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Judicial Wandering Through a Legislative Maze: Application of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act to Child Custody Determinations

*Glanzner v. State, Department of Social Services*¹

I. INTRODUCTION

The area of child custody determinations has historically been plagued by the problem of conflicting decrees among alternate forums. The possibility of a conflicting decree provides an incentive for parents to kidnap their children and move them to a new forum in hopes of gaining custody.² Conflicting decrees disrupt the lives of countless children and subject children to unnecessary interstate struggles.³ Child custody determinations are unique in that they intimately affect the lives of innocent children caught in the web of parental discord.

Originally, state legislatures responded to this dilemma by adopting the Uniform Child Custody Jurisdiction Act⁴ (UCCJA) in an attempt to standardize and self-regulate jurisdiction over child custody determinations.⁵ While states could mandate guidelines for exercising initial jurisdiction, the need for uniformity of interstate enforcement of initial custody decrees still created problems.⁶ Congress responded by promulgating the Parental Kidnapping Prevention Act (PKPA),⁷ a federal statute governing full faith and credit for custody determinations.

The UCCJA and PKPA establish a maze of procedural hurdles over which a court must jump to determine the proper forum in which to consider child custody issues. The Acts are complex and interrelated. For this reason,

1. 835 S.W.2d 386 (Mo. Ct. App. 1992).

2. *Thompson v. Thompson*, 484 U.S. 174, 180 (1988).

3. Brigitte M. Bodenheimer, *Interstate Custody: Initial Jurisdiction and Continuing Jurisdiction Under the UCCJA*, 14 FAM. L.Q. 203, 214 (1981).

4. See MO. REV. STAT. § 452.440-.550 (1986); see also CAL. CIV. CODE § 5150-5174 (West 1983).

5. Bodenheimer, *supra* note 3, at 214.

6. Barbara A. Atwood, *Child Custody Jurisdiction and Territoriality*, 52 OHIO ST. L.J. 369, 391 (1991).

7. 28 U.S.C. § 1738A (1988). This Section is officially entitled "Full Faith and Credit Given to Child Custody Determinations."

many courts, including the *Glanzner* court, have misapplied them and therefore have failed to accommodate the policy considerations that initially gave rise to the Acts.

II. FACTS AND HOLDING

Suzanne and Keith Glanzner separated in October of 1985 after four years of marriage.⁸ While Keith served in the military in Okinawa, Japan, the family spent nearly seventeen months of those four years apart, including their only son's first year.⁹ During Keith's service in Okinawa, Suzanne and Bradley, their son, lived in St. Louis with Keith's parents.¹⁰ In November of 1983 Keith returned from Japan and was stationed in California, where his family joined him.¹¹ The Glanzners returned as a family to St. Louis in January, 1985.¹² Less than a year after their move to Missouri, Suzanne took Bradley back to California, leaving Keith in Missouri.¹³

Thereafter, the family's disputes became legal battles. Suzanne filed in California for legal separation and custody of Bradley on December 18, 1985.¹⁴ Subsequent to Suzanne's filing in California, Keith filed for dissolution in St. Louis on January 10, 1986.¹⁵ Three days later, on January 13, Keith was personally served in Missouri with a summons issued from California.¹⁶ He responded by filing a motion to quash service on the ground that California should not exercise jurisdiction over the child custody issue.¹⁷ However, he never officially asserted that California lacked personal jurisdiction over him.¹⁸ The California trial court held a hearing on Keith's motion to quash and officially assumed jurisdiction over the child custody issue under California's version of the UCCJA.¹⁹ During this hearing, the

8. *Glanzner*, 835 S.W.2d at 388.

9. *Id.* at 387.

10. *Id.* at 388.

11. *Id.* at 387.

12. *Id.* at 388.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 389; see *infra* note 157 (discussing the personal jurisdiction issue).

19. *Glanzner*, 835 S.W.2d at 388. Under both the Missouri and California versions of the Uniform Child Custody Jurisdiction Act (UCCJA), jurisdiction exists in the state which is the child's home state (the state in which the child lived for six months prior to the custody proceedings) or in a state with which the child has a "significant connection" and "[t]here is available . . . substantial evidence concerning the child's present or future care, protection, training, and personal relationships." CAL. CIV. CODE § 5152(1)(a)-(b) (West 1983); MO. REV. STAT. § 452.450.1(1)(b), .1(2)(b) (1986). The California court acknowledged that in the instant

California trial judge consulted a St. Louis County Circuit trial judge²⁰ via telephone because the jurisdictional dispute was between California and Missouri.²¹ Several weeks following California's official assumption of jurisdiction, Suzanne was personally served in California pursuant to the Missouri dissolution action filed by Keith in January of 1986.²²

The California court continued to exercise jurisdiction despite Missouri's concurrent assertion of jurisdiction over the child custody issue. On August 12, 1986, the California court entered an order, pending trial, giving custody to Suzanne and imposing liability on Keith for child and spousal support.²³ The Missouri court entered a default decree of dissolution on September 5, 1986.²⁴ The Missouri court granted Keith custody of his son, Bradley, and gave Suzanne visitation rights.²⁵ Thereafter, the case went to trial in California, and a California court dissolved the marriage on November 3, 1986.²⁶ The court granted custody of Bradley to Suzanne and awarded reasonable visitation rights to Keith within California.²⁷

Throughout these proceedings and until the summer of 1991, Suzanne retained physical custody of Bradley.²⁸ In the summer of 1991, Keith's parents visited Suzanne and Bradley in California.²⁹ Suzanne then allowed Bradley to spend some time with his grandparents in St. Louis because they assured her that Bradley would be returned to California on September 1, 1991.³⁰ However, their assurance was misleading. Bradley was not returned to Suzanne on September 1, 1991, but remained in St. Louis.³¹ In an attempt

case, Missouri was the home state, but assumed jurisdiction under the second clause requiring "significant connection" and availability of "substantial evidence." *Glanzner*, 835 S.W.2d at 388.

20. Judge Ninian M. Edwards was consulted. *Glanzner*, 835 S.W.2d at 388 n.2.

21. *Id.* at 388. Both the Missouri and California versions of the UCCJA authorize the court deciding the jurisdiction issue to communicate with courts of other states before determining whether or not exercise of jurisdiction is proper. CAL. CIV. CODE § 5156(4) (West 1983); MO. REV. STAT. § 452.470.3 (1986).

22. *Glanzner*, 835 S.W.2d at 388.

23. The court also granted Keith visitation rights within California. *Id.*

24. *Id.* Suzanne objected to jurisdiction in Missouri and filed a special appearance to contest it. Her objection to jurisdiction was overruled by the St. Louis County Court, which was fully aware of the California court's assumption of jurisdiction over the child custody issue and the pending action therein. *Id.*

25. *Id.* At the time of the Missouri decree, California had already entered its ruling "pending trial." *Id.* However, the California court did not enter its final ruling dissolving the marriage and granting custody to Suzanne until November 3, 1986. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

to regain custody of Bradley, Suzanne filed a petition for writ of habeas corpus in Missouri on September 13, 1991.³² A temporary order returning custody to Suzanne was issued pending Missouri's determination of proper custody in the instant case.³³

The Missouri Court of Appeals, Eastern District, consolidated the child custody jurisdiction issue and a pending Missouri appeal concerning Suzanne's demand for child and spousal support.³⁴ Judge Grimm, writing for the court, relied on the PKPA to deny Suzanne's writ of habeas corpus to enforce the California court's custody and child support orders.³⁵ The California order for spousal support, however, was enforced.³⁶ The court decided the case under the PKPA, determining that the California order was not entitled to enforcement.³⁷ According to the *Glanzner* court, when contradictory child custody orders are made in two states exercising jurisdiction over the same issue, the PKPA should be applied in place of the UCCJA to determine which court may properly exercise jurisdiction.³⁸

III. LEGAL BACKGROUND

The UCCJA and the PKPA are the primary statutory provisions for determining jurisdiction in child custody proceedings. The UCCJA is a model act that has been adopted with some variation by all fifty states.³⁹ It serves as the primary authority for determining initial jurisdiction over child custody issues. The PKPA is a federal act that mandates that interstate full faith and credit be given to initial custody determinations rendered in conformity with the PKPA.⁴⁰ A skeletal framework of the interrelationship between the UCCJA and PKPA will aid understanding of a close analysis of the Acts.

