No.

IN THE
SUPREME COURT OF THE UNITED STATES

TINA BASTIAN VENESKEY,
Petitioner,

v.

MICHAEL KEITH SULIER
Respondent.

On Petition For A Writ of Certiorari To The North Carolina Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Full Faith and Credit Clause precludes the enforcement of a State's jurisdictional determination when that very determination is based upon an error of law.

2. Whether a State's failure to afford a party a meaningful opportunity to be heard prior to a custody determination is violative of the Due Process Clause of the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the caption.

RELATED CASES

- *In the matter of A.N.S*, Court File No. 20-GM-22549, Probate Court for the County of Delta of Michigan.

- *Michael Keith Sulier v. Tina Bastian Veneskey*, Court File No. 20-CVD-256, District Court for the County of Davie of North Carolina.

- *Tina Veneskey and James Veneskey v. Michael Sulier*, Court File No. 20-24551-DC, Circuit Court for the County of Delta of Michigan.

- *Tina Veneskey and James Veneskey v. Michael Sulier*, Court File No. 355471, State of Michigan in the Court of Appeals.

- *Tina Veneskey and James Veneskey v. Michael Sulier*, Court File No. 163614, State of Michigan in the Supreme Court.

- *Michael Keith Sulier v. Tina Bastian Veneskey*, Court File No. COA21-523, North Carolina Court of Appeals.

- *Michael Keith Sulier v. Tina Bastian Veneskey*, Court File No. COA21-506, North Carolina Court of Appeals.

- *Michael Keith Sulier v. Tina Bastian Veneskey*, Court File No. 332P22, Supreme Court of North Carolina.

- *Michael Keith Sulier v. Tina Bastian Veneskey*, Court File No.331P22, Supreme Court of North Carolina.

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PETITION FOR A WRIT OF CERTIORARI

PETITIONER TINA BASTIAN VENESKEY RESPECTFULLY PETITIONS FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE NORTH CAROLINA COURT OF APPEALS AS THE NORTH CAROLINA SUPREME COURT DECLINED REVIEW.

OPINIONS BELOW

The North Carolina Court of Appeals opinion is available in *Sulier v. Veneskey*, 285 N.C. App. 644, 651 (2022). The Order of the North Carolina Supreme Court denying review is available in the Appendix.

JURISDICTION

The judgment of the North Carolina Court of Appeals was entered October 4, 2022, which was a consolidated opinion for two separate appeals, file numbers COA21-523 and COA21-506. The North Carolina Supreme Court denied review by Order issued June 20, 2023 of the consolidated appeals to the North Carolina Court of Appeals, file numbers 332P22 and 331P22. This Court has jurisdiction under 28 U.S.C. § 2101.

STATUTORY PROVISIONS INVOLVED

The Uniform Child Custody Jurisdiction and Enforcement Act (N.C. Gen. Stat § 50A, *et. seq*.) is reproduced in the Appendix.

STATEMENT

The UCCJEA is a uniform statute designed to help states avoid jurisdictional competition in cases involving a child custody determination. *See* Official Comment to N.C. Gen. Stat. § 50A-101. In addition to avoiding jurisdictional competition and disputes, the UCCJEA is intended to "facilitate cooperation with the courts of other States to the end that a custody decree is rendered in that State which can best decide the case in the interest of the child." *Id.* When two competing custody actions arise in different jurisdictions, the UCCJEA sets forth a uniform hierarchy to determine which court has a superior jurisdictional claim. The circumstances in which a state may exercise jurisdiction to make an initial custody determination are as follows: (1) the state is the child's "home state"; (2) a court of another state does not have jurisdiction and the state has a "significant connection" to the child; (3) the state is a "more appropriate forum"; or (4) so called "necessity jurisdiction," where jurisdiction is not proper under any of the preceding subsections. *See* N.C. Gen. Stat. § 50A-201. Prior to any one state assuming jurisdiction over a custody action, the UCCJEA instructs trial courts with competing jurisdictional claims to communicate about the proceedings, and, upon the parties' presentation of facts and legal arguments, make a determination as to which court has jurisdiction to hear the matter. N.C. Gen. Stat § 50A-110.

The North Carolina Supreme Court's decision to let the North Carolina Court of Appeals' decision stand flies in the face of the enumerated purpose of the UCCJEA. In determining that the North Carolina trial court's exercise of jurisdiction was proper under

the necessity prong of N.C. Gen. Stat. 50A-201, the North Carolina Court of Appeals fails to consider the equally compelling and superior jurisdictional claim the Michigan trial court had but for a mistake of law in determining the child's home state. The North Carolina Court of Appeals' decision rewards its own trial court for reaching an erroneous conclusion of law while simultaneously foreclosing any other state from asserting or reasserting jurisdiction. Such a ruling only encourages further litigation at the expense of the minor child's best interests. Finally, the North Carolina Supreme Court's failure to determine whether Petitioner's Due Process rights were infringed frustrates the direct purpose of the UCCJEA's conference procedure. In the absence of a meaningful opportunity for parties to offer facts and legal arguments prior to a UCCJEA jurisdictional determination, the UCCJEA conference, as prescribed by statute, is nothing more than a performance. By rubber-stamping the notion that trial courts may reach conclusions of law without any testimony from the parties, the North Carolina Supreme Court has created a conflict among State Supreme Courts and set dangerous precent that will only serve to undermine the children the UCCJEA is designed to protect.

1. This petition stems from competing custody actions pertaining to A.N.S. ("minor child") initiated by Petitioner-Defendant Tina Bastian Veneskey ("Grandmother") in Delta County, Michigan on 31 July 2020 and Respondent-Plaintiff Michael Keith Sulier ("Father") on 15 July 2020 in Davie County, North Carolina. The minor child was born 2013 in Marquette, Michigan and lived the majority of her life in two states, Michigan and North Carolina.

Audrey Rorrer Pegram ("Mother") died on 10 May 2020 in Davie County, North Carolina. When Mother died, the minor child was solely residing with Mother and her then-husband Alex Pegram ("Stepfather"). After Mother's death, the minor child came under the care of Grandmother (the minor child's maternal grandmother). Grandmother believed that the minor child was without provision for reasonable and necessary care or supervision and as such took the minor child to Michigan to live with her and her husband, James Veneskey, ("Husband") where the minor child has continuously resided since 18 May 2020.

2. Subsequent to returning to Michigan with the minor child, Grandmother filed an action for guardianship in Probate Court in Delta County, Michigan ("Probate Court") and was granted temporary guardianship of the minor child on 30 June 2020. The Probate Court has continuously extended the temporary guardianship since 30 June 2020. On 15 July 2020, Father filed a complaint for child custody in Davie County, North Carolina. Father was not a resident of North Carolina at the time of filing and has not since taken residency in North Carolina. On 31 July 2020, Grandmother filed a complaint for child custody in Delta County, Michigan, where she and the minor child have resided continuously since 18 May 2020.

3. On or around 29 October 2020, the Michigan Court and the North Carolina Court held a telephone conference to determine which court had jurisdiction to make an initial custody determination pursuant to the UCCJEA. The parties were not present at the conference and did not present evidence or legal arguments prior to the telephone conference.

On 29 October 2020, based upon the conclusions reached by the North Carolina Court and the Michigan Court during their phone conference, the Michigan Court dismissed the child custody action filed by Grandmother on the basis that North Carolina had home state jurisdiction. On 23 February 2021, North Carolina Court heard, for the first time, arguments from the parties about which state should exercise jurisdiction. Following the hearing, the trial court entered an Order on Jurisdiction finding that North Carolina had home state jurisdictions under the UCCJEA. Grandmother appealed the Order on Jurisdiction to the Court of Appeals on 24 March 2021.

4. On 4 October 2022 the North Carolina Court of Appeals issued an opinion holding that North Carolina was not the minor child's home state for the purposes of determining jurisdiction under the UCCJEA, but nevertheless holding jurisdiction proper under the "necessity" prong of the UCCJEA. The North Carolina Court of Appeals also dismissed Grandmother's objection to the UCCJEA conference procedure. Grandmother timely filed a Notice of Appeal Based On a Substantial Question Arising Under the United States Constitution arguing the North Carolina Court of Appeals' decision created a Full Faith and Credit Clause conflict and that the trial court had abridged Grandmother's due process rights under the Fourteenth Amendment. Grandmother also filed a Petition for Discretionary Review at that time. On June 20, 2023, the North Carolina Supreme Court entered an order denying both Grandmother's Notice of Appeal and Petition for Discretionary Review. This timely Petition followed, and pursuant to Rule 14.5 has been resubmitted to this Court.

REASONS FOR GRANTING THIS PETITION

The UCCJEA arises under state law, and therefore, this Court has precious little jurisprudence on the application of the uniform statute. In order for the Court to have jurisdiction to hear a case pertaining to the UCCJEA or an analogous uniform statute, a Petitioner must properly raise federal grounds for appeal in the State Court below. *See Webb v. Webb*, 451 U.S. 493 (1981) (dismissing certiorari due to the Petitioner's failure to properly raise a Full Faith and Credit Clause challenge in the custody action below). This Court has never addressed the questions of: (1) whether an erroneous ruling of law can nevertheless form the jurisdictional basis for a custody proceeding; or (2) the scope of Due Process requirements associated with UCCJEA conferences between courts of the various states. This case presents the Court with a valuable opportunity to provide needed clarity in child custody actions about the roles and responsibilities of trial courts in making jurisdictional determinations that will impact the children of this nation.

Jurisdictional determinations in child custody actions are both complex and fact specific. Accordingly, it is inevitable that well-intending trial court judges engaging in UCCJEA conferences will one day misapply the facts to the law and reach erroneous jurisdictional conclusions. Standing alone, a one-off mistake does not rise to the level of review by this Court. State Courts of Appeal and Supreme Courts regularly review these determinations for error and provide relief when necessary. This case, however, presents the all-together more concerning scenario in which a trial court makes an erroneous conclusion of law, and is subsequently corrected upon

review but the underlying jurisdictional determination remains in place. Such a scenario creates uncertainty amongst practitioners, rewards legal errors, undermines the purposes of the UCCJEA and creates a Full Faith and Credit Clause dispute by preventing other courts of competent jurisdiction from exercising the same.

Furthermore, Supreme Courts of numerous states have afforded varying degrees of Due Process protections to parties seeking to be heard prior to a jurisdictional determination. As states are required to afford Full Faith and Credit to the judgments of other states, a uniform Due Process baseline must be established for initial custody determinations. Without such a standard, parents seeking custody may find differing opportunities to be heard on the merits based on which jurisdiction they reside. This Court has a great interest in ensuring that Due Process is equally afforded to all seeking custody of a child and an even greater interest in ensuring that trial courts have complete information before making a jurisdictional determination that may impact the well being of a minor child.

I. CERTIORARI IS WARRANTED TO ADDRESS WHETHER A TRIAL COURT'S ERRONEOUS CONCLUSION OF LAW SHOULD PRECLUDE OTHER STATES WITH JURISDICTIONAL CLAIMS FROM MAKING SUCH CLAIMS UNDER THE FULL FAITH AND CREDIT CLAUSE.

The North Carolina trial court's jurisdictional determination on initial custody should be vacated because it was based upon a finding that North Carolina was the minor child's home state. Neither

the North Carolina nor Michigan trial court ever made findings of fact or law relating to which jurisdiction would have a "significant connection" in the event the minor child's home state was not North Carolina. Instead, the North Carolina Court of Appeals determined, *sua sponte,* that no other state had jurisdiction under the UCCJEA and determined North Carolina, therefore, obtained jurisdiction by necessity under N.C. Gen. Stat. § 50A-201(a)(4). In fact, Michigan did have a superior jurisdictional claim upon a finding that North Carolina was not the minor child's home state. The North Carolina Court of Appeals' decision foreclosed Michigan from exercising said jurisdiction and in doing so created a Full Faith and Credit Clause dispute.

1. The Full Faith and Credit Clause is enshrined in Article IV, Section 1 of the United States Constitution and reads: "Full Faith and Credit shall be given in each State to the public Arts, Records, and judicial Proceedings of every other State." Art. IV, § 1. The purpose of the Full Faith and Credit Clause is, in part, to prevent competing state courts from reaching conflicting results. *Univ. of Tenn v. Elliott*, 478 U.S. 788, 799 (1986). To that end, "a judgment entered in another state is presumptively valid and subject to recognition under the Full Faith and Credit Clause. . ." *Hare v. Starr Commonwealth Corp.*, 291 Mich. App. 206, 209 (2011).

The Michigan Court of Appeals recently considered whether the state was required to give full faith and credit to a California judgment in which the "California court plainly lacked subject-matter jurisdiction over the child-custody matter" and determined that, in fact, Michigan was not obliged to afford full faith and credit to that judgment. *Nock v.*

Miranda-Bermudez, 2023 Mich. App. LEXIS 5136, * 10-11. The Michigan Court of Appeals' ruling is consistent with this Court's precedent that a state is not required to "afford full faith and credit to a judgment rendered by a court that 'did not have jurisdiction over the subject matter or the relevant parties." *V.L. v. E. L.* 577 U.S. 404, 407 (2016) (quoting *Underwriters Nat. Assurance Co. v. North Carolina Life & Accident & Health Ins. Guaranty Assn.*, 455 U.S. 691, 705 (1982)).

In *Nock*, the Michigan Court of Appeals found that there was no additional basis for California to retain subject matter jurisdiction after concluding home state jurisdiction was improper. 2023 Mich. App. LEXIS 5136, *7 n.2. In the present case, the North Carolina Court of Appeals has, in essence, avoided the rule in *V.L.* and that was later espoused (after the North Carolina Court of Appeals ruling) in *Nock* by asserting jurisdiction by necessity. Jurisdiction by necessity is not a catch-all provision; in fact, North Carolina may only assert necessity jurisdiction if "[n]o court of any state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3)." *Gerhauser v. VanBourgondien*, 238 N.C. App. 275, 300 (2014) (quoting N.C. Gen. Stat. 50A-201(a)(4)).

Grandmother asserted below and continues to assert that Michigan has a "substantial connection," which would be a superior jurisdictional claim to North Carolina's jurisdiction by necessity. However, Grandmother cannot bring those claims in Michigan because North Carolina is afforded full faith and credit.

2. In *Hernandez v. Mayoral-Martinez*, the Michigan Court of Appeals remanded to a trial court for findings of fact on whether significant connection jurisdiction was proper after the trial court made an erroneous home state jurisdiction determination. 329 Mich. App. 206, 213 (2019). The Court in *Hernandez* concluded that "[p]resumably, the court gave short shrift to [significant connections jurisdiction] because it determined that Mexico was the child's home state. Given that the primary reason for the court's order was erroneous, we remand so that the trial court can fully consider whether it has jurisdiction under [significant connections jurisdiction]." *Id.* The present case is factually analogous to *Hernandez* in that the home state jurisdiction was erroneous and the trial court failed to take further inquiry. Despite this, North Carolina elected to exercise jurisdiction by necessity prior to the presentation of evidence on significant connections.

Had the jurisdictional issue been remanded back to the trial court for consideration, Grandmother would have offered evidence of the minor child's significant connections to Michigan rather than North Carolina. *Cheesman v. Williams*, 311 Mich. App. 147, 155, 874 N.W.2d 385, 390 (2015) (quoting *White v Harrison-White*, 280 Mich. App 383, 394; 760 NW2d 691 (2008)) (Significant connections jurisdiction exist "where one parent [or person acting as a parent] resides in the state, maintains a meaningful relationship with the child, and, in maintaining the relationship, exercises parenting time in the state[.]").

The North Carolina Court of Appeals ruling finding that North Carolina was not the minor child's home state and subsequent finding that the North Carolina had jurisdiction by necessity has caused a

plethora of important issues. First, the ruling has caused uncertainty in both North Carolina and Michigan, with Michigan unable to assert a potentially superior jurisdictional claim as it defers to North Carolina's necessity jurisdiction. Second, the ruling has prevented crucial evidence of Michigan's superior jurisdictional claim from being heard.

II. CERTIORARI IS WARRANTED TO ADDRESS THE CHECKERBOARD APPLICATION OF DUE PROCESS IN JURSIDICTIONAL DETERMINATIONS FOR CUSTODY DISPUTES.

It is a bedrock principle that when fundamental rights are in question, procedural due process is required. Specifically, "the fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotations omitted). In determining whether a person has been afforded sufficient procedural due process, courts consider the following:

> "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Id. at 335.

1. The UCCJEA has provided a statutory requirement layered on top of the Fourteenth Amendment's Due Process protections. In relevant part, N.C. Gen Stat. § 50A-110 provides: "(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made."

The North Carolina Court of Appeals explicitly acknowledges that the Michigan and North Carolina courts communicated prior to Grandmother's jurisdictional hearing and further acknowledges that Michigan dismissed its custody proceeding prior to Grandmother being heard on the merits in North Carolina. *Sulier v. Veneskey*, 285 N.C. App. 644, 651 (2022). A plain-reading of the N.C. Gen. Stat § 50A-110 ***requires*** an opportunity to present facts and arguments ***before*** a jurisdictional determination is made. While an order was not entered until after Grandmother has presented her evidence on 23 February 2021, that determination was already made in October 2020 when the Michigan Court dismissed its custody action based on communications between the courts.

The North Carolina and Michigan trial courts held an *ex parte* hearing on 29 October 2020, in which the courts determined, *sua sponte*, North Carolina was the minor child's home state. On 23 February 2021 the North Carolina and Michigan trial courts attempted to reconcile the prior hearing with the requirements of N.C. Gen. Stat. § 50A-110: Specifically, the North Carolina trial court stated: "It

is, but I think right now, my only determine – – my only job here is to make sure that I'm in compliance with the case law that allows the parties to be heard before determination is made, ***but the reality is a determination has been made, period.***" Transcript of Davie County, North Carolina February 23, 2021 UCCJEA jurisdictional hearing at 43, *Sulier v. Veneskey*, 285 N.C. App. 644 (2022) (Nos. COA21-506 and COA21-523). If *Matthews* is to be taken as true and the Due Process Clause affords an individual a *meaningful* opportunity to be heard, Grandmother's UCCJEA conference was anything but meaningful and did not comport with the requirements of due process.

