

INTERSTATE CHILD CUSTODY **Case Law Summaries on** **Interstate Jurisdictional Issues and** **Domestic Violence**

**Prepared by Deborah M. Goelman, Esq. and
the National Center on Full Faith and Credit
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Case Law Summaries on Interstate Jurisdictional Issues and Domestic Violence¹

Notes for Practitioners:

The Parental Kidnapping Prevention Act, as amended by the Violence Against Women Act of 2000, and the Uniform Child Custody Jurisdiction and Enforcement Act contain improvements for domestic violence survivors. Case law preceding the time of enactment of these laws may no longer be relevant in particular jurisdictions.

Cases highlighted in bold (indicated by asterisks in the Table of Contents) may provide useful authority for attorneys representing domestic violence survivors. Note, however, that individual cases may be useful to support one proposition but not another.

If you are aware of additional decisions that should be included in this document, please contact the National Center on Full Faith and Credit at (800) 256-5883, ext. 2.

¹ Draft 2/26/03. Case law is current through October 2002. The following terms were searched on Lexis: Violence Against Women Act and custody; Violence Against Women Act of 2000 and custody; Violence Against Women Act and full faith and credit; Parental Kidnapping Prevention Act and domestic violence; Uniform Child Custody Jurisdiction and Enforcement Act and domestic violence; Uniform Child Custody Jurisdiction Act and domestic violence; emergency jurisdiction and domestic violence; inconvenient forum and domestic violence; home state and domestic violence; relocation and domestic violence; decline jurisdiction by reason of conduct and domestic violence; clean hands and domestic violence; domestic violence and custody; protection order and custody; interstate child custody and domestic violence; annotated version of PKPA.

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Emergency Jurisdiction***Benda v. Benda, 565 A.2d 1121 (N.J. Super. Ct. App. Div. 1989)**

Mother left father due to abuse and obtained restraining order and custody in Indiana, with supervised visitation granted to father. Mother then fled to New Jersey and obtained restraining order and temporary custody. Subsequently, she sought permanent custody in New Jersey based on emergency jurisdiction. Indiana court conferred with New Jersey court and determined that Indiana had jurisdiction. New Jersey judge exercised emergency jurisdiction anyway and awarded mother custody, while Indiana court awarded father custody. Superior Court of New Jersey, Appellate Division held that New Jersey was entitled to exercise emergency jurisdiction, but only for interim protective measures.

***Campbell v. Martin, 802 A.2d 395; 2002 Me. LEXIS 138 (7/22/02)**

Mother fled from Kentucky to Maine with her daughter, fearing abuse from father. Father had threatened to kill mother and child after mother sought a protection order in Kentucky. Maine court issued a temporary order for protection from abuse, awarding custody to mother. Mother then filed for custody in Maine, and father filed for custody in Kentucky. Judicial communication took place, and the Maine trial court held that Kentucky was the child's home state and dismissed mother's complaint for lack of jurisdiction under Maine's UCCJEA. The appellate court held that Maine could exercise emergency jurisdiction, but not jurisdiction over the custody complaint because the exercise of jurisdiction was no longer necessary to protect the child.

***Cole v. Superior Court, 218 Cal.Rptr. 905(Cal. Ct. App. 1985)**

Mother fled with children from Arizona to California because of father's abuse of her and one child. San Diego Superior Court declined to exercise jurisdiction because Arizona was the home state and mother unilaterally took the children, and the Court therefore denied mother an opportunity to prove that there was an emergency. Court of Appeal held that wife abuse and abuse of one child could be grounds for emergency jurisdiction in a case involving the other children and that the mother did not have "unclean hands."

Crabbe v. Kissell, 2001 Conn.Super. LEXIS 3275 (2001)

Father abused mother, who was deaf, and she moved with child from Florida to Connecticut. Mother moved back in with father, and he abused her again, including selling her car and breaking her TTY machine. Mother moved back to Connecticut with child, and father obtained custody and a court order prohibiting the removal of the child from Florida. Mother filed in Connecticut for a temporary restraining order and custody, and the trial court exercised emergency jurisdiction and awarded temporary custody to mother. The Superior Court of Connecticut, however, held that Florida was the home state, and that Connecticut's exercise of temporary emergency jurisdiction should end. The Court also dismissed the restraining order

because the father had no minimal contacts with Connecticut and held that Florida's order granting custody to father would be enforced.

***Crippen v. Crippen, 610 So.2d 686 (1997)**

Mother obtained ex parte protection order, including custody, in Florida after father threatened her with a firearm. Father then obtained custody in Wisconsin, the home state. District Court of Appeal of Florida found that the father failed to inform the Wisconsin court about the pending Florida proceeding, and that Florida's exercise of jurisdiction was consistent with emergency jurisdiction under the UCCJA. The Florida Court of Appeal affirmed the lower court's decision to extend the domestic violence injunction for one year.

***D'Agnese v. D'Agnese, 22 Va. App. 147, 468 S.E.2d 140 (1996)**

Mother filed for custody in Virginia, and then fled to Illinois with children. There, she obtained an emergency protection order based on the father's abuse of the children, which included beatings, holding a knife to her daughter's throat, and threatening to kill the family pets with a gun. Mother filed for divorce in Illinois, and father filed for divorce in Virginia. Subsequently, Illinois court granted custody to mother. Virginia and Illinois courts communicated, and agreed that Virginia had home state jurisdiction and Illinois had emergency jurisdiction. Virginia circuit court denied mother's motion to dismiss and awarded custody to mother and supervised visitation to father. The Court of Appeals of Virginia reversed. Relying on the fact that mother went to Illinois to protect the children from abuse, Court of Appeals of Virginia held that the circuit court should have deferred to Illinois because Illinois had emergency jurisdiction.

Danna v. Danna, 364 S.E.2d 694 (N.C. Ct. App. 1988)

Florida divorce decree prohibited mother from removing children from Florida without court approval or written consent from father. Mother fled from Florida to North Carolina with children. Father sought custody in Florida and mother sought custody in North Carolina. Mother alleged that father had physically and verbally abused her and the children. Florida court awarded custody to father, and North Carolina trial court dismissed mother's action for lack of jurisdiction. Court of Appeals of North Carolina upheld the decision, finding that mother's wrongful conduct supported the dismissal. The trial judge did not have any evidence, other than mother's "bare allegations" that father posed a threat to the children. Mother's affidavits and documents did not constitute proof that father abused the children, and in any event, proof of abuse alone would not necessitate asserting jurisdiction since these claims could have been presented in the Florida court.

David B. v. April B., 1997 Del. Fam. Ct. Lexis 2 (1997)

Mother moved to Delaware with child and obtained a consent protection from abuse order, including custody. Father then filed for custody in Delaware, requesting that the court order the child to reside with him. Delaware Family Court dismissed the case for lack of jurisdiction, since Pennsylvania was the home state and there was no allegation that the child was in need of emergency protection.

***Dean v. Crane, 702 N.Y.S.2d 544 (2000)**

Mother had custody of child in Colorado. Father filed for custody in New York, alleging that child had been exposed to domestic violence from mother's boyfriends. The Family Court in New York held that New York was entitled to exercise emergency jurisdiction because "the child had been repeatedly exposed to acts of serious domestic violence visited upon the mother."

Deering v. Deering, 1995 Del. Fam. Ct. LEXIS 26 (1995)

Mother filed for custody in Delaware while father filed for custody in Texas. Family Court of Delaware held that Delaware was not the home state and did not have significant connection jurisdiction. In addition, "[b]ecause father remained in Texas and mother has successfully removed the children from any threat posed by father, the emergency provision of the UCCJA is not applicable." Therefore, Texas was entitled to exercise jurisdiction as the home state or a significant connection state.

***Farrell v. Farrell, 351 N.W.2d 219 (Mich. Ct. App. 1984)**

Mother fled with children from Ireland to Michigan where her parents lived to escape from husband's abuse. Mother obtained ex parte custody order in Michigan, and father obtained custody in Ireland. Michigan court held that there was an emergency and that the child's substantial contact with the state justified the court's exercise of jurisdiction.

***Garza v. Harney, 726 S.W.2d 198 (Tex. Ct. App. 1987)**

Mother received temporary custody and father received visitation from court in Mexico. Mother fled to Texas with children, and father filed petition in Texas to enforce order from Mexico. Father had physically abused daughter, but not son. Court of Appeal of Texas held that Texas was entitled to exercise emergency jurisdiction as to the daughter, but not the son. Moreover, the district court was permitted only to enter a temporary order for the daughter's protection, not to make a permanent custody determination.

