

1982

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Recommended Citation

(1982) "Child Custody—Jurisdiction of Noncustody Court to Conduct Evidentiary Hearing Under Uniform Child Custody Jurisdiction Act—In re Mullins, 298 N.W.2d 58 (Minn. 1980)," *William Mitchell Law Review*: Vol. 8: Iss. 1, Article 5. Available at: <http://open.mitchellhamline.edu/wmlr/vol8/iss1/5>

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CASE NOTES

Child Custody—JURISDICTION OF NONCUSTODY COURT TO CONDUCT EVIDENTIARY HEARING UNDER UNIFORM CHILD CUSTODY JURISDICTION ACT—*In re Mullins*, 298 N.W.2d 58 (Minn. 1980).

Interstate enforcement of child custody decrees was difficult at common law. Custody decrees were not considered final judgments and therefore were not accorded full faith and credit under the United States Constitution.¹ States were free to assert jurisdiction over a child and refuse to recognize the custody decrees of other states.² The opportunity to modify a custody decree often encouraged the noncustodial parent to remove the child to a more favorable forum and relitigate custody.³ The custodial parent also ran the risk of losing custody if he permitted the child to travel to another state for visitation with the noncustodial parent.⁴

In response to this problem⁵ of interstate enforcement, the National Conference of Commissioners on Uniform State Laws drafted the Uni-

1. See *New York ex rel. Halvey v. Halvey*, 330 U.S. 610, 611-13 (1947). In *Halvey* the United States Supreme Court held that since a custody decree is subject to modification in the state where it was rendered it does not constitute a final judgment. Thus another state has as much right to modify or reject the custody decree as the state of rendition. *Id.* at 615; see also *Ford v. Ford*, 371 U.S. 187, 192-94 (1962) (courts of South Carolina not bound by Virginia custody order since order was not res judicata in Virginia); *Kovacs v. Brewer*, 356 U.S. 604, 607-08 (1958) (modified New York custody decree not entitled to full faith and credit in North Carolina); *May v. Anderson*, 345 U.S. 528, 533 (1953) (full faith and credit clause does not force Ohio court to effectuate Wisconsin decree awarding custody to father when decree obtained in ex parte divorce action not having personal jurisdiction over mother).

2. See, e.g., *In re Giblin*, 304 Minn. 510, 511, 232 N.W.2d 214, 216 (1975); *Zaine v. Zaine*, 265 Minn. 105, 108-10, 120 N.W.2d 324, 326-27 (1963); *Gale v. Lee*, 219 Minn. 414, 421-27, 18 N.W.2d 147, 151-53 (1945).

3. See *Tureson v. Tureson*, 281 Minn. 107, 109, 160 N.W.2d 552, 554 (1968); *State ex rel. Glasier v. Glasier*, 272 Minn. 62, 63, 137 N.W.2d 549, 551 (1965). When it is established that the child is present in the state as a result of the child's surreptitious removal, some courts have declined to exercise jurisdiction to modify the custody decree through the use of the equitable doctrine of clean hands. Ehrenzweig, *Interstate Recognition of Custody Decrees*, 51 MICH. L. REV. 345, 357-60 (1953).

4. See, e.g., *Spencer v. Spencer*, 305 So. 2d 256, 257 (Fla. Dist. Ct. App. 1974); *cert. denied*, 315 So. 2d 470 (Fla. 1975); *Roebuck v. Bailes*, 162 Mont. 71, 73, 508 P.2d 1057, 1059 (1973).

5. Although it is difficult to determine the actual number of children abducted or detained by noncustodial parents estimates range into the thousands. See Note, *Stemming the Proliferation of Parental Kidnapping: New York's Adoption of the Uniform Child Custody Jurisdiction Act*, 45 BROOKLYN L. REV. 89, 89, & n.2 (1978); Note, *Prevention of Child Stealing: The Need for a National Policy*, 11 LOY. L.A.L. REV. 829, 830 (1978); see also Bodenheimer, *The*

form Child Custody Jurisdiction Act (UCCJA).⁶ Since its promulgation in 1968, the UCCJA has been adopted by a substantial majority of the states.⁷ The Minnesota Supreme Court adopted the UCCJA in 1975 in the case of *In re Giblin*.⁸ The Minnesota legislature subsequently enacted the UCCJA in 1977.⁹

A major objective of the UCCJA is to insure a stable environment for the child.¹⁰ Toward this end the UCCJA discourages noncustodial par-

Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws, 22 VAND. L. REV. 1207, 1207-08 (1969).

