Missouri’s “Unique” Approach to Jurisdiction

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I. How did we get here?

A. Webb v. Wyciskalla, 275 S.W.3d 249 (Mo. banc) (1-27-09)

Subject matter jurisdiction, in contrast to personal jurisdiction, is not a matter of a state court's power over a person, but the court's authority to render a judgment in a particular category of case. In the federal courts, unlike Missouri, subject matter jurisdiction is set forth in statutes passed within the authority granted to Congress by article III of the United States Constitution. Thus, pursuant to this constitutional authority, Congress has the power to increase or decrease the kinds and categories of cases heard in the federal courts.

In contrast to the federal system, the subject matter jurisdiction of Missouri's courts is governed directly by the state's constitution. Article V, section 14 sets forth the subject matter jurisdiction of Missouri's circuit courts in plenary terms, providing that the circuit courts shall have original jurisdiction over all cases and matters, civil and criminal. Such courts may issue and determine original remedial writs and shall sit at times and places within the circuit as determined by the circuit court.

Because the authority of a court to render judgment in a particular case is, in actuality, the definition of subject matter jurisdiction, there is no constitutional basis for this third jurisdictional concept for statutes that would bar litigants from relief. Elevating statutory restrictions to matters of "jurisdictional competence" erodes the constitutional boundary established by article V of the Missouri Constitution, as well as the separation of powers doctrine, and robs the concept of subject matter jurisdiction of the clarity that the constitution provides. If "jurisdictional competence" is recognized as a distinct concept under which a statute can restrict subject matter jurisdiction, the term creates a temptation for litigants to label every statutory restriction on claims for relief as a matter of jurisdictional competence. Accordingly, having fully considered the potential ill effects of recognizing a separate jurisdictional basis called jurisdictional competence, the courts of this state should confine their discussions of circuit court jurisdiction to constitutionally recognized doctrines of personal and subject matter jurisdiction; there is no third category of jurisdiction called "jurisdictional competence."

Applying this principle to the present case makes simple the task of determining jurisdiction: The present case is a civil case. Therefore, the circuit court has subject matter jurisdiction and, thus, has the authority to hear this dispute. The circuit court also has the power
to render a judgment that binds the parties, who both are residents of Missouri. Therefore, it has personal jurisdiction.

B.  **Hightower v. Myers, 304 S.W.3d 727 (Mo. banc) (3-9-10)**

The parties were never married but lived together in Missouri and had a child. Although the child was still an infant, Mother moved to New Jersey with Father’s consent. Mother signed up for State assistance in New Jersey and a Family Support Division case was opened and transferred to Missouri. While the administrative paternity and child support case was pending in Missouri, Father filed a Motion for paternity in Missouri, more than 6 months after the child and Mother moved to New Jersey. Mother’s attorney initially filed an objection to subject matter jurisdiction in Missouri, but the parties later agreed upon child support, custody and visitation arrangements, so Mother discontinued with her objection and the first paternity, support, and custody judgment was entered in Missouri. (An administrative paternity and child support order had already been entered in Missouri prior to the Circuit Court Judgment).

Child remained New Jersey from infancy until she was 7. In August or September of 2006, she relocated to Georgia. Mother was pro se, but she participated at trial and did not raise any jurisdictional issues. Mother raised the issue of subject matter jurisdiction in a Motion for New Trial and requested findings of fact and conclusions of law on the jurisdictional and other issues pursuant to *Missouri Supreme Court Rule 78.07(c)*. Mother lost custody of her daughter and appealed.

The Western District held that because New Jersey remained the minor child’s home state and New Jersey had not relinquished jurisdiction in favor of either Missouri or Georgia*, Missouri did not have jurisdiction to determine the child's custody and visitation provisions. The matter was remanded to the trial Court to vacate its Judgment and dismiss Father’s pleadings. Father appealed to the Missouri Supreme Court.

Supreme Court held that *Article V* of the *Missouri Constitution* grants circuit court Judges subject matter jurisdiction in all civil cases. Child custody statutes, though purporting to establish a circuit court's jurisdiction, simply describe statutory conditions for relief and are waived if not timely raised. A statutory provision, even if found in a uniform law, does not supersede a trial court’s constitutional grant of jurisdiction.

