In the

Supreme Court of the United States

LEAH LYNN PARRISH WEBB,	)	
	)	
PETITIONER,	)	
	)	No. 79-6853
V.	)	
	)	
JAMES THOMAS WEBB	)	

Washington, D.C.
March 23, 1981

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ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

LEAH LYNN PARRISH WEBB,

Petitioner,

v.

JAMES THOMAS WEBB

No. 79-6853

Washington, D. C.

Monday, March 23, 1981

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 2:05 o'clock p.m.

APPEARANCES:

MARY R. CARDEN, ESQ., P. O. Box 1337, Gainesville, Georgia 30503; on behalf of the Petitioner.

MANLEY F. BROWN, ESQ., O'Neal, Stone, Brown & Sizemore, 1001 American Federal Building, Macon, Georgia 31201; on behalf of the Respondent.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in Webb v. Webb. Mrs. Carden, you may proceed whenever you are ready.

ORAL ARGUMENT OF MRS. MARY R. CARDEN, ESQ.,

ON BEHALF OF THE PETITIONER

MS. CARDEN: Mr. Chief Justice, and may it please the Court:

This cases arises on a writ of certiorari to the Georgia Supreme Court. The issue before this Court is not whether full faith and credit should be applied to custody decrees in the abstract but rather whether a decree which meets all requirements for the application of full faith and credit was properly denied such full faith and credit simply because of its nature as a custody decree. Or whether --

QUESTION: Ms. Carden, before you go on?

MS. CARDEN: Yes, Your Honor.

QUESTION: How are you here?

MS. CARDEN: Pardon?

QUESTION: How did you get here? Did you raise these federal questions below?

MS. CARDEN: Yes, Your Honor. The first time the federal question was raised was in the motion to dismiss in the trial court in Berrien County, Georgia. We specifically requested that the court afford full faith and credit to a

final Florida judgment rendered just days before.

QUESTION: Did you cite the Federal Constitution?

MS. CARDEN: No, we did not cite the Federal Constitution although we felt and we continue to feel that full faith and credit is such a clear issue, there is no reference to it in the Georgia Constitution or any other statute, and since it was implicit that we were referring to the U. S. Constitution, that that was not necessary. And it was clear, I think it's clear from the finding of the Georgia Supreme Court, and of course we did raise it in our enumerations of error on appeal.

QUESTION: Well, the Georgia Supreme Court didn't say a word about full faith and credit?

MS. CARDEN: No, they didn't say a word about full faith and credit although they held that the Florida decree was a final decree and then continued on to say, nevertheless, it had no effect in preempting jurisdiction of the Georgia courts.

QUESTION: And you regard that as a disposition of the full faith and credit argument?

MS. CARDEN: Yes, Your Honor, we feel that that completely disposes of the full faith and credit issue since they ignored the --

QUESTION: Now, you started to say that you raised it in your -- ?

MS. CARDEN: Yes, we raised it in our enumerations of error to the Georgia Supreme Court.

QUESTION: And what form did that take?

MS. CARDEN: We requested that the trial court be found in error for failing to accord full faith and credit to the Florida decree.

QUESTION: Again any reference to the Constitution?

MS. CARDEN: No, Your Honor.

QUESTION: Doesn't the Georgia Supreme Court rules of practice require that any assignment of error that's not supported by argument or case citation shall be deemed abandoned?

MS. CARDEN: There are some very specific rules to which I think the respondent was referring to that do deal with the raising of constitutional issues and the attack under the constitutionality of the statute. Of course, that wasn't the case here. And there are general rules that do say that you must argue your issues in your brief. We felt that the entire brief was based on the full faith and credit issues, and although there were various state issues involved that the whole tenor of the brief was obviously a full faith and credit issue brief.

QUESTION: Are the briefs in the Georgia Supreme Court in the record somewhere?

MS. CARDEN: Not the briefs, Your Honor, I don't

believe. I believe the Appendix, it contains everything but the briefs.

QUESTION: I thought one of your major points was that the Georgia courts didn't follow the statute?

MS. CARDEN: Below, Your Honor, we argued that, -- and I will get to this in more detail -- that the Uniform Child Custody Jurisdiction Act, which was applicable in both Florida and Georgia, also prohibited the Georgia court from assuming jurisdiction, but that was an independent ground from full faith and credit, because the Uniform Child Custody Jurisdiction Act is only --

QUESTION: You didn't have a separate section in your brief in the Georgia Supreme Court arguing full faith and credit?

MS. CARDEN: No, we didn't, Your Honor.

QUESTION: You just argued the statutory question.

MS. CARDEN: We argued that on the basis of the Uniform Child Custody Jurisdiction Act, but also on the basis of the Full Faith and Credit Clause, that the trial court was in error.

QUESTION: Did you cite the Full Faith and Credit Clause of the United States Constitution in your brief?

MS. CARDEN: No, we did not, Your Honor. We felt that unlike due process and some other more nebulous terms that may be found in numerous statutes and the state constitution,

there was no question as to our reference to the full faith and credit provisions as being the United States Constitution. There is no other reference in Georgia law to full faith and credit.

The facts of the case are fairly straightforward. Mr. and Mrs. Webb were divorced in the Superior Court of Berrien County, Georgia, in September, 1977. In November, 1977, the petitioner, Mrs. Webb, who was awarded custody of the minor child, moved to the State of Florida with the minor child and became a resident there. Some 15 months later, in February of 1979, she took a two-day vacation to Miami leaving the minor child, according to her testimony, in the care of her next door neighbor, who was also her cousin.

