No. 23-5551 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Kristian G. Little (Now Childers) — PETITIONER
(Your Name)

vs.

Jamie A. Little — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Commonwealth of Kentucky Madison Circuit Court Family Court IV
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kristian G. Little (Now Childers)
(Your Name)

605 Walthour RD
(Address)

Savannah, GA 31410
(City, State, Zip Code)

912-659-9094
(Phone Number)

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

G.C.L. (minor child)

RELATED CASES

* *Little Now Childers V. Little, No. 2023-SC-0093-D Supreme Court Of Kentucky. Judgement entered June 7,2023.*

* *Little Now Childers V. Little, No. 2022-CA-1433-MR, Commonwealth Of Kentucky, Court Of Appeals. Judgement entered January 24, 2023.*

* *Little V. Little Now Childers, No 14-CI-50017, Madison Circuit Court Division IV, Judgment entered November 16, 2022*

* *Little V. Little Now Childers, No 14-CI-50017, Madison Circuit Court Division IV, Judgment entered September 30, 2022.*

* *Little V. Little Now Childers, No 14-CI-50017, Madison Circuit Court Division IV, Judgment entered October 18, 2021.*

* *Little V. Little Now Childers, No 14-CI-50017, Madison Circuit Court Division IV, Judgment entered May 17, 2021*

* *Childers V. Little, No. SPDR21-00976-J2, Superior Court, State Of Georgia, Judgement entered November 16, 2022.*

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[x] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is an Order Denying Discretionary Review.

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the Decision of Commonwealth Of Kentucky, Court Of Appeals. court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the Superior Court Of Chatham County, State Of Georgia court appears at Appendix D to the petition and is
[ ] reported at ; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished

The opinion of the Decisions Of Madison Circuit Court Division IV appears at Appendix B to the petition and is
[ ] reported at; or,
[ ] has been designed for publication but is not yet reported; or,
[x]unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was June 7, 2023. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ _____.

X The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

QUESTIONS(S) PRESENTED

This case presents issues of first impression for this Court arising under UCCJEA.

Did the Madison County Family Court ever have jurisdiction to make the initial custody determination?

Did the Madison County Family Court have continuing jurisdiction over a child that had never resided in Kentucky, being conceived, born, and having been completely raised in Georgia, and both parents being noted in the final divorce decree not living in the state?

Did the Madison County Family Court error by making an initial custody determination of a child whose home state is Georgia?

Did the Madison County Family Court consider all relevant factors required under the UCCJEA in making the determination that it was appropriate to exercise jurisdiction?

Did the Court properly address the Petitioner's objection regarding an inconvenient forum under KRS 403.834(2)?

Did the Madison County Family Court error by not releasing Jurisdiction and assuming that the Madison County Court was a convenient forum?

Did The Madison County Family Court error by refusing to communicate with the Georgia Trial Court once Judge Kimberly Walson was made aware that a case had already commenced in Savannah, Georgia, and refusing to stay and communicate with the Savannah, Georgia Trial Court, and providing no documentation of communication or opportunity to participate in any communication to either party involved concerning Jurisdiction issues?

Did the Appeals Court error in dismissing the case due to untimeliness since the trial court entertained what they considered "the late motion" to Alter, Amend, Or Vacate based on CR 60.02 and CR 59.05 and failed to rule until the toll of time expired?

Did the Madison County Family Court properly follow Family Court rules of the 25th Judicial Circuit when it entertained the motion without any service being made to the Petitioner and the Petitioner not being in court or notified of the October 2021 motion?

Did Madison County trial court violate the child's (G.C.L.) and/ or Petitioner's right to due process guaranteed by The Fourteenth Amendment to the United States Constitution when denying the Ex Parte Motion and continuing to rule without proper jurisdiction?

Did the Madison County Trial Court properly follow Family Court rules of the 25th Judicial Circuit when Judge

Kimberly Walson entertained the Motion to Clarify Visitation Schedule, To Specify Exchange Location, and For Respondent to Sign Tax Form, knowing that neither party resided in Madison County?

Did the Madison County Family Court error in requiring the parties to rotate claiming the child on their taxes at the final divorce decree hearing on April 21, 2016 and then again at the May 17, 2021 hearing forcing the Petitioner to sign a waiver of Petitioner's entitled tax credit?

Did the Georgia Trial Court error by dismissing the Petitioner's Complaint To Domesticate Foreign Judgement?

Did the Georgia Trial Court violate the child's and Petitioner's Fourteenth Amendment Right by dismissing the Petitioner's Amended Petition To Domesticate Foreign Judgement And For Modification Of Custody and Visitation?

TABLE OF AUTHORITIES CITED

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STATUES AND RULES

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

14th Amendment Of Constitution Of The United States, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Jamie Little "Respondent" filed for Divorce from Kristian Childers "Petitioner" January 15, 2014. The Petitioner moved to Georgia shortly after being kicked out of the material home by the Respondent in December of 2013. The minor Child, G.C.L., was conceived in Chatham County, Georgia and subsequently born on June 12, 2015. The first reference to the minor child occurred in an incorrectly filed Motion for Custody filed by the Respondent on July 28, 2015 in Madison County, Kentucky more than a year after the Petitioner had moved to Savannah, Georgia and not in the child's Home State of Georgia, where the child was born and resided from birth. It does not appear that any hearing took place to determine the child's Home State, or that KRS 403.800 to 403.880 was considered when hearing this motion or in this case.