An indication of the extent of this problem is the national movement for the passage of legislation which would impose criminal sanctions for child stealing. See Coombs, *The "Snatched" child is Halfway Home in Congress*, 11 FAM. L.Q. 407, 407 (1978); Note, *Domestic Relations—Criminal Sanctions Against "Child-Snatching" in North Carolina*, 55 N.C.L. REV. 1275, 1276 (1977). For Minnesota's current criminal statute for child stealing, see MINN. STAT. § 609.26 (1980).

6. UNIF. CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 111 (1979) [hereinafter cited as UCCJA].

7. See, e.g., ALA. CODE § 30-3-20 to -44 (Cum. Supp. 1981); ALASKA STAT. § 25.30 (1977); ARIZ. REV. STAT. ANN. §§ 8-401 to -424 (Cum. Supp. 1981); ARK. STAT. ANN. §§ 34-2701 to -2726 (Cum. Supp. 1981); CAL. CIV. CODE §§ 5150-5174 (West Cum. Supp. 1982); COLO. REV. STAT. §§ 14-13-101 to -126 (Cum. Supp. 1980); CONN. GEN. STAT. ANN. §§ 46b-90 to -114 (West Cum. Supp. 1981); DEL. CODE ANN. tit. 13, §§ 1901-1925 (1981); IDAHO CODE §§ 5-1000 to -1026 (1979); ILL. ANN. STAT. ch. 40, §§ 2101-2126 (Smith-Hurd 1980); IND. CODE ANN. §§ 31-1-11.6 to .6-24 (West 1980); IOWA CODE ANN. §§ 598A.1-.25 (West 1981); KAN. STAT. ANN. §§ 38-1301 to -1326 (Cum. Supp. 1980); KY. REV. STAT. §§ 403.400-630 (Cum. Supp. 1980); LA. REV. STAT. ANN. §§ 13.1700-1724 (West Cum. Supp. 1982); ME. REV. STAT. tit. 19, §§ 801-825 (1964); MD. ANN. CODE art. 16, §§ 184-207 (1981); MICH. COMP. LAWS ANN. §§ 600.651-.673 (1980); MINN. STAT. §§ 518A.01-.25 (1980); MO. ANN. STAT. §§ 452.440-550 (Vernon Cum. Supp. 1982); MONT. CODE ANN. §§ 40-7-101 to -125 (1981); NEB. REV. STAT. §§ 43-1201 to -1225 (Cum. Supp. 1980); NEV. REV. STAT. §§ 125A.010-.250 (1979); N.H. REV. STAT. ANN. §§ 458-A:1 to :25 (Cum. Supp. 1979); N.J. REV. STAT. ANN. §§ 2A:34-28 to -52 (West Cum. Supp. 1981); N.Y. DOM. REL. LAW §§ 75-a to -z (McKinney Cum. Supp. 1981); N.C. GEN. STAT. §§ 50A-1 to -25 (Cum. Supp. 1981); N.D. CENT. CODE §§ 14-14-01 to -26 (1981); OHIO REV. CODE ANN. §§ 3109.21-.37 (Page 1980); OKLA. STAT. ANN. tit. 10, §§ 1601-1627 (West Cum. Supp. 1981); OR. REV. STAT. §§ 109.700-930 (1979); S.D. CODIFIED LAWS ANN. §§ 26-5-5 to -52 (Supp. 1981); TENN. CODE ANN. §§ 36-1301 to -1325 (1981); UTAH CODE ANN. §§ 78-45c-1 to -26 (Supp. 1981); VT. STAT. ANN. tit. 15, §§ 1031-1051 (Cum. Supp. 1981); VA. CODE §§ 20-125 to -146 (Cum. Supp. 1981); WASH. REV. CODE §§ 26.27.010 to .930 (West Cum. Supp. 1981); WIS. STAT. ANN. §§ 822.01-.25 (West 1977); WYO. STAT. §§ 20-5-101 to -125 (1977).

8. 304 Minn. 510, 521-23, 232 N.W.2d 214, 218-22 (1975).

