

1988

Wendy Marie Christensen Rawlings v. Mark Douglas Weiner : Petition for Writ of Certiorari

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Stephen W. Jewell; attorney for petitioner.

Mark Weiner; Pro Se.

Recommended Citation

Petition for Certiorari, *Rawlings v. Weiner*, No. 880228.00 (Utah Supreme Court, 1988).

https://digitalcommons.law.byu.edu/byu_sc1/2174

This Petition for Certiorari is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

ORIGINAL

880228

THE UTAH SUPREME COURT

WENDY MARIE CHRISTENSEN
RAWLINGS,

Plaintiff/Respondent
and Cross-Appellant

vs.

MARK DOUGLAS WEINER,

Defendant/Appellant and
Cross-Respondent

PETITION FOR
WRIT OF CERTIORARI

Appeals Court Case No.
86-0274-CA

Supreme Court Case No.

Stephen W. Jewell 3814
Attorney for Wendy Rawlings
15 South Main, Third Floor
Logan, Utah 84321
Telephone: (801) 753-2000

Mark Weiner, Pro Se
665 South 700 West
Brigham City, Utah 84302

FILED

JUN 15 1988

880228

Clerk, Supreme Court, Utah

IN THE UTAH SUPREME COURT

ENDY MARIE CHRISTENSEN
AWLINGS,

Plaintiff/Respondent
and Cross-Appellant

s.

MARK DOUGLAS WEINER,

Defendant/Appellant and
Cross-Respondent

*
*
*
*
*
*
*

PETITION FOR
WRIT OF CERTIORARI

Appeals Court Case No.
86-0274-CA

Supreme Court Case No.

Stephen W. Jewell 3814
Attorney for Wendy Rawlings
15 South Main, Third Floor
Logan, Utah 84321
Telephone: (801) 753-2000

Mark Weiner, Pro Se
665 South 700 West
Brigham City, Utah 84302

TABLE OF CONTENTS

QUESTIONS FOR REVIEW	1
REFERENCE TO COURT OF APPEALS OPINION	2
JURISDICTIONAL STATEMENT	2
STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	2

ARGUMENT I

PLAINTIFF BELIEVES THE PANEL OF THE COURT OF APPEALS DECIDED THIS CASE CONTRARY TO THE UTAH UCCJA AND CONTRARY TO THE COURT'S OPINION IN TRENT v. TRENT.	4
A. The TRENT case dealt solely with a determination of visitation rights and not custody.	4
B. The instant action deals primarily with custody...	6
C. This case is further distinguished from TRENT in that there are specific contested issues and Plaintiff herein has made a clear showing of prejudice.	6
D. The decision of the Court of Appeals is contrary to Utah law as stated in the Utah UCCJA.	7
E. The decision of the Court of Appeals is also contrary to the guidelines established by this Court in custody modification actions as stated in KRAMER v. KRAMER.	8

ARGUMENT II.

THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF STATE LAW, WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.	9
CONCLUSION	13

TABLE OF AUTHORITIES

CASES CITED

KRAMER v. KRAMER, 738 P.2d 624 (Utah 1987)	1, 8
SZMYD v. SZMYD, 641 P.2d 14 (Alaska 1982)	10
TRENT v. TRENT, 735 P.2d 382 (Utah 1987)	1, 4, 5

STATUTES AND RULES

78-45C-1 et seq, Utah Code Annotated (Utah UCCJA)	1, 2, 7
Rule 43(2),(4) Rules of the Utah Supreme Court	2

IN THE UTAH SUPREME COURT

WENDY MARIE CHRISTENSEN
RAWLINGS,

Plaintiff/Respondent
and Cross-Appellant

vs.

MARK DOUGLAS WEINER,

Defendant/Appellant and
Cross-Respondent

*

*

*

*

*

*

PETITION FOR
WRIT OF CERTIORARI

Appeals Court Case No.
86-0274-CA

Supreme Court Case No.

QUESTIONS FOR REVIEW

Plaintiff/Respondent and Cross-Appellant, Wendy Marie Rawlings, by and through counsel, hereby petitions this Court for a Writ of Certiorari to review the decision of the Utah Court of Appeals, the Honorable Judges Davidson, Garff, and Bench, entered on or about April 15, 1988. Plaintiff requests this Court to review the following issues:

1. Did the Utah Court of Appeals properly apply the provisions of the Utah Uniform Child Custody Jurisdiction Act ("UCCJA"), Section 78-45c-1, et seq., and the Utah Supreme Court's decision in *TRENT v. TRENT*, 735 P.2d 382 (Utah 1987) in determining if jurisdiction to hear Defendant's custody modification request in this action properly lies in Utah, or if the modification request should have been transferred to the State of Washington as requested by Plaintiff, especially in light of this Court's guidelines stated in *KRAMER v. KRAMER*, 738 P.2d 624 (Utah 1987), regarding custody modification requests?

2. Does this case present an important question of State law, i.e., how district courts should determine jurisdiction under the UCCJA, which has not, but should be, settled by this Court?

REFERENCE TO COURT OF APPEALS OPINION

The opinion of the Court of Appeals was published April 5, 1988, in 80 Utah Advanced Reports 25. A copy thereof is included in the Appendix.

JURISDICTIONAL STATEMENT

Wendy Rawlings requests this review pursuant to Rule 43(2) and (4), Rules of the Utah Supreme Court, on the grounds that the Court of Appeals' decision is in conflict with a prior decision of the Utah Supreme Court and the issues on appeal deal with an important question of State law, which has not been, but should be, settled by this Court.

STATUTORY PROVISIONS

Utah UCCJA, 78-45c-1, et seq., with special attention to Subsection 1(c), Section 3 and Subsections 7(3)(a)-(e). (The Utah UCCJA is reproduced in the Appendix.)

STATEMENT OF THE CASE

The parties in the above-entitled action were married on August 16, 1974 and divorced on May 18, 1982 in the First District Court of Box Elder County, Utah, by the Honorable Omer J. Call. Plaintiff was awarded custody of the five children of the parties. Plaintiff was re-married to Mark Rawlings in September, 1982.

Several Order to Show Cause hearings were held before Judge Call from the time of the divorce in 1982 to 1984, when Mrs. Rawlings and the children moved with her husband to the Seattle, Washington, area in or about June 1, 1984. Judge Call modified the visitation portion of the decree at a hearing held in October, 1984.

