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CHAPTER 26

CONFLICTS OF LAW

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¤ I. (§26.1) INTRODUCTION

Interstate litigation problems arise regularly in the area of family law as a result of both the ever-increasing frequency of divorce and the increased mobility of today's society. The simple, uncontested dissolution action where both the parties and their property are present in Missouri is unusual. Today, typical cases encountered include the situation in which one of the spouses resides outside the state where marital property is situated in another jurisdiction, and where the custodial parent removes the child to reside in another state, giving rise to a battle for custody. The family law practitioner must not only master the Missouri law relevant to divorce and child custody issues, but must also be cognizant of applicable federal requirements in order to achieve full faith and credit recognition and enforcement of Missouri decrees in other states.

The problem of child snatching attained almost epidemic proportions in the 1980's, during which time it was estimated that between 25,000 and 100,000 children of broken marriages were kidnapped each year by a parent seeking to obtain, by force if necessary, custody over a child living with the other parent. The Uniform Child Custody Jurisdiction Act ("UCCJA") § 452.440, *et seq.*, RSMo 1986, and the Parental Kidnapping Prevention Act of 1980 ("PKPA"), Pub.L. 96-611, 94 Stat. 3568-3573, were enacted in order to resolve the problems presented by multistate custody conflicts. Familiarity with the provisions of the UCCJA and PKPA is essential in order to manage any custody case in which the litigants reside in different jurisdictions.

The purpose of this chapter is to examine some of the problems encountered in interstate divorce and custody disputes and apply the available statutes and precedents to resolve them.

¤ II. (§26.2) INTERSTATE RECOGNITION OF JUDGMENTS

The cornerstone for an examination of conflicts in the family law context is the Full Faith and Credit Clause, U.S. Const. art. IV, § 1. That clause provides "[f]ull faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." The Full Faith and Credit Clause, and its implementing legislation, 28 U.S.C. § 1738, require Missouri courts to recognize the divorce decrees of sister states. A divorce decree granted by a sister state must be accorded Full Faith and Credit if granted by a court having jurisdiction of the subject matter, and in accordance with the requirement of procedural due process. *Williams v. State of North Carolina* (I), 317 U.S. 287, (1942). When a Missouri court gives full faith and credit to a divorce decree of another state, the presumption is that such court had authority to render the judgment in question and that the necessary jurisdiction was acquired properly. *Trumbull v. Trumbull*, 393 S.W.2d 82 (Mo.App. E.D. 1965).

Only final judgments, not subject to modification in the state where rendered are entitled to full faith and credit. *In re Marriage of Bradford*, 557 S.W.2d 720 (Mo.App. S.D. 1977), stands for the proposition that Missouri courts are not compelled to recognize decrees of separation or other interlocutory judgments rendered by court of

other states. In *Campbell v. Campbell*, 780 S.W.2d 89 (Mo.App. E.D. 1989), an Ohio default judgment was held to be entitled to full faith and credit in Missouri after registration, even though the manner in which the judgment was obtained in the foreign state did not satisfy Missouri's statutory notice requirements. However, the Missouri court has the power to determine whether the notice afforded in the foreign state satisfies federal due process requirements. 780 S.W.2d 89, 91 (Mo.App. E.D. 1989).

¤ III. EX PARTE DECREE

¤ A. (§26.3) Jurisdiction – Domicile

Jurisdiction to grant a divorce is based on domicile. Each state has the right to determine the marital status of its own residents. If the petitioning spouse is domiciled within the state's borders, the state may issue a valid decree of divorce despite the fact that the other spouse is provided constitutionally-adequate notice and an opportunity to be heard. *Williams v. State of North Carolina* (I), 317 U.S. 287, (1942); *Coffey v. Coffey*, 71 S.W.2d 141 (Mo.App. E.D. 1934).

The Supreme Court of the United States again emphasized domicile as the jurisdictional prerequisite for divorce in *Williams v. State of North Carolina* (II), 325 U.S. 226, (1945). *Williams* (II), *supra*, involved a criminal prosecution for bigamy. The husband obtained a divorce in Nevada and proceeded to remarry. The Supreme Court upheld the husband's conviction for bigamy based on the determination of the North Carolina court that the husband was not domiciled in Nevada at the time he obtained the divorce. The Supreme Court held that an ex parte determination made by the state which grants the divorce that one of the spouses is domiciled in that state, does not preclude another interested state from making its independent determination as to the existence of domicile.

In several cases, Missouri courts have engaged in an independent determination of domicile and, upon finding a lack of proper domicile, have held divorce decrees obtained in sister states invalid for lack of jurisdiction. *Wright v. Wright,* 350 Mo. 325, 165 S.W.2d 870 (banc 1942); *Trumbull v. Trumbull*, 393 S.W.2d 82 (Mo.App. E.D. 1965). *Phelps v. Phelps*, 241 Mo.App. 1202, 246 S.W.2d 838 (W.D. 1952).

There is a presumption that a child's residence is that of his custodial parent. However, it has been held that residence of a child does not depend upon a legal relationship; rather, it depends upon the minor's physical location coupled with his or her intent to remain there indefinitely. The language of a divorce decree appointing one parent as the custodial parent is irrelevant to this inquiry. *American Family Mutual Ins. Co. v. Automobile Club Inter-Ins. Exchange*, 757 S.W.2d 304 (Mo.App. W.D. 1988). See *In re Marriage of Dooley*, 15 S.W.3d 747 (Mo. App. S.D. 2000), holding that residence is equivalent to domicile, requiring physical presence and an intent to remain indefinitely.

¤ 1. (§26.4) Domicile and Residence – Defined

Missouri courts use the terms "residence" and "domicile" interchangeably. *Byars v. Byars*, 593 S.W.2d 656 (Mo.App. S.D. 1980). The terms residence and domicile refer to the place where an individual makes his permanent home and not simply a location where the individual happens to reside for the time being. *Phelps v. Phelps*, 241 Mo.App. 1201, 246 S.W.2d 838 (W.D. 1952). See also *Capuozzo v. Capuozzo*, 782 S.W.2d 163 (Mo.App. S.D. 1990), citing *Byars v. Byars, supra*, 593 S.W.2d 656 (Mo.App. S.D. 1980) with approval. In *Goeman v. Goeman,* 833 S.W. 2d 476 (Mo. App. W.D. 1992) the court held that a party's testimony, alone, that he "resided" in Missouri for 90 days prior to filing, may not be enough to meet the jurisdictional requirement. Thus, where the time of presence in Missouri is short, there should be evidence in the record of *intent* to make Missouri the domicile of the party. The ninety-day residency requirement of §452.305 RSMo 1994 is a jurisdictional fact which must be pleaded and proven, and which accords to the court subject matter jurisdiction which may not be waived by the parties or conferred by agreement. *Groh v. Groh*, 910 S.W. 2d 747 (Mo. App. W.D. 1995). See also *Wambagu v. Wambagu*, 896 S.W. 2d 756 (Mo. App. E.D. 1995), in which the parties were present in Missouri for a temporary employment assignment of several years from their home country of Kenya, all the while with the intention to return to Kenya at the conclusion of the assignment. Under those circumstances, subject matter jurisdiction never attached and the trial court had no jurisdiction.

Where each party files a petition in a different venue, the commencement of the first action is sufficient to vest exclusive jurisdiction in the former court regardless of the date upon which service of process was obtained in either case. *Baker v. Baker*, 804 S.W.2d 763 (Mo.App. E.D. 1990).

In order to establish residence for the purpose of petitioning for dissolution of marriage, two prerequisites are required: there must be actual physical presence in the state combined with a freely-exercised intention of remaining permanently for an indefinite period of time. *State ex rel. Henderson v. Blaeur*, 723 S.W.2d 589 (Mo.App. S.D. 1987), holding that a prisoner is not a resident of the county in which he is incarcerated; *Sharp v. Sharp*, 416 S.W.2d 691 (Mo.App. W.D. 1967); *Phelps v. Phelps, supra, Madsen v. Madsen*, 193 S.W.2d 507 (Mo.App. S.D. 1946). A failure to meet the residency requirement under the dissolution statute confers no jurisdiction and the petition must be dismissed. *Wells v. Noldon*, 679 S.W.2d 889 (Mo.App. E.D. 1984). A change of residence or domicile requires actual physical presence in the new domicile combined with a present intention to remain permanently or for an indefinite period of time, *without any certain purpose to return to the former place of abode. Klindt v. Klindt*, 888 S.W. 2d 824 (W.D. 1994).

An individual does not necessarily lose his usual residence even though he or she may be temporarily absent

from that residence for a period of several years. Whether a change in residency is effectuated depends upon the intention upon which the removal was made. *State ex rel. Henderson v. Blaeur, supra; Turner v. Turner*, 637 S.W.2d 764 (Mo.App. S.D. 1982). Presence in a new domicile coupled with an intent to remain there permanently or indefinitely are necessary components in order to effectuate a change in domicile. *Gaffney v. Gaffney*, 528 S.W.2d 738 (Mo. banc 1975); *In re Marriage of Bradford*, 557 S.W.2d 720 (Mo.App. S.D. 1977); *Bridges v. Bridges*, 559 S.W.2d 753 (Mo.App. E.D. 1977). In another case, a wife who had lived in Missouri and owned a home here for several years moved to Wisconsin from February to August of 1999 and lived with her husband in temporary, employer-provided quarters. Her husband had been transferred in his employment. The wife returned to Missouri in August and filed her petition. In determining whether or not she was a resident of Missouri for the requisite ninety-days prior to filing, the court found it significant that she refused to sell her Missouri home during the six months of her absence, turning down a number of offers to purchase, including one for the full price. Accordingly, although she was not physically present in the state for ninety days prior to filing, she had no intention to change her domicile from Missouri when she left to be with her husband in Wisconsin, and remained a Missouri resident. *Bridgeman v. Bridgeman*, 63 SW 3d 686 (Mo. App. E.D. 2002).