Hagedorn v. Hagedorn, 584 So.2d 353 (La. Ct. App. 1991)

Mother fled from Indiana to Louisiana with child and filed for custody. Father filed for custody in Indiana. Mother amended her complaint, alleging that father threatened her at gunpoint and that she and the child were in immediate danger. Louisiana trial court found that it had emergency jurisdiction under the UCCJA. Court of Appeals of Louisiana, however, found that no allegations of mistreatment or abuse were made by mother in the original petition other than the generic cruel treatment allegation typically made in domestic cases. Court was not concerned about abuse of mother and noted that the allegations of physical abuse pertained only to mother, not to the child. Father gave a “plausible explanation of an incident with a loaded shotgun.” Since Louisiana could not exercise emergency jurisdiction, as the home state, Indiana had jurisdiction.

Hernandez v. Collura, 493 N.Y.S.2d 343 (1985)

Mother returned to her parents’ home in New York from Connecticut. Mother obtained a temporary order of protection in New York for herself and her son, including an order prohibiting the removal of the child from New York. Father obtained custody in Connecticut. New York Family Court then determined that it did not have jurisdiction and ordered that custody be awarded to father, pursuant to the Connecticut order. The New York Supreme Court, Appellate Division upheld this order, finding that mother’s “vague and unsubstantiated allegations” were insufficient for the New York court to exercise emergency jurisdiction.

Kovatch v. Juarez, 2002 Tex. App. Lexis 3590 (2002)

Mother fled from California to Texas with children and obtained temporary protective order. Father filed for custody in California, the home state, and argued that he was not subject to personal jurisdiction in Texas. Mother argued that Texas could exercise emergency jurisdiction. Court of Appeals of Texas refused to issue an advisory opinion because California court already had entered orders and both parties now resided in California. Case dismissed as moot.

Margaret A.T. v. James L.T., 1991 Del. Fam. Ct. Lexis 2 (1991)

Mother fled with children from Maryland to Delaware and filed for custody in Delaware, alleging that father physically abused her and the children. Father filed motion to dismiss under UCCJA. Delaware Family Court held that the children were not so at risk that Delaware should assume jurisdiction, since Maryland was the home state and proceedings were pending there.

Murphy v. Danforth Roseberry, 323 Ark. 482, 915 S.W.2d 697 (1996)

Father obtained custody of children in Texas when mother fled to Vermont. Father planned to kill mother and abused the children. Mother obtained temporary custody of children from Texas court, and father died in an accident. Then father’s family took children to Arkansas and filed for guardianship. Mother filed for writ of habeas corpus in Texas. Arkansas court dismissed the case based on the pending proceeding in Texas. Texas court awarded custody to mother and dismissed the petitions for intervention filed by father’s family, holding that Texas was no longer

a convenient forum and that Vermont had the relevant information about the children. Supreme Court of Arkansas concurred, holding that Texas had continuing jurisdiction under the PKPA and that the Arkansas court did not err in failing to exercise emergency jurisdiction.

***In Re Nada R., 89 Cal.App. 4th 1166, 2001 Cal. App. Lexis 445 (2001)**

Father obtained custody in Saudi Arabia, and mother moved to California. Father abused child while in Florida, and mother returned with children to California and obtained a restraining order. Child told social services that when she was five, father gave her a loaded handgun to hold to her mother's head and that he continually abused her. Child said she would kill herself if returned to father's care. Other family members also had sexually abused the child in Saudi Arabia. Court of Appeals of California held that California had jurisdiction over the dependency proceeding based on emergency jurisdiction under the UCCJEA.

Nadeau v. Nadeau, 716 A.2d 717 (1998), 1998 R.I. LEXIS 253

Mother fled from Rhode Island to Connecticut with five children to escape father's physical and emotional abuse. Mother obtained an ex parte protective order including custody in Connecticut, and then filed for divorce. Father then filed for divorce, custody, and a restraining order in Rhode Island alleging that he feared for the children's safety and he was awarded temporary custody. Father acknowledged the Connecticut proceeding in his ex parte motion for a restraining order but not in the divorce case. Meanwhile, the Connecticut court awarded a final protective order including custody to mother. The Rhode Island court attempted to communicate with the Connecticut court but never did. The Supreme Court of Rhode Island concurred with the trial court that Rhode Island was the home state, and that Connecticut was entitled to exercise emergency jurisdiction, but this was only temporary. "Once the emergency ceased to exist, Connecticut lost its jurisdiction." The decree of the trial court awarding custody to the father was affirmed.

Nazar v. Nazar, 474 N.W.2d 206 (1991)

Mother fled from Minnesota to Louisiana with children, and Louisiana exercised emergency jurisdiction based on father's verbal, psychological, and physical abuse of mother and children. Father filed for custody in Minnesota, and Minnesota court refused to exercise jurisdiction, noting that a custody proceeding was pending in Louisiana. Mother was awarded custody by Louisiana court. The Minnesota Court of Appeals reversed the trial court's decision, holding that Minnesota should decide whether the facts supported the Louisiana court's assumption of emergency jurisdiction. The Court of Appeals also suggested that mother took the children out of the state under false pretenses and kept them without father's permission.

Patricia R. v. Andrew W., 467 N.Y.S. 2d 322 (1983)

After separation agreement was finalized, mother moved to New York and father to New Jersey. Mother filed for order of protection in New York because father struck the child. Father sought sole custody. Family Court of New York held that New Jersey was the home state, so New York could not exercise jurisdiction while New Jersey court was doing so. The court found that "a

single act upon which a temporary order of protection was based is insufficient to rise to level of physical or emotional danger to warrant emergency jurisdiction."

***Powers v. Powers, 95 Ohio App. 3d 352, 642 N.E.2d 451 (1994)**

Luther and Jannie were married, resided in North Carolina, and had two daughters. After an "incident of domestic violence," Luther took the children and went to Ohio. He knew that he had been charged with a domestic violence offense in North Carolina and that an ex parte domestic violence protection order had been issued granting temporary custody of the children to Jannie. Luther filed for custody in Ohio, and the court issued an ex parte order granting Luther temporary custody. Luther did not inform the Ohio court of the previously issued North Carolina order granting Jannie custody. The Ohio referee held a hearing on Jannie's motion to dismiss Luther's complaint for lack of jurisdiction and her motion to modify the Ohio custody order and determined that North Carolina was the proper state to make a custody determination. However, due to the mistreatment of the children, Ohio would retain temporary jurisdiction based on the emergency and issue an interim order returning the children to Jannie.

***Sandra M. v. Jeremy M., 476 S.E. 2d 213 (W. Va. 1996)**

Mother left Florida with child and moved to West Virginia due to abuse. Mother had filed for a protection order in Florida but let the matter lapse when she moved out of state. Father obtained custody in Florida, and mother filed for custody in West Virginia.

The courts in the two states communicated with an unclear result. West Virginia court then granted custody to mother. Supreme Court of Appeals of West Virginia held that neither state was the home state when the proceedings were filed. As the West Virginia circuit court apparently had communicated with the Florida court and agreed that Florida should exercise initial jurisdiction, the Supreme Court of Appeals upheld this decision. However, West Virginia would now be the preferable forum to resolve the modification issue due to the significant evidence in the state.

***Quill v. Quill, 99 A.D.2d 543 (1984), Sup.Ct., App.Div., NY**

Mother fled from New York to Florida with child because of abuse and obtained ex parte protective order including custody. Father filed for custody in New York. The New York Supreme Court, Appellate Division held that the lower court had erred in determining that Florida lacked jurisdiction without communicating with the Florida court. The father had threatened and hit the mother in front of the child, twisted the child's arm, and threatened to abduct the child, which might have constituted grounds for Florida's exercise of emergency jurisdiction.

***Rocissono v. Spykes, 749 A.2d 592 (Vermont 2000)**

After divorce, mother obtained custody in North Carolina. Mother moved from North Carolina to Vermont with children and father filed for custody in North Carolina. When children visited father in Arizona, he filed for emergency custody because mother's new husband had abused the children. Mother left her husband and sought refuge in a battered women's shelter. Arizona

assumed emergency jurisdiction and granted father temporary custody. Mother filed in Vermont for enforcement of the North Carolina order. Arizona continued to exercise jurisdiction, and Vermont declined to do so based on inconvenient forum because mother had reconciled with her husband who continued to pose a threat to the children. Supreme Court of Vermont held that the Arizona court incorrectly assumed permanent jurisdiction although Vermont was the home state, and did so before Vermont declined to exercise jurisdiction. Also, the decision by the Vermont court to decline jurisdiction was based on inappropriate factors, so the Supreme Court ordered the lower court to reconsider the jurisdictional issue after holding a conference with the Arizona trial court and the parties.

White v. Baby Boy D., 2000 OK 44, 10 P.3d 212 (Okla. 2000)

Father was violent towards mother and mother occasionally was violent towards father. Mother brought baby from Missouri to Oklahoma and gave him up for adoption to a couple in Idaho. Father filed for an emergency order in Oklahoma and a paternity petition in Missouri. Oklahoma trial court declined jurisdiction over the adoption and deferred to Idaho. Father's parental rights were terminated after several hearings in Oklahoma. Supreme Court of Oklahoma affirmed the decision, holding that the Oklahoma trial court was entitled to exercise emergency jurisdiction because baby was abandoned when mother relinquished her parental rights.

