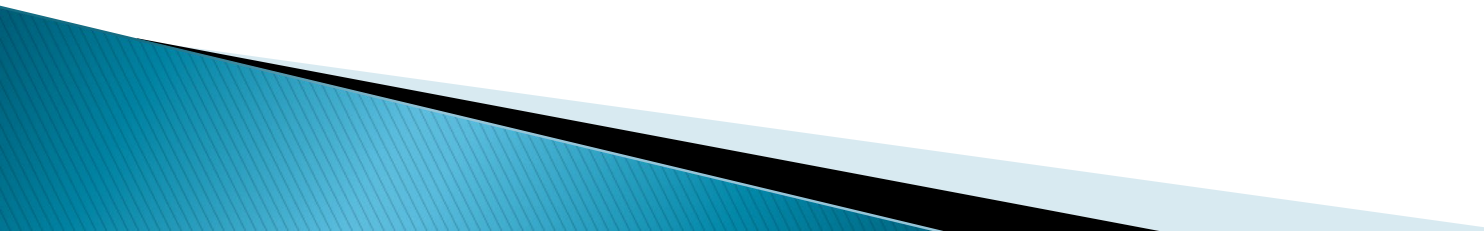


The UCCJEA

June 2025

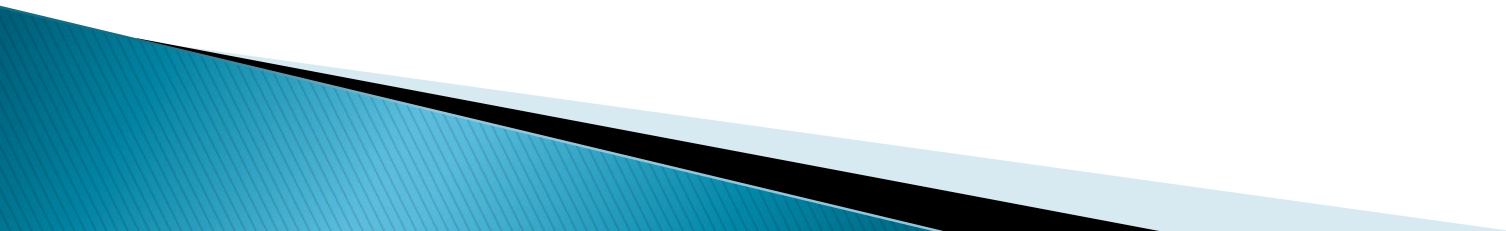
Topics for Today

- ▶ Review of the fundamentals
 - ▶ When do you have to call.....?
 - ▶ Issues that come up when you call
- 

Subject Matter Jurisdiction

- ▶ **Cannot be conferred by consent or waiver**
 - *Foley*, 156 NC App 409 (2003)
- ▶ Trial and appellate courts can review on own motion
 - *In re N.R.M.*, 598 SE2d 147 (2004)
- ▶ **Order needs findings** to support jurisdiction
 - *Foley*; *Brewington v. Serrato*, 77 NC App 726 (1985); *In Matter of E.J.*, (NC App 2013)

**Subject Matter Jurisdiction is
Determined at Time of Filing**



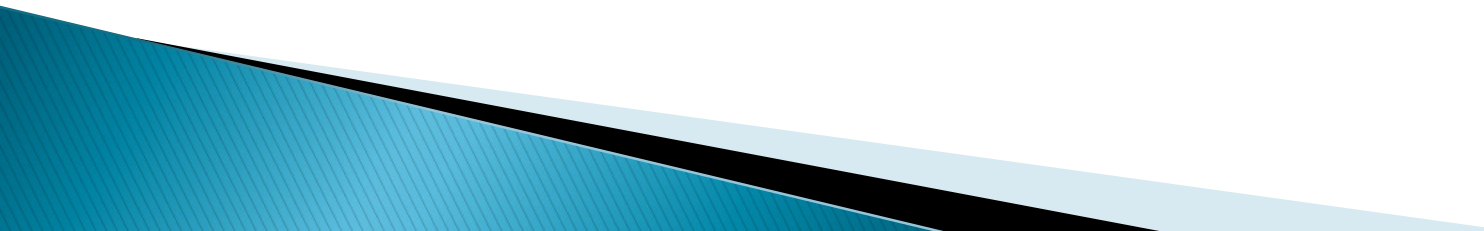
Statutes

- ▶ **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
 - Adopted in all states except Massachusetts

