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A. Haney

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DOMESTIC RELATIONS

Uniform Child Custody Jurisdiction Act: Expand Definitions

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| CODE SECTION: | O.C.G.A. § 19-9-42 (amended) |
| BILL NUMBER: | HB 1509 |
| ACT NUMBER: | 1353 |
| SUMMARY: | The Act expands certain definitions found in the Uniform Child Custody Jurisdiction Act. The definition of "custody proceedings" is expanded to include adoption proceedings and the definition of "state" is expanded to include foreign countries. |
| EFFECTIVE DATE: | July 1, 1988 |

History

The Uniform Child Custody Jurisdiction Act (UCCJA)¹ was enacted in Georgia in 1978 to "[a]void jurisdictional competition and conflict with courts of other states in matters of child custody;"² to "[a]ssure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available;"³ and to "[d]eter abductions and other unilateral removals of children undertaken to obtain custody awards."⁴ The sponsor of HB 1509 introduced the bill at the request of constituents who objected to two 1987 Georgia decisions.⁵ The purpose of the bill was to extend the coverage and protection of the UCCJA⁶ to include adoption proceedings in the definition of "custody proceedings"⁷ and to include foreign countries in the definition of "state."⁸ The bill

1. O.C.G.A. §§ 19-9-40 to -64 (1982).

2. O.C.G.A. § 19-9-41(a)(1) (1982).

3. O.C.G.A. § 19-9-41(a)(3) (1982).

4. O.C.G.A. § 19-9-41(a)(5) (1982).

5. Telephone interview with Representative Mary Margaret Oliver, House District No. 53 (Mar. 15, 1988) [hereinafter Oliver Interview]. Representative Oliver, who sponsored the bill, introduced the bill at the request of two attorneys who objected to the court's interpretation of the UCCJA in *Richardson v. Richardson*, 257 Ga. 101, 355 S.E.2d 664 (1987) and *Olivo v. Gainey*, 185 Ga. App. 427, 364 S.E.2d 279 (1987). *Id.*

6. *Id.*

7. O.C.G.A. § 19-9-42(3) (Supp. 1988).

8. O.C.G.A. § 19-9-42(10) (Supp. 1988).

passed the General Assembly unopposed in its original form.⁹

HB 1509

In *Richardson v. Richardson*,¹⁰ the Georgia Supreme Court summarily held that when a Georgia child is removed to a foreign country, rather than to another state, the UCCJA does not confer jurisdiction on the Georgia courts to make a child custody determination.¹¹ The court so held even though the father had been awarded permanent custody of the child in the Superior Court of DeKalb County which exercised jurisdiction pursuant to the UCCJA.¹² The trial court reasoned that any other decision would be offensive to important public policy¹³ because it would encourage "abductions and other unilateral removals of children undertaken to obtain custody awards."¹⁴

The attorney for the father argued that "the object of the UCCJA is to enable Georgia courts to protect Georgia children."¹⁵ In his opinion, the court failed to consider that its decision could encourage a noncustodial parent to remove the child to a foreign country whose courts do not apply the UCCJA standards.¹⁶ The Act makes clear that foreign countries are included within the definition of "states" so that the UCCJA applies when children have been removed to foreign countries.¹⁷ The Act is consistent with the Supreme Court of Virginia's holding in *Lyons v. Lyons*¹⁸ that the UCCJA applies to international custody determinations. The court stated that to hold otherwise would "encourage a race to the courthouse, the prize of custody being awarded to the swifter and more devious parent."¹⁹

The Act also amends the Code by adding adoption proceedings to the list of custody proceedings covered by the UCCJA. This amendment is in

9. Final Composite Status Sheet, Mar. 7, 1988.

10. 257 Ga. 101, 355 S.E.2d 664 (1987).

11. *Richardson v. Richardson*, 257 Ga. at 101, 355 S.E.2d at 664.

12. *Richardson v. Richardson*, No. 86-2123-7 at 3 (Super. Ct. of DeKalb County, Ga. Apr. 16, 1986).

13. *Id.* at 2-3.