Child custody determinations are unique in that they are never fully settled until a child is no longer subject to parental guardianship. It is

32. *Id.*

33. *Id.* at 388-89.

34. The consolidated issue regarded the state's appeal of the trial court's reversal of a Department of Social Services order demanding Keith pay spousal and child support arrearage of \$11,118. *Id.* at 387. The trial court based its reversal on a finding that California lacked jurisdiction to enter either a custody or support order. *Id.* at 389.

35. *Id.* at 393.

36. *Id.* at 394. The PKPA is silent on the issue of spousal support. The court reasoned that California's order on this issue was binding because the father had been personally served in California and had sufficient contacts with the state. *Id.* at 393-94.

37. *Id.* at 389-90.

38. *Id.* at 393.

39. Mark H. Kruger, *Jurisdiction Under the Uniform Child Custody Jurisdiction Act*, 44 J. Mo. B. 467, 470 (1988).

40. 28 U.S.C. § 1738A (1988).

therefore necessary that a nationwide system exist to determine initial jurisdiction, as well as jurisdiction over modification and enforcement of the initial decree. The UCCJA and PKPA, working together, provide just that.

When a child custody issue arises, the first determination is which court may decide the issue according to state law (the UCCJA). If a court in which a child custody action is originally brought has jurisdiction pursuant to its UCCJA, it may render a custody determination.⁴¹ The state rendering the initial custody decree has exclusive, continuing jurisdiction over the issue until all litigants move from that state⁴² or that state voluntarily declines further exercise of jurisdiction.⁴³ If the same issue is brought in a court of another state, most states' enactments of the UCCJA require the second state to enforce the custody decree of the first state⁴⁴ and forbid modification.⁴⁵ When a subsequent action is brought in another state, it is proper to apply the PKPA to determine if interstate full faith and credit for the initial decree is mandated.⁴⁶

There are two requirements that must be fulfilled for a decree to be entitled to full faith and credit under the PKPA.⁴⁷ The first requirement is that jurisdiction must have been proper in the state where the initial decree was rendered.⁴⁸ The propriety of a state's initial jurisdiction depends upon its conformity with the UCCJA of that state. Therefore, whether the issue is initial, enforcement, or modification jurisdiction, the first inquiry is whether assumption of initial jurisdiction was proper under the UCCJA. This implies a full application of the UCCJA, not merely facial conformity with one of the enumerated grounds for jurisdiction.⁴⁹ If jurisdiction was not proper, then the custody decree is not entitled to full faith and credit under the PKPA.⁵⁰ If jurisdiction was properly invoked, then the second requirement of the PKPA

41. Because child custody issues must be brought in state court, initial jurisdiction must be proper under state law. It is not necessary to analyze jurisdiction under the PKPA until more than one state is competing for jurisdiction.

42. This would occur if both parents moved from the state which rendered the initial custody decree. Bodenheimer, *supra* note 3, at 223.

43. A court may decline jurisdiction pursuant to the inconvenient forum provision of the UCCJA. *See infra* note 77; *see also* Bodenheimer, *supra* note 3, at 222.

44. *See, e.g.*, CAL. CIVIL CODE § 5162 (West 1983); MO. REV. STAT. § 452.500 (1986).

45. *See, e.g.*, CAL. CIVIL CODE § 5163 (West 1983); MO. REV. STAT. § 452.505 (1986).

46. 28 U.S.C. § 1738A(a) (1988); *Mancusi v. Mancusi*, 519 N.Y.S.2d 476, 478 (Fam. Ct. 1987).

47. 28 U.S.C. § 1738A(c) (1988).

48. *Id.* § 1738A(c)(1).

49. Title 28 U.S.C. § 1738A(c)(1) (1988) provides: "such court has jurisdiction under the law of such state." A court must fully conform with its state's version of the UCCJA to have jurisdiction under state law; it follows that the PKPA requires a full analysis of state law to meet this requirement.

50. *Id.* § 1738A(a), (c)(1).

becomes relevant, namely that jurisdiction be based upon one of the grounds authorized in the PKPA.⁵¹ Thus, if both requirements are successfully met, the initial custody decree will be entitled to full faith and credit.⁵² If they are not, however, a court may modify the initial decree provided it has jurisdiction pursuant to the UCCJA of the state in which it sits.

A. Uniform Child Custody Jurisdiction Act

1. Historical Need

Prior to 1968, the year the UCCJA was promulgated,⁵³ there was not a national system to insure that the child custody decrees of one state would be recognized and enforced in another state. The Full Faith and Credit Clause⁵⁴ only requires states to enforce judgments of sister states with equal force as they would enforce their own.⁵⁵ Because states have the power to modify their own custody decrees, the Full Faith and Credit Clause does not bar them from modifying custody decrees of other states.⁵⁶

The possibility of obtaining a favorable custody decree in an alternate state provides an immense incentive for parents to kidnap their children and move them from state to state until they find a sympathetic judge.⁵⁷ With an increase in the divorce rate and social mobility,⁵⁸ the jurisdictional incentive for parental kidnapping has been widely recognized. The estimated yearly number of parental kidnapping incidents hovers somewhere between 25,000 and 100,000.⁵⁹ Because children are particularly vulnerable and their "fate is ultimately connected with the fortunes of the litigants," there was a dire need for states to promulgate jurisdictional rules in child custody matters "emphasizing restraint and comity in order to minimize potential conflicts and harm to children."⁶⁰ In response to this need, the UCCJA was formed and eventually adopted by all fifty states.⁶¹

51. These requirements are discussed *infra* part III.C.

52. 28 U.S.C. § 1738A(a) (1988).

53. Atwood, *supra* note 6, at 389.

54. U.S. CONST art. IV, § 1.

55. *Thompson v. Thompson*, 484 U.S. 174, 180 (1988).

56. *Id.*

57. *Id.*

58. Kruger, *supra* note 39, at 467.

59. *Thompson*, 484 U.S. at 181; Christopher L. Blakesley, *Child Custody—Jurisdiction and Procedure*, 35 EMORY L.J. 291, 296 (1986).

60. Blakesley, *supra* note 59, at 294.

61. Kruger, *supra* note 39, at 470. Missouri adopted its version of the UCCJA in 1978 by L. 1978, H.R. 914, at 689, § 1. California adopted its version of the UCCJA in 1973 by Stats. 1973, ch. 693, at 1251, § 1.

2. Promulgation of the UCCJA

By providing a uniform, nationwide system for custody determinations, the drafters of the UCCJA hoped to promote stability and consistency in the lives of children following a breakup of the family unit.⁶² To accomplish this purpose, the UCCJA "had to bestow legal effect upon that continuing jurisdiction which operates beyond the state borders."⁶³ Most states made at least minimal modifications to the UCCJA before codifying it.⁶⁴ However, the two statutory adaptations in *Glanzner*, the California and Missouri versions of the UCCJA, are substantially similar. They provide authority for assuming initial or modification jurisdiction⁶⁵ in each of four situations: (1) the state is the child's home state;⁶⁶ (2) the child and at least one litigant have significant connection with the state; (3) the child is physically present in the state and has been abandoned, abused or neglected; or (4) no other state has jurisdiction under the first three grounds and/or another state has declined jurisdiction because it is in the child's best interest for this state to litigate the child custody issue.⁶⁷

62. Kruger, *supra* note 39, at 470.

63. *Id.*

64. Atwood, *supra* note 6, at 391.

65. Modification jurisdiction vests a court with power to change an initial custody decree.

66. "Home State" is defined by § 452.445(4) of the Missouri UCCJA as the state in which, immediately preceding the filing of child custody proceeding, the child lived with his parents, a parent, an institution; or a person acting as parent, for at least six consecutive months; or, in the case of a child less than six months old, the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period.

Mo. REV. STAT. § 452.445(4) (1986).

California adheres to a substantially similar definition of "Home State." CAL. CIV. CODE § 5151(5) (West 1983).

