

## Child Custody and Child Support Jurisdiction

Jurisdiction is one of the most fundamental concepts that an attorney must know and understand to litigate successfully. It can also be one of the most confusing, especially when dealing with child custody and child support matters. Kentucky adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) in 2004. This Act governs which state has jurisdiction in child custody proceedings. Kentucky adopted the Uniform Interstate Family Support Act (UIFSA) in 1998, and this law governs which state has jurisdiction in child support cases. While both Acts were enacted, in part, to unify and clarify the different states' interpretations and approaches to jurisdiction in these child related issues, the jurisdictional laws are distinct under each Act. Therefore, a party who submits to the jurisdiction of a court for a child custody proceeding does not necessarily waive his/her challenge to that court's jurisdiction over child support. Consequently, jurisdiction over child related issues can be bifurcated between two states: Kentucky may have jurisdiction over the child custody matters while another state has jurisdiction over the child support issues.

As a result of the confusion over jurisdictional issues in child related matters, there have been a handful of published opinions by Kentucky appellate courts in the last few years. See for example *Mauldin v. Bearden*, 293 S.W.3d 392 (Ky. 2009); *Biggs v. Biggs*, \_\_\_ S.W.3d \_\_\_, 2009 WL 4406061 (Ky. App. 2009) (opinion not final); *Hearld v. Hearld*, 278 S.W.3d 162 (Ky. App. 2009); *Koerner v. Koerner*, 270 S.W.3d 413 (Ky. App. 2008); and *Gibson v. Gibson*, 211 S.W.3d 601 (Ky. App. 2006). This article is intended to provide a brief overview of what requirements must be met prior to a Kentucky court taking any action in a child custody or child support case.

### Child Custody Jurisdiction:

At the outset, it is important to note that jurisdiction under the UCCJEA is not dependent upon personal jurisdiction. "Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination." KRS 403.822(3). Instead, the inquiry revolves around the child's home state. Home state is defined as the state in which a child lived with a parent, or a person acting as a parent, for at least six months immediately prior to the filing of the action. KRS 403.800(7).

There is a four step analysis for initial child custody jurisdiction. In order for a Kentucky court to have exclusive jurisdiction to make an initial child custody determination,

- 1) Kentucky must be the child's home state on the date of the commencement of the proceedings, OR was the home state of the child within six months prior to the commencement of the proceedings and the child is absent from Kentucky but a parent or person acting as a parent continues to live in Kentucky, OR
- 2) There is no home state, OR the home state has declined to exercise jurisdiction because Kentucky is the more appropriate forum, AND
  - a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with Kentucky other than mere physical presence; AND

- b. Substantial evidence is available in Kentucky concerning the child's care, protection, training, and personal relationships, OR
  - 3) All courts having jurisdiction under 1) and 2) above have declined to exercise jurisdiction because Kentucky is the more appropriate forum, OR
  - 4) No court of any other state would have jurisdiction under 1), 2), or 3) above.
- KRS 403.882. If Kentucky is the child's home state, Kentucky has exclusive jurisdiction and no further analysis is required. If Kentucky is not the child's home state, a significant connections analysis is necessary. Only one state can have exclusive jurisdiction over the proceedings at any one time.

A Kentucky court that has made a child custody determination retains exclusive jurisdiction over the matter until 1) a Kentucky court determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with Kentucky and that substantive evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships, OR 2) a Kentucky court or another state court determines that the child, the child's parents, and any other person acting as a parent do not reside in Kentucky. KRS 403.824. The Kentucky court is the only court that can modify the custody determination until one of the two provisions above are met. Furthermore, only the court with continuing exclusive jurisdiction can make the determination that the parties have no significant connection with that state. If Kentucky has exclusive continuing jurisdiction under KRS 403.824, only a Kentucky court can make the determination that there is no significant connection remaining. KRS 403.824(1)(a). If Tennessee has exclusive continuing jurisdiction, the only thing a Kentucky court can do is determine that the parties no longer reside in Tennessee. KRS 403.824(1)(b).

In order for a Kentucky court to modify another state's child custody determination, Kentucky has to have jurisdiction to make an initial determination under KRS 403.822(1)(a) or (b) AND 1) the other state court must determine that it no longer has exclusive, continuing jurisdiction or that Kentucky would be a more convenient forum OR 2) the other state court or a Kentucky court must determine that none of the relevant parties reside in the other state. KRS 403.826.

