Louisiana's New Venue Law for Child Custody Suits: A Critique

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In the 1983 Regular Session, the legislature enacted Louisiana Code of Civil Procedure article 74.2 which provides for venue in custody proceedings. Before the enactment of this article, Louisiana statutory law contained no specific venue provisions for child custody proceedings. Currently, the Louisiana Civil Code contemplates the parent-child relationship only in terms of paternal authority and tutorship, such that divorce or judicial separation ends the regime of paternal authority and triggers the regime of tutorship. The parent awarded custody in the separation or divorce decree has the right to be appointed tutor of the child, and venue for the appointment of a tutor is statutorily provided. However, "the natural tutorship does not begin with the judicial pronouncement..."

1. 1983 La. Acts, No. 62, § 1 provides as follows:
   Art. 74.2 Proceeding for custody; change of custody.
   A. A proceeding to obtain the legal custody of a minor may be brought in the parish where a party is domiciled or in the parish of the last matrimonial domicile.
   B. A proceeding for change of custody may be brought in the parish where the person awarded custody is domiciled or in the parish where the original custody decree was rendered. If the person awarded custody is no longer domiciled in the state, the proceeding for change of custody may be brought in the parish where the original custody decree was rendered.
   C. For the convenience of the parties and the witnesses and in the interest of justice, a court, upon contradictory motion or upon its own motion after notice and hearing, may transfer the proceeding to obtain custody or to change custody to another court where the proceeding might have been brought.

2. La. Civ. Code art. 216 ("A child remains under the authority of his father and mother until his majority or emancipation."); La. Civ. Code art. 246 ("The minor not emancipated is placed under the authority of a tutor after the dissolution of the marriage of his father and mother or the separation from bed and board of either one of them from the other.").


4. La. Civ. Code art. 250 ("Upon divorce or judicial separation from bed and board of parents, the tutorship of each minor child belongs of right to the parent under whose care he or she has been placed...").

5. Louisiana Code of Civil Procedure article 4031 states:
   A petition for the appointment of a tutor of a minor domiciled in the state shall be filed in the parish where the parent or other person awarded custody of the minor is domiciled, if the parents are divorced or judicially separated.
   If the parents who are divorced or judicially separated are awarded joint custody of a minor, they shall petition jointly for appointment as cotutors in the district...
of custody and without appointment, although the right to be tutor is
then in existence."
Thus, if a parent is granted custody but is not ap-
pointed tutor of the child, a change of custody action would be a civil
proceeding for change of custody, not for removal of a tutor, and the
articles providing for venue in tutorship proceedings would not apply.7
The jurisprudence which addressed this gap in the procedural law was
described by one court as involving "some confusion . . . as well as some
seeming conflict."8 This comment will examine the concept of venue and
the objectives venue rules seek to achieve and will analyze the jurisprudence
as it existed prior to the enactment of article 74.2; then it will discuss
whether the "confusion . . . [and] seeming conflict" in that jurisprudence
have been resolved under the new article and will point out some prob-
lems that might arise under article 74.2.

General Overview of Venue

An analysis of the concept of venue is best begun by a statement
of what it is not. Venue is not "jurisdiction." Venue is not "the legal power
court of the parish in which the proceedings for divorce or judicial separation
were instituted.
In all other cases, the petition shall be filed in the parish where the minor resides.

Article 4032 states:
If the minor is not domiciled in the state, a petition for the appointment of
a tutor may be filed in any parish where:
(1) Immovable property of the minor is situated, or
(2) Movable property of the minor is situated, if he owns no immovable prop-
erty in the state.

7. Id. at 734, 269 So. 2d at 225. The same should be true when the suit to obtain
custody is filed after a divorce judgment has been rendered. The parent is bringing a civil
action to obtain custody, not to be appointed tutor of the child, and the tutorship articles
should be inapplicable. But see Perez v. Perez, 359 So. 2d 1136, 1137 (La. App. 4th Cir.),
cert. denied, 360 So. 2d 1180 (La. 1978) ("[W]hen the initial fixing of custody occurs after
divorce, the venue of the action to obtain custody is determined by reference to the law
governing tutorship proceedings, since the custody of the minor is one of the elements of
tutorship."); Pascal, The Work of the Louisiana Appellate Courts for the 1965-1966 Term—
Private Law, 27 La. L. Rev. 423, 432-34 (1967); Pascal, The Work of the Louisiana Ap-
pellate Courts for the 1966-1967 Term—Private Law, 28 La. L. Rev. 312, 317-19 (1968);
Pascal, Tutorship after Separation of the Parents, 17 La. B.J. 267, 268, 270 (1969); R.
Pascal & K. Spaht, Louisiana Family Law Course 518 (3d ed. 1982) (arguing that the natural
tutorship vests immediately upon an award of custody to a parent, and that thereafter,
young action for change of custody must be characterized as an action for removal of a tutor).
Professor Pascal’s theory has not been accepted by the courts. See Griffith v. Roy, 263
La. at 728-34, 269 So. 2d at 223-25.
(1951).

The distinction between jurisdiction and venue is plainly established. Jurisdic-
tion is a term of comprehensive import. It concerns and defines the power of
judicatories and courts. . . . It includes power to inquire into facts, to apply
and authority of a court to hear and determine an action or proceeding . . . and to grant the relief to which [the parties] are entitled.”10 Jurisdiction in child custody cases is governed by Louisiana Code of Civil Procedure article 1011 as supplemented by the Uniform Child Custody Jurisdiction Act.12 If these jurisdictional requirements are met, courts throughout the state have “the legal power and authority” to hear the custody dispute. The next question is which of these many courts may hear the case. This is a question of venue.13

Venue is defined in the Louisiana Code of Civil Procedure as “the parish where an action or proceeding may properly be brought and tried under the rules regulating the subject.”14 Venue rules seek to place the litigation in the court which is in the best position to decide the issues at hand. The court of proper venue should be the most convenient forum, that is, the forum in which the parties, the witnesses, and the evidence relative to the dispute are readily available.15 To be added to these considerations is the traditional rule that the domicile of the defendant is a proper venue.16 The primary consideration in a child custody dispute

the law, to make decision and to declare judgment. Venue in its modern and municipal sense relates to and defines the particular county or territorial area within the State or district in which the cause or prosecution must be brought or tried. It commonly has to do with geographical subdivision, relates to practice or procedure, may be waived, and does not refer to jurisdiction at all.

Id. at 317. See also M. Green, Basic Civil Procedure 63 (2d ed. 1979).


11. La. Code Civ. P. art. 10 (“A court which is otherwise competent under the laws of this state has jurisdiction of the following actions or proceedings only under the following conditions: . . . (5) A proceeding to obtain the legal custody of a minor if he is domiciled in, or is in, this state.”).


13. M. Green, supra note 9, at 63. (“[V]enue addresses itself to the criteria for choosing a particular court among several which are jurisdictionally possible.”).


15. See Stevens, supra note 9 (providing a comparative study of thirteen different grounds of venue and of the considerations of convenience on which these grounds are based).

16. La. Code Civ. P. art. 42 (“The general rules of venue are that an action against: (1) An individual who is domiciled in the state shall be brought in the parish of his domicile . . . ”). See also Stevens, supra note 9, at 311 (“Convenience of the defendant is the reason usually given for venue statutes which provide for the place of trial in the county where the defendant resides—the theory probably being . . . ‘that since the plaintiff controls the institution of the suit he might behave oppressively toward the defendant unless restrained.’”) (quoting Sunderland, The Provision Relating to Trial Practice in the New Illinois Civil Practice Act, 1 U. Chi. L. Rev. 188, 192 (1933)).
is the best interest of the child, and therefore, the court which decides such a dispute must have access to the information that will allow it to determine which parent is best suited to provide a home life that is in the child’s best interest. There are several possible parishes in which information regarding the circumstances of the child and his parents might be available: the parish where the child resides, the parish or parishes where each parent resides, the parish where the parents and child lived together as a family, and the parish in which a prior custody decree was rendered. In determining which of these possible places of venue should be considered proper places of venue, several considerations in addition to the accessibility of information should be kept in mind: the possibility that child snatching could be practiced in an effort to manufacture proper venue, the possibility that relitigation of custody issues could be used as a means to harass the opposing parent, and the desire to resolve the dispute as quickly and as conclusively as possible. These objectives and


The “best interest of the child” standard evokes an inquiry focused upon “the child,” and, thus, while the developmental needs of all children may be useful guides, the specific situation of the child before the court may justify a determination which would not be indicated for all or even most children. The court sits as a court of equity with the responsibility to hand-tailor a decree for a particular family. Furthermore, a custody determination exacts a dual perspective: a looking backwards in time toward past relationships in an effort to make accurate predications about the course of future interrelationships among the principals.

