

Bohmer v. Bohmer

Model answer: the outline, then the written memo (annotated)

Read the colors the same way as your marked-up File and Library: each highlight is the rule a fact serves, and the same color links a rule to the fact that triggers it.

dates / 6-mo clock
temporary absence
intent / time in Columbia
notice, not controlling
F1 violence
F4 finances
F5 evidence
F3/F6 distance + familiarity

STEP ONE The outline (what you jot before you write)

Two issues, each in IRAC. Note the authority next to every rule so you can cite it fast, and mark the facts in their colors so the write-up is just joining the dots.

Key: a highlighted phrase is the fact; **the teal → text** after it is the shorthand analysis, what it proves and which way it cuts.

Issue 1 · Home state: Franklin or Columbia on 6/30/08?

R Rule: home state = lived with a parent 6 consecutive months immediately before the filing; a temporary absence still counts. Home state has priority. § 16-102(7), § 16-201(a).

- › *Mills* (Franklin Ct. App. 2002): an absence stops being temporary once the parent forms intent to stay permanently and is in fact doing so (acts: home, school, job); notice to the other parent is relevant, not controlling; the clock runs from the relocation date.

A Apply (the timeline):

- › Dec 1, 2007: Carrie visits grandparents, both parents remain in Franklin → **temporary absence, still counts as Franklin time.**
- › Feb 2, 2008: Jessica leaves, "back in a few weeks" → **still temporary, no intent yet.**
- › late Feb: decides not to return, takes a job, enrolls Carrie in first grade → **intent + acts, Columbia clock starts.**
- › Mar 1: tells Alex she is staying → **notice, relevant but not controlling.**
- › 6/30/08 filing: from Feb 2 = ~5 months, under 6 → **Franklin still home state.**
- › Counter: Alex says Dec 1 physical presence > 6 mo → **fails, a temporary absence counts as Franklin time.**

C Conclude: Franklin is the home state; it keeps jurisdiction unless it declines under § 16-207.

Issue 2 · Inconvenient forum: will Franklin decline? § 16-207; Brickman

R Rule: home state may decline if it is an inconvenient forum and another state is more appropriate; weigh **six factors**; no factor dispositive, no burden of proof, but **violence weighs most.** § 16-207(a)-(b); *Brickman* (Franklin Sup. Ct. 2003).

A Apply (factor by factor):

- › **F1 violence + safety** § 16-207(b)(1): abuse hx, 2006 choking + CPO, rifle, Feb 1 shaking + photos, threats after she left; she fled, so Columbia is safer. Weaker than *Brickman* (no convictions; conciliatory email; therapy claim). → **favours J**
- › **F2 time outside** (b)(2): ~7 mo Columbia, born there, family; but ~4 yrs Franklin. → **neutral / slight J**
- › **F3 distance** (b)(3): 100 mi vs 400 in *Brickman*; Alex noncustodial travels. → **neutral**
- › **F4 finances** (b)(4): \$10k vs \$55k. → **favours J**
- › **F5 evidence** (b)(5): split between states. → **neutral**
- › **F6 familiarity** (b)(6): only an expired consent CPO; no custody case. → **neutral / slight J**

C Conclude: added weight to safety → **Franklin likely (not certain) declines**; milder than *Brickman*.
Remedy = stay + refile in Columbia. § 16-207(c).

STEP TWO The written answer (memo, full IRAC)

Essay on the left, teaching notes on the right. Every rule carries its citation; the highlighted facts match the outline and the marked-up File.

MEMORANDUM

To: Charles Petrilla, Managing Partner

From: Applicant

Date: July 29, 2008

Re: Jessica Bohmer, jurisdiction over the Franklin custody action

I. Home State: Franklin or Columbia

Whether Franklin or Columbia was Carrie's home state under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) when Alex filed his custody petition on June 30, 2008.

A Franklin court may make an initial custody determination only if Franklin is the child's home state on the date the proceeding commenced. § 16-201(a). The UCCJEA defines the home state as the state in which the child lived with a parent for six consecutive months immediately before the proceeding, and it provides that a temporary absence counts as part of that period. § 16-102(7). The home state has priority, and another state may act only if the home state declines under § 16-207.

