

How to read these pages

Every operative phrase in the real MPT is highlighted in the color of the rule it serves, and the red arrow in the right margin says what that fact is doing and how it lines up with Mills or Brickman. Same color on a rule and on a fact means they connect. Always answer in IRAC, and always argue both sides.

ISSUE 1 • Home state

-  Dates & the 6-month clock (filing = June 30, 2008)
-  Temporary absence: still counts as Franklin time
-  Intent to relocate, shown by actions (job, school, home)
-  Express notice to the other parent: relevant, not controlling

ISSUE 2 • Inconvenient forum (the six factors)

-  Factor 1 domestic violence & safety (weightiest)
-  Factor 2 time / connections in Columbia
-  Factors 3 & 6 distance and court familiarity
-  Factor 4 relative finances (\$10k vs \$55k)
-  Factor 5 location of evidence & witnesses

Bottom line: Franklin is the home state on June 30 (only ~5 months had run since the Feb 2 move, and a temporary absence does not count against Franklin). On the inconvenient-forum motion, safety plus finances point to Columbia, so Franklin is likely (not certain) to decline; the violence here is real but milder than Brickman.

Petrilla and Associates
Attorneys at Law
222 Van Every Place
Centralia, Franklin 33703

Office Memorandum

To: Applicant
From: Charles Petrilla, Managing Partner and Pro Bono Coordinator
Date: July 29, 2008
Re: Jessica Bohmer/Interstate Custody Case

Our law firm, as part of its pro bono program, has agreed to represent Jessica Bohmer in a child custody matter that her husband, Alex Bohmer, has filed in Franklin City, Franklin. Jessica currently lives with their six-year-old daughter, Carrie, in Columbia Heights, Columbia.

No divorce proceeding has yet been filed by either party. On **June 30, 2008**, Jessica’s husband filed a child custody petition in Franklin District Court. We hope to convince the Franklin court that the case should be **heard in Columbia** where Columbia Legal Services is prepared to help Jessica file a custody action and obtain a civil protection order if necessary.

I just spoke to Columbia Legal Services this morning and will be talking to Jessica and Columbia Legal Services tomorrow. I want to be able to give them some answers regarding jurisdiction. To help me advise them, please prepare a memorandum analyzing the following two issues:

1. **Whether Franklin or Columbia was the home-state jurisdiction** under the Franklin Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) at the time of the filing of the current custody case in Franklin.
2. Assuming for purposes of argument that the Franklin court decides that Franklin is the home-state jurisdiction, whether we are likely to be successful if we file a **Motion to Decline Jurisdiction under the Inconvenient Forum** provision of the Franklin UCCJEA.

Be sure to provide detailed discussion and analysis, incorporating the relevant facts and addressing the applicable legal authorities. I want to know the weaknesses as well as the strengths of a potential motion on Jessica’s behalf. You need not prepare a separate statement of facts.

- ← **Your client:**
the mother. You represent her pro bono.
- ← **Filing date:**
this is the day you measure the 6 month home-state clock against.
- ← **Your goal:**
get the custody case moved to Columbia.
- ← **ISSUE 1.** Answer will be Franklin (build the timeline).
- ← **ISSUE 2.** The section 16-207 six-factor test (Brickman).
- ← **Required:**
argue BOTH sides. A one-sided memo is downgraded.
- ← **Time saver:**
no facts section needed. Go straight to IRAC.

Transcript of Telephone Call

[Kathleen Murphy (KM), Columbia Legal Services attorney, and Charles Petrilla (CP), Franklin law firm partner, July 29, 2008]

