

2004

Lara Young v. David Young : Brief of Appellee

Utah Court of Appeals

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David Young; Pro Se.

Recommended Citation

Brief of Appellee, *Lara Young v. David Young*, No. 20040227 (Utah Court of Appeals, 2004).
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**UTAH COURT OF APPEALS
BRIEF**

**UTAH
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DOCKET NO. 20040227**

IN THE UTAH COURT OF APPEALS

LARA YOUNG,

Appellee,

vs.

DAVID YOUNG,

Appellant.

Appellate Docket No. 20040227

**BRIEF OF THE PETITIONER AND APPELLEE,
LARA YOUNG**

APPEAL FROM RULING AND ORDER STAYING THE UTAH PROCEEDINGS
AND TRANSFERRING JURISDICTION TO KING COUNTY, STATE OF
WASHINGTON OF THE THIRD DISTRICT COURT, SUMMIT COUNTY, THE
HONORABLE BRUCE LUBECK

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**FILED
UTAH APPELLATE COURTS**

DEC 06 2004

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STATEMENT OF JURISDICTION

Pursuant to Rule 3(a), Utah Rules of Appellate Procedure, a final order of a Utah District Court may be appealed. Appellate jurisdiction is conferred upon the Utah Court of Appeals pursuant to §78-2a-3(a) UTAH CODE ANNOTATED 1953, as amended.

STATEMENT OF ISSUES

1. Did the trial court correctly stay the Utah proceedings based upon its finding that, pursuant to UCA § 78-45c-207, Utah was an inconvenient forum?
2. Did the trial court correctly order that the issues raised by the pending petition to modify be considered by the Court in King County, State of Washington?

STANDARD OF REVIEW

Challenges to the trial court's interpretation and application of statutory law present questions of law: appellate review is for correctness, giving no particular deference to the lower court's conclusions. *In Re E.H.H.*, 2000 UT App 368, ¶ 6, 16 P.3d 1257.

A pretrial jurisdictional issue decided by the trial court to determine the appropriateness of exercising its continuing jurisdiction is a question of law and is reviewed under a correction of error standard, giving no particular deference to the trial courts determination. *Liska v. Liska*, 902 P.2d 644, 646-647 (Utah Ct. App. 1995).

STATUTORY PROVISIONS

The determinative statutes cited herein are Utah Code Ann. §§ 78-45c-202 and 78-45c-207 (1953, as amended).

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from a Ruling and Order of the Honorable Bruce Lubeck, Third District Court, Summit County, State of Utah. Specifically, this is an appeal from the Third District Court's Ruling and Order staying the proceedings in the State of Utah and ordering that the matter be considered in the State of Washington.

B. Course of the Proceedings & Disposition of the Case

1. On November 8, 1995 Appellee, Lara Young, filed a Verified Divorce Complaint seeking to terminate her marriage to Appellant, David Young, in Third District Court, Summit County, State of Utah. (R. at 1-11).
2. The case was tried on November 26, 1996. (R. at 155; 171).
3. The Decree of Divorce was entered on March 24, 1997. (R. at 171-178).
4. Appellee, Lara Young filed a Petition to Modify Decree of Divorce and Increase Child Support on August 12, 1998. (R. at 206-209).
5. Appellant, David Young filed his Answer to the Petition to Modify Decree of Divorce and Increase Child Support on August 28, 1998. (R. at 218-225).
6. A trial on the Petition to Modify Decree of Divorce was held on October 7, 1998. (R. at 323.)

7. An Order Modifying Divorce Decree and Increasing Child Support was issued on November 2, 1998. (R. at 323-324).

8. Appellant, David Young, filed a Petition to Modify Decree of Divorce on May 5, 1999. (R. at 326-327).

9. Appellee, Lara Young, filed her Answer to Petition to Modify Decree of Divorce on June 17, 1999. (R. at 328-330).

10. On July 19, 1999 Appellee, Lara Young, filed a Motion for Summary Judgment or in The Alternative, Motion to Dismiss [Petition to Modify Decree of Divorce]. (R. 334-335).

11. On November 2, 1999 the trial Court dismissed Appellant, David Young's, Petition to Modify Decree of Divorce on the grounds that it was filed within six (6) months of the Order Modifying Divorcee Decree and that, at the time of the hearing, no genuine issue of material fact existed. (R. at 462-464).

12. On April 3, 2000 Appellant, David Young, filed a second Petition to Modify Decree of Divorce. (R. at 481-483).

13. Appellee, Laura Young, filed an Affidavit in Support of Motion to Dismiss on September 29, 2000. (R. at 513– 516).

14. Appellant's second Petition to Modify Decree of Divorce was dismissed on or about June 12, 2001. (R. at 532)

15. On June 30, 2003 Appellant, David Young, filed a third Petition to Modify Decree of Divorce and Adoption of the Proposed Parenting Plan. (R. at 593-598).