2. Courts of numerous jurisdictions have grappled with the question of how much due process must be afforded to parties to a UCCJEA jurisdictional conference. *See Segal v. Fishbein,* 89 Cal. App. 5th 692, 707 (2022) (holding that oral and written evidence is sufficient; no right to cross-examine another party exists); *In re Muldoon*, 2023 Tex. App. LEXIS 2686, *6 (finding that the trial court erred by "making a decision on jurisdiction before it gave the parties an opportunity to present facts and legal arguments."); and *Tracy D. v. Dep't of Child Safety*, 252 Ariz. 425, 428 (2021) (finding no Due Process issues when mother "briefly testified, though no other parties were given the opportunity to cross-examine or to present additional evidence."). Contrast the above cases with the present case. In the present case the North Carolina trial court admits to hearing arguments solely to fix previous non-compliance with N.C. Gen. Stat. § 50A-110. The inconsistent application of analogous statutes creates a due process issue insofar as there is unequal application of standards for being heard on the merits before a

jurisdictional determination. It is imperative that this Court takes concrete steps to address this disparity and ensure that all parties to a custody action have sufficient due process regardless of what jurisdiction the actions arises in.

CONCLUSION

The UCCJEA is an essential mechanism for preventing interstate squabbles over child custody. However, the uniform statute is only as effective as this Court requires it to be. Without proper limits, courts may be permitted to use erroneous conclusions of law to form the basis of jurisdictional determinations. This cannot be permitted. The UCCJEA sets forth a clear framework from which States may operate, including safeguards to prevent Full Faith and Credit Clause disputes. Without enforcing the plain-text of the statute, the risk arises that States with superior jurisdictional claims will be shunted to one side. Further, Due Process is at the heart of every child custody and jurisdictional determination. Failing to permit a party to be heard prior to making a jurisdictional determination is both wrong and unsupported by the law. For the aforementioned reasons, Petitioner respectfully requests this Court to grant the Petition.

Respectfully Resubmitted Pursuant to Rule 14.5:

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DATED: November 21, 2023.

APPENDIX

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APPENDIX A

IN THE GENERAL COURT OF JUSTICE,
DISTRICT COURT DIVISION, DAVIE COUNTY,
NORTH CAROLINA

FILE NO.: 20 CVD 256
[Stamp:] FILED February 23, 2021

MICHAEL KEITH SULIER,

Plaintiff

v. **ORDER ON JURISDICTION**

TINA BASTIAN VENESKEY,

Defendant.

This matter comes on in Davie District Civil Court on February 23, 2021, before Judge Mary Covington, on the question of jurisdiction. The court heard arguments from both parties and the court makes the following **FINDINGS OF FACT:**

1. Minor child, A.N.S., born on 2013, is the child born of the relationship of the Plaintiff, Michael Keith Sulier and Audrey Michael Rorrer Pegram (now deceased).

2. The Defendants are the maternal grandparents of the minor child and reside in

Michigan, although they own real property located in Davie County, North Carolina, where the minor child was living at the time of biological mother's death.

3. Within moments of the biological mother's death, the Defendant removed the minor child from the jurisdiction of her home state. The minor child has resided In North Carolina continuously form 2017-2020 when her mother passed away.

4. There is credible evidence that the minor child lived in multiple places with the now deceased mother. And although the minor child was born in the State of Michigan, she resided in North Carolina continuously for approximately three years prior to her mother's passing in May 10, 2020, in Davie County, North Carolina.

5. The Defendant has previously resided in Davie County, North Carolina.

6. Deceased mother was residing in North Carolina six months prior to her death in May 2020.

7. She married and had a child with her husband, Alex Pegram. The minor child has a half-sibling that currently lives in North Carolina.

8. The Plaintiff was not aware of the minor child's whereabouts and sought her out within 24 hours of her death.

9. Although the child was removed from the state of North Carolina, she had at least one parent or persons acting as a parent, have significant contact with the state of North Carolina.

10. The State of Michigan did assume emergency temporary jurisdiction for the purposes of establishing a temporary guardianship when the child was taken to North Carolina after the mother's death, by the Defendant. The Plaintiff did not give consent to the child being removed from Noth Carolina.

11. On October 29, 2020, in the Circuit Court for the County of Delta, in the State of Michigan, The Honorable Perry Lund entered a summary disposition order under MCR 2.116(C)(4); finding that Michigan is not the home state of the minor child and is an inconvenient forum. The order was preceded by a telephone conference between Judge Covington and Judge Lund. Subsequently, the custody action filed by the Defendant, was dismissed in its entirety.

12. As the date of this hearing, Michigan's only jurisdiction pertained to the temporary guardianship ordered by the Delta County Probate Court in Case No. 20-GM-22549.

13. There has been no final determination of the guardianship as of the date of this hearing.

14. The Plaintiff filed his action for custody in the North Carolina, the child's home state, on July

15, 2020. The Defendant, the maternal grandmother, filed her custody action in Michigan on July 30, 2020.

15. In the hearing on February 23, 2021, the court heard extensive legal arguments by the attorneys for both parties in North Carolina and by WEBEX in Michigan, while Judge Lund also presided. The summary disposition order entered in Michigan has been appealed by the Defendant, maternal grandparent, however; the appeal is not interlocutory.

16. The court heard credible evidence, over the objection of defense counsel, that the Plaintiff is the biological father of the minor child. He is on the birth certificate, which the Court received into evidence, and he also signed an affidavit of parentage at the time of the minor child's birth.

17. The Court has determined that North Carolina has jurisdiction over the subject matter in the case and personal jurisdiction over the parties because of the Defendant and the minor child's significant contacts within the state of North Carolina.

18. Furthermore, the court finds that North Carolina is the more convenient forum for the minor child and for the Plaintiff and at least one contestant has significant connections within the state of North Carolina.

THE COURT MAKES THE FOLLOWING **CONCLUSIONS OF LAW:**

1. This matter is properly before this court and the court has jurisdiction over the subject matter and the parties in this action.

2. The Plaintiff is the biological parent of the minor child.

3. The defendant is not the biological parent of the minor child.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff is adjudicated to be the biological parent of the minor child.

2. North Carolina Is the home state of the minor child, and North Carolina is the more convenient forum for the custody action moving forward. North Carolina has jurisdiction of the subject matter and the parties in this action in order to determine custody of the minor child.

Entered this day of February 23, 2021.

s/ Mary Covington
District Court Judge Presiding

APPENDIX B

IN THE GENERAL COURT OF JUSTICE,
DISTRICT COURT DIVISION, DAVIE COUNTY,
NORTH CAROLINA

FILE NO.: 20 CVD 256
[Stamp:] FILED May 3, 2021

MICHAEL KEITH SULIER,

Plaintiff

v. TEMPORARY CUSTODY ORDER

TINA BASTIAN VENESKEY,

Defendant.

THIS MATTER COMES ON BEFORE JUDGE MARY COVINGTON ON THE April 28th, 2021, session of civil court, and it appearing to the Court that all parties were properly served and had notice and opportunity to be heard in this matter.
The PLAINTIFF, the biological father of the minor child, A.N.S., age 7, born 2013 in Marquette, Michigan appeared in court and was represented by Attorney Wendy Terry. The Defendant is the maternal grandmother of the minor child and appeared in court represented by Attorney Andrew Wingo.

FINDINGS OF FACT

1. Plaintiff is the biological father of the minor child, A.N.S., DOB 2013. His name appears on the birth certificate. He was present at her birth.

2. The biological mother of the minor child is deceased. Her name at the time of her death was Audrey Michael Rorrer Pegram. Her death remains under investigation but was initially deemed a drug overdose. The court was given no further detail, although the current husband, Alex Pegram, is under investigation for being involved in her death.

3. At the time of mother's death, the minor child was residing in Mocksville, NC, in a home owned by the Defendant, with her mother and her new husband of less than a year, Alex Pegram. The investigation of her death is ongoing, and Mr. Pegram remains a person of interest in her death. And although the deceased mother and Mr. Pegram had a child together, the Defendant only wanted to take custody of A.N.S.

4. Plaintiff is a resident of Myrtle Beach, South Carolina and has resided there since the shortly after plaintiff and mother's final breakup in 2014 and after his father passed away in Davie county.

5. The Defendant is resident of Delta County, Michigan, but owns property in both states.

6. Neither party in this action currently reside in the State of North Carolina, however, after a conducting a jurisdictional hearing with the juvenile Judge in the State of Michigan, it was determined that North Carolina is the home state. That jurisdictional ruling is currently on appeal in Michigan.

7. The Court finds that North Carolina is the home state of the minor child at the time of the filing of this action. The minor child was living at least six months prior to the death of her mother and prior to the filing of this action by Plaintiff.

8. Plaintiff and the mother of the minor child were never married but A.N.S. was the one child born of their relationship.

9. The Plaintiff learned of the death of the mother of A.N.S. on the social media page of a family member of the decedent and he immediately returned to North Carolina to pick up his daughter. He made inquiry with the police department as well as family members and neighbors as to her whereabouts.

10. The Defendant, who is not a biological parent of the minor child has the burden to show that the Plaintiff has acted inconsistent with his constitutionally protected rights to parent the minor child and that standard is by clear, cogent and convincing evidence.

11. The Court finds that within a few days of the unexpected death of the mother of the minor child,

the Defendant came to North Carolina from Michigan and removed the child from the jurisdiction of North Carolina and took her back to Michigan. The Plaintiff was never informed. The Defendant testified that the thought to notify the Plaintiff never crossed her mind.

12. The Defendant and the then stepfather of the minor child, Alex Pegram, had an attorney draw up a consent agreement to allow the Defendant to take the child back to Michigan without the Plaintiff's consent. This consent agreement was invalid as neither party had any legal rights to the minor child without the Plaintiff's consent. The court finds that the Plaintiff did not cede any portion of his custody rights to the stepfather or the Defendant voluntarily as he was never notified of the marriage to Mr. Pegram or the consent agreement removing his child from the jurisdiction of the court.

13. The Defendant made zero efforts to locate the biological father of the minor child before secreting the child away. The Plaintiff had family in the area where the child was residing and the paternal grandmother, and the defendant had previous communications by phone to discuss the minor child and exchanged photos of the minor child. At no time was the Plaintiff or the paternal grandmother given the opportunity to visit with the minor child while in the care of the Defendant.

14. It is uncontroverted that Plaintiff and the mother of the minor child had a tumultuous relationship. They broke up a few times and got back

together. It is common for couples who have a traumatic breakup to leave custody arrangements of the child (born of their relationship) open and incomplete as they navigate the issues. The court finds that the gap of time that the Plaintiff went without communicating with his child was not tantamount to abandonment or neglect.

15. The Plaintiff is a person of limited means financially and educationally. It appears from his testimony and from the testimony of the paternal grandmother, they were both led to believe by the mother of the child and the Defendant that they could no longer have communication with the minor child. This is consistent with the years between 2014-2020.

16. There is credible evidence by the Plaintiff and the paternal grandmother that the Plaintiff did engage in parenting activities such as feeding, changing and taking care of the child while the mother was at work. The parents of this minor child were very young, and both acted as such on multiple occasions, before and after the birth of the child. This does not make the Plaintiff an unfit parent. He was not given the opportunity to parent after the mother and child moved away and the mom changed her name, through marriage.

17. During one of their breakups, the plaintiff and mother attempted to establish a custody agreement including but not limited to child support. The Plaintiff did actually make two child support payments before the parties reconciled, and the

agreement became moot. There was never a child support order entered by any court between the parties subsequently. The Plaintiff was never under any court order to pay child support.

18. There is credible evidence that after the final breakup of the Plaintiff and the mother of the minor child, that Plaintiff was informed he was not allowed to have any contact with the minor child due to a pending charge for breaking and entering which was later dismissed.

19. The Plaintiff remained compliant with the court ordered no-contact order and believed that any contact with the mother or the minor child would result in his bond being revoked. This order was in effect between 2015-2016. During that time period, the Plaintiff did not attempt to contact the mother or the child. His belief that he couldn't have contact was reasonable based on the facts and circumstances at that time.

20. According to the verified pleadings of the Defendant, the mother of the minor child resided at 6 different addresses although she moved 8 times in 5 years. Two of the addresses were at the same address. The Defendant has, at all times, been aware of the mother's moves and financed them.

21. After the no-contact order (pursuant to the domestic charges against the defendant) and the charges were dismissed, the Plaintiff and the paternal grandmother attempted to locate the minor child

through family inquiries and social media. The mother had a different last name at that point, and they did not know how to find her. The mother did not appear in court to testify because she had left the state with the minor child and never informed the Plaintiff where she was going.

22. The Plaintiff and paternal grandmother did purchase and mail gifts, cards and letters for the minor child in an effort to reestablish contact with her. They were sent to the Defendant's residence in Michigan as the mother of the child had a habit of returning to her mother's residence when she needed help from her. Many, if not all, of the cards and gifts were returned to the Plaintiff by the Defendant, or "someone" in the State of Michigan. The testimony of the Defendant that she never saw any of the gifts, cards and letters which were addressed to the child to her address is not credible.

23. The minor child appeared to be bonded with the paternal grandmother as well, prior to the child being moved around by the minor child's mother and Defendant. In fact, the Plaintiff (with the help of the paternal grandmother) and child's mother were able to make amenable arrangements for visitations each time the couple broke up.

24. The Defendant has not allowed the father of the minor child to have any contact with the minor child since the death of her mother, even though the Defendant has been aware that he has

attempted to locate the child and have a relationship with her.

25. The minor child has never been informed that Alex Pegram is not her biological father or that her real father even exists. It appears that the intent of the Defendant was to thwart any potential relationship that the minor child could have with her biological father, the Plaintiff.

26. The Court finds that the Defendant has intentionally tried to hide the minor child from the biological father. Defendant's testimony that she moved from her home into a different home right after her daughter's death because the memories of her were too painful, is not credible. It once again appears to the court that it was another way to hide or secret the child from her father now that she was appointed guardian in an emergency hearing in Michigan. In fact, it would seem to be more comforting to the grieving child to be around her mother's memories and personal belongings, rather than be moved into a place with no memories.

27. There is no credible evidence that the Plaintiff voluntarily permitted the minor child to remain in the custody of the Defendant or agreed to allow the Defendant to act in loco parentis to the child. It would appear from the evidence that long before the mother passed away, the decedent was moving around excessively in an effort to alienate the child from her father and the Defendant was funding those moves. There is no way to know whether or not the decedent

was aware of the Plaintiff's last address prior to her death although she died in the same place where the plaintiff and minor child had lived many years prior.

28. There is credible evidence to indicate that there were gaps in time when the Plaintiff did not pursue the minor child's whereabouts, however, the court does not find that brief gaps of time are tantamount to abandonment of the minor child. The child's mother (now deceased) moved multiple places and got married with a name change. She never informed the Plaintiff of any of those moves or changes.

29. It is uncontroverted that since the birth of the minor child that Defendant has played an integral role in the child's life. The biological mother of this child intentionally left the child with the Defendant for months at a time after the Plaintiff and mother finally split. The Plaintiff was never given the opportunity to agree or disagree with said placement.

30. The Plaintiff has not voluntarily neglected the welfare of the minor child. This court is not convinced that the Plaintiff has abdicated his parental responsibilities, therefore the Court presumes that he will act in the child's best interest.

31. Due to the length of time the Plaintiff and minor child have been kept apart, it would seem that grief counseling and family counseling would be a good idea for the minor child upon moving to South Carolina.

32. The minor child has a sibling who is in the custody of the Plaintiff whom she has never met, and a sibling who resides with her stepfather, Alex Pegram.

33. The minor child has been diagnosed with a lung disease and it would behoove the Plaintiff to become educated about the disease and not smoke in the presence of the minor child or partake in any activity that would exacerbate the disease.

CONCLUSIONS OF LAW

This matter is properly before the Court and the Court has jurisdiction over the parties and the subject matter herein. North Carolina is the home state of the minor child.

1. The Court concludes that the biological father has not abdicated his constitutionally protected rights to parent the minor child, A.N.S., DOB 2013.

2. The Plaintiff is fit and proper to have care, custody and control of the minor child.

3. The Plaintiff is entitled to full custody and Defendant's claims should be dismissed.

BASED ON THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE ORDERED ADJUDGED AND DECREED as follows:

The Defendant's claim for custody is dismissed.

The minor child shall be immediately returned to the Plaintiff.

Entered this the 3rd day of May 2021.

s/ Mary Covington
District Court Judge Presiding

APPENDIX C

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-658

No. COA21-506, 21-523

Filed 4 October 2022

Davie County, No. 20CVD256

MICHAEL KEITH SULIER, Plaintiff,

v.

TINA BASTIAN VENESKEY, Defendant.

Appeal by defendant from orders entered 23 February 2021 and 3 May 2021 by Judge Mary F. Covington in District Court, Davie County. Heard in the Court of Appeals 22 March 2022.

Michael Keith Sulier, pro-se, plaintiff-appellee.

Homesley & Wingo Law Group PLLC, by Andrew J. Wingo and Victoria L. Stout, for defendant-appellant.

STROUD, Chief Judge.

¶ 1 Defendant-maternal Grandmother appeals the trial court's orders determining North Carolina has

jurisdiction over the custody of Plaintiff-Father's minor child and awarding him full custody. Because we conclude the trial court had subject-matter jurisdiction under the UCCJEA and its determination Plaintiff-Father is a fit parent who has not abdicated his constitutional rights to the minor child was supported by its findings and the evidence, we affirm.

I. Background

¶ 2 This case involves a custody dispute between Plaintiff Michael Keith Sulier ("Father"), and Defendant Tina Bastian Veneskey, maternal grandmother ("Grandmother") of Andrea,[1] who was born in 2013.[2] Father and Andrea's late mother ("Mother") were never married but were living together when Andrea was born. Father and Mother separated following Andrea's birth, after which the record reflects Father and Mother had a "tumultuous relationship" during which they "broke up a few times and got back together." During this period of about two years, Father cared for the child and "did engage in parenting activities such as feeding, changing and taking care of the child while the mother was at work." Mother and Father then permanently separated in 2014; Mother moved away, took Andrea with her, got married, and changed her last name. Father did not thereafter have contact with Andrea. The trial court found from Father's and his mother's testimony that

[1] We refer to the minor child by a pseudonym.

[2] The trial court adjudicated Father as the "biological parent of the minor child" in its 23 February 2021 order. Grandmother has not challenged this ruling on appeal.

Father's lack of contact with Andrea after the separation was a result of having been "led to believe by [Mother] and [Grandmother] that they could no longer have communication with the minor child," in part due to a no-contact order, "consistent with the years between 2014-2020." The trial court found after the no-contact order was lifted in 2016, Father and the paternal grandmother "attempted to locate the minor child through family inquiries and social media," but Mother "had a different last name at that point, and they did not know how to find her." According to Grandmother, Mother moved at least eight times with the child during the five years after Mother and Father separated, throughout North Carolina, Michigan, and Alaska, never staying in one location longer than a year until moving into Mother's final home in North Carolina. Grandmother's pleadings in this action revealed to Father for the first time Andrea's previous whereabouts including her return to North Carolina by August of 2017 and most recently living since October 2018 in a home with Mother, Mother's new husband ("Stepfather"), and another child born to Mother and Stepfather, the minor child's half-sibling, in Mocksville, North Carolina.

