NFLR
NEVADA FAMILY LAW REPORT

Volume 8, Number 4 Winter, 1993

1993 FAMILY LAW LEGISLATION

by Peter Jaquette, Esq.

The Nevada Legislature showed very little interest in family law in 1993, carrying on the pattern established in the last couple of sessions. One noteworthy area of inactivity was the Legislature's failure to even discuss possible changes to the child support guidelines.

You may recall, the 1991 Legislature, in an apparent attempt to avoid heat from both from both fathers and mothers groups, asked the State Bar to conduct a review of the formulas "to determine whether any modifications are advisable and report to the Legislature their findings and any proposed amendments." The State Bar delegated this task to the Family Law Section and a committee, chaired by Marshal Willick, spent many hours studying guidelines of other states, the problems or successes of other states, statutory schemes, as well as the perceived problems of the guidelines as they were utilized in Nevada.

The Committee's work resulted in a number of recommendations which were presented to the Legislature. The Committee was then asked to draft proposed legislation which would include many of its recommendations. The result was SB 439, which recommended, among other things, that the child support "ceiling" be raised from $500.00 per child to $1,000.00 per child, that work related child care expenses be awarded in addition to the formula and allocated between the parents in proportion to their relative incomes, that unreimbursed medical expenses be apportioned according to income and that the courts be authorized to consider child support reductions during periods of visitation of fourteen consecutive days and longer.

SB 439 was introduced in early May, referred to committee and ignored. No hearings were held. No action was taken.

AB 420 This bill would have clarified the conflicting caselaw in Nevada regarding the treatment of assets omitted or overlooked during a divorce. This will would have given the courts authority to divide such property in the same manner as it would have been divided at the time of divorce, had it been disclosed or discovered. This bill also died a silent death in committee.

All statutory enactments are in effect as of October 1, 1993. Legislation that was passed includes the following:

CHILD CUSTODY

SB 470, which amends NRS 126.031, establishes custody in the absence of a court order as follows:

a. If the parents have married, each parent has joint legal custody of the child until otherwise ordered by a court;

b. If the child is born out of wedlock and the mother has not married the father, mother has primary physical custody except:

1. The father of a child born out of wedlock has primary physical if the mother has abandoned the child to the father (at least six weeks) and the father has "provided sole care and custody of the child in her absence."

NRS 200.359, the Parental Kidnapping Statute, is amended to include the changes set forth above and to make it clear that the removal or retention of a child "to protect the child from imminent danger of abuse or neglect or to protect the parent from such neglect exempts the removal or detention from the effects of

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NEVADA FAMILY LAW REPORT is a quarterly publication of the Family Law Section of the State Bar of Nevada. Subscription price for non-section members is $35 payable in advance annually from January 1 to December 31. There are no prorations.

The *NEVADA FAMILY LAW REPORT* is intended to provide family law related material and information to the bench and bar with the understanding that neither the State Bar of Nevada, Family Law Section editorial staff nor the authors intend that its content constitutes legal advice. Services of a lawyer should be obtained if assistance is required. Opinions expressed are not necessarily those of the State Bar of Nevada or the editorial staff.

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From the Editor

by Marshal S. Willick

The number of technological options to assist in family practice continues to increase. Now, Lexis has announced a flat rate for access to specialized databases, including Domestic Relations. Some writers have expressed the opinion that at some near point in technological development, malpractice liability will become coextensive with the information readily available in such databases.

This issue features as a practice aid a "fall-out" child support chart. The simplicity of the Nevada child support formula allows for the presumed amount of support across a wide range of incomes to be set out in just a couple of pages. Please feel free to make copies for your staff and clients; it appears to be helpful to many people in turning the abstraction of a percentage into a number they can easily deal with.

Also included is another copy of the "NFLR Judgment, Order, and Settlement Report Form." Right now, while the thought is fresh, please take a moment to share your experience in a recent case with the Section.

Does any member of the Section *not* have one of the burgundy and gray NFLR binders? If so, contact Ishi Kunin (Las Vegas), Peter Jaquette (Carson City), or Mary Rose Zingale (Elko) for your binder.

By now each of you should have received a letter from Peter Jaquette telling you about the program at Tonopah March 17-19. The Council has followed the survey suggestions made by those attending last year, and this year's program will have a more local character and feature a far greater spectrum of social activities. If you did not get the letter and program, call Peter (882-7434) for a copy. Register quickly — there is a $45.00 savings (more than the cost of Section membership!) for Section members who register prior to March 11.

It appears that the private bar membership in the section is some 219 members. This *de facto* specialty bar has, to my observation, coalesced into a generally civil and congenial group, reminiscent in many ways of the descriptions older lawyers gave of "the good old days" in which you could trust representations made over the phone as to procedural matters, etc. With a few notable bad apples aside, it seems to me that we may have re-established that general atmosphere, at least among those of us that spend all our time in the family courts. Is this conclusion shared, or do any of you think that the family law practice is getting worse in terms of general civility among lawyers?

Articles, Case Summaries Wanted for NFLR

The Nevada Family Law Report seeks to provide interesting and substantive family law material to educate both the bench and the bar. NFLR needs articles for upcoming issues. If you are interested in writing critiques of pertinent cases, reports/opinions of family law legislation or discussions of family law trends and issues, please request authors guidelines from Editor Marshal Willick, 330 S. Third St., #960, Las Vegas, NV 89101. Telephone, 384-3440.

Articles published in the NFLR are eligible for continuing legal education credits. Contact the MCLE Board, 329-4443, for applications.

The Section's publication needs your input and contributions. Please contact an editor to discuss any article topic, critique or book review.

Legislation con't

this statute."

SB 472 Chapter 125A is amended to require that visitation rights must be defined with "sufficient particularity" to insure that the rights of the parties can be properly enforced and that the best interest of the child is achieved." This appears to mean that parents who may be perfectly comfortable with an unspecified visitation schedule will be required to include such a schedule in their decree or custody order.

This bill also allows for the non-disclosure of past and present addresses of the child if the court finds that such a non-disclosure would protect the child or any other person from physical or emotional abuse. NRS 125.470 is also amended to provide for law enforcement assistance and other technical procedures for obtaining actual physical custody of a child pursuant to court order.

AB 174 amends Chapter 125A to provide that a convicted rapist who causes the birth of a child has no right to custody or visitation unless the mother consents and it is in the best interest of the child. The limitation is not applicable if the rapist is married to the victim, but the court in a later divorce proceeding may consider the rapist's conduct in considering custody and visitation.

DIVISION OF PROPERTY

AB 347 This bill is the legislative response to McNabney v. McNabney and the debate between equal and equitable distribution of property. NRS 125.150 is amended to provide that the court shall, "to the extent practicable," make an equal disposition of community property of the parties, except that the court may make an unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition. Curiously, this bill chose to treat only community property, and not joint tenancy property.

AB 435 This bill provides that NRS 125.510 will be amended to require that joint tenancy property be treated in the same fashion as community property, except:

a. the court may reimburse, without interest or appreciation, traceable contributions of separate property after considering:

1. the intention of the parties in placing the property in joint tenancy;
2. the length of the marriage; and
3. any other factor deemed relevant.

AB 435 also includes a gratuitous reminder to the court that it may reduce alimony upon a showing that the spouse ordered to pay is "financially unable to pay the amount due to reduced income." This provision also suggests that the spouse's federal income tax return for the preceding calendar year is *the* best indication of a former spouse's income.

AB 520 This bill provides technical adjustments regarding the dividing of assets of an institutionalized spouse pursuant to NRS 123.259.

AB 555 Chapter 286 is amended to provide for the acceptance by the Nevada Public Employees Retirement System of a divorce decree or other court order dividing PERS benefits. The order apparently does not have to be a real QDRO as long as it looks like a QDRO and contains basically the same information as a QDRO.

CHILD SUPPORT

SB 298 amends NRS 125B.140 to mandate interest on child support arrearages and attorney's fees for the enforcement thereof, "unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts."

