

1 On or about March 13, 2005, Metro Health Department (Nashville  
2 Tennessee) found K.PFISTER filleting fish intended for wholesale to  
3 local restaurants in his backyard in violation of numerous health  
4 ordinances. At that time, K.PFISTER was doing business as "Taste of  
5 New Orleans", a company licensed in Louisiana and owned by G. PFISTER.  
6 (See Exhibit 66)

7 On or about March 15, 2005, K.PFISTER telephoned police from the  
8 6389 Temple Road residence in Tennessee that was previously owned by he  
9 and SEARLE and purchased out of foreclosure by G. PFISTER back in  
10 January of 1998. He reported to police that ALEXIS was missing at  
11 roughly 7:47 a.m. Roughly forty (40) minutes later, ALEXIS was found  
12 on her school bus on her way to school. (See Exhibit 67)

13 On or about June 20, 2005, the Tennessee Supreme Court granted  
14 SEARLE's request for review of the Tennessee Court of Appeal's refusal  
15 to hear her appeal of HOOVER's July 3, 2001 "criminal contempt" and  
16 custody orders because she was a fugitive from the State of Tennessee.  
17 (See Exhibit 68)

18 **POINTS AND AUTHORITIES**

19 **PURSUANT TO THE UCCJEA, CALIFORNIA WAS THE HOME STATE AND**  
20 **PROPER FORUM FOR JURISDICTION OVER CUSTODY ISSUES RELATED**  
**TO ALEXIS SEARLE AS OF DECEMBER 25, 1999**

21 Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is  
22 the exclusive method for determining the proper forum in custody  
23 disputes involving other jurisdictions. *In re C.T.* (App.4 Dist.2002)  
24 100 Cal. App.4<sup>th</sup> 101.

25 Questions of interstate jurisdiction regarding child custody are  
26 generally settled under provisions of California version of the UCCJEA.  
27 *Haywood v. Superior Court* (App.2 Dist. 2000) 77 Cal.App.4<sup>th</sup> 949;  
28

1 Marriage of Torres (App.1 Dist. 1998) 62 Cal. App.4<sup>th</sup> 1367; Brown v.  
2 Brown (App.4 Dist. 1999) 71 Cal.App.4<sup>th</sup> 358.

3 "Child custody proceeding" means a proceeding in which legal  
4 custody, physical custody, or visitation with respect to a child is an  
5 issue. (See *California Family Code Section 3402(d)* and *Tennessee Code*  
6 *Annotated Section 36-6-205(d)*)

7 "Home State" means the state in which a child lived with a parent  
8 or person as a parent for at least six consecutive months immediately  
9 before the commencement of a child custody proceeding. (See *California*  
10 *Family Code Section 3402(g)* and *Tennessee Code Annotated Section 36-6-*  
11 *205(g)*).

12 California has jurisdiction to make an initial child custody  
13 determination only if any of the following are true:

- 14 (1) California is the home state of the child on the date of the  
15 commencement of the proceeding...

16 (See *California Family Code Section 3421* and *Tennessee Code Annotated*  
17 *Section 36-6-216*)

18 In this case, the dispute over custody of ALEXIS began on or about  
19 October 19, 1997 in Tennessee. As all the parties were residents of  
20 Tennessee, there can be no doubt that it was ALEXIS' home state for  
21 purposes of custody issues under the UCCJEA. However, on June 23,  
22 1999, HOOVER granted SEARLE's request to relocate with ALEXIS to  
23 California with her fiancé. In doing so, HOOVER correctly noted that  
24 pursuant to the UCCJEA, Tennessee would lose jurisdiction in this case  
25 after ALEXIS had resided in California for six months (See pg. 87 lines  
26 20-22 of Transcript included as Exhibit 24). Pursuant to HOOVER's  
27 order, SEARLE and ALEXIS became residents of California on or about  
28

1 June 25, 1999. And on or about December 25, 1999, California became  
2 ALEXIS' home state for purposes of custody issues under the UCCJEA. As  
3 a result, California was the proper forum for consideration of  
4 K.PFISTER's March 9, 2000 motions regarding visitation and custody  
5 without some additional finding that California was either an  
6 inconvenient forum or Tennessee still had substantial connections to  
7 this dispute that warranted continued jurisdiction in that state.

8 **AS OF DECEMBER 25, 1999, TENNESSEE HAD BECOME AN INCONVENIENT FORUM FOR**  
9 **LITIGATION OF CUSTODY ISSUES RELATED TO ALEXIS SEARLE (aka: PFISTER)**  
10 **AND THERE THERE WERE NO SIGNIFICANT CONNECTIONS WHICH WARRANTED**  
11 **CONTINUING JURISDICTION IN THAT STATE**

12 **INCONVENIENT FORUM**

13 In determining if a state is an inconvenient forum, a court shall  
14 consider whether it is appropriate for a court of another state to  
15 exercise jurisdiction. For this purpose, the court shall allow the  
16 parties to submit information and shall consider all relevant factors,  
17 including:

- 18 (1) Whether domestic violence had occurred and is likely to  
19 continue in the future and which state could best protect the  
20 parties.
- 21 (2) The length of time the child has resided outside the state.
- 22 (3) The distance between the court in the state and the court in  
23 the state that would assume jurisdiction.
- 24 (4) The degree of financial hardship to the parties in litigating  
25 in one forum over the other.
- 26 (5) Any agreement of the parties as to which state should assume  
27 jurisdiction.
- 28 (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 procedure necessary to present the  
evidence.

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

3 (See California Family Code Section 3427 and Tennessee Codes Annotated  
4 Section 36-6-222)

5 In this case, the application of the above factors leave  
6 absolutely no doubt that as of December 25, 1999, Tennessee was an  
7 inconvenient forum and California was far more suited to address the  
8 current custody and visitation issues in this case. There was a prior  
9 history of domestic violence between SEARLE and K.PFISTER. California,  
10 as the home of SEARLE and ALEXIS was obviously far better suited to  
11 protect them from any further violence. As of December 25, 1999,  
12 ALEXIS and SEARLE had resided in California for nearly nine months.  
13 There can be no doubt that the distance between Tennessee and  
14 California was substantial and that this distance would create  
15 tremendous financial hardship for SEARLE were she ordered to travel  
16 back and forth with ALEXIS in order to litigate future custody  
17 disputes. Pursuant to HOOVER's June 23, 1999 ruling, the Tennessee  
18 court clearly indicated it was to lose jurisdiction in six months and  
19 California would then be the proper forum for future custody issues.  
20 All evidence regarding ALEXIS' school, medical/psychological care,  
21 relationships, and home was in California. As such, California was far  
22 better suited to decide any custody issues expeditiously.

23 The single criteria that favored Tennessee was that the Williamson  
24 County Juvenile Court was obviously more familiar with the history of  
25 this case. However, there can be no doubt that the California court  
26 could easily get up to speed on this case by simply reviewing the  
27 available court records and transcripts. To suggest that all of the  
28 other factors should be ignored simply because of the Tennessee court's

1 familiarity with the case is contrary to the intended purpose of the  
2 UCCJEA. Simply stated, by December 25, 1999, ALEXIS' home and life were  
3 in California and as such, that state was the appropriate forum for  
4 litigating any custody disputes. In contrast, Tennessee had long since  
5 become an inconvenient forum for everyone except K. PFISTER.

6 SUBSTANTIAL EVIDENCE

7 (2) A court of another state does not have jurisdiction under  
8 paragraph (1), or a court of the home state has declined to  
9 exercise jurisdiction on the grounds that this state is the  
10 more appropriate forum under 3427 or 3428, and both of the  
11 following are true:

12 (A) The child and the child's parents, or the child  
13 and at least one parent or a person acting as a  
14 parent, have a significant connection with this  
15 state other than physical presence.

