VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

LISA MILLER, **Plaintiff,** **v.** **JANET JENKINS,** **Defendant.**	**Case No. LL-08-310**

DEFENDANT'S DEMURRER AND MOTION FOR SANCTIONS

Defendant, Janet Jenkins, by counsel, hereby demurs to Plaintiff Lisa Miller's Complaint and moves this court to sanction Plaintiff for filing a frivolous lawsuit. In support, Defendant states as follows:

Plaintiff asks this Court to relitigate issues already decided by the Court of Appeals of Virginia and Supreme Court of Virginia in this litigation between the same parties. Specifically, Plaintiff asks this Court to refuse to register or enforce any orders from Vermont concerning the custody and visitation of the parties' minor daughter, IMJ. This request is directly contrary to the express orders of the Court of Appeals of Virginia and the Supreme Court of Virginia, which unambiguously require this Court to give full faith and credit to Vermont's orders. Accordingly, Plaintiff's Complaint must be dismissed and Plaintiff should be sanctioned for filing a lawsuit she knows to be without merit, frivolous and already finally decided by the Supreme Court of Virginia against her.

PROCEDURAL BACKGROUND

This is an interstate child custody dispute which has resulted in two separate decisions from the Court of Appeals of Virginia and one decision from the Supreme Court of Virginia, all

of which require the registration and enforcement of the orders of the Rutland County Family Court in Vermont ("Vermont Court").

This case began in November 2003, when Petitioner Lisa Miller ("Lisa"), filed a complaint in the Vermont Court to dissolve her Vermont civil union with Respondent Janet Jenkins ("Janet"), and to adjudicate the parental rights and responsibilities over the "child of the civil union," IMJ. In June 2004, the Vermont Court issued a Temporary Custody Order granting Lisa primary physical custody over IMJ and granting Janet visitation rights. The Vermont Court continued to exercise its jurisdiction over the same issues and ultimately determined that both Janet and Lisa were legal parents of IMJ, and that Lisa was in contempt of court for refusing to allow Janet visitation. On August 4, 2006, a unanimous Vermont Supreme Court affirmed the Vermont Court's orders. From that decision, Lisa sought a writ of *certiorari* from the United States Supreme Court which was denied on April 30, 2007.

First Appeal in Virginia. Rather than comply with the June 2004 order of the Vermont Court awarding Janet visitation rights, Lisa filed a new action in the Circuit Court of Frederick County, asking the court to rule that she was the sole parent and the only person with custodial and other parental rights over IMJ. On October 15, 2004, the court, after dismissing Janet's jurisdictional objections under the Parental Kidnapping and Prevention Act ("PKPA"), 28 U.S.C. § 1738A, and under Virginia law, ruled that Lisa was the only parent of IMJ and that neither Janet "nor any other person has any claims of parentage or visitation rights over [IMJ]."

Janet appealed that decision, and on November 28, 2006, the Court of Appeals of Virginia ("Court of Appeals") reversed and remanded, holding that Vermont had sole jurisdiction over the case pursuant to controlling federal law. Applying the jurisdictional criteria of the PKPA, the Court of Appeals ruled that Vermont had been IMJ's "home state" within six

months of Lisa's filing the Vermont petition and that Vermont continued to exercise jurisdiction over the case. Accordingly, the Court of Appeals held that "the [Virginia] trial court lacked authority to exercise jurisdiction based upon Lisa's custody and visitation action in Virginia or to modify the custody and visitation orders of the Vermont court." *Miller-Jenkins v. Miller-Jenkins*, 49 Va. App. 88, 98, 637 S.E.2d 330, 335 (2006) ("*Miller-Jenkins One*"), attached at Exhibit A. The Court of Appeals also ruled that "it is well settled that the PKPA preempts any conflicting state law." *Id.* at 96, 637 S.E.2d at 334. Accordingly, the Court of Appeals remanded, directing the circuit court "to extend full faith and credit to the custody and visitation orders of the Vermont court." *Id.* at 103, 637 S.E.2d at 338. On January 19, 2007, the Court of Appeals denied Lisa's petition for rehearing *en banc*. Lisa subsequently attempted to appeal to the Supreme Court of Virginia. Her appeal was dismissed on May 7, 2007, because Lisa failed to file a Notice of Appeal. *See Miller-Jenkins v. Miller-Jenkins*, Record No. 070355 (Va. May 7, 2007), attached at Exhibit B.

Second Appeal in Virginia. While the Court of Appeals was considering the first appeal, Janet sought to register the Vermont custody order in the Frederick County Juvenile and Domestic Relations Court ("J&DR Court"). The J&DR Court registered the order, but on March 1, 2006, Frederick County Circuit Court reversed, ruling that the Vermont Order could not be registered. Janet appealed, and on April 17, 2007, in a two-page, unpublished opinion, the Court of Appeals reversed, finding that registration and enforcement of the Vermont Court's order were mandated by the result in the first appeal:

> [i]n light of our decision in Record No. 2654-04-4, it is clear that the trial court likewise erred in this case, Record No. 0688-06-4. Accordingly, we likewise vacate the trial court's March 1, 2006 order and remand the case to the trial court with instruction to enter an order allowing Janet Miller-Jenkins to register the Vermont order in Virginia.

Ct. App. Mem. Op. 2, Apr. 17, 2007, attached at Exhibit C.

Lisa petitioned for and received an Appeal from the Supreme Court of Virginia. On appeal, the Supreme Court of Virginia, applying Virginia's long standing law of the case doctrine, ruled that all the issues raised in the second appeal had been decided in *Miller-Jenkins One*, which was law of the case and therefore *not* subject to review by the Supreme Court of Virginia in a subsequent appeal where the same parties and issues were involved. *Miller-Jenkins v. Miller-Jenkins*, 661 S.E.2d 822, 826 (Va. 2008), attached at Exhibit D. Accordingly, the Supreme Court of Virginia affirmed the Court of Appeal's judgment and issued an Order to that effect on July 1, 2008. *Id.* at 827; Va. Sup. Ct. Order, July 1, 2008, attached at Exhibit E.

The present action was filed by Lisa on June 17, 2008, and served on June 26, 2008. In it, she asks this Court to enjoin any attempt to register or enforce the Vermont Court's orders.

ARGUMENT

I. The Issues Plaintiff Seeks to Raise Have Already Been Decided Against Her By The Supreme Court Of Virginia and Court of Appeals of Virginia And Cannot Be Relitigated Here.

A. In A Final Decision, The Court Of Appeals Has Definitively Decided That The Federal PKPA Preempts Any Conflicting State Law.

With this new complaint, Lisa seeks to reargue the same issues she previously argued to the Court of Appeals and the Supreme Court of Virginia. In her new complaint Lisa argues that the passage of Virginia's Marriage Affirmation Act, Art. I, Sec. 15A, provides this Court with a basis for disregarding the Vermont Court's orders and the rulings of the Court of Appeals and Supreme Court of Virginia. Lisa's contention is utterly devoid of any legal support.

Miller-Jenkins One is dispositive of Lisa's arguments that passage of the Marriage Amendment permit this Court to refuse to register and enforce the Vermont Court's orders. The Court of Appeals specifically rejected the argument that conflicting state law could provide a

basis for disregarding the Vermont Court's orders, holding that "it is well settled that the PKPA preempts any conflicting state law." 49 Va. App. at 94, 637 S.E.2d at 334. Regarding the Marriage Affirmation Act specifically, the Court of Appeals ruled that if the MAA applied to the case at all, "it is preempted by the PKPA." *Id.* at 102, 637 S.E.2d at 337. When a federal statute preempts conflicting state law, it is irrelevant whether the state law in question is a state statute or state constitutional provision. The Supremacy Clause provides that federal law "shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, cl. 2. Because the Marriage Amendment is state law, its passage in no way effects this Court's obligations under the PKPA as the *Miller-Jenkins One* court made clear that "any conflicting state law" is preempted by the federal PKPA. *Id.* (emphasis added).

In addition to the plain language of the Supremacy Clause, Defendant's research reveals at least two dozen cases supporting the proposition that federal preemption operates the same with respect to all aspects of state law, including a state constitutional provision—and not a single contrary case. *Katzenbach v. Morgan*, 384 U.S. 641, 646-47, (1966) (under the Supremacy Clause, the federal Voting Rights Act trumps any state constitutional provisions to the contrary); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 809 n.19 (1995) ("We are aware of no case that would even suggest that the validity of a state law under the Federal Constitution would depend at all on whether the state law was passed by the state legislature or by the people directly through amendment of the state constitution. Indeed, no party has so argued. Quite simply, in our view, the dissent's distinction between state legislation passed by the state

legislature and legislation passed by state constitutional amendment is untenable.");[1] *State of Mo. v. City of Glasgow*, 152 F.3d 802, 805 (8th Cir. 1998) ("The Supremacy Clause of the federal Constitution dictates that a state law (whether a statutory or constitutional provision) cannot prevent the administration and execution of a federal statute."); *U.S. v. Napier*, 233 F.3d 394, 404 (6th Cir. 2000) ("This state constitutional provision, however, is trumped by the Supremacy Clause of the United States Constitution, which provides that federal law 'shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.'"); *O'Brien v. Massachusetts Bay Transp. Authority*, 162 F.3d 40 (1st Cir. 1998) ("[I]t is of no moment that in this instance a federal law supplants a state constitutional-as opposed to a statutory or regulatory-provision. Such a result is exactly what the letter of the Supremacy Clause demands."); *U.S. v. Baer*, 235 F.3d 561, 562 (10th Cir. 2000); *U.S. v. Spencer*, 160 F.3d 413, 414 (7th Cir. 1998); *E.E.O.C. v. Com. of Mass.*, 858 F.2d 52, 53 (1st Cir. 1988 (" . . . the Supremacy Clause of the United States Constitution requires that a federal statute take precedence over even a state constitutional provision. See, Art. VI, cl. 2, United States Constitution."); *Gary W. v. State of La.*, 622 F.2d 804, 806 n.8 (5th Cir. 1980) ("A second difference is that the Louisiana prohibition is contained in the state constitution, whereas the Mississippi prohibition is contained in a statute. Under the Supremacy Clause of the United States Constitution, U.S.Const. art. VI, cl. 2, state constitutional provisions, as well as state statutes, must comport with federal law. Therefore, this distinction, too, is irrelevant . ."); *Keaveney v. Town of Brookline*, 937 F.Supp. 975, 983 (D. Mass. 1996) ("It would contravene the Supremacy Clause to allow a state constitutional provision to have greater force than federal