Key Concepts from Statutes

- ▶ Priority of Home State Jurisdiction
- ▶ Limitation of Modification Jurisdiction
 - *Even if* original order entered in NC

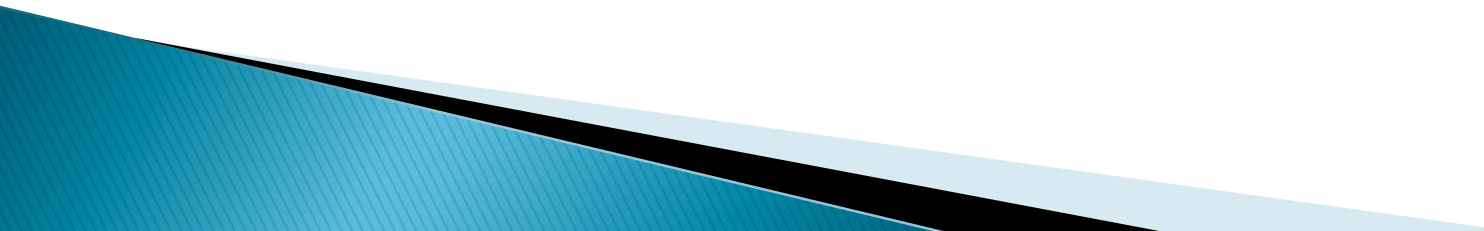
So What?

- ▶ Orders entered without subject matter jurisdiction are **void *ab initio***
 - ▶ Orders not entered in substantial conformity with jurisdictional requirements of PKPA and UCCJEA are **not entitled to recognition in other states**
- 

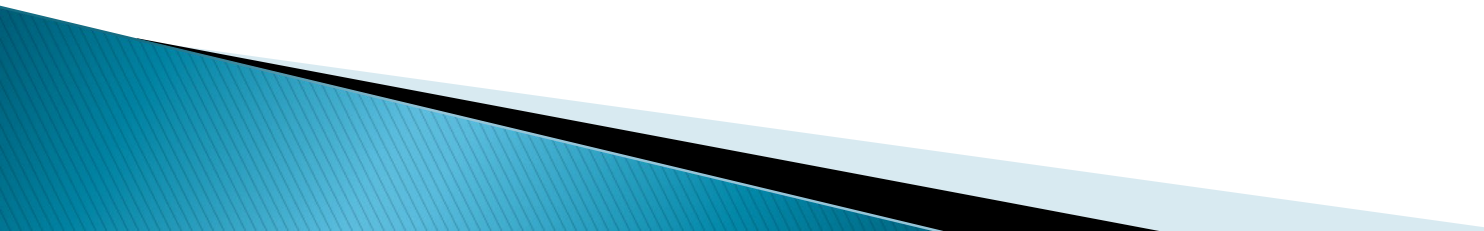
“Custody Determination”

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

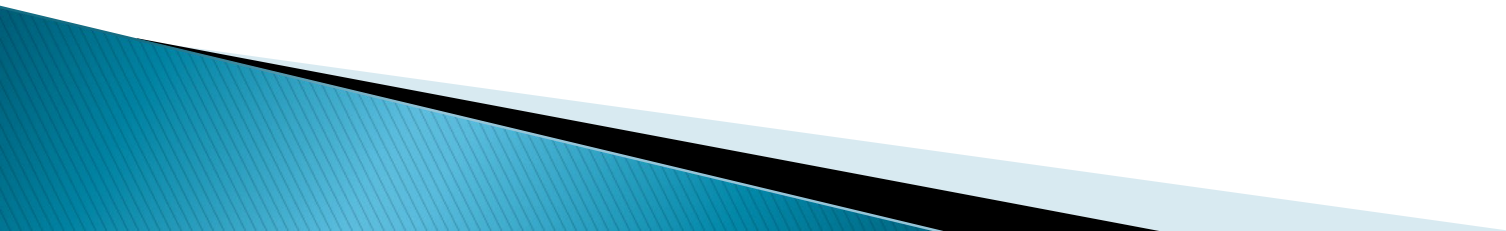
“Custody Proceeding”