During that two-day absence the respondent came to the State of Florida and removed the minor child from the State of Florida.

QUESTION: Weren't there some intervening events?

MS. CARDEN: Yes, Your Honor. The testimony of the petitioner in the trial court in Georgia, and the testimony there was restricted to the testimony of the petitioner and the respondent. The petitioner alleges that he went to the State of Florida because of an emergency situation that existed there. His own testimony indicates, though, that when he did get to the State of Florida he found the child with the next door neighbor who was the petitioner's cousin.

QUESTION: How did the Florida authorities get into the act in that interim?

MS. CARDEN: Your Honor, we are totally uncertain because the only indication that we have that there was any problem at all was that of the respondent's testimony in the trial court of Berrien County. No authorities were present to testify to corroborate his testimony. That was really the first indication we had that there had been, if there was, any real problem there.

QUESTION: Incidentally, Ms. Carden, I gather the youngster is back with her mother now in Florida.

MS. CARDEN: Yes, Your Honor, in November of 1980 the respondent contacted the petitioner to pick up the minor child and the petitioner had had the minor child in Florida, although the respondent -- pardon?

QUESTION: What's there left to fight over?

MS. CARDEN: Well, the respondent has specifically refused to agree to any kind of permanent custody disposition or modification.

QUESTION: But he's turned the child back to the mother?

MS. CARDEN: That's correct, but he still --

QUESTION: Has he indicated that he wants the child back, ever?

MS. CARDEN: He has refused to agree to any

modification of custody or to give any written agreement which would give any kind of permanence to this relationship. Of course, that he still has legal custody and would be able to make his claim on the child at any time.

QUESTION: Did he say why he was surrendering the child?

MS. CARDEN: No, Your Honor, I do not have any personal --

QUESTION: Ms. Carden, in the absence of a violation of the Full Faith and Credit Clause in a case like this, there's no federal question for this court to consider, is there?

MS. CARDEN: That's correct. Our sole issue is whether or not this particular judgment of the Florida court was entitled to full faith and credit.

After finding that the respondent had removed the minor child, the mother contacted local counsel and filed an action in the State of Florida seeking the return of the minor child, and also seeking a restraining order. The restraining order after an ex parte hearing was granted to the mother on the date of filing in March, 1979, and specifically ordered the father to return the child to the State of Florida pending further litigation on the matter.

The father, the respondent, did not answer whatsoever in this Florida proceeding. Instead --

QUESTION: Service was made on him in Georgia, was it?

MS. CARDEN: That's correct. He was personally served by a law enforcement officer with all the process in Georgia.

QUESTION: Who was the law enforced by, Georgia or Florida?

MS. CARDEN: Yes, it was a Georgia law enforcement officer. There has never been any question concerning his having actual notice, nor of the sufficiency of service in this case. But he did not file an answer and instead turned around ten days later and over a month after he had taken the child from Florida and filed an independent action in the Superior Court of Berrien County requesting custody of the minor child. He did not alert that court to any pending proceedings in Florida.

QUESTION: Well, what is the real controversy that's remaining, as Mr. Justice Brennan suggested to you?

MS. CARDEN: Well, of course, the legal custody of the child still remains.

QUESTION: You want us to set aside the Florida decree, I take it?

MS. CARDEN: Yes, Your Honor, that is our -- for Mrs. Webb to now regain custody she would have to seek a modification, she would have to go back to the Court in Georgia,

and since we have a pending proceeding that isn't possible at this time.

QUESTION: Well, why not wait until that controversy arises?

MS. CARDEN: Your Honor, the respondent right now has every right to go to the State of Florida to remove that child. He would even be able to seek the assistance of law enforcement officers to get the return of the child now, so we are in a very precarious position.

QUESTION: Can he do that under the new federal statute?

MS. CARDEN: The new federal statute, the Parental Kidnapping Prevention Act, from everything I can determine is not effective until July 1, 1981. It does provide a series of enforcement mechanisms for custody decrees and it's impossible to say exactly what effect it would have had on this case had it been effective. Obviously, its intent is to provide an enforcement mechanism for custody decrees, even custody decrees that would not be enforceable under the full faith and credit clause because of lack of finality and other problems. But, fortunately or unfortunately, we really at this point do not know what that effect would have been on our case.

After the respondent did not answer in the Florida proceeding, and after he had commenced his proceeding in

Georgia, the Florida court did hold a full hearing on the issue, even though he was in default. And at that hearing they entertained the testimony of the petitioner and made the following determinations.

(1) They determined that Florida had subject matter jurisdiction in that the petitioner and the minor child were residents of the State of Florida and that the minor child's absence from the State of Florida did not affect his status as resident of that state.

Secondly, they found that they would recognize the Georgia decree and would establish this decree in the State of Florida. And according to respondent and the amicus curiae, that's all they did. But of course the record indicates otherwise.

The court went on and found that it was in the best interest of the child to modify visitation, not just parroting the petitioner's request for modification of visitation, but setting out a full schedule of visitation which really did in no way decrease the respondent's visitation rights.