16 (B) Substantial evidence is available in this state  
17 concerning the child's care, protection,  
18 training, and personal relationships.

19 (*See California Family Code Section 3421 and Tennessee Code Annotated*  
20 *Section 36-6-216*)

21 By December 25, 1999, ALEXIS' life was in California with SEARLE.  
22 Other than the presence of her father in Tennessee, ALEXIS had no  
23 connection whatsoever with Tennessee. Her school, her friends, her  
24 doctors, her home, and her activities were all in California. As such,  
25 there can be no credible argument that Tennessee was the more  
26 appropriate forum for litigation of custody issues after December 25,  
27 1999.

1                    **THE TENNESSEE COURT RULINGS AFTER DECEMBER 25, 1999**  
2                    **WERE INVALID FOR LACK OF JURISDICTION AND FURTHER, THEY CLEARLY**  
3                    **INDICATE A LOSS OF JUDICIAL IMPARTIALITY**

4                    It is well settled that a Tennessee judgment or order entered  
5                    without subject matter jurisdiction is void. Gentry v. Gentry (Tenn.  
6                    1996) 924 S.W.2d 678, 680. If Tennessee did not have jurisdiction at  
7                    the filing of a petition, other orders issued after that initial  
8                    petition were also invalid. Lee v. Lee 2004 WL 3021107 (2004  
9                    Tennessee Court of Appeals) (Attached herein)

10                    In Lee, the parties were married in California in 1990. They  
11                    moved to Memphis Tennessee in 1993. Their son William was born in  
12                    Tennessee in 1994. On or about September of 1997, petitioner moved  
13                    to California with the child. As she had not been in California for  
14                    the requisite six months to establish home state jurisdiction, Bertha  
15                    Lee filed for divorce and custody in Tennessee in December of 1997.  
16                    The Tennessee court enters final divorce decree and awarded custody to  
17                    Bertha Lee in 1999. A Tennessee appeals court affirmed that ruling  
18                    later that same year. (See pages 1-2 of Lee v. Lee attached herein).

19                    In November of 2001, Daniel Lee filed a petition for contempt and  
20                    custody change in Tennessee. This filing triggered a long and  
21                    contentious litigation history spanning nearly three years in a  
22                    Tennessee court. During that litigation, the Tennessee court addressed  
23                    allegations of parental mental illness, abuse of the child, termination  
24                    of visitation, and a myriad of legal issues raised by Daniel Lee.  
25                    During this litigation, Bertha Lee repeatedly questioned whether the  
26                    Tennessee court had jurisdiction to hear the matter. And in March of  
27                    2003, the court held that it lacked jurisdiction over the custody  
28                    issues and that California was the appropriate forum. Daniel Lee

1 appealed this decision. (See pages 2-6 of Lee v. Lee attached herein).

2 In affirming the trial court's decision, the Tennessee Court of  
3 Appeals reasoned that the "home state of the child is one of the most  
4 important factors for the court consider in determining the question of  
5 jurisdiction". In determining appropriate jurisdiction in this case,  
6 the court utilized the applicable sections of the UCCJEA codified in  
7 the Tennessee Code Annotated. In doing so, the court determined that  
8 the mother and child had lived in California for far more than the  
9 requisite six months before the father filed his petition in Tennessee.  
10 Further, the court found that the record was devoid of any evidence of  
11 any current connection between the child and Tennessee other than the  
12 fact that his father lived there. Consequently, the trial court was  
13 correct in determining that California was the appropriate forum for  
14 this dispute. (See pages 6-9 of Lee v. Lee attached herein).

15 After affirming the trial court's jurisdiction, the Lee court  
16 turned to the issue of whether the various court orders entered prior  
17 to that jurisdictional finding were rendered invalid by that decision.  
18 In determining that those orders were rendered void by the jurisdiction  
19 decision, the court reasoned that:

20 "since the trial court herein did not have jurisdiction to  
21 determine the custody modification petition filed by Mr. Lee when  
22 it was filed, it is certainly arguable that it did not have  
23 jurisdiction to enter other orders regarding issues raised after  
24 the filing of the petition. However, that does not mean they were  
25 not valid for the pendency of the proceedings, but rather that  
26 they have been rendered void by the decision on jurisdiction"  
27 (See pages 9-10 of Lee v. Lee attached herein)

28 Lee stands on all fours with the facts of this case. Like, Lee,  
Tennessee was the proper home state at the onset of the custody dispute  
in this case. Like Lee, SEARLE lawfully moved to California with her  
daughter and lived there for more than six months before any new

1 custody dispute was filed. Like Lee, ALEXIS' only connection to  
2 Tennessee was the fact that her father K.PFISTER resided there. Like  
3 Lee, California was the proper home state for K. PFISTER's new motion  
4 seeking change in custody and visitation. Like Lee, several motions  
5 and hearings occurred over several months in Tennessee in spite of  
6 SEARLE's continued objections to the jurisdiction of that state.  
7 However unlike Lee, the Tennessee court in this case has yet to  
8 recognize its mistake and acknowledge that California was the  
9 appropriate state for litigation of custody in this case. Unlike Lee,  
10 the Tennessee court ignored the purpose of the UCCJEA in order to force  
11 a single mother living in California to fight for her daughter in  
12 Tennessee solely because the father (K. PFISTER) lived there. Unlike  
13 Lee, a mother has not seen her young daughter for over two years as a  
14 result of the actions of a Tennessee court. Unlike Lee, a father with  
15 little prior connection to his daughter, a criminal record involving  
16 drugs, guns, and violence, a history of drug abuse and domestic  
17 violence, and an inability to properly care for the child without  
18 assistance now has custody of his daughter in either Tennessee or  
19 Louisiana.

20 The Tennessee court's absolute refusal to acknowledge the purpose  
21 of the UCCJEA or its bright line rules in this case is further  
22 exacerbated by HOOVER/NATIONS' complete loss of impartiality and/or  
23 fundamental fairness. There can no doubt that the dispute over ALEXIS  
24 before HOOVER spanned from October 17, 1997 through at least June 23,  
25 1999 when SEARLE's request to move to California with her daughter was  
26 granted.

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1           There can be no doubt that this dispute was more often than not  
2 caustic and wrought with almost constant accusations that could try the  
3 patience of any reasonable judge. However, there is no case wherein  
4 the court is justified in letting emotions or frustration get in the  
5 way of applying the law fairly to both sides. Yet in this case, it is  
6 clear that beginning in roughly March of 1999, HOOVER/NATIONS simply  
7 let this dispute get the better of them and as a result, they misused  
8 their judicial authority to punish and/or abuse SEARLE.

9           In his June 23, 1999 ruling, HOOVER acknowledged that his decision  
10 meant California would take over jurisdiction of this case in six  
11 months. Yet, roughly nine months later on March 9, 2000, he refused to  
12 transfer jurisdiction to California and repeatedly ordered SEARLE and  
13 ALEXIS to travel to Tennessee for further hearings. Between March of  
14 2000 and June of 2001, HOOVER continued to order SEARLE and ALEXIS back  
15 to Tennessee on short notice while refusing her ongoing efforts to  
16 transfer jurisdiction to California. During the June 7, 2001 hearing,  
17 HOOVER again refused to transfer jurisdiction even after acknowledging  
18 that the only factors supporting his decision to keep jurisdiction was  
19 the fact that K. PFISTER lived in Tennessee and he (HOOVER) was  
20 apparently the only judge capable of addressing this case (See pg. 33  
21 of Transcript in Exhibit 41). In spite of K. PFISTER's history of  
22 perjury before him (See Exhibit 12), HOOVER took K. PFISTER at his word  
23 in order to find SEARLE in contempt on a number of questionable  
24 visitation complaints during the July 3, 2001 hearing. And in spite of  
25 the fact that his ability to impose custody sanctions for contempt was  
26 limited to ten days, he ordered SEARLE to serve some 590 days of  
27 custody (See Exhibit 41). In evaluating the fairness of such a  
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1 sanction, it should be noted that during the early 1998 hearing related  
2 to K. PFISTER's attempt to obtain emergency custody of ALEXIS, the  
3 court determined that he had provided intentionally misleading and/or  
4 untruthful pleadings and testimony (See Exhibit 11). In spite of this  
5 blatant disrespect towards the court, K. PFISTER was not ordered to  
6 serve even a single day of custody.