9. Act of Mar. 31, 1977, ch. 8, 1977 Minn. Laws 17 (current version at MINN. STAT. §§ 518A.01-.25 (1980)).

10. In their Prefatory Note to the UCCJA the commissioners made the following comments about the effect of extended interstate custody litigation upon the child and how the Act addresses this problem:

The harm done to children by these experiences can hardly be overestimated. It does not require an expert in the behavioral sciences to know that a child, especially during his early years and the years of growth, needs security stability of environment and a continuity of affection. A child who has never been given the chance to develop a sense of belonging and whose personal attachments when

ents from forum shopping by establishing a custody court in the state of initial jurisdiction¹¹ and by limiting jurisdiction to modify the decree to that state.¹² The continuing jurisdiction of the state issuing the initial custody decree will end if all the parties change their residence or if the state declines to exercise jurisdiction.¹³ A consequence of fixing custody

beginning to form are cruelly disrupted, may well be crippled for life, to his own lasting detriment and the detriment of society.

Underlying the entire Act is the idea that to avoid the jurisdictional conflicts and confusions which have done serious harm to innumerable children, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants, residents and nonresidents, on an equal basis and from the standpoint of the welfare of the child. If this can be achieved, it will be less important *which* court exercises jurisdiction but that courts of the several states involved act in partnership to bring about the best possible solution for a child's future.

UCCJA, Commissioners Prefatory Note, 9 U.L.A. 111, 113-14 (emphasis in original).

11. The establishment of a custody court is controlled by a series of alternative jurisdictional standards which a court must meet if it is to assume jurisdiction to resolve a custody dispute. *Id.* § 3, 9 U.L.A. at 122-23.

The first jurisdictional standard is the Home State Provision which requires that the child and a parent, or one acting as a parent, reside in the state for six months prior to the commencement of the custody action. *Id.* §§ 3(a)(1), 2(5), 9 U.L.A. at 119, 122 ("Home state" defined as state of child's residence with parent or person acting as parent for at least six consecutive months prior to action). The fact that the child has been removed to or retained in another jurisdiction would not prevent a court in the state where the child has lived from asserting jurisdiction under the Home State Provision. *Id.* § 3(a)(i)-(ii), 9 U.L.A. at 122.

The second jurisdictional standard is the Significant Connection Provision which allows a court to assume jurisdiction when there is substantial evidence in the state concerning the child and at least one of the parties has a significant connection with the state. *Id.* § 3(a)(2), 9 U.L.A. at 122. Since this standard is drafted in general terms which are not defined in the Act the significant connection standard has been considered to be subject to abuse. See Note, *Temporary Custody Under the Uniform Child Custody Jurisdiction Act: Influence Without Modification*, 48 U. COLO. L. REV. 603, 607 (1977).

The third jurisdictional standard addresses the situation where the child is present in the state and has been abandoned, or subjected to or threatened with mistreatment, abuse or neglect. UCCJA § 3(a)(3), 9 U.L.A. at 122. The assertion of emergency jurisdiction under this standard is tempered by the other provisions of the Act which seek to limit the modification of custody decrees to the court that issued the decree. *Id.* § 14(a), 9 U.L.A. at 153-54. Thus one commentator has interpreted this standard to limit the assertion of jurisdiction to the issuance of temporary custody orders pending the commencement of proceedings in the state with initial jurisdiction. See Bodenheimer, *Interstate Custody: Initial Jurisdiction and Continuing Jurisdiction Under the UCCJA*, 14 FAM. L.Q. 203, 225-26 (1981).

The final jurisdictional standard addresses the situation in which it appears that no other state would have jurisdiction under the first three standards, or in which another state declines to exercise jurisdiction on the grounds that the forum state is more appropriate and the child's best interests would be served if the forum state assumed jurisdiction. UCCJA § 3(a)(4), 9 U.L.A. at 122.

12. UCCJA § 14(a), 9 U.L.A. at 153-54. See generally Bodenheimer, *supra* note 11, at 213-25.

13. See UCCJA § 14(a), 9 U.L.A. at 153-54; Bodenheimer, *supra* note 11, at 215.

jurisdiction in one state is that a court outside the state of initial jurisdiction may be called upon to enforce a custody decree that it believes does not serve the best interest of the child. This was the situation that confronted the Minnesota Supreme Court in the case of *In re Mullins*.¹⁴

