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Family Law - Does the Court Really Look out for the Best Interest of the Child - Jurisdiction and the Uniform Interstate Family Support Act - Ostermiller v. Spurr, 968 P.2d 940 (Wyo. 1998)

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FAMILY LAW—Does the Court Really Look Out for the Best Interest of the Child? Jurisdiction and the Uniform Interstate Family Support Act. *Ostermiller v. Spurr*, 968 P.2d 940 (Wyo. 1998).

INTRODUCTION

Teresa A. Ostermiller and Scott Spurr, both of Lancaster, California, began a relationship in 1993 and had sexual intercourse.¹ After becoming pregnant, Teresa moved to and became a resident of Gering, Nebraska in August 1993.² She called Spurr in California to inform him that she was pregnant with his child.³ On May 1, 1994, Teresa gave birth to a son, BRO, in Nebraska.⁴ Soon after the birth, Teresa called Spurr and informed him that his son had been born.⁵ Spurr moved to Wyoming sometime after the birth of BRO.⁶

Teresa was in need of financial assistance, and the Nebraska Department of Social Services provided her with Aid for Families with Dependent Children (AFDC) and Medicaid benefits.⁷ This financial aid was contingent on certain conditions. To receive AFDC and Medicaid benefits from Nebraska, Teresa had to sign a child support affidavit.⁸ If Teresa failed to cooperate, the agency threatened to discontinue the aid.⁹

Teresa, a Nebraska resident, signed a Uniform Support Petition

1. Brief of Appellant at 2, *Ostermiller v. Spurr*, 968 P.2d 940 (Wyo. 1998) (No. C-97-219) [hereinafter Appellant's Brief].

2. *Id.*

3. *Id.*

4. *Id.* The Wyoming court uses initials to protect the child's confidentiality.

5. *Id.*

6. *Ostermiller*, 968 P.2d at 941. Spurr moved to Cheyenne, Wyoming, located in the Southeast corner of the State in Laramie county. *Id.* The exact date of Spurr's move is unknown.

7. *Id.* AFDC "provide[s] assistance to needy families so that children may be cared for in their own homes or homes of relatives." General Temporary Assistance For Needy Families (TANF) Provision, 45 C.F.R. § 260.20(a) (2001).

8. Appellant's Brief, *supra* note 1, at 3. A child support affidavit contains information about the child, mother and all alleged fathers, including when and where they had intercourse and potential information that could be used to locate the father (addresses, phone numbers, social security numbers). The affidavit is used by the child support agency to locate alleged fathers to initiate paternity actions.

9. *Id.*

at the request of the Nebraska Department of Family Services.¹⁰ Nebraska sent the petition to Wyoming to establish a Uniform Interstate Family Support Act case.¹¹ Spurr, who had not supported, visited or otherwise aided Teresa in caring for BRO, was served with and answered the petition.¹² Spurr, however, counter-petitioned, asking for the establishment of paternity, visitation, child support, tax exemption, and change in BRO's birth certificate to reflect Spurr's surname.¹³ The counterclaim was unexpected, considering Spurr did not attempt to contact BRO or Teresa prior to the filing of the paternity action.¹⁴ Teresa responded to Spurr's counter-petition with a written objection to personal jurisdiction regarding any matters in the counterclaim that did not pertain to the establishment of paternity and support for BRO.¹⁵

A court commissioner heard the *Ostermiller* case on April 23, 1997.¹⁶ Teresa and BRO were not present at the hearing, but the State of Wyoming appeared as both a guardian ad-litem for BRO and as a representative of the State of Nebraska.¹⁷

Spurr and his wife attended the hearing and stated that Spurr was

10. *Id.* at 1. A Uniform Support Petition states that the mother wants to petition the state where the alleged father is located to establish paternity and child support. It is a standard form that includes information such as the petitioner's name, responding state, initiating state, what type of action (location only, establishment of paternity, child support, medical coverage, modification, income withholding, collection of arrears, enforcement of existing arrears, registration of a foreign support order, federal tax offset), absent parent information and a case summary if an order from a court already exists. The petition is filed pursuant to the Uniform Intrastate Family Support Act (referred to as UIFSA). Office of Child Support Enforcement, United States Department of Health and Human Services, UIFSA Handbook, 2-14. (1994) [hereinafter UIFSA Handbook].

11. Appellant's Brief, *supra* note 1, at 3.

12. *Id.*

13. *Id.* Scott Spurr did not visit BRO during the first three years of his life, including the eighteen months that he lived only one hundred miles from Gering, Nebraska, because he said it was too far away. *Id.* at 2-3.

14. *Id.*

15. *Id.* at 3-4.

16. Report of District Court Commissioner, Doc. 144 No. 181, First Judicial District, State of Wyoming, at 1. In Laramie County, Wyoming, most family law cases are heard by a Court Commissioner and then a recommended order is sent to one of the two district court judges to become a final court order.

17. *Ostermiller v. Spurr*, 968 P.2d 940, 943 (Wyo. 1998). The State of Wyoming represents the child and the initiating state but does not represent the mother or the alleged father in the action. Generally, parents can obtain other counsel to represent them in a UIFSA action. Teresa did not obtain private counsel in this UIFSA action until the appeal process.

capable of caring for the child.¹⁸ Spurr's wife also testified that she was highly supportive of Spurr's visitation request and also desired a relationship with the child.¹⁹ The District Court Commissioner Report was filed April 25, 1997.²⁰ The report recommended to the district court that it establish paternity, require Spurr to pay child and medical support, reimburse Nebraska for past welfare benefits received by Teresa for BRO, award custody to Teresa, provide Spurr with visitation rights, state a provision for the change of BRO's surname, and give Spurr the federal income tax dependence deduction.²¹ The district court, on May 29, 1997, entered a final order affirming all of the Commissioner's recommendations despite Teresa's objection to subject matter and personal jurisdiction.²²

On September 15, 1997, Teresa appealed the district court's order on the grounds that the court did not have subject matter jurisdiction to decide visitation and name change issues, or personal jurisdiction.²³ During the appeal, Spurr failed to file a responding brief. However, the State of Wyoming was "not in concert with [Teresa Ostermiller] in her appeal of the action taken by the District Court" and filed a brief to uphold the district court holding.²⁴ The State of Wyoming, which represented BRO as his guardian ad-litem in the district court action, now opposed Teresa and BRO in order to argue that the district court had jurisdiction over the visitation issues.²⁵ On December 10, 1998, the Wyoming Supreme Court affirmed the district court's ruling, holding that Wyoming statutes confer subject matter and personal jurisdiction over all the decided issues.²⁶

This case note argues that the Wyoming Supreme Court failed in two ways: (1) The court improperly interpreted and applied the Wyoming UIFSA statutes by granting both personal and subject matter juris-

18. *Id.*

19. *Id.*

20. *Id.*

21. Appellant's Brief, *supra* note 1, at 3.

22. Judgment and Order for Paternity and Support, Civil Action No. 144-181, POSSE No. 80799, Filed May 29, 1997, *Ostermiller v. Spurr*, 968 P.2d 940 (Wyo. 1998) [hereinafter Final Order].

23. Appellant's Brief, *supra* note 2, at 1.

24. Brief of Appellee at 2, *Ostermiller v. Spurr*, 968 P.2d 940 (Wyo. 1998) (No. 97-219) [hereinafter Appellee's Brief].

25. Brief of Appellee, *supra* note 22 at 2. The caption of the appellee's brief was changed by the State of Wyoming to Teresa A. Ostermiller, and Brett Ostermiller, a Minor, as the Appellants v. Scott Spurr, Appellee, and the State of Wyoming, Department of Family Services, Appellee.

26. *Ostermiller*, 968 P.2d at 944.

diction over Teresa; and (2) the court failed to consider the best interests of the child when reviewing the visitation and custody issues. The note argues that the Wyoming Supreme Court ignored the intent of the Congress and the Wyoming Legislature and placed an innocent child in a potentially harmful situation. The note will look at decisions prior to and after *Ostermiller* from both Wyoming and other jurisdictions to show the court failed to follow precedent. Additionally, the case note discusses why the State of Wyoming maintained involvement in the appeal after Spurr had withdrawn from the case.