7 During that same June 23, 1999 hearing, HOOVER also awarded K.  
8 PFISTER custody of ALEXIS in spite of the fact that she had lived with  
9 her mother since birth, had limited relationship with her father and  
10 there was no formal change in circumstances warranting such a change.  
11 Further, HOOVER ordered this change in custody with full knowledge of  
12 K. PFISTER's prior criminal, domestic violence, and drug abuse history  
13 as well as the existence of the various mental health limitations that  
14 would hinder his ability to care for his daughter without substantial  
15 assistance.

16 Even after ALEXIS was returned to Tennessee pursuant to HOOVER's  
17 improper orders, the Tennessee court's inability to impartially address  
18 this case continued unabated. During the September 10, 2003, NATIONS  
19 set aside over \$18,000.00 in back child support due from K. PFISTER  
20 while ordering SEARLE to now pay child support. During the November  
21 18, 2003 hearing, NATIONS saw fit to permanently terminate SEARLE's  
22 telephone contact with ALEXIS. This action effectively cut off all  
23 contact between SEARLE and ALEXIS although it is unclear from NATIONS'  
24 ruling exactly how this was deemed to be in the best interests of  
25 ALEXIS. And during the April 29, 2004 hearing, NATIONS, like HOOVER,  
26 ignored the limitations on his ability to impose custody as a sanction  
27 and ordered SEARLE to serve another 120 days in custody simply because  
28

1 she had failed to pay child support as ordered. It is important to  
2 note that during the history of this dispute while K. PFISTER paid  
3 little to no child support and ran up some \$22,000.00 in arrearages,  
4 neither HOOVER or NATIONS ever ordered K.PFISTER to serve a single day  
5 in custody. Clearly, SEARLE has been subjected to an unfair and/or  
6 unequal application of Tennessee law. Perhaps, had the Tennessee court  
7 simply applied the UCCJEA correctly at the onset of the new custody  
8 dispute in March of 2000, California could have addressed this case  
9 fairly and saved both SEARLE and ALEXIS years of trauma and confusion  
10 that will no doubt permanently impact the well being of both of them.

11 **THE LOS ANGELES SUPERIOR COURT DECISION TO DEFER JURISDICTION**  
12 **TO TENNESSEE COURT ON APRIL 16, 2001 WAS IMPROPER AS IT IGNORED THE**  
13 **REQUIREMENTS OF THE UCCJEA AND INSTEAD RESTED UPON BOTH JUDICIAL APATHY**  
14 **AND MISLEADING INFORMATION FROM K. PFISTER, HIS COUNSEL, AND THE**  
15 **TENNESSEE COURT**

16 In early 2001, after residing in California since June 25, 1999,  
17 SEARLE sought to register the Tennessee custody orders. She further  
18 requested modification of those orders. K. PFISTER immediately opposed  
19 any modification arguing that Tennessee still had jurisdiction. In  
20 reality, California had been the home state for purposes of  
21 jurisdiction under the UCCJEA since December 25, 1999. Due to the fact  
22 that K. PFISTER was able to utilize his father's resources in order to  
23 engage counsel in both Tennessee and California while SEARLE was pro  
24 per, he was able to cause various delays in the California proceeding.  
25 However, SEARLE was finally able to appear before Judge Richard Denner  
26 of the Los Angeles Superior Court on April 16, 2001. In reviewing the  
27 transcript of this hearing (See Exhibit 40), two facts are clear.  
28 First, Judge Denner had little interest in hearing the merits of  
SEARLE's jurisdiction motion and in fact, had little understanding as

1 to why the case was even on his calendar. And second, SEARLE did not  
2 have a full understanding of the UCCJEA and lacked the legal training  
3 to properly litigate the matter.

4 The reality here is that SEARLE and ALEXIS had been lawfully  
5 residing in California for nearly nine months before K. PFISTER filed  
6 his new custody motions in Tennessee. By the time SEARLE sought to  
7 register the Tennessee custody orders in California and modify them,  
8 she and ALEXIS had been lawfully residing in California for just short  
9 of a year and a half. Based upon all of the facts discussed above,  
10 there can be no doubt that jurisdiction should have been assumed at  
11 that California hearing pursuant to California law. (See California  
12 Family Code Section 3421 and 3427.

13 What is truly alarming is what was not discussed at that  
14 California hearing. When Judge Denner and/or Judge Gold apparently  
15 spoke to HOOVER, it is clear that the only representation made by  
16 HOOVER was that there was a motion pending in Tennessee that related to  
17 the residency of K. PFISTER. HOOVER apparently did not mention to the  
18 California judge that he was planning on presiding over a whole lot  
19 more than just a hearing on K. PFISTER's residency. In spite of the  
20 fact that SEARLE and ALEXIS had resided in California for a year and a  
21 half, HOOVER neglected to tell the California judge that he had every  
22 intention of presiding over yet another hearing regarding the custody  
23 of ALEXIS. There can be no doubt that HOOVER knew of these other  
24 issues and intended to address them because K. PFISTER's pleadings  
25 regarding a new request for custody had been filed well before the  
26 hearing in California (See *Exhibit 39*). The transcript further reveals  
27 that K. PFISTER's counsel was complicit in this lack of information as  
28

1 he also argued during the California hearing that the only issue  
2 pending in Tennessee was the hearing related to K. PFISTER's residency.  
3 Had either HOOVER or K. PFISTER's counsel been forthcoming with this  
4 information, there can be no doubt that Judge Denner would have been  
5 far more attentive to SEARLE persistence regarding the jurisdiction  
6 issue. Instead, he dismissed her arguments with little interest and  
7 deferred jurisdiction to Tennessee in spite of the fact that the UCCJEA  
8 and California law required him to do otherwise.

9  
10 **REMOVAL OF MINOR ALEXIS SEARLE (aka: PFISTER) FROM THE CUSTODY**  
11 **OF HER MOTHER IN CALIFORNIA BASED UPON INVALID TENNESSEE COURT ORDERS**  
12 **VIOLATED RESPONDENT SEARLE'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS**

13 All persons born or naturalized in the United States, and subject  
14 to the jurisdiction thereof, are citizens of the United States and of  
15 the State wherein they reside. No state shall make or enforce any law  
16 which shall abridge the privileges or immunities of citizens of the  
17 United States; nor shall any state deprive any person of life, liberty,  
18 or property, without due process of law; nor deny to any person within  
19 its jurisdiction the equal protection of the laws. (*United States*  
20 *Constitution 14<sup>th</sup> Amendment*)

21 A person may not be deprived of life, liberty, property without  
22 due process of law, or denied equal protection under the laws.  
23 (*California Constitution Article 1 Section 7(a)*)

24 A citizen or class of citizens may not be granted privileges or  
25 immunities not granted on the same terms to all citizens. (*California*  
26 *Constitution Article 1 Section 7(b)*)

27 Between March 9, 2000 and April 29, 2004, the Williamson County  
28 Juvenile Court in Tennessee (HOOVER and NATIONS) repeatedly failed to  
properly apply the UCCJEA and/or fairly apply Tennessee law. This

1 failure resulted in severe violations of SEARLE state and federal  
2 constitutional rights to due process and equal protection. But most  
3 importantly this failure violated her fundamental right to her  
4 daughter. A daughter that was taken from her custody on June 17, 2003  
5 and has not been returned in nearly two years. A daughter that she has  
6 not even had the small privilege of speaking to on the telephone since  
7 prior to November of 2003. This damage has been immeasurable and  
8 cannot continue. SEARLE has a right to the application of the UCCJEA  
9 in the same manner received by every other citizen. She should not be  
10 denied that right merely because K. PFISTER has the benefit of a father  
11 that will pay for attorneys to work tirelessly in two states to further  
12 their ongoing hatred of SEARLE. In this case, "might does not make  
13 right" and the only possible manner to correct this horrific violation  
14 of SEARLE's rights as a parent and citizen of both California and the  
15 United States of America is for this court to grant the requested  
16 relief.

