

STATE OF INDIANA  
COUNTY OF MADISON

SS:

IN THE MADISON SUPERIOR COURT 3  
2009 TERM

CAUSE NO.: 48DO3-09063-MI-00758

In Re The Marriage of :

,  
Petitioner,

and

Respondent

### MOTION TO DISMISS FOR LACK OF JURISDICTION

Respondent requests an Order dismissing the proceedings filed under this cause number for the lack of jurisdiction over the issue of custody and visitation. In support thereof, Respondent's counsel shows the following:

1. That the child which is the subject of these proceedings is not a resident of the State of Indiana, nor has she resided in Indiana for the past six months.

2. With the child not being a resident of Indiana, therefore the Uniform Child Custody Jurisdiction Act applies to this matter (codified as IC 31-21 et seq.). IC 31-21-2-8 is on point with its definition of "Home state":

"Home state" means the state in which a child lived with:

- (1) a parent; or
- (2) 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, the term means the state in which the child lived since birth with a parent or person acting as a parent. A period of temporary absence of the parent or person acting as a parent is part of the period.

3. Further, these proceedings come within IC 31-21-2-4's definition of "Child custody determination":

(a) "Child custody determination" means a judgment, decree, or other court order providing for:

- (1) legal custody;
- (2) physical custody; or
- (3) visitation;

with respect to a child.

(b) The term does not include an order relating to child support or other monetary obligation of a person.

3. As Petitioner and her counsel have filed an emergency Petition and a Petition to Enforce Georgia Decree as to Summer Parenting Time, all proceedings before this court deal with custody and/or visitation.

4. As the Petitioners' proceedings fail to comply with the UCCJA, this court has no jurisdiction over the child, or the proceedings brought by Petitioner, and all matters brought before this court by the Petitioner require dismissal.

**WHEREFORE**, the Respondent requests an Order dismissing all pending actions under this cause number.

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### **Certificate of Service**

I hereby certify that a copy of the foregoing has been furnished to Kevin Eads, attorney for Petitioner, by fax on July 2, 2009.

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Samuel C. Hasler

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In Re The Marriage of :

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Petitioner,

and

Respondent

**ORDER ON RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION**

This court having read Respondent's Motion to Dismiss for Lack of Jurisdiction, and being duly advised in its premises now

**ORDERS** all proceedings brought by the Petitioner under this cause to be dismissed this date.

Date: \_\_\_\_\_

\_\_\_\_\_  
Stephen Clase, \_\_\_\_\_  
MADISON SUPERIOR COURT 3

Copies to:  
1-ORIGINAL FOR RJO (Orderbook)  
1- COURT FILE  
1- KEVIN EADS  
1- SAM HASLER