And lastly, and really most importantly, the Florida court reviewed the other provisions of the Georgia decree that were in force at that time and determined that there was no reason to change any of those provisions, that they should remain in full force and effect. And, of course, one of those, the major one of those, was that the custody

remained with the petitioner.

After the Florida judgment was rendered, the petitioner filed an answer with the Georgia court, or amended the answer she had already filed with the Georgia court and informed the Georgia court that the Florida court had already rendered a final judgment and requested in her motion to dismiss that, as we have indicated earlier, that the Florida judgment be afforded full faith and credit in Georgia.

The Georgia court, nevertheless, held a hearing on the matter and as I indicated earlier, restricted the testimony to the testimony of the petitioner and the respondent. After hearing the testimony of the petitioner and the respondent, it entered a final order completely in favor of the respondent, awarding him custody of the minor child.

QUESTION: When did the mother first acquaint the Georgia court with the action in Florida?

MS. CARDEN: She filed her answer in March, 1979, and also at that time filed a motion to dismiss, and she informed the court at that time that there was a pending proceeding in Florida.

QUESTION: Had anything occurred in the Georgia proceeding up to that time?

MS. CARDEN: No; no. The first thing that occurred in the Georgia proceeding after the filing on March 24 --

QUESTION: You mentioned earlier that the father

had brought this proceeding in Georgia without informing the Georgia court of the pendency of the Florida proceeding, but as I now understand it that was of no significance.

MS. CARDEN: No, except to indicate that he had not made that disclosure.

QUESTION: Because, right after the completion of the Florida proceeding you then filed an answer which fully acquainted the Georgia court with everything that had happened in Florida?

MS. CARDEN: We had filed an answer previously, but, of course, all we could alert the court to was that there was a pending Florida proceeding and ask them to decline jurisdiction and allow Florida to decide the entire matter. Then, after the final judgment was rendered, we amended that answer, informing them of the final judgment, and at that time requesting that it be accorded full faith and credit.

In the Georgia court order it did not mention whatsoever the Florida proceeding or the Florida judgment. There was no ruling whatsoever as to the significance of either and it also found a material change of circumstances justifying its change of custody based on events all of which had occurred months and even, in several cases, a year and a half prior to the rendition of the Florida order.

From the order of the Superior Court of Berrien County we did appeal to the Georgia Supreme Court and

enumerate this error and failure of the Georgia trial court to give full faith and credit to this Florida decree.

QUESTION: Ms. Carden, can you tell me why the Georgia Supreme Court didn't mention the words "full faith or credit"? Either one of those words?

MS. CARDEN: I presume they thought that they didn't have to reach that issue because of the state grounds that they dealt with, but they did find that it was a final judgment of the State of Florida, and then they turned around in the next few sentences and said that that had no effect, or did not preempt jurisdiction.

QUESTION: No, it started off by saying that the case was there "on the certain provision of Georgia's Uniform Child Custody Jurisdiction Act, Code Annotated 74501." That's the first sentence of it.

MS. CARDEN: One of my enumerations of error was that the Georgia court just declined --

QUESTION: Well, why did they just ignore it? My question is, why did they ignore it?

MS. CARDEN: I presume, Your Honor, that they thought they could make a decision on that ground alone and not deal with the full faith and credit issue. That was one of our enumerations of error.

QUESTION: Did you say, full faith and credit of the U.S. Constitution in your brief?

MS. CARDEN: No, we referred to the failure of the trial court to give full faith and credit to a final Florida judgment.

QUESTION: You didn't cite any constitutional provisions?

MS. CARDEN: No, we didn't cite any constitutional provisions.

QUESTION: So you want us to say you don't have to cite the Constitution in order to invoke this Court's limited jurisdiction?

MS. CARDEN: Your Honor, in many cases I think the failure to cite the U.S. Constitution would lead to confusing results.

QUESTION: I'm eagerly waiting for you to give me the citation.

MS. CARDEN: Well, in the cases dealing with due process, for instance, this Court has held that --

QUESTION: What case?

MS. CARDEN: In cases dealing with due process this Court has held that a failure to specify which provision of the Constitution --

QUESTION: One of the cases -- you cite it.

MS. CARDEN: Pardon?

QUESTION: Please cite me one case that says that.

MS. CARDEN: That the failure to give the exact provision of the United States Constitution doesn't sufficiently raise

a federal issue?

QUESTION: Yes, ma'am.

MS. CARDEN: Well, I can cite to you cases which have held that if it is explicit in the entire record that the issue was appropriately raised, then this Court can decide the federal claim.

QUESTION: Was this case -- well, where was the article of the Constitution of the United States raised in your case? Never.

MS. CARDEN: That's correct. We did not cite to Article IV, Section 1, of the United States Constitution, but we feel that because of the unique nature of the full faith and credit clause, it has no other reference. It's not something that the Court can mistake as being a reference to a state constitution provision for full faith and credit.

QUESTION: I suppose a state court can't simply evade a properly preserved federal question by writing an opinion saying that this case deals with a state law and simply treating state issues.

MS. CARDEN: Well, that would be our feeling about the case because, of course, they did indicate, they recognized that the Florida judgment was final, had been rendered three weeks before, and yet then they went on and said, nevertheless, the Georgia court has jurisdiction. So it indicates that their obvious result was that there was no full faith

or credit afforded.

QUESTION: Then, why didn't you cite it here? When you came to this Court you did cite it.