¶ 3 Mother passed away on 10 May 2020. At this time, Grandmother lived in Michigan. After Mother's death, on or about 18 May 2020, Grandmother traveled to North Carolina and removed Andrea from North Carolina, bringing her to Michigan to stay with Grandmother and her husband. Grandmother did so without notifying Father and without his consent and has kept Andrea in Michigan since. At the time of

Mother's death and at the time this action was filed, Father was residing in Myrtle Beach, South Carolina. Father also has a son with his girlfriend who he has lived with "as a family unit" since his son's birth, and in his briefing on appeal, Father states he "takes care of his [son's] needs [and] he wishes to do the same for his biological daughter . . . ." Father did not learn of Mother's passing until discovering this through a Facebook posting, at which point he "immediately returned to North Carolina to pick up his daughter." Father contacted the police, family members, and neighbors, but was never informed Grandmother took the child to Michigan.

¶ 4 Grandmother initiated a guardianship proceeding in the Delta County Probate Court in Michigan soon after arriving there with Andrea, on 29 May 2020,[3] and on 30 June 2020 the Michigan court

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[3] Grandmother did not include in the Record on Appeal or in her brief to this Court any indication as to the date she filed the guardianship proceeding in Michigan after arriving there with the child on 18 May 2020. We take judicial notice the Michigan Court of Appeals affirmed the Delta County trial court's order declining to exercise child-custody jurisdiction under the UCCJEA on 26 August 2021. *See Veneskey v. Sulier*, No. 355471, 2021 Mich. App. LEXIS 5147 at *1–2, 2021 WL 3821012 at *1 (Mich. Ct. App. Aug. 26, 2021), *review denied*, 967 N.W.2d 71 (Mich. 2021). The Michigan appeal included only the complaint for custody Grandmother later filed in circuit court. *Id.*, 2021 Mich. App. LEXIS 5147 at *2–3, *14–15, 2021 WL 3821012 at *1, *6. According to the Michigan Court of Appeals's opinion, "[Andrea] was removed from North Carolina on May 18, 2020. [Grandmother] filed the[] petition for guardianship on May 29, 2020. [Grandmother] filed the[] circuit court complaint on July 31, 2020." *Id.*, 2021 Mich. App. LEXIS 5147 at *8, 2021 WL 3821012 at *4. We additionally note the trial court's order here

entered an emergency temporary guardianship order. Father then filed his verified Complaint for Child Custody two weeks later, on 15 July 2020, in Davie County District Court. On 30 July 2020, Grandmother filed an action for permanent custody in the Michigan State Court. The Delta Probate Court in Michigan granted temporary guardianship to Grandmother and a telephone conference was then held between the Honorable Mary Covington and the Honorable Perry Lund of the Circuit Court for the County of Delta, Michigan ("UCCJEA conference"). Following that conference, on 29 October 2020, the Michigan Court "entered a summary disposition order under MCR 2.116(C)(4), finding that Michigan is not the home state of the minor child and is an inconvenient forum" and dismissing Grandmother's Michigan custody action.

¶ 5 On 30 September 2020, Grandmother filed a motion to dismiss Father's custody complaint and a Motion for UCCJEA Conference and Answer pursuant to Chapter 50A of the North Carolina General Statutes ("UCCJEA"). Father filed a verified Reply and Response to Motion to Dismiss, noting the previous UCCJEA conference held by Judge Covington and Judge Lund. The next day, on 19 November 2020, Father filed a verified Motion to Allow Supplemental Pleading and verified Supplemental Pleading and Motion in the Cause for an order awarding him immediate and temporary custody based upon the Michigan Court's Order

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indicated Grandmother filed the permanent-custody action in Michigan on 30 July 2020 instead of 31 July 2020.

declaring it was not Andrea's home state. On 27 January 2021, Grandmother filed her verified Answer and Counterclaims in North Carolina for "permanent primary custody" of Andrea. The matters were noticed for hearing on 23 February 2021 and came on that day before the Honorable Mary Covington in Davie County District Court.[4] Judge Lund, in Michigan, also presided virtually at the 23 February 2021 hearing.

¶ 6 By Order on Jurisdiction entered 23 February 2021, Judge Covington concluded North Carolina had subject-matter jurisdiction over Andrea's custody because North Carolina was her "home state" as defined by the UCCJEA; and, as an alternative basis for jurisdiction, a parent or person acting as a parent had significant contacts with North Carolina and North Carolina was a convenient forum for the custody proceeding. The trial court found as fact Grandmother and her husband owned real property located in Davie County, where Grandmother previously resided, and Andrea and Mother were residing in North Carolina continuously for three years prior to Mother's passing. The trial court also found for purposes of the UCCJEA Stepfather "was acting as a parent to [the child] at the time of [Mother's] death . . ." and was living in the North Carolina home with Andrea and her half-sibling. Father filed a verified Motion to Dismiss

[4] It appears from the 23 February 2021 hearing transcript there was some question among the attorneys for the Parties regarding the scope of what was noticed for hearing that day, but Grandmother has not raised any argument on appeal regarding the notice of hearing.

Grandmother's Second Answer and Counterclaims the same day the trial court entered its Order on Jurisdiction.[5]

¶ 7 By Temporary Custody Order entered 3 May 2021,[6] Judge Covington reaffirmed North Carolina's subject-matter jurisdiction over Andrea's custody and concluded Father did not abdicate his constitutionally protected rights as a parent, was fit and proper to have care, custody, and control, and was therefore entitled to full custody of the child. The trial court dismissed Grandmother's claim for custody and ordered Andrea be immediately returned to Father. On 5 May 2021, Grandmother filed written notice of appeal from the trial court's custody order.

II. Discussion

¶ 8 Grandmother makes many arguments on appeal challenging the trial court's award of custody to Father and dismissal of her claim for custody. She argues the conference Judges Covington and Lund held prior to the court's Order on Jurisdiction violated the UCCJEA; the trial court erred in concluding North Carolina was Andrea's home state, there also existed significant-connection jurisdiction, and North Carolina was a convenient forum; and the trial court erred in awarding custody to Father because the

[5] On 24 March 2021, Grandmother filed written Notice of Appeal from the trial court's 23 February 2021 Order on Jurisdiction.

[6] It is not clear why the order is entitled "Temporary Custody Order," but the title is not controlling. The order is in substance a final and appealable order granting Father full custody of Andrea and dismissing Grandmother's claim for custody.

evidence she presented established as a matter of law that Father abdicated his constitutional rights as a parent. Grandmother also takes exception to the trial court's decision not to admit certain evidence from the child's Michigan therapist.

A. Standard of Review

¶ 9 We review *de novo* a trial court's conclusion it has subject-matter jurisdiction over a custody dispute pursuant to the UCCJEA. *In re J.H.*, 244 N.C. App. 255, 260, 780 S.E.2d 228, 233 (2015); *see also In re M.R.J.*, 378 N.C. 648, 2021-NCSC-112, ¶ 19 ("[S]ubject-matter jurisdiction is a question of law . . . ." (quotations and citation omitted)).

¶ 10 In custody determinations, "the trial court's findings of fact are conclusive on appeal if there is evidence to support them, even though the evidence might sustain findings to the contrary." *Adams v. Tessener*, 354 N.C. 57, 63, 550 S.E.2d 499, 503 (2001) (quotations and citations omitted). However, "a trial court's determination that a parent's conduct is inconsistent with his or her constitutionally protected status must be supported by clear and convincing evidence." *Id.*; *In re I.K.*, 377 N.C. 417, 2021-NCSC-60, ¶ 20 ("The trial court's legal conclusion that a parent acted inconsistently with his constitutionally protected status as a parent is reviewed de novo to determine whether the findings of fact cumulatively support the conclusion and whether the conclusion is supported by clear and convincing evidence."). "The trial court's findings of fact are conclusive on appeal if

unchallenged, or if supported by competent evidence in the record." *In re I.K.*, ¶ 20 (citations omitted).

B. Procedure for UCCJEA Conference

¶ 11 We first address Grandmother's arguments the trial court violated the UCCJEA in the procedure it followed in communicating with the Michigan Court. Grandmother argues she suffered "significant harm" as a result of the trial court's application of N.C. Gen. Stat. § 50A-110 during its initial phone conference with Judge Lund.[7] That section provides, in part:

> (a) A court of this State may communicate with a court in another state concerning a proceeding arising under [the UCCJEA].
>
> (b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
>
> . . . .
>
> (d) . . . [A] record must be made of a communication under this section. The parties

[7] This telephone conference originated in the Michigan proceeding; Michigan has the same provision in its UCCJEA statute. *Compare* Mich. Comp. Laws § 722.1110 (2020) *with* N.C. Gen. Stat. § 50A-110 (2021).

> must be informed promptly of the communication and granted access to the record.

N.C. Gen. Stat. § 50A-110 (2021).

¶ 12 Grandmother here takes issue with the telephone call Judge Lund and Judge Covington had during the Michigan proceeding, prior to the North Carolina hearing regarding jurisdiction. After the telephone conference between Judge Lund and Judge Covington, the Michigan Court dismissed Grandmother's Michigan custody action on the ground Michigan was not Andrea's home state or a convenient forum. That call originated with Judge Lund in Michigan based upon the custody proceeding Grandmother filed in Michigan. Grandmother acknowledges there was also a full hearing in the North Carolina action on 23 February 2021 "where the Trial Court of North Carolina, the Circuit Court of Michigan, and the attorneys for both parties from both states were present," and at that hearing both Judges "heard from all attorneys regarding how N.C. Gen. Stat. § 50A-110 was applied . . . and discussed the procedural history of both the Michigan guardianship action and the North Carolina custody action." Grandmother complains the result of the North Carolina hearing "did not change the outcome" of the Judges' earlier phone call in the Michigan proceeding, but that does not change the fact Grandmother had the full UCCJEA hearing in this North Carolina action. The Judges from both States attended a hearing in North Carolina and heard and discussed at length

counsels' jurisdictional arguments, and then the trial court entered an Order on Jurisdiction, and a second Temporary Custody Order again finding facts affirming its jurisdiction. Any issue Grandmother takes with the procedure the Michigan Court followed in Grandmother's case there would be for the Michigan Courts to decide, and in fact, the Michigan Court of Appeals affirmed the dismissal of Grandmother's Michigan child-custody proceeding, concluding North Carolina was the child's home state and Michigan was an inconvenient forum for her custody determination. *See Veneskey, supra*, 2021 Mich. App. LEXIS 5147 at *8-10, 2021 WL 3821012 at *4 ("[A]n individual who removes a minor child from the home state should not obtain a benefit between the removal date and date of a filing of a custody petition in Michigan by claiming that this period destroyed the prior occupancy period and relationship to the home state.").

C. Jurisdiction Under UCCJEA

¶ 13 Grandmother contends the trial court erred in its ultimate determination North Carolina has subject-matter jurisdiction as Andrea's home state, or in the alternative, significant-connection jurisdiction. Grandmother argues both conclusions were erroneous based on the evidence, but she does not challenge any of the trial court's findings of fact, so we are bound by these findings. *In re K.N.*, 378 N.C. 450, 2021-NCSC-98, ¶ 17 ("Unchallenged findings are deemed to be supported by the evidence and are binding on appeal.").

¶ 14 The trial court made the following findings in support of its determination in its 23 February 2021 Order on Jurisdiction:

> 2. The Defendants [(Grandmother and her husband)] are the maternal grandparents of the minor child and reside in Michigan, although they own real property located in Davie County, North Carolina, where the minor child was living at the time of biological [M]other's death.
>
> 3. Within moments of the biological [M]other's death, [Grandmother] removed the minor child from the jurisdiction of her home state. The minor child has resided in North Carolina continuously [from] 2017-2020 when her [M]other passed away.
>
> 4. There is credible evidence that the minor child lived in multiple places with . . . [Mother]. And although the minor child was born in the State of Michigan, she resided in North Carolina continuously for approximately three years prior to her [M]other's passing in . . . North Carolina.

5. [Grandmother] has previously resided in Davie County, North Carolina.

6. [Mother] was residing in North Carolina six months prior to her death in May 2020. She married and had a child with [Stepfather]. The minor child has a half-sibling that currently lives in North Carolina.

7. [Stepfather] . . . was acting as a parent to . . . [Andrea] at the time of the [M]other's death and when he turned the minor child over to [Grandmother]. He currently still resides in North Carolina.

. . . .

9. Although the child was removed from the state of North Carolina, she and at least one parent or persons acting as a parent, have significant contact with the state of North Carolina.

10. The State of Michigan did assume emergency temporary jurisdiction for the purposes of establishing a temporary guardianship when the child was taken to North Carolina [sic] after the [M]other's

death, by [Grandmother]. [Father] did not give consent to the child being removed from North Carolina.

11. On October 29, 2020, in the Circuit Court for the County of Delta, in the State of Michigan, the Honorable Perry Lund entered a summary disposition order . . . finding that Michigan is not the home state of [Andrea] and is an inconvenient forum. . . .

12. As of the date of this hearing, Michigan's only jurisdiction pertained to the temporary guardianship ordered by the Delta County Probate Court in Case No. 20- GM-22549.

. . . .

14. [Father] filed his action for custody in . . . North Carolina, the child's home state, on July 15, 2020. [Grandmother] filed her custody action in Michigan on July 30, 2020.

. . . .

17. The Court has determined that North Carolina has jurisdiction over the subject matter in the case and personal jurisdiction over the parties

> because of [Grandmother] and the minor child's significant contacts within the state of North Carolina.
>
> 18. Furthermore, the court finds that North Carolina is the more convenient forum for the minor child and for [Father] and at least one contestant has significant connections within the state of North Carolina.
>
> . . . .

(Parentheticals added). The trial court also made the following relevant findings in its 3 May 2021 custody order:

> 3. At the time of [M]other's death, the minor child was residing in Mocksville, NC, in a home owned by [Grandmother], with her [M]other and her new husband of less than a year, [Stepfather] . . . .
>
> . . . .
>
> 6. Neither party in this action currently reside in the State of North Carolina, however, after . . . conducting a jurisdictional hearing with the juvenile Judge in the State of Michigan, it was determined that North Carolina is the home state. That

jurisdictional ruling is currently on appeal in Michigan.[8]

7. The Court finds that North Carolina is the home state of the minor child at the time of the filing of this action. [Andrea] was living at least six months prior to the death of her [M]other and prior to the filing of this action by [Father].

. . . .

9. [Father] learned of [Mother's death] on the social media page of a family member of the decedent and he immediately returned to North Carolina to pick up [Andrea] . . . .

. . . .

11. The Court finds that within a few days of [Mother's death], [Grandmother] came to North Carolina from Michigan and removed the child from the jurisdiction of North Carolina and took her back to Michigan. . . . .

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[8] As noted above, the Michigan Court of Appeals affirmed the Delta County trial court's order on 26 August 2021. *See Veneskey, supra*, 2021 Mich. App. LEXIS 5147 at *1–2, 2021 WL 3821012 at *1.

12. [Grandmother] and [Stepfather] had an attorney draw up a consent agreement to allow [Grandmother] to take the child back to Michigan without [Father's] consent.

. . . .

13. . . . [Father] had family in the area where [Andrea] was residing [(in North Carolina)] and [his mother,] the paternal grandmother, and [Grandmother] had previous communications by phone to discuss the minor child and exchanged photos . . .

. . . .

20. According to the verified pleadings of [Grandmother], [Mother] resided at 6 different addresses although she moved 8 times in 5 years.

. . . .

21. After the no-contact order . . . and the charges were dismissed, [Father and his mother] attempted to locate [Andrea] . . . . [Mother] did not appear in court to testify because she had left the state with [Andrea] and never informed [Father] where she was going.

> 22. [Father] . . . . sent [gifts and cards for Andrea] to [Grandmother's] residence in Michigan as [Mother] had a habit of returning to her mother's residence when she needed help from her. . . . .
>
> . . . .
>
> 26. [Grandmother's] testimony that she moved from her home into a different home right after her daughter's death because the memories of her were too painful, is not credible. It once again appears to the court that it was another way to hide or secret the child from [Father] now that she was appointed guardian in an emergency hearing in Michigan. In fact, it would seem to be more comforting to the grieving child to be around her [M]other's memories and personal belongings, rather than be moved into a place with no memories.
>
> . . . .

(Parentheticals and footnote added).

¶ 15 Grandmother has not challenged any of these findings as unsupported by the evidence, so these findings are binding upon this Court. *In re K.N.*, ¶ 17; *In re I.K.*, ¶ 20; see also *In re M.R.J.*, ¶ 38 ("The trial

court is not required to make specific findings of fact demonstrating its jurisdiction under the UCCJEA, but the record must reflect that the jurisdictional prerequisites in the Act were satisfied when the court exercised jurisdiction." (quotations and citation omitted)). We also note that some of the findings, particularly regarding North Carolina's status as Andrea's home state, are actually conclusions of law, so we will review those "findings" *de novo*. *See Walsh v. Jones*, 263 N.C. App. 582, 589–90, 824 S.E.2d 129, 134 (2019) ("If the trial court labels as a finding of fact what is in substance a conclusion of law, we review that 'finding' *de novo*." (quotations and citation omitted)); *In re Everette*, 133 N.C. App. 84, 85, 514 S.E.2d 523, 525 (1999) ("[A]ny determination requiring the exercise of judgment, or the application of legal principles, is more properly classified a conclusion of law." (quotations and citation omitted)).

¶ 16 "Whenever one of our district courts holds a custody proceeding in which one contestant or the children appear to reside in another state, the court must initially determine whether it has jurisdiction over the action." *In re J.H.*, 244 N.C. App. at 262, 780 S.E.2d at 234–35 (quotations and citation omitted). Subject-matter jurisdiction over child custody actions is governed by N.C. Gen. Stat. § 50A-101 *et seq.*, North Carolina's codification of the UCCJEA. As this Court has previously noted, "Michigan and North Carolina have codified the UCCJEA in virtually identical terms," which, in Article 2, Part 2, establishes several "modes" of jurisdiction. *See In re A.L.L.*, 254 N.C. App. 252, 262, 802 S.E.2d 598, 605–06 (2017) ("The

UCCJEA recognizes four modes of subject-matter jurisdiction: (1) initial child-custody jurisdiction, N.C. Gen. Stat. § 50A-201; (2) exclusive, continuing jurisdiction, N.C. Gen. Stat. § 50A-202; (3) jurisdiction to modify determination, N.C. Gen. Stat. § 50A- 203; and (4) temporary emergency jurisdiction, N.C. Gen. Stat. § 50A-204.").