- KM:** Charles, thanks very much for calling. I'm glad you've agreed to take Jessica's case because she needs representation in Franklin as well as in Columbia.
- CP:** Kathleen, I'm happy we can help. Thanks for faxing us a copy of the intake form and the Civil Protection Order issued in 2006 in Franklin against Jessica's husband, Alex. I've reviewed the intake form, but want to know if there have been any new developments. Have you filed a custody action on Jessica's behalf in Columbia?
- KM:** No, not yet. Jessica came into our office a little over two weeks ago seeking our help in obtaining sole custody of Carrie, and possibly with obtaining another civil protection order if Alex continues to threaten her. However, on June 30, 2008, Alex filed for custody of Carrie in Franklin District Court. We haven't actually seen a copy of Alex's complaint yet.
- CP:** I will get a copy from the court today and fax it to you. What are Jessica's concerns regarding having custody handled in Franklin?
- KM:** She's afraid to go back to Franklin City because of Alex's **history of violence** against her. She says that he **owns a hunting rifle** and she fears that he might use it to hurt her or Carrie. The most recent threatening episode was on **February 1, 2008**, when Alex became enraged when Jessica suggested a short visit to Columbia Heights to see her parents and Carrie, who was staying there with Jessica's parents. He ripped up several family photos. That really scared her—she **left for Columbia the next day**, on February 2, 2008, and hasn't been back since. Jessica also doesn't have the time or the money to go back and forth to Franklin City—the drive takes about **an hour and a half**, one way, and would require her to take time off from her new job.
- CP:** Does she intend to stay in Columbia?
- KM:** Yes. When she left Franklin on February 2, 2008, she didn't really have a plan. She told Alex that **she would be back soon**. However, **after about three weeks** in Columbia, she realized that she didn't want to go back to Franklin. She **found a job and enrolled Carrie in the first grade** in Columbia Heights. On **March 1, 2008**, she finally got up the courage and told Alex she wasn't coming back to Franklin but was going to stay with Carrie in Columbia.
- CP:** How did Alex react to that news?

- ← **Factor 1 domestic violence:** the weightiest factor.
- ← Safety concern; the 2006 order made him surrender firearms.
- ← Most recent incident (shook her, ripped photos). Milder than Brickman.
- ← **She leaves Feb 2. But watch:** this is still temporary at first.
- ← **Factor 3 distance:** about 100 miles. Modest, so neutral.
- ← **TEMPORARY absence (Mills):** the Columbia clock is NOT running yet.
- ← **Intent forms in late February:** NEW home-state clock can start here.
- ← Actions proving intent to relocate, exactly like Mills (job + school).
- ← **Express notice to Alex:** relevant but NOT controlling (Mills).

KM: According to Jessica, he “flipped out.” For weeks, he phoned her day and night, calling her all sorts of names. He also sent her a series of threatening e-mails like the one attached to the intake form.

CP: How does Jessica want to have the situation resolved?

KM: She wants sole custody of Carrie and wants to continue to live in Columbia, where her parents live. Having them nearby makes her feel safer, and they also help take care of Carrie. Jessica likes her new part-time job at a doctor’s office and wants to enroll at the community college to finish her degree. Carrie’s doing really well in school and has made a lot of friends. Carrie has told Jessica that she wants to stay in Columbia.

CP: We’ll have to figure out which court should handle this matter. The UCCJEA is the law that controls which court has jurisdiction to hear custody cases. Both Columbia and Franklin adopted identical versions of this law. Let’s see what the law is on this issue.

KM: We really hope that you can find a way to get the Franklin custody case resolved so that we can go forward here in Columbia. I will begin to prepare pleadings so that we can be ready to proceed in Columbia. Jessica is meeting with us tomorrow.

CP: Okay. I’ll call you again tomorrow after we have done some research on our end.

- ← See Attachment B. Note the email is also partly conciliatory.
- ← **Roots in Columbia:** supports Factor 2 (connections).
- ← **Carrie is thriving in Columbia:** school, friends, wants to stay (Factor 2).
- ← Safety is the overarching theme that drives Issue 2.
- ← **Factor 4 finances:** part-time, low pay, a vulnerable new job.
- ← Same UCCJEA in both states, so the analysis is clean.

Columbia Legal Services Intake Form

Date: July 14, 2008

Intake Attorney: Kathleen Murphy

I. Applicant Name: Jessica Bohmer

DOB: 5/30/1976 **Place of birth:** Columbia Heights, Columbia

Home address: 6226 Berkeley Blvd., Columbia Heights, Columbia 12111

Home telephone: 860-555-5688

Work address: Office of Stephen Tigani, MD, 10 Tulip Ave., Columbia Heights, Columbia

Work telephone: 860-555-3876

Is it safe to call the phone numbers listed? X yes no

Are the parties married? X yes no

If so, date and place of marriage: 3/29/2001, Columbia Heights, Columbia

Child(ren) in common. Include name, sex, and date and place of birth.