BACKGROUND

URESAs to UIFSA: Why and How UIFSA Became a Uniform Child Support Act

In the early 1900s, the United States was faced with persistent problems associated with the failure of non-custodial parents to financially support their dependents.²⁷ These problems included a lack of legal guidelines and criminal or civil penalties for non-payment of support.²⁸ In 1910 various state commissioners (legal and family law professionals appointed by Congress) addressed these problems by drafting the Uniform Desertion and Non-Support Act.²⁹ However, the act had two serious deficiencies: (1) Enforcement was limited to imposing criminal sanctions, and (2) the law did not address interstate situations.³⁰ In response to an increasingly mobile society, the Uniform Reciprocal Enforcement of Support Act (URESAs) was enacted in 1950.³¹ URESAs was the first act that specifically addressed the issue of interstate enforce-

27. UIFSA Handbook, *supra* note 10 at 1-1.

28. *Id.*

29. *Id.* The Uniform Desertion and Non-Support Act provided for fine up to \$500 and/or up to two years in prison if the husband deserted and failed to support the mother and child. Unif. Desertion and Non-Support Act § 1, Martindale-Hubbell Law Digest Uniform and Model Acts (2001). It allowed for a judge to order temporary and permanent support but only for in-state actions. It also allowed the court to order the husband into hard labor and have the money he earned given directly to the mother and child. *Id.* at §2.

30. Office of Child Support Enforcement, United States Department of Health and Human Services, Uniform Interstate Family Support Act Handbook, 1-1 (1994). Interstate situations include crossing state lines in order to gain jurisdiction over a non-custodial parent to determine paternity and child support as well as enforcement actions.

31. *Id.* "In 1989, interstate child support cases made up approximately thirty percent of all child support cases, and an estimated 2.5 million noncustodial fathers were nonresidents of the states in which their children lived." John Saxon & Jacqueline Kane, *The Uniform Interstate Family Support Act*, Family Law Section (The North Carolina State Bar), Number 8, March 1996, at 1, available at http://www.ncbar.com/lamp/legal_uifsa.htm (last modified Mar. 18, 1996).

ment and allowed the custodial parent and dependents to stay in their home state.³² The 1968 revisions to URESA resulted in the Act being re-titled as the Revised Uniform Reciprocal Enforcement of Support Act (RURESA).³³

All states eventually accepted some form of URESA or RURESA; however, problems remained.³⁴ The two major shortcomings were that URESA created multiple child support orders with support obligations set at differing amounts in different states, and that URESA required the involvement of courts.³⁵ Court involvement excluded many efficient administrative procedures, such as administrative wage withholdings, being developed by state legislatures.³⁶ Congress identified these shortcomings and established the U.S. Commission on Interstate Child Support (the Commission) to work with the National Conference of Commissioners of Uniform State Laws (NCCUSL) to draft a new model Act, the Uniform Interstate Family Support Act (UIFSA) to replace URESA and RURESA.³⁷

In 1992 the Commission recommended to Congress that each state be required to adopt UIFSA.³⁸ Subsequently, Congress mandated that states enact UIFSA to remain eligible for the federal funding of child support enforcement.³⁹ At the request of Congress, but prior to the mandate, Wyoming repealed URESA and adopted UIFSA in 1995.⁴⁰

Organized into eight articles, UIFSA provides procedural and jurisdictional rules for essentially three types of interstate child support

32. UIFSA Handbook, *supra* note 10 at 1-1.

33. *Id.*

34. *Id.* at 1-1, 1-2.

35. *Id.* At 1-2.

36. *Id.* Two other shortcomings were the lack of uniformity with respect to the versions of URESA enacted by different states and the ability of responding states to modify support orders previously entered by other states. John Saxon & Jacqueline Kane, *The Uniform Interstate Family Support Act*, Family Law Section (The North Carolina State Bar), Number 8, March 1996, at 3, available at http://www.ncbar.com/lamp/legal_uifsa.htm (Mar. 18, 1996).

37. UIFSA Handbook, *supra* note 10 at 1-2.

38. *Id.*

39. Uniform Interstate Family Support Act, Prefatory Note, at 2 (1996), [hereafter UIFSA].

40. WYO. STAT. ANN. §§ 20-4-101 to 20-4-138 (LexisNexis 2001). Repealed by Laws 1995, ch. 148, §3. 42 U.S.C. Section 666(f) states on or after January 1, 1998 each state must have in effect the Uniform Interstate Family Support Act. The Wyoming Legislature, using 42 U.S.C. § 666(f), approved the UIFSA statutes patterned on the model act with only minor variations.

proceedings: establishment, enforcement and modification of child support orders.⁴¹

Subject Matter Jurisdiction under UIFSA: Congressional Intent and How Various States Have Interpreted the Act

A court must have both subject matter and personal jurisdiction to hear a case.⁴² Subject matter jurisdiction is the “extent to which a court can rule on the conduct of persons or the status of things.”⁴³ In regard to subject matter jurisdiction, section 305 of UIFSA sets forth twelve duties that a responding state court may complete after receiving a petition from an initiating state.⁴⁴ A court may issue or enforce support orders, order income withholding, determine arrearages, hold parties in civil or criminal contempt, order obligors to keep the court informed of addresses and employers, issue bench warrants for failure to appear, order obligors to seek appropriate employment, award attorney fees, and grant other available remedies.⁴⁵

Wyoming Statutes section 20-4-155 lists verbatim eleven of the model UIFSA’s twelve duties and powers for a responding court.⁴⁶ The

41. See generally, UIFSA § 301 (b)(1-7) (1996).

- (1) a proceeding to establish a child support order including:
 - a. an expanded means of obtaining personal jurisdiction over a nonresident; and
 - b. establishing paternity, if necessary;
- (2) a proceeding to enforce a child support order, including:
 - a. registering another state’s order; and
 - b. enforcement without registration, including the use of income-withholding orders; and
- (3) a proceeding to modify a child support order.

Id.

42. *Weller v. Weller*, 960 P.2d 493, 496 (Wyo. 1998) “It is fundamental, if not axiomatic, that, before a court can render any decision or order having any effect in any case or matter, it must have subject matter jurisdiction. Jurisdiction is essential to the exercise of judicial power. Subject matter jurisdiction, like jurisdiction over the person, is not a subject of judicial discretion.” *Id.*

43. BLACK’S LAW DICTIONARY 857 (7th ed. 1999).

44. UIFSA §305 (1996). A responding state means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under UIFSA. UIFSA §101(16). An initiating state means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under UIFSA. UIFSA §101(9).

45. See generally UIFSA §305(b) (1996).

46. WYO. STAT. ANN. §20-4-155 (LexisNexis 2001). The only exception was that Wyoming replaced income withholding with the ordering of medical support. The annotations or the legislative notes never state why the Wyoming Legislature changed the

model UIFSA and the Wyoming version both clearly state "a responding tribunal of this state may not condition the payment of a support order issued under this act upon compliance by a party with provisions for visitation."⁴⁷ UIFSA provides many congressional comments showing the legislative intent. One particular comment states that under a UIFSA action the petitioner generally is not present before the responding tribunal, and therefore visitation issues may not be litigated in the context of a support proceeding.⁴⁸

Prior to the adoption of UIFSA by various states, the Ohio Supreme Court had already decided that URESA did not give a state court subject matter jurisdiction over custody and visitation rights in an interstate child support case.⁴⁹ In *In re Byrand v. Byler*, the parties conceived a child in 1987 in Ohio but the mother moved to Kentucky prior to the child's birth.⁵⁰ The mother filed a URESA petition for establishment of paternity and child support with a Kentucky court, which forwarded the petition to the Ohio Child Support Enforcement Agency.⁵¹ The Ohio lower court established paternity and ordered child support, but also addressed visitation by designating the mother as the primary custodian and granting the father reasonable visitation rights.⁵² After the order was issued, the father complained of denied visitation and was granted a hearing.⁵³ The mother responded with a motion to dismiss, alleging that the juvenile court did not have subject matter jurisdiction to order visitation rights under the Ohio URESA statutes.⁵⁴ The court ruled against the mother's motion to dismiss and she appealed the court's dismissal.⁵⁵ The Ohio Court of Appeals held that the juvenile court did have jurisdiction over custody and visitation rights in a URESA action.⁵⁶

The Ohio Supreme Court overruled the Court of Appeals, stating, "[i]n an action involving disputed child support that was initiated pursuant to URESA, the court has no subject matter jurisdiction to consider visitation and custody matters."⁵⁷ The court also stated that the holding is consistent with the requirement that "support issues and visi-

standard UIFSA language.

