

STATE OF TENNESSEE, )  
DEPARTMENT OF HUMAN )  
SERVICES, )  
 )  
Petitioner/Appellee, )  
 )  
VS. )  
 )  
IN THE MATTER OF: )  
 )  
EMMI PRUITT AND )  
KARELYN PRUITT, )  
 )  
JAMI SWAYZE (McCARTHY), )  
 )  
Respondent/Appellant. )

Appeal No.  
01-A-01-9610-CV-00496

Franklin Circuit  
No. 9439

**FILED**  
  
April 30, 1997  
  
Cecil W. Crowson  
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COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE CIRCUIT COURT OF FRANKLIN COUNTY  
AT WINCHESTER, TENNESSEE

THE HONORABLE BUDDY D. PERRY, JUDGE

JOHN KNOX WALKUP  
Attorney General and Reporter

DOUG EARL DIMOND  
Assistant Attorney General  
426 Fifth Avenue North  
Nashville, Tennessee 37243-0499  
Attorney for Petitioner/Appellee

TIMOTHY S. PRIEST  
SWAFFORD, PETERS & PRIEST  
100 First Avenue, S.W.  
Winchester, Tennessee 37398  
Attorney for Respondent/Appellant

REVERSED, DISMISSED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:  
LEWIS, J.  
KOCH, J.

## OPINION

This case involves a question of the jurisdiction of this state over a juvenile petition filed while the children were visiting here. The petition alleged that the children were dependent and neglected because of acts that occurred in their home state of Michigan. The juvenile court of Franklin County assumed jurisdiction, found the children to be dependent and neglected, and placed them in foster care. The circuit court affirmed. We hold that the lower courts had no jurisdiction over this proceeding; therefore we reverse the court's order and dismiss the petition.

### I.

Troy and Jami Sue Pruitt were divorced by the Circuit Court of Genesee County, Michigan in May of 1993. The divorce decree awarded custody of the parties' two minor daughters to Ms. Pruitt (now known as Jami McCarthy). Troy Pruitt lives in Tennessee where the children came to visit in May of 1994. When the time came for the children to return to Michigan, someone (it is not clear in the record who) referred the children to the Tennessee Department of Human Services (DHS), and the department's agents filed a petition in the juvenile court of Franklin County alleging that the children were dependent and neglected in Michigan. This conclusion was based on a conversation with the oldest daughter, age six, revealing that she and her four year old sister had been sexually abused in their mother's home. The court entered an emergency order taking custody of the children and they have been in state custody ever since. The juvenile court and the circuit court of Franklin County overruled the mother's jurisdictional challenge.

### II.

The Uniform Child Custody Jurisdiction Act (UCCJA), Tenn. Code Ann. § 36-6-201, et seq., limits the jurisdiction of this state's courts to issue custody or

visitation orders where the children or the parties have a significant relationship to another state. The varied purposes of the act include the prevention of forum shopping and the promotion of jurisdiction in the state with the closest connection to the child and the child's family. *L. G. v. The People of The State of Colorado*, 890 P.2d 647 (Colo. 1995). The act limits this state's jurisdiction to cases where:

(1) This state:

(A) Is the home state of the child at the time of commencement of the proceeding; or

(B) Had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of the child's removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state; or

(2)(A) It appears that no state has jurisdiction under subdivision (a)(1), or each state with jurisdiction under subdivision (a)(1) has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child; and

(B) The child and at least one (1) contestant have a significant connection with this state; and

(C) There is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationship; and

(D) It is in the best interest of the child that a court of this state assume jurisdiction; or

(3) It appears that no state has jurisdiction under subdivision (a)(1) or (2) or each state has refused jurisdiction on the ground that this is the more appropriate forum to determine child custody, and it is in the best interest of the child that a court of this state assume jurisdiction.

...

(d) Jurisdiction shall not be exercised to modify an existing custody decree except in accordance with § 36-6-215.

Tenn. Code Ann. § 36-6-203.

Tenn. Code Ann. § 36-6-215 provides:

(a) If a court of another state has made a custody decree recognizable and enforceable under § 36-6-213, a court of this state shall not modify that decree unless:

(1) It appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this part or has declined to assume jurisdiction to modify the decree; and

(2) The court of this state has jurisdiction.

Everyone concedes that this state does not have jurisdiction to change the custody of these children. The state asserts, however, that this is not a case involving custody; that this is a petition in the juvenile court having to do with the welfare of the children because they are alleged to be dependent and neglected. Since the Michigan custody order remains intact, the state argues that the UCCJA does not apply.

We disagree. Under the UCCJA the definition of a “custody proceeding” does exclude most proceedings under the juvenile code “except proceedings to determine custody pursuant to § 37-1-104 and pursuant to § 37-1-103 as to dependent and neglected children when an original party or person acting as a parent files the petition or when the petition involves facts arising from another state.” Tenn. Code Ann. § 36-6-202(3). Thus, the provisions of the UCCJA specifically apply to proceedings in the juvenile court in which a child is alleged to be dependent and neglected under facts arising in another state. See *In Re A.L.H., Juvenile*, 630 A.2d

1288 (Vt. 1993);<sup>1</sup> *L.G. v. The People of the State of Colorado*, 890 P.2d 647 (Colo. 1995).

This state can act in an emergency to protect a child who is present in this state and who is threatened with serious injury. Tenn. Code Ann. § 36-6-204. But this power is subject to a sixty day limit. In order to make a permanent change, the petitioning party must proceed in a state having jurisdiction under Tenn. Code Ann. § 36-6-203.

We conclude that pursuant to the provisions of the UCCJA, the courts of this state had no jurisdiction to deal with these children except to the limited extent set forth in Tenn. Code Ann. § 36-6-204. Sixty days after the filing of the initial petition that jurisdiction ended.<sup>2</sup> Now, nearly three years later, the process of returning these children to their home state should proceed.

The judgment of the court below is reversed and the cause is remanded to the Circuit Court of Franklin County for further proceedings in accordance with this opinion. Thirty days after the mandate issues in this case the children shall be returned to their mother's custody unless DHS has arranged an alternative placement satisfactory to the Michigan court. Tax the costs on appeal to the state.

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BEN H. CANTRELL, JUDGE

CONCUR:

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<sup>1</sup>The court recommends that the parties read this case carefully. It demonstrates what should happen when cases like this one arise.

<sup>2</sup>If, in fact, the court had any jurisdiction to begin with. The petition did not allege that any emergency existed while the children were in their father's home.

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SAMUEL L. LEWIS, JUDGE

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WILLIAM C. KOCH, JR., JUDGE

