

1986

# James Thomas Trent v. June Sharon Trent : Brief of Appellant

Utah Supreme Court

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Ralph C. Amott; Attorney for Plaintiff-Respondent.

Brent D. Young; Ivie and Young; Attorneys for Appellant.

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1986

20916

IN THE SUPREME COURT OF THE STATE OF UTAH

JAMES THOMAS TRENT,

)

Plaintiff-  
Respondent,

)

)

Case No. <sup>20916</sup>~~21906~~

vs.

)

JUNE SHARON TRENT,

)

)

Defendant-  
Appellant.

)

---

BRIEF OF APPELLANT

---

APPEAL FROM THE JUDGMENT OF THE FOURTH JUDICIAL  
DISTRICT COURT IN AND FOR UTAH COUNTY, STATE  
OF UTAH, HONORABLE J. ROBERT BULLOCK, PRESIDING

---

BRENT D. YOUNG  
IVIE and YOUNG  
Attorneys for Appellant  
48 North University Avenue  
P.O. Box 672  
Provo, Utah 84603

RALPH C. AMOTT  
Attorneys for Plaintiff  
60 East 100 South  
Provo, Utah 84601  
Attorney for Plaintiff-  
Respondent

FILED

JAN 31 1986

IN THE SUPREME COURT OF THE STATE OF UTAH

JAMES THOMAS TRENT,	)	
	)	
Plaintiff-	)	
Respondent,	)	Case No. 21906
vs.	)	
JUNE SHARON TRENT,	)	
	)	
Defendant-	)	
Appellant.	)	

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BRENT D. YOUNG  
IVIE and YOUNG  
Attorneys for Appellant  
48 North University Avenue  
P.O. Box 672  
Provo, Utah 84603

RALPH C. AMOTT  
Attorneys for Plaintiff  
60 East 100 South  
Provo, Utah 84601  
Attorney for Plaintiff-  
Respondent

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BRENT D. YOUNG  
IVIE & YOUNG  
Attorneys for Defendant-Appellant  
48 North University Avenue  
P.O. Box 672  
Provo, UT 84603  
Telephone: 375-3000

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Plaintiff-	)	
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vs.	)	
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	)	
Defendant-	)	
Appellant.	)	

---

BRIEF OF APPELLANT

---

NATURE OF THE CASE

In a post-decree proceeding the plaintiff brought an order to show cause on 10 May, 1985, seeking a modification of the Decree of Divorce entered on January 15, 1980. Defendant, on July 8, 1985, filed a motion to dismiss pursuant to Title 78-45c-7 of the Utah Code Annotated, 1953 as amended, for an order dismissing the plaintiff's order to show cause on the grounds of an inconvenient forum.

DISPOSITION IN THE LOWER COURT

The court denied defendant's motion. This appeal is taken from the denial.

### RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the order denying defendant's motion to dismiss.

### STATEMENT OF FACTS

1. On the 15th day of January, 1980, the plaintiff obtained a Decree of Divorce from the defendant in Utah County, State of Utah.

2. Paragraph 2 of the Decree of Divorce provided that the defendant was a fit and proper person to have the care, custody and control of the children subject to the visitation rights of the plaintiff.

3. The children have never been in the State of Utah. Their home is in Boise, Idaho. The children and the defendant have resided at 2356 Warm Springs Avenue, Boise, Idaho, since December 1, 1978.

4. On the 10th day of May, 1985, the plaintiff obtained an order to show cause from the Fourth District Court of the State of Utah seeking to have the defendant held in contempt and seeking further adjudication with respect to visitation.

5. On the 2nd day of July, 1985, the 1980 Utah County decree of divorce was filed in the Fourth Judicial District of the State of Idaho, Ada County.

### SUMMARY OF ARGUMENT

The appellant and her children, since July, 1979, have

lived in Ada County, Idaho. Because they have had no contacts with the state of Utah, appellant believes the court erred in not granting her motion to dismiss respondent's motion to modify the Utah decree.