[1] *See also Reynolds v. Simms*, 377 U.S. 533 (1964) (election system set forth in state constitution must be struck down if it violates the federal constitution).

law."); *Bray v. Fuel Systems, LLC*, 2007 WL 2983086 *3 (S.D. Ohio 2007) ("And under the Supremacy Clause, validly enacted federal law, such as § 301, would trump even a contrary state constitutional provision."); *South Dakota Farm Bureau, Inc. v. Hazeltine*, 202 F.Supp.2d 1020, 1042 (D.S.D. 2002); *Kelly v. U.S.*, 2001 WL 438132 *3 (E.D. Pa. 2001); *U.S. v. Manzo*, 182 F.Supp.2d 385, 408 n.18 (D.N.J. 2000); *Dietz v. Arkansas*, 709 F. Supp. 902 (E.D., Ark. 1989); *Seniors Civil Liberties Ass'n, Inc. v. Kemp*, 761 F. Supp. 1528, 1548 (M.D. Fla. 1991) ("Plaintiffs argue that because Florida has chosen to enact a broad state constitutional protection of privacy, the Federal Fair Housing Amendments Act must be struck down. This interpretation blatantly violates the Supremacy Clause contained in Article VI of the United States Constitution. The Supremacy Clause mandates that whenever state and federal law conflict, it is the state, not the federal provision which must be voided."); *U.S. v. Rothacher*, 442 F.Supp.2d 999, 1007 (D. Mont. 2006) (indictment of felon for federal charge of weapon possession was legitimate despite state constitutional provision providing felons full restoration of rights upon release); *accord U.S. v. Minnick*, 949 F.2d 8, 11 (1st Cir. 1991) ("Minnick's protestation that New Hampshire would allow him to possess a firearm, despite his previous convictions, is fully answered by the Supremacy Clause"); *Rios v. Direct Mail Express, Inc.*, 435 F.Supp.2d 1199, 1206-07 (S.D. Fla. 2006) ("DME attempts to escape the Reno holdings by arguing that Reno involved a state statute rather than a provision of a state constitution. But this distinction is irrelevant."); *Jones v. Gale*, 405 F.Supp.2d 1066, 1087 (D. Neb. 2005); *McKenna v. Williams*, 874 A.2d 217, 237 (R.I. 2005); *Cornhusker Intern. Trucks, Inc. v. Thomas Built Buses*, 263 Neb. 10, 19, 637 N.W.2d 876, 883 (Neb. 2002); *In re A.J.*, 69 Vt. 577, 733 A.2d 36, 37 n.1 (Vt. 1999); *Biggs v. Wilson*, 828 F. Supp. 774, 778 (E.D. Cal. 1991).

B. *Miller-Jenkins One* Is Also Dispositive Of Lisa's DOMA Argument.

Lisa's arguments concerning the Defense of Marriage Act ("DOMA"), 28 U.S.C. § 1738C, were also expressly rejected by the Court of Appeals in *Miller-Jenkins One*. In holding that this interstate custody dispute is governed by the PKPA, *Miller-Jenkins One* expressly rejected Lisa's argument that DOMA carved out an exception to the PKPA. Indeed, the manner in which Lisa's current complaint directly contradicts the holding of *Miller-Jenkins One* relating to the PKPA and DOMA is nothing short of remarkable:

Lisa Miller's Complaint, June 2008	Virginia Court of Appeals Decision in *Miller Jenkins One*, Nov. 2006
"In passing DOMA, Congress **carved out** a subset of judgments that are not entitled to full faith and credit, including those child custody orders that arise out of same-sex marriages or same-sex relationships treated as marriage." Complaint ¶ 66. (emphasis added)	"Lisa argues that DOMA, enacted in 1996, **effectively trumps** the PKPA, enacted in 1980, thus enabling the trial court to exercise jurisdiction over Lisa's petition. **We disagree.**" 49 Va. App. at 100. (emphasis added)
"The Virginia Marriage Amendment **prohibits recognition of the Vermont Temporary Or**der, the June 2007 Vermont Final Order concerning visitation and custody, and any modifications to the June 2007 Vermont Final Order." Complaint, ¶ 67. (emphasis added)	" . . [T]he only question before us is **whether**, considering the PKPA, **Virginia can deny** full faith and credit to the orders of the Vermont court regarding IMJ's custody and visitation. **It cannot.**" 49 Va. App. at 102 (emphasis added) We hold that the trial court erred in failing to recognize that the PKPA . . . **required it to give full faith and credit to the custody and visitation orders of the Vermont court**. 49 Va. App. at 103. (emphasis added)

C. This Court May Not Review Nor Fail to Follow A Decision of The Court of Appeals, Even If This Court Believed The Court Of Appeals Decision To Have Been Incorrectly Decided.

Lisa also contends that "[t]he Court of Appeals' Decision is Unconstitutional under the Federal Due Process Clause." (Compl. ¶¶ 77-85). This remarkable contention ignores the fact that "[a] trial judge is bound by a decision and mandate from [the Court of Appeals], unless we have acted outside our jurisdiction. A trial court has no discretion to disregard our lawful mandate. When a case is remanded to a trial court from an appellate court, the refusal of the trial court to follow the appellate court mandate constitutes reversible error." *Rowe v. Rowe*, 33 Va. App. 250, 257-58, 532 S.E.2d 908 (2000). Moreover, Lisa is inviting this Court to violate the Canons of Judicial Conduct by substituting its view of the law for that of the Court of Appeals. *Id.* at 258 ("Furthermore, a trial judge violates his or her oath of office by willfully refusing to abide by the rulings of an appellate court concerning the very case on appeal from the trial court, regardless of how erroneous the trial judge may consider the appellate ruling to be. . . . [T]he Canons of Judicial Conduct provide that "[a] judge shall be faithful to the law ...," Canons of Judicial Conduct for the State of Virginia Canon 3(B)(2) (1999), and "[a] judge should respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 2(A).").

In inviting this Court to engage in judicial anarchy by ignoring the Court of Appeals' mandate, Lisa displays not only recklessness but also a fundamental misunderstanding of the Court of Appeals' ruling and the rule of law. The Court of Appeals' decision did not assess whether the courts of Vermont correctly decided each issue, but rather held that it is only the Vermont courts that have **the jurisdiction** to consider Lisa's claims. *Miller-Jenkins*, 49 Va. App. at 103. Thus, irrespective of whether Lisa's custody claim is based on state law, federal

statutes, the federal constitution, or the Magna Carta—it is for the courts of Vermont to decide the issues of custody. Under *Miller-Jenkins One*, this Court's sole power—and mandate—is to enforce the orders of the Vermont court.

D. The Supreme Court Of Virginia Has Ruled That Lisa Is Barred By Application Of Law Of The Case Doctrine From Raising The Marriage Amendment Argument In This Litigation.

In addition to having been resolved by the plain language of *Miller-Jenkins One*, The Supreme Court of Virginia also rejected Lisa's preemption argument under longstanding law of the case doctrine, observing that "Lisa further maintains that the Court of Appeals could not have addressed in the first appeal whether the PKPA preempted the Virginia Marriage Amendment, because that amendment was not effective when the Court of Appeals rendered its decision in the first appeal. We disagree with Lisa's arguments." *Miller-Jenkins v. Miller-Jenkins*, 661 S.E.2d 822, 826 (Va. 2008). Explaining, the Supreme Court of Virginia opined that "when a party fails to challenge a decision rendered by a court at one state of litigation, that party is deemed to have waived her right to challenge that decision during later stages of the 'same litigation.' The 'law of the case' doctrine applies both to issues that were actually decided by the court, and also to issues 'necessarily involved in the first appeal, whether actually adjudicated or not.'" *Id.* (citations omitted). Accordingly, Lisa's argument regarding the alleged effect of the Marriage Amendment is barred because "Lisa did not ask the Court of Appeals to consider the Virginia Marriage Amendment, despite the fact that it became effective on January 1, 2007, several months before the Court of Appeals issued its opinion in the present appeal." *Id.* at 827.

The Supreme Court also made it expressly clear that Lisa cannot, as she blatantly attempts to do in her new complaint, raise her Marriage Amendment argument in a future litigation. *Id.* at 826 ("[O]ur application of the 'law of the case' doctrine extends to 'future

stages of the same litigation.' Thus, when two cases involved identical parties and issues, and one case has been resolved finally on appeal, we will not re-examine the merits of issues necessarily involved in the first appeal, because those issues have been resolved as part of the 'same litigation.'") (citations omitted).