Carrie Bohmer, female, born 3/22/2002, Memorial Hospital, Columbia Heights, Columbia

Residence of applicant and child(ren) for the past 5 years. Include addresses, dates, and other people living with applicant.

1. 1/15/2003 to 5/31/2004: 28 Lanier St., Columbia Heights, Columbia; both parents and child;
2. 6/1/2004 to 5/30/2006: 1311 Taylor St., Franklin City, Franklin; both parents and child;
3. 5/31/2006 to 4/1/2007: 12 Ivy Lane, Franklin City, Franklin; mother and child only;
4. 4/2/2007 to 2/1/2008: 1311 Taylor St., Franklin City, Franklin; both parents and child (mother and child moved back with father);
5. 2/02/2008 to present: 6226 Berkeley Blvd., Columbia Heights, Columbia; mother, maternal grandparents, and child (mother moved in with her parents and child on February 2, 2008; child had been visiting her maternal grandparents since December 1, 2007).

What legal services is applicant seeking?

Jessica seeks to obtain sole custody of Carrie and protection from her husband's violence.

II. Opposing Party Name: Alex Bohmer

DOB: 10/18/1976 **Place of birth:** Columbia Heights, Columbia

Home address: 1311 Taylor St., Franklin City, Franklin 33068

Home telephone: 514-555-6999

Work address: Franklin Pharmaceutical Co., 101 Industrial Blvd., Franklin City, Franklin

Work telephone: 514-555-2339

Criminal history: n/a

Weapons: owns hunting rifle

Carrie was BORN in Columbia and lived there her first year (Factor 2).

- Back with both parents in Franklin until Feb 1. This is the home-state anchor.

← **Feb 2:** earliest possible relocation date. Count from here.

Dec 1 is a **TEMPORARY** absence:
it does NOT start Columbia's clock (Mills).

Factor 1:
safety is what she is seeking.

Alcohol/drug use: drinks a few beers every weekend
Participation in drug/alcohol treatment: n/a
Participation in domestic violence intervention program: n/a
Has opposing party ever put his/her hands on applicant against applicant’s will? Yes
If yes, fill out Section III, Domestic Violence History

III. Domestic Violence History

Has applicant’s spouse/partner forced applicant to do something by threatening applicant?
Yes, since Jessica was pregnant with Carrie, Alex has been physically and emotionally abusive. He has pushed her down, grabbed her, pulled her by the hair, slapped her in the face, and tried to choke her. He has refused to give her money, prevented her from going out with friends, and generally tried to interfere with her relationship with her large extended family.

What was the most recent incident?
On February 1, 2008, Alex got mad when Jessica told him she wanted to go for a short visit to Columbia to see Carrie and her family. He grabbed her by the shoulders and shook her. When she tried to get away, he got one of her family scrapbooks and took out several photos of her with her parents and ripped them up. Jessica was scared but managed to act calm. She left the next day for Columbia and told Alex she would be back in a few weeks.

What was the worst incident ever?
On Jessica’s 30th birthday (5/30/2006), Alex pushed her down on the floor, then pulled her up and choked her. Jessica thought she was going to lose consciousness. She feared that he might really kill her. She had bruises on her neck and arms. She left the next day with Carrie and filed for a civil protection order, which was granted on 6/10/2006. She and Alex were separated for approximately 10 months before reuniting. She let the civil protection order lapse.

Has/have applicant’s child(ren) been abused by applicant’s spouse/partner?
Alex has never attacked Carrie directly, but she has witnessed his violence against Jessica. When Alex, Jessica, and Carrie were living together as a family, Carrie frequently said that she was afraid “Daddy would get mad” at her, which Jessica interpreted as Carrie’s fear that Alex would also hit Carrie. Carrie used to have nightmares, but those have subsided since she and Jessica moved out.

