

2002

Linary Marie Kingdon v. Brian Lee Kingdon : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LINARY MARIE KINGDON (KNESAL),
Petitioner and Appellee,

vs.

BRIAN LEE KINGDON,
Respondent and Appellant

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Case No. 20020631-CA

BRIEF OF APPELLANT

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF SALT
LAKE COUNTY, STATE OF UTAH, JUDGE ROGER A. LIVINGSTON.

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JURISDICTION OF THE APPELLATE COURT

The Utah Court of Appeals has appellate jurisdiction over this matter pursuant to § 78-3-4 of the Utah Code Annotated 1953, as amended.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Did the Utah trial court err in transferring jurisdiction to the Georgia trial court under the Utah Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the federal Parental Kidnapping Prevention Act of 1980 (PKPA)? This issue is preserved in the Mr. Kingdon's Motion to Continue Jurisdiction and Objection to Relinquishment of Jurisdiction.

II. Did the trial court fail to follow statutory requirements when it did not allow the Mr. Kingdon opportunity to be heard before making its determination regarding jurisdiction? Mr. Kingdon had no opportunity to raise this issue in the trial court before the court had already made its decision regarding jurisdiction.

III. Did the trial court fail to make any findings to support its conclusion that Georgia is the proper forum to hear this case? Mr. Kingdon had no opportunity to raise this issue in the trial court before the final order was entered.

DETERMINATIVE CONSTITUTIONAL PROVISIONS AND STATE STATUTES

The Utah Uniform Child Custody Jurisdiction and Enforcement Act, Utah Code Ann. § 78-45c-101 et seq.

The Parental Kidnapping Prevention Act of 1980, 28 U.S.C.A., § 1738A.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is an appeal concerning proper jurisdiction of a child custody matter. Over the objection of the Mr. Kingdon, the Honorable Judge Roger A. Livingston of the Third Judicial District Court of Salt Lake County, Utah, vacated a child custody modification entered by the Third District Court and transferred jurisdiction of the case to the Superior Court of McIntosh County, Georgia.

B. COURSE OF THE PROCEEDINGS

The parties to the proceedings were divorced in the state of Kansas in 1989, and custody of their two minor children, Julie Marie Kingdon and Stacie Marie Kingdon, was awarded to Mrs. Kingdon. (R. 13, 17) Both Mr. and Mrs. Kingdon left the state of Kansas in 1989, and neither has resided in Kansas since then. (R. 178)

Although Mrs. Kingdon was awarded custody of the minor children, both girls lived with Mr. Kingdon by mutual consent of the parties for substantial periods of time in the years following the divorce. (R. 54; see also Georgia Custody Hearing included in the Addendum [hereinafter cited as “Ga. Hearing”] p. 20, 41-44)

In June of 2001, Mr. Kingdon filed a Motion to Enforce Visitation with the Kansas court that had entered the initial child custody order, alleging that Mrs. Kingdon had interfered with his summer visitation with the girls. (R. 282-283) On June 27, 2001, Judge Meryl Wilson of the Kansas court dismissed the motion based on the finding that the Third Judicial District Court of Salt Lake County, Utah, had assumed jurisdiction of

the matter. (R. 282-283) On June 29, 2001, Mr. Kingdon filed a second Motion to Enforce Visitation, this time with the Third Judicial District Court. (R. 150-154) The matter went into mediation, and no subsequent hearing was held by the Court regarding the visitation matter. (R. 176)

On June 5, 2002, Mr. Kingdon filed a Verified Petition for Modification of Child Custody in the Third District Court. (R. 177-181) The Petition was for split custody of the children, based upon a material and substantial change of living circumstances. (R. 179) The modification was stipulated to by the parties. (R. 184-185, 196).

On June 11, 2002, the Third District Court entered its Order Modifying Child Custody, awarding custody of Julie to Mrs. Kingdon, and custody of Stacie to Mr. Kingdon. (R. 201-203) At the time the order was entered, Julie was living with her mother in Georgia, and Stacie had lived with her father in Utah for nearly 11 months (since July 17, 2001). (R. 197)

On June 4, 2002, Stacie flew from Utah to Georgia to visit her mother, ostensibly for a one-month visit, with a return flight scheduled for July 1, 2002. (R. 208-209, 212) Shortly before Stacie's scheduled return, however, Mrs. Kingdon informed Mr. Kingdon that she refused to return Stacie as planned, notwithstanding a change of custody had already occurred. (R. 207) When Mrs. Kingdon failed to send Stacie back on the scheduled date, Mr. Kingdon filed a Motion for Writ of Assistance on July 3, 2002, requesting the Court's assistance in having Stacie returned to Utah. (R. 215-216). That same day (July 3rd), Mr. Kingdon appeared personally before Judge Livingston of the Third Judicial District Court. (R. 214) Judge Livingston denied Mr. Kingdon's Motion

for a Writ of Assistance, and noted that he would consider setting a hearing when all parties could be present for the issues to be heard. (R. 214)

On July 3, 2002, Mrs. Kingdon filed a Petition for Change of Custody and a Motion for Ex Parte Relief in the Superior Court of McIntosh County, Georgia, alleging that Stacie had been subject to abuse while in Utah. (R. 221-225, 239-243)

After Mr. Kingdon was served with a copy of Mrs. Kingdon's Petition for Change of Custody through the Georgia court, he filed a motion on July 19, 2002, in the Third District Court asking the Court to continue its jurisdiction and objecting to any relinquishment of said jurisdiction. (R. 250-255) On an unknown date, prior to receiving Mr. Kingdon's objection to relinquishment of jurisdiction, Judge Livingston conferred with Judge Robert L. Russell of the MacIntosh County Superior Court, and the judges agreed that Georgia should assume jurisdiction of the case (R. 268, 287)

Mr. Kingdon later requested the Third Judicial District Court to produce a record of the aforementioned telephone conversation between Judge Livingston and Judge Russell. (R. 284-285) On Oct. 4, 2002, the Court indicated that its record of communication with the Georgia Court consisted of the Minute Entry (and final order regarding jurisdiction) dated July 30, 2002. (R. 291)

C. DISPOSITION IN THE COURT BELOW

On July 30, 2002, the Honorable Judge Roger A. Livingston of the Third Judicial District Court made a signed Minute Entry in which he ordered the following:

(a) That the prior child custody modification order entered by the Court on June 11, 2002, awarding custody of the minor child, Stacie Kingdon, to her father be vacated. (R. 268)

(b) That jurisdiction of the case be transferred to the State of Georgia. (R.268)

D. STATEMENT OF THE FACTS

The original child custody order for this case was entered in the State of Kansas, where custody of both children was awarded to Mrs. Kingdon (R. 17) Shortly thereafter, all parties to that order left Kansas and lost significant connection to that state. (R. 178) With the exception of changes to child support obligation, no other state modified the Kansas order until Utah entered the split custody order of June 11, 2002, awarding custody of Julie Kingdon to her mother, and Stacie Kingdon to her father. (R. 196-199, 201-202)

In June 2001, the Kansas court, in fact, refused to hear a dispute between the parties concerning visitation, based on its finding that the Third Judicial District Court of Salt Lake County, Utah, had assumed jurisdiction. (R. 282-283) Although Mrs. Kingdon and both girls lived in Georgia at the time, Mrs. Kingdon chose to use the Utah court system to mediate the matter. (R. 176). She also signed a consent to the personal jurisdiction of the Utah court when she agreed to the split custody arrangement. (R. 184-185)

Since the original order was entered in Kansas and the parties left the state at the end of 1989, Mr. Kingdon is a long-term resident of the State of Utah. (R. 197). His residency status has not changed during the course of the custody dispute. (R. 288) Mrs. Kingdon has resided in various states, most recently in the State of Georgia, from about

March 1999 to the present. (R. 197; Ga. Hearing p. 13) Even though Mrs. Kingdon had legal custody of the girls, she permitted them to live with their father for extended periods of time. (R. 54; Ga. Hearing p. 20, 41-44). At the time of the Third District Court's custody modification order, Julie was living with her mother in Georgia, and Stacie had resided with her father in Utah the preceding 11 months. (R.197) More specifically, Stacie resided with Mr. Kingdon from July 17, 2002, until June 4, 2002, at which time she went back to Georgia for a visit planned to last only until July 1, 2002. (R. 208-209, 212)

On July 1, 2002, Mrs. Kingdon refused to put Stacie on her scheduled return flight to Utah. (R. 206-207) On July 3, 2002, less than a month after the change of custody had been filed in Utah, Mrs. Kingdon petitioned the Superior Court of McIntosh County, Georgia, for temporary and permanent custody of Stacie, based on the claim of an emergency situation due to alleged abuse of the child while the child had been in Utah. (R. 221-225, 239-243) The pleadings to the Georgia court also made note that Stacie was 14 years of age, the age at which a child can elect which parent has custody under Georgia statute. (R. 223, 241) At no time did Mrs. Kingdon attempt to bring the matter back to the Utah court.

On July 3, 2002, Mr. Kingdon filed a Motion for Writ of Assistance with the Third District Court in an attempt to gain the Court's assistance in enforcement of its custody order. (R. 215-216). Mr. Kingdon appeared before the Honorable Judge Livingston in the District courtroom. (R. 214) Judge Livingston decided not to sign the Writ, but said he would consider holding a hearing to investigate the matter more fully. (R. 214)

On July 8, 2002, Judge Livingston received notice that a custody proceeding had been initiated in the Georgia court. (R. 220) Judge Livingston then contacted Judge Robert L. Russell of the McIntosh County Superior Court, and the judges decided that Georgia should assume jurisdiction of the case. (R. 268, 287) The judges agreed Georgia should have jurisdiction, even though neither judge questioned the validity of Judge Livingston's modification order of June 11th. (Ga. Hearing p. 29-30) Mr. Kingdon was not allowed to participate in the communication between the courts, nor was any record kept clearly setting forth the basis of the agreement between the judges. (R. 284-285, 291; Ga. Hearing p. 46) When Mr. Kingdon later requested that the Third District Court provide him with a copy of the record of communication between the courts, Judge Livingston indicated that his Minute Entry of July 30, 2002, was the record in question. (R. 291)

After Mr. Kingdon had also received notice of the custody proceedings initiated in Georgia, he filed a Motion to Continue Jurisdiction and Objection to Relinquish Jurisdiction on July 19, 2002, in the Third District Court. (R. 250-255). In said motion, Mr. Kingdon argued that Utah had proper jurisdiction of the case under UCCJEA and the PKPA. (R. 250-255) When Mr. Kingdon contacted Judge Livingston's office on July 23, 2002, to see if the judge had reviewed the motion, one of the judge's assistants informed Mr. Kingdon that Judge Livingston had contacted Judge Russell some days prior and that the judges had already decided that Georgia should assume jurisdiction; said communication between Judge Livingston and Judge Russell would have occurred a few days after July 8, 2002 (R. 220) Judge Livingston's final order transferring jurisdiction to Georgia makes no mention of the PKPA. (R. 268) Nor does said order set

forth any findings of fact supporting its conclusion that jurisdiction of the case is properly vested with the State of Georgia. (R. 268)

On August 2, 2002, the Honorable Judge Robert L. Russell of the Superior Court of McIntosh County, Georgia, ordered that the State of Georgia assume jurisdiction of the case. (R. 281) On August 19, 2002, a hearing was held in the Superior Court to determine custody of the minor children. (see Ga. Hearing in the Addendum) Mr. Kingdon appeared at the hearing, and entered his objection to the proceedings on the grounds that Utah, not Georgia, had proper jurisdiction of the matter. (Ga. Hearing p. 2-9, 40-41) Judge Russell answered some questions posed by Mr. Kingdon regarding how the judges had decided that Georgia should assume jurisdiction. (Ga. Hearing p. 27-30) However, Judge Russell admitted that no record had been kept of the communication between himself and Judge Livingston. (Ga. Hearing p. 46) Mr. Kingdon was also given opportunity to question Mrs. Kingdon regarding facts pertinent to the matter of jurisdiction, including where the children had resided and for how long, whether she had consented to the custody modification made in Utah, and why she had petitioned the Georgia court for modification of the custody order rather than returning to the Utah. (Ga. Hearing p. 18-26, 30-31) The hearing resulted in an award of custody of both children to Mrs. Kingdon, based on the fact that Judge Livingston had declined to exercise jurisdiction, that the Georgia court had assumed jurisdiction, and that the child election laws of the State of Georgia allowed the children to choose to live with their mother. (Ga. Hearing p. 44-45) Judge Russell made no finding regarding the alleged

abuse of Stacie while she lived with her father, the key issue that had fomented the change of jurisdiction from Utah to Georgia in the first place. (Ga. Hearing p. 41-45)

SUMMARY OF THE ARGUMENT

Utah has proper jurisdiction of this matter pursuant to the Uniform Child Custody and Jurisdiction Act and the federal Parental Kidnapping Prevention Act. The child custody modification order entered by the Third Judicial District Court on June 11, 2002 was made in accordance with the aforementioned Acts. Once the Third District Court had entered its custody order, it had continuing jurisdiction over the case, and no other state had authority to modify its determination while jurisdiction was vested with Utah, unless Utah lost jurisdiction or declined to exercise its jurisdiction. The Third District Court did not lose jurisdiction, and should not have declined to exercise jurisdiction, based on the rules of UCCJEA and PKPA and clear legal precedence.

In the course of the proceedings, the Third District Court did not give the Mr. Kingdon the opportunity to be heard before rendering its decision regarding jurisdiction. Once the Utah court had been notified of the Georgia petition to modify the Utah order based on an alleged emergency situation, the Utah court should have held a hearing to allow both parties to present evidence before any decision was made regarding jurisdiction. No such hearing was held. Although the judges of the Utah and Georgia trial courts did contact each other, no record was made of the communication between the courts as required.

In reaching its conclusion that jurisdiction of this case was properly vested with the State of Georgia, the Third District Court made no findings of fact to support said

conclusion. Without appropriate findings, the trial court's decision regarding jurisdiction is unjustified, and should be reversed by the appellate court.

