

Applying UCCJEA Temporary Emergency Jurisdiction in A/N/D Cases

The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) is a set of uniform laws adopted by every state but Massachusetts*. One key purpose of the UCCJEA is to “provide a uniform set of *jurisdictional rules* and guidelines for the national enforcement of child custody orders.” *In re J.W.S.*, 194 N.C. App. 439, 446 (2008) (emphasis added); see GS 50A-101 Official Comment. The UCCJEA defines when a court has subject matter jurisdiction of a child custody proceeding, which includes abuse, neglect, and dependency actions (A/N/D). See [GS 50A-102\(4\)](#). In North Carolina, the UCCJEA is found at [GS Chapter 50A](#). Under the UCCJEA, there are different types of jurisdiction: initial (the first custody order concerning a child), modification (when there is a previously issued order), and temporary emergency jurisdiction. GS 50A-201 through -204. The focus of this post is temporary emergency jurisdiction.

Criteria for Temporary Emergency Jurisdiction

A North Carolina court that does not have initial child-custody or modification jurisdiction under the UCCJEA has temporary emergency jurisdiction to act when

- the child is present in North Carolina and
- the child has been abandoned (meaning “left without provision for reasonable and necessary care or supervision,” [GS 50A-102\(1\)](#)) or it is necessary in an emergency to protect the child because the child, his/her sibling, or parent is subjected to or threatened with mistreatment or abuse.

[GS 50A-204\(a\)](#); *In re J.W.S.*

The Court Record, Circumstances, and Findings

The court has a duty to make a jurisdictional inquiry. *In re J.H.*, 780 S.E.2d 228 (2015). For a court to determine whether it has jurisdiction, circumstances must exist to support a court's conclusion that it has jurisdiction under the UCCJEA. *In re E.X.J.*, 191 N.C. App. 34 (2008), *aff'd per curiam*, [363 N.C. 9](#) (2009). Court of appeals opinions differ about whether specific findings are a jurisdictional requirement; however, two of the opinions holding that findings are not required have been affirmed per curiam by the North Carolina Supreme Court. *In re E.X.J.* (holding that G.S. 50A-204 does not require findings but noting that including them is a better practice); *In re T.J.D.W.*, 182 N.C. App. 394 (2007), *aff'd*, [362 N.C. 84](#) (2007); *Cf. In re E.J.*, 225 N.C. App. 333 (2013) (holding findings are required).

Regardless of whether findings are required, the record must include evidence sufficient to support jurisdiction. At a minimum, the record will consist of the verified A/N/D petition that contains case

specific allegations that are likely to address abuse, abandonment, or mistreatment (or the threat of mistreatment) to the child, sibling, or parent. The petition should also contain the child's address or whereabouts, and any first pleading filed by *each party* in the action must provide under oath reasonably ascertainable information of the child's address or whereabouts and other information required by [GS 50A-209\(a\)](#), [GS 7B-402](#); *In re A.R.G.*, 361 N.C. 392 (2007). In addition, the petition and/or request for nonsecure custody should state whether there is an emergency requiring immediate protection. See [GS 7B-503\(a\)](#) (criteria for nonsecure custody). Necessary information to establish jurisdiction may also be obtained at any hearing and/or be included in an order. See *In re J.H.* (referencing hearings and a checked box on a nonsecure custody order finding substantial risk of injury or sexual abuse because a parent, guardian, custodian, or caretaker has created conditions likely to cause injury or abuse or has failed or is unable to provide adequate supervision or protection).

Criteria Not Met

If the criteria for temporary emergency jurisdiction is not met, the court will not have authority to proceed with the action even if it has jurisdiction under North Carolina's Juvenile Code (GS Chapter 7B). A court hearing an A/N/D action must have jurisdiction under both the Juvenile Code and the UCCJEA. *In re J.H.*; *In re Brode*, 151 N.C. App. 690 (2002). Without subject matter jurisdiction, a court has no authority to hear the case, and any orders that are entered in the case are void. *In re T.R.P.*, 360 N.C. 588 (2006).

Criteria Met

1. The Court Authority Is Limited

When exercising temporary emergency jurisdiction, a court may only order temporary orders that address the emergency and protect the child. GS 50A-204(a) and Official Comment. Those emergency orders "are absolutely critical in a world where children are subjected to mistreatment and abuse." *In re M.B.*, 179 N.C. App. 572, 575 (2006) (citations omitted).

2. Consideration of Other States' Custody Proceedings

Because North Carolina only exercises temporary emergency jurisdiction when it does not have initial or modification jurisdiction, it is likely another state has initial or modification jurisdiction. The North Carolina court needs to consider whether a child custody proceeding has been commenced in or decided by a court in another state with UCCJEA jurisdiction because that will impact the North Carolina case.