16. On August 6, 2003 Appellee, Lara Young, filed a Petition for Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule in King County Superior Court, State of Washington, Case No.: 03-3-09663 before the Honorable Helen L. Halpert, seeking enforcement of the Order Modifying Divorce Decree and Increasing Child Support as well as the remaining provisions of the Decree of Divorce. (R. at 856-864).

17. Appellant, David Young, filed an Answer to the Petition for Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule filed in King County Superior Court, State of Washington. (R. at 968).

18. On August 11, 2003 Appellee, Lara Young, filed a Motion to Quash on the grounds that jurisdiction should be transferred to the State of Washington. (R. at 644-646; 684-692).

19. The Court heard oral arguments on Appellee, Lara Young's Motion to Quash on November 17, 2003, at which time that matter was taken under advisement. (R. at 964).

20. Thereafter, on November 24, 2003 the Court discussed this matter with the Honorable Helen Halpert, King County Superior Court, State of Washington. (R. at 965, 976).

21. On November 25, 2004 the court issued its Ruling and Order and therein held, "these proceedings are STAYED [] and the matter is to be considered in Washington under petitioner's [Appellee's] petition to modify, the court finding this [Utah] is an inconvenient forum under UCA § 78-45c-207." (R. at 970).

22. This is an appeal from said final order granting Appellee, Lara Young's Motion to Quash.

C. Statement of the Facts

1. The parties are the parents of one minor child, to wit: Kayla MacKenzie Young, (hereinafter "Kayla") born on January 25, 1995. (R. at 2, 156).

2. This case was tried on November 26, 1996 and the Decree of Divorce was entered on March 24, 1997. (R. at 155 - 170; 171-178).

3. Pursuant to ¶ 2 of the Decree of Divorce, the parties were awarded joint legal custody of Kayla and Appellee, Lara Young, was designated as her physical custodian. Appellant, David Young, was awarded liberal and reasonable visitation time with Kayla. (R. at 172).

4. In 1999 Appellee, Lara Young, was promoted by Gap, Inc. She and Kayla relocated to the State of California. (R. at 648).

5. In June 2002 Appellee, Lara Young, secured new employment at an increased salary and relocated to the State of Washington. (R. at 648).

6. Kayla has lived in the State of Washington since June 2002. (R. at 648).

7. Kayla's contacts are in the State of Washington. Specifically, Kayla is attending Carl Sandburg Elementary School: her schoolteachers and classmates are in the State of Washington. Her current and ongoing medical care is provided in the State of Washington: her pediatrician resides in the State of Washington. Kayla's babysitter and after-school care providers are in the State of Washington. (R. at 648).

8. Since 1999, Appellant, David Young, has exercised visitation with Kayla on approximately six (6) occasions. On these occasions, Kayla traveled to see Appellant in the State of Utah. (R. at 647 – 648).

9. Since Appellee, Lara Young, and Kayla left the State of Utah in 1999, Appellant, David Young, has not traveled to either California or Washington see Kayla. (R. at 647-648).

10. Paragraph 3 of the Decree of Divorce order of Appellant, David Young, to provide support of \$136.00 per month for the benefit of Kayla. (R. at 173).

11. Paragraph 1 of the Order Modifying Divorce Decree and Increasing Child Support orders Appellant, David Young, to provide support of \$589.00 per month for the benefit of Kayla. (R. at 323).

12. Appellant, David Young, has a child support arrearage of \$5,219.55. (R. at 648, 682).

13. On August 6, 2003 Appellee, Lara Young, filed an action in the State of Washington, King County Superior Court, case number 03-3-09663-0 SEA before the Honorable Helen L. Halpert, seeking enforcement of the Decree of Divorce and the Order Modifying Divorce Decree. (R. at 686A; 856 – 864).

14. Appellant, David Young, filed an Answer to the Petition for Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule filed in King County Superior Court, State of Washington. (R. at 968).

15. This action and the action filed in King County Superior Court, State of Washington are the only litigation which Appellee, Lara Young, has knowledge of regarding custody of the parties' minor child. (R. at 649).