The Supreme Court then went on to address Mother’s factual objections to changing custody, since because the Western District decided the case on jurisdictional grounds, it had not addressed the factual basis and whether or not a change in custody was in the minor child’s best interests. The Supreme Court indicated that the record showed a more "substantial connection" to Missouri than other forums. Evidence of parents’ respective stability and in facilitating contact with other parent also supported the modification of physical custody.

Although the *UCCJA* was in effect at the time of the filing of this cause of action, the provisions of the *UCCJEA* would have no change on the Court’s analysis of *Article V’s* superior status regarding jurisdictional matters.


The Western District found that the Missouri Supreme Court emphatically declared in *Hightower v. Myers* that the *UCCJA* provisions do not remove subject matter jurisdiction from the court. *304 S.W.3d at 733*. The *Hightower* Court held that a circuit court has original jurisdiction over all civil cases and that because a custody dispute is a civil case, a circuit court has constitutionally vested subject matter jurisdiction.

However, because she and Michael Ketteman never lived in lawful marriage in the State of Missouri, the circuit court lacked jurisdiction to subject Wife to an *in personam* judgment for child support and for payment of certain marital debts. Thus, although the circuit court had jurisdiction over the status of the marriage and could dissolve it, it did not have personal jurisdiction over Rachel Ketteman to adjudicate and subject her to an *in personam* judgment for child support and division of any marital property not within the State of Missouri.

The Western District affirmed the circuit court's judgment dissolving the marriage and awarding the parties joint legal and joint physical custody of their son, but reversed the circuit court's judgment regarding its order that Rachel Ketteman pay child support in the amount of $278.00 per month and that she pay certain marital debts.

### II. The UCCJEA takes effect on August 28, 2009

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| 452.710        | UCCJEA does not apply to adoptions or proceedings relating to authorizations for emergency medical card of child.  

*UCCJA -- unclear if it applied.*

| 452.715        | Addresses interaction of UCCJEA and ICWA.  

*UCCJA was silent regarding ICWA.*

| 452.720        | Foreign country treated as state for purposes as UCCJEA.  

*UCCJA was silent.*

| 452.725        | A party to an applicable case may enter a limited appearance and avoid the imposition of personal jurisdiction based solely on appearing and participating |
A party appearing in a proceeding in MO under UCCJEA is not subject to personal jurisdiction in MO based solely on their appearance in the case.

_UCCJA was silent._

**452.730**

Courts of this state may communicate w/ courts of another state re: applicable cases in accordance with the following:
1. Parties may be allowed to participate in court to court communication.
2. If the parties aren’t able to participate, they must be given an opportunity to present evidence and make arguments before a jurisdictional determination is made.
3. Parties are NOT required to be included in following communications:
   a. schedules
   b. calendars
   c. court records
   d. similar matters
4. No record required in above specific communications. In all other communications, a record is required.
5. Parties must be promptly informed of communication and given access to record.

_UCCJA – If court was informed of proceedings in another state, stay MO proceedings and communicate with other court. Allowed for the exchange of information between courts. Did not allow for parties to participate in exchange of information or to obtain a record of judicial communication._

**452.820**

Parties may offer testimony of witnesses who are located in another state by deposition or other means allowed in MO for testimony taken in another state.

Court can order that testimony of a person be taken in another state and means by which the testimony is to be taken.

A court may permit a person residing in another state be deposed or testify via telephone, audiovisual means, or other electronic means.

Documentary evidence transmitted from another state to a court in MO by technological means that don’t produce an original writing may not be excluded by objection based solely on the means of transmission.

_UCCJA fairly similar. Did not have documentary evidence provision._

**452.735**

Court can request another state court to hold an evidentiary hearing, order a person to produce or give evidence, or order an evaluation regarding custody of a child and forward transcripts of the hearing, evidence, or evaluation to this Court.

