

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. N.G.,	)	CASE NO. 2015-0363
	)	
Relator/Appellee,	)	On Appeal from the Eighth Judicial
	)	District Court of Appeals
vs.	)	Case No. CA-14-101425
	)	
CUYAHOGA COUNTY COURT OF	)	
COMMON PLEAS,	)	
JUVENILE DIVISION, ET AL.,	)	
	)	
Respondents/Appellees,	)	
	)	
- And -	)	
	)	
S.F.,	)	
	)	
Intervening Respondent/	)	
Appellant.	)	

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**MERIT BRIEF OF APPELLEES CUYAHOGA COUNTY COURT OF COMMON PLEAS, JUVENILE DIVISION, AND THE HON. ALISON L. FLOYD**

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## STATEMENT OF THE FACTS

This is an appeal from an action that originated in the Eighth District Court of Appeals. In that action arising out of an interstate child custody dispute, the Court of Appeals issued a writ of prohibition to stop – at least for now – further Ohio Juvenile Court child custody proceedings based on its determination that Virginia child custody proceedings remained controlling pursuant to the Uniform Child Custody Jurisdiction Enforcement Act (“UCCJEA”). For the reasons that follow, appellees The Cuyahoga County Court of Common Pleas, Juvenile Division, and The Honorable Alison L. Floyd respectfully submit that the judgment should be affirmed.

Before reviewing the relevant facts and somewhat convoluted history of this case, it is appropriate initially to identify the interested parties.<sup>1</sup> In the proceedings before the Eighth District Court of Appeals, N.G. was the relator, is now an appellee, and will hereafter be referred to as “Father.” The Cuyahoga County Court of Common Pleas, Juvenile Division, and The Honorable Alison L. Floyd were the respondents, are now appellees, and will hereafter be referred to as “the Ohio Juvenile Court.” S.F. moved to intervene in the case after the Eighth District Court of Appeals made its initial ruling, has now filed this appeal as the appellant, and will hereafter be referred to as “Mother.” The children who are the subjects of the underlying child custody proceedings are Y.G., a minor (DOB: 3/15/2007); and E.G., a minor (DOB: 5/18/2009).

And because this case involves the Virginia state court system that differs in some respects from Ohio’s state court system and with which this Court may not be as familiar, a brief

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<sup>1</sup> The “Confidential Personal Identifiers Contained in Filing” filed in this Court on May 29, 2015 identifies the interested parties and is expressly acknowledged herein. This Merit Brief will make occasional references to those confidential personal identifiers when appropriate.

review of the Virginia state court system may assist this Court in understanding the procedural posture of this case. In particular, Virginia's judicial system consists of four (4) levels of state courts: the District Courts; the Circuit Courts; the Court of Appeals of Virginia; and the Supreme Court of Virginia. Virginia's District Court system consists of (a) the General District, which hears criminal misdemeanor cases and civil cases in which the amount in question does not exceed \$25,000.00; and (b) the Juvenile and Domestic Relations District Court, which hears, among other things, child custody matters like the one presented by the instant case. Virginia's Circuit Courts are trial courts of general jurisdiction that also hear de novo appeals from the applicable General District and Juvenile and Domestic Relations District Courts. As will be discussed hereafter, the Virginia court proceedings relevant to this case have occurred in the Juvenile and Domestic Relations District Court for Arlington County and, on appeal, in the Circuit Court for Arlington County.

Having provided that necessary introduction, the relevant facts and proceedings are as follows:

**A. INITIAL CHILD CUSTODY PROCEEDINGS: VIRGINIA, NOT OHIO**

On February 27, 2012, Mother filed a complaint in the Cuyahoga County Court of Common Pleas, Juvenile Division, to establish a parent-child relationship regarding the two minor children Y.G. and E.G. (See Supplement to Merit Brief of Appellant S.F. (hereafter "Mother's Supplement") at Supp.-000001 to 000002. See also Complaint for an Original Writ of Prohibition (hereafter "Complaint") at par. 6; *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶ 3.) Mother's Juvenile Court complaint sought to establish paternity and an allocation of parental rights and responsibilities. (See Complaint at para. 6.) Mother's complaint indicated that she and Father were never married. (See *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at

¶ 3.) Mother’s Uniform Child Custody Jurisdiction Enforcement Act (“UCCJEA”) affidavit averred that Father lived in Virginia but that the children had lived with Mother in Cleveland, Ohio since their respective births. (See *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶ 3.)

On March 20, 2012, Father filed a petition to allocate parental rights and responsibilities in the Juvenile and Domestic Relations District Court for Arlington County, Virginia. (See Complaint at para. 7. See also Mother’s Supplement at Supp.-000003; *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶ 4.)

On March 30, 2012, Father filed a motion to dismiss Mother’s Ohio Juvenile Court action for lack of subject matter jurisdiction, alleging that Virginia, not Ohio, had “home state” over the children pursuant to the UCCJEA. (See Complaint at para. 8. See also Mother’s Supplement at Supp.-000004 to 000012; *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶ 4.) According to Father’s affidavit in support of his motion to dismiss, the children lived

- in Virginia from April 9, 2010 to December 23, 2010;
- in Ohio from December 24, 2010 to April 23, 2011;
- in Virginia from April 24, 2011 to November 1, 2011; and
- in Ohio since November 1, 2011.

(See Mother’s Supplement at Supp.-000011.)

Father later admitted that his affidavit contained an incorrect date as to when the children lived in Ohio. See Merit Brief of Father at p. 1, fn. 1. Evidence adduced in subsequent court proceedings revealed that the children resided in Virginia with Father from May 17, 2011 – not April 24, 2011 – to November 1, 2011. See Supplement to Father’s Merit Brief (hereafter “Father’s Supplement”) at pp. 49-50 (Transcript of 9/9/14 Arlington County Juvenile and

Domestic Relations District Court proceedings at pp. 23-24). Consequently, the children's state residences would appear to have been as follows:

- in Ohio from December 24, 2010 to May 16, 2011;
- in Virginia from May 17, 2011 to November 1, 2011;
- in Ohio since November 1, 2011.

On May 29, 2012, the Ohio Juvenile Court granted Father's motion to dismiss Mother's Ohio case. (See Complaint at para. 9.) In its judgment entry, the trial court stated:

Pursuant to Civ.R. 12(B)(1) and in consultation with the assigned judge from the state of Virginia, and review of all pleadings before each court, the court finds that there is reasonable cause to believe that the child resided in the state of Virginia more than six months prior to the commencement of the action herein; that the alleged father acknowledges paternity before the Virginia court; and that based on the significant contacts that the child has in the state of Virginia, the court can reasonably infer that the Virginia court would be a court of competent jurisdiction.