¤ 2. (§26.5) Military Personnel Stationed in Missouri

Section 452.305.1(1), RSMo 1994, which authorizes the issuance of a decree of dissolution to a member of the armed services who has been stationed in Missouri for ninety days, but who is not domiciled in Missouri, is of questionable constitutionality. Although it is arguable that the state has sufficient governmental interest in its service personnel to justify the exercise of jurisdiction in cases affecting their marital status, the case law directly conflicts with § 452.305.1(1). Missouri courts consistently hold that the proper jurisdiction for the dissolution of the marriage of a military member lies in the state where the military member is permanently domiciled. *Edwards v. Edwards*, 709 S.W.2d 165 (Mo.App. E.D. 1986); *Oliver v. Oliver*, 325 S.W.2d 33 (Mo.App. E.D. 1959); *Barth v. Barth*, 189 S.W.2d 451 (Mo.App. E.D. 1945); Compare *Madsen v. Madsen*, 193 S.W.2d 507 (Mo.App. S D. 1946). In *Edwards v. Edwards, supra*, at 168, the court held, "[t]he residence of one in military service generally remains unchanged though he or she may be stationed in the line of duty at a particular place even for a period of years."

¤ B. (§26.6) Enforcement of Foreign Judgment and Collateral Attack

The Uniform Enforcement of Foreign Judgments Law, § 511.760, RSMo 1994, provides full faith and credit and enforcement in Missouri to judgments rendered in another state. The Uniform Enforcement of Foreign

Judgments Law is derivative in nature. It is only operative upon existing foreign judgments entitled to full faith and credit in the registering state. The registering state can give the foreign judgment no greater effect than it would receive from courts in the rendering state. *Flexter v. Flexter*, 684 S.W.2d 589 (Mo.App. E.D. 1985), holding that when a Kansas court set aside a default divorce on the issues of property division and support, the judgment with respect to those issues was no longer entitled to full faith and credit in Missouri. Missouri has a ten-year statute of limitations on judgments which have not been revived or executed upon. *Holt v. Holt*, 635 S.W.2d 335 (Mo. banc 1982).

Judgments rendered by a sister state must be provided full faith and credit unless there was (1) a lack of subject matter jurisdiction, (2) failure to provide due notice, or (3) fraud in the procurement or concoction of the judgment. U.S. Const. art. IV, § 1; *Scott v. Scott*, 441 S.W.2d 330, 332 (Mo. banc 1969); *Flieder v. Flieder*, 575 S.W.2d 578, 760 (Mo.App. W.D. 1978). Foreign judgments rendered *without* in personam jurisdiction are void and not entitled to full faith and credit. *Johnson v. Johnson*, 770 S.W.2d 483 (Mo.App. E.D. 1989) and *Crowder v. Crowder*, 700 S.W.2d 147 (Mo.App. E.D. 1985).

¤ 1. (§26.7) Jurisdiction

A failure to verify properly a petition for registration of a foreign judgment will render the court powerless to act due to lack of subject matter jurisdiction. Lack of subject matter jurisdiction cannot be waived. *American Indus'ial Resources, Inc. v. T.S.E. Supply Co.*, 708 S.W.2d 806 (Mo.App. E.D. 1986).

The issue of domicile is a jurisdictional fact in an action for dissolution of marriage. Unless the issue of domicile is fully determined, with both parties present in the state which originally rendered the divorce decree, the court of the state where enforcement is sought may make an independent assessment as to the existence of domicile. *Williams v. State of North Carolina* (II), 325 U.S. 226, (1945). Unless in personam jurisdiction over both parties is obtained, Missouri courts are precluded from declaring a foreign divorce decree void. *Garfunkel v. Garfunkel*, 612 S.W.2d 862, 864 (Mo.App. E.D. 1981).

A court has continuing jurisdiction to control a case until its judgment becomes final and appealable. *State ex rel. Schweitzer v. Greene*, 438 S.W.2d 229, 232 (Mo. banc 1969). *See Martin v. Adams*, 718 S.W.2d 168 (Mo.App. W.D. 1986), holding that an Alabama child support order issued after the initiation in Minnesota of a motion to modify the Alabama decree was entitled to registration and enforcement is Missouri.

Congress statutorily affirmed the application of the Full Faith and Credit Clause to state custody orders by its enactment of the Parental Kidnapping Prevention Act of 1980 (PKPA), Pub.L. 96611, 94 Stat. 3568-3573. A recent decision by the Supreme Court of the United States has held, however, that the PKPA does not create a

federal cause of action in federal court to determine which of two conflicting state custody decisions is valid. *Thompson v. Thompson*, 484 U.S. 174, 108 S.Ct. 513, 98 L.Ed.2d 512 (1988).

¤ 2. (§26.8) Burden of Proof

Missouri Courts are obligated to afford a strong presumption of validity to the judgments of other states. *Cook v. Cook*, 342 U.S. 126, 72 S.Ct. 157, 96 L.Ed. 146 (1951); *Rice v. Rice*, 336 U.S. 674, (1949); *Esenwein v. Pennsylvania*, 325 U.S. 279, (1945). Although the presumption of validity attached to foreign judgments is a rebuttable presumption, the burden of attacking the validity of the judgment of a sister state rests heavily upon the assailant and must be established by clear and convincing evidence or by the clearest and most satisfactory evidence. *Riley v. Califano*, 498 F.Supp. 589 (W.D. Mo. 1980), quoting *Trumbull v. Trumbull*, 393 S.W.2d 82 (Mo.App. W.D. 1965). *Also see Venator v. Venator,* 512 S.W.2d 451, 453-54 (Mo.App. E.D. 1974). See also *Johnson v. Johnson*, 770 S.W.2d 483 (Mo.App. E.D. 1989) stating that a foreign judgment, regular on its face, is entitled to a strong presumption that the foreign court had jurisdiction over the parties and subject matter; the burden of overcoming this presumption is upon the party attacking the judgment. 770 S.W.2d 483, 485 (Mo.App. E.D. 1989). See also *State ex rel. Schimmer v. Wall*, 774 S.W.2d 864 (Mo.App. S.D. 1989), and *Davis v. Davis*, 799 S.W.2d 127 (Mo.App. W.D. 1990).

¤ 3. (§26.9) Res Judicata

The principles of res judicata and full faith and credit may effectively operate to prevent collateral attack of the jurisdiction issue. If the issues of either in personam or subject matter jurisdiction are adjudicated with both parties having the opportunity to litigate the issues, the decree will not be subject to attack in the court of the state which originally rendered the decree. *Sherrer v. Sherrer*, 334 U S. 343, 68 S.Ct. 1087, 92 L.Ed. 1429 (1948); *Williams v. State of North Carolina* (II), 325 U.S. 226, (1945); *Bates v. Bodie*, 245 U.S. 520, (1918); *Keller v. Keller*, 212 S.W.2d 789 (Mo. 1948), where the principle of res judicata operates to prohibit the parties from attacking the decree in the state where rendered, the Supreme Court has held that the Full Faith and Credit Clause prevents both parties and strangers, (such as children and subsequent spouses) from attacking the decree in other states. *Aldrich v. Aldrich*, 378 U.S. 540, (1964), *Cook v. Cook,* 342 U.S. 126, (1951), *Johnson v. Muelberger,* 340 U.S. 581, (1951).

¤ 4. (§26.10) Estoppel

In addition to res judicata, the principle of estoppel may operate to bar collateral attacks upon a divorcing state's jurisdiction. A party will be estopped from asserting the invalidity of a decree if that party's conduct subsequent to the entry of the decree is inconsistent with his contention that the decree is invalid. *Harris v. Harris*,

196 F.2d 46 (D.C. Cir. 1952), cert denied 344 U.S. 829, (1952); *In re Marriage of Sumners*, 645 S.W.2d 205 (Mo.App. S.D 1983), remarriage; *Bennett v. Terry*, 299 S.W. 147 (Mo.App. E.D. 1927), lapse of time; *Littlefield v. Littlefield*, 199 Mo.App. 456, 203 S.W. 636 (W.D. 1918), remarriage.

In this context, estoppel does not require detrimental reliance upon the opposing party's factual representations, but simply a finding that it would be unfair to permit a party to take advantage of the legal invalidity of a decree. See Restatement (Second) Conflict of Laws, § 74 (1971). Application of the doctrine of estoppel does not operate to inject validity into an otherwise invalid divorce decree, but affects only the ability of a party to challenge its validity. The applicability of the estoppel doctrine is governed by the law of the state in which the subsequent action challenging the validity of the decree is brought, rather than the law of the state where the decree was rendered. *Sutton v. Leib*, 342 U.S. 402, (1952).

In Matter of Estate of Warner, 687 S.W.2d 686, 688 (Mo.App. E.D. 1985), the respondent ex-husband attempted to establish ownership of property held in the estate of his deceased first wife. The court held that the respondent, having obtained a Mexican divorce from his first wife and remarried, was estopped from maintaining that he was married to his first wife at the time of her death due to the earlier invalid Mexican divorce. The court further held that third parties are estopped from denying the validity of the divorce if their claim is derived from a person who is estopped or if they were part of the divorce.

