

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

D. D.,
Petitioner & husband,

vs.
D. B.D.,
Respondent & wife,

Case No. XX DR YYYY N

ORDER CONCERNING SUBJECT MATTER JURISDICTION
UNDER THE UCCJEA

This matter having come before the court for an evidentiary hearing on *Date omitted* /2015 on the following:

- (1) Wife’s “Motion to Dismiss for Lack of Jurisdiction,” filed *Date omitted* /2015;
- (2) Wife’s “Expedited Petition Seeking Enforcement of Child Custody Determination Order,” filed *Date omitted* / 2015;
- (3) Husband’s “Verified Emergency Motion for Initial Parenting Plan/ Time-Sharing Determination and Emergency Motion for UCCJEA Conference,” filed *Date omitted* / 2015;

It is ordered:

1. The Record

(A) At the hearing on *Date omitted* / 2015 the mother and her counsel and the father and his counsel were present. The mother and the father testified and their counsel presented argument.

(B) Chapter 61, Florida Statutes, (2014) defines the orders that must be entered in a proceeding between separated parents, whether the parents are married or unmarried. Except within the provisions of that Chapter that adopt the UCCJEA, §§61.501, *et seq.*, Chapter 61 does not use the terms “custody” or “visitation.” to define those orders.

Rather, the statute requires the court to enter a “parental responsibility” order, which defines how parenting decisions will be made now that the parents are separated, and a “time-sharing schedule” order, which defines where the child will be every day and night of the year, how the child will be exchanged, how the parents will communicate with the child, and other details of the child’s day to day schedule throughout the year. The statute, §61.13(2), requires the court to adopt a “parenting plan” that governs the relationship between the separated parents concerning their child.

So, within the UCCJEA provisions of Chapter 61, §§61.501, *et seq.*, the terms “custody” and “visitation” are used because those are the terms used in that uniform statute, but elsewhere in Chapter 61 the terms “parenting plan,” “parental responsibility order,” and “time-sharing schedule” are used.

Therefore, in this order the court uses the terms “custody” and “visitation” because this order and this proceeding at this point are concerned with a determination of subject matter jurisdiction under the UCCJEA.

(C) The husband’s pleading and motion

The husband initial pleading is his petition filed on *Date omitted* /2015. His petition seeks (a) a dissolution of marriage; (b) equitable distribution of the parties’ assets and liabilities and child support; and (c) a child custody and visitation order. So, his petition begins a “child custody proceeding” as defined by §61.503(4).

On *Date omitted* /2015 the husband filed his “Verified Emergency Motion for Initial Parenting Plan/ Time-Sharing Determination and Emergency Motion for UCCJEA Conference,” one of the three subject motions.

(C) The wife’s motion and petition in Florida and her petition in State Omitted

On *Date omitted* /2015 the wife filed her “Motion to Dismiss For Lack of Jurisdiction” and her “Expedited Petition Seeking Enforcement of Child Custody Determination Order,” the other two subject motion and petition.

The wife filed a petition for legal separation in State Omitted on *Date omitted* /2015 and these motions assert that the wife’s State Omitted petition is a “child custody proceeding” as defined by §61.503(4).

2. Findings

These are the facts that are relevant to a determination of subject matter jurisdiction under the UCCJEA:

- (A) 6/20/2014 - the parties were married in Florida.
- (B) 8/12/2014 - the child was born in Florida where he lived until 10/26/2014.
- (C) 10/26/2014 - the wife and child traveled from Florida to State Omitted where the child lived until 1/14/2015.
- (D) 12/1/2014 - the husband traveled from Florida to State Omitted.
- (E) 1/14/2015 - the husband and child traveled from State Omitted to Florida where the child lives now.
- (F) *Date omitted* /2015 - the wife filed her petition in State Omitted.
- (G) *Date omitted* /2015 - the husband filed his petition in this case.
- (H) *Date omitted* /2015 - the wife filed a request for an ex parte custody order in her State Omitted case.
- (I) *Date omitted* /2015 - the wife’s request for an ex parte custody order was granted.

So, the child is less than 6 months old and the child was born in Florida on 8/12/2014 and he lived in Florida from then until 10/26/2014. He next lived in State Omitted from 10/26/2014 until 1/14/2015 and he has lived in Florida since 1/14/2015. These facts are not in dispute. These facts determine the jurisdictional question.

