(2) the child is present in this state and:

(A) the habitual residence of the child cannot be determined;

(B) the child is a refugee; or

(C) the child is internationally displaced due to disturbances in the country of the habitual residence of the child; or

(3) an authority with jurisdiction substantially in accord with paragraph (1) or (2) requests the court to assume jurisdiction and the court agrees.

(b) If requested by a party, the court in a proceeding under this [act], shall make findings and conclusions of the jurisdictional facts.

Comment

Related to Convention: Articles 5, 6, 8, 9; Practical Handbook §§4.1-4.19; 5.1-5.8; Legarde, ¶¶38-45.

In order for a measure taken in this country to be enforceable in another convention country, the court taking the measure must have jurisdiction under a basis approved by the Convention. The primary basis for jurisdiction in the Convention is the habitual residence of the child. The Convention is concerned with country to country relationships; therefore the term "habitual residence" means that the child must be a habitual resident of the United States. In addition to the child being a habitual resident of the United States the court must also have jurisdiction under Section 201.

A state can also have jurisdiction, apart from habitual residence, if the child is present in this state and has no habitual residence. This is a determination that probably should be avoided if possible. But such a determination may be proper when for example: (1) a child moves

frequently between two or more countries, (2) where a child is unaccompanied or abandoned and it is difficult to find evidence to establish the child's habitual residence or (3) where a child's previous habitual residence has been lost and there is insufficient evidence to support the acquisition of a new habitual residence.

Jurisdiction is also proper if the child is present in the country and is a refugee or is internationally displaced. Whether a child is a refugee or is internationally displaced is to be decided under federal law. Finally, this state has jurisdiction if the convention country that would otherwise have jurisdiction has decided to ask a court of this state to assume jurisdiction under Section 415 and the court has agreed.

It should be noted that jurisdiction follows habitual residence. Therefore this section applies when the child's habitual residence changes during the proceedings. When habitual residence changes from one convention country to another convention country, the first court loses jurisdiction and the second court gains jurisdiction. Section 412 provides a *lis pendens* to resolve those cases.

However this rule does not apply when the change of habitual residence is to a non-convention country. The Convention then ceases to apply and either state may attempt to exercise jurisdiction on any basis provided by local law. A measure determined by a court after that child's habitual residence changes to a nonconvention country is not entitled to be enforced under the Convention.

SECTION 412. SIMULTANEOUS PROCEEDINGS.

(a) Except as otherwise provided in Section 416, a court of this state may not exercise jurisdiction under Section 411, 413, or 414 if the court determines that when the proceeding commenced, a request for a similar measure of protection has been made before an authority having jurisdiction and is still under consideration, unless the authority declines to exercise its jurisdiction in favor of the court.

(b) If a court of this state that has jurisdiction under Section 411, 413, or 414 determines that a proceeding has been commenced later in a convention country having jurisdiction concerning a similar measure of protection, the court may decline to exercise jurisdiction.

Comment

Related to Convention: Article 13; Practical Handbook §§4.13-4.35; Legarde, ¶¶68-83.

Article 13 of the Convention provides a *lis pendens* for situations where there is more

than one country which could potentially claim jurisdiction. It was originally designed to apply between the country of the child's habitual residence and the country where a divorce between the child's parents is pending, which under the Convention has concurrent jurisdiction, when authorized by the convention country in question. The United States does not allow the divorce court to have concurrent jurisdiction with the court of the home state.

However, Article 13 of the Convention has application to all potential jurisdictional conflicts that might arise under Articles 5 through10 of the Convention. Therefore, it would apply in those situations when the child's habitual residence changes during the middle of a case. Article 13 applies for as long as proceedings involving similar measures in the other first contracting country are still under consideration. This provides a form of continuing jurisdiction in the country that originally had jurisdiction when habitual residence changes in midst of a case.

In order for this section to apply, the requests before both contracting countries must be the same or similar in substance.

Note that under subsection (a) there is a provision for a court of this state to continue the case if the authority of the convention country that first had jurisdiction declines in favor of this state. This declination of jurisdiction is on the basis of forum non conveniens and does not involve the transfer jurisdiction provisions of Articles 8 and 9 of the Convention. Subsection (b) authorizes a court of this state to decline jurisdiction in favor of the second to file country, if that would be appropriate under the circumstances.

Although there is nothing in the Convention concerning communication, it will usually be good practice for communication to take place between the two convention countries involved (either via Central Authorities or through direct judicial communications) to ensure that no gap in the protection of the child results.

SECTION 413. WRONGFUL REMOVAL OR RETENTION OF CHILD; JURISDICTION.

(a) This section applies to a right of custody that arises:

(1) by operation of law;

(2) under an agreement having legal effect under the law of the country of the habitual residence of the child immediately before removal or retention of the child; or

(3) from a judicial or administrative decision.

(b) Removal or retention of a child is wrongful if:

(1) it is in breach of a right of custody of a person, either jointly or solely, under

the law of the country of the habitual residence of the child immediately before the removal or retention; and

(2) at the time of removal or retention, the right of custody was exercised, either jointly or solely, or would have been exercised but for the removal or retention.

(c) A court that has jurisdiction under Section 411(a)(1) continues to have jurisdiction after a wrongful removal or retention of a child until the child acquires a new habitual residence and:

(1) each person with a right of custody has acquiesced in the removal or retention; or

(2) the child resides in the country of the new habitual residence for at least one year after the time that every person with a right of custody knew or should have known of the whereabouts of the child and;

(A) no request for the return of the child is pending before an authority of the country of the new habitual residence or in a court of this state; and

(B) the child is settled in the new environment.

(d) Except as otherwise provided in Section 416, a court of this state does not have jurisdiction under this [article] over a child whose habitual residence in this state is the result of a wrongful removal or retention unless:

(1) each person with a right of custody has acquiesced in the removal or retention;

(2) the child resides in this state for at least one year after the time that every person with a right of custody knew or should have known of the whereabouts of the child, and

(A) no request for the return of the child is pending in a court of this state or before an authority of the country of the former habitual residence of the child; and

(B) the child is settled in the new environment; or

(3) the court assumes jurisdiction under Section 415.

Comment

Related to Convention: Article 7; Practical Handbook §§4.20-4.25; 13.1-13.14; Legarde, ¶¶ 46-51.