In 1975 Carl Otis Mullins, then five years old, was placed in the foster care of Anne and Earl Krolick, his maternal aunt and uncle in Minneapolis, Minnesota. Carl Otis Mullins had been living with his parents in San Diego, California, until his father, Carl E. Mullins, was convicted and imprisoned for the murder of his wife. After the father's murder trial, the Superior Court of San Diego adjudged the child to be dependent¹⁵ and determined that the best interest of the child would be served by placing him with the Krolicks.¹⁶ The California court expressly reserved jurisdiction over the child and decreed that there be annual dependency review hearings in California.¹⁷ Also, as part of the child's placement with the Krolicks, the California court arranged to have the Hennepin County Welfare Department supervise the child and file quarterly assessments with the San Diego Department of Public Welfare. Hearings to review the child's placement were held each year from 1976 to 1978. Each of these hearings continued the status of Carl Otis Mullins as a dependent child.¹⁸

In 1978 Carl E. Mullins was paroled and the San Diego Welfare Department found him to be capable of providing for his son. As the initial

14. 298 N.W.2d 56 (Minn. 1980).

15. See 298 N.W.2d at 58. Carl O. Mullins was found to be dependent under CAL. WELF. & INST. CODE § 600(a) (West 1972) (current version at CAL. WELF. & INST. CODE § 300(a) (West Cum. Supp. 1982)), which reads:

Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court.

(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control.

16. 298 N.W.2d at 58. Custody of Carl O. Mullins was awarded to the Krolicks under CAL. WELF. & INST. CODE § 726(c) (West Cum. Supp. 1981):

In all cases wherein a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over such ward or dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian unless upon the hearing the court finds one of the following facts:

(c) That the welfare of the minor requires that his custody be taken from his parent or guardian.

17. 298 N.W.2d at 58. The California court retained jurisdiction pursuant to CAL. WELF. & INST. CODE § 607 (West 1972) (current version at CAL. WELF. & INST. CODE § 301 (West Cum. Supp. 1982)), "The Court may retain jurisdiction over any person who is found to be a ward or dependent child of the juvenile court until such ward or dependent child attains the age of 21 years."

18. 298 N.W.2d at 58.

step in reuniting father and son, the California court ordered Carl Otis Mullins to be placed in the home of his paternal aunt in San Diego. Although the Krolicks had notice of the annual dependency hearing in 1978 they had not been informed of the father's petition to terminate his son's dependency.¹⁹ The Krolicks, believing the proceedings to be pro forma, did not attend the hearing and the California court reached its decision without hearing testimony from the Krolicks, the child, or the Hennepin County Welfare Department. The Krolicks filed a petition in Hennepin County District Court for an order enjoining the removal of the child.²⁰ The Krolicks obtained a temporary injunction which was later dismissed when the Hennepin County District Court concluded that it was without jurisdiction. Since the district court never reached the merits of the Krolick's claim, the appeal to the Minnesota Supreme Court was limited to the question of jurisdiction under the UCCJA.²¹

In resolving the issue of jurisdiction, the Minnesota Supreme Court acknowledged that since the custody decree arose from a dependency adjudication, the UCCJA mandated a finding that primary jurisdiction was retained by the California court.²² Unlike a divorce decree, a dependency decree provides for the court's continuous supervision of the child with the intent of eventually returning the child to his parent.²³ Despite California's retention of primary jurisdiction the Minnesota Supreme Court found that the presence of the child and foster parents in Minnesota provided Minnesota with ancillary jurisdiction to modify the custody decree.²⁴ Having found ancillary jurisdiction, the Minnesota court conditioned the return of Carl Otis Mullins on completion of an evidentiary hearing in Minnesota.²⁵ The information gathered at the hearing

19. *Id.*

20. As a result of the local publicity this case received, the Krolicks received almost \$5,000 in donations for their expenses and attorneys' fees. Minneapolis Tribune, Sept. 13, 1981, at 1B, col. 1.

21. 298 N.W.2d at 58.

22. *Id.* at 59. In finding that California retained primary jurisdiction the court cited Minnesota's codification of the Interstate Compact on the Placement of Children. *Id.* at 60 & n.6. This Act provides that the sending agency retains jurisdiction including the power to require the return of the child. MINN. STAT. § 257.40, art. 5 (1980).

23. 298 N.W.2d at 59.

24. *Id.* at 62. Ancillary jurisdiction is primarily a federal court concept whereby a court which has jurisdiction over the primary claim may decide non-removable claims arising from the same incident. See 28 U.S.C. § 1441(c)(1976).