***Wren v. Wren, 2001 Neb. App. Lexis 279 (2001)**

Mother obtained a protection order, including temporary custody, after father tried to hit her, choke her, and shove her to the ground while she was holding their son. Father appealed the protection order, contending that the Nebraska Child Custody Jurisdiction Act governed the case. The Nebraska Court of Appeals held that the protection order statute did not appear to require the jurisdictional requirements of the NCCJA to be applied, but that the requirements of the NCCJA were met. The court had emergency jurisdiction based on the father's assault of the mother while she held the child and his threats to kill anyone who "got in his way of him taking his son."

[See also *Gasaway v. Gasaway* and *Zappitello v. Moses* for related issues]

Inconvenient Forum

Blocker v. Blocker, 57 Ark. App. 218, 944 S.W.2d 552 (1997)

Mother fled from South Carolina with child due to abuse and went to live with family in Arkansas. She filed for custody in Arkansas after almost a year. Father then filed for custody in South Carolina and argued that Arkansas should decline jurisdiction based on inconvenient forum and mother's "absconding with the child" and "bad faith." Court of Appeals of Arkansas held that Arkansas was the home state and would not decline jurisdiction. Court also held that because no case was pending in South Carolina when the Arkansas action was filed, the Arkansas court had no duty to communicate with a court in South Carolina.

***Cline v. Cline, 433 N.E.2d 51 (Ind. Ct. App. 1982)**

Mother fled from Indiana to California with child because of abuse. Father obtained an ex parte custody order in Indiana and California authorities refused to enforce it. Mother filed in California for separation. Trial court in Indiana contacted California court and then declined to exercise jurisdiction over the custody matter. Court of Appeals of Indiana held that the trial court was entitled to decline jurisdiction after determining that California was a more appropriate forum. The Court noted that mother was a battered spouse who had returned to the protection of her parents.

***Cronin v. Camilleri, 101 Md. App. 699, 648 A.2d 694 (1994)**

Mother fled with children from Maryland to Hawaii after father sexually abused child, and she obtained a protection order in Hawaii. Father filed for custody in Maryland and snatched the children from Hawaii back to Maryland. Mother then filed for emergency custody in Maryland, and father left the state with the children. Maryland awarded custody to mother and issued a body attachment for father. He was arrested in Florida, charged with abduction of the children, and returned to Maryland. The Maryland Circuit Court then dismissed father's request for custody and permitted mother to leave Maryland. The Court of Special Appeals of Maryland concurred with the trial court that the Hawaii protection order was a proceeding under the UCCJA and that Hawaii was entitled to exercise emergency jurisdiction based on the father's physical and sexual abuse. The trial court's decision to decline jurisdiction based on inconvenient forum because the children had relatives in Hawaii and the mother could earn a living in Hawaii was affirmed. The decision to decline jurisdiction based on the father's reprehensible conduct in violating the Maryland court order also was affirmed.

***Ganz v. Rust, 299 N.J. Super. 324, 690 A.2d 1113 (1997)**

Mother fled from Pennsylvania to New Jersey with child because of domestic violence. The Pennsylvania trial court issued a consent custody order, but the father then filed for sole custody. Mother filed for custody in New Jersey, the new home state. The Pennsylvania court conducted a hearing without mother, who could not afford to return to Pennsylvania, and awarded custody to father. The Superior Court of New Jersey held that the Pennsylvania court never addressed the jurisdictional issue and should have considered whether Pennsylvania was an inconvenient forum. Therefore, the Pennsylvania order was not entitled to enforcement.

***Jeanne E.M. v. Lindey M.M., 189 Misc.2d 669, 734 N.Y.S. 2d 837 (2001)**

Mother fled from Franklin County, New York because of abuse and came to Albany County to live with her sister after staying in a domestic violence shelter. Father requested a venue change for witness convenience and because the parties had lived in Franklin County. Mother had no vehicle to drive there and her health and safety might have been jeopardized by a change in venue. The Family Court considered the UCCJEA inconvenient forum provisions and kept the case in Albany County, holding “it would not serve the ends of justice to deprive the mother of her safe harbor in Albany County.” The court held that the standard to be applied to an inconvenient forum motion was the same whether between counties, states or countries, and that the legislative commands to consider domestic violence in interstate and international child custody jurisdictional disputes were relevant.

***Luna v. Luna, 592 N.W.2d 557 (N.D. 1999)**

Father obtained physical custody of child from North Dakota court and moved to Pennsylvania with his new wife. Subsequently, mother obtained ex parte order including temporary custody from North Dakota court based on child’s abandonment. Father claimed that North Dakota was an inconvenient forum. Case was dismissed because mother failed to participate, and father returned to Pennsylvania with child. Mother filed again for change of custody in North Dakota. Father appeared by telephone, and father’s second wife testified by deposition that father had abused her and that she had been the child’s primary caretaker. North Dakota court awarded custody to mother. The Supreme Court of North Dakota upheld the order, finding that the state was entitled to modify its own order because it still had significant connection jurisdiction under the PKPA and UCCJA. The district court did not abuse its discretion in finding North Dakota a convenient forum.

***Marlow v. Marlow, 471 N.Y.S.2d 201 (1983)**

In a separation agreement, mother and father agreed that mother would have custody of the children and would not move from New York without father’s consent. Subsequently, mother moved to California with children due to father’s violence. Supreme Court, Special Term of Nassau County held that despite mother’s “wrongful act,” New York should decline jurisdiction because the pertinent evidence about the children was more readily available in California.

***Merman v. Merman, 412 Pa. Super. 247, 603 A.2d 201 (1992)**

Pennsylvania court awarded primary custody to mother. Mother had moved with children to New Jersey and later obtained a protection from abuse order on behalf of the children. Pennsylvania trial court found that New Jersey was a more appropriate forum and declined to exercise jurisdiction. The Superior Court of Pennsylvania upheld the trial court's decision that Pennsylvania was an inconvenient forum.

Sarraj/Wazwaz v. Sarraj, 1997 Minn. App. Lexis 254 (1997)

Mother moved from Illinois to Minnesota with children after father was convicted of domestic battery against mother. Mother moved to transfer jurisdiction to Minnesota, and Minnesota court declined. Minnesota was the home state, but Illinois also had jurisdiction under the UCCJA. Minnesota declined based on inconvenient forum, refusing to exercise emergency jurisdiction since father had not abused children.

***In Re Stoneman v. Drollinger, No. 01-739, Supreme Court of Montana, 2003 Mont. 25**

Father perpetrated domestic violence against mother in Montana for years. Montana trial court issued a custody order awarding custody to mother and unsupervised visitation to father (contrary to the recommendations of a Guardian Ad Litem). Mother relocated from Montana to Washington with four children, and Washington trial court issued a permanent protection order. Mother then filed a motion requesting Montana court to decline jurisdiction under the UCCJEA, which the trial court denied. The Supreme Court of Montana reversed, holding that the lower court erred by denying mother's motion. The trial court failed to consider which forum could best protect mother and children from further abuse when evaluating whether transfer of proceedings to Washington was appropriate. The Supreme Court of Montana held that "the UCCJEA places domestic violence at the top of the list of factors that courts are required to evaluate when determining whether to decline jurisdiction as an inconvenient forum for child custody proceedings." The Supreme Court of Montana ordered the trial court to communicate with the Washington court, and, if transfer can be arranged, to decline jurisdiction based on inconvenient forum so that further custody proceedings may take place in Washington. The Supreme Court of Montana also urged trial courts "to give priority to the safety of victims of domestic violence when considering jurisdictional issues under the UCCJEA."

***Swain v. Vogt, 614 N.Y.S.2d 780, 206 A.D.2d 703 (1994)**

Mother left New York, the child's home state, and relocated to Maine with child to escape abuse despite court order prohibiting relocation. Father filed for custody in New York and mother filed in Maine. The New York Supreme Court, Appellate Division held that the Family Court was entitled to decline jurisdiction if Maine was a more appropriate forum. Court noted that mother had obtained a permanent order of protection against father a few years earlier.

***Van Norman v. Upperman, 231 Neb. 524, 436 N.W.2d 854 (1989)**

Mother left Nebraska with the children because she feared for her life and the welfare of the children after father threatened to kill her. Father filed for custody in Nebraska, alleging that mother had absconded with the children. Nebraska trial court dismissed the case based on inconvenient forum. The Supreme Court of Nebraska held that Nebraska was the home state of two of the children, but was entitled to decline jurisdiction based on inconvenient forum. The trial court had considered appropriately the fact that the children were receiving counseling in Kansas and had relatives in Kansas, and that the mother's limited income would make coming to Nebraska for court appearances an extreme hardship. Judgment affirmed.

