

Child Custody Jurisdiction

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Subject Matter Jurisdiction

- Determined by statute
 - Cannot confer by consent – *Foley*, 156 NC App 409 (2003)
- Trial and appellate courts can review on own motion
 - *In re N.R.M.*, 598 SE2d 147 (2004)
- Evidence and findings must support jurisdiction
 - *Foley; Brewington v. Serrato*, 77 NC App 726 (1985)

Personal Jurisdiction

- Long-arm statute and “minimum contacts” generally not required
 - *Harris*, 104 NC App 574 (1991)
- Exception for TPR
 - *Finnican*, 104 NC App 157 (1991)

Jurisdiction statutes

- UCCJA: Uniform Child Custody Jurisdiction Act
 - G.S. 50A from 1979 until 1999
- PKPA: Parental Kidnapping Prevention Act
 - 28 U.S.C. sec. 1738A
- UCCJEA: Uniform Child Custody Jurisdiction and Enforcement Act
 - G.S. 50A effective October 1, 1999
 - Incorporates PKPA requirements

"Custody Determination"

- 50A-102(3)
 - Any order or judgment providing for legal or physical custody or visitation of a child
 - Includes permanent, temporary and modification orders

"Custody Proceeding"

- Proceeding where custody is at issue
- Includes:
 - Divorce and separation
 - Neglect, abuse and dependency
 - Guardianship
 - TPR
 - Domestic Violence Protection

Jurisdiction

- Based primarily upon past and present location of the child and the parties
- Every pleading, petition and motion in the cause dealing with custody must have information required by GS 50A-209

Jurisdiction

- 3 types of proceedings
 - Initial determination
 - No previous order entitled to full faith and credit
 - Modification proceeding
 - Enforcement proceeding
 - Any state has jurisdiction to enforce a properly entered order
 - UCCJEA contains registration and enforcement procedures

Initial Determinations

- G.S. 50A-201. NC court only has jurisdiction to enter initial order if:
 - N.C. has "Home State" jurisdiction, or
 - There is no "Home State" and NC has significant connection/substantial evidence jurisdiction, or
 - State with jurisdiction decides NC is the more convenient forum, or
 - No state has jurisdiction (default)

Home State Jurisdiction

- State where child lived for at least six months immediately before the filing of the action
 - G.S. 50A-102(7)
- Or, state that was the home state within six months of filing, and one parent or person acting as a parent continues to reside in the state
 - G.S. 50A-201(a)(1)

Significant Connection Jurisdiction 50A-201(a)(2)

- The child and the child's parent (or person acting as a parent) have significant connection with the state other than physical presence, *and*
- Substantial evidence is available in the state concerning the child's care, protection, training and personal relationships
 - *Pheasant v. McKibben*, 100 NC App 379
 - *Holland v. Holland*, 56 NC App 96

Initial Orders

- If NC is not the home state – need to be very cautious about jurisdiction
- If NC is the home state, court can give up jurisdiction:
 - To a more convenient forum G.S. 50A-207, or
 - If NC court finds "unjustifiable conduct" G.S. 50A-208

Practice

- 2 children born in Tennessee.
- Dad moved to NC in 2001.
- 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?

Home state priority

- No
 - (Maybe temporary emergency jurisdiction)
- *Potter v. Potter*, 131 N.C. App. 1 (1998)
- Tennessee is home state, and has priority over NC's significant connection/substantial evidence

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?

Practice

- Jurisdiction determined for each individual child
- NC is home state for Amy
- SC is home state for Scott
- *Beck v. Beck*, 123 N.C. App. 629 (1996)

Practice

- Child born in New York Nov. 04
- Father moves to NC in Feb. 05
- Mom and child move to NC in March 05
- April 05 – DSS files neglect petition
- Does NC have jurisdiction?

Infants

- 50A-102(7): for a child less than 6 months old, home state is where the child has lived since birth
- No home state because all left NY
- NC probably has significant connection/substantial evidence

More practice

- Mom and dad have 3 children in custody of Virginia DSS following an adjudication of serious neglect by Virginia court.
- Mom moves to NC to live with her sister.
- Child #4 is born in NC less than a month after she moves to NC.
- When child is 2 months old, NC DSS files petition alleging neglect.
- Does NC have jurisdiction?

