

Cheryl Howell

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Child Custody Jurisdiction

Overview

Custody Jurisdiction This writing is intended to be an introduction to and an overview of the law relating to the subject matter jurisdiction of a North Carolina court to make a child custody determination. The law regarding subject matter jurisdiction is the same whether the child custody determination is made within the context of a child custody case filed pursuant to North Carolina General Statutes **Chapter 50**, a **juvenile abuse, neglect or dependency proceeding** brought pursuant to General Statutes Chapter 7B, a **termination of parental rights proceeding**, a **guardianship** proceeding or a request for an award of temporary child custody as part of a domestic violence protective order in a **Chapter 50B proceeding**.

Objectives

It is my hope that, after reading this overview, you will be able to do each of the following:

First, **identify the state and federal statutes** which define when a North Carolina court has subject matter jurisdiction to enter a child custody determination and when that determination will be entitled to full faith and credit by other states.

Second, recognize that **North Carolina courts *always* have jurisdiction to enforce a child custody determination that was validly entered.**

Third, identify when a North Carolina court has subject matter jurisdiction to enter an ***initial* child custody determination** regarding a particular child.

Fourth, identify when a North Carolina court has subject matter jurisdiction to ***modify an existing child custody determination.***

Fifth, and finally, ***exercise emergency custody jurisdiction in compliance with the law.***

Subject Matter vs. Personal Jurisdiction

It is important to keep in mind the difference between ***subject matter*** jurisdiction and

personal jurisdiction. Subject matter jurisdiction defines a court's authority to exercise jurisdiction over *a particular case*, while personal jurisdiction defines a court's authority to exercise jurisdiction over *a particular person*. Generally speaking, a court must have both subject matter and personal jurisdiction in a case in order for a judgment entered by the court to be valid.

Subject Matter Jurisdiction Generally

Subject matter jurisdiction is granted by statute and generally *cannot* be conferred upon the court by the consent of the parties and parties cannot waive objection to a court's lack of subject matter jurisdiction. Orders entered without subject matter jurisdiction are void and can be vacated at any time. For example, the Court of Appeals has vacated a custody determination due to a lack of subject matter jurisdiction even though no party ever raised the issue of jurisdiction during proceedings in the trial court or when the case was on appeal. The appellate court has the authority and *the responsibility* to review subject matter jurisdiction in every case. This means that a *trial judge* also must remember to question subject matter jurisdiction in *every* case, even if the parties are not bringing the issue to the attention of the court. In addition, all child custody orders entered by the court should contain **findings of fact** to support the conclusion of law that the court does, in fact, have subject matter jurisdiction in the case. Orders entered without such findings of fact are not entitled to full faith and credit; other courts need to be able to see from the text of the order itself that the order was entered by a court with appropriate jurisdiction.

Personal Jurisdiction Generally Personal jurisdiction involves both statutory and constitutional law. A court generally needs three things to exercise personal jurisdiction over a litigant:

First, there must be *service of process* on the litigant in accordance with the statutory rules of civil procedure.

Second, there must be specific authority to exercise jurisdiction over the litigant granted by *a long arm statute*.

Third, the exercise of jurisdiction over the person must comply with the requirements of the *due process clause* of the Constitution of the United States. This due process clause requirement often is referred to as the *minimum contacts test*.

Unlike subject matter jurisdiction, a court *can* obtain personal jurisdiction over a litigant by the consent of that litigant. Similarly, a litigant can waive the right to object to personal jurisdiction by failing to object to personal jurisdiction before making a formal appearance in the case. If a litigant consents to personal jurisdiction or waives the right to object to a court's lack of personal jurisdiction, the court can proceed to litigate the case and any resulting judgment will be valid even in the absence of valid service of process, authority granted by a long-arm statute, or minimum contacts between the litigant and the state.

Personal Jurisdiction in Custody Cases

As in all other civil cases, personal jurisdiction rules require that parties in a child custody case be served with process in accordance with the rules of civil procedure. However, the North Carolina Court of Appeals first held in the case of *Hart v. Hart*, 74 NC App 1 (1985), that the other two normal requirements for personal jurisdiction, the long arm statute and the constitutional minimum contacts test, *do not apply* in most child custody determination cases. Most courts in other states have ruled similarly. See *also* Official Comment, GS 50A-201 ("neither minimum contacts nor service within the state is required for the court to have jurisdiction to make a child custody determination.").