The parties reached a mediated agreement regarding initial time sharing with the minor child on September 1, 2015. The parties mediated once again on November 25, 2015 and agreed that the Respondent would have limited time sharing until the minor child reached one year of age.

After a final hearing on the Petition for Dissolution on April 21, 2016, the Court ordered the parties to share joint custody with the primary residence of the child being with Petitioner, Kristian Childers. Further the court ordered that timesharing take place in Savannah, Georgia because

the child's Father, the Respondent, was relocating to South Carolina. The court at this time made the statement that Madison County, Kentucky would no longer have jurisdiction and further issues would need to be addressed in South Carolina or Georgia. The Petitioner has made numerous attempts to get recordings from that hearing and others, but has not been successful in retaining copies of all hearing. The Petitioner argues that the Madison County Family Court never had jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), section 201(a)(1).

UCCJEA, section 201(a)(1) states:

> *(a) Except as otherwise provided in Section 204, a court of this State has jurisdiction to make an initial child-custody determination only if: (1) this State is the home State of the child on the date of the commencement of the proceeding, or was the home State of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State*

Furthermore, according to the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention

> *"By excluding proceedings involving monetary obligations, this Act continues the notion of divided jurisdiction. A court may well have jurisdiction to dissolve the marriage or to make an order for child support without having jurisdiction to make a custody determination. This was founded by the case, Stevens v. Stevens, 682 N.E.2d 1309 (Ind. Ct. App. 1997)."*

This confirms that while the Madison County Family Court did have proper jurisdiction to rule on the dissolution of marriage and child support, following the UCCJEA the courts were not automatically granted

jurisdiction over the minor child since he resided in another state for the entirety of his life. Child custody and dissolution of marriage are two different case types, and the UCCJEA is only applicable to child custody determinations. Therefore, the Madison County Courts should have reviewed the child custody case and determined that the Home State of the minor Child, G.C.L, was Georgia and furthermore declined initial jurisdiction determination.

In December of 2019, the Respondent filed a Motion to Modify Parenting Time and served it on the Petitioner, three and one-half years later. At that time, neither the parties, nor the child, resided in Madison County, Kentucky and Madison County Court, in the Dissolution of Marriage Final Decree, had already divulged that the Court would lose jurisdiction and that future proceedings should take place in the child's home state due to all parties residing outside of Kentucky. At that time the motion should have been dismissed on the grounds that the Kentucky Court no longer had jurisdiction of the matter under the UCCJEA guidelines, if it ever even had jurisdiction to begin with. This Motion filed by the Respondent was not properly served upon Petitioner until July 17, 2020, at which point the minor child had resided in Georgia for the entire 5 years of his life and 9 months in the uterus of the Petitioner . This motion was heard on August 17, 2020 in Madison County, Kentucky. The Petitioner continued to argue that Madison County was not the proper venue for retaining jurisdiction. Judge Kimberly Walson advised the

Petitioner to file a case in Chatham County, Georgia. The Petitioner knew jurisdiction and venue were improper due to previously being before Madison County Court with the father of her other two children and the Court decided shortly before the Petitioner and Respondent's case on August 10th, 2020 case number *12-CI50252 Abney V.S. Abney* to decline jurisdiction. The court advised the Petitioner in this case to file in the children's Home State where jurisdiction was most likely proper. Having two different custody cases in two different states causes extra hardships by being divided between two different states and between two different judges, Judge Shepard and Judge Walson. *Wallace v. Wallace, 224 S.W.3d 587 (Ky. Ct. App. 2007)* states that the very purpose for the creation of the family courts is to consolidate litigation and controversies related to a family into one court. Splitting jurisdiction over custody matters involving children within the same family and, as a consequence, forcing the parties to litigate custody and visitation issues in two different jurisdictions, serves neither the reason for the UCCJEA nor for the creation of the family court system. Furthermore, *Clay v. Rivera, No. 2020-CA-1255-MR (Ky. Ct. App. Sep. 3, 2021)* stated that the very purpose for the creation of the family courts is to consolidate litigation and controversies related to a family into one court. Splitting jurisdiction over custody matters involving children within the same family and, as a consequence, forcing the parties to litigate custody and visitation issues in two different jurisdictions, serves neither the reason for the UCCJEA nor for the creation of the

Family Court system. As a general rule, the Court should avoid such a result. Judge Walson's unwillingness to release jurisdiction goes against protocol for UCCJEA and the Family Court system. Judge Walson forcing the Petitioner to create a new case in another jurisdiction, including litigating custody and visitation in the Chatham County Georgia Trial Court before the Kentucky Trial Court would release jurisdiction goes against UCCJEA and the Family Court system and created two jurisdictions battling for jurisdiction. As a general rule, the court should avoid such a result. Also, now Petitioner's family falls under two different jurisdictions. Petitioner's oldest two children fall under the jurisdiction of Chatham County, Georgia (including one child that was born in Kentucky) while the father was stationed in Kentucky and the youngest child belonging to Petitioner and Respondent in this case who falsely under jurisdiction of Madison County by Judge Walson's erroneous errors. The One Family, One Court, and One Judge policy that is listed on the Kentucky Courts website, provides an inaccurate picture of Madison County Family Court. Also showing that the Petitioner never stood a chance at a fair trial there.