_UCCJA substantially similar._
### 452.740 INITIAL child custody jurisdiction

Missouri has initial jurisdiction if:

1. Missouri
   a. Is the child’s home state at the commencement of the proceedings OR
   b. Had been the child’s home state within 6 months before the commencement of the proceeding AND the child is absent from the state for any reason AND at least one parent (or person acting as parent) continues to live in MO

   OR

2. Another state does not have jdx under #1 OR home state declined to exercise jdx b/c MO is more appropriate forum AND:
   a. the child AND his parents OR the child and one of the litigants have a significant connection w/ MO
   b. substantial evidence in MO re: the child’s present/future care, protection, training & personal relationships

   OR

3. All courts having jdx under #1 or #2 have declined to exercise jdx b/c MO would be more appropriate forum

   OR

4. No other state would have jurisdiction under the requirements listed above

### 452.750 Jurisdiction for MODIFICATION proceedings

1. Court would have jdx for initial child custody proceeding under 452.740.1(1) or 452.740.1(2) AND

2. Another state determines it no longer has continuing, exclusive jdx OR
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| 3. | Another state determines that this state is more convenient forum  
OR  
4. | MO court or court of another state determines that neither child nor parent nor person acting as parent resides in that state |
| 452.765 | MO court can’t exercise jdx if at the time the proceeding was commenced another proceeding had previously been commenced in another state having jdx substantially in conformity w/ the UCCJEA, unless the proceedings of the other state were terminated or stayed by that court because this court is a more convenient forum  
Court is to stay proceedings & contact other court. If the other state does NOT determine MO is more appropriate forum, MO court is to dismiss.  
If MO court has temporary emergency jdx, if another state has made prior custody determination or if proceeding begun in another state, MO court must communicate with court of other state to resolve the matter and protect the children and shall determine a period of time for temporary order.  
*UCCJA similar to paragraphs 1 and 2, but less detailed.* |
| 452.470 | Provides factors to be considered in determining the most appropriate forum.  
Factors include:  
1. Whether domestic violence has occurred and likely to continue. State best able to protect parties and child.  
2. Length of time child resided out of state  
3. Distance between MO court and court in state which would assume jdx  
4. Relative financial circumstances of parties  
5. Parties’ agreements re: jdx  
6. Nature & location of evidence required  
7. Ability of each court to decide matter expeditiously and procedures necessary to introduce evidence  
8. Familiarity of each court with facts and issues of pending litigation  
*UCCJA provided procedures for the court to follow, but not factors to be considered.* |
| 452.775 | Court required to decline to exercise jdx if jdx is the result of a party engaging in unjustifiable conduct UNLESS:  
1. Parents and all parties acquiesce to jdx  
2. Court of state otherwise having jdx determines MO is more appropriate forum  
OR |
| | 3. No other state would have jdx under UCCJEA  
Also provides provisions allowing court to fashion a remedy for the party committed the wrongful act  
UCCJA provided court may decline jdx in initial determination if party wrongfully took child from another state or engaged in similar conduct. In modification determination court could not exercise jdx if party wrongfully removed the child unless it felt required to do so in the interest of justice. |
| 452.780 | Provides that info concerning the child’s residence must be submitted for the past 5 years.  
UCCJA -- required the info be submitted for past 6 months. |
| 452.785 | Allows court to order parties in our out of MO to appear and bring child. If party is outside state, can order other party to pay travel expenses of traveling party into court.  
Allows court to appoint GAL if court believes it would be in the BIoC or if there are allegations of abuse and neglect.  
Similar to UCCJA. |
| 452.810 | Procedure for registering custody determination from another state.  
Hearing to contest validity of custody determination must be requested within 20 days after service of notice of registration of foreign custody determination.  
UCCJA didn’t provide for process to contest the validity of a custody determination that was being registered. |
| 452.850-452.915 | **Enforcement Provisions**  
Court can issue temporary visitation orders to enforce child custody order or Hague order. Can issue temporary order enforcing child custody orders.  
Court can recognize and enforce a registered child custody determination of another state, but cannot modify it (except as provided in 452.740-452.845). Can also grant any relief available in this state to enforce a registered child custody determination. UCCJA similar except didn’t provide for granting any relief available in this state.  
If there is a proceeding to enforce a registered child custody determination and a simultaneous proceeding to modify that determination in a state that has jdx to do so, MO court must talk to court hearing modification. Enforcement proceeding continues in MO unless MO court stays or dismisses it after talking to modification court. |
In enforcement proceedings, hearing shall be held the next judicial day after Respondent is served or as soon as possible thereafter. Petitioner can request hearing to be held at later date. Contains requirements for contents of Order to Appear. Enforcement proceedings will not continue if Respondent appears and proves:

