

CHAPTER 822

UNIFORM CHILD CUSTODY JURISDICTION ACT

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822.01 Purposes; construction of provisions. (1) The general purposes of this chapter are to:

(a) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and family have a closer connection with another state;

(d) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) Avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) Facilitate the enforcement of custody decrees of other states;

(h) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) Make uniform the law of those states which enact it.

(2) This chapter shall be construed to promote the general purposes stated in this section.

History: 1975 c. 283, 421; 1979 c. 89.

Wisconsin and the uniform child custody jurisdiction act. In whose hand Solomon's sword. 61 MLR 79.

822.015 Custody of Indian children. The Indian child welfare act, 25 USC 1911 to 1963, supersedes the provisions of this chapter in any child custody proceeding governed by that act.

History: 1981 c. 81.

822.02 Definitions. As used in this chapter:

(1) "Contestant" means a person, including a parent, who claims a right to legal custody, physical placement or visitation with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for legal custody, physical placement or visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child immediately preceding the time involved lived with the child's parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 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 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(6m) "Legal custody" has the meaning given in s. 767.001 (2).

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(9) "Physical custody" means actual possession and control of a child.

(9m) "Physical placement" has the meaning given in s. 767.001 (5).

(10) "State" means any state, territory, or possession of the United States, the commonwealth of Puerto Rico, and the District of Columbia.

History: 1975 c. 283, 421; 1979 c. 89; 1987 a. 355.

See notes to 822.03 citing In Interest of A.E.H., 161 Wis. 2d 277, 468 N.W.2d 190 (1991).

822.03 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:

(a) This state is the home state of the child at the time of commencement of the proceeding, or had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of the child's removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state; or

(b) It is in the best interest of the child that a court of this state assume jurisdiction because the child and the child's parents, or the child and at least one contestant, have a significant connection with this state, and there is available in this state substantial evi-

dence concerning the child's present or future care, protection, training, and personal relationships; or

(c) The child is physically present in this state, and the child has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(d) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with par. (a), (b) or (c), 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.

(2) Except under sub. (1) (c) and (d), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine custody.

History: 1975 c. 283, 421.

When children were abducted from their home state to Wisconsin, the trial court properly assumed emergency jurisdiction but erred in failing to stay the proceedings under s. 822.07 (5). *Vorpahl v. Lee*, 99 Wis. 2d 7, 298 N.W.2d 222 (Ct. App. 1980).

The court did not abuse its discretion in refusing to decline jurisdiction when a mother violated a foreign decree by transporting children to Wisconsin. In *Matter of Custody of R. J. G.* 107 Wis. 2d 704, 321 N.W.2d 354 (Ct. App. 1982).

Guardianship and TPR proceedings are custody proceedings, guardianship and TPR determinations are custody determinations, and guardianship and TPR decrees are custody decrees, all governed by UCCJA. In *Interest of A.E.H.* 161 Wis. 2d 277, 468 N.W.2d 190 (1991).

UCCJA jurisdictional requirements must be met only at the commencement of proceedings in this state. A TPR action commenced after the entry of a guardianship decree constituted a request for modification of custody that required reexamination of jurisdiction. In *Interest of A.E.H.* 161 Wis. 2d 277, 468 N.W.2d 190 (1991).

The determination of jurisdiction when two states have asserted jurisdiction is discussed. A child whose sole connection with Wisconsin was summer visitation did not have a significant connection with the state under sub. (1) (b). In *Interest of J.T.* 168 Wis. 2d 646, 485 N.W.2d 70 (Ct. App. 1992).

The Federal Parental Kidnapping Prevention Act preempts conflicting provisions of the UCCJA. *Michalik v. Michalik*, 172 Wis. 2d 640, 494 N.W.2d 391 (1992).

Ch. 822 does not, in and of itself, establish a sufficient statutory basis for personal jurisdiction over a nonresident defendant in a paternity proceeding. *Paula M.S. v. Neal A. R.* 226 Wis. 2d 79, 593 N.W.2d 486 (Ct. App. 1999).

822.04 Notice and opportunity to be heard. Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given under s. 822.05.

History: 1975 c. 283; 1979 c. 89.

822.05 Notice to persons outside this state; submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

(a) By personal delivery outside this state in the manner prescribed for service of process within this state;

(b) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) By any form of mail addressed to the person to be served and requesting a receipt; or

(d) As directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

History: 1975 c. 283.

Traditional personal jurisdiction is not required in child custody proceedings. Child custody proceedings under ch. 822 are valid even in the absence of minimum contacts over an out-of-state parent. Section 801.05 (11) provides sufficient due process protection to out-of-state parents based on notice and an opportunity to be heard. *Tammie J. C. v. Robert T. R.* 2003 WI 61, 262 Wis. 2d 217, 663 N.W.2d 734, 01–2787.

822.06 Simultaneous proceedings in other states.

(1) A court of this state shall not exercise its jurisdiction under this chapter 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 this chapter, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under s. 822.09 and shall consult the child custody registry established under s. 822.16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with ss. 822.19 to 822.22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

(4) The communication between courts called for by sub. (3) or s. 822.07 (4) may be conducted on the record by telephone conference to which the courts and all counsel are parties.

History: 1975 c. 283; 1979 c. 89; Sup. Ct. Order, 141 Wis. 2d xiii (1982).

Judicial Council Note, 1988: Sub. (4) [created] allows jurisdictional conferences among the courts and parties to be conducted on the record by telephone conference. [Re Order effective Jan. 1, 1988]

See notes to 822.03 citing In *Interest of A.E.H.*, 161 Wis. 2d 277, 468 N.W.2d 190 (1991).