Judge Kimberly Walson erroneously erred in insisting for the Petitioner to file a new case in Chatham County, Georgia, but the Petitioner followed the court's direction and filed this case on June 4, 2021, case number *SPDR 21-00976-J2 Childers v Little.* Filing was delayed due to financial restraints, Covid-19 related court closures,

quarantining and the inability to find a lawyer that would take the case. This case was originally filed pro se, but later counsel was hired. All lawyers in Savannah, Georgia cited OCGA § 19-9-63(1) providing that the first State that made the initial custody determination must decline jurisdiction.

In the hearing in Madison County Trial Court on May 17th, 2021 approximately 3 minutes and 30 seconds into the hearing Judge Walson stated that she would not decline jurisdiction because she had nowhere to send the case to, since nothing had been filled in Savannah, Georgia. Shortly after the initial filing in Georgia, in a form of retaliation, the Respondent filed a Motion to Modify Custody and Child Support on October 8th, 2021, after admitting he was made aware of the case in Chatham County, Georgia by visiting the Chatham County Courts website which showed the case involving an incident that occurred in Savannah, Georgia and the case involving the Petition to Domesticate the Foreign Judgement.

Only the Respondent and his attorney were present during the hearing on October 18, 2021 in Kentucky on the Motion to Modify Custody and Child Support due to service not being perfected on Petitioner. During this hearing, the Respondent failed to make the Madison Family Court aware of the pending case in Chatham County, Georgia. Before making a new custody determination the Madison Family Court should have determined if there were any proceedings in the Georgia

Court, especially after telling the Petitioner to file in Georgia in prior hearings. *Pursuant to UCCJEA 403.832(3),*

> *"[i]n a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state."*

Based on UCCJEA KRS § 403.340(3) states:

> *"If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless after hearing it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. When determining if a change has occurred and whether a modification of custody is in the best interests of the child, the court shall consider the following: (a) Whether the custodian agrees to the modification; (b) Whether the child has been integrated into the family of the petitioner with consent of the custodian; (c) The factors set forth in KRS 403.270(2) to determine the best interests of the child; (d) Whether the child's present environment endangers seriously his physical, mental, moral, or emotional health; (e) Whether the harm likely to be caused by a change of environment is outweighed by its advantages to him; and (f) Whether the custodian has placed the child with a de facto custodian."*

KRS § 403.340(3)(a), was definitely not considered due to the Petitioner not being made aware of the preceding, This is now five years after the final divorce decree and no summons or subpoena was provided. Also the Respondents' reason for requesting a modification was an incident that had occurred where the Petitioner was criminally charged in a case in April 2021, but as of September 2021 the case was completely dismissed and the Defendant was aware before the initial motion for modification on

October 8, 2021. KRS § 454.210, Kentucky's Long Arm Statute, governs service on those parties who are located out of state but meet the transaction requirements which give Kentucky jurisdiction. Service on these parties is made through the Kentucky Secretary of State and is perfected upon the filing of the Secretary of State's service report with the court. KRS Rule 4.04 state:

> *"Service may be made upon an individual out of this state, other than an unmarried infant, a person of unsound mind or a prisoner, either by certified mail in the manner prescribed in Rule 4.01(1)(a) or by personal delivery of a copy of the summons and of the complaint (or other initiating document) by a person over 18 years of age. Proof of service shall be made either by the return receipt mentioned in Rule 4.01(1)(a) or by affidavit of the person making such service, upon or appended to the summons, stating the time and place of service and the fact that the individual served was personally known to him. Such service without an appearance shall not authorize a personal judgment, but for all other purposes the individual summoned shall be before the courts as in other cases of personal service."*

The Respondent sent notice through the mail not certified, without a valid postmark, or evidence of date sent, and it did not arrive until after the hearing had taken place. It arrived on October 18, 2021 and the certification was sent on October 8, 2021. Ky. R. Civ. P. 6.05 clearly states:

> *"Additional time after service by mail of 3 days should have been allowed. Fed. r. civ. p. 6(b) also supports the additional time after service by mail rule."*

This is now five years after the final divorce decree and no summons or subpoena was provided.