- ▶ Proceeding where custody is at issue
 - ▶ Includes:
 - Divorce and separation
 - Neglect, abuse and dependency
 - Guardianship
 - TPR
 - Paternity
 - Domestic Violence Protection (50B)
- 

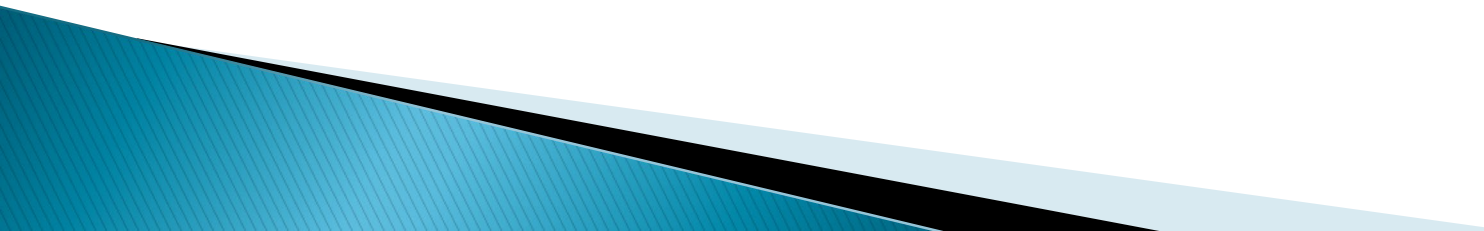
Custody Jurisdiction

- ▶ 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
- 

Type of Proceeding Determines Jurisdiction Analysis



3 Types of Proceedings

- ▶ Initial determination
 - ▶ Modification
 - ▶ Enforcement
- 

Does NC have jurisdiction?

- ▶ Mom, dad and kids live in Florida for years
- ▶ Florida court enters custody order
- ▶ Mom and kids move to NC
- ▶ 3 weeks later, dad asks NC court to enforce visitation provisions in Florida order
 - Does NC Have Jurisdiction to Enforce the Florida order?

Enforcement is Easy

- ▶ **States Always Have Jurisdiction to Enforce**

- Chapter 50A, Part 3 has procedure
 - AOC forms
 - CV-660 through CV-668

Initial Determinations

- ▶ G.S. 50A-201. NC can enter an initial order if:
 - N.C. has “Home State” jurisdiction, or
 - There is no “Home State” (or home state has determined NC is more convenient forum) and NC has significant connection/substantial evidence jurisdiction, or
 - All states with jurisdiction decide 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)

Initial Orders

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

“More Convenient Forum”

- ▶ GS 50A–207. Court with jurisdiction may **stay** proceedings and allow another state the **opportunity to act** if upon considering statutory factors, court determines other state is the more convenient forum within which to litigate custody
- ▶ **DO NOT EVER ‘TRANSFER’ CASE TO ANOTHER STATE**

Practice

- 2 children born in Tennessee.
- Dad moved to NC 8 months ago.
- Children “live” with mom in Tennessee:
 - 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**
 - *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)
 - But perhaps SC is the more convenient forum?

Inconvenient Forum 50A-207

Trial court 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.
- 

In re C.M.B., 266 NC App 448 (2019)

- ▶ Because you must make findings of fact, you must conduct a hearing and take evidence before agreeing or disagreeing that another state is a more convenient forum

Amy and Scott

- ▶ What if mom brought both kids to NC
- ▶ Dad stays in SC
- ▶ After 5 months, mom files in NC
 - Does NC have jurisdiction?

