

# Choosing Among Imprecise American State Parentage Laws

Jeffrey A. Parness

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# Choosing Among Imprecise American State Parentage Laws

*Jeffrey A. Parness\**

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#### INTRODUCTION

Prompted by federal welfare assistance<sup>1</sup> and full-faith-and-credit statutes,<sup>2</sup> an American state trial court now generally exercises subject matter jurisdiction to make initial child support determinations if the forum is the “home state” of the child on the date of the commencement of the proceeding. “Home state” for a child means the last state where the child lived with a parent—or a person acting as a parent—for at least six consecutive months immediately coming before the time the plaintiff filed the initial proceeding.<sup>3</sup> When this jurisdiction is exercised, forum parentage law is typically employed.<sup>4</sup>

Federal lawmakers addressed child support matters after recognizing that more and more disputes over children between parents residing in different states were occurring, state child support laws were “not

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1. 42 U.S.C. § 654(20) (2012) (a state plan for child and spousal support, where the state receives federal welfare aid, must have in effect all laws in § 666); 42 U.S.C. § 666(f) (2012) (each state must have in effect the Uniform Interstate Family Support Act); UNIF. INTERSTATE FAMILY SUPPORT ACT § 102(8) (amended 2008), *available at* [http://www.uniformlaws.org/shared/docs/interstate%20family%20support/UIFSA\\_2008\\_Final\\_Amended%202015\\_Revised%20Preliminary%20Note%20and%20Comments.pdf](http://www.uniformlaws.org/shared/docs/interstate%20family%20support/UIFSA_2008_Final_Amended%202015_Revised%20Preliminary%20Note%20and%20Comments.pdf) [hereinafter UIFSA] (“‘Home state’ means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a [petition] or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six- month or other period.” (alternation in original)).

2. 28 U.S.C. § 1738B(b) (2012).

3. *See, e.g.*, 750 ILL. COMP. STAT. ANN. 36/102(7) (West 2009); IDAHO CODE ANN. § 7-1002(8) (West, Westlaw through end of 2015 First Regular and First Extraordinary Sessions of the 63rd Legislature). Where a child is less than six months old and is the subject of a child support case, the home state typically is the state of birth. *See, e.g.*, *Ocegueda v. Perreira*, 232 Cal. App. 4th 1079, 1081 (Ct. App. 2015).

4. UIFSA, *supra* note 1, § 303 & cmt. (“Historically states have insisted that forum law be applied to support cases whenever possible. This continues to be a key principle of UIFSA.”); 28 U.S.C. § 1738B(h)(1) (providing that in a proceeding to establish a child support order, the forum state’s law generally applies). State laws founded on the Uniform Reciprocal Enforcement of Support Act (“URES A”), which the Revised Uniform Reciprocal Enforcement Support Act (“RURES A”) amended in 1968, preceded the UIFSA. *See, e.g.*, *Colorado ex rel. R.L.H.*, 942 P.2d 1386, 1387 (Colo. App. 1997).

uniform,” and noncustodial parents often moved away to avoid the jurisdiction of the children’s home states over child support matters.<sup>5</sup> Federal legislators sought “to establish national standards under which courts of the various states shall determine their jurisdiction to issue a child support order.”<sup>6</sup> The federal laws mitigated forum shopping, leading to multiple—and often conflicting—child support orders.<sup>7</sup>

Under this newly enacted law, where the respondent in an initial child support proceeding is not subject to personal jurisdiction in the child’s home state, a home state residential parent or person acting as a parent may nevertheless initiate a child support proceeding in the home state.<sup>8</sup> The court then forwards this proceeding to a state court in a state that can exercise personal jurisdiction over the respondent, typically the respondent’s state of residence.<sup>9</sup> In a forwarded proceeding, the responding tribunal usually applies its own state laws.<sup>10</sup>

Obviously, parentage is key to the imposition of a child support order. In seeking to limit harm to children and their custodians, as well as to facilitate governmental recoveries of child welfare payments from parents, Congress enacted the Uniform Interstate Family Support Act (“UIFSA”) at a time when defining legal parentage was typically straightforward. Parentage under state law was usually determined by giving birth, by marriage to the birth mother, by designation on a birth certificate—usually arising from a paternity lawsuit or a voluntary acknowledgment of

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5. Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1994).

6. *Id.* § 2(b). Such nationwide child support jurisdiction standards do not, however, mean that there are comparable nationwide jurisdiction standards for parentage, or even that there are nationwide standards on defining parentage in child support settings.

7. *See, e.g., In re Schneider*, 268 P.3d 215, 218 (Wash. 2011) (en banc) (“This potential for competing child support orders, with varying terms and duration depending on the issuing jurisdiction, resulted in a proliferation of litigation. . . . The UIFSA addressed this ‘chaos’ by establishing a ‘one-order’ system for child support orders by providing that one state would have continuing exclusive jurisdiction over the order.” (citation omitted)).

8. UIFSA, *supra* note 1, § 301(b).

9. *Id.* § 304(a). The child support petitioner typically can agree to the responding tribunal’s exercise of subject matter jurisdiction on issues of custody, parenting time, and the like. *See, e.g., In re Paternity of J.G.*, 19 N.E.3d 278 (Ind. Ct. App. 2014).

10. UIFSA, *supra* note 1, § 303; 28 U.S.C. § 1738B(h)(1) (2012). On occasion, a custodial parent will be sued in a nonresidential state on the issue of the resident petitioner’s parentage, even though the custodial parent cannot be pursued there on child support or child custody matters. *See, e.g., DeWitt v. Lechuga*, 393 S.W.3d 113, 119 (Mo. Ct. App. 2013).

paternity—or by a formal adoption undertaken with judicial oversight.<sup>11</sup> In each setting, parentage arose at a distinct moment in time. Since Congress acted, however, many states have redefined legal parentage in ways, as with *de facto* parenthood and equitable adoption, that have no precise moment of origination.<sup>12</sup> New imprecise forms of parentage emerged because family structures changed; today, more same-sex marriages, as well as more unwed same- and opposite-sex couples, are raising children together.<sup>13</sup>

Similar to the establishment of parentage, states have created new, imprecise forms of disestablishing initial parentage designations since Congress enacted the UIFSA. This change includes rebuttals of marital paternity presumptions and rescissions of voluntary paternity acknowledgements.<sup>14</sup> New imprecise forms of parentage disestablishment emerged for several reasons, including better and more widely available genetic testing and the increasing numbers of births to unwed mothers that have prompted more rescindable paternity acknowledgments.

Because parentage is not defined clearly, courts must look back in time to decide whether certain acts, like household residence or a parental-like relationship, occurred. Many state courts exercising non-forwarded and forwarded home-state jurisdiction in initial child support cases are now choosing to apply their own imprecise parentage laws when examining acts occurring elsewhere.<sup>15</sup> When states differ in these new imprecise forms of parentage, as they often do,<sup>16</sup> undesirable forum shopping is encouraged and uncertainty reigns. These problems are exactly what Congress tried to address when it enacted the UIFSA.<sup>17</sup>

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11. See Jeffrey A. Parness, *Dangers in De Facto Parenthood*, 37 U. ARK. LITTLE ROCK L. REV. 25, 29–30 (2014) (presumed parents) [hereinafter Parness, *Dangers*]; Jeffrey A. Parness & Zachary Townsend, *For Those Not John Edwards: More and Better Paternity Acknowledgments at Birth*, 40 U. BALT. L. REV. 53 (2010) (voluntary paternity acknowledgments).

12. See Jeffrey A. Parness, *Parentage Law (R)Evolution: The Key Questions*, 59 WAYNE L. REV. 743, 752–63 (2013) [hereinafter Parness, *Parentage Law (R)Evolution*].

13. See Katherine K. Baker, *Bionormativity and the Construction of Parenthood*, 42 GA. L. REV. 649, 652 n.9 (2008).

14. See Jeffrey A. Parness, *Challenges in Handling Imprecise Parentage Matters*, 28 J. AM. ACAD. MATRIM. LAW. 401, 409–10 (forthcoming 2015) [hereinafter Parness, *Handling Imprecise Parentage*]; see also Parness & Townsend, *supra* note 11.

15. See *infra* Parts III, IV.

16. See Parness, *Parentage Law (R)Evolution*, *supra* note 12, at 757–58.

17. See *supra* notes 5–7 and accompanying text; see also Patricia W. Hatamyar, *Interstate Establishment, and Modification of Child Support Orders*, 25 OKLA. CITY U. L. REV. 511, 514–19 (2000) (reviewing history and operation of the UIFSA); Laura W. Morgan, Note, *Pre-Emption or Abdication? Courts Rule*

The establishment of parentage and the disestablishment of legal parentage matters beyond mere child support cases, and thus its ambiguity affects other areas of family law. State trial courts must establish legal parentage where the parties dispute parental child-caretaking opportunities.<sup>18</sup> For example, in a paternity action, an alleged unwed biological father may seek a childcare order against an unwed birth mother. In a parentage action, a woman may seek a childcare order in a proceeding against her former lesbian partner, an objecting birth mother. Here too, courts often choose to apply their own imprecise parentage laws where relevant parental-like conduct occurred elsewhere.<sup>19</sup>

In cases other than initial child support proceedings, state trial courts often must consider the disestablishment of legal parentage. For example, either a wife or a husband may seek to disestablish the husband's parentage arising from a marital presumption.<sup>20</sup> A birth mother, a male signatory, or someone else may seek to disestablish the signing male's parentage arising from a voluntary paternity acknowledgment.<sup>21</sup> State courts often employ their own parentage laws on rebuttals or rescissions,<sup>22</sup> which do not recognize precise moments of parentage disestablishment.<sup>23</sup>

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*Federal Law Trumps State Law in Child Support Jurisdiction*, 24 J. AM. ACAD. MATRIM. LAW. 217, 217–24 (2011) (providing the history of the UIFSA).

18. Home state courts on occasion decline to exercise jurisdiction where another state's court has already acted and where, for example, there are "emergency" health issues for the child. *See, e.g.*, *J.D.S. v. Franks*, 893 P.2d 732, 746 (Ariz. 1995) (en banc) (deference to earlier-filed Florida adoption proceeding where child's home state was Arizona).

19. *See infra* Part IV.C.

20. *See, e.g.*, *In re Jesusa V.*, 85 P.3d 2 (Cal. 2004) (two presumed fathers willing to childcare); *State v. EKB*, 35 P.3d 1224 (Wyo. 2001) (neither presumed father willing to childcare).

21. *See infra* Part IV.D.

22. Forum laws are not applied, however, in certain circumstances where the parties ask the forum court to enforce a child support order issued by a court of a different state. 28 U.S.C. § 1738B(h)(2), (3) (2012). *See, e.g.*, *Johns v. Johns*, No. W2013-01102-COA-R3-CV, 2013 WL 6050939, at \*5–6 (Tenn. Ct. App. Nov. 15, 2013) (holding that under 28 U.S.C. § 1738B(h)(3), federal law required a Tennessee court to apply the longer Arkansas limitations period when asked to enforce an Arkansas child support order in arrears).

23. For example, male parentage disestablishments in both marital presumption and voluntary acknowledgement settings sometimes depend more upon subjective standards, like equitable estoppel and duress, than upon objective standards, like lack of genetic ties. Exemplary cases denying rebuttals of marital paternity presumptions without genetic ties between children and husbands include settings where the husband or wife is estopped from rebutting due to the man's developed parental-relationship with the marital child. *See, e.g.*, *Hinshaw v. Hinshaw*, 237 S.W.3d 170, 173–74 (Ky. 2007) (wife–mother lied to husband about his genetic ties, prompting him to establish a strong parent-child relationship); *see generally* Caroline Rogus, *Fighting the Establishment: The Need for Procedural Reform of Our Paternity Laws*, 21 MICH. J. GENDER & L. 67

Blood tests alone cannot always undo presumptions or acknowledgments.<sup>24</sup> Judicial choices to use forum law often occur regardless of where significant events, like holding out a child as one's own or providing child support, occurred.<sup>25</sup> Applying the state's own forum law sometimes upsets settled expectations and denies adults and children their continuing familial relationships.

Greater attention must be devoted to imprecise state parentage laws and the issues they raise in proceedings that initially determine parentage, whether they involve child support or childcare,<sup>26</sup> as well as in proceedings that seek to disestablish legal parentage. The implementation of any of the following at the minimum may resolve these issues in part: a newly written and uniform set of federal parentage laws, newly written and explicit state choice-of-law standards, or state courts more frequently applying imprecise foreign state parentage precedents under current choice-of-law standards.