In the hearing on October 18, Judge Kimberly Walson ordered the Respondent temporary sole custody of the minor child. Neither the child nor the parties have resided in Madison County, Kentucky since 2016.According to the Supreme Court of Kentucky's Family Court Local Rules of the 25th Judicial Circuit rule 7.02, in the local family court rules for Madison court clearly states that, " No cases shall be heard in which neither party resides in Clark or Madison". Judge Walson ignored the fact that everyone had left the state after the final divorce decree hearing. The child has resided in Georgia for his entire life, and all evidence relevant to a custody determination was located in Georgia. The Petitioner appropriately initiated the instant action in Georgia prior to Respondent filing his action in Kentucky. The Respondent filed his petition worded as an emergency situation regarding an incident that occurred six months prior in Georgia and knowing it had been dismissed, while having knowledge that a Custody Motion was pending in Georgia and not sharing that information with the Madison County Family Court. Respondent's bad faith actions should not be rewarded. Judge Kimberly Walson was also made aware in numerous filings of the Georgia case, but still refused to stay the case per *UCCJEA 403.832(2)* recommended procedures or speak with the Georgia Judge. Judge Walson never contacted the Georgia Judge to have a conference about where proper jurisdiction resided, even though she was made aware of the filings in Georgia.

Pursuant to UCCJEA 403.832(2) if the Court determines that there are simultaneous proceedings, "...the

court of this state shall stay its proceedings and communicate with the court of the other state." The proceeding in the most appropriate forum shall survive and the other proceeding shall be dismissed. Pursuant to UCCJEA 403.832(3), "[i]n a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state.

After the final hearing on July 14, 2022, the Court ordered the Respondent be given sole custody. The court declined to stay and communicate with the Georgia Court and the Petitioner nor her legal representation has seen any communication between the two Judges. The order from July 14, 2022 also included findings that "Since the Decree was entered, the parties have had multiple post-decree matters addressed in Madison Family Court." This is simply untrue. The Petitioner had not filed any motions in the Kentucky Courts before October 2021, when the Respondent was granted temporary sole custody. Based upon that incorrect fact, the Court concluded that Jurisdiction is proper under the UCCJEA, disregarding the child's Home State and his significant relationships established solely in Georgia.

There had been no post decree jurisdiction exercised involving custody by the Kentucky Courts from the time of the entry of the Decree of Dissolution through the time that Respondent filed the Motion to Modify Custody on October 8, 2021.

On October 21, 2021 the Petitioner's attorney in Kentucky, Raven Turner, filed an Ex Parte Emergency Motion to set aside the Order entered

on October 20, 2021. Judge Walson decided that uprooting a child from his Home State and his charter school was not an emergency and decided to not hear the motion until her next motion hour. The child now suffers from anxiety and we are still unsure of all the additional damages that have been caused by the erroneous errors in this case resulting from the lack of due process for the child and Petitioner, and causing both due harm. Removing the child from his Home State of Georgia was a violation of the child's and Petitioner's Fourteenth Amendment Right which states;

> *"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

Procedural due process claims typically arise when a state official removes a child from a parent's care. For such claims,

> *"[t]he Fourteenth Amendment guarantees that parents will not be separated from their children without due process of law except in emergencies." Rogers v. County of San Joaquin*, 487 F.3d 1288, 1294 (9th Cir. 2007) (quoting *Mabe v. San Bernardino Cnty., Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1107 (9th Cir. 2001)

In the October 18, 2021 hearing, the Madison County Family Court issued a temporary order removing the child from his home state without providing both the child and the Petitioner an opportunity to participate due to service not being perfected or processed correctly. Thus, the

hearing became an improper Ex-Parte hearing since the Petitioner was not notified and no emergency existed at the time of hearing or at the time of removal.

The incident the Respondent noted for initiating the action happened in April of 2021, was dismissed in September 2021, a month before the Respondents' filings in Madison County Trial Court seeking a modification of custody. The Respondent stated he was made aware of the incident in June 2021 and then waited until October 2021 to bring the incident to the Madison County Family Court's attention, framing the situation as an emergency. Surely if the incident warranted an emergency, then the Respondent would not have waited four (4) months after discovering the incident had occurred to declare as an emergency. If the Respondent truly believed the minor child was in an emergency situation and that his well being was in danger, furthermore warranting the courts to remove the minor child from his home state and violating his constitutional rights, then this motion would have been immediately filed after discovering the incident had occurred. Since the "emergency" motion was filed nearly four (4) months after the Respondent discovered the incident occurred and after the case was dismissed, it should have been obvious the child was not in a situation of emergency, warranting his removal from his home state and violating his constitutional rights and the Petitioner's constitutional rights protected by the Fourteenth Amendment. The Ex Parte motion filed by the Petitioner that should have been heard

immediately unfortunately was heard by Judge Walson on November 1, 2021. During this court session, Judge Walson stated, two minutes and twenty one seconds into hearing stated

> *"Look I get this might not be exactly where it needs to be, but this is the only place it can be right now, because nothing has been filled to transfer this to another state or another place to send it. She has nowhere to send it. And you understand. This was said last spring."*

Again, ignoring the case that was currently in the Georgia trial court. Judge Walson also claimed it wasn't handled as an ex parte Motion, but in a November 19, 2021 filing in the Georgia Trial Court in a Response To An Emergency Motion To Transfer And Stay Foreign Order states " #7 Father admits that an ex-parte hearing was held in Kentucky to modify custody. Father denies the remaining allegations in this paragraph." Approximately 6 minutes and 20 seconds into the hearing the November 1, 2021 hearing Judge Walson states that she is going to take the Petitioner at her word and that the Petitioner probably didn't get notification in time, that "the mail is awful, we will probably get Christmas presents for Valentine's day.....based on that I made a ruling not emergent or ex parte." Thus, again confirming two things, service was not perfected and service not being perfected violated the 14th Amendment Right to Due Process for Petitioner and the child since Judge Walson agreed no emergency existed. Also, according to Family Court Local Rules of the 25th Judicial Circuit rule 2.02(B) states:

> *"that prior to taking of testimony on any motion, counsel shall certify, either in writing or on the record that a*

good faith attempt has been made through negotiations to resolve the issue(s) to be heard."