Shelter care proceedings were held on or about April, 1985, in the State of Washington pursuant to the emergency jurisdiction provisions of the Washington UCCJA, which is similar to the Utah UCCJA.

In or about October, 1985, more than one year after Plaintiff and the children moved to Washington, Defendant, Mark Weiner, filed an Order to Show Cause in Utah petitioning for a modification of the divorce decree requesting the court to grant Weiner custody of the children. Plaintiff was served with the Order to Show Cause on or about December 5, 1985, almost one and one-half years after Plaintiff moved to Washington.

Plaintiff thereafter filed in both Washington and Utah Motions to Transfer Jurisdiction of the case to Washington pursuant to the UCCJA to determine Defendant's custody modification request.

After communications between Judge Call and Washington Family Law Commissioner Stephen Gaddis, which were initiated by the Washington Court, Judge Call denied the request in Utah transfer jurisdiction, ostensibly because Washington had refused jurisdiction. However, it has been indicated by the Washington court on numerous occasions, including the Order by Commissioner Gaddis denying Plaintiff's request for Washington to assume jurisdiction, that Washington was at all times ready to accept jurisdiction of the case. (See copies of Washington orders attached in Appendix.) The only reason Washington declined jurisdiction was because Judge Call refused to relinquish jurisdiction. It appears that Judge Call mistakenly

indicated that Washington had declined jurisdiction of its own accord.

A hearing was then held on Defendant's custody modification request on May 20, 21, and 22, whereafter Judge Call amended the Decree granting Defendant joint legal custody, but leaving physical custody with Plaintiff as stated in the Decree. Weiner initially appealed Judge Call's decision to the Court of Appeals at which time Rawlings cross-appealed solely on jurisdictional grounds. Weiner's appeal was later dismissed for failure to proceed.

The Court of Appeals issued its decision on the jurisdictional issue affirming the trial court. The Court of Appeals apparently based its decision on the incorrect statement of Judge Call that Washington had declined jurisdiction and on the case of TRENT v. TRENT, 735 P.2d 382 (Utah, 1987), wherein the Utah Supreme Court affirmed the Utah County District Court's refusal to transfer jurisdiction to Idaho, where the wife had lived for approximately five years, of a modification request to determine visitation rights.

ARGUMENTS

I.

PLAINTIFF BELIEVES THE PANEL OF THE COURT OF APPEALS
DECIDED THIS CASE CONTRARY TO THE UTAH UCCJA AND
CONTRARY TO THE COURT'S OPINION IN TRENT v. TRENT.

A. The TRENT case dealt solely with a determination of visitation rights and not custody.

The divorce decree in the TRENT case was entered in Utah County on or about January 15, 1980. Defendant, Mrs. Trent, who was living in Idaho at the time, was awarded custody of the parties six minor children subject to reasonable rights of visitation by plaintiff. In May of 1985, plaintiff filed an order to show cause requesting the court to enforce the visitation and to modify the decree to more specifically define visitation. Defendant then requested the court to dismiss the order to show cause stating that she had lived in Ada County, Idaho, from July 16, 1979, prior to the divorce, and was served with the divorce papers while living in Idaho. She further stated that she had lived in Idaho from the time of the decree and that the children had never lived in Utah. The trial court refused to dismiss the order to show cause, concluding that since the issue was limited to visitation in contrast to custody, the Utah forum was not inconvenient. Thereafter, the parties entered a stipulation regarding visitation.

This Court stated in TRENT:

First, notwithstanding the fact that the [Utah Uniform Child Custody Jurisdiction] Act broadly defines "custody determination" as including visitation rights, the issue here is not one of custody in any sense of the word. Furthermore, no substantial issue is presented concerning the visitation to be afforded to Plaintiff. In fact, Defendant's affidavit does not frame any contested issues regarding either Plaintiff's right to visit at specified times and places or any adverse effect such visits might have upon the best interests of the children. Under these circumstances, to compel Plaintiff to seek enforcement of visitation rights in Idaho does not comport to the obvious purpose and intent of forum non conveniens espoused in the Act.

Second, Defendant made no showing of prejudice or that the interests of the children would best be served by relinquishing jurisdiction to Idaho. Defendant also made no showing that needed evidence was more readily available in Idaho. On the contrary, the court having denied the motion to dismiss, the parties promptly stipulated the basis for the court's modification of the decree to permit specific visitation periods. 735 P.2d at 383. (Emphasis added)

B. The instant action deals primarily with custody.

In direct contrast with TRENT, the case at bar dealt primarily with custody and Defendant's request filed in Utah to modify the Decree to grant him custody of the parties' five minor children. This Court allowed the decision in the TRENT case to stand only because that case dealt with minor visitation rights and did not deal with custody. Had TRENT dealt with custody, the opinion clearly suggests that it may very well have been decided differently and in favor of Mrs. Trent, which would also be the decision requested by Mrs. Rawlings in the instant case. Therefore, the decision of the Court of Appeals is in direct conflict with the decision of this Court in TRENT.

C. This case is further distinguished from TRENT in that there are specific contested issues and Plaintiff herein has made a clear showing of prejudice.

The instant case also clearly shows that the interests of the children would be better served by relinquishing jurisdiction to Washington and that it is severely prejudicial to both Plaintiff and the children to refuse to do so. The

children had been in Washington for approximately two years at the time the hearing was held in Utah in May, 1986. The only connection Utah has with the children is their father, (the Defendant) and maternal grandparents. All other connections are found in Washington, e.g. friends, neighbors, school teachers, principals, church leaders, doctors, therapists, psychologists, etc. In fact, Mr. Weiner elected, at considerable expense, to bring the Washington court-appointed psychologist from Seattle to Utah in order to testify at the hearing. Plaintiff was simply unable to call many witnesses that would otherwise have been available if the matter had been heard in Washington.

D. The decision of the Court of Appeals is contrary to Utah law as stated in the Utah UCCJA.

The exercise of jurisdiction by the Utah Court also seriously contravenes the purposes stated in the Utah UCCJA. One purpose of the UCCJA is to " . . . assure that litigation concerning the custody of the child take place ordinarily in the state with which the child and his family have the closest connections and where the significant evidence concerning his care, protection, training, and personal relationships is most readily available and that the courts of this state [should] decline the exercise of jurisdiction when the child and his family have a closer connection with another state. UCA Section 78-45C-1(c).