- ← **Pattern of abuse (Factor 1). Strong, but note:**
no criminal convictions, unlike Brickman.
- ← The Feb 1 incident that prompted her to leave the next day.
- ← **Worst incident, her 30th birthday 2006:**
choking that led to the protection order.
- ← Prior Franklin order (Factor 6 familiarity) and proof of the abuse.
- ← **Contrast/weakness:**
she reconciled once. Alex may argue the danger passed.
- ← **Harm reaches Carrie too:**
Factor 1 protects the child as well.

Additional history:

Jessica has never told anyone all the details about the abuse, although her family has suspected serious problems for a long time. Her family has witnessed the harassing phone calls Alex made after she moved to Columbia. Jessica wants to stay in Columbia because she has a place to live and a good part-time job, and because her mother is available to watch Carrie whenever needed. Jessica also plans to enroll in a community college here and complete her college degree.

Police reports: n/a
Hospital records: n/a

Prior Protection Orders: Yes, see Attachment A.

Date Issued	Jurisdiction	Disposition
6-10-2006	Franklin District Court	Consent Civil Protection Order, expired 6-9-2007

Other documents: See Attachment B.

IV. Income

Applicant employed: yes	Approximate gross income: \$10,000
Opposing party employed: yes	Approximate gross income: \$55,000

- Abuse continued after she left: supports 'likely to continue' (Factor 1).
- Cuts against Factor 3 travel burden: grandparents can help with Carrie.
- Factor 6: Franklin issued it, but it was by consent and has expired.
- Factor 4: Jessica's income. Low and part-time.
- Factor 4: Alex earns about 5.5x more, so he can bear the travel.

Attachment A

DISTRICT COURT OF FRANKLIN

Jessica Bohmer, Petitioner,

vs.

Alex Bohmer, Respondent.

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DV No. 0569-2006

CIVIL PROTECTION ORDER

Upon consideration of the petition filed in this case, and ☐ after a contested hearing, ☐ after a default hearing, ☒ by consent of the parties, the Court has determined:

☒ that the Petitioner has established by a preponderance of the evidence that there is good cause to believe that the parties have a family relationship and that the Respondent committed or threatened one or more acts of domestic violence within the meaning of Franklin Code § 12-105 et seq., to wit, that the Respondent threatened to seriously harm the Petitioner and that he put his hands on Petitioner’s neck in an attempt to choke her.

IT IS HEREBY ORDERED that for a period of 12 months from the date of this order:

☒ Respondent shall not assault, threaten, harass, or physically abuse Petitioner in any manner.

☒ Respondent shall stay at least 100 feet away from Petitioner’s ☒ person, ☒ home, ☒ workplace, ☒ vehicle.

☒ Respondent shall not contact Petitioner in any manner, except by telephone; all telephone calls must be limited to reasonable hours of the day and must abide by the other provisions of this order.

☒ Respondent may not possess any firearms and must immediately turn over any such weapons he or she owns to the Franklin City Metropolitan Police Department.

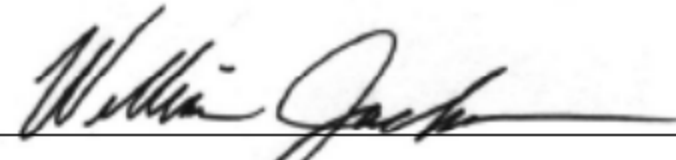
THIS ORDER WILL EXPIRE IN 12 MONTHS UNLESS IT IS RENEWED BY THE COURT. FAILURE TO COMPLY WITH THIS ORDER IS A CRIMINAL OFFENSE AND CARRIES A PENALTY OF SIX MONTHS IN JAIL AND/OR A FINE OF \$1,000.



Respondent’s signature (required for a consent order only)

6-10-06

Date



District Court Judge

6/10/2006

Date

Consent order:

Alex may argue there was no contested finding. A weakness.

A documented, serious act of violence. Anchors Factor 1.

Only 12 months:

it expired in 2007 (see intake). No longer in force.

Ties to the hunting rifle:

a concrete safety concern.