#### APPLICABLE STATUTES

Title 78-45c-7 of the Utah Code Annotated, 1953, as amended, also called the Uniform Child Custody Jurisdiction Act, hereinafter referred to "Uniform Act" in material part, provides:

(1) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child;

(3) In determining if it is an inconvenient forum the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) If another state is or recently was the child's home state;

(b) If another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) If the parties have agreed on another forum which



is no less appropriate; and

(e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section 78-45c-1. ...

Section (c) 78-45c-1 Utah Code Annotated, 1953 as amended, provides in material part:

(c) Assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state; ...

Title 75-45c-2(5) Utah Code Annotated, 1953 as amended, defines "home state" as:

"Home state " means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as a parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period;

#### ARGUMENT

#### POINT I

THE UTAH DISTRICT COURT SHOULD HAVE DECLINED TO EXERCISE ITS JURISDICTION IN THE ABOVE ENTITLED CASE.

The question presented to the lower court was whether, under the circumstances as set forth in the facts above, the Utah court ought to decline to exercise its jurisdiction.

There do not appear to be Utah cases which have inter-

preted Title 78-45c-7 Utah Code Annotated, 1953 as amended. However, the court, in Coppedge v. Harding, 22 Utah Adv. Rep. 21, did deal with 78-45c-6 of the Utah Code Annotated. There are many cases which have dealt with the subject. Some of those are treated in 96 ALR 3d 969. An analysis of all of the cases contained in that annotation will not be undertaken here for the reason the facts covered in this case would be inapplicable to most of those cases.

An analysis of the facts of this case as they apply to the Uniform Act may however, be helpful. Clearly, the Utah court has jurisdiction. The decree was entered here. See Title 30-3-5, Utah Code Annotated, 1953 as amended. However, to determine if the Utah forum is in inconvenient forum for modification proceedings as it relates to custody, several factors may be considered. For example, a threshold question is generally asked with regard to which state is the child's home state. Other inquiries are made with regard to which state has closer connection with the child, in which state evidence can be found concerning the child's care, protection, training and personal relationships. An important question is whether the exercise of jurisdiction in the particular forum would contravene any of the purposes stated in Title 78-45c-1(c) Utah Code Annotated, 1953 as amended, which provides:

Assure that litigation concerning the custody

of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

To answer these questions one need only to look at the defendant's affidavit. The State of Idaho is the home state, (§ 4 and § 7, defendant's affidavit). The children have never lived in the State of Utah and have lived in the State of Idaho for the past six years. The State of Idaho is the only state which has contacts with these children. The evidence regarding the personal care, training and relationships does not exist in Utah. The only relationship the children have with Utah is their father lives here.

The exercise of jurisdiction in the State of Utah would contravene the purposes of Title 78-45c-1(c) Utah Code Annotated, 1953 as amended. It should be obvious in this case the litigation of visitation has taken place in a state where the children have never been, a state they have no connection with, and where literally no evidence exists regarding relationships and where there is no evidence regarding their training. Clearly, the exercise of jurisdiction contravenes the very significant purpose outlined in 78-45c-1(c) Utah Code Annotated, 1953 as amended.

A helpful case to examine is Szmyd v. Szmyd, 641 P. 2d 14

(1982, Alaska). In that case the parties were divorced in Alaska on October 12, 1977. The non-custodial parent, father, continued to live in Alaska. The mother, the custodial parent, moved to Washington in the Fall of 1978. On December 5, 1980, the father moved the court to modify the Alaskan decree. The mother responded by moving to deny his petition on the grounds Alaska was an inconvenient forum. The district court concluded it ought to exercise its jurisdiction. The case was remanded to the trial court for a statement of the reasons for its refusal to dismiss. The trial court thereafter submitted its statement and the Alaskan Supreme Court concluded the trial court should have dismissed or stayed the case on inconvenient forum grounds.

In arriving at the result it focused on the child. The court said at page 20:

The underlying theme in these decisions is the focus of the child's situation and connections with a particular forum;...

#### CONCLUSION

Because the only association or connection the children have with the State of Utah is the fact the father lives here, the court should not have denied plaintiff's motion to dismiss.

Dated: January 30, 1986.