AB 604 modifies Chapter 125B of the Nevada Revised Statutes to add a new section which imposes a 10% per annum *penalty* on every child support installment which is at least one month delinquent. By statute, then, an award of child support arrearages should include a 10% penalty plus statutory interest, plus attorney's fees.

AB 492 and SB 29 amend NRS 11.190 and NRS 17.150 to eliminate the Statute of Limitations for child support arrearages judgments and any need to re-register judgment every six years. They also provide technical changes for the enforcement of support by the enforcing authority.

AB 502 clarifies the language necessary in orders declining immediate wage withholding or assignment. Evidence of timely payment of child support under a previous order for support may constitute "good cause" for the postponement of wage withholding. This bill also requires that any award which deviates from the guideline amount must include findings of fact both as to the basis for the deviation *and* the amount of support that would have been established under the applicable formula.

SB 164 amends NRS 31A to require the enforcing authority to pursue court ordered obligations to provide health insurance and allows employers at the request of the enforcing authority, to enroll the child in an available health insurance plan and to deduct the cost thereof from the employee's salary or wages.

OTHER MATTERS

Five or six bills have made mostly technical adjustments or changes to Chapter 127 to tighten up the temporary and permanent placement rules. In light of the recent national attention to adoption problems, it is a good idea to re-read the entire Chapter carefully after the October 1 amendments have been included.

AB 583 amends NRS 126 to authorize surrogacy contracts.

AB 44, 146 and 341 made technical changes to the solemnization of marriages such as when and by whom such services can be performed.

AB 523 deletes the compromise of minor's claims from the Family Court jurisdiction and adds Chapter 433A Involuntary Admissions to Mental Health Facilities.

AB 540 amends NRS 33.020 to allow courts to issue Temporary Protective Orders by phone or fax if alleged batterer is under arrest, and requires detention facility to serve alleged batterer before releasing him.

SB 413 amends Chapter 14 to allow service of process by leaving papers with the guard of a gated community if the guard denies access to the property.

AB 199 amends Chapter 200 to give jurisdiction over stalking to justice courts and create new crime of stalking.

The Uniform Child Custody Jurisdiction Act (UCCJA) —NRS Chapter 125A— The Federal Parental Kidnapping Prevention Act (PKPA) —28 U.S.C. §1738A—

by Colleen Harrison, Esq.
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A. BACKGROUND

1. Overview

(a) UCCJA. The UCCJA is intended to resolve jurisdictional disputes in child custody cases where more than one state may have jurisdiction. Every state and the District of Columbia has adopted some form of the UCCJA. The purposes of the UCCJA, as set out in NRS 125A.020, are generally to avoid jurisdictional competition between states, to avoid unnecessary relitigation of custody decisions, to facilitate the enforcement of custody decrees of other states and to deter abductions and other unilateral removals of children from one jurisdiction to another. As with all legal matters relating to children, the overriding concern is always the best interests of the child. The jurisdictional issues raised under the UCCJA must be given calendar priority by the court and must be "handled expeditiously." NRS 125A.110.

(b) PKPA. Although the UCCJA tightened the jurisdictional standards to prevent forum shopping, it is not a total "panacea." Confusion among the states that adopted the UCCJA still resulted in many instances of two courts exercising or asserting concurrent jurisdiction. The UCCJA does not address the situation where courts of different states construe their respective provisions of the UCCJA differently.

The problem became one of legislative dimension since in the case where two state courts' constructions of the UCCJA result in conflicting custody orders, the United States Supreme Court has abstained from determining which decree is valid in order to avoid an interpretation of state law. In an attempt to resolve this conflict and to discourage "child snatching" and forum shopping by a parent, Congress in 1980 enacted the Parental Kidnapping Prevention Act, or PKPA, 28 U.S.C. §1738A.

Essentially, this Act requires each state to afford full faith and credit to another state's preexisting custody decree if the preexisting decree was made consistently with the provisions of the Act. The PKPA is more stringent than the UCCJA in limiting jurisdiction where there is a question as to home state, where modification of a custody decree is involved or where a custody proceeding is pending in another state, as will be discussed below.

(c) APPLICABILITY. Both Acts must be consulted whenever child custody is at issue. While it is generally clear that the criteria of the UCCJA and the PKPA apply to divorce-related proceedings, some states have also applied these provisions to custody proceedings in other actions, including adoption and termination of parental rights, *Souza v. Superior Court*, 238 Cal. Rptr. 892 (Ct. App. 1987), domestic violence, *Zappitello v. Moses*, 458 N.W.2d 784 (N.D. 1990), and paternity, *Albers v. Ames*, 616 S.W.2d 653 (Tex. Ct. App. 1981).

2. Nevada Case Law

(a) SWAN CASE. The Nevada Supreme Court in *Swan v. Swan*, 106 Nev. 464, 796 P.2d 221 (1990), reversed a lower court's denial of a non-resident mother's motion to vacate the custody provisions of a default divorce decree, holding that the Nevada court lacked subject matter jurisdiction under the UCCJA, specifically NRS 125A.050. There the father had taken the children from Utah, the marital domicile, and filed for a divorce in Nevada. Meanwhile, the mother had filed a divorce action in Utah, and the Utah judge had encouraged the Nevada court to transfer the custody dispute to Utah. The *Swan* case sets strict standards for interpreting the UCCJA. The Nevada Supreme Court cautioned lower courts against ignoring the spirit of the UCCJA and ordered them to "comply strictly with the Act's provisions and purposes." *Swan* at 469.

(b) ADAMS CASE. In *Adams v. Adams*, 107 Nev. 790, 820 P.2d 752 (1991), the Nevada Supreme Court construed both the UCCJA and PKPA in resolving two conflicting visitation orders. Initially, a court in Nevada had made an award of custody to the father with limited visitation rights for the mother, but one month later the father filed another action in California and at the same time asked the Nevada court to relinquish its jurisdiction to the California court based on the theory of "inconvenient forum." The California court proceeded to order a temporary suspension of the mother's visitation rights under the Nevada order, pending a new hearing in California. After contacting the judge in the California case, the Nevada judge decided that Nevada would retain jurisdiction. The Supreme Court held that since Nevada continued to exercise its jurisdiction over that case, Nevada need not and should not, under either the UCCJA or the PKPA, afford full faith and credit to the California order suspending the visitation rights.

B. DETERMINING THE EXISTENCE OF SUBJECT MATTER JURISDICTION

The first step in approaching cases that may involve the UCCJA or the PKPA is for the court to decide whether it has jurisdiction under NRS 125A.050 and 28 U.S.C. §1738A(c). NRS 125A.050 sets forth five alternative grounds for the exercise of jurisdiction by a Nevada court, four of which are most commonly at issue and which are substantially the same under the PKPA.

1. Home State

(a) UCCJA. The first, under 125A.050(1)(a), authorizes jurisdiction if Nevada is the "home state" of the child

at the time of or shortly before the "commencement of the proceeding." "Home state" is defined by NRS 125A.040 as the state the child has lived in for at least 6 months before the commencement of the proceeding. Therefore, it is important to note that the 6 weeks necessary to establish personal jurisdiction for a parent's divorce is *not* sufficient, *by itself*, to establish subject matter jurisdiction over the custody of a child of that marriage.

It is therefore essential that, in any custody proceeding, the pleadings must contain the jurisdictional information required by NRS 125A.120 concerning the child's residence(s) for the past 5 years. A custody proceeding, as defined by NRS 125A.040(3), apparently includes, at the very least, *all* divorces or separations, whether contested, uncontested or by joint petition, so long as there is a minor child as an issue of their marriage.

(b) PKPA. In addition to consulting the UCCJA, the court must also consult the "home state" provisions under the PKPA, specifically 28 U.S.C. §1738A(c)(1) and (2)(A). For *initial determinations* of child custody, if a state currently has jurisdiction under its laws *and* is the home state of the child, then that forum has *exclusive* subject matter jurisdiction and all other states are barred from exercising child custody jurisdiction. *See* §1738A(c)(2)(B). This can become a trap for unwary courts and attorneys as a court may end up having jurisdiction over the divorce, especially in Nevada where the residency period is only 6 weeks, but not have subject matter jurisdiction over the often pivotal custody determinations.