47. UIFSA §305(d) (1996); WYO. STAT. ANN. §20-4-155(d) (LexisNexis 2001).

48. UIFSA §305(d) cmts.

49. *In re Byard v. Byler*, 658 N.E. 2d 735, 738 (Ohio 1996).

50. *Id.* at 735-736.

51. *Id.* at 736.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* at 737.

tation and custody issues be determined separately from each other."⁵⁸ The court referred to ten URESA jurisdiction cases from other states, noting, "[o]ther jurisdictions are in accord with the holding that a petition filed pursuant to URESA does not confer jurisdiction for custody and visitation issues."⁵⁹

In 1997, the Colorado Court of Appeals, Division Two relied on the UIFSA comments in deciding *In the Interest of R.L.H.* by not allowing the extension of subject matter jurisdiction under UIFSA to visitation and custody issues.⁶⁰ The State of Nevada filed a UIFSA petition in Colorado to determine parentage, child support, and arrearages for a mother who lived and received welfare benefits in Nevada.⁶¹ During the proceedings, the father requested an order concerning parenting time.⁶² The trial court reasoned that because a parentage determination pursuant to UIFSA requires application of the Uniform Parentage Act, it had jurisdiction to decide the visitation.⁶³ However, the Court of Appeals reversed the court's decision, stating, "as the responding tribunal in a proceeding brought pursuant to UIFSA, the trial court's subject matter jurisdiction does not extend to the determination of parenting time."⁶⁴

Personal Jurisdiction Under UIFSA: Does UIFSA Subject the Petitioner to Personal Jurisdiction in the Responding State?

Even if a court has subject matter jurisdiction, it must also have personal jurisdiction over both parties.⁶⁵ Personal jurisdiction requires that a court have the legal authority to make decisions that directly affect an individual.⁶⁶ UIFSA provides for personal jurisdiction over nonresi-

58. *Id.*

59. *Id.* The ten other cases are *Mississippi Dept. of Human Serv. v. Marquis* (Miss 1993), 630 So. 2d 331; *Hood v. Hood* (1984), 146 Vt. 195, 499 A.2d 772; *State ex rel. Dewyea v. Knapp* (1984), 208 Mont. 19, 674 P.2d 1104; *England v. England* (Minn. 1983), 337 N.W.2d 681; *State ex rel. Hubbard v. Hubbard* (1983), 110 Wis. 2d 683, 329 N.W. 2d 202; *People ex rel. Meveren v. Larimer Dist. Court* (Colo. 1982), 638 P.2d 1371; *Moffat v. Moffat* (1980), 27 Cal. 3d 645, 165 Cal. Rptr. 877, 612 P.2d 967; *Hoover v. Hoover* (1978), 271 S.C. 177, 246 S.E. 2d 179; *Kline v. Kline* (1976), 260 Ark. 550, 542 S.W. 2d 499.

60. *In the Interest of R.L.H., a Child and Concerning R.W.J.*, 942 P.2d 1386, 1389 (Colo. Ct App. 1997).

61. *Id.* at 1387.

62. *Id.* An order for parenting time is usually known as a visitation order, which covers the dates and times that the non-custodial parent has the child(ren).

63. *Id.*

64. *Id.*

65. UIFSA Handbook, *supra* note 10, at 3-LA-1.

66. *Id.*

dents in Article 2 of the Act.⁶⁷ In proceedings to establish, enforce, or modify child support orders, a court may exercise personal jurisdiction over a nonresident individual under eight circumstances, including personal service within the state, submitting to jurisdiction and various situations pertaining to time and money spent on the child.⁶⁸

In a UIFSA action, the average petitioner usually files the petition for establishment, enforcement or modification of a child support order in petitioner's home state if she can get personal jurisdiction over the respondent. If the order is from the petitioner's home state then she/he can interact with the court that is going to handle all of the child support issues. However, if none of the circumstances under which personal jurisdiction can be exercised exist, the child support petition can be forwarded to the respondent's state of residency.⁶⁹

UIFSA authorizes the responding state to determine parentage; however, the responding tribunal's authority under UIFSA to determine parentage and establish a child support obligation does not confer jurisdiction for the court to consider parenting issues such as custody and visitation.⁷⁰ Due to distance and economic circumstances, the petitioner in a UIFSA action is generally not present before the court. Even though both parentage and visitation involve the same parties, they are separate

67. UIFSA § 201 (1996).

68. *Id.* [A] tribunal may exercise personal jurisdiction over a nonresident individual under eight circumstances:

- (1) The individual is personally servedwithin the state.
- (2) The individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.
- (3) The individual resided with the child in this State;
- (4) The individual resided in this State and provided prenatal expenses or support for the child;
- (5) The child resides in this State as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage in the putative father registry maintained in this State by the appropriate agency; or
- (8) There is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

Id.

69. UIFSA § 203 (1996). "Under this [Act], a tribunal of this State may serve as an initiating tribunal to forward proceedings to another State and as a responding tribunal for proceedings initiated in another State." *Id.*

70. In the Interest of R.L.H., a Child and Concerning R.W.J., 942 P.2d 1386, 1389 (Colo. Ct App. 1997).

issues and congressional comments to UIFSA suggest they should be handled in two different proceedings.⁷¹ Thus, UIFSA specifically provides limited immunity to the petitioner in regard to personal jurisdiction by permitting a petitioner to appear before a responding tribunal with jurisdiction limited to the establishment, enforcement, and modification of child support.⁷²

Various state supreme court decisions have also interpreted child support and custody acts to separate visitation and child support. In *Early v. Early*, the Georgia Supreme Court held that the state where the child support order was entered had continued jurisdiction over child support issues but under the Uniform Child Custody Jurisdiction Act (UCCJA), the state where the child was located had jurisdiction over matters of child custody and visitation.⁷³

An Arkansas case, *Office of Child Support Enforcement v. Clemmons*, illustrates the intent of UIFSA in determining child support and collateral matters such as visitation in separate proceedings.⁷⁴ In *Clemmons*, the mother who was receiving welfare benefits assigned to the State of Missouri her rights to child support arrearages.⁷⁵ After locating the father in Arkansas, the State of Missouri initiated an interstate action to enforce his child-support obligation.⁷⁶ The chancellor entered an order estopping the mother from obtaining a judgment and/or attempting to collect any child-support arrearages because the mother had willfully concealed the child from his father.⁷⁷ The Arkansas Court of Appeals held that "the chancellor may not consider collateral matters, including visitation, when faced with the issue of enforcement of child support under this uniform act [UIFSA]."⁷⁸ The court was clear that visi-

71. UIFSA § 305 cmts. (1996).

72. WYO. STAT. ANN. §20-4-164(a)(LexisNexis 2001); UIFSA § 314(a)(1996). The comments to §314 state "The primary object of this prohibition is to preclude joining disputes over child custody and visitation with the establishment, enforcement, or modification of child support." UIFSA § 314 cmts. (1996).

73. *Early v. Early*, 499 S.E. 2d 329, 330 (Ga. 1998). The father wanted to modify the Georgia Child Support Order in California, where the mother and child lived. *Id.* at 329. The father still lived in Georgia. *Id.* The California court would not grant jurisdiction since the Georgia court still had jurisdiction over the child support order. *Id.* The Georgia court stated the California court only had jurisdiction over child custody and visitation issues. *Id.* at 330.

74. *Office of Child Support Enforcement v. Clemmons*, 984 S.W.2d 837, 838 (Ark. Ct. App. 1999).

75. *Id.* at 839.