UCCJA

Abuchaibe v. Abuchaibe, 751 So.2d 1257 (Ct. App. Fl. 2000)

Father lived with child in Colombia and mother lived in Florida. When father visited with child, mother obtained an ex parte domestic violence injunction. Subsequently, Florida court entered a final injunction against domestic violence and awarded custody to mother. Father filed for custody in Colombia. Florida court found father in contempt of court order for not returning child. Court of Appeal of Florida held that the trial court erred in exercising jurisdiction because child did not have a significant connection with the state. Court also reversed contempt finding against father as he could not remove child from Colombia while proceedings were pending there.

Baumgartner v. Baumgartner, 691 So.2d 488, 1997 Fla. App. Lexis 1193 (1997)

Parents were German citizens with a pending custody action in Germany when they were on vacation in Florida. Father was arrested and taken to jail and mother obtained a protection order against domestic violence. Court of Appeal of Florida reversed the part of the protection order that awarded mother custody of the children and prevented their removal from Florida. Court held that the trial court was entitled to issue a protection order but that "such temporary protection . . . does not include holding children hostage for a year in possible violation of criminal law."

Canty v. Canty, 178 Ariz. 443, 874 P.2d 1000 (1994)

Upon separation, parties agreed to a joint custody order for three children. During a visit, father perpetrated domestic violence against mother in presence of children. Father then filed for sole custody in Arizona. By agreement, mother retained physical custody of one child. Mother returned to Montana, but then lived with relatives in Arizona for over five months. Father committed another act of domestic violence against her. Mother returned to Montana and left child with father and other children. Father never returned child. Mother filed a petition in the Fort Peck tribal court to modify custody. Arizona held that it had jurisdiction under the UCCJA and granted custody to father. Court of Appeals of Arizona affirmed: Arizona had continuing jurisdiction to modify its own order. Father's misconduct in retaining the child was inappropriate, but did not require Arizona to decline to exercise its jurisdiction. Court of Appeals also found that the trial court was required to consider the violence as a factor against the perpetrator but that this does not "automatically tip the scales against the offending spouse."

***Consford v. Consford, 271 A.D.2d 106, 711 N.Y.S. 2d 199 (2000)**

Mother left Arizona for Florida with child after "marital discord." Father filed for custody in Texas, where family had resided only for eight weeks and obtained joint custody. Mother obtained order of protection and temporary custody in New York, the child's home state. The New York Supreme Court, Appellate Division was concerned about allegations of domestic violence that had never been explored in any judicial forum. The Court held that Texas did not have subject matter jurisdiction under the UCCJA or PKPA and that New York was not required to enforce the Texas decree.

***Gasaway v. Gasaway, 246 Ill. App.3d 531, 616 N.E.2d 610 (1993)**

Mother moved with children from Indiana to Illinois. Indiana court awarded custody to mother. Father filed to modify visitation and for contempt and Indiana court awarded temporary custody to father and issued a warrant for mother's arrest. Father attempted to enforce custody order in Illinois, and Illinois prosecutor refused. Mother obtained an order of protection in Illinois including custody. Father attempted to abduct daughter from school, but was arrested in Illinois on charges of child abduction.

Appellate Court of Illinois held that the UCCJA applied to the Illinois Domestic Violence Act and that Illinois, as the home state, could exercise jurisdiction. The Court also distinguished between protection orders and custody cases, holding that "as long as jurisdiction is established under section 4 of the Custody Act, the trial court may enter an order of protection even though it might have been required to decline to exercise its jurisdiction under section 7 of the Custody Act if it had instead been faced only with a petition to modify an out-of-state custody judgment. This is in accord with the requirement that the Domestic Violence Act be liberally construed to promote the underlying purpose of the Act which is to support the efforts of victims of domestic violence to avoid further abuse by promptly entering and diligently enforcing court orders which prohibit abuse so that victims are not trapped in abusive situations." The trial court properly refused to enforce the temporary Indiana order because father did not follow the appropriate

statutory procedures for enforcing an out-of-state custody judgment. Indiana still had jurisdiction over custody matters in the case, unless it deferred jurisdiction to Illinois, which would be appropriate since Illinois now was the home state.

[See also *Wren v. Wren* and *Zappitello v. Moses* for related issues]

***In Re E.A., 552 N.W.2d 135 (1996)**

Mother fled from Ohio to Iowa with children, and father filed for custody in Ohio. Mother filed a domestic violence petition in Iowa, and the Iowa court ordered the child custody matter resolved in Ohio because Ohio was the home state under the UCCJA.

Father alleged that mother's family was abusing the children, and he received temporary custody from the Ohio court. Iowa investigated and ordered removal of children from father on the ground that he fabricated the sexual abuse allegations. The Iowa investigator noted that the case was consistent with domestic violence and that the father's attempt to gain power and control contributed to the sexual abuse investigation. The father also was suspected of stalking the mother throughout this time. The district court found: "Compelling is the father's history of domestic violence, power, and control in this family . . . These facts present a continuing high risk of abuse of the mother. The court views this as potentially abusive to the children in an emotional sense and interferes with and distracts the mother from providing appropriate care and supervision for the children." The Supreme Court of Iowa upheld the court's order of custody to mother and supervised visitation with father, finding that the district court had exercised jurisdiction to protect the children.

Kristen H. v. Deborah H., 2002 Cal. App. Unpub. Lexis 4766 (2000)

Mother lived in New York and California. She retrieved children from father in California and then police took children into protective custody based on allegations of abuse and neglect. California filed a dependency petition based on emergency jurisdiction, and mother argued that California was an inconvenient forum. Evidence was presented regarding mother's abuse of children and domestic violence between the parents. Court of Appeal of California affirmed decision of the lower court to remove the children, holding that the UCCJEA inconvenient forum statutory factors had been considered even if the court did not recite them.

Kumar v. Kumar, 32 Cal.3d 689, 652 P.2d 1003 (1982)

Mother and father were divorced in New York and mother received custody. Mother moved with child to California without notifying father because she was afraid of him. Father filed for modification in New York, and mother filed for modification in California. Supreme Court of California held that New York had continuing jurisdiction under the PKPA and the UCCJA to modify its original order.

Malik v. Malik, 99 Md. App. 521, 638 A.2d 1184 (1994)

Mother and father lived in Pakistan with children. After mother left the home with the children, father was awarded custody. Mother hid in Maryland with child and then obtained a custody order and a restraining order. Court of Special Appeals of Maryland held that the Circuit Court did not have emergency jurisdiction because the child was not in imminent danger and that both Maryland and Pakistan had home state jurisdiction. Case was remanded to determine whether the Pakistani court's decision was based on law contrary to Maryland public policy. Court of Special Appeals held that the mother's conduct was reprehensible and assessed costs against her.

***Ryan v. Ryan, 784 So.2d 1215 (Fl. Ct. App. 2001)**

Father obtained order of protection against mother including custody of the four children from Florida court. In his petition, he described an incident where his former wife had a physical struggle with one of the children and his new wife at a soccer field. Mother was not served with the petition, which failed to request custody, until the day of the hearing. In the protection order, the court prohibited the mother from having any contact with the children for one year unless another court modified the order. The Circuit Court found that mother's due process rights were violated; the petition gave her no notice that custody and visitation were at issue, and father had not submitted a UCCJA affidavit. The Circuit Court reversed the lower court's decision.

***Stephens v. Stephens, 646 N.E.2d 682 (1995)**

Mother moved from Indiana to Kentucky with child and obtained an ex parte custody order as part of a protective order, which later became a full order. Father filed for custody in Indiana, alleging that mother had taken child to Kentucky. Court of Appeals of Indiana held that Indiana or Kentucky could be the infant's home state. In issuing the protective order, the Kentucky court had complied with its version of the UCCJA, so the Indiana trial court properly declined to exercise jurisdiction because a custody proceeding was pending in another state.

***Thompson v. Thompson, 241 Ga.App.616, 526 S.E.2d 576 (1999)**

Mother fled from Florida to Georgia with children to escape domestic abuse and obtained custody in the Cherokee Superior Court in Georgia. Father obtained custody in Florida. Court of Appeals of Georgia held that, initially, neither state was the home state and that Florida should have enforced the Georgia custody order, which was issued first. The Florida order was not enforceable under the PKPA or UCCJA.

Whitfield v. Whitfield, 315 N.J. Super.1, 716 A.2d 533 (1998)

Mother moved from Virginia to New Jersey with children. Parties had a custody and visitation agreement incorporated into Virginia court order. When father visited children in New Jersey, mother obtained a protection order barring father from visiting with the children as a result of a dispute and father's harassment. The New Jersey Superior Court, Appellate Division reversed the trial court's decision, holding that father was entitled to a hearing about visitation and visitation expenses and that mother should pay her own attorney's fees.