In the context of "concurrent" jurisdiction involving two states with pending proceedings, the PKPA would give exclusive jurisdiction to the state which won the race to the courthouse and is exercising jurisdiction consistent with the Act. (See the discussion under Section D below regarding pending proceedings). It could be argued that the same result should occur where there is "dual" jurisdiction, as where an initial custody action is filed in Nevada, which is not the "home state" but can assert subject matter jurisdiction under the other alternative grounds, and no action has been filed in another state which is technically the "home state." However, it appears that, except in the case of emergencies, the PKPA would only allow a state to assume jurisdiction under alternative grounds other than "home state" if it appears that no other State *would have* home state jurisdiction. *See* 28 U.S.C. §1738A(c)(2)(B) and (D).

Although the PKPA does discuss the "appropriate forum" approach, that is only where another state has declined to exercise jurisdiction because the state whose jurisdiction is at issue is the "more appropriate forum." Therefore, in the situation where another state is the home state but no action has been brought there, the best course for a Nevada court to follow would be to contact that state and see if it would decline to exercise its jurisdiction in favor of Nevada as the appropriate forum. *See* 28 U.S.C. §1738A(c)(2)(D) and the discussion regarding appropriate forums in Section F below.

2."SIGNIFICANT CONNECTION-SUBSTANTIAL EVIDENCE". If a party cannot establish Nevada as the home state under the UCCJA, then the second option is to see if there is jurisdiction under NRS 125A.050(1)(b). Here the court must find that it is in the best interest of the child to assume jurisdiction because the child and at least one of the parents have a "significant connection" with Nevada *and* there is available in Nevada "substantial evidence" concerning the child's welfare.

Note again, however, that under the PKPA subject matter jurisdiction under the "significant contacts" test can only be used where "it appears that no other State would have jurisdiction" under home state analysis. 28 U.S.C. §1738A(c)(2)(B).

3.EMERGENCY. The third option, under NRS 125A.101(1)(c) and 28 U.S.C. §1738(c)(2)(C), is used in special, exigent circumstances to assert jurisdiction for a *temporary* custody order because the child is physically present in Nevada and a serious emergency exists as the child is abandoned or subject to, or threatened with, abuse or neglect. Here it does not matter how long the child has been present in Nevada nor whether Nevada is the child's residence, as the main concern is that there is a valid emergency and a need to protect the child.

Emergency jurisdiction must be narrowly interpreted and invoked only in situations where a bona fide emergency exists. Also, the court issuing the temporary custody order should direct the parties back to the state which has proper UCCJA jurisdiction over initial or modifying orders. *See Fry v. Ball*, 544 P.2d 402 (Colo. 1975); *Brock v. District Court*, 620 P.2d 11 (Colo. 1980); *In re Marriage of Schwander*, 145 Cal. Rptr. 325 (Ct. App. 1978); *Holt v. District Court*, 626 P.2d 1336 (Okla. 1981).

4.NO OTHER STATE. If none of these first three options apply, both NRS 125A.050(1)(d) and 28 U.S.C. §1738A(c)(2)(D) authorize jurisdiction by a Nevada court if it appears that no other state would have jurisdiction consistent with these statutes or another state has declined jurisdiction and deemed Nevada the more appropriate forum. Here again, it is essential that a party in any custody proceeding comply with the requirement of NRS 125A.120 by informing the court of any other custody litigation regarding the children.

If another state is involved and there is other pending litigation, then the Nevada court must decide, even though it has concurrent jurisdiction, whether NRS 125A.060 would allow it to *exercise* that jurisdiction. Also, as discussed above, even if there is no pending litigation, the Nevada court may still have to contact the other state to determine which forum is appropriate. (See also Sections D and F below for discussion of pending proceedings and appropriate forums).

5.INDIAN CHILD. The final option under the UCCJA, NRS 125A.050(1)(e), is limited to cases where an Indian child is involved. This provision allows a court to assume jurisdiction if the child, although of Indian blood, is not subject to *exclusive* Indian jurisdiction.

C. LACK OF SUBJECT MATTER JURISDICTION

Unless a Nevada court finds that it has subject matter jurisdiction under NRS 125A.050, it cannot make any determinations relating to child custody. *Swan, supra*. Furthermore, it has been held that the "absence of the required jurisdictional pleading, combined with the failure of the dissolution court to

address the jurisdictional question, deprived that court of jurisdiction to award custody of the children." *Swan, supra*, at 469, quoting *State Ex Rel. State of Pa. v. Stork*, 641 P.2d 660 (Or. Ct. App. 1982).

The lack of subject matter jurisdiction under the UCCJA can be raised by the parties at any time, or sua sponte by a court, and cannot be conferred by the parties. *Swan, supra*. Therefore a party residing in another state does not waive any objections to subject matter jurisdiction by declining to appear in a custody proceeding in Nevada. Furthermore, parties cannot confer subject matter jurisdiction on a Nevada court by simply agreeing on Nevada as a forum if this state is clearly not an appropriate forum under the UCCJA. *See* NRS 125A.070(3)(d).

D. EXERCISE OF SUBJECT MATTER JURISDICTION — OTHER PENDING PROCEEDINGS

Even though a court has determined that it has subject matter jurisdiction over the custody proceeding, that is not the end of the court's inquiry. The court must then determine under the other provisions of the UCCJA and the PKPA whether it *should exercise* this jurisdiction. First the court should focus on whether another custody proceeding is pending in a court of another state which has jurisdiction under NRS 125A.050 or 28 U.S.C. §1738A(g). *See Swan, supra*, and *Re Marriage of Schmidt*, 436 N.W.2d 99 (Minn. 1989).

1. PENDING PROCEEDINGS UNDER UCCJA. If there is another pending proceeding, then NRS 125A.060 is the UCCJA provision to examine first. This statute in essence prohibits a Nevada court from exercising its jurisdiction if, at the time the action was commenced in Nevada, a custody proceeding was "pending" in another state's court which is exercising jurisdiction "substantially in conformity" with the UCCJA.

2. "PENDING" DEFINED. "Pending" under NRS 125A.060 means that a custody action has been filed in another state, *not* that another state retains continuing jurisdiction under a prior custody decree. *Re Marriage of Steiner*, 152 Cal. Rptr. 612 (Ct. App. 1979). As *Steiner* states, to hold otherwise would insulate all custody decrees from modification by any other state, an incorrect and unreasonable result that does not conform with the purposes of the UCCJA.

Once a custody decree has been rendered by another state and there are no further pending actions in that state, Nevada's jurisdiction is not determined by NRS 125A.060. *Wheeler v. Dist. Court of Denver*, 526 P.2d 658 (Colo. 1974). In such a case, NRS 125A.180, which concerns modification of a foreign custody decree, is the controlling UCCJA provision (discussed later under Section G).

3. COURT'S OPTIONS UNDER NRS 125A.060. Although the *Swan* case was primarily decided on the ground that the Nevada court lacked subject matter jurisdiction under NRS 125A.050, the Supreme Court recognized that if true concurrent jurisdiction exists and there is a pending proceeding in another state, then "the inconvenient forum issue must be addressed." As stated in NRS 125A.060, the Nevada court must examine the filed documents, including any information provided pursuant to NRS 125A.120, to see if there are any other pending proceedings. If it has reason to believe that such is the case, it must "direct an inquiry" to that other state's court.

However, if the Nevada court assumes jurisdiction before it is made aware of another proceeding, it must stay the Nevada action and communicate with the other state's court to determine which state is the most appropriate forum. If the Nevada court then determines that Nevada is *not* the appropriate forum, it must dismiss the Nevada action. In *Swan* the Supreme Court ruled that even if the lower court had proper jurisdiction under NRS 125A.050, it still could have declined jurisdiction on the ground that Nevada was an inconvenient forum. *See also Schlumpf v. Superior Court of Trinity County*, 145 Cal. Rptr. 190 (Ct. App. 1978) and *Clark v. Superior Court of Mendocino County*, 140 Cal. Rptr. 709 (Ct. App. 1977).