¤ IV. (§26.11) IN PERSONAM JURISDICTION

Jurisdiction based on the domicile of the petitioning spouse is sufficient to authorize the dissolution of a marriage. If the proceeding affects status only, such as the existence of the marriage itself or custody of children, the action is in rem and a valid judgment requires only that the res be before the court on proper notice. *Beckmann v. Beckmann*, 358 Mo. 1029, 218 S.W.2d 566, 569 (banc 1949). Domicile as the sole basis for jurisdiction is not sufficient insofar as the dissolution proceeding affects contractual aspects of the marriage such as maintenance, child support and distribution of tangible child support and distribution of tangible property. The court must have personal jurisdiction of the respondent in order to adjudicate a personal liability against respondent. The court must also have jurisdiction over the specific property in order to affect the respondent's interest in such property. *Ferrari v. Ferrari*, 585 S.W.2d 546 (Mo.App. E.D. 1979). See also *Upchurch v. Upchurch*, 767 S.W.2d 629 (Mo.App. E.D. 1989), citing *Ferrari v. Ferrari* with approval.

¤ A. (§26.12) Divisible Divorce Actions

The concept of divisible divorce recognizes that a divorce proceeding has two separate aspects; that relating

to the existence of the marriage itself and that relating to personal property rights. The property interest and support obligations of a litigant cannot be adjudicated ex parte. The adjudication of the duties of maintenance and support requires in personam jurisdiction through general appearance in the action or personal service of summons in the forum state, or pursuant to applicable long arm statutes. *See Estin v. Estin*, 334 U.S. 541, (1948). In *Estin, supra*, the husband procured a divorce in Nevada following the earlier issuance of a support order in New York. The decree of the Nevada court purported to eliminate the wife's claim for support under the earlier New York judgment, even though the Nevada court had never obtained personal jurisdiction over the wife. The Supreme Court held that the New York court was only required to recognize the Nevada decree insofar as the decree granted the divorce and that New York need not give full faith and credit to that portion of the Nevada judgment eliminating the wife's entitlement to support, The Court stated: "The result in this situation is to make the divorce divisible – to give effect to the Nevada decree insofar as it affects marital status and to make it ineffective on the issue of alimony."

In *Vanderbilt v. Vanderbilt*, 354 U.S. 416, (1957), the Supreme Court of the United States extended its holding in *Estin, supra*, to protect an absent spouse from an ex parte determination of her support rights despite the fact that no support order had been reduced to judgment at the time of the husband's ex parte divorce.

The concept of divisible divorce has long been recognized by Missouri courts. In *Gould v. Crow*, 57 Mo. 200 (1874), the Supreme Court of Missouri considered a divorce decree granted in another state to a resident of that state, on an order of publication. The court held the decree valid to the extent that it terminated the marriage, but concluded that any in personam order included within the terms of the decree would have no force or extraterritorial effect. In *State ex rel. Miller v. Jones*, 349 S.W.2d 534 (Mo.App. E.D. 1961), the court of appeals relied on *Gould v. Crow, supra*, and held that, where each of the parties commenced divorce actions in their home states of Missouri and Colorado without procuring personal jurisdiction over the absent spouse, both states had jurisdiction to grant the divorce but neither state had jurisdiction to enter binding child support or alimony orders.

The Supreme Court of Missouri reaffirmed in *Thompson v. Thompson*, 657 S.W.2d 629, 630-31 (Mo. banc 1983), citing *In re Marriage of Breen*, 560 S.W.2d 358, 361 (Mo.App. W.D. 1977), that lack of personal jurisdiction over the respondent precludes a judicial determination relating to maintenance, child support and attorney's fees. If the court lacks personal jurisdiction over one of the parties, the court's power to divide marital property is limited to marital property located within the state. See also *State ex rel. Valencia v. Hutcherson*, 782 S.W.2d 417 (Mo.App. W.D. 1989) which holds that personal jurisdiction over a defendant is a prerequisite to entering a general

judgment in personam, and "lack of personal jurisdiction forestalls consideration of orders pertaining to maintenance, child support, and attorney's fees", 782 S.W.2d 417, 418, quoting *Thompson v. Thompson*, 657 S.W.2d 629, 631 (Mo. banc 1983).

In *Hale v. Hale*, 781 S.W.2d 815 (Mo.App. E.D. 1989), the court held that Missouri may claim continuing jurisdiction, pursuant to §452.370.5, RSMo Supp. 1990 and Supreme Court Rule 54.14, to modify the child support and maintenance provisions of its decree, even after both parties no longer reside within the state. *Id.* at 819.

The pendency of a divorce action in another state does not divest Missouri courts of jurisdiction. The Missouri court, if satisfied that the same relief could be obtained in the court where the action was initiated, may upon proper motion exercise its discretion to stay the Missouri suit. *Carron v. Carron*, 631 S.W.2d 660 (Mo.App. E.D. 1982).

The commencement of a divorce action in one state will not insulate the petitioner from Full Faith and Credit Clause recognition of a judgment obtained when a subsequent suit is brought in another state. In *Urbanek v. Urbanek*, 503 S.W.2d 434 (Mo.App. E.D. 1973), the Court of Appeals upheld the dismissal of the wife's petition for dissolution. Even though the Missouri action was filed before the husband's dissolution action in Mississippi, the Mississippi court issued its decree of dissolution prior to the hearing and trial in the Missouri case. The Court, in holding that the Mississippi decree must be given full faith and credit in Missouri, determined that it had the power to determine the issues of child custody and support, pursuant to a separate count in the petition in equity for child custody and support.

¤ B. (§26.13) Long Arm Jurisdiction

Rule 54.06(b) of the Missouri Rules of Civil Procedure provide for long arm jurisdiction in dissolution of marriage actions initiated in Missouri:

> Service sufficient to authorize a general judgment in personam may be obtained on any person, any person's personal representative or other legal representative, whether or not a citizen or resident of the state who has lived in lawful marriage within this state, as to all civil actions for dissolution of marriage or for legal separation and all obligations arising for maintenance of a spouse, support of any child of the marriage, attorney fees, suit money or disposition of marital property, if the other party to the lawful marriage continues to live in this state or if a third party has provided support to the spouse or to the children of the marriage and is a resident of this state.

The Supreme Court of the United States, in *Kulko v. Superior Court of California*, 436 U.S. 84, (1978), considered the jurisdiction of the California courts under the California long arm statute, § 410.10, Cal. Civ. Proc. Code (1973), to modify a child support order, entered pursuant to a Haitian divorce decree. The parties were married in California during one of appellant husband's brief visits while he was in the military. The Haitian divorce decree incorporated a New York separation agreement entered into when the parties were domiciled in New

York. Following the divorce, the appellant husband sent the parties' daughter to live with her mother in California. The California Supreme Court upheld the California court's exercise of jurisdiction; concluding that in sending the daughter to reside with her mother in California, the appellant husband purposefully availed himself of the benefits and protections of the laws of California.

The Supreme Court of the United States reversed, holding that the appellant husband had insufficient contacts with California to provide a constitutional basis for its courts to exercise personal jurisdiction over him. *Shaffer v. Heitner*, 433 U.S. 186, (1977). In order to comply with the due process requirements of the Fourteenth Amendment, a judgment imposing a personal duty of liability must be entered by a court having jurisdiction over the person of the defendant. *International Shoe Co. v. Washington*, 326 U.S. 310, (1945). *Pennoyer v. Neff*, 95 U.S. 714, (1877). The existence of valid personal jurisdiction depends upon both the presence of reasonable notice to the defendant of commencement of the action, *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, (1950), and sufficient contact between the defendant and the forum state as to make it fair to require defense of the action in the forum. *Milliken v. Meyer,* 311 U.S. 457, (1940). The court in *Kulko* concluded that neither the incident of the party's marriage and husband's temporary visits to California nor the husband's action in sending his daughter to live in California with her mother were sufficient to satisfy the requirements of *International Shoe Co. v. Washington, supra*, that the "quality and nature" of his activity were such that it was "reasonable" and "fair" to require him to defend the action in California.

The United States Supreme Court has since held that one's temporary presence in a state with which he has no contact whatsoever is sufficient to confer *in personam* jurisdiction. In *Burnham v. Superior Court of California, County of Marin*, 58 U.S.L.W. 4629 (1989), the Supreme Court, in an opinion by Justice Scalia, pointed out that among the most firmly established principles of personal jurisdiction in American tradition is that courts of a state have jurisdiction over non-residents who are physically present in the state, without regard to whether the defendant was only briefly in the state or whether the cause of action was related to his activities there. 58 U.S.L.W. 4631. The Court said "[a]lthough research has not revealed a case deciding the issue in every State's courts, that appears to be because the issue was so well settled that it went unlitigated." *Id.* The appellant argued that *International Shoe* and *Shaffer v. Heitner*, *supra*, required "continuous and systematic" contacts with the forum by the defendant, consistent with "traditional notions of fair play and substantial justice," and that the defendant's presence in the forum must be related to the litigation. *Id.* at 4632, 4633. The Supreme Court pointed out that those decisions involved jurisdiction over an *absent* defendant who was served outside the state. *Id.* at 4633. The require-

ment of "minimum contacts" set out in those precedents is a substitute for physical presence of the defendant, and serves to confer jurisdiction upon the absent defendant.

The effect of the *Burnham* decision is to uphold the constitutionality of what is commonly referred to as "gotcha" jurisdiction – *in personam* jurisdiction over a non-resident who is served with process while physically present in the forum state, but who has no other connection with the state.

The Missouri long arm statutes, Rule 54.06(b), satisfies constitutional requirements for the valid exercise of in personam jurisdiction by requiring that both parties lived in lawful marriage in Missouri and that the petitioning party continues to reside within Missouri. Note, however, that Rule 54.06(b) has been held inapplicable to a case in which there is a pre-existing Missouri decree and modification of its child support and maintenance provisions is sought in the Missouri court, even though both parties now reside outside the state. In such a case, Rule 54.14 applies, as the Missouri circuit court has continuing personal jurisdiction over the parties for the limited purpose of modifying maintenance or child support. *Hale v. Hale*, 781 S.W.2d 815, 818 (Mo.App. E.D. 1989).