Whether an out-of-state stay counts toward Franklin or instead starts a new home state turns on the difference between a temporary absence and a permanent relocation. Under *In re Marriage of Mills* (Franklin Ct. App.

Set-up. An objective, predictive memo to the partner. Per the assignment, no separate statement of facts.

Issue 1 of 2. Answer it first; Issue 2 assumes it.

Issue. Frame the issue as a *Whether* question, anchored to the filing date.

Rule. Rule, statute first. Give the home-state definition, the six-month clock, and the temporary-absence rule, each with its section.

Rule. Rule, case gloss. Cite *Mills* and pull out its three moves: intent shown by acts, temporary can ripen, notice is not controlling.

2002), an absence is no longer temporary once the absent parent has formed the intent to reside permanently in another state and is in fact doing so. Intent is judged by the parent's conduct, such as renting a home, enrolling the child in school, and taking a job, and a stay that begins as temporary can ripen into a permanent move. The date the parent expressly tells the other parent is relevant but not controlling, and the six-month clock for the new state runs from when the intent formed and was acted upon.

Here, Carrie was first present in Columbia beginning December 1, 2007, when she stayed with her maternal grandparents while both parents remained in Franklin. That was a temporary absence, so under § 16-102(7) and *Mills* it counts as Franklin time and did not start a Columbia clock. Jessica's own departure on February 2, 2008 was also temporary at first: she told Alex she would be "back in a few weeks," showing no intent to relocate.

The absence became a permanent relocation only in late February, when Jessica decided not to return, found a job, and enrolled Carrie in the first grade in Columbia. Those acts are the same intent-establishing conduct the court relied on in *Mills*. Her March 1 statement to Alex that she was staying is relevant but, under *Mills*, not the controlling date, because the relocation was already underway.

Measuring from the earliest defensible relocation date, February 2, only about five months had passed when Alex filed on June 30, 2008, fewer than the six the UCCJEA requires. Columbia therefore could not have become the home state until August at the earliest.

In fairness, Alex will argue that Carrie was physically present in Columbia from December 1, 2007, more than six months before he filed, making Columbia the home state. That argument should fail, because a temporary absence is counted as home-state time in the left-behind state under § 16-102(7) and *Mills*, and the grandparent visit was temporary until Jessica relocated. If anything, dating the move to the March 1 notice shortens Columbia's period further.

Therefore, on Issue 1, Franklin was Carrie's home state when Alex filed on June 30, 2008, and Franklin has jurisdiction to the exclusion of Columbia unless it declines as an inconvenient forum under § 16-207.

II. Inconvenient Forum

Apply. Application, in date order. Label the Dec 1 visit and the Feb 2 move as temporary, and say why each still counts as Franklin time.

Apply. Application, the turn. Pin the relocation to late Feb by matching Jessica's acts to *Mills*; note March 1 is not the trigger.

Apply. Do the arithmetic on the page. Under any candidate date it is under six months.

Both sides. Weakness, as the memo required. Raise Alex's strongest home-state argument and defeat it with the temporary-absence rule.

Conclude. Conclusion answers the exact question and pivots to Issue 2.

Issue 2 of 2. You reach it only because Franklin is the home state.

Whether the Franklin court, though the home state, is likely to decline jurisdiction as an inconvenient forum so that the case can proceed in Columbia.

A home-state court may decline jurisdiction if it determines that it is an inconvenient forum and that a court of another state is more appropriate. § 16-207(a). The court weighs six factors: (1) whether domestic violence has occurred and is likely to continue and which state can best protect the parties and child; (2) the time the child has resided outside the state; (3) the distance between the courts; (4) the parties' relative finances; (5) the nature and location of the evidence, including the child's testimony; and (6) each court's familiarity with the case. § 16-207(b). Under *In re Marriage of Brickman and Young* (Franklin Sup. Ct. 2003), no single factor is dispositive and neither party bears a burden of proof, but the domestic violence factor is given greater weight than any other.

Here, the first and weightiest factor, § 16-207(b)(1), is a documented history of Alex's violence: years of abuse, a 2006 choking that produced a consent protection order, his possession of a hunting rifle, the February 1 incident in which he shook Jessica and destroyed family photographs, and threatening emails after she left. Jessica fled to Columbia out of fear, the very circumstance *Brickman* says supports declining, so Columbia can best protect Jessica and Carrie. This evidence is not as strong as in *Brickman*, where there were four criminal convictions and beatings during pregnancy, and Alex's email is partly conciliatory and mentions a therapist appointment; if he attended, he could argue his potential for future violence has abated, the showing the offender failed to make in *Brickman*. On balance the factor still favors Jessica.