76. *Id.*

77. *Id.*

78. *Id.* Arkansas enacted UIFSA in 1993, ARK. CODE ANN. § 9-17-101 *et seq.* (Lexis 1999).

tation and child support under UIFSA are totally separate proceedings:

In a UIFSA action, visitation issues are collateral matters which burden the child-support determination and run counter to the goal of streamlining the proceedings both procedurally and substantively [T]he chancellor directly contravened UIFSA's purpose of enforcing the collection of child support. Because UIFSA does not allow us to consider the visitation issue, we must reverse.⁷⁹

In *Perdomo v. Fuller*, an unusual situation arose when an alleged father living in Oklahoma filed a UIFSA action to establish paternity against a Wisconsin woman in the Oklahoma court system.⁸⁰ The Oklahoma court denied his petition upon request from the mother on grounds it was not the best forum to determine child support and the collateral issues.⁸¹ The Oklahoma court stated:

Although the Act has attempted to deal with many of the problems associated with interstate lawsuits, we are nonetheless reluctant to disturb an Oklahoma tribunal's (the lower court) declination of jurisdiction pursuant to the Act. According to plaintiff, more is at stake in this lawsuit than simply asking for blood tests. We agree with the trial court that Wisconsin, the state where the mother is a citizen and child has always resided, is the more convenient forum to hear this paternity action.⁸²

Do Welfare Benefits and the Child Support Agency Force a Custodial Parent to Submit to Personal Jurisdiction?

In 1974 Congress amended the Social Security Act requiring states to establish the Child Support Enforcement Program in order to receive federal funding.⁸³ Section 307 of UIFSA lists the duties of the Child Support Enforcement Agency, which include providing services to a mother or father in a proceeding under UIFSA.⁸⁴ A mother or father may voluntarily choose to apply for the services of the Child Support

79. *Clemmons*, 984 S.W. 2d at 839.

80. *Perdomo v. Fuller*, 974 P.2d 185, 186 (Okla. Civ. App. 1998).

81. *Id.* The Oklahoma court stated the best location for the action would be where the mother and child were located due to the effect on the hearing on the child. *Id.* at 186-187.

82. *Id.* at 187.

83. *Flores v. Flores*, 979 P.2d 944, 946 (Wyo. 1999).

84. UIFSA § 307(a) (1996).

Offices. However, if a parent receives AFDC or Medicaid assistance, they are required by law to cooperate with the Child Support Enforcement (CSE) program.⁸⁵ Aid to Families with Dependent Children, AFDC, is a federally funded program created to provide financial assistance to needy families with children.⁸⁶ Both Wyoming and Nebraska participate in the federally funded AFDC program and have child support enforcement programs.⁸⁷ In order for a state to receive a block grant to administer the AFDC program, it must certify it is operating a child support enforcement program that includes enforcing support obligations, locating noncustodial parents, establishing paternity and obtaining child and spousal support.⁸⁸

Many AFDC recipients must submit themselves to the jurisdiction of a responding state's courts if they want to continue to receive welfare benefits. An AFDC recipient must assign the support rights to the state for the period the AFDC recipient is receiving AFDC benefits.⁸⁹ The federal standards for the child support enforcement program include naming all of the potential parents of the child for whom aid is requested and for the welfare recipient to provide as much known information to assist in locating him/her, such as past addresses, phone numbers, social security numbers for the noncustodial parent as well as his/her parent's address.⁹⁰ The federal code has added sanctions to AFDC recipients in

85. CD-ROM: An Introduction to the Child Support Enforcement Program, Module 1, page 14, (Policy Studies, Inc. 1996) [hereafter CD-ROM]; State Plan for State of Wyoming, Aid for Dependant Children at 7, pursuant to 45 CFR 200, "Cooperation with assignment of support, establishment of paternity, and pursuit of child support must continue during any performance period to be eligible to receive a performance payment. The child support unit must immediately report noncompliance with these standards to the eligibility worker." *Id.*

86. 42 U.S.C.A. § 601(1999). (a) The purpose of this part is to increase the flexibility of States in operating a program designed to:

Provide assistance to needy families. 42 U.S.C.A. § 601(a)(1) (Supp. 2001).

87. WYO. STAT. ANN. §§ 4-1-101 to 42-2-404 (LexisNexis 2001); NEB. REV. STAT. §§ 43-501 to 43-536 (Michie 1998).

88. 42 U.S.C.A. § 602(a)(2) (Supp. 2001). "Certification that the state will operate a child support enforcement program. A certification by the chief executive officer of the state that, during the fiscal year, the state will operate a child support enforcement program under the state plan approved under Part D." *Id.*

89. 42 U.S.C.A. § 608(a) (1999). §608(a) directs each State's Plan for TANF to make mandatory "Cooperation with assignment of support, establishment of paternity, and pursuit of child support must continue during any performance period to be eligible to receive a performance payment. The child support unit must immediately report noncompliance with these standards to the eligibility worker." Wyoming State Plan Document, Temporary Assistance to Needy Families and Personal Opportunities with Employment Responsibilities (POWER) (2000) at 7, available at <http://dfsweb.state.wy.us/STATEPLN/stplanf2.htm> (last modified July 14, 2000).

90. CD-ROM, *supra* note 85, Module 1 at 14.

the form of a reduction or elimination of assistance for not cooperating in the establishment of paternity and obtaining of child support unless good cause is established.⁹¹

What is the Standard for "the Best Interest of a Child?"

Even if a court has personal and subject matter jurisdiction to decide issues of visitation and custody in an UIFSA action, the court is still required to consider the best interests of the child. The Wyoming Legislature and the Wyoming Supreme Court have both addressed the standard for what is the best of interests of a child when addressing jurisdiction questions regarding visitation and custody issues.⁹² The Uniform Child Custody Jurisdiction Act (UCCJA) incorporates this standard in its framework.⁹³ Wyoming Statutes section 20-5-104 (a)(ii) states "it is in the best interest of the child that a court of this state assume jurisdiction because the child . . . ha[s] a significant connection with the state and there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships."⁹⁴ This provision expressly relates to child custody issues and not to child visitation, but the two situations are analogous. Both involve the time a child spends with a noncustodial parent.

There are multiple cases addressing which court should have jurisdiction over visitation and custody issues and focusing on what is in the best interest of the child. In *Paternity of Carlin L.S. v. Neal*, a paternity suit was filed by the child's mother against the father in Wisconsin.⁹⁵ The child was born in Minnesota and resided in Wisconsin, while the father at the time of filing was a resident of Michigan.⁹⁶ The Wisconsin Court of Appeals held that UCCJA did not by itself establish jurisdiction in the paternity action.⁹⁷ The court ruled that if UIFSA incorporates UCCJA, the UCCJA must be reviewed to determine if it

91. 42 U.S.C.A. § 608(a) (1999). Good cause can be granted if a history of mental or physical abuse is shown or a potential threat of physical or mental harm or kidnapping is shown. *Id.*

92. WYO. STAT. ANN. § 20-5-104(a)(ii) (LexisNexis 2001); *Weller v. Weller*, 960 P.2d 493, 495 (Wyo. 1998).

93. WYO. STAT. ANN. §§ 20-5-101 to 20-5-125 (LexisNexis 2001). These sections of the Wyoming Statutes are known as the Uniform Child Custody Jurisdiction Act. *Id.* at §20-5-101.

94. WYO. STAT. ANN. § 20-5-104(a)(ii) (LexisNexis 2001).

95. *Paternity of Carlin L.S. v. Neal A.R.*, 593 N.W.2d 486, 488 (Wis. Ct. App. 1999).

96. *Id.*

97. *Id.* at 490.

provides for jurisdiction.⁹⁸ This indicates that a court must satisfy the requirement of the UCCJA, which is to consider the best interest of the child, to take jurisdiction over custody and visitation.