The planners agree that they would want the court to have access to existing information concerning four distinct and basic relationships: mother-child, father-child, family-child, as well as the husband-wife relationship insofar as it may have skewed the true interactions of the other relationships. As corroborative information about these primary relationships, evidence would be useful regarding those relationships of the child outside the home which are thought to mirror his functioning within the home and in relationship with his family. The planners would want the court to have access to objective evaluations of the child’s special needs or talents from adults with whom he has interacted in order to correct for parental deification or vilification.

Yet even if this information is amassed it is useful only as it enables the court to make an informed prediction about which parent will be the more nurturing parent.

Id. at 101-03.

19. The disintegration of the family can be chaotic and disorienting and is always
concerns will serve as the standard against which the decisions of the courts prior to the enactment of article 74.2, as well as article 74.2 itself, must be judged. Factual Patterns Under the Jurisprudence and Article 74.2

Obtaining Legal Custody—No Separation or Divorce Suit Filed

An action to obtain legal custody of a child prior to judicial separation was authorized by amendment to Louisiana Revised Statutes 9:291 in 1978. Prior to the amendment to section 291, a noncustodial spouse seeking custody of a child prior to judicial separation could do so only through a petition for habeas corpus which has its own venue provisions. However, for the spouse who had physical custody of the child but feared interference by the other spouse and thus wished to obtain a judicial decree of custody, habeas corpus was inappropriate. Now each spouse can bring an action under section 291 to obtain or protect custody, but section 291 has no accompanying venue provision. Though no jurisprudence has been found in which the proper venue for such an action was at issue, presumably the general rule of Louisiana Code of Civil Procedure article 42 making the domicile of the defendant a proper venue would have applied prior to the enactment of Code of Civil Procedure article 74.2(A). Article 74.2(A) broadens this general rule by also allowing suit to be brought in the domicile of the plaintiff spouse and in the last matrimonial domicile.

Suit for Custody Brought in Conjunction with Suit for Separation or Divorce

Venue for an action for separation or divorce is proper in the domicile attended by stress and anxieties about the future for both the parents and the child. While society may not be responsible for the fracturing of the family, it at least bears some obligation not to increase the stress of uncertainty nor to unduly prolong the period of instability before the two new families can be constructed.

Id. at 104.

20. La. R.S. 9:291 (Supp. 1984) ("Unless judicially separated, spouses may not sue each other except for causes of action . . . pertaining to the custody of a child . . . while the spouses are living separate and apart, although not judicially separated.").

21. Even though no suit for separation or divorce has been filed, when the parents are actually living separate and apart, the statutory interspousal immunity does not bar . . . the courts from hearing a habeas corpus proceeding instituted by one parent against the other . . . [because] the habeas corpus suit is actually instituted in the interest of the children, although done so by a parent to effectuate the state's interest in the welfare of these children.


of either party and in the last matrimonial domicile.\textsuperscript{24} This is nonwaivable venue, and thus is jurisdictional in nature.\textsuperscript{25} The custody determination was traditionally considered incidental to the suit for separation or divorce, and thus venue for the custody suit was proper in the proper venue of the principal action.\textsuperscript{26} Additionally, the generally accepted rule was that "a judgment of divorce [had] the effect of terminating all prior orders relative to matters incident to the proceeding, such as custody . . . ."\textsuperscript{27}

In \textit{Wasson v. Wasson},\textsuperscript{28} a judgment of separation and custody had been rendered in East Baton Rouge Parish. The husband later brought suit for divorce and custody in Livingston Parish, his domicile. The court held that since Livingston Parish was a proper place of venue for the divorce action and since the divorce judgment in Livingston Parish would terminate the prior custody decree rendered in the separation judgment, it was proper that the issue of custody be considered by the court in Livingston Parish. A year later, the same parties were again before the first circuit,\textsuperscript{29} but this time the issue was proper venue for an action for child support. The court again applied the rule that prior decrees of custody and child support were mere incidents of a judgment of separation which were abated upon a judgment of divorce, and held that Livingston Parish, being a proper venue for the divorce action, was also a proper venue to decide the issue of child support. The court reasoned that "to hold otherwise would . . . disrupt the continuity of child support payments and relegate the custodial parent to another action following finality of the divorce decree."\textsuperscript{30} The court, however, expressed dissatisfaction with the rules which forced the custodial parent under a prior decree "to journey to another parish to again litigate the issues of child support, custody and visitation"\textsuperscript{31} and allowed "a disgruntled husband, bound by what he feels is a high child support award [or erroneous child custody award], to move across the state to what he considers a friendly forum and compel the wife to undergo legal expenses and time consumption in relitigating the issue."\textsuperscript{32} The court suggested that these hardships and inequities would be cured if a prior decree in a separation judgment remained.

\textsuperscript{24} La. Code Civ. P. art. 3941.
\textsuperscript{26} Howard v. Howard, 409 So. 2d 279, 280 (La. App. 4th Cir. 1981).
\textsuperscript{28} Wasson, 403 So. 2d at 72.
\textsuperscript{29} Wasson v. Wasson, 402 So. 2d 718 (La. App. 1st Cir. 1981).
\textsuperscript{30} Id. at 720. It can be assumed that the court was similarly concerned in the previous \textit{Wasson} case, \textit{i.e.}, that if a divorce judgment was rendered without providing for the custody of the children, the children would be without a legal custodian since the divorce judgment would have the effect of terminating any prior custody decrees.
\textsuperscript{31} Id. at 719.
\textsuperscript{32} Id.
viable as to the rights affecting the children despite a subsequent divorce judgment, and noted that "a special rule for venue of the incidents of separation or divorce [was] needed." 3

Although the court in *Wasson* felt that the problem required legislative resolution, the Louisiana Supreme Court was first to act. In *Lewis v. Lewis*, the court held that a judgment awarding child support had a legally independent basis (the paternal obligation) and was not a mere incident of a separation decree. Thus the rule that a divorce judgment abates all attendant incidents of a separation judgment was no longer applicable to child support decrees. The *Lewis* rationale was extended to child custody decrees rendered in separation judgments in *Howard v. Howard*.

*Lewis* and *Howard*, by providing that a decree of child custody was to be considered legally independent of the separation suit and thus would remain viable despite a subsequent divorce judgment, answered one of the concerns expressed by the *Wasson* court. No "special rule" for the venue of this legally independent action, however, was forthcoming. Certainly if the custody suit is legally independent of the separation or divorce

33. Id. at 720 n.3.
34. Id. at 719 n.2.
35. Id. at 719.
37. Id. at 1234.
38. 409 So. 2d 279 (La. App. 4th Cir. 1981). The court in *Howard* made this extension with no discussion whatsoever. It is clear that the obligation to support one's child arises from the fact of paternity and not from the marital relationship. La. Civ. Code art. 227. In fact, this obligation of support extends to illegitimate as well as legitimate children. La. Civ. Code arts. 239-40. Thus the termination of the marital relationship in the divorce decree should have no effect upon a prior child support decree since the obligation upon which the child support decree was based remains intact. See La. Civ. Code art. 158; State v. Seghers, 124 La. 115, 49 So. 998 (1909); 1 M. Planiol, Civil Law Treatise pt. 2, no. 1681 (11th ed. La. St. L. Inst. trans. 1959). To extend this rationale to custody decrees is conceptually difficult because the custody of the child is often characterized as a right rather than an obligation of the parents. "Custody incidental to paternal authority is the right to supervise and direct the care of the child and his activities with a view to his proper rearing and development and his health and safety." R. Pascal & K. Spaht, supra note 7, at 483 (emphasis added). But see 1 M. Planiol, supra, pt. 2, no. 1662 ("The custody of the child is not only the parent's right, it is also an obligation from which they cannot, in principle, relieve themselves."). Whether characterized as a right or an obligation, it is clear that custody, like support, is based on the fact of paternity and not the marital relationship. See La. Civ. Code arts. 216-218, 220, 235, 236. In fact, when the child is illegitimate and formally acknowledged by both parents, both parents have the right to claim the custody of the child. See La. Civ. Code arts. 245, 256; La. Code Civ. P. art. 4261; Creppel v. Thornton, 230 So. 2d 644 (La. App. 4th Cir. 1970) (holding father has the right, based on the parent-child relationship, to sue for custody of his illegitimate child); see also Note, Persons—Custody of Illegitimates, 17 Loy. L. Rev. 459 (1971) (discussing the development of the law regarding a father's right to custody of his illegitimate children
suit, it should have a basis of venue independent of that for the separation or divorce action. Before the enactment of article 74.2, the statutes provided only one conceivable legally independent venue for custody actions, that being the domicile of the defendant under Code of Civil Procedure article 42(1). If this was the sole independent venue, the only way in which a divorce or separation suit could be joined with a custody suit would be if the parent seeking the separation or divorce and custody filed suit in the domicile of the defendant parent. It is questionable whether the court in Lewis intended its holding to have the effect of restricting the plaintiff's choice of forum in a divorce or separation suit in this manner. "If it is customary to deal with [the child custody issue] in the same suit as that of divorce or separation, it is nevertheless true that it cannot be identified with the subject matter of the divorce or separation suit or be considered incidental to it."