ARGUMENT

I. UTAH HAS PROPER JURISDICTION UNDER UCCJEA AND PKPA

A. The Utah trial court had jurisdiction to enter the custody modification order of June 11, 2002.

The State of Kansas entered the initial child custody order for this case in September 1989. Shortly thereafter, however, both Mr. Kingdon and Mrs. Kingdon, and the minor children, left the State of Kansas and have not resided there again. The Kansas court which had entered the original custody order even refused to entertain a dispute over the father's visitation rights in the summer of 2001, based on the finding that the Third Judicial District Court of Salt Lake County, Utah, was the proper venue to hear the visitation matter. Since Mr. Kingdon, Mrs. Kingdon, and the children had long since left the State of Kansas and no longer had any significant connection to that State, by the time the Third District Court in Utah entered its child custody modification order, Kansas no longer had jurisdiction over child custody.

Did, then, the State of Utah have a proper jurisdiction to enter its child custody modification order of June 11, 2002? A review of the relevant statutes shows that Utah did indeed have authority to enter the order.

The Utah Uniform Child Custody Jurisdiction and Enforcement Act and the federal Parental Kidnapping Prevention Act are designed to determine which state has jurisdiction over custody actions. Under UCCJEA, specifically Utah Code Ann. § 78-

45c-203, the State of Utah had jurisdiction to modify the Kansas order based on the fact that 1) Utah had jurisdiction to make an initial child-custody determination under U.C.A. § 78-45c-201, and 2) the children and parents no longer resided in the State of Kansas. The fact that the children and parents no longer resided in Kansas is evident from the record. Utah met the provisions of U.C.A. § 78-45c-201 for making an initial child-custody determination by virtue of the fact that Stacie Kingdon's home state was Utah at the time of the modification order, and Julie Kingdon had a significant connection with the state of Utah and there was substantial evidence available in Utah concerning her care, protection, training, and personal relationships.

The modification order of June 11, 2002, likewise met the provisions of the PKPA, 28 U.S.C.A. § 1738A. This statute provides:

- (f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—
 - (1) it has jurisdiction to make such a child custody determination; and
 - (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

Utah had jurisdiction under its own state laws to make the child custody determination, and Kansas no longer had jurisdiction of the matter, thus satisfying the requirements of the PKPA.

The child custody modification order entered by the Third District Court was done with Mrs. Kingdon's consent. It is possible that the split custody arrangement, which the parties agreed was in the best interests of the children, could have been effected through the Georgia courts, since Julie Kingdon's home state was Georgia at the time of the modification. The State of Georgia's laws regarding jurisdiction of a child custody

matter are very similar to Utah's. However, Mrs. Kingdon was satisfied to use the Utah court for the agreed-upon modification, and she never petitioned the Georgia court to exercise jurisdiction until after the Third District Court had already entered its modification order. Once she had submitted to the jurisdiction of the Utah court, she was bound by the determination of that court, in accordance with U.C.A. § 78-45c-106.

It is also important to note that both Judge Livingston of Utah and Judge Russell of Georgia never questioned the validity of Utah's modification order when they conferred about which state should have jurisdiction. During the Georgia custody hearing on August 19, 2002, Mr. Kingdon asked Judge Russell if either judge had questioned the propriety of the existing Utah order. Judge Russell said that "that wasn't challenged." When Mr. Kingdon asked if the judges had believed Utah exercised proper jurisdiction to make the modification, Judge Russell replied: "Judge Livingston thought so at the time."

B. The Utah trial court had exclusive, continuing jurisdiction after the custody modification.

Under UCCJEA, once the Utah court entered its child custody modification order, the court had exclusive, continuing jurisdiction of the case. U.C.A. § 78-45c-202 provides that having made a child-custody determination consistent with § 203, Utah retains jurisdiction until all the children and parents lose "significant connection" to the state or no longer reside in the state. Mr. Kingdon has remained a resident of the State of Utah from the time the child custody modification order was entered to the present; thus Utah retained continuing jurisdiction under UCCJEA.

Under PKPA, jurisdiction continues with the same court as long as the court has jurisdiction under the laws of that state and that state remains the residence of the child or of any contestant (28 U.S.C.A. § 1738A(d)). Utah had continuing jurisdiction under U.C.A. § 78-45c-202, and Mr. Kingdon remained a Utah resident; thus Utah retained continuing jurisdiction under PKPA.

C. The Utah trial court erred in declining to exercise jurisdiction.

While Utah had exclusive, continuing jurisdiction under UCCJEA and PKPA, no other state had a right to modify the Utah custody order, unless Utah lost jurisdiction or declined to exercise jurisdiction (28 U.S.C.A. § 1738A(f)). Utah did not lose its jurisdiction (as shown in B above), but did err in declining to exercise jurisdiction.

U.C.A. § 78-45c-207 and 208 provide reasons why a Utah court may decline to exercise jurisdiction over a child-custody determination. Section 208 deals with declining jurisdiction by reason of unjustifiable conduct on the part of the person invoking the court's jurisdiction, and does not apply in this instance. Section 207 provides that a Utah court may decline to exercise its jurisdiction if it determines that it is an inconvenient forum and another state is a more convenient forum. According to subsection (1): "The issue of inconvenient forum may be raised upon the court's own motion, request of another court, or motion of a party." Neither Mr. Kingdon nor Mrs. Kingdon ever raised the issue of inconvenient forum in the Third Judicial District Court, and there is no clear indication on the record that the trial courts of Utah or Georgia raised the issue, either. Judge Livingston's final order regarding jurisdiction does not say that Utah was determined to be an inconvenient forum; it says rather "that the forum for

determining custody of both minor children, Stacie and Julie, is properly vested with the State of Georgia.” Without knowing what the Utah trial court’s basis was for concluding that Georgia was the proper forum for a custody determination, it is a matter of speculation to say whether or not the Court applied the rules of § 207 to this case.

It would appear, however, from Judge Russell’s findings at the conclusion of the August 19, 2002, hearing in the Georgia trial court, that U.C.A. § 78-45c-207 might not have been the basis used by the Utah court in declining to exercise jurisdiction. Judge Russell stated:

“Judge Livingston declined to exercise Utah jurisdiction and agreed that Georgia was the home state of both children because of significant contacts and the best interest of the children and emergency action needed.”

It would seem, rather, that Judge Livingston erred in his interpretation of the “home state” definition, which under UCCJEA and PKPA is the state where the child resided for the six months preceding a custody determination (U.C.A. § 78-45c-102(7) and 28 U.S.C.A. § 1738A(b)(4)). Under the definitions of both Acts, when Utah entered its custody modification order on June 11th, Julie’s home state was Georgia, and Stacie’s home state was Utah.

Even if the provisions of U.C.A. § 78-45c-207 had been applied to this case, however, it should be evident that Utah would have been the most appropriate forum to entertain any proceeding to modify its own custody order of June 11, 2002. The primary factors to consider would have been Mrs. Kingdon’s allegations of child abuse and the nature and location of the evidence regarding the alleged abuse. If the alleged abuse had really taken place, evidence thereof would have been found in the State of Utah in the form of school

and/or medical records, the testimony of witnesses in Utah who had close contact with Stacie and her family, etc. (The Third Judicial District Court and the McIntosh County Superior Court never made any findings of abuse, nor did either court ever even attempt to ascertain whether Mrs. Kingdon's allegations of abuse were true.) The other relevant factors listed in U.C.A. § 78-45-c-207 for the Utah court to consider would not have had as much import as the charges of abuse and the alleged emergency situation rising therefrom.

Without clearly establishing that Utah was an inconvenient forum to make a child-custody determination, Judge Livingston's order vacating the previous child custody modification order and transferring jurisdiction to the State of Georgia violates both the UCCJEA and PKPA. These Acts are specifically designed to determine which state has jurisdiction over custody actions. They attempt to set jurisdiction where the most evidence is located and are designed to prevent parents from taking their children from one jurisdiction to another in an attempt to gain advantage over the other parent with regards to custody issues.

Mr. Kingdon contends in his Motion to Continue Jurisdiction and Objection to Relinquishment of Jurisdiction that in filing a Petition for Change of Custody in the Superior Court of McIntosh County, Georgia, Mrs. Kingdon was seeking an advantage she could obtain in the Georgia court that she could not obtain in the Utah court; namely, the child-election laws of the State of Georgia, which allow a child of age fourteen or older to choose which parent with whom she desires to live. Georgia Code § 19-9-1 includes the following provision:

In all cases in which the child has reached the age of 14 years, the child shall have the right to select the parent with whom he or she desires to live. The child's selection shall be controlling, unless the parent so selected is determined not to be a fit and proper person to have the custody of the child.

Although Mrs. Kingdon denied prior knowledge of Georgia's child election laws during the August 19th hearing in the McIntosh County Superior Court, both her Petition for Change of Custody and Motion for Ex Parte Relief filed previously in the Georgia court made specific mention of Stacie's age as grounds for obtaining the relief Mrs. Kingdon sought. As it turned out, Mrs. Kingdon did gain the advantage that she sought-- Georgia's child election provision was the sole determining factor for awarding custody of Julie and Stacie to Mrs. Kingdon in the Georgia trial court.

Even if Mrs. Kingdon didn't intend to use Georgia's child election laws to her advantage, the fact remains that she, the non-custodial parent, knowingly detained Stacie from Mr. Kingdon, the custodial parent, and never sought to resolve the matter through the Utah court which had entered the custody order, with Mrs. Kingdon's consent, less than one month prior to her filing a complaint in the Georgia court.

In the case of Curtis v. Curtis, 789 P.2d 717 (Utah Ct. App. 1990), after a custody order was entered in the State of Utah, the non-custodial father, William Curtis, took the children to Mississippi and filed for a change of custody in the Mississippi court. He claimed that the need to modify custody resulted from an "emergency situation" involving abuse of the children. The Utah trial court transferred jurisdiction to the Mississippi trial court, but that judgment was reversed by the Utah Court of Appeals. In its published opinion, the Court of Appeals found that: 1) Utah had jurisdiction for the

initial custody decree, 2) that Utah had continuing jurisdiction to modify the decree and had not lost jurisdiction, and 3) that Utah had not declined to exercise its jurisdiction. In regards to the issue of declining jurisdiction the Court noted:

A second state with jurisdiction may modify a first state's custody decree if the first state has declined to exercise jurisdiction. *See, e.g., E.E.B. v. D.A.*, 89 N.J. 595, 446 A.2d 871, 877 (1982). However William never requested Utah courts to exercise their modification jurisdiction. Rather, he chose to try his luck in another forum. Therefore, not having had the opportunity to exercise its jurisdiction, we hold that the Utah court had not declined to exercise it as of the time the Mississippi orders were entered.

Mrs. Kingdon likewise never requested the Third Judicial District Court to exercise its modification jurisdiction, but chose to try her luck in another forum. The Court of Appeals should find that since Mrs. Kingdon never returned to the Third District Court, said Court should not have declined to exercise jurisdiction.

II. THE UTAH TRIAL COURT FAILED TO GIVE MR. KINGDON OPPORTUNITY TO BE HEARD BEFORE MAKING ITS DECISION REGARDING JURISDICTION

A. The Utah trial court did not allow Mr. Kingdon to present facts and legal arguments before it agreed with the Georgia trial court that Georgia should assume jurisdiction.

The UCCJEA, in U.C.A. § 78-45c-110, provides that a Court of the State of Utah may communicate with a court of another state as a means of reaching an appropriate jurisdictional determination. Subsection (2) states:

The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, the parties shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

When Judge Livingston of the Third Judicial District Court conferred with Judge Russell of the McIntosh County Superior Court as to which State had proper jurisdiction of this child custody matter, the judges did not ask Mr. Kingdon, nor apparently Mrs. Kingdon or her attorney, to participate in the communication. Although the Third District Court was not required to have the parties participate, no effort was made to see if an arrangement could be made for all parties to participate.

The second sentence of § 110(2) does require the Court to give any party which is not able to participate in the communication the opportunity to present facts and make legal argument prior to the determination of jurisdiction. The commentary in the Uniform Child Custody Jur. & Enf. Act (U.L.A.) § 110 provides further elucidation regarding this requirement:

The second sentence of subsection [2] protects the parties against unauthorized ex parte communications. The parties' participation in the communication may amount to a hearing if there is an opportunity to present facts and jurisdictional arguments. However, absent such an opportunity, the participation of the parties should not be considered a substitute for a hearing and the parties must be given an opportunity to fairly and fully present facts and arguments on the jurisdictional issue before a determination is made. This may be done through a hearing or, if appropriate, by affidavit or memorandum. The court is expected to set forth the basis for its jurisdictional decision, including any court-to-court communication which may have been a factor in the decision.

(The comment above is found in Uniform Laws Annotated, Master Edition, Vol. 9, Part IA, p. 667, c. 1999, published by West Group.)

The Third District Court should have held a hearing regarding the jurisdictional issue, or at least allowed the parties to submit written statements before the decision regarding jurisdiction was made. In Holm v. Smilowitz, 840 P.2d 157 (Utah App. 1992) the Court of Appeals found that the District Court of Iron County, Utah, erred in refusing

to hold a hearing regarding a jurisdictional determination and violated Mrs. Holm's due process rights by refusing her attorney's request for a hearing on an undomesticated Ohio order. Likewise, without allowing Mr. Kingdon the opportunity to present evidence and make argument before it reached its jurisdictional decision, the Third Judicial District Court not only erred, but in effect abrogated Mr. Kingdon's due process rights.

Mr. Kingdon did file a Motion to Continue Jurisdiction and Objection to Relinquishment of Jurisdiction, on July 19, 2002, but this was done apparently after Judge Livingston and Judge Russell had already conferred and reached their jurisdictional decision. The aforesaid Motion was not made in response to a request by the Court for facts and legal argument regarding jurisdiction, but was made only after Mr. Kingdon had been served with notice of the child custody proceedings initiated in Georgia. Mr. Kingdon did not receive notification from the District Court that a communication between the Utah and Georgia trial courts had occurred until July 30, 2002, in the final order regarding jurisdiction. Neither the Utah trial court nor the Georgia trial court made any mention of the PKPA in rendering their jurisdictional decisions--a statute cited repeatedly by Mr. Kingdon in the aforesaid Motion, because neither court had received or reviewed the motion before jurisdictional determination was made.

