

**UCCJEA Case Decided by the
North Carolina Supreme Court**
January 25, 2013

UCCJEA: Communications Between Courts

Jones v. Whimper, ___ N.C. ___, ___ S.E.2d ___ (Jan. 25, 2013).

<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMy84OUExMi0xLnBkZg>

Facts: The mother and child moved to New Jersey. More than a year later the mother's new husband filed an action in N.J. to adopt the child, and soon thereafter the father (a N.C. resident) filed an action in N.J. seeking custody of the child. The judge there consolidated the two actions. After the mother and child moved back to N.C., having been in N.J. three years, the father filed a motion to dismiss the N.J. actions on the basis that N.J. was an inconvenient forum. The court in N.J. denied the motion, and the father then filed a custody action in N.C. The N.J. and N.C. judges talked, and because the N.J. judge declined to find that N.C. was a more convenient forum, the judge in N.C. dismissed the action here for lack of subject matter jurisdiction.

Court of Appeals: The court of appeals affirmed. *Jones v. Whimper*, ___ N.C. App. ___, 727 S.E.2d 700 (2012). One judge dissented.

Supreme Court - Held: Modified and affirmed.

Finding the lack of jurisdiction clear, the supreme court affirmed. However, it modified the decision of the court of appeals in line with points made by the dissent in the court of appeals.

1. G.S. 50A-206 states that a N.C. court may not exercise jurisdiction if, when the action is filed, a custody action "has been commenced in a court of another state having jurisdiction substantially in conformity with" the UCCJEA, if the other court does not determine that N.C. is a more convenient forum. The court of appeals referred instead to the other state's "substantial compliance" with the UCCJEA. The statute, the supreme court said, refers to the type of jurisdiction the other state has, not its actions or procedures with respect to determining jurisdiction in a particular case.
2. G.S. 50A-110 authorizes the court to communicate with a court in another state about jurisdiction in a custody action. It requires the court to allow parties an opportunity to present facts and legal arguments before making a jurisdictional decision and requires that a record be kept of substantive communications between the courts. The court of appeals held that these requirements apply only to discretionary communications between courts, not to communications required by G.S. 50A-206 when there are simultaneous proceedings. The supreme court, referring to the official commentary, held that the requirements in G.S. 50A-110 apply to all communications between courts that are trying to resolve a jurisdictional question.

Appellate court opinions: <http://www.aoc.state.nc.us/www/public/html/opinions.htm>.

Earlier case summaries: <http://www.sog.unc.edu/node/513>.

Other juvenile law resources: <http://www.sog.unc.edu/node/1689>.



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