Article 74.2(A) gives an action to obtain legal custody a legally independent venue in satisfaction of Lewis and Howard and conveniently lines up custody venue with proper venue in separation and divorce proceedings. Thus although the custody issue can no longer, after Lewis and Howard, be considered incidental to the separation or divorce suit, article 74.2(A) allows the customary practice of dealing with the custody issue in the same proceeding as the separation or divorce proceeding to continue when the custody suit is a suit to obtain custody. However, up to the time of Creppel v. Thornton). Only when the illegitimate child has not been acknowledged by the father or when the mother has not concurred in the father's acknowledgment does the mother have a preferential right to the custody of the child. La. Civ. Code art. 256(A). Thus, a decree terminating the marriage relationship should have no effect on a prior custody decree since the basis of the custody decree is the parent-child relationship and not the marriage relationship. It should be noted that the position taken by the court in Howard was not unprecedented. See Pascal, The Work of the Louisiana Supreme Court for the 1955-1956 Term—Persons, 17 La. L. Rev. 303 (1956).

The question, then, is whether it is correct to consider judgments relating to the custody of children . . . , though rendered in the same numbered proceeding as the separation suit, as judgments incidental to the separation proceeding. The writer is of the opinion they are not incidental, but independent judgments, and therefore that the rights which they declare remain in effect even though the parents may later obtain a divorce.

Id. at 312.


40. Id.


42. Article 74.2(A) would also apply in the Perez situation, supra note 7, in which the initial fixing of custody occurs after a judgment of divorce.

43. La. Code Civ. P. art. 742, comment (b) ("The article provides that venue in a proceeding to obtain custody should be where either party is domiciled or in the parish of the last matrimonial domicile. This reflects the most convenient places to try the proceeding, and it is also the same venue as for an action of separation or divorce and would thus allow the two matters to be combined.") (emphasis added).
when the suit is for change of custody, article 74.2(B) applies and the convenient parallel between proper venue for the custody suit and proper venue for the separation or divorce suit disappears. A claim for child custody brought with a suit for divorce is a suit for change of custody when a prior separation decree awarded custody to the other parent because, after Lewis and Howard, the custody decree is legally independent of the separation decree and does not abate upon the rendering of a subsequent divorce decree. Thus article 74.2(B) governs venue in such a suit and the result is to restrict the choice of forum for the divorce proceeding. For example, if a noncustodial parent wishes to sue for divorce and custody in his domicile, he could do so only if his domicile was also either the domicile of the custodial parent or the parish in which the separation and custody decree was rendered as required by article 74.2(B).

Whether or not the court in Lewis intended its holding to have such an effect upon the customary practice of dealing with the custody issue in the same suit as that of the divorce, such restriction of choice of forum in the divorce action is desirable. Denying the noncustodial spouse a handy forum in his own domicile serves to lodge the child custody dispute in a court which has access to relevant information, to deter harassment of the custodial spouse, and to prevent frivolous relitigation of the custody issue.\(^4^4\)

**Change of Custody**

*Divorce or Separation Judgment and Custody Decree in Parish A. Suit for Change of Custody in Parish B.*

It was in addressing the above situation that the Louisiana courts rendered their most confusing and conflicting decisions. Inconsistent opinions were rendered among and even within the circuits.

In Lucas v. Lucas,\(^4^5\) the third circuit held that venue for changes of custody was proper in the domicile of the noncustodial parent. A judgment of divorce and custody had been rendered in Caddo Parish. Subsequently, the custodial parent moved with the children to Mexico City. The noncustodial parent removed the children from Mexico without the consent of the custodial parent, brought them back to his domicile in

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\(^{44}\) To allow a spouse to bring suit in his own domicile for divorce and custody subsequent to a prior decree which awarded custody to the other spouse would allow the hardship and inequity with which the court in Wasson was concerned to continue. A "disgruntled husband" could "move across the state to what he considers a friendly forum and compel the wife to undergo legal expenses and time consumption [and the journey to another parish] to again litigate issues of custody." Wasson v. Wasson, 402 So. 2d 718, 719 (La. App. 1st Cir. 1981). Lewis, Howard, and article 74.2(B) combine to foreclose the possibility of such tactical maneuvering.

\(^{45}\) 195 So. 2d 771 (La. App. 3d Cir. 1966).
Rapides Parish, and filed suit for change of custody. Jurisdiction in Louisiana was upheld under Code of Civil Procedure article 10, the children being present in the state.\(^4\) Ostensibly, the court upheld venue in Rapides Parish under Louisiana Code of Civil Procedure articles 43(5) and 5091.\(^4\) However, the court resorted to this analysis only after stating that "as a general rule, the court where the child is domiciled, or is physically present, is best qualified to determine, and most concerned with, the best interests of the child."\(^4\) Thus, Lucas can also be read as holding that venue for change of custody is proper where the child is physically present—an interpretation wholly consistent with the basis for jurisdiction in the case under Code of Civil Procedure article 10.\(^4\) Several years later in Hopkins v. Hopkins,\(^10\) the third circuit confined Lucas to its facts\(^3\)

46. Lucas was decided prior to the adoption by Louisiana of the UCCJA in La. R.S. 13:1700-1724 (1983). In Lucas, the court stated that "the trend of decisions throughout the United States seems to be toward assuming jurisdiction over the status of minor children physically within the jurisdiction of the court regardless of the manner in which the children were brought within this confines of the state." \(^{195}\) So. 2d at 774. One of the express purposes of the UCCJA is to "deter abductions and other unilateral removals of children undertaken to obtain custody awards." La. R.S. 13:1700(A)(5) (1983). In Lucas, the original decree awarding custody to Mrs. Lucas was rendered on March 25, 1963. Shortly thereafter, Mrs. Lucas and the children moved to Mexico City where the children remained until, on October 15, 1964, the parents consented to an amendment to the custody award which gave temporary custody to Mr. Lucas in Louisiana until June 1, 1965. Mr. Lucas returned the children to Mexico City on June 1, 1965. Back in Louisiana, Mr. Lucas filed suit for change of custody. The suit was dismissed for lack of jurisdiction since the children were no longer in the state. At this point, Mr. Lucas returned to Mexico City and unlawfully removed his children. The motivation present in Lucas to indulge in child-napping in order to manufacture jurisdiction is absent under the UCCJA because the "physical presence in this state of the child . . . is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination." La. R.S. 13:1702(B) (1983). For two articles dealing thoroughly with the UCCJA and its interpretation and application, see McGough & Hughes, supra note 17; Student Symposium, supra note 12.

47. [It is clear that Mrs. Lucas is a nonresident . . . who has not appointed an attorney for service of process. Hence venue of a suit against her is where proper service is made. [La. Code Civ. P. art. 42(5)]. Since this court has jurisdiction over the status involved, i.e., the custody of these children, an attorney at law was properly appointed to represent her and service of process was made on him in Rapides Parish [La. Code Civ. P. art. 5091].] \(^{195}\) So. 2d at 781.

48. \(^{195}\) Id. at 780.

49. The Lucas opinion has been criticized for resolving the venue question in terms of jurisdiction. See Sims v. Sims, 388 So. 2d 428, 430 (La. App. 2d Cir. 1980).

50. 300 So. 2d 661 (La. App. 3d Cir. 1974).

51. The situation in the instant case is readily and easily distinguishable from Lucas v. Lucas . . . First, in Lucas there was a final divorce. Second, in Lucas one party had moved to the parish where venue was sought and the other party had left the parish of original venue and was at the time of the litigation living in a foreign country. Third, Lucas concerned itself only with custody whereas the instant case involves the amount of child support and the question of visitation.
and held that the court which rendered the initial custody decree in a separation judgment retains exclusive venue to modify that judgment.52

The second circuit followed the Hopkins rule in Ahlers v. Ahlers,53 decided in 1980. Later that year, the same court rendered the decision in Sims v. Sims,54 which was a substantial departure from the Hopkins rule. In Sims, a divorce and custody decree was rendered in Parish A. The custodial parent had moved to Parish B. The child was residing with the noncustodial parent in Parish C, where suit for change of custody was filed. The court held that after a divorce is rendered, suit for change of custody should be brought in the parish where the divorce decree was rendered or in the defendant’s domicile.55

Thus, prior to article 74.2, a party who wished to modify a custody decree rendered in a prior separation or divorce proceeding could file suit

... [W]e want to make it clear that [Lucas] is limited to the narrow and peculiar facts involved.

