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Child Custody Jurisdiction: communication between courts in different states



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The provisions in the Uniform Child Custody Jurisdiction and Enforcement Act (the UCCJEA), N.C. Gen Stat., Chapter 50A, define a trial court's subject matter jurisdiction to enter a child custody determination. This means that if the requirements of the Act are not followed, a custody determination will be void ab initio.

The UCCJEA allows communication between courts in different states when a judge determines communication is necessary for a court to determine whether and how it can exercise jurisdiction. The Act **requires** communication between courts in different states in two specific circumstances, and the Act sets out the procedure to be followed whenever a court communicates with a court in another state.

When is communication required?

While the UCCJEA allows a judge in North Carolina to contact a judge in another state when the judge deems it necessary or appropriate, the Act requires communication only in two specific circumstances. One is when the North Carolina court is exercising temporary emergency jurisdiction and there is an action pending in the state with jurisdiction to enter a custody determination or when the state with jurisdiction has previously entered a custody order, and the second is when a North Carolina court that is exercising jurisdiction to make a custody determination or to enforce a custody determination learns that a court of another state also is exercising jurisdiction. (a simultaneous proceeding).

The North Carolina Court of Appeals has clarified that when the UCCJEA requires the "court" to communicate with a court in another state, that means a trial judge must make the communication. *In re J.W.S.*, 194 N.C. App. 439 (2008) (citing *In re Malone*, 129 N.C. App. 338 (1998)) (contact by county DSS attorney not sufficient); *In re Malone* (efforts by county DSS to contact various Florida agencies not sufficient).

Temporary emergency jurisdiction. G.S. 50A-204

Temporary emergency jurisdiction is available in certain circumstances when the court does not have jurisdiction either to make an initial custody determination or to modify an existing order. A court has temporary emergency jurisdiction if the child is present in this state, and (1) the child has been abandoned or (2) 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. G.S. 50A-204(a).

If there is no previous custody order entitled to enforcement and there is no proceeding pending in another state with appropriate jurisdiction, the temporary order entered with emergency jurisdiction remains in effect until an order is obtained from a court with appropriate jurisdiction. G.S. 50A-204(b). There is no requirement that the judge exercising emergency jurisdiction in this situation contact a court in any other state. *In re K.M.*, 228 N.C. App. 281 (2013) (unpublished) (citing *In re M.B.*, 179 N.C. App. 572 (2006)) (trial court was not required to contact any other state to determine whether there was an unknown custody order in existence or to request that the alleged home state assume jurisdiction without an action pending in the unknown court).

If a proceeding is not commenced in the appropriate state by the time North Carolina becomes the home state of the child, then the order entered pursuant to the emergency jurisdiction statute becomes a final determination if it so provides. G.S. 50A-204(b); *In re M.B.*, 179 N.C. App. 572 (2006) (the court's temporary emergency custody determination became a final order when no custody order had been entered or was pending in any other state at the time North Carolina became the home state of the child); *In re N.B.*, 289 N.C. App. 525 (2024) (applying *In re M.B.*).

However, if there is a custody order entitled to enforcement, or if a custody proceeding is pending in a state with jurisdiction, an order entered pursuant to the emergency jurisdiction statute must specify a period in which the party seeking the order must return to the state with appropriate jurisdiction for relief. The temporary order remains in effect until the specified period of time expires or until the court with jurisdiction enters an order within the specified time. G.S. 50A-204(c).

Any time the court exercising temporary emergency jurisdiction becomes aware that an action is pending in another state with jurisdiction or that another state with jurisdiction has entered a custody order, the North Carolina judge must immediately communicate with the judge in the other 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. G.S. 50A-204(d); *In re Malone*, 129 N.C. App. 338 (1998) (trial court should have contacted judge in home state of Florida before exercising temporary emergency jurisdiction over custody and visitation issues); *In re J.W.S.*, 194 N.C. App. 439 (2008) (adjudication order void where trial judge failed to contact New York court where temporary custody order had been entered several years before North Carolina court exercised emergency jurisdiction); *In re M.B.*, 288 N.C. App. 351 (2023) (North Carolina trial court lacked jurisdiction to enter orders awarding custody to maternal aunt where a Maryland court

had made a previous custody determination, mother resided and worked in Washington D.C., and the North Carolina court did not specify the duration of its emergency jurisdiction or communicate with the child's home state as required by G.S. 50A-204(c)-(d).