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(2014) (suggesting reforms easing burdens on those seeking to rescind voluntary paternity acknowledgments). Exemplary cases denying rescissions of voluntary paternity acknowledgments without genetic ties between children and male acknowledgers include, also, settings where the birth mother or male acknowledger is estopped from rebutting due to the man's developed parental relationship with the child. *See, e.g., In re Paternity of A.G.P.*, No. 39A05-1311-JP-558, 2014 WL 2192799 (Ind. Ct. App. May 27, 2014) (denying the birth mother the opportunity to rescind as "[she] cannot take advantage of the fraud she herself perpetuated on the court"). Comparably, a presumed parentage establishment involving "holding out" a child as one's own is also generally subject to rebuttal on more subjective than objective standards. *See, e.g., Chaterjee v. King*, 280 P.3d 283, 302-08 (N.M. 2012) (considering estoppel and inequity when birth mother seeks to rebut the presumption of parenthood).

24. *See, e.g., R.P. v. K.S.W.*, 320 P.3d 1084, 1089, 1099 (Utah Ct. App. 2014) (citing UTAH CODE ANN. § 78B-15-607 (2009)) (biological father cannot undo marital presumption where the married couple is "committed to remaining married"); *Helton v. Beamon*, 861 N.W.2d 621, 621-22 (Mich. 2015) (acknowledgment rescission after 60 days requires not only proof of fraud, duress, or mistake, but also a best interests analysis).

25. *See, e.g., DEL. CODE ANN. tit. 13, § 8-103(a)-(b)* (West Supp. 2015) ("This chapter applies to determinations of parentage in this State. The court shall apply the law of this State to adjudicate the parent-child relationship. The applicable law does not depend on: (1) The place of birth of the child; or (2) The past or present residence of the child."); ALA. CODE § 26-17-103 (2009); TEX. FAM. CODE ANN. § 160.103 (West 2014); OKLA. STAT. tit. 10, § 7700-103 (West 2009). The provisions cited above were taken from the Uniform Parentage Act. *See UNIF. PARENTAGE ACT § 103* (amended 2002), *available at* [http://www.uniformlaws.org/shared/docs/parentage/upa\\_final\\_2002.pdf](http://www.uniformlaws.org/shared/docs/parentage/upa_final_2002.pdf) [hereinafter UPA].

26. Beyond child support and childcare, courts may need to initially determine parentage in proceedings on heirship, *DeHart v. DeHart*, 986 N.E.2d 85, 98 (Ill. 2013), on the governmental requirements to provide reunification services for parents whose children are in dependency proceedings, *In re C.C.*, No. A142870, 2014 WL 6839585, at \*4 (Cal. Ct. App. 2014), and on life insurance proceeds, *Minn. Life Ins. Co. v. Jones*, 771 F.3d 387, 388 (7th Cir. 2014).

This Article urges the courts to develop new state choice-of-law precedents that require the occasional employment of foreign state laws for certain imprecise parentage law issues, most often pursuant to a state interest analysis.<sup>27</sup>

Part I reviews choice of law in initial parentage proceedings. Part II introduces the varying forms of imprecise American state parentage laws. Part III explores exemplary cases involving judicial respect for earlier parentage determinations elsewhere, while Part IV examines exemplary cases on choosing imprecise parentage laws when there were no earlier determinations. Part V demonstrates how, in choosing between imprecise parentage laws, courts should not always choose forum law and should instead choose differing state laws in differing settings, as with childcare and child support issues.

#### I. CHOICE OF LAW IN INITIAL PARENTAGE PROCEEDINGS

Under federal law, appropriate state authorities, including trial courts, must enforce and may not modify certain child support orders made in other states.<sup>28</sup> Such full faith and credit afforded to foreign state child support orders is dependent upon the foreign state court acting pursuant to its own state laws, having subject-matter jurisdiction and “personal jurisdiction over the contestants;” and giving “reasonable notice and opportunity to be heard . . . to the contestants.”<sup>29</sup> A state court, however, generally “shall apply” forum law in an initial proceeding to establish a child support order under federal law.<sup>30</sup> Courts have interpreted this law to require the state courts entertaining initial child support petitions to utilize their own state laws in determining the parentage of the respondent, when the parentage is in doubt.<sup>31</sup>

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27. This Article does not address American state court responsibilities regarding the parentage laws of foreign countries. *See, e.g.*, OHIO REV. CODE ANN. § 3127.04(B)–(C) (West 2011) (provided that if there is no violation of “fundamental principles of human rights,” Ohio courts shall recognize and enforce child custody determinations made in foreign countries that substantially conform with certain jurisdictional standards); *In re Yaman*, 105 A.3d 600 (N.H. 2014) (respecting Turkish court order regarding childcare for children then living in New Hampshire); *In re A.L.C.*, 16 F. Supp. 3d 1075 (C.D. Cal. 2014) (holding child born, and remaining in, California is a habitual resident of Sweden per International Child Abduction Remedies Act (“ICARA”) of Hague Convention).

28. 28 U.S.C. § 1738B (2012).

29. *See id.* § 1738B(c).

30. *See id.* § 1738B(h)(1). In a proceeding involving either the interpretation or enforcement of an earlier child support order issued in another state, or both, the forum jurisdiction’s laws are not applied. *See id.* § 1738B(h)(2)–(3).

31. *See infra* Part IV.A–B.

The plaintiff in an initial child support proceeding can be “a person (including a parent) who . . . claims a right to receive child support” or a governmental unit “to which the right to obtain child support has been assigned.”<sup>32</sup> An issuing court most often is located in the “child’s home State,” meaning:

[T]he State in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately preceding the time of the filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them.<sup>33</sup>

The court in an initial proceeding to establish child support in a home state must respect, per federal law, an earlier parentage determination made in another state.<sup>34</sup> For example, an earlier parentage determination may arise in a marriage dissolution or paternity case decree, a formal adoption order, or a voluntary parentage declaration.<sup>35</sup> An earlier determination declares legal parentage at a distinct moment in time for all later purposes.<sup>36</sup>

As noted earlier, an initial proceeding to establish child support may also begin in, but not be finally decided by, a home state court. Where the respondent—typically a nonresident—is not subject to personal jurisdiction

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32. See 28 U.S.C. § 1738B(b).

33. *Id.* (“A period of temporary absence of any of [the parents or persons acting as parents] is counted as part of the 6-month period.”); see, e.g., *Drexler v. Bornman*, 92 A.3d 628 (Md. Ct. Spec. App. 2014) (seven to eight day absence). In some cases, there is no home state, as when the child is less than six months old and has lived in two or more states. States vary on who can be a nonparent qualified as a “person acting as a parent.” *Schirado v. Foote*, 785 N.W.2d 235, 241–44 (N.D. 2010). To date, state courts considering the issue have decided the unborn cannot have a “home state.” See, e.g., *Gray v. Gray*, 139 So. 3d 802, 806–08 (Ala. Civ. App. 2013).

34. See, e.g., 28 U.S.C. § 1738(a)(1). The home state must also respect certain parentage determinations made in other states that were not related to child support. See, e.g., OHIO REV. CODE ANN. § 3127.20(A) (West 2011) (providing that no Ohio court may exercise subject matter jurisdiction where “a child custody proceeding concerning the child is pending in a court of another state having jurisdiction”).

35. See, e.g., *Kielkowski v. Kielkowski*, 346 P.3d 690 (Utah Ct. App. 2015) (marital presumption of husband’s paternity not rebutted though divorce default contained husband’s statement that there were “no children at issue in this marriage”); *Lehr v. Robertson*, 463 U.S. 248 (1983) (stepfather adoption over natural father’s objection); 42 U.S.C. § 666(a)(5)(A) (2012) (“paternity establishment” procedures, including voluntary paternity acknowledgments as conditions to state participation in federal welfare subsidy programs).

36. See Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1998).

in the home state,<sup>37</sup> the home state court may forward a child support proceeding for decision to a responding tribunal in a state where there is personal jurisdiction.<sup>38</sup> The second state court must respect an earlier parentage determination.<sup>39</sup> Courts must also respect earlier parentage determinations in other cases, such as cases dealing with childcare petitions and marriage dissolution disputes.<sup>40</sup>

Where there is no earlier parentage determination, the home state court deciding upon child support must first determine parentage,<sup>41</sup> as must a non-home state court deciding a child support case that another court forwarded to the non-home state court.<sup>42</sup> Further, the court must often undertake an initial parentage determination in nonsupport cases, like a paternity action where a biological father is seeking court-ordered childcare or a marriage dissolution action where a wife disputes the marital presumption of parentage to end the husband's childcare rights for a child born to the wife. In each instance, the deciding court will typically apply its own parentage law.<sup>43</sup>

Federal law seemingly prompts a home state court initially determining child support to make any required determination of parentage under its own state law.<sup>44</sup> Federal law also seemingly prompts a non-home state court, responding to a case forwarded by a home state court, to make any required determination of parentage under its own state law if the state must initially decide child support.<sup>45</sup>

Comparably, state courts will sometimes choose to employ their own parentage laws in cases not initially seeking child support, but where legal parentage is relevant and either not yet determined or earlier determined but still subject to challenge. This occurs via a rebuttal of a parentage

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37. The bases for personal jurisdiction over a nonresident in an initial child support proceeding are found in the UIFSA § 201, which provides requirements demanded of states receiving federal welfare aid. UIFSA, *supra* note 1, § 201.

38. *Id.* § 301(b).

39. *Id.* § 303(1).

40. *Id.* § 305(b) (stating that the second state court can only “determine parentage of a child. . . . to the extent not prohibited by other laws”). Other law may involve legal requirements that the second state respect an earlier parentage determination within or outside the second state. *See, e.g., id.* § 315 (“A party whose parentage of a child has not been previously determined by or pursuant to law may not plead nonparentage as a defense . . .”).

41. *See, e.g., id.* § 201(a) (“In a proceeding to establish . . . a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction . . . if . . . the individual resided with the child in this state.”).

42. *Id.* § 305(b)(1).

43. *Id.*

44. 28 U.S.C. § 1738B(h)(1) (2012).

45. UIFSA, *supra* note 1, § 303(2) (“[D]etermine the duty of support . . . in accordance with the law . . . of [the] state.”).

presumption or a rescission of a voluntary parentage acknowledgment.<sup>46</sup> Perhaps a state's adoption of the Uniform Parentage Act, which says a court adjudicating "the parent-child relationship" must apply its own law regardless of the "place of birth of the child" or the "past or present residence of the child," motivates many courts.<sup>47</sup> In some parentage settings, state courts fail to consider that their own state laws, particularly their own choice of law standards, prompt the courts to apply foreign state parentage laws.<sup>48</sup>

*Crouch v. Smick*, a 2014 Illinois Appellate Court ruling, is exemplary of an overly hasty, although ultimately correct, employment of forum parentage law.<sup>49</sup> In that case, a former wife and resident of California sought to terminate the parental rights of her former husband, a resident of Illinois, in an Illinois state court.<sup>50</sup> The couple divorced in Illinois, where a court had earlier decided post-marital custody and visitation issues of the marital children.<sup>51</sup> The mother pursued a termination of parental rights so that her new husband could adopt the children.<sup>52</sup> The former husband objected.<sup>53</sup> The Illinois appellate court sustained the trial court's retention of jurisdiction arising initially from the marriage dissolution proceeding, but reversed the lower court's application of California law, even though the mother's new husband was hoping to adopt her children in California with the mother's approval.<sup>54</sup> *Crouch* applied Illinois law when deciding whether to terminate parental rights simply because Illinois continued to be the home state of the children.<sup>55</sup> Illinois was the home state under law, if not in reality, as the former husband remained there. *Crouch* summarily concluded at the outset that "once Illinois is determined to be the home state under [Uniform Child Custody Jurisdiction and Enforcement Act], Illinois law applies."<sup>56</sup> The court later categorically declared: "If an Illinois

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46. See *infra* Part IV.D–E.

47. See, e.g., UPA, *supra* note 25, § 103(b) ("The court shall apply the law of this State to adjudicate the parent-child relationship. The applicable law does not depend on: (1) the place of birth of the child; or (2) the past or present residence of the child."). Several American states adopted the language of the UPA. See, e.g., N.M. STAT. ANN. § 40-11A-103(b) (West 2013); ALA. CODE § 26-17-103 (2009); N.D. CENT. CODE ANN. § 14-20-03(a) (West 2008); TEX. FAM. CODE ANN. § 160.103(b) (West 2014); DEL. CODE ANN. tit. 13, § 8–103(b) (West Supp. 2015); OKLA. STAT. tit. 10, § 7700–103 (West 2009).

48. See *infra* Part V.

49. 24 N.E.3d 300 (Ill. App. Ct. 2014).

50. *Id.* at 303.

51. *Id.* at 301.

52. *Id.*

53. *Id.*

54. *Id.* at 301, 302.

55. *Id.* at 305.