Attachment B

To: jessicabohmer@mpt.com
From: alexbohmer@mpt.com
Date: March 10, 2008

Jessica,

You should think twice about leaving Franklin and taking Carrie. I mean business—if you don’t come back soon, I guarantee you that you’ll be sorry. I’m not going to sit still and let you walk all over me!

You know you can’t take care of Carrie without me. Remember what happened the last time when you ran off and then came back begging for another chance? Besides, you’re taking Carrie away from her life here—her school and her friends.

This is it, Jessica. I am not playing any more of your games. For Carrie’s own good, I’m not going to let you cut me out of her life.

You know we could make this work if you would just try a little harder instead of quitting and running off to your parents every time we argue. I’m willing to meet you halfway—I know I’ve got a bad temper, and I’ve got an appointment with a therapist next week—but Carrie is my daughter and she needs her daddy as well as her mommy.

Alex

- ← Sent after she told him she was staying (Mar 1). Contact continues.
- ← **Threatening tone:**
'I mean business... you'll be sorry.'
- ← Ominous, but not an explicit threat. Weaker than Brickman's record.
- ← **Conciliatory:**
this part actually HELPS Alex. Argue around it.
- ← **Big weakness:**
if Alex attended, he can show the danger has abated, the very thing Brickman FAILED to show.
- ← Sympathetic framing that helps Alex's side.

FRANKLIN UNIFORM CHILD CUSTODY JURISDICTION
AND ENFORCEMENT ACT (§ 16-101 *et seq.* (1999))

* * * *

§ 16-102. **Definitions.** In this Act:

* * * *

(3) “Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, or modification order. . . .

* * * *

(7) “Home State” means the State in which a child lived with a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. . . . A period of temporary absence of any of the mentioned persons is part of the period.

* * * *

§ 16-201. **Initial Child Custody Jurisdiction.**

(a) Except as otherwise provided . . . a court of this State has jurisdiction to make an initial child custody determination 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 months before the commencement of the proceeding and the child is absent from this State but a parent continues to live in this State;

(2) . . . 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 § 16-207

* * * *

§ 16-207. **Inconvenient Forum.**

(a) A court of this State which has jurisdiction under this [Act] to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court’s own motion, or request of another court.

- THE home-state test. Count six months back from the June 30 filing.
- KEY rule: a temporary absence still counts as home-state time.
- Home state is measured on the filing date.
- The ONLY way Columbia hears it: Franklin must decline (Issue 2).
- Discretionary. This launches the six-factor inconvenient forum test.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another State to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;
- (2) the length of time the child has resided outside this State;
- (3) the distance between the court in this State and the court in the State that would assume jurisdiction;
- (4) the relative financial circumstances of the parties;
- (5) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child; and
- (6) the familiarity of the court of each State with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another State is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper.

- ← FACTOR 1 (weightiest). Jessica's strongest ground.
- ← FACTOR 2. Carrie about 7 months in Columbia. Neutral / slight.
- ← FACTOR 3. Only about 100 miles. Neutral.
- ← FACTOR 4. \$10k vs \$55k. Favors Jessica.
- ← FACTOR 5. Evidence is split between states. Neutral.
- ← FACTOR 6. Neutral / slight.
- ← **THE REMEDY:**
Franklin stays its case and Jessica refiles in Columbia. It does not just dismiss.

In re Marriage of Mills
Franklin Court of Appeal (2002)

William and Jennifer Mills were married in 1993. They have two children. The parties separated in November 1999, when William moved from the family home to a nearby town in Franklin where he had secured a new job. Jennifer and the children remained in the family home in Franklin City.

In June 2000, the children went to Columbia for an extended visit to Jennifer’s sister’s farm. On August 10, 2000, Jennifer decided to leave Franklin with her mother and permanently move to Columbia and did so with the children. Thereafter, she rented a house, enrolled the children in school, and found a new job in Columbia. Jennifer has resided in Columbia with the children and her mother since moving there. However, Jennifer did not have an explicit conversation with William about her permanent relocation until sometime during the fall—the exact date is disputed, but both agree it was no earlier than November 1, 2000.