16. Appellee, Lara Young currently has physical custody of Kayla: they reside in the State of Washington. (R. at 649).

17. The parties in this action are the only parties that claim custody or visitation right with Kayla.

SUMMARY OF THE ARGUMENT

Adopted by Utah in 2000 as a complete replacement to the Uniform Child Custody Jurisdiction Act (UCCJA), the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) “was promulgated in an effort to clarify ambiguous provisions in the UCCJA and to rectify conflicting state interpretations of the UCCJA.” *Benson v. Benson*, 667 N.W.2d 582, 584 (N.D. 2003). “The most significant changes in the UCCJEA are prioritizing home-state jurisdiction and providing for exclusive, continuing jurisdiction in the initial decree state.” *Id.*

Specifically, Section 202 of the UCCJEA clears up the confusion that was being caused by the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. §1738A. *Codified as* Utah Code Ann. §78-45c-202. The “PKPA requires other States to give full faith and credit to custody determinations made by the original decree State pursuant to the decree State’s continuing jurisdiction so long as that State has jurisdiction under its own law and remains the residence of the child or any contestant.” *See* UCCJEA, §202, comment 2, *Appellant Brief*, Addendum B.

Section 207 of the UCCJEA “retains the focus of Section 7 of the UCCJA. It authorizes courts to decide that another State is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties. If so, the court may defer to the other state.” See UCCJEA, §207, cmt., *Appellant Brief*, Addendum B; *codified at* Utah Code Ann. §78-45c-207, *citing* 78-45c-7 (Repealed 2000). However, there is one significant departure from the UCCJA: “the court shall stay the case and direct the parties to file in the State that has been found to be the more convenient forum. The court is also authorized to impose any other conditions it considers appropriate.” See UCCJEA, §207, cmts, *Appellant Brief*, Addendum B.

In this case, §§ 202 and 207 of the UCCJEA were correctly applied by the trial court as the applicable body of law governing this situation. First, the respondent filed a petition on June 30, 2003 to modify the decree after the UCCJEA statutory changes were adopted by Utah in 2000. Even if the filing date is determined to be the date of the divorce, November 8, 1995, the UCCJEA still applies because the applicable sections at issue in this case are procedural in nature, and can be applied retroactively. “A statute may be applied retroactively if it affects only procedural and not substantive rights.” *In Re T.M.*, 2003 UT App. 191, ¶17, 73 P.3d 959, *quoting* *Wilde v. Wilde*, 969 P.2d 438, 442 (Utah Ct. App. 1998).

Second, a court of this State conducted an initial child custody determination. Utah Code Ann. §78-45c-201. Pursuant to ¶ 2 of the Decree of Divorce, Appellee was granted the care, custody, and control of the party’s minor child, Kayla. (R. 172). Based

on the initial child custody determination, this court has exclusive, continuing jurisdiction. Utah Code Ann. 78-45c-202.

Pursuant to the UCCJEA as adopted by Utah, the trial court continues to have exclusive, continuing jurisdiction until 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...or...the court determines that it is an inconvenient forum.” Utah Code Ann. §78-45c-202(1-2).

In this case, a Utah court has determined that there lacks a significant connection with this state, and that Utah is an inconvenient forum. (R. at 970). In making this determination, the Court discussed the case with the Honorable Helen L. Halpert, King County Superior Court, Washington, to determine whether Washington state “ought to have matters heard [] because its inconvenient or because there’s no substantial connection with this state.” (R. at 976). After a considerable discussion on the record, the Court determined that “it’s inconvenient... [and] there simply isn’t sufficient connection [in Utah] anymore to justify keeping it here, and I can allow it to go forward [in Washington]. (R. at 976).

ARGUMENT

I. THE TRIAL COURT CORRECTLY FOUND THAT UTAH WAS AN INCONVENIENT FORUM PURSUANT TO UCA § 78-45c-207.

Under the UCCJEA, a “Utah court may choose to decline to exercise its jurisdiction, stay its proceedings, and defer to the jurisdiction of [another states court].” *Liska* at 648. Before determining whether it is an inconvenient forum, the court

shall consider all relevant factors, including: ...[1] the length of time the child has resided outside this state; [2] the distance between the court in this state and the court in the State that would assume jurisdiction; [3] the relative financial circumstances of the parties; [4] any agreement of the parties as to which state should assume jurisdiction; [5] the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child; [6] the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and [7] the familiarity of the court of each state with the facts and issues of the pending litigation.

See also Utah Code Ann. §78-45c-207.