In order to uphold the exercise of jurisdiction invoked pursuant to the long arm statute, Missouri courts require strict compliance with the statutory provision mandating that the "parties lived in lawful marriage" in Missouri. In *Thompson v. Thompson*, 657 S.W.2d 629 (Mo. banc 1983), the court held that there was no valid exercise of personal jurisdiction where the parties spent only one night following their marriage and several vacations in Missouri before returning to the state where the husband was attending school. In *Nocito v. Nocito*, 670 S.W.2d 181 (Mo.App. E.D. 1984), the court also held that it lacked personal jurisdiction over the respondent insofar as there was no evidence that the appellant husband had at any time set foot in Missouri. The Western District Court of Appeals has held that a single visit to our state is an insufficient contact to satisfy due process requirements necessary for an exercise of personal jurisdiction over a party or the other party's motion to modify child support. *Laney v. Nigro*, 905 S.W. 2d 902 (Mo. App. W.D. 1995).

In the absence of minimum contact to support the exercise of personal jurisdiction, the respondent's nonappearance will not constitute a waiver of the jurisdictional defense. *Crouch v. Crouch*, 641 S.W.2d 86, 89-90 (Mo. banc 1982). A waiver of the respondent's right to challenge the court's exercise of subject matter jurisdiction occurs only if the respondent appears before the court and fails to assert the defense within the time prescribed by the rules. It has been held that a single visit to Missouri is an insufficient contact to satisfy due process requirements necessary for an exercise of personal jurisdiction over a party. *Laney v. Nigro*, 905 S.W.2d 902 (Mo. App. W.D. 1995). Similarly, in *State ex rel. Phelan v. Davis*, 965 S.W.2d 886 (Mo. App. W.D. 1998), the wife attempted to invoke personal jurisdiction over the husband under

Rule 54.06, alleging that the parties "lived in lawful marriage within this state" based

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on their engaging in sexual relations on more than one occasion in this state. The court, citing *Thompson v. Thompson*, 657 S.W.2d 629 (Mo. banc 1983), found that the wife's allegations were insufficient to meet the standard of Rule 54.06(b) and therefore the husband could not be subjected to a judgment *in personam*.

Similarly, in *Wray v. Wray*, 73 SW 3d 646 (Mo. App. E.D. 2002), the Missouri court did not have personal jurisdiction over a respondent who, although married in this state, left days later to reside elsewhere for over twenty years and never returned. This nominal presence in Missouri for several days during a marriage of 24 years' duration did not satisfy the Missouri longarm requirement of Section 506.500 that the party have "…*lived* in lawful marriage…" in this state. Thus, the PDL judgment entered against the respondent was held to be void for lack of personal jurisdiction.

¤ V. (§26.14) DISTRIBUTION OF PROPERTY

The court's power to divide marital property located in Missouri is not hindered by lack of personal jurisdiction over an absent spouse. *Chenowith v. Chenowith*, 575 S.W.2d 871, 873 (Mo.App. W.D. 1978). However, personal jurisdiction over both parties is vital to the enforcement of decrees dividing property, part or all of which is located outside the state. *Berry v. Berry*, 620 S.W.2d 456, 458 (Mo.App. E.D. 1981) (*see* §26.16, *infra*).

The concept of in rem jurisdiction provides the basis for the court's authority to divide marital property located within the state even though the court lacks personal jurisdiction over one of the parties. An individual's rights in tangibles, both real estate and personal property, is determined by the law of the situs of property. *Curry v. McCanless*, 307 U.S. 357, (1939); *Wass v. Hammontree*, 77 S.W.2d 1006 (Mo. 1934). In order to issue a valid in rem judgment, due process requires notice to the party whose interests are to be affected, the court has physical power over the res author, and that the defendant and the cause of action have a reasonable relationship to the forum.

Shaffer v. Heitner, 433 U.S. 186, (1977).

In re Marriage of Breen, 560 S.W.2d 358 (Mo.App. W.D. 1977), involved an action commenced by publication under Rule 54.17 for dissolution of marriage, distribution of marital property and for custody of the minor child. The petition alleged domicile in Clay County and described the marital property held by the entireties located in Clay County. The respondent failed to file an answer to the petition. The circuit court entered a default judgment which ordered dissolution of the marriage and provided for custody of the minor child. The circuit court refused to divide the marital property.

The Missouri Court of Appeals, citing *Shaffer v. Heitner, supra*, reversed, holding that "the relationship among the forum, the property and the parties, as a matter of proven fact, satisfied the minimum contacts requirements of due process to adjudicate against the nonresident defendant her interests in the real estate before the court." *In re Marriage of Breen, supra*, at 363. The court noted that the acquisition by the parties of real estate located within Missouri constituted a purposeful avail by the parties of the state's protection of their interests in the property. It is a conscious assumption of risk that the state will exercise its power over such property interests and adjust disputes over ownership should the marriage dissolve. *Id*. at 363.

¤ A. (§26.15) Intangible Property

Decrees affecting rights in intangible property, including stocks, bonds, notes, trust funds and choses in action are entitled to full faith and credit in other states only if entered by a court having personal jurisdiction over the record owner. *Curry v. McCanless*, 307 U.S. 357, (1939). *McDougal v. McDougal*, 279 S.W.2d 731 (Mo.App. S.D. 1955); *State of California ex rel. Houser v. St. Louis Union Trust Co.*, 260 S.W.2d 821 (Mo.App. E.D. 1953).

In *McDougal v. McDougal, supra*, at 739, the court, quoting *State of California ex rel. Houser v. St. Louis Union Trust Co., supra*, held that the situs of intangible personal property, by fiction of law, is always at the domicile of the owner and that jurisdiction over the owner will, in most cases, enable a state to affect the intangible thing as it desires to do. In *McDougal, supra*, a divorce decree entered by an Arkansas court having jurisdiction over both parties and awarding the wife a portion of the husband's trust property located in Missouri, was held subject to execution by the wife in Missouri.

¤ B. (§26.16) Tangible Property

Decrees affecting rights in tangible property, whether real or personal, located outside the state are not entitled to full faith and credit. *See Fall v. Eastin*, 215 U.S. 1, (1909). In *Fall v. Eastin*, the Supreme Court of the United States held that a decree affecting the disposition of real property located in another state cannot operate

beyond the state in which jurisdiction is exercised and is not entitled to full faith and credit. The court did recognize, however, that a court may utilize whatever power it possesses by virtue of its exercise of personal jurisdiction over a party to give effect to its decree respecting property situated in another state.

Where both parties are personally before the court, the court, pursuant to its authority over the person and its power to compel compliance by means of contempt proceedings, may effect a transfer of property which is located in another state. *Berry v. Berry*, 620 S.W.2d 456 (Mo.App. E.D. 1981), stands for the proposition that a court exercising personal jurisdiction over the parties in a divorce action does not exceed its jurisdiction when it disposes of marital property situated outside the state by requiring in its decree that a party execute and deliver a deed conveying the marital property located in another state to the other party.

See also *Podschun v. Rice*, 769 S.W.2d 441 (Mo.App. W.D. 1989), holding that a husband and wife holding title to Missouri realty as tenants by the entirety became tenants in common when one of them moved out of state and obtained a Colorado divorce decree; the remaining party had no contact with Colorado and therefore the Colorado court did not have jurisdiction to vest title to the Missouri property in either party.

¤ VI. (§26.17) CHILD SUPPORT

The law pertaining to the duration and extent of a parent's child support obligation is somewhat unsettled in Missouri. The Restatement (Second) of Conflicts of Law, position, adopted by the Supreme Court of the United States in *Yarborough v. Yarborough*, 290 U.S. 202, (1933), holds that the character and extent of the parent's obligation and the status of minor children are ordinarily determined by the law of the domicile of the parent responsible for support of the child. The rule stated in *Yarborough v. Yarborough*, *supra*, was followed by the Supreme Court of Missouri in *Berkley v. Berkley*, 246 S.W.2d 804 (Mo. banc 1952), and by the Eastern District of the Court of Appeals in *Federbush v. Mark Twain Parkway Bank*, 575 S.W.2d 829, 830-31 (Mo.App. E.D. 1978).

However, cases decided by the Western District of the Court of Appeals reject the language in *Yarborough v. Yarborough, supra*, as merely dictum and concluded that the domicile of the child is determinative of the duration of the parent's support obligation. *Thompson v. Thompson*, 645 S.W.2d 79 (Mo.App. W.D. 1982). *Anderson v. Anderson*, 616 S.W.2d 562, 563 (Mo.App. W.D. 1981), and *Hartman v. Hartman*, 602 S.W.2d 932, 935 (Mo.App. W.D. 1980), holding Missouri's governmental interest in establishing the age of majority for children and in providing liability for support of children until they reach majority as controlling in their determination that the father, a domicillary of Minnesota, should support his children residing in Missouri until they reach age twenty-one.

The careful practitioner engaged in a matter involving conflicts of law applicable to child support decrees

would be well served by taking the time to carefully review each of the above-cited cases. Counsel should pay particular attention to *Hartman v. Hartman*, 602 S.W.2d 932 (Mo.App. W.D. 1980) and *Thompson v. Thompson, supra*, 645 S.W.2d 79 (Mo.App. W.D. 1982). In those cases, the court of appeals painstakingly analyzed the law in this area and reconciled these seemingly disparate cases. The court found the full faith and credit clause governs, and it requires that the judgment of the rendering state as to the duration and extent of support be honored, *unless* there is an overriding legitimate state interest in finding otherwise.

For example, in *Hartman, supra*, at 933, the parties were divorced in Missouri. The father moved to Minnesota two years after the decree was rendered. In 1978, the eldest child reached age eighteen and the father ceased paying support on his behalf, arguing that the age of emancipation in Minnesota was eighteen and that was where the father lived. In 1978, the age of emancipation in Missouri was still twenty-one. The Court of Appeals, Western District, found Missouri courts should enforce their own judgments, that full faith and credit would otherwise require the Minnesota court to recognize the Missouri judgment as rendered, and therefore the father's move to Minnesota did not have the effect of modifying the Missouri judgment. *Hartman* at 936. Finally, in dictum, the *Hartman* court found that Missouri has a legitimate interest in enforcing its own judgments, especially where the beneficiaries of that judgment continue to reside here. *Hartman* at 937.