1. Child custody determination is not registered an confirmed AND
   a. Issuing court did not have jdx
   b. Custody determination has been vacated, stayed or modified by a court having jdx to do so
   c. Respondent entitled to, but did not receive, notice in child custody determination hearing

   OR

2. The child custody determination is registered and confirmed but has been vacated, stayed or modified

If court determines Petitioner entitled to physical custody of child immediately, shall under Respondent to deliver the child to Petitioner unless Respondent establishes:

1. Child custody determination is not registered an confirmed AND
   d. Issuing court did not have jdx
   e. Custody determination has been vacated, stayed or modified by a court having jdx to do so
   f. Respondent entitled to, but did not receive, notice in child custody determination hearing

   OR

1. The child custody determination is registered and confirmed but has been vacated, stayed or modified

Upon filing for Petition for Enforcement, Petitioner can apply for a warrant for return of the child if the child is likely to suffer serious imminent physical harm or removal from state. Petitioner shall be heard next judicial day after warrant executed. Requirements for warrant. If there is not a less intrusive means of obtaining the child, can authorize police officers to enter private property to get kid and can authorize them to make forcible entry at any hour.

Court shall award prevailing party necessary and reasonable expenses incurred in enforcement.

Can appeal. *No provision for appeal in UCCJA.*
III. Where Do We Go From Here?


On June 11, 2010, Mother filed an action against Father requesting a declaration of paternity, an order of support, and reimbursement of necessaries in the circuit court of St. Louis County. The petition alleged that as of the date of the filing, Mother and Child were residents of the state of Oklahoma, and Father was a resident and citizen of the country of Spain. The petition also alleged that approximately nine months prior to the birth of Child in Oklahoma on June 12, 2002, Mother and Father engaged in sexual intercourse in St. Louis County, Missouri.

On June 1, 2010, prior to the filing of their action in St. Louis County, Mother filed an action pursuing the step-parent adoption of Child by her current husband in Child's home state of Oklahoma. In that petition, Mother requested Father's parental rights be terminated and sought a declaration that the consent of Father to the adoption was not necessary because he had not contributed to the support of Child and he failed to maintain a relationship with Child. On August 16, 2010, the Oklahoma court terminated Father's parental rights and granted the adoption.

Father argued that Missouri had neither subject matter, nor personal jurisdiction; and further, even if Missouri did have jurisdiction, no county in Missouri qualified as an appropriate venue for this cause of action. The trial court agreed with Father, and Mother appealed.

As to subject matter jurisdiction, since this is a civil case, Article V, Section 14 of the Missouri Constitution provides that circuit courts shall have original jurisdiction over all cases and matters, civil and criminal. Therefore, the circuit court had constitutionally vested subject matter jurisdiction over the case.

In addition, Missouri had personal jurisdiction over the parties. By filing her petition in St. Louis County, Mother consented to the jurisdiction of the circuit court. The circuit court also had personal jurisdiction over Father pursuant to Section 210.829.2. That section of the Uniform Parentage Act provides that a person who has sexual intercourse in Missouri submits to the jurisdiction of the courts of this state regarding any actions brought under Sections 210.817 to 210.852, when the child may have been conceived here.

The relevant portion of Section 210.829.4 provides that an action brought under Sections 210.817 to 210.852 may be brought in the county in which the child resides, the mother resides, or the alleged father resides or is found. As stated in the circuit court's judgment, Mother and Child are residents of Oklahoma and Father is a resident of Spain. Thus, the venue provision in Section 210.829.4 does not appear to contemplate a situation like the present. Here, Father is not a resident of the United States. Because Father is not a resident of the United States, the only state that can obtain personal
jurisdiction over Father is the state where the sexual intercourse took place, the State of Missouri. Yet, none of the parties resides in Missouri, and under these facts, Section 210.829.4 creates the anomalous situation where even though a Missouri court would have subject matter jurisdiction and personal jurisdiction, there is no appropriate venue.

