

NO. 69107-4-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

In re the Marriage of:

WENDY A. McDERMOTT,

Appellant,

and

JUSTIN J. McDERMOTT,

Respondent.

BRIEF OF RESPONDENT

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INTRODUCTION

The parties are currently involved in an ongoing child custody proceeding in Kansas. See Appendix A. Although Wendy asked the Kansas court to defer jurisdiction to Washington, it refused to do so. *Id.*

Kansas is H's home state because H lived there for six consecutive months. H's birth and short stay in Costa Rica were a temporary absence from Kansas, the parties' home state. The parties lived in Kansas before H's birth, always intended to return to Kansas after his birth, and brought newborn H home to Kansas. The parties' home state is plainly their newborn son's home state.

Kansas is also H's home state because he lived there from birth, his father still lives there, and H was absent from Kansas for less than six months before the parties commenced child custody proceedings. And Kansas is also the more convenient forum, where it is the only place the parties and H lived as a family, the father remains there, and nearly all of the evidence is there.

The superior court has done nothing inconsistent with the ongoing child custody proceeding in Kansas. It simply and correctly ruled on its own jurisdiction.

This Court should affirm.

STATEMENT OF THE CASE

- A. H was born in Costa Rica so that he could enjoy dual citizenship, but returned to his parent's Kansas home when he was just 6 weeks old.**

For more than six years, Justin McDermott has worked as an Emergency Medical Technician and managed a small family cattle ranch, in rural Kansas. CP 181, 280.¹ He has a home there, owned by his parents. CP 41. He can only take limited time away given the demands of the ranch. CP 91.

The parties began living together, in Kansas, in March 2010. CP 180. Wendy worked on a yacht, so was often out of state. CP 180. These absences included time in Costa Rica, where Wendy has family. CP 180-81, 220. In June 2010, she quit her job and returned to the parties' Kansas home. CP 181.

The parties were married in Costa Rica on November 27, 2010, but Wendy neglected to file the official paperwork. CP 41, 58. The parties married again on March 17, 2011, and their only child, H, was born in June 2011. CP 9, 83. The parties planned for H to be born in Costa Rica so that he could have dual citizenship. CP 9, FF 2; CP 201. After their wedding and honeymoon in Costa

¹ This brief uses first names to avoid confusion. No offense is intended.

Rica, Justin returned to the parties' home in Kansas. CP 181. Their plan was that Wendy would stay in Costa Rica to pursue a business interest (that never came to fruition) and to plan for H's birth. *Id.* Wendy would then come home to Kansas until H's due-date was near, and then return to Costa Rica where Justin would join her for the birth. *Id.* Then the whole family would return to Kansas after H was born. *Id.*

Although Justin wanted to be with Wendy during the end of her pregnancy, he had to return home to Kansas to earn money and tend to the ranch. CP 181. Justin flew to Costa Rica two weeks before H was born. *Id.* Justin stayed until H was two weeks old, reluctantly leaving his new son to return home to work. *Id.*

When H was about six weeks old, Justin returned to Costa Rica in late July to bring Wendy and H home to Kansas. CP 10, FF 4. Justin continued working as an EMT and managing the farm. CP 181, 201. When Wendy worked or was in school, Justin cared for H as much as his work schedules allowed. CP 201. When Wendy and Justin were both unavailable, Justin's mom often cared for H. *Id.*

Wendy does not challenge the following findings of fact, verities on appeal:²

- ◆ Justin and Wendy were Kansas residents when H was born, and for the remainder their time in Costa Rica;
- ◆ Wendy did not establish that she intended to permanently reside in Costa Rica; rather
- ◆ They always intended to return to Kansas with H after his birth.

CP 9-10, FF 1-4.

B. When Wendy decided to move to Washington for work, the parties agreed that Justin and H would split time between Washington and Kansas.

When H was only a few months old, Wendy decided that she wanted to move to Washington. CP 181-82, 223. The parties agreed that Wendy and H would come to Washington first, so that Wendy could apply with the Washington State Ferries and look for housing while Justin held down the farm in Kansas. CP 181-82. If Wendy was hired, then Justin would come to Washington and finalize housing and other particulars before returning to Kansas. CP 182. It was never agreed that H would permanently reside in Washington – the agreement was that Justin and H would, together, split time between Washington and Kansas. CP 182.

² Wendy does not challenge any of the court's findings related to jurisdiction. BA 2, 4. Rather, she challenges only one finding regarding the reach of the domestic violence protection order ("DVPO"). *Id.*

Wendy left Kansas with H on January 15, 2012. CP 10, FF 5. Wendy states that “[s]everal months” after she “moved” to Washington with H, Justin came out to look for housing. BA 5. Justin came to Washington in mid-March, almost exactly two-months after Wendy left Kansas. CP 10, FF 5.

C. The parties argued, but Justin is not abusive.

In a heavily-contested child custody case, it is no surprise that Wendy spends an inordinate amount of time accusing Justin of domestic violence and drug and alcohol abuse. BA 5-7. The parties argued – sometimes angrily – but Justin never raised a hand to Wendy and never would. CP 181-82. In fact it is Wendy who physically assaulted Justin on at least three occasions. *Compare BA 7 with CP 181, 187-89.*

Justin does not have a drug or alcohol problem and has never been ordered to undergo a domestic violence or chemical dependency assessment. CP 70, 71, 118, 189, 202. Justin did not “total[]” vehicles and “destroy[]” property when he was supposedly inebriated. CP 190. Justin damaged Wendy’s car, but he simply had an accident. CP 190. On another occasion, he overturned a four-wheeler to avoid hitting his dogs, injuring his knee as a result. CP 189. After his paramedic friend checked Justin’s knee, Justin

lost his balance and fell while trying to get into a rocking chair, breaking the chair. *Id.*

Wendy focuses in particular on an argument the parties had at her aunt's house in Washington before leaving to look for a house. BA 5-6. Both parties were yelling, Justin no louder than Wendy. CP 182.

That afternoon, the parties again argued. CP 182. Justin, who had missed many of his son's "firsts," including his first steps, was naturally upset that Wendy insisted on taking H to Washington with her, rather than just flying out for interviews and leaving H at home with Justin. CP 182-83. When Justin loosened his seatbelt to retrieve H's "sippy cup," Wendy questioned what he was doing and pulled the car over. CP 183. Obviously upset, Wendy pulled H from the car and began walking away. *Id.* Justin did not want H in the cold and rain, so took a walk, hoping Wendy would put H back in the car. *Id.* When Justin returned, Wendy had locked herself and H in the car and called the police. *Id.*

Wendy says that the police "determined there had been no physical assault." BA 6. In fact, Wendy told the police "that this was not physical and that it was only a verbal argument." CP 276.

Wendy states that the police “escorted” Justin from the scene, but the truth is that they “were kind enough” to drive him to the county line – as far as they could take him – and arrange for a taxi to take him to the airport. *Compare* BA 6 with CP 183-84, 277. Justin just wanted to get home to Kansas. CP 183-84, 277. Justin could not fly out until the next morning and repeatedly asked to see H before he left. CP 184. Wendy refused. *Id.*

PROCEDURAL HISTORY

On March 29, 2012, Justin filed a petition for dissolution in Kansas, asking to be named H’s residential parent. CP 96-98.³ Later that same day, Wendy filed a petition for dissolution in Washington. CP 82-88.

Justin moved forward with his Kansas action, and on April 2, 2012, Kansas entered temporary orders, establishing a residential schedule. CP 99-107. Wendy did not appear as she was first served with Justin’s dissolution petition on June 28, 2012. BA 12 (citing CP 114 (Kansas return of service)). It is unclear why Wendy was not served earlier.

³ Attached as Appendix B is a timeline offered to correct some omissions in the timeline attached to Wendy’s brief.

Wendy served Justin on April 17, 2012, after the Kansas court had already entered the temporary parenting plan and support orders. CP 278. On May 4, 2012, Wendy moved for a Domestic Violence Protection Order (“DVPO”), as well as more particularized temporary orders. CP 238-67, 268-77.

Justin responded to Wendy’s dissolution petition on May 22, 2012. CP 73-76. Contrary to Wendy’s assertion that Justin “agreed to Washington’s jurisdiction over all matters,” Justin plainly stated that he does not think that Washington is the proper jurisdiction. *Compare* BA 12 (citing CP 73-76, 180-92) *with* CP 190. But given the facts of this case, Justin stated that he felt “it would be easier to simply finalize [his] divorce in the State of Washington,” and asked the court to enter his proposed parenting plan. CP 190.