An Indian tribal court custody order is given full force and effect under the doctrine of comity. *Custody of Sengstock*, 165 Wis. 2d 86, 477 N.W.2d 310 (Ct. App. 1991).

822.07 Inconvenient forum. (1) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child. Motions under this subsection may be heard on the record as prescribed in s. 807.13.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) If another state is or recently was the child's home state;

(b) If another state has a closer connection with the child and family or with the child and one or more of the contestants;

(c) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) If the parties have agreed on another forum which is no less appropriate; and

(e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in s. 822.01.

(4) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this state shall inform the original court of this fact.

History: 1975 c. 283, 421; 1979 c. 89; Sup. Ct. Order, 141 Wis. 2d xiii (1982).

Judicial Council Note, 1988: Sub. (2) is amended to allow motions to dismiss or stay because of inconvenient forum be heard on the record by telephone conference. [Re Order effective Jan. 1, 1988]

Section 801.63 does not control inconvenient forum motions in custody proceedings. *Mayer v. Mayer*, 91 Wis. 2d 342, 283 N.W.2d 591 (Ct. App. 1979).

When children were abducted from their home state to Wisconsin, the trial court properly assumed emergency jurisdiction but erred in failing to stay the proceedings under s. 822.07 (5). *Vorpahl v. Lee*, 99 Wis. 2d 7, 298 N.W.2d 222 (Ct. App. 1980).

Contempt proceedings in a visitation matter do not involve a custody determination or modification, and this section is not applicable to a jurisdictional objection. *In re Paternity of J.L.V.* 145 Wis. 2d 308, 426 N.W.2d 112 (Ct. App. 1988).

UCCJA jurisdictional requirements must be met only at the commencement of proceedings in this state. A TPR action commenced after the entry of a guardianship decree constituted a request for modification of custody that required reexamination of jurisdiction. *In Interest of A.E.H.* 161 Wis. 2d 277, 468 N.W.2d 190 (1991).

822.08 Jurisdiction declined by reason of conduct.

(1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other

expenses, including attorneys' fees, incurred by other parties or their witnesses.

History: 1975 c. 283.

822.09 Information under oath to be submitted to the court.

(1) Every party in a custody proceeding in the first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(a) The party has participated as a party, witness, or in any other capacity in any other litigation concerning the custody of the same child in this or any other state;

(b) The party has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) The party knows of any person not a party to the proceedings who has physical custody of the child or claims to have legal custody, physical placement or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which the party obtained information during this proceeding.

History: 1975 c. 283, 421; 1987 a. 355.

822.10 Additional parties. If the court learns from information furnished by the parties pursuant to s. 822.09 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have legal custody, physical placement or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of the person's joinder as a party. If the person joined as a party is outside this state the person shall be served with process or otherwise notified in accordance with s. 822.05.

History: 1975 c. 283, 421; 1987 a. 355.

Grandparents with court ordered visitation rights were entitled to notice of termination of parental rights proceedings. *Termination of Parental Rights of Steven C.* 169 Wis. 2d 727, 486 N.W.2d 572 (Ct. App. 1992).

822.11 Appearance of parties and the child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child the court may order that the party appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child the court may order that the notice given under s. 822.05 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under sub. (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

History: 1975 c. 283, 421.

822.12 Binding force and res judicata effect of custody decree.

A custody decree rendered by a court of this state which had jurisdiction under s. 822.03 binds all parties who have been served in this state or notified in accordance with s. 822.05 or who

have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter.

History: 1975 c. 283; 1979 c. 89.

822.13 Recognition of out-of-state custody decrees.

The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of this chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

History: 1975 c. 283; 1979 c. 89.

822.14 Modification of custody decree of another state.

(1) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under sub. (1) and s. 822.08 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with s. 822.22.

History: 1975 c. 283; 1979 c. 89.

An action for legal custody commenced in Wisconsin after entry of a custody decree in California was an action to modify the California custody decree requiring Wisconsin jurisdiction and no California jurisdiction at the time of commencement. In *Interest of A.E.H.*, 161 Wis. 2d 277, 468 N.W.2d 190 (1991).

822.15 Filing and enforcement of custody decree of another state.

(1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the decree in the same manner as a custody decree of a circuit court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a circuit court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his or her witnesses.

History: 1975 c. 283; 1977 c. 449.

822.16 Registry of out-of-state custody decrees and proceedings.

The clerk of each circuit court shall maintain a registry in which he or she shall enter the following:

(1) Certified copies of custody decrees of other states received for filing;

(2) Communications as to the pendency of custody proceedings in other states;

(3) Communications concerning a finding of inconvenient forum by a court of another state; and

(4) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

History: 1975 c. 283; 1977 c. 449.

822.17 Certified copies of custody decree. The clerk of a circuit court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

History: 1975 c. 283; 1977 c. 449.

822.18 Taking testimony in another state. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

History: 1975 c. 283.

822.19 Hearings and studies in another state; orders to appear.

(1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

History: 1975 c. 283.

822.20 Assistance to courts of other states.

(1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give testimony or a statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

History: 1975 c. 283, 421.

822.21 Preservation of documents for use in other states.

In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents.

History: 1975 c. 283.

822.22 Request for court records of another state.

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in s. 822.21.

History: 1975 c. 283.

822.23 International application. The general policies of this chapter extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody

decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

History: 1975 c. 283; 1979 c. 89.

822.24 Priority. Upon the request of a party to a custody pro-

ceeding which raises a question of existence or exercise of jurisdiction under this chapter the case shall be given calendar priority and handled expeditiously.

History: 1975 c. 283; 1979 c. 89.

822.25 Short title. This act may be cited as the “Uniform Child Custody Jurisdiction Act”.

History: 1975 c. 283.