Practice

- Initial determination for this child
- NC is home state
 - Child less than 6 months, home state is where child has lived since birth

Practice

- Both children born in NC while dad stationed at Fort Bragg.
- August 2005: mom and kids move to Vermont. Dad remains at Fort Bragg.
- January 2006: mom and kids come to Fort Bragg so mom and dad can have free marriage counseling.
- February 2006 (6 weeks later): mom and dad return to Vermont with kids.
- July 2006: mom brings kids back to NC.
- Mom files for custody in NC in November 2006 - jurisdiction ?

Temporary absences

- No
- Vermont is home state.
- 6 weeks in NC was "temporary absence"
 - GS 50A-102(7)
 - Totality of circumstances test
- *Chick v. Chick*, 164 NC App 444 (2004);
Pheasant v. McKibben, 100 NC App 379 (1990)

Question

- Child born in Kentucky.
- When child is 3 months old, mom brings child to NC and dad stays in Kentucky.
- When child is 5 months old, NC DSS files petition alleging abuse and requests nonsecure custody order.
- Does NC have jurisdiction?

Home state priority

- Kentucky is home state
- NC has no jurisdiction unless Kentucky decides NC is more convenient forum
- But what about protection of child?

Emergency Jurisdiction

- G.S. 50A-204 (no longer listed as ground for jurisdiction)
- NC may exercise TEMPORARY jurisdiction if child is present in NC and:
 - 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

Emergency Jurisdiction

- Orders are temporary
 - If state with jurisdiction has acted or is acting, NC order must be of limited duration
 - If state with jurisdiction has not acted and does not act, NC order may become permanent. *See In re M.B.*, 635 NC App 8 (2006)
- If state with jurisdiction has acted or is acting, NC court must communicate "immediately" with that court to resolve the emergency

Question

- Child born in Kentucky.
- When child is 3 months old, mom brings child to NC and dad stays in Kentucky.
- When child is 5 months old, NC DSS files petition alleging abuse and requests nonsecure custody order.
- Does NC have jurisdiction?

Emergency Jurisdiction

- Nonsecure custody order is a temporary emergency order
- Can court adjudicate with temporary emergency jurisdiction?
 - *Van Kooten*, 126 NC App 764 (1998)
 - *Brode*, 151 NC App 690 (2002)
 - *But see In re M.B.*, 635 S.E.2d 8 (2006)???

Question

- Florida court declared child dependent and placed him in custody of foster parents; closed juvenile case
- 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?

Modification Jurisdiction

- State entering initial order has continuing, exclusive jurisdiction until:
 - *That state* determines it no longer has significant connection/substantial evidence jurisdiction **or**
 - The parents and the child do not reside in that state
 - G.S. 50A-202 and 203

Modification G.S 50A-203

- NC Court cannot modify order from another state unless:
 - No other state has continuing exclusive jurisdiction – or state with continuing jurisdiction decides NC is the more convenient forum – **AND**
 - NC has a basis for jurisdiction under GS 50A-201(a)(1)(home state) or (a)(2)(significant connection/substantial evidence)

Modification G.S. 50A-202(b)

- NC court cannot modify a NC order unless:
 - NC has continuing exclusive jurisdiction (meaning party resides here and there is significant connection/substantial evidence jurisdiction) or
 - NC has initial determination jurisdiction under G.S. 50A-201

Practice

- Florida court declared child dependent and placed him in custody of foster parents; closed juvenile case
- 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?

Modification

- TPR would modify Florida order
- Florida has continuing exclusive jurisdiction
- *In re Bean*; 132 NC App 363 (1999); *In the Matter of N.R.M., T.F.M.*, 165 N.C. App. 294 (2004).

Question

- 1996: Child born in Iowa.
- 1998: Family moved to Colorado.
- 1999: Colorado divorce judgment gives dad custody.
- 1999: Dad to Iowa with child, mom to NC.
- 2004: Child visits NC; diagnosed with post traumatic stress syndrome due to abuse by dad. Mom reports to NC DSS.
- Can NC enter nonsecure? Adjudicate abuse?

Van Kooten, 126 NC App 764

- Modification
- Colorado does not have continuing exclusive jurisdiction
- But Iowa is home state
- NC can exercise emergency jurisdiction
- NC court should contact Iowa to determine if Iowa willing to proceed