Summary of Personal Jurisdiction

So personal jurisdiction in most child custody determinations is relatively uncomplicated. If a party is served with process appropriately or waives service of process, requirements for personal jurisdiction are satisfied.

Subject Matter Jurisdiction

Subject matter jurisdiction is more complicated. When does a court have subject matter jurisdiction to make a child custody determination? Remember, *subject matter jurisdiction cannot be conferred upon the court by the consent of the parties*. Therefore, the consent of the parties, or the failure of the parties to object to jurisdiction, will not allow the court to enter a child custody determination when the law does not give that court jurisdiction.

State and Federal Statutes

So, where do we find the law relating to subject matter jurisdiction in custody cases? There is a uniform state law and a federal statute. The uniform state law is the **Uniform Child Custody Jurisdiction and Enforcement Act**, which I will refer to as the **UCCJEA**. The UCCJEA became law in North Carolina on October 1, 1999, and is found in North Carolina General Statutes Chapter 50A, parts 1 through 3. The relevant federal statute is the **Federal**

Kidnapping Prevention Act, found at 28 US Code Annotated Section 1738A. I will refer to this statute from here on out as the **PKPA**.

Federal PKPA

The Federal PKPA is a **full faith and credit statute**. In other words, the federal statute provides the rules that must be followed in order for a child custody determination made by a court in one state to be entitled to full faith and credit in another state. The PKPA is *not* a subject matter jurisdiction statute. However, if a court order is entered in violation of the PKPA, a court in another state is not required to honor or even consider that order when the court in the other state subsequently is asked to consider custody of the child at issue.

UCCJEA

The UCCJEA defines subject matter jurisdiction. The statute is called a *uniform law* because it is substantially similar if not identical to a model statute created by a national organization called the Uniform Laws Commissioners. As the name of the group implies, the Uniform Laws Commissioners create model statutes to address areas of the law where it is particularly important to have uniformity in the laws of the various states to serve a common interest. For custody determinations, uniform laws were created to discourage parents from forum shopping, running from one state to another with children in hopes of obtaining a more favorable custody decision. The goal of this uniform law is to designate clearly and uniformly when a state court can act in a custody matter and when it must defer to a court in another state.

PKPA

Congress enacted the PKPA in 1980 in response to a concern over forum shopping by parents and inconsistent custody judgments involving the same children from judges in different states. The federal act does not attempt to define the jurisdiction of state courts. However, the PKPA does provide that if its provisions are not followed, the resulting state court judgment is not entitled to full faith and credit. The PKPA sets two primary rules: First, a state with **home state jurisdiction** has priority jurisdiction to enter an **initial** custody determination about a particular child. It is only when there is no home state that a state court can look to the alternative grounds for exercising jurisdiction. Second, a state that enters a custody order in accordance with the provisions of the PKPA retains **continuing exclusive jurisdiction** to **modify** that order until certain conditions occur that will allow another state to act about the child.

UCCJEA

In 1997, the Uniform Laws Commissioners adopted the *UCCJEA* to replace an earlier version of the uniform law called the Uniform Child Custody and Jurisdiction Act, or the UCCJA. The new uniform act – the UCCJEA - incorporates and conforms to the provisions of the PKPA, something the UCCJA did not do. North Carolina adopted the UCCJEA in 1999, and *all other states* except Massachusetts have now adopted the statute as well. It is important to remember that the UCCJEA complies with the PKPA, as does the law of Massachusetts. **The rules regarding jurisdiction and full faith & credit are now essentially the same.** For that reason and for ease of reference throughout the rest of this course, I will refer only to the provisions of the UCCJEA. Because custody cases frequently require judges in North Carolina to communicate with judges in other states, it is important to remember that all states except Massachusetts have adopted the UCCJEA . While there may be minor differences in the statutes of various states, it is relatively safe for you to assume the law of the other state, including Massachusetts, is substantially the same as the law of North Carolina.