25. 298 N.W.2d at 62. The evidentiary hearing was contingent upon the appellants making a formal application to the district court and notification of the California authorities. A 60-day time limit was placed on the commencement of the hearing. Sixty days after the hearing the appellants were to petition the San Diego Superior Court for a review of the custody order. *Id.*

In the subsequent case of *Landa v. Norris*, 313 N.W.2d 423 (Minn. 1981), the Minnesota Supreme Court declined to exercise ancillary jurisdiction to allow a noncustodial parent to obtain an evidentiary hearing in Minnesota. In *Landa* the parties obtained a divorce in North Dakota in 1979. The North Dakota decree awarded permanent custody

was to be made available to the San Diego Superior Court, thereby insuring that its decision would be based on a complete record.²⁶

In finding ancillary jurisdiction, the Minnesota Supreme Court analyzed the UCCJA in light of two foreign decisions that permitted minors' guardians to retain temporary custody pending applications to modify the foreign custody decrees. The Wisconsin Supreme Court in *Zillmer v. Zillmer*²⁷ and the Colorado Supreme Court in *Fry v. Ball*²⁸ were

of the children to the mother and allowed the father visitation rights. The mother and children subsequently moved to Ohio and the father moved to Minnesota. During the children's visit in May, 1981, the father noticed signs of child abuse and obtained an order from the Hennepin County District Court to show cause why he should not be granted permanent custody. In asserting jurisdiction the district court relied upon the best interests of the child and emergency jurisdiction provisions of the UCCJA.

On appeal the Minnesota Supreme Court found that when North Dakota declined to exercise jurisdiction Ohio was the next state to properly exercise jurisdiction and had apparently continued to do so. On these facts the Minnesota court held that Minnesota did not have jurisdiction under the UCCJA. Since there were some questions in the record as to the Ohio court's intent to exercise continuing jurisdiction, the case was remanded to the district court pending notification from the Ohio court of its intent to exercise continuing jurisdiction.

With respect to *Mullins* the *Landa* court noted that in *Mullins* a different procedural approach was taken. Reiterating that there is a presumption that the court with primary jurisdiction would not knowingly render a decision on an incomplete record the Minnesota Supreme Court presumed that the Ohio court would provide an opportunity for consideration of all the evidence. Thus the court found it unnecessary to provide an evidentiary hearing in Minnesota.

26. *Id.*

27. 8 Wis. 2d 657, 100 N.W.2d 564, *modified on rehearing*, 8 Wis. 2d 657, 101 N.W.2d 703 (1960). In *Zillmer*, a pre-UCCJA decision, the children's mother brought a habeas corpus proceeding to obtain custody of the children who were living with their paternal grandparents in Wisconsin. The children's father had sent them to live with his parents when their mother was confined to a hospital for treatment of a mental illness. Once restored to capacity by a Kansas probate court the mother obtained a divorce in a Kansas district court. The Kansas court found that the children had been placed with the grandparents who had not first obtained legal custody. The court held that the children were still residents of Kansas and subject to the court's jurisdiction. As a part of the divorce decree, custody of the children was awarded to the mother. *Id.* at 658-59, 100 N.W.2d at 565.

In response to the mother's petition for a writ of habeas corpus the grandparents alleged that the mother was likely to have a recurrence of her mental illness which could result in harm to the children. Testimony was introduced that the mother had previously attacked her mother with a knife, attempted to shoot her husband with a gun and attempted to strangle one of the children. Her condition was described as psychotic and incurable with respect to recurrence. *Id.* at 659-60, 100 N.W.2d at 565-66.

When the case was first brought before the Wisconsin court it found that the Kansas court had jurisdiction and that the divorce decree had res judicata effect. Unless the grandparents could establish a substantial change in the circumstances the court indicated that they would not make a change of the children's custody. *Id.* at 662, 100 N.W.2d at 566-67.