***Yost v. Johnson, 591 A.2d 178 (1991), 1991 Del. LEXIS 151**

Mother had custody under a Pennsylvania decree; she moved to Virginia and father moved to Delaware. Virginia court modified the visitation provisions. Mother moved to Italy, and at the end of a summer visit, father did not return the children. Father filed for custody in Delaware, and mother was permitted to return to Italy with the children temporarily, but then court awarded custody to father. Supreme Court of Delaware reversed the decision. The trial court's ex parte communication with the Virginia judge regarding jurisdiction violated mother's procedural due process rights, as there was no opportunity for parties to be heard and no written record of the communication.

***Zappitello v. Moses, 458 N.W.2d 784, 1990 S.D. LEXIS 102 (1990)**

Father and mother separated, and mother moved with children from South Dakota to Colorado. Under a South Dakota divorce decree, mother received custody of the children and father received visitation during the summers. One day prior to returning the children, father filed for a protection order in South Dakota alleging that the children had been victims of domestic abuse. Mother requested that the matter be transferred to the Colorado courts because South Dakota had no jurisdiction under the UCCJA. The circuit court held that the UCCJA did not apply to claims arising out of the Domestic Abuse Act, proceeded with the hearing, and ordered custody to be placed with the father. Mother filed for a writ of prohibition with the Supreme Court of North Dakota which was granted. The Supreme Court of North Dakota held that the UCCJA applies to cases involving the Domestic Abuse Act and that the circuit court had not found the requisite jurisdiction under the UCCJA; therefore, the custody order to the father was set aside.

[See also *Wren v. Wren* and *Gasaway v. Gasaway* for related issues]

UCCJA/UCCJEA - Judicial Communication***In Re C.T., 121 Cal.Rptr.2d 897 (2002)**

Father had custody of daughter and she reported to stepfather that father had sexually molested her. Mother obtained a temporary restraining order in California to prevent child from returning to father in Arkansas. California court advised Arkansas court that California was assuming emergency jurisdiction. California court agreed to provide Arkansas court with the file and transcript from the dependency jurisdictional hearing and Arkansas court agreed that child's custody would remain with mother. The Superior Court of San Diego County held that the lower court erred when it did not sooner contact the Arkansas court, however, the error was not prejudicial. Also, the court held that the UCCJEA did not require tape recordings or reporter's transcripts of the inter-court conversations.

***Liska v. Liska, 902 P.2d 644 (1995), 272 Utah Adv. Rep. 17**

Mother filed for divorce in Utah and then moved with the children to Colorado. Utah court awarded mother custody and father visitation. A few years later, mother obtained an emergency order in Colorado preventing father from exercising visitation, and Colorado court continued to exercise jurisdiction. Father filed for enforcement of his visitation order in Utah. The Utah commissioner stayed the proceedings to confer with Colorado magistrate about jurisdiction, and then deferred jurisdiction. Court of Appeals of Utah held that Utah had continuing jurisdiction and that the Colorado court should have consulted with the Utah court prior to modifying the Utah order. Also, Utah commissioner should have made a record of her communication with the Colorado magistrate regarding jurisdiction. Nevertheless, the error was harmless.

Sherrell v. Sherrell, 1998 Tenn. App. Lexis 110

Mother fled with children from Texas to Tennessee due to father's physical abuse. Father was arrested in Tennessee for another abusive incident. Subsequently, mother returned to Texas, but father continued to abuse her so she moved back to Tennessee and filed for divorce. Father filed for divorce in Texas, claiming that Texas was the child's home state and a more appropriate forum. Court of Appeals of Tennessee concurred that the child's home state was Texas and ordered the Tennessee trial court to consult with the Texas court and reach a mutually acceptable decision on jurisdiction.

Home state

Alexander v. Ferguson, 648 F.Supp. 282, 1986 U.S. Dist. LEXIS 18938 (1986)

Mother obtained custody of child and a permanent protective order in Pennsylvania. Father and mother moved to Delaware, and then father moved to Maryland. Mother left children with father and moved to New York. Maryland court gave Pennsylvania order full faith and credit and returned children to mother in New York. Father filed motion for reconsideration in Maryland and Maryland court asserted jurisdiction. Meanwhile, mother filed in New York and obtained a temporary order of protection and custody. Maryland court held a hearing without mother,

awarded custody to father, and ordered mother's arrest for contempt. New York court refused to enforce the Maryland custody order. U.S. District Court for Maryland held that Maryland was the home state when it issued the custody order, that mother "has flaunted federal law," and that the Maryland court rather than the New York court had jurisdiction.

D.B. v. P.B., 692 So.2d 856 (Ala. Civ. App. 1997)

Mother fled with child from Florida to Alabama. Mother obtained custody and protective order based on father's abuse. Father filed for custody in Florida and failed to mention Alabama proceedings. Alabama Juvenile Court dismissed dependency petition based on Circuit Court case, and Alabama Circuit Court dismissed divorce action due to Florida's exercise of jurisdiction. Father was arrested in Alabama for violating the protective order, but then obtained visitation. Meanwhile, Florida court granted custody to father. Court of Civil Appeals of Alabama concurred that father's affidavit to Florida court was misleading, but held that since Florida was the home state, under the PKPA and UCCJA Florida court was entitled to exercise jurisdiction.

Dschaak v. Dschaak, 479 N.W.2d 484, 1992 N.D. Lexis 5 (1992)

Mother left North Dakota with her son and fled to West Virginia because of physical and mental abuse. When she filed for custody, West Virginia declined to exercise jurisdiction, deferring to North Dakota. Father filed for custody in North Dakota and mother returned to the state. The trial court awarded temporary custody to the father despite the statutory provision requiring the court to consider the existence of domestic violence. The Supreme Court of North Dakota upheld the trial court's ruling.

***Giambrone v. Giambrone, 586 N.E.2d 23 (Mass. App. Ct. 1992)**

Parties lived in New York and separated. Child went to relatives in Ohio while mother visited her family in Brazil. Father filed for custody in New York and then moved to Ohio. Although father filed to discontinue New York case, judge scheduled custody hearing in New York. Father obtained temporary custody in Ohio, and mother obtained custody in New York. Ohio judge "relinquished" jurisdiction to New York. Mother took child from Ohio, violating an existing Ohio court order, and a Federal warrant was issued for her arrest. Meanwhile, mother obtained a restraining order in Massachusetts and filed criminal charges against father for assault and battery. The Appeals Court of Massachusetts held that New York was the home state, and that the Ohio orders were not enforceable under the PKPA or UCCJA.

***Hartman v. Cammalleri, 1999 Conn. Super. Lexis 3453**

Mother moved from New York to shelter in Connecticut with child. Mother obtained custody in Connecticut through consent, but father abducted child at first scheduled supervised visit and hid child for 12 years. In 1996, mother and child were reunited, but due to child's problems, he was placed in an inpatient facility in New York. Father was incarcerated for abduction for several years, but then filed for visitation in Connecticut. Superior Court of Connecticut held that Connecticut was not the home state and did not have a significant connection with the child, and therefore lacked jurisdiction.

***In re Holbert v. Holbert, 1997 Ohio App. Lexis 4102 (1997)**

Mother filed actions in Kentucky alleging domestic violence and received temporary custody through 1994. All of the Kentucky orders terminated in May 1995. Mother moved to Ohio with the child in 1994, and in 1996 she sought custody of the child in Ohio. Ohio Court of Appeals held that Ohio had in personam jurisdiction over father due to his temporary residence in Ohio and the fact that father had abused mother and child in Ohio. Father argued that Ohio did not have subject matter jurisdiction under the UCCJA because of the temporary custody orders that had been issued in Kentucky; the Ohio Court of Appeals held that Ohio did have jurisdiction because Ohio was the home state. The Kentucky court never addressed permanent custody and there was no pending custody proceeding in Kentucky.

***In the Interest of E.K.N., 24 S.W. 3d 586 (2000)**

Mother left with child after father was arrested, and court in California issued a protective order. After brief reconciliation, mother left again with child and moved to Texas without informing father of where she was living. She obtained custody and support order in Texas. Court of Appeals of Texas held that Texas trial court had jurisdiction under the PKPA and UCCJA because Texas was the home state.

In Re Kastanas, 78 Wash.App.193, 896 P.2d 726 (1995)

Mother fled from California to Washington with children and filed for custody. After a brief reconciliation, mother fled again to Washington because she feared for her safety and the child's safety. Father filed for a restraining order in California and mother obtained a restraining order in Washington. The California Commissioner spoke to the Washington Commissioner, who was inclined to decline jurisdiction despite mother's allegations. The Washington Commissioner declined jurisdiction because California was the home state, and a superior court judge overruled the Commissioner and asserted jurisdiction. The Court of Appeals of Washington held that the Washington court had to decline jurisdiction under the PKPA.

