

UCCJEA: Transitioning from Temporary Emergency Jurisdiction to Home State Jurisdiction in A/N/D Cases

The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) governs a state's subject matter jurisdiction to hear child custody cases, including abuse, neglect, dependency (A/N/D), and termination of parent rights (TPR). See [G.S. 50A-102\(4\)](#); [50A-106](#). Without following the jurisdictional requirements of the UCCJEA, the court lacks subject matter jurisdiction. Any orders entered when a court lacks subject matter jurisdiction are void ab initio. [In re T.R.P.](#), 360 N.C. 588 (2006). I receive numerous inquiries about the UCCJEA in A/N/D cases. A common question involves North Carolina's use of temporary emergency jurisdiction and whether it ever becomes initial custody jurisdiction when North Carolina becomes the juvenile's "home state" after the A/N/D petition has been filed in district court. Earlier this month, the court of appeals answered this question when it published [In re N.B.](#), ___ N.C. App. ___ (July 5, 2023). This blog serves as a follow up to my [previous blog post](#) about temporary emergency jurisdiction under the UCCJEA.

Jurisdiction under the UCCJEA

The UCCJEA provides for four types of subject matter jurisdiction in child custody proceedings:

- initial custody determination ([G.S. 50A-201](#)),
- modification jurisdiction of a child custody order ([G.S. 50A-203](#)),
- temporary emergency jurisdiction ([G.S. 50A-204](#)), and
- exclusive, continuing jurisdiction ([G.S. 50A-202](#)).

In re N.B. addresses temporary emergency jurisdiction and its conversion to initial custody determination based upon North Carolina becoming the child's "home state."

"Home State" and How It Relates to Subject Matter Jurisdiction

A child's "home state" is the state where the child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than 6 months of age, the infant's home state is the state in which the child lived from birth with a parent or person acting as a parent. [G.S. 50A-102\(7\)](#). The commencement of a child custody proceeding is when the initiating pleading is filed in court, which for child welfare cases is the A/N/D petition. [G.S. 50A-102\(5\)](#); [7B-405](#).

Initial custody determination exists when the state is the child's "home state" and there has never been a child custody proceeding or determination for the child. [G.S. 50A-201\(a\)\(1\)](#). See [G.S. 50A-102\(3\)](#) (definition of "child custody determination"; [50A-102\(4\)](#) (definition of "child custody proceeding"). Additionally, if the child has left a state but that state was the child's home state within six months before a custody proceeding is initiated, that state has initial custody jurisdiction

so long as a parent or person acting as a parent continues to live in that state. G.S. 50A-201(a)(1). If there is a prior custody order entered in another state, the state where the child now lives has jurisdiction to modify the other state's custody order if the conditions of G.S. 50A-203 are satisfied. One of the criteria for modification jurisdiction is whether the state where the child now lives is the child's "home state."

Some A/N/D cases involve situations where the child is determined by a county department of social services (DSS) to be abused, neglected, and/or dependent but the child has not lived in North Carolina for six months. What can a DSS and the North Carolina district court do when North Carolina does not have initial custody or modification jurisdiction under the UCCJEA?

Temporary Emergency Jurisdiction

The UCCJEA provides for temporary emergency jurisdiction when a state has neither initial custody nor modification jurisdiction when

- the child is present in the state and
- the child has been abandoned or it is necessary in an emergency to protect a child because the child, their sibling, or their parent is threatened with or subjected to mistreatment or abuse.

G.S. 50A-204(a).

Temporary emergency jurisdiction enables DSS to immediately file an A/N/D petition in district court for a juvenile who has been substantiated as abused, neglected, and/or dependent but who has not lived in North Carolina for the immediately preceding six months. Temporary emergency jurisdiction provides the North Carolina court with subject matter jurisdiction to enter a temporary order. In an A/N/D action, that temporary order is the nonsecure custody order. See G.S. 7B-503 through -507.

Depending on whether there has been or is a child custody proceeding or determination in another state, the North Carolina court may be required to communicate with the court of the other state to address subject matter jurisdiction. See G.S. 50A-204(d). While exercising temporary emergency jurisdiction, the North Carolina court may only enter temporary orders. *Id.* (See my earlier blog post). In some cases, temporary emergency jurisdiction may transition to initial custody jurisdiction based on a change in the child's home state.