In *Liska*, the commissioner “properly” recommended “that Utah decline to exercise its primary jurisdiction and defer to the jurisdiction of the Colorado court.” *Liska* at 649-650. The commissioner found “evidence that is available to the Colorado court regarding the children’s schooling, medical care, psychological evaluation, family and peer relationships is not available to this court.” *Id.* Furthermore, “[b]ased on the continued residency of the children in Colorado...and the limited visitation exercised by the noncustodial parent who resides in Utah, Colorado has a close connection with the children at present.” *Id.*

The *Liska* considerations mandate that the State of Utah stay its case and defer the case to the State of Washington. Kayla’s contacts are in the State of Washington. Indeed, Kayla left the State of Utah in 1999 and has not returned. (R. at 648). All current and relevant evidence necessary to determine her best interest is present in the State of Washington. Namely, Kayla’s records for day care, preschool, and elementary school are in the State of Washington. Her friends, care takers, and health care providers reside in the State of Washington. (R. at 648). And, contrary to Appellant’s position,

Kayla's infrequent contact with the State of Utah – six (6) visits over the last five (5) years – does not provide the basis necessary for the State of Utah to retain jurisdiction. (R. at 647–648).

Without dispute, Washington is of a sufficient distance that requiring Appellee, Lara Young, and Kayla, and all required witness to travel to Utah, is considerably more inconvenient, and expensive than requiring one witness, Appellant, David Young, travel to the State of Washington. The financial burden is of significance in this case in that Appellant, David Young, has failed and refused to remain current in his child support obligation. His arrearage is \$5,219.55. (R. at 648, 682). Notwithstanding Appellant's child support arrearages, Appellee, Lara Young, has provided consistent and reliable financial support for Kayla. To now require her to incur additional financial strain in travel expenditures and time off of work to come to Utah would be inequitable and unfair. Moreover, because the original Decree is silent as to the issue of retained jurisdiction, principals of equity and fairness should control.

Finally, King County Superior Court has a family court division/department, such that the necessary evaluations can occur more quickly and with less expense than in Utah. Therefore, King County Superior Court is able to decide the issues more expeditiously. (R. at 976). And, while it is true the State of Utah has maintained this action since 1995, the relevant and necessary evidence regarding the best interest of Kayla is not longer available in the State of Utah. Indeed, the State of Utah's only claim to the case is based on the case's history. This is not and should not be the basis of jurisdiction. Without

dispute, the State of Washington is a more convenient forum notwithstanding that it will have to become familiar with the procedural and factual history of this case.

Based on the forgoing factors, Utah is clearly the inconvenient forum in this matter. Therefore, in accordance with the UCCJEA purpose to “promote cooperation with the courts of other States to the end that a custody decree is rendered in the State which can best decide the case in the best interest of the child,” the Utah court correctly stayed these proceedings, allowing Washington to exercise jurisdiction consistent with Appellee, Lara Young’s Petition to Modify. See UCCJEA, §101, cmt. (2), *Appellant Brief*, Addendum B.

II. THE TRIAL COURT CORRECTLY STAYED THE UTAH PROCEEDINGS PURSUANT TO UCA § 78-45c-202 AND DEFERRED THIS CASE TO THE STATE OF WASHINGTON.

A court of this state that has made an initial child custody determination has exclusive and continuing jurisdiction to modify the child custody determination unless the court “determines that neither the child, the child and one parent, nor the child and 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.” Utah Code Ann. §§ 78-45c-201, 202.

The trial court in this case found that there no longer existed substantial evidence in this state concerning the child’s care, protection, training, and personal relationships. “[Kayla] has been in Washington since June, 2002...any records concerning the child in Utah would be at least 4 years old and the child is not yet nine years of age...[and] that the best interest of the child” is to stay the proceedings in Utah in favor of Washington.

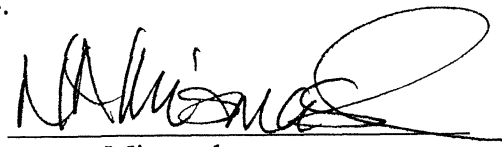
(R. at 976). Further, there lacks any significant connection with Utah since Kayla has only returned to Utah six times to visit Respondent. (R. at 647-648).

Based on the aforementioned analysis by the trial court, Utah lacks any substantial evidence concerning the child's care, protection, training, and personal relationships. Moreover, "the relationship between the child and the person remaining in the State with exclusive, continuing jurisdiction [is] so attenuated" that there no longer exists a substantial connection sufficient to warrant a court of this State to enforce jurisdiction. See UCCJEA, §202, cmt. 1, *Appellant Brief*, Addendum B. Therefore, the trial court correctly stayed these proceedings, allowing Washington to exercise jurisdiction over the petitioner's petition to modify.


CONCLUSION

WHEREFORE, Appellee, Lara Young prays that this Court uphold the Ruling and Order of the trial court staying any further action in the State of Utah on Appellant's Petition to Modify Decree of Divorce and Adoption of the Proposed Parenting Plan on the grounds that the State of Utah is an inconvenient forum to determine or otherwise decide the issues presented therein and that the matter should be deferred to the State of Washington.