In *Weller v. Weller* the entire family lived in Pennsylvania until the parents separated.⁹⁹ After the separation, the mother moved the child to Wyoming and filed for divorce, including child support and custody issues.¹⁰⁰ The father was served with a complaint in Pennsylvania but failed to respond; consequently, a Wyoming court issued a default divorce decree that included custody and child support provisions.¹⁰¹ Later, the father filed a custody complaint in Pennsylvania and then filed a motion in Wyoming to set aside the child custody and support provisions of the divorce decree.¹⁰² The district court upheld the custody and support provisions but the Wyoming Supreme Court reversed.¹⁰³ The court held the district court did not have subject matter jurisdiction under the UCCJA; therefore, the child custody and support provisions of the divorce decree were void.¹⁰⁴ The Wyoming Supreme Court held that the district court did not obtain subject matter jurisdiction under UCCJA because the petition was filed only two months after the mother and child moved to Wyoming, and UCCJA subject matter jurisdiction rules state that the child's "home state" has sole jurisdiction over custody and support issues to protect the best interest of the child.¹⁰⁵

The Wyoming Supreme Court also decided in *Quenzer v. Quenzer* that the best interests of a child is to be decided in the "home state" of the child.¹⁰⁶ The court referred to the UCCJA in stating "courts which have interpreted this provision similarly have held that by requiring optimal access to the relevant evidence the best interest of the child will be served."¹⁰⁷ The court found the best interests of the child are served

98. *Id.* at 489.

99. *Weller v. Weller*, 960 P.2d 493, 494 (Wyo. 1998).

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* at 496.

104. *Id.* at 496.

105. *Id.* The "home state" is where the child has lived for the last six consecutive months which is Pennsylvania in this case. *Id.* at 495. The *Weller* court state "Although it would be judicially efficient to approve the district court's actions and order because, at this point, the children have been in Wyoming for longer than six months, such an act would undermine the legislative function, the purposes behind the UCCJA jurisdictional requirements, and the basic doctrine of subject matter jurisdiction." *Id.* at 496.

106. *Quenzer v. Quenzer*, 653 P.2d 295, 304 (Wyo. 1982).

107. *Id.*

when the court with the best access to the evidence to decide such sensitive issues as custody and visitation is given jurisdiction.¹⁰⁸

The Wyoming Supreme Court again addressed what constitutes the best interests of a child in *Thomas v. Thomas*.¹⁰⁹ In *Thomas*, the father and mother were married at the time of their daughter's birth.¹¹⁰ The father disappeared when the daughter was three months old.¹¹¹ The mother obtained a default divorce decree, which included child support provisions.¹¹² The father was later located by the Wyoming child support enforcement office and brought to court for failure to pay child support.¹¹³ The district court dismissed the child support provisions due to lack of personal jurisdiction, finding that "personal service was not obtained on the defendant prior to the entry of a child support obligation."¹¹⁴ However, the father later filed a motion to establish visitation and child support.¹¹⁵ The district court stated in relevant part "the [d]efendant has entirely failed to maintain contact with or interest in [his] daughter . . . The [d]efendant's history, [of] disappearing for a significant time . . . [and] failure to provide support, indicates that the court should be cautious in forcing visitation on daughter."¹¹⁶ The district court determined that it was in the daughter's best interest to grant the father only limited visitation.¹¹⁷ The Wyoming Supreme Court affirmed the ruling.

PRINCIPAL CASE

In *Ostermiller*, the district court granted Scott Spurr's request for a change to BRO's surname and standard visitation by ruling it had jurisdiction over all issues.¹¹⁸ Teresa Ostermiller, who was not present at the district court hearing, appealed.¹¹⁹ On appeal, the Wyoming Supreme Court construed Wyoming's UIFSA and parentage statutes to hold, three to two, that the district court had subject matter jurisdiction over the visitation issue and personal jurisdiction over Teresa.¹²⁰

108. *Id.*

109. *Thomas v. Thomas*, 983 P.2d 717, 718 (Wyo. 1999).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 719.

117. *Id.* at 722.

118. *Ostermiller v. Spurr*, 968 P.2d 940,942 (Wyo. 1998).

119. *Id.*

120. *Id.* at 944.

Jurisdiction—Subject Matter and Personal

The court ruled that the Wyoming UIFSA statutes incorporate, by reference, Wyoming's parentage statutes for paternity and support proceedings, and provide for independent powers and jurisdiction of Wyoming courts as responding tribunals.¹²¹ The court referred to Wyoming Statutes section 20-4-185 (part of the UIFSA statutes), which states that in a parentage proceeding by a responding Wyoming tribunal, the provisions of Wyoming Statutes sections 14-2-101 through 14-2-120 (the Parentage and Paternity action statutes) and the Wyoming choice-of-law provisions shall apply.¹²² The court, in following the chain of statutes, focused on Wyoming Statutes section 20-4-142 which provides:

- (a) In a proceeding to establish a support order or to determine parentage, a district court of this state may exercise personal jurisdiction over a non-resident if:

...

- (ii) The individual submits to the jurisdiction of this state by consent,

...

- (vii) The individual asserted parentage in this state pursuant to W.S. 14-2-101 through 14-2-120.

The court then looked at Wyoming Statutes section 14-2-113 to justify the inclusion of visitation and name change.¹²³ Wyoming Statutes section 14-2-113 states:

- (a) The judgment or order of the court determining the exercise or nonexistence of the parent and child relationship is determinative for all purposes.
 (b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate is issued.
 (c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and

121. *Id.* at 942.

122. *Id.* at 942-43.

123. *Id.* at 943.

guardianship of the child, visitation privileges with the child or any other matter in the best interest of the child.¹²⁴

The Wyoming Supreme Court used this trilogy of Wyoming statutes to determine that the district court had subject matter jurisdiction to determine parentage and to order custody, support, and visitation.¹²⁵

The court, in regards to personal jurisdiction, held that because Teresa submitted to Wyoming jurisdiction for adjudication of paternity and child support by signing the child support petition she had submitted to the same jurisdiction for the father's visitation and name change requests.¹²⁶ The court stated there is "no evidence in the record to support a contention of involuntariness or coercion with respect to the mother's signature on the petition initiated by Nebraska's child support enforcement agency"¹²⁷ The court's justification for the ruling was based on *Quenzer v. Quenzer*, which held that a party's demand for affirmative relief changes a special appearance to a general appearance that cannot later be withdrawn.¹²⁸

Teresa further asserted that even if the district court had jurisdiction, it abused its discretion in applying its "standard" visitation order.¹²⁹ The Wyoming Supreme Court based its ruling for standard visitation on the fact that Scott Spurr and his wife were present for the hearing, Scott was capable of providing care for the child, his wife was highly supportive of the parent-child relationship, and they desired a relationship with the child.¹³⁰ However, Teresa appeared only through counsel and failed to provide testimony to contradict Scott's statements.¹³¹ The Wyoming Supreme Court, reviewing the uncontradicted testimony, determined the district court did not abuse its discretion when it awarded standard visitation to Scott Spurr.¹³² The majority stated that the court not only had the authority but the obligation to determine visitation.¹³³

124. WYO. STAT. ANN. § 14-2-113 (LexisNexis 2001).

125. *Ostermiller*, 968 P.2d at 943.

126. *Id.* at 942.

127. *Id.* at 943.

128. *Id.* at 942.

129. *Id.*

130. *Id.* at 943.

131. *Id.*

132. *Id.*

133. *Id.* at 944.

Principal Case: Dissent

The dissenting opinion by Justice Golden, joined by Chief Justice Lehman, stated the district court did not have subject matter jurisdiction over issues of custody, visitation, name change or income tax deduction because UIFSA and the predecessor Acts clearly state that subject matter jurisdiction is limited to parentage and support issues.¹³⁴ The dissent, referring to the very similar Colorado paternity case *In re R.L.H.*, stated, "a determination of custody or visitation issues is noticeably absent from the list of duties and powers delineated in Section 14-5-305, C.R.S. (1996 Cum. Supp.), the statutory section of the Colorado UIFSA."¹³⁵ The dissent looked at the language of UIFSA, which states "the power to assert jurisdiction over support issues under the Act does not extend the tribunal's jurisdiction to other matters."¹³⁶ The dissent discussed why visitation issues should be excluded in interstate paternity actions, stating, "this case [Ostermiller] provides an excellent example of the need to determine other issues involving the child in the child's home state. The record is absolutely devoid of any evidence as to the best interests of the child."¹³⁷

The dissent also addressed the issue of who was representing the "best interests of the child" in this paternity action.¹³⁸ Wyoming statutes provide that a child must be made a party to a paternity action and a court-appointed attorney must represent the child.¹³⁹ The State of Wyoming represented the child in the district court matter, but during the appeal failed to represent the child and became an appellee.¹⁴⁰ The dis-

134. *Id.* (Golden, J., dissenting) (citing *In the Interest of R.L.H., a Child and Concerning R.W.J.* at 1388-89).