MS. CARDEN: Well, we understood at that point that we did --

QUESTION: Was this the first time you heard of it, eh? Is that the first time you heard of it?

MS. CARDEN: No, Your Honor. Of course, in the state court, we had a number of grounds for enumerations of error and here it is our only ground and then of course we've raised it very specifically.

QUESTION: Of course, the whole thrust of the Uniform Act is to, as some point, to persuade some state to respect the judgment of another state, and so that, to call it, it might be perfectly natural to refer to the obligations under the Act as a full faith and credit obligation.

MS. CARDEN: Well, of course, the Act specifically refers to itself as being a comity-based statute and does not of course have anything to do with anything related to full faith and credit in the United States Constitution.

QUESTION: Well, it attempts to convince a state it ought to give some respect to a judgment of another state.

MS. CARDEN: That's correct; as a matter of comity, by making laws more uniform in order to have it recognized.

QUESTION: Or as a matter of full faith and credit.

MS. CARDEN: Well, we would argue that the Uniform Child Custody Jurisdiction Act, of course, changes state law, but it does eventually allow, mandates for the application of full faith and credit in the U.S. Constitution, and to that extent, yes, but the Act itself does not mandate full faith and credit be given. In rephrasing the issue that we stated earlier, really all we are asking this Court to do is to look at the judgment rendered in this case and to afford it the same measure of full faith and credit as it would render or accord to any other judgment regardless of its nature as a custody decree.

We can find no evidence in either Article IV, Section 1, or in the earlier opinions of this Court that would indicate that just by its nature, as a custody decree, it would not be entitled to full faith and credit. Obviously, there's nothing in the exact wording of Article I, Section 4, that says anything regarding custody decrees. In the four cases that this Court has dealt with prior to this time in which a custody decree was sought to be accorded full faith and credit, this Court has examined the custody decree to determine whether it mandates full faith and credit to be applied to other judgments and found that the very custody decree examined did not meet certain requirements and the two that this Court has dealt with previously have been the lack of due process afforded to the defendant in the proceeding

and also in the past, the lack of finality that custody decrees were accorded in the state in which they were rendered.

QUESTION: Incidentally, Ms. Carden, I gather this uniform statute, it mandates, doesn't it, that the judge in Florida communicate with the judge in Georgia?

MS. CARDEN: Your Honor, I believe the exact language of the statute says that when a court is informed that there is a prior pending proceeding, that the court of the second state is to communicate with the court of the first state, but --

QUESTION: So that if there was a deficiency --

MS. CARDEN: That's correct.

QUESTION: -- it was on the part of the Georgia judge --

MS. CARDEN: That's correct.

QUESTION: -- not calling the Florida judge after he learned of the pendency of the Florida action, correct?

MS. CARDEN: That's correct. The Florida proceeding was pending and there has been no dispute that it was pending several weeks before the institution of the Georgia proceeding and the court --

QUESTION: Have you had any experience with that provision?

MS. CARDEN: Pardon?

QUESTION: Have you had any experience with that provision?

MS. CARDEN: Well, I think now the Act is becoming more familiar to judges. They are beginning to communicate with each other and trying to informally resolve these differences. I'm sure that there are going to be exceptions to this.

QUESTION: I wish that had been in effect about 30 years ago.

QUESTION: Ms. Carden, didn't the Georgia Supreme Court say both trial courts were at fault in failing to contact the other trial court?

MS. CARDEN: That is what the Georgia Supreme Court held. The actual wording of the statute actually says the court of the second state has the obligation to confer with the state in which the original proceeding is pending first.

QUESTION: Then, the question is, which is the second state? In a sense, Florida was the second state because the decree was originally a Georgia decree.

MS. CARDEN: Of course, but in Georgia -- and Georgia may be very unique in this sense, Georgia courts do not exercise any continuing jurisdiction once the decree is rendered, so once the decree is rendered they lose their jurisdiction unless a second suit is instituted under similar residence and venue requirements, so there was nothing pending in Georgia. The Georgia courts don't even construe it to be --

QUESTION: What is your view of what the Georgia

court should have done? Supposing the Georgia court had called up the Florida judge and said, well, we've entered this decree down here, there was an ex parte hearing, and the wife testified and so forth. But we really didn't have a full hearing on the question of whether there had been changed circumstances since the original decree. Wouldn't they then have gone ahead and had the full hearing he did have?

MS. CARDEN: If, according to the Uniform Act, the parties had -- well, everything had gone as, I think, the Uniform Act considers it, upon learning of the pending Florida proceeding -- and the Georgia court did know of that long before the order was rendered in Florida -- there would have been communication between the courts concerning which was the appropriate forum and how the best manner in which evidence could be taken could be arranged.

QUESTION: Would you agree that in one court or the other it would have been proper then to hold a hearing on whether there'd been changed circumstances?

MS. CARDEN: I think that the courts themselves can determine which is the most appropriate forum and upon that decision have the hearing.

QUESTION: But if you admit that, then you're not saying that the Georgia court was obliged to enter the same decree that the Florida court had entered? He's merely obliged to take it into account in deciding what to do?

MS. CARDEN: Had there been -- I would say that it would not be impossible for the Georgia court to have had jurisdiction had there not been a final judgment rendered in the State of Florida, without that final judgment rendered in the State of Florida.

QUESTION: Well, that's your full faith and credit argument, isn't it?

