

only J is his only biological child of this marriage) since he has abandoned them on July 00, 0000. R C did not come to see J in Milwaukee from July 00, 0000 to February of 0000. He did not visit or have any relationship with J from February of 0000 to August of 0000 when he lived in the same state as J. From August of 0000 to the present, R C has had minimal contact with J, and, contrary to the statement in the father's memorandum, the only contacts R C had with J were the results of D C's extra efforts. In the nearly five years since the children have been placed with D C, she is only aware of R C coming to Wisconsin three times, and never for the purpose of visiting J. Two times were to respond to a summons: this case, and in September of 0000 to attend a child custody hearing in Milwaukee. The only other time that is known that R C was in Milwaukee was on December 00, 0000 for a funeral.

The contact R C has had with the children has only been because D C has sought out the father when she has traveled down to Mississippi with the children to provide visits to the mother who is incarcerated. While D C was down in Mississippi she set up visits for the children to see R C.

Purpose of the Uniform Child Custody Jurisdiction Act

In reviewing the Uniform Child Custody Jurisdiction Act (hereinafter UCCJA), as is written in chapter 822 of the Wisconsin Statutes, it is clear that the intention of the statute would be to have this court and this state have jurisdiction over matters that match this fact pattern. The purposes of UCCJA, as stated in Wis. Stats. 822.01(1), indicate that this court should be the court to exercise jurisdiction. 822.01(1)(a) states this act is to try

and “[a]void jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.” Allowing the Mississippi order of custody to prevail would be to create the problems this act was meant to avoid. J has spent all but about 00 months of her 00-year-old life in the care of D C or with D C having a significant role in her life. J has never been separated from her sister S. The amount of harm that would come to J if she was separated from the only home and family she has ever known is significant and the effects would be devastating.

Section 822.01(1)(b) further states the purpose of the act is to allow the state that is in the best position to decide what is in the best interest of the child to make the custody decision. This is the state that the children have lived almost all of their lives and this court would have a much easier time determining what result would be the best for these children. The Mississippi courts would be at a distinct disadvantage in determining what would be best for the children. It appears the Mississippi courts made no consideration of what would be in the best interest of the children which is a fatal flaw in determining whether that decision is in compliance with the UCCJA.

Reasons for this court having jurisdiction

Two people make up the core of J’s closest family relationships: D C, maternal grandmother, and S, sister. For the reasons stated above, this cannot be disputed. The protection, care, schooling, and personal relationships that make up J’s life are here in Milwaukee and in the household of D C. J has a stable home environment and secure family relationships in this home. These factors are listed in Wis. Stats. Sec. 822.01(1)(c) &(d) and would further indicate that this

state should have jurisdiction of this matter. [These factors are also discussed in Wis. Stats. Sec. 822.03(1)(b)]

The statutes definition of a child's "home state" having priority in considering jurisdiction is found in Wis. Stats. Sec. 822.02(5). This definition indicates a home state is one in which the child lived with a parent, or a person acting as a parent (D C), for at least 6 months prior to the period in time at issue. In this case, J's home state has been established almost 00 years here in Wisconsin.

The argument to have this case tried in Wisconsin also finds support in Wis. Stats. Sec. 822.03(1)(c). In this statute, the child is physically present in the state and the child has been abandoned. As was indicated above, the father abandoned the family on July 00, 0000 and has only had contact with J upon efforts arranged by D C when she went down to Mississippi to give the parents visitation.

Another ground which may exist, but which this court may need to check with documents from Mississippi, is the ground found in Wis. Stats. Sec. 822.03(1)(d). This ground states that Wisconsin would have jurisdiction if Mississippi declined to exercise jurisdiction on the ground that Wisconsin was the more appropriate forum to determine custody and to determine what was in the best interest of the child. Attached as Exhibit "B" is a joint petition/order signed, notarized, and initialed by both parents but which does not have a court signature on it. This is the only document D C has and it is what the mother believes was the order of the court in Mississippi. The mother's intentions in the divorce action could not be clearer. S C only agreed with the divorce if it meant the children would remain with her mother in the only home they had known. Further evidence of this intent is found in Exhibits "C" and "D". What also is very clear is that both parents signed in numerous places and initialed on many pages

indicating their clear intent on October of 0000 that jurisdiction over the children's custody would be determined in Wisconsin courts. In what manner the father obtained a Mississippi court order contrary to this mutual agreement is unclear, but it is clear the order entered by Mississippi was not ever the intent of the mother and was not the intent of either party on October of 0000.

The reasons Mississippi should not be the venue for this action

The court in Mississippi that entered the custody order was likely not aware of the existing custody order in Wisconsin. That court would have been required under the UCCJA to contact the Wisconsin court to coordinate the decision making process. The decision made in Mississippi, whether the court there was aware of Wisconsin's custody order or not, was in violation of the UCCJA. The violations of this order include not being in compliance with the act [Wis. Stats. Sec. 822.06] by ignoring or being unaware of what was in the best interest of the children which is the central purpose of the act. No effort was made to contact this jurisdiction to see how the children were doing or to look into what substantial relationships would be sacrificed and how limited the relationships were in Mississippi.

Course of action the Wisconsin courts should pursue

Before this court makes a decision on whether to accept or decline jurisdiction, the UCCJA provides that the court may communicate with a court of another state and exchange information pertinent to which court would be in the best position to have jurisdiction on this matter [Wis. Stats. Sec. 822.07(4)]. It would be very important in this case for this exchange of information to take place. This exchange is essential in fairness to all parties, but it is most essential in determining what is in the best interest of these children. Wis. Stats. Sec. 822.19, 822.20, & 822.22 discuss the requests each court could

make of one another. In this case it would be important to have the transcripts and any social service reports available or initiated to be shared between the states to truly determine what is in these children's best interest and what is in conformance with the UCCJA.

Conclusion

The petitioner became aware of the Mississippi order enclosed in the father's memorandum when served a copy on May 00, 0000. How that document was produced considering the mutual intention of the parties as documented in Exhibit "B" is unknown. What is known is that the order from Mississippi does not conform with the provisions of the UCCJA, and is therefore not required to be followed in this state. The statute only requires a state to honor a decision made in another state if it complies with the provisions of the UCCJA. [Wis. Stats. Sec. 822.13] As stated above, there is no evidence that the factors considered crucial by the UCCJA in determining what is in the best interest of the children was followed at all in the Mississippi decision. It would be important for this court to begin communicating with the Mississippi court and to exchange information so that a decision can be made which safeguards the best interest of the children. The UCCJA was designed to help states work together to find the best solution for children. The UCCJA was also designed to avoid an inadequately informed court in one jurisdiction to unintentionally harm a child currently living in another jurisdiction by entering an order without knowing the entire picture. The petitioner

respectfully requests that information is shared between Wisconsin and Mississippi courts to make an informed decision as to what is in these children's best interest.

Dated at Milwaukee, Wisconsin this 00th day of May, 0000.

Attorney Myron Daubert
Attorney for D C
State Bar # 1000587

Post Office Address
1441 North Mayfair Road, Suite 201
Wauwatosa, WI 53226
(414) 000-0000