¶ 17 The first "mode," North Carolina General Statute § 50A-201, is at issue here. *Id.* That section provides:

> (a) . . . [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;
>
> (2) A court of another state does not have jurisdiction under subdivision (1), or a court of

the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:

a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and
b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208; or

> (4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).
>
> (b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.
>
> (c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

N.C. Gen. Stat. § 50A-201 (2021).

¶ 18 This section thus establishes jurisdiction over initial child custody determinations in various scenarios. First, the court must identify the child's "home state" as defined in North Carolina General Statute § 50A-102. Next, the court must determine whether North Carolina has jurisdiction under any subsection of § 50A-201. If North Carolina is the "home state" and "a parent or person acting as a parent continues to live in this State," jurisdiction falls under subsection (a)(1). Here, the trial court, and the Michigan Court, determined North Carolina is Andrea's home state. *See Veneskey, supra*, 2021 Mich. App. LEXIS 5147 at *9–10, 2021 WL 3821012 at *4 (explaining Michigan is not the home state before stating "even if North Carolina does not qualify as the

home state" implying North Carolina is the home state). The trial court also found that a person acting as a parent, Stepfather, continues to live in this state.

1. Home State

¶ 19 We begin the "home state" analysis with the date of commencement of the initial child custody proceeding. In both North Carolina and Michigan, "'[c]ommencement' means the filing of the first pleading in a proceeding." N.C. Gen. Stat. § 50A-102(5) (2021); Mich. Comp. Laws § 722.1102(e) (2021). And in both states, a "child custody proceeding" includes a proceeding for guardianship. N.C. Gen. Stat. § 50A-102(4); Mich. Comp. Laws § 722.1102(d). As noted by the Michigan Court of Appeals,

> "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or parenting time with respect to a child is an issue. *Child-custody proceeding includes a proceeding for . . . guardianship*, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear.

Veneskey, supra, 2021 Mich. App. LEXIS 5147 at *9, 2021 WL 3821012 at *4 (emphasis in original) (quoting Mich. Comp. Laws § 722.1102(d)). The Michigan Court of Appeals continued:

> The May 29, 2020 guardianship petition was filed only several days after [Andrea] left North Carolina. Regardless of the time period during which [Andrea] was removed from North Carolina and [Grandmother's] filings in Michigan to secure guardianship and custody, we conclude that it did not render Michigan as [Andrea's] home state for purposes of plaintiffs' and defendant's claims for custody. Indeed, in the six-month time period preceding [Andrea's] move to Michigan and the commencement of legal proceedings here, [Andrea] resided in North Carolina with her family.

Id., 2021 Mich. App. LEXIS 5147 at *9-10, 2021 WL 3821012 at *4.

¶ 20 Michigan's analysis is consistent with North Carolina law. Moreover, the definition of "home state" in the UCCJEA notes that a "period of temporary absence" of a parent or child is included in the statutory six-month period immediately before commencement of a child custody proceeding. *See* N.C. Gen. Stat. § 50A-102(7) ("A period of temporary absence of any of the mentioned persons is part of the period.").

¶ 21 As noted by the Michigan Court of Appeals, "in the six-month time period preceding [Andrea's] move

to Michigan and the commencement of legal proceedings here, [Andrea] resided in North Carolina with her family." *Veneskey, supra*, 2021 Mich. App. LEXIS 5147 at *9-10; 2021 WL 3821012 at *4. After her Mother's death, Andrea remained with "her family," specifically her Stepfather, who was "a person acting as a parent," and her sibling, until Grandmother took Andrea to Michigan on 18 May 2020. On 29 May 2020, Grandmother filed the temporary guardianship proceeding, which was the "commencement of a child custody proceeding," as correctly noted by the Michigan Court of Appeals. *Veneskey, supra*, 2021 Mich. App. LEXIS 5147 at *8, 2021 WL 3821012 at *4. The trial court found Grandmother took Andrea to Michigan "to hide or secret the child from [Father]. . . ."

¶ 22 Under the UCCJEA, North Carolina was Andrea's home state on the date of the commencement of the proceeding in Michigan, which is the date of commencement of the initial child-custody proceeding. Andrea had lived in North Carolina continuously for more than six months prior to 18 May 2020, when Grandmother took her to Michigan. Thus, Andrea had been in Michigan for only 11 days when a proceeding was filed. We conclude this period of 11 days in Michigan with Grandmother was a temporary absence from North Carolina for purposes of the statutory definition of "home state."

> While the issue of whether an absence from a state amounted to a temporary absence has previously

come before this Court, we have decided this issue on a case-by- case basis. Some courts in sister states have adopted certain tests for determining whether an absence from a state was a temporary absence. These tests include (1) looking at the duration of absence, (2) examining whether the parties intended the absence to be permanent or temporary, and (3) adopting a totality of the circumstances approach to determine whether the absence was merely a temporary absence. We deem the third option to be the most appropriate choice for several reasons. First, it comports with the approach taken by North Carolina courts in determining the issue of whether an absence was temporary on the basis of the facts presented in each case. Second, it incorporates considerations, such as the parties' intent and the length of the absence, that courts of sister states have found important in making this determination. Third, it provides greater flexibility to the court making the determination by allowing for consideration of additional circumstances that may be presented in the multiplicity of factual settings in which child custody jurisdictional issues may arise.

Chick v. Chick, 164 N.C. App. 444, 449–50, 596 S.E.2d 303, 308 (2004) (citations omitted).

¶ 23 We therefore consider the "totality of the circumstances to determine whether the absence was merely a temporary absence." *Id.* As part of this analysis, we consider the parties' intent, length of the absence, and the particular factual circumstances of this case. *Id.* The length of absence was extremely short, only 11 days, and the factual circumstances of this case are tragic, as this custody dispute arose upon the death of Andrea's mother and has continued, in two states, because Grandmother sought to "hide or secret the child from [Father]" and establish custody herself in Michigan. Under the totality of the circumstances, her presence in Michigan was a "temporary absence" from North Carolina and North Carolina is Andrea's home state under the UCCJEA. Andrea lived here with her Mother, Stepfather, and sibling more than six months prior to 18 May 2020. She was moved to Michigan only due to her Mother's death. No doubt Grandmother intended this move to be permanent, not temporary, but Grandmother is not Andrea's parent and did not have custody of Andrea. Thus, Andrea's absence from North Carolina was temporary, only several days, before the commencement of the proceeding. She had resided in North Carolina with Mother and Stepfather for more than six months before the commencement of the proceeding in Michigan. The trial court did not err by concluding North Carolina is Andrea's "home state."

2. Presence of Parent or Person Acting as a Parent

¶ 24 Under subsection (a)(1), the next issue is whether "a parent or person acting as a parent continues to live in this State." N.C. Gen. Stat. § 50A-201(a)(1). Grandmother contends Stepfather was not a "person acting as a parent" for purposes of § 50A-201(a)(1). She argues

> even though after [Mother's] death [Stepfather] was acting as a parent to the minor child, that status ceased when [Stepfather] signed the agreement to allow Defendant-Appellant to take the minor child to Michigan and Defendant-Appellant did take the minor child to Michigan. Therefore, at the time Plaintiff-Appellee filed his complaint, [Stepfather] was not a person acting as a parent to the minor child because [Stepfather] did not have physical custody of the minor child for six consecutive months immediately before the commencement of the action since Defendant-Appellant had the minor child for approximately two months and prior to that [Mother] had custody of the minor child as her parent. In addition, [Stepfather] has not been awarded custody nor is he seeking custody of the minor child as

> evidenced by his signing of the agreement that gave away any parental rights he possessed at the time to Defendant-Appellant. (04/29/2021 T pp 48, 79).

¶ 25 The trial court found that Andrea's Stepfather was a person "acting as a parent" who continues to live in North Carolina, but this finding is actually a conclusion of law and we review it accordingly. *Walsh*, 263 N.C. App. at 589–90, 824 S.E.2d at 134; *In re Everette*, 133 N.C. App. at 85, 514 S.E.2d at 525. Thus, we must consider whether Stepfather was a "person acting as a parent" under the UCCJEA.

¶ 26 North Carolina General Statute § 50A-102(13) defines a "person acting as a parent" as "a person, other than a parent, who:

> a. Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and
> b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

N.C. Gen. Stat. § 50A-102(13) (2021).

¶ 27 The Uniform Law Comment for UCCJEA § 50A-102 notes:

> The term "person acting as a parent" has been slightly redefined. It has been broadened from the definition in the UCCJA to include a person who has acted as a parent for a significant period of time prior to the filing of the custody proceeding as well as a person who currently has physical custody of the child. *In addition, a person acting as a parent must either have legal custody or claim a right to legal custody under the law of this State.* The reference to the law of this State means that a court determines the issue of whether someone is a "person acting as a parent" under its own law.

N.C. Gen. Stat. Ann. § 50A-102 (West 2021) (emphasis added).

¶ 28 We have been unable to find any North Carolina case addressing whether a stepparent who lives with a minor child and her other parent for more than six months prior to the commencement of the child custody proceeding may be considered as a "person acting as a parent" under North Carolina General Statute § 50A-102, particularly where that stepparent is *not* claiming a right to legal custody. Before the trial court, Grandmother argued Stepfather could not be a "person acting as a parent"

under the UCCJEA because he was not claiming any right to legal custody; instead, he had executed a "consent agreement to allow [Grandmother] to take the child back to Michigan without [Father's] consent."[9]

¶ 29 Since the UCCJEA is a uniform act, in the absence of any North Carolina cases addressing this issue in detail, we find the analysis by other courts instructive. The North Dakota Supreme Court has summarized treatment of this issue by many states in *Schirado v. Foote*, 785 N.W.2d 235 (N.D. 2010). In *Shirado*, in a custody dispute between the child's parents, the trial court had determined the Fort Berthold Indian Reservation was the child's home state because the child had resided there with his grandparents, as "a person acting as a parent." 785 N.W.2d at 237–38. The North Dakota Supreme Court remanded for additional findings of fact but addressed the analysis of whether the grandparents may be persons "acting as a parent" under the UCCJEA:

> The alternative basis for the district court's dismissal of Schirado's action was that the child lived with Foote's parents. If the home state determination was based in whole or in part on the child living with his

[9] The terms of this document are not in our record. It is referred to at one point as a "power of attorney" and the trial court referred to it as a "consent agreement," but the import of the document was to grant Grandmother permission to take the child to Michigan and presumably to allow Grandmother to exercise some sort of parental authority over the child.

grandparents, the grandparents would need to be persons acting as parents to the child. Under our version of the UCCJEA, a "[p]erson acting as a parent" is a nonparent who

> "a. Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and
> b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this state."

N.D.C.C. § 14–14.1–01(11). The grandparents cared for the child from September 2006 to December 2007, arguably satisfying the first requirement of being "a person acting as a parent" if the jurisdictional decision was not based on J.L.F. living with Foote. N.D.C.C. § 14–14.1–01(6). However, jurisdiction depends on the circumstances that exist at the time the proceeding is commenced. *Id.* The grandparents had not been awarded legal custody by a court before Schirado commenced this action in North

Dakota court. Therefore, the dispositive issue for determining jurisdiction, based on the child living with the grandparents, is whether the grandparents qualified as persons acting as parents by claiming a right to legal custody under the laws of North Dakota. *See* N.D.C.C. § 14–14.1–01(11)(b). We will proceed to discuss the applicable law on this issue because its analysis is likely to arise on remand. *In re Voisine*, 2010 ND 17, ¶ 13, 777 N.W.2d 908 (citing *Dosland v. Netland*, 424 N.W.2d 141, 142 (N.D.1988)).

[¶ 17] This Court has not interpreted what it means to claim a right to legal custody under North Dakota law. A survey of judicial decisions in other states reveals there is no consistent interpretation of the requirement. However, national case law consistently presents three elements considered in determining if a person claims a right to legal custody under the laws of a state: 1) formality, 2) timing and 3) plausibility.

A

[¶ 18] Our sister states require a nonparent's claim of legal custody to conform with differing levels of formality under the UCCJEA. Pennsylvania and Texas require nonparents seeking "person acting as a

parent" status to formally apply for legal custody from a court before they are deemed to have claimed a right to legal custody under the UCCJEA. *Wagner v. Wagner*, 887 A.2d 282, 287 (Pa.Super.Ct.2005) (holding parent's mother needed to seek legal custody of the child from a court to claim a right to legal custody under UCCJEA); *In re S.J.A.*, 272 S.W.3d 678, 684 (Tex.App.2008) (holding stepmother needed to seek legal custody of child from a court to claim a right to legal custody under UCCJEA). On the other end of the spectrum, Delaware requires no formal application for legal custody, instead requiring only that the prospective "person acting as a parent" have "the right to claim legal custody" to qualify as a person claiming a right to legal custody of a child. *Adoption House, Inc. v. A.R.*, 820 A.2d 402, 408–09 (Del.Fam.Ct.2003) (holding adoption agency claimed right to legal custody of child by having "the right to claim legal custody").

[¶ 19] In *Hangsleben v. Oliver*, 502 N.W.2d 838, 842–43 (N.D.1993), this Court addressed the term "a person acting as a parent" under the UCCJEA's predecessor, the UCCJA. *See* N.D.C.C. ch. 14–14 (repealed 1999). In *Hangsleben* and under the UCCJA,

"[a] 'person acting as a parent' is defined as a 'person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.' " 502 N.W.2d at 842. In *Hangsleben* we concluded "the common-sense definition of a 'person acting as a parent' " included grandparents who "fed, clothed, and cared for" their granddaughter at the request of the child's mother and without a court order. *Id.* at 843. Other jurisdictions have reached similar results. *See In re A.J.C.*, 88 P.3d 599, 606–07 (Colo.2004) (finding adoptive parents to be persons acting as parents under UCCJA where they had "exercised all parental rights and responsibilities" since the child's birth); *Reed v. Reed*, 62 S.W.3d 708, 713 (Mo.Ct.App.2001) (finding maternal grandmother was person acting as parent under the plain meaning of the term in the UCCJA); *In re B.N.W.*, No. M2004–02710–COA–R3–JV, 2005 WL 3487792, **25–26 (Tenn.Ct.App. Dec.20, 2005) (finding paternal grandmother providing care for child was person acting as a parent under UCCJEA); *Ruffier v. Ruffier*, 190 S.W.3d 884, 890 (Tex.App.2006) (finding maternal grandmother caring

for child in Belarus was a person acting as a parent under UCCJEA).

[¶ 20] As between the UCCJA and the UCCJEA, the UCCJEA has changed the pertinent portion of the definition of a "person acting as a parent" to mean a person who "[h]as been awarded legal custody by a court or claims a right to legal custody under the law of this state." N.D.C.C. § 14–14.1–01(11)(b). We note the different words used in the definitions in the UCCJEA and the UCCJA. However, we have not been asked by the parties to this appeal to deviate from the level of formality applied in *Hangsleben*. Nor do we perceive a clear majority position among other jurisdictions addressing this point so that we are willing to change course without the benefit of full briefing and argument by parties with a stake in the outcome of the issue.

[¶ 21] Here, the grandparents did not formally claim a right to legal custody until they petitioned the tribal court to grant them temporary custody of the child. But their extended care and custody of the child appears to satisfy the "common-sense" definition in *Hangsleben* that the grandparents are persons acting as a parent. See also N.D.C.C. § 14–10–05 (parent may place

child in home of grandparent). Therefore, for purposes of this case, if jurisdiction is based upon the grandparents, the formality requirement can be considered satisfied for purposes of determining whether the Fort Berthold Indian Reservation is the home state.

B

[¶ 22] The next factor is timing of the nonparent's claim. A small number of jurisdictions allow nonparents to assert their claim to legal custody at any point in the pending litigation. *See, e.g., Patrick v. Williams*, 952 So.2d 1131, 1139 n. 9 (Ala.Civ.App.2006) (applying Alabama's modified version of UCCJEA and holding no formal claim to legal custody need be made in cases where grandparents have physical custody of child at time of proceedings); *Adoption House, Inc.*, 820 A.2d at 408–09 (waiving timing element from consideration by allowing nonparents to claim a right to legal custody under UCCJEA by merely having the right to do so). Most jurisdictions addressing this issue require a nonparent's claim of legal custody, whether formal or informal, to be asserted prior to or simultaneous with the initiation of the pending action. *See, e.g., In re Sophia G.L.*, 229 Ill.2d 143, 321 Ill.Dec. 748,

890 N.E.2d 470, 482 (2008) (holding maternal grandparents were persons acting as parents under UCCJEA where grandparents petitioned Indiana court for custody of children before father initiated pending proceeding in Illinois); *Plemmons v. Stiles*, 65 N.C.App. 341, 309 S.E.2d 504, 506 (1983) (holding grandparents were persons acting as parents under UCCJA where grandparents initiated pending proceeding by petitioning for custody of child); *Draper v. Roberts*, 839 P.2d 165, 173–74 (Okla.1992) (holding under UCCJA that "[t]he critical time for testing whether the custodians were 'acting as parents' and 'claim a right to custody' was the point in time when the [pending action] was filed"); *O'Rourke v. Vuturo*, 49 Va.App. 139, 638 S.E.2d 124, 128 (2006) (holding nonbiological father was a person acting as a parent under UCCJEA where he requested custody at outset of pending divorce proceeding); *In re A.C.*, 165 Wash.2d 568, 200 P.3d 689, 692 (2009) (holding foster parents were persons acting as parents under UCCJEA where they petitioned for nonparental custody at outset of pending action).

[¶ 23] Giving priority to a child's home state is the central provision of the

UCCJEA, and the UCCJEA is intended to "[a]void jurisdictional competition and conflict with courts of other States in matters of child custody." Uniform Child Custody Jurisdiction and Enforcement Act § 101 cmt.1, 9 U.L.A. 657; *Kelly*, 2009 ND 20, ¶ 21, 759 N.W.2d 721. It has long been held that subject matter jurisdiction is determined at the time a suit is initiated, and to hold otherwise would undermine one of the UCCJEA's central functions by allowing participants to divest a state of jurisdiction by changing the analysis after proceedings have begun. *In re Mannix*, 97 Or.App. 395, 776 P.2d 873, 875 (1989). We therefore conclude that to qualify as a "person acting as a parent" under the UCCJEA, a nonparent's claimed right to legal custody must occur prior to, or simultaneous with, the initial filing related to the instant litigation. To hold otherwise would be contrary to the function of the UCCJEA and contrary to the principles of "certainty, predictability and uniformity of result." *Daley v. American States Preferred Ins. Co.*, 1998 ND 225, ¶ 14 n. 4, 587 N.W.2d 159 (enumerating goals in choice of law analysis).