The Weiner children and the Plaintiff certainly have a much closer connection now with Washington than with Utah. It is therefore incumbent upon the Utah courts, in order to conform to the UCCJA, to transfer jurisdiction of the case to Washington where almost all of the evidence exists. Judge Call may have been familiar with the parties, but was not able to hear all of the evidence because the evidence could not be brought from Washington.

It must also be stressed that this is not the typical situation envisioned by the drafters of the UCCJA where one party seeks to deprive the other party of certain rights by moving to another state and requiring the responding party, who is still living in the decree state, to defend long distance. Defendant initiated this action. He should be held to the standards defined in the UCCJA to establish and determine jurisdiction to modify the custody decree, which require that this action be heard in the state with the closest connections, in this case, the State of Washington.

E. The decision of the Court of Appeals is also contrary to the guidelines established by this Court in custody modification actions as stated in KRAMER v. KRAMER.

The necessity of custody modification hearings taking place in the state with the closest connections becomes all the more imperative in light of this Court's recent rulings and directions regarding custody modification hearings as outlined in KRAMER v. KRAMER, 738 P.2d 624 (Utah, 1987), wherein this

Court has stated that the trial court, when dealing with a request for modification of an earlier custody order, must first determine that there has been a substantial change of circumstances to reopen the custody decree and that " . . . ordinarily the trial court must focus exclusively on the parenting ability of the custodial parent and the functioning of the established custodial relationships." 738 P.2d at 626 The trial court can only focus exclusively on the parenting ability of the custodial parent and the functioning of the custodial relationship in a situation similar to the instant action when that hearing is held in the state with the closest connection to the children and the custodial parent, in this case the State of Washington.

The trial court in this case simply could not comply with the guidelines established in *KRAMER* because there was no way to provide sufficient evidence in Utah when almost all of the evidence is in Washington. If Defendant wants to request a custody modification, let him go to the forum where the evidence exists and the case can be properly decided.

II.

THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF STATE LAW, WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

Since *TRENT* did not deal with modification of a custody order pursuant to the UCCJA, the instant case is a case of first impression in Utah. As currently stated by the Court of

appeals, it appears that as long as the non-custodial parent continues to reside in Utah as the decree state, Utah will retain jurisdiction over such matters forever, no matter what the circumstances. This is certainly not the intent of the ICCJA. This is especially problematic in situations such as the instant action where the non-custodial parent can continually harass the custodial parent with legal action in Utah and require the custodial parent to defend the action in Utah or default, which can be extremely expensive and complicated. For the Court's information, Defendant has again filed a Petition to modify the decree requesting custody of the children which was filed subsequent to the decision of the trial court in this case and subsequent to the commencement of the appeal. Of course, Plaintiff feels the Petition is groundless, but must still defend the action from Washington.

A closely similar factual case is SZMYD v. SZMYD, Alaska, 541 P.2d 14 (1982). In that case, the parties were divorced in Alaska in October of 1977 and the wife was granted custody of the couple's one year old child. A year later, in the Fall of 1978, the wife and child moved to Washington State. They resided in Washington for two years and then moved to California in early September, 1980. On December 5, 1980, the husband filed a Motion in Alaska, the decree state, to modify the custody decree. The wife moved to dismiss the action for lack of jurisdiction, or alternatively on the grounds that Alaska was an inconvenient forum, which Motion the Superior Court denied. The wife sought a review of that denial to the Alaska Supreme

Court, which stayed the Superior Court proceedings in order to hear her petition.

In reaching the first issue, whether the Alaska trial court had jurisdiction to hear the modification petition, the Alaska Supreme Court ruled that even though the trial court had the continuing right to modify custody decrees, the trial court MUST ALWAYS DETERMINE WHETHER JURISDICTION EXISTS IN ORDER TO MODIFY A DECREE (641 P.2d 17). The opinion clearly delineates that the trial court must always determine if it meets the jurisdictional prerequisites of Section 3 of the UCCJA. In the instant case, at no time did the trial court ever indicate that it had considered the jurisdictional requirements of the Utah UCCJA.

In determining if the Alaska Superior Court had jurisdiction pursuant to Section 3 of the UCCJA, (which is similar to the Utah UCCJA except for the "significant connection" requirement), the Supreme Court of Alaska held that since the wife had recently moved from the State of Washington and was currently residing in California at the time the petition was filed, and since California was not the "home state", the child having resided in California for less than six months, no other state had jurisdiction at the relevant time. The Alaska Supreme Court seems to have reluctantly held that the trial court had jurisdiction pursuant to Subsection (a)(4) of Section 3 of the UCCJA because no other state appeared to have jurisdiction. It can be easily read into the holding as dictum that if the wife had either continued to reside in Washington

where she had resided for two years, or if she had resided in California for more than six months at the time the petition to modify was filed in Alaska, thus allowing another state to satisfy the jurisdictional requirements as the "home state", the Alaska Supreme Court would have held that the trial court simply did not have jurisdiction.

The Alaska Supreme Court did, however, conclude that Alaska was an inconvenient forum and directed the trial court to dismiss the Petition to Modify. The Alaska Court noted that the purpose of the inconvenient forum provisions were to, "encourage jurisdictional restraint whenever another state appears to be in a better position to determine custody of a child." 641 P.2d at 19. The Supreme Court of Alaska had requested the trial court on temporary remand to state the reasons why the trial court had not granted the motion since it was difficult to determine where there had been an abuse of discretion without clearly stated reasons. After the trial court had stated its reasons, the Alaska Supreme Court ruled that California was the more appropriate forum in light of the child's best interests, even though the child had only resided in California for a few months. The Court further indicated that other jurisdictions, on substantially similar facts, had stayed or dismissed such proceedings in favor of a more appropriate forum, noting that the underlying theme in those decisions was to focus on the CHILD'S situation and connections with the particular forum than the parties.

The opinion of the Alaska Supreme Court is well reasoned, complies with the purpose and provisions of the UCCJA, and further appears to be in harmony with this Court's decisions in TRENT and KRAMER. Furthermore, this court certainly did not intend in the TRENT case that Utah would always retain jurisdiction as long as one of the parties resided in Utah. Therefore, this court should review the instant case in an effort to establish guidelines in future cases and for members of the bar when dealing with modification of a custody order in a Utah divorce decree when the custodial parent no longer resides in Utah.