On the second factor, § 16-207(b)(2), Carrie has lived in Columbia for about seven months, was born there, and has extended family there, although she also lived in Franklin for roughly four years. This factor is neutral or slightly favors Jessica, and it is weaker than in *Brickman*, where the children had five years in the new state.

On the third factor, § 16-207(b)(3), the courts are only about 100 miles, an hour and a half, apart, far less than the 400 miles in *Brickman*. As the noncustodial parent Alex is better positioned to travel, and Jessica's parents can help with Carrie, so this factor is neutral.

On the fourth factor, § 16-207(b)(4), Jessica earns about \$10,000 in a new

Issue. Issue framed as a prediction, which the partner asked for.

Rule. Rule. State the six factors with the (b)(1)-(6) pinpoints and *Brickman's* weighting rule before applying anything.

Apply. Apply F1, both sides. Marshal the abuse, tie it to *Brickman's* fled-for-safety rule, then honestly concede it is milder and flag the therapy point.

Apply. Apply F2. Compare to *Brickman's* five years; call it neutral to slight.

Apply. Apply F3. The short distance cuts against declining; neutral.

Apply. Apply F4. Income gap favors

part-time job while Alex earns about \$55,000 in stable employment. As in *Brickman*, the disparity favors the lower-earning custodial parent, so this factor favors Jessica.

On the fifth factor, § 16-207(b)(5), the evidence and witnesses are split: Carrie, Jessica, and the maternal family are in Columbia, but Alex and Carrie's earlier years, including her former school and friends, are in Franklin. Unlike *Brickman*, where the witnesses were concentrated in the new state, this factor is neutral.

On the sixth factor, § 16-207(b)(6), Franklin issued the 2006 protection order, but there is no prior custody case in either state, that order was by consent and has expired, and a certified copy can easily be used in Columbia. This factor is neutral or slightly favors Jessica.

Weighing the factors together and giving added weight to safety as *Brickman* directs, the domestic violence and financial factors favor Columbia and the rest are neutral, so no factor outweighs Jessica's safety concerns. The firm can make a strong argument that Franklin should decline, though because the violence here is milder than in *Brickman* and Alex has real counterarguments, the outcome is not certain.

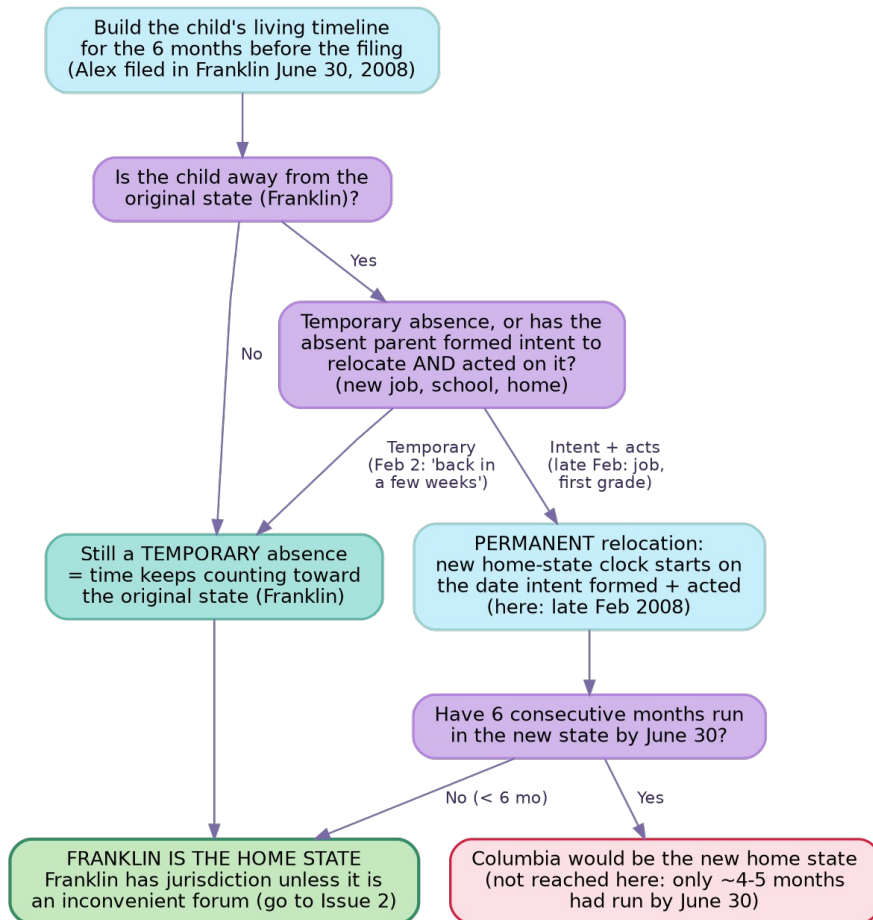
Therefore, on Issue 2, the Franklin court is likely, though not certain, to decline jurisdiction as an inconvenient forum; if it does, it will stay its case on the condition that Jessica promptly file a custody proceeding in Columbia. § 16-207(c).