This section is designed to prevent jurisdiction from transferring following a wrongful removal or retention as set out in the 1980 Abduction Convention by formalizing the relationship between that Convention and the 1996 Protection Convention. Therefore, as set out below, the terms of this section should be interpreted identically to the terms of the Abduction Convention.

The definition of wrongful removal or retention in this section does not specifically include the term "institution or other body." That is because the definition of the term "person" in Section 102 includes "institution or other body" and therefore the term would be redundant in this section.

The term "rights of custody" is also not defined in this section since it is defined in Section 401. The language of Section 401 should be interpreted to track the interpretation given to the terms under the Abduction Convention. The term "rights of custody" therefore does not include access or visitation rights as defined in Section 401. Other terms such as, "exercise of custody", "acclimatized", and "environment" etc will also take on the same meaning here that they have in the cases interpreting the 1980 Convention. Since there is a considerable judicial gloss on those terms, the drafting committee determined that none of the language should be modernized.

This section presents both sides of Article 7 of the Convention. It confirms that a court of this state does not lose its jurisdiction after a wrongful abduction or retention unless the requirements of Article 7 are met. It also provides that a court of this state does not obtain jurisdiction if the child's habitual residence in this state is the result of a wrongful abduction or retention unless the requirements of the Article 7 are met. The only jurisdiction that can be exercised by a court of this state when a child has become a habitual resident of the United States and has its home state in this state as a result of a wrongful abduction is urgency jurisdiction under section 416.

The reference to a petition for the return of the child pending in the court of this state or the country of the new habitual residence is in line with the interpretation of Article 7 set out in the Practical Handbook. Therefore, it should be noted that a custody determination made by the court of the convention country from which the child has been wrongfully removed or retained, while that country still has jurisdiction under this section, must be recognized and enforced under the sections on recognition and enforcement. Therefore a return order issued by a convention country from which the child has been abducted must be enforced by the convention country to which the child been wrongfully abducted even if the child's habitual residence has changed.

SECTION 414. DECLINING JURISDICTION.

(a) If a court of this state that has jurisdiction under Section 411(a)(1) or (2) determines that an authority in a convention country is in a better position to assess the best interest of a child, the court may:

(1) request that the authority assume jurisdiction over all or part of the case; or

(2) stay the proceeding to allow a party to request that the authority assume jurisdiction.

(b) If under subsection (a), the authority agrees to assume jurisdiction, the court may decline jurisdiction.

(c) The court may communicate under Section 407 with the authority concerning a request under subsection (a) that it assume jurisdiction.

(d) Before determining under subsection (a) whether the authority is in a better position to determine the best interest of a child, the court shall allow each party to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue and which country can best protect the parties and the child;

(2) the time the child has resided outside the United States;

(3) the distance between the court and the authority that would assume jurisdiction;

(4) the financial circumstances of the parties;

(5) any agreement of the parties as to which country should assume jurisdiction;

(6) the nature and location of evidence required to resolve any issue in the case, including testimony of the child;

(7) the ability of the court and the authority to obtain evidence and decide the case expeditiously;

(8) the procedures available in this state and the convention country necessary to present evidence;

(9) the familiarity of the court and the authority with the facts and issues in the proceeding; and

(10) whether a defense to the return of the child was sustained under the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

(e) A request under subsection (a) may be made only to an authority:

(1) in a convention country of which the child is a national;

(2) that has jurisdiction over the [divorce] or annulment of marriage of the parents of the child; or

(3) in a convention country that has a significant connection to the child.

(f) An order declining to exercise jurisdiction under this section is not permanent.

Comment

Related to Convention: Articles 8, 9; Practical Handbook §§5.1-5.22; Legarde, ¶¶ 53-60.

Article 8 and 9 of the Convention are set out in Sections 414 and 415 of this Article. This section refers to declining jurisdiction. Section 415 refers to "assuming jurisdiction." The term "transferring jurisdiction" was not used since it does not fit comfortably into a common law tradition, even though the convention terminology is "transferring jurisdiction."

The provisions of this section and the next section only apply to convention countries.

Subsection (c) is material that is contained in Section 207. This section should provide guidance to a court in determining whether it is appropriate to transfer jurisdiction in the same way that Section 207 provides guidance in terms of whether a court should find that it is an inconvenient forum. The factors of this section can also be used to determine whether another convention country has a significant connection to the child. The Convention does not provide a procedure for determining what factors a court should consider when it decides that another state should transfer or receive jurisdiction. Therefore it is not inconsistent with the Convention to

add this provision.

The Convention also does not provide for the parties to be heard before a request to decline jurisdiction is granted. This then becomes a matter of local law and it would be appropriate to apply the provisions of Section 207 to allow the parties to submit information to the court before a decision on declining jurisdiction is made.

That part of Article 8 of the Convention that requires an authority to determine whether it is in the best interests of the child for it to receive jurisdiction is covered in Section 411(a)(3).

Subsection (f) provides that a transfer under this section does not effect a permanent transfer of jurisdiction. If the convention country of the habitual residence of the child transfers the case to another country, modification procedures would take place in the country of the child's habitual residence since there is no continuing jurisdiction under the convention.

SECTION 415. REQUEST TO DECLINE JURISDICTION.

(a) A court of this state may request, or invite the parties to request, the appropriate authority of the convention country of the habitual residence of a child to decline to exercise jurisdiction over a measure of protection in favor of the court if:

(1) the child is a national of the United States;

(2) a [divorce] or annulment-of-marriage proceeding of the parents of the child is pending in this state; or

(3) this state has a significant connection to the child.

(b) The court may communicate under Section 407 with the authority concerning a request under subsection (a).

(c) The court may assume jurisdiction following a request under subsection (a) only if the authority declines to exercise jurisdiction in favor of the court.

(d) An assumption of jurisdiction under this section is not permanent.

Comment

Related to Convention: Articles 8, 9; Practical Handbook §§5.1-5.22; Legarde, ¶¶ 53-60.

It is not necessary to have a separate jurisdictional basis for the court under subsection

(a). So long as the court would have subject matter jurisdiction to entertain a petition under the law of this state, it can decide whether to request a transfer of jurisdiction from the convention country of the child's habitual residence.

As in the case of the previous section an assumption of jurisdiction in this state following a declination by the country of the habitual residence of the child is not permanent. Future actions would have to be filed in the convention country of the child's habitual residence.

SECTION 416. TEMPORARY JURISDICTION IN URGENT SITUATION.