UCCJEA

The UCCJEA is found in **Chapter 50A** of the NC General Statutes. 50A -102(3) and (4) provide a broad scope for the act by defining the term **“custody determination”** to include *any* **“judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child, including permanent, temporary, initial, and modification orders,”** and by defining the term **“child custody proceeding”** to include *any* proceeding **“in which legal custody, physical custody, or visitation with respect to a child is at issue.”** The statute specifies that the term “custody proceeding” includes proceedings for **divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence.**

UCCJEA Subject Matter Jurisdiction

Subject matter jurisdiction is determined under the UCCJEA primarily by the **past and present physical location of the child and the parties.** Because information regarding the past and present location of the child and the parties is necessary for a court to determine whether it has jurisdiction to proceed in a case, GS 50A-209 requires that *every* pleading requesting a custody determination contain the information set out in that

statute. The North Carolina Administration Office of the Courts has developed a form entitled “**Affidavit as to the Status of Minor Child**” to be used in custody cases to be sure the court receives all required information. This form is available online and in the clerk’s office in every county. It is Form number AOC-CV-609. Parties are not required to use the form, and many attorneys choose to include the required information in the pleading itself.

Required Information

The following information is required by 50A-209:

the child’s present address

places where the child has lived the last five years, and

the names and present addresses of the persons with whom the child has lived during that period.

In addition, the party filing the pleading must state:

whether he or she has participated in any other proceeding involving this child,

knows of any other proceeding that could affect the current proceedings, or

knows the names and addresses of any person not a party to the present action who claims right to custody.

Types of Proceedings

The jurisdictional analysis applicable to a particular case depends on whether the party filing the pleading is requesting an **initial determination** of custody, **modification** of an existing custody determination, or **enforcement** of an existing custody order

Enforcement

The analysis for enforcement is the simplest. This is because North Carolina, like every other state, **always** has subject matter jurisdiction to **enforce** a custody order that was validly entered, regardless of where that order was entered. The UCCJEA states this rule in G.S. 50A-303. **Part 3 of the UCCJEA** is the section of the act addressing enforcement of custody determinations and it contains detailed procedures to be used when a party wants

to *register* an order from another state and detailed procedures to be used when a party wishes to *enforce* an order from another state. The procedures for enforcement are beyond the scope of this presentation. What is important to remember at this point is that *every* state has the jurisdiction and *the obligation* to enforce orders from other states, if those orders were validly entered. Validly entered means entered in accordance with the uniform jurisdictional rules of the UCCJEA and the PKPA.

Initial Determinations

An initial proceeding is defined in GS 50A-202(8) as the *first* child custody determination regarding a particular child. 50A-201 provides that North Carolina courts have jurisdiction to enter an initial custody determination if:

NC is the home state of the child, or was the home state of the child within six months of the filing of the action and a parent or person acting as a parent continues to reside in the state; or

There is no home state and NC has significant connection substantial evidence jurisdiction; or

A state with jurisdiction decides NC is a more convenient forum; or

No state has jurisdiction. This is referred to as default jurisdiction.

In compliance with the PKPA, the UCCJEA sets out a clear preference that jurisdiction be exercised by the child's home state.

Home State

Home state is defined as the state **where the child has lived at least six months immediately before the filing of the action**. GS 50A-102(7). The six-month residence requirement is designed to be bright-line easy to apply rule to determine jurisdiction. The second part of the definition of home state jurisdiction found in GS 50A-201(a)(1) - "or was the home state of the child within six months of the filing of the action and a parent or person acting as a parent continues to reside in the state" and is sometimes referred to as the extended home-state rule. A state that has attained home state status for a child will remain home state for a period sufficient to allow a new state to attain home-state status. However, both the UCCJEA and the PKPA provide for the extended home state jurisdiction **only if one parent remains in the home state**.

It is important to remember that that most foreign countries are treated as “states” under the UCCJEA. GS 50A-105. This means, for example, that a foreign country may be a child’s home state.

No Home State

If there is no state with no home state jurisdiction in a particular case either because the child has not lived in any particular state for 6 months or because all parties have left the previous state, the court can nevertheless exercise jurisdiction if there **is no other state with home state status and North Carolina has significant connection substantial evidence jurisdiction pursuant to 50A-201(a)(2)**. To meet this jurisdiction standard the court must find two things:

First, the child and the child’s parents or person acting as a parent have **significant connections** with the state other than physical presence, and

Second there is **substantial evidence** in the state concerning the child’s care, protection, training and personal relationships.

This standard is much more *subjective* than home state jurisdiction. Remember that it can only be considered if the court first concludes the child has no home state.