If the Petitioner would have been a lawyer the Respondent's lawyer would have reached out and fulfilled this requirement, but due to the Petitioner being pro se, this requirement was not met. If this requirement would have been met the Petitioner would have been notified of an upcoming hearing in advance and the Petitioner's and the child's right to due process would not have been violated. Due to Ms. Beverly Brewers lack of following multiple rules such as right to have service perfected and the rules of Family Court Local Rules of the 25th Judicial Circuit rule 2.02(B) the Petitioner's and child's Constitutional Rights guaranteed by the 14th Amendment were indeed violated.

In the Spring of 2021, Judge Walson told the Petitioner that she would have a conference with the Judge about the proper jurisdiction of the case. In a filing with the Madison County Family Court, pro se, the Petitioner objected to jurisdiction of the Court under the UCCJEA as well as venue due to the residence of the parties. The Court lacked jurisdiction and was not the proper venue to hear this case. The Petitioner continued to live in Savannah, Georgia and the Respondent had moved from Charleston, South Carolina to Pikeville, Kentucky without any notification or agreement from the Petitioner or approval of the court. According to Family Court Rules of Procedure and Practice FCRPP *7(2)(a)(i)(ii);*

"Before a joint custodian seeks to relocate, written notice shall be filed with the court and served on the

non-relocating joint custodian. (ii) The written notice shall include the proposed relocation address, date of relocation and the effect, if any, of relocation on court-ordered time-sharing."

Neither of the Parties nor the minor child resided in Madison County, Kentucky since April 2016, when the last remaining party in Madison County, the Respondent, moved to Charleston, South Carolina.

Due to financial hardship and the Petitioner's attorney withdrawing from the case the Petitioner attempted to file a motion to Alter, Amend, Or Vacate, Pro Se, on October 12, 2022. Judge Walson entertained the motion by requesting that the Respondent's attorney respond to the motion and then that the Petitioner file a Answer to the Respondent's Response on October 24, 2022. On the morning of October 24, 2022 Judge Walson also allowed the Petitioner's attorney to withdraw from the case. The Respondent filed a response on October 26, 2022. The Petitioner took no delay in filing an answer to the Respondent's response on November 02, 2022 citing CR 59.05 and CR 60.02. The Petitioner was under the impression that CR 60.02 only mentioned a reasonable time frame and no longer than one year. The original Motion to Alter, Amend or Vacate was filed on day 12 11 plus months ahead of the 12 month deadline. On November 16, 2022, an order was issued finding that the Petitioner's response was untimely and the new evidence wasn't sufficient to have the Court Alter, Amend or Vacate its September 20, 2022 order. The courts failed to mention the CR 60.02 statute used in Petitioner's Answer to

Respondent's response to Alter, Amend or Vacate. The Petitioner was under the impression that she now had 30 days to file an appeal with the Appellate Court.

The Petitioner hired attorney, James O'toole, to handle the filing to ensure everything was timely and correct. James O'toole took no delay in filing a notice of appeal on December 5, 2022, believing that he was actually filing early. Unfortunately, the Appeals Court ruled that the notice of appeal was untimely and issued an order dismissing the case on January 24, 2023. The Petitioner's failure to file timely was excusable neglect in light of change in representation, Petitioner's status as pro se litigant, and oversight of counsel. The trial court did not dismiss the case based on untimeliness, but overruled the motion. The Petitioner didn't know that the motion to Alter was deemed untimely until the order was produced in November 16, 2022, when Judge Walson created an appealable order overruling not dismissing and that order was issued after the toll of time for appeal had expired.

The Court should review this case to determine and establish if the trial court ever had jurisdiction to make an Initial child custody determination. According to *UCCJEA KRS 403.822(1)(a)(b)(c)(d),* the Kentucky courts did not have jurisdiction to make an initial custody determination because Kentucky was not the Home State of the child. He was conceived and born in Savannah, GA. Furthermore the minor child wasn't conceived at the commencement of the Divorce, which is the

original case and the case which all motions have been filed under. If that was the case the minor child would have been born a year earlier in 2014.