On May 30, almost two months after Kansas issued a temporary parenting plan, the Washington court issued its first orders. CP 93-94. Commissioner Stewart ordered a continuance, and denied Wendy’s request for a DVPO. CP 93-94.⁴ Although Wendy asked the court to take temporary emergency jurisdiction,

⁴ This brief uses the names of the Superior Court Commissioners and Judges to avoid confusion of the many different orders at issue here.

the court did not address her request, reserved all UCCJEA issues, and ruled that Washington would “maintain jurisdiction in the meantime,” without addressing the basis for jurisdiction. *Id.*

Commissioner Stewart also ordered mutual restraints, formalized in a separate order. CP 93-94, 63-72. In addition to financial restraints, both parties were restrained from disturbing the other's peace; going on the grounds of the other's home, work or school; being within 500 feet of the other's home, work, or school; molesting, assaulting, harassing, or stalking the other; and removing H from Washington. CP 64-67. Commissioner Stewart struck through proposed provisions that would have prohibited Justin from drinking or use drugs around H and required him to undergo a drug and alcohol evaluation. CP 70, 71.

On June 4, 2012, Justin filed a motion to dismiss Wendy's dissolution petition for lack of jurisdiction. CP 57-62.⁵ His Reply (dated June 13) informed the trial court that the Kansas proceeding was “open.” CP 91. Justin questioned why Wendy continued to

⁵ This motion mistakenly states that Justin filed for dissolution in Kansas after Wendy filed in Washington, but before she served Justin. CP 58. Justin had Wendy's filing date wrong. *Id.* The parties filed on the same day, Justin filing shortly before the Washington courts were open due to the two-hour time difference. BA 7 n.4; CP 58, 96.

deny the Kansas action, when he had plainly stated on the record that it was “open.” *Id.* And Justin stated that more information regarding the Kansas court and action would be made immediately available if the Washington court elected to confer with Kansas under the UCCJEA. *Id.*

Two days later, Wendy moved to revise Commissioner Stewart’s order denying her request for a DVPO. CP 148-53. Justin responded, denying Wendy’s allegations. CP 287-90. Wendy then filed a response to Justin’s motion to dismiss (CP 40-56) claiming that no other state had jurisdiction, and stating that while Justin claimed to have filed an action in Kansas, he had not provided any evidence and had not served Wendy. CP 46.

On June 14, 2012, Judge Janice Ellis granted Wendy’s motion to revise, ordering a DVPO, subject to temporary visitation. CP 35-39, 117-18. Like Commissioner Stewart, Judge Ellis declined to order Justin to undergo a domestic violence or chemical dependency assessment. CP 118. The order checks two boxes for jurisdiction, “temporary emergency jurisdiction” and “other,” filling in the blank after “other” with “no other home state; present in WA.” CP 37.

On June 21, 2012, Commissioner Stewart granted Justin's motion to dismiss. CP 29-32. Commissioner Stewart ruled that H had no home state and that Kansas is the more convenient forum. CP 29-30. Commissioner Stewart awarded Justin unsupervised visitation, ruling that the DVPO restrains Justin's contact with Wendy, not with H. CP 116. After reviewing the parties' materials, Commissioner Stewart was convinced that Justin poses no risk of harm to H. *Id.* Wendy moved to revise the next day. CP 24-31.

On July 6, Justin filed in Washington copies of his Kansas petition for dissolution and the temporary parenting plan and support order. CP 95-111. Three days later, Judge Linda Krese ruled on Wendy's motion to revise Commissioner Stewart's order declining jurisdiction. CP 9-11. Judge Krese revised the ruling "in so far as it found that there was no home state," finding that Kansas is H's home state. CP 10. The court denied the motion to revise "in so far as [Commissioner Stewart's order] declined to exercise jurisdiction in favor of Kansas." *Id.*

Wendy appealed on July 18, 2012, the same day that her Kansas attorney appeared on her behalf in the ongoing Kansas litigation. CP 1-2; Kansas docket, attached as Appendix A. Wendy filed a motion to decline jurisdiction, which the Kansas court denied.

App. A at 6, 7. Since then the parties have engaged in discovery. *Id.* at 8-10. The most recent case activity was on January 16, 2013. *Id.*

ARGUMENT

A. Standards of review.

Wendy states that “[w]hether Washington courts have subject matter jurisdiction is a question of law that this Court reviews de novo.” BA 13 (citing *In re Parentage of Ruff*, 168 Wn. App. 109, 115, 275 P.3d 1175 (2012)). While this may generally be accurate, this Court has previously held that determining which state has home-state jurisdiction under the UCCJEA is “a mixed question of fact and law.” *In re Parentage, Parenting, & Support of A.R.K.-K.*, 142 Wn. App. 297, 302 n.1, 174 P.3d 160 (2007)). Thus, this Court defers to the trial court’s factual findings, but reviews its legal conclusions *de novo*. *A.R.K-K.*, 142 Wn. App. at 302 n.1 (citing *In re Pennington*, 142 Wn.2d 592, 602-03, 14 P.3d 764 (2000)).

A trial court that has jurisdiction under the UCCJEA may decline to exercise jurisdiction if it determines that it is an inconvenient forum and that a court located in another state is the more appropriate forum. RCW 26.27.261; *In re Marriage of*

Greenlaw, 123 Wn.2d 593, 869 P.2d 1024 (1994) (discussing former RCW 26.27.070); **Sales v. Weyerhaeuser Co.**, 138 Wn. App. 222, 227-28, 156 P.3d 303 (2007), *aff'd*, 163 Wn.2d 14, 117 P.3d 1122 (2008). This Court reviews for an abuse of discretion the trial court's decision to dismiss on grounds that Washington courts are an inconvenient forum. **Myers v. Boeing Co.**, 115 Wn.2d 123, 128, 794 P.2d 1272 (1990). The Court will affirm any findings that are supported by substantial evidence. **McCleary v. State**, 173 Wn.2d 477, 514, 269 P.3d 227 (2012).

Wendy essentially asks this Court to ignore cases interpreting the Uniform Child Custody Jurisdiction Act ("UCCJA," the precursor to the UCCJEA) and the Parental Kidnapping Prevention Act. BA 14. But our courts have continued to rely on such cases, where appropriate in matters involving the UCCJEA. See *e.g.*, **Ruff**, 168 Wn. App. 109, 115-17 (cited at BA 13). While there may be some instances where the UCCJEA is so different from the UCCJA that certain cases have little precedential value, Wendy has not identified one here.

To support her claim, Wendy relies in part on the UCCJEA's prefatory note, which simply does not support her assertion. BA

14. Our Supreme Court addressed the circumstances under which the UCCJEA arose from the former UCCJA:

The UCCJEA arose out of a conference of states in an attempt to deal with the problems of competing jurisdictions entering conflicting interstate child custody orders, forum shopping, and the drawn out and complex child custody legal proceedings often encountered by parties where multiple states are involved. UCCJEA prefatory note, 9 pt. IA U.L.A. at 651; UCCJEA § 101 cmt., 9 pt. IA U.L.A. at 657. It is, in a sense, a pact among states limiting the circumstances under which one court may modify the orders of another. See UCCJEA prefatory note, 9 pt. IA U.L.A. at 649-51. Most states have adopted the UCCJEA in order to reduce conflicting orders regarding custody and placement of children.

In re Custody of A.C., 165 Wn.2d 568, 574, 200 P.3d 689 (2009) (footnote omitted). Kansas, like Washington, has adopted the UCCJEA. Kan. Stat. Ann. § § 23-37,101 to 23-37,405 (2011).

B. H's home state is Kansas.

After a temporary absence in Costa Rica for H's birth, the parties returned, with their new baby, to their Kansas home. The trial court correctly ruled that like his parents, H was temporarily absent from Kansas, such that Kansas is his home state; *i.e.*, the place he lived for at least six consecutive months immediately before proceedings commenced. CP 9-10. But even if this Court is not persuaded to count the few weeks H spent in Costa Rica, then Kansas is H's home state, where (1) he lived there from birth to 5.5

months; (2) Justin remains in Kansas; and (3) H had not lived outside Kansas for more than six months when the proceedings commenced. Either way, this Court should affirm.

1. Since Kansas is H's home state, Washington has jurisdiction only if Kansas defers to Washington, which it has refused to do.

Except where the court takes emergency jurisdiction under RCW 26.27.231,⁶ a Washington court "has jurisdiction to make an initial child custody determination only if" (1) Washington is the home state; (2) there is no other home state or the home state has declined to exercise jurisdiction on the ground that Washington is a more appropriate forum; (3) all other courts with jurisdiction have declined to exercise jurisdiction on the ground that Washington is a more appropriate forum; or (4) no other state would have jurisdiction under the first three provisions:

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

(b) A court of another state does not have jurisdiction under (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that

⁶ Temporary emergency jurisdiction is addressed, *infra*, Argument § D.

this state is the more appropriate forum under RCW 26.27.261 or 26.27.271, and:

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

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

(c) All courts having jurisdiction under (a) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under RCW 26.27.261 or 26.27.271; or

(d) No court of any other state would have jurisdiction under the criteria specified in (a), (b), or (c) of this subsection.