B. No record was kept of the communication between the Utah and Georgia trial courts.

The UCCJEA, in U.C.A. § 78-45c-110, provides that a record shall be kept of the communication between the courts:

(4) Except as provided in Subsection (3), a record shall be made of the communication. The parties shall be informed promptly of the communication and granted access to the record.

(5) For the purposes of this section, “record” means information that is inscribed on a tangible medium or that which is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

The Third District Judicial Court failed to keep a record of its communication with the McIntosh County Superior Court, as “record” is defined in the statute cited above. Such “record” cannot be the brief entry in Judge Livingston’s Minute Entry of July 30, 2002, noting that the courts had communicated, lacking any details of said communication. Even so, Judge Livingston claims that his reference to telephoning Judge Russell in the aforesaid Minute Entry *is* the “record” in his October 4, 2002 response to Mr. Kingdon’s Motion to Obtain Record.

However, such a record must clearly set forth the basis for any agreement between the communicating courts. In Footnote 9 of State in Interest of D.S.K., 792 P.2d 118 (Utah App. 1990), the Utah Court of Appeals recommended:

That where judges communicate by telephone, they make prompt written record of their conclusions and that the basis for any agreement be set forth clearly in the record.

Judge Russell of the Georgia trial court verified that no record was kept of the communication between himself and Judge Livingston. The exact date of their communication cannot even be found in the record on appeal, only approximated from the July 8, 2002, fax cover sheet from Mrs. Kingdon’s attorney to the District Court, in

which the attorney noted that Judge Russell would call Judge Livingston “within a day or so.” Without keeping the record of communication required under UCCJEA, the Utah trial court cannot establish that it did give Mr. Kingdon opportunity to be heard before the Court made its jurisdictional determination.

III. THE UTAH TRIAL COURT FAILED TO SUPPORT ITS CONCLUSION REGARDING JURISDICTION WITH ANY FINDINGS OF FACT

A. The Utah trial court made no findings of fact to warrant a transfer of jurisdiction to Georgia.

Judge Livingston’s final order vacating his previous child custody modification order and transferring jurisdiction to Georgia is based on the conclusion “that the forum for determining custody of both minor children, Stacie and Julie, is properly vested with the State of Georgia.” However, nowhere in the final order, or anywhere else in the record on appeal, does Judge Livingston support this conclusion with any findings of fact. Without a valid basis for transferring jurisdiction of this case to the State of Georgia, Judge Livingston has committed an abuse of his judicial discretion.

CONCLUSION STATING THE RELIEF SOUGHT

The Appellant, Mr. Kingdon, seeks a reversal of the Third Judicial District Court’s order vacating its prior child custody modification order of June 11, 2002, and a reinstatement of that prior custody order. More specifically:

- 1) A ruling that the State of Utah has proper jurisdiction of this child custody matter under the Utah Uniform Child Custody Jurisdiction and Enforcement Act and the federal Parental Kidnapping Prevention Act.


- 2) A ruling that the trial court failed to give Mr. Kingdon opportunity to be heard before it made its determination to transfer jurisdiction to Georgia.
- 3) A ruling that the trial court failed to make findings of fact to support its conclusion that Georgia was the proper forum for this matter.
- 4) To remand the case to the trial court for any further proceedings concerning custody of the minor children, and to admonish the trial court to follow the procedures outlined in UCCJEA and PKPA in any future child custody proceedings.

DATED this 17th day of December, 2002.


Brian Lee Kingdon, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that I personally hand carried and delivered eight true and accurate copies of the above Appellant's Brief to the Utah Court of Appeals, 450 South State Street, Salt Lake City, Utah 84114-0230 and mailed, first-class postage prepaid, two true and accurate copies to C. Jean Bolin, Attorney for Mrs. Kingdon, P.O. Box 2332, Darien, GA 31305, this 17th day of December, 2002.


Brian Lee Kingdon, Pro Se

ADDENDUM

Utah Code Annotated § 78-45c-101, et seq. (Utah Uniform Child Custody Jurisdiction and Enforcement Act, or UCCJEA)

28 U.S.C.A. § 1738A (Parental Kidnapping Prevention Act, or PKPA)

Certified Transcript of Child Custody Hearing Held August 19, 2002 in the Superior Court of McIntosh County, Georgia

CHAPTER 45b

PUBLIC SUPPORT OF CHILDREN [REPEALED]

78-45b-1 to 78-45b-25. Repealed.

Repeals. — Laws 1988, ch 1, § 407 repeals §§ 78-45b 1 to 78 45b 6, as enacted by Laws 1975, ch 96, § 1 Laws 1977 ch 145 § 1, and Laws 1985, ch 8, § 2 and as amended by Laws 1987 ch 77, § 3 and Laws 1987, ch 161, §§ 309 to 312 relating to common law remedies, definitions, support debt and hearings, effective January 19 1988

Laws 1987, ch 161, § 314 repeals § 78-45b 6 1, as last amended by Laws 1983, ch 161, § 2 concerning findings in order by department and judicial review, effective January 1, 1988

Laws 1988 ch 1, § 407 repeals §§ 78 45b 7 to 78-45b 21, as enacted by Laws 1975, ch 96, §§ 7, 10, 12 14 to 18, 20 and 21, Laws 1984 (S S), ch 2, § 1 and Laws 1985, ch 9, § 1 and as amended by Laws 1977, ch 145, § 8, Laws 1984, ch 14, § 1, Laws 1984 (S S), ch 2, § 2,

Laws 1985, ch 10, § 1 and Laws 1987, ch 151, § 313, relating to liens, final orders, payments and charging all uncollectable support debts, effective January 19, 1988

Section 78 45b-22 (L 1975, ch 96, § 22), relating to inapplicability of statute of limitations to liens wage assignment or garnishment, was repealed by Laws 1985, ch 10, § 2.

Laws 1988, ch 1, § 407 repeals §§ 78-45b-23 to 78 45b 25 as enacted by Laws 1984, ch. 13, § 5 Laws 1985, ch 13, § 1 and Laws 1987, ch. 77 § 4 relating to medical and dental expenses of dependent children, providing court debt information to consumer reporting agencies and the information received from state tax commissioner, effective January 19, 1988. For present comparable provisions, see Title 62A Chapter 11

CHAPTER 45c

UTAH UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Section
78 45c 1 to 78 45c 26 Repealed

Part 1

General Provisions

78 45c 101	Title
78-45c 102	Definitions
78-45c 103	Proceedings governed by other law
78-45c 104	Application to Indian tribes
78-45c 105	International application of chapter
78 45c 106	Binding force of child custody determination
78 45c 107	Priority
78 45c 108	Notice to persons outside state
78 45c 109	Appearance and limited immunity
78 45c 110	Communication between courts
78 45c 111	Taking testimony in another state

Section
78 45c-112

Cooperation between courts
Preservation of records

Part 2

Jurisdiction

78 45c 201	Initial child custody jurisdiction
78 45c 202	Exclusive, continuing jurisdiction
78 45c 203	Jurisdiction to modify determination
78 45c 204	Temporary emergency jurisdiction
78 45c 205	Notice — Opportunity to be heard — Joinder
78 45c 206	Simultaneous proceedings
78 45c 207	Inconvenient forum
78 45c 208	Jurisdiction declined by reason of conduct
78 45c 209	Information to be submitted to court

ping Prevention Act (PKPA), 28 USCS § 1738A(c)(2)(A), 6 A.L.R.5th 1.

Significant connection jurisdiction of court to modify foreign child custody decree under §§ 3(a)(2) and 14(b) of the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. §§ 1738A(c)(2)(b) and 1738A(f)(1), 67 A.L.R.5th 1.

Home state jurisdiction of court to modify foreign child custody decree under §§ 3(a)(1) and 14(a)(2) of Uniform Child Custody Juris-

diction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. §§ 1738A(c)(2)(A) and 1738A(f)(1), 72 A.L.R.5th 249.

Declining jurisdiction to modify prior child custody decree under § 14(a)(1) of Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. § 1738A(f)(2), 73 A.L.R.5th 185.

Appealability of interlocutory or pendente lite order for temporary child custody, 82 A.L.R.5th 389.

78-45c-102. Definitions.

As used in this chapter:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual under 18 years of age and not married.

(3) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or parent-time with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or parent-time with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3, Enforcement.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child custody determination is made.

(11) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" includes government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(b) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe, or band, or Alaskan Native village which is recognized by federal law or formally acknowledged by a state.

(17) "Writ of assistance" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

History: C. 1953, 78-45c-102, enacted by L. 2000, ch. 247, § 2; 2001, ch. 255, § 36. ent-time" for "visitation" in Subsections (3) and (4)

Amendment Notes. — The 2001 amendment, effective April 30, 2001, substituted "parent-time" for "visitation" in Subsections (3) and (4). **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000

NOTES TO DECISIONS

Custody proceeding.

Voluntary termination of adoptive father's parental rights in, and obligations to, child was

not custody issue under this chapter *T.B. v. M.M.J.*, 908 P.2d 345 (Utah Ct. App. 1995).

COLLATERAL REFERENCES

A.L.R. — What types of proceedings or determinations are governed by the Uniform Child Custody Jurisdiction Act (UCCJA) or the

Parental Kidnapping Prevention Act (PKPA), 78 A.L.R. 4th 1028

78-45c-103. Proceedings governed by other law.

This chapter does not govern:

(1) an adoption proceeding; or

(2) a proceeding pertaining to the authorization of emergency medical care for a child.

History: C. 1953, 78-45c-103, enacted by L. 2000, ch. 247, § 3.

Effective Dates. — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000

78-45c-104. Application to Indian tribes.

(1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(2) A court of this state shall treat a tribe as a state of the United States for purposes of Part 1, General Provisions, and Part 2, Jurisdiction.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this

chapter shall be recognized and enforced under the provisions of Part 3, Enforcement.

History: C. 1953, 78-45c-104, enacted by L. 2000, ch. 247, § 4. **Effective Dates.** — Laws 2000, ch 247, § 42 makes the act effective on July 1, 2000

COLLATERAL REFERENCES

A.L.R. — Construction and application of Indian Child Welfare Act of 1978 (ICWA) (25 U S C A §§ 1901 et seq) upon child custody determinations, 89 A L R 5th 195

78-45c-105. International application of chapter.

(1) A court of this state shall treat a foreign country as a state of the United States for purposes of applying Part 1, General Provisions, and Part 2, Jurisdiction.

(2) A child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter shall be recognized and enforced under Part 3, Enforcement.

(3) The court need not apply the provisions of this chapter when the child custody law of the other country violates fundamental principles of human rights.

History: C. 1953, 78-45c-105, enacted by L. 2000, ch. 247, § 5. **Effective Dates.** — Laws 2000, ch 247, § 42 makes the act effective on July 1, 2000

78-45c-106. Binding force of child custody determination.

A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 78-45c-108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. The determination is conclusive as to them as to all decided issues of law and fact except to the extent the determination is modified.

History: C. 1953, 78-45c-106, enacted by L. 2000, ch. 247, § 6. **Effective Dates.** — Laws 2000, ch 247, § 42 makes the act effective on July 1, 2000

78-45c-107. Priority.

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, shall be given priority on the calendar and handled expeditiously

History: C. 1953, 78-45c-107, enacted by L. 2000, ch. 247, § 7. **Effective Dates.** — Laws 2000, ch 247, § 42 makes the act effective on July 1, 2000.

78-45c-108. Notice to persons outside state.

(1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for the service of process or by the law of the state in which the service is made. Notice

shall be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.

(2) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(3) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

History: C. 1953, 78-45c-108, enacted by § 42 makes the act effective on July 1, 2000
L. 2000, ch. 247, § 8. **Cross-References.** — Service of process.
Effective Dates. — Laws 2000, ch. 247, Rule 4, U R C P

78-45c-109. Appearance and limited immunity.

(1) A party to a child custody proceeding who is not subject to personal jurisdiction in this state and is a responding party under Part 2, Jurisdiction, a party in a proceeding to modify a child custody determination under Part 2, Jurisdiction, or a petitioner in a proceeding to enforce or register a child custody determination under Part 3, Enforcement, may appear and participate in the proceeding without submitting to personal jurisdiction over the party for another proceeding or purpose.

(2) A party is not subject to personal jurisdiction in this state solely by being physically present for the purpose of participating in a proceeding under this chapter. If a party is subject to personal jurisdiction in this state on a basis other than physical presence, the party may be served with process in this state. If a party present in this state is subject to the jurisdiction of another state, service of process allowable under the laws of that state may be accomplished in this state.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

History: C. 1953, 78-45c-109, enacted by § 42 makes the act effective on July 1, 2000
L. 2000, ch. 247, § 9. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000

78-45c-110. Communication between courts.

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(2) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, the parties shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) A communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of that communication.

(4) Except as provided in Subsection (3), a record shall be made of the communication. The parties shall be informed promptly of the communication and granted access to the record.

(5) For the purposes of this section, “record” means information that is inscribed on a tangible medium or that which is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an

electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

History: C. 1953, 78-45c-110, enacted by L. 2000, ch. 247, § 10. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000

78-45c-111. Taking testimony in another state.

(1) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order 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 is taken.

(2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

History: C. 1953, 78-45c-111, enacted by L. 2000, ch. 247, § 11. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000

78-45c-112. Cooperation between courts — Preservation of records.

(1) A court of this state may request the appropriate court of another state to:

- (a) hold an evidentiary hearing;
- (b) order a person to produce or give evidence under procedures of that state;
- (c) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (d) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (e) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may:

- (a) hold a hearing or enter an order described in Subsection (1); or
- (b) order a person in this state to appear alone or with the child in a custody proceeding in another state.

(3) A court of this state may condition compliance with a request under Subsection (2)(b) 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 the person to secure his appearance with the child in the other state.

(4) Travel and other necessary and reasonable expenses incurred under Subsections (1) and (2) may be assessed against the parties according to the law of this state.

(5) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of these records.

History: C. 1953, 78-45c-112, enacted by L. 2000, ch. 247, § 12. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000.

PART 2

JURISDICTION

78-45c-201. Initial child custody jurisdiction.