Therefore, it is the decision of the court, having reviewed this matter with the jurist of the other court, that the state of Virginia is the home state of the child; and that this matter may proceed expediently before the Virginia court, this court finds that said expediency would serve the best interest of the child, child's sibling, and the family.

It is ordered that the Complaint to Establish Parent-Child Relationship and Application to Determine Custody herein is dismissed for lack of jurisdiction. Matter to proceed before the Virginia Court as scheduled and noticed to the parties. Hearing on July 24, 2012 is canceled.

(See Complaint at Exhibit B. See also *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶ 6.)

On June 5, 2012, the Virginia Juvenile and Domestic Relations District Court issued an order granting the parties joint legal custody of the children, with primary physical custody with father. (See Complaint at para. 10.) Mother was to have liberal visitation and half of the summer. (*Id.*) Mother appealed the June 5, 2012 Arlington County Juvenile and Domestic

Relations District Court order to the Arlington County Circuit Court. See Merit Brief of Mother at p. 1; Merit Brief of Father at p. 2.

**B. OHIO COURT OF APPEALS REVERSES AND REMANDS FOR FURTHER PROCEEDINGS**

Following the Ohio Juvenile Court's May 29, 2012 dismissal of Mother's custody action for lack of jurisdiction, Mother moved the Ohio Juvenile Court to reconsider its ruling and requested an evidentiary hearing. (See *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶ 8.) After the Ohio Juvenile Court denied Mother's motion for reconsideration, she filed on July 11, 2012 an appeal to the Eighth District Court of Appeals, in the matter docketed as Case No. CA-12-98652.<sup>2</sup>

On February 14, 2013, the Court of Appeals issued its decision in *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495. The Court of Appeals noted that Mother's UCCJEA affidavit alleged that the children had lived with her in Ohio since their respective births, while Father's affidavit alleged that the children lived in Virginia and Ohio at various times between April 9, 2010 until they remained in Ohio since November 1, 2011. See *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶¶ 16-18.<sup>3</sup> The Court of Appeals held that the trial court erred when it dismissed Mother's complaint without holding an evidentiary hearing because the facts regarding where the children lived were in dispute. See *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶ 20.

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<sup>2</sup> Father did not file a timely brief in the Court of Appeals and that court denied his motion for an extension of time to file a brief after the case had already been scheduled for oral argument. See *State ex rel. N.G. v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. No. 101425, 2014-Ohio-4390 at ¶ 6.

<sup>3</sup> At ¶ 18 of its opinion, the Court of Appeals' opinion reports Father as having indicated that the children lived in Virginia from April 8, 2010, but Father's affidavit in fact averred that their time in Virginia commenced on April 9, 2010. See Mother' Supplement at Supp.-000011.

The *E.G.* Court explained:

The trial court could not determine whether Ohio or Virginia was the children's "home state" at the time mother filed her custody complaint in Ohio – not based on mother's pleadings in Ohio or father's pleadings in Virginia or their affidavits or by talking to the Virginia judge for that matter – because again, the facts are in dispute.

If the trial court determines, after holding an evidentiary hearing, that the children did, in fact, live in Virginia from April 24, 2011 to November 1, 2011, as father claims they did, then the Cuyahoga County Juvenile Court lacks jurisdiction to determine the action because Virginia would be the children's "home state" under the UCCJEA. See *Rosen [v. Celebrezze]*, 117 Ohio St.3d 241, 2008-Ohio-853, 883 N.E.2d 420.

If, however, the trial court determines that the children lived in Ohio – with only "temporary absences" from home – then Ohio is the children's "home state" for purposes of jurisdiction under the UCCJEA. \*\*\*

See *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶¶ 20-22.

**C. VIRGINIA AND OHIO COURT PROCEEDINGS FOLLOWING REMAND**

While the Ohio case was on remand, the Arlington County Circuit Court issued a "Visitation Order" on July 15, 2013 that, among other things, expressly acknowledged the February 14, 2013 Court of Appeals ruling that "reversed and remanded the Ohio trial court's ruling and directed the trial court to hold an evidentiary hearing to determine whether Ohio or Virginia is the 'home state' of the children" and that "the issue of whether Virginia has subject matter jurisdiction at this point in time is unresolved \*\*\*." See Mother's Supplement at Supp-000077 to Supp-000084. Establishing a visitation schedule while the jurisdictional issues were being litigated, the July 15, 2013 Visitation Order provided "that the [Mother's] custody appeal in this Court is stayed until further order. The Order of the Juvenile and Domestic Relations District Court dated June 5, 2012 shall remain in full force and effect during the stay \*\*\*." *Id.* at p. 2.

On March 13, 2014, the Ohio Juvenile Court held an evidentiary hearing upon the issue of jurisdiction pursuant to R.C. 3127.01 *et seq.* (See Complaint at para. 15.) On April 22, 2014, the trial court issued an order that reads as follows in relevant part:

The Court finds that [Mother] has and continues to make her primary residence in the State of Ohio, since 2003, and specifically in Cuyahoga County, since 2004. The evidence failed to show that Mother intended on relinquishing her residence to establish another home state.

The Court finds that [Father], who Mother has alleged in her complaint, is the natural father of the child, has and continues to maintain the state of Virginia as his home state. There was insufficient evidence to show that Father intended to relinquish his residence to establish another home state.

It is undisputed that at the time of the child's birth in the state of Ohio, the parties were not married. Despite Father's presence at the hospital for the birth of the child, Mother asserts in her complaint that she is seeking an order of the court to establish the existence of a parent-child relationship between [Father] and the child.

The Court finds no clear and convincing evidence was presented by either party or to show that or how paternity was established for the child. Pursuant to R.C. 3109.42, an unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian of the child.

The Court further finds that based on the evidence presented, Mother did not waive, relinquish or abandon her parental responsibilities and custody to [Father] such that the court could reasonably conclude that the child has established a residence and home state outside of or apart from his legal custodian.

The Court therefore finds and concludes that the state of Ohio is the home state of the Mother and the child; and that in accordance with R.C. 3127.15(A)(1), this Court finds that it has jurisdiction over the parties and to determine the issues.

(See Complaint at Exhibit D.)