67. MO. REV. STAT. § 452.450 (1986). The Missouri UCCJA establishes the following grounds for jurisdiction:

1. A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) This state:

(a) Is the home state of the child at the time of commencement of the proceeding; or

(b) Had been the child's home state within six months before commencement of the proceeding and the child is absent from this state for any reason, and a parent or person acting as parent continues to live in this state; or

(2) It is in the best interest of the child that a court of this state assume jurisdiction because:

The UCCJA establishes more than one legitimate ground to assume initial jurisdiction.⁶⁸ When two or more states have a legitimate claim to initial jurisdiction under the UCCJA, the Act sets out guidelines to determine which court is the proper forum.⁶⁹ The UCCJA requires parties in a custody proceeding to divulge information concerning all past or present custody proceedings in which the child has been involved.⁷⁰ It also places an affirmative duty upon courts to consult the child custody registry to determine if an action concerning the issue is pending in another state.⁷¹ If a court becomes aware of a pending action in another state, the UCCJA directs the courts to communicate with each other to determine which forum is most appropriate for the present litigation.⁷² However, if the courts do not agree on an appropriate forum, the legally-mandated forum is the court in which the custody action was first pending.⁷³

-
- (a) The child and his parents, or the child and at least one litigant, have a significant connection with this state; and
 - (b) There is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or
 - (3) The child is physically present in this state and:
 - (a) The child has been abandoned; or
 - (b) It is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse, or is otherwise being neglected; or
 - (4) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with subdivision (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that this court assume jurisdiction.

Id.

The main difference between the California and the Missouri UCCJA jurisdictional provisions is the grammatical style each uses to achieve substantive equality between the four possible grounds for obtaining jurisdiction. Missouri achieves this end by connecting each ground with an "or." California does not use the "or" connector, but rather achieves the same result by establishing in the first paragraph that jurisdiction exists "if the conditions as set forth in any of the following paragraphs are met." CAL. CIV. CODE § 5152(1) (West 1983); MO. REV. STAT. § 452.450 (1986).

68. CAL. CIV. CODE § 5152(1) (West 1983); MO. REV. STAT. § 452.450 (1986).

69. Bodenheimer, *supra* note 3, at 216-17.

70. CAL. CIV. CODE § 5158 (West 1983); MO. REV. STAT. § 452.480 (1986).

71. CAL. CIV. CODE § 5155 (West 1983); MO. REV. STAT. § 452.465 (1986).

72. CAL. CIV. CODE § 5155 (West 1983); MO. REV. STAT. § 452.465 (1986).

73. CAL. CIV. CODE § 5155 (West 1983); MO. REV. STAT. § 452.465 (1986); Wachter v. Wachter, 439 So. 2d 1260, 1265 (La. Ct. App. 1983); Bodenheimer, *supra* note 3, at 213.

3. Does the UCCJA Contain a Home State Preference?

While a strict reading of the UCCJA provides no implication of a home state preference, some courts have interpreted a preference for home state jurisdiction into the Act.⁷⁴ One commentator has argued that when a preference for home state jurisdiction is erroneously interpreted into the UCCJA,

The noxious effects of the concurrent jurisdiction idea are compounded. The state of the custody judgment would lack even concurrent jurisdiction. Jurisdiction would shift whenever the child spent six months in another state, regardless of the circumstances of the move. A kidnapping parent would simply wait six months, perhaps hiding the child during that period, and could then relitigate custody in the new forum.⁷⁵

The promulgators of the UCCJA carefully drafted procedures to avoid conflicts in concurrent jurisdiction. The Louisiana Supreme Court expounded on the procedural logic of the UCCJA:

It is evident that jurisdiction may exist in two different states under the home state and significant connection standards. When this occurs, it is not necessary that the significant connection state defer in every case to the home state. The conflict is avoided by reference to priority of filing and to factors indicating . . . an inconvenient forum.⁷⁶

Courts that have legitimate jurisdiction under one of the four jurisdictional grounds provided by the UCCJA are allowed to decline jurisdiction if they determine, *sua sponte* or upon a motion by a representative of the child, that it would be in the best interest of the child for an alternate forum to determine custody.⁷⁷ Some states enumerate specific factors a court may look at when considering whether it is in the best interest of the child for that state to retain or decline jurisdiction. In *Hattoum v. Hattoum*,⁷⁸ the court noted that Pennsylvania's UCCJA allows a court to consider, *inter alia*, "[i]f another state is or recently was the home state of the child."⁷⁹ While this may be an enumerated consideration in some states' versions of the UCCJA, it is still

74. *Glanzner v. Glazner*, 835 S.W.2d 380, 392 (Mo. Ct. App. 1992).

75. *Bodenheimer*, *supra* note 3, at 220.

76. *Revere v. Revere*, 389 So. 2d 1277, 1280 (La. 1980).

77. CAL. CIV. CODE § 5156 (West 1983); MO. REV. STAT. § 452.470 (1986).

78. 441 A.2d 403 (Pa. 1982).

79. *Id.* at 406. California provides an identical provision for consideration in determining whether a court should decline jurisdiction. CAL. CIV. CODE § 5156(3)(a) (West 1983). Missouri's UCCJA does not enumerate factors to be considered in determining whether or not a forum is inconvenient.

merely a single factor among many, and as such is inconclusive on the issue of which forum should exercise jurisdiction.⁸⁰

Although a state *may* decline legitimate jurisdiction based on inconvenient forum considerations, it is not mandatory to do so.⁸¹ However, "unless a state has continuing jurisdiction under the terms of the federal law, the PKPA makes it judicially imprudent for one state court to exercise jurisdiction when another state court fulfills the requirements and wishes to exercise 'home state' jurisdiction."⁸² There is a trend among states to decline jurisdiction in order to allow the home state to litigate the issue.⁸³ However, Professor Bodenheimer, a reporter for the committee that drafted the UCCJA,⁸⁴ warns against adopting this trend as a hard and fast rule.⁸⁵ In support of her admonition against judicial creation of a home state preference in the UCCJA, she points to circumstances where declining jurisdiction in favor of the home state may work to the disadvantage of the child; for example, when the home state has a tendency to abolish the noncustodial parent's visitation rights.⁸⁶

4. The UCCJA Is Designed to Eliminate Conflicting Child Custody Decrees Among States

The Act provides that a state may not modify a custody decree rendered by a sister state that assumed initial jurisdiction in substantial conformity with the UCCJA.⁸⁷ This provision confers exclusive continuing jurisdiction to the state rendering the initial decree unless (1) that state no longer has jurisdiction in substantial conformity with the UCCJA⁸⁸ or (2) it declines to exercise continuing jurisdiction.⁸⁹ Theoretically, the UCCJA provides for no instances of concurrent jurisdiction.⁹⁰ However, this theory assumes that judges will uniformly apply the UCCJA and will interpret the law of another state consistent with that state's interpretation of its own UCCJA. Professor

80. *Hattoum*, 441 A.2d at 406.

81. *Mancusi*, 519 N.Y.S.2d at 478.

82. *Id.* at 478-79 (citation omitted).

83. Bodenheimer, *supra* note 3, at 222.

84. Kruger, *supra* note 39, at 469.

85. Bodenheimer, *supra* note 3, at 222-23.

86. *Id.*

87. UCCJA § 14; see CAL. CIV. CODE § 5163 (West 1983); MO. REV. STAT. § 452.505 (1986).

88. This would occur if both parents moved from the state that rendered the initial custody decree. Bodenheimer, *supra* note 3, at 224.

89. A court may decline jurisdiction pursuant to the inconvenient forum provision of the UCCJA. See *supra* note 77; see also Bodenheimer, *supra* note 3, at 222.

90. Bodenheimer, *supra* note 3, at 216.

Bodenheimer, interpreting the Commissioners' Note to Section 6 of the UCCJA,⁹¹ elaborates on the intended effect of the Act: "only one state—the state of continuing jurisdiction—has power to modify the custody decree. Only that state decides whether to decline the exercise of its jurisdiction in any particular case. The rule is clear and simple. There can be no concurrent jurisdiction and no jurisdictional conflict between two states."⁹² Although eliminating concurrent jurisdiction was the intent of the UCCJA, many jurisdictional conflicts between states have arisen, due primarily to inconsistent interpretations of various modified adaptations of the UCCJA.

To prevent courts from exercising simultaneous jurisdiction where more than one forum has legitimate jurisdiction pursuant to the UCCJA, the Act provides that jurisdiction rightfully vests in the court in which the action was first pending.⁹³ The Missouri version of the UCCJA reads: "A court of this state shall not exercise its jurisdiction under [the UCCJA] if, at the time of filing the petition, a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with [the UCCJA], unless the proceeding is stayed by the court of that other state for any reason."⁹⁴ In *In re Marriage of Ray*,⁹⁵ the Missouri Court of Appeals noted that substantial conformity may be achieved by obtaining jurisdiction under any of the four jurisdictional grounds provided in the UCCJA, without recognition of a home state preference.⁹⁶

Courts sometimes misapply the continuing exclusive jurisdiction aspect of the UCCJA. If continuing exclusive jurisdiction is properly applied, the

91. The Missouri and California versions of section 6 are entitled "Simultaneous Proceedings in Other States" and are in substantial conformity with the model code. See CAL. CIVIL CODE § 5155 (West 1983); MO. REV. STAT. § 452.465 (1986).