(a) A court has jurisdiction under this [article] to order a temporary measure of protection for a child present in this state in an urgent situation, including when:

(1) the child has been abandoned;

(2) the child may be removed immediately from this state; or

(3) it is necessary to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

(b) A measure of protection ordered under subsection (a) regarding a child habitually resident in a convention country expires when the court orders an end to the measure or an authority with jurisdiction has taken measures required by the situation.

(c) A measure of protection ordered under subsection (a) regarding a child habitually resident in a nonconvention country expires when the court orders an end to the measure or a measure ordered by the nonconvention country is registered under Section 305.

Comment

Related to Convention: Article 11; Practical Handbook §§6.1-6.12; Legarde, ¶¶68-73.

This section tracks Article 11 of the Convention. As in Section 204, the child must be present in this state for this section to be applicable. But, the scope of this section is wider than the scope of Section 204. The term "urgent" covers more situations than the comparable term "emergency" as found in Section 204. Subsection (a)(1)-(3) are examples of what can constitute an urgent situation. It is not meant to exhaust the situations where urgent jurisdiction can be taken.

This means that this section can be used to fill in the gaps of the 1980 Hague Convention

on the Civil Aspects of International Child Abduction. Thus a court of a country that is requested to return the child under the 1980 Convention might decide to return the child only if the child is protected from the left behind parent on return. Or, it might decide to return the child only if the left behind parent provides certain undertaking with regard to the child and the other parent. These orders are described in the Practical Handbook as "urgent" and, since they are properly taken under this section, are therefore are entitled to enforcement in the country of the habitual residence of the child until modified. See the Practical Handbook, ¶6.11. Although United States courts have authority to issue provisional orders under the International Child Abductions Remedies Act, 42 U.S.C. §11604, there is no basis for enforcement of these orders abroad except by this Convention.

The expiration of the emergency order is as set out in Article 11of the Convention. If the child's habitual residence is in a convention country the order expires when that convention country takes whatever measure is required by the situation, which may be none at all if the convention country of the child's habitual residence decides there is no emergency. If the child's habitual residence is in a nonconvention country the emergency order expires when it is recognized by a court of this state under Section 305. The Convention seems to require that the non-contracting state actually take a measure of protection since there must be something to be recognized in this state in order for the temporary order to come to an end.

SECTION 417. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.

(a) Before a court orders a measure of protection under this [article], notice and an opportunity to be heard must be given to:

(1) a parent whose parental rights have not been terminated;

(2) a person having physical custody of the child; and

(3) any other person entitled to notice under the law of this state in a child-custody proceeding between residents of this state;

(b) The obligation to join a party and the right to intervene as a party in a proceeding under this [article] are governed by the law of this state in a child-custody proceeding between residents of this state.

Comment

This section is the equivalent of Section 205.

SECTION 418. INFORMATION REQUIRED TO BE SUBMITTED TO COURT.

(a) [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] [In] a measure-of-protection proceeding, each party, in its first pleading or an attached affidavit, shall give information, if reasonably ascertainable, under oath, as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the name and present address of each person with which the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated as a party or witness, or in any other capacity, in another proceeding concerning a measure of protection for the child and, if so, identify the court or authority, the case number, and the date of the proceeding;

(2) knows of any proceeding that could affect the current proceeding, including a proceeding for enforcement and a proceeding relating to domestic violence, a protective order, a termination of parental rights, or an adoption and, if so, identify the court or authority, the case number, and the date of the proceeding; and

(3) knows the name and address of any person not a party to the proceeding having physical custody of the child or claiming a right of legal or physical custody of, or visitation with, the child and, if so, the name and address of the person.

(b) If the information required by subsection (a) is not furnished, the court, on motion of a party or on its own may stay the proceeding until the information is furnished.

(c) If a pleading or affidavit states any information under subsection (a) affirmatively, the party shall give additional information under oath as required by the court. The court may examine the party under oath as to details of the information furnished and any other matter pertinent to the court's jurisdiction and the disposition of the case.

(d) A party to a measure-of-protection proceeding has a continuing duty to inform the court of any proceeding that could affect the measure-of-protection proceeding.

[(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information under subsection (a), the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.]

Legislative Note: *The pleading requirements from Article 2 of the UCCJEA are generally carried over into this Article. However, the information is made subject to local law on the protection of names and other identifying information in certain cases. A number of states have enacted laws relating to the protection of victims in domestic violence and child abuse cases which provide for the confidentiality of victims' names, addresses, and other information. These procedures must be followed if the child-custody proceeding of the state requires their applicability.*

Comment

This section is the equivalent of Section 209.

SECTION 419. APPEARANCE OF PARTIES AND CHILD.

(a) In a measure-of-protection proceeding under this [article], the court may order a party that is in this state to appear before the court in person with or without the child. The court may order a person that is in this state and has physical custody or control of the child to appear in person with the child.

(b) If a party to a measure-of-protection proceeding under this [article] whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 405 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may render an order necessary to ensure the safety of the child and a person ordered to appear under this section.

(d) If a party to a measure-of-protection proceeding that is outside this state is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel or other expenses of the party appearing and of the child.

Comment

This section is the equivalent of Section 210.

SECTION 420. DURATION OF MEASURE OF PROTECTION. Except as otherwise provided in Section 416(b) and (c), the following rules apply:

(1) A measure of protection ordered by a court of this state with jurisdiction under Section 411, 413, or 414 remains in force, even if a change of circumstances has eliminated the jurisdictional basis of the measure, until the measure is terminated, modified, or replaced by a court of this state or an authority with jurisdiction.

(2) A measure of protection ordered by an authority of a convention country with jurisdiction remains in force even if a change of circumstances has eliminated the jurisdictional basis of the measure, until the measure is terminated, modified, or replaced by a court of this state or an authority with jurisdiction.

Comment

Related to Convention: Articles 14, 23(2)(e); Practical Handbook §§8.1-8.5; Legarde, ¶¶81-83.

This is a familiar principle and is found in both Uniform Interstate Family Support Act and this Act. An order made with appropriate jurisdiction continues to be enforceable even after the jurisdictional basis of the order disappears. The order is enforceable until modified by an authority, or court, with appropriate jurisdiction under this article.

It should be noted that even though the order remains in force, the Convention in Article 23(e) provides a defense to its registration, recognition and enforcement if the order is inconsistent with a later order of the nonconvention country of the child's habitual residence.