BRENT D. YOUNG  
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that on this 30 day of January, 1986  
I mailed four true and correct copies of the foregoing Brief of  
Appellant to Ralph C. Amott, Attorney for Plaintiff, postage  
prepaid, addressed as follows:

RALPH C. AMOTT  
Attorney at Law  
60 East 100 South  
Provo, UT 84601

  
BRENT D. YOUNG

## A P P E N D I X

## **CHAPTER 45c**

### **UNIFORM CHILD CUSTODY JURISDICTION**

<b>Section</b>	
78-45c-1.	Purposes - Construction.
78-45c-2.	Definitions
78-45c-3.	Bases of jurisdiction in this state.
78-45c-4.	Persons to be notified and heard.
78-45c-5.	Service of notice outside state — Proof of service — Submission to jurisdiction
78-45c-6.	Proceedings pending elsewhere — Jurisdiction not exercised — Inquiry to other state — Information exchange — Stay of proceeding on notice of another proceeding
78-45c-7.	Declining jurisdiction on finding of inconvenient forum — Factors in determination — Communication with other court — Awarding costs.
78-45c-8.	Misconduct of petitioner as basis for refusing jurisdiction — Notice to another jurisdiction — Ordering petitioner to appear in other court or to return child — Awarding costs.
78-45c-9.	Information as to custody of child and litigation concerning required in pleading — Verification — Continuing duty to inform court.
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78-45c-11.	Ordering party to appear — Enforcement — Out-of-state party — Travel expenses

- 5c-12. Parties bound by custody decree — Conclusive unless modified.
- 5c-13. Recognition and enforcement of foreign decrees.
- 5c-14. Modification of foreign decree — Prerequisites — Factors considered.
- 5c-15. Filing foreign decree — Effect — Enforcement — Award of expenses.
- 5c-16. Registry maintained by clerk of court — Documents entered.
- 5c-17. Certified copies of decrees furnished by clerk of court.
- 5c-18. Taking testimony of persons in other states.
- 5c-19. Request to court of another state to take evidence, to make studies or to order appearance of party — Payment of costs.
- 5c-20. Taking evidence for use in court of another state — Ordering appearance in another state — Enforcement — Costs.
- 5c-21. Preservation of records of proceedings — Furnishing copies to other state courts.
- 5c-22. Requesting court records from another state.
- 5c-23. Foreign countries — Application of general policies.
- 5c-24. Priority on court calendar.
- 5c-25. Notices — Orders to appear — Manner of service.
- 5c-26. Short title.

**8-45c-1. Purposes — Construction.** (1) The general purposes of this act are

- a) Avoid jurisdiction competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
  - b) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;
  - c) Assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;
  - d) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;
  - e) Deter abductions and other unilateral removals of children undertaken to obtain custody awards;
  - f) Avoid relitigation of custody decisions of other states in this state insofar as possible;
  - g) Facilitate the enforcement of custody decrees of other states;
  - h) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and
  - i) To make uniform the law of those states which enact it.
- (2) This title shall be construed to promote the general purposes stated in this section.

**History:** L. 1980, ch. 41, § 1.

**Scope of Act.**

This act relating to child custody; providing for the enactment of the Uniform Child Custody Jurisdiction Act; providing procedures for the determination of child custody issues

when the parties live in different jurisdictions; providing for recognition of child custody determinations made by other jurisdictions; providing for enforcement of child custody determinations and minimizing the necessity for repetitious litigation. — Laws 1980, ch. 41.

**8-45c-2. Definitions.** As used in this act:

- (1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage, or legal separation, and includes child neglect and dependency proceedings;

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(5) "Home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period;

(6) "Initial decree" means the first custody decree concerning a particular child;

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "Physical custody" means actual possession and control of a child;

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by the court or claims a right to custody; and

(10) "State" means any state, territory or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

**History:** L. 1980, ch. 41, § 2.

**78-45c-3. Bases of jurisdiction in this state.** (1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if the conditions as set forth in any of the following paragraphs are met:

(a) This state (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons and a parent or person acting as parent continues to live in this state;

(b) It is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(c) The child is physically present in this state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(d) (i) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(2) Except under paragraphs (c) and (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.



) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

**History:** L. 1980, ch. 41, § 3.

**-45c-4. Persons to be notified and heard.** Before making a decree under this act reasonable notice and opportunity to be heard shall be given to the contestants, parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to section 5c-5.

**History:** L. 1980, ch. 41, § 4.

**-45c-5. Service of notice outside state — Proof of service — Submission of jurisdiction.** (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be made in any of the following ways:

- ) By personal delivery outside this state in the manner prescribed for service of process within this state;
  - ) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;
  - ) By any form of mail addressed to the person to be served and requesting a receipt, or
  - ) As directed by the court (including publication, if other means of notification are ineffective).
- (2) Notice under this section shall be served, mailed, delivered, or last published at least 10 days before any hearing in this state.
- (3) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the law pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.
- (4) Notice is not required if a person submits to the jurisdiction of the court.

**History:** L. 1980, ch. 41, § 5.

**-45c-6. Proceedings pending elsewhere — Jurisdiction not exercised — Priority to other state — Information exchange — Stay of proceeding on basis of another proceeding.** (1) A court of this state shall not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act, unless the proceeding is stayed by a court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding the court shall examine pleadings and other information supplied by the parties under section 78-45c-10 and shall consult the child custody registry established under section 78-45c-16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the

court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 78-45c-19 through 78-45c-22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

**History:** L. 1980, ch. 41, § 6.

**78-45c-7. Declining jurisdiction on finding of inconvenient forum — Factors in determination — Communication with other court — Awarding costs.** (1) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

- (a) If another state is or recently was the child's home state;
- (b) If another state has a closer connection with the child and his family or with the child and one or more of the contestants;
- (c) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
- (d) If the parties have agreed on another forum which is no less appropriate, and
- (e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section 78-45c-1.

(4) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or if the

which would have jurisdiction in the other state is not certainly known, shall mit the information to the court administrator or other appropriate official rwarding to the appropriate court.

Any communication received from another state informing this state of a ng of inconvenient forum because a court of this state is the more appropriate n shall be filed in the custody registry of the appropriate court. Upon assum- risdiction the court of this state shall inform the original court of this fact.

History: L. 1980, ch. 41, § 7.

**45c-8. Misconduct of petitioner as basis for refusing jurisdiction — ce to another jurisdiction — Ordering petitioner to appear in other court — return child — Awarding costs.** (1) If the petitioner for an initial decree wrongfully taken the child from another state or has engaged in similar hensible conduct the court may decline to exercise jurisdiction for purposes judication of custody if this is just and proper under the circumstances.

Unless required in the interest of the child, the court shall not exercise its diction to modify a custody decree of another state if the petitioner, without nt of the person entitled to custody has improperly removed the child from physical custody of the person entitled to custody or has improperly retained hild after a visit or other temporary relinquishment of physical custody. If etitioner has violated any other provision of a custody decree of another state ourt may decline to exercise its jurisdiction if this is just and proper under ircumstances.

Where the court declines to exercise jurisdiction upon petition for an initial dy decree pursuant to subsection (1), the court shall notify the parent or other ppriate person and the prosecuting attorney of the appropriate jurisdiction in other state. If a request to that effect is received from the other state, the shall order the petitioner to appear with the child in a custody proceeding uted in the other state in accordance with section 78-45c-20. If no such request ade within a reasonable time after such notification, the court may entertain ition to determine custody by the petitioner if it has jurisdiction pursuant ction 78-45c-2.

Where the court refuses to assume jurisdiction to modify the custody decree oother state pursuant to subsection (2) or pursuant to section 78-45c-14, the shall notify the person who has legal custody under the decree of the other and the prosecuting attorney of the appropriate jurisdiction in the other state may order the petitioner to return the child to the person who has legal cus- If it appears that the order will be ineffective and the legal custodian is ready ceive the child within a period of a few days, the court may place the child foster care home for such period, pending return of the child to the legal custo-

At the same time, the court shall advise the petitioner that any petition for fication of custody must be directed to the appropriate court of the other state h has continuing jurisdiction, or, in the event that that court declines jurisdic- to a court in a state which has jurisdiction pursuant to section 78-45c-3.