92. Bodenheimer, *supra* note 3, at 216.

93. CAL. CIV. CODE § 5155 (West 1983); MO. REV. STAT. § 452.465 (1986).

94. MO. REV. STAT. § 452.465.1 (1986).

95. 820 S.W.2d 341 (Mo. Ct. App. 1991).

96. *Id.* at 344. Other states with statutory provisions similar to that of Missouri have declined to exercise jurisdiction when custody litigation was pending in another state exercising jurisdiction in substantial conformity with the UCCJA. *In re Custody of Rector*, 565 P.2d 950 (Colo. Ct. App. 1977); *Wachter v. Wachter*, 439 So. 2d 1260 (La. Ct. App. 1983); *In re McDonald*, 253 N.W.2d 678 (Mich. Ct. App. 1977); *De Passe v. De Passe*, 70 A.2d 473 (N.Y. 1979).

For example, in *Wachter v. Wachter*, 439 So. 2d 1260 (La. Ct. App. 1983), the Louisiana Court of Appeals held that Louisiana was not entitled to exercise jurisdiction over a child custody determination because the issue was pending in a New Jersey court when the Louisiana court initiated jurisdiction. *Id.* at 1264-65. At the time the Louisiana court initiated jurisdiction, the New Jersey court's exercise of jurisdiction was in substantial compliance with the UCCJA. *Id.* at 1265. The New Jersey court, however, did not maintain consistency with the UCCJA throughout the proceeding because it failed to comply with its notice requirements. *Id.* at 1264. The New Jersey action, therefore, was not enforceable under either the UCCJA or the PKPA. *Id.* at 1265.

court will have to apply only the UCCJA provisions on simultaneous proceedings and pending actions in two circumstances: (1) to determine initial jurisdiction, or (2) in one of the two situations where a court may lose continuing jurisdiction.⁹⁷ In *Hempe v. Cape*,⁹⁸ the Missouri Court of Appeals, Southern District, erroneously applied the simultaneous proceedings and pending actions provision when neither of the circumstances warranting their application was present. The *Hempe* court declined to exercise jurisdiction over a child custody modification proceeding because an action concerning the issue was pending in a Florida court that the *Hempe* court determined was exercising jurisdiction in substantial conformity with the UCCJA.⁹⁹ The initial custody decree was entered in Missouri, which was the child's home state at that time.¹⁰⁰ However, because the father still resided in Missouri, when the later Florida action for modification was brought, Missouri maintained exclusive continuing jurisdiction under both the Missouri and Florida versions of the UCCJA.¹⁰¹ As such, the Florida court should have recognized Missouri's exclusive continuing jurisdiction and deferred to it for the judgment on modification.¹⁰² Because the Florida court assumed jurisdiction in contravention of its own state law, only the determination of the Missouri court was entitled to full faith and credit under the PKPA.¹⁰³

The UCCJA attempts to achieve its purpose of consistent custody decrees by affirmatively requiring states to enforce decrees of other states rendered in accordance with the UCCJA.¹⁰⁴ Both the California and Missouri enactments of the UCCJA require enforcement of custody decrees of sister states made in accordance with the UCCJA in the same manner that a court of each state would enforce a decree of its own state.¹⁰⁵

97. Bodenheimer, *supra* note 3, at 218; *see also supra* notes 88-89 and accompanying text.

98. 702 S.W.2d 152 (Mo. Ct. App. 1985).

99. *Id.* at 161.

100. *Id.* at 153.

101. FLA. STAT. ch. 61.1328 (1985); MO. REV. STAT. § 452.505 (1986).

102. FLA. STAT. ch. 61.1328 (1985); MO. REV. STAT. § 452.505 (1986).

103. 28 U.S.C. § 1738A(d) (1988). The Parental Kidnapping Prevention Act, discussed *infra*, governs jurisdiction in enforcement and modification decrees. The PKPA requires that jurisdiction be proper under state law in order for a custody decree to be enforceable. *Id.*

104. Atwood, *supra* note 6, at 391.

105. CAL. CIV. CODE § 5162 (West 1983); MO. REV. STAT. § 452.510 (1986).

B. Parental Kidnapping Prevention Act

1. Historical Need

Many of the problems giving rise to the UCCJA continued to exist after its promulgation because of widespread state modifications and differing interpretations of the model UCCJA.¹⁰⁶ In *Thompson v. Thompson*,¹⁰⁷ the United States Supreme Court opined that the UCCJA "floundered" because states adopted variant versions of the Act.¹⁰⁸ Another primary reason the UCCJA has failed to prevent inconsistent custody determinations is that judges often interpreted statutes of other states inconsistently with the forum state's interpretation of its own statute.¹⁰⁹ Due to concern over these issues and because "custody orders characteristically are subject to modification as required by the best interests of the child . . . some courts doubted whether custody orders were sufficiently 'final' to trigger full faith and credit requirements."¹¹⁰ The continued occurrence of inconsistent custody determinations and concern for the well being of children led Congress to enact the Parental Kidnapping Prevention Act (PKPA),¹¹¹ which became effective in 1981.¹¹²

2. Provisions of the PKPA

The PKPA governs jurisdiction of custody enforcement and modification proceedings.¹¹³ The Act requires that when a custody proceeding is brought in a state other than the state that rendered the initial decree, the "State [in which the action is subsequently brought] shall enforce according to its terms, and shall not modify except as provided [herein], any child custody determination made consistently with the provisions of this section by a court of another State."¹¹⁴ Custody determinations are consistent with the PKPA when jurisdiction is exercised in conformity with the laws of that state and one of the following is met: (1) the state is the child's home state; (2) there is no home state and the child and at least one contestant have significant connection with the state; (3) the child is physically present in the state and has been

106. Atwood, *supra* note 6, at 391.

107. 484 U.S. 174 (1988).

108. *Id.* at 181.

109. Peter M. Walzer, *Maneuvering Through Complex Rules*, 12 FAM. ADVOC. 16 (1990).

110. *Thompson*, 484 U.S. at 180.

111. 28 U.S.C. § 1738A (1988).

112. 28 U.S.C. § 1738A note (1988) (explaining Congress' purpose for enacting the PKPA).

113. *Mancusi*, 519 N.Y.S.2d at 478.

114. 28 U.S.C. § 1738A(a) (1988).

abandoned, abused, or neglected; (4) no state has jurisdiction pursuant to the PKPA; (5) a state has declined jurisdiction because it is in the child's best interest that this state decide the child custody issue; or (6) the state has continuing jurisdiction¹¹⁵ under the PKPA.¹¹⁶

Other than the difference in the types of custody proceedings over which the PKPA and UCCJA govern jurisdiction, perhaps the key difference between

115. The PKPA also contains a provision granting continuing jurisdiction to the court which enters the initial custody decree provided jurisdiction was based on grounds consistent with the PKPA. A court maintains continuing jurisdiction as long as that jurisdiction is consistent with its own laws and at least one contestant remains a resident of the state in which the court sits.