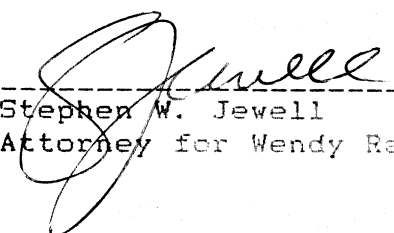
CONCLUSION

It appears quite clearly that the decision of the Court of Appeals in this matter is in conflict of the decision of this Court in TRENT and the guidelines established in KRAMER. It also appears that the decision of the Appeals Court may be in conflict with the purpose and intent of the UCCJA. These are important legal issues which should be determined and clarified by this Court.

Therefore, this Court should grant Plaintiff's Petition for Writ of Certiorari to review the decision of the Court of

Appeals and to settle any unresolved jurisdictional issues regarding the modification of custody orders when the custodial parent no longer resides in the state.

RESPECTFULLY SUBMITTED this 14 day of June, 1988.

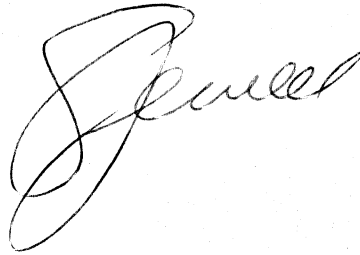


Stephen W. Jewell
Attorney for Wendy Rawlings

CERTIFICATE OF MAILING

I hereby certify that on the 14 day of June, 1988, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF CERTIORARI, by depositing the same in the U. S. Mail, postage prepaid, to:

Mark Weiner, Pro Se
665 South 700 West
Brigham City, Utah 84302



ADDENDUM

TAB 1	Utah Court of Appeals Opinion
TAB 2	Utah UCCJA
TAB 3	Washington Court Opinions

APR 18 1988
IN THE UTAH COURT OF APPEALS

-----oo0oo-----

Wendy Marie Christensen Rawlings,)

Plaintiff, Respondent,
and Cross-Appellant,

v.

Mark Douglas Weiner,

Defendant, Appellant,
and Cross-Respondent.

OPINION
(For Publication)

Case No. 860274-CA

FILED

Before Judges Davidson, Garff and Bench.

Timothy M. Sneha
APR 15 1988

Timothy M. Sneha
Clerk of the Court
Utah Court of Appeals

DAVIDSON, Judge:

Plaintiff Wendy Rawlings (Rawlings) appeals from the district court's modification of her divorce decree, claiming the trial court lacked jurisdiction to modify the decree because of the Uniform Child Custody Jurisdiction Act (UCCJA), in effect in both Utah and Washington. We affirm.

Defendant Mark Weiner (Weiner) and Rawlings were married August 16, 1974, in Manti, Utah. The parties had five children as issue of their marriage. The parties were divorced on May 18, 1982, by the Honorable Omer J. Call of the First District Court of Box Elder County, Utah. The original decree was later amended on September 27, 1982, by Judge Call. Rawlings was awarded custody of the parties' five children while Weiner was awarded carefully enunciated visitation rights with the minor children. In December 1982, Rawlings remarried.

From 1982 to 1984 Weiner initiated several proceedings to enforce the visitation order in the divorce decree, and each time the judge ordered the parties to comply with the order.¹

1. All hearings were before Judge Call. The orders on the order to show cause enumerated here dealt exclusively with compliance of visitation rights. The orders by Judge Call were: November 17, 1982; May 16, 1983; February 16, 1984; May 29, 1984.

In June 1984, Rawlings sent a letter to Weiner informing him that she and the children had moved to "the Des Moines area" and could be reached at a Utah post office box. Rawlings moved to Washington in June of 1984.² During the summer of 1984, Weiner initiated several additional proceedings in an attempt to locate his children.³

In October 1984, another hearing was held and the court found that Rawlings' move constituted a substantial change in circumstances allowing modification of the visitation provisions in the divorce decree.

In April 1985, a shelter care hearing was held in Washington, pursuant to emergency jurisdiction provided for in the Washington UCCJA, to determine allegations of child abuse made by Rawlings against Weiner. Commissioner Gaddis of the Washington court noted that the Washington court orders were temporary and any permanent adjudication or realignment of the parties had to come from Utah, until the Utah court declined jurisdiction.

In October 1985, Weiner filed an order to show cause in Utah. In November 1985, Rawlings petitioned for transfer of jurisdiction from Utah to Washington. Pursuant to Rawlings' transfer request, Commissioner Gaddis contacted the court in Utah and after discussion with Judge Call declined to accept jurisdiction in Washington. Commissioner Gaddis urged the Utah court to retain jurisdiction to enforce or modify custody and visitation orders.

On December 23, 1985, Judge Call filed a statement and order and certified the matters of disqualification and jurisdiction to Judge VeNoy Christoffersen of the First District Court of Utah for determination. Judge Christoffersen denied Rawlings' motion to disqualify Judge Call, denied the Motion to Change Jurisdiction, and set a hearing date in May 1986, for the order to show cause. On October 21, 1986, the findings of fact, conclusions of law, and order on the order to show cause were entered by the court. The court found Rawlings in contempt for continuing to use "Rawlings" as the children's last name after being ordered not to do so, modified the visitation order and ordered that the parties have joint custody of the children, with Rawlings maintaining physical custody.

2. The "Des Moines area" referred to in the letter turned out to be a suburb of Seattle, Washington.

3. Weiner's continued attempt to locate his children resulted in additional orders by Judge Call on July 26, 1984 and August 8, 1984.

Weiner timely appealed the October 21, 1986 order. Rawlings cross-appealed on grounds that the First District Court lacked jurisdiction. Weiner's appeal was dismissed for lack of prosecution by order of this Court on June 9, 1987.

Before addressing the issue of jurisdiction it is important to note that there is no transcript of the May 1986 hearing. Rawlings refers to continuing objections to jurisdiction made at the May hearing. There is no record of these objections as Rawlings requested no transcript. As held in Fackrell v. Fackrell, 740 P.2d 1318 (Utah 1987):

Appellate review of factual matters can be meaningful, orderly, and intelligent only in juxtaposition to a record by which lower courts' rulings and decisions on disputes can be measured. In this case without a transcript no such record was available, and therefore no measurement of the district court's action can be made as urged upon us by defendant.

Id. at 1319-20 (quoting Sawyers v. Sawyers, 558 P.2d 607, 608-09 (Utah 1976)). Without "adequate citations to the record, the judgment of the lower court is presumed to be correct." Fackrell, 740 P.2d at 1319.