SECTION 421. CONFLICT OF LAWS: IN GENERAL.

(a) In this section, "law" means the law in a state or foreign country other than its conflict of laws rules.

(b) Except as otherwise provided in this section and Section 422, a court of this state shall apply the law of this state in a proceeding under this [article].

(c) In an exceptional circumstance to protect a child, a court of this state in a proceeding under this [article] may apply or take into consideration the law of another country that has a significant connection to the child.

(d) If this state becomes the habitual residence of a child, the law of this state governs the application in this state of a measure of protection taken in the convention country of the former habitual residence of the child.

(e) Except as otherwise provided in Section 422(c), in a proceeding under this [article], the law of the habitual residence of a child governs the exercise of parental responsibility. If the habitual residence of the child changes, the law of the new habitual residence applies.

(f) A court of this state may decline to apply the law designated by this section only if, after taking into account the best interest of the child, the court finds the law is manifestly contrary to the public policy of this state.

Comment

Related to Convention: Articles: 15, 17, 20, 21(1), 22; Practical Handbook §§9.1-9.8; 9.16-9.18; 9.25; Legarde, ¶¶86-97; 109-110; 115-118.

Sections 421 and 422 introduce into United States cases arising under the Convention a new element: the question of the applicable law. In the United States, as well as most other common law countries, allocation of competency between jurisdictions in child custody and

visitation cases is handled by rules of jurisdiction and recognition of judgments. Choice of law is not used. A court that has jurisdiction over a custody determination applies its own substantive law of custody, visitation, dependency, neglect, etc.

The default rule, contained in subparagraph (b), is that a court that has jurisdiction under the Convention will apply its own law, which, given that jurisdiction is very likely to be located in the place of the child's habitual residence, will result in the application of the law of the child's habitual residence in practically all cases.

However, the court in order to protect the child may, in exceptional cases, apply the law of another country which has a significant connection to the fact pattern. This provision is likely to be little used in the United States. Since there will be no concurrent jurisdiction for the divorce court in the United States, the only concurrent jurisdiction will be urgency jurisdiction. It is extremely unlikely that a court asked to decide a case in an urgent situation will have time to consider the law of another jurisdiction. However, it is possible that there may be a case, albeit rare, where even though a court has jurisdiction as the place of the child's new habitual residence, the child, over the course of time, has had a more substantial relationship with another country and therefore the court of the child's new habitual residence may wish to apply the law of the child's previous habitual residence. Under this section when a court looks to the law of another country it looks only that the internal law of that country and not its choice of law rules.

Subsection (d) draws a distinction between the existence of measures of protection and the method of application of a measure in a particular country when the child's habitual residence changes. The distinction is the equivalent of the distinction between the law governing the validity of a contract and the performance of a contract. The substantive law governing, for example, visitation, is that of the forum. However, the conditions for carrying out the visitation arrangements are that of the child's new habitual residence. This is particularly apt, according to the Explanatory Report, in those situations where the original determination was made by the child's habitual residence and child's habitual residence then changes. The Explanatory Report acknowledges that there is not a clear line between the establishment of a measure and the means of carrying out the measure and suggests that the line will have to be drawn on a case-by-case basis.

Subsection (e) distinguishes between the existence of parental responsibility and the exercise of parental responsibility. The applicable law governing the exercise of parental responsibility is that of the habitual residence of the child and not the place where the parent acted. If the habitual residence of the child changes the law of the new habitual residence governs the exercise of parental responsibility.

SECTION 422. CONFLICT OF LAWS REGARDING PARENTAL RESPONSIBILITY.

(a) Except as otherwise provided in subsection (b), in this section, "law" means the law in a state or foreign country other than its law on conflict of laws.

(b) If the law made applicable by this section is the law of a nonconvention country and the law on conflict of laws of the nonconvention country would apply the law of another nonconvention country, the law of the other nonconvention country is applicable. If the other nonconvention country would not apply its own law, the law applicable is determined under subsection (c).

(c) In a proceeding under this [article], the following rules apply:

(1) Attribution or termination of parental responsibility by operation of law, without the intervention of an authority, is governed by the law of the country of the habitual residence of the child.

(2) Attribution or termination of parental responsibility by agreement or a unilateral act, without the intervention of an authority, is governed by the law of the country of the habitual residence of the child at the time the agreement or act takes effect.

(3) Attribution of parental responsibility under the law of the country of the habitual residence of the child continues even if the child acquires a new habitual residence.

(4) If the child acquires a new habitual residence, the law of the new habitual residence determines the attribution of parental responsibility by operation of law to an individual who at the time of the acquisition of the new habitual residence did not have parental responsibility.

(d) Parental responsibility established under subsection (c) may be terminated or modified by a measure of protection ordered in accordance with this [article].

(e) A court of this state may refuse to apply the law designated by this section only if, after taking into account the best interest of the child, the court finds the law is manifestly contrary to the public policy of this state.

Comment

Related to Convention: Articles 16, 18, 21(2), 22; Practical Handbook §§9.9-9.15; Legarde, ¶¶98-108.

The specific rules referred to in this section are for those countries where local rules provides for rights of custody, or parental responsibility, by operation of law, unilateral act, or agreement. Unlike anything else in the Convention, the rules do not concern decisions or measures, but rather relationships created by local rules of law. The Convention provides that these issues be determined by the law of the habitual residence of the child.

Subsection (c)(3) provides that the parental responsibility that comes about by operation of law, agreement or unilateral act continues even if the habitual residence of the child changes.

Subsection (c)(4) deals with the reverse situation. It provides that if parents who do not have parental responsibility under the law of the child's original habitual residence move to a convention country where parental responsibility by operation of law is applicable, the law of the new habitual residence applies.

Subsection (d) restates Article 18 of the Convention that the parental responsibility established by this section may be modified by a measure taken under this article.

Subsection (b) deals with the renvoi problem, i.e. whether the reference to the law of a particular state is to that state's local law or whether the reference includes the conflict of law rules of the referred to country. Article 21(2) of the Convention contains an exception to the normal rule of referring only to local law for fact patterns that fall under Article 16 of the Convention. If the application of subsection (c) of this section would result in the application of the law of a nonconvention country and if the choice-of-law rules of that country would dictate applying the law of another nonconvention country then the law of the second nonconvention country applies. If the second nonconvention country would not apply its own law then the convention requires that the applicable law be that set forth in the section.