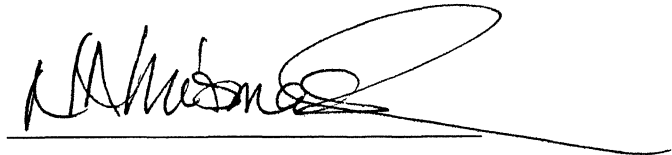
DATED this 6th day of December, 2004.


Nancy Mismash
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the foregoing Brief of
Petitioner and Appellee, was deposited in the United States Mail, postage prepaid on this
 day of December, 2004.

David Young
Appellant – Pro Se
P.O. Box 942
Park City, Utah 84060
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ADDENDUM

- Exhibit A Utah Code Annotated § 78-45c-202
- Exhibit B Utah Code Annotated § 78-45c-207
- Exhibit C Transcript of Chambers/Telephonic Hearing
- Exhibit D Ruling and Order

A

Utah Code Annotated § 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.

Laws 2000, c. 247, § 14, eff. July 1, 2000.

HISTORICAL AND STATUTORY NOTES

Uniform Law

This section is similar to § 202 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). See Volume 9, Pt. IA Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

B

Utah Code Annotated § 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.

HISTORICAL AND STATUTORY NOTES

Uniform Law

This section is similar to § 207 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). See Volume 9, Pt. IA Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Prior Laws:

Laws 1980, c. 41.

C. 1953, § 78-45c-7.

C

LARA YOUNG,

Plaintiff,

vs.

DAVID YOUNG,

Defendant.

)
)
)
) Case No. 954600158
)
) Transcript of:
)
) CHAMBERS/TELEPHONIC HEARING
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Silver Summit District Court
6300 North Silver Creek Drive
Park City, UT 84098

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A P P E A R A N C E S

HONORABLE BRUCE LUBECK
Third District Court, Summit County
State of Utah
Silver Summit District Court
6300 North Silver Creek Drive
Park City, UT 84098
Appearing in Utah Chambers

HONORABLE HELEN L. HALPERT
King County Superior Court
State of Washington
c/o 516 3rd Ave Rm W-1034
Seattle, WA 98122
Appearing Telephonically from Washington

MR. HANSEN, Esquire
for the Plaintiff in Washington
Appearing Telephonically from Washington

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(Whereupon, the following proceedings were had in
open court:)

JUDGE LUBECK: Let me put you on speaker, too, if I
may. Are you there, Judge?

JUDGE HALPERT: Yes, and in court with me is Mr.
Hansen, who represents the mother in Washington; is that
correct?

MR. HANSEN: That's correct.

JUDGE LUBECK: All right, let me -- I'll just make my
record. I am in my office; no one is here. And I have a
digital recording system, so that's why I've put you on
speakerphone. But no one's here. But it will only record in
that way.

And if I may, just for the record in this case, it's
Lara Young versus David Young, Case Number 954600158. And in
the case here, if I may, the Respondent, Mr. Young, has filed a
motion to -- petition to modify the decree that was entered
back in 1997. There have actually been a couple of petitions,
in '98 and '99, and 2000. But this is one that was filed June
30 of this year here in Summit County.

And he requested temporary orders, and I've had a
hearing scheduled for August 11. And on that very date, the
Petitioner filed a motion to quash the summons and asked,

1 erroneously, under the "UCCJA," that this matter be handled up
2 there in Washington. And I -- we didn't do anything on the
3 11th because we just got her pleading that day, and I allowed
4 Mr. Young to respond. He's done that.

5 We then had a hearing last week, or a couple of weeks
6 ago, on November 17, and I talked to Judge Halpert off the
7 record just about scheduling this hearing.

8 And we scheduled this to discuss, under the UCCJEA,
9 whether or not this state, being -- having original, exclusive
10 jurisdiction, ought to have matters heard up there because it's
11 inconvenient or because there's no substantial connection with
12 this state.

13 So, as I see it, from this perspective, Judge, that's
14 where we are, and the purpose of this conversation.

15 JUDGE HALPERT: I would agree there is -- I don't --
16 Mr. Hansen doesn't know if this is his problem or not. He
17 wrote me a letter, which I got Friday, which explains Mom's
18 position. I believe I asked that it also be faxed to you; I
19 think my bailiff might have done that.

20 JUDGE LUBECK: Yes. And I did receive that.

21 JUDGE HALPERT: But Mr. Hansen was relying on Utah
22 counsel to serve Mr. Young and we had no idea whether that
23 happened.