Id. at 662.

52. The defendant’s argument in Lucas was that only the Caddo Parish court was competent to entertain a suit for change of custody since the original decree had been rendered in Caddo. The defendant cited the following rule, enunciated in State ex rel. Marston v. Marston, 223 La. 1046, 1054, 67 So. 2d 587, 590 (1953), as authority for her position: “When two courts have concurrent jurisdiction over the same subject matter, the court which first obtains jurisdiction and possession of the res . . . retains it to the exclusion of all others.” The court distinguished the Marston rule on the ground that it applied when suits involving the same issues were concurrently pending in different courts. Then, noting that other jurisdictions did adhere to an exclusive jurisdiction and venue rule absent concurrent proceedings, the court stated:

It is our view that a strict adherence to [this rule] is objectionable on several grounds: It would work undue hardship where the parties move to a far distant parish and would be faced with the necessity of transporting themselves, their lawyers and witnesses back to the parish which rendered the original custody order.

... [The conditions under which the children are living] can best be determined by the court of the parish to which the parents and the children have moved.

195 So. 2d at 779-80.

53. 384 So. 2d 474 (La. App. 2d Cir. 1980). The Ahlers court held that a court which renders a custody decree in a divorce judgment retains exclusive jurisdiction and venue to modify the custody decree. One of the grounds on which Lucas was distinguished by Hopkins was that Lucas involved a final divorce. Hopkins, 300 So. 2d at 661. After Ahlers, the argument that the Hopkins rule only applied to custody decrees rendered in a separation suit was eliminated.

54. 388 So. 2d 428 (La. App. 2d Cir. 1980).

55. In dicta, the court stated that the change of custody suit should be brought in the parish where a divorce is pending if brought as an incident of a divorce action, and that after divorce, the change of custody action could be brought in any parish where the child was situated. The court stated that this last possibility, which could be said to have been authorized in Lucas, was “vulnerable to the declinatory exception of improper venue and . . . the least preferred venue.” Id. at 432. The court so held and sustained the exception of improper venue in Parish C.
in the domicile of the defendant relying on Sims, but would risk encountering the Hopkins rationale if the domicile of the defendant was not also the parish which rendered the initial custody decree. The plaintiff's own domicile was a possible venue if the plaintiff's case was analogous to Lucas, but Hopkins and Ahlers were contrary authority if the plaintiff's domicile was not also the parish in which the initial decree was rendered. Additionally, dicta in both Lucas and Sims could have led to the filing of suit in the parish where the child was present. However, the holding in Hopkins and further dicta in Sims indicated that this was not a proper forum.

The legislature solved this dilemma by incorporating the Sims holding into article 74.2(B). The parish in which the original decree was rendered is still a proper venue under the new provision, but it is not an exclusive venue. This change remedies the undue hardship that could result under the Hopkins rules when the parties no longer live in the parish in which the original decree was rendered. The legislature, however, seems to be of the opinion that even under such circumstances, the parish which rendered the initial decree remains "familiar with the circumstances of the case" and able to "rule in the best interest of the minor." The Lucas result allowing suit in the plaintiff's domicile when the custodial parent is no longer a resident of the state is also included in article 74.2(B).

**Separation-Custody Decree in Parish A. Divorce Decree Silent as to Custody in Parish B. Suit Brought for Change of Custody in Parish B.**

In *Howard v. Howard*, the father was granted a separation and

56. The court in Hopkins cited two cases involving alimony and child support as authority for its holding. See White v. White, 272 So. 2d 469 (La. App. 3d Cir. 1972); Caldwell v. Gilbert, 253 So. 2d 639 (La. App. 3d Cir. 1971); see also Dupuy v. Dupuy, 357 So. 2d 23 (La. App. 3d Cir. 1978) (a child support case following Hopkins). It is open to question whether there is any life left in the exclusive jurisdiction and venue rule as applied to suits to modify child support and alimony now that the rule has been abrogated with respect to change of custody suits.

57. See supra note 52.

58. La. Code Civ. P. art. 74.2, comment (c).

59. Id.

60. This is a proper venue because "the court would know the circumstances of that party and could rule on a change of custody issue." La. Code Civ. P. art. 74.2, comment (c). Thus, under the new statute the court is spared the tortured application of Code of Civil Procedure articles 42(5) and 5091 that the Lucas court found it necessary to advance. 195 So. 2d at 780-81. Additionally, the implication in Lucas that the child must also be present in this parish is also refuted under article 74.2(B). The result reached on original hearing in Lucas is also incorporated into article 74.2(B), which allows suit to be brought in the parish which rendered the initial decree when the custodial parent is no longer a resident of the state.

61. 409 So. 2d 279 (La. App. 4th Cir. 1981).
custody in Richland Parish, his domicile. The mother was later granted a divorce in St. John Parish, her domicile. The divorce decree was silent as to custody. Subsequently, the mother brought suit for change of custody in St. John Parish. On original hearing, the court, noting that a custody action, being incidental to an action for separation or divorce, should be brought in the parish of proper venue for the separation or divorce action, held that once jurisdiction over the custody dispute attached in Richland Parish, it continued for purposes of modifying the decree. On rehearing, the court, following Lewis, held that the custody suit was legally independent of the separation suit, and therefore the Richland parish custody decree was not abrogated upon rendition of the divorce judgment in St. John Parish. The court then affirmed the result it had reached on original hearing, stating that "the proper venue . . . continued in the Parish of Richland, particularly since that parish is and always has been the domicile of the children involved."62

It is difficult to glean from the opinion just what the court intended to be the independent venue for the legally independent custody action. The "continued in the Parish of Richland" language is reminiscent of Hopkins, but one could also argue that either the domicile of the children or the domicile of the defendant was the independent basis of venue.

Code of Civil Procedure article 74.2(B) now governs this situation. After Lewis and Howard, such a suit must be characterized as one to modify a prior decree since the prior custody award in the separation judgment does not abate with the later judgment of divorce. Article 74.2(A), which governs proceedings to obtain custody, is not applicable. The legally independent venue in this factual situation is, under article 74.2(B), the domicile of the custodial parent or the parish where the original decree was rendered. Thus, the new venue provision answers the questions raised by Howard, rejecting the possibility that the domicile of the children is a basis for venue.

Separation-Custody Judgment in Parish A. Divorce—Custody Judgment in Parish B. Suit for Change of Custody in Parish B.

In Parker v. Parker,63 the mother was granted a separation and custody of the child in Bienville Parish. A divorce judgment and custody decree again awarding custody to the mother were later rendered in East Baton Rouge Parish, the domicile of the father. The father brought suit for change of custody in East Baton Rouge Parish. The court characterized the rule which allowed a suit for change of custody to be brought in the parish which rendered a final divorce decree when that decree also made an award of custody as a "jurisprudential exception to the general

62. Id. at 281.
63. 432 So. 2d 1010 (La. App. 1st Cir. 1983).
rule of venue (i.e., Code of Civil Procedure article 42(1)) which . . . appears no longer to exist." The court reasoned that this "former jurisprudential exception" had developed as a result of the principle, abrogated by Lewis and Howard, that custody issues were incidental to the divorce action. Stating that "in the absence of any specific legislative provisions which would apply to venue in child custody cases, we must apply the general rules of venue," the court held that under Code of Civil Procedure article 42(1), Bienville Parish, the domicile of the defendant parent, was the proper venue.

Code of Civil Procedure article 74.2(B) provides that a proceeding for change of custody may be brought in the parish where the custodial parent is domiciled or in the parish where the original custody decree was rendered. The result in Parker would be incorrect under the new article if the parish which rendered the divorce and custody decree is characterized as the parish where "the original custody decree was rendered." It seems clear that at least such a characterization was intended by the legislature for purposes of article 74.2(B). The court which rendered the divorce and custody decree would be familiar with the case and thus could rule in the best interest of the minor. Additionally, the parish in which the divorce and custody decree was rendered is likely to be the domicile of one of the parents (as it was in Parker) giving that court further ease of access to and familiarity with the circumstances of the party. The interesting question is whether the parish in which the separation and custody decree was rendered is also to be considered "the parish where the original custody decree was rendered." That court continues to have an interest in and familiarity with the case as well. It is also likely that one of the parties is still domiciled in that parish. It can, of course, be asserted that the legislature would have drafted the statute to read "the parishes where the original custody decree were rendered" if it had intended both the parish in which a separation-custody decree was rendered and the parish in which a divorce-custody decree was rendered to be proper places of venue. Even so, the statute is susceptible of the interpretation that the plaintiff has three choices of forum if the defendant is domiciled in Parish A, the separation-custody decree was rendered in Parish B, and the divorce-custody decree was rendered in Parish C.