56. *Id.* at 301.

court is determined to be the home state for jurisdiction, it is necessarily the state with the most significant relationship for choice-of-law purposes and Illinois law applies.”<sup>57</sup>

The Illinois appellate court’s reasoning was based on the unfounded assumption that the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), and its predecessor the Uniform Child Custody and Jurisdiction Act (“UCCJA”), would be undermined when applying any California laws, as “jurisdictional conflicts” and “forum shopping” would arise.<sup>58</sup> The court failed to distinguish, however, between jurisdiction and choice of law, and also failed to recognize—as did the California adoption court<sup>59</sup>—that a choice-of-law interest analysis would also prompt the use of Illinois law. The main issues involved the former husband’s alleged abandonment, disability due to drug addiction, developmental disability, and mental disability, so that most relevant evidence “is in Illinois.”<sup>60</sup> In other post-dissolution disputes, however, a choice-of-law interest analysis—which often guides Illinois courts in other true conflict settings<sup>61</sup>—might favor California law. Consider, for example, what law should apply in an Illinois proceeding when a California mother seeks to have her new husband declared a presumed or de facto parent, on equal footing with her former husband, because of her new husband’s significant childcare and parental-like acts in California. In this situation, a true conflict would exist as California, in contrast to Illinois, recognizes imprecise parentage in the childcare setting via its presumed parent statutes.<sup>62</sup> These statutes also contemplate the possibility of three parents, unlike Illinois.<sup>63</sup>

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57. *Id.* at 305.

58. *Id.* at 304–05.

59. *Id.* at 303.

60. *Id.* at 302.

61. *See, e.g.,* *Morris B. Chapman & Assocs. v. Kitzman*, 739 N.E.2d 1263, 1269 (Ill. 2000) (“Ordinarily, Illinois follows the Restatement (Second) of Conflicts of Laws (1971),” including Section 6 encompassing a competing state interest analysis.).

62. *Compare* CAL. FAM. CODE § 7611 (West 2013) (presumed parentage for person without biological ties or formal adoption), *with In re Scarlett Z.D.*, 28 N.E.3d 776 (Ill. 2015) (no presumed, de facto, equitable adoption or other parentage recognition for childcare purposes without General Assembly action).

63. *Compare* CAL. FAM. CODE § 7612(c) (three parents including two presumed parents and birth mother, where “recognizing only two parents would be detrimental to child”), *with* 750 ILL. COMP. STAT. ANN. 46/204(b) (effective Jan. 1, 2016) (with 2 or more conflicting presumptions, a single presumption is chosen).

## II. INTRODUCTION TO IMPRECISE AMERICAN STATE PARENTAGE LAWS

State courts usually respect earlier judicial or judicial-type determinations of legal parentage made in foreign states.<sup>64</sup> These determinations deem parentage to have arisen at precise moments in time.<sup>65</sup> Affording respect is relatively easy.<sup>66</sup>

Forum state courts sometimes apply their own parentage laws where there were no such earlier parentage determinations, although foreign state courts could have made such determinations if asked about what occurred in their borders. Thus, where the relevant foreign state parentage laws are imprecise, as with doctrines like *de facto* parenthood, equitable adoption, and rescindable voluntary paternity acknowledgements, forum state courts will often utilize their own laws even though all or most of the relevant acts occurred elsewhere. Because foreign state policies are not afforded respect, undesirable forum shopping is encouraged and uncertainty about initial or continuing legal parentage frequently reigns.<sup>67</sup>

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64. Besides respecting judicial orders in, for example, marriage dissolution or paternity cases as per the Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1994), courts must afford respect to some judicial-type initiatives having the force and effect of court judgments, like voluntary paternity acknowledgments. *See* 410 ILL. COMP. STAT. ANN. 535/12(5) (West 2009) (purpose of an unwed biological father's acknowledgment is to establish "legally . . . the biological father and child relationship"); 750 ILL. COMP. STAT. ANN. 45/6(b) (West 2009) (voluntary acknowledgment has "full force and effect of a judgment").

65. *See* Parness, *Handling Imprecise Parentage*, *supra* note 14, at 403–12 (contrasting precise and imprecise parentage laws).

66. Of course, legal parentage can be determined for a number of purposes. A determination of parentage in one state for child support purposes does not warrant respect in a second state where the issue involves the male parent's ability to veto a proposed adoption where paternity norms differ in the two settings. *See, e.g.,* *Adoption of A.S.*, 151 Cal. Rptr. 3d 15 (Ct. App. 2012) (holding New York order of filiation for child support purposes only establishes biological ties which prompt support duties, and not parentage, leading to adoption veto powers).

67. Failure to utilize imprecise foreign state parentage law is sometimes justifiable, as when a foreign state court refuses to exercise jurisdiction and there is a significant relationship between the forum and the parties interested in parentage. *See, e.g.,* *H.O. v. Utah*, 122 P.3d 686, 689 (Utah Ct. App. 2005) (Utah court employs Utah parental rights termination standards to parent living in Arizona, where Utah is "the state with the most significant relationship to the children and the proceedings to terminate parental rights" and where "the Arizona court declined jurisdiction over the child custody proceeding.").

Imprecise American state parentage laws abound, originating both in statutes<sup>68</sup> and judicial precedents<sup>69</sup> and such laws can carry differing doctrinal names while having similar requirements to establish and disestablish parentage.<sup>70</sup> These laws can designate parentage not only as de facto parenthood and equitable adoption, but also as psychological parent, parent by estoppel, presumed parenthood, *in loco parentis* parent, and equitable parent.<sup>71</sup> The same doctrinal name can have different meanings from state to state. For example, a de facto parent, perhaps surprisingly, sometimes encompasses a parent on par with a birth or adoptive mother or a biological or adoptive father.<sup>72</sup> A de facto parent also sometimes encompasses a nonparent who has third party standing to seek a childcare order over parental objection.<sup>73</sup> As well, different doctrinal names can have comparable meanings,<sup>74</sup> as with de facto parent, equitable parent, parent by estoppel, and presumed parenthood.<sup>75</sup> A de facto parent generally includes a parent on equal footing with a biological or a formal adoptive parent, whether arising under statute or precedent, regardless of the doctrinal name employed.

Beyond their names, the degrees of imprecision of state de facto parent laws vary from state to state. Some de facto parent laws are more objective, as with laws following the Uniform Parentage Act,<sup>76</sup> which requires a two-year residence and a “holding out” of a child as one’s own to establish

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68. See Parness, *Handling Imprecise Parentage*, *supra* note 14, at 403–12; Parness, *Parentage Law (R)Evolution*, *supra* note 12, at 752–63.

69. See Parness, *Handling Imprecise Parentage*, *supra* note 14, at 403–12; Parness, *Parentage Law (R)Evolution*, *supra* note 12, at 752–63.

70. See generally Parness, *Parentage Law (R)Evolution*, *supra* note 12 (providing a general review, and comparison, of American state parentage laws).

71. *Id.* at 762, 764 n.102.

72. *Id.* at 769 n.137.

73. Compare DEL. CODE ANN. tit. 13, § 8–201(a)(4), (b)(6), (c) (West Supp. 2015) (providing for de facto parenthood, on equal footing with biological or adoptive parenthood, where one had a “parent-like relationship” and “acted in a parental role”), with D.C. CODE § 16-831.01 (2009) (providing that de facto parent can seek “third-party custody” if he or she lived with a child since birth).

74. Compare DEL. CODE ANN. tit. 13, § 8–201(a)(4), (b)(6), (c) (2015) (providing for de facto parenthood, on equal footing with biological or adoptive parenthood, where one had a “parent-like relationship” and “acted in a parental role”), with ALA. CODE § 26-17-204(a)(5) (2009) (providing that one is a “presumed parent” if, “while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child or otherwise openly holds out the child as his natural child and establishes a significant parental relationship with the child by providing emotional and financial support for the child”).

75. For a review of imprecise American state parentage laws, both via statutes and precedents, see Parness, *Handling Imprecise Parentage*, *supra* note 14, at 403–12.

76. UPA, *supra* note 25, § 204(a)(5).

parentage.<sup>77</sup> Others are more subjective, as with laws that require a bonded or dependent or parental-type relationship.<sup>78</sup>

Many cases illustrate how the courts determine which de facto parentage law to apply and how the state courts fail to recognize choice-of-law issues. In too many cases involving multistate acts, courts neglect to consider the unique and legitimate interests of foreign state governments that prompted their imprecise parentage laws and the reasonable expectations of those who provide parental-like childcare. At times, courts simply apply forum laws without justifying their choices, sometimes aided by parties who fail to seek a choice-of-law analysis.

### III. EXEMPLARY CASES INVOLVING RESPECT FOR EARLIER PARENTAGE DETERMINATIONS

American Courts facing claims implicating legal parentage generally respect parentage determinations made elsewhere. Such earlier determinations can be made in a number of ways, including through court cases, voluntary parentage acknowledgments, and marital parentage presumptions.

#### *A. Respect in Home State Child Support Cases*

Where a child has resided in a state for more than six months, a court in that state can initially establish child support obligations for a parent also living in the state.<sup>79</sup> In doing so, however, the home state court must respect a parentage determination made earlier in another state where the court did not consider child support.<sup>80</sup> While federal statutory law obliges a state court generally to apply its own laws in a proceeding to establish a child support order,<sup>81</sup> its own laws can include its choice-of-law rules, because the Full Faith and Credit Clause dictates that respect be given to a parentage determination made in another state.<sup>82</sup> Such foreign state

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77. See, e.g., N.M. STAT. ANN. § 40-11A-204(A)(5) (West 2013); N.D. CENT. CODE § 14-20-10(1)(e) (West 2009); OKLA. STAT. ANN. tit. 10, § 7700-204(A)(5) (West 2009).

78. See, e.g., DEL. CODE ANN. tit. 13, § 8-201(c) (West Supp. 2015) (providing for de facto parenthood). *But see* Bancroft v. Jameson, 19 A.3d 730, 750 (Del. Fam. Ct. 2010) (holding that there can be no de facto parenthood when there are already two fit parents as otherwise due process privacy rights of existing parents are unduly compromised).

79. 28 U.S.C. § 1738(B) (2012).

80. *Id.*

81. 28 U.S.C. § 1738B(h)(1).

82. U.S. CONST. art. IV, §1.

parentage determinations are perhaps infrequent, however, as child support rulings usually accompany initial parentage rulings.<sup>83</sup>

### *B. Respect in Child Support Cases in Responding Tribunals*

When established child support obligors—but not custodial parents—move interstate, their support obligations often are enforced in the courts of their new residences. Personal jurisdiction is assured in those courts, as the parties are residents subject to suit in their state of residency. In these enforcement proceedings, the UIFSA “responding” tribunals must respect the child support and underlying parentage orders entered elsewhere.<sup>84</sup> In doing so, the UIFSA bars these tribunals from entertaining a defense of nonparentage.<sup>85</sup> Further, the UIFSA usually prohibits those tribunals from entertaining claims by these obligors for parenting time, visitation, or custody.<sup>86</sup>

### *C. Respect in Childcare Disputes*

Later childcare disputes in the forum state also employ earlier parentage determinations by other state courts.<sup>87</sup> *Berwick v. Wagner*, a Texas child custody proceeding, involved a child born to a gestational surrogate in California.<sup>88</sup> Jerry Berwick and Richard Wagner married in Canada in 2003.<sup>89</sup> They registered as domestic partners in California in 2005, but

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83. *But see* State *ex rel.* N.G. v. Cuyahoga Cnty. Court of Common Pleas, No. 101425 (Ohio Ct. App. Sept. 30, 2014) (respecting man’s parentage arising under earlier Virginia home state ruling on “allocation of parental rights”).

84. *See* U.S. CONST. art. IV, §1.

85. *See, e.g.,* Reid v. Dixon, 524 S.E.2d 576, 577 (N.C. Ct. App. 2000) (relying upon N.C. GEN. STAT. § 52C-3-314 (1995)); *see also* State v. Hanson, 725 So. 2d 514, 515 (La. Ct. App. 1998) (noting that to contest paternity established in Iowa that led to Iowa child support order sought to be enforced in Louisiana, Louisiana child support obligor “must return to the forum that rendered the judgment on paternity”).

86. *See, e.g.,* State *ex rel.* R.L.H., 942 P.2d 1386 (Colo. App. 1997); COLO. REV. STAT. ANN. §§ 14-5-314(a), 14-5-701(b) (West 2005).

87. No respect is given, however, to earlier childcare judgments wherein the courts lacked jurisdiction. *See, e.g.,* Pecoraro v. Rostagno-Wallat, 805 N.W.2d 226 (Mich. Ct. App. 2011) (no respect for New York filiation proceeding declaring filiation in biological father where child was born to a married couple in Michigan and where New York court lacked personal jurisdiction over husband); *In re* Marriage of Dedie, 255 P.3d 1142 (Colo. 2011) (en banc) (no respect for New York child custody modification order where New York court lacked jurisdiction); *In re* L.S., 257 P.3d 201 (Colo. 2011) (en banc) (no respect for Nebraska custody decree where there was no subject matter jurisdiction).