In *Thompson v. Thompson, supra,* at 87, the parties were divorced in Kansas where the age of majority is eighteen. The parties moved to Missouri and pursuant to a motion to modify the dissolution decree, the court held that once the parties became domiciled in Missouri, they became subject to Missouri law, where the age of majority is twenty-one. The court concluded that the question of child support becomes a purely internal affair of Missouri and that Missouri courts may bring the decree into conformity with Missouri law once the parties became domiciled in Missouri. In order to escape literal application of the Full Faith and Credit Clause, which required Missouri to recognize the Kansas judgment, the Court relied on § 103 of the Restatement (Second) Conflict of Laws, p. 312 (1971) which provides:

> A judgment rendered in one State of the United States need not be recognized or enforced in a sister State if such recognition or enforcement is not required by the national policy of full faith and credit because it would involve an improper interference with important interests of the sister State.

Brown v. Brown, 678 S.W.2d 831, 833 (Mo.App. E.D. 1984), presented the Eastern District of the Court of Appeals with a complex conflict of laws problem. The appellant moved the Court to terminate the obligation to pay child support. The parties' separation agreement (which provided for child support), was incorporated into the

decree of dissolution granted in Missouri. At the time of the dissolution hearing, the mother had relocated with the child in North Carolina. The father resided in Maryland. The court found that preserving the integrity of the Missouri decree was the only significant contact Missouri possessed in the case. Because the child, being the subject matter of the agreement which provided for child support, resided in North Carolina, the Missouri court held that it would apply North Carolina law to construe the parents' child support obligation. Under North Carolina conflict-of-law rules and case law, the validity and construction of a contract, including separation agreements, is determined by reference to the law of the state where the contract was executed (Missouri). The court held that Missouri law as to the age of majority applied and that child support would continue until the child attained the age of twenty-one.

Support orders are entitled to full faith and credit only to the extent that they are final judgments. Child support payments which are past due and owing and not subject to retroactive modification are final judgments entitled to full faith and credit. *Sistare v. Sistare*, 218 U.S. 1, (1910).

Future payments mandated by a support order are not final because the order is subject to future modification and are not, therefore, given full faith and credit. *Siegel v. Mosier,* 632 S.W.2d 76, 79 (Mo.App. E.D. 1982), holding that a judgment for child support rendered pursuant to the Uniform Enforcement of Foreign Judgments Law, § 511.760, RSMo 1986, was properly limited to the amount of child support past due and owing, plus interest.

Missouri courts will apply the Missouri statute of limitations to an action brought on a foreign judgement. *Northwestern Brewers Supply Co. v. Vorhees*, 356 Mo. 699, 203 S.W.2d 422 (1947). The Court of Appeals for the Western District in *Foley v. Foley*, 641 S.W.2d 138, 143 (Mo.App. W.D. 1982), permitted the registration of a California decree in Missouri even though execution had been denied in California and no appeal was taken. The Court, in holding the California decree enforceable did so upon the principle articulated in *Ferguson v. Ferguson*, 636 S.W.2d 323 (Mo. banc 1982), and *Holt v. Holt,* 635 S.W.2d 335 (Mo. banc 1982), that periodic payments are presumed paid after the expiration of ten years from the due date of the periodic payment and not ten years from the date of rendition of the judgment.

A Missouri court may modify a foreign child support judgment registered in Missouri to the extent such modification is permitted in the state of rendition. *Thomason v. Warthen*, 771 S.W.2d 381, 382 (Mo.App. S.D. 1989.). The Missouri court may *not* modify a foreign child support order which is non-modifiable in the state of rendition, if the child support obligation under the foreign decree has already been fulfilled. *Davis v. Sullivan*, 762 S.W.2d 495

(Mo.App. W.D. 1988).

If a party does not collaterally attack a judgment at the time and place where it is initially rendered, the party may not be able to later attack the judgment in a subsequent proceeding brought to register the foreign judgment. *Castle v. Castle*, 642 S.W.2d 709 (Mo.App. W.D. 1982), holding the registration in Missouri of a Kansas judgment for accrued child support issued in Kansas fourteen years following the original divorce decree and support order proper because the respondent neither appeared in nor attacked the Kansas judgment at the time it was rendered. Once a valid support order is entered in Missouri, the Missouri court has continuing personal jurisdiction over both parties to modify the order even where both parties have left the state and Missouri can no longer validly modify custody. *Rapp v. Russell*, 965 S.W.2d 897 (Mo. App. S.D. 1998).

¤ VII. (§26.18) CHILD CUSTODY

The Supreme Court of the United States has never directly delineated the applicability of the Full Faith and Credit Clause to child custody decrees. Because child custody decrees are by nature continually subject to modification, a court in making a custody determination is not, as a federal constitutional requirement, bound to accord full faith and credit to a decree entered by a court of another state in an action involving the same parties. *See Ford v. Ford,* 371 U.S. 187, (1962); *Kovacs v. Brewer*, 356 U.S. 604, (1958); *New York ex rel. Halvey v. Halvey*, 330 U.S. 610, (1947).

In *Kovacs v. Brewer, supra*, the Supreme Court held that a custody decree is not res judicata and entitled to full faith and credit if "changed circumstances" require a different arrangement to protect the child's health and welfare. Although the court in *Ford v. Ford, supra*, did not definitively decide the applicability of the Full Faith and Credit Clause to custody decrees, the court did hold that the Full Faith and Credit Clause, if applicable to a child custody decree, would require recognition of a child custody decree as binding provided that the rendering state would be bound by it.

Although the Supreme Court of the United States has not as a constitutional requirement mandated full faith and credit recognition of the custody decrees of sister states, the Parental Kidnapping Prevention Act of 1980 (PKPA), Pub.L. 96-611, 94 Stat. 3568-3573, 28 U.S.C. § 1738A, imposes a federal duty, under standards derived from the Uniform Child Custody Jurisdiction Act (UCCJA), § 452.440, *et seq*., RSMo 1994, to provide full faith and credit to the custody decrees of other states if made in accordance with the provisions of the PKPA. Multistate child

custody conflicts, insofar as they involve the authority of more than one state to exercise jurisdiction, are exclusively controlled by the provisions of the PKPA and UCCJA.

¤ A. (§26.19) Uniform Child Custody Jurisdiction Act (UCCJA)

The Uniform Child Custody Jurisdiction Act (UCCJA), § 452.410 and §§ 452.440-452.550, RSMo 1994, was adopted by the Missouri Legislature in 1978. The Act has been adopted in all fifty states and the District of Columbia. The purpose of the UCCJA is to limit, as much as possible, the jurisdiction or exercise of jurisdiction over the custody of a child, at any one time, to the court of only one state and thus avoid jurisdictional competition and conflict between the courts of different states. *In re B.R.F.*, 669 S.W.2d 240 (Mo.App. E.D. 1984). The term "state" in Missouri's enactment of the UCCJA does not include foreign nations. *State ex rel. Rashid v. Drumm*, 824 S.W. 2d 497 (Mo. App. E.D. 1992).

¤ 1. (§26.20) Jurisdiction

The various bases for establishing jurisdiction under the UCCJA are set forth in § 452.450, RSMo 1994. Section 452.450 provides four separate prerequisites for the exercise of jurisdiction under the UCCJA. Child custody jurisdiction is limited by the Act lo the state where: (1) the child has his home; or (2) the child and at least one of the litigants has significant connections and where substantial evidence exists concerning the child's present or future care; or (3) the child is physically present and requires emergency protection or (4) it is in the best interest of the child to assure jurisdiction because it appears that no other state could or would assume jurisdiction under any of the other three alternative grounds providing for jurisdiction.

The jurisdictional requirement of the UCCJA are designed to increase the probability that a custody decision will be in the best interests of a child by providing that the issue of custody be decided in the court with the greatest access to relevant information concerning the child. *In re B.R.F.,* 669 S.W.2d 240 (Mo.App. E.D. 1984).

The UCCJA, as enacted in Missouri, confers no subject matter jurisdiction to determine child support absent allegations concerning child custody provisions. *McKinnon v. McKinnon*, 896 S.W. 2d 90 (Mo. App. E.D. 1995). It is in this important respect that the Missouri enactment *differs* from the original uniform act. Section 2(2) of the original Uniform Act states as follows:

"Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. This term does not include a decision relating to child support or any other monetary obligation of any person.

In the Missouri enactment, the following additional language appears: "...but the court shall have the right

in any custody determination where jurisdiction is had pursuant to Section 452.460 and where it is in the best interest of the child to adjudicate the issue of child support." §452.446 RSMo 1994.

An agreement between the parties to stipulate to Missouri jurisdiction is not binding or enforceable. In *Steele v. Steele*, 978 S.W.2d 835 (Mo. App. W.D. 1998), both parents and their children moved to Missouri from Wisconsin shortly after the parents' divorce in Wisconsin. The trial court held that the Missouri court had jurisdiction of the father's motion to modify the custody order even though the parties had agreed, as part of their divorce agreement, that Wisconsin was to retain jurisdiction of any custody disputes through the year 2000.

¤ a. (§26.21) Home State" Jurisdiction

Section 452.450.1(1), RSMo 1994, permits Missouri courts to exercise jurisdiction if this state:

(a) Is the home state of the child at the time of commencement of the proceedings; 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; . . .