On rehearing, the Wisconsin Supreme Court amended its decision to allow the grandparents or father to petition the Kansas court for a modification of its custody decree. As stated by the court:

presented with situations in which the child's welfare could have been jeopardized if the foreign custody decree was enforced. As in *Mullins*, the courts in *Zillmer* and *Fry* recognized that they did not have primary jurisdiction but feared that the foreign custody orders were not based on complete records. The *Zillmer* and *Fry* courts therefore staid enforcement of the foreign decree until all pertinent testimony and information was on the record.²⁹

The Minnesota court interpreted these decisions as authority for the possible existence of concurrent jurisdiction under the UCCJA.³⁰ Com-

Further reflection has not altered our conclusion that the question of custody ought to be decided in the Kansas court, and counsel has not attempted to show that the law of Kansas would prevent further consideration there. Because of the concern for the welfare of the children engendered by the opinion of the medical witness, however, we have concluded that it will be an appropriate exercise of the power of the Wisconsin court to permit the children to remain in the temporary custody of the grandparents pending institution and disposition of an application to the Kansas court for modification of its judgment insofar as it relates to custody.

8 Wis. 2d at 663a-63b, 101 N.W.2d at 704.

28. 190 Colo. 128, 544 P.2d 402 (1975). The petitioners were the natural parents of Scott Fry and had brought action to enjoin a Colorado district court from exercising jurisdiction under the UCCJA. At the time, the child resided with his paternal grandmother who had been appointed by the Superior Court of Orange County, California, as his guardian because his father was incarcerated and his mother was an out-patient at a heroin addiction clinic. The child and his grandparents subsequently moved to Colorado without first obtaining consent from the California court to change their domicile. The child's natural parents obtained a termination of the guardianship with custody of the child being restored to themselves. When the parents appeared in Colorado to pick up the child a scuffle ensued which resulted in the arrest of the parents and the filing of assault charges. *Id.* at 130-31, 544 P.2d at 404-05.

After this incident the grandparents obtained an ex parte order restoring their custody of the child and enjoining the parents from having any further contact with the grandparents. The parents then sued to dissolve the order. *Id.* at 131, 544 P.2d at 405.

On appeal the Colorado Supreme Court held that the UCCJA required the Colorado court to defer jurisdiction to the California court. Since the California court had retained jurisdiction its custody order was not subject to modification by the Colorado court. *Id.*

Although the Colorado court found that it lacked jurisdiction, the court was concerned that the California custody order was not based on a complete record. The court expressly referred to the fact that the child had expressed open fear of returning to live with his parents and exhibited dependence on his grandparents. These facts, along with the alleged assault, were considered to be of a nature that might have changed the judgment of the California court. Thus the Colorado court exercised its equity power to permit the child to remain in the custody of his grandmother pending her petition of the Superior Court of Orange County, California, for a modification of its custody order. *Id.* at 134-35, 544 P.2d at 407-08.

29. *Fry v. Ball*, 190 Colo. 128, 135, 544 P.2d 402, 408 (1975); *Zillmer v. Zillmer*, 8 Wis. 2d 657, 663a-63b, 101 N.W.2d 703, 704 (1960).

30. Prior to the adoption of the UCCJA it was typical for two or more jurisdictions to assert concurrent jurisdiction over the disposition of a child's custody. A primary goal of the UCCJA was the elimination of concurrent jurisdiction. See note 10 *supra*. Despite this prohibition some courts find justification for concurrent jurisdiction under the UCCJA. See *Allison v. Superior Court*, 99 Cal. App. 3d 993, 160 Cal. Rptr. 309 (1979); *Palm v.*

mentators consider *Zillmer* and *Fry* to be authority for the proposition that a state without primary jurisdiction under the UCCJA may assert emergency jurisdiction to enjoin enforcement of a foreign custody order that threatens the welfare of the child.³¹ By arguing for emergency jurisdiction, individuals contesting foreign custody orders are permitted to petition the court of initial jurisdiction to modify the order while maintaining the status quo.³² Although the UCCJA does not expressly allow for the exercise of emergency jurisdiction to modify a custody decree, the overall intent of the UCCJA has been interpreted to authorize such jurisdiction if the guardian has petitioned the custody court for modification.³³

When analyzed under the rationale of *Zillmer* and *Fry* the decision of the Minnesota Supreme Court in *Mullins* is suspect on two points. First, the Minnesota Supreme Court did not expressly base its jurisdiction over Carl Otis Mullins on the existence of an emergency.³⁴ Although there was evidence that Carl Otis Mullins was fearful of returning to California,³⁵ the court's finding of jurisdiction based merely upon the presence of the child and foster parents in Minnesota³⁶ represents a departure from the strict jurisdictional standards imposed by the UCCJA.³⁷

Superior Court, 97 Cal. App. 3d 456, 158 Cal. Rptr. 786 (1979); Bodenheimer, *supra* note 11, at 216-19. In analyzing these cases, Bodenheimer submits that these decisions are predicated upon the erroneous assumption that concurrent jurisdiction rests with both the state that issued the decree and the state where the child has subsequently resided for at least six months. Bodenheimer construes UCCJA § 14 to vest exclusive jurisdiction to modify a custody decree in the court that issued the decree. Until that court no longer has jurisdiction under the UCCJA or declines to exercise jurisdiction, another court can not assert jurisdiction. Thus the exercise of concurrent jurisdiction is incompatible with the express terms of the UCCJA.