Amy and Scott

▶ No

- SC remains **home state** for 6 months after kids leave if one parent stays in that state

One more Amy and Scott


- ▶ Mom, Dad, Amy and Scott leave SC and come to NC
- ▶ After living in NC for 5 years, Mom files for custody in NC
- ▶ Mom and Dad go to mediation but nothing is resolved
- ▶ Dad moves to Kentucky; Mom and kids go back to SC
- ▶ 8 months later, dad schedules custody trial
 - Can the NC case proceed to trial?

► Yes

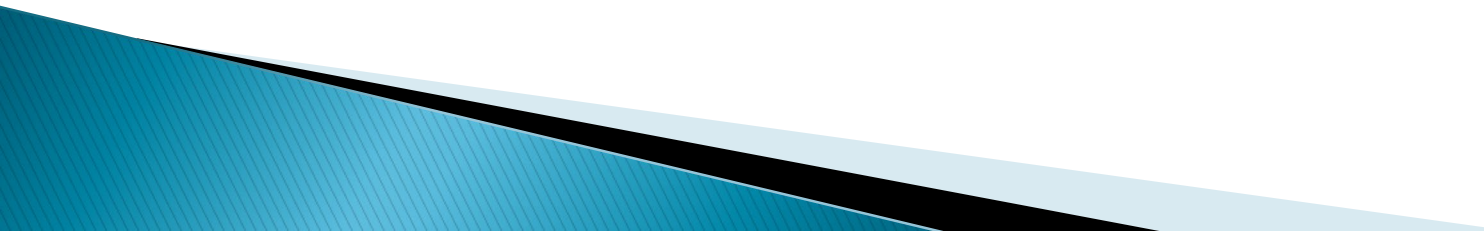
Subject Matter Jurisdiction is determined at time of filing and continues until all issues are resolved.

Waly v. Alkamary, 279 NC App 73 (2021)

Question

- Child born in Kentucky.
 - When child is 3 years old, mom brings child to NC and dad stays in Kentucky.
 - When child has been in NC for 4 months, 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: **Grounds**

- ▶ 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
 - GS 50A-204

Emergency Jurisdiction: **Process**

- ▶ **If state with jurisdiction has acted or is acting:**
 - ▶ NC order must be of limited duration
 - ▶ NC court must communicate “immediately” with that court to resolve the emergency
 - ▶ “Court” means the judge and not DSS or attorney
See In re: J.W.S., 194 NC App 439 (2008); In re: Malone, 129 NC App 338 (1998)
- ▶ **Failure to contact immediately results in loss of subject matter jurisdiction**
 - ▶ *See In re: J.W.S., 194 NC App 439 (2008)*

Emergency Jurisdiction: **Process**

- If state with jurisdiction has not acted and does not act:
 - NC order may become permanent “if it so provides”.
 - *See In re M.B.*, 635 NC App 8 (2006)
 - Statute does not require communication

Back to the Question

- Child born in Kentucky.
- When child is 3 years old, mom brings child to NC and dad stays in Kentucky.
- When child has been in NC for 4 months, NC DSS files petition alleging abuse and requests nonsecure custody order.
 - Does NC have jurisdiction?

Emergency Jurisdiction

- ▶ Child is present in the state
- ▶ It is necessary in an emergency to protect the child from abuse
- ▶ Kentucky is the home state
- ▶ Kentucky is not acting and has not acted
- ▶ So temporary order can be entered
 - Include provision for order to “become permanent”?

Amy and Scott Again...

- ▶ Amy, Scott, Mom and Dad live in SC for several years.
- ▶ Mom and dad separate; **SC enters custody order**
- ▶ Mom and kids move to NC
- ▶ Dad stays in SC
- ▶ After mom and kids **in NC for 2 years**, mom files motion to modify custody in NC
 - **Does NC have jurisdiction?**

Modification Jurisdiction

- ▶ State entering initial order keeps **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**)

Amy and Scott Again...