Lisa suggests that Chief Justice Hassell's concurrence, in which he states that he does "not believe that [*Miller-Jenkins One*] was correctly decided," *id.* at 827, provides a basis for this Court to ignore *Miller-Jenkins One*. Lisa's argument is plainly nonsense. Not only is it the opinion of a solitary justice, but also even that Justice's opinion is clear that in the custody dispute between Lisa and Janet, all the courts of Virginia are bound by the decision in *Miller-Jenkins One*. *Id.* at 827-28 (Va. 2008) ("As the majority correctly holds, the law of the case doctrine prohibits this Court from considering the merits of the former appeal in this proceeding.") (Hassell, J., concurring).

II. Plaintiff Should Be Sanctioned For Filing In Bad Faith A Law Suit She Knows To Be With Out Merit Because The Issues Raised Have Already Been Decided Against Her In Prior Litigation Between The Same Parties.

Plaintiff's contentions in her Complaint are so utterly without any basis in the law that sanctions under Virginia Code Section 8.01-271 are required. The Complaint simply repeats her DOMA arguments that were expressly rejected in *Miller-Jenkins One*. The Complaint presupposes that the Supremacy Clause does not operate to preempt a state constitutional provision, when the very text of the Supremacy Clause and legions of cases provide that it does. Finally, Plaintiff asks this Court to declare "unconstitutional" the Court of Appeals' holding in *Miller-Jenkins One*. These contentions go beyond advancing unsupportable theories and indeed reflect open contempt for the structure of the judicial system of this Commonwealth. Defendant

respectfully requests an order of sanctions covering her fees in submitting this demurrer and motion, as well as a punitive sanction.

Section 8.01-271 requires an attorney who files a pleading to attest that it is reasonably well grounded in fact, supportable by existing law or a good faith argument for a change in the law, and is not interposed for an improper purpose. The attorney's signature attests to each of the conditions; if any of the three is not met, sanctions are appropriate. *Ford Motor Co. v. Benitez*, 273 Va. 242, 251 (2007). Indeed, sanctions are mandatory. *Id.* at 249 ("[I]t is apparent that the General Assembly had the opportunity to make discretionary a court's imposition of sanctions upon finding a statutory violation, but elected not to do so. Instead, it used the mandatory words 'shall impose ... an appropriate sanction.'"). When a party pleads a theory that cannot be supported by a legitimate legal argument, sanctions should be imposed. *Nedrich v. Jones*, 245 Va. 465, 429 S.E.2d 201, 207 (1993) (sanctions imposed for seeking recovery under implied contract theory when express contract precluded such recovery); *Flippo v. CSC Associates III, L.L.C.*, 262 Va. 48, 547 S.E.2d 216 (2001) (claim of fraud warranted sanctions when defendant stated only an opinion and invited plaintiff to review defendant's assertions himself); *Concerned Taxpayers of Brunswick County v. County of Brunswick*, 249 Va. 320, 455 S.E.2d 712 (1995) (attempt to sue supervisors individually warranted sanctions absent allegation of diversion of funds for personal benefit).

Under Section 8.01-271, this Court should award expenses and fees associated with the Demurrer, this Motion, as well as a punitive award. The statute "permit[s] not only a recovery of such fees and expenses incurred in defending against an unwarranted claim, but also a recovery of those fees and expenses incurred in pursuing a sanctions award arising out of such a claim." *Cardinal Holding Co. v. Deal*, 258 Va. 623, 632, 522 S.E.2d 614, 619 (1999). An additional

sanction to punish the attorney is appropriate. *Id.* (approving $10,000 punitive sanction in addition to costs and fees).

CONCLUSION

For the foregoing reasons, the defendant respectfully requests that the Court sustain her demurrer and dismiss Plaintiff's Complaint. Defendant also respectfully requests that the Court impose sanctions.

Respectfully Submitted,

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Exhibit A

C

Briefs and Other Related Documents
Miller-Jenkins v. Miller-JenkinsVa.App.,2006.
Court of Appeals of Virginia,Alexandria.
Janet MILLER-JENKINS
v.
Lisa MILLER-JENKINS.
Record No. 2654-04-4.

Nov. 28, 2006.

Background: Biological mother of child filed petition to establish parentage and for declaratory relief, seeking declaration that she was the sole parent of child and an adjudication of any parental rights claimed by her same-sex partner to be void. The Circuit Court, Frederick County, John R. Prosser, J., issued ruling stating that mother was the sole biological and natural parent of child, and that mother's same sex-partner had no claims of parentage or visitation rights over child. Same-sex partner appealed.

Holding: The Court of Appeals, Willis, Jr., J., held that Parental Kidnapping Prevention Act (PKPA) prevented trial court from exercising jurisdiction over mother's petition.

Vacated and remanded.

West Headnotes

[1] Child Custody 76D ⇐707

76D Child Custody
76DX Interstate Issues
76DX(A) In General
76Dk707 k. Preemption by Federal Law. Most Cited Cases
The Parental Kidnapping Prevention Act (PKPA) preempts any conflicting state law. 28 U.S.C.A. § 1738A.

[2] Child Custody 76D ⇐745

76D Child Custody
76DX Interstate Issues
76DX(C) Jurisdiction of Forum Court
76Dk745 k. Continuing Jurisdiction. Most Cited Cases

Child Custody 76D ⇐748

76D Child Custody
76DX Interstate Issues
76DX(C) Jurisdiction of Forum Court
76Dk748 k. Pending Proceeding in Foreign Jurisdiction. Most Cited Cases

Children Out-Of-Wedlock 76H ⇐1

76H Children Out-Of-Wedlock
76HI Status in General
76Hk1 k. Who Are Bastards, Illegitimate, or Out-Of-Wedlock; Name and Status. Most Cited Cases
Parental Kidnapping Prevention Act (PKPA) prevented Virginia trial court from exercising jurisdiction over biological mother's petition to establish parentage, in which she sought declaration that she was sole parent of child and adjudication of any parental rights claimed by her same-sex partner to be void; Vermont Supreme Court held that Vermont court had jurisdiction over case initiated by mother's complaint seeking dissolution of parties' civil union, mother commenced Vermont proceeding two months after Vermont ceased to be child's home state due to child's having been removed from Vermont by mother while partner continued to live in Vermont, proceeding in Vermont court was pending when mother filed her petition in trial court, and Vermont court continued to exercise jurisdiction. 28 U.S.C.A. § 1738A(c)(1), (c)(2)(A)(ii), (g, h).

[3] Statutes 361 ⇐188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In General. Most Cited Cases
A principal rule of statutory interpretation is that courts will give statutory language its plain meaning.

[4] Child Custody 76D ⇐770

76D Child Custody
76DX Interstate Issues
76DX(D) Proceedings and Relief
76Dk768 Pleading
76Dk770 k. Issues, Proof and Variance. Most Cited Cases

Children Out-Of-Wedlock 76H ⇐1

76H Children Out-Of-Wedlock
76HI Status in General
76Hk1 k. Who Are Bastards, Illegitimate, or Out-Of-Wedlock; Name and Status. Most Cited Cases
Parentage action initiated by biological mother constituted a "custody determination" or "visitation determination" under the Parental Kidnapping Prevention Act (PKPA), such that the PKPA was applicable in determining whether trial court had authority to exercise jurisdiction over action, as mother's petition prayed that she be adjudicated as having "sole parental rights" over child and that her same-sex partner's claim to "parental rights" be adjudged "nugatory, void, illegal and/or unenforceable," and, whatever semantic machinations were involved, any common understanding of the term "parental rights" included right to custody and visitation. 28 U.S.C.A. § 1738A.

[5] Child Custody 76D ⇐702

76D Child Custody
76DX Interstate Issues
76DX(A) In General
76Dk701 Constitutional, Statutory, and Regulatory Provisions
76Dk702 k. In General. Most Cited Cases

Children Out-Of-Wedlock 76H ⇐1

76H Children Out-Of-Wedlock
76HI Status in General
76Hk1 k. Who Are Bastards, Illegitimate, or Out-Of-Wedlock; Name and Status. Most Cited Cases

Marriage 253 ⇐54(2)

253 Marriage
253k54 Effect of Informal or Invalid Marriage or Union
253k54(2) k. Same-Sex and Other Non-Traditional Union. Most Cited Cases
Federal Defense of Marriage Act (DOMA) did not, by implication, repeal Parental Kidnapping Prevention Act (PKPA), such as to enable trial court to exercise jurisdiction over biological mother's parentage action, in which she sought declaration that she was sole parent of child and adjudication of any parental rights claimed by her same-sex partner to be void; there was nothing in wording or legislative history of DOMA indicating that it was designed to affect the PKPA, the primary purpose of which was to extend requirements of Full Faith and Credit Clause to child custody determinations. U.S.C.A. Const. Art. 4, § 1; 28 U.S.C.A. §§ 1738A, 1738C.

[6] Statutes 361 ⇐158

361 Statutes
361V Repeal, Suspension, Expiration, and Revival
361k158 k. Implied Repeal in General. Most Cited Cases
Repeal of a statute by implication is not favored.

[7] Statutes 361 ⇐223.1

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.1 k. In General. Most Cited

Cases
Where two statutes are in apparent conflict, it is the duty of the court, if it be reasonably possible, to give to them such a construction as will give force and effect to each.

[8] Statutes 361 ⇐181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In General. Most Cited Cases
Primary objective of statutory construction is to ascertain and give effect to legislative intent.

[9] Statutes 361 ⇐188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In General. Most Cited Cases
The plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction.

