



Inter-State Complications

A UCCJEA/ICPC case study

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UCCJEA Overview

- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (Fam.Code, § 3400 et seq.) SCOPE OF PRESENTATION. This overview will cover jurisdiction only. It will not cover enforcement under the UCCJEA. \
- UCCJEA LEGISLATIVE PURPOSE
- SCOPE OF UCCJEA JURISDICTIONAL PROVISIONS
- WHEN DOES CALIFORNIA HAVE SUBJECT MATTER JURISDICTION UNDER THE UCCJEA TO MAKE AN INITIAL CHILD CUSTODY DETERMINATION?

UCCJEA Overview

- THE UCCJEA PROVIDES THE EXCLUSIVE JURISDICTIONAL BASIS FOR MAKING A CHILD CUSTODY DETERMINATION IN CALIF
- UCCJEA FIRST IN TIME EXCLUSIVE AND CONTINUING JURISDICTION
- TEMPORARY EMERGENCY JURISDICTION
- COMMUNICATION WITH FOREIGN COURT

UCCJEA Overview

- UCCJEA SUBJECT MATTER JURISDICTION CANNOT BE BY STIPULATION OR CONSENT
- SUBJECT MATTER JURISDICITON CANNOT BE WAIVED.
- JURISDICTION TO MODIFY CUSTODY DETERMINATION MADE BY OTHER STATE
- FORUM INCONVENIENS AND THE UCCJEA

UCCJEA Overview

- THE DISENTITLEMENT DOCTRINE AND THE UCCJEA
- UCCJEA AND THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION
- UCCJEA NOT CONCERNED WITH CHILD'S BEST INTEREST
- SUBJECT MATTER JURISDICTION COMPARED TO PERSONAL JURISDICTION

ICPC Overview

- NATURE OF ICPC
- ICPC LEGISLATIVE PURPOSE AND POLICY
- ICPC APPLICABILITY
- LACK OF UNIFORMITY AMONG THE STATES ON ICPC APPLICABILITY TO PLACEMENT WITH OUT OF STATE PARENT
- PLACEMENT WITH OUT OF STATE RELATIVES

ICPC Overview

- ICPC CONDITIONS FOR PLACEMENT
- ICPC MEMBERSHIP
- SENDING STATE CONTINUING JURISDICTION AND FINANCIAL RESPONSIBILITY

ICPC Overview

- ICPC RULES AND REGULATIONS
- ICPC DOES NOT ALLOW CONDITIONAL ORDERS
- ICPC AND OUT OF STATE VISITS

Overview of Service of Process Outside California

SERVICE OF PROCESS ABROAD

A. The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638) (hereinafter the Hague Service Convention).

B. Inter-American Service Convention

C. For foreign countries not members of the Hague Service Convention or the Inter-American Service Convention:

SERVICE OF PROCESS OUTSIDE OF CALIFORNIA BUT WITHIN THE U.S.

Case Study: The Situation



In 2010, Mother and Father separate, Father leaving the state and Mother continuing to raise their two young children.

In the summer of 2010, Mother and the children visit Father at his new residence in Connecticut.

During the visit, Father initiates custody proceedings on July 1, 2010 in the Connecticut family court, and seeks and receives an immediate order for Mother not to leave the state with the children. The custody matter is set for mediation.

Later on the same day, Mother seeks and receives an "Emergency Relief from Abuse" order from the Connecticut court, which names Mother and both children as protected parties and includes a supervision requirement for Father to visit the kids.

Case Study: The Situation



- Two weeks later, an appointed Custody Mediator in Connecticut reports that neither parent has appeared for the custody mediation, and Mother's family law attorney says that the Mother has taken the children to California. The Connecticut Court reasserts its Jurisdiction dating back to July 1, 2010, and suspends proceedings indefinitely.

- On December 1, 2010, the children are removed from the Mother by law enforcement in California when the Mother is arrested due to substance abuse issues. A petition is filed under 300(b) and (g), based on her substance abuse, incarceration, and failure to make adequate provision for the care of her children. No allegations are made concerning Father.

- During a lengthy contested hearing in the California juvenile court, Father seeks sole custody and dismissal based on W&I 361.2. Mother seeks return to her, or in the alternative Family Reunification services. No evidence is presented that would bring Father into the petition.

The Situation: Trial Court Issues

Question: Is ICPC required before the kids can go with their dad?

Under *In Re C.B.*, no.

In that case, the county appealed from an order authorizing a father to leave California with his children. The court had done this after setting aside the jurisdictional finding against him, thereby rendering him a non-offending parent, and finding that therefore ICPC did not apply. The juvenile court left the children under the supervision of the child protective agency and ordered the father to participate in family maintenance services. The Court of Appeal affirmed the order, finding that an out-of-state placement with a parent is never subject to the ICPC. Thus, the juvenile court did not err by failing to comply with the ICPC regulations.

The reviewing court did suggest it may be time for a 50-state effort to extend the ICPC to out-of-state placements with parents.

Current Events in ICPC

The Association of Administrators of the Interstate Compact on the Placement of Children ("the Association"), is authorized by the ICPC to promulgate rules and regulations to carry out more effectively the terms and provisions of the ICPC. (Fam. Code § 7901, art. 7.) The Association recently issued the new regulations governing ICPC implementation, which go into effect October 1 of this year. The new version of ICPC anticipated by those regulations will include non-custodial parents as placements governed by ICPC. BUT: until the new ICPC is adopted in California and whatever the receiving state is, all you have is the Association's regulations.