On April 1, 2001, William filed a petition in Franklin District Court seeking custody of the parties’ two children.¹

Jennifer moved to dismiss the petition, arguing that the Franklin court lacked subject matter jurisdiction to determine custody of the parties’ children, on the grounds that

1. It is not unusual for child custody actions to be undertaken without a request to dissolve the marriage.

Columbia was the children’s “home state.” The trial court granted the motion, concluding that it lacked subject matter jurisdiction under the Franklin Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), § 16-101 *et seq.* William appeals. We affirm.

Under the UCCJEA, a Franklin court has subject matter jurisdiction to make a child custody determination if Franklin is the “home state” of the child. “Home state” is defined as the state in which a child lived with a parent for at least six months immediately before the commencement of a child custody proceeding. See UCCJEA § 16-102(7). Any period(s) of temporary absence are considered part of and included in the calculation of the six-month home-state requirement. *Id.*

On appeal William contends that the district court should have asserted jurisdiction under the UCCJEA to decide custody of the children because the children were only temporarily absent from Franklin and temporary absences are considered time in the home state. Specifically, he argues that when Jennifer left the state on August 10, 2000, she did so with the intent of returning to Franklin, and that she did not inform him that she intended to remain in Columbia with the children until at the earliest November 1, 2000. He thus maintains that the children’s absence from Franklin was

- Started as a temporary absence, like Carrie's Dec 1 visit.
- Intent to relocate forms on a specific date.
- The ACTIONS that prove intent. Match: Jessica's job + first grade in late Feb.
- Same home-state test as the statute.
- Express notice came later. Match: Jessica's Mar 1 talk with Alex.

only a “temporary absence,” and that they should be considered to have resided in Franklin until November 1, 2000.

While we agree that intent is a significant consideration in determining whether an absence from a state is a “temporary absence,” we do not believe that the significance of intent can or should be restricted to the intent existing at the time of leaving. If it were so restricted, then an absence that began with intent to return would remain a “temporary absence” even long after a decision had been reached to permanently relocate and such relocation to another state had in fact occurred. We believe instead that **an absence from a state is no longer** “temporary” once the absent person has formed the intent to reside permanently in another state and is in fact doing so with such intent.

In this case the children’s presence in Columbia beginning in June 2000 was originally **intended to be temporary**. However, the parties had separated some seven months earlier and, as of August 10, 2000, Jennifer moved to Columbia intending to permanently relocate there with the parties’ children. She has since resided there with them, with that intent. We conclude that **the relevant six-month period began to run on August 10, 2000**. We therefore agree with the trial court that Columbia, and not Franklin, was the children’s “home state” when William filed his April 1, 2001, petition for custody, and that under UCCJEA § 16-201(a), the Franklin court did not have jurisdiction to

make a child custody determination. In so concluding, we reject William’s contention that the children’s absence from Franklin must be considered a “temporary absence” **until Jennifer expressly informed him in November** that her earlier move to Columbia, of which he was aware, had been made with the intent that she and the children would remain in Columbia permanently.

Affirmed.

Express notice is NOT the trigger. Alex cannot rely on waiting for Mar 1 either.

THE HOLDING you borrow:
an absence stops being temporary once intent forms AND the parent is in fact living there.

A move can START temporary (Carrie's Dec 1, Jessica's Feb 2).

Clock runs from the RELOCATION date, here late Feb, not Dec 1.

In re Marriage of Brickman and Young

Franklin Supreme Court (2003)

Mark Brickman commenced this action seeking to modify custody of his four minor children. His former wife, Ruth Young, moved to dismiss under the Franklin Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) on the ground that **Franklin is an inconvenient forum**. She appeals the district court’s denial of her motion, as affirmed by the court of appeal. We granted review, and now **reverse and remand**.

BACKGROUND

Brickman and Young married on October 1, 1988, in Livingston, Franklin. Thereafter, they separated and reconciled numerous times before finally separating in 1996.