135. *Id.* at 945 (Golden, J., dissenting).

136. *Id.* (Golden, J., dissenting).

137. *Id.* (Golden, J., dissenting).

138. *Id.* (Golden, J., dissenting).

139. *Id.* (Golden, J., dissenting). WYO. STAT. ANN. §14-2-107 (LexisNexis 2001):

The child shall be made a party to the action. If the child is not represented by a state agency and the child is a minor, the child shall be represented by the child's guardian or a guardian ad litem appointed by the court for the limited purpose of establishing paternity. The child's mother or father may not represent the child as guardian or otherwise.

Id.

140. *Id.* (Golden, J., dissenting). The dissent expressed concern "the court commissioner's statement that the State of Wyoming represented the child in this matter, yet the State of Wyoming is the appellee in this appeal and the child is one of the appellants, along with his mother. The parties to an action and their relationship to each other are important matters, as this case illustrates through its apparent disregard for appropriate captions on the filed petitions and the resulting confusion concerning personal jurisdic-

sent questioned who was looking out for the best interest of the child by stating,

it is unconscionable that decisions on such important issues concerning this child were made without any testimony or evidence about the child. The commissioner, and hence the district court, relied upon comments from a father who had never seen or spoken to his child and attorneys who had never had contact with the child. I am convinced that this illustrates the reasoning behind the limited subject matter jurisdiction given to a responding tribunal under UIFSA.¹⁴¹

ANALYSIS

The Wyoming Supreme Court failed, both procedurally and substantively, in *Ostermiller*: The court procedurally failed to properly apply the guidelines and intent of UIFSA in finding that the state district court had personal and subject matter jurisdiction, and substantively failed to determine the best interests of the child, BRO.

Failure to Apply the Correct Jurisdictional Standards

The majority opinion relied heavily on statutory language in determining that the district court had jurisdiction over custody and visitation rights. The court focused specifically on the Wyoming version of UIFSA.¹⁴²

The Wyoming Supreme Court erroneously applied Wyoming Statutes section 20-4-142 in authorizing the district court jurisdiction. Wyoming's UIFSA statutes refer to Wyoming's parentage statutes.¹⁴³ However, the language in the Wyoming parentage statutes does not grant authority to establish jurisdiction. Wyoming Statutes section 14-2-106 merely states, "the district court has jurisdiction of an action brought under this act [Wyoming parentage statutes]."¹⁴⁴ The court erred in ap-

tion, parties, legal representation, and parties on appeal." *Id.*

141. *Id.* (Golden, J., dissenting).

142. WYO. STAT. ANN. §§ 20-4-139 to 20-4-189. (LexisNexis 2001).

143. WYO. STAT. ANN. § 20-4-142 (LexisNexis 2001).

(a) In a proceeding to establish . . . a support order or to determine parentage, a district court of this state may exercise personal jurisdiction over a non-resident . . . if:

(vii) The individual asserted parentage in this state pursuant to W.S. 14-2-101 through 14-2-120.

144. WYO. STAT. ANN. § 14-2-106 (LexisNexis 2001). The statute also states a person who has sexual intercourse in Wyoming which has resulted in the birth of a child

plying the jurisdiction granted in the Wyoming parentage statutes because Teresa brought her UIFSA action under the Wyoming UIFSA statutes, not under the Wyoming parentage statutes.¹⁴⁵

In determining if the court has jurisdiction, the court must consider under which statute the action was filed. *Ostermiller* did not fall within the jurisdiction granted under the Wyoming parentage statutes because the action was not brought under Title 14, but instead under UIFSA.¹⁴⁶ The court is granted subject matter jurisdiction for proceedings brought under a UIFSA action in Wyoming Statutes section 20-4-151.¹⁴⁷ The UIFSA statute is silent about visitation and custody proceedings and therefore does not explicitly provide the court with subject matter jurisdiction over visitation and custody proceedings.¹⁴⁸ The Wyoming Supreme Court used Wyoming Statutes section 20-4-142 to hold that the district court had subject matter jurisdiction over Teresa in the visitation and custody proceedings.¹⁴⁹ Since Wyoming Statutes section 20-4-142 refers to the parentage statutes, the court held that Wyoming Statutes section 14-2-113 gives the district court jurisdiction in the custody and visitation proceedings.¹⁵⁰ However, Wyoming Statutes section 14-2-106

who is subject of the proceedings under this act, subjects to the jurisdiction of the courts of this state in an action brought under this act. *Id.* at (b). As well as, any action may be brought in the county in which the child resides, is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced. *Id.* at (c).

145. *Ostermiller*, 968 P.2d at 941.

146. *Id.*

147. WYO. STAT. ANN. § 20-4-151(b) (LexisNexis 2001) provides:

(b) The Uniform Interstate Family Support Act provides for the following proceedings:

- (i) Establishment of an order for . . . child support . . . ;
- (ii) Enforcement of a support order and income withholding order of another state without registration . . . ;
- (iii) Registration of an order for . . . child support of another state for enforcement . . . ;
- (iv) Modification of an order for child support . . . issued by a district court of this state . . . ;
- (v) Registration of an order for child support of another state for modification . . . ;
- (vi) Determination of parentage.

148. *In the Interest of R.L.H., a Child and Concerning R.W.J.*, 942 P.2d 1386, 1388-89 (Colo. Ct. App. 1997).

149. *Ostermiller*, 968 P.2d at 943.

150. *Id.* WYO. STAT. ANN. § 14-2-113 (LexisNexis 2001) reads:

- (a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative of all purposes.
- (b) If the judgment or order of the court is at variance with the child's birth

is the section that gives the court jurisdiction under the Wyoming parentage statutes. It states, "the district court has jurisdiction of an action brought under this act. The action may be joined with an action for divorce, annulment, separate maintenance, support or any action which may affect the parent and child relationship."¹⁵¹ The action that Teresa brought was under the UIFSA statutes and therefore, the UIFSA statute should be controlling. The Wyoming parentage statutes are very clear that in order to gain jurisdiction utilizing these statutes, the cause of action must invoke them in the first place. An action brought under the Wyoming parentage statutes could be joined to a UIFSA action if the original action or counterclaim was brought under the Wyoming parentage act. However, the original action and the counterclaim were brought under the UIFSA statutes and therefore, do not grant jurisdiction by joining the two statutes.

The UIFSA statutes refer to the Wyoming parentage statutes in their entirety. The Wyoming parentage statutes, therefore, cannot be completely ignored, which creates some confusion in how to determine jurisdiction in UIFSA actions. The confusion can be attributed to the reference of the Wyoming parentage statutes in the UIFSA statutes. Since the UIFSA statute's language is not obvious in the meaning of the words employed, extrinsic aids of statutory interpretation, such as legislative history, should be used.¹⁵² The legislative intent of Congress in passing UIFSA is explicit in the corresponding comments. Comments to section 201 of UIFSA state, "nonresident party concedes personal jurisdiction by seeking affirmative relief or by submitting to the jurisdiction by answering or entering an appearance. However, the power to assert jurisdiction over a support issue under the Act does not extend the tribunal's jurisdiction to other matters."¹⁵³ The legislative intent clearly demonstrates that UIFSA is limited to support and parentage issues and specifically excludes other matters.¹⁵⁴

certificate, the court shall order that a new birth certificate be issued.

(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child or any other matter in the best interest of the child.

151. WYO. STAT. ANN. § 14-2-106 (LexisNexis 2001). The original action was a UIFSA action. Appellant's Brief, *supra* note 1, at 3. The counterclaim filed by Scott Spurr was brought in response to the UIFSA action and not under the Wyoming parentage act. *Id.* Therefore, the action was never brought under the Wyoming parentage act.