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

RCW 26.27.201(1)(2); **Ruff**, 168 Wn. App. at 116-17 (emphasis in case). At issue here is subsection (b) – whether Kansas is H's home state.

A child's "home state" is (1) the state where the child lived with a parent for at least six consecutive months immediately before the commencement of a child custody proceeding (the "six consecutive months" provision); or (2) if the child is less than six months old, the state where the child has lived from birth with a parent (the "from birth" provision):

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

RCW 26.27.021(7); **A.R.K.-K.**, 142 Wn. App. at 303. As the last sentence says, “temporary absence[s]” are included in either calculation. *Id.*

A child’s home state has priority jurisdiction, and “no other state may assert jurisdiction unless the home state declines.” **A.R.K.-K.**, 142 Wn. App. at 303 (citing RCW 26.27.201(1)). If a court properly asserts jurisdiction and makes an initial child custody determination, then “it retains ‘exclusive, continuing jurisdiction over the determination’ until the children and parents no longer reside in the state or no longer have a significant connection to the state.” **A.R.K.-K.**, 142 Wn. App. at 303 (citing RCW 26.27.211).

Judge Krese correctly ruled that Kansas is H’s home state under the six consecutive months provision. CP 9-11. Kansas denied Wendy’s motion to defer jurisdiction to Washington, and the action there is ongoing. App. A. This Court should affirm under the six consecutive months provision, and may alternatively affirm

under the from birth provision, where H resided in Kansas for at least 5.5 months, and this action was filed 2.5 months after Wendy removed him from Kansas.⁷

2. Kansas is H's home state under the "six consecutive months" provision.

It is undisputed that H lived in Kansas for just under six months, from about July 28, 2011, when his parents brought him home for Costa Rica, until January 15, 2012, when Wendy removed him to Washington. CP 9, FF 1; CP 10, FF 4, 5. The trial court found that H's time in Costa Rica after his birth was a "temporary absence" from Kansas, his parents' home. CP 10, CL 1. Thus, the court ruled that Kansas was H's home state under the six consecutive months provision. *Id.*; **A.R.K.-K.**, 142 Wn. App. at 303 ("[t]emporary absences" are included in the six month period).

This ruling is plainly supported by the court's unchallenged findings. CP 9-10, FF 1-4. The parties lived in Kansas before H was born, went to Costa Rica for his birth solely so he would have dual citizenship, and always planned to bring H home to Kansas.

⁷ Wendy argues that "[b]ecause there was no home state, Washington also could exercise jurisdiction based on a 'significant connection.'" BA 26 (citing RCW 26.27.201(1)(b)). This alternate basis for taking jurisdiction is irrelevant. If this Court is unpersuaded that Kansas is H's home state, then it should affirm on the ground that Washington properly deferred jurisdiction to Kansas. *Infra*, Argument § C.

CP 9-10, FF 1-4. The parties' "absence" from Kansas was "temporary"; *i.e.* Justin and Wendy lived in Kansas for far more than six consecutive months. RCW 26.27.021(7); CP 10, CL 1. It naturally follows that H was only temporarily absent from Kansas, too – he did not live in Costa Rica, he lived with his parents. CP 10, CL 1. Thus, like his parents, Kansas is H's home state under the six consecutive months provision. RCW 26.27.021(7).

Indeed, H's first two weeks in Washington are arguably also a temporary absence from Kansas. It is clear that Justin did not agree that H would live solely in Washington – ever. CP 181-82. This is another reason that Judge Krese was correct that Kansas is H's home state.

Wendy argues at great length that H could not be temporarily absent from Kansas, because he was not "present" in Kansas before being born in Costa Rica. BA 19-20. She continues that the six consecutive months provision turns on where the child "lived" and that H did not live in Kansas when he was in Costa Rica for six weeks after his birth. BR 20-23. This strained interpretation leads to absurd result that a newborn child does not live where both of his parents lived, simply because they elected to give birth outside of their home state, always intending to return home.

Tingey v. Haisch, 159 Wn.2d 652, 663-64, 152 P.3d 1020 (2007) (“the court ‘will avoid literal reading of a statute which would result in unlikely, absurd, or strained consequences.’ A reading that produces absurd results must be avoided because ‘it will not be presumed that the legislature intended absurd results’”) (internal citations omitted).

H no more “lived in Costa Rica” – for purposes of a “home state” analysis than his parents did. *Compare* BA 22-23 with CP 9-10, FF 1-4. Again, Wendy does not challenge the findings that the parties were temporarily absent in Costa Rica, always intending to return to their Kansas home state. CP 9-10, FF 1-4. A newborn cannot “live in” a country his parents are only visiting. Rather, H, like his parents, was a vacationer.⁸ Thus, the only reasonable reading of the six consecutive months provision, as applied here, is that H’s home state is Kansas.

3. Kansas is also H’s home state under the “from birth” provision.

Even assuming *arguendo* that H did not “live in” Kansas during the first few weeks of his life, Kansas is H’s home state

⁸ If asked where she lives, a reasonable person on vacation answers Kansas, not Costa Rica. It is an unreasonable interpretation of the home state statute that H lived in a place he vacationed.

under the “from birth” provision. RCW 26.27.021(7). H lived in Kansas with Justin and Wendy for just under six months. CP 9-10, FF 1-4. Both parties commenced child-custody proceedings (Justin in Kansas and Wendy in Washington) on March 29, 2012, about 2.5 months after Wendy removed H from Kansas. CP 82-88, 96-98. Thus, Kansas remained H’s home state because it was his “home state of the child within six months before the commencement of the proceeding” (under the from birth provision) and Justin continues to live there. RCW 26.27.201(1)(a); Kan. Stat. Ann. § 23-37,201(a)(1) (2011).

Justin is not aware of any published Washington opinion interpreting this provision. In interpreting this statute, this court’s goal is to effectuate the Legislature’s intent. ***Dep’t of Ecology v. Campbell & Gwinn, L.L.C.***, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The legislative history here reveals no intent to limit the from birth provision to circumstances in which the child is younger than six-months-old when the action is commenced.

Such a limitation would produce an absurd result. ***Tingey***, 159 Wn.2d at 663-64. Assume, for example, that a child “S” is born in Washington and lives here with both of her parents until she is 5.5 months old. The marriage falls apart, and the mother returns

to her former home in Florida with S, while the father remains in Washington. One month later, when S is 6.5 months old, the mother files for dissolution in Florida, arguing that the from birth provision does not apply because S is over six months old when the action is commenced. That interpretation would give no effect to the from birth provision, despite the fact that S lived in Washington from birth to 5.5 months. See ***Whatcom County v. City of Bellingham***, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) (“Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous”).

In short, Kansas is H’s home state regardless of Wendy’s strained argument that H, unlike his parents, could not be temporarily absent from his parents’ home state. Kansas is not “the moon.” See BA 19. It is H’s home state. This Court should affirm.

4. The parties cannot confer subject matter jurisdiction upon the trial court where none exists.

Wendy’s repeated claims that Justin consented to Washington jurisdiction have no bearing on whether Washington has jurisdiction under the UCCJEA. The trial court’s jurisdiction to make a child custody determination is subject matter jurisdiction.

Ruff, 168 Wn.2d at 117-18; UCCJEA § 201 cmt. 2, 9 pt. IA U.L.A. at 673. A party may raise a lack of subject matter jurisdiction argument at any time during a proceeding, and failure to raise it in an initial appearance will not waive the argument. **Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County**, 135 Wn.2d 542, 556, 958 P.2d 962 (1998).

A party "cannot consent to subject matter jurisdiction, nor can [he] waive objection to it." **Ruff**, 168 Wn. App. at 116 (citing **Skagit Surveyors**, 135 Wn.2d at 556, **Wampler v. Wampler**, 25 Wn.2d 258, 267, 170 P.2d 316 (1946)). Subject matter jurisdiction is "the power and authority of the court to act." **Ruff**, 168 Wn. App. at 116 (quoting **Dougherty v. Dep't of Labor & Indus.**, 150 Wn.2d 310, 315, 76 P.3d 1183 (2003) (quoting 77 Am.Jur.2d *Venue* § 1 at 608 (1997))). "It 'refers to the court's authority to entertain a type of controversy, not simply lack of authority to enter a particular order.'" **Ruff**, 168 Wn. App. at 116 (quoting **In re Marriage of Schneider**, 173 Wn.2d 353, 360, 268 P.3d 215 (2011) (citing **Marley v. Dep't of Labor & Indus.**, 125 Wn.2d 533, 539, 886 P.2d 189 (1994))).