88. *Berwick v. Wagner*, No. 01-12-00872-CV, 2014 WL 4493470 (Tex. App. Sept. 11, 2014).

89. *Id.* at \*1.

lived in Houston, Texas.<sup>90</sup> In 2005, they entered into a gestational surrogacy agreement with a woman in California to carry a child for them.<sup>91</sup> She was implanted with embryos formed from Berwick's sperm and from donated ova.<sup>92</sup> The result was the birth of a son, C.B.W.<sup>93</sup>

A California court entered a Judgment of Paternity before C.B.W.'s birth, and declared both Berwick and Wagner a "legal parent" of C.B.W.<sup>94</sup> The court also found that the surrogate and her husband were not legal parents,<sup>95</sup> and further ordered the hospital to list Berwick in the space provided for father on the child's birth certificate and Wagner in the space provided for mother.<sup>96</sup>

Berwick ended his relationship with Wagner in 2008.<sup>97</sup> Berwick later married a woman, telling Wagner that they could no longer co-parent C.B.W., saying Wagner needed to "move on and 'get his own family' and 'his own little boy.'"<sup>98</sup> Wagner then petitioned for joint managing conservatorship custody of C.B.W. in a Texas court in 2008, and separately sought to register the California Judgment of Paternity in Texas.<sup>99</sup> Over Berwick's objection, the trial court confirmed the California judgment, giving Wagner standing to seek custody.<sup>100</sup> A jury trial was held after Berwick's unsuccessful appeal from the order confirming the registration.<sup>101</sup> Upon a jury verdict appointing Wagner as sole managing conservator and Berwick as possessory conservator, Berwick appealed again.<sup>102</sup>

On appeal, Berwick argued that the registration of the California judgment in Texas "does not mean that it is enforceable" because the registration was "contrary to Texas law," under which a child can have only one legal father.<sup>103</sup> Berwick also contended that the gestational surrogacy agreement was void under Texas law because Texas did not recognize the parties' same-sex marriage.<sup>104</sup> Texas law provides that

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90. *Id.* (noting that their relationship ran from 1994 to 2008).

91. *Id.*

92. *Id.*

93. *Id.* (noting that after C.B.W.'s birth, Berwick and Wagner "lived together as a family for several years" in Houston).

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at \*16–18.

99. *Id.* at \*1.

100. *Id.* at \*2.

101. *Id.*

102. *Id.*

103. *Id.* at \*3; *see also* TEX. FAM. CODE ANN. § 160.201 (West 2014).

104. *Berwick*, 2014 WL 4493470, at \*3.

surrogacy agreements are enforceable only if the intended parents are married to each other.<sup>105</sup>

The Texas appellate court held that the California Judgment of Paternity was entitled to full faith and credit “without regard to public policy concerns” involving Texas laws.<sup>106</sup> The court recalled that in *Berwick*’s earlier appeal, the court had held that the parties’ California Judgment of Paternity declaring Wagner to be a legal parent was properly registered in Texas and that the California court had jurisdiction to enter the judgment.<sup>107</sup>

The case of *Park v. Bailey*<sup>108</sup> demonstrates comparable deference to another state’s paternity judgment, which the respecting court could not enter if all relevant conduct occurred in the foreign state. In *Park*, an unwed biological father obtained a paternity judgment in Alabama in a childcare dispute involving a proposed adoption in Georgia.<sup>109</sup> The Georgia court respected the Alabama paternity judgment although the Alabama ruling technically did not comply with Georgia adoption law norms on a father’s veto power over a proposed adoption.<sup>110</sup>

The *Berwick* and *Park* rulings demonstrate how a court in a childcare dispute will respect the parentage determination made elsewhere even when all relevant conduct occurred within its borders and even if the court itself could not make such a determination.

#### *D. Respect in Marital Parentage Presumption Cases*

State laws, chiefly through statutes, recognize marital parentage presumptions on behalf of the male—and sometimes the female—spouses of birth parents.<sup>111</sup> Spousal relationships must exist when birth, conception, or pregnancy occurs.<sup>112</sup> In this situation, the presumptions arise at precise moments.<sup>113</sup> Where birth, conception, or pregnancy occur in one state, and the parties argue for the presumed spousal parentage arising from that event for the first time in a second state, a court in the second state will often

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105. *Id.* (citing TEX. FAM. CODE ANN. § 160.754(b)).

106. *Id.* at \*6.

107. *Id.*

108. 765 S.E.2d 721 (Ga. Ct. App. 2014) (Alabama paternity judgment standards substantially followed the Georgia legitimation norms).

109. *Id.* at 723.

110. *Id.* at 725.

111. See Parness, *Parentage Law (R)Evolution*, *supra* note 12, at 757–58.

112. *Id.* at 756–57.

113. *Id.* (at birth, at time of conception, or during pregnancy).

defer to the marital presumption laws of the first state, though the court in the first state never judicially recognized such a presumption.<sup>114</sup>

In a trusteeship case decided in Minnesota in 2004, a Minnesota court respected a Florida marital parentage presumption, although the presumption had never been formally recognized in a Florida judicial proceeding.<sup>115</sup> In that case, a man, JHM, created three irrevocable trusts by 1980 to benefit his children, the combined value of which was approximately \$900 million.<sup>116</sup> In 1979, JHM married PAM, his third wife.<sup>117</sup> JHM and PAM divorced in 1991.<sup>118</sup> During the marriage, PAM gave birth to DHM in 1983, CWM in 1985 and ACM in 1987.<sup>119</sup> The birth certificates of each of these children listed JHM as the father.<sup>120</sup>

Before a Florida court granted the 1991 divorce, JHM had earlier filed for divorce, in 1986, wherein he challenged the paternity of DHM and CWM.<sup>121</sup> But this 1986 suit was voluntarily dismissed with prejudice.<sup>122</sup> In 1989, the trustees of a fourth trust distributed trust assets to all of JHM's children, including DHM, CWM, and ACM.<sup>123</sup> That trust was to benefit all of JHM's "children," defined by the trust to include all of JHM's "legal issue and all adopted children."<sup>124</sup>

In the 1991 divorce proceeding in Florida, the court deemed the three children born to PAM during her marriage to JHM "children of the marriage" per a settlement agreement.<sup>125</sup> The agreement also stated that these three children "shall share equally and no differently" in his assets and in the trusts for his benefit, just like JHM's children from his first two marriages or from any later marriage.<sup>126</sup>

In 1997, the trustees of the three trusts undertook an investigation into "proper trust beneficiaries."<sup>127</sup> They found that "there is a basis to reasonably conclude that PAM's children are not JHM's children."<sup>128</sup> In 2000, the trustees petitioned a Minnesota court to identify the "proper

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114. See, e.g., *In re Trusteeship of Trust Created Under Trust Agreement Dated Dec. 31, 1974*, 674 N.W.2d 222, 229 (Minn. Ct. App. 2004); *State v. Simons*, 336 P.3d 557, 566 (Or. Ct. App. 2014).

115. *In re Trusteeship*, 674 N.W.2d at 229.

116. *Id.* at 225.

117. *Id.* at 226.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

beneficiaries,” as each of the three trusts was situated in Minnesota.<sup>129</sup> The trustees asserted that “blood or saliva testing could be used” to test biological ties, urging that any beneficiary of the subject trusts “must be a biological descendant of JHM.”<sup>130</sup> PAM and her three children born during her marriage to JHM resisted.<sup>131</sup> In 2003, the trial court held that the three children were not biologically tied to JHM for purposes of the three trusts as required to benefit, though the children could later submit to genetic testing.<sup>132</sup>

The appeals court ruled, *inter alia* that the trustees had no standing “to challenge . . . paternity by bringing a collateral attack of a preexisting adjudication of parentage made consistent with applicable parentage laws.”<sup>133</sup> The Minnesota court deemed the Florida divorce decree binding on the trustees as the Florida courts had consistently “applied the principle that a divorce decree which establishes the paternity of a child is a final determination of paternity.”<sup>134</sup>

Further, even if no settlement pact had expressly designated JHM as the father of PAM’s children born during the marriage, the Florida law on marital parentage presumptions could have operated to bar the trustees. The Minnesota appeals court expressly recognized that Florida “courts maintain ‘the presumption that a child born in wedlock is the blood issue of the partners of such marriage.’”<sup>135</sup>

Similarly, an Oregon court applied the marital parentage presumption of Louisiana in a 2014 decision.<sup>136</sup> In that case, no earlier agreement as to parentage and no explicit acknowledgment of parentage had occurred during the Louisiana divorce.<sup>137</sup> The state of Oregon brought suit against Alton Simons, an Oregon resident, for child support payments.<sup>138</sup> Simons was married to and living with the child’s mother in Louisiana at the time

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129. *Id.* at 226–27.

130. *Id.* at 227.

131. *Id.*

132. *Id.* at 227–28.

133. *Id.* at 228.

134. *Id.* at 230; *cf.* Dep’t of Human Res. v. Mitchell, 12 A.3d 179 (Md. Ct. Spec. App. 2011) (holding that, in a child support modification proceeding, the UIFSA prohibited a collateral attack in Maryland, based on nonbiological parentage, by a former husband on a New York divorce decree declaring the children to be “of the marriage” and ordering him to pay child support).

135. *In re Trusteeship*, 674 N.W.2d at 229. Incidentally, the Minnesota court explicitly found that even if the paternity of the three children had not been established per the 1991 Florida dissolution decree, the trustees would have been foreclosed under Florida law from challenging the paternity of the three children. *Id.* at 232.

136. *State v. Simons*, 336 P.3d 557 (Or. Ct. App. 2014).

137. *Id.* at 562.

138. *Id.* at 559.

of birth<sup>139</sup> and was named on the birth certificate issued in Louisiana.<sup>140</sup> But in the Louisiana dissolution judgment, the court made no mention of Simons' paternity of the child in question, though the court deemed two other children born during the marriage to be children of the marriage.<sup>141</sup>

In resisting Oregon's pursuit of support for the one child who was still living with the mother in Louisiana, Simons urged he "is not J's biological father."<sup>142</sup> Oregon responded that both the Louisiana birth certificate and the Louisiana marital parentage presumption made Simons the child's father.<sup>143</sup> The court applied an Oregon statute, driven by the UIFSA, and found that no nonparentage defense was available, as Simons' parentage had been "previously determined by or pursuant to law."<sup>144</sup> The Oregon court noted other instances where parentage "arises by operation of law" in Oregon, including a filing of a voluntary acknowledgment of paternity, a marriage of the parents after birth, and a consent to artificial insemination.<sup>145</sup> Although acknowledging that it was bound to apply Oregon's "own procedural and substantive law,"<sup>146</sup> the Oregon appeals court nevertheless determined that Louisiana law guided the defense of nonparentage because "Simons's paternity has been previously determined by operation of Louisiana law."<sup>147</sup> Seemingly applicable, Oregon common law included a choice-of-law rule demanding that the court apply another state's parentage law.<sup>148</sup>

The Oregon court also noted that, per the UIFSA, parentage may operate by law where one "publicly" acknowledges "a duty of support after receiving" a child into the home.<sup>149</sup> Under Louisiana law, Simons' defense, involving a disavowal of a marital paternity presumption, was unavailable to Simons because the relevant statutory time period had expired. The Louisiana divorce decree was not itself a disavowal, and Simons failed to meet the Louisiana procedures for disavowal petitions.<sup>150</sup>

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139. *Id.* at 558–59.

140. *Id.* at 559.

141. *Id.*

142. *Id.*

143. *Id.* at 560.

144. *Id.* (citing OR. REV. STAT. ANN. § 110.381 (West 2003)).

145. *Id.* at 561; *see also* Shineovich v. Shineovich, 214 P.3d 29, 39–40 (Or. Ct. App. 2009).

146. *Simons*, 337 P.3d at 562 (citing OR. REV. STAT. ANN. § 110.348).

147. *Id.* at 564.

148. *See id.* at 566 (agreeing with the state that in determining whether a defense of nonparentage may be raised, the governing law is the law of the state where the parentage of the child is asserted to have been "previously determined").

149. *Id.* at 564 n.10 (citing UIFSA, *supra* note 1, § 315 cmt.).

150. *Id.* at 563.

In both the Minnesota and Oregon cases, foreign state marital presumption laws were recognized as relevant because the acts prompting the presumptions—that is marriage and birth—occurred in other states and at precise points in time.