****331** Joseph R. Price (Lisa M. Vollendorf; Gregory R. Nevins; Rebecca Glenberg; ****332** John L. Squires; Arent Fox PLLC; Lambda Legal Defense & Education Fund, Inc.; American Civil Liberties Union; Equality VirginiaEducation Fund, on briefs), Richmond, for appellant.
Rena M. Lindevaldsen (Mathew D. Staver; Scott E. Thompson; Liberty Counsel, on brief), for appellee.
Amicus Curiae: Virginia Chapter of the National Association of Social Workers; Virginia Women Attorneys Association; Virginia Poverty Law Center, Inc.; Virginia National Organization for Women; Virginia Organizing Project (Thomas M. Wolf; Kenya N. Washington; LeClair Ryan, PC, on brief), for appellant.

Present: CLEMENTS, J., and WILLIS and ANNUNZIATA, S.J.

WILLIS, JR., Judge.
***91** Janet Miller-Jenkins ("Janet") appeals the October 15, 2004 "Final Order of Parentage" of the Circuit Court of Frederick County ("trial court"). In that order, the trial court held (1) that Lisa Miller-Jenkins ("Lisa") is "the sole biological and natural parent of" IMJ, a minor, (2) that Lisa " solely has the legal rights, privileges, duties and obligations as parent hereby established for the health, safety, and welfare of" IMJ, and (3) that neither Janet "nor any other person has any claims of parentage or visitation rights over" IMJ.

On appeal, Janet contends the trial court erred (1) in failing to recognize that the federal Parental Kidnapping Prevention Act ("PKPA"), 28 U.S.C. § 1738A, barred its exercise of jurisdiction, (2) in holding that the Virginia Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), Code § 20-146.1 *et seq.*, permitted it to exercise jurisdiction, and (3) in refusing to enforce the June 17, 2004 custody order of the Rutland County, Vermont Family Court ("Vermont court").

We hold that the trial court erred in failing to recognize that the PKPA barred its exercise of jurisdiction. Accordingly, we vacate the orders of the trial court and remand this case with instruction to grant full faith and credit to the custody and visitation orders of the Vermont court.

I. Background

Beginning in the late 1990's, the parties lived together in Virginia. On December 19, 2000, they traveled to Vermont ***92** and entered into a civil union pursuant to the laws of that state. *See* Vt. Stat. Ann. Tit. 15, § 1201 *et seq.* Thereafter, while residing in Virginia, Lisa was artificially inseminated with sperm from an anonymous donor. In April 2002, she gave birth to IMJ. In August 2002, the parties and IMJ moved to Vermont and established residence there. In September 2003, the parties ended their relationship. Lisa moved to Virginia with IMJ. Janet remained in Vermont.

On November 24, 2003, Lisa filed in the Vermont court a "Complaint for Civil Union Dissolution."

She designated IMJ as "the biological or adoptive" child of the "civil union." She asked the Vermont court to dissolve the civil union, to award her legal and physical "rights and responsibilities for the minor child," to award Janet "suitable parent/child contact (supervised)," and to "award payment of suitable child support money."

On June 17, 2004, the Vermont court entered a " Temporary Order Re: Parental Rights & Responsibilities." In that order, the Vermont court awarded Lisa "temporary legal and physical responsibility for the minor child of the parties," and awarded Janet "on a temporary basis, parent-child contact with the minor child as follows.. .." The order then listed the specifics of that contact, and in so listing thrice used the word " visitation."

On July 1, 2004, the day Virginia's Marriage Affirmation Act ("MAA"), Code § 20-45.3 became law, Lisa filed in the trial court a "Petition to Establish Parentage and for Declaratory Relief." She asserted that she had "sole custody" of IMJ, and asked the court (1) to declare that she was "the sole parent of" IMJ, (2) to rule that she was "to be the sole parent of and to have sole parental rights over" IMJ, (3) to adjudicate any parental rights claimed by Janet "to be nugatory, void, illegal and/or unenforceable," and (4) to award her attorney's fees and costs.

****333** On July 19, 2004, after learning of the petition filed by Lisa in Virginia, the Vermont court entered the following order:
***93** This Vermont Court has and will continue to have jurisdiction over this case including all parent-child contact issues. This Court is unaware of any proceeding available in a state that does not recognize a civil union to resolve the issue of this case. This Court will not and cannot defer to a different State that would preclude the parties from a remedy.
The Temporary Order for parent-child contact [is] to be followed. Failure of the custodial parent to allow contact will result in an immediate hearing on the need to change custody.

On July 29, 2004, Janet filed a demurrer to Lisa's Virginia petition. On August 18, 2004, the trial court entered an order (1) recognizing that Janet was entering a special appearance for the purpose of contesting jurisdiction, (2) directing the parties to file memoranda addressing the question of jurisdiction, and (3) staying all visitation between Janet and IMJ except for supervised visitation in Virginia. Following an August 24, 2004 hearing, the trial court ruled it had jurisdiction pursuant to the MAA and the UCCJEA. It memorialized this ruling in a September 9, 2004 order.[FN1]

> FN1. The trial court, in the September 9, 2004 order, also certified the matter for an interlocutory appeal to this Court pursuant to Code § 8.01-670.1. Janet noted an appeal. Record No. 2192-04-4. By order entered January 6, 2005, we dismissed that appeal, finding that we lacked jurisdiction pursuant to either Code § 8.01-670.1 or Code § 17.1-405.

Meanwhile, the Vermont court, by order entered September 2, 2004, held Lisa in contempt for refusing to comply with the child visitation terms of its June 17, 2004 order.

On October 15, 2004, the trial court entered the final order in this case, setting forth the holdings delineated in the first paragraph of this opinion.

On appeal by Lisa, the Supreme Court of Vermont ("Vermont Supreme Court") affirmed the judgment of the Vermont court, holding, *inter alia,* that the civil union entered into by Lisa and Janet was valid under Vermont law; that the Vermont***94** court had jurisdiction to dissolve that civil union and to determine all its implications, including the parentage of and parental rights and responsibilities with respect to IMJ; and that the Vermont court acted properly in holding Janet to be a parent of IMJ and in assigning parental rights and responsibilities to her. *Miller-Jenkins v. Miller-Jenkins,* 912 A.2d 951 at 956, 2006 WL 2192715, 2006 Vt. LEXIS 159 (Vt. Aug. 4, 2006).
It held that PKPA afforded preemptive jurisdiction to Vermont and denied full faith and credit to

Virginia orders contradicting those entered by the Vermont court. *Id.* at 967, 2006 WL 2192715, 2006 Vt. LEXIS 159.

II. Analysis

A. *The PKPA*

1. *Statutory History and Analysis*

28 U.S.C. § 1738A, commonly referred to as the Parental Kidnapping Prevention Act, carries the following title: "Full faith and credit given to child custody determinations." Subsection (a) of the PKPA reads: "The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State."

The United States Supreme Court has succinctly summarized the thrust of the PKPA:
The Parental Kidnap[p]ing Prevention Act (PKPA or Act) imposes a duty on the States to enforce a child custody determination entered by a court of a sister State if the determination is consistent with the provisions of the Act. In order for a state court's custody decree to be consistent with the provisions of the Act, the State must have jurisdiction under its own local law and one of five conditions set out in § 1738A(c)(2) must be met. Briefly put, these conditions authorize the state court to enter a custody decree if the child's home is or recently has been in the State, if the ***95** child has no home State and it would be in the child's best interest for the ****334** State to assume jurisdiction, or if the child is present in the State and has been abandoned or abused. Once a State exercises jurisdiction consistently with the provisions of the Act, no other State may exercise concurrent jurisdiction over the custody dispute, § 1738A(g), even if it would have been empowered to take jurisdiction in the first instance, and all States must accord full faith and credit to the first State's ensuing custody decree. *Thompson v. Thompson,* 484 U.S. 174, 175-77, 108 S.Ct. 513, 514-15, 98 L.Ed.2d 512 (1988) (footnotes omitted).

The PKPA had its genesis in the confusion concerning the applicability of the full faith and credit doctrine, 28 U.S.C. § 1738, to child custody orders. *See Thompson,* 484 U.S. at 180, 108 S.Ct. at 516-17. Indeed, "a parent who lost a custody battle in one State had an incentive to kidnap the child and move to another State to relitigate the issue." *Id.* Yet, despite its unofficial and common title, the PKPA is not limited to parental kidnapping cases.
"[T]he principal problem Congress was seeking to remedy was the inapplicability of full faith and credit requirements to custody determinations.... The sponsors and supporters of the Act continually indicated that the purpose of the PKPA was to provide for nationwide enforcement of custody orders made in accordance with the terms of the UCCJA [FN2].... *Congress' chief aim in enacting the PKPA was to extend the requirements of the Full Faith and Credit Clause to custody determinations...* ."

FN2. The Uniform Child Custody Jurisdiction Act, since superceded by the UCCJEA.

Scott v. Rutherfoord, 30 Va.App. 176, 187, 516 S.E.2d 225, 231 (1999) (quoting *Thompson,* 484 U.S. at 181, 183, 108 S.Ct. at 517-518) (emphasis added). *See also Wilson v. Gouse,* 263 Ga. 887, 441 S.E.2d 57, 60 (1994) ("the PKPA was intended not only to apply where a child was abducted by a parent and removed to another state but to remedy what was widely ***96** considered to be the inapplicability of the full faith and credit statute to child custody orders" (footnote omitted)).