MS. CARDEN: That's correct.

QUESTION: Tell me, does the statute say -- you suggest that it's the Georgia judge who should have called the Florida judge under the facts of this case. Does the statute say what happens if the Georgia judge didn't telephone the Florida judge?

MS. CARDEN: No, there's no remedy provided in that regard, in the statutory law.

QUESTION: I mean, no suggestion that a failure to call the Florida judge meant a loss of jurisdiction in the Georgia court, is it?

MS. CARDEN: No, there's no penalty or remedy provided for the failure to comply with any of these sections.

QUESTION: I think you've made this point clear in an answer to a previous question from me, that certainly we have no jurisdiction to construe the Uniform Act unless it runs afoul of the Full Faith and Credit Clause in some way.

MS. CARDEN: Yes, I think the only -- really the

two sections of the Uniform Act that are important to the full faith and credit issue, one, are the provisions which provide for due process to be afforded to the respondent, which of course is required under full faith and credit.

QUESTION: Does the Act address a situation where one state enters a final judgment like the Florida court did here, and yet another state goes ahead, like Georgia did?

MS. CARDEN: The Act --

QUESTION: Does it purport to permit that?

MS. CARDEN: In a comity-based sense the Act says that if one state has rendered a judgment in compliance with the Act, then the other state shall honor it. That's the provision of the Act. Of course, that's based on comity.

QUESTION: The Act is not before us, is it?

MS. CARDEN: No, it's not, and the only other provision of the Act, other than the due process provisions which do afford jurisdiction to the --

QUESTION: Well, that's a Georgia statute. I suppose if a Georgia trial judge, after being informed of a final judgment being entered in a Florida court, if he went ahead and nevertheless entered a judgment of his own, he might be reversed in a Georgia court on the grounds that he's violated the state statute.

MS. CARDEN: That's correct.

QUESTION: So that's obligatory. It just isn't a

matter of comity, I mean. The statute says, you must -- does it say that?

MS. CARDEN: It says "shall." "Shall enforce" the statute. The only other section of the Uniform Child Custody Jurisdiction Act that's really relevant is the section which does make custody decrees final, binding, and conclusive, and does take away the previous status of the law which kept them on the breast of the court, modifiable at any time, and I think those are the only two areas where the Act really has relevance.

QUESTION: Ms. Carden, if the parties now stipulated to vacate the Georgia judgment, would there be any case left at all?

MS. CARDEN: No, Your Honor. In fact, we had hoped that that would occur after the child was exchanged in November. We had hoped that there would be an agreement between the parties but evidently the respondent has not been willing to do so, and as a result we have no assurance as to the continuing legal status of the child.

QUESTION: But if there were a repeat performance after July 1, 1981, there wouldn't be any problem either, would there?

MS. CARDEN: I hope there wouldn't be any problem although the new Criminal Kidnapping Prevention Act of course is based on principles of the Uniform Child Custody

Jurisdiction Act, and it would be subject to the same kind of interpretation that perhaps has been handled in this case, and there could be similar problems.

In summary, Your Honor, really all we're asking the Court to do in this case is to scrutinize this custody decree in terms of the mandates for full faith and credit to any other judgment, and if it meets those mandates for the application of full faith and credit, to apply full faith and credit to this decree and allow -- to reverse the judgment of the Georgia Supreme Court, not affording full faith and credit to it. Thank you, Your Honor.

MR. CHIEF JUSTICE BURGER: Very well. Mr. Brown.

ORAL ARGUMENT OF MANLEY F. BROWN, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. BROWN: Mr. Chief Justice and may it please the Court:

As the Court knows from our brief, the primary thrust of the respondent is that this is not, this case is not the proper vehicle for this Court to address the serious constitutional law problems which would be presented by this petition for certiorari.

QUESTION: Well, you certainly didn't help us much in your response to the petition.

MR. BROWN: Well, begging the Court's pardon, I personally didn't file that, in defense of myself.

QUESTION: Well, I know, but I say the state didn't.

QUESTION: We weren't alerted to the fact that --

MR. BROWN: Well, of course, that's the main problem with this whole case is that nobody, none of the lawyers in the court below ever saw any of these issues. They were never dealt with, they were never properly raised, the Georgia Supreme Court never addressed them, and at the point where I came into the case --

QUESTION: But the petition said that the issue had been raised, and we no longer require the filing of records with our petitions for certiorari, like we did historically. And so, nor -- it's not unusual to credit a statement of a petitioner if the respondent doesn't say something about it, doesn't challenge it. And it wasn't challenged here.

MR. BROWN: Well, I thoroughly agree with Your Honor's observation. All I'm saying in defense of myself is that I did not file a response to --

QUESTION: You're appointed by us?

MR. BROWN: I was appointed by the Court after the case --

QUESTION: Yes.

MR. BROWN: -- arrived at this level. And at that point I raised every conceivable point that immediately occurred to me, namely, that the point had not been properly raised in the Georgia Supreme Court. Because the portion of

the record that fully exposes the fact that this issue was never even thought of in the court below is the motion for rehearing filed by the petitioner. If you look at it at page 52 of the Joint Appendix and take cognizance of the fact that under Georgia law a motion for rehearing addressed itself to telling the court wherein you have made a mistake. It's supposed to be used to point out to the Georgia court precisely what they did wrong. And it's supposed to be to some extent a predicate for a certiorari petition to this Court.