*E. Respect in Voluntary Paternity Acknowledgment Cases*

Voluntary paternity acknowledgments undertaken in one state typically are respected in the courts of other states hearing legal parentage issues.<sup>151</sup> Under federal welfare assistance laws, states participating in the Temporary Assistance to Needy Families program must make voluntary acknowledgment affidavit procedures available and must “give full faith and credit to such an affidavit signed in any other State according to its procedures.”<sup>152</sup> State statutes typically reflect this demand. An Illinois statute is illustrative of this point and provides:

Establishments of paternity made under the laws of other states shall be given full faith and credit in this State regardless of whether paternity was established through voluntary acknowledgment, tests to determine inherited characteristics, or judicial or administrative processes.<sup>153</sup>

Likewise, an Ohio statute states:

A court that is determining a parent and child relationship pursuant to this chapter shall give full faith and credit to a parentage determination made under the laws of this state or another state, regardless of whether the parentage determination was made pursuant to a voluntary acknowledgment of paternity, an administrative procedure, or a court proceeding.<sup>154</sup>

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151. They are also respected in federal courts. *See, e.g.*, *Minn. Life Ins. Co. v. Jones*, 771 F.3d 387, 389 (7th Cir. 2014) (respecting Illinois acknowledgment and acknowledgment rescission standards).

152. 42 U.S.C. § 666(a)(5)(c)(iv) (2012). *See, e.g.*, *Burden v. Burden*, 945 A.2d 656 (Md. Ct. Spec. App. 2008) (reviewing federal laws and finding respect may be required; in the case the acknowledgment recession standards in South Dakota and Maryland led to the same result). Federal district courts, per the so-called *Erie* Doctrine, must also credit state voluntary parentage acknowledgments where parentage issues arise from state law claims; *see, e.g.*, *Jones*, 771 F.3d at 389 (respecting signed acknowledgment for six year old child that led to “order of parentage” in dispute over life insurance proceeds).

153. 750 ILL. COMP. STAT. ANN. 45/27 (West 2009).

154. OHIO REV. CODE ANN. § 3111.02(B) (West 2011).

*In re Mary G.*,<sup>155</sup> a 2007 California child dependency proceeding, demonstrates the application of these statutory policies. The California court used an earlier Michigan affidavit of paternity to establish a child support order and was given full faith and credit.<sup>156</sup> Such deferential policies are recognized in the Uniform Parentage Act, which says: “A court of this State shall give full faith and credit to an acknowledgment of paternity or denial of paternity effective in another State if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other State.”<sup>157</sup>

In the case *In Re Ayden K.M.*, a Tennessee appeals court deemed Tennessee courts bound by a voluntary paternity acknowledgment signed in Texas by a man and the birth mother after the child’s birth in Texas.<sup>158</sup> After signing the acknowledgment, the birth mother moved to Tennessee and the man to Idaho, with the birth mother thereafter seeking to overturn the man’s “designation as father” in a later Tennessee child custody proceeding.<sup>159</sup> In ruling this way, the Tennessee appeals court bound the courts in Tennessee to any Texas court ruling that overturned acknowledgments in any later or continuing Tennessee child custody case.<sup>160</sup>

#### *F. Respect in Other Initial Child Support Cases*

Where a child has not resided in a particular state for more than six months, and where an infant has not resided in that state since birth, a court in the state of residency of the child and custodial parent may nevertheless initially establish the child support obligations of another parent also living in the state.<sup>161</sup> In doing so, the state court must often respect a parentage determination made in another state where there has been no consideration of child support.<sup>162</sup> In that scenario, state choice-of-law rules prompted by

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155. 59 Cal. Rptr. 3d 703 (Ct. App. 2007).

156. *Id.* at 715.

157. UPA, *supra* note 25, § 311. The comment to section 311 recognizes that federal statutes require these policies for the states receiving federal welfare assistance. *See id.* § 311 cmt.

158. 382 S.W.3d 354, 354 (Tenn. Ct. App. 2012).

159. *Id.* at 354.

160. *Id.* at 357–58 (suggesting that a Texas court could not have decided the issue of custody, because the petitioning father was then living in Idaho and the birth mother and child in Tennessee); *cf. In re Gendron*, 950 A.2d 151 (N.H. 2008) (holding that a New Hampshire woman could not challenge man’s voluntary parentage acknowledgment in Massachusetts during a custodial dispute in a New Hampshire court).

161. Here, there can be personal jurisdiction. *Pennoyer v. Neff*, 95 U.S. 714, 720 (1878) (residency prompts personal jurisdiction in a convenient forum).

162. U.S. CONST. art. IV, §1. Such a determination may occur, for example, with a birth certificate notation.

the Full Faith and Credit Clause can dictate such respect.<sup>163</sup> Such a forum state determination of a child support will be unnecessary where a child support order accompanied an initial determination of parentage.<sup>164</sup>

#### IV. EXEMPLARY CASES ON CHOOSING WHICH IMPRECISE PARENTAGE LAWS APPLY

##### *A. Choice of Law in Initial Child Support Cases in Home State Courts*

Custodial parents or governmental welfare agencies seeking reimbursements for child welfare payments can present initial child support cases in the home states of children for whom child support is sought. In this situation, a child's home state is the state where, while living with a parent or a person acting as a parent, the child lived for at least six consecutive months immediately preceding the time of filing, or "if a child is less than 6 months old," the state where the child "lived from birth."<sup>165</sup> In initial home state child support cases, federal law dictates that state courts generally apply forum laws on issues of parentage when parentage has not been earlier determined in a way commanding respect.<sup>166</sup>

##### *B. Choice of Law in Initial Child Support Cases in Responding Tribunals*

When child support is initially sought in a responding tribunal, choice-of-law parentage issues can arise where the alleged obligee resides in the forum state, but the obligor does not. Responding tribunals are chiefly employed in initial child support cases when the alleged obligor cannot be sued in the child's home state due to a lack of residence therein and due to a lack of personal jurisdiction.<sup>167</sup> Forum law is demanded in these

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163. *Id.*

164. *Id.* Here, there is full faith and credit to the foreign state parentage and support orders, as can occur in a paternity lawsuit.

165. 28 U.S.C. § 1738B(b) (2012); *see also* UIFSA, *supra* note 1, § 102; 42 U.S.C. § 666(f) (2012).

166. 28 U.S.C. § 1738B(h)(1).

167. Initial parentage cases may not need to employ responding tribunals as compared to child support cases, as where termination of parental rights or interests are at issue. There, a child's home state might provide a legitimate forum though an alleged defending parent or nonparent is without residence or other contacts supporting in personam jurisdiction there. Status or *in rem* personal jurisdiction can be used when authorized by state law. *See, e.g., In re R.W.*, 39 A.3d 682, 693–94 (Vt. 2011). The Vermont Supreme Court distinguished initial child custody cases and did not address them, *id.* at 693 n.4, presumably because of cases like *May v. Anderson*, 345 U.S. 528 (1953), which held that an Ohio court cannot respect an order on custodial parental rights of the mother regarding visitation under a Wisconsin court decree where in personam jurisdiction did not

instances where the responding tribunals are hearing the initial child support case and where the responding tribunal has not earlier determined parentage questions in a way commanding respect.<sup>168</sup>

In *Child Support Enforcement Agency v. Carlin*, a 2001 case from Hawaii, a Puerto Rican mother alleged that a male Hawaiian fathered her child.<sup>169</sup> The alleged father specifically denied that he was the child's "presumed father."<sup>170</sup> Any presumed parentage was not litigated, however, as testing in Hawaii established the respondent's biological ties.<sup>171</sup> Assuming no male biological ties, had the mother urged that a child support order in Hawaii could be based on de facto parentage, challenging choice of law issues may have arisen. The two governments, Hawaii and Puerto Rico, might have approached de facto parentage differently. While many of the relevant facts might have occurred in Puerto Rico, a Hawaiian court might be asked to use its own de facto parentage law.<sup>172</sup>

### C. Choice of Law in Initial Childcare Cases

In *In re Marriage of Mancine*, an Illinois marriage dissolution proceeding, both the husband, Nicholas Gansner, and his wife, Miki Loveland Mancine, sought custody of a minor, William, born in August 2008.<sup>173</sup> Miki adopted William in Wisconsin in March of 2009, before her marriage to Nicholas in May of 2009, though the parties had contemplated a pre-adoption wedding.<sup>174</sup> Miki already had another adopted child,

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exist in Wisconsin. The *May* decision was reviewed in *In re R.W.*, 39 A.3d at 692, which recognized "fragmented nature of the court's reasoning" in *May*. There is also comparable uncertainty over whether a trial court may issue an abuse prevention order on behalf of its resident plaintiff where there is no traditional basis for in personam jurisdiction over a nonresident defendant. *Fox v. Fox*, 106 A.3d 919, 923–27 (Vt. 2014) (reviewing cases and declining "to carve out a blanket exemption from the constitutional due process requirement of personal jurisdiction for requests for final [relief from abuse] orders").

168. UIFSA, *supra* note 1, § 303(2); 42 U.S.C. § 666(f).

169. 31 P.3d 230, 233 (Haw. Ct. App. 2001).

170. *Id.*

171. *Id.* at 234 (respondent admitted paternity "based upon the genetic test results").

172. HAW. REV. STAT. ANN. § 584-4(a) (LexisNexis 2008) (stating that "[a] man is presumed to be the natural father of a child if . . . [w]hile the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child . . ."); P.R. LAWS ANN. tit. 31, § 461 (West, Westlaw through Dec. 2001) (presumed parentage for men only when arising from marriage or when there is a voluntary acknowledgement of paternity).

173. *In re Marriage of Mancine*, 965 N.E.2d 592, 593 (Ill. App. Ct. 2012).

174. *Id.* at 594 ("Miki and Nicholas decided they would marry in approximately June or July of 2008. . . . William [the child involved in the custody dispute] was born on August 5, 2008 . . . . Nicholas and Miki became formally

Elizabeth, who earlier lived with Miki and her ex-husband, John Mancine.<sup>175</sup> Under Wisconsin law, an unmarried couple cannot adopt a child, but a single woman can adopt.<sup>176</sup> Within a month of William's birth, Nicholas and Miki "had moved in" together in Wisconsin and "Nicholas . . . was co-parenting William."<sup>177</sup>

An adoption agent in Wisconsin advised Nicholas that he could adopt William as a stepparent after the marriage.<sup>178</sup> William's birth certificate did reflect Nicholas's last name, although Nicholas married Miki in Wisconsin about two months after William's adoption was finalized.<sup>179</sup> Nicholas had moved in with Miki at least nine months before the wedding and was co-parenting at their home.<sup>180</sup> About three months before the wedding, Miki named Nicholas "as the [child's] sole guardian" by Miki in

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engaged in December 2008."). The appellate court's factual account is derived chiefly from trial court pleadings and affidavits on which there was no trial but little party disagreement. *Id.* The appellate court briefs reveal, however, other facts disputed by the parties, disagreements that evidently were unimportant to case's resolution. For example, Miki and Nicholas disagreed on why Nicholas got a vasectomy. *Compare* Brief of Respondent-Appellant at 2, *In Re Marriage of Mancine*, 9 N.E.3d 550 (Ill. Ct. App. 2014) (No. 10-D-9394) [hereinafter Appellant Brief] (because Nicholas believed "that he would be William's father forever," he got a vasectomy), *with* Response Brief of Petitioner-Appellee at 13–14, *In Re Marriage of Mancine*, 9 N.E.3d 550 (No. 10-D-9394) [hereinafter Appellee Brief] (urging that the vasectomy was prompted because Nicholas "did not want to pass on his genetic material for his mental illness (depression, et. cetera)," while noting that the vasectomy was not mentioned in Nicholas's trial court pleadings or his affidavit). The parties also disagreed on whether "Miki engaged in pathological extramarital sexual behavior" and prostitution during her marriage to Nicholas. *Compare* Appellant Brief, *supra*, at 22, *with* Appellee Brief, *supra*, at 11–12. The briefs also reveal additional factual assertions which seem undisputed, but outside the appellate court opinion. *See, e.g.*, Appellant Brief, *supra*, at 5 (stating that Nicholas and Miki had their first date in the spring of 2008, a few days before Miki and John Mancine officially divorced; even then, Nicholas knew of soon-to-be William's adoption, and of Elizabeth); *id.* at 6–7 (stating that Nicholas and Miki accompanied William's birth mother to the hospital "and were with her in the delivery room").

175. *Marriage of Mancine*, 965 N.E.2d at 594 (stating when Miki and Nicholas began dating in the Spring of 2008, Elizabeth—Miki's adopted daughter—was one year old and Miki was separated from her then-husband, John Mancine; Miki and Nicholas had at one time planned to marry in June or July of 2008).

176. *Id.* (citing WIS. STAT. ANN. § 48.82 (West 2008)).

177. *Id.*

178. *Id.*

179. *Id.* (noting that William, the adopted child, was born in August 2008; his adoption by Miki was finalized in Wisconsin on March 4, 2009; Miki and Nicholas were married in May 2009).