SECTION 423. DUTY TO RECOGNIZE AND ENFORCE MEASURE OF PROTECTION ORDERED IN CONVENTION COUNTRY.

(a) Except as otherwise provided in subsection (e), a court of this state shall recognize and enforce a measure of protection ordered by an authority if:

(1) the authority's country exercised jurisdiction in substantial conformity with this [article] or the measure of protection was ordered under factual circumstances meeting the jurisdictional standards of this [article]; and

(2) the measure has not been modified in accordance with this [article].

(b) Except as otherwise provided in subsection (e), if a child's habitual residence is not in the convention country, the recognition required by subsection (a) applies to a measure of protection ordered by an authority that had jurisdiction over the [divorce] or annulment of the marriage of the parents of the child if:

(1) the law of the convention country provides;

(2) the habitual residence of one parent is in the country;

(3) at least one parent had parental responsibility when the proceeding for [divorce] or annulment commenced; and

(4) the jurisdiction of the authority was agreed to by the parents or any other person with parental responsibility.

(c) A court of this state may decline to recognize a measure of protection ordered by an authority only if:

(1) the authority's country was not the habitual residence of the child and the authority did not otherwise have jurisdiction under the standards of Section 411(a)(2), 413, or 414;

(2) except in an urgent situation, the issuing authority did not allow the respondent an opportunity to be heard;

(3) the measure is incompatible with a later measure taken by an authority of a convention country with jurisdiction or by an authority of a nonconvention country of the child's habitual residence;

(4) after taking into account the best interest of the child, the court finds the measure is manifestly contrary to the public policy of this state;

(5) except in an urgent situation, the issuing authority did not provide the child an opportunity to be heard if the failure to be heard is in violation of fundamental principles of procedure of this state; or

(6) the child has been placed in foster care, institutional care, or a similar relationship in this state, the authority that ordered the placement did so without consultation and without transmitting a report giving the reasons for the placement, and this state has not consented to the placement.

Comment

Related to Convention: Articles 10, 23; Practical Handbook §§10.1-10.19; Legarde, ¶¶61-63; 119-135.

This section contains in subsection (a) the basic rule of recognition. It requires recognition of a measure of protection made in another convention country if the measure was taken in accordance with the jurisdictional provisions of this article. The recognition language taken from Section 303 has been slightly rewritten but the duty to recognize is not lessened in this article.

Subsection (b) is a special case. The Convention in Article 10 allows an authority having jurisdiction of the parent's divorce or annulment to also exercise jurisdiction over the child of the parties so long as one of the parents is habitually resident in the country, one parent has parental responsibility and the parties, as well as anyone else with parental responsibility, agree. This jurisdictional basis is not required under the Convention and is not a part of United States law. However, the Convention does require recognition of custody determinations made in accordance with its jurisdictional standard. Therefore even though the United States does not have this jurisdictional basis to decide a measure of protection such as custody, the Convention does require recognition of a measure taken by the country that has jurisdiction over the divorce or annulment of the parents of the child.

The jurisdiction authorized under Article 10 for the authority having jurisdiction of the divorce or annulment ceases when the divorce or annulment proceedings end. Therefore proceeding to modify the determination made by the divorce authority are governed by Section 411.

The Convention requires recognition as a matter of law without the intervention of a court or other tribunal. Recognition "by operation of law" means that it is not necessary to commence proceedings for the measure to be recognized in the requested convention country and for it to produce an effect there. An example set out in the Practical Handbook, and slightly modified, is as follows:

A family are habitually resident in Contracting State A. Following the breakdown of the parents' relationship, the court in Contracting State A, with the agreement of the father, grants the mother sole custody of the child. A year later, the mother lawfully moves with the child to Contracting State B. She wishes to enroll the children in school. Her sole custody of the child which will allow enrollment in school will be recognized by operation of law in Contracting State B without her taking any further action. She will not have to apply to the judicial or administrative authorities in Contracting State B for recognition of the custody order.

The language "by operation of law," is not included in this section. The example raised above does not fall within the ambit of court decisions. Since this act is directed to courts, it will be operational in cases where recognition will be contested. Therefore the operation of law language would not apply and the registration procedure is as set out in Article 3.

The defenses to recognition are set out in this section as they are in Article 23(2) of the Convention. The list of the reasons for nonrecognition are exclusive. No additional bases for rejecting recognition are permitted. The Convention, and therefore this section, permits nonrecognition for the reasons set out but does not require nonrecognition.

Subsection (c)(3) allows for nonrecognition of a measure if it is incompatible with a later measure taken by the nonconvention country of the child's habitual residence. However, before this subsection is applicable, it must be determined that the measure taken by the nonconvention country of the child's habitual residence is entitled to be recognized and enforced in this state.

Subsection (c)(5) does not require amendment of state statutes or rules concerning the role of the child's preference in procedures affecting the child. So long as the child's preference plays a role in the proceedings, either through an attorney for the child, a guardian ad litem, a custodial evaluator, or an interview by the court, this provision is satisfied. Even if the child is never consulted, the lack of input from the child must violate a fundamental rule of procedure of this state to be unenforceable. The provision also does not apply when the measure taken is an urgent one.

The public policy defense is worded differently here than Article 3. Article 3 applies to nonconvention countries and the wording of this defense in this section is the one mandated by the convention.

SECTION 424. REGISTRATION, RECOGNITION, AND ENFORCEMENT OF MEASURE OF PROTECTION ORDERED IN CONVENTION COUNTRY.

(a) A measure of protection ordered by an authority may be registered in this state under Section 305.

(b) A measure of protection ordered by an authority may be recognized and enforced

under Sections 308 through 312.

(c) Registration, recognition, and enforcement of a measure of protection ordered by an authority may be declined only under Section 423(c).

(d) A court of this state is bound by the findings of fact on which an authority based its jurisdiction.

(e) A court of this state may use any remedy available to the court to enforce a measure of protection ordered by an authority. The remedies in this [act] are cumulative and do not affect the availability of other remedies to enforce a measure of protection.

Comment

Related to Convention: Articles 23, 24, 25, 26, 28; Practical Handbook §§10.1-10.19; Legarde, ¶¶61-63; 119-135.

It is possible that the entire registration and enforcement process could be set out section by section in this article. The drafting committee determined that a reference to the Article 3 procedure was more appropriate. Therefore a measure from a convention country is registered under the procedure of Section 305 and is recognized and enforced in accordance with the procedure of Sections 308-312. The defenses to registration and enforcement are contained in Section 423.