It is submitted that the phrase "the parish where the original custody

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64. Id. at 1012.
65. Id.
66. Id.
67. La. Code Civ. P. art. 74.2, comment (c) ("'Venue for a proceeding for change of custody would be . . . where the original decree was rendered because [that court] would be familiar with the circumstances of the case and could rule in the best interest of the minor.").
decree was rendered” should be read “the parish where the last custody decree was rendered” thus cutting off the possibility in the foregoing hypothesis of suit in Parish B. The availability of information in the parish in which the separation-custody decree was rendered would be superseded by the availability of perhaps more complete and certainly more current information in the parish in which the divorce-custody decree was rendered. In addition, the narrowing of choices of forum generally serves to deter harassment and relitigation.

*Separation-Custody Judgment in Parish A. Divorce-Custody Judgment in Parish B. Suit for Change of Custody in Parish A*

Coincidentally, another *Parker v. Parker* case (*Parker II*) dealt with this similar factual situation. The judgment of separation was rendered in Jefferson Parish. By consent, the custody of the child was given to the mother. The parties moved from Jefferson Parish and subsequently, a divorce judgment awarding custody to the father was rendered in Iberia Parish. Eight months later, the same court changed the custody from the father to the mother after a contested hearing. Following this decree, the mother moved with the child to several places in Louisiana, and in October 1980, to Colorado where she continued to move from place to place. The child’s location following the Iberia decree was unknown to the father until January 1982 when he discovered that the child had been living with his maternal grandparents in Jefferson Parish since June 1981. Having located his son, the father, who was domiciled in LaFourche Parish, began visiting him on a regular basis. In May 1982, the father learned that the mother was intending to return to Jefferson Parish in order to take the child with her to the Bahamas for an indeterminate amount of time. The father filed suit for change of custody in Jefferson Parish.

The court began its analysis by stating that there were two possible places of proper venue: Jefferson Parish, which the court stated was the most convenient forum, and Iberia parish, which rendered the divorce-custody decree and the subsequent modification decree. The convenience of a Jefferson forum was not, however, considered by the court to be the determining factor. Neither did the court wish to base its decision as to proper venue on the fact that it appeared from the record that the defendant mother was still domiciled in Jefferson Parish. Rather, the court, citing the *Lewis* independent action language, held that “even assuming the defendant is a Colorado domiciliary, and therefore has no domicile in Louisiana, the parish in which the child in suit was residing at the

68. 424 So. 2d 479 (La. App. 5th Cir. 1982), cert. denied, 427 So. 2d 1198 (La. 1983).
69. Jurisdiction in this case was based on UCCJA, specifically, on La. R.S. 13:1702(A)(2) (1983).
time of the filing of the proceeding for change of custody, Jefferson parish, was a proper venue. In a footnote, the court noted that an additional factor was that a Jefferson Parish court had rendered the judgment of separation. Thus the Parker II court seemed to hold that where the custodial parent is a nonresident of the state, the parish in which the child is present is an independent venue for the independent custody action established by Lewis and Howard.

Article 74.2(B) does not include the parish where the child is located as a proper place of venue. Thus the result of Parker II could be achieved under article 74.2(B) only if the mother was indeed still domiciled in Jefferson Parish. If the mother had changed her domicile to Colorado, then Lafourche Parish, the Plaintiff's domicile—a parish not considered by the court in Parker II as a possibility—would be a proper place of venue under article 74.2(B). The court in the parish of the plaintiff's domicile is said to be competent to make the best interests determination because it would know the circumstances of the party seeking the change of custody. LaFourche Parish, however, did not have and had never had any connection with the child. Additionally, Iberia Parish, the parish in which the divorce-custody decree and subsequent modification decree were rendered, would be a proper forum under article 74.2(B). The court disqualified Iberia as a place of proper venue because "none of the individuals involved . . . [had] any connection with Iberia other than the fact that the plaintiff alone did spend some time there." This summation of the Parker family's contact with Iberia Parish is perhaps too facile. The father had done more than "spend some time" in Iberia. He had been a domiciliary. An Iberia Parish Court not only rendered the custody decision in the divorce suit, it also rendered the later modification decree. Thus, while it was true that the mother and child had never lived in Iberia

70. 424 So. 2d at 482-83.
71. Id. at 483 n.6.
72. This was arguably the holding of Lucas. In fact, the court in Parker II stated that there appears to be some conflict among Louisiana circuit courts regarding the rules to be followed when the child is in this state but domiciled elsewhere (see, for example . . . Sims v. Sims . . . and Lucas v. Lucas . . .). Because we believe it unwise to judicially set inflexible rules regarding venue in custody matters, we prefer the methodology used in Lucas over that used in Sims.
424 So. 2d at 482.
73. Article 74.2(B) allows suit for change of custody in the domicile of the custodial spouse. Note that Parker II presents an attractive setting for a holding that the parish in which the separation-custody decree was rendered, Jefferson Parish, should be considered a "parish where the original custody decree was rendered." On this expansive reading of the statute, see supra text accompanying note 67. Note also that in Parker II, the Jefferson Parish court merely incorporated a consent custody order into its separation decree. Thus, there was no previous fully contested custody hearing in Jefferson Parish.
74. La. Code Civ. P. art. 74.2, comment (c).
75. 424 So. 2d at 482.
Parish, it was not true that they had no connection with the parish.

It can be concluded that both LaFourche Parish and Iberia Parish—the proper places of venue under article 74.2(B) in the Parker II situation—would have had access to some relevant information concerning the child's best interest. Nevertheless, Jefferson Parish was arguably the forum best equipped with the information needed to make this best-interest determination. LaFourche Parish, although it was the plaintiff's domicile, had no connection with the child or the mother. Iberia Parish, though familiar with the parties and their circumstances due to its earlier encounters with the case and due to the father's former domiciliary status, had had no contact with the parties for four years. On the other hand, Jefferson Parish had been the family domicile at one time, was the child's present place of residence and had been for the year preceding the suit, and was the parish in which the child had attended school for the previous year. Clearly, much evidence concerning the child's past, present and future care and relationships was available in Jefferson Parish. Just as clearly, Jefferson Parish would not be a proper forum under article 74.2(B).

The UCCJA as a Venue Statute

Parker II raises the question of the relationship between intrastate venue problems and interstate jurisdictional problems. Although the court in Parker II rejected the notion that the UCCJA was applicable to an intrastate custody dispute, the argument can be made that the two problem areas—interstate jurisdiction and intrastate venue—involve the same concerns and should be approached in the same manner.

The Uniform Child Custody Jurisdiction Act purports to control the resolution of potential jurisdictional conflicts between the courts of two or more states. However, an identical potential for forum-shopping and conflicting decrees can and often does arise in the context of intrastate litigation under the guise of venue challenges. In many states, venue wars occurring within the microcosm of a state are still encouraged by the same atavistic policies of local control and territoriality which finally prompted the promulgation of the UCCJA for the macrocosmic federal system.

76. The Uniform Child Custody Jurisdiction act is concerned with avoiding jurisdictional competition and conflict between courts of different states in matters of child custody. The Act has no application to venue, a matter involving the operation of courts within a state which does not involve possible conflicts with other states.

424 So. 2d at 482.

77. McGough & Hughes, supra note 17, at 24-25.
The main concern of the UCCJA is the best interest of the child. Generally stated, the express purposes of the UCCJA are to prevent the shifting of children from state to state for jurisdictional purposes, to deter continuing controversy over and relitigation of custody decrees, and to prevent the rendering of custody decrees by courts in states which have little or no connection with the child. Louisiana's adoption of the UCCJA indicates legislative approval of these purposes and of the scheme developed in the Act to achieve them. The dominant concern in deciding which court within the state should hear a child custody dispute is also the child's best interest. Perhaps an intrastate venue statute should be analogous in purpose and design to the UCCJA given that both statutes seek to achieve the same objective.

Prior to the enactment of article 74.2, the proposition that the objectives of the UCCJA were not served in cases involving questions of intrastate venue was apparent. Cases such as Lucas which held that the parish in which the child was present was an appropriate venue served as an inducement to child-napping. Allowing a noncustodial parent to bring a suit for change of custody along with a suit for divorce in his domicile provided an inducement to relitigate custody issues and thus, to harass the custodial parent who perhaps lived with the child in a distant parish. The Hopkins exclusive venue rule, by requiring that only the forum which rendered the initial decree could modify that decree regardless of the lapse of time or the present domicile of the parties involved, permitted a custody suit in a court which no longer had any connection with the child or his parents.

The legislature, rather than choosing a venue format analogous in design to the UCCJA, has attempted to remedy the above problems through Code of Civil Procedure article 74.2. The following sections will contrast the 74.2 solution to these problems with their possible treatment under the UCCJA when read as a venue provision.

