

**Summary of SC95053, *Kelly J. Blanchette v. Steven M. Blanchette***

Appeal from the St. Louis County circuit court, Judge John N. Borbonus III  
Argued and submitted November 4, 2015; opinion issued December 22, 2015

**Attorneys:** The mother was represented by Matthew T. Singer of The Law Office of Matthew T. Singer in St. Louis, (314) 272-3388; the father was represented by Richard B. Blanke of Uthoff, Graeber, Bobinette & Blanke in St. Louis, (314) 621-9550, and Robert O. Appleton Jr. of Appleton Pohle in St. Louis, (314) 726-4700.

*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 appeals a Missouri circuit court's judgment registering West Virginia dissolution and child custody judgments and finding that West Virginia retained exclusive jurisdiction over the custody case. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the circuit court's judgment. The West Virginia court had jurisdiction (authority) to enter the dissolution judgment and subsequent custody modifications, and the Missouri court did not err in registering them. As to the second modification action in West Virginia, the mother received notice and the opportunity to be heard sufficient to satisfy due process.

**Facts:** A husband filed a petition for dissolution in February 2005 in West Virginia, where he, his wife and their son lived. Shortly thereafter, and with the West Virginia court's consent, the mother (who was pregnant) and the son moved to Missouri. The mother gave birth to a daughter in July 2005 in St. Louis. The parties appeared in person and by counsel in January 2006 in the West Virginia court; there is no evidence that either party requested or that the court considered St. Louis County as an alternative or preferable forum. The West Virginia court subsequently entered its judgment of dissolution awarding the mother primary physical custody of the children and ordering the father to pay monthly child support. In 2008, the father asked the West Virginia court modify its judgment, seeking additional custodial time. The mother appeared by telephone and by counsel at a hearing on the motion; the court granted the father's motion. In July 2013, the father sent the children back to Missouri, unaccompanied, via commercial airliner over the mother's protest. In September 2013, the mother filed in St. Louis County a petition to register the West Virginia dissolution judgment and first modification as well as a motion to modify the parenting plan to require the father to accompany the children during air travel for visitations. Around the same time, the father filed in West Virginia a motion to modify, seeking to increase his custodial time. The mother received notice of a hearing on that motion eight days before the scheduled hearing; she did not request a continuance or appear at the hearing in any manner. The West Virginia court granted the father's motion and reduced the father's child support obligation. The mother asked the St. Louis County court not to enter the latest West Virginia modification but to grant her proposed modification instead. The father moved to dismiss her motion for lack of jurisdiction under the uniform child custody jurisdiction enforcement act (the uniform act). The St. Louis County court ultimately issued its judgment registering all three West Virginia judgments and dismissing the mother's competing motion, finding West Virginia retained exclusive jurisdiction. The mother appeals.

## **AFFIRMED.**

**Court en banc holds:** (1) The West Virginia judgment of dissolution and subsequent modifications were not void for lack of jurisdiction, and the St. Louis County court did not err in registering them in Missouri. In both Missouri and West Virginia, jurisdiction (authority) over child custody is governed by the uniform act, which is intended to avoid jurisdictional competition and conflict, and both states have enacted a policy of “one family, one court.” Jurisdiction under the uniform act is based on the child’s home state at the time the proceeding commences (when the first pleading is filed) unless the home state declines to exercise jurisdiction on the ground that another state is the more appropriate forum, the child and at least one parent have a significant physical connection with the other state other than mere physical presence, and substantial evidence in the other state is available concerning the child’s care, protection, training and personal relationships. This proceeding “commenced” in February 2005 when the father filed the first pleading in his dissolution action in West Virginia, giving that court jurisdiction to determine the son’s custody. Even if the custody proceedings as to the daughter did not “commence” until she was born five months later, this Court cannot construe the uniform act to prescribe the impractical result of bifurcation or transfer of the case midway through litigation. Missouri never declined jurisdiction at the time the initial dissolution action commenced because the mother never asked a court to consider which state’s forum was more appropriate until 2013. Even had she raised the issue immediately after the daughter’s birth, the St. Louis County court likely would have declined jurisdiction because the dissolution already was pending in West Virginia. By process of elimination, jurisdiction over the daughter’s custody, visitation and support necessarily falls to West Virginia as no other state satisfied criteria for visitation under the uniform act’s alternatives.

(2) The mother received reasonable notice and an opportunity to be heard in the father’s 2013 modification action sufficient to satisfy due process. There is no definitive statute or court rule prescribing a particular timeframe for notice of custody modifications in West Virginia, and West Virginia precedent instructs that this Court follow the fundamental principal that due process requires reasonable notice and an opportunity to be heard. The mother was familiar with the West Virginia court, having appeared in person and by counsel at the original hearing and by telephone and counsel at the hearing on the first modification. She was served with notice of the second modification in accord with West Virginia rules and had the opportunity to participate by telephone or request a continuance. She did neither and elected not to appear at all, nor has she moved to set aside the second modification order or appealed it in West Virginia.