Schirado, 785 N.W.2d at 240–43 (alterations in original).

¶ 30 Thus, the North Dakota Supreme Court determined the factors normally considered in the analysis of whether a person is "a person acting as a parent" under the UCCJEA are the 1) formality, 2) timing and 3) plausibility of the person's claimed right to legal custody of the child. *Id.* at 241. The relevant time is immediately prior to or simultaneously with the commencement of the child custody proceeding. *Id.* at 243. We hold this analysis is consistent with the "function of the UCCJEA" and "principles of 'certainty, predictability and uniformity of result.'" *Id.* (quoting *Daley v. American States Preferred Ins. Co.*, 587 N.W.2d 159, 162 n.4 (N.D. 1998)).

¶31 Here, these factors make our analysis quite simple. We need not analyze the formality or plausibility of any claim to custody by Stepfather under North Carolina law, because he made no such claim. At the time of commencement of the proceeding, Stepfather was not making any claim to custody. To the contrary, he had executed a document purporting to give Grandmother permission to take the child to Michigan. We need not consider whether Stepfather would have had any right to a claim for custody under North Carolina law because he clearly did not make such a claim but instead declared his opposite intention. Under the UCCJEA, Stepfather was not a "person acting as a parent," and the trial court's conclusion to this effect was not supported by its findings of fact.

¶ 32 Thus, North Carolina is Andrea's "home state," but no parent or person acting as a parent remains in North Carolina. Subject matter jurisdiction does not fall under subsection (a)(1). We must proceed to consider subsection (a)(2).

3. Significant Connection Jurisdiction

¶ 33 The trial court concluded North Carolina would have significant connection jurisdiction, but part of this determination was based upon its conclusion that Stepfather was a "person acting as a parent" and we have already addressed this issue. There was no "person acting as a parent" in this case, and Father is the only parent.

¶ 34 North Carolina General Statute § 50A-201(a)(2) provides this State may have jurisdiction if:

> (2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:
>
> a. The child *and* the child's parents, or the child *and at least one parent or a person acting as a parent*, have a significant connection with this

> State other than mere physical presence; *and*
>
> b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

N.C. Gen. Stat. § 50A-201(a)(2) (emphasis added).

¶ 35 As we have already addressed, Father lives in South Carolina. There is no parent or "person acting as a parent" who lives in North Carolina or who has significant connections with North Carolina. Stepfather was not a "person acting as a parent," and based upon the trial court's findings of fact, Grandmother was not a "person acting as a parent" either. At the time of the commencement of the proceeding, she did not have "physical custody of the child" and had not "had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding." N.C. Gen. Stat. § 50A-102(13). Based on the trial court's findings, the *child* had "significant connection" to North Carolina, but subsection (2) requires that *both* the child and "at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence." N.C. Gen. Stat. § 50A-201(a)(2)(a). Here, there is no parent in North Carolina or with significant connections to North Carolina. Thus, jurisdiction cannot fall under subsection (a)(2), despite the trial court's findings regarding "substantial evidence . . . available in this

State concerning the child's care, protection, training, and personal relationships." *Id.*, § 50A-201(a)(2)(b). We must proceed to subsection (a)(3).

4. More Appropriate Forum Jurisdiction

¶ 36 North Carolina General Statute § 50A-201(a)(3) allows jurisdiction where "[a]ll courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208."

¶ 37 Here, Grandmother claimed Michigan should have subject matter jurisdiction, but Michigan determined it was not the child's home state and that North Carolina is the more appropriate forum to determine custody. *See Veneskey, supra*, 2021 Mich. App. LEXIS 5147 at *9–13, 2021 WL 3821012 at *4–6 (Michigan court finding it would be an inconvenient forum and then determining North Carolina would have jurisdiction). There is no state other than North Carolina or Michigan which might have initial child custody jurisdiction under the UCCJEA. Although Father lives in South Carolina, Andrea has never lived there. But this case does not fall clearly under subsection (a)(3) because no other state *"having jurisdiction under subdivision (1) or (2) . . .* declined to exercise jurisdiction on the ground that a court of this State [North Carolina] is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208." N.C. Gen. Stat. § 50A-201(a)(3)

(emphasis added. Michigan determined it did not have jurisdiction under subdivisions (1) or (2), although it did determine North Carolina would be the more appropriate forum. *Veneskey, supra*, 2021 Mich. App. LEXIS 5147 at *9–13, 2021 WL 3821012 at *4–6. We must proceed to subdivision (a)(4).

5. Jurisdiction by Necessity

¶ 38 North Carolina General Statute § 50A-201(a)(4) provides that a court of this State has jurisdiction to make an initial child-custody determination only if "[n]o court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3)." N.C. Gen. Stat. § 50A-201(a)(4).

¶ 39 Due to the unusual circumstances of this case, North Carolina has jurisdiction by necessity under § 50A-201(a)(4). As we have already discussed, no other state would have jurisdiction to make an initial child custody determination under subdivisions (1), (2), or (3). North Carolina is the child's home state, and as demonstrated by the trial court's unchallenged findings of fact, the child has significant connections to North Carolina. She lived here prior to her Mother's death, and she has a sibling in North Carolina with her Stepfather. As noted by the trial court's findings, there is substantial evidence regarding the child's welfare in North Carolina. The only other state which could have possibly had jurisdiction under the UCCJEA, Michigan, has determined it is not the child's home state and that North Carolina is the more

appropriate forum. *Veneskey, supra*, 2021 Mich. App. LEXIS 5147 at *9–13, 2021 WL 3821012 at *4–6. Therefore, although the trial court relied upon the wrong subdivision of 50A-201(a) to conclude it had jurisdiction, on *de novo* review, we conclude North Carolina does have jurisdiction to make an initial child custody determination under subdivision (a)(4).

D. Custody Determination

¶ 40 Finally, Grandmother argues the trial court erred in dismissing her claim for custody and in awarding Father full custody because it concluded Father was a fit parent who has not abdicated his constitutionally protected rights as a parent to Andrea.

¶ 41 Our Supreme Court has long established that "natural parents have a constitutionally protected interest in the companionship, custody, care, and control of their [biological] children." *Price v. Howard*, 346 N.C. 68, 72, 484 S.E.2d 528, 530 (1997); *David N. v. Jason N.*, 359 N.C. 303, 305, 608 S.E.2d 751, 752–53 (2005) (reaffirming "the paramount right of parents to the custody, care, and control of their children"). "[T]he Due Process Clause would be offended 'if a [court] were to attempt to force the breakup of a natural family . . . without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.'" *Adams*, 354 N.C. at 61, 550 S.E.2d at 502 (quoting *Price*, 346 N.C. at 78, 484 S.E.2d at 534) (alterations from original omitted and own alterations added). As our

Supreme Court has explained, a fit and natural parent "is presumed to act in the child's best interest and . . . there is normally no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's [child]." *Id.*, 354 N.C. at 60, 550 S.E.2d at 501 (quotations and alterations from original omitted) (citing *Troxel v. Granville*, 530 U.S. 57, 68–69, 147 L.E.2d 49, 58 (2000)).

¶ 42 "[W]hile a fit and suitable parent is entitled to the custody of his child, it is equally true that where fitness and suitability are absent he loses this right." *David N.*, 359 N.C. at 305, 608 S.E.2d at 753 (quotations and citations omitted); *Adams*, 354 N.C. at 61, 550 S.E.2d at 502 ("[A] parent's right to custody is not absolute."). Indeed, the protection afforded to biological parents comes "with similar recognition that some facts and circumstances, typically those created by the parent, may warrant abrogation of those interests." *Price*, 346 N.C. at 75, 484 S.E.2d at 532; *id.*, 346 N.C. at 79, 484 S.E.2d at 534 ("[A] parent may no longer enjoy a paramount status if his or her conduct is inconsistent with this presumption or if he or she fails to shoulder the responsibilities that are attendant to rearing a child."). "Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy." *Id.*, 346 N.C. at 79, 484 S.E.2d at 534. This is in addition to "[o]ther types of conduct, which must be viewed on a case-by-case basis . . . ." *Id.*, 346 N.C. at 79, 484 S.E.2d at 534–35. Ultimately, the test our

Supreme Court lays out is that "a natural parent may lose his constitutionally protected right to the control of his children in one of two ways: (1) by a finding of unfitness of the natural parent, or (2) where the natural parent's conduct is inconsistent with his or her constitutionally protected status." *David N.*, 359 N.C. at 307, 608 S.E.2d at 753; *see also Price*, 346 N.C. at 73, 484 S.E.2d at 531 (stating the interest of natural parents "must prevail against a third party unless the court finds that the parents are unfit or have neglected the welfare of their children"). A finding of either must be supported by clear and convincing evidence. *David N.*, 359 N.C. at 307, 608 S.E.2d at 753.

¶ 43 Here, the trial court determined Father was both a fit and proper parent and he had not abdicated his constitutionally protected right to parent Andrea. Grandmother argues this determination is erroneous because she presented clear and convincing evidence showing Father "did not partake in much of the child rearing including taking the child to her many doctors' appointments, only paid child support twice in 2015 in the over five years that he did not have custody of the child, . . . did not visit with the minor child upon the end of [his and Mother's] relationship in approximately 2015[,]" or thereafter attempt to seek custody; and that he drinks alcohol. According to Grandmother, this clear and convincing evidence mandated the trial court conclude Father had abdicated his right to Andrea's custody and award custody to Grandmother.

¶ 44 We note a trial court is not bound to render any determination propounded by a party simply because there is sufficient evidence before it which could tend to support that determination. *Cf. Adams*, 354 N.C. at 63, 550 S.E.2d at 503 (explaining a "trial court's findings of fact are conclusive on appeal if there is evidence to support them, *even though the evidence might sustain findings to the contrary*" (emphasis added; quotations and citations omitted)). Again, Grandmother challenges the trial court's custody determination but does not argue there was insufficient evidence to support the findings of fact upon which it relied in reaching its conclusion. Our inquiry thus is to "determine whether the trial court's findings support its legal conclusion that" Father did not abdicate his constitutional rights by acting inconsistent therewith. *Id.*, 354 N.C. at 65, 550 S.E.2d at 504.

¶ 45 The following findings of fact relevant to the trial court's custody determination are unchallenged as supported by the evidence and are thus binding on us:

> 9. [Father] learned of the death of [Mother] on the social media page of a family member of [Mother] and he immediately returned to North Carolina to pick up his daughter. He made inquiry with the police department as well as family members and neighbors as to her whereabouts.

. . . .

11. The Court finds that within a few days of the unexpected death of [Mother], [Grandmother] came to North Carolina from Michigan and removed the child from the jurisdiction of North Carolina and took her back to Michigan. [Father] was never informed. [Grandmother] testified that the thought to notify [Father] never crossed her mind.

12. [Grandmother] and the [Stepfather] had an attorney draw up a consent agreement to allow [Grandmother] to take the child back to Michigan without [Father's] consent. . . . The court finds that [Father] did not cede any portion of his custody rights to [Stepfather] or [Grandmother] voluntarily as he was never notified of the marriage to [Stepfather] or the consent agreement removing his child from the jurisdiction of the court.

13. [Grandmother] made zero efforts to locate [Father] before secreting the child away. [Father] had family in the area where the child was residing and the paternal grandmother [and Grandmother] had previous communications by phone to discuss

the minor child and exchanged photos of the minor child. At no time was [Father] or the paternal grandmother given the opportunity to visit with the minor child while in the care of [Grandmother].

14. It is uncontroverted that [Father] and [Mother] had a tumultuous relationship. They broke up a few times and got back together. It is common for couples who have a traumatic breakup to leave custody arrangements of the child (born of their relationship) open and incomplete as they navigate the issues. The court finds that the gap of time that [Father] went without communicating with his child was not tantamount to abandonment or neglect.

15. [Father] is a person of limited means financially and educationally. It appears from his testimony and from the testimony of the paternal grandmother, they were both led to believe by [Mother] and [Grandmother] that they could no longer have communication with the minor child. This is consistent with the years between 2014-2020.

16. There is credible evidence by [Father] and the paternal grandmother that [Father] did engage in parenting activities such as feeding, changing and taking care of the child while [Mother] was at work. The parents of this minor child were very young, and both acted as such on multiple occasions, before and after the birth of the child. This does not make [Father] an unfit parent. He was not given the opportunity to parent after [Mother] and child moved away and [Mother] changed her name, through marriage.

17. During one of their breakups, [Father] and [M]other attempted to establish a custody agreement including but not limited to child support. [Father] did actually make two child support payments before the parties reconciled, and the agreement became moot. There was never a child support order entered by any court between the parties subsequently. . . . .

18. There is credible evidence that after the final breakup of [Father] and [Mother], that [Father] was informed he was not allowed to have any contact with the minor child due to a pending charge for breaking and entering which was later dismissed.

19. [Father] remained compliant with the court ordered no-contact order and believed that any contact with [Mother] or the minor child would result in his bond being revoked. This order was in effect between 2015-2016. During that time period, [Father] did not attempt to contact [Mother] or the child. His belief that he couldn't have contact was reasonable based on the facts and circumstances at that time.

. . . .

21. After the no-contact order (pursuant to the domestic charges against [Father]) and the charges were dismissed, [Father] and the paternal grandmother attempted to locate the minor child through family inquiries and social media. [Mother] had a different last name at that point, and they did not know how to find her. [Mother] did not appear in court to testify because she had left the state with the minor child and never informed [Father] where she was going.

22. [Father] and paternal grandmother did purchase and mail gifts, cards and letters for the minor

child in an effort to reestablish contact with her. They were sent to [Grandmother's] residence in Michigan as [Mother] had a habit of returning to her mother's residence when she needed help from her. Many, if not all, of the cards and gifts were returned to [Father] by [Grandmother], or "someone" in the State of Michigan. The testimony of [Grandmother] that she never saw any of the gifts, cards and letters which were addressed to the child to her address is not credible.

23. The minor child appeared to be bonded with the paternal grandmother as well, prior to the child being moved around by [Mother] and [Grandmother]. In fact, [Father] (with the help of the paternal grandmother) and child's [M]other were able to make amenable arrangements for visitations each time the couple broke up.

24. [Grandmother] has not allowed [Father] to have any contact with the minor child since the death of her [M]other, even though [Grandmother] has been aware that he has attempted to locate the child and have a relationship with her.

25. The minor child has never been informed that [Stepfather] is not her biological father or that her real [F]ather even exists. It appears that the intent of [Grandmother] was to thwart any potential relationship that the minor child could have with [Father].

26. The Court finds that [Grandmother] has intentionally tried to hide the minor child from [Father]. [Grandmother's] testimony that she moved from her home into a different home right after her daughter's death because the memories of her were too painful, is not credible. It once again appears to the court that it was another way to hide or secret the child from [Father] now that she was appointed guardian in an emergency hearing in Michigan. In fact, it would seem to be more comforting to the grieving child to be around her [M]other's memories and personal belongings, rather than be moved into a place with no memories.

27. There is no credible evidence that [Father] voluntarily permitted the minor child to remain in the custody of [Grandmother] or agreed to allow [Grandmother] to act in loco parentis to the child. It would appear from the

evidence that long before the [M]other passed away, [Mother] was moving around excessively in an effort to alienate the child from her [F]ather and [Grandmother] was funding those moves. . . .

28. There is credible evidence to indicate that there were gaps in time when [Father] did not pursue the minor child's whereabouts, however, the court does not find that brief gaps of time are tantamount to abandonment of the minor child. [Mother] moved multiple places and got married with a name change. She never informed [Father] of any of those moves or changes.

29. . . . [Mother] intentionally left the child with [Grandmother] for months at a time after [Father] and [M]other finally split. [Father] was never given the opportunity to agree or disagree with said placement.

. . . .

32. The minor child has a sibling who is in the custody of [Father] whom she has never met, and a sibling who resides with her [Stepfather] . . . .

¶ 46 We note that "[i]n considering whether disruption of custody over an extended period of time may result in a possible displacement of a parent's constitutionally protected interests," our Supreme Court has "recognized the danger of a fact situation . . . in which the custodian[] obtained custody unlawfully[:]"

> the resolution of cases must not provide incentives for those likely to take the law into their own hands. Thus, those who obtain custody of children unlawfully, particularly by kidnapping, violence, or flight from the jurisdiction of the courts, must be deterred. Society may not reward, except at its peril, the lawless because the passage of time has made correction inexpedient.

Price, 346 N.C. at 81–82, 484 S.E.2d at 536 (quotations, citations, and alterations from original omitted; own alteration added).

¶ 47 The trial court's findings of fact fully support its conclusions that Father did not act inconsistently with his constitutionally protected status as a natural parent and was fit to have custody. *Cf. Adams*, 354 N.C. at 66, 550 S.E.2d at 505 ("The trial court's findings of fact are sufficient, when viewed cumulatively, to support its conclusion that [the natural parent's] conduct was inconsistent with his protected interest in the child."). Grandmother's

argument is based on her contentions regarding the evidence she presented which she believes would support different findings of fact and also regarding the best interests of the child. However, the trial court is the sole judge of credibility of the witnesses. "[T]he trial court sees the parties in person and listens to all the witnesses. This allows the trial court to detect tenors, tones and flavors that are lost in the bare printed record read months later by appellate judges." *Id.*, 354 N.C. at 63, 550 S.E.2d at 503 (quotations and citations omitted). And where the natural parent is not unfit and has not acted inconsistently with his constitutionally protected rights as a parent, even if Grandmother may have a greater ability to provide for the child, the government may not, "over the objections of the parent," remove a child from her natural parent "solely to obtain a better result for the child."[10] *Id.*, 354 N.C. at 61–62, 550 S.E.2d at 502–503 (quotations and citation omitted). We conclude the evidence and the trial court's findings, unchallenged and binding on appeal, support the trial court's determination that Father is fit and proper and has not abdicated his constitutionally protected right to parent Andrea. *Cf. In re Gibbons*, 247 N.C. 273, 281, 101 S.E.2d 16, 22 (1957) ("Since the death of his wife there is little evidence that he has had any great

[10] The evidence from the child's therapist appointments in Michigan following her Mother's death, which Grandmother sought to introduce and argues was erroneously excluded, was not proffered for the record. In any event, evidence from Andrea's therapy in Michigan would not address Father's circumstances or fitness as a parent under the circumstances of this case but could relate only to the best interests of the child—an issue neither the trial court nor we can address.

yearning to have his child with him . . . . Instead he surrendered this high privilege to the grandmother . . . ." (quotations and citation omitted)). Accordingly, the trial court did not err in its dismissal of Grandmother's claim or in its award of full custody to Father.