152. Hill v. Value Recovery Group, 964 P.2d 1256, 1258 (Wyo. 1998).

153. UIFSA § 201 Cmt. The primary focus in statutory interpretation is determining the legislative intent. In the Matter of the Interest of WJH, 24 P.3d 1147, 1150 (Wyo. 2001).

154. UIFSA §201 Cmt. In reference to subsection 2.

The following case provides additional support for the view that the Wyoming court's jurisdiction did not extend to name change and visitation issues. The Colorado case, *In the Interest of R.L.H.*, was also a UIFSA action. Colorado had also adopted a UIFSA statute which included a reference to the Uniform Parentage Act (UPA).¹⁵⁵ The issue presented was whether the trial court had subject matter jurisdiction to enter orders concerning parenting time in proceedings brought under UIFSA.¹⁵⁶ R.L.H.'s father requested an order concerning parenting time as Scott Spurr did in *Ostermiller*.¹⁵⁷ The district court in *R.L.H.* used the same reasoning as the Wyoming court in that UIFSA requires application of the Uniform Parentage Act and therefore allows the court to determine parenting time.¹⁵⁸

The similarities end with the analysis at the appellate level. The Colorado Court of Appeals reversed the lower court's holding that because "the reference to the UPA in the Colorado UIFSA simply establishes a method to determine parentage . . . as the responding tribunal in a proceeding brought pursuant to UIFSA, the trial court's subject matter jurisdiction does not extend to the determination of parenting time."¹⁵⁹

The Colorado Court of Appeals referred to a similar case from Ohio. In *In re Byard v. Byler* the Supreme Court of Ohio stated, "no provisions in Ohio's URESA grants the court subject matter jurisdiction over a disputed matter other than child support In an action involving disputed child support that was initiated pursuant to URESA, the court has no subject matter jurisdiction to consider visitation and custody matters."¹⁶⁰ Even though *Byard* involves URESA, as predecessor to UIFSA, it should be noted that the *Ostermiller* dissent stated, "the replacement of URESA and RURESAs by UIFSA did not expand the permissible scope of issues to be addressed in interstate child support enforcement proceedings."¹⁶¹ Wyoming, along with other states, has used the UCCJA to determine custody and UIFSA to determine child support, which provides a better approach when both support and visitation issues are raised.¹⁶²

155. *In the Interest of R.L.H., a Child and Concerning R.W.J.*, 942 P.2d 1386, 1387 (Colo. Ct. App. 1997).

156. *Id.*

157. *Id.*

158. *Id.* Parenting time is more commonly known as visitation.

159. *Id.*

160. *In re Byard v. Byler*, 658 N.E.2d 735, 737 (Ohio 1996).

161. *Ostermiller v. Spurr*, 968 P.2d 940,944 (Wyo. 1998).

162. *Paternity of Carlin L.S. v. Neal A.R.*, 593 N.W. 2d 486 (Wis. Ct. App. 1999); *Weller v. Weller*, 960 P.2d 493 (Wyo. 1998); *Abu-Dalbouh v. Abu-Dalboth*, 547 N.W.

Another state that separates visitation and child support matters is Georgia. The law in Georgia is that a court's jurisdiction to hear an interstate child support proceeding does not confer jurisdiction to hear custody or visitation matters, which are governed by the Uniform Child Custody Jurisdiction Act (UCCJA).¹⁶³ In general, the UCCJA confers jurisdiction over custody issues in the child's "home state," which in *Ostermiller* is Nebraska, not Wyoming.¹⁶⁴ The UIFSA statutes were intended to govern issues of paternity and child support and grant jurisdiction over these issues to the responding state. The UCCJA governs issues of child custody and visitation and grants jurisdiction to the child's "home state." The Wyoming Supreme Court apparently ignored the UCCJA when it recognized jurisdiction over visitation issues in *Ostermiller*.

Ostermiller is similar to *Paternity of Carlin L.S. v. Neal* in that it referred to another statute for jurisdiction, not the UCCJA, but the Wyoming parentage statutes.¹⁶⁵ The Wisconsin court used the incorporated UCCJA statutes to assert jurisdiction, but in *Ostermiller* the court did not attempt to use the Wyoming UCCJA statutes to gain jurisdiction. Whether the court attempted to use the UCCJA is unclear since the court was silent in regards to UCCJA. The Wyoming UIFSA statutes refer only to the Wyoming parentage statutes; however, the *Ostermiller* court should not have had jurisdiction under the parentage statutes since the original action was not filed under those statutes but under the UIFSA statutes.

In a Wyoming case, *Weller v. Weller*, the court dealt with subject matter jurisdiction under UCCJA.¹⁶⁶ The Wyoming Supreme Court ruled that it must have subject matter jurisdiction in order to proceed with custody and visitation issues.¹⁶⁷ As discussed earlier, the district court in *Ostermiller* did not have jurisdiction over custody and visitation proceedings pursuant to the UIFSA statutes and the action was not filed under the Wyoming parentage statutes. The *Weller* court stated "unless the court has jurisdiction, it lacks any authority to proceed, and any decision, judgment, or other order is, as a matter of law, utterly void and of no effect for any purpose."¹⁶⁸ Except for the issues of parentage and

2d 700 (Minn. Ct. App. 1996).

163. *Early v. Early*, 499 S.E. 2d 329, 330 (Ga. 1998).

164. U.C.C.J.A. § 5, 9 (IA) U.L.A. 466 (1999).

165. *Ostermiller*, 968 P.2d at 943 referring to *Paternity of Carlin L.S. v. Neal* A.R., 593 N.W. 2d 486 (Wis. Ct. App. 1999).

166. *Weller*, 960 P.2d at 493.

167. *Id.* at 496.

168. *Id.*

child support, the *Ostermiller* court did not have subject matter jurisdiction and its decisions as to the collateral matters should be "utterly void and of no effect for any purpose."¹⁶⁹

In recognizing jurisdiction for custody and visitation, the *Ostermiller* court erroneously relied upon a 1982 Wyoming case, *Quenzer v. Quenzer*, finding Ostermiller's paternity and child support claims were a demand for affirmative relief which changed Teresa's appearance from a special appearance to a general appearance.¹⁷⁰ Again, the *Ostermiller* court failed to recognize that the interstate action was filed under a UIFSA petition, while the *Quenzer* court based its jurisdiction on the UCCJA, which allowed for jurisdiction over custody and visitation issues.¹⁷¹ Therefore, the court should have never relied upon the *Quenzer* case for analysis.

A welfare recipient or applicant may choose not to apply for need benefits due to the potential for visitation and custody issues being decided without their consent. The assertion of jurisdiction over visitation and custody issues collateral to a UIFSA proceeding subjects a non-resident petitioner to these other issues and therefore may dissuade the nonresident custodial parent from ever filing an out-of-state petition under UIFSA in Wyoming. However, Teresa had to file the petition for support and parentage or be removed from Nebraska AFDC support. Teresa, like many welfare recipients, may have chosen to be removed from ADFC support if she knew that she was subjecting herself to personal jurisdiction by filing the UIFSA action. The *Ostermiller* decision sends a message to nonresident parents who may be forced into a UIFSA action in Wyoming that the Wyoming court will also decide visitation and custody. More importantly, most UIFSA petitioners will be unaware of the *Ostermiller* decision and will blindly subject themselves to the personal jurisdiction of the court to decide visitation and custody. Therefore, a UIFSA petitioner should be put on notice that by filing the peti-

169. *Id.*

170. *Ostermiller*, 968 P.2d at 942 (citing *Quenzer*, 653 P.2d at 295). Teresa Ostermiller became a defendant in the counterclaim and challenged the jurisdiction of the counterclaim for visitation. Appellant's Brief, *supra* note 1, at 3. A common method in state courts of challenging the court's personal jurisdiction is by making a "special appearance." JACK FRIEDENTHAL ET AL., CIVIL PROCEDURE §3.26 (3d ed. 1999). A defendant who wishes to object to personal jurisdiction must enter a special appearance and typically is not permitted to introduce any other defenses prior to or simultaneously with raising the objection which if done is deemed to be a "general appearance" and will waive all jurisdiction objections. *Id.* Teresa presented her objection to personal jurisdiction to the counterclaim and therefore was not subjecting herself to a general appearance. Appellant's Brief, *supra* note 1, at 3.