[1] Moreover, it is well settled that the PKPA preempts any conflicting state law. *See Meade v. Meade,* 812 F.2d 1473, 1476 (4th Cir.1987) ("The PKPA quite simply preempts conflicting state court methods for ascertaining custody jurisdiction."). *See also Murphy v. Woerner,* 748 P.2d 749, 750

(Alaska 1988); *Delk v. Gonzalez,* 421 Mass. 525, 658 N.E.2d 681, 684 (1995); *In re Clausen,* 442 Mich. 648, 502 N.W.2d 649, 673-74 (1993); *In re Relationship of Henry,* 326 Or. 166, 951 P.2d 135, 138 (1997); *State ex rel. Conforti v. Wilson,* 203 W.Va. 21, 506 S.E.2d 58, 62 (1998); *Michalik v. Michalik,* 172 Wis.2d 640, 494 N.W.2d 391, 394 (1993).

[2] Pursuant to Vt. Stat. Ann. tit. 15, § 1206,[FN3] Lisa filed a "Complaint for Civil Union Dissolution" with the Vermont court on November 24, 2003. By doing so, she placed before the Vermont court the issues of the parties' legal and physical "rights and responsibilities" concerning IMJ and "suitable parent/child contact." In Vermont, the term " parental rights and responsibilities" means "the rights and responsibilities related to a child's physical living arrangements, parent child contact, education, medical and dental care, religion, travel and any other matter involving a child's welfare and upbringing." Vt. Stat. Ann. tit. 15, § 664(1). And the term "parent child contact" means "the right of a parent who does not have physical responsibility to have visitation with the child." Vt. Stat. Ann. tit. 15, § 664(2).

> FN3. "The family court shall have jurisdiction over all proceedings relating to the dissolution of civil unions."

[3] In reviewing the applicability of the PKPA to the trial court's action, we are guided by the wording of the statute. "A principal rule of statutory interpretation is that courts will give statutory language its plain meaning." *Davenport v. Little-Bowser,* 269 Va. 546, 555, 611 S.E.2d 366, 371 (2005). At its threshold, the PKPA requires that a court making a child custody or visitation determination have "jurisdiction ***97** under the law of such State." 28 U.S.C. § 1738A(c)(1). The Vermont Supreme Court held that the Vermont court had jurisdiction under the ****335** laws of Vermont over the case initiated by Lisa's complaint. *See* Vt. Stat. Ann. tit. 15, § 1206. We are bound by that holding. *See* 28 U.S.C. § 1738A(a) and (g).

Furthermore, Code § 28 U.S.C. 1738A(c)(2)(A)(ii) sanctions the Vermont court's exercise of jurisdiction. That subsection applies where a state " had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State." *Id.* The parties lived together in Vermont until September 2003, when Lisa and IMJ moved to Virginia. Janet continued to live in Vermont. Lisa commenced the Vermont proceeding to dissolve the civil union in November 2003, two months after Vermont ceased to be IMJ's "home state, due to her having been removed from that state" by Lisa.

Because the Vermont court acquired jurisdiction over the issues of custody and visitation, subsections (g) and (h) of the PKPA governed the trial court's ability to entertain Lisa's petition. Those subsections read:

A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

28 U.S.C. § 1738A(g) and (h).

The proceeding in the Vermont court was pending when Lisa filed her petition in the trial court. The Vermont court was then exercising its jurisdiction under Vermont law and ***98** consistently with the provisions of the PKPA. Thus, subsection (g) applied. The Vermont court, by virtue of its June 17, 2004 and July 19, 2004 orders, continued to exercise jurisdiction, giving application to subsection (h). Therefore, under a "plain meaning" statutory analysis, the trial court lacked authority to exercise jurisdiction based upon Lisa's custody and visitation action in Virginia or to modify the

custody and visitation orders of the Vermont court.

2. *Lisa's Position*

Lisa posits three arguments why the PKPA did not preclude the trial court from exercising jurisdiction over her petition.

a. Application of Vermont Law

First, Lisa argues that "to the extent the Vermont order constitutes a visitation determination, the Virginia court properly exercised jurisdiction because the Vermont order was not properly made." Specifically, Lisa contends the Vermont court could not grant "parent child contact" to Janet because it did not first determine that Janet was a parent. The Vermont Supreme Court rejected this argument. *Miller-Jenkins,* 912 A.2d at 956, 2006 WL 2192715, 2006 Vt. LEXIS 159. Furthermore, Lisa makes this contention despite the fact that she alleged in her "Complaint for Civil Union Dissolution" that IMJ was "the biological or adoptive child[ ] of said civil union," and despite the fact that the Vermont court in its June 17, 2004 order specifically found that IMJ was "the minor child of the parties."

Lisa cites no authority, and we know of none, that permits us to rule that the supreme court of another state incorrectly interpreted its own law. The contrary is well established: "This Court has uniformly professed its disposition, in cases depending on the laws of a particular State, to adopt the construction which the Court of the State have given to those laws." *Elmendorf v. Taylor,* 23 U.S. (10 Wheat.) 152, 159, 6 L.Ed. 289 (1825).

***99** b. Custody or Visitation Determination

[4] Second, Lisa argues: "Even if the Vermont court properly made an initial custody determination within the meaning of the PKPA, the Virginia court properly exercised jurisdiction over the parentage action filed in Virginia." Specifically, Lisa contends the ****336** Virginia parentage action is not a custody or visitation determination per the PKPA. Yet, Lisa's petition to the trial court prays that she be adjudicated as having "sole parental rights" over IMJ and that Janet's claim to "parental rights" be adjudged " nugatory, void, illegal and/or unenforceable."

Lisa's complaint in the Vermont court asserted that IMJ was "the biological or adoptive" child of the civil union. She asked that court to award Janet " suitable parent/child contact" and to "award payment of suitable child support money." She thus submitted the determination of IMJ's parentage to the jurisdiction of the Vermont court. Its resolution of that issue has been affirmed by the Vermont Supreme Court and is final.

Whatever semantical machinations are involved, any common understanding of the term "parental rights" includes the right to custody, *see Szemler v. Clements,* 214 Va. 639, 643, 202 S.E.2d 880, 884 (1974) ("Parental rights of custody are founded upon the strong presumption that the best interests of the child will be served by placing it in the custody of its natural parents."), and visitation, *see* Peter N. Swisher, Lawrence D. Diehl & James R. Cottrell, *Virginia Practice Series: Family Law: Theory, Practice, and Forms* § 15.8 (2004 ed.) (" The right of a non-custodial parent to the company and society of his or her child is well established. Barring gross unfitness which jeopardizes the well being of the child, visitation is a presumed entitlement."). *See also L.A.M. v. State,* 547 P.2d 827 (Alaska 1976). [FN4] We therefore reject the contention***100** that Lisa's "parentage action" is not a custody or visitation determination embraced by the PKPA.

FN4. While there is much discussion of parental rights in reported cases, few cases attempt to define those rights making discussion difficult. A careful review of the literature, including case law, treatise and law review, indicates that the following have been listed as "parental rights" protected to varying degrees by the Constitution:
(1) Physical possession of the child which,

> in the case of a custodial parent includes the day-to-day care and companionship of the child. In the case of a non-custodial parent, possession is tantamount to the right to visitation.
> (2) The right to discipline the child, which includes the right to inculcate in the child the parent's moral and ethical standards.
> (3) The right to control and manage a minor child's earnings.
> (4) The right to control and manage a minor child's property.
> (5) The right to be supported by an adult child.
> (6) The right to have the child bear the parent's name.
> (7) The right to prevent an adoption of the child without the parents' consent.
> *L.A.M.*, 547 P.2d at 832 n. 13.

c. DOMA and the MAA

Third, Lisa argues: "Even if the Vermont court properly made an initial custody determination within the meaning of the PKPA, and the Virginia order is somehow construed as a visitation or custody determination, the Virginia court properly exercised jurisdiction over the matter by virtue of the federal Defense of Marriage Act and the [Virginia] Marriage Affirmation Act."

DOMA reads:
No state, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or right or claim arising from such relationship.

28 U.S.C. § 1738C.

[5] Lisa argues that DOMA, enacted in 1996, effectively trumps the PKPA, enacted in 1980, thus enabling the trial court to exercise jurisdiction over Lisa's petition. We disagree.

[6][7] Lisa cites no authority holding that either the plain wording of DOMA or its legislative history was intended to ***101** affect or partially repeal the PKPA. Therefore, any Congressional intent to repeal must be by implication. However, "[r]epeal by implication is not favored and the firmly established principle of law is that where two statutes are in apparent conflict, it is the duty of the court, if it be reasonably possible, to give to them such a construction as will give force and effect to each." *Scott v. Lichford,* 164 Va. 419, 422, 180 S.E. 393, 394 (1935).

****337** [8][9] We do not read the two statutes to conflict. They can be reconciled. In analyzing the statutes, we are mindful that "[t]he primary objective of statutory construction is to ascertain and give effect to legislative intent. *Turner v. Commonwealth,* 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983). The plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction. *Id.*" *Commonwealth v. Zamani,* 256 Va. 391, 395, 507 S.E.2d 608, 609 (1998). As we have noted, " ' Congress' chief aim in enacting the PKPA was to extend the requirements of the Full Faith and Credit Clause to custody determinations.' " *Scott,* 30 Va.App. at 187, 516 S.E.2d at 231 (quoting *Thompson,* 484 U.S. at 183, 108 S.Ct. at 518).
DOMA
has two primary purposes. The first is to defend the institution of traditional heterosexual marriage.
The second is to protect the right of the States to formulate their own public policy regarding the legal recognition of same-sex unions, free from any federal constitutional implications that might attend the recognition by one State of the right for homosexual couples to acquire marriage licenses.