(1) Except as otherwise provided in Section 78-45c-204, a court of this state has jurisdiction to make an initial child custody determination only if:

(a) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) a court of another state does not have jurisdiction under Subsection (1)(a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 78-45c-207 or 78-45c-208; and

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a significant connection with this state other than mere physical presence; and

(ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) all courts having jurisdiction under Subsection (1)(a) or (b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 78-45c-207 or 78-45c-208; or

(d) no state would have jurisdiction under Subsection (1)(a), (b), or (c).

(2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination.

History: C. 1953, 78-45c-201, enacted by L. 2000, ch. 247, § 13. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000

NOTES TO DECISIONS

ANALYSIS

Appropriate forum.
 Concurrent jurisdiction.
 Preferred forum.

Appropriate forum.

Utah district court appropriately retained jurisdiction under the Utah Uniform Child Custody Jurisdiction Act to make any determinations regarding custody, visitation or other matters relevant to the children, where the parents were divorced in Utah and, although the mother had taken the children to Washington, that state specifically declined to exercise jurisdiction because of Utah's past and present involvement with the matter *Rawlings v. Weiner*, 752 P.2d 1327 (Utah Ct. App.), cert. denied, 765 P.2d 1278 (Utah 1988).

This chapter does not give a preference to the "home state." The significant connection or substantial connection basis comes into play either when the home state test cannot be met or as an alternative to that test. In *re W.D. v. Drake*, 770 P.2d 1011 (Utah Ct. App.), cert. denied, 789 P.2d 33 (Utah 1989).

Even though a certain state may be the "home state," if the child and his family have equal or stronger ties with another state that other state also has jurisdiction. In *re W.D. v. Drake*, 770 P.2d 1011 (Utah Ct. App.), cert. denied, 789 P.2d 33 (Utah 1989).

Judge did not abuse his discretion in deciding that California was the more appropriate and convenient forum to litigate custody and in granting the state's motion to dismiss the nat-

ural parents' petition, where substantial information concerning the parents' abilities and past history was in California, the mother had only recently come to Utah but had lived for years in California, and the parents' purpose in coming to Utah was to shop for jurisdiction. In *re W.D. v. Drake*, 770 P.2d 1011 (Utah Ct. App.), cert. denied, 789 P.2d 33 (Utah 1989).

The state that made the original custody determination has exclusive continuing jurisdiction over the custody issue until that state loses or declines to exercise its jurisdiction. *Crump v. Crump*, 821 P.2d 1172 (Utah Ct. App. 1991), cert. granted, 843 P.2d 516 (Utah 1992).

Concurrent jurisdiction.

Utah had concurrent jurisdiction to modify a child custody order from another state when it was in the best interest of the child for Utah to assume jurisdiction because the child and at least one parent had a significant connection with Utah and there was substantive evidence in Utah pertaining to the child's care, protection, training, and personal relationships. *Holm v. Smilowitz*, 840 P.2d 157 (Utah Ct. App. 1992).

Preferred forum.

In child custody matters, continuing jurisdiction of court in which divorce decree originated is intended to remain exclusive, even if other states have come to satisfy one or more of the criteria of this section, unless the decree state decides not to exercise it. *Liska v. Liska*, 902 P.2d 644 (Utah Ct. App. 1995).

COLLATERAL REFERENCES

A.L.R. — Significant connection jurisdiction of court under § 3(a)(2) of the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA), 28 USCS § 1738A(c)(2)(B), 5 A.L.R.5th 550.

Abandonment and emergency jurisdiction of court under § 3(a)(3) of the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA), 28 USCS § 1738(c)(2)(C), 5 A.L.R.5th 788

Home state jurisdiction of court under § 3(a)(1) of the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA), 28 USCS § 1738A(c)(2)(A), 6 A.L.R.5th 1

Default jurisdiction of court under § (a)(4) of the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA), 28 USCS § 1738A(c)(2)(D), 6 A.L.R.5th 69.

78-45c-202. Exclusive, continuing jurisdiction.

(1) Except as otherwise provided in Section 78-45c-204, a court of this state that has made a child custody determination consistent with Section 78-45c-201 or 78-45c-203 has exclusive, continuing jurisdiction over the determination until:

(a) a court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant

connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) a court of this state or a court of another state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this state.

(2) A court of this state that has exclusive, continuing jurisdiction under this section may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under Section 78-45c-207.

(3) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 78-45c-201.

History: C. 1953, 78-45c-202, enacted by L. 2000, ch. 247, § 14. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000

78-45c-203. Jurisdiction to modify determination.

Except as otherwise provided in Section 78-45c-204, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Subsection 78-45c-201(1)(a) or (b) and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 78-45c-202 or that a court of this state would be a more convenient forum under Section 78-45c-207; or

(2) a court of this state or a court of the other state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in the other state.

History: C. 1953, 78-45c-203, enacted by L. 2000, ch. 247, § 15. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000

78-45c-204. Temporary emergency jurisdiction.

(1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2) If there is no previous child custody determination that is entitled to be enforced under this chapter, and if no child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 78-45c-201 through 78-45c-203, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 78-45c-201 through 78-45c-203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 78-45c-201 through 78-45c-203, a child custody determination made under this section becomes a final determination, if:

(a) it so provides; and

(b) this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced

in a court of a state having jurisdiction under Sections 78-45c-201 through 78-45c-203, any order issued by a court of this state under this section shall specify in the order a period of time which the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 78-45c-201 through 78-45c-203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced, or a child custody determination has been made, by a court of a state having jurisdiction under Sections 78-45c-201 through 78-45c-203, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to Sections 78-45c-201 through 78-45c-203, upon being informed that a child custody proceeding has been commenced, or a child custody determination has been made by a court of another state under a statute similar to this section shall immediately communicate with the court of that state. The purpose of the communication is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

History: C. 1953, 78-45c-204, enacted by L. 2000, ch. 247, § 16.

Effective Dates. — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000.

NOTES TO DECISIONS

ANALYSIS

Emergency jurisdiction.
— Permanent custody.

Emergency jurisdiction.

Emergency jurisdiction under Subsection (1)(c) is reserved for extraordinary circumstances. Emergency jurisdiction should be limited to those cases of neglect where the harm is immediate or imminent. In re D.S.K., 792 P.2d

118 (Utah Ct. App. 1990) (decided under former § 78-45c-3).

— Permanent custody.

An assumption of emergency jurisdiction is an assumption of temporary jurisdiction only; it does not confer upon the state the authority to make a permanent custody disposition. In re D.S.K., 792 P.2d 118 (Utah Ct. App. 1990) (decided under former § 78-45c-3).

COLLATERAL REFERENCES

A.L.R. — Emergency jurisdiction of court under §§ 3(a)(3)(ii) and 14(a) of Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act, 28 U.S.C.A. §§

1738A(c)(2)(C)(ii) and 1738A(f), to protect interests of child notwithstanding existence of prior, valid custody decree rendered by another state, 80 A L.R.5th 117.

78-45c-205. Notice — Opportunity to be heard — Joinder.

(1) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of Section 78-45c-108 shall be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(2) This chapter does not govern the enforceability of a child custody determination made without notice and an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

History: C. 1953, 78-45c-205, enacted by L. 2000, ch. 247, § 17. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000.

78-45c-206. Simultaneous proceedings.

(1) Except as otherwise provided in Section 78-45c-204, a court of this state may not exercise its jurisdiction under this chapter if at the time of the commencement of the proceeding a proceeding concerning the custody of the child had been previously commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 78-45c-207.

(2) Except as otherwise provided in Section 78-45c-204, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 78-45c-209. If the court determines that a child custody proceeding was previously commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(3) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

- (a) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
- (b) enjoin the parties from continuing with the proceeding for enforcement; or
- (c) proceed with the modification under conditions it considers appropriate.

History: C. 1953, 78-45c-206, enacted by L. 2000, ch. 247, § 18. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000.

NOTES TO DECISIONS

ANALYSIS

Exercise of jurisdiction.
—Hearing.
Pending foreign proceeding.
—Stay of Utah action.
Proceedings elsewhere.
—Due process.

Exercise of jurisdiction.

—Hearing.

When a mother and child living in Utah sought relief in Utah from an Ohio custody order being enforced in Utah by her husband, the district court erred in refusing to hold a hearing to examine whether, under §§ 78-45c-

14 and 78-45c-6, jurisdiction should be exercised by the Utah court. Given the policy considerations behind this chapter, the district court, at the very least, should have stayed its determination until after it held a hearing to determine whether jurisdiction should have been exercised. *Holm v. Smilowitz*, 840 P.2d 157 (Utah Ct. App. 1992).

Pending foreign proceeding.

—Stay of Utah action.

Utah district court, after learning of prior guardianship proceedings in Oregon, was required to stay a Utah action seeking to determine child custody and to communicate with the Oregon court to determine the propriety of further proceedings in Oregon, so that the issues could be litigated in the more appropriate forum, where the child resided in Oregon at the time and the Oregon court had appointed

the child's grandparents as guardians. *Coppedge v. Harding*, 714 P.2d 1121 (Utah 1985).

Proceedings elsewhere.

Where grandparents in Oregon, with whom child was visiting, had won custody in Oregon court, Utah district court was required to stay parents' proceeding seeking custody determination and to communicate with Oregon court to determine the propriety of further proceedings in Oregon. *Coppedge v. Harding*, 714 P.2d 1121 (Utah 1985).

—Due process.

A mother was denied her due process rights by the trial court's enforcement of a foreign-custody modification judgment which had questionable jurisdictional validity without giving the mother reasonable notice and opportunity to be heard. *Holm v. Smilowitz*, 840 P.2d 157 (Utah Ct. App. 1992).

COLLATERAL REFERENCES

A.L.R. — What types of proceedings or terminations are governed by the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA), 78 A.L.R.4th 1028.

Default jurisdiction of court under § (a)(4) of the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA), 28 USCS § 1738A (c)(2)(D), 6 A.L.R.5th 69.

Pending proceeding in another state as ground for declining jurisdiction under § 6(a) of the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA), 28 USCS § 1738A(g), 20 A.L.R.5th 700.

Significant connection jurisdiction of court to modify foreign child custody decree under

§§ 3(a)(2) and 14(b) of the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. §§ 1738A(c)(2)(b) and 1738A(f)(1), 67 A.L.R.5th 1.

Home state jurisdiction of court to modify foreign child custody decree under §§ 3(a)(1) and 14(a)(2) of Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. §§ 1738A(c)(2)(A) and 1738A(f)(1), 72 A.L.R.5th 249.

Declining jurisdiction to modify prior child custody decree under § 14(a)(1) of Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. § 1738A(f)(2), 73 A.L.R.5th 185.

78-45c-207. Inconvenient forum.

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

(2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate that a court of another state exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (a) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (b) the length of time the child has resided outside this state;

- (c) the distance between the court in this state and the court in the state that would assume jurisdiction;
- (d) the relative financial circumstances of the parties;
- (e) any agreement of the parties as to which state should assume jurisdiction;
- (f) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;
- (g) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (h) the familiarity of the court of each state with the facts and issues of the pending litigation.

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

(4) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

History: C. 1953, 78-45c-207, enacted by L. 2000, ch. 247, § 19. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000.

78-45c-208. Jurisdiction declined by reason of conduct.

(1) Except as otherwise provided in Section 78-45c-204 or by other law of this state, if a court of this state has jurisdiction under this chapter because a person invoking the jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

- (a) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
- (b) a court of the state otherwise having jurisdiction under Sections 78-45c-201 through 78-45c-203 determines that this state is a more appropriate forum under Section 78-45c-207; or
- (c) no other state would have jurisdiction under Sections 78-45c-201 through 78-45c-203.

(2) If a court of this state declines to exercise its jurisdiction pursuant to Subsection (1), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 78-45c-201 through 78-45c-203.

(3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to Subsection (1), it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state except as otherwise provided by law other than this chapter.

History: C. 1953, 78-45c-208, enacted by L. 2000, ch. 247, § 20.

Effective Dates. — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000

78-45c-209. Information to be submitted to court.

(1) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit shall state whether the party:

(a) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or parent-time with the child and, if so, identify the court, the case number of the proceeding, and the date of the child custody determination, if any;

(b) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding; and

(c) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or parent-time with, the child and, if so, the names and addresses of those persons.

(2) If the information required by Subsection (1) is not furnished, the court, upon its own motion or that of a party, may stay the proceeding until the information is furnished.

(3) If the declaration as to any of the items described in Subsection (1) 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 other matters pertinent to the court's jurisdiction and the disposition of the case.

(4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, that information shall be sealed and not disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

History: C. 1953, 78-45c-209, enacted by L. 2000, ch. 247, § 21; 2001, ch. 255, § 37.

Amendment Notes. — The 2001 amendment, effective April 30, 2001, substituted "par-

ent-time" for "visitation" in Subsections (1)(a) and (c)

Effective Dates. — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000

78-45c-210. Appearance of parties and child.

(1) A court of this state may order a party to a child custody proceeding who is in this state to appear before the court personally with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear physically with the child.

(2) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 78-45c-108 include a statement directing the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to the party.

(3) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(4) If a party to a child custody 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 reasonable and necessary travel and other expenses of the party so appearing and of the child.

History: C. 1953, 78-45c-210, enacted by L. 2000, ch. 247, § 22. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000.

PART 3

ENFORCEMENT

78-45c-301. Definitions.

As used in this part:

(1) “Petitioner” means a person who seeks enforcement of a child custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.

(2) “Respondent” means a person against whom a proceeding has been commenced for enforcement of a child custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.

History: C. 1953, 78-45c-301, enacted by L. 2000, ch. 247, § 23. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000.

78-45c-302. Scope — Hague Convention Enforcement.

This chapter may be invoked to enforce:

- (1) a child custody determination; and
- (2) an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.

History: C. 1953, 78-45c-302, enacted by L. 2000, ch. 247, § 24. **Effective Dates.** — Laws 2000, ch. 247, § 42 makes the act effective on July 1, 2000.

78-45c-303. Duty to enforce.