III. Conclusion

¶ 48 Although the trial court relied upon the wrong subsection of North Carolina General Statute § 50A-201(a) to conclude North Carolina has jurisdiction under the UCCJEA, the trial court's findings of fact support a conclusion that North Carolina has subject matter jurisdiction over custody under the UCCJEA and Father is a fit and proper parent who has not abdicated his constitutional rights as a parent. We therefore affirm the trial court's orders as to subject matter jurisdiction and custody. Grandmother's motion for sanctions under the appellate rules is denied.

AFFIRMED.

Judges HAMPSON and JACKSON concur.

APPENDIX D

SUPREME COURT OF NORTH CAROLINA
TWENTY-SECOND-B DISTRICT
No. 331P22

MICHAEL KEITH SULIER

v

TINA BASTIAN VENESKEY

From N.C. Court of Appeals
(21-506)
From Davie
(20CVD256)

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Defendant on the 7th of November 2022 in this matter pursuant to G.S. 7A-30 (substantial constitutional question), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the notice of appeal is

"Dismissed ex mero motu by order of the Court in conference, this the 14th of June 2023."

s/ Allen, J.
For the Court

Upon consideration of the petition filed on the 7th of November 2022 by Defendant in this matter for

discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 14th of June 2023."

s/ Allen, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th of June 2023.

s/ Grant E. Buckner
Grant E. Buckner
Clerk, Supreme Court of North Carolina

M.C. Hackney
Assistant Clerk, Supreme Court of North Carolina
[Seal]

Copy to:
North Carolina Court of Appeals
Mr. Andrew J. Wingo, Attorney at Law, For Veneskey, Tina Bastian - (By Email)
Ms. Victoria L. Stout, Attorney at Law, For Veneskey, Tina Bastian - (By Email)
Ms. Wendy J. Terry, Attorney at Law, For Sulier, Michael Keith - (By Email)
Mr. Michael Keith Sulier, For Sulier, Michael Keith - (By Email)

Mr. John Fuller, Attorney at Law, For Veneskey, Tina Bastian - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

SUPREME COURT OF NORTH CAROLINA
TWENTY-SECOND-B DISTRICT
No. 332P22

MICHAEL KEITH SULIER

v

TINA BASTIAN VENESKEY

From N.C. Court of Appeals
(21-523)
From Davie
(20CVD256)

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Defendant on the 7th of November 2022 in this matter pursuant to G.S. 7A-30 (substantial constitutional question), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the notice of appeal is

"Dismissed ex mero motu by order of the Court in conference, this the 14th of June 2023."

s/ Allen, J.
For the Court

Upon consideration of the petition filed on the 7th of November 2022 by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the

following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 14th of June 2023."

s/ Allen, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th of June 2023.

s/ Grant E. Buckner
Grant E. Buckner
Clerk, Supreme Court of North Carolina

M.C. Hackney
Assistant Clerk, Supreme Court of North Carolina
[Seal]

Copy to:
North Carolina Court of Appeals
Mr. Andrew J. Wingo, Attorney at Law, For Veneskey, Tina Bastian - (By Email)
Ms. Victoria L. Stout, Attorney at Law, For Veneskey, Tina Bastian - (By Email)
Ms. Wendy J. Terry, Attorney at Law, For Sulier, Michael Keith - (By Email)
Mr. Michael Keith Sulier, For Sulier, Michael Keith - (By Email)
Mr. John Fuller, Attorney at Law, For Veneskey, Tina Bastian - (By Email)

West Publishing - (By Email)
Lexis-Nexis - (By Email)

APPENDIX E

IN THE GENERAL COURT OF JUSTICE,
DISTRICT COURT DIVISION, DAVIE COUNTY,
NORTH CAROLINA
FILE NO.: 20 CVD 256
[Stamp:] FILED July 15, 2020

MICHAEL KEITH SULIER,
Plaintiff

vs COMPLAINT FOR CHILD CUSTODY

TINA BASTIAN VENESKEY,
Defendant.

NOW COMES the Plaintiff, complaining of the Defendant and alleges and says as follows:

1. The Plaintiff is a resident of South Carolina and has been a resident of South Carolina for a period of at least six months next preceding the filing of this action. The Plaintiff lives within commuting distance of the Davie County District Court in Mocksville, North Carolina.

2. The Defendant is an adult residing in Michigan is not in the military service, is mentally competent, and is *sui juris*.

3. The Plaintiff and Audrey Michael Rorrer Pegram, hereinafter referred to "Pegram," lived together and later separated from one another.

4. There was one child born to Plaintiff and Ms. Pegram, namely: A.N.S., born 2013 and now seven (7) years of age. A copy of the minor child's birth certificate showing Plaintiff as her legal father is attached hereto and incorporated by reference herein.

5. The Defendant is the mother of Ms. Pegram and the maternal grandmother of the minor child. Upon information and belief, the Defendant has previously lived in Davie County, North Carolina and has significant ties to the jurisdiction.

6. Ms. Pegram lived in Davie County, North Carolina for a period in excess of six months until she died suddenly on or about May 10, 2020. A copy of the on-line obituary is attached hereto and incorporated by reference as if fully set forth to corroborate the Plaintiff's allegation.

7. Immediately following the death of Ms. Pegram, the Defendant removed the minor child from the State of North Carolina without notification to the Plaintiff and with the intent to hide the child from Plaintiff and assume physical custody of her granddaughter.

8. There is a controversy concerning the custody, of the said minor child. North Carolina is the

appropriate state in which to litigate issues of custody, visitation, and support concerning this minor child.

A. North Carolina is the home state of the minor child, and the minor child was physically present in North Carolina until Defendant removed her for the purpose of avoiding litigation in North Carolina and hiding the minor child from the Plaintiff.

B. No other state has jurisdiction, pursuant to N.C.G.S. §50A-201(1), and this State is the more appropriate forum under N.C.G.S. §50A-207 or N.C.G.S. §50A-208; and

(1) The minor child and the Plaintiff, her only parent, have a significant connection with the State of North Carolina other than mere physical presence; and

(2) There is substantial evidence available in this State concerning the minor child's care, protection, training, and personal relationships.

C. The Plaintiff has been informed and therefore believes and alleges that the Defendant has filed an action for custody in the State of Michigan. The Plaintiff has not been served with a complaint or summons in the custody action, and he has been informed that the Defendant is attempting to serve him by

publication. Except as stated, there have not been any other previous custody proceedings or determinations in this or in any other state.

D. No other state has assumed jurisdiction in this matter, and it appears that no other state would have jurisdiction under prerequisites substantially in accordance with North Carolina General Statutes Chapter 50A. The minor child was removed from North Carolina to Michigan to avoid the Plaintiff and to avoid the jurisdiction of the North Carolina District Courts.

E. North Carolina has been the minor child's home state for a period of at least six months next preceding the death of her mother, Ms. Pegram. Upon information and belief, the minor child has been taken by the Defendant to Michigan within the past two months. The minor child's present address is unknown. Her last known address was in Mocksville, Davie County, North Carolina, where she lived with her step-father and half-sister.

1) The minor child has lived primarily at the following addresses during the past five years:

a) unknown May 10,2020 to present;

b) 243 Cherry Street, Mocksville, NC 27028, about 2016 to about May 10, 2020;

c) Alaska, about eight months before 2016;

2) The minor child has lived with the following people during the past five years (paragraphs correspond to El) above):

a) unknown May 10, 2020 to present;

b) Ms. Pegram, her husband, Alex Pegram, and their daughter, A.J.P.;

c) Ms. Pegram and her first husband, Jared.

F. The Plaintiff has not participated as a party, witness, or in any other capacity in any other litigation concerning the custody of this minor child in this or any other state. The Plaintiff has no information of any custody proceeding concerning this minor child pending in a court of this or any other state, except as set forth above.

G. The Plaintiff does not know of any person not a party to this proceeding who has physical custody of this minor child or claims to have

custody or visitation rights with respect to this minor child.

H. The Defendant is not a person acting as a parent, as defined in N.C.G.S. §50A- 102(13).

I. It is in the best interests of justice and in the best interests of the minor child that a Court of this State immediately communicate with the Court in Michigan to make a child custody determination pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act and Uniform Deployed Parents Custody and Visitation Act, as by law provided.

6. An award of custody of this minor child to the Plaintiff will best promote the interest and welfare of the said child.

A. It is in the best interest of the minor child to award Plaintiff custody to preserve stability in her home and routine. Plaintiff is the sole surviving parent of the minor child.

B. The minor child has resided primarily with the Plaintiff and Ms. Pegram since her birth, never having resided with the Defendant until the Defendant unilaterally removed her from Davie County, North Carolina.

C. The Plaintiff has been a primary caretaker of the minor child since her birth.

D. The Plaintiff is a fit and proper person to exercise the care, custody, and control of his minor child.

E. The minor child's schools, doctors, sibling, immediate family, and others with information concerning her care, custody, well-being, and best interests are located in North Carolina and South Carolina, within commuting distance from the Davie County Courthouse.

F. The Defendant has committed misconduct in removing the minor child from the jurisdiction of this Court, in hiding her whereabouts from the Plaintiff, and in bringing an action in Michigan without making an effort to inform the Plaintiff of her location or well being. Defendant's misconduct is detrimental to the minor child and designed to form a barrier between the Plaintiff father and his daughter, the minor child.

7. The parties are both able bodied adults capable of contributing to the support of the minor child, and it is in the best interests of the minor child that the Court order the Defendant to pay her child

support obligation in order to return the minor child to her rightful home, that is with her sole living parent, the Plaintiff. Plaintiff is in need of an order requiring Defendant to pay the costs of returning the minor child to Davie County, North Carolina, and the costs of this action, including reasonable attorney fees needed to return the minor child home.

8. The Plaintiff's preferred method of alternative dispute resolution is mediation.

WHEREFORE, the Plaintiff respectfully prays of the Court as follows:

1. That the Court make a child custody determination regarding appropriate jurisdiction, together with the appropriate Court in Michigan;

2. That the Plaintiff be awarded the care, custody, and control of his daughter, A.N.S., born 2013 and now seven (7) years of age;

3. That the Defendant, as child support for the benefit and best interest of the minor child, pay for her transportation back to the State of North Carolina;

4. That the Defendant pay the costs of this action, including reasonable attorney fees;

5. And for such other and further relief as the Court may deem just and proper.

This the 14th day of July, 2020.

s/ Wendy J. Terry
WENDY J. TERRY
Attorney for Plaintiff
Penry Terry & Mitchell, LLP
151 South Main Street
Mocksville, NC 27028
(336) 753-0753

NORTH CAROLINA
DAVIE COUNTY

VERIFICATION

I, being first duly sworn, depose and say that I am the Plaintiff in the above entitled action, that I have read the foregoing document and know the contents thereof, that the same is true of my own knowledge except for those things and matters stated upon information and belief and as to those matters believe them to be true.

s/ Michael Keith Sulier
MICHAEL KEITH SULIER

Sworn (or affirmed) and subscribed before me
This the 14th day of July, 2020.

Signed and sealed: *Lindley S. Bess*
Notary Public

My Commission Expires: 07/30/2024

MICHAEL SULIER
3002 SANDFORD DRIVE
YADKINVILLE NC 27055

EXHIBIT
A

This certificate is a valuable and legal document. Please keep it in a safe pla

Errors or omissions should be reportec to the State Vital Records Office within 30 days of issue by calling (517)335-8

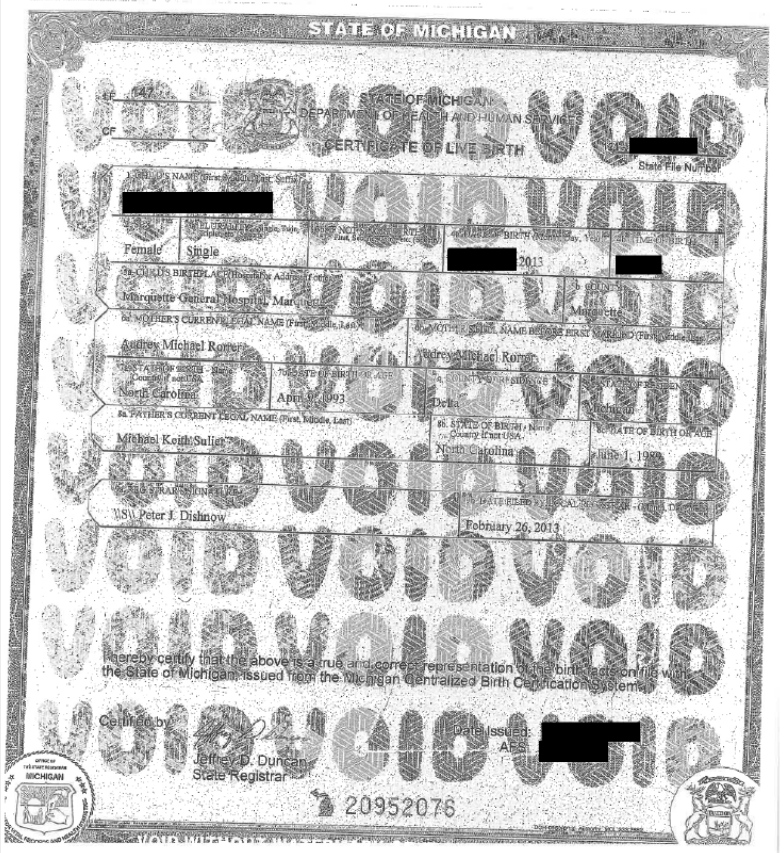

EXHIBIT B

Lexington

Audrey Michael Rorrer Pegram

(April 09, 1993 - May 10, 2020)

Audrey Michael Rorrer Pegram, age 27 of Mocksville passed away Sunday.

No services are scheduled.

Audrey was born in Iredell County, North Carolina April 9, 1993. She was a wife, mother, daughter, sister and friend.

She is survived by her husband Alex; daughters, [redacted] and [redacted]; her mother, Tina Bastian and other family members and friends.

Online condolences may be made at www.davidsonfuneralhome.net

APPENDIX F

IN THE GENERAL COURT OF JUSTICE,
DISTRICT COURT DIVISION, DAVIE COUNTY,
NORTH CAROLINA

FILE NO.: 20 CVD 256
[Stamp:] FILED September 30, 2020

MICHAEL KEITH SULIER,

Plaintiff

v. **MOTION TO DISMISS**
MOTION FOR UCCJEA
CONFERENCE AND ANSWER

TINA BASTIAN VENESKEY,

Defendant.

MOTION TO DISMISS

NOW COMES Defendant, by and through Counsel and moves the Court to dismiss the Complaint in this matter pursuant to Rule 12(b)(l) of the North Carolina Rules of Civil Procedure and the Uniform Child-Custody Jurisdiction and Enforcement Act N.C.G.S. § 50A for lack of subject matter jurisdiction. In support of said Motion, the Defendant respectfully shows the Court as follows:

1. The minor child at issue in this matter is A.N.S., born 2013 in Marquette, Michigan.

2. The minor child resided at the following address in the past 5 years:

a. From July 15, 2020 through present – with Tina and James Veneskey at 5293 18th Road, Escanaba, MI 49829.
b. From May 18, 2020 through July 15, 2020 – with Tina and James Veneskey at 1919 14th Avenue North, Escanaba, MI 49829.
c. From October 2018 through May 18, 2020 – with Audrey Rorrer Pegram (f/k/a Audrey Rorrer) at 243 Cherry Street, Mocksville, NC 27028.
d. From July 2018 through October 2018 – with Audrey Rorrer Pegram at 1050 Link Road, Lexington, NC 27295.
e. From August 2017 through July 2018 – with Audrey Rorrer at 243 Cherry Street, Mocksville, NC 27028.
f. From May 2017 through August 2017 – with Tina and James Veneskey at 1919 14th Avenue N, Escanaba, MI 49829.
g. From November 2016 through May 2017 – with Audrey Rorrer at 521 N 19th Escanaba, MI 49829.
h. From October 2016 through November 2016 – with Audrey Rorrer in Anchorage and/or North Pole, Alaska.
i. From July 2016 through September 2016 – with Tina and James Veneskey at 1919 14th Avenue N, Escanaba, MI 49829.

j. From March 2016 through July 2016 – with Audrey Rorrer in Anchorage and/or North Pole, Alaska.
k. From March 2015 through March 2016 – with Audrey Rorrer at 521 N 19th Escanaba, MI 49829.

3. An initial child-custody determination as to this child has not been entered by any state.

4. Plaintiff filed a verified Complaint for Child Custody in this matter on July 15, 2020, requesting that this Court make an initial child-custody determination as to the minor child.

5. The Complaint alleges that the child resided in North Carolina from "about 2016" with her mother Audrey Rorrer Pegram until her untimely death in May 2020.

6. In May 2020, after the death of her mother, the minor child came under the care of her maternal Grandmother in Michigan, where she has remained. The Complaint further alleges that North Carolina is the home state for the minor child.

7. Subject matter jurisdiction in child custody actions is determined by the Uniform Child Custody Jurisdiction Enforcement Act, N.C.G.S. §50A.

8. N.C.G.S. §50A-201 outlines the circumstances in which North Carolina has jurisdiction to enter an initial child-custody determination, none of which apply in this case as neither parent resides in the State of North Carolina,

the child does not reside in North Carolina, and no court of home jurisdiction has declined to exercise jurisdiction.

9. Pursuant to N.C.G.S §50A-207, even if North Carolina has jurisdiction, which is denied, North Carolina is an inconvenient forum.

10. Michigan is the home state of the minor child based on the physical location of the child in Michigan since May 2020. Michigan has not declined to exercise jurisdiction over custody determinations for the child at issue.

11. Defendant, by and through her counsel, filed an action for Guardianship In the Matter of A.N.S., File No. 20-GM-22549, Delta County Probate Court, Michigan. Defendant was granted Temporary Guardianship for the minor child on June 30, 2020, and said guardianship was extended on August 17, 2020 for an additional 6 months pending the resolution of pending custody civil actions.

12. Defendant, by and through counsel, filed an action for custody of the minor child on July 23, 2020, which was subsequently served on Plaintiff on August 6, 2020.

13. North Carolina lacks subject matter jurisdiction over the cause of action in this matter and as such, all claims should be dismissed as the child does not live in North Carolina and the Plaintiff does not live in North Carolina.

14. Michigan is the appropriate jurisdiction for a determination of Child Custody Jurisdiction based on the provisions set forth in Chapter 50A of the

North Carolina General Statutes entitled Child-Custody Jurisdiction and enforcement set forth in §5OA-101 et. seq.