The comments to the UCCJEA emphasize this point:

It should also be noted that since jurisdiction to make a child custody determination is subject matter jurisdiction, an agreement of the parties to confer jurisdiction on a court that

would not otherwise have jurisdiction under this Act is ineffective.

Ruff, 168 Wn. App. at 118 (quoting UCCJEA § 201 cmt. 2, 9 pt. IA U.L.A. at 673).

In short, Justin could not waive his argument that that the trial court lacks subject matter jurisdiction. Nor can either party confer subject matter jurisdiction upon the trial court where none exists. Allegations that Justin agreed to litigate in Washington are irrelevant.

This Court should affirm on this independently sufficient ground that Kansas is H's home state.

C. The trial court properly exercised its discretion in determining that Kansas is the more convenient forum.

This Court will reverse the trial court's discretionary decision that Kansas is a more convenient forum only if the decision is unreasonable or based on untenable grounds. *Supra*, Argument § A. The trial court's decision that Kansas is a more convenient forum is entirely reasonable – Kansas is the only place the parties lived together with their child, H lived there for most of his life before proceedings were commenced, and most of the relevant evidence is located there. Kansas has assumed jurisdiction and refused to defer to Washington. App. A. This Court should affirm.

1. Kansas is the more convenient forum.

A Washington court with jurisdiction over child-custody determinations under the UCCJEA “may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum.” RCW 26.27.261(1); **A.R.K.-K.**, 142 Wn. App. at 306. To determine whether to defer jurisdiction to a foreign court, the Washington court “shall consider whether it is appropriate for a court of another state to exercise jurisdiction” based on the following factors (RCW 26.27.261(2)):

- (a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (b) The length of time the child has resided outside this state;
- (c) The distance between the court in this state and the court in the state that would assume jurisdiction;
- (d) The relative financial circumstances of the parties;
- (e) Any agreement of the parties as to which state should assume jurisdiction;

- (f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (h) The familiarity of the court of each state with the facts and issues in the pending litigation.

Wendy primarily focuses on factor (a), stating that “Commissioner Stewart simply ignored the domestic violence finding made by Judge Ellis, flatly violating[] RCW 26.27.261(2)(a).” BA 28-30. To the contrary, the Commissioner’s order and minute entry reflect that he was well aware of the DVPO, but unpersuaded that Justin posed any risk to H. CP 34, 116.

The parties thoroughly briefed this (and every) statutory factor. CP 48-55, 57-62, 89-92. Commissioner Stewart reviewed the parties’ materials and specifically addressed the DVPO in the order declining jurisdiction to Kansas. *Compare* BA 28-30 *with* CP 32-34. Commissioner Stewart correctly ruled that the DVPO does not restrain Justin’s contact with H, where the DVPO states that Justin posed a threat to Wendy, without mentioning H. CP 34, 36, 116. Commissioner Stewart was “not concerned, after reading the

material, that [Justin] poses harm to the child,” so ordered unsupervised visitation. CP 116 (all caps omitted).⁹ He ruled that the DVPO did not warrant keeping Washington jurisdiction over the “residential contact with the child [and] family law portions of the divorce.” CP 34.

Wendy does not claim that the domestic violence she alleges is “likely to continue in the future.” RCW 26.27.261(2)(a); BA 28-30. In her request for a DVPO, Wendy conceded that she did not think Justin would return to Washington except for the litigation. CP 271. Commissioner Stewart also noted that Justin “is rarely present in Washington.” CP 115 (all caps omitted).

Wendy argues that “Washington provides greater protection than Kansas,” claiming that “Kansas does not require courts to restrict residential time based on domestic violence,” while Washington does. BA 29 (citing RCW 26.09.191(2) and (2)(n)); BA 30. Wendy did not raise this argument below, arguing only that Kansas was less likely to protect her because Justin is “well-connected” there. CP 49-50. She apparently thought better of that

⁹ The parties previously agreed to supervised visitation, Justin no doubt thinking it was the only way to get Wendy to allow him to see H while the Washington matter was continued. CP 41, 93-94.

point, not repeating it here. BA 29. The Court should decline to consider this new argument raised for the first time on appeal. ***Keithly v. Sanders***, 170 Wn. App. 683, 694-95, 285 P.3d 225 (2012); RAP 2.5(a).

In any event, citing one statute from the entire Kansas code is certainly no indication that Kansas would treat domestic violence any less seriously than Washington does. BA 30. Wendy argues that with respect to children, “it is clear Washington provides greater protection than Kansas.” BA 30. This is both false and unfounded. Wendy completely fails to cite Kansas’s Uniform Child Abduction Prevention Act (UCAPA), which even Washington has not yet adopted. Moreover, Kansas has the Protection From Abuse Act (PFAA), which:

shall be liberally construed to promote the protection of victims of domestic violence from bodily injury or threats of bodily injury and to facilitate access to judicial protection for the victims, whether represented by counsel or proceeding pro se.

Crim v. Crim, 40 Kan. App. 2d 367, 371, 196 P.3d 375 (Kan. Ct. App. 2008) (citing K.S.A. 60-3101(b)). In Kansas,

ongoing divorce proceedings are not a jurisdictional bar to an individual pursuing a claim under the PFAA. The PFAA explicitly states that the remedies it provides are “in addition to any other available civil or criminal remedies.”

Id. at 372 (citing K.S.A. 60-3109). And the abuse allegation need not even reference a recent event or present a future risk:

The statutory scheme is designed to promote protection of the victims and make access to the court easy and prompt. For that reason, the trial court is simply charged to exercise its discretion in light of the circumstances presented. . . . We hold that the Act does not require focusing on the timing of either recent abuse or future risk as a condition precedent to the issuance of an order for protection from abuse.

Trolinger v. Trolinger, 30 Kan. App. 2d 192, 198-199 (Kan. Ct. App. 2001) (PFFA contains “no requirement . . . [the abuser] actually drew blood or caused . . . bodily injury”).¹⁰ There is no reason to believe that Kansas judges – who have broad discretion to protect its citizens from domestic abuse – are less capable or concerned that ours are.

In a footnote, Wendy compares Washington’s civil definition of domestic violence to Kansas’ criminal statute. BA 30 n.13. This is highly misleading. Under the PFAA, “abuse” “means the occurrence of one or more of the following acts between . . . household members” (K.S.A 60-3102(a)):

(1) Intentionally attempting to cause bodily injury, or intentionally or recklessly causing bodily injury.

¹⁰ Kansas also has a strong prevention from stalking act. K.S.A. 2002 Supp. 60-31a01 through 60-31a09, and amendments thereto.

(2) Intentionally placing, by physical threat, another in fear of imminent bodily injury.

The *Crim* court held that “harassing phone calls and voice messages threatening against [the mother], her children, and her parents, and driving his vehicle in a reckless manner which threatened the safety of [the mother] and her children,” were “abuse” under the PFAA. *Crim*, 40 Kans. App. at 371-72. This is no different than Washington. See RCW 26.50.010(1).

Wendy also claims that Kansas “does not require courts to restrict residential time based on domestic violence,” suggesting that it “only requires courts to consider ‘evidence of spousal abuse’ as a factor in determining the residential schedule.” BA 30. This is false. Kansas requires the court to consider all of the following factors (among others):

(g) evidence of spousal abuse;

(h) whether a parent is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any other state, or under military or federal law;

(i) whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A. 2011 Supp. 21-5602, and amendments thereto;

(j) whether a parent is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments

thereto, or any similar act in any other state, or under military or federal law; and

(k) whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A. 2011 Supp. 21-5602, and amendments thereto.

K.S.A. § 23-3203 (2011). And a non-residential parent is not entitled to visitation when “the court finds, after a hearing, that the exercise of parenting time would seriously endanger the child’s physical, mental, moral or emotional health.” K.S.A. § 60-1616. Indeed, the Kansas Supreme Court has held that under this statute, it was reversible error for the trial court to refuse to admit evidence of domestic abuse occurring prior to a divorce, when the abuser later sought enforced visitation. *In re Marriage of Kiister*, 245 Kan. 199, 777 P.2d 272 (Kan. 1989).

In sum, Kansas fully protects its citizens from domestic abuse. Kansas is entitled full faith and credit – and deserves it. Wendy’s attempts to cast aspersions on Kansas and its courts are based on nothing but uninformed prejudice.

Wendy’s arguments on three of the remaining seven statutory factors are unpersuasive – she does not address the other four. Wendy dismisses as “sheer speculation” the Commissioner’s finding that there are likely more witnesses to H’s upbringing in

Kansas than in Washington. BA 31. To the contrary, Justin plainly argued that most of the evidence relevant to this matter (factor (f)) is located in Kansas (CP 61):

Moreover, in terms of where the substantial evidence concerning the child's care, protection, training, and relationship lies, it is clear that the majority of said evidence is in Kansas. Kansas is the only state where BOTH parents cared for the child and where various neighbors, friends and family members would have observed the interaction of both the mother and the father and their abilities to train and raise their child.