24 JUDGE LUBECK: Correct. I don't have anything that
25 indicates whether it did or didn't.

1 MR. HANSEN: (Inaudible)

2 JUDGE HALPERT: So, having said that, had Mr. Young
3 had notice of this, he could have been in your court; correct?

4 JUDGE LUBECK: No. He didn't have notice from us of
5 this. No, I didn't intend for either party to be here, to be
6 part of this; at least I didn't set it up that way. If you
7 think it should be, we can do that, but no, he did not have
8 notice of this, and to my knowledge neither did Lara Young's
9 attorney here in Utah.

10 JUDGE HALPERT: What -- this is how I construe the
11 case: that in fact Utah does have continuing, exclusive
12 jurisdiction as a matter of law, but that the child lives in
13 Washington and it makes much more sense to do the action here,
14 on a forum-inconvenient basis. Is that --

15 JUDGE LUBECK: No, I mean and that's, as I see under
16 the law, what we're talking about. Again, we don't do a lot of
17 these here. This is a county outside of Salt Lake, and we have
18 a lot of divorces, but I'm not experienced in these, these
19 UCCJEA things. But yes, that's the situation. She
20 evidently -- I think it's pretty clear that the mother and the
21 child left Utah, and I'm not exactly sure when, but at some
22 point in 1999. So, they've been gone at least four and perhaps
23 pushing five years, depending on when they left.

24 The father was here and has remained here; has been
25 here for 27 years or something. And so his filings, which are

1 voluminous and long, are to the extent that she, the mother,
2 has just been moving around. The fact that she's in Washington
3 now is a mere fortuity -- this is his position; I'm not
4 advocating it -- that she moves around for work and for
5 boyfriends and just happened to have landed in Washington
6 because a boyfriend is there now, and she is as likely to leave
7 next week as she is next month, and that's basically his
8 position; being sort of casual about it.

9 That she's lived in five jurisdictions -- four
10 jurisdictions in five years, and there are sufficient ties here
11 to do it.

12 Clearly, she I believe at age 4 didn't go to school
13 here and hasn't been here since 1999. And, really, I think
14 there's no question about that. So, whatever school records
15 there are certainly aren't going to be here, and I don't know
16 what may be there. I understand from the pleadings she's been
17 there since June of 2002, so about a year and-a-half, and I
18 assume the child is in school there. I don't know what else
19 would be there, other than school records; and the bodies, of
20 course.

21 JUDGE HALPERT: Certainly, from my perspective, it
22 would be easier to do it here since the child is here, because
23 an evaluator could spend some time observing the child; a
24 parenting evaluator.

25 JUDGE LUBECK: Right.

1 JUDGE HALPERT: So, I don't know what your call is on
2 this. I would be perfectly happy to retain this case and to
3 have Utah decide to bow out on this one. But I do think, as a
4 matter of law, it is your call, Judge Lubeck.

5 JUDGE LUBECK: Well, again, I want to make sure you
6 agree with that. That's, frankly, the way I see it. I can
7 decide that it's either -- like I say -- it's inconvenient, or
8 -- and maybe it's not completely separate, but in my mind
9 they're kind of separate -- but there simply isn't sufficient
10 connection here anymore to justify keeping it here, and I can
11 allow it to go forward there.

12 So, if you agree with that, I'm not sure that -- I'll
13 be glad to talk to them -- but I just need to make that
14 decision. And I would -- I think, frankly, I would prefer to
15 re-read the statutes to make sure I'm on solid footing.

16 But is there anything else that you can think of that
17 would weigh in to this decision, where this ought to happen?

18 JUDGE HALPERT: I think the key is, I saw the
19 pleadings that Mom filed in Utah. We do have -- I don't know
20 what your evaluation services are in Utah. King County, we
21 have quite good family court services, and there could be a
22 low-cost evaluation done here. And you all may have that, too.
23 But that's just another factor.

24 JUDGE LUBECK: So, you are a family court?

25 JUDGE HALPERT: Yes.

1 JUDGE LUBECK: Okay. And I'm not; I'm a court of
2 general jurisdiction. I do everything here; the only judge in
3 the county. But we do indeed have a large number of
4 evaluators, but they -- it's just a question of normally the
5 parties agree, and, if they don't, the court selects one, and
6 we have a rule that sets the time limits and so on. But it's a
7 competitive market and so it's really a -- there isn't a -- I
8 wouldn't say that many of them are low cost. But they vary a
9 little bit. But they're reasonably expensive.

10 So, it may be that you have a better system in place.
11 I don't think ours is deficient in any way, but I think a
12 family court -- we don't have a family court in Utah at all.
13 But it's my understanding that that would probably be better
14 than what we have.