If you look at the motion for rehearing, you'll see that it states only that the Georgia Supreme Court ignored relevant Georgia precedent and that it rendered a decision on an incorrect interpretation of the Uniform Act. It never mentioned in any form, shape, or fashion whatsoever the full faith and credit clause of the Federal Constitution, Article IV, Section 1.

Now, those words were used a couple of times in the record but they were never used with very much precision, and ordinarily the Georgia Supreme Court would not totally ignore that issue. As you look at other decisions of the Court you see that they have dealt with full faith and credit, and at least they would have graced the contention by saying that it lacked merit. As it is, they didn't even mention it.

QUESTION: Here are two of your three justices dissenting from the disposition of the case, at Joint Appendix

on page 53, and none of them refer to the Full Faith and Credit Clause.

MR. BROWN: Exactly. They were complaining that the majority had returned to authorization of child snatching and had misconstrued that.

QUESTION: Why do you suppose your Supreme Court didn't cite its own Rule 45?

MR. BROWN: I have no idea. I imagine they just were never aware that the enumeration of error was intended to even raise a federal constitutional provision, because they regularly cite Rule 45 as to enumerations of error which have not been supported by evidence.

QUESTION: While I have you interrupted, may I ask, Mr. Brown, what about the return by -- he's your client now -- of the child to the mother?

MR. BROWN: Your Honor, it's my understanding the child is not with the mother but the child is with the maternal grandmother. That's in my brief, the initial brief I filed. I was advised of that by prior counsel in the case. Since that time I have been advised by Mr. Webb -- I made that specific inquiry of him last week, because I knew the Court would ask about it -- and he advised me again that the child is with his ex-wife's mother, and not returned to the --

QUESTION: Well, does the mother live with her mother?

MR. BROWN: No, she lives somewhere else. She lives I think, in Jacksonville, Florida, and the mother lives over in Gainesville, so frankly I don't know exactly what the truth of the matter is, because I haven't seen with my own eyes where the child is. I know the father does not have the child and it's my understanding that the maternal grandmother does have the child.

QUESTION: Did your client say why he didn't want to keep the child?

MR. BROWN: No, sir. And frankly, I don't know, I don't understand. That's one of a number of things about this case, that as a practical matter, as a lawyer, you don't understand.

QUESTION: But you just wonder what --

MR. BROWN: He doesn't want his wife to have the child back. He's adamant about that, and adamant about continuing in this Court and not entering into the stipulation that they've invited, because I've asked him to do that, because it would have eliminated my job in this Court and would have eliminated the Court's work.

Now, in addition to the other points that we raised in our brief, and suggested to the Court, that this case ought not be heard on the merits, I want to suggest to the Court that in connection with this new federal act, the Parental Kidnapping Prevention Act of 1980, it's not at all

clear, I don't think, that that particular Act goes into effect only on July 1 of 1981. I think, in being candid with the Court, some argument can be made -- and I'm not sure which one of us would win under the Act, but I think a reasonable argument can be made that the Act became effective on December 28 when President Carter signed the Act into law. I say that because the Act was part of some social security amendments dealing with pneumococcal vaccine services and the Delayed Effective Date Act, if you read the language carefully, you see that it refers only to services provided, which clearly indicates that the Delayed Effective Date Act refers to the pneumococcal vaccine amendment and not to the Parental Kidnapping Prevention Act.

There are two other delayed effective dates in that legislative package, both relating to other sections. There is no suggestion whatsoever in the Act that the parental Kidnapping Prevention Act of 1980 is to have a delayed effective date until July 1, 1981.

QUESTION: Where in your brief is that?

MR. BROWN: If Your Honor pleases, the Act was passed sort of at the 11th hour, and I don't think we even had a copy of it until after I filed the brief and the reason I'm mentioning it to you in oral argument is because it's not in the brief, to try to give the Court that information. And if we need to supplement that by way of additional brief,

we'll do it, with the Court's permission. In addition to that, the legislative history of this particular Act indicates that it was considered as part of several legislative packages. In none of those legislative undertakings was it ever suggested that the Act should have a delayed effective date.

QUESTION: Ms. Carden has conceded -- we wouldn't necessarily hold her to that -- she has conceded that if the Act were in effect now, there would be no case at all. She said, if it was only a problem between now and July 1 -- now, if you're telling us that there's no problem even now, between now and July 1, that might be relevant. I suggest that you submit some observations on that subject.

MR. BROWN: With the Court's permission we would submit a supplemental brief on that point, if the Court desires. Frankly, I don't know who wins under the new Act; it's not that clear.

QUESTION: Well, anyway, Mr. Brown, if there is a cullable possibility that the Act is in effect, I suppose what we'd do is send it back for reconsideration under the Act.

MR. BROWN: Well, I think you could look at the Act in connection with the principles of Bradley v. School Board of Richmond, as to whether you would apply an Act which came into being while the case was on appeal.

QUESTION: But we wouldn't decide that in the first instance, probably.

MR. BROWN: I don't see any need to do it. I'm just saying that the Court could, if it saw fit to do so. At any rate, if the Act, if the Court concludes that the Act does not come into effect until July 1, 1981, it still has such an impact on this case that it sterilizes the constitutional issues in the case insofar as this particular proceeding is concerned so that it really does not make sense for this Court to get into these constitutional issues when an Act of Congress pursuant to Article IV, Section 1, is purporting to deal with this.

