

Child custody jurisdiction: what happens when everyone leaves the state while the case is pending?

Suppose mother files an action for custody when North Carolina is the home state of the child and mother and father both reside in North Carolina. Temporary orders are entered in the case and a couple of years go by without a permanent order being entered. When mom requests a trial date for entry of a permanent order, dad files a motion to dismiss the case for lack of jurisdiction because mom, the child and dad all now reside in other states. No one resides in North Carolina. Should the case be dismissed?

The answer to that question is no. The North Carolina court continues to have jurisdiction. The court may consider whether another state is a more convenient forum pursuant to [G.S. 50A-207](#), but unless the court determines it is appropriate to stay the North Carolina proceeding pursuant to the inconvenient forum statute, the custody claim must be tried in North Carolina.

Subject matter jurisdiction is determined at the time an action is initiated

The provisions in [NC Chapter 50A, the Uniform Child Custody and Jurisdiction and Enforcement Act](#), define the subject matter jurisdiction of the North Carolina courts relating to child custody matters. The determination of whether a court has subject matter jurisdiction in a particular case is determined at the time the case is initiated. *In re T.N.G.*, 244 N.C. App. 398 (2017); *Gerhauser v. VanBougondien*, 238 N.C. App. 275 (2014). In a custody matter, that means at the time a complaint seeking custody is filed or at the time a motion to modify is filed. See *Gerhauser* (determination made at time motion to modify was filed by father).

Once the court acquires jurisdiction, the court keeps it until the matter is finally resolved

The North Carolina Supreme Court explained in *In re Peoples*, 296 N.C. 109 (1978):

“(O)nce jurisdiction of a court attaches it exists for all time until the cause is fully and completely determined.”

In re Peoples, 296 N.C. at 146, quoting [Kinross-Wright v. Kinross-Wright](#), 248 N.C. 1, 11 (1958).

According to the court, “[j]urisdiction is not a light bulb which can be turned off or on during the course of a trial. Once a court acquires jurisdiction over an action, it retains it throughout the proceeding. ... If the converse of this were true, it would be within the power of the defendant to preserve or destroy the jurisdiction of the court at his own whim.”

In re Peoples, 296 N.C. at 146, quoting *Silver Surprise, Inc. v. Sunshine Mining*, 445 P.2d 334 (Washington 1968).

Waly v. Alkamary

The N.C. Court of Appeals recently addressed this issue directly in the case of [Waly v. Alkamary, N.C. App. \(Aug. 17, 2021\)](#). Father filed a complaint in 2016 for an initial determination of custody. Father, mother and child had lived in North Carolina for at least six months at the time the action was initiated, so North Carolina was the home state of the child at the time of filing. Very shortly after the complaint was filed, mother and child moved to New Jersey and father moved to Florida. The court entered temporary orders but did not enter a final custody order until 2019. The final custody order awarded primary physical custody to father and visitation to mom. Mother appealed, arguing that the NC court lost jurisdiction to enter a custody order when all parties left the state shortly after the complaint for custody was filed.

The court of appeals rejected mother's argument that the NC court lost jurisdiction when the parties left the state. The appellate court held that the complaint was a request for an initial custody determination and NC was the home state of the child at the time the complaint was filed. Therefore, the court had initial determination jurisdiction pursuant to [GS 50A-201](#). Because subject matter jurisdiction is determined at the time of filing and "once jurisdiction attaches to a child custody matter, it exists for all time until the cause is fully and completely determined," the fact that both parties left the state while the action was pending had no impact on the jurisdiction of the court.

In re C.M.B.

It is important to remember that juvenile abuse, neglect and dependency cases are not finally resolved until court explicitly terminates jurisdiction. This means that a court can retain subject matter jurisdiction and the juvenile case can remain pending for many years, even when a child has been placed with a guardian pursuant to a permanent plan and the juvenile court has stopped actively litigating the case.

In the case of *In re C.M.B.*, 266 N.C. App. 448 (2019), DSS filed a petition alleging the child was a neglected juvenile in 2009. After the petition was filed, mother moved to Virginia. In 2011, the court adjudicated the child neglected, appointed an aunt as the child's guardian, released and discharged mother's attorney and waived all future review hearings.

In late 2013 or early 2014, the aunt and child moved to Tennessee. In 2017, the aunt filed a motion to modify in Tennessee. After responding to the matter in Tennessee, mother filed a motion in North Carolina, asking the North Carolina court to exercise jurisdiction. The North Carolina court eventually entered an order concluding that North Carolina was an inconvenient forum pursuant to [GS 50-207](#) and that Tennessee was a more convenient forum and mother appealed.

In explaining that North Carolina continued to have subject matter jurisdiction in the case originally initiated in 2009, the court of appeals stated that the trial court will retain jurisdiction in a juvenile

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case until a child reaches the age of 18 unless the court enters an order that explicitly terminates jurisdiction. The court in this case had ordered permanent guardianship and waived all future hearings, but the court had not terminated jurisdiction. The fact that all parties and the child had left the state had no impact on the trial court's jurisdiction. As the juvenile case had not been finally resolved, the court continued to exercise the jurisdiction originally invoked in 2011.