



TEMPORARY ABSENCES, PERMANENT RELOCATION, AND UCCJEA JURISDICTION

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WHAT IS THE UCCJEA?

- **Uniform Child Custody Jurisdiction Enforcement Act (“UCCJEA”)**
 - *Adopted by 49 of 50 states (with the exception of Massachusetts)*
- The UCCJEA Specifies **which court** should decide a custody case, not how the court should decide the case
- The UCCJEA provides four (4) different paths to make that determination
 - Home State
 - Significant Connection
 - Appropriate Forum
 - Lack of Jurisdiction elsewhere

HOME STATE JURISDICTION

- **A.R.S. § 25-1031. Initial child custody jurisdiction**
 - *“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 or person acting as a parent continues to live in this state.”*



TEMPORARY ABSENCES

- Temporary absences don't pause the 6 month tolling period under the UCCJEA
- **Examples**
 - Summer camp
 - Vacations
 - emergencies



TOTALITY OF THE CIRCUMSTANCES

- **Totality of the circumstances test is the applicable test to evaluate whether an absence is temporary for purposes of determining a child's home state under the UCCJEA.** See *Antonetti v. Westerhausen in & for Cnty. of Maricopa*, 254 Ariz. 364, 523 P.3d 969 (Ct. App. 2023), review denied (Sept. 12, 2023)
- **Factors**
 1. Duration
 2. Intent
 3. “surrounding circumstances”

ANTONETTI V. WESTERHAUSEN, 254 ARIZ. 364 (2023)

FACTS:

- Minor child Born in Italy
- Parties and Minor Child lived together in Tunisia
- Parties were staying in Italy during COVID
- Mother boarded a Repatriation flight to Arizona with the Minor Child.
- Father asserted his belief was Mother and the child's stay in Arizona would only be Temporary

TUNISIA TO ARIZONA



INTENT TEST V. TOTALITY OF CIRCUMSTANCES

- What was the parties intent at the time they traveled with the child. This requires the court to consider the parent's initial purpose for an absence.
- Problem according to the court of appeals, is intentions change over time
- This is why the court adopted totality of the circumstances
 - *Greater flexibility to examine the "How, the when, and why" the child now remains permanently.*



DOES NOTICE OF INTENT TO REMAIN MATTER?

- Ask for an evidentiary hearing
- *In Antonetti*, Father argued Mother's intent to remain in Arizona versus a declaration to remain are different. Mother testified she told father before leaving Italy, and after arriving in Arizona that she believed it was unsafe for her and the child to return to Tunisia, and Father did not do anything to refute this testimony.
- The court's ruling saw this as Father arguing the 6 months could not begin tolling until he realized he realized he could not persuade mother to return to Tunisia and reconcile.
- *The standard is not notice of intent but whether a party has reason to recognize the permanency.*



ALWAYS CONSIDER THE DOMESTIC VIOLENCE IMPLICATIONS IN YOUR CASE

- In cases where multiple states might qualify under the UCCJEA, the court must consider domestic violence (See *Hubert v. Carmony*; See also A.R.S. 1037(b))
- In weighing the *totality of the circumstances*, one party lying to another to escape potential abuse can matter.



QUESTIONS