Significant connection jurisdiction

The North Carolina appellate courts have held that before exercising significant connection/substantial evidence jurisdiction, the trial court must conclude there is evidence in the state **beyond “the declarations of competing parents” and that there are resources of information in the state that address aspects of the child’s “present or future care, protection, training, and personal relationships”**.

More Convenient Forum

When a state does not have home state jurisdiction or significant connection/substantial evidence jurisdiction, the state nevertheless may obtain jurisdiction from a state with jurisdiction if the state with jurisdiction determines that the other state is the more appropriate forum within which to litigate the custody dispute. G.S. 50A-207 allows a court with jurisdiction to “decline” to exercise jurisdiction when that court determines based on factors set out in that statute that it is more appropriate for a court in another state to hear and decide the custody matter. So, for example, if Tennessee is the home state of a child

because the child lived in Tennessee for more than six months, but the child moved to North Carolina less than six months ago with mom, and dad remains in Tennessee, the Tennessee court may decide that it is more appropriate to allow North Carolina to litigate the custody issue. The Tennessee court may base that decision on number of factors, including the relative financial situation of the parties and the location of the evidence that will be necessary in a custody trial. If Tennessee makes such a determination, North Carolina will have jurisdiction to decide custody, even though Tennessee is the home state of the child.

Before a North Carolina court can order that another state is a more convenient forum for a custody determination, the North Carolina Court of Appeals has held that there must be a hearing, and the court must make findings of fact about the factors found in GS 50A-207. *In re C.M.B.*, 266 N.C. App. 448 (2019)

Test Yourself

Practice

- 2 children born in Tennessee.
- Dad moved to NC.
- Children “live” with mom in Tenn:
 - attend school in Tennessee
 - spend most weekends and most holidays in NC with father and father’s parents.
 - receive medical treatment both in NC and Tenn.
 - Go to church, have friends and play sports in both states.

Does NC have jurisdiction to make a custody determination?

Answer:

- No

Home state priority. While North Carolina has evidence and a significant amount of information regarding the children in this case, the children reside in Tennessee.

Tennessee is home state, and therefore has priority over jurisdiction based on NC's significant connection/substantial evidence regarding the children.

Practice

Amy and Scott were born in South Carolina. When Amy was 10 and Scott was 8, mom moved to NC and brought Amy with her. Scott stayed with his father in SC. Mom has been living in NC for 8 months. Does NC have jurisdiction to make a custody determination?

Answer

Yes for Amy; No for Scott

- Jurisdiction determined for each individual child
- NC is home state for Amy
- SC is home state for Scott

Practice

Amy and Scott were born in South Carolina. When Amy was 10 and Scott was 8, mom moved to NC and brought Amy with her. Scott stayed with his father in SC. Mom has been living in NC for 4 months. Does NC have jurisdiction to make a custody determination?

Answer:

No

- Jurisdiction determined for each individual child
- SC is home state for Scott
- SC remains the home state for Amy because father continues to reside in SC.
Remember- state which becomes home state remains home state for 6 months after the child leaves, IF one parent remains in the state.

Modification Jurisdiction

A modification proceeding is defined by 50A-102(11) as a “custody determination that changes, replaces, or 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.”

Continuing Exclusive Jurisdiction

The key concept in modification jurisdiction is the concept of **continuing exclusive jurisdiction** or **CEJ** for short. The concept of CEJ was created to limit the ability of state courts to modify custody orders validly entered in another state. **GS 50A-203 prohibits a North Carolina court from modifying an order of another state, unless the North Carolina court first determines that the state which entered the order no longer has CEJ, or the state has CEJ but has entered an order concluding North Carolina should exercise jurisdiction because it is a more convenient forum.**

CEJ

So when does a court have CEJ? CEJ is defined in GS 50A-202. That statute provides that when a state enters an initial order, that state retains the continuing exclusive jurisdiction to modify that order until:

that state determines it no longer has significant connection/substantial evidence jurisdiction, or

any state determines that none of the parties to the initial custody order or the child continue to reside in the state that entered the initial order.