171. *Quenzer*, 653 P.2d at 298.

tion they may be subjected to rulings on visitation and custody and can choose not to file and lose their benefits.

The *Ostermiller* dissent stated, "this case provides an excellent example of the need to determine other issues involving the child in the child's home state."¹⁷² Teresa Ostermiller and the State of Nebraska could not gain personal jurisdiction over Spurr on the issues of child support and parentage and therefore sent the interstate petition to Wyoming to decide those issues.¹⁷³ An Oklahoma case, *Perdomo v. Fuller*, states "a court where the child resides may be in a better position to deal with the collateral issues that plaintiff raises in his pleadings: support and maintenance of the child and proper surname of the child."¹⁷⁴ The *Perdomo* court noted, the issues of visitation and custody would be best decided in the home state of the child and the father could have submitted to jurisdiction in Nebraska.¹⁷⁵ The *Ostermiller* court could have requested a transfer of the collateral issues to a Nebraska court.¹⁷⁶ As the dissent stated, "If the respondent to a UIFSA action wishes to have other

172. *Ostermiller*, 968 P.2d at 945 (Golden J., dissenting).

173. The State of Nebraska could not get long-arm jurisdiction over Spurr since none of the following eight circumstances were available under the checklist for asserting long-arm jurisdiction. NEB. REV. STAT. § 42-705 (Lexis 1999).

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. The individual is personally served with notice within the State;
2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
3. The individual has resided with the child in this state;
4. The individual resided in this state and provided prenatal expenses or support for the child;
5. The child resides in this state as a result of the acts or directives of the individual;
6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
7. The individual asserted parentage in this state pursuant to section 43-104.02, 71-628, 71-640.01, or 71-640.02 with the Department of Health and Human Services Finance and Support; or
8. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

Id.

174. *Perdomo v. Fuller*, 974 P.2d 185,187 (Okla. Civ. App. 1998).

175. *Perdomo*, 974 P.2d at 187. If Spurr truly desired visitation with BRO, he only lived 100 miles from the Teresa's hometown and could have easily and without much cost filed the action in Nebraska and asserted himself to jurisdiction. Appellant's Brief, *supra* note 2, at 2-3.

176. *Perdomo*, 974 P.2d at 187.

issues decided at the same time, the proper forum is the child's home state, where determination as to the child's best interests may be properly decided through the use of competent evidence concerning the child."¹⁷⁷ The usual argument for combining the UIFSA action with the collateral issues of visitation and custody are judicial economy and efficiency. However, this argument overlooks the child's best interest that should be the main focus of the court.

Were the Child's Best Interests Considered?

During the trial the father acknowledged that he had never visited his son because the two-hour drive was too far.¹⁷⁸ The *Ostermiller* court relied upon the facts in the record that the father was allegedly capable of providing for the child, the wife was highly supportive and the father wanted to enjoy a relationship with the child as justifying liberal visitation of a child the father never met or attempted to meet.¹⁷⁹ Scott Spurr had almost three years to attempt to act like a father, but did nothing until after the Uniform Child Support Petition had been filed.¹⁸⁰ No expert testimony, guardian ad litem reports, or input from the mother were consulted before the order of visitation was entered.¹⁸¹ The record lacks any showing that measures were taken to ensure the best interests of the child such as home visits or supervised visitation.¹⁸² In the case of a father who has never seen his son, it is more logical to place specific restrictions on the father before placing the child with him for an entire weekend. Without adequate investigation, a litigant may in fact turn out to be a violent, abusive, or ill-equipped father. At the very least a child may be frightened of an unknown adult.

Why was the State of Wyoming Involved in the Appeal?

The Report of the District Court Commissioner and the Judgment and Order for Paternity and Support were captioned with the State of Wyoming ex rel Teresa Ostermiller and Brent Ostermiller as the petitioners and Scott Spurr as the respondent.¹⁸³ Upon the adverse ruling,

177. *Ostermiller*, 968 P.2d at 945 (Golden, J., dissenting).

178. Brief of Appellant, *supra* note 1, at 3.

179. *Ostermiller*, 968 P.2d at 943.

180. Brief of Appellant, *supra* note 1, at 2.

181. Brief of Appellant, *supra* note 1, at 11.

182. Final Order, *supra* note 22 at 1-4. Usually home visits are conducted by the Department of Family Services and consist of one or two visits to the home of parent to view the living conditions.

183. The caption in the Report of District Court Commissioner was STATE OF WYOMING, ex rel, TERESA A. OSTERMILLER and BRETT OSTERMILLER, a minor child vs. SCOTT SPURR. The caption of the Judgment and Order for Paternity

Teresa appealed to the Wyoming Supreme Court. The caption in the Brief of Appellant was the same as the Report of District Court Commissioner. However, the Brief of Appellee had a movement of parties. The State of Wyoming switched sides and became the Appellee and the captioned was changed to reflect that move.¹⁸⁴ The Wyoming Attorney General's office filed the brief.¹⁸⁵ Scott Spurr filed no brief.¹⁸⁶

In the Report of District Court Commissioner, the Summary of Evidence states, "the minor child was represented by the State of Wyoming as guardian ad-litem for the minor child in the paternity action."¹⁸⁷ The *Ostermiller* dissent expressed concern "with the court commissioner's statement that the State of Wyoming represented the child in this matter, yet the State of Wyoming is the appellee in this appeal and the child is one of the appellants, along with his mother."¹⁸⁸

The facts seem to confuse almost everyone who reads them. The State of Wyoming was named as guardian ad-litem on behalf of BRO by the district court. In addition, the State of Wyoming brought the original interstate action on behalf of the State of Nebraska and Teresa Ostermiller and her son. The State of Nebraska never requested the State of Wyoming to determine visitation and custody. The action was initiated by the State of Nebraska by submitting a uniform interstate transmittal form, which does not request visitation or custody. However, the State of Wyoming decided to fight the *Ostermiller* appeal.

In light of all of these facts, the question of why the State of Wyoming switched sides needs to be asked. This has the appearance of an egregious conflict of interests. The Wyoming Department of Family Services and the Wyoming Attorney General's office can best answer that question.

CONCLUSION

Teresa Ostermiller and the State of Nebraska filed a UIFSA petition with the State of Wyoming to determine child support and parent-

and Support was State of Wyoming, Department of Family Services, State of Wyoming, ex rel., TERESA A. OSTERMILLER, and BRETT R. OSTERMILLER, a minor vs. SCOTT SPURR.

184. The caption of the Brief of Appellee was TERESA A. OSTERMILLER, and BRETT R. OSTERMILLER, a Minor Appellants v. SCOTT SPURR Appellee, STATE OF WYOMING, DEPARTMENT OF FAMILY SERVICES, Appellee.

185. Brief of Appellee, *supra* note 24, at 12. Signature of William U. Hill, Attorney General for the State of Wyoming.

186. Reply Brief of Appellant at 1, *Ostermiller v. Spurr*, 968 P.2d 940 (Wyo. 1998) (No. C-97-219).

187. Report of District Court Commissioner, *supra* note 16, at 1.

188. *Ostermiller v. Spurr*, 968 P.2d 940, 945 (Wyo. 1998) (Golden, J., dissenting).

age.¹⁸⁹ The Wyoming court which considered the petition did not have subject matter jurisdiction over the father's counterclaim for visitation and name change since UIFSA does not give the court the power to determine visitation, custody or name change issues.¹⁹⁰ In addition, Teresa Ostermiller did not submit to personal jurisdiction in Wyoming by bringing the UIFSA action.¹⁹¹ However, even though the court lacked both subject matter jurisdiction and personal jurisdiction, it allowed the district court's order for visitation to stand. Finally, the court ignored its own standards regarding the best interests of the child. Therefore, when the Wyoming Supreme Court is presented with a similar case, it should overturn this decision in order to protect the child's best interests and follow UIFSA's intent.

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189. *Ostermiller*, 968 P.2d at 941.

190. UIFSA § 305 cmts. (1996).

191. UIFSA § 314 cmts. (1996).