(1) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction that was in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

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Compensation Programs U S
Labor v National Van Lines
979, 613 F.2d 972 198 U.S. App
239, certiorari denied 100 S.Ct
488 U.S. 907 65 1 Ed.2d 1136
judicata effect of Nevada state Su
Court judgment upholding state
Industrial Insurance Commission's denial
worker's compensation benefits to
ant barred federal diversity action
plaintiff against state Industrial In
surance System and its manager alleging
cause of action for breach of covenant of
faith and fair dealing violation of
fiduciary duties unfair trade practices
intentional infliction of emotional
distress that arose out of claims against
Industrial Insurance Commission
Williams v State Indus. Ins. System
Nev. 1987 672 F.Supp. 459 affirmed
78 F.2d 388

Where New Jersey Division of Work
men's Compensation had jurisdiction of
claim which arose from accidents occur
ing in Pennsylvania and no compensa
tion cause of action existed in Pennsylva
nia, for permanent disability and there
fore, no award of such nature could have
been made by Pennsylvania Board claim
ant's right to compensation for such kind
of permanent disability was not justicia
ble in the prior Pennsylvania workmen's
compensation proceeding and therefore

award of compensation in such proceed
ing was not res judicata as to such ele
ment of recovery in subsequent New Jer
sey workmen's compensation proceeding
Bowers v American Bridge Co. 1956
127 A.2d 580 43 N.J. Super. 48 affirmed
132 A.2d 28 24 N.J. 390

Where decedent was employed as sales
man out of branch office of employer in
South Dakota and contract between em
ployer and employee was entered into in
that state and defendant was killed while
allegedly in course of his employment in
Iowa state in which death occurred was
not required to give full faith and credit
to Workmen's Compensation Act of South
Dakota and Industrial Commissioner of
Iowa properly assumed jurisdiction even
though action was pending before Indus
trial Commissioner of South Dakota on
same cause of action Schmidt v Pitts
burgh Plate Glass Co. 1952 55 N.W.2d
227 243 Iowa 1307

325 Miscellaneous claims

State court judgment rejecting judg
ment debtor's request for relief from
creditor's attempted execution was res
judicata barring subsequent suit in feder
al court challenging validity of execution
same essential factual allegations were
made in both cases Jones v Poindexter,
C.A.4 (Va.) 1990 903 F.2d 1006

§ 1738A. Full faith and credit given to child custody determina tions

(a) The appropriate authorities of every State shall enforce accord
ing to its terms and shall not modify except as provided in subsec
tion (f) of this section any child custody determination made consis
tently with the provisions of this section by a court of another State

(b) As used in this section, the term—

- (1) 'child' means a person under the age of eighteen,
- (2) 'contestant' means a person, including a parent, who
claims a right to custody or visitation of a child,
- (3) 'custody determination' means a judgment, decree, or
other order of a court providing for the custody or visitation of a
child, and includes permanent and temporary orders, and initial
orders and modifications,
- (4) 'home State' means the State in which, immediately
preceding the time involved, the child 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 such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) “modification” and “modify” refer to a custody determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody determination concerning the same child, whether made by the same court or not;

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

(7) “physical custody” means actual possession and control of a child; and

(8) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child’s present or future care, protection, training, and personal relationships;

(C) the child is physically present in such 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;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or any

State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction, or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section

(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant

(e) Before a child custody determination is made, 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 a child

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

(1) it has jurisdiction to make such a child custody determination, and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination

(Added Pub L 96-611 § 8(a), Dec 28, 1980 94 Stat 3569)

HISTORICAL AND STATUTORY NOTES

Congressional Findings and Declaration of Purpose

Section 7 of Pub L 96-611 provided that

(a) The Congress finds that—

(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws and in the courts of different States the District of Columbia the Commonwealth of Puerto Rico and the territories and possessions of the United States

(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes and the effect to be given the decisions of such disputes by the courts of other jurisdictions are often inconsistent and conflicting

(3) those characteristics of the law and practice in such cases along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries contribute to a tendency of parties involved in such disputes to frequently resort to the seizure restraint

concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation of cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and

“(4) among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

“(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

“(c) The general purposes of sections 6 to 10 of this Act [enacting this section and sections 654(17) and 663 of Title 42, The Public Health and Welfare, amending section 655(a) of Title 42, and enacting provisions set out as notes under this section and sections 663 and 1305 of Title 42 and 1073 of Title 18, Crimes and Criminal Procedure] are to—

“(1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;

“(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

“(3) facilitate the enforcement of custody and visitation decrees of sister States;

“(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

“(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

“(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.”

State Court Proceedings for Custody Determinations; Priority Treatment; Fees, Costs, and Other Expenses

Section 8(c) of Pub.L. 96-611 provided that: “In furtherance of the purposes of section 1738A of title 28, United States Code [this section], as added by subsection (a) of this section, State courts are encouraged to—

“(1) afford priority to proceedings for custody determinations; and

“(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], necessary travel expenses, attorneys’ fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination in any case in which—

“(A) a contestant has, without the consent of the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], (i) wrongfully removed the child from the physical custody of such person, or (ii) wrongfully retained the child after a visitation order or other temporary relinquishment of physical custody; or

“(B) the court determines it is appropriate.”

LIBRARY REFERENCES

American Digest System

Admissibility of public records and documents, and acts, records, and proceedings of other states, see Evidence Ⓒ331, 346 et seq.
Proceedings to determine right to custody of child, and enforcement of order, see Parent and Child Ⓒ2(4) et seq.

IN THE SUPERIOR COURT
FOR THE COUNTY OF MCINTOSH
STATE OF GEORGIA

LINARY M. KINGDON,

Plaintiff,

VERSUS

BRIAN L. KINGDON,

Defendant.

COPY

Case No. 02-V-188

Hearing held before the Honorable Robert L.
Russell, Judge of McIntosh County Superior Court,
on August 19, 2002. Reported by Janey K. Kennedy,
OCR, B-1356.

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1 (Monday, August 19, 2002, 9:21 a.m.)

2 (WITH BOTH THE PLAINTIFF AND THE DEFENDANT
3 PRESENT, THE FOLLOWING TRANSPIRED:)

4 THE COURT: All right. Now, this is Linary Kingdon
5 versus Brian Kingdon, civil action number 02-V-188. We
6 have Ms. Bolin here representing Linary Kingdon, and I
7 believe also the children are here, and we have Mr.
8 Brian Kingdon here pro se.

9 Mr. Kingdon has answered this matter and basically
10 he says that Utah has proper jurisdiction on this
11 matter. But this is the case where I've already
12 conferred with the Utah judge; is that correct?

13 MS. BOLIN: That is correct, Your Honor.

14 THE COURT: Right. I dealt with Judge Livingston,
15 Mr. Kingdon. You've seen my order, I believe?

16 MR. KINGDON: Yes, Your Honor.

17 THE COURT: Now, why shouldn't this order be
18 controlling?

19 MR. KINGDON: The reason, Your Honor, is that under
20 the Parental Kidnapping Prevention Act of 1980 --

21 THE COURT: The what?

22 MR. KINGDON: The Parental Kidnapping Act of 1980,
23 the State of Utah should have proper jurisdiction of
24 this matter.

25 THE COURT: For what reason -- I mean, let's see.

1 Hadn't the children resided here for the last six
2 months?

3 MR. KINGDON: No, Your Honor.

4 THE COURT: Let's see. One child has. That's
5 right.

6 MR. KINGDON: One child, yes, Your Honor.

7 THE COURT: One child has and -- yeah, I remember
8 discussing this with Judge Livingston. Basically, we
9 discussed it at length and he had no doubt in his mind
10 that Georgia was the proper forum for jurisdiction.

11 And pursuant to the Uniform Child Custody
12 Jurisdiction Act, we met -- we talked on the phone and
13 we swapped the paperwork back and forth and both talked
14 about who had the most contacts here and also where the
15 children have lived, and we both agreed that Georgia was
16 the proper place for jurisdiction.

17 MR. KINGDON: Your Honor, I disagree, though, that
18 the proper forum is Georgia and --

19 THE COURT: I understand. Now, Mr. Kingdon, I'm
20 going to note your disagreement and I'm going to note
21 your objection for the record to that finding of Judge
22 Livingston and myself, and your recourse about that
23 would be to appeal to a higher court.

24 MR. KINGDON: Yes, Your Honor, I have appealed.
25 And I believe that I would also need to proffer to the

1 Court here for the purposes of appeal regarding the
2 matter of jurisdiction.

3 THE COURT: Go ahead. Say anything you'd like.

4 MR. KINGDON: Your Honor, under the Parental
5 Kidnapping Prevention Act of 1980, that was basically
6 designed to take care of jurisdictional matters like
7 this where a non-custodial parent would take a child to
8 another state where they felt they would obtain a more
9 favorable ruling regarding child jurisdiction.

10 In this particular case, the original child custody
11 order was established in Kansas in 1989. Then in this
12 past year on June 11th of 2002, there was an order
13 entered in the 3rd Judicial District Court of Salt Lake
14 City -- or Salt Lake County, Utah. And the order was
15 for modification of that original Kansas order.

16 This order awarded split custody to the parties.
17 The order was done pursuant to the Uniform Child Custody
18 and Jurisdiction of the State of Utah, and the plaintiff
19 in this case agreed to the jurisdiction of the Utah
20 court.

21 Then on -- I believe it was July 1st, after the
22 youngest of the children, Stacy -- she had been awarded
23 to me in the split-custody arrangement, and she'd come
24 out to visit her mother and she stayed with her mother.
25 And there were -- there were charges made -- there were

1 allegations made of child abuse.

2 Instead of going back to the Utah court, the
3 plaintiff simply opened up a child custody proceeding
4 here in Georgia, and this Court awarded a temporary
5 custody to the plaintiff until the matter could be
6 heard.

7 Under the laws of both the state of Utah and the
8 state of Georgia, the parties -- when there's going to
9 be a communication between the Courts regarding
10 jurisdiction, the parties are to be given a chance to
11 participate in those proceedings. And, Your Honor, I
12 was never able to -- I was never allowed to participate
13 in any proceeding regarding the jurisdiction.

14 And what I believe has happened, Your Honor, is
15 that both the Court in Utah and here in Georgia has
16 relied on information provided by plaintiff in making
17 their decision and that that information has either been
18 incomplete or incorrect.

19 And the heart of the issue of this case is there's
20 a major difference between the laws of the state of Utah
21 and the laws of the state of Georgia regarding the
22 choice of a child as to who their custodial parent will
23 be.

24 The state of Georgia recognizes that a child at age
25 fourteen is -- has pretty much the right to choose which

1 custodial parent they want to live with. However, in
2 the state of Utah, the law is very much different, and
3 so the plaintiff has desired that this matter be heard
4 here in Georgia.

5 **THE COURT:** Does Utah have a child election law?

6 **MR. KINGDON:** No, Your Honor, not that I'm aware
7 of. And in matters like this, Your Honor, the Parental
8 Kidnapping Prevention Act of 1980 was designed to
9 prevent parents from taking children to another forum
10 where they thought they would get a more favorable
11 ruling.

12 And the Uniform Child Custody Acts of both Georgia
13 and Utah are designed to follow the Parental Kidnapping
14 Prevention Act. And this case, to me, seems clearly a
15 case where a parent -- a non-custodial parent in this
16 case has taken a child and sought for another forum, and
17 I very strongly believe that the state of Utah is the
18 proper forum.

19 **THE COURT:** For both children?

20 **MR. KINGDON:** For this particular case, the state
21 of Utah made a custody order, a custody modification
22 order, and the state of Utah -- they made that -- they
23 made that custody order properly according to the laws
24 of Utah and also in accordance with the Parental
25 Kidnapping Prevention Act, which prevails if there's a

1 difference between state laws.

2 And the court of Utah continues to exercise
3 jurisdiction under the Parental Kidnapping Prevention
4 Act as long as the child or one of the parents still
5 resides in Utah. I still reside in the state of Utah
6 and the -- under the Parental Kidnapping Prevention Act,
7 this case should still properly be in Utah.

8 And I found a case in Utah very similar to this.
9 It's called Curtis vs. Curtis and --

10 THE COURT: Do you have a cite on that?

11 MR. KINGDON: Yes, Your Honor.

12 THE COURT: Is that a Georgia case?

13 MR. KINGDON: It is a Utah case, Your Honor.

14 THE COURT: All right. Go ahead and read the cite
15 into the record.

16 MR. KINGDON: Okay. May I be seated, Your Honor?

17 THE COURT: Certainly.

18 MR. KINGDON: Thank you. And I apologize, Your
19 Honor, for not --

20 THE COURT: There's no problem at all, Mr. Kingdon.
21 You're doing a good job.

22 MR. KINGDON: Thank you. Curtis vs. Curtis, 789
23 P.2d 717, Utah Court of Appeals, 1990.

24 THE COURT: Okay. Thank you. And what does that
25 case say?

1 MR. KINGDON: Your Honor, that was a case where a
2 non-custodial father took his children to the state of
3 Mississippi and opened up a child custody proceeding in
4 the state of Mississippi. The original order for that
5 custody was in the state of Utah.

6 And what happened with that -- the facts of that
7 case were that the father tried to open up the child
8 custody case in Mississippi and completely ignored the
9 state of Utah. He never went back to the court with
10 continuing jurisdiction.

11 It was also -- this particular case was also on the
12 basis of alleged child abuse. From there, there were
13 proceedings in both states. The mother of the children
14 in this case went down to the state of Mississippi and
15 made an appearance in the court in Mississippi.

16 There was a ruling ultimately from the court in
17 Mississippi that she -- that the father should have
18 custody of the children. And the court in Utah -- the
19 trial court in Utah also said that because she had made
20 an appearance in the court in Mississippi, that that
21 gave the court in Mississippi jurisdiction regarding the
22 case.

23 She appealed the matter. The Utah Court of Appeals
24 overturned the Utah trial court's order based on the
25 finding that because of the -- the father had never made

1 an attempt to come back to the Utah court to settle the
2 matter and because the mother was still a resident of
3 the state of Utah, they found that the Utah court had
4 jurisdiction of the matter.

5 That case is very similar, in my opinion, to this
6 case, Your Honor. I even have a -- I have a copy of it
7 here if the Court would like to have that or --

8 THE COURT: All right. I'll take a copy. Thank
9 you, Mr. Kingdon. You know, I think what we need to do
10 here for your benefit really, Mr. Kingdon -- you can
11 have a seat.