Georgia being the Home State of the child was the only jurisdiction the child fell under. Under section 101 of the UCCJEA, among other things:

> *"Grants priority to home State jurisdiction; Preserves exclusive, continuing jurisdiction in the decree State if that State determines that it has a basis for exercising jurisdiction. Such jurisdiction continues until the child, his or her parents, and any person acting as the child's parent move away from the decree State; Authorizes courts to exercise emergency jurisdiction in cases involving family abuse and limits the relief available in emergency cases to temporary custody orders; Revamps the rules governing inconvenient forum analysis, requiring courts to consider specified factors; Directs courts to decline jurisdiction created by unjustifiable conduct."*

The Respondent purposely used the court to retaliate against the Petitioner for initiating a case in the child's home state as requested by Judge Walson. The Respondent in his Motion for Modification also failed to disclose the important fact that a case had already been initiated in Savannah, Georgia. The Respondent's unclean hands should not be rewarded. The Respondent was very much aware where jurisdiction of the child was proper, and successfully concealed the pending Georgia action from the Court in order to dishonestly persuade the Madison County Family Court to grant him custody. The Petitioner believes this is definitely unjustifiable conduct by the Respondent. As referred to in UCCJEA, section 208(a) (Jurisdiction Declined by Reason of Conduct);

> *"(a) Except as otherwise provided in Section 204 [or by other law of this State], if a court of this State has jurisdiction under this [Act] because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction."*

KRS § 403.836(3) states:

> *"(3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (1) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court shall not assess fees, costs, or expenses against this state unless authorized by law other than KRS 403.800 to 403.880"*

Under this subsection of KRS § 403.836, the unjustifiable conduct that the Respondent has participated in should be enacted and require the Respondent to pay the Petitioner's court and attorney fees, including but not limited to any extra costs such as Guardian Ad Litem fees, all travel expenses and all other fees that the courts finds applicable under this statute.

Judge Walson believed she was the only one that had any information regarding this child and did not check if there was any action pending in Georgia before determining custody modification. Ignoring the evidence submitted by the Petitioner regarding the child's care, training, and personal relationships in Georgia. The Respondent submitted no evidence regarding the child's care, training, or personal relationships or other significant connection, other than mere presence of the Respondent,

existing in the State of Kentucky. The State of Georgia had never had a fair opportunity to decline to exercise jurisdiction due to the Respondent constantly filing in a state that did not have correct jurisdiction. It is undisputed that Georgia was the Home State of the minor child at the time of filing of all Kentucky actions and that neither the child nor the parties have resided in Madison County, Kentucky for years. The child had resided in Savannah, Georgia for his entire life, and all evidence relevant to a custody determination was located in Georgia.

In 2008 the Commonwealth of Kentucky Court of Appeals ruled on this issue and published an opinion, *Officer v. Blankenship, 555 S.W.3d 449 (Ky. Ct. App. 2018).* In *Officer V. Blankenship* the Appellant, Heidi Jill Officer, argued that the Warren Family Court in Kentucky never had the authority to adjudicate custody notwithstanding the parties' property settlement agreement designating Kentucky as the children's home state, and that the Warren Family Court's continuing jurisdiction over this matter is improper. Much like the Petitioner's argument in this case. The Appeals Court review of the case is that the Warren Family Court acted in error. The Warren Family Court never had subject matter jurisdiction to decide the custody of the parties' two minor children because Kentucky was not the children's home state. The Warren Family Court should have granted Heidi's CR 60.02 motion to set aside the dissolution decree, to the extent it resolved custody issues, and relinquished all custody determinations to the Oregon court. The Kentucky Trial Court should have released all

jurisdiction based on the Appeals Court ruling. Jurisdiction isn't something that can be negotiated; you either have it or you don't and Kentucky has never had it. According to the Appeals Court: "Whether a Kentucky court has jurisdiction under the UCCJEA is a question of law that we review de novo. " *Ball v. McGowan* , 497 S.W.3d 245, 249 (Ky. App. 2016) (citing *Addison v. Addison* , 463 S.W.3d 755, 764 (Ky. 2015)). And de novo, Kentucky had no right to make the initial custody decision. In *Ball v. McGowan*, the Nevada court asserted exclusive, continuing jurisdiction because one parent still lived there. The Kentucky Court of Appeals opined, "We think this insufficient; there must be something more than one parent's connection to the decree State for exclusive, continuing jurisdiction to endure." *Ball v. McGowan,* 497 S.W.3d 245, 251 (Ky. App. 2016).

> *"KRS § 403.824. Exclusive, continuing jurisdiction (1) Except as otherwise provided in KRS 403.828, a court of this state which has made a child custody determination consistent with KRS 403.822 or 403.826 has exclusive, continuing jurisdiction over the determination until: (a) A court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or (b) A court of this state or a court of another state determines that the child, the child's parents, and any other person acting as a parent do not presently reside in this state. (2) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under KRS 403.822."*

If the court did not error in determining that it did have jurisdiction to make the initial child custody ruling, continuing jurisdiction was most definitely lost when the Respondent relocated to Charleston, South Carolina after the finalization of the divorce in 2016, which is noted in the final decree stating that visitation would take place in Savannah, Georgia due to the Father relocating to Charleston, South Carolina. At that time the court noted that no one would be living in Kentucky. Thus, according to *KRS 403.828,* the Kentucky courts lost continuing jurisdiction because no parties resided in the state and would no longer have the jurisdiction to make a custody determination due to lack of evidence available in this state concerning the child's care, protection, training, and personal relationships. The oxford dictionary defines continuing as: without a break in continuity; ongoing. Once the Respondent left the State of Kentucky and moved to Charleston, South Carolina claiming homestead exemption there throughout the year 2019 continuing jurisdiction in Kentucky was most definitely lost.

