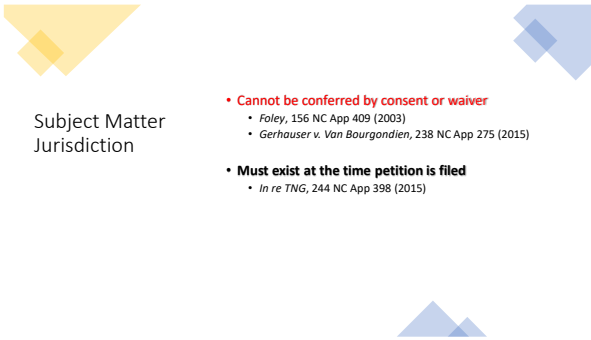
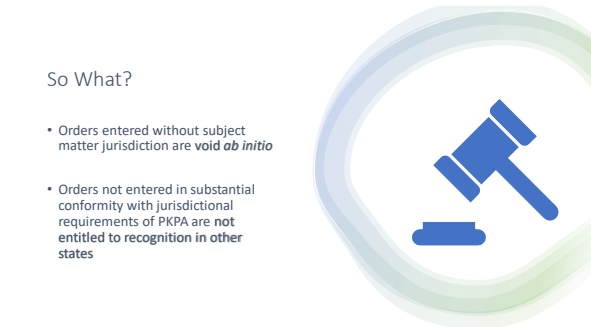


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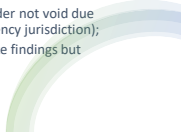
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3

• **Order needs findings** to support jurisdiction

- *Foley v. Foley*, 156 NC App 409 (2003); *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)



4



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)



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Topics for today.....

Emergency Jurisdiction

- GS 50A-204

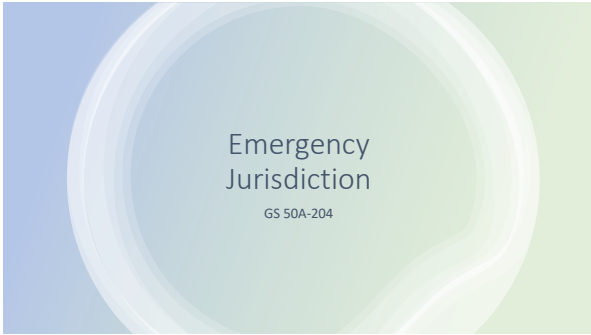
Inconvenient forum determinations

- GS 50A-207

Modification jurisdiction

- GS 50A- 202, 203

6



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Required for jurisdiction

- Grounds
- Appropriate process

8

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

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Neglect is Insufficient

Official Comment, GS 50A-204

- Emergency is defined as “mistreatment or abuse”
- ‘Neglect’ alone is not a basis for the assumption of jurisdiction
- “Under the PKPA, if a State exercised temporary emergency jurisdiction based on a finding that a child was neglected without a finding of mistreatment or abuse, the order would not be entitled to federal enforcement in other States.”

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- Emergency Jurisdiction: **Process**
- If no order in effect and state with jurisdiction has not acted and does not act:
 - NC order becomes permanent “if it so provides” when NC becomes home state
 - See *In re M.B.*, 635 NC App 8 (2006)
 - Statute does not require communication
 - But see *Van Kooten*, 126 NC App 764

11

Example

- Child is 8 years old and has lived in Virginia all of her life.
- She came to NC 2 months ago with mom. Dad still lives in Virginia
- There has never been a custody proceeding of any kind in Virginia.
- Petition alleging abuse of child is filed in NC.
- Jurisdiction?

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Emergency Jurisdiction GS 50A-204(b)

- Petition is filed invoking temporary emergency jurisdiction
- Order should provide that jurisdiction is temporary but will become permanent when NC becomes the home state of the child if no action is filed in Virginia before that happens
- No need to communicate with Virginia
 - No one to communicate with.....
- If nothing filed in Virginia, jurisdiction becomes permanent when NC becomes home state

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But what if.....

- Child is 8 years old and has lived in Virginia all of her life.
- She came to NC 2 months ago with mom. Dad still lives in Virginia
- Virginia entered a custody order in case between parents when child was 3 years old.
- Petition alleging abuse of child is filed in NC.
- Jurisdiction?

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Emergency Jurisdiction: Process

- If order in effect or state with jurisdiction **has acted or is acting:**
 - NC order must be of limited duration. GS 50A-204(c)
 - *In re: E.J.*, 225 NC App 333 (2013)
 - NC court must communicate "immediately" with that court to resolve the emergency. GS 50A-204(d)
- Failure to contact immediately results in loss of subject matter jurisdiction
 - *In re: J.W.S.*, 194 NC App 439 (2008)

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No More Nunc Pro Tunc in Civil Cases?