At the hearing on *Date omitted* /2015 there was no substantial evidence of an emergency concerning the child in Florida or State Omitted, as “emergency” is defined by §61.517, that “the child, or a sibling or parent of the child, is subject to or threatened with mistreatment or abuse,” or as “emergency” is defined by Florida case law.

See, e.g., Loudermilk v. Loudermilk, 693 So.2d 666, 668 (Fla. 2d DCA 1997), in which “emergency” is defined as “where a child is threatened with harm, or where the opposing party plans to improperly remove the child from the state. *See Gielchinsky v Gielchinsky*, 662 So.2d 732, 733 (Fla. 4th DCA 1995); *see also Wilson v. Roseberry*, 669 So.2d 1152 (Fla. 5th DCA 1996) (concluding that parent’s removal of children from state without noncustodial parent’s knowledge was not emergency) ...”

So, the father’s removal of the child from State Omitted on 1/14/2015 was not legally improper even if the mother felt it was highly improper because there was no evidence that the child’s traveling with a parent on that day was harmful to the child in any way or in violation of an existing child custody order or a child custody proceeding substantially in conformity with the UCCJEA. The mother did not agree that the child should leave with the father on that day, but the lack of her agreement does not make the child’s removal legally improper. The officers at the airport were correct when they declined to act on the mother’s request to stop the father from boarding a plane with the child. They had no authority to stop him.

In general, at the hearing on *Date omitted* /2015 there was much testimony about the parties’ intentions, subjective or expressed, their disagreements and arguments, their estrangement, their separation and when it might have occurred, their leaving a home or staying in a home, their claims of legal residency in one state or another, their informal arrangements for each spending time with the child, and about which parent filed which case first, all of which illustrated a couple breaking up over a period of months, a break up that took place across a continent. This testimony might be relevant to the question of whether either party was a resident of Florida for 6 months before the husband filed this action and so whether this court has jurisdiction under §61.021 to dissolve the marriage. This testimony might be relevant to a decision about a parenting plan, a parental responsibility order and a time-sharing schedule, which is determined by consideration of the child’s best interest and the factors in §61.13(3)(a) - (t).

However, none of this testimony determines the jurisdictional question. The statute uses an objective standard for determining which state has jurisdiction to decide a child custody case. It does not rely on the intentions of the parents or the state that either claims as a legal residence. It does not depend on which party filed a case first. It does not rely on what they said or did not say as they were breaking up or their informal agreements and alleged violations of those agreements. It is not determined by a consideration of the best interest of the child.

Jurisdiction under the UCCJEA for a child less than 6 months old is determined by where the child was born and where he lived with a parent after birth. *See Ocegueda v. Perreira, infra*, and *Meyeres v Meyeres, infra*.

3. Issues and rulings

(A) Does Florida have subject matter jurisdiction to make a child custody order under the UCCJEA?

Yes. Florida is the child’s “home state” because the child was born in Florida on 8/12/2014, he lived in Florida until 10/26/2014, and he has lived in Florida since 1/14/2015.

See, e.g., Karam v. Karam, 6 So.3d 87, 90 (Fla. 3d DCA 2009): “Under the UCCJEA, jurisdictional priority lies in the child’s home state.”

F.S. §61.503(7) “ ‘Home state’ ... In the case of a child younger than 6 months of age, the term means the state in which the child lived from birth with [a parent.]”

So, for a child less than 6 months of age the standard in the statute is where the child “lived from birth with a [parent].”

F.S. §61.514 “Initial child custody jurisdiction. -

(1) Except as otherwise provided in s. 61.517, a court of this state has jurisdiction to make an initial child custody determination only if:

(a) This state is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding ...”

See Ocegueda v. Perreira, (2015) 232 Cal.App.4th 1079,181 Cal.Rptr.3d 845, in which the child was less than 6 months old and the appellate court reversed the trial court’s ruling that it had UCCJEA jurisdiction, despite a stipulation by the parents to a shared parenting plan in the California case and trial court findings that California was the state with the most significant connection to the child because the parents had lived together in California for some years before the mother went to Hawaii about 19 days before the child was born. The child was born in Hawaii and came to California with his mother when he was six weeks old. The father filed the California case the day after the child arrived from Hawaii and the mother later filed her custody case in Hawaii. The court held that the child “lived” in Hawaii from birth with a parent and the subjective intentions of the parents did not alter the conclusion that Hawaii was the “home state” of the child so Hawaii had exclusive UCCJEA jurisdiction and the California orders were void because the California court did not have subject matter jurisdiction.