The Madison Family Court did not properly address the Petitioner's objection regarding an inconvenient forum under *KRS 403.834(2).* The Court should have considered all relevant factors and once found it was an inappropriate forum, stayed it proceeding de novo.

> *"403.834 (2) states: Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:(a) Whether domestic violence has*

occurred and is likely to continue in the future and which state could best protect the parties and the child;(b) The length of time the child has resided outside this state;(c) The distance between the court in this state and the court in the state that would assume jurisdiction;(d) The relative financial circumstances of the parties;(e) Any agreement of the parties as to which state should assume jurisdiction;(f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and(h) The familiarity of the court of each state with the facts and issues in the pending litigation."

If the Courts' would have taken the above factors into consideration the Trial Court it would have been clear Kentucky was an inconvenient forum. The Madison Family Court's only advice regarding this was that "this might not be where the case should be, but this is the only place the case can be since nothing has been filed in another state." Judge Walson had nowhere else to send the case and advised the Petitioner to file in Georgia if that is where the Petitioner felt it was appropriate." She also stated that her court was the only person with knowledge of this child regardless of the preschool records, vital statistics records, and extra curricular activities records from Georgia that were submitted to the court. The Respondent had no such records, because Kentucky had no record of the child's care, protection, training, and personal relationship.

The Kentucky Supreme Court has most recently decided on a similar case on August 04, 2023 in Day V. Day No. 2022-CA-1250-MR addresses the issue of Kentucky declining to exercise jurisdiction due to both parties moving out of state. The Supreme Court ruled that the trial

court did not error in declining to exercise jurisdiction and in the Petitioner very similar case Madison County Family Court most definitely erred in not declining to exercise jurisdiction it didn't have (especially after it was released at the final divorce decree hearing).

Last, The Trial and Appeals Court erred in dismissing the Petitioner's appeal, stating that the Motion to Alter, Amend, or Vacate was untimely. The Petitioner cited CR 60.02 in her response which gives the Petitioner one year to ask for relief. Her Motion to Alter, Amend or Vacate was 12 days after the final order. Nowhere close to the 1 year deadline.

> *"CR 60.02 states On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation."*

CR 59.05 gave a deadline of 10 days to file and the Petitioner assumed that meant 10 business days, but CR.60.02 that was addressed in the Response has a deadline of no longer than one year. The Appeals Court erred in dismissing the case, not only did it include CR 59.05, but it also

included CR 60.02 which the Trial Court erred by not considering or mentioning CR60.02 in the final order.

Georgia House Bill 481 gives the minor child protection and rights by the State of Georgia from the time of his Doctor at Thrive OBGYN (located at 5356 Reynolds Street, Savannah, Georgia 31405) finding a heartbeat. His heartbeat was confirmed at six weeks and four days on October 13, 2014 by ultrasound. This was 9 months before the Respondent filed any motions in the Kentucky Courts regarding this child. The Petitioner is certain that Georgia Heartbill law confirmed that the child has been entitled to protection even in the uterus Lin, HB, 481-Heartbeat Bill, 26 Ga. St. U.L. Rev.

The main purposes of the UCCJEA are to prevent forum shopping, avoid interstate custody disputes, and encourage cooperation among the states, to avoid jurisdictional competition and conflict with other states in child custody matters. The Respondent and Judge Walson are attempting to use UCCJEA for the complete opposite purpose. Kentucky never had Jurisdiction, but if it did it was certainly lost at the final divorce decree hearing when it was first made known to the Courts that the The Respondent was relocating to Charleston, South Carolina and claimed this as his primary residence. The choice to close a successful business and move 8 hours away from the child is clearly an attempt to move to a more convenient forum. The Kentucky Courts unwillingness to communicate

and work together with the Georgia Courts is another example of misuse of UCCJEA.

Where information is lacking regarding an issue it is allowed to look at out of state cases for guidance. *Bellew v. Larese, No. S10A1334*, the parties were married in Italy, the couple had a child born in Italy. Family moved to Georgia and claimed homestead exemption for many years and in 2007 mother left with the child for Italy to visit for the summer. In August of 2007 the mother filed for divorce with the child in italy. Father filed for divorce in September 2007 in Georgia. In November 2007 the trial court in Georgia conducted a hearing and created a temporary order giving the father sole legal and physical custody. The Italy Trial Court did the same at which the father did not appear, exercising jurisdiction over the divorce and granting exclusive custody to the mother with the father having visitation. The Georgia court mistakenly contends that they cannot exercise jurisdiction due to the Italian court adopting UCCJEA. The Supreme Court disagreed and found that the Italian Court (much like the Kentucky courts) undertook no analysis of the Home State of the child. Thus under UCCJEA the jurisdictional inquiry entered into by the Italian Court must be deemed insufficient. The Supreme Court further explained that if it were to find the jurisdictional finding by the Italian Court sufficient under the UCCJEA, it would render meaningless the statutory requirement that a court of Georgia state defer to the court of another state only if that court had jurisdiction, substantially in

conformity, with the UCCJEA. Such a finding would also allow this kind of forum shopping that the UCCJEA seeks to prevent. If we think of Kentucky as Italy we can see that no reference in any Court documents refers to the child having a Home State because the Courts failed to consider UCCJEA de novo.