This means simply that once a court makes a custody determination, that state retains the exclusive authority to make all decisions about jurisdiction as long as one party or the child resides in that state. This doesn't necessarily mean that the state will in fact have jurisdiction in a particular case, but rather it means that the state will be the only state with authority to make a jurisdictional decision. Once all the parties and the child leave the state, however, then other courts can determine if they have jurisdiction to modify an order

Modification Jurisdiction Example

So, for example, suppose New York entered an initial custody order regarding a child in 2023. Immediately thereafter, mom and child moved to North Carolina and dad moved to Tennessee. If any action is filed seeking modification of that 2023 New York custody order, the New York court will not have CEJ because both parties and the child have left New York. However, if dad had stayed in New York rather than moving to Tennessee, the New York court would have CEJ, meaning the New York court would have the exclusive right to determine whether New York still has grounds to exercise jurisdiction at the time the motion to modify is filed. No other state court would have the authority to make that determination if dad resides in New York.

Modification Jurisdiction for Orders Entered in Other States

G.S. 50A-203 provides that a North Carolina court can modify an order entered in another state only if the North Carolina judge determines:

First, that **no other state has CEJ**, or that the state with CEJ has decided North Carolina is the more convenient forum pursuant to GS 50A-207 which we discussed earlier in the context of initial jurisdiction - and

Second, NC **has a basis for jurisdiction under GS 50A-201(a)(1) or (a)(2)**, meaning North Carolina now is the home state, or there is no home state, and North Carolina has significant connection/substantial evidence jurisdiction.

Modification Jurisdiction Example

So, returning to our previous example where the New York court entered an initial custody order in 2023. Suppose that after entry of the custody order, mom and child moved to North Carolina and dad moved to Tennessee. When mom and child have lived in North Carolina for one year, mom files a motion to modify the New York custody order in a North Carolina court. In this situation, North Carolina has modification jurisdiction because first, New York does not have CEJ because all parties and the child have left that state. And second, North Carolina is now the home state of the child because the child has lived in this state for more than 6 months. The answer would be different however, if dad had stayed in New York. If dad was still in New York when mom filed the request for modification, North Carolina would not have subject matter jurisdiction to consider the modification request because New York has CEJ. In that situation, New York could decide,

pursuant to the terms of GS 50A-207, that North Carolina is the more convenient forum to litigate the modification hearing. If New York declines jurisdiction in this way, North Carolina will have subject matter jurisdiction to consider the modification request.

Modification of North Carolina Orders

A North Carolina court must consider modification jurisdiction rules even if the initial custody order was entered by a North Carolina court. GS 50A-202(b) prohibits modification of a North Carolina order by a North Carolina court unless the North Carolina court first determines that North Carolina has CEJ, meaning at least one party or the child resides here *and* there is significant connection/substantial evidence jurisdiction. North Carolina also may have modification jurisdiction even if it does not have CEJ if North Carolina is the home state at the time the modification request is filed in North Carolina, or if there is no home state and North Carolina has significant connection/substantial evidence jurisdiction. And, as always, North Carolina can exercise jurisdiction if a state with jurisdiction has entered an order stating North Carolina is a more appropriate forum for deciding custody.

Test Yourself

Practice

- Florida court declared child dependent and placed him in custody of foster parents and ordered visitation with father.
- Foster parents move to NC with the child. Dad remained in Florida.
- 7 months after moving to NC, foster parents file TPR petition against father in NC.
- Does NC have jurisdiction to proceed?

Answer:

No

- This is a modification proceeding because there is a custody determination in effect about this child; the TPR would modify the Florida order.
- Florida has continuing exclusive jurisdiction because dad remains in Florida

- North Carolina cannot modify the custody determination by the Florida court, unless the Florida court determines it no longer has a basis for exercising jurisdiction or determines that North Carolina is the more appropriate forum. Either way, the jurisdictional decision must be made by the Florida court.

Practice

- California order gave mom custody of two children and visitation to dad
- Two years later, mom moves to NC with the kids and dad moves to New York
- 8 months after moving to NC, mom files an action in NC to modify the California order
- Does NC have jurisdiction to proceed?

Answer

Yes

- This is a modification proceeding because there is an order in existence addressing custody of the children
- North Carolina court can make the determination that neither parent nor the child continue to reside in California, so California does not have CEJ
- North Carolina has grounds to exercise jurisdiction because it is now the home state of the child

One More Practice

- NC court enters custody order in case between mom and dad, granting joint custody to both
- One year later, Dad takes a new job and moves to Virginia. Mom also moves to Virginia so they can continue to share custody.
- 8 months after mom leaves North Carolina for Virginia, grandmother files a motion to intervene in the NC custody case along with a motion asking the court to modify that order to grant her visitation with the child.
- Does NC have jurisdiction to consider grandmother's request?