17 **K. PFISTER'S BLATANT MISUSE OF COURT PROCESS IN ORDER TO BYPASS THE**  
18 **MOVE AWAY ORDER AND MAINTAIN JURISDICTION IN TENNESSEE AS WELL AS THAT**  
19 **COURT'S ONE SIDED EFFORTS TO ACCOMMODATE THAT GOAL BOTH CONSTITUTE A**  
20 **BLATANT DISREGARD FOR THE INTENDED PURPOSE OF THE UCCJEA AND THE BEST**  
21 **INTERESTS OF ALEXIS SEARLE (aka: PFISTER)**

22 The UCCJEA's jurisdictional mandate requires child custody  
23 litigation to take place in the home state absent compelling  
24 justification for removal. The rule exists to prevent abduction, child  
25 stealing, and forum shopping, all of which conduct the Legislature  
26 finds to be in the best interests of no one. Hafer v. Superior Court  
27 of San Diego County (1981) 126 Cal. App. 3d 856, 867. (See also  
28 California Family Code Section 3428 and Tennessee Code Annotated  
Section 36-6-223). The facts in Hafer involved a 1977 divorce action

1 in San Diego California wherein the father and Plaintiff was granted  
2 custody of the three children. The Plaintiff and the children then  
3 spent the next three years living in Idaho. In June of 1981, the  
4 mother and Defendant filed a child custody modification action in San  
5 Diego County Superior Court alleging emergency grounds . Plaintiff  
6 opposed the Defendant's motion on jurisdictional grounds under the  
7 UCCJEA. He contended that Idaho had long since been the children's  
8 home state and thus, the proper forum for Defendant's modification  
9 motion. See Hafer at pgs 858-862. In concluding that Idaho was, in fact  
10 the children's home state, the Hafer court reasoned as follows:

11 "Jurisdictional disputes under the UCCJEA are not "technical" in  
12 the sense of being irrelevant to the welfare of the living  
13 children involved. On the contrary, the act exists and defines  
14 jurisdictional rules to best serve the interests of the hapless  
15 children of divorce. The purpose of the act, as stated by its  
16 drafters and by all the commentators, is to maximize continuity  
17 and stability in the lives of these children and to minimize  
18 disruption caused by continual dislocations and custody battles of  
19 the warring parents. The act aims to make definite and  
20 predictable rules of choice of forum by which the parties must  
21 abide. If the courts do not enforce these rules in all cases, the  
22 parties will continue to flout the law, the dissatisfied parent  
23 always hoping some new forum will be more sympathetic to his or  
24 her claim. The instability caused by refusal to enforce  
25 jurisdictional rules (and also rules governing choice of forum) in  
26 this area, as in no other, irreparably harms the interests of all  
27 concerned, especially the children." See Hafer at pgs 865-866

28 "In re Marriage of Carney (1979) 24 Cal.3d 725, 730-731 strongly  
emphasizes children's need for stability and continuity. So also  
does the act. The home state concept is therefore of the utmost  
importance in the act, requiring the courts, when possible, to  
choose that forum to adjudicate custody disputes. The children's  
home is the presumptively correct forum. A showing of need to  
change custody does not alter the fact that the modification  
process will be less harmful to the children if conducted near  
their present home. Thus, here no reason appears to be favor the  
California forum unless one assumes inability of the Idaho courts  
to decide the matter fairly. There is no factual or legal basis  
for such an assumption and it violates the full faith and credit  
doctrine. It is counterproductive to the aim of continuity, which  
the act seeks to uphold, to drag children, as here, into a distant  
state to litigate and relitigate custody, simply because the  
noncustodial parent desires it." See Hafer at pg. 866

1 "The harm done to children by these experiences can hardly be  
2 overestimated. It does not require an expert in behavioral  
3 sciences to know that a child, especially during his/her early  
4 years and the years of growth, needs security and stability of  
5 environment and a continuity of affection. A child who has never  
6 been given the chance to develop a sense of belonging and whose  
7 personal attachments when beginning to form are cruelly disrupted,  
8 may well be crippled for life, to his/her own lasting detriment  
9 and the detriment of society." See Hafer at pgs. 866-867

10 What has been lost during the gamesmanship of K. PFISTER and  
11 improper aid of HOOVER/NATIONS is the simple fact that at the center of  
12 this litigation storm stands a little girl. A little girl, who almost  
13 from birth has been caught in a heated custody battle. A little girl  
14 who moved to California in June of 1999 amid the promise of a new start  
15 and a stable home. A little girl who, less than eight months after  
16 arriving in California, was forced to endure repeated short notice  
17 trips to Tennessee for even more contentious hearings. A little girl  
18 that just six weeks shy of her seventh birthday, last glimpsed her  
19 mother in handcuffs before she was taken to Polinsky Center. A little  
20 girl that, after being taken from her mother with little explanation,  
21 was forced onto a plane and returned to Tennessee without the mother  
22 she had spent her entire life with. A little girl who has not laid eyes  
23 on her mother since June 17, 2003. There can be no doubt that the  
24 damage to ALEXIS as a result of the last two years will be  
25 immeasurable.

26 This case involves exactly the kind of case history the UCCJEA was  
27 intended to stop. It involves the horrific damage to a young child  
28 that can occur when an interstate custody battle runs amok. Had the  
UCCJEA been properly applied here, none of this damage would have  
occurred. Once HOOVER granted SEARLE's request to move to California,  
that state should have become the home state in six months. K. PFISTER

1 was determined to not let that happen. Roughly nine months later, he  
2 began a constant stream of pleadings in Tennessee that sought contempt  
3 findings on a myriad of issues as well as a change of custody. Rather  
4 than honor the UCCJEA and transfer jurisdiction to California,  
5 HOOVER/NATIONS took the bait presented by K. PFISTER and simply  
6 continued to preside over the case as if SEARLE and ALEXIS still  
7 resided in Tennessee.

8 California was the proper home state and had proper jurisdiction  
9 over this dispute. K. PFISTER could have had a full and fair hearing  
10 on his custody issues in California as he was no stranger to the  
11 California courts and obviously had the resources to do so. The  
12 California court would have had full access to all of the local  
13 evidence and the impact and disruption of these proceedings to ALEXIS'  
14 life would have been minimal. Instead, HOOVER/NATIONS ignored the  
15 UCCJEA and applied their own law to the detriment of ALEXIS and her  
16 mother.

17  
18 **THE WRONGFUL RETENTION OF ALEXIS SEARLE (aka: PFISTER) IN TENNESSEE**  
19 **SINCE ON OR ABOUT JUNE 16, 2003 DOES NOT RENDER TENNESSEE**  
20 **THE NEW HOME STATE AND/OR THE APPROPRIATE STATE FOR JURISDICTION OF**  
21 **CURRENT CUSTODY ISSUES**

22 There have been UCCJEA cases wherein there has been substantial  
23 delay before the cases were brought to a final conclusion and the  
24 children were after a "wrongful removal". In these cases there have  
25 been unanimous agreement that such delays, (i.e. time spent searching  
26 for the children, locating an attorney, seeking law enforcement  
27 assistance, or "judicial delays") cannot be considered and the case  
28 must be dealt with as if the proverbial clock had stopped at the time  
of the children were wrongfully removed.