Kearney v. Hudson, 2001 Conn. Super. Lexis 267 (2001)

Mother filed criminal charges and obtained restraining order against father in Connecticut. After father completed Family Violence Program and protective order was dissolved, father filed for custody in Connecticut, and mother filed motion to dismiss because South Carolina was now the child's home state. Father claimed mother wrongfully removed child, while mother asserted that she fled for safety. Superior Court of Connecticut held that Connecticut did not have jurisdiction under the PKPA, but that mother unilaterally removed child from state at a time when she knew father was precluded from communicating with her and she kept secret her location. Court held that "[mother] has violated the intent of the PKPA and blatantly acted to frustrate its conduct. If the [father's] claimed domestic violence is reprehensible – and it is – so, too is the [mother's] egregious conduct." Court held that Connecticut had jurisdiction despite the fact that South Carolina was the home state.

***King v. King, 619 So.2d 125, 1993 La. App. LEXIS 2270 (1993)**

Father left New Hampshire and took child to Louisiana after a "domestic quarrel." Mother obtained a domestic violence and custody order in New Hampshire. Father filed for custody in Louisiana. Louisiana trial court declined to exercise jurisdiction because New Hampshire was the home state and already had exercised jurisdiction.

MC v. MC, 215 N.J. Super. 132, 521 A.2d 381 (1986)

Mother remained in New Jersey with daughter and father returned to Ireland with son after "marital arguments" led to the issuance of a domestic violence order against the father. Irish court awarded custody of the son to the father. The Superior Court of New Jersey held that the Irish order was binding based on comity and the UCCJA. With respect to the daughter, New Jersey was the home state and could exercise jurisdiction, and custody was awarded to the mother. (The evidence of domestic violence was not considered in either decision.)

***Missouri v. Rosen, 966 S.W.2d 292, 1998 Mo. App. Lexis 105**

Mother gave birth to child in a hospital in Kansas and social worker was concerned about the child's safety. Mother indicated that she had a restraining order issued against father in the past and had called the police several times, and there was a history of father sexually abusing the other children. Social worker contacted Missouri's Department of Family Services [DFS] since the parents intended to return to Missouri and transferred child to DFS. Missouri court found that it lacked jurisdiction under the UCCJA but that returning the child to the parents would endanger the child, so an extraordinary writ of prohibition was issued. Court of Appeals of Missouri found that Missouri court was entitled to exercise significant connection jurisdiction under the UCCJA.

Moore v. Richardson, 332 Ark. 255, 964 S.W.2d 377 (1998)

Mother filed to modify order in Arkansas because father was being investigated for abusing child. With court's permission, mother moved to Texas, but court continued father's supervised visitation (by his family members) with child. Mother did not send child for visitation because child had told Texas DHS workers that she was still being physically abused. Texas court issued a protective order on behalf of mother, requiring father's visitation to be supervised by a professional counselor in Texas. Arkansas court communicated with Texas court regarding jurisdiction, but received no response. Arkansas held mother in contempt and ordered her jailed. Supreme Court of Arkansas upheld the order of the Arkansas court and found that Texas should not have modified the Arkansas order.

In Re Payne, 79 Wash.App. 43, 899 P.2d 1318 (1995)

Parties lived in Virginia and then moved to Washington. Mother asserted that father was domineering, unreasonably jealous, and demanding. Father returned to Virginia and filed for custody, and then attempted to abduct the children, assaulting mother, children, and grandmother. Mother obtained a domestic violence protection order including custody in Washington, but did not mention the pending Virginia proceeding. Washington commissioner spoke to Virginia judge and concluded that Virginia was a more appropriate forum under the PKPA and UCCJA because it was the home state.

Ricky D.C. v. Carol A.C., 139 Misc.2d 826, 528 N.Y.S.2d 786 (1988)

Mother fled with child from Tennessee to New York because of long-term physical and mental abuse. A separation agreement signed by both parties in New York gave custody of child to mother. One month later father filed for custody in Tennessee and served mother while she was picking up her belongings. Mother was not present in court because it was financially impossible for her to return to Tennessee, and the court awarded custody to father. Although the New York Family Court was convinced that the child's return to Tennessee with his father might be contrary to the child's best interests, the court held that Tennessee was the home state under the PKPA and entitled to exercise jurisdiction.

In Re Simons, 118 Ohio App.3d 622, 693 N.E.2d 1111 (1997)

Mother filed for divorce in Kentucky and then fled to Ohio with child. Grandmother filed custody and dependency pleading in Juvenile Court in Ohio, alleging that father had abused mother and child. She informed Ohio court that Kentucky court had awarded mother temporary custody of child and father supervised visitation. Mother then filed a separate domestic violence action in Ohio and obtained an ex parte order of protection. Ohio Juvenile Court communicated with Kentucky court and then dismissed case. Court of Appeals of Ohio held that Kentucky was the home state, that the Juvenile Court communicated properly with the Kentucky court, and that the Juvenile Court exercised its right to decline jurisdiction as an inconvenient forum under the UCCJA.

***Stewart v. Stewart, 708 N.E.2d 903, 1999 Ind. App. Lexis 597 (1999)**

Mother obtained domestic violence protective order against father in North Carolina, including temporary custody of child. Father moved to Indiana. Mother sent child to live with father for 6 weeks the following summer, and father filed for custody in Indiana. Indiana court granted custody to father, and mother contested Indiana's jurisdiction under the UCCJA. Indiana Court of Appeals held that North Carolina was the child's home state despite the temporary absence, and that Indiana did not have jurisdiction over the child custody determination.

PKPA

B.B. v. D.D., 18 P.3d 1210 (Alaska 2001)

Mother moved from Alaska to Oregon with children after father choked and threatened to kill her, and she obtained custody in Oregon. Mother moved to North Pole with children and father exercised visitation. Mother and children left North Pole, and father hired private investigator to find them. Father located them in Kasilof and obtained temporary custody based on mother's failure to inform father of new residence after relocation. Mother filed motion to change custody based on father's severe abuse of children. Father moved to restrict mother's telephone contact with children and court ordered mother's telephone contact to be supervised. Mother claimed that Alaska trial court lacked jurisdiction to modify the Oregon order. Supreme Court of Alaska held that Alaska trial court had jurisdiction under PKPA to modify the Oregon order because Oregon had lost jurisdiction, as there was no longer a significant connection to the state. Mother could present evidence of child abuse to the lower court with a new motion to modify custody order.

Cahill v. Kendall, 202 F.Supp.2d 1322, 2002 U.S. Dist. Lexis 7796 (2002)

Father sued judges from Alabama and Florida in federal district court. Father claimed that the Florida state court that issued a custody order declined to enforce and modify the order under the PKPA and that the Alabama UCCJA and the Florida UCCJEA were inconsistent. U.S. District Court for the Southern District of Alabama found that the PKPA confers no federal cause of action. Father's other claim was dismissed because of the Rooker-Feldman doctrine (federal district court may not review state court judgments) and the domestic relations exception to federal jurisdiction.

***Jorgensen, 627 N.W.2d 550 (Sup. Ct. Iowa 2001)**

Mother moved to Iowa with child, and father filed for joint legal custody in New York. Child alternated between parties for years, and then mother filed for custody in Iowa. The Iowa court modified the New York order. Supreme Court of Iowa stated that Congress' chief aim in enacting the PKPA was to extend the requirements of the Full Faith and Credit Clause to custody determinations. The New York decree was not consistent with the PKPA so Iowa was not required to give the custody order full faith and credit. As the home state, Iowa was entitled to make an initial custody determination.

Kreis v. Cummins, 1998 Del. Fam. Ct. LEXIS 9 (1998)

Under court order issued in Delaware, Mother had custody of two youngest children in California while oldest child lived with father in Delaware. Mother obtained domestic violence restraining order in California to limit father's visitation with two younger children. Father filed for custody in Delaware. Family Court of Delaware held that although California was the home state, Delaware retained continuing jurisdiction under the PKPA.

***Schuyler v. Ashcraft, 293 N.J. Super. 261, 680 A.2d 765 (1996)**

Parties divorced in Florida in 1990. During the year following the divorce, father and his family repeatedly used the Florida court system to harass mother and to try to force a change of custody, filing false sexual abuse charges and instituting an extraordinary number of legal proceedings. Florida court granted mother's petition to relocate to California with the children, stating:

“[Mother] has no lodging, no money and constant oppression. If the mother wants to try for a better life with the two children, the court gives her its blessings. Slavery was abolished 125 years ago and so was oppression. The mother's condition following her divorce has been analogous to that of slave chained to false accusations, constant allegations and hatred. A human being deserves better.”

The Florida court retained jurisdiction only for six months. Nevertheless, father applied ex parte before different judges and was granted orders changing the wording of the original order. Mother filed the original Florida order in New Jersey. New Jersey court assumed emergency jurisdiction, fearing that father would abduct children. Father's due process violations became clear (father's lawyer was later admonished by the Florida bar for his conduct in this case). After issuing conflicting orders, New Jersey and Florida judges had a telephonic conference and Florida again relinquished jurisdiction. Then father's lawyer sent an ex parte letter to a Florida judge who was no longer sitting in the family court and Florida court rescinded its order.