15 JUDGE HALPERT: I do want to clarify: King County
16 Superior Court is a court of general jurisdiction.

17 JUDGE LUBECK: Right. But you have a --

18 JUDGE HALPERT: Administratively, we divide up, and
19 my assignment at this point is family court for two years.

20 JUDGE LUBECK: Okay. Good. That's what I assumed it
21 was. Okay.

22 JUDGE HALPERT: So, are you just going to issue a
23 written order; is that your --

24 JUDGE LUBECK: I think that's -- in this, I think I'd
25 rather have that record, and just do a brief minute entry, a

1 ruling and order with the background and say I'm going to keep
2 it here or send it there, and get that to you in the next day
3 or so. I'm not sure that we have a mailing address, but I
4 imagine our clerks have exchanged fax numbers or something.
5 But --

6 JUDGE HALPERT: Why don't you get that to us.

7 JUDGE LUBECK: All right. And I'll just do a ruling
8 and order saying it seems to me that it's better that it go one
9 place or the other and do that. And, again, I won't delay on
10 that; I'm sure I can get that out in the next day or two.

11 JUDGE HALPERT: That would be great.

12 JUDGE LUBECK: All right. Anything else, Judge? I
13 appreciate this time with you. Anything else you think we need
14 to talk about?

15 JUDGE HALPERT: I don't think it's a legally hard
16 case. I mean, I don't think Mr. Hansen is arguing that
17 Washington be the home state for modification; he's arguing
18 that it makes more sense to have it here, but not -- I don't
19 think anyone disagrees as to what the law is, and that it is
20 your choice.

21 JUDGE LUBECK: Okay.

22 JUDGE HALPERT: Thank you very much.

23 JUDGE LUBECK: Very well. Thank you, Judge.

24 JUDGE HALPERT: Bye.

25 JUDGE LUBECK: Bye.

1 (Whereupon, the instant proceedings came to a close.)

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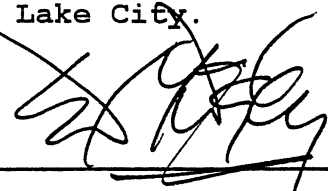
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I, Ed Midgley, an Official Court Reporter in and for the State of Utah, do hereby certify that the foregoing proceedings, recorded via digital audio at the time of their occurrence, were subsequently reduced by me, incident to assignment, to printed transcript form as hereinbefore appearing;

That I was not present at any of the proceedings hereinbefore represented;


But that said transcription, so reduced, constitutes a true and correct transcription of testimony given, evidence adduced and/or proceedings had as appearing upon said digital audio record, to the best of my ability so to transcribe.

To which certification I hereby set my hand this 3rd day of December, 2003, at Salt Lake City.



Ed Midgley

-2/17/04- Submitting AS Duplicate Original as previously-filed "original" apparently unable to be located.



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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

LARA YOUNG, Petitioner, vs. DAVID YOUNG, Respondent.	RULING and ORDER Case No. 954600158 Honorable BRUCE C. LUBECK DATE: November 25, 2003
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The above matter came before the court on November 17, 2003 for oral argument on Petitioner's motion to quash. Petitioner was present through Nancy Mismash, and Respondent was present without counsel, representing himself.

BACKGROUND

The parties in this case were divorced March 25, 1997. One child was born to the parties in 1995. There were several petitions to modify. A petition to modify was filed August 12, 1998 by petitioner. A petition to modify was filed May 5, 1999, by respondent. Respondent filed another petition on April 3, 2000. The parties have been given joint physical custody.

On June 30, 2003, respondent filed this petition to modify the decree, seeking custody, alleging petitioner has created an unstable environment for the child, with petitioner moving several times, living in 4 jurisdictions in the past 5 years. He supported it with a lengthy affidavit setting forth petitioner's moves, residences, vehicles, boyfriends, and other information about her alleged instability. He asserts she moved to Washington in June, 2002, where she remains, after having left Utah with the child in 1999, thence to California, thence to Washington in June, 2002. He filed a proposed parenting plan as well, and sought temporary relief. A hearing was scheduled and held August 11, 2003.

On August 1, 2003, petitioner filed a motion in King County, Washington, to modify custody, arguing that Washington was the home state of the child and Washington should entertain the petition and child custody issues. On a date unknown, respondent in this action filed a response in Washington.

On August 11, 2003, petitioner filed the present motion to quash arguing that under the Uniform Child Custody Jurisdiction

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Act (UCCJA) this court did not have jurisdiction, but that the matter should be heard in Washington. The court continued the matter to allow respondent to respond, which he did with supporting attachments on September 11, 2003. Petitioner filed no reply but filed a notice to submit September 15, 2003. Oral argument was held November 17, 2003.