14. *Id.* (quoting O.C.G.A. § 19-9-41(a)(5) (1982)).

15. Telephone interview with David N. Soloway, Frazier & Soloway (Mar. 25, 1988).

16. *Id.* Mr. Soloway believes the plain meaning of O.C.G.A. § 19-9-63 expressly extends the UCCJA to the international arena. The court instead chose to follow the rigid construction of the definition of "state" used in *Binns v. Smith*, 251 Ga. 861, 310 S.E.2d 225 (1984) ("[W]e interpret the word 'place' to be equivalent to 'state' defined in O.C.G.A. § 19-9-42(10) . . . as 'any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.' . . . [F]oreign nations fall without this provision."). *Id.* at 861, 310 S.E.2d at 226.

17. O.C.G.A. § 19-9-42(10) (Supp. 1988).

18. 227 Va. 82, 314 S.E.2d 362 (1984). Virginia is the only other state to address the issue of whether the term "state" as defined in the UCCJA applies to foreign countries.

19. *Lyons v. Lyons*, 227 Va. at 99, 314 S.E.2d at 371.

response to the Georgia Court of Appeals' decision in *Olivo v. Gainey*.²⁰ Olivo, an unwed father, sought custody of his child in New York. He refused to consent to an adoption authorized by the child's mother. The child was removed to Georgia and placed with a family who wished to adopt her.²¹ The New York court determined that Olivo was the father of the child and issued an order reserving jurisdiction over the child custody issue; further, the court forbade the child's adoption in Georgia until the custody proceeding in New York was completed.²² The Georgia trial court nevertheless terminated Olivo's parental rights and granted the adoption petition.²³

O.C.G.A. § 19-9-46(a) provides in part, "a court of this state shall not exercise its jurisdiction under [the UCCJA] if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction."²⁴ The Georgia Court of Appeals reversed the trial court by finding that Olivo's parental rights could not be terminated.²⁵ The court, however, overruled a previous decision which had "impliedly held that custody proceedings under the UCCJA encompass adoption proceedings" because it was "apparent that this court imprudently or inadequately considered the issue at that time."²⁶ The court reasoned that an adoption proceeding was not "a proceeding concerning the custody of the child" such that another state's jurisdiction must take precedence.²⁷

Both *Olivo* and *Richardson* have serious ramifications regarding interpretation of the UCCJA in Georgia. The exclusion of adoption and removal of children to foreign countries from the protections of the UCCJA could lead to forum shopping in child custody disputes. This practice would increase conflict with other courts, violating the express purposes of the statute. Furthermore, forum shopping is "offensive to important public policy."²⁸ The Act clarifies ambiguity regarding the inclusion of

20. 185 Ga. App. 427, 364 S.E.2d 279 (1987).

21. *Olivo v. Gainey*, 185 Ga. App. at 427, 364 S.E.2d at 279.

22. *Id.* at 427, 364 S.E.2d at 280.

23. *Id.*

24. O.C.G.A. § 19-9-46(a) (1982).

25. *Olivo*, 185 Ga. App. at 429, 364 S.E.2d at 280. Since Olivo fought "tooth and nail" for his child, the court found no evidence of desertion. Consequently, his parental rights could not be terminated. *Id.* at 428, 364 S.E.2d at 280. See also *In re Baby Girl Eason*, 257 Ga. 292, 357 S.E.2d 459 (1987) (when unwed father exercises his opportunity interest in his child, he must be treated as any other parent with regard to his right to custody of his child).

26. *Olivo*, 185 Ga. App. at 428, 364 S.E.2d at 280 (overruling *In re C.C.B.*, 164 Ga. App. 3, 296 S.E.2d 198 (1982)).

27. *Id.* at 428, 364 S.E.2d at 280 (quoting O.C.G.A. § 19-9-46(a) (1982)).

28. See *supra* text accompanying notes 11—14.

adoption and foreign proceedings in the UCCJA's coverage, satisfying the intent of its sponsor.²⁹

A. Haney

29. Oliver Interview, *supra* note 5.