1 Events that have occurred after a wrongful removal or wrongful  
2 retention cannot be considered by the court since to do so would  
3 frustrate the purpose of the UCCJEA. This issue has been addressed by  
4 various courts inside and outside of California and a sampling of these  
5 holdings is included as follows:

6 "Subject matter jurisdiction either exists or does not exist at  
7 the time when the petition is filed with the court... Facts developing  
8 after that, such as the length of time the children have now been in  
9 California, cannot be considered when determining whether the court  
10 initially had jurisdiction to hear the action". Rexford v. Rexford  
11 (Alaska 1980) 631 P.2d 475, 478.

12 "In our view, the better rule is that subject matter jurisdiction  
13 either exists or does not exist at the time the action is commenced.  
14 Otherwise the absconding parent is encouraged purposely to delay a  
15 pending custody proceeding in order to gain time to establish  
16 significant contact with the state". Plas v. Superior Court (1984) 155  
17 Cal.App.3d 1008, 1015.

18 "We, as a court of law, must consistently refuse to condone what  
19 has happened here if the aims of the act are ever to be achieved. It  
20 is essential to discourage parents from unnecessary child stealing. So  
21 long as they have any hope of succeeding in such maneuvers...they will  
22 continue, regrettably, to engage in such conduct. The Legislature has  
23 decided such conduct is not in the children's best interests. When we  
24 apply the law we act in the children's interests." Hafer, Supra.

25 "On remand, the court may not consider Alyssa's current  
26 circumstances; rather, the court must consider whether it had subject  
27 matter jurisdiction as of January 2001 [Weller v. Weller (Wyo.1998) 960  
28

1 P.2d 493, 496] To do otherwise 'would undermine the legislative  
2 function, the purposes behind the UCCJEA's jurisdictional requirements,  
3 and the basic doctrine of subject matter jurisdiction." In Re Alyssa F.  
4 (2003) 112 Cal. App. 4<sup>th</sup> 846.

5 "The fact that the children have been in Florida since 1978 and that  
6 Florida may now have become their 'home state' pending the lengthy  
7 resolution of this appeal shall not be considered by the trial court in  
8 determining jurisdiction". Hegler v. Hegler (Fla. App. 1981) 383 So.2d  
9 1134, 1137.

10 There can be no doubt that California was the appropriate home  
11 state for purposes of jurisdiction over the custody dispute raised by  
12 K.PFISTER in March of 1999. Due to inability of the Tennessee court to  
13 impartially apply the UCCJEA to this case and relinquish jurisdiction,  
14 ALEXIS was taken from her mother in June of 2003 and she has not seen  
15 her since. Due to SEARLE's pro per status after the loss of ALEXIS and  
16 the Tennessee court's unwillingness to provide a copy of the relevant  
17 court files, roughly two years have passed since ALEXIS was taken to  
18 either Tennessee or Louisiana. For that reason, K.PFISTER will  
19 undoubtedly suggest that Tennessee or Louisiana is now ALEXIS' home  
20 state for purposes of jurisdiction over this dispute or that one of  
21 those states is the more convenient forum. However, there can be no  
22 doubt from the discussion above that ALEXIS removal from California  
23 occurred pursuant to a Tennessee order that lacked proper jurisdiction.  
24 As a result, that June 27, 2001 order and all subsequent orders issued  
25 by that court in this case were invalid and remain so. Accordingly,  
26 ALEXIS is being wrongfully held in Tennessee and the time period during

27 ///

1 which her recovery has been sought can not support a new home state  
2 finding under the UCCJEA.

3 **CONCLUSION**

4 On June 16, 2003, SEARLE and ALEXIS were living happily in San  
5 Diego County. ALEXIS was in school and doing well while SEARLE was  
6 working and caring for her daughter's needs. On June 17, 2003, while  
7 trying to ensure proper steps were taken to address a domestic violence  
8 incident next door, their world was destroyed. The UCCJEA was created  
9 to avoid put an end to this type of destruction and the permanent  
10 damage interstate custody battles can cause to the development of  
11 children. K. PFISTER, with the aid of HOOVER/NATIONS, has managed to  
12 bypass the UCCJEA and realize his life goal of tormenting SEARLE in  
13 every way imaginable for as long as humanly possible. This court has an  
14 obligation to protect a California citizen from this type of intra-  
15 state abuse. For all of the reasons stated above, SEARLE respectfully  
16 requests that the court grant the following relief:

17  
18 *Respondent TAMMY SEARLE requests that the court make the following*  
19 *findings:*

- 20 1. The State of California had proper jurisdiction over custody  
21 issues related to Alexis Searle (aka: Pfister) as of December  
22 25, 1999.
- 23 2. There were no substantive ties to Tennessee as of December 25,  
24 1999 that would warrant continued jurisdiction over custody  
25 issues related to Alexis Searle (aka: Pfister).
- 26 3. Any Tennessee court orders related to custody of Alexis Searle  
27 (aka: Pfister) issued after December 25, 1999 lacked  
28 jurisdiction pursuant to UCCJA and were therefore invalid.
4. The removal of Alexis Searle (aka: Pfister) from California and  
transfer of her custody to Petitioner PFISTER pursuant to  
invalid Tennessee court orders was improper and a violation of  
the State and Federal Constitutional rights of Respondent  
SEARLE.



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2004 WL 3021107 (Tenn.Ct.App.)

Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.  
Berta Margarita De Los Rios LEE

v.

Daniel LEE.

No. W2003-01053-COA-R3-CV.

Assigned on Briefs March 22, 2004.

Dec. 29, 2004.

Appeal from the Chancery Court for Shelby County, No. D-27933-III; D.J. Alissandratos, Chancellor. Daniel M. Lee, Collierville, Tennessee, Pro Se.

Lee Ann Pafford Dobson, Germantown, Tennessee, for the appellee, Berta Margarita De Los Rios Lee. Paul G. Summers, Attorney General and Reporter; Pamela A. Hayden-Wood, Senior Counsel, In Defense of Tenn.Code Ann. § 36-6-101(a)(1).

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

**OPINION**

PATRICIA J. COTTRELL, J.

\*1 As part of a divorce, the trial court granted custody of the parties' child to the mother, with visitation by the father. The father appealed, and this court affirmed the trial court. The father subsequently filed a petition to change custody. After lengthy proceedings brought on by various filings by the parties, the trial court ruled that it no longer had jurisdiction over the child's custody. We affirm the jurisdictional ruling, making all other issues moot.

Berta Margarita de Los Rios Lee and Daniel Mark Lee were married in Torrance, California in 1990. They moved to the Memphis area in 1993 when Mr. Lee, an employee of Federal Express, voluntarily transferred there. The parties' only child, William Alvaro Lee, was born in this state in 1994. The marriage relationship deteriorated, and in September of 1996, the wife returned to California with the child. In December of the same year, she filed a Complaint for Divorce in the Shelby County Chancery Court and asked the court to grant her custody of William. The husband filed an Answer and Counter-Complaint for Divorce and also asked for custody of William.

During the pendency of the divorce action the trial court entered a consent order allowing Mr. Lee two weeks of visitation with William every month. His periods of visitation were marked by apparent confusion on his part over their duration and by continuing conflicts over the boundaries of each parent's authority. The difficulties the parties experienced with visitation during this period are more fully recounted in Lee v. Lee, 66 S.W.3d 837 (Tenn.Ct.App.2001).