MOTION FOR UCCJEA CONFERENCE

In the event that this Court declines to dismiss the Plaintiff's Complaint, the Defendant moves the Court, pursuant to N.C.G.S. §5OA-110 to communicate with the Circuit Court of Delta County, Michigan to determine which jurisdiction is proper and convenient to hear and resolve the issue of child custody.

ANSWER TO COMPLAINT

In the alternative, if Defendant's Motions are denied, Defendant, by and through Counsel, in answer of Plaintiff's Complaint, does allege and say as follows:

1. The allegation in paragraph 1 of Plaintiff's Complaint is ADMITTED, upon information and belief, that Plaintiff is a citizen and resident of South Carolina. DENIED, that his location in South Carolina is within "commuting distance" to Mocksville, North Carolina.

2. The allegations contained in paragraph 2 are ADMITTED that the Defendant is an adult, is not incompetent, not under a legal disability and not in the military.

3. The allegations in paragraph 3 of Plaintiff's Complaint are ADMITTED in part and DENIED in part. Plaintiff left the child's mother, Audrey Rorrer Pegram, in approximately July 2014, and Plaintiff has not seen or spoken with the minor child since approximately July 2014.

4. The allegation in paragraph 4 of Plaintiff's Complaint is ADMITTED that Plaintiff is listed as the minor child's father but DENIED as to the validity of the attached copy.

5. The allegation in paragraph 5 of Plaintiff's Complaint is ADMITTED in part and DENIED in part. Defendant is the maternal grandmother of the minor child, but has not resided in Davie County since February 2010.

6. The allegation in paragraph 6 of Plaintiff's Complaint is ADMITTED.

7. The allegation in paragraph 7 of Plaintiff's Complaint is DENIED.

8. The allegations in paragraph 8 of Plaintiff's Complaint are DENIED.

a. The allegations in paragraph 8a of Plaintiff's Complaint are DENIED.
b. The allegations in paragraph 8b (1) and (2) of Plaintiff's Complaint are DENIED.
c. The allegations in paragraph 8c of Plaintiff's Complaint are DENIED.

d. The allegations in paragraph 8d of Plaintiff's Complaint are DENIED.
e. The allegations in paragraph 8e (1) et al. of Plaintiff's Complaint are DENIED.
f. The allegations in paragraph 8f of Plaintiff's Complaint are DENIED.
g. The allegations in paragraph 8g of Plaintiff's Complaint are DENIED.
h. The allegations in paragraph 8h of Plaintiff's Complaint are DENIED.
i. The allegations in paragraph 8i of Plaintiff's Complaint are DENIED.

6. (Second Paragraph so numbered) The allegations in paragraph 6 of Plaintiff's Complaint are Denied.

a. The allegation in paragraph 6a of Plaintiff's Complaint is DENIED.
b. The allegation in paragraph 6b of Plaintiff's Complaint is DENIED. The minor child had not lived with the Plaintiff since approximately July 2014 and has not seen the Plaintiff since July 2014.
c. The allegation in paragraph 6c of Plaintiff's Complaint is DENIED.
d. The allegation in paragraph 6d of Plaintiff's Complaint is DENIED.
e. The allegation in paragraph 6e of Plaintiff's Complaint is DENIED.
f. The allegations in paragraph 6f of Plaintiff's Complaint is DENIED.

7. (Second Paragraph so numbered) The allegations in paragraph 7 of Plaintiff's Complaint are DENIED.

8. (Second Paragraph so numbered) The allegations in paragraph 8 of Plaintiff's Complaint do not require a response from Defendant and as such are DENIED.

WHEREFORE, Defendant prays the Court as follows:

1. That the Court dismiss the Plaintiff's Complaint with prejudice;

2. That the Plaintiff be denied the relief requested in his Complaint;

3. In the alternative, that the Court communicate with the Circuit Court of Delta County, Michigan to determine which jurisdiction is proper and convenient to hear and resolve the issue of child custody; and

4. That the Court grant unto Defendant whatever further relief the Court deems just and proper.

///

///

This, the 29th day of September 2020.

HOMESLEY & WINGO LAW GROUP PLLC
Attorneys for Defendant

By: *s/ Andrew Wingo*
Andrew Wingo
N.C. Bar No.: 25765
330 South Main Street
Mooresville, North Carolina 28115
(704) 799-4646 / Fax: (704) 664-0267
Andrew@LakeNormanLaw.com

STATE OF MICHIGAN

VERIFICATION

DELTA COUNTY

I, TINA BASTIAN VENESKEY, being first duly sworn, deposes and says that I am the Defendant in this action; that I have read the foregoing Answer, Motion to Dismiss and Motion for UCCJEA Conference and that the same is true of my own knowledge except as to those matters and things therein stated upon information and belief, and as to those I believe them to be true.

(Tina Wolcott-Veneskey)
s/Tina Bastian Veneskey
TINA BASTIAN VENESKEY

Sworn to and subscribed before me
this 28th day of September, 2020.

Signed and sealed: *Cheryl L. Comeaux*
Notary Public

My commission expires: 10/10/2024

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing Answer, Motion to Dismiss and Motion for UCCJEA Conference on all the parties to this cause, in the manner prescribed by Rule 5 of the Rules of Civil Procedure by:

X Depositing a copy thereof postage paid, in the United States mail to all parties as follows:

Wendy J. Terry
Penry Terry & Mitchell, LLP
151 South Main Street
Mocksville, NC 27028

and

Sarah E. Henderson
Casselman & Henderson, P.C.
148 W. Washington St.
Marquette, MI 49855

☐ Depositing a copy thereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each party as follows:

X Telecopying a copy thereof to the attorney for each party as follows:

Wendy J. Terry 336-248-6214
Sarah E. Henderson 906-228-2863

This, the 29th day of September 2020.

HOMESLEY & WINGO LAW GROUP PLLC
Attorneys for Defendant

By: *s/ Andrew Wingo*
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APPENDIX G

Chapter 50A.

Uniform Child-Custody Jurisdiction and Enforcement Act and Uniform Deployed Parents Custody and Visitation Act.

Article 1.

Uniform Child Custody Jurisdiction Act.

§§ 50A-1 through 50A-25: Repealed by Session Laws 1999-223, s. 1(b), effective October 1, 1999, and applicable to causes of action arising on or after that date.

Article 2.

Uniform Child-Custody Jurisdiction and Enforcement Act.

Part 1. General Provisions.

§ 50A-101. Short title.

This Article may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-102. Definitions.

In this Article:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual who has not attained 18 years of age.

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or

visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3 of this Article.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

(7) "Home state" means 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. A period of temporary absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child-custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child-custody determination for which enforcement is sought under this Article.

(10) "Issuing state" means the state in which a child-custody determination is made.

(11) "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

a. Has physical custody of the child or has had physical custody for a period of six

consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-103. Proceedings governed by other law.

This Article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child. (1999-223, s. 3.)

§ 50A-104. Application to Indian tribes.

(a) A child-custody proceeding that pertains to an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this Article to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3. (1999-223, s. 3.)

§ 50A-105. International application of Article.

(a) A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

(c) A court of this State need not apply this Article if the child-custody law of a foreign country violates fundamental principles of human rights. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-106. Effect of child-custody determination.

A child-custody determination made by a court of this State that had jurisdiction under this Article binds all persons who have been served in accordance with the laws of this State or notified in accordance with G.S. 50A-108 or who have submitted to the jurisdiction of the court and who have been given an

opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified. (1979, c. 110, s.1; 1999-223, s. 3.)

§ 50A-107. Priority.

If a question of existence or exercise of jurisdiction under this Article is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously. (1999-223, s. 3.)

§ 50A-108. Notice to persons outside State.

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court. (1999-223, s. 3.)

§ 50A-109. Appearance and limited immunity.

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of

having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this Article committed by an individual while present in this State. (1999-223, s. 3.)

§ 50A-110. Communication between courts.

(a) A court of this State may communicate with a court in another state concerning a proceeding arising under this Article.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible

medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (1999-223, s. 3.)

§ 50A-111. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-112. Cooperation between courts; preservation of records.

(a) A court of this State may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person to produce or give evidence pursuant to procedures of that state;

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) Forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records. (1979, c. 110, s. 1; 1999-223, s. 3.)

Part 2. Jurisdiction.

§ 50A-201. Initial child-custody jurisdiction.

(a) Except as otherwise provided in G.S. 50A-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;

(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:

a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the

custody of the child under G.S. 50A-207 or G.S. 50A-208; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-202. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State which has made a child-custody determination consistent with G.S. 50A-201 or G.S. 50A-203 has exclusive, continuing jurisdiction over the determination until:

(1) A court of this State determines that neither the child, the child's parents, and any person acting as a parent do not 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

(2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(b) 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 G.S. 50A-201. (1999-223, s. 3.)

§ 50A-203. Jurisdiction to modify determination.

Except as otherwise provided in G.S. 50A-204, a court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or G.S. 50A-201(a)(2) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207; or

(2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-204. Temporary emergency jurisdiction.

(a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this Article and a child-custody proceeding has not been commenced in a court of a state having

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

(c) If there is a previous child-custody determination that is entitled to be enforced under this Article, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203 shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to G.S. 50A-201 through G.S. 50A-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another

state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-205. Notice; opportunity to be heard; joinder.

(a) Before a child-custody determination is made under this Article, notice and an opportunity to be heard in accordance with the standards of G.S. 50A-108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This Article does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this Article are governed by the law of this State as in child-custody proceedings between residents of this State. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-206. Simultaneous proceedings.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State may not exercise its jurisdiction under this Part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this

Article, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under G.S. 50A-207.

(b) Except as otherwise provided in G.S. 50A-204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to G.S. 50A-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this Article, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this Article does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

(c) In 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. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-207. Inconvenient forum.

(a) A court of this State which has jurisdiction under this Article to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate 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:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside this State;

(3) The distance between the court in this State and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this State may decline to exercise its jurisdiction under this Article if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-208. Jurisdiction declined by reason of conduct.

(a) Except as otherwise provided in G.S. 50A-204 or by other law of this State, if a court of this State has jurisdiction under this Article because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under G.S. 50A-201 through G.S. 50A-203 determines

that this State is a more appropriate forum under G.S. 50A-207; or

(3) No court of any other state would have jurisdiction under the criteria specified in G.S. 50A-201 through G.S. 50A-203.

(b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under G.S. 50A-201 through G.S. 50A-203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorneys' 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 may not assess fees, costs, or expenses against this State unless authorized by law other than this Article. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-209. Information to be submitted to court.

(a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present

addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, the pleading or affidavit shall identify the court, the case number, and the date of the child-custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, the pleading or affidavit shall identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subdivisions (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivisions (a)(1) through (3) is in the affirmative, the declarant shall give additional

information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-210. Appearance of parties and child.

(a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to G.S. 50A-108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child. (1979, c. 110, s. 1; 1999-223, s. 3.)

Part 3. Enforcement.

§ 50A-301. Definitions.

In this Part:

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination. (1999-223, s. 3.)

§ 50A-302. Enforcement under Hague Convention.

Under this Part, a court of this State may enforce an order for the return of the child made under

the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination. (1999-223, s. 3.)

§ 50A-303. Duty to enforce.

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this Article or the determination was made under factual circumstances meeting the jurisdictional standards of this Article, and the determination has not been modified in accordance with this Article.

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another state. The remedies provided in this Part are cumulative and do not affect the availability of other remedies to enforce a child-custody determination. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-304. Temporary visitation.

(a) A court of this State which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this State makes an order under subdivisions (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part

2. The order remains in effect until an order is obtained from the other court or the period expires. (1999-223, s. 3.)

§ 50A-305. Registration of child-custody determination.

(a) A child-custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

(1) A letter or other document requesting registration;

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in G.S. 50A-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) Direct the petitioner to serve notice upon the persons named pursuant to subdivision (a)(3) of this section, including notice of their opportunity to contest the registration in accordance with this section.

(c) The notice required by subdivision (b)(2) must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

(2) A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under Part 2;

(2) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law, and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. (1979, c. 110, s. 1; 1997-81, s. 1; 1999-223, s. 3; 2007-484, s. 8.)

§ 50A-306. Enforcement of registered determination.

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another state.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with Part 2, a registered child-custody determination of a court of another state. (1999-223, s. 3.)

§ 50A-307. Simultaneous proceedings.

If a proceeding for enforcement under this Part is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under

Part 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding. (1999-223, s. 3.)

§ 50A-308. Expedited enforcement of child-custody determination.

(a) A petition under this Part must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this Article and, if so, identify the court, the case number, and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the

court, the case number, and the nature of the proceeding;

(4) The present physical address of a child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorneys' fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) If the child-custody determination has been registered and confirmed under G.S. 50A-305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under G.S. 50A-312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2;

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2. (1999-223, s. 3.)

§ 50A-309. Service of petition and order.

Except as otherwise provided in G.S. 50A-311, the petition and order must be served, by any method authorized by the law of this State, upon respondent and any person who has physical custody of the child. (1999-223, s. 3.)

§ 50A-310. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to G.S. 50A-204 upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that

the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2; or

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

(b) The court shall award the fees, costs, and expenses authorized under G.S. 50A-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this Part. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-311. Warrant to take physical custody of child.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by G.S. 50A-308(b).

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) Direct law enforcement officers to take physical custody of the child immediately; and

(3 Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not available, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour. An officer executing a warrant to take physical custody of the child, that is complete and regular on its face, is not required to inquire into the regularity and continued validity of the order. An officer executing a warrant pursuant to this section shall not incur criminal or civil liability for its due service.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian. (1999-223, s. 3; 2017-22, s. 3.)

§ 50A-312. Costs, fees, and expenses.

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or

expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this Article. (1999-223, s. 3.)

§ 50A-313. Recognition and enforcement.

A court of this State shall accord full faith and credit to an order issued by another state and consistent with this Article which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2. (1979, c.110, s.1; 1999-223, s. 3.)

§ 50A-314. Appeals.

An appeal may be taken from a final order in a proceeding under this Part in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under G.S. 50A-204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal. (1999-223, s. 3.)

§ 50A-315. Role of prosecutor or public official.

(a) In a case arising under this Article or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this Part or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

(1) An existing child-custody determination;

(2) A request to do so from a court in a pending child-custody proceeding;
(3) A reasonable belief that a criminal statute has been violated; or
(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party. (1999-223, s. 3.)

§ 50A-316. Role of law enforcement.

At the request of a prosecutor or other appropriate public official acting under G.S. 50A-315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under G.S. 50A-315. (1979, c. 110, s. 1; 1999-223, s. 3.)

§ 50A-317. Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under G.S. 50A-315 or G.S. 50A-316. (1999-223, s. 3.)

§ 50A-318: Reserved for future codification purposes.

§ 50A-319: Reserved for future codification purposes.

§ 50A-320: Reserved for future codification purposes.

§ 50A-321: Reserved for future codification purposes.

§ 50A-322: Reserved for future codification purposes.

§ 50A-323: Reserved for future codification purposes.

§ 50A-324: Reserved for future codification purposes.

§ 50A-325: Reserved for future codification purposes.

§ 50A-326: Reserved for future codification purposes.

§ 50A-327: Reserved for future codification purposes.

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§ 50A-346: Reserved for future codification purposes.

§ 50A-347: Reserved for future codification purposes.

§ 50A-348: Reserved for future codification purposes.

§ 50A-349: Reserved for future codification purposes.

Article 3.

Uniform Deployed Parents Custody and Visitation Act.

Part 1. General Provisions.

§ 50A-350. Short title.

This Article may be cited as the "Uniform Deployed Parents Custody and Visitation Act." (2013-27, s. 3.)

§ 50A-351. Definitions.

The following definitions apply in this Article:

(1) Adult. – An individual who is at least 18 years of age or an emancipated minor.

(2) Caretaking authority. – The right to live with and care for a child on a day-to-day basis, including physical custody, parenting time, right to access, and visitation.

(3) Child. – An (i) unemancipated individual who has not attained 18 years of age or (ii) adult son or daughter by birth or adoption who is the subject of an existing court order concerning custodial responsibility.

(4) Close and substantial relationship. – A relationship in which a significant bond exists between a child and a nonparent.

(5) Court. – An entity authorized under the laws of this State to establish, enforce, or modify a decision regarding custodial responsibility.

(6) Custodial responsibility. – A comprehensive term that includes any and all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes custody, physical custody, legal custody, parenting time, right to access, visitation, and the authority to designate limited contact with a child.

(7) Decision-making authority. – The power to make important decisions regarding a child, including decisions regarding the child's education,

religious training, health care, extracurricular activities, and travel. The term does not include day-to-day decisions that necessarily accompany a grant of caretaking authority.

(8) Deploying parent. – A service member, who is deployed or has been notified of impending deployment, and is (i) a parent of a child or (ii) an individual other than a parent who has custodial responsibility of a child.

(9) Deployment. – The movement or mobilization of a service member to a location for more than 90 days, but less than 18 months, pursuant to an official order that (i) is designated as unaccompanied; (ii) does not authorize dependent travel; or (iii) otherwise does not permit the movement of family members to that location.

(10) Family member. – A sibling, aunt, uncle, cousin, stepparent, or grandparent of a child, and an individual recognized to be in a familial relationship with a child.

(11) Limited contact. – The opportunity for a nonparent to visit with a child for a limited period of time. The term includes authority to take the child to a place other than the residence of the child.

(12) Nonparent. – An individual other than a deploying parent or other parent.

(13) Other parent. – An individual who, in common with a deploying parent, is (i) the parent of a child or (ii) an individual other than a parent with custodial responsibility of a child.

(14) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) Return from deployment. – The conclusion of a service member's deployment as specified in uniformed service orders.

(16) Service member. – A member of a uniformed service.

(17) State. – A state of the United States, the District of Columbia, Puerto Rico, and the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(18) Uniformed service. – Service which includes (i) the active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States; (ii) the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or (iii) the National Guard. (2013-27, s. 3.)

§ 50A-352. Remedies for noncompliance.

In addition to other relief provided under the laws of this State, if a court finds that a party to a proceeding under this Article has acted in bad faith or intentionally failed to comply with the requirements of this Article or a court order issued under this Article, the court may assess reasonable attorneys' fees and costs against the opposing party and order other appropriate relief. (2013-27, s. 3.)

§ 50A-353. Jurisdiction.

(a) A court may issue an order regarding custodial responsibility under this Article only if the court has jurisdiction pursuant to Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) under Article 2 of this Chapter. If the court has issued a temporary order regarding custodial responsibility pursuant to Part 3 of this Article, for purposes of the UCCJEA, the residence of the deploying parent is not changed by reason of the deployment during the deployment.