In appropriate cases a court dismissing a petition under this section may ge the petitioner with necessary travel and other expenses, including attorney's and the cost of returning the child to another state.

History: L. 1980, ch. 41, § 8.

**Conduct of petitioner.**

At that children were present in county idence of father who brought action to y the child custody provisions of a for- l divorce decree did not make the father's

county of residence the proper venue for the action since the children's presence was the result of the father's wrongful refusal to return the children to their mother, who had custody under the decree, after a visitation period. Angell v. Sixth Judicial Dist. Court (1982) 656 P 2d 405.

**78-45c-9. Information as to custody of child and litigation concernin required in pleadings — Verification — Continuing duty to inform court.** (1) Every party in a custody proceeding in his first pleading or in an affidavit attache to that pleading shall give information under oath as to the child's present addres: the places where the child has lived within the last five years, and the names an present addresses of the persons with whom the child has lived during that perio In this pleading or affidavit every party shall further declare under oath as to eac of the following whether:

(a) He has participated, as a party, witness, or in any other capacity, in an other litigation concerning the custody of the same child in this or any other state;

(b) He has information of any custody proceeding concerning the child pendin in a court of this or any other state; and

(c) He knows of any person not a party to the proceedings who has physica custody of the child or claims to have custody or visitation rights with respect t the child.

(2) If the declaration as to any of the above items is in the affirmative th declarant shall give additional information under oath as required by the cour The court may examine the parties under oath as to details of the informatio furnished and as to other matters pertinent to the court's jurisdiction and the di position of the case.

(3) Each party has a continuing duty to inform the court of any custody pro ceeding concerning the child in this or any other state of which he obtained infor mation during this proceeding.

History: L. 1980, ch. 41, § 9.

**78-45c-10. Joinder of persons having custody or claiming custody or visita tion rights.** If the court learns from information furnished by the parties pursuar to section 78-45c-9 or from other sources that a person not a party to the custod proceeding has physical custody of the child or claims to have custody or visitatio rights with respect to the child, it shall order that person to be joined as a part and to be duly notified of the pendency of the proceeding and of his joinder a a party. If the person joined as a party is outside this state he shall be serve with process or otherwise notified in accordance with section 78-45c-5.

History: L. 1980, ch. 41, § 10.

**78-45c-11. Ordering party to appear — Enforcement — Out-of-state part — Travel expense.** (1) The court may order any party to the proceeding who i in this state to appear personally before the court. If that party has physical cus tody of the child the court may order that he appear personally with the child. If the party who is ordered to appear with the child cannot be served or fails t obey the order, or it appears the order will be ineffective, the court may issue warrant of arrest against such party to secure his appearance with the child.

(2) If a party to the proceeding whose presence is desired by the court is outsid this state with or without the child the court may order that the notice given unde section 78-45c-5 include a statement directing that party to appear personally wit or without the child and declaring that failure to appear may result in a decisio adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appea under subsection (2) or desires to appear personally before the court with or wit out the child, the court may require another party to pay to the clerk of the cou travel and other necessary expenses of the party so appearing and of the child this is just and proper under the circumstances.

History: L. 1980, ch. 41, § 11.

**78-45c-12. Parties bound by custody decree — Conclusive unless modified.** A custody decree rendered by a court of this state which had jurisdiction under section 78-45c-3, binds all parties who have been served in this state or notified in accordance with section 78-45c-5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified in accordance with law, including the provisions of this act.

**History:** L. 1980, ch. 41, § 12.

**78-45c-13. Recognition and enforcement of foreign decrees.** The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act or which was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

**History:** L. 1980, ch. 41, § 13.

**78-45c-14. Modification of foreign decree — Prerequisites — Factors considered.** (1) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (a) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to exercise some jurisdiction to modify the decree and (b) the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and section 78-45c-8 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section 78-45c-22.

**History:** L. 1980, ch. 41, § 14.

**78-45c-15. Filing foreign decree — Effect — Enforcement — Award of expenses.** (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorney's fees, incurred by the party entitled to the custody or his witnesses.