When a state with UCCJEA jurisdiction has decided a child custody proceeding or a proceeding has been commenced there, the North Carolina court must immediately communicate with the other state's court to address jurisdiction and how to resolve the emergency. GS 50A-204(d);

[50A-110](#); See *In re J.W.S.*; *In re Brode*. The North Carolina court may enter a temporary order but the order must specify an adequate period of time for the person to obtain an order in the state with jurisdiction. GS 50A-204(c); *In re J.H.*; *In re J.W.S.* The North Carolina order will be in effect until an order is obtained from the other state within the specified period or the period expires. GS 50A-204(c). After entering an emergency order, the North Carolina court should defer further proceedings in the action until the other state's court makes a determination as to whether it will exercise jurisdiction or determine North Carolina is a more appropriate forum. *In re J.W.S.* (reversed denial of motion to set aside adjudication order and remanded for trial court to contact New York court regarding jurisdiction); *In re Brode* (vacated adjudication order that did not defer adjudication pending notice from Texas court regarding whether it would exercise jurisdiction); see [GS 50A-201](#). These cases are referring to deferring adjudicatory and subsequent hearings and not the hearings on the need for continued nonsecure custody that are required by North Carolina's Juvenile Code. See [GS 7B-506\(a\), \(e\)](#).

If the state with jurisdiction has not acted and is not acting in a child custody proceeding, the North Carolina temporary order remains in effect until an order is obtained from a court in a state that has jurisdiction. GS 50A-204(b). But, a North Carolina temporary custody determination can become a final determination if (1) no other custody proceedings have been initiated and no custody orders have been entered in any other state, (2) North Carolina becomes the home state (meaning the child has lived in North Carolina for six consecutive months with a parent or person acting as parent, [GS 50A-102\(7\)](#)), and (3) the order contains a provision that it becomes final. GS 50A-204(b); see [In re N.T.U.](#), 234 N.C. App. 722 (2014) (note, foster parent was a person acting as a parent).

What A/N/D Orders Can Be Entered Using Temporary Emergency Jurisdiction?

The North Carolina appellate courts have provided some answers. A general answer is that the order should indicate in some way that it is temporary. See *In re Brode*.

1. Nonsecure Custody Orders: Yes

Nonsecure custody orders are temporary orders. See GS 7B-506(a), (e); [In re O.S.](#), 175 N.C. App. 745 (2006). As such, a court has the authority to enter a nonsecure custody order in an A/N/D proceeding while exercising temporary emergency jurisdiction. See *In re J.W.S.*; *In re J.H.*

2. To Adjudicate or Not: That Is the Question

Most appellate cases hold that the trial court does not have the authority to enter an order adjudicating a child abused, neglected, or dependent when it is exercising temporary emergency jurisdiction. *In re J.H.*; *In re Brode*; *In re E.J.*; *Matter of Van Kooten*, 126 N.C. App. 764 (1997). The court of appeals explained a trial court's authority while exercising temporary emergency jurisdiction; "the trial court was *without jurisdiction*: (1) to order Respondent to do anything other

than relinquish the children to the temporary custody of DSS; (2) to order DSS to do anything beyond what was necessary for DSS to take care of the children pursuant to the emergency custody order; and (3) to consider any other matters related to custody of the children.” [In re A.G.M.](#), 773 S.E.2d 123, 129 (2015) (emphasis added). Referencing adjudication orders specifically, the court of appeals has held “while the trial court had temporary jurisdiction to enter the nonsecure custody orders, the trial court did not have jurisdiction, exclusive or temporary, to enter the juvenile adjudication order.” *In re J.W.S.* at 453.

But... the court of appeals has recognized one exception. In cases where the North Carolina court enters an adjudication order while exercising temporary emergency jurisdiction, that adjudication order is valid if

- North Carolina obtains home state status and
- There has not been another state that has entered a child custody order and a child custody proceeding has not been commenced in another state.

In re J.H.; See *In re E.X.J.*; *In re N.T.U.*

When those two circumstances occur, North Carolina acquires initial custody determination. See GS 50A-201. For example, in [In re M.B.](#), the respondent father appealed the neglect adjudication for lack of subject matter jurisdiction. At adjudication, the child had only been in North Carolina for less than three months so the court was exercising temporary emergency jurisdiction. The court of appeals held the appeal was moot because the trial court entered a subsequent order that concluded North Carolina had initial custody determination because it was now the home state (the child and both her parents had lived here for six months), no custody order was entered or pending in any other state, and the temporary custody determination had become a final determination.

Because this requires a wait and see approach, after an adjudication order is entered, there is a risk that before North Carolina becomes the home state, a child custody proceeding will be commenced in another state. This would impact North Carolina’s subject matter jurisdiction and the validity of the adjudication and subsequent orders.

What about the 60 Day Time Period to Hold an Adjudicatory Hearing?

The court may continue an adjudicatory hearing beyond the 60 day statutory time period from when the petition is filed “in extraordinary circumstances when necessary for the proper administration of justice.” [GS 7B-803](#); see [7B-801\(c\)](#). It is hard to imagine that waiting until North Carolina acquires subject matter jurisdiction to make an initial custody determination does not meet that criteria. Without subject matter jurisdiction, the orders entered in the action, including the adjudication order, are void. Subject matter jurisdiction cannot be conferred by waiver, consent, or estoppel, and it can be challenged at any time, including for the first time on appeal. *In re T.R.P.* As the dissent in

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In re T.R.P. notes, the potential disruptive effect on abused, neglected, or dependent children could be staggering since the determination of whether an order is void does not consider what is in the best interests of the child.

**Massachusetts has the precursor to the UCCJEA, the UCCJA which addresses home state, initial, modification, and temporary emergency jurisdiction.*