180. *Id.* (explaining that William was born in August 2008 and was living with Miki and Nicholas in a single home by early September 2008).

prospective adoption papers, though evidently not in a court proceeding.<sup>181</sup> Nicholas and Miki were named as parents on William's baptism record about seven months before the wedding.<sup>182</sup>

About a month after the wedding, a Wisconsin adoption agency said it would support a stepparent adoption.<sup>183</sup> Approximately a year later, a Wisconsin agency told Nicholas that he was free to file his petition for stepparent adoption, but he refrained from doing so.<sup>184</sup> At that time, Nicholas and Miki would adopt a third child, Henry.<sup>185</sup> Nicholas primarily cared for all the children in the household because only Miki was working.<sup>186</sup> When Nicholas began working, he continued the childcare.<sup>187</sup> According to Nicholas, Miki held the couple and all the children out as a family unit, and even used his last name of Gansner.<sup>188</sup>

Miki sought a divorce in Illinois about 15 months into the marriage, after the entire family had moved to Illinois to be closer to Miki's parents.<sup>189</sup> Miki challenged Nicholas's standing to seek custody of William, as Nicholas had never formally adopted William.<sup>190</sup> Because the family had lived in Illinois for more than six months, both the trial<sup>191</sup> and appellate<sup>192</sup> courts employed Illinois law.<sup>193</sup> The Illinois courts did not consider, as Illinois statutory law allowed, whether jurisdiction over the

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181. *Id.* (“Miki named Nicholas as the sole guardian of William and any future child she has, and named her parents as alternate guardians.”).

182. *Id.* (noting that the baptism occurred in November 2008 and the wedding occurred in May 2009).

183. *Id.*

184. *Id.* at 594–95 (an August 2010 email to Nicholas).

185. *Id.* at 595.

186. *Id.* (when Henry was adopted in September of 2009, Nicholas and Miki moved the household to Chicago).

187. *Id.*

188. *Id.* (“According to Nicholas, Miki always held out William as Nicholas’ child and held out herself, Nicholas, Elizabeth, William and Henry as ‘the Gansner family.’”). Two months after seeking to divorce Nicholas, Miki petitioned to change William’s last name to Mancine, her first husband’s last name. Appellant Brief, *supra* note 174, at 1 n.1.

189. *Marriage of Mancine*, 965 N.E.2d at 595 (dissolution sought on September 24, 2010).

190. *Id.*

191. *Id.* (explaining that the trial court dismissed the claims because “Nicholas lacked standing”).

192. *Id.* at 596 (explaining that the appellate court dismissed the claims because “Nicholas’ arguments are not well grounded”).

193. The Illinois courts perhaps employed Illinois—rather than Wisconsin—parentage laws because William’s “home state” was Illinois. 750 ILL. COMP. STAT. ANN. 36/102(7) (West 2009) (defining “home state” as “state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding”). Yet home state status may speak only to jurisdiction and not to choice of law.

“child custody determination should be declined because a Wisconsin court would be a more appropriate forum.”<sup>194</sup>

The appeals court found that Nicholas lacked standing as to William,<sup>195</sup> rejecting the “equitable parent,” “equitable estoppel,” “equitable adoption,” and *parens patriae* arguments under Illinois law,<sup>196</sup> which barred Miki from challenging Nicholas’s standing.<sup>197</sup> The court ruled without ever considering the possible application of Wisconsin law.<sup>198</sup> Wisconsin common law does recognize a comparable parentage doctrine, called equitable adoption.<sup>199</sup> The law on equitable adoption, however, was unclear; its application from the inheritance setting to the childcare setting was uncertain. Further, equitable adoption was not employed in a Wisconsin proceeding involving William’s parentage. The Illinois Supreme Court assumed that Illinois law governed William’s parentage.<sup>200</sup>

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194. *Id.* at § 207.

195. *Marriage of Mancine*, 965 N.E. 2d at 602.

196. *Id.*

197. *Id.*

198. *Id.* at 596–602.

199. *See, e.g., Randy A.J. v. Norma I.J.*, 677 N.W.2d 630, 641–42 (Wis. 2004) (precluding the use of “the equitable parent doctrine,” the court allows “equitable estoppel” to “address those instances where unfairness in a proceeding would harm children and adults, absent the intervention of the court’s equitable powers”); *Hendrick v. Hendrick*, 765 N.W.2d 865, 868 (Wis. Ct. App. 2009) (“[T]he focus of a proceeding seeking to determine a child’s paternity is whether the ‘best interests’ of the child would be served thereby.”). *But see In re Paternity of Christian R.H.*, 794 N.W.2d 230, 233–34 (Wis. Ct. App. 2010) (stating that while there is common law authority to order child “visitation,” there is no nonstatutory authority to confer “parental rights”). Had William been formally adopted by Nicholas under Wisconsin law, the *Mancine* court would likely have deferred to Wisconsin adoption law. *See, e.g., 750 ILL. COMP. STAT. ANN. 45/27* (West 2009) (recognizing full faith and credit to paternity establishments in other states when done “through voluntary acknowledgment, tests to determine inherited characteristics, or judicial or administrative processes”); *see also Port v. Cowan*, 44 A.3d 970 (Md. 2012) (stating that, under the doctrine of comity, Maryland allows same-sex couples who wed in a civil ceremony in California to divorce in Maryland though a same-sex marriage was not then allowed in Maryland, where same-sex marriage was also not explicitly deemed by the Maryland legislature as void or unenforceable). On when “home state” law may not be applied (*e.g.*, so that a *Mancine* court would apply Wisconsin law), *see example, Castro v. Castro*, 818 N.W.2d 753 (N.D. 2012) (remanded for a hearing as to forum’s inconvenience under North Dakota law (N.D. CENT. CODE § 14-14.1-18 (West 2008))).

200. Given the lack of clarity, the high court denied review, but in a supervisory order directed the appeals court to reconsider its holding in light of the Supreme Court’s recent use of equitable adoption in an inheritance case. *Mancine v. Gansner*, 992 N.E.2d 1 (Ill. 2013). Upon reconsideration, the appeals court again declined to “apply the concept of equitable adoption in the context of statutory proceedings on adoption, parentage and divorce” as that “would undermine the entire family law structure enacted by . . . [the] legislature and

Initial childcare cases can involve adoption as well as divorce. In the context of adoption, courts can apply their own laws to determine the parentage of children placed for adoption. These courts sometimes deftly avoid a choice of parentage law analysis that would undermine an adoption that is deemed desirable. In a 2014 New York adoption proceeding, twins were born to a surrogate mother in India and were quickly moved to New York to live with the “birth parent.”<sup>201</sup> The court granted the petition for adoption although the surrogacy contract would have been illegal if undertaken in New York.<sup>202</sup> The court effectively recognized the sperm donor’s parentage under New York law and failed to explore Indian law, deeming the “surrogacy contract’s legality . . . of no consequence.”<sup>203</sup>

Initial childcare decisions requiring parentage determinations can involve other matters. For example, parentage determinations are necessary in cases involving assisted reproduction outside of surrogacy. Consider a birth mother undertaking an assisted reproduction procedure in one state but maintaining child custody in a second state. The sperm donor then argues for parentage and childcare opportunities in the second state. In 2007, the Kansas Supreme Court in *In re K.M.H.* utilized an interest analysis derived from Kansas choice-of-law precedents<sup>204</sup> and found that the Kansas statute on assisted reproduction applied. Distinguishing the *Adams* precedent from Illinois,<sup>205</sup> the court observed:

The facts of this case bear little resemblance to the facts of *Adams*. Here, the parties are Kansas residents. Whatever agreement that existed between the parties was arrived at in Kansas, where they exchanged promises supported by consideration, and D.H. literally delivered on his promise by giving his sperm to S.H. The twins were born in Kansas and reside in Kansas. The only fact tying any of the participants to Missouri is the location of the clinic where the insemination was performed.

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create uncertainty and protracted litigation.” *Marriage of Mancine*, 9 N.E.3d at 554–55. A comparable Illinois Supreme Court supervisory order was issued in *In re Scarlett Z.-D.*, 975 N.E.2d 755 (Ill. App. Ct. 2012). On reconsideration, that appeals court, again applying only Illinois law, found “equitable adoption . . . might present a potentially viable theory” upon which an unwed father could “assert standing” to seek childcare of his former girlfriend’s adopted child. *In re Scarlett Z.-D.*, 11 N.E.3d 360, 384 (Ill. App. Ct. 2012). *Scarlett Z.-D.* was heard again by the Illinois Supreme Court, 28 N.E.3d 776 (Ill. 2015), which rejected the unwed father’s standing to seek custody or visitation, per equitable adoption or de facto parenthood, over the adoptive mother’s objection.

201. *In re J.J.*, 984 N.Y.S.2d 841 (N.Y. Fam. Ct. Queens 2014).

202. *Id.* 842.

203. *Id.* at 847.

204. *In re K.M.H.*, 169 P.3d 1025 (Kan. 2007).

205. *Id.* at 1032.

Under these circumstances, we hold that Kansas law applies and that significant contacts and a significant aggregation of contacts with Kansas make application of our law to the parties' claims not only appropriate but also constitutional. This choice is neither arbitrary nor unfair; neither party would have been justified in expecting Missouri to have a controlling interest as to any dispute between them.<sup>206</sup>

In the 1990 *Adams* case, the Illinois Supreme Court applied Florida law, as the insemination was performed in Florida and this application would "fulfill the participants' expectations and . . . help ensure predictability and uniformity of result."<sup>207</sup> In *Adams*, the husband and wife had been Florida residents, their consultations concerning fertility options occurred in Florida, the artificial insemination from an anonymous donor was performed by a Florida doctor in his Florida clinic, and the baby was born to the wife in Florida and was a Florida resident until the wife moved herself and the child to her parents' home in Illinois where she then filed for divorce.<sup>208</sup> The husband sought a determination of nonpaternity in Illinois, where the court determined that Florida law should govern because Florida had a more significant relationship than Illinois to the parentage dispute.<sup>209</sup>

In *K.M.H.*, the court used an interest analysis to determine whether Missouri or Kansas law applied.<sup>210</sup> The children subject to the childcare dispute were clearly Kansas residents, had never been Missouri residents, and thus had Kansas as their "home state."<sup>211</sup> In *Adams*, the child had been living in Illinois for about five and a half months when a petition for divorce was filed in Illinois.<sup>212</sup> The child was born when the parents were married and living in Florida.<sup>213</sup> Clearly, Illinois was not the "home state" of the child under the UIFSA,<sup>214</sup> and the court employed Florida parentage law.

In initial childcare disputes before courts where there were no earlier determinations of legal parentage and where much of the earlier childcare

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206. *Id.*

207. *In re Marriage of Adams*, 551 N.E.2d 635, 639 (Ill. 1990).

208. *Id.*

209. *Id.*

210. *In re K.M.H.*, 169 P. 3d at 1031–33.

211. *Id.* at 1029 (birth mother pursued court action "seeking a determination that the sperm donor would have no parental rights").

212. *Marriage of Adams*, 551 N.E. 2d at 636.

213. *Id.* at 636 (noting that the child was born August 4, 1985 and moved to Illinois on October 1, 1985 as well as that the divorce petition was filed on March 13, 1986).

214. The child had not lived in Illinois for six months. *Id.*

occurred outside the forum, courts only sometimes employ foreign laws on parentage. Some courts fail to utilize a state interest analysis used in other choice-of-law settings.

*D. Choice of Law in Marital Parentage Presumption Cases*

Some initial parentage cases involving divorce are guided by marital parentage presumptions that deem, for example, that children born to female spouses are the presumed children of their spouses, be they male or female.<sup>215</sup> Marital parentage presumptions vary significantly among states. For example, where presumed paternity for married men is based on the prospect of biological ties, state laws differ on whether such presumptions are rebuttable by evidence of no biological ties.<sup>216</sup> Where a marriage, birth of a child, and then divorce occur in more than one state, the court must choose which rebuttal norms for marital parentage presumptions apply.

In one New York case, the court foresaw and foreclosed the choice of law difficulties that could arise if dissolution proceedings that involved marital parentage presumptions were brought later.<sup>217</sup> In that case, the court granted the petition for adoption brought by an ova donor and her spouse for the adoption of a child born to the spouse.<sup>218</sup> In doing so, the court recognized that “other potential legal avenues” to parenthood for the nonbirth mother, like *de facto* parenthood, were less certain as only an adoption, accompanied by a “judicial order of filiation,” was “presumptively subject to full faith and credit.”<sup>219</sup>

In *Hermanson v. Hermanson*, the Nevada Supreme Court had to choose between California and Nevada rebuttal standards.<sup>220</sup> Cindy was married to David when she delivered James in California in 1982.<sup>221</sup> The couple lived in California until 1985.<sup>222</sup> In October 1985, Cindy relocated

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215. *See, e.g.*, *Gartner v. Iowa Dept. of Pub. Health*, 830 N.W.2d 335, 348 (Iowa 2013) (holding that marital parentage presumption applies to a married lesbian couple).