By its reference to Section 305, this section continues the policy of that section that a measure does not have to be registered for enforcement. It can simply be registered with a view toward later enforcement. This complies with Article 24 of the Convention which requires convention countries to have a simple and rapid procedure to determine whether a measure taken in another convention country is entitled to recognition and enforcement.

Subsection (d) implements Article 25 of the Convention. In determining whether a measure of another convention country is entitled to registration, recognition and enforcement a court of this state may not review findings of fact made by the authority of the convention country that ordered the measure sought to be enforced.

Enforcement procedure are governed by the law of the law of the state, or convention country, where the measure is to be enforced.

SECTION 425. COOPERATION WITH CONVENTION COUNTRY. Before placing a child in foster care, institutional care, or a similar situation in a convention country, a

court of this state shall:

(1) consult with the appropriate authority of the country;

(2) transmit a report to the authority giving reasons for the placement; and

(3) obtain consent to the placement by the authority.

Comment

Related to Convention: Article 33; Practical Handbook §§11.13-11.17; Legarde, ¶143.

A court in this state that is considering placing a child in another convention country must first consult with the appropriate authority of the other convention country. It must transmit to the other convention country a report on the child, together with the reasons for the proposed placement. The decision to place the child in the other convention country must not be made unless the appropriate authority of that convention country has consented to the placement.

SECTION 426. SUITABILITY TO EXERCISE [VISITATION].

(a) If the parent has asked an authority in a convention country with which the parent has a significant connection to make a finding on the suitability of the parent to exercise [visitation], the parent may request the court to stay a proceeding in which the parent is seeking to obtain or maintain visitation.

(b) If the authority under subsection (a) made a finding on the suitability of the parent to exercise [visitation], the court shall consider the finding in making a decision on [visitation].

Comment

Related to Convention: Article 35; Practical Handbook §11.23; Legarde, ¶¶146-149.

Although it is not required that the proceedings be stayed to allow the parent time to obtain the information contemplated by this section, the Explanatory Report indicates that it is strongly urged. A court which does stay the proceeding pending arrival of the information may take temporary measures regarding the child.

[ARTICLE] 4 5.

MISCELLANEOUS PROVISIONS

SECTION ~~401~~ 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION ~~405~~ 503. TRANSITIONAL PROVISION. A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before the [effective date of this [act]] is governed by the law in effect at the time the motion or other request was made.

[SECTION ~~402~~ 504. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: *Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.*

SECTION ~~403~~ 505. EFFECTIVE DATE. This [act] takes effect . . . .

PET

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Counsel for Petitioner

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

In the matter of the Visitation of the Persons of: Jeremiah Caleb Blount, Kaydi Rose Blount, Luna Bell Blount, and Logan Alexander Blount, minors; PAULA BLOUNT, Petitioner, vs. JUSTIN CRAIG BLOUNT and STEPHANIE BLOUNT, Respondents.	CASE NO. : DEPT. NO. : **AMENDED PETITION FOR GRANDPARENT VISITATION (NRS 125C.050)**

COMES NOW Petitioner Paula Blount, by and through her counsel, F. Peter James, Esq., who hereby petitions this Honorable Court for visitation rights as to the minor children Jeremiah Caleb Blount, Kaydi Rose Blount, Luna Bell

Blount, and Logan Alexander Blount pursuant to NRS 125C.050. In support of her petition, Petitioner hereby allege and request relief as follows:

1. The minor children at issue, Jeremiah Caleb Blount, Kaydi Rose Blount, Luna Bell Blount, and Logan Alexander Blount, have been residing in the State of Nevada for several months prior to the filing of this Petition.
2. The mother of Jeremiah and Kaydi is Gretchen Bernice Whatoname-Blount (however now deceased December 27, 2017), who is the late daughter-in-law of Petitioner.
3. The mother of Luna and Logan is Stephanie Blount, wife of Respondent Justin Blount.
4. The children's father is Respondent, Justin Craig Blount (hereinafter "Dad"), who is the son of Petitioner.
5. As Gretchen is deceased, Dad is the sole remaining parent of Jeremiah and Kaydi.
6. Jeremiah and Kaydi lived off and on with Petitioner all of their lives. Dad, Gretchen, Jeremiah, and Kaydi have all lived with Petitioner.
7. As to all children, Dad is unreasonably denying / restricting Petitioner's visitation with the children. As to Luna and Logan, Stephanie is unreasonably denying / restricting Petitioner's visitation.

8. It is in the children's best interest for Petitioner to have visitation with them.
9. There are strong love, affection, and other emotional ties existing between Petitioner and the children.
10. Petitioner has the capacity and disposition to give love, affection, and guidance to the children, as well as serve as a role model to them.
11. Petitioner will cooperate in providing the children with food, clothing, and other materials needed during the visitation.
12. Petitioner will cooperate in providing the children with healthcare or alternative care recognized and permitted under the law of this State in lieu of healthcare.
13. Petitioner has a strong relationship with the children. The children participated in all holidays and other family gathering with Petitioner. The children (less Logan and Luna) lived with Petitioner off and on all of their lives.
14. Petitioner is morally fit.
15. Petitioner has no mental or physical health issues that would affect her caring for the children.

16. The children (ages 8, 5, 2, and less than a year) are too young to voice their preference; however, Petitioner believes that the children would like to have visitation with her.

17. Petitioner has always been and will continue to be willing and able to facilitate and encourage a close relationship with the children's parent and other relatives.

18. The children have no known medical or other health needs that would be affected by the visitation.

19. Petitioner has previously financially supported Dad, Gretchen, Jeremiah and Kaydi. Petitioner has purchased clothing, food, and other necessities for the children. Dad, Gretchen, and the children (less Logan and Luna) have lived with Petitioner.

20. Additional factors in support of Petitioner's request for visitation will be addressed as the occasion arises.

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WHEREFORE, Petitioner respectfully requests that the Court permit them reasonable visitation with the children.

Dated this ____ day of July, 2018

_____

LAW OFFICES OF F. PETER JAMES
F. Peter James, Esq.
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3821 W. Charleston Blvd., Suite 250
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702-256-0087
Counsel for Petitioner

VERIFICATION

Paula Blount deposes and states as follows:

1. That I am the Petitioner in the above entitled action.

2. That I have read the foregoing **PETITION FOR GRANDPARENT VISITATION** and know the contents thereof.

3. That the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe them to be true.

4. Those factual averments contained in said document are incorporated herein as if set forth in full.

5. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct to the best of my knowledge, information, and belief.