Meanwhile father called mother at work and threatened to kill her and her attorney. New Jersey court issued a protection order with custody to mother and no visitation to father. Mother was assaulted two blocks from the courthouse by a man who warned her to “drop the charges.” Mother also saw the word “dead” written in ketchup on her sliding glass door and father told her he would kill her with a car bomb or a gun. Florida judges continued to issue conflicting jurisdictional orders. New Jersey court ordered that it had “absolute jurisdiction” as a result of the August 1991 Florida order and the testimony of father's counsel that mother had never been properly served within the six month time period.

In Florida, investigator filed affidavit that father had sole custody and mother was unlawfully keeping them out of the state. Florida's Governor signed extradition papers for mother. Mother was arrested in New Jersey in front of her children and released on bail; Cape May County Prosecutor informed court that warrant was based on misinformation. Once again, Florida court ceded jurisdiction to New Jersey and rescinded it.

Superior Court of New Jersey held that only the original Florida court order was valid under the PKPA and that New Jersey alone had jurisdiction to modify the custody and visitation portions. Florida retained jurisdiction to modify the child support orders under the Full Faith and Credit for Child Support Orders Act.

Thompson v. Thompson, 798 F.2d 1547 (1986)

Parties divorced in California and mother received custody. With permission from the court, mother and child moved to Louisiana. Mother filed for enforcement of California custody decree and modification of visitation order in Louisiana and was awarded custody. Meanwhile California court awarded custody to father. Father brought action in U.S. District Court for the Central District of California seeking declaratory and injunctive relief under the PKPA due to conflicting custody decrees. Examining the legislative history of the PKPA, the U.S. Court of Appeals for the Ninth Circuit held that the PKPA did not create a cause of action in federal court.

Thompson v. Thompson, 484 U.S. 174 (1988)

The Supreme Court affirmed the decision of the Ninth Circuit. The Supreme Court held that the PKPA does not provide an implied cause of action in federal court to determine which of two conflicting state custody decisions is valid. Congress' aim in enacting the PKPA was to extend the requirements of the Full Faith and Credit Clause to custody determinations, not to create a separate cause of action.

Wiseman v. Dorshorst, 737 N.E.2d 325 (Ill. App. Ct. 2000)

Parties had a joint custody agreement from Wisconsin court. Mother requested permission to move to Illinois, and court permitted it. Later mother requested that Illinois court revise the visitation schedule because transporting the children was too difficult. Father filed to modify the custody decree in Wisconsin. Appellate Court of Illinois held that under the supremacy clause of the Constitution, federal law preempts a conflicting state law, so where the PKPA conflicts with a state UCCJA, the PKPA prevails. As a result, only the Wisconsin court could modify the Wisconsin custody decree.

Custodial interference

In the Interest of Brandon C., 1997 Conn. Super. Lexis 3229 (1997)

Mother and father separated due to the father's violence, and mother moved from North Carolina to Virginia, Canada, Connecticut and Florida. Father obtained a custody order in Virginia and took the children back to North Carolina. He returned the children to mother, but later filed a charge of custodial interference against mother, and the children were placed in foster care. The court considered the behavior of both parents to be flawed (including a possible psychological diagnosis of the mother as "paranoid personality" because she believed the father's family was attempting to remove her children). After finding that the children were neglected by both parents, the court ordered custody to be placed with the mother under protective supervision.

In re D'Attomo, 570 N.E.2d 796 (Ill. App. Ct. 1991)

Mother obtained protection order from Illinois court, including custody, after father abused her. Father abducted child and disappeared to Italy for two years. Father pled to child abduction charge and then was prosecuted for contempt of court order. Appellate Court of Illinois held that father could not be prosecuted twice for the same offense due to double jeopardy. Here, the child abduction statute defined the same offense as indirect criminal contempt for violating a custody order by removing or concealing a child.

***State v. Carver, 781 P.2d 1308 (Wash. 1989)**

Father moved to California with child and obtained temporary custody. Mother and father reconciled and returned to Washington. Mother obtained a protective order including custody from Washington court and moved to a shelter with child. Father obtained permanent custody from California court. In violation of Washington court order, father took child to California. Washington prosecutor charged father with custodial interference and he was convicted. Supreme Court of Washington upheld the custodial interference statute and father's conviction.

***Strother v. State of Alaska, 891 P.2d 214 (1995)**

Mother obtained an ex parte restraining order against father after he repeatedly slammed her head against his knee and the dashboard in the car. Father contested custody, claiming mother was unfit. Father failed to appear at hearing, and the clerk's office mailed two copies of the order to him. Father returned to Alaska, abducted child, and disappeared to Montana. Father left letters for mother stating she would never see the child again. Eventually the FBI arrested father in South Dakota. Mother and father reconciled, and mother recanted at father's trial for custodial interference. Court of Appeals of Alaska upheld father's conviction, finding that Alaska's custodial interference statute was intended to prohibit parents from abducting their children as a means of settling a custody dispute.

***Vachon v. Pugliese, 931 P.2d 371, 1996 Alas. LEXIS 130 (1996)**

Because father had been stalking her, mother fled with child from Alaska to Massachusetts. Father filed for custody and Alaska court ordered mother to return child for visit. Mother filed for custody in Massachusetts. Alaska court awarded father custody unless mother returned to Alaska and court found mother had committed custodial interference. Supreme Court of Alaska held that the record did not support a finding of custodial interference and that the lower court erred in characterizing the mother's conduct as wrongful. The custody award to father was reversed.

UCCJEA/UCCJA – Clean Hands Doctrine

***Coleman v. Coleman, 493 N.W.2d 133 (Minn. Ct. App. 1992)**

Mother moved to Nebraska from Minnesota with children because of abuse by father, including yelling, threats, grabbing, bruising, and kicking objects. She obtained temporary custody in Nebraska based on emergency jurisdiction. Father filed for custody in Minnesota and the Minnesota court declined to exercise jurisdiction after conferring with the court in Nebraska. Court of Appeals of Minnesota affirmed the trial court's decision, holding that Nebraska had emergency jurisdiction under the UCCJA and that Minnesota was entitled to decline jurisdiction. Court also held that mother did not abduct the children, but fled to Nebraska for her safety and their safety.

Dymitro v. Dymitro, 129 Idaho 527, 927 P.2d 917 (1996)

Mother left Idaho with son and moved to Ohio. Idaho court awarded primary custody to father, finding that mother had overstated the violent nature of father's temper, and mother appealed. Mother argued that magistrate punished her for leaving the state with the child, while father argued that mother's unilateral removal of the child contravened the UCCJA. The Court of Appeals of Idaho held that the magistrate had not abused his discretion and that he was entitled to consider mother's actions in removing her son from Idaho.

***Fox v. Fox, 180 Cal. App.3d 862, 225 Cal.Rptr. 823 (1986)**

Mother fled with child from Louisiana to California because she was afraid of father. She filed for custody in California, and father filed in Louisiana. Among other reasons, California court declined to exercise jurisdiction based on the mother's conduct in removing the child from Louisiana. Court of Appeal of California reversed, holding that the mother's flight to California was not reprehensible or objectionable conduct within the meaning of the statute.

Lamison v. Arnold, 2001 Iowa App. LEXIS 632 (2001)

Mother sent child to live with father for a short time, and he filed for and received custody a few months later. Mother claimed Iowa did not have jurisdiction under the UCCJEA due to father's unjustifiable conduct. She also claimed that the trial court did not consider father's past domestic assault charges in the custody decision. Court of Appeals of Iowa held that Iowa was the home state and that mother could not raise the issue of father's unjustifiable conduct on appeal when she did not raise it in trial court. Also, domestic violence was just one factor in the custody determination, and after father's conviction, he completed a domestic abuse course and learned to manage his anger. The court also noted that there were domestic abuse allegations against the mother by her new partner.

***Nieto v. Ramos, 2001 Cal. App. Unpub. LEXIS 1847 (2001)**

Mother took minor without father's permission and moved from California to Kentucky. Father filed for custody in California, and trial court transferred custody to father due to mother's conduct. Trial court discounted mother's allegations of domestic violence, stating that they were of recent vintage and had not been raised at earlier proceedings. Meanwhile, mother filed for custody in Kentucky. Court of Appeal of California held that California did not have home state jurisdiction under the UCCJEA and that mother's conduct was not illegal or wrongful. Under the UCCJEA, the trial court should not have considered the taking of the child to be wrongful where there was evidence that this was a result of domestic violence. Here, mother left father due to domestic violence and went to Kentucky, where her parents live, to find a job. Court of Appeal ordered the child returned to mother's custody.

***Odom v. Odom, 606 So.2d 862 (1992)**

Mrs. Odom fled to a shelter in Louisiana with her children after Mr. Odom assaulted her and her daughter. Mr. Odom filed for custody and alleged that Mrs. Odom was abusing their son and that the children should be placed in foster care. The Department of Social Services found no evidence of abuse, and the Court of Appeals found that Mr. Odom had submitted pictures of the child's legs as evidence of abuse when the lesions were caused by impetigo. Mrs. Odom fled to Missouri with the children, and Mr. Odom obtained custody in Louisiana while Mrs. Odom was in a shelter in Missouri. The Court of Appeals found that "Mr. Odom is a manipulative and vindictive person who will not hesitate to use his children to punish his former wife" and reversed the custody determination. The Court did not condone Mrs. Odom's flight, but understood that she fled the jurisdiction because of fear, and thus refrained from punishing Mrs. Odom for past misconduct.