78. See Student Symposium, supra note 12, at 108.
80. See supra note 17.
81. On Lucas v. Lucas, see supra text accompanying notes 45-49; on Sims v. Sims, see supra note 55; on Parker v. Parker, see supra text accompanying notes 68-72.
82. See supra text accompanying notes 31-32.
83. On Ahlers v. Ahlers, see supra text accompanying note 53. The original decree was rendered in Orleans Parish. At the time suit for change of custody was filed, the mother and child lived in Bossier Parish and the father lived in Texas. The court held that the Orleans Parish court alone could modify its prior judgment.
84. The text of the UCCJA is easily converted into a venue statute by a mere substitution of the word "parish" for "state." See, e.g., Commonwealth Child Custody Jurisdiction Act, Pa. Cons. Stat. Ann. §§ 2401-2424 (Purdon 1978) (as they appeared prior to
Presence of the Child: The Child-Napping Problem

The UCCJA was "designed to bring some semblance of order" into an "intolerable state of affairs where self-help and the rule of 'seize-and-run' prevail[ed]." The UCCJA implements its purpose of "deter[ring] abductions and other unilateral removals of children undertaken to obtain custody awards" by providing that "physical presence . . . of a child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court." Additionally, the UCCJA contains a "clean hands" provision under which a court may, in an initial decree, and must, in a modification decree, refuse to exercise its jurisdiction when the petitioner has engaged in child-napping.

The inducement to engage in child-napping is absent under article 74.2 because the parish where the child is present is not included as a place of proper venue. However, there are circumstances, such as those in their amendment by Pa. Cons. Stat. Ann. §§ 5364 (Purdon 1980), providing that "the provisions of [UCCJA] allocating jurisdiction and functions between and among courts of different states shall also allocate jurisdiction and functions between and among the courts of common pleas of this Commonwealth."). For articles explaining Pennsylvania's move to a venue statute patterned after UCCJA, see Frank, The End of Legal Kidnapping in Pennsylvania: The Development of a Decided Public Policy, 25 Vill. L. Rev. 784 (1980); Turner, Pennsylvania's New Child Custody Venue and Jurisdiction Legislation, 49 Pa. B.A.Q. 471 (1978). See also Georgia Child Custody Intrastate Jurisdiction Act, Ga. Code Ann. §§ 19-9-20 to 19-9-24 (1982 & Supp. 1984).

86. Id. at 113.
90. An inducement to engage in child-napping does exist, however, under the court's present handling of custody proceedings initiated under a writ of habeas corpus. This problem was encountered in Georgia and resulted in the enactment of Ga. Code Ann. § 19-9-23 (Supp. 1984):
(a) Except as otherwise provided in this Code section, after a court has determined who is to be the legal custodian of a child, any complaint seeking to obtain a change of legal custody of the child shall be brought as a separate action in the county of residence of the legal custodian of the child.
(c) No complaint specified in subsection (a) or (b) of this Code section shall be made:
(1) As a counterclaim or in any other manner in response to a petition for a writ of habeas corpus seeking to enforce a child custody order; or
(2) In response to any other action or motion seeking to enforce a child custody order.
(d) The use of a complaint in the nature of habeas corpus seeking change of child custody is prohibited.

This statute is a codification of the ruling in Matthews v. Matthews, 238 Ga. 201, 232 S.E.2d 761 (1977), which dealt with a recurrent form of parental tug-of-war: A noncustodial parent would unlawfully remove the child from the custodial parent and return with the child to his county of residence; the custodial parent would file a habeas corpus petition...
to regain possession of the child in the county in which the child was now located, and the noncustodial parent would counter claim for change of custody. Until Matthews, this practice had been sanctioned by the Georgia courts under the rationale that the custodial parent submitted to the venue of the court in the county of the noncustodial parent's residence by filing the habeas petition. In Matthews the court held, as a matter of policy, that suit for change of custody could not be brought by the noncustodial parent in his county of residence. "We believe that by denying these parents a convenient forum in which to relitigate custody, these practices [i.e., illegal seizure and detention of children] may be reduced or stopped altogether." Id. at 203, 232 S.E.2d at 78.

It should be noted that this same tug-of-war is possible in Louisiana despite the adoption of article 74.2. For example, a suit for change of custody would be proper under article 74.2(B) in Parish A, where the original decree was rendered, or in Parish B, the domicile of the custodial spouse. Assume the noncustodial spouse detains the child in Parish C, his domicile. Under Louisiana Code of Civil Procedure art. 3822, the custodial parent must file the habeas corpus proceeding in Parish C. The noncustodial parent can then reconvene for change of custody, and by virtue of Code of Civil Procedure art. 1034, the custodial parent could not raise the objection of improper venue. Indeed, the detaining parent need not even reconvene for change of custody because it is the practice of the courts in a habeas corpus proceeding not only to consider the detaining parent's legal authority to detain the child but also to focus on the child's best interest in determining whether that detention should continue. See, e.g., Wood v. Beard, 290 So. 2d 675, 677 (La. 1974); Cawthorne v. Williams, 313 So. 2d 915 (La. App. 2d Cir. 1975); Benoit v. Blassingame, 249 So. 2d 302 (La. App. 1st Cir. 1971); Note, Child Custody: Paternal Authority v. Welfare of the Child, 35 La. L. Rev. 904, 906 (1975).

Historically, the justification for such action by the court is that habeas corpus is the detainee's (i.e., the child's) remedy. Since a "petition for habeas corpus may be filed by the person in custody or by another person in his behalf," La. Code Civ. P. art. 3821, "it is essentially a writ of inquiry . . . and a proper remedy . . . to determine a controversy concerning the right to the custody of a minor child. . . . The welfare of the child as well as the rights of the parents must be taken into consideration." State ex rel. Jagneaux v. Jagneaux, 206 La. 107, 111-12, 18 So. 2d 913, 914 (1944) (emphasis added). But as authority for this sort of action, later cases have cited Code of Civil Procedure article 3830 ("The judgment may order the person released or placed in the custody of a proper person.").

Such practice by the courts, however justified, is a virtual invitation to child-napping. Absent the enactment by the legislature of a statute similar to the aforementioned Georgia statute, the courts should adhere to a strict interpretation of Code of Civil Procedure article 3821 ("Habeas corpus is a writ commanding a person who has another in his custody to produce him before the court and to state the authority for the custody."). Under a strict interpretation, once it is established that the plaintiff in the habeas corpus proceeding has authority pursuant to a court order or decree of custody, the inquiry should be at an end. The defendant who desires a change of custody would then initiate a separate action in the proper forum under article 74.2(B). In support of this approach, see Wood v. Beard, 290 So. 2d 675, 678 (La. 1974) (Barham, J., concurring in the decree); Pascal, Work of the Appellate Courts for the 1966-1967 Term—Private Law, 28 La. L. Rev. 312, 317-18 (1968): See also Buchanan v. Malone, 415 So. 2d 259 (La. App. 2d Cir. 1982) (upholding the trial court's refusal to convert a habeas corpus proceeding initiated by a nonresident custodial parent into a suit for changes of custody). While noting that Wood v. Beard stood for the proposition that "it [was] appropriate for the trial court to determine the fitness of the custodial parent when the issue is raised in response to a writ of habeas corpus," the Buchanan court held that Wood was legislatively overruled to the extent that it conflicted with the UCCJA. 415 So. 2d at 261. Since the trial court did not have jurisdiction to entrate a change of custody suit under the UCCJA, the children were returned to the custodial parent after her legal authority for this custody was established.
Parker II, when absent child-napping, the parish in which the child is present is the optimal forum to make a decision as to the best interests of the child.

Under a venue provision analogous in format to the UCCJA, could the result in Parker II have been achieved? The most preferred jurisdictional basis under the UCCJA is "home state" jurisdiction.91 For a state to qualify as a child's "home state," the child must have lived in the state with "his parents, a parent or a person acting as a parent"92 for at least six consecutive months preceding the filing of the custody suit. The child in Parker II had lived in Jefferson Parish with his grandparents for a year preceding suit. The grandparents, however, would not qualify as "person[s] acting as parent" because they had not been awarded custody by a court and did not claim a right to custody.93 Thus Jefferson Parish would not have been a "home parish" under the UCCJA.

Article 74.2 includes the domicile of the custodial spouse as a proper venue in suits to modify a custody award. The inclusion of such a forum reflects the traditional notion in civil litigation that the plaintiff must sue the defendant in the defendant's domicile94 and provides a type of "home parish" venue.95 Jefferson Parish would not have been a proper venue under article 74.2(B) in Parker II because the child was not living there with the custodial parent. The analogy between "domicile of the custodial spouse" as a basis of venue under article 74.2(B) and "home state" as a basis of jurisdiction under the UCCJA, however, is not perfect, for Louisiana does not require that a person live in a parish for six months before that parish becomes his domicile.96 Thus a court in a parish where the custodial spouse had lived only a short period of time would be a proper forum for a change of custody suit under article 74.2(B).

