

**Summary of SC89951, *John T. Hightower v. Melissa Ann Myers, et al.***

Appeal from the Jackson County circuit court, Judge Sandra C. Midkiff  
Argued and submitted Oct. 27, 2009; opinion issued March 9, 2010

**Attorneys:** Mother was represented by Ronald Ribaudo of The Ribaudo Law Firm in Lake St. Louis, (636) 485-8252; and Father was represented by Michelle N. Higinbotham of Higinbotham & Higinbotham in Belton, (816) 322-5297.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A mother challenges the trial court's modification of a custody and child support decree. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the trial court's judgment. The trial court had jurisdiction under the constitution and authority to proceed under the statutes, and its judgment modifying custody is supported by substantial evidence and does not misapply the law.

**Facts:** In 1999, Mother and Father had a child in Kansas City, Kan. They lived in Kansas City, Mo., from June 2000 to May 2001. When their relationship ended, Mother moved to New Jersey with Father's assistance. By agreement, the two exchanged custody of their child, who lived with Father for 51 days between June and August 2001 and for an additional 36 days between November and December 2001. In January 2002, Father filed a petition for a paternity declaration and child custody in a Missouri trial court. In August 2003, the court entered an amended judgment declaring Father to be the child's father, awarding joint legal and physical custody to both parents, ordering Father to pay \$500 per month in child support, and including a parenting plan that designated times the child was to spend with each parent and requiring Father to pay the cost of the child's transportation and, while she still required a chaperone, the cost of Mother's transportation to accompany the child while traveling between the parents' homes. Despite the parenting plan, Mother failed on several occasions to permit the child to travel to spend time with Father, regularly denied Father telephone access to the child, and failed to provide Father with the child's academic report cards or school photographs. While she lived in New Jersey, Mother changed residences five times but did not provide Father with the required notice of the moves, the child's new addresses and the names of the schools the child was going to attend.

In July 2006, Mother told Father she might move to Georgia with her boyfriend; she moved there the next month, even though she did not have a job in Georgia and did not provide Father with the required 60-day advance notice of her proposed relocation. In addition, the child did not begin school until September 2006, a month after classes began and just nine days before students in the child's grade would be required to take standardized tests. Also in July 2006, Mother asked Missouri's family support division to increase the amount of Father's child-support obligation. In September 2006, Father asked the Missouri trial court to modify its 2003 judgment, requesting that custody of the child be transferred to him and that Mother be ordered to pay him child support. Without the assistance of an attorney, Mother filed a pleading objecting to Father's request, but she did not challenge the court's jurisdiction over her or the proceedings. The court ultimately concluded that it had jurisdiction over the custody issues and that Missouri was the most appropriate forum for a determination of those issues because Mother recently had relocated from New Jersey to Georgia. It granted Father's motion, maintaining joint legal and

physical custody, changing the child's primary residence to Missouri with Father, and ordering Mother to pay \$87 per month in child support. The trial court overruled Mother's subsequent motion for a new trial, issuing additional findings that, had Mother not moved, New Jersey would have been the forum state, but because Mother had moved to Georgia, New Jersey no longer was the child's home state, and more evidence about the child would be present in Missouri than in Georgia. Mother appeals.

**AFFIRMED.**

**Court en banc holds:** (1) The trial court had subject-matter jurisdiction over this case and authority to proceed. Under the uniform child custody and jurisdiction act (UCCJA), codified in Missouri at sections 452.440 to 452.550, RSMo 2000, a court in a particular state has jurisdiction to make a child custody determination by initial or modification decree when one of four prerequisites is met – the state is the child's home state, the child has a significant connection with the state, an emergency exists warranting the state to assume jurisdiction, or no other state has or is exercising jurisdiction over the child. Because the case here is a civil case, the trial court had subject-matter jurisdiction over the dispute pursuant to article V of the Missouri Constitution. Jurisdiction, however, is different from statutory authority; once established, subject-matter jurisdiction may not be removed by statutory provisions. In light of *J.C.W. ex rel. Webb v. Wycsiskalla*, 275 S.W.3d 249 (Mo. banc 2009), and *McCracken v. Wal-Mart Stores East, LP*, 298 S.W.3d 473 (Mo. banc 2009), then, the UCCJA provisions at issue, section 452.450.1, do not remove subject-matter jurisdiction from a court. Rather, they inform the court whether it lacks authority to declare or modify custody because of statutory limitations. Here, the trial court had subject-matter jurisdiction under the constitution, and it had authority under section 452.450.1(2) or (4) to modify the custody decree because the child has a substantial connection to Missouri and more evidence would be present in Missouri than Georgia. Because Mother failed to raise and preserve a timely challenge to the trial court's authority either in the initial proceeding in 2003 or the modification proceeding in 2007, her claims are waived and she is not entitled to relief.

(2) The trial court's findings of fact are supported by substantial evidence and are not against the weight of the evidence, and it did not misapply the law. Under section 452.410.1, RSMo 2000, a court may modify a custody decree if it finds that a change has occurred in the child's circumstances and that modifying custody is necessary to serve the child's best interest. The statute does not require that the change be "substantial." Nor does it require that the change of circumstance be "continuing;" that is a standard for modifying child support, not custody. Here, substantial evidence supports the trial court's findings that, between the 2003 decree and the 2007 modification motion, Mother: had not maintained a stable living environment for the child, moving five times in New Jersey and then a sixth time to Georgia, causing disruption in the child's school enrollment and attendance; repeatedly failed to notify Father of her moves as required by section 452.377, RSMo 2000, and the terms of the 2003 judgment; lacked stability in her employment and income; has demonstrated a pattern of denying or refusing Father's time with the child by willfully and intentionally blocking or denying Father regular contact and parenting time for long periods of time; thwarted and frustrated Father's efforts to maintain daily telephone contact and regular visits with the child; and lacked a sincere interest in cooperating with Father or facilitating good parental relations. The trial court appropriately considered the relevant factors enumerated in section 452.375.2, RSMo 2000, to determine custody in the child's best interest and provided sufficient findings of fact and conclusions of law in its initial order modifying custody, in its additional findings of fact and conclusions of law, and in its order overruling Mother's motion for a new trial.