Under the UCCJEA, a court's subject matter jurisdiction to make an initial child custody determination is heavily dependent on the question of whether the court is of a state that is the child's "home state." *See OCGA § 19-9-61; Kuriatnyk v. Kuriatnyk, 286 Ga. 589, 590(1) (690 S.E.2d 397) (2010).* "Home state" is defined as: the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. *Friedman v. Eighth Judicial District Court of the State, 264 P.3d 1161, U65(II)(A) (Nev.2011) (punctuation omitted). See generally UCCJEA § 101cmt.* (stating that the purposes of the act are to (1) avoid jurisdictional competition, (2) promote cooperation between courts of different states, (3) discourage use of the interstate system to continue custodial controversies, (4) deter child abductions, (5) avoid relitigation of custody decisions in other states, and (6) facilitate enforcement of decrees by other states).

Madison County Family Court final divorce decree required the parties to rotate the Child's Tax Credit without any explanation. The Kentucky Supreme Court ruled in *Adams-Smyrichinsky*, that to award tax exemptions to someone that does not qualify for them under the IRS standards, requires the order to state sound reasons why such an award actually serves to benefit the child. Therefore, a Trial Court may only order a custodial parent to sign a waiver in favor of the non-eligible parent for stated sound reasons reliably related to the support of the child.

When the issue was re-evaluated in 2021 again, Judge Walson ordered that the waiver be signed without stating any sound reasons and the Respondent attempted to hold the Petitioner in contempt for refusing to so, forcing her to sign the waiver. The Respondent still believes that the tax credit should have been issued to her due to the child residing with the Petitioner more than 50 percent of the time. The Respondent at the 2021 hearing was not exercising all of his court order time sharing.

The Petitioner believes that the Georgia Court erred by dismissing the Petitioner's Complaint To Domesticate Foreign Judgement and Petitioner's Amended Petition To Domesticate Foreign Judgement And For Modification Of Custody and Visitation thus violating the Petitioner's Fourteenth Amendment right. The Petitioner had lived in Georgia for over eight years and the child for his whole life, surely they should have been protected by their state. The Constitution of Georgia in the Bill Of Rights sections states Paragraph I.

"Life, liberty, and property. No person shall be deprived of life, liberty, or property except by due process of law."

For Georgia to allow the Madison County Kentucky Trial Courts to come in and infringe on their rights without having jurisdiction is a violation of the Georgia Constitution and The United States Constitution. By dismissing the Petitioner Complaint To Domesticate Foreign Judgement and Petitioner's Amended Petition To Domesticate Foreign Judgement And For Modification Of Custody The Georgia trial court failed to protect their rights to the Petitioner and child afforded to them under the US. Constitution and the Constitution Of Georgia.

REASONS FOR GRANTING THE PETITION

The minor child was conceived, born and raised in Georgia from June 2015 until October 2021, when the Kentucky court unjustifiably declared it had jurisdiction over the child and removed him from his home state. According to the guidelines set up by Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the minor child's home state was always Georgia, never Kentucky. While Kentucky had proper jurisdiction in the matters related to the dissolution of marriage, Kentucky never had proper jurisdiction to rule on the custody of the minor child because the minor child never resided in Kentucky for more than 6 months and never had any significant relationship to Kentucky involving his training, health and safety. All significant relationships were in Georgia where the minor child resided for the entirety of his life until being unjustifiably removed from his home state.

At the time of the dissolution of marriage in 2016, the Kentucky courts lacked subject matter jurisdiction to make an initial jurisdiction determination of the minor child because neither the Petitioner, nor the minor child resided in the state, and the minor child had resided solely in Georgia since his birth in June 2015.

It is important for all courts of the United States to follow the rules set forth by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) in order for there to be uniformity in the judicial system, to

prevent a court from acting in a rogue manner and to prevent parties from venue shopping. The UCCJEA is a federal act that should be followed by all courts of any state in the United States. Without answers to these questions the State of Kentucky is left with unclear understandings of how UCCJEA is intended to work and if Madison County Family Court and Judge Kimberly Walson continues in this manner this Court will go against everything UCCJEA set out to prevent. Furthermore, a court of the United States that acts without proper jurisdiction undermines the integrity and legitimacy of laws and the Judicial System in the United States.

Furthermore it is important for all Courts of the United States to uphold and follow the liberties and rights found in the United States Constitution, most notably in this case the Fourteenth Amendment's right to due process, to ensure a fair and true trial for all citizens.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kristen M Childers

Date: September 5, 2023