The only instance in which a court of improper venue may, in a habeas corpus proceeding, properly inquire into the best interests of the child is when such proceeding is initiated prior to judicial decree of separation or divorce and prior to judicial award of custody pursuant to La. R.S. 9:291 (Supp. 1984). In such circumstances, paternal authority continues, and both parents have authority to detain the child. The court, of necessity, must resort to a "best interests" inquiry in order to determine which of the parents is to be awarded custody. See Note, Custody of Children by Writ of Habeas Corpus, 24 Loy. L. Rev. 308, 312 (1978).

91. McGough & Hughes, supra note 17, at 29.
94. See supra note 16 and accompanying text.
96. See La. Civ. Code art. 41 ("A change of domicile from one parish to another is produced by the act of residing in another parish, combined with the intention of making one's principal establishment there.").
the best interests of the child would be served in such circumstances is questionable. The UCCJA did not define the "home state" of the child in terms of the domicile of the child's parents, but rather in terms of the amount of time the child and at least one parent had resided in a state. "Most American children are integrated into an American community after living there six months; consequently this period of residence would seem to provide a reasonable criterion for identifying the established home." Implicit in this definition of "home state" is the view that the state's interest in its domiciliaries alone does not give it the power to decide the custody suit. Rather, it is the parties' actual connection, qualitative and quantitative, with a state that is determinative of whether the child's best interest would be met by allowing the courts of that state to decide the custody dispute. Likewise, in connection with venue, the fact of domicile in a parish should not be the reason for allowing suit in that parish. Thus while both the UCCJA and article 74.2(B) provide that the court in the child's "home" can hear a change of custody suit, the UCCJA definition of "home" more closely serves the purpose of insuring that the court which decides the case has access to the information necessary to make a determination as to the child's best interest. For example, assume that the family had lived together in East Baton Rouge Parish for at least six months. The parents are granted a divorce and a custody decree is rendered by an East Baton Rouge court awarding custody to the mother. The mother then moves with the child to Caddo Parish intending to make Caddo Parish her home. Under article 74.2(B), the father could file suit for change of custody in Caddo Parish immediately after the mother and child established a residence there. The Caddo Parish court would have no information other than the testimony of the parents on which to base its decision regarding which of the parents would provide a home life for the child in accordance with the child's best interest. The mother and child simply would not have had sufficient time to become "integrated into [the Caddo Parish] community." If Louisiana adopted a definition of "home parish" analogous to the UCCJA definition of "home state," there would be a six month waiting period after the custodial parent moved to a new parish before that parish became a proper venue for a change of custody action. In this example, if the father wished to bring suit for change of custody within six months of the mother's relocation, he would have to bring suit in East Baton Rouge which, since the family had lived there for a sufficient length of time, would have access to the needed information.

98. Id.
99. The effect of utilizing the UCCJA as a venue provision in this hypothetical seems to put an unfair burden on the custodial parent who perhaps has been forced to move
The second major basis of jurisdiction under the UCCJA is known as "significant connection" jurisdiction. In order for a state to have jurisdiction under this provision, it must be in the child's best interest for the state to assume jurisdiction, the child and at least one parent must have a significant connection with the state, and there must be substantial evidence in the state concerning the child. Apparently Jefferson Parish would have met the requirements of an analogous "significant connection" venue provision. Jefferson Parish had been the domicile of all the parties at one time and was the parish in which the child had resided and attended school for the year preceding the suit. It was also the parish in which the child's grandparents, his custodians for the prior year, lived and the parish in which the child was regularly visited by his father for the four months prior to the institution of the custody suit. Obviously, the child had a significant connection with Jefferson Parish. The jurisdictional requirement, however, is that "the child and his parents, or the child and at least one contestant, have a significant connection with [the] state." Five years previously, both parents had been domiciliaries of Jefferson Parish, however neither was domiciled there at the time of suit. The question arises whether the "significant connection" basis, when used as a venue provision, requires domicile or, at least, residence of one parent in the parish in question. Although the question has not arisen under the UCCJA, presumably residence in the state of

from the family domicile as a result of the disintegration of the marriage. This would seem especially true if the noncustodial parent continued to live in the family domicile because this parent would be effectively granted a forum for change of custody in his own domicile. However, the argument can be made that the value of placing the suit before a court that has optional access to information regarding this child's best interest should, in this instance, be allowed to outweigh the competing value of preventing relitigation of custody decrees and harassment of the custodial parent. In the event that both noncustodial and custodial parents have moved from the child's "home parish," and both parents deem it inconvenient to return to that parish to litigate, they could consent to suit for change of custody elsewhere. Additionally, if an emergency required the bringing of suit in a parish that had not yet become a "home parish," then La. R.S. 13:1702(3), read as a venue provision, would provide proper venue in the parish where the child was physically present.

101. Note that the court in Parker II based their assertion of jurisdiction on the "significant connection" basis of the UCCJA.

[The child] has attended school for the past year in Louisiana [in Jefferson Parish]. His father and stepmother reside here. Both his paternal and maternal grandparents live in Louisiana [maternal grandparents live in Jefferson Parish], and the witnesses needed for a proper determination of custody . . . now live in or close to Jefferson Parish.

424 So. 2d at 481-82.
103. The question would arise under the UCCJA if the Parker II factual situation were elevated to an interstate jurisdictional dispute—i.e., child is living with grandparents in State A for over 6 months, custodial parent is living in State B, and noncustodial parent is living in State C; noncustodial parent brings suit for change of custody in State C.
a parent would be a prerequisite to a finding of a significant connection
with the state.

[The "significant connection" provision's] purpose is to limit
jurisdiction rather than to proliferate it. The first clause of the
paragraph is important: jurisdiction exists only if it is in the child's
interest, not merely the interest or convenience of the feuding par-
ties, to determine custody in a particular state.

The interest of the child is served when the forum has optimum access
to relevant evidence about the child and family. There must be maximum
rather than minimum contact with the state. The submission of the par-
ties to a forum . . . is not sufficient without additional factors establishing
closer ties with the state.\textsuperscript{104} Thus, even if the "significant connection"
provision of the UCCJA was utilized to determine proper venue in the
Parker II situation, the result would be the same as under article 74.2(B):
Jefferson Parish would not be a proper venue. Can it be concluded, then,
that the parishes listed in article 74.2(B) are the functional equivalent of
the UCCJA "significant connection" forum? The argument can be made
that article 74.2 is but a specific listing of the parishes which were deemed
by the legislature to meet the "significant connection" text.\textsuperscript{105} Thus,
through article 74.2 the legislature insures that the custody dispute will
be heard in a parish with "maximum contact" with the child and at least
one parent, while sparing the courts the task of defining "significant con-
nection" on a case by case basis. In Parker II, decided under article
74.2(B), the plaintiff could have filed suit in his domicile, LaFourche
Parish, since the defendant spouse was a nonresident. LaFourche, however,
had no connection at all with the child. Additionally, Iberia Parish, the
former domicile of the plaintiff and the parish where the divorce-custody
and subsequent modification decrees were rendered, would have been a
proper forum under article 74.2(B). Since neither of the parents lived in
Iberia at the commencement of the proceedings, it would not meet the
basic residence requirement previously discussed and would thus be dis-
qualified as a forum under the "significant connection" test even though,
like Jefferson Parish, Iberia did have some contact with the Parkers and
their child.\textsuperscript{106} Thus in both instances article 74.2(B) would have allowed

\begin{itemize}
  \item\textsuperscript{104} UCCJA § 3, 9 U.L.A. 124, commissioners' note (1968) (emphasis added).
  \item\textsuperscript{105} See La. Code Civ. P. art. 74.2, comment (c).
  \item\textsuperscript{106} The court in Iberia Parish had rendered a custody decree in the divorce proceeding
    and had rendered a subsequent change of custody decree after a contested hearing. This
court was definitely familiar with the circumstances of the case and, if one parent had
continued to live in the parish, would probably meet the "significant connection" test. Ar-
ticle 74.2 seems to contemplate that the court which rendered the initial decree did so after
a hearing. If a court merely incorporated a consent decree into its judgment or merely
affirmed an award made by another court in a previous proceeding, it does not seem cor-
rect to say that that court "would be familiar with the circumstances of the case and could
\end{itemize}
suit in parishes which had access to some information relevant to the child’s best interest but did not have “optimum access to relevant evidence about the child and family.” By enumerating the parishes which were deemed to possess the “significant connection” with the child and his parent or parents, the legislature has succeeded in bringing specificity and predictability into a formerly confused area. However, a consequence of such enumeration is to keep the _Parker II_-type case in a forum which is not optimally equipped to decide it in the child’s best interest.