Lastly, if a Nevada court enters a custody decree before it is informed of the other pending proceeding, it must immediately inform the other court of its action, again to determine whether Nevada is the most appropriate forum. If the Nevada court then finds that Nevada is *not* the appropriate forum, it must vacate its previous custody determination. *Swan, supra*.

4. PENDING PROCEEDINGS UNDER PKPA. It is crucial to note, however, that unlike the UCCJA, the PKPA does not allow a state court initially to consider the "appropriateness" of either forum where pending proceedings in other states are involved. Under the PKPA a second state court *is absolutely prohibited* from exercising concurrent jurisdiction over a custody matter *commenced during the pendency of a custody proceeding in another state* which is presently exercising jurisdiction consistent with the PKPA. 28 U.S.C. §1738A(g).

Although *Adams, supra*, examined the PKPA, it did so in the context of modification of prior custody decrees. Neither the *Swan* or *Adams* decisions specifically dealt with the problem of concurrent jurisdiction for initial custody determinations under the PKPA, but other courts have held that where the PKPA and the state's version of the UCCJA conflict, the PKPA preempts state law. *State v. Interest of D.S.K.*, 792 P.2d 118 (Utah 1990); *In re Marriage of Leyda*, 398 N.W.2d 815 (Iowa 1987); *In re Custody of Thorensen*, 730 P.2d 1380 (Wash. 1987). It is also deemed necessary to reach a resolution under the UCCJA that is consistent with the PKPA. *D.S.K., supra*; *Olivia H. v. John H.*, 497 N.Y.S.2d 838 (Fam. Ct. 1986); *see also Funk v. Macaulay*, 457 N.E.2d 223 (Ind. Ct. App. 1983).

Therefore, the only determinations a second state court makes under the PKPA is whether at the time the action before it was commenced, there was already a proceeding pending in another state and, if so, whether the first state court is properly exercising jurisdiction consistent with the Act. If it so determines, then the second court cannot exercise jurisdiction.

As emphasized above, a second state court *cannot* assert jurisdiction under the "significant connection" analysis, if it appears that the first state is the "home state" of the child. 28 U.S.C. §1738A(c)(2)(A) and (B). Clearly, the state which has "home state" jurisdiction

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$27.50 per person (we must have 40 people participate to make this balloon extravaganza).

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COUNTRY WESTERN BARBEQUE DINNER & DANCE

FRIDAY, MARCH 18, 1994 7:00 P.M. TO 11:00 P.M.

Put your boots on and come join us at the Elk's Lodge for great grub and dancing. Menu includes: Ribs, chicken, corn on the cob, beans, salad, rolls, apple pie and ice cream. There will be a bar next door to purchase alcoholic beverages.

$15.00 per person.

RESERVATIONS ARE REQUIRED

There will be _____ person(s) attending the Champagne Breakfast, $27.50 per person, for a total of $_____ enclosed.

There will be _____ person(s) attending the Country Western BBQ, $15.00 per person, for a total of $_____ enclosed.

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NAME: _____ TELEPHONE NO: _____

CHILD SUPPORT BY HOURLY WAGES, AVERAGE MONTHLY SALARIES, AND ANNUAL INCOMES

(Presumes 40-hour week, 52-week year); $100.00 per child per month minimums per NRS 125B.080(4) shown

HOURLY WAGE	AVERAGE MONTHLY SALARY	ANNUAL INCOME	18% ONE CHILD	25% TWO CHILDREN	29% THREE CHILDREN	31% FOUR CHILDREN	33% FIVE CHILDREN
$3.50	$606.67	$7,280.00	$109.20	$200.00	$300.00	$400.00	$500.00
$3.75	$650.00	$7,800.00	$117.00	$200.00	$300.00	$400.00	$500.00
$4.00	$693.33	$8,320.00	$124.80	$200.00	$300.00	$400.00	$500.00
$4.25	$736.67	$8,840.00	$132.60	$200.00	$300.00	$400.00	$500.00
$4.50	$780.00	$9,360.00	$140.40	$200.00	$300.00	$400.00	$500.00
$4.75	$823.33	$9,880.00	$148.20	$205.83	$300.00	$400.00	$500.00
$5.00	$866.67	$10,400.00	$156.00	$216.67	$300.00	$400.00	$500.00
$5.25	$910.00	$10,920.00	$163.80	$227.50	$300.00	$400.00	$500.00
$5.50	$953.33	$11,440.00	$171.60	$238.33	$300.00	$400.00	$500.00
$5.75	$996.67	$11,960.00	$179.40	$249.17	$300.00	$400.00	$500.00
$6.00	$1,040.00	$12,480.00	$187.20	$260.00	$301.60	$400.00	$500.00
$6.25	$1,083.33	$13,000.00	$195.00	$270.83	$314.17	$400.00	$500.00
$6.50	$1,126.67	$13,520.00	$202.80	$281.67	$326.73	$400.00	$500.00
$6.75	$1,170.00	$14,040.00	$210.60	$292.50	$339.30	$400.00	$500.00
$7.00	$1,213.33	$14,560.00	$218.40	$303.33	$351.87	$400.00	$500.00
$7.25	$1,256.67	$15,080.00	$226.20	$314.17	$364.43	$400.00	$500.00
$7.50	$1,300.00	$15,600.00	$234.00	$325.00	$377.00	$403.00	$500.00
$7.75	$1,343.33	$16,120.00	$241.80	$335.83	$389.57	$416.43	$500.00
$8.00	$1,386.67	$16,640.00	$249.60	$346.67	$402.13	$429.87	$500.00
$8.25	$1,430.00	$17,160.00	$257.40	$357.50	$414.70	$443.30	$500.00
$8.50	$1,473.33	$17,680.00	$265.20	$368.33	$427.27	$456.73	$500.00
$8.75	$1,516.67	$18,200.00	$273.00	$379.17	$439.83	$470.17	$500.50
$9.00	$1,560.00	$18,720.00	$280.80	$390.00	$452.40	$483.60	$514.80
$9.25	$1,603.33	$19,240.00	$288.60	$400.83	$464.97	$497.03	$529.10
$9.50	$1,646.67	$19,760.00	$296.40	$411.67	$477.53	$510.47	$543.40
$9.75	$1,690.00	$20,280.00	$304.20	$422.50	$490.10	$523.90	$557.70
$10.00	$1,733.33	$20,800.00	$312.00	$433.33	$502.67	$537.33	$572.00
$10.25	$1,776.67	$21,320.00	$319.80	$444.17	$515.23	$550.77	$586.30
$10.50	$1,820.00	$21,840.00	$327.60	$455.00	$527.80	$564.20	$600.60
$10.75	$1,863.33	$22,360.00	$335.40	$465.83	$540.37	$577.63	$614.90
$11.00	$1,906.67	$22,880.00	$343.20	$476.67	$552.93	$591.07	$629.20
$11.25	$1,950.00	$23,400.00	$351.00	$487.50	$565.50	$604.50	$643.50
$11.50	$1,993.33	$23,920.00	$358.80	$498.33	$578.07	$617.93	$657.80
$11.75	$2,036.67	$24,440.00	$366.60	$509.17	$590.63	$631.37	$672.10
$12.00	$2,080.00	$24,960.00	$374.40	$520.00	$603.20	$644.80	$686.40
$12.25	$2,123.33	$25,480.00	$382.20	$530.83	$615.77	$658.23	$700.70
$12.50	$2,166.67	$26,000.00	$390.00	$541.67	$628.33	$671.67	$715.00