Two (2) months after the Ohio Juvenile Court ruled that Ohio had "home state" jurisdiction, the Arlington County Circuit Court issued on May 23, 2014 an "Order of Dismissal" which reads as follows in its entirety:

ON THE 23<sup>RD</sup> DAY OF MAY, 2014, the parties through counsel came before this Court on [Mother's] Motion to Dismiss this Appeal of the Order of Custody from the Juvenile and Domestic Relations Court, Dated June 5, 2012; and

IT APPEARING TO THE COURT that is [sic] stayed the instant custody appeal by a Visitation Order entered on July 15, 2013, until further order to allow the Ohio trial court to hold an evidentiary hearing to determine whether Ohio or Virginia is the "home state" of the children; and it further

APPEARING TO THE COURT that the Court of Common Pleas, Juvenile Division, Cuyahoga County, Ohio, following an evidentiary hearing in which the parties and their attorneys appeared, entered two (2) Orders on April 21, 2014 finding that Ohio is the home state of the two (2) children of the parties to this custody appeal; and it further

APPEARING TO THE COURT that the Ohio trial court has scheduled a pre-trial on the issues of custody, including visitation, for June 12, 2014; it is therefore

ADJUDGED, ORDERED and DECREED that the custody appeal in the instant case before this Court be, and it hereby is, dismissed and the Visitation Order entered on July 15, 2013, be and it hereby is vacated.

See Mother Supplement at Supp-000027 to Supp-000028. The May 23, 2014 "Order of Dismissal" thus dismissed Mother's appeal of the June 5, 2012 Juvenile and Domestic Relations District Court "custody order" but did not vacate that order. There has been no Virginia state court order relinquishing Virginia's exercise of jurisdiction over these children in favor of Ohio's exercise of jurisdiction.

**D. FATHER'S ORIGINAL ACTION IN PROHIBITION**

One (1) day before the Arlington County Circuit Court issued its May 23, 2014 "Order of Dismissal," however, Father filed on May 22, 2014 the underlying original action in prohibition in the Eighth District Court of Appeals against the Ohio Juvenile Court. Mother was not a party to the case at that time.

On September 30, 2014, the Eighth District Court of Appeals issued its decision in *State ex rel. N.G. v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. No. 101425, 2014-Ohio-4390,

granting a writ of prohibition against the Ohio Juvenile Court. The Court of Appeals determined that because the Arlington County Juvenile and Domestic Relations District Court made the initial custody determination on June 5, 2012, it acquired “exclusive and continuing jurisdiction as long as the child, the child’s parents, or any person acting as a parent continue to live in the state.” *Id.* at ¶ 14. The Court acknowledged that when the appeals court panel hearing *In re E.G.* reversed the dismissal of Mother’s Ohio complaint and remanded for an evidentiary hearing to resolve a factual dispute over where the children had been living, “the implications of the Virginia court having exercised jurisdiction based upon the determination that Virginia was the home state were unknown and, therefore, were not addressed.” *Id.* at ¶ 15. In any event, the Court of Appeals here determined that the Virginia court’s June 15, 2012 initial custody determination was entitled to full faith and credit pursuant to R.C. 3127.43. *Id.* at ¶ 18. The Court accordingly issued a writ of prohibition stopping the Ohio Juvenile Court from conducting further proceedings and directing the Ohio Juvenile Court to vacate all orders entered on and after March 13, 2014.

After the Ohio Juvenile Court complied with the Court of Appeals’ mandate, however, Mother moved to intervene in the prohibition action on October 23, 2014 and contemporaneously moved for emergency relief from judgment. Following further legal briefing, the Court of Appeals, by a 2-to-1 vote, denied Mother’s motions on January 14, 2015. The text of the Court’s ruling is as follows:

Combined motion to intervene as respondent [Mother] and emergency motion for relief from order is denied. On September 9, 2014, the Juvenile and Domestic Relations District Court of Arlington County, Virginia issued a final order enforcing its June 5, 2012 custody order, which was the initial custody determination. [Mother] has appealed that ruling to the Circuit Court of Arlington County, Virginia. The evidence presented to this court reflects that a dispute among the parties as to whether the June 5, 2012 order is in force or was vacated by the Circuit Court's order dated May 23, 2014. This dispute is best resolved by the circuit Court that issued the May 23, 2014 order. The Circuit Court of Arlington County, Virginia has stayed the appeal but ordered the children to remain in Virginia in physical custody of [Father]. The custody order was not stayed or modified or expressly vacated. Therefore, the June 5, 2012 custody order and the September 9, 2014 order enforcing it, are entitled to full faith and credit unless vacated, stayed, or modified by a court having jurisdiction to do so. R.C. 3127.43; R.C. 3127.20; *State ex rel. Morenz v. Kerr*, 104 Ohio St.3d 148, 2004-Ohio-6208, 818 N.E.2d 1162. In the event that the Virginia appellate courts vacate, modify or stay the custody orders, that could trigger jurisdiction back in the Ohio juvenile court cases again. Until such time, the Ohio juvenile court does not have jurisdiction to proceed.

See Mother's Merit Brief at App-4.

On March 2, 2015, Mother filed this appeal in the Supreme Court of Ohio.

### ARGUMENT

Although the course of the underlying child custody proceedings have been challenging, Appellee the Ohio Juvenile Court respectfully submits that the Court of Appeals' decisions now before this Court have come to the correct result. While the Ohio Juvenile Court does question the propriety of granting extraordinary relief in prohibition to forbid a court from exercising judicial power when (a) the prior *E.G.* appeals court decision *ordered* the Ohio Juvenile Court to conduct further judicial proceedings and (b) the action in prohibition is really being used as a substitute to appeal the correctness of the Ohio Juvenile Court's decision after remand, the Appellee Ohio Juvenile Court nevertheless accepts that under a proper application of the various provisions of the Uniform Child Custody Jurisdiction Enforcement Act ("UCCJEA"), it is proper for the Virginia state courts to exercise jurisdiction in this interstate child custody dispute unless

and until the Virginia state courts determine that their orders should be vacated, modified, or stayed.

For her part, Mother's appeal contends that the Court of Appeals erred in (1) denying her motion to intervene; (2) according the Virginia court orders full faith and credit; and (3) denying her motion for relief from judgment where the judgment was granted as a result of fraud. For the reasons discussed hereafter, Appellee Ohio Juvenile Court respectfully submits that none of those contentions are well taken. So for the reasons that follow, Appellee Ohio Juvenile Court respectfully urges this Court to affirm the judgment of the Court of Appeals.

Because the appeal before this Court is from a judgment issuing a writ of prohibition, it is well to review initially the standards applicable to such proceedings. In that regard, an action in prohibition tests only the jurisdiction of the lower court. *See State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 740 N.E.2d 265 (2001); *State ex rel. Staton v. Common Pleas Court*, 5 Ohio St.2d 17, 21, 213 N.E.2d 164 (1965). To be entitled to the writ, a relator must show that (1) the respondents were exercising or about to exercise judicial or quasi-judicial power; (2) the exercise of that power was unauthorized by law; and (3) denial of the writ would cause injury for which no other adequate remedy exists in the ordinary course of the law. *See State ex rel. Westlake v. Corrigan*, 112 Ohio St.3d 463, 2007-Ohio-375, 860 N.E.2d 1017, ¶ 12.