Utah Code Ann. § 30-3-5(3) (1987) provides:

The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property as is reasonable and necessary.

This statute establishes continuing jurisdiction in the First District Court of Box Elder County as the court granting the decree of divorce. Rawlings argues that notwithstanding the continuing jurisdiction, under the Utah UCCJA, Utah Code Ann. §§ 78-45c-1 to 26 (1987), this state is an inconvenient forum. Section 78-45c-3(1) states:

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.

Section 78-45c-3(3) states:

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

Section 78-45c-7(3) states:

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 § 78-45c-1.


The UCCJA does not mandate loss of jurisdiction to the original state in all cases. Only if Utah chooses to relinquish jurisdiction, based on the best interests of the children, will such jurisdiction transfer.⁴ In Trent v. Trent, 735 P.2d 382 (Utah 1987), the Utah Supreme Court affirmed the trial court's authority under the Utah UCCJA in declining to relinquish jurisdiction to Idaho. In Trent the

4. It may be argued that jurisdiction may be obtained through the emergency provision in section 78-45c-3(1)(c) as was done in this case. However, accepting such jurisdiction on an emergency basis does not give permanent jurisdiction. The court is still required to contact the original state court to determine which court is most convenient and best serves the interests of the children and the parties.

children had neither lived in nor had any contacts with the State of Utah, unlike the children in this case. While Trent dealt exclusively with enforcement of visitation, it makes clear that the UCCJA is not mandatory.

The facts show that Washington specifically declined to exercise jurisdiction because of Utah's past and present involvement with the matter. The judge in Utah and commissioner in Washington conferred and determined that Utah was the more appropriate forum and that Utah would continue to have exclusive subject matter jurisdiction over the custody and visitation of the parties' children. This is precisely the position described in section 78-45c-3(1)(d)(i).⁵ We hold that the First District Court appropriately retained jurisdiction under the Utah UCCJA to make any determinations regarding custody, visitation or other matters relevant to the children.

The judgment of the trial court is affirmed.


Richard C. Davidson, Judge

I CONCUR:


Reginald W. Garff, Judge

BENCH, Judge: (Concurring)

For me, the instant case presents a very narrow question: How does a state's continuing jurisdiction in a divorce case mesh with foreign jurisdiction under the Uniform Child Custody Jurisdiction Act (UCCJA), 9 U.L.A. 116 (1979)? I believe the

5. Section 78-45c-3(1)(d)(i) is the same version as used by Judge Call in December 1985.

question is answered by section 14(1) of UCCJA,¹ which was not mentioned by the majority but provides as follows:

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 assume jurisdiction to modify the decree and (b) the court of this state has jurisdiction.

The Commissioner's note to section 14 explains the circumstances under which jurisdiction would shift:

Courts which render a custody decree normally retain continuing jurisdiction to modify the decree under local law. Courts in other states have in the past often assumed jurisdiction to modify the out-of-state decree themselves without regard to the preexisting jurisdiction of the other state. In order to achieve greater stability of custody arrangements and avoid forum shopping, subsection (a) declares that other states will defer to the continuing jurisdiction of the court of another state as long as that state has jurisdiction under the standards of this Act. In other words, all petitions for modification are to be addressed to the prior state if that state has sufficient contact with the case to satisfy section 3. The fact that the court had previously considered the case may be one factor favoring its continued jurisdiction. If, however, all the persons involved have moved away or the contact with the state has otherwise become slight, modification jurisdiction would shift elsewhere.

1. In Utah, Utah Code Ann. § 78-45c-14(1) (1987); in Washington, RCWA 26.27.140 (1986).

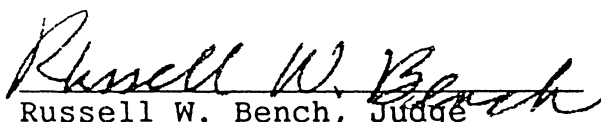
9 U.L.A. at 154 (citation omitted).

The Reporter for the Special Committee preparing the UCCJA was even more specific when she noted the following:

A typical example is the case of the couple who are divorced in state A, their matrimonial home state, and whose children are awarded to the wife, subject to visitation rights of the husband. Wife and children move to state B, with or without permission of the court to remove the children. State A has continuing jurisdiction and the courts in state B may not hear the wife's petition to make her the sole custodian, eliminate visitation rights, or make any other modification of the decree, even though state B has in the meantime become the "home state" under section 3. The jurisdiction of state A continues and is exclusive as long as the husband lives in state A unless he loses contact with the children, for example, by not using his visitation privileges for three years.

Bodenheimer, The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws, 22 Vand. L. Rev. 1207, 1237 (1969) (quoted in State ex rel. Cooper v. Hamilton, 688 S.W.2d 821, 826 (Tenn. 1985)).

Under the facts of this case, Utah's jurisdiction over custody issues was primary and Washington's jurisdiction was secondary. The parties were divorced in Utah. Rawlings subsequently moved to Washington, taking the children with her. Weiner remained in Utah, and continually sought enforcement of his visitation rights under the Utah decree. At Rawlings' request, Washington took emergency jurisdiction under UCCJA. On discovering that Utah had continuing jurisdiction over custody, Washington declined any further jurisdiction under section 14(1). That was precisely what should have happened under UCCJA. Because Utah had primary jurisdiction over custody of the children, I concur in affirming the judgment of the trial court.


Russell W. Bench, Judge

effect, the order will not take effect until a determination is made at the hearing. The administrative law judge shall remind the payee of visitation rights of payor and under proper circumstances the administrative law judge may make court payments conditional upon the child's custodian making the child available for the exercise of visitation rights. Hearings shall be granted and conducted in accordance with section 78-45b-6.

If the department's application for an order to withhold and deliver is granted, a copy of the order will be served upon the obligor's employer or payer of earnings by certified mail, return receipt requested.

If the event there is in the possession of any employer or payer of earnings any earnings subject to the department's order to withhold and deliver, such earnings shall be withheld immediately upon receipt of the order and shall be forwarded to the department or other designee.