116. 28 U.S.C. § 1738A (1988). The PKPA provides:

(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

Id.

the Acts is that the PKPA contains a home state preference.¹¹⁷ Under the UCCJA, "a state may exercise significant connection jurisdiction even if a home state . . . exists at the same time. In contrast, the PKPA authorizes 'significant connection' jurisdiction only when there is no state qualifying as the child's home state."¹¹⁸ As a result, custody decrees made in a state exercising significant connection jurisdiction when a home state exists will be consistent with the requirements of the UCCJA but not with those of the PKPA.¹¹⁹

3. The PKPA Incorporates the UCCJA

The United States Supreme Court has recognized that the PKPA was intended to incorporate, not eliminate, the UCCJA.¹²⁰ The Court explained that "[t]he sponsors and supporters of the [PKPA] continually indicated that the purpose of the PKPA was to provide for nationwide enforcement of custody orders made in accordance with the terms of the UCCJA."¹²¹ The incorporation of the UCCJA is textually embodied in the first of two requirements for jurisdiction under the PKPA: "such court has jurisdiction under the law of such State."¹²² If jurisdiction is inconsistent with a state's own law (normally embodied in that state's UCCJA) then jurisdiction fails the PKPA test; a decree rendered inconsistently with that state's UCCJA is not entitled to full faith and credit under the PKPA.¹²³ The Supreme Court noted that congressional intent in promulgating the PKPA was to effectively adopt "key provisions of the UCCJA for all states" to eliminate incentives for forum shopping.¹²⁴ Because initial jurisdiction is wholly controlled by state law, and because the PKPA applies only to situations in which a previous decree has been rendered, courts generally accept that the PKPA was meant to work in conjunction with state law and not override it.¹²⁵

In *Wachter v. Wachter*,¹²⁶ the Louisiana Court of Appeals strictly applied a PKPA analysis, articulating the analytical framework courts should use in determining whether a custody determination is entitled to full faith and credit. Because the PKPA requires custody decrees to be consistent with the

117. 28 U.S.C. § 1738A(c)(2)(B) (1988); *O'Daniel v. Walker*, 686 S.W.2d 805, 806 (Ark. Ct. App. 1985); *Mancusi*, 519 N.Y.S.2d at 478.

118. *Atwood*, *supra* note 6, at 392.

119. *Id.*

120. *Thompson v. Thompson*, 484 U.S. 174, 181 (1988).

121. *Id.*

122. 28 U.S.C. § 1738A(c)(1) (1988).

123. *See Wachter v. Wachter*, 439 So. 2d 1260, 1264-65 (La. Ct. App. 1983).

124. *Thompson*, 484 U.S. at 182.

125. *Blakesley*, *supra* note 59, at 350-52.

126. 439 So. 2d 1260 (La. Ct. App. 1983).

law of the state where rendered, the court analyzed the initial custody decree, rendered in New Jersey, under New Jersey's UCCJA.¹²⁷ Even though New Jersey qualified as the home state,¹²⁸ the New Jersey decree was not entitled to full faith and credit under the PKPA because the court failed to comply with the notice requirement of the New Jersey UCCJA.¹²⁹ In other words, because jurisdiction was improper under New Jersey's UCCJA, it was ipso facto improper under the PKPA.¹³⁰

Another example of the interaction between the UCCJA and the PKPA is found in *Bolger v. Bolger*.¹³¹ In that case, a custody proceeding was pending in Texas when New York assumed jurisdiction over the same issue.¹³² The New York UCCJA required a court to stay proceedings if an action was pending in another court exercising jurisdiction in substantial conformity with the UCCJA.¹³³ However, the Texas court assumed jurisdiction based solely on the physical presence of the children in Texas at the time the action was brought.¹³⁴ This basis for jurisdiction was specifically denied in the UCCJA.¹³⁵ Therefore, New York's assumption of jurisdiction was not in contravention of its own law. Although the Texas Court of Appeals did not specifically delineate its rationale for finding the New York decree consistent with New York's laws, the court did recognize this requirement.¹³⁶ The Texas court found the initial jurisdiction consistent with the requirements of the PKPA and thus determined that the New York decree was entitled to full faith and credit.¹³⁷

4. The PKPA Does Not Pre-empt the UCCJA

The PKPA is designed to incorporate rather than pre-empt the UCCJA and to enhance its purpose of avoiding inconsistent custody decrees.¹³⁸ To determine that a congressional enactment pre-empts state family law, the

127. *Id.* at 1264.

128. *Id.* at 1265.

129. *Id.* at 1264.

130. *Hempe v. Cape*, 702 S.W.2d 152 (Mo. Ct. App. 1985). In both *Hempe* and *Wachter* assumption of jurisdiction was improper under the UCCJA of the state assuming jurisdiction. Accordingly, the PKPA precludes the application of full faith and credit to such custody decrees. The *Wachter* court recognized this mandate of federal law, while the *Hempe* court did not.

131. 678 S.W.2d 194 (Tex. Civ. App. 1984).

132. *Id.* at 195.

133. N.Y. DOM. REL. LAW § 75-g.1 (McKinney 1988).

134. *See Bolger*, 678 S.W.2d at 196.

135. N.Y. DOM. REL. LAW § 75-d.2 (McKinney 1988).

136. *Bolger*, 678 S.W.2d at 196.

137. *Id.*

138. *See supra* notes 120-25 and accompanying text.

United States Supreme Court requires a finding that "Congress has positively required by direct enactment that state law be preempted."¹³⁹ Alternatively, state family law may be pre-empted under the Supremacy Clause¹⁴⁰ if the law does "'major damage' to 'clear and substantial' federal interests."¹⁴¹ In *Archambault v. Archambault*,¹⁴² the Supreme Judicial Court of Massachusetts concluded, "[f]rom the language of the PKPA . . . Congress did not intend expressly to preempt any state law."¹⁴³ However, the *Archambault* court did find that the Supremacy Clause mandated pre-emption of an amendment to the Massachusetts UCCJA because it frustrated the purposes of the PKPA.¹⁴⁴

The *Glanzner* court cited *Marks v. Marks*¹⁴⁵ for the proposition that the PKPA pre-empts the UCCJA.¹⁴⁶ In *Marks*, however, the South Carolina Court of Appeals failed to determine whether the "public policy of the [UCCJA] should also be applied" in applying the PKPA to determine a custody enforcement action.¹⁴⁷ The *Marks* court reasoned that the PKPA governed the issue because it was enacted at the time the action was commenced, whereas South Carolina's UCCJA was not enacted until later.¹⁴⁸ In analyzing the issue consistently with the PKPA, the court determined that jurisdiction was proper pursuant to the laws of the state that rendered the initial custody decree.¹⁴⁹ Because the UCCJA was not enacted in South Carolina at the time *Marks* was initiated, it could not be inferred that South Carolina's reliance on the PKPA indicated pre-emption of the UCCJA.

The Tennessee Court of Appeals, in *Voninski v. Voninski*,¹⁵⁰ provided

139. *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979) (quoting *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904)).

140. *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368 (1986).

141. *Id.* (quoting *United States v. Yazell*, 382 U.S. 341, 352 (1966)).

142. 555 N.E.2d 201 (Mass. 1990).

143. *Id.* at 205.

144. *Id.* at 208. The Massachusetts UCCJA amendment contained a provision not commonly found in the UCCJA of other states and not contained in the model draft of the UCCJA. The 1987 amendment to MASS. GEN. L. ch. 209B, § 11(b) provides: "Notwithstanding any provision of this chapter to the contrary, no child shall be ordered or compelled to appear or attend [a custody] proceeding in another state when, after a hearing a judge makes a finding that there is probable cause to believe that such child may be placed in jeopardy or exposed to risk of mental or physical harm by such return to said other state." *Archambault*, 555 N.E.2d at 204.

145. 315 S.E.2d 158 (S.C. Ct. App. 1984).

146. *Glanzner*, 835 S.W.2d at 392.

147. *Marks*, 315 S.E.2d at 160.

148. *Id.*

149. *Id.* at 161.

150. 661 S.W.2d 872 (Tenn. Ct. App. 1982). The court applied the Tennessee and New York UCCJAs to determine if the exercise of jurisdiction was consistent with the state law. *Id.* Published by University of Missouri School of Law Scholarship Repository, 1993

insight into the conceptual framework of the UCCJA and PKPA. The court explained that

[u]nder the Supremacy Clause of the United States Constitution, the PKPA takes precedence over either the Tennessee or New York law and must be first consulted in determining jurisdiction in custody disputes . . . In this judicial maze, the federal act, however, directs one straight back to state law since the first of the jurisdictional prerequisites of the PKPA is that the state court must have jurisdiction under its own laws.¹⁵¹

In any PKPA analysis, proper application of a state's UCCJA is essential to arriving at the mandated result. The Acts are complimentary, not competitive or mutually exclusive.

IV. INSTANT DECISION

In *Glanzner v. Glanzner*,¹⁵² the Missouri Court of Appeals, Eastern District, held that the California court order granting custody of Bradley Glanzner to his mother, Suzanne, was not entitled to full faith and credit under the PKPA and was therefore not enforceable in Missouri.¹⁵³ The court focused its inquiry on determining which of the conflicting decrees was entitled to enforcement.¹⁵⁴

The court first addressed the validity of the California court's initial assumption of jurisdiction. The court explained that because the PKPA is silent on the issue, analysis of initial jurisdiction must focus on the jurisdictional provisions of the UCCJA.¹⁵⁵ Both the California and Missouri adaptations of the UCCJA confer authority to exercise initial jurisdiction on a state where (1) the child and at least one parent have "significant connections" with the state and (2) substantial evidence concerning the child's present or future care, protection, training, and personal relationships is available in the state.¹⁵⁶ Based upon this provision, the court upheld the California trial

151. *Id.* at 876 (citations omitted).