***In Re Thorenson, 46 Wash. App. 493, 730 P.2d 1380 (Wa. Ct. App. 1987)**

Mother had custody of child under a Florida court order, but the order required court consent to remove child from the state. Mother fled with child to Illinois and then Washington in violation of the existing order, but did so to protect herself and child from physical and mental abuse. Father obtained a custody order in Florida without notice to mother, and the Washington court refused to enforce it. The Washington court communicated with the Florida court and requested an investigation regarding the mother's abuse allegations. The Washington court stated that it would exercise jurisdiction if the allegations were substantiated. Florida court refused to yield jurisdiction to Washington and granted custody to the father. Court of Appeals in Washington held that the PKPA governed and that Washington was not required to enforce the Florida court order because it was issued without notice to the mother. Court also held that the mother's flight to protect herself and the child from physical and mental abuse counterbalanced the "unclean hands" doctrine. Therefore, the trial court in Washington had not abused its discretion in exercising jurisdiction, despite the mother's technical violation of the Florida custody decree.

VAWA – full faith and credit provision

***People v. Hadley, 658 N.Y.S.2d 814 (1997)**

In violation of an order of protection issued in New Jersey, defendant followed his daughter to New York. The order precluded the defendant from stalking or following his daughter and indicated that the defendant was given a copy of the order, but the order was missing the signature, title and department of the person who served defendant and the date of service. The defendant moved to dismiss the criminal contempt charge, contending that the order only could be enforced criminally in New Jersey. The Criminal Court of the City of New York held that New York's Penal Law sanctioned the intentional disobedience of the order of any court, permitting out of state court orders to be enforced. Moreover, the federal full faith and credit provision included an expansive definition of "protection order" and "spouse or intimate partner," indicating that Congress intended to extend the provision to all persons protected by a state protection order. Therefore, the courts of New York could enforce the New Jersey order. However, to satisfy due process and the law of the state of New York, the prosecution must demonstrate that the defendant was given notice of the contents of the restraining order by proper notice.

Relocation

Coniglio v. Coniglio, 170 A.D.2d 477 (1991), NY Supreme Ct, App. Div.

Mother and father separated, and the stipulated custody and visitation order required mother to obtain father's prior written consent before moving more than 50 miles away. Mother asked court to permit her to relocate with child from New York to Florida. Court held that such a move would deprive the father of reasonable access to the child and that exceptional circumstances had not been shown. Dissent viewed the father's drug and alcohol abuse and his history of

abusing mother as constituting extraordinary circumstances, especially since the mother fled the marital residence to escape the father's physical brutality.

***Desmond v. Desmond, 509 N.Y.S.2d 979 (Fam. Ct. NY 1986)**

Father repeatedly and severely abused mother in the presence of the children, and mother fled from New York to Virginia with the children. New York Family Court held that the mother's move with the children did not entitle father to custody. Mother had family support in Virginia and her relocation helped create a tranquil environment for the children. The court held that abused parents should not be penalized for "seeking refuge out of the easy reach of their oppressors." Rather, the level and quantum of abuse should be considered in determining whether exceptional circumstances warranted the relocation.

***Gruber v. Gruber, 583 A.2d 434 (Super. Ct. Pa. 1990)**

After separation, father hit mother when she was pregnant in the presence of the children. Mother obtained a protection order in Pennsylvania, but then moved to Illinois to live with her brother. Father sought to prevent mother from leaving the state, and mother testified that she could have a home, support, and help with future employment in Illinois. Superior Court of Pennsylvania held that the best interests of the child are more closely allied with the interests of the custodial parent, and, in this case, the mother's relocation would substantially enhance the quality of her life and that of her children. Mother was entitled to relocate to seek a better life and to escape the "turmoil and troubled confrontations" with father.

***Hanke v. Hanke, 615 A.2d 1205 (Md. Ct. Spec. App. 1992)**

Mother obtained custody and father obtained visitation from Maryland trial court. Father had physically and sexually abused mother and molested child. Father also had been prosecuted for sexual abuse of stepchild. Mother moved from Pennsylvania to Kentucky with children and advised court. Maryland court transferred custody to father and Kentucky court transferred custody to Department of Social Services. Court of Special Appeals of Maryland reversed the lower court's decision, finding that the trial judge was annoyed because mother moved to Kentucky with child and was unwilling to allow visitation, but that the court's order was not in the child's best interest.

***Jacoby v. Carter, 167 A.D.2d 786 (Sup. Ct. App. Div. NY 1990)**

Mother fled from New York to Pennsylvania with child due to abuse. Mother filed for divorce in New York and father sought a return of the child to New York. Supreme Court, Appellate Division affirmed the lower court's decision that the father's physical and emotional abuse of mother constituted exceptional circumstances justifying her relocation with the child.

***Marshall v. Marshall, 117 Ohio App.3d 182, 690 N.E.2d 68 (1997)**

Mother left Ohio and fled to North Carolina because of the abuse. Trial court in Ohio penalized mother for leaving and granted custody to father when mother failed to return to Ohio despite

court order to do so. Court of Appeals of Ohio held that the trial court abused its discretion in awarding custody to father by placing undue emphasis on the fact that mother left Ohio and failed to return. Among other factors justifying the mother's move, the court mentioned that she left the marital home because of spousal abuse and went to live near her sister, one of her few relatives in the country.

***Olmo v. Olmo, 140 A.D.2d 677 (Sup. Ct. App. Div. NY 1988)**

Mother fled from New York to Colorado with children due to father's abuse. Father obtained custody in New York, while mother obtained custody in Colorado. New York order was vacated subsequently. New York Supreme Court, Appellate Division held that mother's relocation was made in good faith and that exceptional circumstances justified her move to Colorado, where she could reside rent-free with her parents who assisted her in caring for the child and provided her and the child with emotional support.

***O' Neill v. Stone, 721 So.2d 393, 1998 Fla. App. Lexis 14368 (1998)**

Mother received a protection order and a separate custody order in Florida, and then left the state with child to live with her family in New Jersey. Father filed for custody in Florida, and the court transferred custody to father. Mother filed to set aside this order; she was denied the right to testify by telephone and returned to Florida for the hearing. Without hearing the testimony of mother's witnesses, the trial court ordered her to relocate to Florida with the child. Florida Court of Appeal found that the trial court erred by refusing to hear the testimony of witnesses and by failing to consider that the custody dispute was in the context of a domestic violence proceeding. Court of Appeal held that the context and timing of the mother's departure did not support the trial court's conclusion that she left the state for the purpose of circumventing the court-ordered visitation schedule and reversed the order.

***In re Roe, 20 Cal. Rptr.2d 352 (Ct. App. Cal. 1993)**

Mother took child and left father because she feared for her safety and that of her son. Some time later, the Department of Children's Services received a report and investigated father for abuse of child. Father filed a civil suit against mother and continued to be "vindictive and angry" towards her. Mother wished to relocate because her new husband found employment in another location. Court of Appeal affirmed the decision that this was in the child's best interest.

Personal jurisdiction

Anthony T. v. Anthony J., 510 N.Y.S.2d 810 (1986)

Child filed in New York for order of protection against father who was in Florida. By phone, father threatened to burn down son's house, come by with a machine gun, and murder him. Family Court of Nassau County held that the act of harassment occurred in New York, and that the Family Court had subject matter jurisdiction. However, the Court did not have personal jurisdiction as no statutory language permitted long-arm jurisdiction in offense cases.

***Bartsch v. Bartsch, 636 N.W. 2d 3 (Iowa 2001)**

Mother filed for a protective order against father in Iowa shortly after she moved there. Father resided in Colorado and filed a motion to dismiss. Iowa district court found that father did not have sufficient minimum contacts for personal jurisdiction and Iowa Supreme Court concurred. The Supreme Court held, however, that personal jurisdiction was not required because the protective order was issued as a status adjudication to protect an Iowa resident. The Supreme Court stated that "the State's interest in protecting victims of domestic abuse is equal to, if not greater than, its interest in actions determining child custody or terminating parental rights because it involves the safety of the protected parties."

Pierson v. Pierson, 555 N.Y.S.2d 227 (1990)

Mother fled from Florida to New York with the children and filed for a protection order, alleging that father grabbed and attacked her in Florida and beat the child. New York Family Court in Monroe County found that the Family Court had subject matter jurisdiction even if the alleged acts occurred outside of New York. Court also had personal jurisdiction over the father who had returned to New York. Court denied the motion to dismiss because the risk of family violence still existed.