If an inferior tribunal patently and unambiguously lacks jurisdiction, prohibition will lie to prevent any future unauthorized exercise of jurisdiction or to correct the results of prior jurisdictionally unauthorized actions. *See Chesapeake Exploration, L.L.C. v. Oil & Gas Comm'n*, 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 40, ¶ 11. Where jurisdiction is patently and unambiguously lacking, the relator need not establish the lack of an adequate remedy at law because the availability of alternate remedies like appeal would be immaterial. *Id.*

In the absence of a patent and unambiguous lack of jurisdiction, however, a court having general subject-matter jurisdiction can determine the bounds of its own jurisdiction. *See Girard v. Youngstown Belt Ry. Co.*, 134 Ohio St.3d 79, 2012-Ohio-5370, 979 N.E.2d 1273, ¶ 16. “[A] party challenging that jurisdiction has an adequate remedy by appeal.” *Dzina v. Celebrezze*, 108 Ohio St.3d 385, 2006-Ohio-1195, 843 N.E.2d 1202, at ¶ 12. “Prohibition will not issue as a substitute for appeal to review mere errors in judgment.” *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002-Ohio-4907, 775 N.E.2d 522 at ¶ 28. Thus “[a]ppel, not prohibition, is the remedy for the correction of errors or irregularities of a court having proper jurisdiction.” *Smith v. Warren*, 89 Ohio St.3d 467, 468, 732 N.E.2d 992 (2000).

This Court’s review is thus “limited to determining whether jurisdiction is patently and unambiguously lacking.” *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224, at ¶ 12. *See also State ex rel. Shimko v. McMonagle*, 92 Ohio St.3d 426, 431, 751 N.E.2d 472 (2001).

It should further be noted that this Court’s plenary authority in extraordinary actions permits it to consider an appeal as if it had been originally filed in the Supreme Court. *See State ex rel. Dreamer v. Mason*, 129 Ohio St.3d 94, 2011-Ohio-2318, 950 N.E.2d 519, ¶ 18, fn. 2; *State ex rel. Minor v. Eschen*, 74 Ohio St.3d 134, 138, 656 N.E.2d 940 (1995). The Court’s “plenary authority” generally refers to its ability to address the merits of a writ case without the necessity of a remand if the court of appeals erred in some regard. *State ex rel. Dreamer v. Mason*, supra at ¶ 18, fn. 2; *State ex rel. Natl. Elec. Contrs. Assn., Ohio Conf. v. Ohio Bur. of Emp. Servs.*, 88 Ohio St.3d 577, 579, 728 N.E.2d 395 (2000).

Understanding the standards applicable to such proceedings, it is now appropriate to respond to Mother’s respective propositions of law.

**I. The Court of Appeals did not prohibit Mother from intervening in the prohibition case.**

Mother's first proposition of law asserts that a non-party parent has a due process right to intervene in a prohibition action challenging the inferior court's jurisdiction. Whatever merit that proposition of law may have in the abstract, Appellee Ohio Juvenile Court respectfully submits that it has no application here because the record does not reflect that Mother was barred from intervening in the writ action proceedings. Accordingly, Mother's first proposition of law should be rejected.

In particular, the record reflects that on October 23, 2014, Mother filed in the Court of Appeals a document captioned, "Combined Motion to Intervene as Respondent [Mother] and Emergency Motion for Relief from Order." Mother filed this as a single document. She did not file a motion to intervene separate from her emergency motion for relief from the Court of Appeals' September 30, 2014 decision granting Father's request for a writ of prohibition.

It should be noted that in responding to Mother's combined motions, Appellee Ohio Juvenile Court expressly indicated that it did not oppose Mother's motion to intervene.

At any rate, in ruling on Mother's motion on January denying Mother's combined motions on January 14, 2015, the Court of Appeals did deny the "[c]ombined motion to intervene as respondent [Mother] and emergency motion for relief from order." But nothing in the text of the Court of Appeals' January 14, 2015 order indicates that it had precluded Mother from intervening to be heard in the case. To the contrary, the text of that order addresses only the substantive merits of the jurisdictional issue presented. Nothing in the text of that order indicates that the Court refused to consider Mother's contentions and that the Court's discussion of the substantive merits was an alternate holding rendered even if it had considered Mother's argument as an intervening party.

The record of proceedings before the Court of Appeals similarly reflects that it did not preclude Mother from being heard as an intervenor in the writ case. On October 27, 2014, the Court of Appeals issued an order staying its September 30, 2014 order pending disposition of Mother's post-judgment motions. On November 19, 2014, the Court of Appeals granted Mother's motion for an extension of time to respond to Father's motions for sanctions. At no time did the Court of Appeals indicate that it would not consider Mother's contentions.

While the text of the Court of Appeals' January 14, 2015 ruling does at first glance appear to have denied Mother's motion to intervene, the more plausible explanation is that the Court of Appeals was simply determining Mother's motions *as she presented them to the Court of Appeals*, namely, as a single combined motion. But having declared as a matter of judicial housekeeping that the combined motions were denied should not fairly be interpreted as suggesting that the Court of Appeals was hostile to Mother's involvement to the point of denying her the very opportunity to be heard.

The record of the Court of Appeals proceedings – including its express acknowledgement on January 14, 2015 that jurisdiction in Ohio could be triggered if the Virginia state courts were to relinquish jurisdiction – suggest strongly that the Court of Appeals did hear and consider Mother's contentions before concluding ultimately that they were not well taken. To the extent that a court of appeals has discretion when considering whether to allow a non-party to intervene in an original action in prohibition after the writ has already been granted, *see State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, 696 N.E.2d 1058 (1998), Appellee Ohio Juvenile Court respectfully submits that the Court of Appeals here did not abuse its discretion by allowing Mother to intervene in this original action in prohibition. Because

Mother's contention that the Court of Appeals denied her motion to intervene is not substantiated by the record, her first proposition of law should be rejected.

**II. The Court of Appeals did not err in according full faith and credit to the Virginia state court orders pursuant to R.C. 3127.43 and R.C. 3127.20.**

The fundamental issue presented by this appeal is whether the Court of Appeals erred by issuing a writ of prohibition to cease further child custody proceedings in the Ohio Juvenile Court based on the fact that the Juvenile and Domestic Relations District Court for Arlington County, Virginia, issued the initial custody determination on June 5, 2012 that, by operation of law and until set aside by a court of competent jurisdiction, thereafter conferred upon the Virginia state courts exclusive and continuing jurisdiction over these child custody matters. Although Appellee Ohio Juvenile Court respectfully submits that its exercise of judicial powers in this case was authorized by law – and indeed by mandates issued by the Court of Appeals – but that the initial exercise of jurisdiction by the Virginia state courts – after appropriate consultation with the Ohio Juvenile Court – conferred jurisdiction on the Virginia state courts at least until such time as that exercise of jurisdiction was revisited by the Virginia courts. Accordingly, Mother's second proposition of law is not well taken.