(3) Every person, firm, corporation, association, political subdivision, or department of the state shall honor according to its terms, the department's order to withhold and deliver, or a duly executed assignment of earnings whether executed voluntarily or pursuant to an order which is presented by the department as a plan to satisfy or retire a support debt or obligation. This requirement to honor the department's order to withhold and deliver the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be withheld presently or in the future and shall continue in force and effect until released in writing by the department. Any order or assignment made pursuant to this subsection shall have the same priority against the obligor as a claim for taxes. Payment of moneys pursuant to an order or assignment of earnings presented by the department shall serve as full acquittance under any contract of employment, and the state shall defend the employer and hold him harmless for any action taken pursuant to the assignment of earnings. The department shall be released from liability for improper receipt of moneys under an assignment of earnings upon turn of any moneys so received.

(4) No employer may discharge or prejudice any employee by reason of the fact that his earnings have been subjected to support lien, wage assignment or garnishment for any indebtedness under this act. This subsection shall not preclude termination of an obligor who is an employee for other causes.

(5) Should any person discharge an employee in violation of subsection (4), that person shall be liable to the employee for such damages as he may suffer, together with costs, interest, and attorneys' fees, or a maximum of \$1,000, whichever is greater.

(6) The maximum part of the aggregate disposable earnings of an individual in any work pay period which may be subjected to a support lien or garnishment to enforce payment of a judgment arising out of failure to support dependent children may not exceed 50% of his disposable earnings for the work pay period.

(7) Whenever a support lien or garnishment is served upon any person, asserting a support debt against earnings and there is in the possession of such person such earnings, 50% of the disposable earnings shall be disbursed to the debtor whether such earnings are paid, or are to be paid weekly, monthly or at other regular intervals and whether there be due the debtor earnings for one week or for longer period. The support lien or garnishment shall continue to operate and require said person to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until released in writing from the department.

History: C. 1953, 78-45b-13, enacted by L. ch. 96, § 13; L. 1977, ch. 145, § 9; 1982, 32, § 2.

Compiler's Notes.

allow the department to issue orders requiring the withholding and delivery of earnings of a responsible parent. For prior version, see parent volume.

CHAPTER 45c

UNIFORM CHILD CUSTODY JURISDICTION

Section

- 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 pleadings — Verification — Continuing duty to inform court.
- 78-45c-10. Joinder of persons having custody or claiming custody or visitation rights.
- 78-45c-11. Ordering party to appear — Enforcement — Out-of-state party — Travel expense.
- 78-45c-12. Parties bound by custody decree — Conclusive unless modified.
- 78-45c-13. Recognition and enforcement of foreign decrees.
- 78-45c-14. Modification of foreign decree — Prerequisites — Factors considered.
- 78-45c-15. Filing foreign decree — Effect — Enforcement — Award of expenses.
- 78-45c-16. Registry maintained by clerk of court — Documents entered.
- 78-45c-17. Certified copies of decrees furnished by clerk of court.
- 78-45c-18. Taking testimony of persons in other states.
- 78-45c-19. Request to court of another state to take evidence, to make studies or to order appearance of party — Payment of costs.
- 78-45c-20. Taking evidence for use in court of another state — Ordering appearance in another state — Enforcement — Costs.
- 78-45c-21. Preservation of records of proceedings — Furnishing copies to other state courts.
- 78-45c-22. Requesting court records from another state.
- 78-45c-23. Foreign countries — Application of general policies.
- 78-45c-24. Priority on court calendar.
- 78-45c-25. Notices — Orders to appear — Manner of service.
- 78-45c-26. Short title.

78-45c-1. Purposes — Construction. (1) The general purposes of this act are to:

(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;

) 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 same child; and

) To make uniform the law of those states which enact it.

) This title shall be construed to promote the general purposes stated in this ion.

story: L. 1980, ch. 41, § 1.

2 of Act.

act relating to child custody; providing enactment of the Uniform Child Custody sdiction Act; providing procedures for 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.

3-45c-2. Definitions. As used in this act:

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

) "Custody determination" means a court decision and court orders and ructions providing for the custody of a child, including visitation rights; it does include a decision relating to child support or any other monetary obligation ny person;

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

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

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

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

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

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

) "Person acting as parent" means a person, other than a parent, who has sical custody of a child and who has either been awarded custody by the court laims a right to custody; and

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

istory: L. 1980, ch. 41, § 2.

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

) This state (i) is the home state of the child at the time of commencement he proceeding, or (ii) had been the child's home state within six months before

(b) It is in the best interest of the child that a court of this state assume juris- diction because (i) the child and his parents, or the child and at least one contes- tant, 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, protec- tion, training, and personal relationships;

(c) The child is physically present in this state and (i) the child has been aban- doned 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 prerequi- sites 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 suffi- cient to confer jurisdiction on a court of this state to make a child custody determi- nation.

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

History: L. 1980, ch. 41, § 3.

78-45c-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, any 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 78-45c-5.

History: L. 1980, ch. 41, § 4.

78-45c-5. Service of notice outside state — Proof of service — Submission to 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:

(a) By personal delivery outside this state in the manner prescribed for service of process within this state;

(b) 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;

(c) By any form of mail addressed to the person to be served and requesting a receipt; or

(d) As directed by the court (including publication, if other means of notifica- tion 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 order pursuant to which the service is made, or the law of the place in which the

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. Notice is not required if a person submits to the jurisdiction of the court.

History: L. 1980, ch. 41, § 5.

c-6. Proceedings pending elsewhere — Jurisdiction not exercised — Stay of proceeding on information exchange — Stay of proceeding on 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 by the court of the other state because this state is a more appropriate forum or for other reasons.

Before hearing the petition in a custody proceeding the court shall examine affidavits 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 in the other state.

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 resolved 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 issued 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. 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.

(1) 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.

(2) In determining if it is an inconvenient forum, the court shall consider if 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 the child and one or more of the contestants;
- (c) If substantial evidence concerning the child's present or future care, protection, and relationships is more readily available in another state;

(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 court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this state shall inform the original court of this fact.

History: L. 1980, ch. 41, § 7.

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. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction for purposes of adjudication of custody if this is just and proper under the circumstances.

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

(3) Where the court declines to exercise jurisdiction upon petition for an initial custody decree pursuant to subsection (1), the court shall notify the parent or other appropriate person and the prosecuting attorney of the appropriate jurisdiction in the other state. If a request to that effect is received from the other state, the court shall order the petitioner to appear with the child in a custody proceeding instituted in the other state in accordance with section 78-45c-20. If no such request

4) Where the court refuses to assume jurisdiction to modify the custody decree another state pursuant to subsection (2) or pursuant to section 78-45c-14, the court shall notify the person who has legal custody under the decree of the other state and the prosecuting attorney of the appropriate jurisdiction in the other state. The court may order the petitioner to return the child to the person who has legal custody. If it appears that the order will be ineffective and the legal custodian is ready to receive the child within a period of a few days, the court may place the child in a foster care home for such period, pending return of the child to the legal custodian. At the same time, the court shall advise the petitioner that any petition for modification of custody must be directed to the appropriate court of the other state which has continuing jurisdiction, or, in the event that that court declines jurisdiction, to a court in a state which has jurisdiction pursuant to section 78-45c-3.