Wendy faults the trial court for finding that Kansas is equally well-suited to handle this matter, arguing that "nothing in the record addresses itself to this question." BA 31. This argument ignores that Kansas already was (and is) resolving this matter, as Wendy is well aware. See App. A. Indeed, Justin informed the Commissioner that proceedings in Kansas were "open," and argued that Kansas is plenty capable of resolving this matter. CP 91.

Finally, Wendy criticizes the Commissioner's statement that the 5.5 months of joint parenting in Kansas outweighs the 2.5 months H spent in Washington before the parties filed. BA 31; CP 33. But this is plainly relevant to factor b, "[t]he length of time the child has resided outside this state." RCW 26.27.261(2)(b). The

simple fact is that when the parties filed, most of H's young life had been spent in Kansas. CP 9-10, FF 1-4.

In short, the court properly exercised its discretion to defer to Kansas, where H lived most of his life and where most of the evidence is located.

2. Judge Krese's order does not supersede Commissioner Stewart's order deferring jurisdiction to Kansas, the more convenient forum.

Wendy is simply incorrect in claiming that Judge Krese's order supersedes Commissioner Stewart's order as to issues judge Krese specifically refused to revise. Commissioner Stewart ruled that H has no home state, but that Washington is an inconvenient forum and that Kansas is a more appropriate forum. CP 32-34. Thus, he declined jurisdiction in Washington, in favor of Kansas, under RCW 26.27.261. *Id.*

On Wendy's motion to revise, Judge Krese ruled that H's home state is Kansas under RCW 26.27.021(7). CP 9-11. Judge Krese did not address Commissioner Stewart's ruling that Kansas is a more convenient forum under RCW 26.27.261. *Id.* Rather, the revision order plainly states that Commissioner Stewart's order is revised only to the extent that the commissioner ruled that H has no home state. CP 10-11. The order is affirmed in all other aspects,

specifically including the Commissioner's ruling declining jurisdiction in favor of Kansas (*id.*):

ORDER

Based on the above findings and conclusions, the court orders as follows:

1. The Commissioner Order is revised insofar as it found that there was no home state. The court finds that Kansas was the child's home state on the date of date of Commencement of this proceeding.
2. The court denies the Motion to Revise insofar as it declined to exercise jurisdiction in favor of Kansas.
3. The court denies the Motion to Revise with regard to all other provisions ordered by the Commissioner.

Citing this Court's decision in ***Greico v. Wilson***, Wendy asserts that she does not have to appeal from Commissioner Stewart's order, arguing that Judge Krese's order superseded it. BA 14 (citing 144 Wn. App. 865, 877, 184 P.3d 668 (2008), *aff'd in part, rev'd in part sub nom., In re Custody of E.A.T.W.*, 168 Wn.2d 335, 227 P.3d 1284 (2010)). ***Greico*** contradicts Wendy's argument.

When a superior court denies the motion to revise without entering findings of its own, the trial court "adopts the commissioner's findings, conclusions, and rulings as its own." ***Greico***, 144 Wn. App. at 877 (citing ***State ex rel. J.V.G. v. Van***

Guilder, 137 Wn. App. at 417, 423, 154 P.3d 243 (2007)). But when the revision court makes independent findings and conclusions, the order on revision supersedes the commissioner's order. 144 Wn. App. at 877. Again, Judge Krese did not make findings pertaining to inconvenient forum under RCW 26.27.261, but specifically denied Wendy's motion as to that issue. CP 10-11. Thus, Judge Krese adopted as her own Commissioner Stewart's findings that Kansas is the more appropriate forum. **Greico**, 144 Wn. App. at 877.

This Court should reject Wendy's unsupported request to submit supplemental briefing challenging Commissioner Stewart's order. BA 15 n.8. Wendy admits that this "challenge is also implicit" in subsequent arguments. *Id.* If she wanted to make the argument more explicit, she should have done so in her opening brief.

D. No judicial conference was required for the Washington court to determine that Kansas is H's home state, or to rule that Kansas is the more convenient forum. (BA 16-17, 23-27).

Wendy argues that once the superior court took temporary emergency jurisdiction under RCW 26.27.231, the court could take no further action without first conferring with Kansas. BA 16-17, 23-

27. She claims that the court did not confer with Kansas and that Judge Krese's order ruling that Kansas is H's home state (CP 9-10) and Commissioner Stewart's order declining jurisdiction in favor of Kansas (CP 32-34) are thus void. BA 23-27. This argument misunderstands the temporary emergency jurisdiction statute, and ignores black letter law that a superior court always has jurisdiction to determine whether it has subject matter jurisdiction and whether it should exercise its jurisdiction. *In re Marriage of Kastanas*, 78 Wn. App. at 193, 201, 896 P.2d 726 (1995). This Court should affirm.

1. Temporary emergency jurisdiction under RCW 26.27.231.

A Washington court may take "temporary emergency jurisdiction" if a child is located in the state and (1) the child is abandoned; or (2) taking emergency jurisdiction is necessary to protect the child because the child or his sibling or parent is abused or threatened with abuse. RCW 26.27.231(1). This statute is an exception to the general rule that Washington has jurisdiction under the UCCJEA "only if" it is the child's home state. RCW 26.27.201(1) (expressly excepting RCW 26.27.231).

RCW 26.27.231(2) governs the effect of child custody determinations made under a Washington court's temporary emergency jurisdiction where (1) no foreign court has made a child custody determination entitled to enforcement under the UCCJEA; and (2) no action has been commenced in a state with UCCJEA jurisdiction:

[1] If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221. [2] If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

A "child custody proceeding" is a proceeding involving the custody a child, a parenting plan, or visitation with a child:

"Child custody proceeding" means a proceeding in which legal custody, physical custody, a parenting plan, or visitation with respect to a child is an issue. The term includes a proceeding for dissolution, divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, emancipation proceedings under chapter 13.64 RCW, proceedings under chapter 13.32A RCW, or enforcement under Article 3.

RCW 26.27.021(4). A “child custody determination” is an order, including temporary orders, providing for custody and visitation:

“Child custody determination” means a judgment, decree, parenting plan, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

RCW 26.27.021(3).

RCW 26.27.231(2) is inapplicable where Kansas made a child custody determination before the Washington Court took temporary emergency jurisdiction on June 14, 2012, having entered a temporary parenting plan on April 2, 2011. RCW 26.27.231(2). This subsection is inapplicable for the additional reason that Kansas has UCCJEA jurisdiction as H’s home state. RCW 26.27.231(2). And this subsection is also inapplicable because, as discussed in more detail below, the orders Wendy challenged are not child custody determinations. *Id.*

Under subsection (3), where (as here) an action has been commenced in a foreign court with UCCJEA jurisdiction, or (also as here) a foreign court with UCCJEA jurisdiction has made a child custody determination, then the Washington court order taking temporary emergency jurisdiction “must specify” the period of time

the Washington court considers adequate to allow the moving party to obtain relief from the foreign court with UCCJEA jurisdiction:

If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under RCW 26.27.201 through 26.26.221. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

RCW 26.27.231(3). As the last sentence plainly indicates, an order assuming temporary emergency jurisdiction is effective only until the foreign court enters the order at issue, or the period identified in the temporary-emergency-jurisdiction order expires. *Id.*

RCW 26.27.231(4) also has two parts – the first applies when a Washington court is exercising temporary emergency jurisdiction under RCW 26.27.231, and the second applies when a Washington court exercises jurisdiction under RCW 26.27.201 through RCW 26.27.221, but a foreign court has taken temporary emergency jurisdiction under a statute like RCW 26.27.231:

[1] A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under RCW

26.27.201 through 26.27.221, shall immediately communicate with the other court. [2] A court of this state that is exercising jurisdiction pursuant to 26.27.201 through 26.27.221, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Provision [1] requires a Washington Court that has assumed temporary jurisdiction to communicate with a foreign court when:

(a) the Washington court has been asked to make a child custody determination; and (b) the Washington court has been informed (i) that a child custody proceeding has been commenced in a foreign court with UCCJEA jurisdiction, or (ii) that a foreign court with UCCJEA jurisdiction has made a child custody determination.

Provision [2] requires any Washington court exercising non-emergency jurisdiction through some other UCCJEA provision, such as the home state provision (RCW 26.27.201(1)), to communicate with any foreign court that has taken UCCJEA temporary emergency jurisdiction to resolve the emergency.

Provision [2] is inapplicable as Kansas did not take temporary emergency jurisdiction.

