

Custody Jurisdiction
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Subject Matter Jurisdiction

- Cannot be conferred by consent or waiver
 - *Foley*, 156 NC App 409 (2003)
 - *Gerhauser v. Van Bourgondien*, 238 NC App 275 (2015)
- Trial and appellate courts can review on own motion
 - *In re N.R.M.*, 165 NC App 294 (2004)

Subject Matter Jurisdiction

- Order needs findings to support jurisdiction
 - *Foley; Brewington v. Serrato*, 77 NC App 726 (1985);
 - *In Matter of E.J.*, 225 NC App 333 (2013)(order void due to lack of findings to show basis for emergency jurisdiction).
 - *But cf., In the Matter of N.T.U.*, 234 NC App 722 (2014)(order not void due to lack of findings when circumstances supported emergency jurisdiction);
 - *In re J.C.*, 235 NC App 69 (2014)(‘better practice’ is to make findings but order okay if evidence is in the record)

Personal Jurisdiction

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

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 (legislation pending now)

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 (custody always at issue?)
 - 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

3Types of Proceedings

- Initial determination
- Modification
- Enforcement

Case #1

- *Gerhauser v. Van Bourgondien*, 238 NC App 275 (2014)
 - Did NC have jurisdiction to modify when the 2012 motion to modify was filed?

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)

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

- NC court cannot modify a NC order unless:
 - NC has continuing exclusive jurisdiction (meaning party continues to reside 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 ("jurisdiction by necessity)

Gerhauser

- Did NC have jurisdiction to modify the NC order when the 2012 motion to modify was filed?
 - GS 50A-202(a) - NC did not have continuing exclusive jurisdiction because no one lived here when motion was filed
 - GS 50A-202(b) – no modification unless NC has initial jurisdiction pursuant to GS 50A-201

Gerhauser: Initial Jurisdiction?

- Was NC the home state?
 - No – everyone left NC by 2009
- Was there a home state?
 - Utah was not the home state
 - Trip to Germany was not a "temporary absence"
 - Germany was not the home state
 - Kids in Germany only 2 months when motion filed in NC

Gerhauser: Initial Jurisdiction?

- Significant Connection Jurisdiction?
 - NC does not have significant connection
 - No party in NC since 2009; no kids in state since 2004
- Jurisdiction by necessity?
 - Only if no other state has initial jurisdiction
 - Both Utah and Florida has significant connection jurisdiction

Gerhauser summary

- No jurisdiction to modify NC order
 - No continuing exclusive jurisdiction
 - No initial determination jurisdiction
 - NC not the home state
 - No home state
 - NC did not have significant connection jurisdiction
 - No other state determined NC is the more convenient forum
 - Jurisdiction by necessity not available because both Utah and Florida have significant connection jurisdiction
 - No emergency

Case #1

- Can NC enforce the 2010 order?

Enforcement is Easy

- States Always Have Jurisdiction to Enforce
 - Chapter 50A, Part 3 has procedure
 - AOC forms
 - CV-660 through CV-668

No Registration Required

- There is no statute or appellate case indicating registration is required before order can be enforced
- *And see* Official Comment, GS 50A-305
 - Purpose of registration process is to allow parent to send order to state before sending child to state

Case #2

- *Based on In re J.W.S.*, 194 NC App 439 (2008)
 - Does NC have jurisdiction to modify the 2013 NY order?
 - Did NC appropriately exercise emergency jurisdiction?

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 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

Case #2

NY has continuing exclusive jurisdiction

Horizontal lines for notes

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

Horizontal lines for notes

Emergency Jurisdiction: Process

- ▶ If state with jurisdiction has acted or is acting:
 - ▶ NC order must be of limited duration
 - ▶ See *In re: E.J.*, 738 SE2d 204 (COA Feb. 2013)
 - ▶ 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)

Horizontal lines for notes

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
 - *But see Van Kooten*, 126 NC App 764

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
- *See Jones v. Whimper*, 366 NC 367 (2013)

Case #2

- Grounds for emergency?
 - Probably – child in NC and threatened with abuse
- Proper process?
 - NY has acted (issued 2013 custody order)
 - NC court was required to communicate immediately with NY court to “resolve the emergency”