To begin, there can be no dispute that a Juvenile Division of an Ohio Court of Common Pleas generally has the basic statutory jurisdiction to hear certain child custody matters. In particular, R.C. 2151.23(A)(2) provides that a juvenile court generally has exclusive original jurisdiction under the Revised Code to “determine the custody of any child that is not a ward of another court of this state.” Pursuant to R.C. 2151.23(F)(1), the juvenile court shall exercise its jurisdiction in child custody matters in accordance with R.C. 3109.04 – which provides for the general allocation of parental rights and responsibilities – and in accordance with R.C. 3127.01

to 3127.53, which codifies Ohio's adoption of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).<sup>4</sup>

In this case, Father contended that the Ohio Juvenile Court lacked jurisdiction to hear Mother's child custody case based on the UCCJEA. In *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, 883 N.E.2d 420, the Supreme Court of Ohio recounted the circumstances that culminated in the adoption of the UCCJEA:

To help resolve interstate custody disputes, the Uniform Child Custody Jurisdiction Act ("UCCJA") was drafted in 1968 and adopted by Ohio in 1977. A purpose of the UCCJA was to avoid jurisdictional competition and conflict with courts of other jurisdictions in custody matters. This purpose, however, was defeated by departures from the original text of the UCCJA in many states and by inconsistent decisions by state courts during about 30 years of litigation.

To rectify this problem, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") in 1997 to replace the UCCJA. The most significant change the UCCJEA makes to the UCCJA is giving jurisdictional priority and exclusive continuing jurisdiction to the home state. The UCCJEA eliminates a determination of "best interests" of a child from the original jurisdictional inquiry.

*Id.* at ¶¶ 20-21 (citations and internal punctuation omitted). *Cf. In re Palmer*, 12 Ohio St.3d 194, 196, 465 N.E.2d 1312 (1984) (purpose of the UCCJA was to avoid interstate jurisdictional competition and conflict in child custody matters so that "the child or children in question will not be caught in a judicial tug of war between different jurisdictions.")

The UCCJEA establishes four (4) types of jurisdiction under which a court may make an initial determination in a child custody proceeding: (1) home-state jurisdiction; (2) significant-connection jurisdiction; (3) jurisdiction because of declination of jurisdiction; and (4) default jurisdiction. *See Rosen v. Celebrezze, supra* at ¶ 31.

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<sup>4</sup> The State of Virginia has likewise adopted the UCCJEA, codified as Va.Code § 20-146.1, *et seq.*

As codified in Ohio, R.C. 3127.15 provides as follows:

(A) Except as otherwise provided in section 3127.18 of the Revised Code, a court of this state has jurisdiction to make an initial determination in a child custody proceeding only if one of the following applies:

(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 division (A)(1) of this section or a court of the home state of the child has declined to exercise jurisdiction on the basis that this state is the more appropriate forum under section 3127.21 or 3127.22 of the Revised Code, or a similar statute of the other state, and both of the following are the case:

(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.

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

(3) All courts having jurisdiction under division (A)(1) or (2) of this section 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 section 3127.21 or 3127.22 of the Revised Code or a similar statute enacted by another state.

(4) No court of any other state would have jurisdiction under the criteria specified in division (A)(1), (2), or (3) of this section.

R.C. 3127.15(A).

R.C. 3127.15(B) declares that R.C. 3127.15(A) "is the exclusive jurisdictional basis for making a child custody determination by a court of this state."

In order to appropriately apply the provisions of the UCCJEA, it is necessary to review the relevant terms. Ohio's definitions are set forth in separate provision under R.C. 3127.01, while Virginia's comparable definitions are all set forth generally under Va.Code § 20-146.1.

In particular, “child custody proceeding” is defined as a proceeding in which legal custody, physical custody, parenting time, or visitation with respect to a child is an issue, and includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, parentage/paternity, termination of parental rights, and protection from domestic violence, but does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under the applicable law. R.C. 3127.01(B)(4).

The “initial determination” means the first child custody determination concerning a particular child. R.C. 3127.01(B)(8). “Child custody determination” means a judgment, decree, or other order of a court that provides for legal custody, physical custody, parenting time, or visitation with respect to a child and includes permanent, temporary, initial, and modification orders but does not include an order relating to child support or other monetary obligations of an individual. R.C. 3127.01(B)(3).

“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 preceding the commencement of a child custody proceeding and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

R.C. 3127.01(B)(7). “Commencement” means the filing of the first pleading in a proceeding.

R.C. 3127.01(B)(5).

Applying these definitions to the admittedly peculiar facts of this case points to the conclusion ultimately arrived at by the Court of Appeals in this case.

To begin, there is no dispute that Mother filed her Ohio child custody action on February 27, 2012 and that Father filed his Virginia child custody action on March 20, 2012. The Ohio Juvenile Court – in consultation with the Virginia Juvenile and Domestic Relations District

Court – determined on May 29, 2012 that Ohio did not have “home state” jurisdiction while Virginia did have “home state” jurisdiction.<sup>5</sup> Seven (7) days later, on June 5, 2012, the Virginia District Court ordered that the parties were to have joint legal custody of the children, with primary physical custody with Father and Mother having liberal visitation and physical custody during have of the summer.

Meanwhile back in Ohio, Mother moved the trial court to reconsider the Ohio Juvenile Court’s May 29, 2012 final order dismissing mother’s case.<sup>6</sup> See *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶ 8. On June 28, 2012, the trial court denied Mother’s motion for reconsideration, which Mother then appealed to the Eighth District Court of Appeals. On February 14, 2013, the Court of Appeals determined that there were issues of fact that had to be resolved by an evidentiary hearing and accordingly remanded the case “for the trial court to hold an evidentiary hearing to determine whether Ohio or Virginia is the ‘home state’ of the children.” *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495 at ¶ 26.

On remand, the Ohio Juvenile Court conducted an evidentiary hearing as was mandated by the Court of Appeals in *In re E.G.* Putting aside for the moment the outcome of that evidentiary hearing, it cannot fairly be said that the Ohio Juvenile Court’s exercise of judicial power in that matter was unauthorized by law. The court was authorized to determine whether Ohio was the “home state” of the children if only to determine the Ohio court’s own jurisdiction

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<sup>5</sup> Inasmuch as that order cancelled all further Ohio court proceedings, it was presumably a final order in the matter and was immediately appealable as expressly indicated on page 2 of the exhibit.