The parties ultimately stipulated to the grant of an absolute divorce pursuant to Tenn.Code Ann. § 36-4-129(b). The trial court conducted a bench trial to determine the question of custody and some undecided property issues, and subsequently entered a Final Decree of Divorce and granted custody of William to his mother. Mr. Lee was granted visitation every other weekend and additional visitation during Christmas and school vacations. On appeal, this court affirmed the trial court's custody and visitation arrangement. [FN1] See Lee v. Lee, *supra*. The decisions rendered by the trial court and by this court did not signal an end to the parties' struggles over visitation or custody.

[FN1. While we found the trial court's award of visitation to be

appropriate, we noted that a change had been subsequently made in William's school schedule which could affect visitation. We accordingly directed the trial court to consider that change on remand.

## I. TRIAL PROCEEDINGS AND ISSUES ON APPEAL

The proceedings that are the **subject of this appeal** began with the filing on November 19, 2001, by Mr. Lee of a Petition for Contempt **[FN2]** and to Change Custody. As he had in prior proceedings, Mr. Lee appeared *pro se*. The petition **alleged that there had been a material change of circumstances and that Ms. Lee had tried to minimize or negate his relationship with William, to the detriment of the child. The mother's response denied the father's allegations and claimed that he had abused his visitation privileges in violation of specific provisions in the Final Decree and should himself be held in contempt.**

**[FN2].** Some of the contempt allegations related to disposition of real property in accordance with the divorce decree and are unrelated to custody and visitation issues.

In an unusual legal strategy, Mr. Lee's petition asking the court to change custody and find the mother in contempt for violating the prior custody and visitation order began with a challenge to the court's jurisdiction. That challenge was based on alleged constitutional infirmities in Tenn.Code Ann. § 36-6-601(a)(1), the statute authorizing courts to award custody. **[FN3]** The same or similar constitutional arguments would be raised by Mr. Lee with regard to almost every issue that arose.

**[FN3].** The Attorney General was notified, as is required pursuant to Tenn. R. Civ. P. 24.04, and intervened.

**\*2** Mr. Lee's choice of litigation strategy was unsuccessful and even counterproductive, for not only did he fail to achieve a change of custody, but his visitation rights were suspended and he was unable to get them restored. We have read all the transcripts of proceedings in the record (six in all), as well as reviewing all the filings. **[FN4]** Although we have determined that only the jurisdictional issue need be resolved in this appeal, we will briefly discuss the more significant proceedings in the trial court to give a better understanding of the context of the rulings. The parties filed many, or as the trial court once observed, "innumerable," motions, and throughout a series of hearings, the trial court attempted to deal with those motions in an orderly fashion based on the parties' setting them for hearing and in recognition of the interdependence of some of them.

**[FN4].** We note that the mother was not present at any of those hearings, although she was represented by counsel. The father was *pro se*, and was not called as a witness. The hearings focused almost exclusively on arguments on legal issues or procedural motions.

Along with her answer and counterclaim the mother filed a motion for a psychological examination of Mr. Lee under Tenn. R. Civ. P. 35. She contended that the father's mental condition was in controversy because he had allowed his son to view inappropriate violent material and had inflicted emotional abuse upon him during visitation. She alleged the examination was necessary due to concerns about the father's fitness for unsupervised visitation.

The father filed a response to the motion in which he stated that the court had already issued such an order on January 24, 2001, so a new order was not necessary, even though he had not yet complied. **[FN5]** He also re-asserted constitutional challenges to the statute authorizing courts to make custody awards. The trial court conducted a hearing and granted the mother's motion, expressing its own concerns based on its observations. The court determined that the father's psychological status had to be determined not only for the purpose of custody and visitation, but also for the question of whether he was competent to proceed in the litigation. The court stated that "the threshold at issue in any litigation is first and foremost the competence of someone to be able to proceed." The detailed order filed by the court included a strict schedule for the father to submit to an evaluation by the professional named by the mother.

FN5. The transcript of the hearing of January 23, 2002, also indicates that the trial court had orally granted a similar motion in January of 2001, but through an oversight the court's written order had omitted that ruling. Our record includes no filings prior to Mr. Lee's petition.

Six months later, the mother filed an "Emergency Petition to Terminate Visitation or, in the Alternative, Supervised Visitation." The Petition noted that the results of the ordered psychological examination had not yet been tendered to the court [FN6] and alleged that the father had engaged in a variety of abusive behaviors against the child during visitation. In later appearances, the father denied those allegations.

FN6. Although the had father finally submitted to the psychological examination, he did not pay the psychologist as ordered by the trial court,

and the psychologist had not released the report.

The original Complaint for Divorce had been brought in the court of Chancellor D.J. Alissandratos, and he had presided over the case since that time. But he was off the bench on the day the mother's Emergency Petition was filed. The Petition was therefore heard *ex parte* by Chancellor Walter Evans. On June 21, 2002, he issued an order enjoining Mr. Lee from exercising visitation with his child, "until further orders of this court to the contrary" and set a hearing for a date one month later on July 22. \*3 Mr. Lee filed a Motion to Reconsider and to Restart Visitation (the first of several motions seeking this relief), and Ms. Lee filed a motion to re-appoint CASA to investigate her allegations [FN7] or, in the alternative, to appoint a Guardian ad Litem for the same purpose and to represent the interests of the child. The father filed a response in which he asked that a CASA investigation be performed with the mother to bear the cost and that no Guardian ad Litem be appointed.

FN7. CASA had apparently done two home studies during the initial divorce proceedings.

At a hearing on some of the various pending motions on July 19, the father attempted to have the emergency order lifted, but the trial court decided to hold all matters in abeyance until receipt of the report of the psychologist who had been appointed to evaluate Mr. Lee. By the time of the next hearing, October 4, 2002, the chancellor had finally obtained access to the psychologist's report. On the basis of the report, he found the father to be competent to proceed with the litigation unassisted. [FN8]

FN8. The chancellor quoted the report during the hearing as saying that the personality test "produced significant elevations on set scale six indicating problems with suspiciousness, sensitivity to criticism, extreme mistrust of others and a sense of persecution. This elevation was significantly related to questions which artificially elevate the score due to his current involvement in the legal process." The court went on to say that "Mr. Lee has become deeply involved in the various legal subjects which may at times obscure the real issues involving his son." The psychological report itself is not in the appellate record. The transcript of the record indicates that Mr. Lee never moved the trial court to have the psychological report from the Rule 35 mental examination entered into evidence. He has filed a motion in this court to supplement the record with that report. Under Tenn. R.App. P. 24(e), such a motion should be submitted to and settled by the trial court, whose determination is

conclusive unless there are extraordinary circumstances. Mr. Lee's motion in this court does not suggest that he filed a motion in the trial court to supplement the record. Instead, it recites only that he asked the trial court clerk to put the report in the record, and that he asked the appellee's counsel if she would agree to the supplementation. We note that under

Tenn. R.App. P. 24(g) no court may add or subtract from the record "except insofar as may be necessary to convey a fair, accurate and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal." Mr. Lee is not challenging the accuracy of the findings in the report nor the trial court's explicit adoption of those findings. Further, the inclusion of the report in the appellate record is not necessary to resolve this appeal. The motion is accordingly denied.

The chancellor considered a number of motions during the same hearing, including the father's motion to recuse, which was denied, and his motion for sanctions against the mother for requesting the psychological examination, which was likewise denied. At this hearing, the father tried to raise the question of visitation, but the court stated it would not rule on that or other pending issues regarding the custody arrangement until a Guardian ad Litem had been appointed and filed a report. The court ordered the appointment of a Guardian ad Litem for the child. [FN9]

FN9. The father objected at the outset to the appointment of a Guardian ad Litem. In later filings and hearings, he asserted that because of the chancellor's alleged bias against him, any such appointment by the court would inevitably lead to an unfavorable result for him and insisted that he himself should be allowed to choose the Guardian ad Litem. He also made an argument that because the order appointing her refers to the Guardian ad Litem as "the guardian of the person" of the child, it was an unconstitutional infringement upon his rights as a parent.