- ▶ Amy, Scott, Mom and Dad live in SC for several years.
- ▶ Mom and dad separate; SC enters custody order
- ▶ Mom and kids move to NC
- ▶ Dad stays in SC
- ▶ After mom and kids **in NC for 2 years**, mom files motion to modify custody in NC
 - **Does NC have jurisdiction?**

Amy and Scott

- ▶ No

- ▶ NC has no modification jurisdiction because SC has CEJ

- ▶ But NC can modify **if SC determines** NC is a more convenient forum because NC now is home state

What about.....

- ▶ Child born in NC
- ▶ When child is 6 years old, mom and dad begin litigating custody in NC; original custody order modified a couple of times
- ▶ Last modification entered when child is 10 years old (8 months ago)
- ▶ After last modification (8 months ago), mom takes child and moves to Germany; dad moves to Tennessee
- ▶ Dad files motion to modify in NC, arguing move to Germany is changed circumstances

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

Initial Determinations

- ▶ G.S. 50A–201. NC can enter an 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)

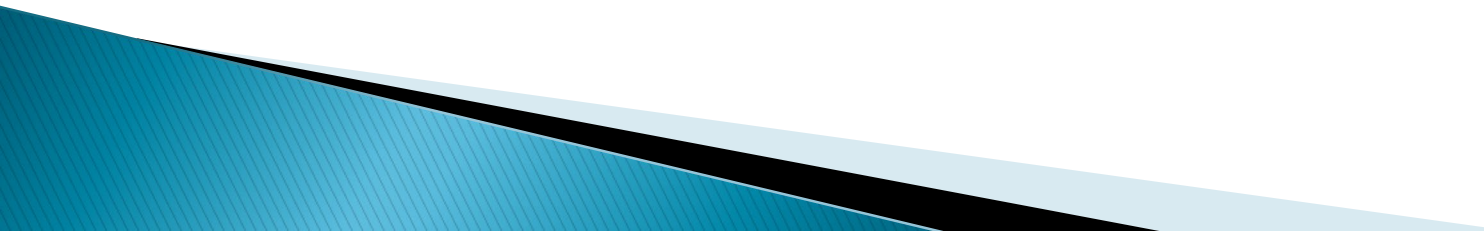
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- ▶ Last modification entered when child is 10 years old (8 months ago)
- ▶ After last modification (8 months ago), mom takes child and moves to Germany; dad moves to Tennessee
- ▶ Dad files motion to modify in NC, arguing move to Germany is changed circumstances

Germany is the home state

- ▶ So, no modification jurisdiction in NC
- ▶ But dad argues NC the **more convenient forum under GS 50A-207?**
 - Will that work?

More Convenient Forum

- ▶ Only the 'state' with jurisdiction can decide to stay its proceedings and allow another 'state' to litigate
 - ▶ So, only Germany can make decision in this case because it is the home state
 - ▶ **STATE WITH JURISDICTION DOES NOT TRANSFER CASE TO STATE THAT IS THE MORE CONVENIENT FORUM**
- 

Another Practice

- ▶ Custody case filed in NC by a self-represented litigant
- ▶ Pleadings say kids in NC for 1 year
- ▶ During testimony, mom shows you a “temporary custody” order from Vermont entered 1 year ago awarding custody to her
- ▶ What do you do?

Simultaneous Proceedings

GS 50A-206

- ▶ NC court may not proceed if another state is litigating custody “in substantial conformity with” the UCCJEA
 - *Jones v. Whimper*, 736 SE2d 170 (NC 2012)
- ▶ NC court “shall stay proceedings and immediately communicate with court in other state”
- ▶ NC must dismiss unless other court determines NC is more convenient forum


When do you have to call.....?

Only in 2 situations.....

- ▶ Emergency jurisdiction when state with jurisdiction has acted or is acting, and
- ▶ Simultaneous proceedings
 - GS 50A-206
 - GS 50A-307

Communication Between Judges

GS 50A-110

- ▶ Parties may be allowed to participate in discretion of judge
 - ▶ If parties do not participate, parties must be allowed “to present facts and argument” before jurisdiction decision is made
 - ▶ “Record” must be made of all communications unless dealing only with court records or scheduling
- 

Issues that come up when you
call.....