ICPC itself, as a contract between the states, trumps state law, but state law trumps ICPC regulations. For that reason, the case of *McComb v. Wambaugh* already back in 1991 invalidated the aspect of Regulation III that used to apply to placement with a parent. 934 F.2d 474 (1991).

So until a new ICPC is adopted, state case law -- *In Re C.B.* -- controls.



The Situation: Trial Court Issues

- Applied to the our case situation: although there may be new regulations effective 10/1/2011, and even a new ICPC compact coming soon, social services **can not require ICPC for a non-offending, non-custodial Father to have his children.**



The Situation: Trial Court Issues

Disposition: Under 361.2, assuming that Father qualifies as a non-offending, non-custodial parent, the juvenile court has four options:

- Deny him placement based on detriment to the children
- Place with him and dismiss
- Place with him subject to the jurisdiction of the juvenile court and order a home visit in 3 months (and then decide whether to dismiss or keep supervision),
- Place with him under the court's supervision and
 - give services to both parents,
 - give services only to him, or
 - give reunification services only to Mother

The Situation: Decision

Following a lengthy contested hearing, the Court orders the children removed from their Mother and placed with their Father in Connecticut, under the continuing supervision of the Juvenile Court, with orders to the Agency to provide family reunification services and “reasonable visitation” to the Mother.



APPELLATE ISSUES

The Situation: Appellate Issues

A. Communication with a court in another state is mandatory if there is an existing child custody order or a pending proceeding in the other state, otherwise it is discretionary.

Fam. Code 3410(a), 3424(d), 3426(b); *In re S.T.* (2002) 100 Cal App 4th 101, 110-111; *In re Angel L.* (2010) 159 Cal App 4th 127, 1138-39.

That error would constitute an abuse of discretion and therefore be reversible, under *In Re S.T.*, if prejudice is shown.

Here the prejudice is the California Court’s ignorance of the basis for the Connecticut Court’s orders.

The Situation: Appellate Issues

- a. The Court asserted jurisdiction over the children under UCCJEA despite prior custody action in CONNECTICUT and despite the Court's involvement arising from the Mother's unjustifiable conduct
- Once Connecticut had made an initial custody determination, the California juvenile court should not have made a new "initial" custody determination. The California juvenile court has no authority to review the findings and orders of another state's family court.
 - Mother's remedy, if she disagreed with the Connecticut Court's exercise of jurisdiction over her and the children, was to appeal based on UCCJEA issues *in that state*. Instead, she abducted the children and fled the jurisdiction.



The Situation: Appellate Issues

Cont'd

This parental "kidnapping" arguably falls within the description of "unjustifiable conduct" in the UCCJEA, and requires the court to decline jurisdiction. Cal Fam Code 3429.



- The Mother would argue that her taking the children to California was due to domestic violence, an exception to the "unjustifiable conduct" rule, but the California Juvenile Court had no evidence of the domestic violence beyond the Mother's allegations.
- Also, the Mother did not go on to initiate any custody action in California on her own, instead subjecting her children to neglect until the state became involved.

The Situation: Appellate Issues

- c. The Court modified a prior child custody determination in Connecticut by ignoring the Connecticut court's protective order restraining Father from contact with the children in violation of the UCCJEA.
- Once Connecticut had made a child custody determination, a California court could only modify that order if it met the UCCJEA requirements, *and* either (a) the other state determined it no longer had exclusive jurisdiction or that California would be a more convenient forum, or (b) the child, the child's parents, and any other person acting as a parent did not presently reside in the other state.
 - Because Father continued to reside in Connecticut, and because the California Court did not seek input from the Connecticut Court related to jurisdiction or inconvenient forum issues, it could not modify the Connecticut Court's restraining order by placing the children with Father.



The Situation: Appellate Issues

- d. The Court ordered out-of-state placement with the noncustodial Father while failing to order measures to enforce its continuing jurisdiction, including at a minimum requiring Father to expressly concede the juvenile court's jurisdiction throughout the pendency of the dependency case, and notifying the Connecticut court of its orders.

While a California juvenile court has the authority to place a child out-of-state, if it maintains continuing supervision of the case it has a duty to ensure that its jurisdiction and orders will be enforceable in the other jurisdiction. *In re Karla S.*, 186 Cal.App.4th 1236, 1267-70 (2010).

In our sample case, the Juvenile Court should have at a minimum required 1) the parents' submission to the personal jurisdiction of the California juvenile court for the duration of the dependency; and 2) Registration of the California Juvenile Court's placement and temporary custody and visitation orders with the Connecticut court pursuant to Cal Fam Code 3445.

The Situation: Remedies

1. Appeal



Benefits:

- a. Clarification of California juvenile court jurisdiction over minors

- b. Enforcement of juvenile court orders in Connecticut

The Situation: Remedies

2. Alternative courses of action

- Seek enforceability by stipulation or submission of the parties to jurisdiction, and registration of the orders in Connecticut
- Seek confidentiality waivers from the Father and report to court based on collateral contacts
- Seek a change of order with a JV-180, or request for rehearing

Conclusions



Doing what we can to make sure the Juvenile Court follows the UCCJEA from day one can save a lot of headache later on, and preserve enforceability of Juvenile Court orders.

While ICPC can't currently be required for out-of-state non-offending, non-custodial parents, if there is a real possibility of detriment, Agencies may want to request an order to use the ICPC evaluation as a means of gathering information before placing the child under 361.2.