152. 835 S.W.2d 386 (Mo. Ct. App. 1992).

153. *Id.* at 391. Judge Grimm delivered the opinion of the court, with Chief Judge Gaertner and Judge Simon concurring. *Id.* at 387, 394.

154. *Id.* at 390.

155. *Id.* at 389. The official title of the PKPA is "Full faith and credit given to child custody determinations." 28 U.S.C. § 1738A (1988). The PKPA governs only enforcement and modification of foreign decrees. *Id.*

156. CAL. CIV. CODE § 5152(1)(b) (West Supp. 1993); MO. REV. STAT. § 452.450.1(2) (1986).

court's initial assumption of jurisdiction as proper under the UCCJA.¹⁵⁷ The *Glanzner* court also noted that the PKPA did not pre-empt the California UCCJA provision for initial jurisdiction.¹⁵⁸

The court next determined that the Missouri trial court's exercise of jurisdiction over the custody issue pending in California was also proper under the UCCJA.¹⁵⁹ Under Missouri Revised Statute section 452.450.1(a) and (b), a court is entitled to exercise jurisdiction if it is the home state¹⁶⁰ at the time proceedings are commenced or had been the home state within six months prior to the commencement of proceedings.¹⁶¹ Because Bradley, after a nine month stay in Missouri, had only been absent two months when Suzanne initiated custody proceedings, and three months when Keith initiated custody proceedings, the court reasoned that Missouri was the home state.¹⁶² The court further determined that because Missouri was the home state, it was the proper forum to determine the child custody issue.¹⁶³

157. *Glanzner*, 835 S.W.2d at 389-90. Keith Glanzner asserted that California was an improper forum because it lacked personal jurisdiction over him. After he was personally served, he made a motion to quash service. However, his ground for that motion was that California should not exercise jurisdiction over the child custody issue. The father never made a "special or limited" appearance for the purpose of asserting that California lacked personal jurisdiction over him. To the contrary, he acknowledged that he was personally served. This, together with his general appearance contesting jurisdiction, was sufficient to establish personal jurisdiction. *Id.* (quoting CAL. CIV. PROC. CODE § 410.50(a) (West 1983)). In California, when a defendant fails to make a "special or limited" appearance to contest personal jurisdiction, he waives the right to later assert that defense. *Id.* (citing *California Dental Ass'n v. American Dental Ass'n*, 590 P.2d 401, 404 (Cal. 1979) (en banc)).

158. *Glanzner*, 835 S.W.2d at 389.

159. *Id.* at 390.

160. "Home State" is similarly defined in the PKPA, California UCCJA and Missouri UCCJA as the state in which, immediately preceding the initiation of custody proceedings, the child lived with his parents, a parent, or a person acting as a parent, for at least six consecutive months. Periods of temporary absence of any such persons are counted as part of the six month period. 28 U.S.C. § 1738A(b)(4) (1988); CAL. CIV. CODE § 5151(5) (West 1983); MO. REV. STAT. § 452.445(4) (1986).

161. Title 28 U.S.C. § 1738A(c)(2)(A) (1988) and CAL. CIV. CODE § 5152(a)(1) (West Supp. 1993) contain substantially similar provisions.

162. *Glanzner*, 835 S.W.2d at 390.

163. *Id.* The Missouri court cited *Hempe v. Cape*, 702 S.W.2d 152, 161 (Mo. Ct. App. 1985) in support of its determination. In *Hempe*, Missouri was the home state when it assumed initial jurisdiction of the child custody issue. Florida later became the home state, but Missouri possibly retained jurisdiction under the "significant connections" test. *See* MO. REV. STAT. § 452.450.1(2) (1986). A modification action was initiated in Florida, followed by one in Missouri. The court of appeals held that Missouri improperly assumed continuing jurisdiction over the child custody issue by entering a modification decree. The court declined to determine whether Missouri satisfied the "significant connections" test and thereby satisfied the requirements for continuing jurisdiction under the PKPA. The court instead held that when an action is pending in a court of another state whose assumption of jurisdiction is in substantial conformity with the UCCJA, Missouri should decline to exercise jurisdiction. *Hempe*, 702

The mother contended that the Missouri trial court had not exercised jurisdiction consistent with Missouri Revised Statute section 452.465.1 because an action was pending in another state exercising jurisdiction substantially in conformity with the UCCJA when the Missouri court assumed jurisdiction.¹⁶⁴ However, the court found this argument untenable, focusing on the PKPA, not the UCCJA.¹⁶⁵ The court opined that had their focus been on the UCCJA, this argument would still have been unlikely to succeed, because several courts have interpreted the UCCJA to contain a preference for home state jurisdiction.¹⁶⁶ The *Glanzner* court posited that when there is a home state whose court is willing to exercise jurisdiction, usurpation of jurisdiction by another state may not constitute "substantial conformity" with the UCCJA.¹⁶⁷

In support of these contentions, the *Glanzner* court resorted to an extrapolation of the policy considerations behind Congress' adoption of the PKPA from the congressional historical and statutory notes.¹⁶⁸ Because it held that the California decree was unenforceable, the court interpreted Missouri Revised Statute section 452.465.1 (disqualifying assumption of jurisdiction for actions pending in other states exercising jurisdiction in substantial conformity with the UCCJA) to be in accord with the purpose of the federal statute, and therefore Missouri's initial determination could be held valid.¹⁶⁹ Having ruled that the Missouri court's exercise of jurisdiction complied with the requirements of the PKPA, the *Glanzner* court announced that the Missouri decree was entitled to full faith and credit under the federal statute.¹⁷⁰

S.W.2d at 161. Under the PKPA, when the court that made the initial custody order declines to exercise jurisdiction over the modification proceeding, a court of another state which properly has jurisdiction may modify the custody decree. 28 U.S.C. § 1738A(f) (1988).

164. *Glanzner*, 835 S.W.2d at 392. Section 452.465.1 of the Missouri Revised Statutes provides: "A court of this state shall not exercise its jurisdiction under [the UCCJA] if, at the time of filing the petition, a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with [the UCCJA], unless the proceeding is stayed by the court of that other state for any reason." MO. REV. STAT. § 452.465.1 (1986).

165. *Glanzner*, 835 S.W.2d at 392.

166. *Id.* The Missouri Court of Appeals, Eastern District, cited *Hattoum v. Hattoum*, 441 A.2d 403, 405 (Pa. 1982) and *Prickett v. Prickett*, 498 So. 2d 1060, 1061 (Fla. Ct. App. 1986) for this proposition. *Glazner*, 835 S.W.2d at 392.

167. *Glazner*, 835 S.W.2d at 392.

168. *Id.* at 393. See *supra* note 112 for an explanation of these policy considerations.

169. *Glazner*, 835 S.W.2d at 392. The mother also contended that Missouri did not have in personam jurisdiction over her because of defective return of service. However, in personam jurisdiction is unnecessary for dissolution or child custody determinations. *Id.* at 390 (citing *In re Marriage of Breen*, 560 S.W.2d 388, 361 (Mo. Ct. App. 1977); *In re Marriage of Southard*, 733 S.W.2d 867, 868 (Mo. Ct. App. 1987)).

170. *Id.* at 391.

