Child Custody Jurisdiction: What is the “Home State”?

Two recent cases illustrate how the Probate & Family Court judges apply the Massachusetts Child Custody Jurisdiction and Enforcement Act (G.L.c. 209B, §2):

Case 1:

Mother was the breadwinner in the household and was offered a job promotion which required her to move from Massachusetts to Missouri. Father was unemployed and was the primary caretaker of their 7-month-old child at the time of the move. The parties were married in Massachusetts where Mother had resided all of her life until the time of the move. Several months after the move to Missouri, Father committed multiple assaults on Mother which led to a restraining order and ultimately incarceration. As a result of the restraining order, the Missouri judge awarded physical custody to Mother. While Father was in jail awaiting trial on the restraining order violation, Mother arranged for a transfer back to Massachusetts and returned to Massachusetts with her 12 month-old child. As soon as she returned to Massachusetts, she filed a complaint for separate support in the Massachusetts Probate & Family Court and served Father in the Missouri jail. Mother’s electronic records of the airline tickets to Missouri and back to Massachusetts demonstrated that she and the child were out of the Commonwealth just 8 days under 6 months.

Both Massachusetts and Missouri have enacted the Uniform Child Custody Jurisdiction and Enforcement Act which gives jurisdiction to the "home state" – i.e., where the child last lived for six months or more.  *See G.L.c. 209B, §2(a)(1)(ii).* As a result, the Massachusetts and Missouri judges agreed that the child never became a resident of Missouri and thus remained a Massachusetts resident for child custody purposes. As an aside, the Mother later amended the separate support action to a divorce and the Massachusetts and Missouri judges agreed that Massachusetts should also exercise jurisdiction over the divorce. (But the domicile statute for divorce cases and the case law interpreting that statute can be tricky and sometimes gets confused with the Uniform Child Custody Jurisdiction and Enforcement Act. For that reason, we will deal with divorce jurisdiction in a separate future blog).

This case, however, stands for the simple proposition that a child, who is not subject to an existing custody order, is lawfully moved to a new state, the new state becomes the child’s “home state” after 6 months have elapsed.

Case 2:

Pursuant to a judgment of divorce, Father was awarded sole legal and physical custody of the parties’ minor child. Because Father was a member of the Armed Forces on active duty, he was also allowed to move out of state with the daughter to North Carolina where he was stationed. Additional orders of visitation for the Mother were entered with the judgment. Two years later, while on a vacation visit with Mother, the child told Mother’s family that she had been beaten by her step-mother who administered other excessive forms of punishment. Mother made a complaint to the North Carolina child welfare agency which began investigating the matter. Mother also filed a complaint for modification of the divorce judgement in the Massachusetts Probate & Family Court along with an emergency motion asking the court to exercise emergency jurisdiction under G.L.c. 209B, §2(a)(3)(ii) of the Massachusetts Child Custody Jurisdiction and Enforcement Act. The Court intervened and allowed the child to remain with the Mother while the North Carolina child welfare office completed its investigation of the allegations of abuse. A second hearing was held 2 weeks later during which it was revealed that the North Carolina child welfare office could not substantiate the allegations of abuse. As Mother’s vacation visitation with the child had already expired, the child was transferred back into Father’s custody at the courthouse.

While Mother did not prevail, the case is noteworthy because, even though the child had been a North Carolina resident for 2 years, the Massachusetts judge could have entered temporary orders to “protect the child from abuse” under the Massachusetts Child Custody Jurisdiction and Enforcement Act.