)URLY WAGE	AVERAGE MONTHLY SALARY	ANNUAL INCOME	18% ONE CHILD	25% TWO CHILDREN	29% THREE CHILDREN	31% FOUR CHILDREN	33% FIVE CHILDREN
$12.75	$2,210.00	$26,520.00	$397.80	$552.50	$640.90	$685.10	$729.30
$13.00	$2,253.33	$27,040.00	$405.60	$563.33	$653.47	$698.53	$743.60
$13.25	$2,296.67	$27,560.00	$413.40	$574.17	$666.03	$711.97	$757.90
$13.50	$2,340.00	$28,080.00	$421.20	$585.00	$678.60	$725.40	$772.20
$13.75	$2,383.33	$28,600.00	$429.00	$595.83	$691.17	$738.83	$786.50
$14.00	$2,426.67	$29,120.00	$436.80	$606.67	$703.73	$752.27	$800.80
$14.25	$2,470.00	$29,640.00	$444.60	$617.50	$716.30	$765.70	$815.10
$14.50	$2,513.33	$30,160.00	$452.40	$628.33	$728.87	$779.13	$829.40
$14.75	$2,556.67	$30,680.00	$460.20	$639.17	$741.43	$792.57	$843.70
$15.00	$2,600.00	$31,200.00	$468.00	$650.00	$754.00	$806.00	$858.00
$15.25	$2,643.33	$31,720.00	$475.80	$660.83	$766.57	$819.43	$872.30
$15.50	$2,686.67	$32,240.00	$483.60	$671.67	$779.13	$832.87	$886.60
$15.75	$2,730.00	$32,760.00	$491.40	$682.50	$791.70	$846.30	$900.90
$16.00	$2,773.33	$33,280.00	$499.20	$693.33	$804.27	$859.73	$915.20
NOTE: Below this line, percentage support for one child exceeds the presumptive ceiling of NRS 125B.070.							
$16.25	$2,816.67	$33,800.00	$507.00	$704.17	$816.83	$873.17	$929.50
$16.50	$2,860.00	$34,320.00	$514.80	$715.00	$829.40	$886.60	$943.80
$16.75	$2,903.33	$34,840.00	$522.60	$725.83	$841.97	$900.03	$958.10
$17.00	$2,946.67	$35,360.00	$530.40	$736.67	$854.53	$913.47	$972.40
$17.25	$2,990.00	$35,880.00	$538.20	$747.50	$867.10	$926.90	$986.70
$17.50	$3,033.33	$36,400.00	$546.00	$758.33	$879.67	$940.33	$1,001.00
$17.75	$3,076.67	$36,920.00	$553.80	$769.17	$892.23	$953.77	$1,015.30
$18.00	$3,120.00	$37,440.00	$561.60	$780.00	$904.80	$967.20	$1,029.60
$18.25	$3,163.33	$37,960.00	$569.40	$790.83	$917.37	$980.63	$1,043.90
$18.50	$3,206.67	$38,480.00	$577.20	$801.67	$929.93	$994.07	$1,058.20
$18.75	$3,250.00	$39,000.00	$585.00	$812.50	$942.50	$1,007.50	$1,072.50
$19.00	$3,293.33	$39,520.00	$592.80	$823.33	$955.07	$1,020.93	$1,086.80
$19.25	$3,336.67	$40,040.00	$600.60	$834.17	$967.63	$1,034.37	$1,101.10
$19.50	$3,380.00	$40,560.00	$608.40	$845.00	$980.20	$1,047.80	$1,115.40
$19.75	$3,423.33	$41,080.00	$616.20	$855.83	$992.77	$1,061.23	$1,129.70
$20.00	$3,466.67	$41,600.00	$624.00	$866.67	$1,005.33	$1,074.67	$1,144.00
$20.25	$3,510.00	$42,120.00	$631.80	$877.50	$1,017.90	$1,088.10	$1,158.30
$20.50	$3,553.33	$42,640.00	$639.60	$888.33	$1,030.47	$1,101.53	$1,172.60
$20.75	$3,596.67	$43,160.00	$647.40	$899.17	$1,043.03	$1,114.97	$1,186.90
$21.00	$3,640.00	$43,680.00	$655.20	$910.00	$1,055.60	$1,128.40	$1,201.20
$21.25	$3,683.33	$44,200.00	$663.00	$920.83	$1,068.17	$1,141.83	$1,215.50
$21.50	$3,726.67	$44,720.00	$670.80	$931.67	$1,080.73	$1,155.27	$1,229.80
$21.75	$3,770.00	$45,240.00	$678.60	$942.50	$1,093.30	$1,168.70	$1,244.10
$22.00	$3,813.33	$45,760.00	$686.40	$953.33	$1,105.87	$1,182.13	$1,258.40
$22.25	$3,856.67	$46,280.00	$694.20	$964.17	$1,118.43	$1,195.57	$1,272.70
$22.50	$3,900.00	$46,800.00	$702.00	$975.00	$1,131.00	$1,209.00	$1,287.00

OURLY WAGE	AVERAGE MONTHLY SALARY	ANNUAL INCOME	18% ONE CHILD	25% TWO CHILDREN	29% THREE CHILDREN	31% FOUR CHILDREN	33% FIVE CHILDREN
$22.75	$3,943.33	$47,320.00	$709.80	$985.83	$1,143.57	$1,222.43	$1,301.30
$23.00	$3,986.67	$47,840.00	$717.60	$996.67	$1,156.13	$1,235.87	$1,315.60
NOTE: Below this line, percentage support for two children exceeds the presumptive ceiling of NRS 125B.070.							
$23.25	$4,030.00	$48,360.00	$725.40	$1,007.50	$1,168.70	$1,249.30	$1,329.90
$23.50	$4,073.33	$48,880.00	$733.20	$1,018.33	$1,181.27	$1,262.73	$1,344.20
$23.75	$4,116.67	$49,400.00	$741.00	$1,029.17	$1,193.83	$1,276.17	$1,358.50
$24.00	$4,160.00	$49,920.00	$748.80	$1,040.00	$1,206.40	$1,289.60	$1,372.80
$24.25	$4,203.33	$50,440.00	$756.60	$1,050.83	$1,218.97	$1,303.03	$1,387.10
$24.50	$4,246.67	$50,960.00	$764.40	$1,061.67	$1,231.53	$1,316.47	$1,401.40
$24.75	$4,290.00	$51,480.00	$772.20	$1,072.50	$1,244.10	$1,329.90	$1,415.70
$25.00	$4,333.33	$52,000.00	$780.00	$1,083.33	$1,256.67	$1,343.33	$1,430.00
$25.25	$4,376.67	$52,520.00	$787.80	$1,094.17	$1,269.23	$1,356.77	$1,444.30
$25.50	$4,420.00	$53,040.00	$795.60	$1,105.00	$1,281.80	$1,370.20	$1,458.60
$25.75	$4,463.33	$53,560.00	$803.40	$1,115.83	$1,294.37	$1,383.63	$1,472.90
$26.00	$4,506.67	$54,080.00	$811.20	$1,126.67	$1,306.93	$1,397.07	$1,487.20
$26.25	$4,550.00	$54,600.00	$819.00	$1,137.50	$1,319.50	$1,410.50	$1,501.50
$26.50	$4,593.33	$55,120.00	$826.80	$1,148.33	$1,332.07	$1,423.93	$1,515.80
$26.75	$4,636.67	$55,640.00	$834.60	$1,159.17	$1,344.63	$1,437.37	$1,530.10
$27.00	$4,680.00	$56,160.00	$842.40	$1,170.00	$1,357.20	$1,450.80	$1,544.40
$27.25	$4,723.33	$56,680.00	$850.20	$1,180.83	$1,369.77	$1,464.23	$1,558.70
$27.50	$4,766.67	$57,200.00	$858.00	$1,191.67	$1,382.33	$1,477.67	$1,573.00
$27.75	$4,810.00	$57,720.00	$865.80	$1,202.50	$1,394.90	$1,491.10	$1,587.30
$28.00	$4,853.33	$58,240.00	$873.60	$1,213.33	$1,407.47	$1,504.53	$1,601.60
$28.25	$4,896.67	$58,760.00	$881.40	$1,224.17	$1,420.03	$1,517.97	$1,615.90
$28.50	$4,940.00	$59,280.00	$889.20	$1,235.00	$1,432.60	$1,531.40	$1,630.20
$28.75	$4,983.33	$59,800.00	$897.00	$1,245.83	$1,445.17	$1,544.83	$1,644.50
$29.00	$5,026.67	$60,320.00	$904.80	$1,256.67	$1,457.73	$1,558.27	$1,658.80
$29.25	$5,070.00	$60,840.00	$912.60	$1,267.50	$1,470.30	$1,571.70	$1,673.10
$29.50	$5,113.33	$61,360.00	$920.40	$1,278.33	$1,482.87	$1,585.13	$1,687.40
$29.75	$5,156.67	$61,880.00	$928.20	$1,289.17	$1,495.43	$1,598.57	$1,701.70
NOTE: Below this line, percentage support for three children exceeds the presumptive ceiling of NRS 125B.070.							
$30.00	$5,200.00	$62,400.00	$936.00	$1,300.00	$1,508.00	$1,612.00	$1,716.00
$30.25	$5,243.33	$62,920.00	$943.80	$1,310.83	$1,520.57	$1,625.43	$1,730.30
$30.50	$5,286.67	$63,440.00	$951.60	$1,321.67	$1,533.13	$1,638.87	$1,744.60
$30.75	$5,330.00	$63,960.00	$959.40	$1,332.50	$1,545.70	$1,652.30	$1,758.90
$31.00	$5,373.33	$64,480.00	$967.20	$1,343.33	$1,558.27	$1,665.73	$1,773.20
$31.25	$5,416.67	$65,000.00	$975.00	$1,354.17	$1,570.83	$1,679.17	$1,787.50
$31.50	$5,460.00	$65,520.00	$982.80	$1,365.00	$1,583.40	$1,692.60	$1,801.80
$31.75	$5,503.33	$66,040.00	$990.60	$1,375.83	$1,595.97	$1,706.03	$1,816.10
$32.00	$5,546.67	$66,560.00	$998.40	$1,386.67	$1,608.53	$1,719.47	$1,830.40
$32.25	$5,590.00	$67,080.00	$1,006.20	$1,397.50	$1,621.10	$1,732.90	$1,844.70