Section 452.445(4), RSMo 1994, defines "[h]ome state" as the state in which the child, immediately preceding the filing of the custody action, lived with his or her parents, a parent, or person acting as a parent, for at least six consecutive months, and in the case of a child less than six months old, the state in which the child lived from birth with his or her parents, a parent, or a person acting as a parent.

The provision for "home state" jurisdiction becomes of great importance and utility to a noncustodial parent if the parent initially awarded custody permanently removes the child from Missouri. A Missouri court could properly exercise jurisdiction in a subsequent custody proceeding if the noncustodial parent continued to reside in Missouri and commenced the proceeding within six months of the child's removal. If the noncustodial parent acts promptly, § 452.450.1(1)(b) serves the purpose of protecting the stay-at-home parent from the burden of having to travel to another state if he or she, in light of changed circumstances, wishes to relitigate the issue of custody. *See Hempe v. Cape*, 702 S.W.2d 152 (Mo.App. S.D. 1985); commissioner's note, § 3, Uniform Child Custody Jurisdiction Act, 9 U.L.A. 123 (1979).

In *Rumbolo v. Phelps*, 759 S.W.2d 894 (Mo.App. E.D. 1988) the trial court sustained the mother's motion to modify the decree, allowing her to move with the child to the State of Colorado. The mother appealed that part of

the modification order retaining jurisdiction over all issues "concerning the child's custody;" she argued the restriction was prejudicial to her should she wish to modify the decree at some future time. The court held issues regarding jurisdiction in future cases must be reserved for future decisions, and declined to reverse.

¤ b. (§26.22) Jurisdiction Based on "Significant Connection" With the State

Section 452.450.1(2), RSMo 1994, permits a Missouri court to assume jurisdiction if it is in the child's best interest for the court to assert jurisdiction because: "(a) The child and his parents, or the child and at least one litigant, have a significant connection with this state; and (b) [t]here is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships. . . . ."

In authorizing jurisdiction under the "significant connection" alternative, Missouri courts emphasize both the duration and quality of the child's contacts in Missouri. *In re Marriage of Phillips*, 723 S.W.2d 579 (Mo.App. S.D. 1987), hold that a child's visit in Missouri for thirty-nine days prior to father's filing of motion to modify custody did not establish a significant contact between the child and the state of Missouri. *In re Marriage of Panich*, 672 S.W.2d 718, 721 (Mo.App. S.D. 1984), holds that Missouri had "significant connection" jurisdiction because at the time the proceedings commenced the children had lived in Missouri longer than they resided in California and several Missouri residents testified regarding the children's care, protection, training and personal relationships.

The Eastern District's holding in *Timmings v. Timmings*, 628 S.W.2d 724 (Mo.App. E.D. 1982), strongly suggests that Missouri courts will carefully scrutinize both the parent's and the child's connections with Missouri. Despite having determined that the father had a significant connection with Missouri, the court declined to exercise jurisdiction pursuant to § 452.450.1(2) because the child had been outside the state attending school and evidence concerning the child's well being would not be available in Missouri.

Because the physical presence of the child is not mandatory in order for a court to exercise jurisdiction pursuant to "significant connections," the assumption of jurisdiction on this theory may produce concurrent jurisdiction in more than one state. Sections 452.465 and 452.470, RSMo 1994, set forth procedures for the resolution of jurisdictional conflicts. Pursuant to these sections, the court first to assume jurisdiction will proceed with the determination of the matter. A Missouri court which first assumes jurisdiction may, pursuant to § 452.470, relinquish jurisdiction to a court of another state upon its determination that the Missouri court is an inconvenient forum and that the court of another state provides a more appropriate forum.

The court of appeals, Southern District, has held jurisdiction based upon a child's significant contacts with the state continues in the state of the prior decree where the court record and other evidence exists and where one

parent continues to reside; this jurisdiction is preferential to "home state" jurisdiction which may be acquired in the state to which the child was moved. *Lydic v. Manker*, 789 S.W.2d 129, 131-32 (Mo.App. S.D. 1990). *See Also Dobbs v. Dobbs,* 838 S.W. 2d 502 (Mo. App. E.D. 1992); *Yurgel v. Yurgel*, 572 So.2d 1327 (Fla. 1990); *Harris v. Melnick*, 552 A.2d 38 (Md. Ct. App. 1989); and *G.S. v. Ewing*, 786 P.2d 65 (Okla. 1990). More than one state may have jurisdiction over a custody case. *Davis v. Davis*, 799 S.W.2d 127, 133 (Mo.App. W.D. 1990).

¤ c. (§26.23) Parens Patriae Jurisdiction

Section 452.450.1(3), RSMo 1994, provides for parens patriae jurisdiction of a child physically present in Missouri who has either been abandoned or subject to or threatened with mistreatment or abuse. In *Piedemonte v. Nissen,* 817 S.W.2d 260 (Mo. App. W.D. 1991), the court noted the requirements of §452.450.1(3)(a) and (b) are conjunctive; thus, emergency jurisdiction under the statute requires both an actual abandonment *and* that the neglect be an actual emergency. Such *parens patriae* jurisdiction is reserved for extraordinary circumstances and is usually exercised by the juvenile court to protect a child physically present within its bounds regardless of the child's actual domicile. When there is child neglect without emergency or abandonment, jurisdiction cannot be based upon these provisions of the statute. *Parens patriae* jurisdiction is only temporary, in order to preserve the status quo for such limited time as will enable the petitioner to apply for permanent custody in the state with regular jurisdiction under the UCCJA. Additionally, the court's decree must be made under factual circumstances meeting the jurisdictional standards of the UCCJA. See also *State ex rel. In re R.P. v. Rosen*, 966 S.W.2d 292 (Mo. App. W.D. 1998), in which the court held that the Missouri court properly exercised emergency jurisdiction over an infant born in Kansas and returned to Missouri two days after her birth where the parents were Missouri residents and where no other court would have jurisdiction over the child, who required emergency protection.

¤ d. (§26.24) Subsidiary Jurisdiction

Section 452.450.1(4), RSMo 1994, grants jurisdiction to Missouri courts where no other state has jurisdiction pursuant to § 452.450.1, subdivisions (1), (2) or (3), or where another state has declined to exercise jurisdiction on the ground that Missouri is the more appropriate forum.

The existence of valid jurisdiction in Missouri is not dependent upon the physical presence of the child in Missouri. The mere physical presence in Missouri of the child, or of the child and one of the litigants is insufficient

to confer jurisdiction on a Missouri court. Sections 452.450.2, and .3.

¤ e. (§26.25) Judicial Application

Unless both parties consent to the court's exercise of jurisdiction, *Brown v. Brown*, 676 S.W.2d 519 (Mo. banc 1984), the petitioning party must demonstrate the existence of at least one of the jurisdictional alternatives as set forth in § 452.450.1 RSMo 1994 before the court may assume jurisdiction.

In *Brown v. Brown, supra*, both spouses and the children resided in Missouri when the marriage was dissolved and custody was adjudicated. The jurisdictional issue arose after the custodial parent, with the court's permission, moved to another state with the children. The noncustodial parent, who remained in Missouri, subsequently filed a motion to modify the original decree seeking custody of the children. The custodial parent did not object to the jurisdiction of the Missouri court to hear and determine the modification proceeding. The noncustodial parent prevailed and was granted custody of the children. The Court of Appeals transferred the case to the Supreme Court of Missouri based on its belief that it no longer had jurisdiction to adjudicate the custody issue. The Supreme Court held that the Uniform Child Custody Jurisdiction Act (UCCJA), § 452.400, *et seq.*, now RSMo 1994, did not disable the Missouri court from exercising jurisdiction in the modification proceeding when neither party objected to its jurisdiction. *Brown v. Brown, supra.*

In *Elliott v. Elliott*, 612 S.W.2d 889, 893 (Mo.App. S.D. 1981), the court held that it lacked jurisdiction under the UCCJA to adjudicate a child custody case because none of the statutory prerequisites necessary to confer jurisdiction were present. The parents were divorced in Missouri and custody of the minor child was granted to the paternal grandparents. The grandparents resided in Colorado with the child. The mother relocated in Michigan. The father moved to Colorado. The court found that Missouri was not the home state of the child because the child had resided in Colorado for more than seven months prior to the filing of the motion to modify. None of the parties, including the child, had any remaining significant connections with Missouri and most of the evidence concerning the child's present or future care, protection, training and personal relationships was located in Colorado. There was no showing that the child had been abandoned in Missouri or was in need of emergency action due to mistreatment or abuse. The court concluded that the Colorado court was the proper forum for adjudication of the custody issue. *See also Timmings v. Timmings*, 628 S.W.2d 724 (Mo.App. E.D. 1982), where the court declined to exercise jurisdiction upon finding that the child had insufficient contacts with Missouri.

Even if jurisdiction to determine the child custody issue is properly established in Missouri pursuant to § 452.450.1, subdivisions (1), (2), (3) or (4); the Missouri court shall decline to exercise jurisdiction under the UCCJA

if, at the time of the commencement of a custody proceeding, a proceeding concerning the custody of the child is pending in a court of another state exercising jurisdiction substantially in conformity with the UCCJA, unless the proceeding is stayed by the court of the other state for any reason. Section 452.465.1, RSMo 1994. *See* 28 U.S.C. § l738A(g). *Hempe v. Cape*, 702 S.W.2d 152, 159 (Mo.App. S.D. 1985). Although the Missouri court may have rendered the original divorce decree and custody order, jurisdiction of the Missouri court to further adjudicate child custody issues will lapse if neither the child or any contestant remains in Missouri. Under the Parental Kidnapping Prevention Act of 1980, Pub.L. 96-611, 94 Stat. 3568-3573, the jurisdiction of a state court continues so long as the state continues to have jurisdiction under state law and the state remains the residence of the child or any contestant. 28 U.S.C. § 1738A(d). In *In re B.R.F.*, 669 S.W.2d 240 (Mo.App. E.D. 1984), the court noted that the Missouri court's jurisdiction over the child custody issue derived from the parents' divorce action and held that the court's jurisdiction abated upon the death of the natural mother. The Missouri court still retains subject matter jurisdiction to enforce its own custody orders via a motion for contempt filed by one party, even though the child has lived outside the state for more than six months with the other parent. *Levis v. Markee*, 771 S.W.2d 928, 931 (Mo.App. E.D. 1989), which also holds that an order for contempt in such circumstances is not a custody determination under the UCCJA. *Id.* at 931. In this regard, *see also In Re Marriage of Ray*, 820 S.W. 2d 341 (Mo. App. E.D. 1991), and *Harris v. Melnick*, 552 A.2d 38 (Md. Ct. App. 1986).