See Meyeres v. Meyeres, 196 P.2d 604 (Ct. App. Utah 2008), in which the appellate court reversed the trial court’s order ruling that it lacked subject matter jurisdiction. The child was born in Utah and moved with the mother to Kansas when he was six weeks old. The mother then filed a divorce action in Kansas and the father later filed a divorce action in Utah. The two courts held a telephone conference to discuss subject matter jurisdiction. The Kansas court “refused to defer to the Utah court. As a result the Utah court ... deferred to the Kansas court on child custody issues.” *Id.* at 606. The appellate court reversed because Utah was the “home state” of the child, not Kansas, so Utah had exclusive UCCJEA jurisdiction. The appellate court noted that the Utah court could decide Kansas was a more appropriate forum and could decline to exercise jurisdiction, but the Utah trial court had not had a hearing to determine the more appropriate forum and had not made findings under the factors in the statute regarding whether Utah was an inconvenient form. *See* F.S. §61.520 “Inconvenient forum” and the factors in subsection 2.

(B) Does State Omitted have subject matter jurisdiction to make a child custody order under the UCCJEA?

No. Florida is the child’s “home state” so Florida has exclusive jurisdiction under the UCCJEA, and State Omitted cannot be the child’s “home state” because the child is less than 6 months old and the child was not born in State Omitted and the child had not lived in State Omitted for 6 months before the mother filed her petition in State Omitted. F.S. §61.514(1)(a) & §61.503(7).

(C) Is State Omitted “exercising jurisdiction substantially in conformity with” the UCCJEA?

No, State Omitted does not have subject matter jurisdiction under the UCCJEA because State Omitted is not the child’s “home state” and no other provision of §61.514 gives jurisdiction to State Omitted. See *Ocegueda v. Perreira, supra*. Therefore, §61.526 does not apply because there is no child custody determination of another state substantially in conformity with the UCCJEA.

(D) Does State Omitted have “temporary emergency jurisdiction” under §61.517(1)?

No, because there was no evidence at the hearing of any “mistreatment or abuse” of the child or the mother or the father in State Omitted or Florida. In any event, even if there is evidence of an “emergency,” this court has jurisdiction under §61.514(1)(a), which supersedes the “temporary” jurisdiction under §61.517(1), so any such issues may be addressed in this proceeding. See §61.517(2).

(E) Is the wife’s State Omitted proceeding a “simultaneous proceeding” under §61.519?

No, because State Omitted does not have “jurisdiction substantially in conformity with” the UCCJEA. Therefore, this court does not stay this proceeding. See §61.519(2).

(F) Under §61.520 is Florida an inconvenient forum and State Omitted a more appropriate forum?

This issue was not raised by any of the motions heard on *Date omitted* /2015 and no evidence was presented under the factors in §61.520(2), so the court does not reach this issue.

4. Ruling on the matters presented

(1) Wife’s “Motion to Dismiss for Lack of Jurisdiction,” filed *Date omitted* /2015 - **Denied.**

(2) Wife’s “Expedited Petition Seeking Enforcement, Etc.,” filed *Date omitted* /2015 - **Denied.**

(3) Husband’s “Verified Emergency Motion, Etc.,” filed *Date omitted* /2015 - **Granted and continued.**

The argument in this motion addresses subject matter jurisdiction under §61.021, which requires 6 months residency in Florida by one of the parties before a Florida court has jurisdiction to dissolve a marriage. It also raises “home state” jurisdiction under the UCCJEA. The two concepts are mutually exclusive and the two jurisdictions distinct.

The court has ruled on the issue of UCCJEA jurisdiction in this order. The court will not address subject matter jurisdiction to dissolve the marriage under §61.021 in this order because it was

not raised at the hearing on *Date omitted* /2015. Any issue of subject matter jurisdiction to dissolve the marriage is **continued** for further proceedings.

This motion asks the court to determine that it has UCCJEA jurisdiction, which request is **granted**, and this motion asks the court to order a temporary parenting plan, parental responsibility order and time-sharing schedule. Regarding the latter request, the court **continues** this motion for further hearings. The evidence and argument at the hearing on *Date omitted* /2015 were concerned with UCCJEA jurisdiction and not considerations of the best interests of the child, which is the standard for determining these questions.

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

R. Thomas Corbin, Circuit Judge

Copies provided to:
_____, Esq., and _____, Esq.