H.R.Rep. No. 104-664, at 2 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2905, 2906. *See also id.* at 18, *reprinted in* 1996 U.S.C.C.A.N. at 2922 ("It is surely a legitimate purpose of government to take steps to protect the right of the people, acting through their state legislatures, to retain democratic control over the manner in which the States will define the institution of marriage. [DOMA] advances this most important government interest.").

***102** Nothing in the wording or the legislative history of DOMA indicates that it was designed to affect the PKPA and related custody and visitation determinations. Simply put, DOMA allows a state to deny recognition to same-sex marriage entered into in another state. This case does not place before us the question whether Virginia recognizes the civil union entered into by the parties in Vermont. Rather, the only question before us is whether, considering the PKPA, Virginia can deny full faith and credit to the orders of the Vermont court regarding IMJ's custody and visitation. It cannot. The law of Vermont granted the Vermont court jurisdiction to render those decisions. By filing her complaint in Vermont, Lisa invoked the jurisdiction of the Vermont court. She placed herself and the child before that court and laid before it the assertions and prayers that formed the bases of its orders. By operation of the PKPA, her choice of forum precluded the courts of this Commonwealth from entertaining countervailing assertions and prayers.

Lisa argues that the MAA forbade the trial court to extend full faith and credit to the orders of the Vermont court. The MAA reads:
A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.

Code § 20-45.3.

We need not, and do not, decide whether the MAA applies to this case. If it does, it is preempted by the PKPA. *See, e.g., Meade,* 812 F.2d at 1476 (PKPA preempts conflicting state law).

B. *The UCCJEA*

Janet also contends the trial court erred in holding that the UCCJEA permitted it to exercise jurisdiction in this case. ***103** Having determined that the PKPA is the controlling law in this matter and that the PKPA preempts conflicting state law, we need not address that issue.

III. Conclusion

We hold that the trial court erred in failing to recognize that the PKPA prevented its exercise of jurisdiction and required it to give full faith and credit to the custody and visitation orders of the Vermont court. By so holding, we do not address whether Virginia law recognizes or endorses same-sex unions entered into in another state or jurisdiction. We do not comment on the constitutionality, ****338** viability or breadth of-the UCCJEA and the MAA. We do not consider the merits of the rulings of the Vermont court. Those questions are not before us. The issue before us is the narrow one of jurisdiction. By filing her complaint in Vermont, Lisa invoked the jurisdiction of the courts of Vermont and subjected herself and the child to that jurisdiction. The PKPA forbids her prosecution of this action in the courts of this Commonwealth. Accordingly, we vacate the orders of the trial court and remand this matter to the trial court with instruction to extend full faith and credit to the custody and visitation orders of the Vermont court.

Vacated and remanded.

Va.App.,2006.
Miller-Jenkins v. Miller-Jenkins
49 Va.App. 88, 637 S.E.2d 330

Briefs and Other Related Documents (Back to top)

• 2654044 (Docket) (Nov. 10, 2004)

END OF DOCUMENT

Exhibit B

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday *the* 7th *day of* May, 2007.

Lisa Miller-Jenkins, Appellant,

against Record No. 070355
Court of Appeals No. 2654-04-4

Janet Miller-Jenkins, Appellee.

From the Court of Appeals of Virginia

Finding that the appeal was not perfected in the manner provided by law because the appellant failed to file the notice of appeal, the Court dismisses the petition for appeal filed in the above-styled case. Rule 5:14(a).

A Copy,

Teste:

Patricia L. Harrington, Clerk

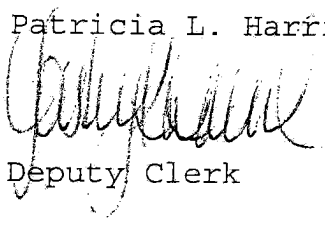
By: 
Deputy Clerk

Exhibit C

COURT OF APPEALS OF VIRGINIA

Present: Judges Frank, Clements and Senior Judge Fitzpatrick
Argued at Richmond, Virginia

JANET MILLER-JENKINS

v. Record No. 0688-06-4

LISA MILLER-JENKINS

MEMORANDUM OPINION* BY
JUDGE JOHANNA L. FITZPATRICK
APRIL 17, 2007

FROM THE CIRCUIT COURT OF FREDERICK COUNTY
John R. Prosser, Judge

Rebecca K. Glenberg (Joseph R. Price; Arent Fox PLLC, on brief), for appellant.

Rena M. Lindevalsden (Mathew D. Staver; Liberty Counsel, on brief), for appellee.

In this appeal, Janet Miller-Jenkins challenges a March 1, 2006 order of the trial court. In that order, the trial court ruled that a Vermont order concerning child custody and visitation between the parties could not be registered in Virginia because (1) the Vermont order directly conflicted with the trial court's October 15, 2004 order adjudging Lisa Miller-Jenkins as the sole parent of IMJ, a child, (2) Vermont lacked subject-matter jurisdiction to enter its order, and (3) the Vermont order contravenes Virginia's public policy and statutory law.

In Record No. 2654-04-4, Miller-Jenkins v. Miller-Jenkins, 49 Va. App. 88, 637 S.E.2d 330 (2006), we vacated the trial court's October 15, 2004 order and remanded the case "to the trial court with instruction to extend full faith and credit to the custody and visitation orders of the Vermont court." Id. at 103, 637 S.E.2d at 338.

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

In light of our decision in Record No. 2654-04-4, it is clear that the trial court likewise erred in this case, Record No. 0688-06-4. Accordingly, we likewise vacate the trial court's March 1, 2006 order and remand the case to the trial court with instruction to enter an order allowing Janet Miller-Jenkins to register the Vermont order in Virginia.

Vacated and remanded.

Exhibit D

Westlaw.
661 S.E.2d 822
661 S.E.2d 822
(Cite as: 661 S.E.2d 822)

H

Miller-Jenkins v. Miller-Jenkins
Va.,2008.

Supreme Court of Virginia.
Lisa MILLER-JENKINS
v.
Janet MILLER-JENKINS.
Record No. 070933.

June 6, 2008.

Background: Biological mother of child filed petition to establish parentage and for declaratory relief, seeking declaration that she was the sole parent of child and an adjudication of any parental rights claimed by her same-sex partner to be void. The Circuit Court, Frederick County, John R. Prosser, J., issued ruling stating that mother was the sole biological and natural parent of child, and that mother's same sex-partner had no claims of parentage or visitation rights over child. Same-sex partner appealed. The Court of Appeals, 49 Va.App. 88, 637 S.E.2d 330, vacated and remanded. Same-sex partner registered Vermont custody order, and mother appealed. The Circuit Court reversed. Same-sex partner appealed. The Court of Appeals reversed and reinstated registration of the Vermont order. Mother appealed.

Holding: The Supreme Court, Barbara Milano Keenan, J., held that the law of the case doctrine precluded biological mother from appealing the Court of Appeals reinstatement of Vermont child custody order that granted mother's former same-sex partner visitation rights with child.

Affirmed.

Hassell, C.J., filed a concurring opinion.

West Headnotes

[1] Appeal and Error 30 ⚿1097(1)

30 Appeal and Error
30XVI Review
30XVI(M) Subsequent Appeals
30k1097 Former Decision as Law of the Case in General
30k1097(1) k. In General. Most Cited Cases

Under the "law of the case doctrine," when there have been two appeals in the same case, between the same parties, and the facts are the same, nothing decided on the first appeal can be re-examined on a second appeal.

[2] Courts 106 ⚿99(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k99 Previous Decisions in Same Case as Law of the Case
106k99(1) k. In General. Most Cited Cases

Pursuant to the law of the case doctrine, when a party fails to challenge a decision rendered by a court at one stage of litigation, that party is deemed to have waived her right to challenge that decision during later stages of the same litigation.

[3] Appeal and Error 30 ⚿1097(1)

30 Appeal and Error
30XVI Review
30XVI(M) Subsequent Appeals
30k1097 Former Decision as Law of the Case in General
30k1097(1) k. In General. Most Cited Cases

Courts 106 ⚿99(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision

106k99 Previous Decisions in Same Case as Law of the Case
106k99(1) k. In General. Most Cited Cases
The law of the case doctrine applies both to issues that were actually decided by the court, and also to issues necessarily involved in the first appeal, whether actually adjudicated or not.

[4] Appeal and Error 30 ⇐1097(1)

30 Appeal and Error
30XVI Review
30XVI(M) Subsequent Appeals
30k1097 Former Decision as Law of the Case in General
30k1097(1) k. In General. Most Cited Cases
When two cases involve identical parties and issues, and one case has been resolved finally on appeal, the Supreme Court will not re-examine the merits of issues necessarily involved in the first appeal, because those issues have been resolved as part of the same litigation and have become the law of the case.

[5] Appeal and Error 30 ⇐853

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k851 Theory and Grounds of Decision of Lower Court
30k853 k. Rulings as Law of Case. Most Cited Cases
Under the law of the case doctrine, courts assume without deciding that there may be error in the decision of the court below; as a result, a decision that becomes the law of the case is adhered to only in the case in which it arose and does not become binding precedent in other cases.

[6] Children Out-Of-Wedlock 76H ⇐20.11

76H Children Out-Of-Wedlock
76HII Custody
76Hk20.11 k. Review. Most Cited Cases
The law of the case doctrine precluded biological mother of child from appealing the Court of Appeals' reinstatement of Vermont child custody order that granted mother's former same-sex partner visitation rights with child; each issue raised by mother was previously addressed by the Court of Appeals in the first appeal filed by the parties, the second Court of Appeals opinion, which was appealed to the Supreme Court, reflected the issues actually decided in the first appeal, and mother failed to perfect her appeal of the first Court of Appeals opin- ion.