<sup>6</sup> In *Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 423 N.E.2d 1105 (1981), the Supreme Court of Ohio held that the Ohio Rules of Civil Procedure do not prescribe motions for reconsideration after a final judgment in the trial court. *Id.* at syllabus. The court declared that “motions for reconsideration of a final judgment in the trial court are a nullity.” *Id.* at 379, 423 N.E.2d 1105.

to proceed. Indeed, the Court of Appeals' mandate in *In re E.G.* required the Ohio Juvenile Court to exercise its judicial powers. Under these circumstances, it cannot be said that the trial court patently and unambiguously lacked jurisdiction.

And the issue the Ohio Juvenile Court had to determine on remand was whether or not Ohio was the children's "home state" under the UCCJEA. In *Rosen v. Celebrezze, supra*, the court held that R.C. 3127.15(A)(1) conferred home-state jurisdiction "on the state that was the home state within six months before the commencement of the child-custody proceeding." *Id.* at ¶ 41. "Put another way, a child's home state is where the child lived for six consecutive months ending within the six months before the child custody proceeding was commenced." *In re E.G.*, 8th Dist. No. 98652, 2013-Ohio-495, at ¶ 14. *See also In re J.E.*, 8th Dist. No. 97116, 2012-Ohio-704, at ¶ 12 (Ohio is home state so long as the six-consecutive-month period ends within six months prior to the commencement of the child custody proceeding).

After conducting the evidentiary hearing on remand, the Ohio Juvenile Court determined that Ohio was in fact the children's "home state." Based on the evidence adduced at the evidentiary hearing, the trial court's April 22, 2014 order found that mother continued to be the children's residential parent as a matter of law. Because Mother remained an Ohio resident and had not waived, relinquished, or abandoned her parental responsibilities and custody over the children, it followed that the children were likewise Ohio residents. The Ohio Juvenile Court therefore determined that Ohio was the home state and that the court accordingly had "home state" jurisdiction to determine these child custody issues pursuant to R.C. 3127.15(A)(1).

Father for his part contended that the trial court erroneously focused on Mother's residence and her custodial responsibilities as an unmarried mother instead of on the residence of the children. (See Complaint at paras. 26-31.) But those objections did not contest the trial

court's jurisdiction to conduct these proceedings; they contested the decision resulting from those proceedings. To the extent Father disagreed with the trial court's findings, appeal generally would have provided an adequate remedy at law to address his contentions. See *France v. Celebrezze*, 8th Dist. No. 98992, 2012-Ohio-5085, at ¶ 10 (appeal constitutes an adequate remedy at law to contest trial court determinations under the UCCJEA). But Father's disagreement with the trial court's ruling does not mean that the trial court lacked jurisdiction to make the ruling.

And when the critical facts of the children's residence is considered, Mother's initial UCCJEA affidavit filed with her February 27, 2012 complaint averred that the children resided with her in Ohio since their births, whereas Father's subsequent chronology of residences, taking into account the factual error contained in his initial affidavit, would suggest that the state in which the children last lived for six (6) consecutive months prior to the filing of any child custody proceeding was Virginia, for the period from April 9, 2010 to December 23, 2010.

In any case, there can be no dispute that on June 5, 2012, the Arlington County Juvenile and Domestic Relations District Court issued its child custody order in this matter. To be sure, Father's Virginia child custody proceeding was filed after Mother's Ohio child custody proceeding was filed. Under the UCCJEA, a state court may not exercise jurisdiction if an action is already pending in another state court. Va.Code § 20-146.17 reads as follows:

- A. Except as otherwise provided in Va.Code § 20-146.15, a court of this Commonwealth may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding a proceeding concerning the custody of the child has been previously commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this Commonwealth is a more convenient forum under Va.Code § 20-146.18.
- B. Except as otherwise provided in Va.Code § 20-146.15, a court of this Commonwealth, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Va.Code § 20-146.20. If the court determines that a child custody proceeding has been commenced in a court another state having jurisdiction substantially in accordance with this act, the court of this Commonwealth shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this Commonwealth is a more appropriate forum, the court of this Commonwealth shall dismiss the proceeding.

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Va.Code § 20-146.17. Accord R.C. 3127.20.

But prior to the Virginia court's June 5, 2012 "custody order," the Ohio Juvenile Court had already dismissed Mother's Ohio case without making any "initial determination" on May 29, 2012. Consequently, the Virginia court's June 5, 2012 "custody order" must by any measure be considered the "initial determination" in this child custody proceeding. See Va.Code § 20-146.1. It cannot be said that the Ohio Juvenile Court made any prior "initial determination" under R.C. 3127.01(B)(8) because the Ohio court dismissed Mother's action on May 29, 2012.

To the extent that the Virginia court made the initial determination in this child custody proceeding, that court acquired exclusive and continuing jurisdiction over this matter by operation of law. Va.Code § 20-146.13 reads as follows:

- A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth that has made a child custody determination consistent with § 20-146.12 or § 20-146.14 has exclusive, continuing jurisdiction as long as the child, the child's parents, or any person acting as a parent continue to live in this Commonwealth.
- B. A court of this Commonwealth 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 § 20-146.12.

Va.Code § 20-146.13. Accord R.C. 3127.16. *See also Rosen v. Celebrezze, supra* at ¶ 21 (UCCJEA gives "jurisdictional priority and exclusive continuing jurisdiction to the home state.").

And once the Virginia court made its child custody determination, the UCCJEA would generally forbid another state court from modifying that court order. R.C. 3127.17 reads as follows:

Except as otherwise provided in section 3127.18 of the Revised Code [applicable to temporary emergency jurisdiction], a court of this state may not modify a child custody determination made by a court of another state unless the court of this state has jurisdiction to make an initial determination under division (A)(1) or (2) of section 3127.15 of the Revised Code and one of the following applies:

- (A) The court of the other state determines that it no longer has exclusive, continuing jurisdiction under section 3127.16 of the Revised Code or a similar statute of the other state or that a court of this state would be a more convenient forum under section 3127.21 of the Revised Code or a similar statute of the other state.
- (B) The court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

R.C. 3127.17.

As the Court of Appeals found, R.C. 3127.43 requires an Ohio court to give full faith and credit to an order issued by another state pursuant to the UCCJEA. R.C. 3127.43 reads as follows:

A court of this state shall accord full faith and credit to an order issued by another state consistent with this chapter that enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under sections 3127.15 to 3127.24 of the Revised Code or a similar statute of another state.