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

History: L. 1980, ch. 41, § 8.

78-45c-9. Information as to custody of child and litigation concerning child required in pleadings — Verification — Continuing duty to inform court.

Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath as to each of the following whether:

- a) He has participated, as a party, witness, or in any other capacity, in any 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 pending in a court of this or any other state; and
 - c) He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to child.
- 2) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.
- 3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

History: L. 1980, ch. 41, § 9.

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

History: L. 1980, ch. 41, § 10.

in this state to appear personally before the court. If that party has physical custody 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 to obey the order, or it appears the order will be ineffective, the court may issue a 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 outside this state with or without the child the court may order that the notice given under section 78-45c-5 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if 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 pursuant to 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 assume 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

the office of the clerk of any district court of this state. The clerk shall treat a 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.

(2) 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.

8-45c-16. Registry maintained by clerk of court — Documents entered. The clerk of each district court shall maintain a registry in which he shall enter each of the following:

- 1) Certified copies of custody decrees of other states received for filing;
- 2) Communications as to the pendency of custody proceedings in other states;
- 3) 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.

8-45c-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 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.

8-45c-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 appearances 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 take testimony of persons in proceedings pending in the court of this state to appear

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 cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against such person to secure his appearance with the child in the other state.

History: L. 1980, ch. 41, § 20.

78-45c-21. Preservation of records of proceedings — Furnishing copies to other state courts. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearing, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents.

History: L. 1980, ch. 41, § 21.

78-45c-22. Requesting court records from another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 78-45c-21.

History: L. 1980, ch. 41, § 22.

78-45c-23. Foreign countries — Application of general policies. The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

History: L. 1980, ch. 41, § 23.

78-45c-24. Priority on court calendar. Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this act the case shall be given calendar priority and handled expeditiously.

ie court or a party to the action upon order of the court.

(2) Orders of the court for parties or persons to appear before the court in accordance with the terms of this act shall include legal and sufficient service of process in accordance with the Utah Rules of Civil Procedure unless otherwise ordered for good cause shown.

History: L. 1980, ch. 41, § 25.

78-45c-26. Short title. This act may be cited as the “Utah Uniform Child Custody Jurisdiction Act.”

History: L. 1980, ch. 41, § 26.

Effective Date.

Section 27 of Laws 1980, ch. 41 provided:
“his act shall take effect on July 1, 1980.”

PART V JURORS

Chapter

78-46. Jury Selection and Service Act.

CHAPTER 46

JURY SELECTION AND SERVICE ACT

Section

- 46-1. Short title.
- 46-2. Jurors selected from random cross section — Opportunity and obligation to serve.
- 46-3. Discrimination prohibited.
- 46-4. Definitions.
- 46-5. Number of trial jurors.
- 46-6. Alternate trial jurors — Selection — Duties and function.
- 46-7. Persons competent to serve as jurors.
- 46-8. Determination on juror qualification — Persons not competent to serve as jurors.
- 46-9. Jury commissioners — Appointment — Term — Qualifications — Compensation — Vacancy.
- 46-10. Master list maintained by jury commission — Public examination — Lists used in compiling master list available to jury commission.
- 46-11. Master jury wheel — Selection of names to put in jury wheel.
- 46-12. Drawing prospective juror names from master wheel — Juror qualification form — Content — Completion — Penalties for failure to complete or misrepresentation — Joint jury wheel for court authorized.
- 46-13. Drawing juror panels — Notice to jurors — Procedure when shortage of jurors drawn — Public inspection of names drawn and content of qualification forms — Exception.
- 46-14. Qualified prospective jurors not exempt from jury service.
- 46-15. Excuse from jury service.
- 46-16. Jury not selected in conformity with act — Procedure to challenge — Relief available.
- 46-17. Preservation of records and papers.
- 46-18. Compensation and travel expenses of jurors.
- 46-19. Limitations on jury service.
- 46-20. Penalties for failure to appear or complete jury service.

tuting grand jury.

78-46-23. Court administrator's duties and responsibilities.

78-46-1. Short title. This act shall be known and may be cited as the “Jury Selection and Service Act.”

History: C. 1953, 78-46-1, enacted by L. 1979, ch. 130, § 1.

Compiler's Notes.

Laws 1979, ch. 130, § 1 repealed old sections 78-46-1 to 78-46-33 (R.S. 1898, §§ 1291 to 1316, 1318 to 1323; L. 1905, ch. 15, § 1; 1905, ch. 102, § 1; C.L. 1907, §§ 1291 to 1316, 1318 to 1323; C.L. 1917, §§ 3591 to 3616, 3618 to 3623; L. 1925, ch. 18, § 1; 1925, ch. 19, § 1; 1929, ch. 87, § 1; R.S. 1933, 40-0-1 to 40-0-33; L. 1933, ch. 36, § 1; 1933 (2nd S.S.), ch. 11, § 1; C. 1943, 40-0-1 to 40-0-33; L. 1947, ch. 65, §§ 1, 2; 1949, ch. 59, § 1; 1949, ch. 60, § 1; 1967, ch. 209, § 4; 1967, ch. 221, § 1; 1971, ch. 44, § 2; 1971 (1st S.S.), ch. 8, § 1; 1977, ch. 77, §§ 70 to 73; 1977, ch. 140, § 4; 1977, ch. 144, §§ 1, 2), relating to the selection and qualifications of jurors, and enacted new sections 78-46-1 to 78-46-23.

Title of Act.

An act repealing and reenacting chapter 46, title 78, Utah Code Annotated 1953, relating to juries; providing the manner in which jurors are called, establishing jury commissioners and defining their duties; providing juror qualifications, exemptions and procedures for challenging jury selection methods; providing the method for selecting grand juries; establishing sanctions for failure to comply with requirements of the act; providing sanctions and penalties for employers who discharge employees summoned for jury service; and providing a severability clause — Laws 1979, ch. 130.

Law Reviews.