***823** Mathew D. Staver, Orlando, FL (Rena M. Lindevaldsen, Longwood, FL; Liberty Counsel, Orlando, FL, on briefs), for appellant.
Joseph R. Price, Washington, DC (Gregory R. Nevins; Rebecca Glenberg, Richmond; Arent Fox, Washington, DC; Lambda Legal Defense & Educ. Fund, Inc.; American Civil Liberties of Virginia Foundation, Richmond, on brief), for appellee.
Amicus Curiae: Com. of VA (Robert F. McDonnell, Atty. Gen.: William E. Thro, State Sol. Gen.; Stephen R. McCullough, Deputy State Sol. Gen.; William C. Mims, Chief Deputy Atty. Gen.; David E. Johnson, Deputy Atty. Gen.; Matthew M. Cobb, Asst. Atty. Gen., on brief), in support of appellant.
Amicus Curiae: American Center of Law and Justice (Vincent P. McCarthy; Kristina ***824** J. Wenberg; Erik M. Zimmerman; Benjamin P. Sisney, on brief), in support of appellant.
Amicus Curiae: National Legal Foundation (Steven W. Fitschen; Barry C. Hodge, on brief), in support of appellant.
Amicus Curiae: Michael A. Cox, Atty. Gen. of the State of Michigan (Henry J. Boynton, Asst. Sol. Gen.; Alison P. Landry, Senior Asst. Atty. Gen., on brief), in support of appellant.
Amici Curiae: Nat. Ass'n of Counsel for Children; Virginia Chapter of the Nat. Ass'n of Social Workers; Virginia Women Attys. Ass'n; Virginia Nat. Organization for Women; Virginia Organizing

Project; Professor Joan H. Hollinger (Thomas M. Wolf; Megan A. Scanlon; LeClair Ryan, on brief), in support of appellee.

Present: All the Justices.

OPINION BY Justice BARBARA MILANO KEENAN.

In this appeal, we consider whether the Court of Appeals erred in directing a circuit court to register a custody and visitation order rendered by a Vermont court, based on the Court of Appeals' previous holding in the same custody and visitation dispute that the federal Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (2000 & Supp. V 2005), requires that the courts of this Commonwealth give full faith and credit to the Vermont order.

In 2000, Lisa Miller-Jenkins (Lisa) and Janet Miller-Jenkins (Janet) entered into a civil union (the civil union) in Vermont that was permitted under Vermont law.[FN1] Lisa and Janet decided that Lisa would bear a child, and in April 2002, after successful artificial insemination, Lisa gave birth to IMJ [FN2] in Virginia. Lisa, Janet, and IMJ lived together in Virginia until July 2002, when they moved to Vermont, where they lived until September 2003. At that time, Lisa and IMJ returned permanently to Virginia over Janet's objection.

> FN1. Because the parties have the same last name, we will refer to them by their first names.
>
> FN2. Because IMJ is a minor, we refer to her by pseudonym.

In November 2003, Lisa filed a petition in a Vermont family court (the Vermont court), seeking to dissolve the civil union and to gain custody of IMJ. The Vermont court dissolved the civil union and entered a custody and visitation order (the Vermont custody order) granting temporary custody of IMJ to Lisa and temporary visitation rights to Janet. After initially allowing Janet to visit IMJ in June, Lisa thereafter refused to permit Janet to have contact with IMJ as required by the terms of the Vermont custody order.

On July 1, 2004, Lisa filed a petition in the Frederick County Circuit Court (the circuit court), asking the circuit court to determine that Lisa was IMJ's "sole parent" and seeking sole custody of IMJ. On July 7, 2004, Janet filed a motion in the Vermont court seeking enforcement of the Vermont custody order and a determination that Lisa was in contempt of that court for her failure to abide by the terms of the Vermont custody order. On July 19, 2004, the Vermont court entered an order holding that the Vermont court had continuing jurisdiction over all custody matters in the case, and that the Vermont court would not defer to an order entered by a court in another state purporting to resolve the issue of custody.

In August 2004, the circuit court entered an order temporarily awarding sole custody of IMJ to Lisa and ordered that IMJ not be removed from Virginia (the Virginia custody order). Because the Vermont custody order included a provision granting Janet scheduled visitation with IMJ in Vermont, the Virginia custody order was in direct conflict with the Vermont custody order. In September 2004, the Vermont court issued an order holding Lisa in contempt for violating the terms of the Vermont custody order.

In October 2004, the circuit court concluded that it had jurisdiction over the custody dispute and entered an order awarding sole custody to Lisa, holding that Janet did not have any parental rights, and that Lisa was IMJ's "sole" parent. In November 2004, the Vermont court issued a contrary order holding*825 that Lisa and Janet were both "parents" of IMJ.

In January 2005, Janet appealed the Virginia custody order to the Court of Appeals (the first Virginia appeal). *See Miller-Jenkins v. Miller-Jenkins,* 49 Va.App. 88, 637 S.E.2d 330 (2006). In November 2006, the Court of Appeals reversed the circuit court's judgment entering the Virginia custody or-

der, holding that the circuit court did not have jurisdiction to enter the order because the dispute was a "custody and visitation determination" subject to the provisions of the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (2000 & Supp. V 2005) (the PKPA), which accorded Vermont sole jurisdiction over the custody and visitation dispute. *Id.* at 103, 637 S.E.2d at 337-38. The Court of Appeals concluded that the provisions of the Defense of Marriage Act, 28 U.S.C. § 1738C (2000 & Supp. V 2005) (the DOMA), did not alter the applicability of the PKPA to the custody and visitation dispute, and that the PKPA preempted all state law to the contrary, including Code § 20-45.3 (the Marriage Affirmation Act). *Id.* at 102-03, 637 S.E.2d at 337.

The Court of Appeals further held in the first Virginia appeal that Vermont law governed the parties' dispute, and that the courts of Virginia were bound by Vermont's interpretation of its own law. *Id.* at 96-97, 637 S.E.2d at 334-35. Accordingly, based on its holding that Vermont had sole jurisdiction over the case, the Court of Appeals declined to address the issue whether the civil union would have been recognized under Virginia law. *Id.* at 103, 637 S.E.2d at 337-38.

Following the Court of Appeals' entry of judgment in the first Virginia appeal, Lisa filed a petition for appeal to this Court. We dismissed Lisa's petition because she failed to file a notice of appeal. *Miller-Jenkins v. Miller-Jenkins,* Record No. 070355 (May 7, 2007).

Meanwhile, in March 2005, Janet sought to register the Vermont custody order in the Juvenile and Domestic Relations District Court of Frederick County (the juvenile and domestic relations court). The juvenile and domestic relations court registered the Vermont custody order, and Lisa appealed that decision to the circuit court. The circuit court reversed the juvenile and domestic relations court's judgment mandating registration of the Vermont custody order.

Janet appealed from the circuit court's judgment to the Court of Appeals. In an unpublished opinion, the Court of Appeals summarily reversed the circuit court's order and reinstated the registration of the Vermont custody order, holding that this result was mandated by the Court of Appeals' decision in the first Virginia appeal. *Miller-Jenkins v. Miller-Jenkins,* Record No. 0688-06-4, 2007 WL 1119817 (April 17, 2007). Lisa appeals from the Court of Appeals' judgment.

Addressing the merits of her appeal, Lisa argues that the Court of Appeals erred in concluding that the PKPA requires that Virginia courts give full faith and credit to the Vermont custody order. Lisa maintains that the DOMA, not the PKPA, is applicable in determining whether Virginia must accord full faith and credit to Vermont's child custody orders, and that the Court of Appeals erred in holding that the PKPA preempts the Marriage Affirmation Act and in not addressing whether the PKPA also preempts Article I, § 15-A of the Constitution of Virginia (the Virginia Marriage Amendment). Lisa also contends, among other things, that both the Court of Appeals' judgment and the Vermont judgment violated her fundamental parental rights.

Janet argues, however, that this Court should not reach the merits of Lisa's appeal. Janet contends that Lisa's claims are barred by the "law of the case" doctrine because all the issues presented in this appeal were resolved by the Court of Appeals' decision in the first Virginia appeal, which Lisa failed to timely appeal to this Court. Janet maintains that the first Virginia appeal and the present appeal are the same "case," because the present appeal involves the same parties and the same issue of custody and visitation. Thus, Janet asserts that under the "law of the case" doctrine, the Court of Appeals' holding in the first Virginia appeal that the PKPA requires Virginia to give full faith and credit to the Vermont custody order was a ***826** binding adjudication that resolves the issues before us in the present appeal.

In response, Lisa contends that the "law of the case" doctrine does not apply to the present appeal,

because the present appeal is not the same "case" that was before the Court of Appeals in the first Virginia appeal. According to Lisa, the issue in the first Virginia appeal was whether the courts of Virginia had jurisdiction to entertain Lisa's custody petition, while the issue in the present appeal is whether the courts of Virginia must give full faith and credit to the Vermont custody order. Lisa further maintains that the Court of Appeals could not have addressed in the first appeal whether the PKPA preempted the Virginia Marriage Amendment, because that amendment was not effective when the Court of Appeals rendered its decision in the first appeal. We disagree with Lisa's arguments.