If the UCCJA was used to dictate proper venue in a _Parker II_ situation, Jefferson Parish would not meet either the “home state” or “significant connection” tests. Neither would Iberia, LaFourche or any other parish in the state. However, Jefferson Parish does seem to be “the forum [with] optimum access to relevant evidence about the child and his family.” The result reached by the court in _Parker II_ could be achieved by application of the “residual” provision of the UCCJA which “allows a state to assume jurisdiction over a custody dispute when no other state meets the requisites of the previous sections” (i.e., “home state” or “significant connection”) and also “allows a court to depart from the Act’s general rule that mere physical presence of the child in a state is insufficient to confer jurisdiction upon its courts.” Because article 74.2 contains no such “residual” basis of venue, the result of _Parker II_-proper venue in Jefferson Parish—which seems correct in terms of placing the litigation before a court best equipped to decide in accordance with the child’s best interest, is no longer obtainable under the article’s provisions.

**Plaintiff’s Domicile as Proper Venue: Initial Decree**

As previously discussed, the effect of the _Lewis_ and _Howard_ decisions which characterized a decree of custody as legally independent of the separation decree has been to change the characterization of a subsequent suit brought by the noncustodial spouse for divorce and custody from a proceeding to obtain custody to a proceeding for change of custody. Since the plaintiff’s domicile is not a proper venue for a change of custody suit, the prior inducement to relitigate custody decrees and harass the custodial parent no longer exists. A parent may, however, under Article 74.2(A) sue for separation or divorce and initial custody in his own domicile. Since a person can establish a domicile in a parish simply by acquiring a residence there and by evincing an intent to make that parish his home, it is possible that under article 74.2(A), the suit to

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108. Id.
111. See supra text accompanying notes 43-44.
obtain custody could be brought before a court which had no connection with the child and only very recent connection with the domiciliary. It is questionable whether such a court would have access to the information necessary to make a decision in the child's best interest. Another possibility is that a parent, cognizant of the availability of a forum in his own domicile, might move in order to obtain a friendly forum or to prevent a less mobile parent from contesting the claim. In such an event, the plaintiff's domiciliary status would be open to attack, but litigation of such procedural matters should be avoided in the interest of judicial efficiency and the speedy resolution of child custody disputes.

Under the UCCJA, divorce jurisdiction in a state does not necessarily include custody jurisdiction.113 "The submission of the parties to a forum, perhaps for purposes of divorce, is not sufficient without additional factors establishing closer ties with the state."114 Similarly, in matters of venue in child custody disputes, the interest in judicial efficiency and convenience115 should not be allowed to outweigh the paramount concern of putting the litigation before a court which is best able to make a determination as to the child's best interest. Additionally, under the UCCJA, jurisdiction in a state is never based on domicile alone.116 The six-month residence prerequisite to "home state" status and the maximum contacts required by "substantial connection" jurisdiction reduce the temptation to engage in forum shopping and help to insure that the case will be heard by a court which has access to the relevant information.

Article 74.2(A) perhaps serves the purposes of deterring forum shopping and the rendering of decrees by courts which have no connection with the child when it is coupled with article 74.2(C). This provision allows the proceeding to be transferred to a court where the action *might have been brought* "for the convenience of the parties and the witnesses and in the interest of justice." Thus a party who brought suit in a parish which arguably was his domicile but which had no connection with the child could be subject to a transfer of the proceeding to another, not so handy, forum. The UCCJA also contains an inconvenient forum

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114. Id.
116. As two commentators observed: The Act explicitly states:

"Except under Paragraphs (3) and (4) of Section A [emergency and residual jurisdiction], *physical presence* in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state.
provision. Under both the UCCJA and article 74.2, the inconvenient forum mechanism is the means by which the courts are encouraged to exercise "judicial restraint . . . whenever another state [parish] appears to be in a better position to determine custody of a child." However, the phrase "for the convenience of the parties and the witnesses and in the interest of justice" in article 74.2(C) provides rather vague guidance as to when a court should transfer a proceeding, especially when compared to the detailed inconvenient forum provision of the UCCJA. Additionally, the wording of article 74.2(C) seems to focus the inquiry on the interests of the parents and witnesses involved rather than on the welfare of the child.

In conclusion, the possibilities of forum shopping and of the rendering of initial custody decrees by uninformed courts are inherent in article 74.2(A) because venue is proper in the plaintiff's domicile. The transfer provision of article 74.2(C) is meant to remedy these undesirable possibilities once they materialize; however, the guidance provided by the legislature as to when transfer is appropriate is vague and seems to draw attention away from the main reason why a transfer is being considered at all, the best interests of the child. Under the UCCJA, the aforementioned possibilities are largely foreclosed at the outset because the mere fact of the plaintiff's domicile in a state is not sufficient to confer jurisdiction on that state to render an initial decree. In addition, the inconvenient forum provision gives a court detailed guidance upon which to base a decision to transfer and focuses the court's inquiry directly upon the child's best interest.

McGough & Hughes, supra note 17, at 37 (emphasis added).

119. The inconvenient forum provision of UCCJA lists five factors to be taken into account in determining whether it is in the child's best interest to decline to exercise jurisdiction: (1) another state is or was the child's home state; (2) another state has a closer connection with the child and his parents or parent; (3) substantial evidence concerning the child is more readily available elsewhere; (4) the parties agree to another no less appropriate forum; and (5) the exercise of jurisdiction by this court would contravene any of the stated purposes of the Act. The provision also provides for the exchange of information between the possible forums and for the taxing of the costs of the proceedings plus the travel expenses and attorneys' fees of the other parties to the party who commenced the proceeding "if it appears to the court that it is clearly an inappropriate forum" La. R.S. 13:1706(G) (1983).
120. See UCCJA § 7, 9 U.L.A. 139 commissioners' note (1968).
Continuing and Exclusive Venue: The Hopkins Rule

The Hopkins rule of continuing and exclusive venue was incorporated in part into article 74.2(B). The court which rendered the initial decree continues to be a court of proper venue under the statute but is no longer a court of exclusive venue. Thus the new article solves the problem created by the Hopkins rule that a court which had long ago rendered a custody decree remained the only proper forum to modify that decree even after all the parties involved had moved away. The UCCJA recognizes a concept of continuing jurisdiction in that "even when one of the jurisdictional bases favors a proceeding in a Louisiana court, our courts may not exercise jurisdiction to modify another state's decree unless it appears that the court which rendered the decree no longer has jurisdiction under prerequisites substantially in accordance with the Act." Thus, under the UCCJA, the jurisdiction of a court which rendered the initial decree continues exclusively to modify that decree until "all the persons involved have moved away or the contact with the state has otherwise become [so] slight [that] modification jurisdiction . . . shift[s] elsewhere." Under article 74.2(B), the court which rendered the initial decree does not retain exclusive venue, but it does retain continuing venue regardless of the lapse of time or change in circumstances. Of course, article 74.2(C), the transfer provision, does provide a means by which the proceeding can be moved to a better informed forum in the event of changed circumstances. Thus article 74.2 accomplishes two things. First, it remedies the injustice created by the Hopkins holding that the court which rendered the initial decree remains forever the exclusive venue to modify that decree regardless of the present circumstances of the parties. Second, it provides a mechanism by which the proceeding can be transferred from the court which rendered the initial decree in the event that a change in circumstances so warrants. By accomplishing these two things, article 74.2 serves the goal of insuring that the custody case is heard by a court with access to relevant information. The UCCJA continuing jurisdiction rule—exclusive until contact with the family and child dwindles—by narrowing the choice of forum, serves the additional goal of achieving greater stability of custody arrangements.

Conclusion

The legislature, in enacting Code of Civil Procedure article 74.2, has remedied the confusion present under the jurisprudence by providing a clear expression of the proper venue for actions to obtain or for change of venue.
of custody. The UCCJA when used as a venue provision effectively serves the purposes of insuring that the court which decides the dispute is the best equipped to do so according to the best interests of the minor and of promoting the stability of custody decrees. Should the legislature reconsider article 74.2, the questions it will have to confront are whether it is willing to sacrifice optimal access to information by the forum and whether it is willing to leave the door open to forum shopping in exchange for a statute that is easily applied and predictable. The alternative is to repeal article 74.2, and, in its place, adopt the UCCJA as a venue provision. Such a statute would, of course, be less easily applied than article 74.2. However, the desire to simplify matters should not be allowed to overshadow the dominant concern behind any statute that regulates custody proceedings: the best interest of the child.

Sybil Hope Stephens