The court expressly recognized that where the PKPA and state law conflict in interstate custody matters, the PKPA pre-empts state law; the court implicitly found such a conflict.¹⁷¹ The Missouri and California UCCJA authorize "significant connections" as a ground for initial jurisdiction, regardless of the existence of a home state. Thus, they are inconsistent with the PKPA enforcement provision, which authorizes "significant connection" jurisdiction only in the absence of a home state.¹⁷² The court thereby reasoned that the PKPA pre-empts the UCCJA and imposes a home state preference on state law.¹⁷³ The Missouri court implied that there is a home state preference that acts as a de facto nullification of UCCJA significant connection jurisdiction when the home state does not decline jurisdiction.¹⁷⁴

The court relied on the PKPA requirements for full faith and credit to arrive at its final conclusion.¹⁷⁵ The PKPA mandates that a state give full faith and credit to the child custody determination of another state when (1) the court exercising jurisdiction has jurisdiction under the laws of its own state and (2) jurisdiction is consistent with the PKPA.¹⁷⁶ The court found that Missouri's petition was consistent with the PKPA because Missouri had been the child's home state within six months of filing the petition.¹⁷⁷ The court also found that the California petition failed to satisfy any of the enumerated possibilities to qualify for enforcement under the PKPA.¹⁷⁸ The court thus denied enforcement of the California custody decree, denied Suzanne's writ of habeas corpus, and quashed the temporary order granting Suzanne custody of Bradley.¹⁷⁹

171. *Id.* at 392. The court cited U.S. CONST. art. I, § 8 for the proposition: "Congressional enactments which do not expressly exclude state legislation in the field nevertheless override state laws with which they conflict." *Id.* (quoting *National City Lines, Inc. v. LLC Corp.*, 687 F.2d 1122, 1128-29 (8th Cir. 1982)).

172. *Glazner*, 835 S.W.2d at 391.

173. *Id.* at 391-92.

174. *Id.*

175. *Id.* at 391. The PKPA provides that "every State shall enforce . . . any child custody determination made consistently with the [PKPA] by a court of another state." 28 U.S.C. § 1738A(a) (1988).

176. *Glanzner*, 835 S.W.2d at 391. See *supra* notes 115-16 and accompanying text for the requirements to be "consistent with" the PKPA.

177. *Glanzner*, 835 S.W.2d at 391. The court found that Missouri satisfied 28 U.S.C. § 1738A(c)(2)(A) (1988). *Id.*

178. *Glanzner*, 835 S.W.2d at 391.

179. *Id.* at 393.

V. COMMENT

A. *What Went Wrong?*

*Glanzner v. Glanzner*¹⁸⁰ exemplifies how a legislature's purpose can be frustrated by improper application of the law. By rejecting the California custody decree and upholding the Missouri decree, the *Glanzner* court's application of the UCCJA and PKPA encourages the very act that the legislation intended to prevent: interstate kidnapping designed to gain a favorable custody determination.¹⁸¹ The court's holding implicitly gave legal approval to Keith Glanzner's kidnapping of his son. Either the Acts are ineffective or they were misapplied in *Glanzner*.

The *Glanzner* court was faced with an enforcement action in which two conflicting original custody decrees had been rendered¹⁸² and only one could be enforced. The first inquiry, therefore, should have been to determine which court properly exercised initial jurisdiction. The propriety of enforcement inherently rests upon the propriety of the initial jurisdiction. A judgment rendered by a court exercising improper jurisdiction is void and thereby unenforceable.¹⁸³ In considering enforcement, whether one begins with the PKPA or the UCCJA, attention should immediately be guided to initial jurisdiction under state law.

In considering the initial assertion of jurisdiction by the California court, the Missouri Court of Appeals properly determined that the California court was entitled to exercise initial jurisdiction pursuant to its own UCCJA. The California court relied on the "significant connection" provision for establishing jurisdiction. From this point on, the *Glanzner* court's analysis of the law travels down a path divergent from that intended by the legislature and reaches an untenable result.

If Keith had been able to locate a forum that had adopted the UCCJA with sufficient modifications to establish a home state preference in its laws, or one that did not require enforcement of other states' decrees, it would be necessary to apply the PKPA to determine the enforceability of the California decree. As noted earlier, the California decree was inconsistent with the PKPA and, as such, not entitled to full faith and credit under a PKPA analysis.¹⁸⁴ However, this does not negate the validity of California exercising initial jurisdiction under the UCCJA; Congress is not empowered to determine initial jurisdiction for the states. That is one of the functions of

180. 835 S.W.2d 386 (Mo. Ct. App. 1992).

181. See *supra* notes 57-61, 111 and accompanying text.

182. *Glanzner*, 835 S.W.2d at 387.

183. JACK H. FRIEDENTHAL ET AL., CIVIL PROCEDURE § 3.1 (1985).

184. *Glanzner*, 835 S.W.2d at 391.

the UCCJA. Although diametrically opposed to public policy, if Keith found such a forum, he could have established that forum as the home state by hiding Bradley for six months. He could have then obtained a custody decree inconsistent with the California decree but enforceable under the PKPA. To avoid such a possibility, many courts voluntarily decline legitimate jurisdiction in favor of the home state. Significant connection jurisdiction may be preferable when the home state has a tendency to make declarations that the court finds inconsistent with the child's best interest, such as abolishing visitation rights of the noncustodial parent. A court must balance the merits of significant connection jurisdiction with the possibility that some parents will find a forum sympathetic to kidnapping parents.

B. *The Glanzner Court Analysis*

The Missouri court should have enforced the California custody decree under the laws of Missouri, notwithstanding the federal law codified in the PKPA. The facts at hand required Missouri to look no further than its own UCCJA and the California court's grounds for initial jurisdiction.

The *Glanzner* court focused on which decree was entitled to enforcement under the PKPA.¹⁸⁵ By focusing its inquiry in such a manner, the court concerned itself with an issue not properly before it: the propriety of extending full faith and credit to the Missouri decree.¹⁸⁶ The California decree did not satisfy the second prong of the PKPA test because it was not the home state when the initial action was commenced and Missouri, the home state, was available to adjudicate the issue.¹⁸⁷ However, the Missouri decree did not satisfy the first prong of the PKPA test because the California court found initial jurisdiction under significant connection, as authorized under Missouri law, prior to the assumption of jurisdiction in Missouri.¹⁸⁸ The court properly found that the California decree lacked consistency with the PKPA and was therefore unenforceable by its terms under a PKPA analysis.¹⁸⁹ Thereafter, the *Glanzner* court hammered a square peg into a circle by declaring the Missouri decree enforceable.

The Missouri UCCJA, in Missouri Revised Statute section 452.465.1, requires the court to stay proceedings that are otherwise proper under the UCCJA if an action in a court of another state, exercising jurisdiction consistent with the UCCJA, is pending at the commencement of the Missouri

185. *Id.* at 390.

186. A Missouri court is not equipped to find its own order entitled to full faith and credit. This task is left to some foreign jurisdiction whenever enforcement is sought.

187. *Glanzner*, 835 S.W.2d at 391.

188. *Id.* at 392.

189. *Id.* at 393.

action. This provision is part of the state's law to be considered when determining the validity of initial jurisdiction. However, when faced with this section of the UCCJA, the *Glanzner* court offered two retorts for failing to apply it. First, the PKPA, not the UCCJA, was the focus of inquiry, so the Missouri law was irrelevant.¹⁹⁰ Second, the court declared that if the Missouri UCCJA was the focus, it very likely contained a home state preference.¹⁹¹ Although the court earlier admitted that the PKPA did not pre-empt the California UCCJA in determining initial jurisdiction,¹⁹² that logic was not consistently applied to the Missouri UCCJA. The court declared that the PKPA pre-empted section 452.465.1 of the Missouri UCCJA to the extent that it demanded a finding that the Missouri trial court's initial exercise of jurisdiction was improper because of the pending California action.¹⁹³ The court claimed reliance on congressional historical and statutory notes to support this proposition.¹⁹⁴ The *Glanzner* court reasoned that because the PKPA contains a home state preference, it necessarily pre-empts state law to the extent that state law does not contain a home state preference.¹⁹⁵

In its research of the congressional history and statutory notes, the court overlooked Congress' intent to incorporate the UCCJA into the PKPA.¹⁹⁶ Missouri's assumption of jurisdiction in the initial custody proceeding was improper under Missouri law and as such was not "made in accordance with the terms of the UCCJA." Therefore, the Missouri decree was not entitled to nationwide enforcement under the PKPA.

Had the *Glanzner* court applied the UCCJA and PKPA as intended, by incorporating the UCCJA into its PKPA analysis, the court would have been compelled to enforce the California decree under Missouri law. Because a California custody action was pending at the time the Missouri trial court initially assumed jurisdiction, jurisdiction was improper under section 452.465.1. Although the PKPA mandates interstate enforcement of certain custody decrees, it does not preclude a state from enforcing other decrees under the state's own laws. The PKPA is not the sole provision available to Missouri for enforcement of custody decrees. Rather, the Missouri UCCJA requires enforcement of custody decrees of other states that are made in conformity with the UCCJA.¹⁹⁷ Because the California decree was made in

190. *Id.* at 392.

191. *Id.*

192. *Id.* at 389.