Utah Legislative Survey — 1979, 1980 Utah Rev. 155.

78-46-2. Jurors selected from random cross section — Opportunity and obligation to serve. It is the policy of this state that persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity in accordance with this act to be considered for jury service and have the obligation to serve as jurors when summoned for that purpose.

History: C. 1953, 78-46-2, enacted by L. 1979, ch. 130, § 1.

Compiler's Notes.

For repeal and re-enactment of this section, see Compiler's Notes under 78-16-1.

78-46-3. Discrimination prohibited. A citizen shall not be excluded or exempted from jury service on account of race, color, religion, sex, national origin, or economic status.

History: C. 1953, 78-46-3, enacted by L. 1979, ch. 130, § 1.

Compiler's Notes.

For repeal and re-enactment of this section, see Compiler's Notes under 78-46-1.

78-46-4. Definitions. (1) “Jury” means a body of persons temporarily selected from the citizens of a particular county invested with power to present and decide a person for a public offense, or to try a question of fact.

(2) “Grand jury” means a body of seven persons selected from the citizens of a particular county before a court of competent jurisdiction and sworn to inquire into public offenses committed or triable within the county.

(3) “Trial jury” means a body of persons selected from the citizens of a particular county before a court or offices of competent jurisdiction, and sworn to try and determine by verdict a question of fact.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

WENDY MARIE CHRISTENSEN RAWLINGS,)

Petitioner,)

v.)

MARK DOUGLAS WEINER,)

Respondent.)

NO. 85-3-04844-3

ORDER DECLINING
JURISDICTION

Petitioner's motion for determination of jurisdiction and communication with Box Elder County District Court having duly and regularly come on for hearing, the same being referred to the undersigned commissioner who had presided over contemporaneous Juvenile Court proceedings concerning the custody of the children subject of this proceeding and retained jurisdiction therein; the court having further communicated with the appropriate judge of Box Elder County District Court; now therefore,

IT IS HEREBY ORDERED ADJUDGED AND DECREED that this court finds that the custody and visitation of the children subject to this proceeding has also been subject to the subject matter jurisdiction of the Box Elder County District Court of the State of Utah; that said court acquired jurisdiction over the parties and the subject matter several years ago and has continuously exercised jurisdiction in enforcement and modification proceedings; and that one of the named parties, father of the children,

16868-108

1 continues to reside in the State of Utah; that upon commun
2 tion with said court it has elected and determined to cont
3 exercising sole and exclusive child custody jurisdiction;

4 IT IS FURTHER ORDERED that pursuant to the Uniform Chi
5 Custody Jurisdiction Act (RCW 26.27) it is determined that
6 Elder County District Court of the State of Utah continues
7 have exclusive subject matter jurisdiction over the custody
8 visitation of the parties' children, the parties not having
9 agreed to litigate exclusively in the State of Washington a
10 there being no emergency justifying intervention in the mat
11 by Washington Courts; and

12 IT IS FURTHER ORDERED that all Washington proceedings c
13 concerning the custody of said children are hereby stayed unt
14 further order of the court or until an appropriate motion fo
15 dismissal proceedings is filed and granted; and

16 IT IS FURTHER ORDERED that the courts of Washington and
17 proceeding shall remain open for enforcement provisions of s
18 orders as have been and may be entered by the Box Elder Coun
19 District Court of the State of Utah pursuant to the provisio
20 the UCCJA.

21
22 Dated and signed in open this 13 of January, 1986
23

24 *Stephen Gaddis*

25 _____
26 STEPHEN M. GADDIS, COURT COMMISSIO
27
28

FEB 10 1986

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

JOY RAWLINGS Petitioner,

vs.

ARIK WEINER,
Respondent.

No. 85-3-04814-3

ORDER ON FAMILY LAW MOTION

☒ AGREED ☒ TEMPORARY

DENYING RECONSIDERATION

above-entitled court, having heard a motion for reconsideration

HEREBY ORDERED motion for reconsideration
is denied. Jurisdiction may be
re-examined upon request or relinquish-
ment of jurisdiction by the courts of
Washington.

: 1/22, 1986.

[Signature]
COURT COMMISSIONER

NOTED BY:

ney for _____

ney for _____

FILED
1987 DEC 21 11:50:51
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CERTIFIED
COPY

JAN 7 1988

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In Re the Marriage of:

WENDY MARIE CHRISTENSEN RAWLINGS,

Petitioner,

and

MARK DOUGLAS WEINER,

Respondent.

NO. 85-3-04844-3

~~ADVISORY OPINION~~

File Memorandum

THIS MATTER having come on regularly to be heard before the undersigned Court Commissioner upon the Motion of Petitioner, and the Petitioner appearing personally and by her attorney, Ralph Thompson, Jr., P.S. of Sonkin, Thompson & Klein, and the Respondent appearing/not appearing, and the Court having considered the records and files herein, including the Declaration and Motion of Petitioner, it hereby gives the following: ~~ORDER~~

~~*****~~
Had the Utah court declined jurisdiction in late 1985 or early 1986, this Court would have

Advisory opinions not permitted, (S)

At the time of my telephone conference with the Utah judge, I represented to the Utah court that Washington was exercising jurisdiction under the emergency power of the UCPJA in juvenile court and would
① exercise full jurisdiction only if Utah declined to assert its primary under RCW 26.27.140
and ② we would enforce all orders of Utah Court

ORDER ON PETITIONER'S MOTION - I

SONKIN, THOMPSON & KLEIN
ATTORNEYS AT LAW

2640 FIRST INTERSTATE CENTER

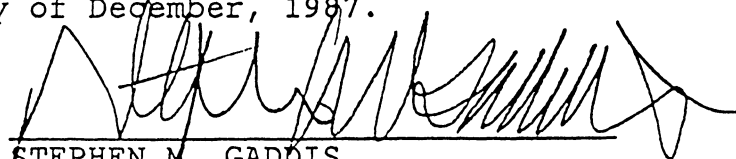
THIRD AVENUE

SEATTLE, WASHINGTON 98104

③ Subsequently the Juvenile case was dismissed as there was no further

the Utah orders, and to take
if + when Utah decided to
to exercise jurisdiction.

DATED this 21 day of December, 1987.


STEPHEN M. GADDIS
COURT COMMISSIONER

Presented by:

SONKIN, THOMPSON & KLEIN

By: Heila R. Thorn for
Ralph Thompson, Jr., P.S.
Attorney for Petitioner