Brickman repeatedly battered Young during the marriage, and Young obtained several court-issued protection orders during their multiple separations. Brickman pled guilty to **domestic assault in 1990, 1991, 1994, and 1996**. The record details Brickman’s violations of the protection orders, as well as several incidents involving Brickman’s violent behavior after the parties’ final separation and before Young’s move to Columbia.

In its March 23, 1998, marriage dissolution decree, the Franklin District Court, among other things, awarded custody of the parties’ four children to Young. Shortly thereafter, Young relocated to the State of Columbia with her children. In response, Brickman

filed a motion in Franklin District Court seeking to modify the court’s decree and to obtain custody. Young then subsequently filed a motion requesting the Franklin District Court to decline jurisdiction as an inconvenient forum to allow the Columbia court to assume jurisdiction over the parties’ ongoing child custody and visitation arrangements. Brickman opposed the motion. The Franklin District Court denied the motion; the court of appeal affirmed, and we granted review.

DISCUSSION

In this case of first impression we examine the provisions of the Franklin UCCJEA that allow a court to decline to exercise jurisdiction over child custody proceedings when the court determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum in which to make the child custody determination.

The Franklin UCCJEA sets forth six specific factors to be considered, which we discuss in turn below. We note that, while some factors may weigh more heavily than others, **all must be considered** by the court. The law **does not allocate a burden of proof** to either party, but directs the court to conduct an evaluation based upon the relevant information available to determine whether

← The exact motion you are bringing for Jessica.

← **Result:**
Columbia got the case. Your target outcome.

← **FOUR convictions. Jessica's case has NONE:**
the key contrast and weakness.

← Weigh every factor, even the neutral ones.

← No burden of proof. Put this in your rule statement.

it is appropriate for another state to exercise jurisdiction.

The first inconvenient forum factor inquires “whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child.” UCCJEA § 16-207(b)(1). The UCCJEA places domestic violence at the top of the list of factors that courts are required to evaluate when determining whether to decline jurisdiction as an inconvenient forum for a child custody proceeding. With regard to this factor, the court should determine whether the parties are located in different states because one party is a victim of domestic violence or child abuse. If domestic violence or child abuse has occurred, the issue is which forum can provide greater safety.¹

Given the high propensity for recidivism in domestic violence, we hold that when a court finds that domestic violence has occurred or that a party has fled the state to avoid further violence or abuse, the court is authorized to

1. The compelling need to protect victims from further domestic violence is supported by the research findings of the United States Department of Justice. Those findings suggest that termination of an abusive relationship actually poses an increased risk of escalation in domestic violence. Although divorced women and separated women comprise only 10 percent of all women in America, they account for three-quarters of all battered women and report being battered 14 times as often as women still living with their partners. Divorced or separated men, as opposed to husbands living with their wives, commit 79 percent of all spousal violence.

consider whether the party and the child might be better protected if further custody proceedings were held in another state. This factor alone is not dispositive under the UCCJEA; however, courts should give greater weight to this factor than to any other individual factor when considering jurisdictional issues under the UCCJEA.

Brickman asserts on appeal that his last act of reported domestic violence occurred in 1996 and claims that there has been “no apparent problem” during the past three years.

But Brickman’s criminal record of domestic violence reveals a pattern of recurrent wife-battering of escalating intensity, which includes severely beating Young during her pregnancies. The record also establishes that Brickman has perpetrated serious injury upon his ex-wife and has exhibited obsessive and controlling behavior. Brickman testified at the May 2001 hearing that he had not received any type of psychological counseling since his last incarceration in 1996 for domestic violence. Moreover, he made no showing to the district court that his potential for future violence has abated.

This history of serious domestic violence and the threat of future domestic violence by Brickman leads us to conclude that with regard to this factor, Columbia is the state that would best protect Young and the children.

The second statutory factor asks how long the children have resided outside Franklin.

- The weighting rule. Quote it.
- Factor 1 outranks the others. Lead with it.
- The core question: does Columbia keep Jessica and Carrie safer? Yes.
- Why past abuse predicts future risk.
- Jessica fled after Feb 1. She fits this squarely.
- Brickman's fatal gap. BUT Alex's therapy claim could close it. Address this weakness.