_____

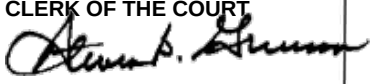
PAULA BLOUNT, Petitioner

STATE OF ARIZONA)
) ss:
COUNTY OF MOJAVE)

Subscribed and Sworn to before my by
Paula Blount this ____ day of July, 2018

_____

NOTARY PUBLIC in and for said County and State



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Attorney for Respondents

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Visitation of the Persons of: JEREMIAH CALEB BLOUNT KAYDI ROSE BLOUNT LUNA BELL BLOUNT LOGAN ALEXANDER BLOUNT, minors: PAULA BLOUNT, Petitioner vs. JUSTIN CRAIG BLOUNT, Respondent/CounterPetitioner	)	Case No: D-18-571209-O Dept: B

REPLY TO PETITIONER'S BRIEF

COMES NOW Respondent, Justin Blount, by and through his attorney, John T. Kelleher, Esq., of the law firm of KELLEHER & KELLEHER LLC, and hereby files his Reply to Petitioner's Brief.

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This Reply is made and based upon the pleadings on file herein, any exhibits attached hereto, and the oral argument of counsel at the time of the hearing.

DATED this 24 day of July, 2018.

KELLEHER & KELLEHER, LLC.

By: _____

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Attorney for Respondent

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POINTS AND AUTHORITIES

I.

STATEMENT OF THE FACTS

Herein, Petitioner's brief misapplies both Nevada and Tribal laws, and further entirely disregards the UCCJEA and the application of the same to the facts at hand.

A. THE UCCJEA DOES APPLY TO ALL CUSTODIAL AND VISITATION ACTIONS AS IS CLEARLY DEFINED BY *Friedman v. Eighth Judicial Dist. Court of State*, ex rel. Cty. of Clark, 127 Nev. 842, 849, 264 P.3d 1161, 1166 (2011).

To begin, Petitioner argues that a grandparent visitation action can be brought in any state where the child resides, regardless of the residency requirement or the Court's jurisdiction over the minor children. Petitioner quintessentially argues that if the children reside in a state for even one day, the Courts would be permitted to address visitation issues, regardless of which Court has exercised jurisdiction over custody. This is ludicrous. The Courts have been very clear in their position, that in order to exercise jurisdiction over custody or visitation, the children must be Nevada residents for at least six months prior to the time of filing.

There is very clear case law which addresses this exact issue, set forth in the Nevada Supreme Court in *Friedman v. Eighth Judicial Dist. Court of State*, ex rel. Cty. of Clark, 127 Nev. 842, 849, 264 P.3d 1161, 1166 (2011). The Court very clearly found " child custody proceeding" to mean "a proceeding in which legal custody, physical custody or **visitation** with respect to a child is an issue." *Id.* The Nevada Supreme Court has blatantly rejected Petitioner's argument that the UCCJEA does not apply to visitation proceedings in *Friedman.*

The Court in *Friedman* was exceptionally clear on the issue of jurisdiction as well, stating that "once exclusive, continuing jurisdiction ceases, a court can modify its prior child custody determination "only if it has jurisdiction to make an initial [child custody] determination pursuant to NRS 125A.305." *Id.* Moreover, "under NRS 125A.305(1), with certain exceptions not relevant here, a Nevada court has jurisdiction to make an initial child custody determination only if Nevada "is the home state of the child on the date of the commencement of the proceeding," NRS 125A.305(1)(a). *Id.*

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Petitioner aptly recognizes that the purpose of the UCCJEA is to determine custodial disputes, but somehow goes on to argue that the UCCJEA does not apply to visitation actions, despite the clear case law on point and the recognition that the UCCJEA applies to all custodial proceedings, including visitation. Petitioner spends several pages advising that since the Arizona District Court will not exercise jurisdiction, and the natural parent now resides in Nevada, Nevada is the appropriate jurisdiction. This argument is completely baseless in that it completely disregards the residency requirement established by NRS 125A.305 and foregoes the fact that the Hualapai Tribal Courts continues to exercise jurisdiction over the minor children.

Nevada has consistently reinforced the belief that in order to exercise jurisdiction over a child, Nevada must be the home state , meaning "[the state in which [the] child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence from the state, immediately before the commencement of a child custody proceeding." NRS 125A.085(1). *In re Guardianship of N.M.*, No. 64694, 2015 WL 2092205, at *3 (Nev. Apr. 29, 2015), adhered to on reconsideration, 131 Nev. Adv. Op. 75, 358 P.3d 216 (2015). The Court has also noted that Nevada may be an appropriate jurisdiction in the absence "of custody proceedings or a controlling custody order in another state." *Id.* The Hualapai Tribal Reservation has exercised jurisdiction over this custodial case however, including the issue of grandparent's visitation in regard to the maternal grandparents, so there is no absence of controlling custody orders. Petitioner's argument fails in this regard as well.

B. PERSUASIVE CASE LAW ADVISES THAT UNTIL THE TRIBAL COURT RELEASES JURISDICTION OVER THE MINOR CHILDREN, THEIR CONTINUING AND EXCLUSIVE JURISDICTION REMAINS INTACT.

Petitioner moves forward to argue that pursuant to the Indian Child Welfare Act ("ICWA"), the Hualapai Tribal Reservation loses jurisdiction over its registered members unless those members are residing on the reservation. (See Petitioner's Brief, Page 10 of 13, Line 3-4.) Petitioner fails to account for the language under 25 USCA 1903 (West), clearly stating that "every state... shall give full faith and credit to the judicial proceedings... of any other entity." 25 USCA 1911 (West.)

It is undisputed that the purpose of the UCCJEA is to ensure that jurisdiction over minor children is relegated to one state or jurisdiction, rather than facing the possibility of competing jurisdictions and concurrent, but inconsistent, custodial orders. Here, both Kaydi and Jeremiah are registered members of the Hualapai Indian Tribe, and all previous litigation (including custody, visitation, etc.) has been addressed through the Hualapai Tribal Court.