Similarly, if a North Carolina judge learns that another court is exercising emergency jurisdiction, the North Carolina judge must immediately contact the other judge and attempt to, among other things, "resolve the emergency." G.S. 50A-204(d).

Simultaneous proceedings. G.S. 50A-206.

Unless exercising emergency jurisdiction pursuant to G.S. 50A-204, a North Carolina court may not exercise jurisdiction 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" the UCCJEA. G.S. 50A-206(a).

The court in the other state having jurisdiction substantially in conformity with the UCCJEA may terminate or stay the proceeding in the other state upon a finding that North Carolina would be a more appropriate forum pursuant to G.S. 50A-207. G.S. 50A-206(a).

If a North Carolina court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with the UCCJEA, the North Carolina court must stay its proceeding and communicate with the other court. If the court of the other state having jurisdiction substantially in accordance with the UCCJEA does not determine that the North Carolina court is a more appropriate forum, the North Carolina court must dismiss the North Carolina action. G.S. 50A-206(b).

In an action to modify a custody order, the North Carolina court must determine whether a proceeding to enforce the order at issue in the modification proceeding has been commenced in another state. G.S. 50A-206(c).

If an enforcement proceeding is pending in another state, after communicating with the court of the other state, the North Carolina court considering modification may:

1. Stay the modification proceeding until the conclusion of the enforcement action,
2. Enjoin the parties from continuing to pursue the enforcement proceeding, or
3. Proceed with the modification under conditions the court deems appropriate. S. 50A-206(c).

If there is a proceeding in North Carolina to enforce an order from another state and the North Carolina court determines that there is a motion to modify the order pending in the court of a state with appropriate modification jurisdiction, the North Carolina court must “immediately communicate with the modifying court.” G.S. 50A-307. Enforcement continues in North Carolina unless the North Carolina court, after consultation with the modification court, stays or dismisses the enforcement action. G.S. 50A-307.

Procedure for communication between courts. G.S. 50A-110.

G.S. 50A-110 authorizes communications between a North Carolina judge and a judge of another state concerning any proceeding arising under the UCCJEA. G.S. 50A-110(a) and Official Comment thereto; *Jones v. Whimper*, 366 N.C. 367 (2013) (G.S. 50A-110, and the safeguards set out therein, apply to “all communications between courts attempting to determine” which court has jurisdiction, including communications required by G.S. 50A-206).

The statute provides that the court may allow the parties to participate in the communication, but their participation is not required. If the parties are not able to participate, they must be given the opportunity to present facts and legal arguments before a jurisdictional determination is made. G.S. 50A-110(b); *In re C.M.B.*, 266 N.C. App. 448 (2019); *Harris v. Harris*, 202 N.C. App. 584 (2010) (unpublished) (trial judge erred by failing to make a record of a communication with a judge in Indiana and by not allowing parties to be heard before making a decision on jurisdiction).

A record must be made of the communication. The parties must be informed promptly of the communication and be granted access to the record of the communication. G.S. 50A-110(d). “Record” is defined to mean “information that is transcribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.” G.S. 50A-110(e).

The court of appeals has held that this requirement is met if either court makes a record that is available to the parties. *Chick v. Chick*, 164 N.C. App. 444 (2004) (no error when Vermont court made record even though North Carolina court did not).]

A court order has been found to be a sufficient record of the communication. *Chick v. Chick*, 164 N.C. App. 444 (2004) (noting, however, that the better practice is to include in the record greater detail than the minimum required by statute and that “generous disclosure” is preferred).

An email from a judge’s assistant to the parties informing them that the trial judge had communicated with a judge in another state was a sufficient record of the communication. *In re C.M.B.*, 266 N.C. App. 448 (2019).

The North Carolina court may communicate with another court concerning schedules, calendars, court records, and similar matters without informing the parties and without keeping a record. G.S. 50A-110(c).

This entry was tagged with the following terms: child custody, communication between courts, jurisdiction, the UCCJEA, Uniform Child Custody Jurisdiction and Enforcement Act.

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