UCCJEA § 16-207(b)(2). The district court relied heavily on the fact that the children have spent the majority of their lives in Franklin and on the extensive history of the parties in the Franklin courts. However, the four children, ranging in age from four to eleven at the time of the hearing, have now lived in Columbia for five years. Young testified that the children “have significant connections to family, school, and community” in Columbia and have developed relationships that have enhanced their sense of security and well-being, which is “a contrast from the isolation they experienced while living in Franklin.” Because it has been the children’s home for the past five years, we conclude that, on this factor, Columbia would be an appropriate forum for child custody proceedings.

The third factor evaluates the distance between the courts, which is approximately 400 miles in this case. UCCJEA § 16-207(b)(3). Young testified that the drive between her home and the court in Franklin takes about eight hours each way. As the primary custodial parent, Young must either bring the children with her to court proceedings or arrange for their care in her absence. Because the distance between the Franklin and Columbia courts creates a transportation inconvenience that must be borne by one of the parties, we conclude that the facts suggest that Brickman, as the noncustodial parent, may be in the better position to undertake the necessary travel.

The fourth factor concerns the relative financial circumstances of the parties, which the district court found to be disparate. UCCJEA § 16-207(b)(4). The court determined that Brickman enjoys an annual income of \$41,797 while Young has an annual income of \$6,500. We conclude that this factor weighs in favor of transfer to Columbia’s jurisdiction.

The fifth factor examines the traditional bases for determining venue and inquires about the nature and location of the evidence required to resolve the pending litigation, including testimony of the children. UCCJEA § 16-207(b)(5). Notwithstanding Young’s testimony that all current evidence regarding the children’s mental health, medical, financial, and school records is in Columbia, the district court concluded that Franklin is just as convenient a forum as Columbia for review of pertinent child records. Although records may be easily transportable, the district court failed to address the convenience of the witnesses, the majority of whom reside in Columbia, including the four children. Three of the children are enrolled in school and receive therapeutic counseling in Columbia. Young maintains that Columbia is now the location of all witnesses and evidence regarding the children. Brickman did not refute Young’s assertions regarding the location of evidence and witnesses. This factor weighs in favor of Columbia’s jurisdiction.

- ← **Factor 2:**
Brickman kids had 5 years. Carrie has only ~7 months, so weaker for Jessica.
- ← **Factor 4:**
big income gap favored transfer. Your \$55k vs \$10k gap is similar.
- ← **Carrie has these too:**
grandparents, first grade, friends.
- ← **Factor 5:**
In Brickman the evidence pointed to Columbia. Yours is SPLIT between the states, so only neutral.
- ← **Jessica says the same:**
isolated in Franklin because Alex cut her off.
- ← **Factor 3:**
Brickman was 400 miles. Yours is only 100, so the distance argument is much weaker.
- ← Alex, the noncustodial parent, should travel. Same logic applies.

The final factor is the familiarity of the court of each state with the facts and issues in the pending litigation. UCCJEA § 16-207(b)(6). There has been extensive litigation concerning this marriage in the Franklin court—the case file is now in its fifth volume. But while the Franklin court may be well versed in the conflict, Young argues persuasively that the Columbia court also has had an opportunity to at least become familiar with the facts and issues involved in the case, when she applied for and received a permanent protection order in 2001 from the Columbia court. Therefore, under this factor, while the Franklin court might be the more appropriate forum, we conclude that the Columbia court would not be an inappropriate forum.

CONCLUSION

Weighing all the factors together, and giving added weight to the first factor concerning the existence of past and danger of continuing violence, we conclude that Columbia is the more appropriate forum to resolve this custody dispute.

Accordingly, we reverse the court of appeal’s affirmance of the district court’s order and remand to the district court with instructions to stay further proceedings and to direct the parties to file in Columbia, the more appropriate forum.

Reversed and remanded.

- Factor 6:
Brickman had a huge Franklin case history. Yours is just one expired protection order.
- The holding:
safety carries the day. This is your roadmap.
- Result. Argue Jessica reaches the same outcome, though less strongly.
- The remedy again:
stay in Franklin, then refile in Columbia.