2. The trial court did not properly exercise temporary emergency jurisdiction.

There are multiple components to a Washington court's exercise of temporary emergency jurisdiction. First, there must be an emergency. RCW 26.27.231; *Ruff*, 168 Wn. App. at 119-124. Second, the child or his sibling, or parent must face the threat of abuse. *Id.*¹¹ And third, the jurisdiction must be "temporary." *Id.*

The statute does not define "emergency," so this Court will give the term its ordinary and common meaning, and may turn to the dictionary. *Ruff*, 168 Wn. App. at 119-20 (citing *Budget Rent A Car Corp. v. Dep't of Licensing*, 144 Wn.2d 889, 899-900, 31 P.3d 1174 (2001)). In *Ruff*, the appellate court defined "emergency" as used here, as "an unforeseen combination of circumstances or the resulting state that calls for immediate action." *Ruff*, 168 Wn. App. at 120 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 741 (1993)).

Apart from *Ruff*, "Washington courts have not passed on what an emergency is under the UCCJEA, but has done so under the earlier [UCCJA]." *Ruff*, 168 Wn. App. at 120 (citing *In re*

¹¹ Although Justin contests Wendy's domestic violence allegations, this brief assumes *arguendo* that the DVPO is sufficient evidence of "abuse" under RCW 26.27.231.

Marriage of Greenlaw, 67 Wn. App. 755, 762, 840 P.2d 223 (1992), *rev'd on other grounds*, 123 Wn.2d 593, 869 P.2d 1024 (1994)). In **Greenlaw**, the appellate court held “that assumption of emergency jurisdiction under the UCCJA is to be undertaken only in extraordinary circumstances, such as where a child would be placed in imminent danger if jurisdiction were not exercised.” **Greenlaw**, 67 Wn. App. at 762; **Ruff**, 168 Wn. App. at 120.

Commissioner Stewart correctly concluded that there was no emergency jurisdiction here. CP 33. The parties argued and yelled. CP 181-82, 276. Wendy claims that at times, these arguments caused her to fear for her safety. BA 5-6. This is not “extraordinary” nor did Wendy even claim that H was in “imminent danger.” **Greenlaw**, 67 Wn. App. at 762; CP 85, 224. Rather, she agreed that Justin was unlikely to come to Washington other than to appear in court. CP 271.

The order is also flawed because it does not indicate the length of time necessary for Wendy to obtain relief in Kansas and does not include an expiration date. RCW 26.27.231(3); *see also* **Ruff**, 168 Wn. App. at 122. These requirements are “mandatory.” **Ruff**, 168 Wn. App. at 124. In any event, Wendy has plainly had sufficient time to obtain relief in Kansas. RCW 26.27.231(3); **Ruff**,

168 Wn. App. at 122. Wendy is actively participating in the Kansas action, although it does not appear that she has requested a DVPO there. App. A. There is no "emergency" in Washington, if there ever was one.

And Wendy never asked the trial court to confer, repeatedly denying that there was a Kansas action. CP 13, 25, 48. On June 5, Justin plainly informed the Washington Court that he had an open action in Kansas, later stating that it was unclear why Wendy continued to deny the existence of the Kansas action. CP 58, 91. Justin even invited the Washington court to confer with Kansas. *Id.* Wendy continued to question whether Justin had filed suit in Kansas. CP 25. Justin filed the Kansas pleadings in Washington on July 6, 2012. CP 95-111.

3. The superior court did not have to communicate with Kansas to determine its own jurisdiction.

The communication requirement in RCW 26.27.231(4) is triggered only if the Washington court with temporary emergency jurisdiction is asked to make a child custody determination. *Ruff*, 168 Wn. App. at 121-22. But Wendy challenges the court's orders ruling that Kansas is the home state and that Washington should decline jurisdiction to Kansas. These are not child custody

determinations. RCW 26.27.021(3). Thus, RCW 26.27.231(4) simply does not require the Washington court to confer with a foreign court before deciding its own jurisdiction.

Such a requirement would not further the UCCJEA's purposes. The UCCJEA is essentially "a pact" limiting the circumstances under which one court will modify another court's orders. ***Custody of A.C.***, 165 Wn.2d at 574 (citing UCCJEA prefatory note, 9 pt. IA U.L.A. at 649-51). It is, in other words, an agreement to give child custody determinations full faith and credit. *Id.* Its purposes are to reduce conflicting child custody orders from competing jurisdictions, reduce forum shopping, and simplify drawn out and complex legal proceedings. ***Custody of A.C.***, 165 Wn.2d at 574 (citing UCCJEA prefatory note, 9 pt. IA U.L.A. at 651; UCCJEA § 101 cmt., 9 pt. IA U.L.A. at 657). Washington did not do anything that conflicts with Kansas' child custody determination – it simply decided that it lacks jurisdiction and that Kansas is the more appropriate forum. These decisions simplify this matter.

But even assuming that the superior court had to communicate with Kansas, and failed to do so, the only consequence is that the Washington court would not have

jurisdiction to enter permanent child custody orders. *Ruff*, 168 Wn. App. at 123-34. Again, it has not done so.

Additionally, the superior court did not have to confer with Kansas before ruling that Kansas is the home state because that decision has no bearing on Washington's temporary emergency jurisdiction. RCW 26.27.231 assumes that Washington does not have jurisdiction as the home state – that is why there must be an emergency for the court to take jurisdiction. RCW 26.27.201 confers jurisdiction on Washington if it is the home state, specifically excepting jurisdiction taken on an emergency basis under RCW 26.27.231.

4. Wendy's remaining arguments are unpersuasive.

Wendy's reliance on *Prizzia v. Prizzia* is misplaced. BA 24 (citing 58 Va. App. 137, 707 S.Ed.2d 461, 468 (2011)). Wendy quotes *Prizzia* for the proposition that RCW 26.27.231 (the temporary emergency jurisdiction statute) "does not permit a court simply to declare that it has decided to decline to exercise jurisdiction." BA 24 (quoting *Prizzia*, 707 S.E.2d at 468). But *Prizzia* was not remotely addressing the court's authority after having taken emergency jurisdiction, which was not at issue in that case. *Prizzia*, 707 S.E.2d at 468. Rather, the court held that a

court declining jurisdiction under Virginia Code under the eight factor inconvenient-forum test must consider the statutory factors. 707 S.E.2d at 468.

But even assuming *arguendo* that the court had an obligation to confer with Kansas and failed to do so, the consequence would be that the court did not have jurisdiction to enter final child custody orders, “even assuming that it had the authority to temporarily assume emergency jurisdiction.” *Ruff*, 168 Wn. App. at 123-24. Again, the trial court did not enter any final child custody orders. CP 9-11, 32-34.

Wendy claims that Kansas did not enter its temporary orders in compliance with the UCCJEA because she was not given notice. BA 23. Wendy was repeatedly informed of the Kansas action and was properly served. Her continuing failure to acknowledge those proceedings is troubling.

Wendy accuses Justin of deceiving the Kansas court by failing to disclose that H was born in Costa Rica, claiming that this “requires Kansas to decline jurisdiction” BA 23, n.10 (citing CP 96-98; RCW 26.27.231, emphasis Wendy’s). Justin disclosed that H had lived in Kansas and Washington during the past five years. CP 97. He did not include Costa Rica because H did not

live there, where his parents were only visitors. CP 9-10, FF 1-4. Nothing in RCW 26.27.231 supports Wendy's assertion that Kansas is required to decline jurisdiction simply because Justin failed to mention H's birthplace. BA 23.

Finally, Wendy incredibly suggests that "[a] judicial conference would have informed the Washington judicial officers that there was no active proceeding in Kansas. There was, in effect, nowhere to send this case." BA 17. This could not be further from the truth. The Kansas court surely would have told the Superior Court that it had entered a temporary parenting plan on April 2, 2011, but had stayed the case pending resolution of the parties' motions in Washington. CP 90, 99-101. It remains "unclear" why Wendy denies this. See App. A at 4-5; CP 90.

By June 5 at the latest, Wendy and the trial court were on notice that Justin contested Washington jurisdiction and was proceeding in Kansas. CP 58, 91. Wendy appeared on July 18, 2012, and has been actively participating in the Kansas litigation. App. A. While claiming that there was "nowhere to send this case," Wendy neglects to mention that Kansas denied her motion to defer jurisdiction to Washington. *Id.* at 7.

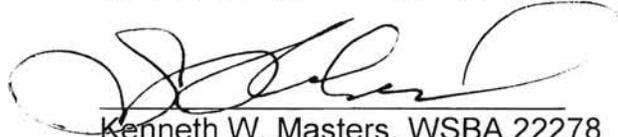
In short, the Washington Court did not have to communicate with Kansas before deciding its jurisdiction. This Court should affirm.