Jessica, tracking Brickman.

Apply. Apply F5. Split evidence means neutral, unlike *Brickman*.

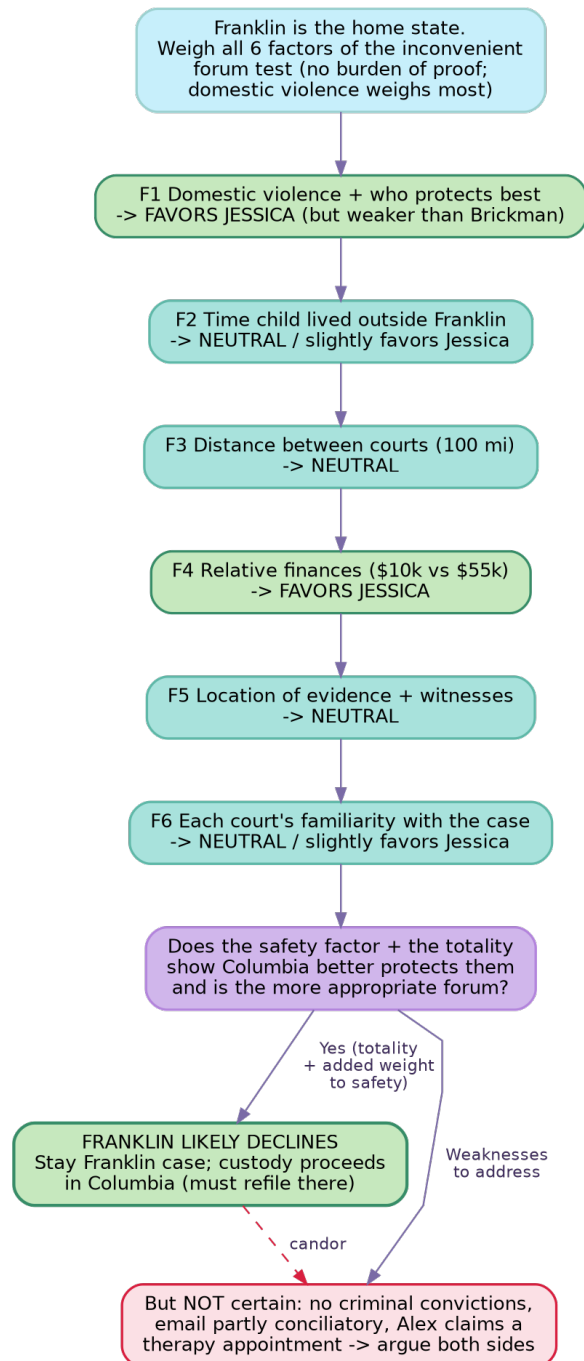
Apply. Apply F6. One expired consent order is thin; neutral to slight.

Conclude. Conclusion. Weigh, do not tally; give safety added weight, predict a likely decline, hedge, and end with the remedy from § 16-207(c).

AT A GLANCE **The two decision paths****Issue 1: temporary absence vs permanent relocation**

Count six months from the relocation date to the June 30 filing.

Issue 2: weigh the six factors, give safety added weight



Predict a likely decline, then hedge honestly.