Under these circumstances, the general venue statute in Section 508.010, RSMo. Supp. 2010 is applicable. It provides, in pertinent part, that when all the defendants are nonresidents of the state, suit may be brought in any county in this state.

The circuit court had both subject matter jurisdiction over the case and personal jurisdiction over the parties, so the circuit court erred to the extent it stated it lacked jurisdiction. Furthermore, because of the unique facts present here and the application of Section 508.010.2(4), RSMo. Supp. 2010, venue was proper in St. Louis County.

B. Enforcement? Marian Ware v. Philip Ware, 337 S.W.3d 723 (Mo. App. ED) (3/15/2011)

The parties divorced in Texas in 1994. By 2002, Father and the minor child had moved to Missouri and the Mother resided in Colorado. In 2002, Father registered the Texas Judgment in Missouri; Mother waived personal service and the parties filed a stipulated modification in Missouri, thereby changing the Texas Judgment to grant Father primary physical custody and to discontinue his ongoing child support obligations.

Later in 2005, Father filed a second motion to modify in Missouri, and after Mother was served and did not answer or object, the Court entered a default judgment granting Father sole legal and physical custody and ordering Mother to pay Father $619.32 per month in child support.

In 2010, Mother filed a motion in Missouri to set aside and vacate the 2002 and 2005 judgments based upon a lack of subject matter jurisdiction under UIFSA. The trial court denied Mother’s motion, Mother appealed.

The Eastern District held that based upon the Supreme Court’s ruling in Hightower v. Myers, all prior case law analyzing “subject matter jurisdiction” are no longer valid and that the provisions of UIFSA do not determine whether or not a Missouri Court has jurisdiction. Even if it were possible for Mother to have argued that Missouri did not have jurisdiction pursuant to UIFSA, by failing to object back in 2002, she waived any such argument.

C. Everything? In re E.A.K., 348 S.W.3d 825 (Mo. App. SD) (9-20-11)

Father petitioned to establish paternity, for visitation and custody rights, etc. Father moved to be, and was, appointed as Child's next friend for purposes of the action. Mother moved to set aside the judgment for lack of personal jurisdiction over her. After a hearing, the court denied that motion. Later, Mother filed a second motion to set aside the
judgment, this time alleging that Father “erroneously named himself” as Child's next friend and “was not qualified to act” as such. After another hearing, the court denied this motion as well.

Mother challenges trial court jurisdiction to render the underlying judgment. More specifically, she argues that Father was improperly appointed as Child's next friend and, as a result, Child was not properly made a party to the paternity claim “as required by § 210.830 R.S.Mo. and Missouri Supreme Court Rule 52.02 ... and therefore the trial court did not have jurisdiction to enter” its judgment.

In light of cases analyzing other uniform laws in jurisdictional terms are no longer deemed valid. See, e.g., Hightower, 304 S.W.3d at 732–34 (Uniform Child Custody Jurisdiction Act); Ware v. Ware, 337 S.W.3d 723 (Mo.App.2011)(Uniform Interstate Family Support Act). The UPA is no different, because “subject matter jurisdiction is established by the Missouri Constitution and cannot be removed by statutory provisions.” Hightower, 304 S.W.3d at 734, quoted in R.A.D., 348 S.W.3d at 781. Mother's jurisdictional challenge fails.

D. The Future

On June 30, 2011, the Governor signed House Bill 260. HB260 was sponsored by Representative Stanley Cox. It had quickly been approved by both branches of the Missouri Legislature. This bill specifically adopts what uniform law? Although the Governor signed this Bill into law and it has been ratified by Missouri and many other states, the Uniform Interstate Family Support Act has not yet been ratified by the United States Congress. As such, the effective date for Missouri’s statutory provisions encompassing the Uniform Interstate Family Support Act are contingent upon congressional ratification.