**History:** L. 1980, ch. 41, § 15.

**78-45c-16. Registry maintained by clerk of court — Documents entered.** The clerk of each district court shall maintain a registry in which he shall enter the following:

- Certified copies of custody decrees of other states received for filing;
- Communications as to the pendency of custody proceedings in other states;
- Communications concerning a finding of inconvenient forum by a court of another state, and

(4) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

**History:** L. 1980, ch. 41, § 16.

**78-45c-17. Certified copies of decrees furnished by clerk of court.** The clerk of a district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

**History:** L. 1980, ch. 41, § 17.

**78-45c-18. Taking testimony of persons in other states.** In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

**History:** L. 1980, ch. 41, § 18.

**78-45c-19. Request to court of another state to take evidence, to make studies or to order appearance of party — Payment of costs.** (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

**History:** L. 1980, ch. 41, § 19.

**78-45c-20. Taking evidence for use in court of another state — Ordering appearance in another state — Enforcement — Costs.** (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed. If the person who has physical custody of the child

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FOURTH JUDICIAL DISTRICT COURT  
OF UTAH COUNTY, STATE OF UTAH

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BRENT D. YOUNG  
IVIE & YOUNG  
Attorneys for Defendant  
48 North University Avenue  
Provo, UT 84601  
Telephone: 375-3000

IN THE DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH

-----

JAMES THOMAS TRENT,	)	
	)	
Plaintiff,	)	AFFIDAVIT
	)	
vs.	)	Civil No. 51,760
	)	
JUNE SHARON TRENT,	)	
	)	
Defendant.	)	

---

STATE OF IDAHO )  
( ss.  
COUNTY OF ADA )

June Sharon Trent, being first duly sworn, deposes and says:

1. I am the defendant in the above entitled case.
2. I was divorced from the plaintiff on the 15th day of January, 1980.
3. On the 16th day of July, 1979, I was served with the complaint which led to the divorce. I was served in Ada County, State of Idaho. I mailed a letter to the court which was received and docketed on November 13, 1979. In that letter I expressed my concern that I did not live in Utah, that my children did not live in Utah, and that I could not afford an attorney to litigate the matter in Utah. I understand that my letter

was treated as an answer. I further understand that the court granted the divorce.

4. My six children, whose names and ages are set forth below, have lived with me at 2356 Warm Springs Avenue, Boise, Idaho, for the past six years:

Sharon, age 19

James, age 15

Matt, age 13

Polly, age 12

Boyd, age 8

Sarah, age 6

5. As stated above, I have participated by mailing my letter to the judge of the above-entitled court in the divorce which was obtained in Utah County, State of Utah.

6. The children attend school at the following schools:

Adams Elementary School, Boise, Idaho

East Junior High School, Boise, Idaho.

7. The children have never lived in the State of Utah. The children have no contact with the State of Utah as they have never lived there.

8. Because the Utah decree has been filed in the County of Ada, State of Idaho, and because all information with respect to the care, custody, control and well-being of the children is only available in Idaho, and because the children have never been in Utah, it is my feeling that the question of visitation and custody should be reviewed in the State of Idaho where the children live.

9. The only judicial proceedings which I know relate to

the children are the case in Utah County and the action filed in Ada County. I know of no action in any other state. There is no other person who has had physical custody of the children or who claims custody of the children.

Dated: June 25, 1985.

*June Trent*  
June Trent

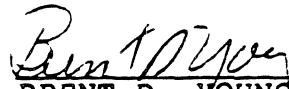
SUBSCRIBED AND SWORN TO before me this 25th day of June, 1985.

*Betty J. Hill*  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission expires:  
10/25/87

MAILING CERTIFICATE

I hereby certify that on the 2 day of July, 1985 I caused to be mailed a true and correct copy of the foregoing Affidavit and certified copies of Notice of Filing a Foreign Judgment and Affidavit Supporting Filing a Foreign Judgment to Ralph Amott, Attorney for Plaintiff by placing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Ralph Amott  
Attorney at Law  
60 E. 100 South  
Provo, UT 84601

  
BRENT D. YOUNG