(b) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to Part 2 of this Article, for purposes of the UCCJEA, the residence of the deploying parent is not changed by reason of the deployment.

(c) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, for purposes of the UCCJEA, the residence of the deploying parent is not changed by reason of the deployment.

(d) This section does not prohibit the exercise of temporary emergency jurisdiction by a court under the UCCJEA. (2013-27, s. 3.)

§ 50A-354. Notice required of deploying parent.

(a) Except as provided in subsections (c) and (d) of this section, a deploying parent shall, in a record, notify the other parent of a pending deployment not later than seven days after receiving notice of deployment unless the deploying parent is reasonably prevented from notifying the other parent by the circumstances of service. If the circumstances of service prevent notification within seven days, the notification shall be made as soon as reasonably possible thereafter.

(b) Except as provided in subsections (c) and (d) of this section, each parent shall, in a record, provide the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment as soon as reasonably possible after receiving notice of deployment under subsection (a) of this section.

(c) If an existing court order prohibits disclosure of the address or contact information of the other parent, a notification of deployment under subsection (a) of this section, or notification of a plan for custodial responsibility during deployment under subsection (b) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notice in a record is not required if the parents are living in the same residence and there is actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility between parents, a court may consider

the reasonableness of a parent's efforts to comply with this section. (2013-27, s. 3.)

§ 50A-355. Notification required for change of address.

(a) Except as otherwise provided in subsection (b) of this section, an individual to whom custodial responsibility has been assigned or granted during deployment under Part 2 or Part 3 of this Article shall notify the deploying parent and any other individual with custodial responsibility of any change of mailing address or residence until the assignment or grant is terminated. The individual shall provide the notice to any court that has issued an existing custody or child support order concerning the child.

(b) If an existing court order prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been assigned or granted, a notification of change of mailing address or residence under subsection (a) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been assigned or granted. (2013-27, s. 3.)

§ 50A-356: Reserved for future codification purposes.

§ 50A-357: Reserved for future codification purposes.

§ 50A-358: Reserved for future codification purposes.

§ 50A-359: Reserved for future codification purposes.

Part 2. Agreement Addressing Custodial Responsibility During Deployment.

§ 50A-360. Form of agreement.

(a) The parents of a child may enter into a temporary agreement granting custodial responsibility during deployment.

(b) An agreement under subsection (a) of this section shall be (i) in writing and (ii) signed by both parents or any nonparent to whom custodial responsibility is granted.

(c) An agreement under subsection (a) of this section may include the following:

(1) To the extent feasible, identify the destination, duration, and conditions of the deployment that is the basis for the agreement.

(2) Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent, if applicable.

(3) Specify any decision-making authority that accompanies a grant of caretaking authority.

(4) Specify any grant of limited contact to a nonparent.

(5) If the agreement shares custodial responsibility between the other parent and a nonparent, or between two nonparents, provide a process to resolve any dispute that may arise.

(6) Specify (i) the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child; (ii) any role to be played by the other parent in facilitating the contact; and (iii) the allocation of any costs of communications.

(7) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available.

(8) Acknowledge that any party's existing child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court.

(9) Provide that the agreement terminates following the deploying parent's return from deployment according to the procedures under Part 4 of this Article.

(10) If the agreement must be filed pursuant to G.S. 50A-364, specify which parent shall file the agreement. (2013-27, s. 3.)

§ 50A-361. Nature of authority created by agreement.

(a) An agreement under this Part is temporary and terminates pursuant to Part 4 of this Article following the return from deployment of the deployed parent, unless the agreement has been terminated before that time by court order or modification of the agreement under G.S. 50A-362. The agreement derives from the parents' custodial responsibility and does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent given caretaking authority, decision-making authority, or limited contact by an

agreement under this Part has standing to enforce the agreement until it has been modified pursuant to an agreement of the parents under G.S. 50A-362 or terminated under Part 4 of this Article or by court order. (2013-27, s. 3.)

§ 50A-362. Modification of agreement.

The parents may by mutual consent modify an agreement regarding custodial responsibility made pursuant to this Part. If an agreement made under this subsection is modified before deployment of a deploying parent, the modification shall be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement. If an agreement made under this section is modified during deployment of a deploying parent, the modification shall be agreed to, in a record, by both parents and any nonparent who will exercise custodial responsibility under the modified agreement. (2013-27, s. 3.)

§ 50A-363. Power of attorney.

If no other parent possesses custodial responsibility or if an existing court order prohibits contact between the child and the other parent, a deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment. The power of attorney is revocable by the deploying parent through a revocation of the power of attorney signed by the deploying parent. (2013-27, s. 3.)

§ 50A-364. Filing agreement or power of attorney with court.

An agreement or power of attorney created pursuant to this Part shall be filed within a

reasonable period of time with any court that has entered an existing order on custodial responsibility or child support concerning the child. The case number and heading of the existing case concerning custodial responsibility or child support shall be provided to the court with the agreement or power of attorney. (2013-27, s. 3.)

§ 50A-365: Reserved for future codification purposes.

§ 50A-366: Reserved for future codification purposes.

§ 50A-367: Reserved for future codification purposes.

§ 50A-368: Reserved for future codification purposes.

§ 50A-369: Reserved for future codification purposes.

Part 3. Judicial Procedure for Granting Custodial Responsibility During Deployment.

§ 50A-370. Proceeding for temporary custody order.

(a) After a deploying parent receives notice of deployment and during the deployment, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 521-522. A court may not issue a permanent order granting custodial responsibility in the absence of the deploying parent without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion shall be filed in an existing proceeding for custodial responsibility of the

child with jurisdiction under Part 1 of this Article or, if there is no existing proceeding in a court with jurisdiction under Part 1 of this Article, in a new action for granting custodial responsibility during deployment. (2013-27, s. 3; 2014-115, s. 38(a).)

§ 50A-371. Expedited hearing.

The court shall conduct an expedited hearing if a motion to grant custodial responsibility is filed before a deploying parent deploys. (2013-27, s. 3.)

§ 50A-372. Testimony by electronic means.

In a proceeding brought under this Part, a party or witness who is not reasonably available to appear personally may appear and provide testimony and present evidence by electronic means unless the court finds good cause to require a personal appearance. (2013-27, s. 3.)

§ 50A-373. Effect of prior judicial decree or agreement.

In a proceeding for a grant of custodial responsibility pursuant to this Part, the following shall apply:

(1) A prior judicial order designating custodial responsibility of a child in the event of deployment is binding on the court unless the circumstances require modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility of a child in the event of deployment, including a prior written agreement executed under

Part 2 of this Article, unless the court finds the agreement contrary to the best interest of the child. (2013-27, s. 3.)

§ 50A-374. Grant of caretaking or decision-making authority to nonparent.

(a) In accordance with the laws of this State and on the motion of a deploying parent, a court may grant caretaking authority of a child to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if it is in the best interest of the child.

(b) Unless the grant of caretaking authority to a nonparent under subsection (a) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than (i) the time granted to the deploying parent in an existing permanent custody order, except that the court may add unusual travel time necessary to transport the child or (ii) in the absence of an existing permanent custody order, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, except that the court may add unusual travel time necessary to transport the child.

(c) A court may grant part of the deploying parent's decision-making authority for a child to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if the deploying parent is unable to exercise that authority. When a court grants the authority to a nonparent, the court shall specify the decision-making powers that will and will not be granted, including applicable health, educational, and religious decisions.

(d) Any nonparent to whom caretaking authority or decision-making authority is granted shall be made a party to the action until the grant of caretaking authority or decision-making authority is terminated. (2013-27, s. 3.)

§ 50A-375. Grant of limited contact.

(a) In accordance with laws of this State and on motion of a deploying parent, a court shall grant limited contact with a child to a nonparent who is either a family member of the child or an individual with whom the child has a close and substantial relationship, unless the court finds that the contact would be contrary to the best interest of the child.

(b) Any nonparent who is granted limited contact shall be made a party to the action until the grant of limited contact is terminated. (2013-27, s. 3.)

§ 50A-376. Nature of authority created by order.

(a) A grant made pursuant to this Part is temporary and terminates pursuant to Part 4 of this Article following the return from deployment of the deployed parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom it is granted.

(b) A nonparent granted caretaking authority, decision-making authority, or limited contact under this Part has standing to enforce the grant until it is terminated under Part 4 of this Article or by court order.

(c) Any nonparent made a party because of a grant of caretaking authority, decision-making authority, or limited contact shall have no continuing right to party status after the grant of caretaking

authority, decision-making authority, or limited contact is terminated pursuant to Part 4 of this Article or by court order. (2013-27, s. 3.)

§ 50A-377. Content of temporary custody order.

(a) An order granting custodial responsibility under this Part shall (i) designate the order as temporary and (ii) identify to the extent feasible the destination, duration, and conditions of the deployment.

(b) If applicable, a temporary order for custodial responsibility shall comply with each of the following:

(1) Specify the allocation of caretaking authority, decision-making authority, or limited contact among the deploying parent, the other parent, and any nonparent.

(2) If the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any significant dispute that may arise.

(3) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications.

(4) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or is otherwise available,

unless contrary to the best interest of the child.

(5) Provide for reasonable contact between the deploying parent and the child following return from deployment until the temporary order is terminated, which may include more time than the deploying parent spent with the child before entry of the temporary order.

(6) Provide that the order will terminate following return from deployment according to the procedures under Part 4 of this Article. (2013-27, s. 3.)

§ 50A-378. Order for child support.

If a court has issued an order providing for grant of caretaking authority under this Part, or an agreement granting caretaking authority has been executed under Part 2 of this Article, the court may enter a temporary order for child support consistent with the laws of this State regarding child support if the court has jurisdiction under the Uniform Interstate Family Support Act under Chapter 52C of the General Statutes. (2013-27, s. 3.)

§ 50A-379. Modifying or terminating assignment or grant of custodial responsibility to nonparent.

(a) Except for an order in accordance with G.S. 50A-373 or as otherwise provided in subsection (b) of this section, and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 521-522, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has

been granted, the court may modify or terminate a grant of caretaking authority, decision-making authority, or limited contact made pursuant to this Article if the modification or termination is consistent with this Part and the court finds it is in the best interest of the child. Any modification shall be temporary and terminates following the conclusion of deployment of the deployed parent according to the procedures under Part 4 of this Article, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact. (2013-27, s. 3; 2014-115, s. 38(b).)

§ 50A-380: Reserved for future codification purposes.

§ 50A-381: Reserved for future codification purposes.

§ 50A-382: Reserved for future codification purposes.

§ 50A-383: Reserved for future codification purposes.

§ 50A-384: Reserved for future codification purposes.

Part 4. Return From Deployment.

§ 50A-385. Procedure for terminating temporary grant of custodial responsibility established by agreement.

(a) At any time following return from deployment, a temporary agreement granting custodial responsibility under Part 2 of this Article may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) The temporary agreement granting custodial responsibility terminates if (i) the

agreement to terminate specifies a date for termination or (ii) the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by both parents.

(c) In the absence of an agreement to terminate, the temporary agreement granting custodial responsibility terminates 60 days from the date the deploying parent gives notice to the other parent that the deploying parent has returned from deployment, unless earlier terminated upon the date stated in an order terminating the temporary grant of custodial responsibility or the death of the deploying parent.

(d) If the temporary agreement granting custodial responsibility was filed with a court pursuant to G.S. 50A-364, an agreement to terminate the temporary agreement shall also be filed with that court within a reasonable period of time after the signing of the agreement. The case number and heading of the existing custodial responsibility or child support case shall be provided to the court with the agreement to terminate. (2013-27, s. 3; 2014-115, s. 38(c).)

§ 50A-386. Consent procedure for terminating temporary grant of custodial responsibility established by court order.

At any time following return from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued under Part 3 of this Article. After an agreement has been filed, the court shall issue an order terminating the temporary order on the date specified in the agreement. If no date

is specified, the court shall issue the order immediately. (2013-27, s. 3.)

§ 50A-387. Visitation before termination of temporary grant of custodial responsibility.

After a deploying parent returns from deployment and until a temporary agreement or order for custodial responsibility established under Part 2 or Part 3 of this Article is terminated, the court shall enter a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child. The court shall enter a temporary order granting contact under this section even if the time exceeds the time the deploying parent spent with the child before deployment. (2013-27, s. 3.)

§ 50A-388. Termination by operation of law of temporary grant of custodial responsibility established by court order.

(a) A temporary order for custodial responsibility issued under Part 3 of this Article shall terminate, if no agreement between the parties to terminate a temporary order for custodial responsibility has been filed, 60 days from the date the deploying parent gives notice of having returned from deployment to the other parent and any nonparent granted custodial responsibility, when applicable, or upon the death of the deploying parent, whichever occurs first.

(b) Any proceedings seeking to terminate or prevent termination of a temporary order for custodial responsibility are governed by laws of this State. (2013-27, s. 3; 2014-115, s. 38(d).)

§ 50A-389: Reserved for future codification purposes.

§ 50A-390: Reserved for future codification purposes.

§ 50A-391: Reserved for future codification purposes.

§ 50A-392: Reserved for future codification purposes.

§ 50A-393: Reserved for future codification purposes.

§ 50A-394: Reserved for future codification purposes.

Part 5. Miscellaneous Provisions.

§ 50A-395. Uniformity of application and construction.

In applying and construing this Article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (2013-27, s. 3.)

§ 50A-396. Relation to Electronic Signatures in Global and National Commerce Act.

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b). (2013-27, s. 3.)

APPENDIX H

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF DELTA
FAMILY DIVISION

TINA VENEKSY AND JAMES VENESKY,
Plaintiff,

v. File No. 20-24551-DC
Hon. Perry R. Lund

MICHAEL SULIER,
Defendant.

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ORDER

At a session of said Court held in Delta County Courthouse,
Escanaba, Michigan, on October 14, 2020.

PRESENT: HON. PERRY R. LUND FAMILY DIVISION JUDGE / CIRCUIT COURT

This matter having come before the Court on Defendant's Motion for Summary Disposition under MCR 2.116(C)(4), with the parties having been served and their attorneys present, the Court makes the following findings:

WHEREAS:

1) North Carolina is the home state of the minor child, A.N.S, date of birth, 2013;

2) Michigan is not the minor child's home state and is an inconvenient forum in which to determine the child's custody;

3) An action regarding the minor child's custody and between the parties has been filed in the North Carolina General Court of Justice District Court Division, and that Court, through a phone conference with this Court, has indicated that North Carolina will accept jurisdiction over the child and determine her custody; and

4) This Court lacks subject matter jurisdiction over this dispute.

Therefore, in accordance with the findings and reasons stated above and on the record:

IT IS ORDERED THAT:

a) Defendant's Motion for Summary Disposition under MCR 2.116(C)(4) is granted.

b) This custody action is dismissed in its entirety.

c) The temporary guardianship over the minor child ordered by the Delta County Probate Court in Case No. 20-GM-22549 shall remain in place until further order of that Court.

IT IS SO ORDERED.

Dated: 10-29-2020

s/ Perry R. Lund
Hon. Perry R. Lund
(P53248)
Family Division
Judge/Circuit Court

[Stamp:] TRUE COPY FILED October 29, 2020

APPENDIX I

STATE OF MICHIGAN
PROBATE COURT
DELTA COUNTY

OPINION & ORDER
FILE NO. 20-GM-22549

In the matter of A.N.S.

Judge: HON. PERRY R. LUND, Bar no. P53248

Opinion:

Under MCL 722.1304 (1), a child-custody determination issued by a court of another state *may* (italicize added) be registered in this state.

Under MCL 722.1312, a court of this state shall accord full faith and credit to an order issued by another state and consistent with this act that enforces a child-custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under article 2.

Under MCL 722.1304(1), the child custody determination may be registered in Michigan, but there's no indication what happens if it is not registered. Presumably, a party is not entitled to any benefits of law they would be entitled to if they did not register the child-custody determination here. At the

same time, this court is required under full faith and credit (MCL 722.1312) to recognize the North Carolina custody determination.

This Court on February 1, 2023 ordered one specific thing, that the Temporary Guardianship would terminate on March 1, 2023 at 4:00pm.

The Court did not make any orders which would fall within the parameters of the Uniform Child- Custody Jurisdiction Enforcement Act. The Court did this specifically so the temporary guardianship was separate from issues involving the Uniform Child Custody Jurisdiction Enforcement Act.

At the hearing, it was brought forward that the visit with the father did not go well and the visitation for the next day was cancelled; the father was in agreement with cancelling said visit.

This Court, on the record, indicated perceived problems with transferring the child to the father's custody. That issue has not been addressed by the father. Is he intending on March 1, 2023 at 4:00pm to go to the Veneskey's residence and retrieve the child?

This Court specifically did not address the matter under the temporary guardianship.

How physical custody is acquired is addressed under the Uniform Child-Custody Jurisdictional Enforcement Act. MCL 722.1310 gives guidance on the issue as does other provisions of the Act.

Under MCR 2.119, the motion for Rehearing or Reconsideration must be denied as the Court did not commit palpable error. Termination of the temporary guardianship without triggering elements or the Uniform Child Custody Jurisdiction and Enforcement Act was not error.

Under MCR 2.612 (c) the court will grant the motion for Relief from Judgment. The Court will specifically do so under MCR 2.612 (C) (e) "any other reason justifying relief from the operation of the judgment."

This Court has concern as was addressed on the record, of how the transition of the minor to the father is to take place. The Uniform Child-Custody Jurisdiction and Enforcement Act addresses that issue. As such, given the unique facts of this case it is this Court's opinion that transition of the child to her father needs to occur under the Uniform Child-Custody Jurisdiction and Enforcement Act. Said child-custody determination from North Carolina shall be filed in Michigan.

This Court must, under full faith and credit, recognize the child-custody determination from North Carolina and, in looking at the best interest of the minor, must develop a means of transferring custody of the child to her father, the Uniform Child Custody Jurisdiction and Enforcement Act provides that means.

IT IS ORDERED:

For the reasons stated, relief from judgment is granted under MCR 2.612 (C) (e) and the Order terminating the temporary guardianship on March 1, 2023 at 4:00pm is hereby stayed, until such a time as the child-custody determination is registered in this state. The Court does not reverse any of its findings regarding termination of the temporary guardianship but parameters must be put in place regarding the transfer of custody and said parameters for achieving the transfer are contained in the Uniform Child Custody Jurisdiction Enforcement Act.

Dated: 02/14/2023 *s/ Perry R Lund*
Honorable Perry R. Lund

[Stamp:] FILED February 14, 2023