R.C. 3127.43.

The record establishes that the Virginia courts made the initial custody determination and thus acquired exclusive, continuing jurisdiction over the determination. Unless and until such time as a court of competent jurisdiction sets aside that exercise of jurisdiction, the UCCJEA requires courts of another state to refrain from interfering with that exercise of jurisdiction. Encouraging a state court to act as a reviewing court over another state court's findings would be fundamentally inconsistent with the terms of the UCCJEA and general law. To the extent that there remains any dispute between Mother and Father here as to whether Virginia has properly exercised jurisdiction under the UCCJEA, the Court of Appeals correctly determined that that is question to be directed in the first instance to the Virginia state courts, leaving open the possibility that the Ohio Juvenile Court's jurisdiction may be invoked depending on the outcome of those proceedings.

Mother relies on *Mallissa C. v. Matthew Wayne H.*, 145 N.M. 22, 193 P.3d 569 (N.M.App. 2008), in which a New Mexico family court considered whether a Texas court appeared to have jurisdiction under the UCCJEA. In that case, the Texas court had issued a TRO that directed the child's mother to appear for a hearing but which did not otherwise contain any of the information required by the UCCJEA as a predicate for jurisdiction. But unlike the instant

case in which Virginia made an initial determination, it does not appear that the Texas court in that made any initial determination. Consequently, Mother's reliance on that case is misplaced.

The Court of Appeals correctly determined that under the provisions of the UCCJEA, the Virginia state courts have jurisdiction over this child custody dispute unless and until those state court orders are vacated, modified, or stayed. Accordingly, Mother's second proposition of law is not well taken.

**III. Mother did not establish that she was entitled to relief from judgment.**

Mother's third proposition of law asserts that an intervening party should be granted relief from a writ of prohibition when it is shown that the writ was granted as a result of fraud. While that may again be true in the abstract, the record here does not substantiate that the writ of prohibition ordered here was issued as a result of fraud.

To the contrary, the decisions on review reflect that the judgment rendered by the Court of Appeals was essentially compelled by operation of law and in particular by operation of the various provisions of the UCCJEA. That analysis is set forth in the discussion addressing Mother's second proposition of law and will not be repeated here.

To the extent that there does remain any factual dispute as to whether the children truly resided in a particular state for the requisite period of time necessary to confer lawful jurisdiction on a state court pursuant to the provisions of the UCCJEA, that is an issue that should be directed in the first instance to the Virginia state courts to resolve.

**CONCLUSION**

Appellee The Cuyahoga County Court of Common Pleas, Juvenile Division, and The Honorable Alison L. Floyd respectfully request that this Court affirm the judgment of the Court of Appeals.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Pursuant to S.Ct.Prac.R. 3.11(B)(1), a true copy of the foregoing Merit Brief of Appellees Cuyahoga County Court of Common Pleas, Juvenile Division, and The Hon. Alison L. Floyd was served this 24<sup>th</sup> day of June 2015 by e-mail upon:

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# APPENDIX

## **ORC Ann. 3127.01**

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 6 (SB 38).

### **Page's Ohio Revised Code Annotated > Title 31: Domestic Relations — Children > Chapter 3127: Uniform Child Custody Jurisdiction and Enforcement Act**

#### **§ 3127.01 Definitions.**

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- (A) As used in the Revised Code, "uniform child custody jurisdiction and enforcement act" means the act addressing interstate recognition and enforcement of child custody orders adopted in 1997 by the national conference of commissioners on uniform state laws or any law substantially similar to the act adopted by another state.
- (B) As used in sections 3127.01 to 3127.53 of the Revised Code:
- (1) "Abandoned" means the parents of a child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that ninety-day period.
  - (2) "Child" means an individual who has not attained eighteen years of age.
  - (3) "Child custody determination" means a judgment, decree, or other order of a court that provides for legal custody, physical custody, parenting time, or visitation with respect to a child. "Child custody determination" includes an order that allocates parental rights and responsibilities. "Child custody determination" includes permanent, temporary, initial, and modification orders. "Child custody determination" does not include an order or the portion of an order relating to child support or other monetary obligations of an individual.
  - (4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, parenting time, or visitation with respect to a child is an issue. "Child custody proceeding" may include a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, parentage, termination of parental rights, or protection from domestic violence. "Child custody proceeding" does not include a proceeding regarding juvenile delinquency, contractual emancipation, or enforcement pursuant to sections 3127.31 to 3127.47 of the Revised Code.
  - (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 preceding the commencement of a child custody proceeding and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other 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 sections 3127.01 to 3127.53 of the Revised Code.
  - (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 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 the child's parent, who meets both of the following criteria:
- (a) The person has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence from the child, within one year immediately before the commencement of a child custody proceeding; and
  - (b) The person 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 Alaskan Native village that is recognized by federal or state law.
- (17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

## History

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*150 v S 185*, § 1, eff. 4-11-05.

## **ORC Ann. 3127.15**

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 6 (SB 38).

**Page's Ohio Revised Code Annotated > Title 31: Domestic Relations — Children > Chapter 3127: Uniform Child Custody Jurisdiction and Enforcement Act**

### **§ 3127.15 Jurisdiction of Ohio court to make initial determination.**

- (A) Except as otherwise provided in section 3127.18 of the Revised Code, a court of this state has jurisdiction to make an initial determination in a child custody proceeding only if one of the following applies:
- (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 division (A)(1) of this section or a court of the home state of the child has declined to exercise jurisdiction on the basis that this state is the more appropriate forum under section 3127.21 or 3127.22 of the Revised Code, or a similar statute of the other state, and both of the following are the case:
    - (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.
    - (b) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.
  - (3) All courts having jurisdiction under division (A)(1) or (2) of this section 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 section 3127.21 or 3127.22 of the Revised Code or a similar statute enacted by another state.
  - (4) No court of any other state would have jurisdiction under the criteria specified in division (A)(1), (2), or (3) of this section.
- (B) Division (A) of this section 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**

150 v S 185, § 1, eff. 4-11-05.

## **ORC Ann. 3127.16**

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 6 (SB 38).

**Page's Ohio Revised Code Annotated > Title 31: Domestic Relations — Children > Chapter 3127: Uniform Child Custody Jurisdiction and Enforcement Act**

### **§ 3127.16 Duration of Ohio court's exclusive, continuing jurisdiction.**

Except as otherwise provided in section 3127.18 of the Revised Code, a court of this state that has made a child custody determination consistent with section 3127.15 or 3127.17 of the Revised Code has exclusive, continuing jurisdiction over the determination until the court 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.