Answer

No

- This is a modification matter because there is an existing order about this child.
- North Carolina no longer has CEJ because both parents and the child have left the state.
- Therefore, North Carolina will have jurisdiction to modify the order entered by the NC court only if North Carolina now has jurisdiction to make an initial determination. See 50A-202(b).
- Because Virginia is now the home state of the child, North Carolina could not exercise initial determination jurisdiction.

Emergency Jurisdiction

As do all laws dealing with the custody of children, the UCCJEA recognizes that there will be times when a court must be able to act to protect a child from harm, even if that court does not have jurisdiction to enter an initial order or modify an existing order. GS 50A-204 allows a court to exercise **temporary emergency jurisdiction** in certain circumstances. The official comments on that statute state that emergency jurisdiction is ***an extraordinary jurisdiction reserved for extraordinary circumstances***. GS 50A-204(a) allows a NC court to exercise emergency jurisdiction if two circumstances are present:

First, the child is present in NC, and

Second, the court determines *either* that the child has been abandoned or it is necessary in an emergency to protect child because child or sibling or parent of the child is subjected to or threatened with abuse.

Test Yourself

Practice:

- Texas order grants primary custody to mom with visitation to dad.
- Dad moves to North Carolina while mom and child remain in Texas.
- Dad files action in North Carolina for emergency custody, alleging child called him and said new step-father is abusing her.

- Does NC have jurisdiction to consider father's request?

Answer

No

- This is a modification matter because there is an existing order about this child.
- Texas has continuing exclusive jurisdiction because mom and child continue to live in the state.
- The facts allege that the child is threatened with abuse, but North Carolina cannot exercise emergency jurisdiction because the child is not present in North Carolina. Dad must file a request for relief with the Texas court.

Practice:

- Texas order grants primary custody to mom with visitation to dad.
- Dad moves to North Carolina while mom and child remain in Texas.
- Dad files an action in North Carolina for emergency custody, alleging child is with him in North Carolina for visitation and child has told him that new stepfather is abusing her mother. The child is scheduled to return to Texas tomorrow, but dad does not want to send child back to a dangerous situation.
- Does NC have jurisdiction to consider father's request?

Answer

Yes, if you find abuse is severe enough that the child needs protection

- This is a modification matter because there is an existing order about this child.
- Texas has continuing exclusive jurisdiction because mom and child continue to live in the state.
- The child is present in North Carolina.
- The UCCJEA allows court to exercise temporary emergency if the child needs protection either due to a threat against the child, or a threat against the parent or sibling of the child.

In this case, the parent is threatened with abuse. If the court in North Carolina is convinced that the child will be in danger if returned to Texas, North Carolina can exercise temporary emergency jurisdiction.

Emergency Jurisdiction

So, how does a court exercise temporary emergency jurisdiction? The procedure is set out in detail in GS 50A-204.

If a state with “real” jurisdiction has acted or is acting about the child, the North Carolina judge being asked to assume emergency jurisdiction must immediately communicate with the court in the other state to resolve the emergency. Returning to our earlier example, suppose New York has acted by entering a custody order in 2023 and dad remains in New York while mom and child have moved to North Carolina. Before sending the child to New York to visit with dad, mom discovers child was abused by dad’s new girlfriend the last time child visited New York. Mom files an action in North Carolina asking the court to modify the visitation provisions in the New York custody order.

In this situation, New York has CEJ so North Carolina does not have jurisdiction to modify the New York custody order. However, based on the allegations of possible abuse and the fact that the child is present in North Carolina when the modification request was filed, the North Carolina court can exercise temporary emergency jurisdiction if the court thinks it is necessary to do so to protect the child.

However, because New York has entered a custody order, meaning it “has acted” in the past and still has jurisdiction, the North Carolina court must **immediately communicate** with the New York court to determine how to best “resolve the emergency” and return the custody issue to the court with appropriate jurisdiction, in this case New York. The conversation between the North Carolina judge and the judge in New York must focus on how to protect the safety of the parties and the child and determine a period for the duration of the temporary emergency order.