Provisions exist to provide a Kentucky court with temporary emergency jurisdiction under certain conditions. These requirements, set out in KRS 403.828, provide clear rules for how a Kentucky court should proceed under such circumstances and how long the emergency child custody determination remains in effect.

A Kentucky court that has jurisdiction, under any provision of the UCCJEA, may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum and that a court of another state is a more appropriate forum. However, in order to make such determination, the court must consider all the factors mandated by KRS 403.834(2). If a Kentucky court determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, the Kentucky court must "stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state." KRS 403.834(3). This is to ensure that a child does not get lost in the shuffle between jurisdictions. KRS 403.834. *See also Biggs v. Biggs*, \_\_\_ S.W.3d \_\_\_, 2009 WL 4406061 (Ky. App. 2009) (opinion not final).

### Child Support Jurisdiction:

While the UCCJEA focuses on the child's home state, the UIFSA grants jurisdiction on a much more liberal scale. KRS 407.5201 provides a list of grounds to exercise personal jurisdiction over a nonresident in order to establish, enforce or modify child support:

- 1) The individual is personally served with summons or notice in Kentucky;
- 2) The individual submits to the jurisdiction of Kentucky by consent, by entering a general appearance or by filing a responsive pleading which effectively waives any challenge to personal jurisdiction;
- 3) The individual resided with the child in Kentucky;
- 4) The individual resided in Kentucky and provided prenatal expenses or support for the child;
- 5) The child resides in Kentucky as a result of the acts or directives of the individual;
- 6) The individual engaged in sexual intercourse in Kentucky and the child may have been conceived as a result;
- 7) The individual asserted parentage in the putative father registry maintained in Kentucky;  
or
- 8) There is any other basis consistent with the Kentucky Constitution and United States Constitution.

Given the expansive reach of the statute, it is possible that more than one state could have jurisdiction over a matter at the same time. To deal with this issue, the UIFSA includes rules for what courts should do if there are simultaneous proceedings in another state. The analysis begins with the order in which the proceedings began. If the Kentucky action was filed second, Kentucky may exercise jurisdiction only if the Kentucky pleading is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state, an objection to the exercise of jurisdiction is timely filed in the other state, AND Kentucky is the home state of the child. KRS 407.5204(1). If the Kentucky action was filed first, Kentucky may not exercise jurisdiction if the pleading in the other state is filed before the expiration of the time allowed in Kentucky for filing a responsive pleading challenging the exercise of jurisdiction by Kentucky, an objection to the exercise of jurisdiction is timely filed in Kentucky, AND the other state is the home state of the child. KRS 407.5204(2).

Once Kentucky issues a support order, it retains continuing, exclusive jurisdiction to enforce and modify the order so long as the child, the obligor, or the obligee remain a resident of Kentucky. If all parties relocate to another state, Kentucky may enforce the order, but not modify it. In such a case, if either party wants to modify the order, the obligor must file for relief in the obligee's state of residence and the obligee must file for relief in the obligor's state of residence. The existing support order must be registered in the state in which relief is sought. KRS 407.5205, 407.5206 and 407.5601-407.5614. *See also Gibson v. Gibson*, 211 S.W.3d 601 (Ky. App. 2006).

The UIFSA created a single order system to eliminate multiple and conflicting support orders. There may only be one order in effect at any one time. If Kentucky issues a support order, Kentucky retains exclusive jurisdiction until certain conditions are met which provides a basis for jurisdiction in another state. If another state issues a support order, Kentucky will have jurisdiction to enforce the order only if the requirements of KRS 407.5201-.5608 are met. Kentucky will have the jurisdiction to

modify the order only if the conditions of KRS 407.5609-.5614 are met. There is a distinction between registration of a child support order for the purpose of enforcement versus modification. *Koerner v. Koerner*, 270 S.W.3d 413 (Ky. App. 2008).

Finally, jurisdiction under both the UCCJEA and the UIFSA is measured at the time the action is filed. Therefore, if parties move after the commencement of the proceedings, it is irrelevant to the jurisdictional analysis. This eliminates one party trying to avoid the action by relocating to another state after the proceeding has been filed.

While jurisdiction can be a confusing concept and it is easy to get overwhelmed by all the requirements and conditions of the UCCJEA and UIFSA, both Acts do provide a clear step-by-step guide.

Sarah Jost Nielsen is an associate with Diana L. Skaggs + Associates, a firm limiting its practice to divorce and family law. She is a frequent contributor to the firm's divorce blog, [www.DivorceLawJournal.com](http://www.DivorceLawJournal.com).