This entry was contributed by Cheryl Howell on September 2, 2018 at 8:00 am and is filed under Civil Procedure-General, Family Law.



Nunc pro tunc is a phrase used in an order or judgment when the court wants the order or judgment to be effective as of a date in the past rather than on the date the judgment or order is entered into the court record. Black's Law Dictionary defines the term "nunc pro tunc" to mean "now for then, [a term signifying] a thing is now done which should have been done on the specified date." Recent cases from the North Carolina Court of Appeals have made it clear that nunc pro tunc is a tool available only in extremely limited circumstances.

Judgment/Order Must Have Been Decreed or Signed in the Past

In Whitcomb v. Whitcomb, 222 NC App 771 (2012), the court of appeals reminded us that nunc pro tunc only can be used if an order actually was "decreed or signed" on the date in the past. Because nunc pro tunc is a tool to correct the court record to reflect an event that actually occurred in the past, it cannot be used to give an order retroactive effect when the order was not in fact entered in the past.

The trial court in Whitcomb entered an equitable distribution judgment in a case involving a marital corporation. At some point during the equitable distribution proceeding, the marital corporation filed a motion to intervene. The trial court indicated on the record that it would sign an order allowing intervention but a written order was not signed. Several years after the final equitable distribution judgment was entered, the court signed a written consent order granting the corporation's motion to intervene nunc pro tunc to the date the court indicated on the record that it would allow the motion.

• Nunc pro tunc will not cure jurisdictional problem

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Communication with other states

GS 50A-110

When statutes require that 'court' communicate with other state, 'court' means the judge and not DSS or attorney

In re: J.W.S., 194 NC App 439 (2008)
In re: Malone, 129 NC App 338 (1998)

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GS 50A-110

- Court must allow parties "to participate in the communication" or "to present facts and legal arguments before a decision on jurisdiction is made."
 - *In the Matter of C.M.B.*, 266 NC App 448 (2019)
- Court must make a 'record' of the communication with the other court.
 - Email from judicial assistant to parties informing them of judge's communication was a sufficient record
 - *In the Matter of C.M.B.*



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Emergency Jurisdiction

- **Nonsecure custody order** is a temporary emergency order
- Can court **adjudicate** with temporary emergency jurisdiction?
 - *Van Kooten*, 126 NC App 764 (1998)(no)
 - *Brade*, 151 NC App 690 (2002)(no)
 - *In re E.J.*, 225 NC App 333 (2013)(no)
 - *But see In re M.B.*, 179 NC App 572 (2006)(yes)
 - *In re A.G.M.*, 241 NC App 426 (2015)(can do only what is necessary to take care of child)

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When state with jurisdiction is acting or has acted....

- Communicate to “resolve the emergency”
- How can emergency be resolved?
 - Action is filed in state with jurisdiction and NC case is dismissed
 - Can NC case proceed if the state with jurisdiction determines NC is the more appropriate forum?
 - GS 50A-207

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The graphic features a large white diamond shape on a light gray background. Inside the diamond, the text "Inconvenient forum" is written in a bold, black font, with "GS 50A-207" centered below it. To the right of the diamond is a yellow diamond shape containing a small yellow exclamation mark. The background is decorated with various geometric shapes in shades of blue and yellow.

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50A-207. Inconvenient forum.

(a) A court of [a] State which has jurisdiction under this Article to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

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Jurisdiction

- A determination by a state with jurisdiction that NC is a more appropriate forum gives NC jurisdiction to proceed:
 - For an initial determination, only if the state making the decision pursuant to 207 is the home state and NC has grounds for significant connection jurisdiction, or if the home state and all states having significant connection jurisdiction determine NC is the more appropriate forum.
 - GS 50A-201(2) and (3)
 - For a modification, only if NC is either the home state or has significant connection jurisdiction.
 - GS 50A-203(1)

23

Back to our scenario.....

- Child is 8 years old and has lived in Virginia all of her life.
- She came to NC 2 months ago with mom. Dad still lives in Virginia
- Virginia entered a custody order in case between parents when child was 3 years old.
- Petition alleging abuse of child is filed in NC.
- Jurisdiction?

24

When state with jurisdiction has acted....

- Communicate to "resolve the emergency"
- Can NC ask Virginia to determine NC is the more convenient forum?
- Would that determination by a Virginia court give NC jurisdiction to proceed?