CONCLUSION

For the reasons stated above, this Court should affirm.

RESPECTFULLY SUBMITTED this 30th day of January, 2013.

MASTERS LAW GROUP, P.L.L.C.



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Bainbridge Is, WA 98110
(206) 780-5033

CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF RESPONDENT** postage prepaid, via U.S. mail on the 30th day of January 2013, to the following counsel of record at the following addresses:

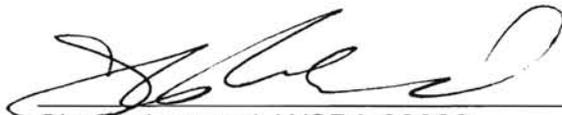
Co-counsel for Respondent

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Seattle, WA 98164


Shelby Lemmel, WSBA 33099

Chautauqua County District Court Search - Case Display

Case Number: 15

Case Year: 2012	Case UID: 2012-DM-000015
Case Type: DM	Filed: 2012-03-29
Case Sub-type: Marriage Dissolution/Divorce	
Advisement Date:	Remand Date:
Appealed: N	Appealed Date:
Status Code: 1	Status Date:
Status Description: Pending	

Defendants

Party

Defendant Number: 1

Last Name (or Business Name): McDermott

First Name: Wendy

Middle: A

Suffix:

Description

Sex: F

Race:

Height:

Weight:

Defense Attorney 1

Last Name: Kruser	First: Mark	Middle: W
Primary Attorney: N	Court Appointed: N	Conflict Attorney: N
Withdrawn: N	Send Notices: Y	
Practice or Office:		

Defense Attorney 2

Last Name: Floodman	First: Sheila	Middle: J
Primary Attorney: Y	Court Appointed: N	Conflict Attorney: N

APPENDIX A

Withdrawn: N	Send Notices: Y
Practice or Office:	

Plaintiff

Party

Plaintiff Number: 1	Amount Claimed: 0.00	
Last Name (or Business Name): McDermott		
First Name: Justin	Middle: J	Suffix:

Description

Sex: M	Race: White
Height: 6 feet, 03 inches	Weight: 220 pounds

Plaintiff Attorney

Last Name: Herlocker	First: Lucy	Middle: L
Primary Attorney: Y	Court Appointed: N	Conflict Attorney: N
Withdrawn: N	Send Notices: Y	
Practice or Office:		

Hearings

Hearing

Hearing Number: 1	Jury Hearing: N
Hearing Type: Other	
Starts: 2013-02-06 at 08:00:00	
Court Room Number:	
Ends: 2013-02-06 at 08:00:00	Results Code:
Hearing Results:	
Hearing Comments: take file for 2/13 hrg	

Judge

Last Name: House	First: Gary	Middle:	Suffix:
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APPENDIX A

Case Judge

Last Name: House	First: Gary	Middle:	Suffix:
------------------	-------------	---------	---------

Registry of Actions**Action 1**

Action Date: 2012-03-29	Action Type: PET
Action Agent: F. William Cullins	
Description: Petition Filed Document Title: Petition for Divorce Document ID: 16893	

Action 2

Action Date: 2012-03-29	Action Type:
Action Agent: F. William Cullins	
Description: Filing: Divorce/Paternity Docket Fee Paid by: Herlocker, Lucy L (attorney for McDermott, Justin J) Receipt number: 0011607 Dated: 3/29/2012 Amount: \$178.00 (Check) For: McDermott, Justin J (plaintiff)	

Action 3

Action Date: 2012-03-29	Action Type: DOMESREL
Action Agent: F. William Cullins	
Description: Domestic Relations Affidavit Document Title: Domestic Relations Affidavit of Petitioner Document ID: 16894	

Action 4

Action Date: 2012-03-29	Action Type: APPLI
Action Agent: F. William Cullins	
Description: Application for Document Title: Application for Temporary Custody Document ID: 16895	

Action 5

Action Date: 2012-03-29	Action Type: APPLI
Action Agent: F. William Cullins	

Description: Application for Document Title: Application for Temporary Support - 139;/s/L
Herlocker Document ID: 16896

Action 6

Action Date: 2012-03-29	Action Type: APPLI
Action Agent: F. William Cullins	
Description: Application for Document Title: Application for Restraining Order Document ID: 16897	

Action 7

Action Date: 2012-03-29	Action Type: CSW
Action Agent: F. William Cullins	
Description: Child Support Worksheet Document Title: Child Support Worksheet Document ID: 16898	

Action 8

Action Date: 2012-04-02	Action Type: PAPL
Action Agent: F. William Cullins	
Description: Parenting Plan Document Title: Temporary Parenting Plan Document ID: 16961	

Action 9

Action Date: 2012-04-02	Action Type: TEXT
Action Agent: F. William Cullins	
Description: TEXT Document Title: Temporary Custody Order;/s/GH Document ID: 16962	

Action 10

Action Date: 2012-04-02	Action Type: TEXT
Action Agent: F. William Cullins	
Description: TEXT Document Title: Temporary Support Order;/s/GH Document ID: 16963	

Action 11

Action Date: 2012-04-02	Action Type: TEXT
Action Agent: F. William Cullins	
Description: TEXT Document Title: Restraining Order;/s/GH Document ID: 16964	

Action 12

Action Date: 2012-06-22	Action Type: ISSD
Action Agent: F. William Cullins	
Description: Summons: Issued to Wendy A Mcdermott on 6/22/2012; Assigned to Out of County Sheriff. Service Fee of \$200.00.	

Action 13

Action Date: 2012-07-18	Action Type: EOA
Action Agent: F. William Cullins	
Description: Entry of Appearance;/s/ Mark Krusor Document Title: Entry of Appearance Document ID: 18449	

Action 14

Action Date: 2012-07-18	Action Type: ANS
Action Agent: F. William Cullins	
Description: Answer;/s/ Krusor Document Title: Answer Document ID: 18450	

Action 15

Action Date: 2012-07-27	Action Type: MOT
Action Agent: F. William Cullins	
Description: Motion Document Title: Motion for the Court to Order Child Returned to Kansas Pursuant to the Temporary Orders - L Herlocker Document ID: 18566	

Action 16

Action Date: 2012-08-21	Action Type: TEXT
Action Agent: Gary House	
Description: TEXT Document Title: Respondents Proposed Parenting Plan Document ID: 18946	

Action 17

Action Date: 2012-08-21	Action Type: MOT
Action Agent: Gary House	
Description: Motion to Modify:Notice of hearing:10/24/12 @ 9AM;/s/ Krusor Document Title: Motion Document ID: 19239	

Action 18

Action Date: 2012-08-21	Action Type: MOT
Action Agent: Gary House	
Description: Motion for Continuance; Notice of hearing; 10/214/12 @ 9AM;/s/ Krusor Document Title: Motion Document ID: 19240	

Action 19

Action Date: 2012-10-03	Action Type: ORD
Action Agent: Gary House	
Description: Order Document Title: Order - GH Document ID: 19508	

Action 20

Action Date: 2012-10-04	Action Type: MOT
Action Agent: Gary House	
Description: Motion Document Title: Memorandum in Support of Respondents Motion Proying that Kansas Decline Jurisdiction Under the Uniform Child Custody Jurisdiction Enforcement Act - M Krusor Document ID: 19512	

Action 21

Action Date: 2012-10-16	Action Type: PETIT
Action Agent: Gary House	
Description: Petition Document Title: Petitioners Proposed Factual Statement - L Herlocker Document ID: 19650	

Action 22

Action Date: 2012-10-16	Action Type: TEXT
Action Agent: Gary House	
Description: TEXT Document Title: Petitioners Memorandum in Opposition to Respondents Motion Praying that Kansas Decline to Exercise Jurisdiction Under the UCCJEA - L Herlocker Document ID: 19651	

Action 23

Action Date: 2012-10-22	Action Type: TEXT

Action Agent: Gary House

Description: TEXT Document Title: Respondents Proposed Findings of Fact Document ID: 19704

Action 24

Action Date: 2012-11-06	Action Type: ORD
Action Agent: Gary House	
Description: Order for Mediation;/s/ GH copy & Herlocker 's ck for \$25 mailed to Nancy Finley Document Title: Order for Mediation Document ID: 19904	

Action 25

Action Date: 2012-11-14	Action Type: ORD
Action Agent: Gary House	
Description: Order Document Title: Order Denying Respondents Motion for Kansas to Decline to Exercise Jurisdiction Under the UCCJEA - GH Document ID: 19998	

Action 26

Action Date: 2012-11-14	Action Type: ORD
Action Agent: Gary House	
Description: Order Document Title: Order for Hearing - GH Document ID: 19999	