§§ 452.440–452.550, RSMo 2000, Missouri may decline to exercise jurisdiction even if no matter is pending in another state. For example, in *Payne v. Welker*, 917 S.W.2d 201 (Mo. App. W.D. 1996), Missouri declined to exercise modification jurisdiction where Maryland was the new home state and the state with significant connections even though there was no custody matter pending in Maryland at the time.

For additional support that an order for contempt is not a custo[redacted] n certain circumstances under the UCCJA, see *Rapp v. Russell,* 965 S.W.2d 897 (Mo. App. S.D. 1998). In *Haydon v. Darrough*, 961 S.W.2d 940 (Mo. App. E.D. 1998), it was error for the Missouri court to modify its custody decree as a means of enforcing it where neither parent continued to live in Missouri and Missouri was no longer the home state of the child. The father had moved to Indiana to live, and the mother and child moved to Virginia after entry of the decree.

¤ 2. (§26.26) Modification of Decree of Another State

Section 452.505 RSMo 1994, provides:

> 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 §§ 452.440 to 452.550 or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

In re Marriage of Phillips, 723 S.W.2d 579 (Mo.App. S.D. 1987), involved a father's attempt, pursuant to a motion to modify filed in the Circuit Court of Jasper County, to procure custody of his daughter during her thirty-nine day visit in Missouri. In 1982, a Virginia Court, in accordance with a property settlement agreement previously executed by the parties, entered a decree of dissolution and awarded custody of the minor child to the mother. The court held that the Circuit Court of Jasper County was barred by § 452.505 from modifying the custody provision of the Virginia decree in that Virginia was the home state of the child at the time the Missouri modification proceeding was commenced and there was no showing that the Virginia court lacked jurisdiction to determine the child's custody under jurisdictional prerequisites substantially in accordance with §§ 452.440 to 452.550, RSMo 1978, as amended (now RSMo 1994). Additionally, there was no showing that Virginia had declined to assume jurisdiction. *Id*. at 582.

In *Johnson v. Kiloh*, 704 S.W.2d 705 (Mo.App. W.D. 1986), the parties were divorced in Missouri in 1982. The mother subsequently moved to Texas and initiated a custody proceeding pursuant to § 11.05 of the Texas Family Code. The court held that because the mother's custody suit in Texas did not involve the exercise of jurisdiction in conformity with the Uniform Child Custody Jurisdiction Act (UCCJA), §§ 452.440-452.550, RSMo 1994, the Texas suit was not a bar to the Missouri court's assumption of jurisdiction over the father's motion to modify.

Under the UCCJA, a change in circumstances must be alleged and proven before a change in custody is effectuated. In *Jones v. Jones,* 724 S.W.2d 615 (Mo.App. W.D. 1986), the court held that a change in circumstances or a finding of unknown facts as they are stated in §452.410, RSMo 1994, is required to change custody whether the previous decree was rendered in Missouri or another jurisdiction. *Id*. at 618.

In defining what is a "custody determination" under the act, §452.445.1 states "This term does not include a decision relating to child support or any other monetary obligation of any person; *but the court shall have the right in any custody determination where jurisdiction is had pursuant to section 452.460 and where it is in the best interest of the child to adjudicate the issue of child support..." (emphasis added).* Thus, the UCCJA as enacted in Missouri allows the trial court to adjudicate child support in addition to custody in modifying a foreign decree. This provision is unique to the Missouri enactment, and is not part of the uniform law. *Elbert v. Elbert,* 833 S.W. 2d 884 (Mo. App.

E.D. 1992). See also *Adams v. Adams*, 871 S.W. 2d 105 (Mo. App. E.D. 1994).

A motion to modify a child custody decree has been held to be an original action in Missouri and therefore subject to the general venue statute, § 508.010, RSMo 1994, rather than the venue statute applicable to dissolution of marriage actions (§ 452.300, RSMo 1994). *State ex rel. Lineback v. Williams,* 787 S.W. 2d 335 (Mo.App. S.D. 1990).

¤ 3. (§26.27) "Clean Hands"

Missouri courts may refuse to exercise jurisdiction if the petitioning party has wrongfully removed the child from another state, has improperly retained the child after a visit, or has violated any other provision of a custody decree of another state. Section 452.475, RSMo 1994; *Piedemonte v. Nissen,* 817 S.W.2d 260 (Mo. App. W.D. 1991).If the court dismisses a petition because the party initiating the proceeding engaged in wrongful conduct, the court may require the party who commenced the proceeding to pay the other party's travel and other expenses and attorney's fees. Section 452.475.3. *See Hempe v. Cape*, 702 S.W.2d 152, 162 (Mo.App. S.D. 1985). Where both parties seek relief, the wrongful conduct of a party will not prevent the assumption of jurisdiction if the court's failure to exercise jurisdiction would result in the lack of a forum for adjudication of the custody issue. *Dobyns v. Dobyns*, 650 S.W.2d 701, 707 (Mo.App. W.D. 1983).

The "clean hands" provision of the UCCJA is a discretionary ground for declining jurisdiction and does not supersede the best interests of the child, and it is error to decline jurisdiction solely on the basis of the parent's conduct without considering the best interests of the child. *State ex rel. Rashid v. Drumm*, 824 S.W. 2d 497 (Mo. App. E.D. 1992).

¤ 4. (§26.28) Notice Requirement

The Uniform Child Custody Jurisdiction Act (UCCJA), § 452.440, *et seq.*, RSMo 1994, permits service on the litigant who is outside the state by registered mail. Section 452.460, RSMo 1994; I*n re Marriage of Welsh*, 714 S.W.2d 640 (Mo.App. S.D. 1986).

¤ 5. (§26.29) Recognition and Enforcement of Out-Of-State Custody Decrees

It is well-settled law that a judgment entered by a foreign court is presumed to be a judgment in a matter in which the court had jurisdiction over the parties and the subject matter, and the burden is on the person attacking recognition of such a judgment to present evidence to rebut that presumption. *Kilgore v. Kilgore*, 666 S.W.2d 923, 932 (Mo.App. W.D. 1984). If however, a foreign decree is not rendered in accordance with the requirements of the UCCJA and the Missouri statute adopting the uniform act, Missouri courts are not obligated to recognize and give effect to its custody provisions. Section 452.500, RSMo 1994; *Johnson v. Kiloh*, 704 S.W.2d 705 (Mo.App. W.D. 1986);

Dobyns v. Dobyns, 650 S.W.2d 701, 707 (Mo.App. W.D. 1983).

The enforcement in Missouri of out-of-state custody decrees is effectuated upon the filing of certified copies of the decree in the office of the circuit clerk. Section 452.510, RSMo 1994. If the custody decree of another state is violated and enforcement is sought in Missouri, the court may require the party who violated the decree to pay the necessary expenses incurred by the party entitled to custody, including his or her attorney's fees. Section 452.510.2.

¤ B. (§26.30) The Parental Kidnapping Prevention Act of 1980 (PKPA)

The Parental Kidnapping Prevention Act of 1980 ("PKPA"), Pub.L. 96-611, 94 Stat. 3568-3573 (Chapter 115, 28 U.S.C. § 1738A), imposes on the states a federal duty, under standards derived from the Uniform Child Custody Jurisdiction Act (UCCJA), §§ 452.440-452.550, RSMo 1994, to give full faith and credit to the custody decrees of other states. The PKPA was adopted primarily to reduce the incentive for parental child-snatching created by the refusal of a significant number of states to give effect to the child custody decrees of other states. *Thompson v. Thompson*, 484 U.S. 174, 108 S.Ct. 513, 98 L.Ed.2d 512 (1988).

Through the enactment of the PKPA, Congress hoped to alleviate inadequacies in the operation of the UCCJA by imposing upon the states a uniform set of standards identical to those found in the UCCJA. When the PKPA was enacted in 1980, not all the states had adopted the UCCJA and those states without the UCCJA continued to provide havens for child snatchers. The variations in interpretation and application of the UCCJA among the states created the potential for the dual exercise of jurisdiction and conflicting custody adjudications. *Thompson v. Thompson, supra.*

The PKPA provides that "[t]he appropriate authorities of every State shall enforce according to its terms. . .any child custody determination made consistently with the provisions of this section by a court of another State." 28 U.S.C. § 1738A(a). The statute, which mirrors the provisions of the UCCJA, proceeds to set forth the conditions under which a state may assert jurisdiction to enter its own child custody determination in order to modify the custody determination of a court of another state. The PKPA permits the modification of the custody decree of another state by the enforcing state only if (1) it has jurisdiction to make such a child custody determination, and (2) the court of the other state no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination. 28 U.S.C. § 1738A(f).

The PKPA provides for the availability of the Federal Parent Locator Service as an aid in tracking down parents who have abducted their children in violation of existing custody decrees or to avoid potential decrees. The Act also provides that, if a parent is charged with parental kidnapping in violation of state felony statutes, such a

charge constitutes a violation of federal criminal code provisions concerning interstate or international flight to avoid prosecution.