The court also discussed, but did not rule on, the jurisdictional issue which had been raised earlier. The court observed that it continued to be concerned about its jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, but agreed that other issues had required resolution before it could proceed with that question. The trial court wanted to hear from the Guardian ad Litem on the jurisdiction issue so that the child's interest was represented. The report of the Guardian ad Litem was submitted to the court during the hearing of January 17, 2003. The report stated that California had long been William's home state and that it was in the child's best interest that matters of custody, visitation, and child support be heard in the courts of that State. The court found it no longer had jurisdiction over custody. [FN10]

FN10. The court also declared that it would retain jurisdiction over the disputes related to the distribution of marital property in accordance with the divorce decree, specifically disposition of real property in Tennessee and the contempt allegations related thereto.

At the end of this final hearing, not in response to any request, Mr. Lee asked to strike his motion to restart visitation, and the court agreed since "it becomes moot. It becomes one for California." An order memorializing the court's decision was entered on March 27, 2003, entitled "Order on Transfer of Jurisdiction as to Custody and Child Support Issues Pertaining to Minor Child." In it, the court held that the Tennessee court did not have continuing jurisdiction over custody and visitation decisions involving the child. It also found that, although it had discretion to retain authority over the issues relating to child support, those matters should also be transferred to California. [FN11] This appeal followed.

FN11. In discussing the timing for relieving the Guardian ad Litem of his responsibilities, the court recognized that a final judgment would be

issued later, presumably on the property distribution and related contempt issues the court retained. Although we cannot locate that judgment in the record, Mr. Lee does not challenge the court's decisions as to those issues. No one has raised any finality issues, and

9. Is the statute that purports to grant courts **jurisdiction** over children of divorced parents T.C.A. § 36-6-101(a)(1), which the attorney **general** has not said is constitutional, unconstitutional under the Tennessee and **United States** Constitutions?

10. Was the reopening of a res judicata order, to allow mother to take the child out of the country, an abuse of discretion?

11. After 14 months of litigation where the mother requested and trial judge issued numerous modifications to custody and other orders, was the trial judge's purported withdrawal under the Uniform Child Custody Jurisdiction and Enforcement Act prior to all matters being adjudicated and appealed as of right under Tennessee law, an abuse of discretion?

12. If any of the issues raised, briefed, and argued under Tennessee law are declined to be answered by this Court, does that allow another state to adjudicate Tennessee statutory and constitutional law in an appeal as of right?

FN13. An example are Mr. Lee's objections to the order that he undergo a psychological examination. That examination has been completed;

its results were not used in any way that injured Mr. Lee's position; and he wants to include it in the appellate record.

## II. JURISDICTION

Tennessee's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Tenn.Code Ann. § 36-6-201 et seq, governs jurisdictional conflicts between Tennessee and other states over child custody. [FN14] As stated in the Act, one of its purposes is to "[p]romote 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." Tenn.Code Ann. § 36-6-202(2).

FN14. The definitions portion of the Act specifically states that a "child custody determination" or a "child custody proceeding" includes determinations or proceedings involving visitation as well as child custody. Tenn.Code Ann. § 36-6-205(3) & (4).

The home state of the child is one of the most important factors for the court to consider in determining the question of jurisdiction, and that term is defined in the statute.

"Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, "home state" 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.

Tenn.Code Ann. § 36-6-205(7).

Even though the child in this case was living with his mother in California in 1996 when she filed for divorce and custody, it was not his home state at the time, because he had not yet lived there for six months. The mother was correct to file in Tennessee, since it had the jurisdiction to make an initial child custody determination under Tenn.Code Ann. § 36-6-216(a)(1).

A Tennessee court making the initial custody determination generally has continuing jurisdiction over its

own child custody order. However, after the child has lived in another state long enough for that state to have become the child's home state, that jurisdiction may end.

(a) Except as otherwise provided in § 36-6-219, a court of this state which has made a child-custody determination consistent with this part has exclusive, continuing jurisdiction over the determination until:

\*5 (1) A court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or (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 § 36-6-216.

Tenn.Code Ann. § 36-6-217.

Since Mr. Lee still resides in this state, determination of jurisdiction must necessarily rest upon subsection (a)(1). The first part is clearly met because William and his mother have been living in California since 1996. The other requirement is that the child no longer has a significant connection with this state and that substantial evidence is no longer available in this state concerning his care, protection, training, and personal relationships.

The parties originally married in California. The child was born in this state, but his mother took him back to California when he was two years old. The father exercised visitation in both California and Tennessee, but primarily in California. That visitation was suspended during these proceedings before the trial court ruled that it no longer had jurisdiction. The record does not contain any evidence of any current connection between the child and this state other than that his father lives here.

The type of connection and evidence meant by the statute must be considered in the context of any proceeding to modify an existing custody arrangement, which is what Mr. Lee sought when he initiated these proceedings. Once a court has established a custody or parenting arrangement, including a visitation or residential schedule for the non-custodial parent, that order can only be changed or modified if the court determines (1) there has been a material change in circumstances since the initial custody order and (2) that modification of the existing arrangement is in the child's best interests.

Cranston v. Combs, 106 S.W.3d 641, 643-44 (Tenn. 2003); Kendrick v. Shoemaker, 90 S.W.3d 566, 570 (Tenn. 2002). These determinations, of course, must be based upon evidence adduced at a hearing where both parties have the opportunity to present evidence and challenge the other party's evidence. There can be no question that virtually all of the evidence related to William's current situation, and therefore relevant to a determination of his best interests, will be provided by witnesses and records in California.

In response to Ms. Lee's emergency petition, Mr. Lee filed his own affidavit and those of two other people who, according to Mr. Lee, had knowledge of William's condition during his visits in Tennessee. [FN15] The purpose of these affidavits, however, was to contradict the allegations made by Ms. Lee in support of her emergency petition to suspend visitation. While they may have limited relevance to the issues to be decided regarding the change of custody petition, they do not constitute substantial evidence of the child's current care, protection, training, and personal relationships.

FN15. The affidavits, which are sworn, are in the form of typed questions which Mr. Lee submitted to the affiants, and which they answered in their own handwriting. Most of the answers were only one word in length. For example, a neighbor of Mr. Lee's who lived two doors down from him and who previously provided daycare to William in her home was asked, "What if any signs of physical or mental trauma (abuse) did you note the weeks William was under your daily care." Her answer was "None" (word underlined). "Did the father and son show great care and love for each other, with the father doing things such as calling from work to check on him?" The affiant answered "yes." Her only more extensive statement, in response to the question "any other comments?" was "I feel that the child suffers the most. My granddaughter always wants to go play at Wms. when he is there." Mr. Lee's own affidavit stated that the second affiant lived in Mr. Lee's home, and was "eager to provide testimony." His answers were also monosyllabic responses to questions posed by Mr. Lee. Neither affiant claimed to have a significant relationship with William or to have extensive knowledge of him outside his earlier visits in Tennessee.

\*6 Consequently, we conclude that the trial court no longer had continuing, exclusive jurisdiction over custody issues related to the child. Subsection (b) of Tenn.Code Ann. § 36-6-217 makes it clear that a Tennessee court that does not have continuing exclusive jurisdiction under subsection (a) has no jurisdiction to modify custody unless it has jurisdiction under Tenn.Code Ann. § 36-6-216, the provision related to initial custody determinations. Under subsection (a) of that statute, a court has jurisdiction to make an initial award 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 (6) 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 (a)(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 § 36-3-221 or § 36-3-222, and ...
- (3) All courts having jurisdiction under subdivision (a)(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 § 36-3-221 or § 36-3-222, or
- (4) No court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (2), or (3).