193. *Id.* at 392.

194. *Id.* at 393.

195. *Id.* at 392-93.

196. The United States Supreme Court, in *Thompson v. Thompson*, 484 U.S. 174, 181 (1988), noted that "the purpose of the PKPA was to provide for nationwide enforcement of custody orders made in accordance with the terms of the UCCJA." *Id.* at 181.

197. MO. REV. STAT. § 452.505 (1986).

conformity with the Missouri UCCJA (absent an improper finding of a home state preference in the UCCJA), the *Glanzner* court should have enforced the California custody decree under the Missouri UCCJA. The *Glanzner* court incorrectly interpreted the PKPA to pre-empt the UCCJA on this issue.

In short, the court correctly found that the California decree was not entitled to full faith and credit under the PKPA. However, it should have applied the Missouri UCCJA, not the PKPA, and enforced the California decree under Missouri's state law. Finally, the *Glanzner* court's opinion that the initial Missouri decree was enforceable under the PKPA was incorrect under the first part of the two-prong PKPA test for determining enforceability. Had Missouri enforced the California decree under its own law, the legislative purposes behind the UCCJA and PKPA would have been realized. Keith Glanzner would have been denied his reward of custody for kidnapping his son, and Bradley would have been returned to his former and familiar surroundings with his mother in California.

C. *The Home State Preference*

The *Glanzner* court had to work through several statutory loopholes in order to declare Missouri's decree deserving of full faith and credit. The *Glanzner* court first determined that the Missouri trial court's assumption of jurisdiction was proper under the Missouri UCCJA because Missouri was the home state.¹⁹⁸ It is well established that Missouri was the home state.¹⁹⁹ However, in establishing the validity of initial jurisdiction, a court should not pick and choose which UCCJA provisions to follow.²⁰⁰ The court acknowledged that the UCCJA was the proper instrument to determine the propriety of initial jurisdiction.²⁰¹ It even acknowledged that for the purpose of determining initial jurisdiction, the PKPA did not pre-empt the California UCCJA.²⁰² However, it rested its finding that the Missouri decree satisfied the first prong of the PKPA test on the assumption that the PKPA pre-empts those portions of the UCCJA that are inconsistent with the home state preference of the PKPA.²⁰³

The *Glanzner* court next asserted that even if the UCCJA was the proper focus of inquiry to determine whether section 452.465.1 invalidated Missouri's initial jurisdiction, the Missouri decree was valid because of Missouri's home

198. *Glanzner*, 835 S.W.2d at 390.

199. *Id.*

200. The PKPA requires jurisdiction to be proper under the laws of the state wherein the action is proceeding. 28 U.S.C. § 1738A(c)(1) (1988). To be valid under Missouri law, jurisdiction must conform with all relevant statutory enactments.

201. *Glanzner*, 835 S.W.2d at 389.

202. *Id.*

203. *Id.* at 392.

state status.²⁰⁴ As explained above, neither the Missouri UCCJA nor the California UCCJA contain a home state preference.²⁰⁵ While Missouri courts have voluntarily chosen to decline legitimate jurisdiction under the UCCJA to allow home states to adjudicate a custody issue,²⁰⁶ the court may not, consistent with Missouri's own statutory provisions, impose this judicial politeness on California by interpreting a home state preference into their UCCJA. However, the *Glanzner* court did just this. By so doing, *Glanzner* provided an example of the UCCJA's susceptibility to varying judicial interpretations from state to state.

The Missouri and California enactments of the UCCJA provide essentially identical grounds for jurisdiction.²⁰⁷ The California court interpreted these grounds to justify significant connection jurisdiction despite the presence of a home state. The *Glanzner* Court recognized this interpretation as proper under the California UCCJA,²⁰⁸ but proceeded to declare that the same words in the Missouri UCCJA evinced a home state preference.²⁰⁹ The finding of a home state preference mandates denial of initial jurisdiction under significant connection grounds when a home state exists. The Missouri court, in effect, interpreted California's UCCJA in a manner inconsistent with California's own interpretation. The *Glanzner* court declared that California's lack of a home state preference rendered its decree not in substantial conformity with the Missouri UCCJA.²¹⁰ Therefore, the court reasoned that the Missouri court was not required to stay proceedings because of the pending California action.²¹¹ The court made an incomplete and unpersuasive attempt to dispel the argument that initial jurisdiction in Missouri was inconsistent with Missouri law. This attempt amounted to judicial legislation of a home state preference into the Missouri UCCJA.²¹²

204. *Id.*

205. See *supra* notes 74-76 and accompanying text.

206. *Hempe v. Cape*, 702 S.W.2d 152, 162 (Mo. Ct. App. 1985).

207. CAL. CIV. CODE § 5152 (West 1983); MO. REV. STAT. § 452.450 (1986). See *supra* note 67 for the text of MO REV. STAT. § 452.450 (1986).

208. *Glanzner*, 835 S.W.2d at 389.

209. *Id.* at 392.

210. *Id.*

211. *Id.*

212. Because of the complexity of the UCCJA, courts have occasionally misapplied it and thereby arrived at faulty conclusions. *Prickett v. Prickett*, 498 So. 2d 1060 (Fla. Dist. Ct. App. 1986), cited by *Glanzner* for asserting that the UCCJA contains a home state preference, is an example of this. *Glanzner*, 835 S.W.2d at 392. In *Prickett*, an initial custody decree was rendered in Florida, the home state at the time. *Prickett*, 498 So. 2d at 1061. Thereafter, the wife and child moved to Connecticut and the father remained in Florida. *Id.* A later Florida action modified that decree. *Id.* Subsequently, the wife initiated a custody proceeding in Connecticut and the Florida Court of Appeals upheld Connecticut's jurisdiction because Connecticut was now the home state. *Id.* at 1062. The *Prickett* holding is clearly erroneous

D. *Where Are We Now?*

Significant connection initial jurisdiction is under attack. This is unfortunate because it is a carefully devised, sophisticated prong of the UCCJA. It helps alleviate some of the abuses available where there is a home state preference.

As a practical matter, custody orders issued from courts that assumed jurisdiction under the significant connection prong of the UCCJA may face limited interstate enforcement if the state targeted for enforcement has one of the following: (1) a mutated UCCJA which fails to provide for interstate enforcement or which carries a home state preference; or (2) judges who have judicially mandated a PKPA analysis as a preemptive enforcement mechanism or have by judicial fiat made a home state preference. This hurdle has caused some states to decline significant connection jurisdiction in favor of home state jurisdiction even when otherwise available under the UCCJA.

Conversely, significant connection orders should enjoy interstate enforcement where the target state has a UCCJA in substantial harmony with the model code and where its judiciary has not gratuitously mandated a home state preference or a PKPA preemption.

E. *What Needs to Be Done?*

Significant legislation in the future is unlikely. The best hope for avoiding results like that in *Glanzner* is for the judiciary to rethink the home state preference and the PKPA preemption. However, if any state is considering an amended UCCJA, substantial adherence to the model code would promote consistent custody decrees. In states where the judiciary has introduced the pernicious doctrines of PKPA preemption or home state preference, an affirmative legislative repeal of such doctrines is desirable. If Congress is willing to amend the PKPA, an express requirement of full adherence to the initial jurisdictional prerequisites of the UCCJA would be of great benefit. The PKPA and UCCJA are designed to work together and

under both the UCCJA and the PKPA. Connecticut's UCCJA precluded it from modifying the Florida decree because the Florida court exercised jurisdiction in substantial conformity to the Connecticut UCCJA. CONN. GEN. STAT. § 46b-104 (1986). In addition, the PKPA precluded Connecticut from modifying the Florida decree because Florida maintained continuing jurisdiction by virtue of three facts: (1) jurisdiction existed under Florida law (Florida properly assumed jurisdiction pursuant to the Florida UCCJA because it was the home state at the time of the initial custody decree. FLA. STAT. ch. 61.1308 (1985)), (2) the initial decree was made consistent with the PKPA because Florida was the home state at the time, (*Prickett*, 498 So. 2d at 1061; see *supra* note 116 for the provisions of the PKPA), and (3) the father remained in Florida. While Florida had the option of declining jurisdiction in favor of Connecticut, it was not mandatory. *Id.*

supplement each other to insure consistent resolution of custody disputes. Judicial legislation frustrates these purposes. The PKPA and UCCJA are a means to an end, a map to arrive at a destination. When the means are altered, the destination may never be reached.

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