There is a significant conflict among the various United States Circuit Courts of Appeal as to whether federal courts have jurisdiction under the PKPA to determine which of two inconsistent state custody decrees is valid. The Circuit Courts of Appeal for the third, fifth, and eleventh circuits have held that the PKPA does create a cause of action enforceable in the federal courts. *Flood v. Braaten*, 727 F.2d 303 (3rd Cir. 1984); *Heartfield v. Heartfield*, 749 F.2d 1138 (5th Cir. 1985); *McDougald v. Jenson*, 786 F.2d 1465 (11th Cir. 1986), *cert. den.*479 U.S. 860, 93 L.Ed. 2d 137, 107 S. Ct. 207, reh. den. 479 U.S. 1001, 93 L. Ed. 2d 611, 107 S. Ct. 614 (1986). The Circuit Courts of Appeal for the seventh, ninth, and District of Columbia Circuits have reached the opposite conclusion in holding that the PKPA does not authorize suit in federal court to enforce its provisions. *Lloyd v. Loeffler*, 694 F.2d 489 (7th Cir. 1982); *Thompson v. Thompson, supra; Bennett v. Bennett*, 682 F.2d 1039 (D.C. Cir. 1982).

Flood v. Braaten, supra, is a classic example of the type of case the PKPA was intended to resolve. The parties were divorced in North Dakota in 1977. The mother received custody of the four children and subsequently relocated to New York. She later moved to New Jersey. During the children's holiday visit with the father in North Dakota, the father obtained an ex parte custody order. The appellant-mother managed to have the ex parte order vacated. Several weeks later, however, without explanation as to its basis for the assumption of jurisdiction, the North Dakota court transferred custody to the father. The father travelled to New York where he seized two of the four children. The mother filed a motion to modify the North Dakota custody decree requesting the return of the children to her custody. On the day she filed her motion the mother tried to abduct the children from the father's custody and successfully removed one of the children back to her New Jersey home. The New Jersey court ruled that pursuant to the UCCJA, it was the proper forum for resolution of the custody dispute and awarded custody to the mother. The mother again returned to North Dakota where she unsuccessfully attempted to abduct the child in the father's custody. For more than four years, the courts of New Jersey and North Dakota each refused to enforce the custody decree rendered by the other. In an effort to end the stalemate, the mother filed a complaint in federal district court for enforcement of the New Jersey custody order. The district court summarily dismissed the complaint.

The Court of Appeals for the Third Circuit reversed, holding that, in limited circumstances of noncompliance with 28 U.S.C. §1738A, federal district court intervention is permissible. The court explained that to impose a complete restriction on the availability of a federal forum for the resolution of interstate custody disputes would

render the PKPA virtually nugatory. *Flood v. Braaten, supra*. An analysis of the legislative history of the PKPA revealed to the court that although Congress did not envision federal courts engaging in custody determinations or enforcing custody decrees in the first instance, Congress did intend a limited role for the federal courts in enforcing the PKPA.

Under the PKPA, if two state courts attempt concurrently to render a custody decree, one state is in violation of the mandates of federal law. The court narrowly prescribed the role of federal courts by stating that a preliminary inquiry into the jurisdictional facts by the federal tribunal would sufficiently identify the state exercising jurisdiction in violation of the PKPA. *Flood v. Braaten, supra,* at 310.

The availability of a federal forum for parents seeking relief from conflicting child custody adjudications was rejected by the ninth circuit in *Thompson v. Thompson, supra.* In 1979, the parties obtained a divorce in California and were granted joint custody of their son. In 1980, additional proceedings were held and the mother was awarded sole custody in contemplation of her relocation with the child to Louisiana. The California court ordered a further investigation of the custody issue and eventually awarded sole custody of the child to the father. However, while the California proceeding was pending, the mother obtained enforcement in Louisiana of the California order granting her custody of and also obtained an order modifying the husband's visitation rights. The father filed an action in the district court seeking a declaration that the Louisiana custody was invalid. The district court dismissed the complaint for lack of subject matter and personal jurisdiction.

Although the court found that the district court had both personal jurisdiction and subject matter jurisdiction, the court affirmed the district court judgment dismissing Mr. Thompson's complaint. The court proffered several justifications in support of its refusal to recognize a federal cause of action for enforcement of the PKPA. An analysis of the legislative history of the PKPA failed to convince the court that Congress intended to create a federal cause of action for enforcement of the PKPA. The language of the PKPA does not expressly authorize suit in federal court to enforce its provisions. The legislative materials lack any mention of a role for the federal courts in enforcing the PKPA. The court emphasized that Congress' intention in enacting the PKPA was simply to adopt the UCCJA as a federal procedure applicable to all the states for purposes of interstate custody disputes. *Id*. at 1547,1552-55.

The court found that various policy considerations weigh strongly against the recognition of a federal cause of action for enforcement of the PKPA. The court noted that the Full Faith and Credit Clause is not a source of federal jurisdiction. The domestic relations exception to diversify jurisdiction is strong indication of Congress'

reluctance to involve the federal courts in custody disputes. The court found that, absent a clear command from Congress, the longstanding prohibition against federal court involvement in such matters should not be disregarded. *Id*. at 1559. The court then surmised that, if federal courts were granted enforcement powers under the PKPA, the federal courts would inevitably become involved in the merits of the case and would not simply be confined to the jurisdictional facts. The court concluded that the PKPA creates no cause of action enforceable in the federal courts.

During its Fall, 1987 term, the Supreme Court of the United States did review the *Thompson* cas*e, sup*ra, and resolved the conflict as to whether the PKPA creates a cause of action in Federal Court.

The continuing vitality of the PKPA as a means to resolve interstate custody disputes and as a deterrent to child snatching is questionable in light of the Supreme Court of the United States recent decision in *California v. Superior Court of California, San Bernardino County*, 482 U.S. 400, 107 S.Ct. 2433, 96 L.Ed.2d 332 (1987). Upon the parties' divorce in California, Judith Smolin Pope was granted custody of the two minor children. She relocated to Oregon with her new husband. The Popes subsequently moved to Texas and finally settled in Louisiana. Richard Smolin obtained a modification of the California custody decree granting him sole custody of the children. Judith Pope ignored the California custody order. Richard Smolin then obtained a warrant for the custody of his children. He travelled to Louisiana with his father and picked up the children while they were waiting at their bus stops.

The California Supreme Court granted the Smolin's a writ of habeas corpus to avoid extradition. The California Court of Appeals issued a writ of mandate on the ground that the superior court abused its discretion in blocking extradition. The Supreme Court held that the provisions of the Extradition Act of 1869, 15 Stat. 337, 18 U.S.C. § 3182, prohibit a state court from refusing to permit extradition. The asylum state may do no more than ascertain whether the requisites of the Extradition Act have been met and may not consider defenses or determine the guilt or innocence of the charged party. *Id*. at 107 S.Ct. 2437-38. The Court concluded that it was for the Louisiana courts to determine whether the Smolins were guilty of violating the Louisiana kidnapping statute and whether the California custody decree validly established Mr. Smolin as the children's custodian under the full faith and credit provisions of the UCCJA. *Id*. at 107 S.Ct. 2439-40.

In dissent, Justice Stevens, joined by Justice Brennan, expressed the view that in upholding extradition of the custodial parent the "Court implicitly approves nonadherence to the uniform federal rule governing custody determinations." *Id*. at 107 S.Ct. 2445. Justice Stevens concluded that extradition of the custodial parent is at

cross-purposes with Congress' declared intent in enacting the PKPA to deter abduction and discourage interstate custody disputes. *Id*.

In Missouri, it has been expressly held that the terms of the PKPA pre-empts conflicting state laws on custody, even where both states' decrees were enacted in conformity with the UCCJA as enacted in that state; thus, where two custody decrees from different states conflict, preference will be given to the decree which was consistent with the PKPA. In *Glanzer v. Glanzer,* 835 S.W. 2d 386 (Mo. App. E.D. 1992), a California decree based upon "most significant contacts" jurisdiction conflicted with a Missouri decree rendered pursuant to "home state" jurisdiction. In that case, the Missouri decree was enforced because the PKPA does not recognize "significant contacts" jurisdiction.

¤ VIII. (§26.31) MARRIAGE

Missouri courts have long recognized that marriages which are valid where celebrated will be upheld in this state even though the marriage might be invalid under Missouri law if contracted in Missouri. *Banks v. Galbraith*, 149 Mo. 529, 51 S.W. 105 (1899); *Henderson v. Ressor*, 265 Mo. 718, 178 S.W. 175 (banc 1915); *Doyle v. Doyle*, 497 S.W.2d 846 (Mo.App. W.D. 1973). However, common law marriage constitutes an exception to the rule. Missouri courts will not recognize a strictly common law marriage of residents of this state on a sojourn in a common law state, holding that to do so would violate public policy as expressed in § 451.040.5, now RSMo 1986; *Stein v. Stein*, 641 S.W.2d 856, 858 (Mo.App. W.D. 1982); *Hesington v. Hesington*, 640 S.W.2d 824, 827 (Mo.App. S.D. 1982).

However, Missouri will recognize as valid a common law marriage that is valid where the parties reside, but the proponent of that status must present "stringent proof" of the relationship and its validity in the foreign state. *Whitley v. Whitley*, 778 S.W.2d 233 (Mo.App. W.D. 1989).

¤ IX. (§26.32) ANNULMENT

The existence of a valid marriage is governed by the substantive law of the state where the marriage was celebrated. *Hartman v. Valler & Spies Milling Company*, 356 Mo. 424, 202 S.W.2d 1 (1947); *Taylor v. Taylor*, 355 S.W.2d 383 (Mo.App. S.D. 1962). An annulment must be accorded full faith and credit if it is entered by a court having jurisdiction of the parties. *Sutton v. Leib*, 342 U.S. 402, (1952).