Now, I realize that this Act still doesn't cure the monumental, necessarily cure the monumental personal jurisdiction problem that underlies this whole problem between the states, but still it's a step in the right direction. And I think the Court under the doctrine of such cases as Rice v. Sioux Memorial Park should consider that even though the Act is not in effect now, it has such an impact on this case that it would render of isolating significance this particular case.

QUESTION: Since you seem to have the matter well in the front of your mind, perhaps you can have that to us by the end of this week?

MR. BROWN: All right, sir. We'll endeavor to do that.

QUESTION: It doesn't have to be printed.

QUESTION: No, this can be typewritten, I assure you.

MR. BROWN: Now, there's one other issue that was not adequately briefed that I want to call to the Court's attention and it has to do with a question of cooperation between the Florida and the Georgia courts and what Florida should have done. Frankly, there was a provision of this Uniform Act that's never been mentioned that in preparation for oral argument I came across it, and it said that --

QUESTION: We really have no jurisdiction to second guess the Georgia Supreme Court on the interpretaion of the Uniform Act.

MR. BROWN: Well, this provision has something to do, I think, with personal jurisdiction and how to go about handling the Act without triggering this type of question and causing it to come to this Court. That's Section 19(b) of the Uniform Act, which is not exactly like the URESA provisions which this Court discussed in Kulko, in the footnotes in Kulko. 19(b) does authorize the Florida judge when a proceeding like this is filed to contact the Georgia judge and ask the Georgia court to initiate a proceeding over their resident over whom they have personal jurisdiction compelling him to come to Florida to participate in this child custody decision and the Georgia Act has the correlative section which is 20(c) which says that if they get a request from a Florida judge, they are bound to exercise personal jurisdiction

over their resident and require the resident to go to Florida.

So that, what I'm saying is, it was unnecessary to get into the constitutional problems that you have in this case if the petitioner had simply utilized the provisions that were available in the Act. They could have compelled Mr. Webb under penalty of contempt in Berrien Superior Court in Georgia to go to Florida, and this case, I submit, would never be here. And I think that's another reason why this Court should consider just dismissing the case.

QUESTION: Mr. Brown, could they do that even now? In other words, could not the mother file some kind of amendment in the Florida action and say, well, there've been changed circumstances in the last six months, the child's back in Florida, you've got jurisdiction over me and the child, please call the Florida judge on the phone and let's have somebody try this thing out with --

MR. BROWN: Certainly. I think this thing is still a wide-open issue, I think it's the problem that this Court has always seen with child custody decrees, they're never final, there are no vested rights in this area. As a matter of fact, there are changed circumstances, obviously. My client doesn't even have the child now. The child is back with the maternal grandmother. So we're up here disputing about something that is already changed and under Halvey and

the other decrees, under other cases of this Court that have recognized that proposition it'd be satisfactory to send the case back to the trial judge and say, judge, find out what happened in this case. What's going on? Why is the child gone? Who has the child, and what disposition should be made? It just means that there's no reason for this Court to get involved in something that raises serious and difficult questions of constitutional law.

QUESTION: If we followed your suggestion of a dismissal, there would be no holding of the Georgia court on any federal question.

MR. BROWN: Absolutely not, because the Georgia court never followed the federal question. If you look at the Georgia cases we have cited, where they've dealt with the Uniform Child Custody Jurisdiction Act and attacks on that Act of a constitutional nature, you'll see that they have always addressed themselves to the full faith and credit question and they've merely said, we aren't concerned with full faith and credit as a matter of Georgia law because we are enforcing this Act under comity. That's what this Act was designed to be, it was a cooperative effort between the states. Georgia didn't buy this act with a view toward having this Court telling them that they had to construe the Act a certain way, by virtue of Article IV, Section 1. If you read --

QUESTION: This is not a uniform act that the Congress consented to, is it? I mean, it's not a compact?

MR. BROWN: No, sir.

QUESTION: An interstate compact.

MR. BROWN: It's just a uniform act --

QUESTION: Among the states.

MR. BROWN: Somebody lobbies in each legislature, and if they want to pass the thing they put it into effect, and that's exactly what Georgia has done and they didn't accept it on the basis of any mandatory full faith and credit type of compulsion, and the -- Commissioners noted that, specifically to Section 12, which has to deal with the binding effect of res judicata, and Section 13 states that it's not intended to establish personal jurisdiction over a nonresident. It's based on the philosophy of Justice Frankfurter in his concurrence in, I believe, May v. Anderson, where he said a state may not be bound to do certain things, but it may do it if it wants to. That's all that the Act is based on and it's right in the Commissioner's notes and it makes no sense to me at all to try to apply the mandatory standards of full faith and credit to a comity-based act.

Now, this case to some extent is like the Halvey case. It's virtually like it factually in that you have a Florida decree which was not recognized in a sister state. In Halvey New York didn't recognize the Florida decree and

what this Court said there was that under Florida law this decree could have been changed even by the Florida court on the basis of changed circumstances. So New York didn't do anything Florida couldn't do, and we say that Georgia didn't do anything that Florida couldn't do. The decisions are in our brief at Footnote 25, three cases have not been superseded by the Uniform Child Custody Jurisdiction Act. They continue to be cited by the Florida courts right up to this very minute. They're still good law.