216. *Compare* CAL. FAM. CODE § 7541(a) (West 2013) (rebuttal possible if founded on “evidence based on blood tests”), *with* OR. REV. STAT. ANN. § 109.070(1)(b), (2) (West Supp. 2013) (providing that only a husband or wife can challenge the husband’s presumed paternity as long as the husband and wife are married and cohabitating, unless the husband and wife consent).

217. *In re Adoption of Sebastian*, 879 N.Y.S.2d 677 (N.Y. Sur. Ct. 2009).

218. *Id.* at 693.

219. *Id.* at 687 (other, less secure, avenues to parenthood include a listing on a birth certificate and an execution of “a statutorily prescribed acknowledgment of paternity (filiation)”).

220. 887 P.2d 1241 (Nev. 1994).

221. *Id.* at 1242.

222. *Id.* at 1242–43.

with James to Iowa.<sup>223</sup> In October 1990, Cindy “returned” to Las Vegas, Nevada in an attempt to reconcile with David, but this attempt lasted only a month.<sup>224</sup>

In December 1990, Cindy sued David for divorce in Nevada, asserting that “there were no issue of the marriage.”<sup>225</sup> David responded by requesting James be named his “de facto child” even though James was not his biological son.<sup>226</sup> In August 1993, a Nevada trial court declared that “David is the father of James.”<sup>227</sup>

Both California and Nevada have statutes declaring a husband is the presumed father of a child born to his wife.<sup>228</sup> The California law, until January 1, 1994, however, made the presumption conclusive.<sup>229</sup> The California law since then, as well as the Nevada law at all relevant times, made the presumption rebuttable.<sup>230</sup> The Nevada Supreme Court reversed the trial court, holding that its application of the then-repealed California conclusive presumption was in error.<sup>231</sup> The court refused to apply California law even though the presumption clearly arose in California because the child was born in and remained in California for about three years.<sup>232</sup> Instead, the Nevada court utilized “the substantial relationship test” to resolve the conflict<sup>233</sup> and deemed the Nevada rebuttal norms applicable as “[t]he parties have not resided in California for almost ten years[,]” James was a Nevada resident, and employment of the repealed California conclusive presumption law would violate “a public policy of Nevada.”<sup>234</sup>

In *Smith v. Smith*, a Minnesota appeals court had to choose between its own laws and Oregon’s laws on the establishment, and then rebuttal, of any marital parentage presumption.<sup>235</sup> Kim and Roger were the unwed biological parents of T.L.S., who was born in Oregon.<sup>236</sup> The parents married in Oregon and had Roger’s name placed on the birth certificate of T.L.S. in Oregon.<sup>237</sup> After the parties moved to Minnesota, they disputed physical custody of T.L.S. in a Minnesota court during a marriage dissolution

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223. *Id.* at 1243.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.* at 1244, 1245–46.

229. *Id.* at 1244 n.3.

230. *Id.* at 1244, 1245–46.

231. *Id.* at 1246.

232. *Id.* at 1245.

233. *Id.* at 1244.

234. *Id.*

235. No. C7-93-1825, 1994 WL 149445, at \*2 (Minn. Ct. App. Apr. 19, 1994).

236. *Id.* at \*1.

237. *Id.*

proceeding.<sup>238</sup> Minnesota law, but not Oregon law, provided a marital parentage presumption for Roger.<sup>239</sup> The Minnesota court applied the Minnesota presumption and its three-year time period for a mother's request for a rebuttal.<sup>240</sup> The Minnesota appellate court found its own law to be applicable under the Restatement of Conflict of Laws provision, which stated that any choice should be guided by using "the local law of the state which . . . has the most significant relationship to the child and the parent."<sup>241</sup>

In childcare disputes between spouses or one-time spouses, marital presumptions typically guide the parentage of those who are not birth mothers. These presumptions vary interstate, as do the presumption rebuttal norms. These variations prompt choice-of-law issues when two or more states have ties to the birth mothers and their spouses; these issues should prompt careful choice-of-law analyses rather than hurried choices of forum laws.

#### *E. Choice of Law in Voluntary Paternity Acknowledgment Cases*

Some initial parentage cases in one state can involve an earlier birth certificate voluntary paternity acknowledgment executed in another state, like *LP v. LF*, which the Wyoming Supreme Court decided in 2014.<sup>242</sup> In 2011, the mother sought to disestablish her former boyfriend as her child's father because the man had no biological ties to the child.<sup>243</sup> The child was born in Colorado at the end of 2003, and the former boyfriend was "listed as the father on the child's birth certificate."<sup>244</sup> The mother and the former boyfriend lived together in Colorado for at least a year and a half and then in Washington State for one or two months.<sup>245</sup> Then, they lived separately in Wyoming for about five years.<sup>246</sup> The former boyfriend "helped some, but not a lot" with the child's expenses.<sup>247</sup>

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238. *Id.*

239. *Id.* at \*2.

240. *Id.* at \*3.

241. *Id.* at \*2–3 (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 287(1) (1969) and referencing MINN. STAT. § 257.57(1)(b) (1992)); *see also* Taylor v. Taylor, No. CA 10-1503, 2011 WL 1734077, at \*2 (La. Ct. App. May 4, 2011) (Louisiana marital parentage presumption rebuttal law limiting time for challenge applied to presumption that arose in Texas where the now-divorced couple had never lived in Louisiana as a married couple; court noted "a strong policy of favoring the legitimacy of children").

242. 338 P.3d 908 (Wyo. 2014).

243. *Id.* at 910–11.

244. *Id.*

245. *Id.* at 910.

246. *Id.*

247. *Id.*

The Wyoming high court granted the mother's petition to "disprove paternity,"<sup>248</sup> finding that the man was not a "presumptive parent" under Wyoming law and, even if so, was not a parent as "the presumption was conclusively rebutted" by a stipulated paternity test finding no biological ties.<sup>249</sup> Further, the court declined "to adopt de facto parentage or parentage by estoppel, . . . leaving that important policy decision to the Wyoming Legislature."<sup>250</sup>

The Wyoming Supreme Court failed to explain, however, why it gave no respect to the Colorado birth certificate and the likely voluntary paternity acknowledgment on which the birth certificate was founded.<sup>251</sup> Recall, by contrast, the Illinois and Ohio statutes requiring that their state courts give full faith and credit to voluntary parentage acknowledgments executed elsewhere.<sup>252</sup> Had the Wyoming Supreme Court granted respect, the choice of law question for the Wyoming court would have been whether the Colorado or Wyoming standards for rescinding parentage acknowledgments should be employed.<sup>253</sup>

#### *F. Choice of Law in Other Initial Child Support Cases*

Initial requests for court-ordered child support can, of course, occur in courts that are neither home nor responding state tribunals. They can occur in either marriage dissolution or paternity actions. In each setting, child support for a child may be first sought in one state where the facts prompting the alleged parentage of the child support respondent occurred in a second state.

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248. *Id.* at 910, 913.

249. *Id.* at 921.

250. *Id.*

251. COLO. REV. STAT. § 19-4-105(1)(c)(II) (West Supp. 2008) (man is presumed a child's father if named with his consent on child's birth certificate).

252. OHIO REV. CODE ANN. § 3111.02(B) (West 2011); 750 ILL. COMP. STAT. ANN. 45/27 (2009).

253. These standards do vary interstate. In Wyoming, the standard for rescission is that a signatory may only rescind within 60 days or before the date of the first hearing of a case involving the signatory's parentage, but no more than two years later. WYO. STAT. ANN. §§ 14-2-607(a), 14-2-608(a)(ii) (West Supp. 2008). In Colorado, the standard for rescission is within 60 days or by the date of any administrative or judicial proceeding to which the signatory is a party. COLO. REV. STAT. § 19-4-105(2)(b) (West Supp. 2008). Had the mother sought rescission in Washington while she and the man lived there, the forum state standard may have been used, which would have been within 60 days or before the date of the first hearing, but no more than four years later. WASH. REV. CODE ANN. §§ 26.26.330(1), 26.26.335(1)(b) (West 2005).

In a North Dakota proceeding, Antonyio Johnson sought a divorce from Madonna Johnson in July 1998.<sup>254</sup> Madonna claimed that the court should order Antonyio to pay child support for Jessica, who Madonna urged had been equitably adopted by Antonyio under North Dakota law.<sup>255</sup> The Johnson marriage occurred in September 1986, with no child ever born to Madonna during the marriage.<sup>256</sup> But in August 1988, the Johnsons took custody of Jessica while living in New Jersey.<sup>257</sup> Jessica was three months old and the natural granddaughter of Madonna.<sup>258</sup> Although Jessica was scheduled to remain with the Johnsons for only a month, she remained with the Johnsons for ten years until the time of the divorce proceeding.<sup>259</sup> During this decade, the Johnsons raised Jessica as their child, and the Johnsons initiated formal adoption proceedings in New Jersey and in Kentucky, where Jessica's natural parents lived in 1990,<sup>260</sup> however, neither of those proceedings were completed due to military work transfers.<sup>261</sup> From November 1987 through November 1991, the Johnsons resided in New Jersey, although Antonyio served in the Desert Storm campaign from August 1990 to May 1991.<sup>262</sup> Antonyio was then stationed in the Azores from November 1991 to February 1993, was stationed in Florida from February 1993 to May 1997, was on assignment in Korea as of May 1997 and on assignment in Grand Forks, North Dakota since May 1998.<sup>263</sup> Antonyio and Madonna had not resided together since the Korea assignment.<sup>264</sup> When Antonyio was in the Azores, "Madonna and Jessica stayed in Kentucky because they could not accompany him."<sup>265</sup> The North Dakota trial court denied Madonna's child support request.<sup>266</sup>

The North Dakota Supreme Court employed the North Dakota doctrine of equitable adoption, looking to earlier cases on "contracts to adopt only in the context of inheritance law."<sup>267</sup> The court determined that the public policy of the state supports application of the doctrine to impose a child support obligation under certain circumstances, and nothing in North

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254. *Johnson v. Johnson*, 617 N.W.2d 97, 100 (N.D. 2000).

255. *Id.* at 101.

256. *Id.* at 100.

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.* at 124.

263. *Id.*

264. *Id.*

265. *Id.* at 100.

266. *Id.* at 101.

267. *Id.* at 103.

Dakota law forbids that application.<sup>268</sup> Thus, the high court remanded the case for resolution of the factual question involving the “application of the doctrine to impose a child support obligation upon Antonyio.”<sup>269</sup>

A dissenting justice began: “This is a case of a grandmother and her grandchild who have never lived in North Dakota.”<sup>270</sup> He went on: “it is clear that if an ‘equitable adoption’ took place, it took place in New Jersey or Kentucky and would therefore be governed by the law of one of those states.”<sup>271</sup> In both New Jersey and Kentucky, there was no doctrine of equitable adoption.<sup>272</sup> The dissent deemed New Jersey or Kentucky law appropriate under North Dakota choice-of-law rules for contract cases.<sup>273</sup> The dissent also observed that the “majority ignores jurisdictional implications and comity.”<sup>274</sup> In particular, “no attempt” to notify the biological parents<sup>275</sup> presumably still in Kentucky had occurred.

The North Dakota high court majority did not respond to the observations in the dissent on choice of law in contract cases, perhaps because the majority deemed that an equitable adoption did not involve a contract. The dissent seemingly assumed Antonyio contracted with his wife to adopt Jessica, thus

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268. *Id.* at 109. Such an application of the equitable adoption doctrine was “limited,” however, as the court expressed “preference for adherence to statutory procedures” on formal adoptions. *Id.* at 105–06 n.3.

269. *Id.* at 109–10.

270. *Id.* at 112 (Sandstrom, J., dissenting).

271. *Id.*

272. *Id.*

273. *Id.* at 123 (“[I]t objectively appears that our precedent would mandate the application of another forum’s law because the alleged contract arose in either Kentucky or New Jersey and was performed in either of those states, the subject matter was in either of those states, and the domicile of all parties was in either of those states at the time the alleged contract was made.”). Justice Sandstrom also referenced *Pearson v. Pearson*, 606 N.W.2d 128, 131 (N.D. 2000), explaining that “a common law marriage validly entered in another jurisdiction would be recognized in North Dakota” even though North Dakota law “[does] not allow common law marriage.” *Johnson*, 617 N.W.2d at 123. The existence of a common law marriage—as with the existence of Jessica’s equitable adoption by Antonyio—normally would not actually be recognized by a foreign court. Yet in *Pearson*, there was a North Dakota statute obliging state courts to render “valid” marriages “contracted” outside of the state which would be deemed valid “where contracted.” *Pearson*, 606 N.W.2d at 131 (citing N.D. CENT. CODE § 14-03-08 (West 2008)). And in *Pearson*, the validity of the alleged foreign country common law marriage was never fully resolved by the North Dakota court as this issue was unnecessary to the final decision. *Id.* By contrast, in *Johnson*, there was no statute obliging North Dakota courts to render valid any parentage “contracted” elsewhere, to the extent contracts were relevant in parentage matters.