OURLY WAGE	AVERAGE MONTHLY SALARY	ANNUAL INCOME	18% ONE CHILD	25% TWO CHILDREN	29% THREE CHILDREN	31% FOUR CHILDREN	33% FIVE CHILDREN
$32.50	$5,633.33	$67,600.00	$1,014.00	$1,408.33	$1,633.67	$1,746.33	$1,859.00
$32.75	$5,676.67	$68,120.00	$1,021.80	$1,419.17	$1,646.23	$1,759.77	$1,873.30
$33.00	$5,720.00	$68,640.00	$1,029.60	$1,430.00	$1,658.80	$1,773.20	$1,887.60
$33.25	$5,763.33	$69,160.00	$1,037.40	$1,440.83	$1,671.37	$1,786.63	$1,901.90
$33.50	$5,806.67	$69,680.00	$1,045.20	$1,451.67	$1,683.93	$1,800.07	$1,916.20
$33.75	$5,850.00	$70,200.00	$1,053.00	$1,462.50	$1,696.50	$1,813.50	$1,930.50
$34.00	$5,893.33	$70,720.00	$1,060.80	$1,473.33	$1,709.07	$1,826.93	$1,944.80
$34.25	$5,936.67	$71,240.00	$1,068.60	$1,484.17	$1,721.63	$1,840.37	$1,959.10
$34.50	$5,980.00	$71,760.00	$1,076.40	$1,495.00	$1,734.20	$1,853.80	$1,973.40
$34.75	$6,023.33	$72,280.00	$1,084.20	$1,505.83	$1,746.77	$1,867.23	$1,987.70
$35.00	$6,066.67	$72,800.00	$1,092.00	$1,516.67	$1,759.33	$1,880.67	$2,002.00
$35.25	$6,110.00	$73,320.00	$1,099.80	$1,527.50	$1,771.90	$1,894.10	$2,016.30
$35.50	$6,153.33	$73,840.00	$1,107.60	$1,538.33	$1,784.47	$1,907.53	$2,030.60
$35.75	$6,196.67	$74,360.00	$1,115.40	$1,549.17	$1,797.03	$1,920.97	$2,044.90
$36.00	$6,240.00	$74,880.00	$1,123.20	$1,560.00	$1,809.60	$1,934.40	$2,059.20
$36.25	$6,283.33	$75,400.00	$1,131.00	$1,570.83	$1,822.17	$1,947.83	$2,073.50
$36.50	$6,326.67	$75,920.00	$1,138.80	$1,581.67	$1,834.73	$1,961.27	$2,087.80
$36.75	$6,370.00	$76,440.00	$1,146.60	$1,592.50	$1,847.30	$1,974.70	$2,102.10
$37.00	$6,413.33	$76,960.00	$1,154.40	$1,603.33	$1,859.87	$1,988.13	$2,116.40
..OTE: Below this line, percentage support for four children exceeds the presumptive ceiling of NRS 125B.070.							
$37.25	$6,456.67	$77,480.00	$1,162.20	$1,614.17	$1,872.43	$2,001.57	$2,130.70
$37.50	$6,500.00	$78,000.00	$1,170.00	$1,625.00	$1,885.00	$2,015.00	$2,145.00
$37.75	$6,543.33	$78,520.00	$1,177.80	$1,635.83	$1,897.57	$2,028.43	$2,159.30
$38.00	$6,586.67	$79,040.00	$1,185.60	$1,646.67	$1,910.13	$2,041.87	$2,173.60
$38.25	$6,630.00	$79,560.00	$1,193.40	$1,657.50	$1,922.70	$2,055.30	$2,187.90
$38.50	$6,673.33	$80,080.00	$1,201.20	$1,668.33	$1,935.27	$2,068.73	$2,202.20
$38.75	$6,716.67	$80,600.00	$1,209.00	$1,679.17	$1,947.83	$2,082.17	$2,216.50
$39.00	$6,760.00	$81,120.00	$1,216.80	$1,690.00	$1,960.40	$2,095.60	$2,230.80
$39.25	$6,803.33	$81,640.00	$1,224.60	$1,700.83	$1,972.97	$2,109.03	$2,245.10
$39.50	$6,846.67	$82,160.00	$1,232.40	$1,711.67	$1,985.53	$2,122.47	$2,259.40
$39.75	$6,890.00	$82,680.00	$1,240.20	$1,722.50	$1,998.10	$2,135.90	$2,273.70
$40.00	$6,933.33	$83,200.00	$1,248.00	$1,733.33	$2,010.67	$2,149.33	$2,288.00
$40.25	$6,976.67	$83,720.00	$1,255.80	$1,744.17	$2,023.23	$2,162.77	$2,302.30
$40.50	$7,020.00	$84,240.00	$1,263.60	$1,755.00	$2,035.80	$2,176.20	$2,316.60
$40.75	$7,063.33	$84,760.00	$1,271.40	$1,765.83	$2,048.37	$2,189.63	$2,330.90
$41.00	$7,106.67	$85,280.00	$1,279.20	$1,776.67	$2,060.93	$2,203.07	$2,345.20
$41.25	$7,150.00	$85,800.00	$1,287.00	$1,787.50	$2,073.50	$2,216.50	$2,359.50
$41.50	$7,193.33	$86,320.00	$1,294.80	$1,798.33	$2,086.07	$2,229.93	$2,373.80
$41.75	$7,236.67	$86,840.00	$1,302.60	$1,809.17	$2,098.63	$2,243.37	$2,388.10
(Hourly)	(Annual/12)	(Hourly x 40 hrs/wk x 52 wks)					

(Willick; 410.69)

is the preferred state under the PKPA.