31. See Bodenheimer, *supra* note 11, at 225-26; Note, *supra* note 11, at 610-15.

32. *Fry v. Ball*, 190 Colo. 128, 135, 544 P.2d 402, 408 (1975); *Zillmer v. Zillmer*, 8 Wis. 2d 657, 663a-63b, 101 N.W.2d 703, 704 (1960); see Bodenheimer, *supra* note 11, at 225-26; Note, *supra* note 11, at 610-15.

33. See Ratner, *Procedural Due Process and Jurisdiction to Adjudicate: (a) Effective-Litigation Values vs. The Territorial Imperative (b) The Uniform Child Custody Jurisdiction Act*, 75 NW. U.L. REV. 363, 403-06. Although UCCJA § 3(a)(3)(ii) would appear to permit the exercise of emergency jurisdiction when the child is neglected or threatened with mistreatment, UCCJA § 14(a) would prohibit the assertion of jurisdiction if the state of initial jurisdiction continues to exercise jurisdiction. It has been suggested that the apparent conflict between these sections of the UCCJA is resolved by allowing a state to issue temporary custody orders, which do not modify the existing custody decree, and require the petitioning party to seek further relief in the court that issued the decree under challenge. See also Note, *supra* note 11.

34. 298 N.W.2d at 62.

35. See Appellants' Brief and Appendix at 3, A-5, *In re Mullins*, 298 N.W.2d 58 (Minn. 1980).

36. 298 N.W.2d at 62.

37. As adopted in Minnesota, the UCCJA does not provide for the exercise of ancillary jurisdiction. MINN. STAT. § 518A.14 (1980).

The argument that Minnesota attained jurisdiction by becoming the child's new

The second problem with the *Mullins* decision is that it allowed the Krolicks to obtain an evidentiary hearing in a Minnesota court.³⁸ The *Fry* and *Zillmer* courts assumed jurisdiction and enjoined execution of the custody order only to permit the objecting party to petition for modification in the state which issued the order.³⁹ The *Zillmer* and *Fry* decisions more closely conform to the policy that underlies the UCCJA since the state with primary jurisdiction is afforded the opportunity to control the review of the additional evidence.⁴⁰ In his dissent to *Mullins* Justice Scott recognized that the court's decision circumvented the UCCJA which already provided means for the California court to obtain the relevant evidence in Minnesota.⁴¹ Although the majority thought it was adhering to the policy of the UCCJA by promoting cooperation between the states, its decision could also be viewed as an example of the interstate jurisdictional competition that the UCCJA seeks to alleviate.⁴²

"home state" is an erroneous interpretation of the UCCJA. One of the jurisdictional standards under the UCCJA is the child's "home state." See *supra* note 11. The UCCJA defines "home state" as the state where the child and his parent or person acting as a parent have resided for at least six consecutive months. UCCJA § 2(5), 9 U.L.A. at 119. The fact that a child obtains a new "home state" does not necessarily result in a change of jurisdiction to the state of the child's residence. See Bodenheimer, *supra* note 11, at 219-20. Until the court of initial jurisdiction declines to continue exercising jurisdiction, the child's state of residence is without jurisdiction. *Id.*

38. 298 N.W.2d at 62.

39. *Fry v. Ball*, 190 Colo. 128, 135, 544 P.2d 402, 408 (1975); *Zillmer v. Zillmer*, 8 Wis. 2d 657, 663a-63b, 101 N.W.2d 703, 704 (1960).