274. *Johnson*, 617 N.W.2d at 112.

275. *Id.* at 118. Perhaps the dissent would have been less concerned with the absence of notice to the biological parents had the initial issue in North Dakota been guardianship of Jessica by Antonyio and Madonna. *See, e.g., Wilson v. Wilson*, 431 S.W.3d 369 (Ark. Ct. App. 2013).

considering the contract laws of New Jersey and Kentucky to be potentially applicable. Yet, could not the contract be seen as one between Antonyio and Jessica's biological parents? If so, would not Pennsylvania law, where Antonyio and Madonna first took Jessica, be potentially applicable?

Unfortunately, no opinion in *Johnson* considered utilizing an interest analysis to determine which state's imprecise parentage law on equitable adoption or its equivalent should operate. And no opinion in *Johnson* considered whether to decline jurisdiction altogether or at least over the parentage, if not the child support, issue as to Antonyio.<sup>276</sup> As to the issue of Antonyio's parentage, a prerequisite to any judicial inquiry into either support or custody, one may reasonably question whether North Dakota even had federal constitutional authority to choose to apply its own law.<sup>277</sup>

### G. Choice of Law in Adoption Cases

In some adoption cases, state courts must choose between competing state parentage laws. For instance, in *In re Adoption of Baby Boy S.*, a Kansas appellate court considered the adoption of a child born in Kansas to a Kansas resident in 1996.<sup>278</sup> The child was conceived in Ohio, and the unwed biological father resided in Ohio.<sup>279</sup> The mother and her new boyfriend had moved to Kansas from Ohio in February of 1994 with the child and relinquished the child for adoption there in late April 1994.<sup>280</sup> The court addressed whether Kansas or Ohio laws on termination of parental rights would be used to assess the unwed biological father's rights in the adoption proceeding.<sup>281</sup> Though the father had never lived in Kansas, the court employed Kansas law.<sup>282</sup> The court found it reasonable "for parties to expect that the standards for parental obligations would be determined by the laws of the state where the child resides."<sup>283</sup> Under Kansas law, termination was appropriate because the biological father "failed without reasonable cause to provide support for the mother during

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276. The factors utilized in such considerations include: "length of time child has resided outside [the] state," the location of the evidence, and the familiarity with the relevant facts and issues. N.D. CENT. CODE § 14-14.1-18.

277. See, e.g., *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981) (lack of majority opinion prompts uncertainties regarding minimum state interests needed to avoid federal constitutional Full Faith and Credit Clause concerns).

278. 912 P.2d 761, 764 (Kan. Ct. App. 1996).

279. *Id.*

280. *Id.* at 764–65.

281. *Id.* at 766 (employing KAN. STAT. ANN. § 59-2136(h)(4), (5) (West Supp. 2012)).

282. *Id.* at 768.

283. *Id.* at 767.

the six months prior to the child's birth.<sup>284</sup> Choosing Kansas law was "neither arbitrary nor fundamentally unfair."<sup>285</sup> The father relinquished or otherwise ignored his parental obligations to a child living in Kansas.<sup>286</sup> Further, the father failed "to make substantial efforts to remain in contact with an unwed mother and participate in the pregnancy and birth of the child,"<sup>287</sup> including failing to make "serious efforts to locate [the] whereabouts" of his pregnant former girlfriend<sup>288</sup> who "did not move to conceal herself" and who had "obtained a listed phone number under her name."<sup>289</sup>

In *Stubbs v. Weathersby*, the Oregon Supreme Court considered the acts of a birth mother whose child an Oregon couple sought to adopt.<sup>290</sup> The couple urged that the mother's consent was unnecessary because the mother had consented to the adoption and she had willfully neglected her child without just cause for a year.<sup>291</sup> The child was conceived in Texas, but born and raised by the mother for one month in Washington.<sup>292</sup> After this month, the child was in foster care in Washington for about six months.<sup>293</sup> The prospective adopters then brought the child to Oregon, prompting an end to a Washington juvenile court dependency proceeding.<sup>294</sup> An Oregon adoption proceeding was begun, and the court entertained it as the child had been living in Oregon for six consecutive months with the prospective adopters who were deemed "persons acting as parents."<sup>295</sup>

On the issues regarding maternal consent, the Oregon court applied Oregon laws,<sup>296</sup> although the mother prepared and signed the alleged consent in Washington, and any neglectful maternal acts prompting the lack of a requirement of maternal consent occurred in Washington.<sup>297</sup> In applying Oregon law, the court recognized the interest of Washington as "the state in which the consent is signed" and "where the parent-child relationship exists," as well as the "dangers of forum shopping in adoption cases" when forum law is applied.<sup>298</sup> Yet the court found the UCCJA "mitigates" the dangers because that law "guarantees that the forum state has an interest

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284. *Id.* at 769 (employing KAN. STAT. ANN. § 59-2136(h)(4)).

285. *Id.* (citing *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 308 (1981)).

286. *Id.* at 766–67.

287. *Id.* at 767.

288. *Id.*

289. *Id.* at 767, 765.

290. 892 P.2d 991, 994 (Or. 1995) (en banc).

291. *Id.*

292. *Id.* at 993.

293. *Id.*

294. *Id.* at 993–94.

295. *Id.* at 996–97.

296. *Id.* at 998.

297. *Id.* at 997, 993–94.

298. *Id.* at 997.

in applying its own law” and that “unusual circumstances” could prompt, in other cases, the application of foreign state law.<sup>299</sup>

Comparable to *Stubbs* on the issue of which law applied to the withdrawal of a maternal consent to a proposed adoption is the 1978 Arizona Supreme Court decision in *In re Appeal in Pima County Juvenile Action No. B-7087*.<sup>300</sup> In that case, the mother sought to revoke an initial consent made in Arkansas after she moved to Arizona.<sup>301</sup> The Arizona high court applied Arkansas, not the more stringent Arizona, revocation law in allowing maternal revocation because an Arkansas adoption was always expected—the consent form was “drawn for filing in an Arkansas court”—and before her alleged consent, the mother was advised of law.<sup>302</sup> The court made no mention of the need for, or any finding of, exceptional circumstances.

In Arizona, a foreign parentage law applied even though the alleged parent lived in Arizona, but in Oregon, a local parentage law was applied even though the alleged parent lived outside of Oregon. The two cases clearly exemplify the interstate disagreements on the initial application of parentage laws to alleged out-of-state parents in adoption cases.

In adoption cases, parental rights termination proceedings are usually unnecessary for biological fathers who have failed to step up to parenthood and thus have failed to achieve parental status.<sup>303</sup> In Utah, a choice-of-law statute recognizes that in a Utah adoption proceeding, such an out-of-state father may only need to comply with the step up requirements of his own state’s laws.<sup>304</sup>

Typically in adoption cases, veto powers are held by the legal parents who did not initiate the adoption proceedings. Yet to be such a legal parent, one must comply with imprecise parentage laws on seizing parental

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299. *Id.* at 997, 998 n.6 (suggesting that exceptional circumstances include settings where the parties in an Oregon adoption case “intended” for some foreign state law to apply); *see also* State *ex rel.* S.O., 122 P.3d 686,689 (Utah Ct. App. 2005) (using “most significant relationship” test); *Hanlon v. Mooney*, 407 So. 2d 554, 557–58 (Ala. Civ. App. 1981) (using Alabama law to assess consent to adoption executed in Indiana).

300. 577 P.2d 714 (Ariz. 1978) (en banc).

301. *Id.* at 714.

302. *Id.* at 715–16.

303. In *Lehr v. Robertson*, 463 U.S. 248 (1983), the court found such state statutory barriers to participation rights for unwed biological fathers in adoption proceedings were constitutionally permissible as male biological ties alone did not prompt federal constitutional childcare interests. *Id.* at 267–68.

304. UTAH CODE ANN. § 76B-6-122(1)(c)(i)(B) (2013) (compliance with parental rights requirements of “the last state” where the unmarried biological father knew the mother resided); *see also* *Nevares v. M.L.S.*, 345 P.3d 719 (Utah 2015).

opportunities, assuming no applicable precise parentage laws—as with a voluntary acknowledgment or paternity court judgment. Here, veto authority should not always be guided by the forum state law on whether there has been compliance, as where the purported parent has not had direct contacts with the forum.

#### V. CHOOSING BETWEEN IMPRECISE AMERICAN STATE LAWS WHEN FIRST DETERMINING PARENTAGE

In varying case settings, like child support, childcare, and adoption, a court often must determine parentage for the first time. These determinations are especially difficult when imprecise parentage laws, such as presumed or de facto parenthood, operate where the relevant conduct exclusively or chiefly occurred outside the forum. When two American state laws on imprecise parentage differ, the court should not always apply its own parentage laws but should apply its own choice-of-law standards. Statutory and uniform law provisions dictating the use of forum parentage law without any choice-of-law analysis spur uncertainties and unfortunate forum shopping. Courts must develop new choice-of-law precedents requiring occasional employment of foreign state laws on imprecise parentage. These precedents are needed in a variety of cases, including marriage dissolution, adoption, and child support.

In choosing between imprecise parentage laws in varying legal settings with similar factual circumstances, a court should not always choose the same state law. Thus, forum law may be properly chosen in one setting, as with child support, but not in another setting, as with childcare. This is not problematic, as even within a single state, parentage laws often differ depending upon setting. Thus, an unwed biological father can be a legal parent for child support purposes, but not a legal parent with childcare rights or adoption veto powers. In an imprecise parentage law setting, courts may need to assess competing state interests differently if monetary support is sought from a forum resident whose child is outside the forum, if childcare opportunities are sought by a forum resident whose child is outside the forum, and if an adoption is considered for a child outside the forum but where the child's parent resides in the forum asked to consider the termination of parental rights.

#### CONCLUSION

Not too long ago, American state laws chiefly designated parentage at precise moments in time. One became a parent upon giving birth, upon having one's spouse give birth, upon formal adoption, upon completion of a birth certificate or a voluntary paternity acknowledgment, or upon a

paternity case judgment. A state would usually respect these parentage designations from another state, even though certain parentage designations—as with a marital paternity presumption or a voluntary parentage acknowledgment—could later be voided through a rebuttal or rescission occurring without a parental rights termination proceeding.<sup>305</sup>

Today, American state laws also increasingly allow for parentage establishments to be based on conduct occurring at no precise moment in time, as with residing with and supporting a child, typically called *de facto* or presumed parenthood.<sup>306</sup> Certain parentage disestablishments also often depend upon earlier conduct occurring at no precise moment in time.<sup>307</sup>

When conduct relevant to legal parentage occurs in one state and legal parentage is later to be initially established in another state, the second state's court frequently fails to respect the imprecise parentage laws of the state where the conduct occurred.<sup>308</sup> Comparably, the second state's court often fails to respect the first state's norms on disestablishing legal parentage even though the relevant conduct occurred there.<sup>309</sup> Although respect is not always due, applications by the second state's court of its own parentage laws should not be automatic. Yet proposed uniform statutes, as well as federal and state statutes, are read to suggest this mandate. These readings are wrong because they fail to account for the possibility that the second state's court should defer to the first state's parentage norms because, possibly, governmental interest analysis favors the first state.

This Article urges that the second state's court should explore in parentage cases whether there are conflicting, imprecise parentage laws and, if so, whether it should utilize its own choice of law rules to resolve any conflict. This may mean, as with choice of law rules compelling an interest analysis in other settings, that the resolution of which state's imprecise parentage law controls may vary depending upon context. For example, parentage law choices may differ in multistate child support and childcare cases where an alleged parent lives in the forum while the child and custodial parent live outside the forum. Here, the forum has a significant interest in what its resident should pay for child support—albeit for a child residing elsewhere—especially if the resident has never left the forum. Yet the child's and custodial parent's state of residency has a significant interest in the day-to-day childcare provided to the child, even

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305. See Parness, *Handling Imprecise Parentage*, *supra* note 14, at 409–10.

306. *Id.* at 404–05.

307. Thus, voluntary paternity acknowledgments can be rescinded more than 60 days later if there is shown fraud, duress or mistake, though the state law rescission procedures vary widely. Parness & Townsend, *supra* note 11, at 82–87.

308. See *supra* Part IV.

309. See *supra* Part IV.D.

if the noncustodial parent has never lived there. As well, parentage law choices may differ in voluntary parentage acknowledgment establishment and disestablishment cases where the signing occurred in one state and where the fraud leading to the signing occurred in a different state. Here, the norms on how to sign may best come from where signing occurred while the norms on fraud may best come from where the fraud occurred.

New judicial precedents are needed when initial parentage establishment and parentage disestablishment disputes involve significant conduct outside the forum. Sometimes courts should choose not to employ the imprecise parentage laws of the forum.