5. NOT PENDING UNDER THE PKPA OR UCCJA. On the other hand, neither NRS 125A.060 nor 28 U.S.C. §1738A(g) by their terms prohibit a state court such as Nevada from exercising concurrent jurisdiction, even though there is a pending proceeding in another state, if *that proceeding was not pending at the time* the action was filed in Nevada and Nevada has proper subject matter jurisdiction. Clearly under the PKPA, whichever action was filed first in time prevails, *if* that first court does in fact have valid jurisdiction.

Certainly, if the first court has "home state" jurisdiction, then the PKPA would give that court exclusive jurisdiction. As noted above in Section B, if it does *not* have such jurisdiction, then it must determine whether it can assume jurisdiction under the successive alternative grounds under 28 U.S.C. §1738A(2). In that regard, as discussed above, the first court should then contact the other state's court where the second proceeding was brought to review the situation so as to remove the possibility of conflicting decrees. (See also the discussion under Section F below concerning appropriate forum).

E. EXERCISE OF UCCJA JURISDICTION — PETITIONER ACTS WRONGFULLY

NRS 125A.080 allows a court to decline jurisdiction to make an initial custody determination if the *petitioner* has acted wrongfully in taking the child from another state or has engaged in other wrongful conduct. Where modification of a custody decree entered by another state is sought by such a petitioner, the court, assuming that it has jurisdiction to modify, *must* decline to exercise that jurisdiction, "(u)nless required in the interest of the child." (See discussion of modification jurisdiction in Section G below).

In either case, the Nevada court declining jurisdiction must notify the other parent or person with legal custody and the prosecuting attorney in the other state of its decision. In appropriate cases the court dismissing the petition may also require the petitioner to pay the other party's expenses, including travel costs and attorney's fees.

If the Nevada court refuses to assume jurisdiction to modify the custody decree of another state, the court may also order the return of the child to the legal custodian in that other state. Furthermore, the court must advise the petitioner to direct his modification request to the appropriate forum.

It must be noted that this statute does not apply to a situation where the *respondent*, as the primary physical custodian of a child under a current custody decree, is alleged by the petitioner *to have wrongfully removed* the child from the state without permission being given under NRS 125A.350. However, such removal by the custodial parent could be considered by a court if a motion for a change of custody is brought by the non-custodial parent.

F. APPROPRIATE FORUM

If a Nevada court finds that it has "concurrent" jurisdiction that is not prohibited by the PKPA or the UCCJA, then the Nevada court must still proceed to an analysis of which is the more appropriate (or convenient) forum to litigate the custody issue. *Swan, supra.*

1. FACTORS TO CONSIDER. NRS 125A.070(3) sets forth the factors that a court should consider in determining the appropriate forum, always keeping in mind the best interests of the child. These factors may include:

(a) Whether another state is or recently was the child's home state;

(b) Whether another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) Whether substantial evidence concerning the child's present or future care, protection, training and personal relationships is more readily available in another state;

(d) Whether the parties have agreed on another forum which is no less appropriate; and

(e) Whether the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in NRS 125A.020.

2. NEVADA AS INAPPROPRIATE FORUM. A finding of inappropriate forum may be made either upon the motion of a party or upon the court's motion, sua sponte. Before determining whether to decline or retain jurisdiction, the Nevada court may contact the court in another state and exchange information pertinent to the decision as to which state is a more appropriate forum.

If a Nevada court finds that Nevada is not the appropriate forum, it may either dismiss the proceedings outright or stay the Nevada action upon any conditions the court deems just and proper, including a condition that a custody proceeding be commenced promptly in the more appropriate state. The Nevada court must then inform the state found to be the more appropriate forum of the dismissal or stay in Nevada. The Nevada court may also require the party who commenced the Nevada action to pay, in addition to the court costs, the other party's expenses, including attorney's fees.

G. MODIFICATION OF CUSTODY DECREE UNDER UCCJA & PKPA

1. CONTINUING JURISDICTION. In most jurisdictions it is the rule that the divorce courts retain a continuing power to modify their custody orders. Furthermore, it is not necessary in Nevada that a Nevada court expressly retain jurisdiction in its decree. *Schmutzer v. Schmutzer*, 76 Nev. 123, 350 P.2d 142 (1960). Both by statute and case law, Nevada courts have continuing jurisdiction to modify their custody orders at any time during the minority of the child. NRS 125.510; *State ex rel. Groves*, 61 Nev. 269, 125 P.2d 723 (1942); *Harris v. Harris*, 95 Nev. 214, 591 P.2d 1147 (1979). The UCCJA and the PKPA also reflect this general policy favoring the continuing jurisdiction of the court rendering the initial custody decree.

2. PREFERENCE FOR JOINT CUSTODY. Also, given the general statutory preference for joint custody, NRS 125.510(3) authorizes a Nevada court to modify another state's custody order at any time in order to give the parties joint custody. However, this authority is still subject to the jurisdictional requirements of NRS Chapter 125A.

3. MODIFICATION UNDER UCCJA. So when a Nevada court is requested to

modify the custody decree of another state, it must first look at its authority under NRS 125A.180, which states in relevant part as follows:

1. If a court of another state has made a custody decree, a court of this state shall not modify that decree unless:

(a) It appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with the Uniform Child Custody Jurisdiction Act, or the Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901 et seq.), or has declined to assume jurisdiction to modify the decree; and

(b) The court of this state has jurisdiction.

4. DEFERENCE TO PRIOR STATE'S JURISDICTION.

(a) UCCJA. The UCCJA Commentators' Note to what is in Nevada NRS 125A.180 states that *all petitions for modification* are to be addressed to the prior state if that state has "sufficient contacts" with the case to satisfy NRS 125.050. *See* Annotations at 83 ALR 4th 742. As a practical matter the determination of whether another state has sufficient contacts is initially a matter for the court before whom the petition for modification is brought. This often requires that court to analyze the kind of connections any of the parties have with the other state and to decide if those contacts are sufficient to meet the jurisdictional standards of the UCCJA. *See Biggers v. Biggers*, 650 P.2d 692 (Idaho 1982).

However, courts must also not assume that jurisdiction to modify a custody decree automatically shifts to the new "home state" under the UCCJA. *D.S.K., supra*. The problem with the "sufficient contacts" analysis is that it does not work where both state courts are each asserting sufficient contacts and each chooses to exercise concurrent jurisdiction under the UCCJA to modify the prior decree. This stalemate was precisely the situation the PKPA was meant to resolve. *See Adams, supra*.

(b) PKPA. The PKPA attempts to remove this dilemma entirely by, in effect, eliminating the possibility of concurrent modification jurisdiction and *automatically bestowing exclusive modification jurisdiction* upon the state court which issued the prior child custody decree *as long as* that state continues to have jurisdiction under its own state law *and* is the residence of at least one of the "contestants" or the child. 28 U.S.C. §1738A(d); *D.S.K., supra*; *Adams, supra*.

Also, a second state which has proper jurisdiction may modify a preexisting custody award made by the first state *only if* the first state no longer has jurisdiction *or* "has declined" to exercise continuing jurisdiction. 28 U.S.C. §1738A(f). Therefore, under both the UCCJA and the PKPA, only if the state that rendered the prior custody decree has lost jurisdiction or has declined jurisdiction, is deference to that state's continuing jurisdiction no longer required. *Adams, supra*. Generally the state where the original order was made is the proper forum to make the determination whether it has lost such jurisdiction. *Souza, supra*.

5. STATE OF RESIDENCE. Most courts have held that a state loses its continuing jurisdiction if the child and *both* parents are no longer residents of that state. *See In Re Gloria F*, 260 Cal. Rptr. 706 (Ct.App. 1989); *Souza, supra*; *Clarke v. Clarke*, 496 A.2d 361 (N.H. 1985); *State ex rel. Dept. of Human Resources v. Avinger*, 721 P.2d 781 (N.M. App. 1985) and *Roberts v. Dist. Court of Larimer County*, 596 P.2d 65 (Colo. 1979). The same result would follow under the PKPA. *See* 28 U.S.C. §1738A(d).

