

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA** **CIVIL ACTION**

**P. A. B.,
Mother,**

vs.

Case No. 00 DR 0000 N

**J. K. C.,
Father,**

ORDER DENYING EMERGENCY VERIFIED MOTION

This matter having come before the court *ex parte* on the mother's "Emergency Verified Motion for Child Pick-Up Order" filed 8/2/2011, it is ordered:

1. Findings

The parties have twin boys, (*Names omitted*), born on 5/3/2002. The children have the same last name as the father and his name appears on their birth certificates, copies of which were filed with the mother's motion. The children were born in Fort Myers, Lee County, Florida.

From the mother's UCCJEA affidavit it appears that the children have been living with the father in (*City deleted*), Washington, since at least "June 15th" 2011 and perhaps since "Sept 4th 2010." Her UCCJEA affidavit is ambiguous, unclear and confusing. It says that from "Sept 4th 2010 to Aug 15th" the children were last with her, but that statement in her affidavit makes no sense. "Aug 15th" 2010 would come before "Sept 4th 2010" and if she means "Aug 15th" 2011, that day has not yet come and, in any event, the children are in (*City deleted*) today. In short, her UCCJEA affidavit is confused and cannot be relied upon

Her UCCJEA affidavit reports that the children have been living at (*Address omitted*), Fort Myers, FL 33967, since "Sept '06," but when they last lived there is unclear from her affidavit. Perhaps they left there on "Sept 4th 2010" or "June 15th" 2010. The affidavit is vague.

From a copy of an email exchange between the parents filed with the mother's motion it appears they have a dispute about when the children would be back in Florida, the mother thinks they should be here now, so they can start school here on 8/8/2011, and the father thinks they should be back here "Winter Break about Dec. 21."

The mother included a copy of a document dated "July 12, 2011," which indicates that the Washington child support enforcement agency, "Division of Child Support," has started a child support enforcement action against the mother. This also indicates that the father is receiving state benefits for the children. The State of Washington, through the "Division of Child Support," is obligated by federal law to start a child support action against a "noncustodial" parent if the

“custodial” parent is receiving state supplied benefits for the children.

The mother’s UCCJEA says there is no other case concerning these children pending anywhere. The motion does not attach any time-sharing or parental responsibility order or any other parenting order concerning these children, other than a D.V. injunction that expired on “Sept. 30, 2005.” So, there is no order concerning the time-sharing of these children anywhere and there appears to be no written agreement between these parties concerning time-sharing.

2. Ruling

2.1 Jurisdiction From the mother’s UCCJEA affidavit the court cannot determine that it has jurisdiction over the children under the UCCJEA. Without jurisdiction under that statute, no order concerning these children can be entered in Florida.

2.2 Paternity established Because the father’s name appears on the children’s birth certificates, paternity is established by law pursuant to F.S. §742.10 and §382.013, so no judgment of paternity is necessary to establish that he is the child’s father. *Mohorn v. Thomas*, 30 So.3d 710 (Fla. 4th DCA 2010).

2.3 No emergency There are no facts amounting to an emergency stated in the mother’s motion. The children are apparently being fed, clothed and housed by the father in (*City deleted*). The parents appear to have a dispute concerning when they would be returned to Florida. The mother wants them enrolled in school here on 8/8/2011 but this is not an emergency. It is not clear from the mother’s UCCJEA affidavit that the court has any jurisdiction over any parenting issue.

2.4 No ex parte relief The mother’s motion does not state any legal basis for *ex parte* relief, that is, a court order granting her something with no notice to the father and no opportunity for the father to appear and present his position on her motion. Without citations to legal authority for *ex parte* relief, the court cannot grant her such relief. In this situation, there is no legal authority for *ex parte* relief known to the court.

2.5 No existing time-sharing order The “Emergency” motion filed by the mother presumes she has an order granting her certain time-sharing with the children but in fact there is no time-sharing order or written time-sharing agreement between these parents.

2.6 Time-sharing may be ordered only after a trial on the merits The court cannot presume any particular time-sharing sought by either parent is in the children’s best interest without a full trial on the merits of a petition for paternity to establish a time-sharing order, but the mother has not filed a petition for paternity. At that trial the parties could present their evidence of the best interests of the children in a time-sharing order, considering all of the factors in §61.13(3), and advise the court of all of the relevant facts and circumstances concerning the children and the parties. However, the court has no jurisdiction to consider a paternity petition at a trial or temporarily if the

court does not have jurisdiction under the UCCJEA.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Copies provided to:

P. A. B., *pro se*, (Address omitted)

J. K. C., *pro se*, (Address omitted)