The court determined that the UCCJEA, rather than the UCCJA as asserted by petitioner, is the applicable body of law governing this situation. The court ruled that it would take the matter under advisement and contact the court in Washington and then make a ruling as to whether Utah should retain jurisdiction or whether it should find this an inconvenient forum because there were no substantial ties to Utah with the child and one parent being in another state. The court contacted the Honorable Helen Halpert on November 17, 2003. The off-the-record conversation was solely and exclusively about identifying the case in each jurisdiction and the parties, and scheduling a future discussion for an on-the-record discussion. The merits of the cases were not discussed in any manner. It was determined that the clerks of the two courts would talk in the next couple of days and schedule a time convenient for both courts when a recorded discussion could take place. On November 18, 2003, that discussion was scheduled for November 24, 2003.

The court has now discussed the matter with the Honorable Helen Halpert on the record. That conversation will be ordered transcribed and provided to the parties as soon as available.

DISCUSSION

The court has reviewed the pleadings of the parties and the entire file, and heard oral argument, concludes as follows.

Under the UCCJEA, UCA 78-45c-101 et seq., this court has continuing exclusive jurisdiction until this court determines there is not a significant connection with Utah and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships. If this court so determines it has exclusive, continuing jurisdiction, it may also decline jurisdiction if it determines this is an inconvenient forum. UCA 78-45c-202. This state is inconvenient if another state is more appropriate forum, and the court shall consider all relevant factors, including those listed in UCA 78-45c-207, which include prior domestic violence, the length of time the child has resided outside of Utah, the distance between this court and Washington's court, the relative financial circumstances of the parties, any agreement of the parties, the nature and location of the evidence required to resolve the pending litigation (including testimony of the

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child), the ability of the court of each state to decide the issue expeditiously, and the familiarity of the court of each state with the facts and issues of the pending litigation. If this court determines it is an inconvenient forum, it may stay this proceeding on condition that the child custody proceeding proceed in Washington.

Thus, the court believes there are two reasons why it could decline jurisdiction. The first is under 78-45c-202, if the court concludes there are not sufficient connection with this state and substantial evidence is no longer available here. The second and distinct reason it may decline jurisdiction is because the court finds the forum inconvenient, after weighing the statutory factors.

In this case the parties were married in this jurisdiction in 1992, and one child was born in Utah in 1995. The parties divorced in 1997. The mother, petitioner, and the child moved from Utah in 1999 to California, and now live in Washington. Respondent has remained in Utah. Respondent has evidently attempted more involvement in the life of his daughter. He claims petitioner is unstable in residence, employment, and relationship and the child's best interest is for both parents to be in this jurisdiction under an agreed parenting plan.

The child was not in school before she left Utah in 1999, being only 4 years old at that time. It is not in the record exactly what schools she has been attending, when she started, nor where all the records are. She has been in Washington since June, 2002.

Overall, the court believes that the proceedings in this jurisdiction should be stayed while the matter proceeds in Washington. The child is there, and though the UCCJEA does not reflect that the best interest of the child is a weighty consideration, it is to this court. The court in Washington has a family court division or department and evaluations can occur more quickly and with less expense than in Utah. Any records concerning the child in Utah would be at least 4 years old and the child is not yet nine years of age. Travel to Utah by the mother and child is more inconvenient than travel to Washington by one person, respondent.

These proceedings are STAYED in Utah and the matter is to be considered in Washington under petitioner's petition to modify, the court finding this is an inconvenient forum under UCA 78-45c-207.

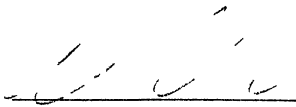
This Ruling and Order is the Order of the court and no other

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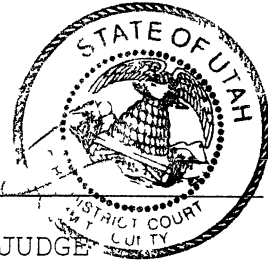
order is required.

DATED this 17 day of July, 2003.

BY THE COURT:



BRUCE C. LUBECK
DISTRICT COURT JUDGE



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Case No: 954600158
Date: Nov 25, 2003

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 954600158 by the method and on the date specified.

METHOD	NAME
Mail	DAVID YOUNG DEFENDANT PO Box 942 Park City, UT 84060
Mail	NANCY A MISMASH ATTORNEY PLA 314 MAIN ST #201 PO BOX 3390 PARK CITY UT 84060-3390

Dated this 25th day of November, 2003.


Deputy Court Clerk