Action 27

Action Date: 2012-11-16	Action Type: CRS
Action Agent: Gary House	
Description: Correspondence;Resp allowed to participate in mediation by phone;/s/ GH Document Title: Letter Document ID: 20063	

Action 28

Action Date: 2012-11-28	Action Type: EOA
Action Agent: Gary House	
Description: Entry of Appearance Document Title: Entry of Appearance - Shela Floodman Document ID: 20130	

Action 29

Action Date: 2012-11-28	Action Type: MOT
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Action Agent: Gary House

Description: Motion Document Title: Motion - Notice of Hearing - Certificate of Service

Document ID: 20131

Action 30

Action Date: 2012-11-28

Action Type: PARPLAN

Action Agent: Gary House

Description: Parenting Plan Document Title: Proposed Parenting Plan of Respondent Document ID: 20132

Action 31

Action Date: 2012-11-28

Action Type: NOT

Action Agent: Gary House

Description: Notice Document Title: Notice of Intent to Issue Business Record Subpoenas Document ID: 20134

Action 32

Action Date: 2012-11-28

Action Type: SUBI

Action Agent: Gary House

Description: Subpoena Business Records Issued: Atty for Respondent (Sedan EMS)

Action 33

Action Date: 2012-11-28

Action Type: REQS

Action Agent: Gary House

Description: Request for Transcript;/s/ Kruser sent cd to Michelle Smith Document Title: Request for Transcript Document ID: 20135

Action 34

Action Date: 2012-11-30

Action Type: NOS

Action Agent: Gary House

Description: Notice of Service Document Title: Notice of Service of Respondents Interrogatories Request for Production and Request for Admissions to Petitioner - S Floodman Document ID: 20158

Action 35

Action Date: 2012-12-06	Action Type: PAPL
Action Agent: Gary House	
Description: Parenting Plan Document Title: Proposed Parenting Plan of Petitioner Document ID: 20269	

Action 36

Action Date: 2012-12-10	Action Type: CRS
Action Agent: Gary House	
Description: Correspondence Document Title: Request for a deposit on the transcript that was request - Mark Krusor from Heather Lohmeyer Document ID: 20315	

Action 37

Action Date: 2012-12-14	Action Type: SUBI
Action Agent: Gary House	
Description: Subpeona Business Records Issued; Signed & returned to Floodman for service (Indep Community College)	

Action 38

Action Date: 2012-12-18	Action Type: SUBI
Action Agent: Gary House	
Description: Subpeona of Business Records Issued; Cq Co Shf (Cert mail to Human Resources Depart, Inlandboatmen's Union of the Pacific)	

Action 39

Action Date: 2012-12-20	Action Type: ORD
Action Agent: Gary House	
Description: Order Document Title: Agreed Order - GH Document ID: 20454	

Action 40

Action Date: 2013-01-02	Action Type: SUBS
Action Agent: Gary House	

Description: Subpoena Served/Returned Document Title: Business Records Subpoena Return -
Certmail Human Resources Document ID: 20616

Action 41

Action Date: 2013-01-03	Action Type: SUBI
Action Agent: Gary House	
Description: Subpeona Business Records Issued; Signed & returned to Floodman for service (Ks Board of Emergency Medical Services)	

Action 42

Action Date: 2013-01-11	Action Type: TRANSC
Action Agent: Gary House	
Description: Transcript of Proceedings October 24th 2012	

Action 43

Action Date: 2013-01-16	Action Type: ORD
Action Agent: Gary House	
Description: Order Document Title: Order - GH Document ID: 20771	

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Marriage of McDermott Timeline

November 27, 2010 – The parties marry in Costa Rica. CP 41.

March 17, 2011 – The parties marry in Oklahoma. CP 83.

June 15, 2011 – H is born. CP 41.

January 15, 2012 – Wendy removes H to Washington. CP 10

March 29, 2012 – Justin files his petition for dissolution in Kansas. CP 96-98.

March 29, 2012 – Wendy files her petition for dissolution in Washington. CP 82-88.

April 2, 2012 – The Kansas court enters a Temporary Parenting Plan (CP 99-101), a Temporary Support Order (CP 102-04), a Temporary Custody Order (CP 105-07), and a Restraining Order. CP 108-111.

April 17, 2012 – Wendy serves Justin in the Washington action. CP 278.

May 4, 2012 – Wendy files her Petition for Order for Protection (CP 268-77) and a Motion for Temporary Orders, requesting a Guardian ad Litem, a Temporary Parenting Plan, and a Domestic Violence Protective Order (CP 238-67), and supporting declarations. CP 213-237.

May 22, 2012 – Justin files his response to Wendy's Petition for Dissolution (CP 73-76) a Proposed Parenting Plan (CP 193-203) and supporting declarations. CP 171-192.

May 30, 2012 – Commissioner Stewart enters the Order of Continuance, denying Wendy's request for a DVPO and reserving ruling on all UCCJEA issues. CP 93-94. The Commissioner also enters a temporary mutual restraints. CP 63-72.

June 5, 2012 – Justin files his Motion to Dismiss Dissolution Action for Lack of Jurisdiction. CP 57-62.

June 6, 2012 – Wendy moves to revise Commissioner Stewart's May 30 order. CP 142-53.

June 14, 2012 – Judge Ellis enters an Order revising Commissioner Stewart's order (CP 117-18) and enters an Order for Protection. CP 35-39.

June 21, 2012 – Commissioner Stewart rules on Justin's motion to dismiss, entering an Order on Jurisdiction declining jurisdiction in favor of Kansas. CP 32-34.

APPENDIX B

June 22, 2012 – Wendy moves to revise Commissioner Stewart's June 21 Order deferring jurisdiction to Kansas. CP 24-31.

June 28, 2012 – Justin serves Wendy in the Kansas action. CP 114.

July 6, 2012 – Justin files the Kansas dissolution pleadings and orders in Washington. CP 95-111.

July 9, 2012 – Judge Krese enters an order revising Commissioner Stewart's Order on Jurisdiction ruling that Kansas is H's home state, but otherwise denying Wendy's motion. CP 9-11.

July 18, 2012 – Wendy files her Notice of Appeal in Washington (CP 1-8) and her lawyer enters an appearance in the Kansas Action. App A.

October 4, 2012 – Wendy moves in Kansas for the court to decline jurisdiction. App A.

November 14, 2012 – The Kansas court denies Wendy's motion. App A.

APPENDIX B

RCW 26.27.021

Definitions.

The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

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

(2) "Child" means an individual who has not attained eighteen years of age.

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

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, a parenting plan, or visitation with respect to a child is an issue. The term includes a proceeding for dissolution, divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, emancipation proceedings under chapter 13.64 RCW, proceedings under chapter 13.32A RCW, or enforcement under Article 3.

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

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

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

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

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

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

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

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

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

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

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

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

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

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

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

[2001 c 65 § 102.]

RCW 26.27.201

Initial child custody jurisdiction.

(1) Except as otherwise provided in RCW 26.27.231, a court of this state has jurisdiction to make an initial child custody determination only if:

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

(b) A court of another state does not have jurisdiction under (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or 26.27.271, and:

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

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

(c) All courts having jurisdiction under (a) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under RCW 26.27.261 or 26.27.271; or

(d) No court of any other state would have jurisdiction under the criteria specified in (a), (b), or (c) of this subsection.

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

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

[2001 c 65 § 201.]

RCW 26.27.211

Exclusive, continuing jurisdiction.

(1) Except as otherwise provided in RCW 26.27.231, a court of this state that has made a child custody determination consistent with RCW 26.27.201 or 26.27.221 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(2) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under RCW 26.27.201.

[2001 c 65 § 202.]

RCW 26.27.231

Temporary emergency jurisdiction.

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

(2) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under RCW 26.27.201 through 26.27.221. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to RCW 26.27.201 through 26.27.221, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

RCW 26.27.261

Inconvenient forum.

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

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

(a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) The length of time the child has resided outside this state;

(c) The distance between the court in this state and the court in the state that would assume jurisdiction;

(d) The relative financial circumstances of the parties;

(e) Any agreement of the parties as to which state should assume jurisdiction;

(f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) The familiarity of the court of each state with the facts and issues in the pending litigation.

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

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

Kan. Stat. Ann. § 23-37,201 (2011)

23-37,201. Initial child-custody jurisdiction.

(UCCJEA 201). (a) Except as otherwise provided in K.S.A. 2011 Supp. 23-37,204, and amendments thereto, a court of this state has jurisdiction to make an initial child-custody determination only if:

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

(2) a court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under K.S.A. 2011 Supp. 23-37,207 or 23-37,208, and amendments thereto, 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 this state other than mere physical presence; and

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

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under K.S.A. 2011 Supp. 23-37,207 or 23-37,208, and amendments thereto; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

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

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

History:

L. 2000, ch. 171, § 43; July 1.