The Florida court didn't hear about this lady's trip to Miami, when she left this six-year-old child at home alone untended, unattended, and Georgia did hear that evidence and the trial judge didn't like it. That's exactly the fact that caused him to take the child away from her. Now, if you accepted their argument, it would mean that no court would ever hear about her misconduct. No court would ever make that decision because all you do under the Uniform Act is run next door and file a decree, you don't even have to file under other proceedings.

In a couple of decisions that this Court has suggested in the past, I think Riley and Williams v. North Carolina, that you have to file another action in order to make a judgment of one state the judgment of another state. But this Act allows that to be done by the simple act of filing. And it would be a terrible precedent if a parent

used this Act --

QUESTION: The Act is not before us.

MR. BROWN: It certainly is not. But what I'm saying, if you did what the petitioner wants you to do, if you made the application of full faith and credit that the petitioner wants, then you are giving the petitioner, or you are establishing a precedent where an heir apparent can hide his misconduct right behind this decree, and we submit that that's not --

QUESTION: Do you want us to get rid of full faith and credit?

MR. BROWN: Do I want you to get rid of full faith and credit?

QUESTION: Yes, sir.

MR. BROWN: No, sir, I don't want you to apply it in this case. I think it has its place.

QUESTION: You'd just like them to raise it?

MR. BROWN: Certainly, I certainly agree with that. I think a lawyer ought to be held to a lawyer's standards, and that includes raising an issue at the earliest possible time, and if they mean Article IV, Section 1, of the Constitution of the United States, they got to say that. That's our position in that regard.

The irony of this situation is, in effect what they're saying is, Georgia, you have to give full faith and

credit to your own decree. And, well that does not make sense to me, in any way whatsoever. This was a Georgia decree. They went through a perfunctory type of proceeding in Florida where changed circumstances weren't even considered, just adopted the Georgia Act and turned around and told Georgia and said, now, you've lost all rights to deal with your prior decree. That's not what the Full Faith and Credit Clause was intended for.

If you look at the new act, Section (d) of the new act, the new federal act, is designed to protect the decree of the original court, because it provides in that act that there shall be continuing jurisdiction in the court which renders the original decree and it forbids another state such as Florida, in this case, from dealing with an act, dealing with a prior decree from a sister state.

And finally, I'll just mention, and I don't think the Court is of a mind to ever get to this, but if you got over the problem that the petitioner wants to get over, the problem's about not properly raising this question, you finally get around to the merits. Then you get into this first class question of personal jurisdiction. And under Kulko it doesn't look like the Court is going in that direction. It would require a liberalization of what the Court said in that case. And we submit that very definitely there is no reason to do that; you would have to repudiate May v.

Anderson, and the Court, in Mr. Justice Marshall's opinion in Kulko, cited May v. Anderson, so it gave the case a pat on the back. It didn't look like you were getting ready to repudiate, because you recited it in that decision.

And our basic position is, there's no reason to get that far and to get into that type of difficult problem in this case. Under this new act the issue may be back to this Court. It'll certainly be in a different form, it'll be in connection with the new act, there will be no risk of the Court handing down an opinion which might conflict with the terms of that act, and it just makes good sense to essentially dismiss this case on the grounds that the writ of certiorari was improvidently granted. Thank you, Your Honors.

MR. CHIEF JUSTICE BURGER: Thank you, counsel. Do you have anything further, Ms. Carden? You have two minutes remaining.

ORAL ARGUMENT OF MS. MARY R. CARDEN, ESQ.,

ON BEHALF OF THE PETITIONER -- REBUTTAL

MS. CARDEN: I'd just like to make a few remarks in response to Mr. Brown's comments.

First of all, of course, comity as we mentioned before doesn't demand full faith and credit and in this case Georgia did not afford full faith and credit to the Florida decree, regardless of the Uniform Child Custody Jurisdiction Act. So no decision in this matter even though Georgia may

have not said, we don't think Article IV, Section 1, does not apply, the opinion still is there that Georgia under precedent of Webb v. Webb does not have to give any kind of importance or consideration to a final judgment of another state on the basis of that decision.

Also, he mentioned the case of Halvey v. Halvey. And at that time Florida law provided that custody decrees could be modified even on the basis of facts that were not before the court at the time of its original decree, and I believe that was the reason that this Court had such a difficult time applying full faith and credit to Halvey. Since that time that law has been changed with the Uniform Child Custody Jurisdiction Act, and the only possibility for modification does deal with a material change of circumstances occurring after the original decree. One cannot go back and question the decree.

Finally, he mentioned that there was, as he called it, kind of a rump hearing in Florida. Well, his client, the respondent, was given every opportunity to appear and to raise any problems or any of the facts that he thought were there. Obviously, the Florida court knew of the events, at least from the mother's perspective in February, because the restraining order was issued on the basis of the facts that appeared before the court at that time. So they -- and they held a full hearing, the fact that the father didn't appear

shouldn't give him the right to go to another state and file a new action.

MR. CHIEF JUSTICE BURGER: Thank you, counsel. The case is submitted.

(Whereupon, at 2:56 o'clock p.m., the case in the above-entitled matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

NO. 79-6853

LEAH LYNN PARRISH WEBB

V.

JAMES THOMAS WEBB

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: Bill T. Wilson