### **History**

150 v S 185, § 1, eff. 4-11-05.

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## **ORC Ann. 3127.17**

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 6 (SB 38).

**Page's Ohio Revised Code Annotated > Title 31: Domestic Relations — Children > Chapter 3127: Uniform Child Custody Jurisdiction and Enforcement Act**

### **§ 3127.17 When Ohio court may modify determination made in another state.**

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Except as otherwise provided in section 3127.18 of the Revised Code, a court of this state may not modify a child custody determination made by a court of another state unless the court of this state has jurisdiction to make an initial determination under division (A)(1) or (2) of section 3127.15 of the Revised Code and one of the following applies:

- (A) The court of the other state determines that it no longer has exclusive, continuing jurisdiction under section 3127.16 of the Revised Code or a similar statute of the other state or that a court of this state would be a more convenient forum under section 3127.21 of the Revised Code or a similar statute of the other state.
- (B) The court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

### **History**

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150 v.S 185, § 1, eff. 4-11-05.

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## **ORC Ann. 3127.20**

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 6 (SB 38).

**Page's Ohio Revised Code Annotated > Title 31: Domestic Relations — Children > Chapter 3127: Uniform Child Custody Jurisdiction and Enforcement Act**

### **§ 3127.20 Effect of pending proceeding in another state.**

- (A) Except as otherwise provided in section 3127.18 of the Revised Code, a court of this state may not exercise its jurisdiction under sections 3127.15 to 3127.17 of the Revised Code if, at the time of the commencement of the proceeding, a child custody proceeding concerning the child is pending in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 3127.21 of the Revised Code or a similar statute of the other state.
- (B) Except as otherwise provided in section 3127.18 of the Revised Code, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 3127.23 of the Revised Code. If the court determines that a child custody proceeding is pending in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.
- (C) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may do any of the following:
- (1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
  - (2) Enjoin the parties from continuing with the proceeding for enforcement;
  - (3) Upon the demonstration of an emergency, proceed with the modification under conditions the court considers appropriate.

### **History**

150 v S 185, § 1, eff. 4-11-05.

## **ORC Ann. 3127.43**

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 6 (SB 38).

**Page's Ohio Revised Code Annotated > Title 31: Domestic Relations — Children > Chapter 3127: Uniform Child Custody Jurisdiction and Enforcement Act**

### **§ 3127.43 Full faith and credit accorded to orders issued in another state.**

A court of this state shall accord full faith and credit to an order issued by another state consistent with this chapter that enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under sections 3127.15 to 3127.24 of the Revised Code or a similar statute of another state.

### **History**

150 v S 185, § 1, eff. 4-11-05.

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## **Va. Code Ann. § 20-146.1**

Current through the 2015 Regular Session of the General Assembly.

**Code of Virginia > TITLE 20. DOMESTIC RELATIONS > CHAPTER 7.1. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT > ARTICLE 1. GENERAL PROVISIONS**

### **§ 20-146.1. Definitions**

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In this act:

*"Child"* means an individual who has not attained eighteen years of age.

*"Child custody determination"* means a judgment, decree, 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, or modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

*"Child custody proceeding"* means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for 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, contractual emancipation, or enforcement under Article 3 (§ 20-146.22 et seq.) of this chapter.

*"Commencement"* means the filing of the first pleading in a proceeding.

*"Court"* means a court of competent jurisdiction as determined by otherwise applicable Virginia law to establish, enforce, or modify a child custody determination or an entity authorized under the law of another state to establish, enforce or modify a child custody determination.

*"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 any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

*"Initial determination"* means the first child custody determination concerning a particular child.

*"Issuing court"* means the court that makes a child custody determination for which enforcement is sought under this act.

*"Issuing state"* means the state in which a child custody determination is made.

*"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.

*"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.

*"Person acting as a parent"* means a person, other than a parent, who has (i) 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 (ii) been awarded legal custody by a court or claims a right to legal custody under the laws of this Commonwealth.

*"Physical custody"* means the physical care and supervision of a child.

"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.

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

## **History**

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1979, c. 229, § 20-125; 2001, c. 305.

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## **Va. Code Ann. § 20-146.12**

Current through the 2015 Regular Session of the General Assembly.

**Code of Virginia > TITLE 20. DOMESTIC RELATIONS > CHAPTER 7.1. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT > ARTICLE 2. JURISDICTION**

### **§ 20-146.12. Initial child custody jurisdiction**

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- A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth has jurisdiction to make an initial child custody determination only if:
1. This Commonwealth 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 Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;
  2. A court of another state does not have jurisdiction under subdivision 1, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under § 20-146.18 or § 20-146.19, 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 Commonwealth other than mere physical presence and (ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training, and personal relationships;
  3. All courts having jurisdiction under subdivision 1 or 2 have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under § 20-146.18 or § 20-146.19; or
  4. No court of any other state would have jurisdiction under the criteria specified in subdivision 1, 2, or 3.
- B. Subsection A is the exclusive jurisdictional basis for making a child custody determination by a court of this Commonwealth.
- 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**

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1979, c. 229, § 20-126; 2001, c. 305.

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## **Va. Code Ann. § 20-146.13**

Current through the 2015 Regular Session of the General Assembly.

**Code of Virginia > TITLE 20. DOMESTIC RELATIONS > CHAPTER 7.1. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT > ARTICLE 2. JURISDICTION**

### **§ 20-146.13. Exclusive, continuing jurisdiction**

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- A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth that has made a child custody determination consistent with § 20-146.12 or § 20-146.14 has exclusive, continuing jurisdiction as long as the child, the child's parents, or any person acting as a parent continue to live in this Commonwealth.
- B. A court of this Commonwealth 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 § 20-146.12.

### **History**

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2001, c. 305.

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## **Va. Code Ann. § 20-146.17**

Current through the 2015 Regular Session of the General Assembly.

**Code of Virginia > TITLE 20. DOMESTIC RELATIONS > CHAPTER 7.1. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT > ARTICLE 2. JURISDICTION**

### **§ 20-146.17. Simultaneous proceedings**

- A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been previously commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this Commonwealth is a more convenient forum under § 20-146.18.
- B. Except as otherwise provided in § 20-146.15, a court of this Commonwealth, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to § 20-146.20. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this Commonwealth shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this Commonwealth is a more appropriate forum, the court of this Commonwealth shall dismiss the proceeding.
- C. In a proceeding to modify a child custody determination, a court of this Commonwealth shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:
  - 1. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
  - 2. Enjoin the parties from continuing with the proceeding for enforcement; or
  - 3. Proceed with the modification under conditions it considers appropriate.

### **History**

1979, c. 229, § 20-129; 2001, c. 305.

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