12 MR. KINGDON: Thank you.

13 THE COURT: Is -- what we need to do is probably
14 get some testimony as opposed to you making like an
15 argument like an attorney. I think what we probably
16 need to do is put some testimony on so that we can
17 establish some facts --

18 MR. KINGDON: Yes, Your Honor.

19 THE COURT: -- in this matter that will give you a
20 basis to appeal on.

21 MR. KINGDON: Yes. Yes, Your Honor.

22 THE COURT: So who's the moving party today? Ms.
23 Bolin?

24 MS. BOLIN: Yes, Your Honor.

25 THE COURT: Is this a temporary matter? We started

1 off with an ex-parte matter; is that correct?

2 MS. BOLIN: Well, we filed for a change of custody,
3 Your Honor. Then we went into an ex parte.

4 THE COURT: And this is a temporary -- this is not
5 a divorce; right?

6 MS. BOLIN: No, sir.

7 MR. KINGDON: No, Your Honor.

8 THE COURT: This is a -- what, a modification of
9 custody for one child; is that right?

10 MS. BOLIN: Yes, Your Honor.

11 THE COURT: Okay.

12 MS. BOLIN: The mother already had custody of the
13 other child.

14 THE COURT: All right. Well, you're the moving
15 party, Ms. Bolin, and basically what I regard as to--
16 what Mr. Kingdon said is basically like an opening
17 argument.

18 And why don't you say any opening comments you
19 would like, and then I'll let you -- for the record,
20 what I'd like to do is establish from Mrs. Kingdon--
21 and we'll probably hear from the girls, too, as far as
22 their preference on your case since there's -- you don't
23 have written affidavits from them?

24 MS. BOLIN: No, Your Honor.

25 THE COURT: Okay. That's a preferred course of

1 action usually, is just to have a written election from
2 them. But since they're here and they're sitting in the
3 courtroom anyway, then we can just put them on the stand
4 and let them tell us what their preference is if the
5 parties don't have any objection.

6 But why don't we hear from you in the way of
7 opening remarks if you have any, then let's put Mrs.
8 Kingdon or whoever you wish to call on the stand and
9 let's just briefly get the facts out about where the
10 children have lived and the fact pattern of how we've
11 come to be here in court.

12 And then Mr. Kingdon can ask questions and then we
13 can hear from Mr. Kingdon under oath as well and that
14 will give us -- me an opportunity to make some findings
15 of fact in this matter that may be helpful to everybody,
16 Utah courts, Georgia courts, or anybody else who takes a
17 look at this. Ms. Bolin, any remarks you want to make?

18 MS. BOLIN: Yes, Your Honor. The action was
19 actually commenced because the child came to Georgia and
20 refused to return to Utah. And as a result of her
21 refusal, the mother filed a motion to change custody and
22 we notified the Court and asked for an ex parte because
23 time was of the essence. The child was scheduled to
24 return. The mother did not want to be in contempt.

25 And based on the facts as they were verified to me

1 by the child in question, we did file an ex parte. The
2 father was served and subsequently, in accordance with
3 the UCJEEA, both judges from both states had
4 conversation.

5 I believe that orders -- in fact, I know for a fact
6 that orders were issued by the state of Utah. Roger
7 Livingston, the Honorable Superior Court Judge there, as
8 well as the Honorable Robert Russell concurred and both
9 agreed that jurisdiction should be placed in the Georgia
10 courts.

11 Since that time, Mr. Kingdon has filed appeals and
12 I understand --

13 THE COURT: Appeals?

14 MS. BOLIN: Yes, Your Honor, appeals to that
15 decision. I understand that he's filed an appeal with
16 the Utah --

17 THE COURT: Utah court?

18 MR. KINGDON: With the Utah court, yes.

19 THE COURT: Well, there's no appeal that's been
20 filed here.

21 MS. BOLIN: No, sir, but the Court of Appeals in
22 Utah, and he has filed an appeal there on the
23 jurisdictional issue alone.

24 THE COURT: Okay, very well. Call your first
25 witness.

1 MS. BOLIN: Okay. Plaintiff calls Linary Kingdon.

2 THE COURT: Right up here, Mrs. Kingdon.

3 (WITNESS APPROACHES THE WITNESS STAND)

4 L I N A R Y K I N G D O N, having been duly sworn, took the
5 stand and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. BOLIN:

8 Q Please state your name.

9 A Linary Kingdon.

10 Q You're going to need to speak up a little bit
11 louder.

12 A Is this on?

13 THE COURT: It doesn't amplify. It just records,
14 so speak louder.

15 A Linary Kingdon.

16 Q (By Ms. Bolin:) And, Mrs. Kingdon, where do you
17 reside?

18 A In Darien, Georgia.

19 Q And how long have you resided in Georgia?

20 A Total time? A little over six years.

21 Q And by "total," what does that mean?

22 A I lived in Kingsland from -- in St. Marys from '91
23 to '94 and then relocated to Oregon for five years and then
24 moved back here in March of '99.

25 Q So you've been here now a total of how many months

1 or years since your second return or your return back to
2 Georgia?

3 A Okay. Three years and five months.

4 Q But did you live here at least six months prior to
5 filing this action?

6 A Yes, almost two years.

7 Q And you have two -- how many children do you have?

8 A Two.

9 Q And what are their names?

10 A Julie and Stacy.

11 Q And what are their birthdays?

12 A Julie is July 11th, '86, and she's sixteen. And
13 Stacy is March 5th, '88, and she is fourteen.

14 Q And are those parties present?

15 A Yes.

16 Q Who has custody of those children?

17 A Because of the recent things, I do.

18 Q And the custody issue arose as a result of what?

19 I'll rephrase that. Were you married to Mr. Kingdon?

20 A Yes, from --

21 Q When were y'all divorced?

22 A September 11th, 1989.

23 Q And at the time of your divorce, what was the
24 custody arrangement?

25 A Joint custody and physical residency with me.

1 Q And has that changed during the years?

2 A It did in June of this year.

3 Q And what was that change?

4 A The change was to shift custody of Stacy to her
5 dad.

6 THE COURT: That was June of this year?

7 MS. BOLIN: June 11th, Your Honor, I believe.

8 THE WITNESS: May or June?

9 MR. KINGDON: June 11th, Your Honor.

10 MS. BOLIN: It was --

11 MR. KINGDON: The order was entered June 11th.

12 THE COURT: In Utah?

13 MR. KINGDON: In Utah, yes, Your Honor.

14 THE COURT: And until June 11th, where had the
15 child been? With you?

16 THE WITNESS: Back and forth mostly with me, but a
17 little bit with her dad when she wanted to live with
18 him.

19 THE COURT: And where was the child going to
20 school?

21 THE WITNESS: Depending where she lived.

22 THE COURT: She went to both schools?

23 MR. KINGDON: Your Honor, both -- both children
24 have lived with me at various times. Most recently,
25 Stacy resided with me from July 17th, 2001 until she

1 came out here to visit her mother June 4th, 2002. So
2 she had been in Utah for nearly a year before the order
3 was entered in Utah.

4 Q (By Ms. Bolin:) During that time, Mrs. Kingdon,
5 who was the official custodial parent of Stacy?

6 A I was.

7 Q And as a result of your child visiting you this
8 summer, what happened?

9 A She told me about the environment at home in Utah,
10 and it didn't sound like a healthy one at all and she didn't
11 want to return.

12 Q And what was your response to that?

13 A I needed to pursue legal help because I had just
14 shifted custody to her dad and I couldn't just make her stay
15 or -- I needed to follow the law.

16 Q Were y'all represented by counsel when you filed
17 that consent order?

18 A Brian did it, and at the time we were in agreement
19 with the situation as it was at that time.

20 Q And were you in agreement with that order until
21 July or -- excuse me -- until June of this year?

22 A To change custody?

23 Q Uh-huh.

24 A Right, as long as -- yeah, until I knew about other
25 things.

1 Q Exactly what did you learn that made you change
2 your mind?

3 A That Stacy was very stressed, and being in Utah the
4 worst part is that she had gotten to the point where she was
5 inflicting bodily injury to herself and had contemplated
6 suicide.

7 Q At any point in time did you refuse to allow her to
8 return to Utah?

9 A Never. In fact, I encouraged her even sometimes
10 when she didn't want to go.

11 Q In spite of the danger to herself?

12 A Well, no. This time I didn't encourage her, but I
13 made sure that what she had told me was true.

14 Q And how did you make sure of that?

15 A Well, I helped -- made sure she understood the
16 importance of the things she was saying, that if it wasn't
17 true, you know, that that's very bad. And some of the things
18 she had told me, I contacted people in Utah that I could
19 follow through to verify that what she had said was true.
20 And then a lot of it just boils down to I had to believe her
21 or her dad, and from my experience, I'm much more able to
22 trust her.

23 Q Is it -- is it your opinion that it's in the
24 child's best interest to remain in Georgia?

25 A Yes.

1 MS. BOLIN: That's all, Your Honor.

2 THE COURT: Any questions, Mr. Kingdon, for Mrs.
3 Kingdon?

4 MR. KINGDON: Yes, Your Honor.

5 THE COURT: You can stay seated if you'd like.

6 MR. KINGDON: Yes, sir. Thank you, Your Honor.
7 Your Honor, should I be sworn in before --

8 THE COURT: You're asking questions right now.

9 MR. KINGDON: Okay. Thank you.

10 THE COURT: You're not testifying. You're asking
11 questions.

12 MR. KINGDON: Yes, sir.

13 CROSS-EXAMINATION OF LINARY KINGDON

14 BY MR. KINGDON:

15 Q Linary, can you tell the Court what evidence you
16 have that there was abuse in this case? Can you --

17 A Her emotional demeanor when she was talking about
18 it. I did see some scars on her wrists. Non-physical
19 evidence would be having talked to the assistant principal at
20 the school where she went when she asked to be taken into
21 protective -- a protective situation to be away from home in
22 Utah. Those are the only ones I can think of right now.

23 Q Linary, did you provide this Court with a list of
24 the addresses where you have lived in the past five years and
25 also of the names of the people who Stacy has resided with?

1 A Was I supposed to?

2 Q Yes.

3 A Oh. No, I didn't.

4 Q You did not. Can you please tell the Court where
5 you have lived going back to -- well, in your -- in your
6 deposition of the court, you started with where you had lived
7 in 1994. Can you go back -- can you go back to the time when
8 we were divorced in Kansas and tell the Court where you and
9 the children have resided since --

10 MS. BOLIN: Your Honor, I object to that. They've
11 been -- they've been divorced since 1989, I believe.
12 For her to go back and to list all that, I think, is
13 irrelevant.

14 THE COURT: The question was about what were the
15 reasons for the divorce?

16 MR. KINGDON: No. The question was regarding where
17 the plaintiff and the children have resided since the
18 divorce.

19 THE COURT: Since the divorce. Well, let's just go
20 back five years. Let's see. That will be --

21 MR. KINGDON: That's fine.

22 THE COURT: Yeah, let's -- that would be, what,
23 1997?

24 MR. KINGDON: 1997.

25 THE COURT: All right.

1 MR. KINGDON: Yes, Your Honor.

2 THE COURT: Answer the question --

3 THE WITNESS: Okay.

4 THE COURT: -- from 1997.

5 A '97, I was in --

6 THE COURT: Well, let me -- let me see if -- let me
7 ask this to see if I can speed this up. The -- I'm
8 looking at Mr. Kingdon's answer, and basically, you
9 know -- neither party has really filed the affidavit,
10 you know, even though I've requested that.

11 The -- and Mr. Kingdon mentioned -- said it hadn't
12 been filed. But this is what Mr. Kingdon says as far as
13 Stacy goes. The child lived with her father from June
14 1994 through December 1994, from August 1996 to May
15 1997, from August 1999 through December 1999, and from
16 July 17th, 2001 to July -- June 4th, 2002. Do you agree
17 with that?

18 THE WITNESS: (Nods head)

19 THE COURT: Answer out loud.

20 THE WITNESS: Yes.

21 THE COURT: All right. I think that satisfies what
22 you --

23 MR. KINGDON: Yes. Yes, Your --

24 THE COURT: -- were trying to get.

25 MR. KINGDON: Yes, Your Honor.

1 THE COURT: Proceed.

2 MR. KINGDON: Okay.

3 Q (By Mr. Kingdon:) When the -- how did the whole
4 issue of having the defendant, myself, having custody of
5 Stacy -- how did all of that come about? Can you tell the
6 Court about that?

7 A Say your question again.

8 Q Can you tell -- can you please tell the court why
9 it is that you agreed to a change of custody?

10 A Oh, okay. All right. Stacy was living with you in
11 eighth grade. Child -- Utah was still pulling child support
12 out of your check to send to me for both children, and the
13 plan was that Stacy would stay with you through high school.
14 And so in order to straighten out -- so you weren't paying
15 for her when she was with me, Utah says that we would have to
16 go through the court system legally and change custody.

17 Q So you recognized the jurisdiction of Utah? You
18 agreed that Utah had proper jurisdiction in the case?

19 A They were the ones that had to take the money out
20 of your check for child support. So, yeah, they were
21 handling it at that point.

22 Q And then you were aware at the time when Stacy came
23 out to -- pardon me. Can you tell the Court about when
24 Stacy -- or when Stacy came to visit you after being in Utah
25 this past time? Can you tell --

1 A Like tell about the visit?

2 Q Can you tell the Court when that occurred, when
3 Stacy came back to visit you?

4 A Well, let's see. June 4th, she flew here to visit
5 me.

6 Q Okay. And she's resided -- she's resided here in
7 Darien since that time?

8 A Correct.

9 Q Did -- were -- at that time that she resided with
10 you, were you -- were you given notice that custody had been
11 changed in Utah by the Utah court?

12 A Huh-uh, no.

13 Q When did you receive notice that custody had been
14 changed?

15 A July something. I don't recall the date.

16 Q Okay. When you kept Stacy, did you do so knowing
17 that there was -- that you had already agreed to a change of
18 custody in Utah through the Utah court? When you kept Stacy
19 here in Georgia during her last visit, did you -- did you
20 know that there -- a change was imminent in the Utah court?

21 A We were in the process of doing what needed to be
22 done.

23 Q Okay. Have you ever attempted to change the
24 custody modification that was entered June 11th in the 3rd
25 Judicial District Court of Salt Lake County? Have you ever

1 attempted to change that custody through that forum?