At the time Mr. Lee filed his petition to change custody, Tennessee was clearly not the child's home state. There is no indication in the record that a California court has declined jurisdiction. Further, California would have jurisdiction under the UCCJEA's provisions. Consequently, the courts of Tennessee no longer had jurisdiction to decide the custody modification petition.

Mr. Lee's sole attack on the factual basis for the trial court's decision on jurisdiction was his reference to the neighbors who provided affidavits generally testifying they had seen no evidence of physical or emotional abuse during William's visits to his father's house. His only attack on the trial court's legal analysis is his assertion that "home state" is merely a definition and has no bearing on the issue since "the 'home state' is below the hierarchy of the state with exclusive continuing jurisdiction, which is Tennessee." Our analysis of the UCCJEA's jurisdictional provisions addresses this assertion.

Mr. Lee's primary argument is that the trial court abused its discretion by dismissing his petition on jurisdictional grounds after "multiple appealable orders were issued." He asserts that the court had continuing jurisdiction when he filed his petition; that the court made several rulings during the pendency of his petition that he wants to challenge in this appeal and further, if necessary; that until those appeals are exhausted, the question of jurisdiction is not before this court or the trial court; that rulings such as the ordering of the psychological evaluation and others he considers as having Constitutional implications "created the possibility of a very lengthy appellate process, up to the U.S. Supreme Court, and precludes personal jurisdiction over the parties from being modified until the entire process is complete."

\*7 These arguments indicate a misapprehension of the requirement that subject matter jurisdiction exist and the consequences of the lack of such jurisdiction. Subject matter jurisdiction involves a court's power or authority to adjudicate a particular controversy brought before it; it relates to the cause of action itself. State es rel. Dept. of Social Services v. Wright, 736 S.W.2d 84, 85 n. 10 (Tenn.1987); First American Trust Co. v. Franklin-Murray Development Company, L.P., 59 S.W.3d 135, 140 (Tenn.Ct.App.2001). Thus, subject matter jurisdiction is an essential requirement for the granting of judicial relief both at trial and on appeal. Id. at 141. "The lack of subject matter jurisdiction is so fundamental that it requires dismissal whenever it is raised and demonstrated." Id. The question of whether a court has authority to modify a custody order is a matter of subject matter jurisdiction. Gutzke v. Gutzke, 908 S.W.2d 198, 201 (Tenn.Ct.App.1995).

Issues of the court's fundamental authority to decide a controversy are so important that courts must address them even if the parties do not raise them. First American Trust Co., 59 S.W.3d at 140. In fact, parties cannot waive the requirement of subject matter jurisdiction or agree to confer jurisdiction on the court. Id. at 140-41.

Courts derive their subject matter jurisdiction from the Constitution of Tennessee or from legislative act, i.e., statute. Meighan v. U.S. Sprint Communications Co., 924 S.W.2d 632, 639 (Tenn.1996). Courts cannot exercise jurisdictional authority that has not been conferred on them directly or by necessary implication. In re Estate of White, 77 S.W.3d 765, 768 n. 7 (Tenn.Ct.App.2002); Dishmon v. Shelby State Cmty. College, 15 S.W.3d 477, 480 (Tenn.Ct.App.1999).

In the case before us, the Tennessee General Assembly has adopted the UCCJEA, and the provisions of that act clearly set out the requirements for a Tennessee court to exercise jurisdiction over a change of

custody request. Unless the statute confers jurisdiction, the court has no authority to decide the issue. While we understand that Mr. Lee is dissatisfied with many of the interim rulings made by the trial court, and that he is frustrated with the subsequent dismissal for lack of jurisdiction after those interim rulings, the record shows that, from early on in these proceedings, the court expressed its concern over the question of jurisdiction since Tennessee had long ceased to be the child's home state. A hearing and decision on that issue, however, was postponed until the psychological report was filed and considered and then until a guardian ad litem to represent the child's interest was appointed and made a report. With both these actions, which the court considered prerequisite to a substantive ruling on jurisdiction, there was delay, at least some of which is attributable to Mr. Lee. In any event, the fact that the trial court had made some interlocutory rulings does not confer jurisdiction on it to consider the petition for change of custody. Just as the parties cannot confer jurisdiction by appearance, plea, consent, or waiver, *First American Trust*, 59 S.W.3d at 140-41, neither can the court confer jurisdiction upon itself. \*8 We conclude that the trial court correctly found that it had lost jurisdiction over this case. Neither the trial court nor this court has the authority to modify the existing custody order.

### III. STATUS OF VISITATION

Some of the arguments propounded by Mr. Lee point out an important issue that we think must be addressed simply to clarify the legal consequence of the trial court's dismissal for lack of jurisdiction and our affirmance thereof. That issue is the status of interlocutory orders entered before the court determined that it had no jurisdiction to decide a request for custody modification. The only one of the interlocutory orders whose post-dismissal status need be clarified is the one of most importance and the one with most significant consequence to Mr. Lee: the injunction suspending Mr. Lee's visitation. [FN16] While that order was in effect at the time of the dismissal on jurisdictional grounds, it was no longer in effect after the dismissal, and the original custody order, including the visitation arrangements therein, remains the controlling order on those matters, unless or until it is modified by a court with jurisdiction.

FN16. The exchange between Mr. Lee and the trial court at the end of the last hearing regarding Mr. Lee's withdrawal of his motion to restart visitation could lead to confusion. At this point, of course, we do not know whether the parties have initiated any litigation in California and what their view, or the California court's view, of the interlocutory order is. We simply felt it advisable to set forth our view.

It is well-settled that a judgment or order entered without subject matter jurisdiction is void. *Gentry v. Gentry*, 924 S.W.2d 678, 680 (Tenn.1996); *First American Trust*, 59 S.W.3d at 141. Since the trial court herein did not have jurisdiction to determine the custody modification petition filed by Mr. Lee when it was filed, it is certainly arguable that it did not have jurisdiction to enter other orders regarding issues raised after the filing of the petition. However, that does not mean they were not valid for the pendency of the proceedings, but rather that they have been rendered void by the decision on jurisdiction. The UCCJEA's jurisdictional sections provide that the court making an initial custody determination (the trial court herein) has continuing jurisdiction over that order until a Tennessee court makes the determinations set out in Tenn.Code Ann. § 36-6-217 that result in the loss of jurisdiction. In the case before us, that determination was not made until after the parties and the court had undergone at least six hearing on various motions and issues. The interlocutory or *pendente lite* orders ruling on those motions and issues were entered at a time when the trial court, under the language of the statute, still had continuing jurisdiction.

The visitation suspension order was, in effect, a temporary restraining order or temporary injunction pursuant to Tenn. R. Civ. P. 65. [FN17] Like any other injunction entered for the pendency of the litigation or any other interlocutory order, it was extinguished upon the dismissal of the action. **Because** the trial court did not have jurisdiction to modify the existing custody and visitation order, the restraining order did not effect a permanent modification of the original custody order. It was not intended to.

FN17. A restraining order may be entered without notice. Tenn. R.

Civ. P. 65.03(1). As a general rule, however, such an order "shall expire by its terms within such time after entry, not to exceed fifteen days, as the court fixes." Tenn. R. Civ. P.

65.03(5). There is an exception for domestic relations cases, and a restraining order entered in such a case "may be issued upon such terms and conditions and remain in force for such time as shall seem just and proper to the judge to whom application therefor is made...." Tenn. R. Civ. P. 65.07.

**\*9** For any or all of these reasons, the order suspending visitation "pending further orders of the court" was no longer effective upon the trial court's dismissal of the action for lack of subject matter jurisdiction.

#### CONCLUSION

The court's order dismissing the father's petition to change custody for lack of jurisdiction is affirmed. Costs of this appeal are taxed to the appellant, Daniel Lee.

Tenn.Ct.App.,2004.

Lee v. Lee

2004 WL 3021107 (Tenn.Ct.App.)

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