It is critical that the North Carolina judge contact the New York court as soon as possible. The North Carolina Court of Appeals held that an adjudication order in a juvenile case entered by North Carolina judge was void for lack of subject matter jurisdiction where the record showed that the North Carolina judge did not make immediate contact with a New York court that had entered a temporary custody order about the same child six years earlier.

Also, North Carolina appellate courts have made it clear that *the judge* must contact the other court. An attorney or representative from the Department of Social Services may not perform this task on behalf of the judge.

Emergency Jurisdiction

Any emergency order entered by a North Carolina judge after talking with a judge in the state with jurisdiction must be of limited duration. The North Carolina order must specify a period of time the court considers adequate for the person asking for emergency relief to schedule a hearing before the court in the state with jurisdiction. So, returning to our example, any order entered by the North Carolina judge must expire by its own terms on a date specified in the order. The North Carolina judge will set this expiration date based on information obtained from the New York judge concerning when the New York judge will be able to hear mom's modification request.

Emergency jurisdiction

The process is much less complicated if the state with jurisdiction has not acted in the past and is not acting at the present time. In that case, if the judge determines:

- 1) the child is present in North Carolina,
- 2) there is a basis for exercising emergency jurisdiction and
- 3) there is no previous or ongoing custody matter in the state with jurisdiction,

the North Carolina judge has no obligation to make contact with the judge in the other state, and the order entered by the North Carolina judge is not required to contain a clear termination date.

GS 50A-204(b) states that a custody determination made pursuant to emergency jurisdiction when the state with jurisdiction has not acted and is not acting at present may "become a final determination if it so provides, and this state becomes the home state of the child."

However, if the court with jurisdiction acts at any time before North Carolina becomes home state, then the North Carolina judge must immediately communicate with the other court. This requirement is found in 50A-204(d).

Test Yourself

Practice: Let's return to our last situation

- Texas order grants primary custody to mom with visitation to dad.
- Dad moves to North Carolina while mom and child remain in Texas.
- Dad files an action in North Carolina for emergency custody, alleging child is with him in North Carolina for visitation and child has told him that new stepfather is abusing her mother. The child is scheduled to return to Texas tomorrow, but dad does not want to send child back to a dangerous situation.
- Assume you find child needs protection because of threatened abuse of mother.
- Do you need to contact Texas court before entering an order?

Answer

Yes

- Because the Texas court has acted in the past by entering the initial custody order, you must contact the Texas court before entering a temporary order
- In the conversation, you and the Texas judge must decide how to resolve the emergency, how to protect the parties, and what time duration to include within any order you enter.

Practice:

- Child born in New York
- 1 year later, Mom and child moved to North Carolina and father remained in New York.
- One month later, North Carolina DSS filed a petition alleging child is neglected; court entered nonsecure custody order placing child in foster care.
- Two months later, the North Carolina court entered an adjudication order, finding the child is neglected and continuing placement in foster care. Adjudication order states that the order will become a permanent order when North Carolina becomes the home state of the child.

- Mom's lawyer argues the adjudication order is void for lack of subject matter jurisdiction because the North Carolina court did not attempt to contact the New York court nor direct that an action be instituted in New York to address the emergency regarding the child.
- Is the North Carolina order void?

Answer

- No
- New York was the home state when DSS filed the North Carolina petition.
- North Carolina had grounds to exercise temporary emergency jurisdiction because the child was present in the state and neglected.
- Because New York was not acting and had never acted, the North Carolina court was not required to contact the New York court. And, pursuant to GS 50A-204(b), the adjudication order became permanent in August 2008, when North Carolina became the new home state of the child.

Emergency Jurisdiction

Emergency jurisdiction is invoked most frequently in juvenile cases and most of the time in these cases a North Carolina court will have the authority to enter orders necessary to protect children. However, the recent appellate case law in North Carolina has made it clear that the procedures set forth in the UCCJEA must be followed closely for these emergency orders to be valid in North Carolina and subject to recognition by other states.

Wrap Up

This discussion was intended to be an introduction to the law relating to jurisdiction in court proceedings involving child custody. This is a very technical area of the law, but answers to most questions can be found within the statutory provisions of chapter 50A, the UCCJEA.