2 MS. BOLIN: Your Honor, I object. She obviously
3 has because she's here today and that change of custody
4 was based on a significant change in circumstances. I
5 would object to the --

6 THE COURT: Well, I think he's asking about like
7 filing a petition --

8 MR. KINGDON: Yes.

9 THE COURT: -- for modification in the Utah
10 court --

11 MR. KINGDON: Yes, Your Honor.

12 THE COURT: -- is what he asked about.

13 MR. KINGDON: Yes, Your Honor.

14 A I haven't done that paperwork, but I sent them a
15 letter prior to the date when she was supposed to return to
16 let them know that I needed to do something.

17 Q (By Mr. Kingdon:) Have you ever -- have you since
18 that point filed any papers in the courts in Utah?

19 A My lawyer's taken care of that for me.

20 Q So --

21 THE COURT: The answer is no at this time.

22 A Oh, I myself, no.

23 THE COURT: Well, anybody on your behalf or
24 yourself has not filed any papers in Utah; is that
25 correct?

1 THE WITNESS: You have or haven't?

2 MS. BOLIN: Your Honor, we've filed everything in

3 the Utah courts. They have been apprised of these

4 actions as was proved by the orders --

5 THE COURT: What Mr. Kingdon wants to know, has any

6 formal legal paperwork been filed in the Utah courts,

7 like a petition for modification there, is what he's

8 asking.

9 MR. KINGDON: Yes, Your Honor.

10 MS. BOLIN: A petition for modification was not

11 filed there, but a petition for modification in the

12 Georgia courts, based on a significant change of

13 circumstances, was filed.

14 THE COURT: I understand, but the question is, has

15 any paperwork been filed in Utah. That's what -- formal

16 legal paperwork, motion, petition.

17 MS. BOLIN: No, Your Honor.

18 THE COURT: The answer is --

19 MS. BOLIN: No, Your Honor.

20 THE COURT: -- no; is that correct?

21 THE WITNESS: Correct, I think.

22 THE COURT: Okay. That's what -- that's what he

23 wants to know.

24 MR. KINGDON: That was my question, Your Honor.

25 Thank you.

1 THE COURT: All right. Proceed.

2 Q (By Mr. Kingdon:) Linary, can you tell the Court
3 why you wanted to have the custody modification that was done
4 in Utah -- why you wanted to have that custody modification
5 done here through the Georgia court system?

6 A Why here instead of Utah?

7 Q Yes.

8 A Well, because this is where -- Georgia is where
9 Stacy considers her home more than Utah. I've been here for
10 an extended period of time. I was working, so it was hard
11 for me to leave. You weren't working, so you could leave
12 Utah. It just seemed more appropriate to me.

13 Q Okay. Did your desire to have the Georgia court
14 take jurisdiction of this case -- did it have anything to do
15 with the fact that there is a difference between Georgia and
16 Utah law regarding the choice of the child?

17 A No, because I didn't know about that.

18 Q Yet did you state in your affidavit -- or excuse
19 me -- in your petition to this Court that for a modification
20 or change that the child -- or that the Court should modify
21 the order based on the fact that the child was age fourteen?

22 A Say that again.

23 Q In your petition to this Court here, did you state
24 that you should be given custody of Stacy because she is age
25 fourteen and under -- was that one of the reasons that was

1 stated to this Court why you should have custody of Stacy at
2 this time?

3 A I don't recall if I stated that. That's not the
4 reason I think I should have custody.

5 MR. KINGDON: Okay. Your Honor --

6 THE COURT: Any more questions for Mrs. Kingdon?

7 MR. KINGDON: I'm a little unsure if we have
8 moved -- perhaps you can help me, Your Honor. Have we
9 moved into a child custody proceeding now at these -- at
10 this point?

11 THE COURT: Well, you know, Mr. Kingdon, the way I
12 view this is I've already decided the jurisdictional
13 issue, and you are contesting that. And basically, I'm
14 letting you put some facts on the record so that you can
15 appeal this matter and that you'll have some basis for
16 appeal.

17 MR. KINGDON: Thank you, Your Honor.

18 THE COURT: Otherwise, the appellate courts just
19 say there's no record and affirm what I do, but I want
20 to be more than fair to you and --

21 MR. KINGDON: Thank you, Your Honor.

22 THE COURT: And I'm basically just trying to get
23 some information on the record for you, and that's why I
24 wanted to get the dates down.

25 MR. KINGDON: Yes, Your Honor.

1 THE COURT: And I think -- I really don't think
2 there's any contest about the dates. I think both
3 parties agree to that. And now that we've done that,
4 then, well, yes, today is -- today is the purpose -- I
5 mean, the purpose of today is for me to decide temporary
6 custody, I guess, until a final hearing.

7 Now, on the other hand, I'll just tell you if I've
8 got two young ladies who are both over the age of
9 fourteen or older who are making an election and are
10 going to tell me that, then unless you show that she is
11 a unfit parent totally unsuitable for custody, then I'm
12 going to follow their election.

13 MR. KINGDON: Yes, Your Honor, I understand.

14 THE COURT: So I really don't need a lot of -- I
15 mean, you're entitled to ask for it if you want to try
16 to prove that she's unfit, but that's what I would
17 probably say the law is on this subject right now.

18 MR. KINGDON: Your Honor, is there an appropriate
19 way for me to ask you what the findings of fact -- what
20 the findings of fact were regarding --

21 THE COURT: Well, I mean, pretty much what the
22 findings of fact are going to be is --

23 MR. KINGDON: I'm sorry, Your Honor. When you
24 spoke with the Honorable Judge Livingston, what the
25 findings of fact were.

1 THE COURT: Just -- so far there's nothing been any
2 surprises of what we conferred about. The same length
3 of times were basically -- well, maybe a few minor
4 discrepancies, but nothing important. We discussed this
5 and we looked at the Utah paperwork that had been filed
6 there in Utah, and I faxed him the paperwork that had
7 been filed here.

8 And basically, what he said is that one child has
9 moved from place to place, and the other child has
10 stayed with Mrs. Kingdon primarily most of the time and
11 that -- and has been with Mrs. Kingdon since, what, 1999
12 here in Georgia for the most part and that -- and she
13 has had legal custody of Stacy until June or July of
14 2002, even though she hasn't had physical custody.

15 And we discussed all of that and basically because
16 of the two children's situation, he thought that Utah
17 should defer to Georgia for jurisdictional purposes, and
18 I'm going to say that in my findings of fact.

19 MR. KINGDON: Right. My problem, Your Honor, is
20 that there's -- in both states, there's the statute
21 that --

22 THE COURT: I'm aware of that, Mr. Kingdon, and I
23 believe what the statute says is the judges may allow
24 the parties to participate, and if they aren't allowed
25 to participate, they're allowed to file paperwork.

1 And the paperwork that we had in Utah that you
2 filed and the paperwork that we had here in Georgia that
3 Mrs. Kingdon filed was both reviewed by both judges.
4 And I know you may have wanted to file more paperwork,
5 but the issue really -- the issue of the length of the
6 children staying is really not in question. I mean,
7 that's what both judges had in front of them.

8 MR. KINGDON: Right. But at the time, Your Honor,
9 I mean, it was obviously -- in referring to the
10 jurisdictional matter, the -- Stacy had been with me for
11 longer than six months. Her home state --

12 THE COURT: That's correct. We were both aware of
13 that.

14 MR. KINGDON: Her home state was Utah.

15 THE COURT: We were both aware that she had been
16 with you longer than six months and the other child had
17 been with Mrs. Kingdon since -- in Georgia since around
18 1999.

19 MR. KINGDON: Was there any question about the
20 propriety of Utah having entered that modification?

21 THE COURT: Well, he had that in front of him and
22 we related that back to each other.

23 MR. KINGDON: Okay. So in the communication, both
24 Courts agreed that Utah had proper jurisdiction to make
25 that custody modification? Was that -- or was that ever

1 even brought up?

2 THE COURT: Well, it was -- yeah, and that wasn't

3 challenged. This is just --

4 MR. KINGDON: That was not challenged?

5 THE COURT: No, no.

6 MR. KINGDON: Okay.

7 THE COURT: There's no -- we didn't argue about

8 that. I mean, we both understood that Utah had entered

9 an order in June -- July, is it?

10 MR. KINGDON: It was --

11 THE COURT: July of 2002.

12 MR. KINGDON: June 11th, 2002.

13 THE COURT: June 11th of 2002.

14 MR. KINGDON: Okay. So there was no question that

15 Utah had proper jurisdiction at the time?

16 THE COURT: Well, I mean, there's an order. I'm

17 not getting into whether they did or didn't. I mean,

18 you know, Judge Livingston thought so at the time.

19 MR. KINGDON: Right. Okay.

20 THE COURT: So I'm not going to -- I mean, that

21 wasn't a question either.

22 MR. KINGDON: All right.

23 THE COURT: Now, do you have any more questions for

24 Mrs. Kingdon?

25 MR. KINGDON: Your Honor, I just -- I apologize.

1 I've not had an opportunity to be heard by either Court
2 regarding the jurisdiction, which I --

3 THE COURT: Well, I'm getting ready to let you
4 testify. Do you have any more questions for her?

5 MR. KINGDON: Let's see.

6 Q (By Mr. Kingdon:) Linary, were you aware that
7 there was communication between the Courts regarding
8 jurisdiction?

9 A I found out afterwards when my attorney told me.

10 Q Okay. Did your or your attorney participate in
11 those communications?

12 A I didn't. I'm not sure if she did.

13 MR. KINGDON: Okay. Your Honor, again I'll just
14 state this before I ask my next question, but again I
15 feel that these -- that this is not the proper forum for
16 these proceedings and --

17 THE COURT: All right. Mrs. Kingdon, you can step
18 down.

19 (WITNESS WITHDREW FROM THE STAND)

20 THE COURT: Let's hear from the two children, Ms.
21 Bolin. Bring -- call Stacy or Jennifer (sic) up.

22 MS. BOLIN: Your Honor, do you want to hear that in
23 chambers or in open court?

24 THE COURT: What?

25 MS. BOLIN: Do you want to hear that in chambers or

1 open court?

2 THE COURT: No. I'll hear it right here. Bring
3 Julie up. I mean, I'm just going to ask -- that's all
4 we're going to ask her. Julie come on up.

5 (WITNESS APPROACHES THE WITNESS STAND)

6 THE COURT: Raise your right hand. Be sworn in.

7 (JULIE KINGDON IS SWORN BY THE CLERK)

8 THE COURT: You can have a seat.

9 (WITNESS COMPLIES)

10 THE COURT: I'll ask you, Julie -- Julie, your
11 birthday is July 11th, 1986?

12 MS. J. KINGDON: Yes, sir.

13 THE COURT: And where do you wish to reside? With
14 your mother or your father?

15 MS. J. KINGDON: My mother.

16 THE COURT: All right. Thank you. You can have a
17 seat.

18 (WITNESS WITHDREW FROM THE STAND)

19 THE COURT: Stacy, come on up.

20 (WITNESS APPROACHES THE WITNESS STAND)

21 THE COURT: Raise your right hand. Be sworn in.

22 (STACY KINGDON IS SWORN BY THE CLERK)

23 THE COURT: Have a seat.

24 (WITNESS COMPLIES)

25 THE COURT: Stacy, you were born March 5th, 1988?

1 MS. S. KINGDON: (Nods head)
2 THE COURT: You're fourteen years of age?
3 MS. S. KINGDON: (Nods head)
4 THE COURT: Now, who do you elect to live with?
5 Your mother or your father?
6 MS. S. KINGDON: My mother.
7 THE COURT: Have a seat.
8 (WITNESS WITHDREW FROM THE STAND)
9 THE COURT: All right. Mr. Kingdon -- do you have
10 any more witnesses, Ms. Bolin?
11 MS. BOLIN: No, Your Honor, but I would present to
12 the Court a copy of an affidavit of the plaintiff. The
13 Court indicated earlier that he did not have one in the
14 record.
15 THE COURT: I haven't seen it in here. Have you
16 given Mr. Kingdon a copy?
17 MS. BOLIN: Yes, Your Honor.
18 THE COURT: Okay.
19 MR. KINGDON: I'm sorry, Your Honor. I don't
20 know --
21 THE COURT: This says it's filed July 10th, so I
22 assume it's in here, then.
23 THE CLERK: It should be.
24 THE COURT: Okay. Well, find it for me.
25 (CLERK COMPLIES)

1 THE COURT: All right. Mr. Kingdon, do you want to
2 testify?
3 MR. KINGDON: Yes, Your Honor.
4 THE COURT: Come on up.
5 (DEFENDANT APPROACHES THE WITNESS STAND)
6 THE COURT: Raise your right hand and be sworn in.
7 (BRIAN KINGDON IS SWORN BY THE CLERK)
8 THE COURT. Have a seat. Say anything you would
9 like. Now, what you're doing is talking about
10 jurisdiction and the length of the time where the
11 children have lived, which we've already agreed on, I
12 think, but say anything else you'd like to say.
13 MR. KINGDON: Yes, Your Honor.
14 THE COURT: This is not asking questions. This is
15 you testifying, making statements.
16 MR. KINGDON: This is me testifying.
17 THE COURT: Go ahead.
18 MR. KINGDON: Yes, Your Honor. I will attempt to
19 primarily address the jurisdictional matter since
20 that's --
21 THE COURT: I'm going to give you a chance to
22 argue.
23 MR. KINGDON: Oh.
24 THE COURT: This is just your testimony --
25 MR. KINGDON: Just my testimony.

1 THE COURT: -- about facts.

2 MR. KINGDON: Okay. Your Honor, I was married to
3 Linary in 1985. We had two children, Julie and Stacy.
4 We were divorced in 1989. At that time the divorce was
5 done on basically an emergency basis in Kansas because I
6 was in the military and I was under orders to go to
7 Korea.

8 And so there was no -- I was under orders to go to
9 Korea to an area where I would not be able to have the
10 children. So there was no dispute at the time that
11 Linary should have the children because I was totally
12 going to be unable to have the children.