While the ICWA does not directly define the term "wardship", surrounding states have found that wardship is recognized at the time a tribe exercises jurisdiction over custodial proceedings, specifically finding that wardship continues over the minor children until such time as the Tribal Court releases jurisdiction or jurisdiction is terminated by judicial proceedings in Tribal Court. *Matter of M.R.D.B.*, 241 Mont. 455, 461, 787 P.2d 1219, 1222 (1990). This particular case is not binding, but it does provide the most clear and persuasive finding regarding tribal jurisdiction and wardship of Indian children.

Both Jeremiah and Kaydi are registered members of the Hualapai Tribe. Petitioner argues that since no parent or child resides on the reservation, the Tribal Court should lose jurisdiction, however it is critical to note that the custodial orders issued by the Hualapai Tribal Court occurred after the death of the children's natural mother. *See Respondent's Supplemental Exhibit C.* Despite no natural parent continuing to reside on the reservation, the Tribal Court continued to exercise jurisdiction over the children. The tribe has in no way, shape, or form released jurisdiction, nor has jurisdiction been terminated. Petitioner now files her requests, simply asking the Court to disregard the Tribal Court's Order and move forward with issuing their own visitation and custody orders, which is grossly inappropriate. Petitioner has made no efforts to secure the release of the Tribal Court's jurisdiction, and until those steps are taken, this Honorable Court should dismiss this action.

Surrounding jurisdictions have long noted that unless a statutory exception applies, courts in other states are prohibited from modifying custodial orders entered by Courts with exclusive, continuing jurisdiction. *Angel B. v. Vanessa J.*, 234 Ariz. 69, 72, 316 P.3d 1257, 1260 (Ct. App. 2014). This includes all custodial orders entered in the Hualapai Tribal Courts. Again, until such time as the Hualapai Tribal Court releases custodial jurisdiction of the minor children, this Court

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should not enter any competing Orders.

C. PETITIONER DOES NOT HAVE A PRIMA FACIE ARGUMENT AS TO WHY SHE SHOULD BE AWARDED ANY CONTACT WITH LUNA BLOUNT OR LOGAN BLOUNT.

NRS 125C.050 Petition for right of visitation for certain relatives and other persons.

1. Except as otherwise provided in this section, if a parent of an unmarried minor child:

(a) Is deceased;

(b) Is divorced or separated from the parent who has custody of the child;

(c) Has never been legally married to the other parent of the child, but cohabitated with the other parent and is deceased or is separated from the other parent; or

(d) Has relinquished his or her parental rights or his or her parental rights have been terminated, the district court in the county in which the child resides may grant to the great-grandparents and grandparents of the child and to other children of either parent of the child a reasonable right to visit the child during the child's minority.

2. If the child has resided with a person with whom the child has established a meaningful relationship, the district court in the county in which the child resides also may grant to that person a reasonable right to visit the child during the child's minority, regardless of whether the person is related to the child.

Here, Petitioner willingly admits that she has no relationship with LUNA BLOUNT (Age 2) or LOGAN BLOUNT (Age less than 1.) She has had minimal contact with both children, and has never had any unsupervised contact with either child. The children have never resided with Petitioner, received financial support from Petitioner, or established a meaningful relationship with Petitioner. Most importantly, *both parents* remain adamantly opposed to Petitioner having any contact with either LUNA or LOGAN. Petitioner acknowledges that Respondent allowed her some visitation with Luna, however she wanted her relationship with Luna to be on Petitioner's terms or not at all. *(See Petitioner's Motion, Page 12 of 18, Line 10-17.)* Once again, Petitioner refused to acknowledge the parental limitations set forth, instead unilaterally making demands of Respondents. Further, both Respondents find it troubling that Petitioner has "opened a bank account for Luna" without advising the natural parents. Again, Respondents attempt to set boundaries, and Petitioner feels entitled to disregard those requests.

In this action, Petitioner has absolutely no grounds upon which to receive any visitation

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with Luna or Logan. Petitioner's son, Respondent herein, is opposed to Petitioner's contact with the children, as is natural mother, Stephanie Blount. Petitioner would need to overcome the presumption that not one but both natural parents are not acting in the best interest of the children, and that she has a substantial and meaningful relationship with the children, which she certainly does not.

D. PETITIONER'S ACTION SHOULD BE DISMISSED, AND SHOULD SHE CHOOSE TO REFILE, SHE MUST NAME THE PROPER PARTIES TO THIS ACTION.

NRS 125A.345 Notice; opportunity to be heard; joinder.

1. Before a child custody determination is made pursuant to the provisions of this chapter, notice and an opportunity to be heard in accordance with the standards of NRS 125A.255 must be given to all persons entitled to notice pursuant to the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

2. The provisions of this chapter do not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

3. The obligation to join a party and the right to intervene as a party in a child custody proceeding conducted pursuant to the provisions of this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

Petitioner simply says she made an "error" in failing to include Stephanie Blount in this action. The Court should not entertain her assertion that it was "inadvertent" as it is a small piece of Petitioner's overall belief that she can disregard parental rights over the minor children in favor of her own desires. Petitioner's case should be dismissed, and if Petitioner elects to re-file such an action, she should be ordered to name the proper parties.

E. ATTORNEY'S FEES SHOULD BE AWARDED, AS PETITIONER HAS BROUGHT FORTH A BASELESS AND PROCEDURALLY DEFECTIVE MOTION.

NRS 18.010 Award of attorney's fees.

1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When the prevailing party has not recovered more than $20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party

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was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

Herein, Respondent is entitled to an award of attorney's costs and fees. Respondent is attempting to raise four young children, and has now had to incur thousands of dollars in legal fees to defend himself against this action. To be clear, Respondent sent a letter on June 21, 2018, almost one month prior to the hearing, in the hopes of clarifying the legal positions of this case and avoiding the incurrence of these fees. Petitioner elected to disregard that letter, instead moving forward with her frivolous motion. Respondents must be awarded costs and fees for having to defend themselves against this action, and should be permitted to provide a Memorandum of Costs and Fees pursuant to NRCP 54.

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II.

CONCLUSION

WHEREFORE, Respondent Justin Blount requests that this Honorable Court deny Petitioner's requested relief.

DATED this 24 day of July, 2018.

Submitted by:

KELLEHER & KELLEHER, LLC

By: _____

JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of July, 2018, true and correct copies of the document described as **REPLY TO PETITIONER'S BRIEF** was served via electronic service and deposited in the United States Mail, postage prepaid and addressed as follows:

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