In re N.B.: Temporary Emergency Jurisdiction Transitions to Home State Initial Custody Determination

The Facts: In 2020, the two children who were the subject of the A/N/D action resided with their mother and her husband in Washington state (Note, there are two other children who are not

included in this opinion). In October, mother separated from her husband and started to relocate to North Carolina. Later in October, one child moved to North Carolina and stayed with her aunt. In January, another child moved in with other relatives in North Carolina. In December, the child who lived with her aunt disclosed that mother's husband had been sexually abusing her. A report to DSS was made and mother denied any allegations and refused to cooperate with DSS. In January, DSS filed a petition alleging abuse, neglect, and dependency for the child who disclosed the sexual abuse and neglect and dependency for the sibling. The district court entered nonsecure custody orders for the two children based upon temporary emergency jurisdiction. By March, mother had relocated to North Carolina and had housing here. An adjudication and disposition hearing was heard in March, and an order was entered in July. The order contained a conclusion that it initially exercised temporary emergency jurisdiction but North Carolina had obtained home state jurisdiction since mother and the two children had lived here for more than six months and there was no custody order from another state. Mother appealed arguing that North Carolina did not have subject matter jurisdiction under the UCCJEA.

The Issue

The issue on appeal was “whether (and under what conditions) temporary emergency jurisdiction under the UCCJEA may eventually ripen into home-state jurisdiction.” Sl.Op. 6. The answer is yes when specific criteria are met.

The Analysis

It is undisputed that when DSS initiated the A/N/D case, North Carolina was neither child's “home state” and that the district court properly exercised temporary emergency jurisdiction at the commencement of the action. As a result, the district court had subject matter jurisdiction to enter the nonsecure custody orders. However, mother argued that the district court lacked subject matter jurisdiction to enter an adjudication order under temporary emergency jurisdiction based upon the passage of time – six months – which made North Carolina the children's home state. The court of appeals rejected mother's argument.

The court of appeals looked to three prior published opinions. Two of those opinions involved a TPR where at the commencement of the TPR, North Carolina was the home state. Prior to the initiation of the TPRs, DSS had custody of the respective children because of underlying A/N/D cases where DSS had been awarded custody. The A/N/D cases initially involved temporary emergency jurisdiction as neither child had resided in North Carolina for six months before the A/N/D actions were commenced. See [In re N.T.U.](#), 234 N.C. App. 722 (2014); [In re E.X.J.](#), 191 N.C. App. 34 (2008), *aff'd per curiam*, 363 N.C. 9 (2009). In both cases, no child custody proceedings had ever been initiated in another state. Because *In re N.B.* does not involve a TPR, the court of appeals also looked to [In re M.B.](#), 179 N.C. App. 572 (2006). Like *In re N.B.*, *In re M.B.* was an A/N/D case. In *In re M.B.*, the district court initially exercised temporary emergency jurisdiction and adjudicated the juvenile neglected and placed the juvenile in DSS custody. The

district court recognized that North Carolina had become the child's home state and ordered that its adjudication become a final order under G.S. 50A-204(d). While the appeal in *In re M.B.* was pending, there was confirmation that no child custody proceedings had been filed in another state. The court of appeals determined that the issue of temporary emergency jurisdiction was moot and never discussed G.S. 50A-204.

In *In re N.B.*, the court of appeals examined G.S. 50A-204(b), which explicitly states:

if a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under G.S. 50A-201 through 50A-203, a child-custody determination made under this section becomes a final determination if it so provides, and this State becomes the home state of the child.

The plain language of this statute "contemplates that a court exercising emergency jurisdiction may enter an initial child-custody determination, which 'includes a . . . temporary . . . order.' *Id.*" Sl.Op. 9. Here, mother and both her children lived in North Carolina for more than 6 months and there was never a child custody order from or proceeding in another state such that North Carolina was home state when the adjudication and dispositional order were entered. As a result, at the time the adjudication and dispositional orders were entered, North Carolina's temporary emergency jurisdiction had transitioned to initial custody determination. In making its holding, the court of appeals recognized it was following the holding of two unpublished cases, *In re K.M.*, 228 N.C. App. 281 (2013) (unpublished) and *In re L.C.D.*, 253 N.C. App. 840 (2017) (unpublished).

A Word of Caution

Subject matter jurisdiction can be raised at any time. *In re K.J.L.*, 363 N.C. 343 (2009). It is a conclusion of law with a de novo standard of review. *In re N.B.* Although North Carolina can become a child's home state, transitioning North Carolina's temporary emergency jurisdiction to initial custody jurisdiction, consider the following:

- There cannot have been a child custody determination made in another state.
- A child custody proceeding cannot have been or be commenced in another state. It is possible that a child custody proceeding is initiated in a child's home state after an A/N/D petition has been filed in North Carolina and before North Carolina obtains home state jurisdiction.

Be wary about having an adjudication hearing prior to North Carolina becoming the child's home state. In *In re N.B.*, the court of appeals referred to the passage of time up to the entry of the adjudication and dispositional order (the hearing was conducted earlier, before North Carolina had home state jurisdiction). Since an adjudication is not a temporary order, to avoid any confusion and possible jurisdictional defects, it is prudent to wait to hold the adjudicatory hearing until North Carolina has become the child's