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Jurisdiction

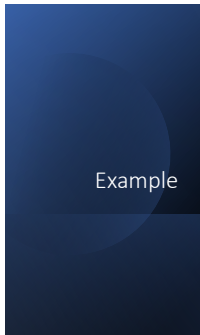
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 - GS 50A-201(2) and (3)
 - For a modification, only if NC is either the home state or has significant connection jurisdiction.
 - GS 50A-203(1)

26



- What about when a NC court is asked to determine NC is an inconvenient forum and another state is the more appropriate forum?

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- Court in NC adjudicated child neglected and placed with grandparents three years ago.
- Grandparents and child moved to Tennessee 2 years ago; parents remain in NC.
- Parents file a request to modify the child's placement to give them more visitation.
- Grandparents want case 'transferred' to Tennessee.

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On the Civil Side
A UNC School of Government Blog
<https://onl.org.unc.edu>

Child Custody: We Can't "Change Venue" to Another State; Determining NC is an inconvenient forum

**This is a post from October 28, 2016 that I decided to post again, with a couple of appellate case updates, due to the frequency with which I receive questions about this procedure.

I received a call once from a clerk of court asking what she should do with a voluminous court file received in the mail from a court in another state. It was a large box containing all of the pleadings, motions, reports and other filings for a custody case that had been litigated in another state for several years, accompanied by a court order signed by a judge in that other state "transferring venue" of the case to North Carolina, citing as authority that state's version of the [Uniform Child Custody and Jurisdiction Act \(UCCJEA\)](#).

Does the UCCJEA allow a judge to transfer a custody case to another state? When that clerk received the file and the order from the other state, is the North Carolina court required to act in the custody proceeding?

Post from
Nov. 11, 2020

29


G.S. 50A-207


- (b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and 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.

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Procedure

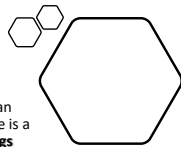
 The determination that NC is an inconvenient forum requires an evidentiary hearing and court must make findings of fact based on evidence *In the Matter of C.M.B.* 266 NC App 448 (2019)

 Evidence can be in the form of affidavits only *Harter v. Eggleston* 847 SE2d 444 (NC App 2020)

 The court can make the determination at any point in time during a proceeding *Halli v. Ramnisha* 848 SE2d 542 (NC App 2020)

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GS 50A-207



- (c) If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, **it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state** and may impose any other condition the court considers just and proper.

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Does the Tennessee court have jurisdiction?

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

- Tennessee has no jurisdiction unless NC determines it is the more convenient forum
- Juvenile case in NC remains pending until jurisdiction is terminated by court order
- Order ceasing reunification, relieving attorneys and GAL and ordering guardianship did not terminate the juvenile case

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Options for NC court?

01

Address mom's request in the juvenile case and allow case to remain pending

02

Enter order terminating jurisdiction
• Allow custody to revert to status at time petition was filed

03

Terminate jurisdiction and enter Chapter 50 custody order pursuant to GS 7B-911

04

Determine NC is an inconvenient forum and that Tennessee is the more appropriate forum

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Modification Jurisdiction

GS 50A-202 and GS 50A-203

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What do you think?

- California custody order entered in 2013
- Dad and child moved to NC in 2013
- Mom moved to Nevada
- Mom moved back to California in 2016
- In 2018, dad files TPR in NC
- Does NC have jurisdiction to terminate?

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- TPR does not require minimum contacts
- *In re Matter of F.S.T.V.*, 374 NC 532 (2020)

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Modification Jurisdiction

§ 50A-203. Jurisdiction to modify determination.

- Except as otherwise provided in G.S. 50A-204, a court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or G.S. 50A-201(a)(2) and:
 - (1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207; or
 - (2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

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Can NC modify the California order by terminating mom's rights?

1. Does NC have initial determination jurisdiction?
 - Yes. NC was the home state when TPR filed
2. Has California determined it no longer has continuing exclusive jurisdiction or that NC is a more appropriate forum?
 - No
3. Can NC determine that the child and the child's parents do not presently reside in California?
 - No. Mom resided in California when TPR was filed in NC

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In the Matter of D.A.Y.,
266 NC App 33 (2019)

- Where California court had not determined that it no longer had continuing exclusive jurisdiction or determined NC was a more appropriate forum, NC had no jurisdiction to terminate mom's parental rights.
- Bonus question –
 - Does California have jurisdiction to terminate parental rights?

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§ 50A-202. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State which has made a child-custody determination consistent with G.S. 50A-201 or G.S. 50A-203 has exclusive, continuing jurisdiction over the determination until:

- (1) A court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or
- (2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(b) A court of this State which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under G.S. 50A-201.

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