13 Shortly after the divorce, Linary suffered a mental
14 and emotional breakdown. She was hospitalized. She was
15 diagnosed with bipolar mental disorder, manic depressive
16 with paranoia. I was forced to take a hardship
17 discharge from the Army in order to take care of the two
18 children because she was unable to.

19 So they lived with me for a time, and then Linary
20 came and picked them -- and I moved to Utah. She moved
21 out of the -- out of Kansas. Neither one of us, to my
22 knowledge, has returned to Kansas to live.

23 I took the children for a time, then she came and
24 picked up the children. And since that time, the
25 children have at various times lived with me either at

1 the plaintiff's request -- either at Linary's request or
2 by mutual agreement.

3 Julie has spent a more substantial amount of time
4 with me. Most recent -- well, I moved to Utah with the
5 children, and then I have resided there ever since
6 except for a brief six-month stay in the state of
7 Washington in 1996.

8 I have -- I have been troubled throughout the years
9 by difficulties in dealing with the plaintiff. Her
10 diagnosed mental disorder has made it difficult to make
11 agreements and hold to those agreements with her and
12 deal with the children.

13 The children have -- like I said, have gone back
14 and forth, and Julie has spent more time with -- much
15 more time with me than Stacy. I believe that through
16 the mother's influence, in large measure, the reason
17 that Stacy does not wish to reside with me has a lot to
18 do with the influence that her mother has had on her.

19 There are some specific things that I learned when
20 Stacy was here this last time from July 17th of 2001 to
21 May of 2002, regarding things that she says that her
22 mother has told her about me and so forth. I have
23 brought copies of some of the things that both Julie and
24 Stacy have written in this regard.

25 The charges of child abuse are really nothing new.

1 Most every time the children have been with me, when
2 they have returned to their mother, she has called me
3 and said -- basically told me that while the children
4 were with me, that they were neglected, abused, and so
5 forth. This is just the first time that this has--
6 this has come before the Court, these charges.

7 I -- in my answer to this court, I have denied most
8 of the charges that Linary has made. I do -- I do admit
9 that there was arguing in my home in Utah, but I do not
10 believe that the arguments were in the nature of abuse
11 to Stacy in any way.

12 A lot of Stacy's and Linary's testimony regarding
13 this matter are distortions of facts or just outright
14 lies. Stacy has stated that she cut her wrists. If she
15 were to come up in front of this Court and hold up her
16 wrists to the Court, the Court would see no evidence of
17 scarring or anything like that.

18 She has said that while she was with me that she
19 contemplated suicide. I have no knowledge of that. I
20 do know that in a journal entry that she made concerning
21 her mother -- in a journal entry, Stacy stated that she
22 thought that she was depressed and that her mother was
23 going to commit suicide.

24 I believe that it is in Stacy's best interest to
25 remain in Utah. She has more structure there. I

1 understand that while she's here, she's allowed to do a
2 lot of things that she simply would not be allowed to do
3 if she were with myself and my wife in Utah.

4 And I'm very concerned for both of my daughters. I
5 want what's best for them. I am in no way an abusive
6 parent. I've been charged with physical abuse of the
7 children. Both children could tell this Court or anyone
8 that I have never physically abused them, and I find
9 such allegations offensive and repugnant.

10 I could address more why I think that Linary is an
11 unfit mother, but it seems that the intention of this
12 Court is to give the children their choice of who they
13 want to live with. That who they want to live with,
14 and I understand that, based on what little I know of
15 Georgia law, that that pretty much follows the provision
16 of law.

17 And I do not want to turn this court into a forum
18 for showing, you know, who the better parent is or why I
19 think that -- why that I think that the mother is really
20 not fitted to have Stacy, again, in large measure,
21 because I don't believe that the proper forum to hear
22 those issues is here. I think that pretty much covers
23 things.

24 THE COURT: Any questions, Ms. Bolin?

25 CROSS-EXAMINATION OF BRIAN KINGDON

1 BY MS. BOLIN:

2 Q Mr. Kingdon, are you employed?

3 A I am not currently employed.

4 Q When was the last time you were employed?

5 A I was laid off at the very end of last year, so
6 December 31st.

7 Q What kind of educational background do you have?

8 A I have a degree in -- a Bachelor's degree in
9 psychology and also a Bachelor's degree in accounting.

10 MS. BOLIN: That's all, Your Honor.

11 THE COURT: You may have a seat.

12 (DEFENDANT WITHDRAWS FROM THE STAND)

13 THE COURT: I'll give you the opening and
14 concluding argument, Ms. Bolin.

15 MS. BOLIN: Your Honor, I'll go ahead and just
16 quickly reiterate that jurisdiction has been placed with
17 the Georgia courts. Our petition here is based on a
18 significant change in circumstances once the child
19 returned from Utah and came to Georgia.

20 Based on the allegations set forth in the verified
21 pleadings and based on their testimony here today, I
22 would submit that Georgia is, in fact, the proper forum
23 and that these children -- both girls should be entitled
24 under Georgia law to choose where they wish to reside.

25 And I think they've made it clear that they wish to

1 reside in Georgia with their mother, and I would
2 respectfully submit to the Court that that is where they
3 need to be.

4 THE COURT: Mr. Kingdon?

5 MR. KINGDON: Your Honor, again I do not believe
6 that this is the proper forum for this hearing. I
7 believe that it is in the best interest of Stacy Marie
8 Kingdon that she remain in Utah in accordance with the
9 agreement that the mother made that she should remain
10 there and that I should have custody.

11 I do not believe that the mother is particularly
12 fit. I believe that she is not capable or willing to
13 understand how her mental disorders affect her children
14 or what her negative influence on them is regarding
15 their relationship with me. And I believe that the--
16 this matter should -- I believe that this Court should
17 revisit -- look at again how this Court came to this
18 basis.

19 It troubles me, Your Honor -- it troubles me that
20 charges of child abuse have been made, but not at any
21 point -- and because of those charges of child abuse,
22 because that was raised, this case has been moved from
23 Utah, which had proper jurisdiction, down to this court.

24 Yet the plaintiff has not at any point given this
25 Court any real substantial evidence that there was child

1 abuse. And to me, it seems like a violation of my right
2 to due process that I have been accused of child abuse
3 and never been given opportunity to present facts
4 regarding that.

5 The case has been moved based on that. Yet here in
6 this court, that really does not seem to matter under
7 Georgia law. This is a matter of -- the fact that I'm
8 a -- I'm a citizen of the United States. I'm entitled
9 to due process under the law whether I'm in Utah or
10 Georgia, anywhere.

11 And allegations have been raised and my -- the
12 circumstances of my family have been greatly altered
13 without having to substantiate any of those claims, and
14 that truly bothers me that that is how this is being
15 handled. And again, that's why I believe that this
16 court is not the proper forum for this.

17 THE COURT: Ms. Bolin, anything further?

18 MS. BOLIN: No, Your Honor. Thank you.

19 THE COURT: All right. I'll find that the parties
20 were divorced September 11th, 1989, in Kansas; that
21 joint custody of both children was awarded to Linary
22 Kingdon -- I mean, Linary -- joint custody to both
23 parties was awarded on September 11th, 1989, with
24 physical custody with Linary Kingdon; that Stacy Marie
25 Kingdon lived with her father from June 1994 through

1 December 1994, from August 1996 to May 1997, from August
2 1999 through December 1999, and from July 17th, 2001 to
3 June 4th, 2002; that there was a June 11th, 2002 consent
4 order entered into Utah changing custody from Stacy
5 (sic) to Brian Kingdon; that on -- now, that was with
6 Stacy.

7 Now, as far as Julie goes, she's lived with the
8 mother basically for the last five years, and the mother
9 has resided in Georgia with a brief stay in --

10 MR. KINGDON: Your Honor?

11 THE COURT: What?

12 MR. KINGDON: I'm sorry. Julie has not resided
13 with her mother for the past five years.

14 THE COURT: Well, you said she's briefly stayed
15 with you some.

16 MR. KINGDON: She's stayed -- Julie has stayed with
17 me much more than Stacy. You have the dates for Stacy.
18 I gave those --

19 THE COURT: Yes.

20 MR. KINGDON: I gave those dates because of the--
21 of the matter of me having custody of Stacy according to
22 Utah, but Julie has not lived with her mother for the
23 past five years. I'm sorry.

24 THE COURT: Well, Ms. Bolin, when has Julie stayed
25 with the mother?

1 MS. BOLIN: Your Honor, just a second.

2 (MS. BOLIN CONFERS BRIEFLY WITH THE PLAINTIFF)

3 MS. BOLIN: Your Honor, the physical custody has
4 always been with the mother until June 11th of this
5 year. The children lived intermittently with both
6 parents.

7 And to actually establish how much time was spent
8 in both homes, I don't have that information readily
9 available, but we can have --

10 THE COURT: Where has Julie lived for the last
11 three years since Mrs. Kingdon returned to Georgia,
12 1999?

13 MRS. KINGDON: When Stacy and I returned to
14 Georgia, Julie was with her dad, but then four months
15 later she came to visit, didn't want to go back and has
16 been with me then -- so that would have been December
17 three years ago.

18 THE COURT: December of 1999?

19 MRS. KINGDON: Correct.

20 THE COURT: And she's been with you since?

21 MRS. KINGDON: Correct.

22 THE COURT: All right.

23 MR. KINGDON: She has resided -- she resided with
24 me before December of 1999, and in December of 1999, she
25 stayed here with her in --

1 THE COURT: All right. I'll find that as far as
2 Julie is concerned that the mother has always had
3 physical custody of her and that's never changed as far
4 as legal physical custody, and that from December of
5 1999 until today's date she's resided with the mother in
6 Georgia.

7 I'll find that on July -- let's see -- that on--
8 what did I say? June 11th, 2002, the Utah court entered
9 an order, consent order, between the parties giving
10 physical custody of Stacy to Mr. Kingdon; that on--
11 that the child came to visit supposedly for one month, I
12 believe, by agreement of the parties in July. Is that
13 right? Was it July or June?

14 MRS. KINGDON: June 4th, she --

15 MR. KINGDON: June 4th is when she came.

16 THE COURT: June 4th, for one month, but then
17 expressed a desire to stay and did stay despite Mr.
18 Kingdon's objections; that on July 3rd, 2002, Mrs.
19 Kingdon filed a motion for ex-parte relief and also
20 seeking a petition for modification of the Utah order
21 and also stated that there was a jurisdictional dispute;
22 that Judge Livingston, superior court judge of Utah, and
23 myself conferred by phone.

24 We reviewed the Utah paperwork that had been filed.
25 We reviewed the Georgia paperwork that had been filed.

1 We discussed this matter. We exchanged faxes of the
2 different paperwork that had been filed.

3 Judge Livingston declined to exercise Utah
4 jurisdiction and agreed that Georgia was the home state
5 of both children because of significant contacts and the
6 best interest of the children and emergency action
7 needed and that he entered a Utah order; and that on
8 July 8th, 2002, I entered an order giving Georgia -- no
9 August 5th, 2002, I entered an order determining that
10 both children -- the forum for determining custody of
11 both minor children, Stacy and Julie, was properly
12 vested with the state of Georgia and that Georgia was
13 the home state as far as jurisdictional purposes.

14 And then based on the election of both children
15 being over the age of fourteen, I grant temporary
16 custody with the mother, Linary Kingdon, of both
17 children at this time.

18 Ms. Bolin, you draw up and order and, Mr. Kingdon,
19 you can now review your legal options based on this
20 order once it's signed.

21 Now, Ms. Bolin, I want you to give Mr. Kingdon
22 either a fax or copy him the order as soon as you get it
23 prepared and I've signed it. Make sure he gets that as
24 soon as possible. Do you have his address --

25 MS. BOLIN: Yes, Your Honor.

1 THE COURT: -- and/or fax number?
2 MS. BOLIN: Yes.
3 THE COURT: Anything else you want to say, Mr.
4 Kingdon? Any questions?
5 MR. KINGDON: Yes, Your Honor. Was there -- was
6 there some sort of record kept of the communication
7 between you and Judge Livingston?
8 THE COURT: Ms. Kennedy, have you got a card for
9 Mr. Kingdon?
10 COURT REPORTER: You mean today?
11 MR. KINGDON: No, the conversation that Judge
12 Livingston had with --
13 THE COURT: No, there wasn't any record.
14 MR. KINGDON: There was not any record kept of
15 that?
16 THE COURT: No.
17 MR. KINGDON: And then I don't -- I'm sorry. I
18 don't know Georgia law, but I would like to enter my
19 notice to appeal the decision of this Court.
20 THE COURT: You're acting as your own attorney, Mr.
21 Kingdon, so you'll figure out -- you can figure out what
22 to do.
23 MR. KINGDON: Yes, Your Honor.
24 THE COURT: But Ms. Kennedy will give you her card.
25 MR. KINGDON: Thank you.

1 THE COURT: And I'll note for the record that my
2 court reporter is giving you her card at this time.

3 (COURT REPORTER CONFERS BRIEFLY WITH MR.
4 KINGDON)

5 THE COURT: All right. Thank y'all very much.
6 You're free to go.

7 MR. KINGDON: Thank you, Your Honor.

8 (HEARING CONCLUDED, 10:32 a.m.)

C E R T I F I C A T E

STATE OF GEORGIA,

COUNTY OF WARE:

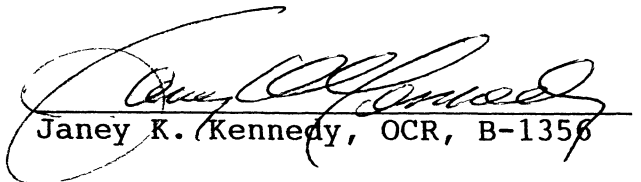
I hereby certify the foregoing hearing, pages 1 through 47, represents a true and complete transcription of the testimony reported by me on August 19, 2002.

I further certify I have no interest in the outcome of this case, and I am neither kin nor counsel to any party.

I further certify I have not entered into any contractual agreements with any party involved in this case.

This certification is expressly withdrawn and denied upon the disassembly or photocopying of the foregoing transcript of the proceedings or any part thereof, including exhibits, unless disassembly or photocopying is executed by the undersigned certified court reporter.

This, the 20th day of November 2002.


Janey K. Kennedy, OCR, B-1356