Some courts have actually questioned whether the fact that only the non-custodial parent continues to reside in the state where the decree was rendered is by itself sufficient for that state to retain continuing jurisdiction under the UCCJA. However, these same courts have recognized that under the express terms of the PKPA, 28 U.S.C. §1738A(d), residence of one parent is sufficient to allow continuing jurisdiction if that state also maintains jurisdiction under it own state law. Again, the goal is to harmonize the results under the UCCJA and the PKPA, always keeping in mind that, in case of a conflict, the PKPA preempts state law. *See D.S.K., supra*.

6. JURISDICTION OF MODIFYING STATE. Here, as in all custody cases, even if the Nevada court determines that the state that rendered the decree does not now have continuing jurisdiction, it may not modify that decree unless the Nevada court currently has proper jurisdiction itself under the UCCJA and the PKPA.

7. NOTIFICATION OF LEGAL CUSTODIAN. Again, if a Nevada court refuses to assume jurisdiction to modify the custody decree of another state pursuant to NRS 125A.180, that court must notify the legal custodian of the child and the prosecuting attorney in that other state of the court's decision. The court may, if the child is not at that time in the physical custody of the legal custodian under the prior decree, also order the petitioner to return the child to the legal custodian. *See* NRS 125A.080(4).

8. COMPETING MODIFICATION PROCEEDINGS. Consider the scenario where the initial decree state has lost jurisdiction, as one party has since moved to Nevada and the other party has moved to another state, and both then file modification petitions in their respective states. In such a case it appears that the PKPA would require both courts to solve this jurisdictional problem using the same analysis for pending proceedings and determining if one of the forums is the "home state", as discussed above in Section D.

H. RETAINING JURISDICTION OVER MAIN DIVORCE ACTION

It is important to note that even though a Nevada court declines to exercise jurisdiction over a custody matter under the UCCJA or the PKPA, it may still retain jurisdiction over the main divorce action under NRS 125A.070(6). In such a case, the Nevada court could grant the divorce while refusing to make any order concerning the custody issue. However, since custody issues are often of pivotal importance to the parties, a better option may be to stay the main divorce action

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until resolution of the custody dispute by the other forum.

I. NOTICE AND HEARING

Before a court can enter any custody decree or modify an existing custody decree under the UCCJA or the PKPA, each party must be given reasonable notice and opportunity to be heard. NRS 125A.090; 28 U.S.C. §1738A(e); *Whitney v. Second Judicial Dist. Court*, 68 Nev. 176, 227 P.2d 960 (1951). If a party lives out of state, notice must be provided as set forth in NRS 125A.100.

This notice requirement would seem to invalidate ex-parte custody orders, even in light of *Turner v. Saka*, 90 Nev. 54, 518 P.2d 608 (1974). There the Supreme Court held, in the context of an injunction sought under NRCP 65, that in order to disturb existing custody rights, either notice or a showing of necessity must be made by the moving party. While *Turner* would seem to allow ex-parte orders in emergencies, that case was decided some 5 years before the UCCJA was adopted by Nevada in 1979 and there are no Nevada cases since then specifically discussing this notice requirement. However, some courts, particularly federal courts, have held that ex-parte emergency custody orders are not automatically invalid where a hearing is held within a short time after the order is issued. *See People v. Beach*, 240 Cal. Rptr. 50 (Ct. App. 1987); *Donald v. Polk County*, 836 F.2d 376 (7th Cir. 1988).

Unlike regular motion practice where regular mailing is sufficient, notice here must either be made by service of process, mailing with return receipt or, if other means are ineffective, publication upon order of the court. The statute requires adequate proof of service and notice must be given at least *20 days before* any hearing on the matter. Following these procedures is important as, even if a Nevada court has subject matter jurisdiction under NRS 125A.050, its custody decree is binding only on those who have been *properly notified* or who otherwise have submitted to Nevada's jurisdiction *and* who have also been given an opportunity to be heard. *See* NRS 125A.150.

J. MISCELLANEOUS PROVISIONS

The UCCJA contains various other provisions concerning foreign custody decrees and the assistance and information to be provided by the various courts involved in any UCCJA custody matter.

1. FOREIGN DECREES OR PROCEEDINGS. NRS 125A.170 and 125A.190 deal with the recognition and enforcement of foreign decrees in Nevada. In the *Adams* case the court considered the obligation of a Nevada court, under NRS 125A.170, to recognize a foreign decree and held that Nevada need not afford recognition to a foreign custody decree where that other state did not have proper jurisdiction to enter the custody order under its own comparable UCCJA provisions.

Under NRS 125A.200, the court clerk is required to maintain a registry of any documents or communications received regarding custody decrees or proceedings in other states that may affect the disposition of custody proceedings brought in Nevada. The clerk is to register a foreign decree by assigning a case number, docket and department to the decree, with a certified copy of the filed decree being sufficient proof of such registration.

2.PRESERVATION OF CUSTODY RECORDS. NRS 125A.240 requires a Nevada court to preserve all the pertinent records of a custody proceeding brought before it until the child involved reaches 18. Upon request of another state, copies of these records must be forwarded to that state. If, after consideration of all the factors involved, a Nevada court decides to take jurisdiction over a custody proceeding brought in Nevada that involves a prior custody order from another state, the Nevada court must, pursuant to NRS 125A.250, request from that other state the equivalent records mentioned in NRS 125A.240.

3.WITNESSES AND HEARINGS. In addition to other discovery tools available under Nevada's procedural rules, the examination of witnesses outside of Nevada by deposition or otherwise is provided for by NRS 125A.210. Also, under NRS 125A.220 and 125A.230, a court in Nevada or elsewhere may request that hearings be held by a court in the state where a party resides. A copy of the transcript of that hearing must be forwarded to the requesting court.

4.APPEARANCE OF PARTIES. NRS 125A.140 authorizes a court to order any party found in this state to appear personally before the court for a custody hearing. The court may also order such a party who has physical custody of any child of the parties to produce that child before the court for "beneficial disposition" during pendency of the action. If a party *in this state* who is ordered to appear with the child cannot be served or fails to obey the order, the court may issue a warrant for that party's arrest to secure his appearance with the child. *See also In re Byington*, 77 Nev. 456, 366 P.2d 518 (1961).

If a party whose presence is desired by the court is *outside this state*, the court may order that the notice given under NRS 125A.100 include a statement directing that party, and any children in his physical custody, to appear personally before the court. Such a notice should also contain a warning that failure to appear may result in a decision adverse to that party. NRS 125A.220 and 125A.230 also authorize a court in Nevada or elsewhere to request the appropriate court in the state where the party resides to order that party to personally appear, with any children in his physical custody, before the court in the other state requesting his appearance in the custody proceeding.

As a last resort, the Nevada court could, under appropriate conditions, issue a bench warrant for the arrest of the uncooperative party under NRS 200.359. Again, this option is only available if Nevada is the "home state" of the child.

5.JOINDER OF ADDITIONAL PARTIES. If a court determines that a person not a party has or claims to have custody of a child or visitation rights with a child, the court must order that person joined as a party. That person must be properly notified of his joinder and the pendency of the proceeding in the same manner that other parties are notified (see discussion above under Section H).

Knowing what is happening at the trial level in Family Law will help all of us to be better practitioners. Please share with the Section what is happening in any case you think is significant, either because it typifies rulings in an area, or appears to be contrary to normal rulings in that area.

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PROCEDURAL STATUS: ☐-Pre-Trial Motion ☐-Trial/Settlement ☐-Post-Trial Motion

COUNTY: _____ DEPT./JUDGE: _____ CASE NO.: _____

POINT OF PRIMARY INTEREST: ☐-Procedure ☐-Custody ☐-Visitation
☐-Child Support ☐-Spousal Support/Alimony
☐-Property Division ☐-Other

EXPLANATION/SUMMARY: _____

_____

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