40. See UCCJA §§ 18-19, 9 U.L.A. at 161-63. These two sections of the UCCJA establish a procedure for the receipt of evidence from other states. Under this procedure, the state of initial jurisdiction may request that the courts of another state hold a hearing to obtain evidence on its behalf. *Id.* § 19(1), 9 U.L.A. at 162. In *Fry* and *Zillmer*, the courts implicitly left the introduction and review of any additional evidence up to the court that issued the custody order. In contrast, the *Mullins* court gave appellants the opportunity of obtaining an evidentiary hearing in Minnesota irrespective of the wishes of the California court.

41. 298 N.W.2d at 63 (Scott, J., dissenting). As stated by Justice Scott:

The majority is well-intentioned in attempting to provide the California court with additional information. However, if the California court deems it desirable to hold an evidentiary hearing in Minnesota, which it may very well do, the UCCJA would allow the hearing on motion of the California tribunal, not at the insistence of this court. Moreover, in the event the California court requests such a hearing in Minnesota, under the UCCJA the foreign tribunal "may prescribe the manner * * * and the terms upon which the testimony shall be taken." By not requiring the instant action to take its proper course in the California system, we would deny the California court the opportunity afforded under the UCCJA to structure the scope and focus of any evidentiary hearing conducted in Minnesota. This consideration could be significant, as the California tribunal may have specific concerns that it would like addressed at the hearing.

Id. (citations omitted).

42. See *supra* notes 38-41 and accompanying text. On its own initiative, the Minnesota court chose to become actively involved in the custody battle over Carl O. Mullins. Although the Minnesota Supreme Court acknowledged that the California courts retained primary jurisdiction, the assertion of ancillary jurisdiction in the absence of any express

The majority's confusion with the use of a temporary custody order can be traced to a lack of clarity in the UCCJA itself.⁴³ A strict reading of the UCCJA does not allow a state to assert jurisdiction and temporarily enjoin enforcement of a custody order.⁴⁴ Nevertheless, since the UCCJA's adoption, it has become evident that courts are often asked to enforce orders which are not based on complete records and which are not in the child's best interest.⁴⁵ In response to this problem the suggestion has been made that the present emergency provision of the UCCJA be replaced by one that would expressly allow a court to issue a temporary order pending litigation in the proper forum.⁴⁶ Such a provision would allow a state to insure that custody is based on an informed decision without sacrificing the UCCJA's goal of eliminating concurrent jurisdiction.⁴⁷ Though the *Mullins* court extended the UCCJA beyond previous interpretations, it did serve the best interest of the child by insuring that the custody of Carl Otis Mullins was based on an informed decision.⁴⁸

Corporations—DISREGARDING THE CORPORATE ENTITY—*Victoria Elevator Co. v. Meriden Grain Co.*, 283 N.W.2d 509 (Minn. 1979).

The corporation is the cornerstone of the American economic structure.¹ Through incorporation, investors can combine capital and reap the profits that derive from economies of scale.² Because of its integral

emergency constituted an implicit challenge to the California custody decree. 298 N.W.2d at 62.

43. *See supra* note 33.

44. *Id.*

45. *See, e.g.*, *Fry v. Ball*, 190 Colo. 128, 544 P.2d 402 (1975).

46. *See Note, supra* note 11, at 616-20.

47. *Id.*

48. The court ordered evidentiary hearing in Minnesota resulted in the Krolick's continued custody of the child with visitation rights afforded to the father. *Minneapolis Tribune*, Sept. 13, 1981, at 113.

1. *See Congdon v. Congdon*, 160 Minn. 343, 373, 200 N.W. 76, 87 (1924) (corporations are of "utmost importance" to industrial world and "essential to the welfare of business interests"); H. BALENTINE, *THE LAW OF CORPORATIONS* § 1 (rev. ed. 1946); Note, *Disregard of the Corporate Entity*, 4 WM. MITCHELL L. REV. 333, 334-36 (1978) (acceptance of corporate device by American business has resulted in phenomenal industrial growth). One leading commentator has stated that "[b]ecause of its size, power, and import, the modern business corporation is a key institution in contemporary society and in the American free enterprise profit system—somewhat analogous to the feudal system of old." H. HENN, *HANDBOOK OF THE LAW OF CORPORATIONS AND OTHER BUSINESS ENTERPRISES* § 1, at 4 (2d ed. 1970).

2. *See generally* H. HENN, *supra* note 1, § 1, at 4. For a general discussion of the history and effect of incorporation, see 1 W. FLETCHER, *CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS* §§ 1-5 (rev. perm. ed. 1974) and H. BALENTINE, *supra* note 1, §§ 118-119.