[1] The "law of the case" doctrine is well established in the courts of this Commonwealth. Under this doctrine,

> [when] there have been two appeals in the same case, between the same parties, and the facts are the same, nothing decided on the first appeal can be re-examined on a second appeal. Right or wrong, it is binding on both the trial court and the appellate court, and is not subject to re-examination by either. For the purpose of that case, though only for that case, the decision on the first appeal is the law.

Steinman v. Clinchfield Coal Corp., 121 Va. 611, 620, 93 S.E. 684, 687 (1917); *see Uninsured Employer's Fund v. Thrush,* 255 Va. 14, 18, 496 S.E.2d 57, 59 (1998); *Chappell v. White,* 184 Va. 810, 816, 36 S.E.2d 524, 526-27 (1946); *Kemp v. Miller,* 160 Va. 280, 284, 168 S.E. 430, 431 (1933).

[2][3] Pursuant to the "law of the case" doctrine, when a party fails to challenge a decision rendered by a court at one stage of litigation, that party is deemed to have waived her right to challenge that decision during later stages of the "same litigation." *See Kondaurov v. Kerdasha,* 271 Va. 646, 658, 629 S.E.2d 181, 188 (2006). The "law of the case" doctrine applies both to issues that were actually decided by the court, and also to issues "necessarily involved in the first appeal, whether actually adjudicated or not." *Kemp,* 160 Va. at 285, 168 S.E. at 431; *Searles v. Gordon,* 156 Va. 289, 296, 157 S.E. 759, 761 (1931); *Norfolk & W.R. Co. v. Duke,* 107 Va. 764, 766, 60 S.E. 96, 97 (1908).

Our decisions applying the "law of the case" doctrine generally have involved litigation that has proceeded in a "linear" sequence to trial, appeal, trial on remand, and second appeal, all under the same set of pleadings. *See, e.g., Lockheed Info. Mgmt. Sys. Co. v. Maximus, Inc.,* 259 Va. 92, 108, 524 S.E.2d 420, 429 (2000) (stating that issue decided in first case and not appealed was not subject to relitigation on remand); *Kemp,* 160 Va. at 284, 168 S.E. at 431 (holding that issues decided on appeal were binding law of case on remand). However, we have never limited the "law of the case" doctrine to litigation that occurs in such sequential fashion under one set of pleadings.

[4] In our decision in *Kondaurov,* we explained that our application of the "law of the case" doctrine extends to "future stages of the same litigation." 271 Va. at 658, 629 S.E.2d at 188. Thus, when two cases involve identical parties and issues, and one case has been resolved finally on appeal, we will not re-examine the merits of issues necessarily involved in the first appeal, because those issues have been resolved as part of the "same litigation" and have become the "law of the case."

[5] Under the "law of the case" doctrine, courts assume without deciding that there may be error in the decision of the court below. *See Chappell,* 184 Va. at 816, 36 S.E.2d at 527; *Kemp,* 160 Va. at 284, 168 S.E. at 431; *Peterson v. Haynes,* 145 Va. 653, 660, 134 S.E. 675, 677 (1926); *Steinman,* 121 Va. at 622, 93 S.E. at 688. As a result, a decision that becomes the "law of the case" is adhered to only in the case in which it arose and does not become binding precedent in other cases. *See Chappell,* 184 Va. at 816, 36 S.E.2d at 527; *Kemp,* 160 Va. at 284, 168 S.E. at 431; *Steinman,* 121 Va. at 622, 93 S.E. at 688.

[6] With these principles in mind, we first decline

Lisa's request that we consider ***827** the effect of the Virginia Marriage Amendment on the arguments presented in this appeal. Lisa did not ask the Court of Appeals to consider the Virginia Marriage Amendment, despite the fact that it became effective on January 1, 2007, several months before the Court of Appeals issued its opinion in the present appeal. In addition, Lisa did not assign error in this Court to the Court of Appeals' failure to consider the Virginia Marriage Amendment. Therefore, we conclude that this part of Lisa's argument is procedurally barred. *See* Rule 5:17(c).

We also observe that Lisa's petition and brief filed in this Court contain the identical assignments of error that she presented in her petition to this Court in the first Virginia appeal. Because Lisa sought to appeal these same issues in the first Virginia appeal, we find no merit in her assertion that those issues were not before the Court of Appeals in the first Virginia appeal.

We have compared Lisa's arguments in the present appeal and the decision rendered by the Court of Appeals in the first Virginia appeal. We agree with the Court of Appeals' conclusion that each of the issues Lisa raises in this appeal was addressed and resolved in the first Virginia appeal. *See Miller-Jenkins,* 49 Va.App. 88, 637 S.E.2d 330 (2006); *Miller-Jenkins v. Miller-Jenkins,* Record No. 0688-06-4, 2007 WL 1119817 (April 17, 2007).

The Court of Appeals' holding in the present appeal merely reflects the issues actually decided in the first Virginia appeal, including the issues whether the PKPA applied to the custody and visitation dispute and whether the Vermont custody order was entitled to full faith and credit. *See Kemp,* 160 Va. at 285, 168 S.E. at 431; *Searles,* 156 Va. at 296, 157 S.E. at 761; *Norfolk & W.R. Co.,* 107 Va. at 766, 60 S.E. at 97. Thus, we conclude that the "law of the case" doctrine prevents Lisa from reasserting the issues she raises in the present appeal because each of those issues was decided finally by the first Virginia appeal, which Lisa failed to perfect in this Court. *See Lockheed,* 259 Va. at 108, 524 S.E.2d at 429; *Searles,* 156 Va. at 295-96, 157 S.E. at 761.

Our conclusion is not altered by Lisa's argument that the "law of the case" doctrine is inapplicable to the present appeal because this appeal is not the same "case" as the first Virginia appeal. Although Lisa and Janet separately filed the cases from which the two appeals arose, both cases involved these same parties and sought adjudication of the same issue, custody and visitation regarding IMJ. The two Virginia appeals were part of the "same litigation" seeking to resolve the single question which custody order, the Vermont custody order or the circuit court's order, would govern the parties' custody and visitation dispute. *See Kondaurov,* 271 Va. at 658, 629 S.E.2d at 188.

Finally, we observe that the Court of Appeals' holding in the first Virginia appeal is binding under the "law of the case" doctrine only with respect to the parties and the issues in the case before us. *See Chappell,* 184 Va. at 816, 36 S.E.2d at 527; *Steinman,* 121 Va. at 620, 93 S.E. at 687. Thus, based on our holding that the Court of Appeals' decision in the first Virginia appeal is the "law of the case," we do not reach the merits of the underlying issues presented in this appeal. *See Chappell,* 184 Va. at 816, 36 S.E.2d at 527; *Kemp,* 160 Va. at 284, 168 S.E. at 431; *Peterson,* 145 Va. at 660, 134 S.E. at 677; *Steinman,* 121 Va. at 622, 93 S.E. at 688.

For these reasons, we will affirm the Court of Appeals' judgment.

Affirmed.

Chief Justice HASSELL, concurring.

I join the opinion of the Court. However, I write separately to state that I have serious concerns about the Court of Appeals' opinion in the former appeal, *Miller-Jenkins v. Miller-Jenkins,* 49 Va.App. 88, 637 S.E.2d 330 (2006). I do not believe that this decision was correctly decided. Lisa Miller-Jenkins failed to perfect an appeal from that decision in the manner required by law, *see Miller-Jenkins v. Miller-Jenkins,* Record No. 070355 (May 7, 2007), and, therefore, this Court could not review

that decision. As the majority correctly holds, the law of the case doctrine prohibits this Court from considering***828** the merits of the former appeal in this proceeding.

Va.,2008.
Miller-Jenkins v. Miller-Jenkins
661 S.E.2d 822

END OF DOCUMENT

Exhibit E

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday *the* 1st *day of* July, 2008.

Lisa Miller-Jenkins, Appellant,

against Record No. 070933
Court of Appeals No. 0688-06-4

Janet Miller-Jenkins, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

For reasons stated in writing and filed with the record, the Court is of opinion that there is no error in the judgment appealed from. Accordingly, the judgment is affirmed.

This order shall be certified to Court of Appeals of Virginia and the Circuit Court of Frederick County.

A Copy,

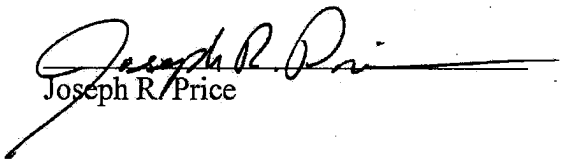
Teste:

Clerk

Certificate of Service

I, Joseph R. Price, hereby certify that on this 10th day of July, 2008, a copy of Respondent's Motion to Register and Enforce Vermont Court Orders was served by facsimile and first class mail, upon:

Rena Lindevaldsen
Mathew D. Staver
Liberty Counsel
PO Box 11109
Lynchburg, VA 24506-1108

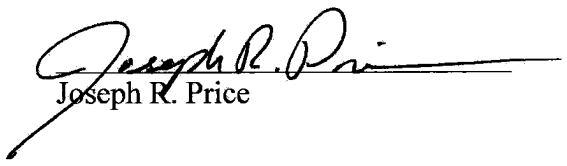


Joseph R. Price

Certificate of Service

I, Joseph R. Price, hereby certify that on this 14th day of July, 2008, a copy of Defendant's Demurrer and Motion for Sanctions was served by facsimile and first class mail, upon:

Rena Lindevaldsen
Mathew D. Staver
Liberty Counsel
PO Box 11109
Lynchburg, VA 24506-1108



Joseph R. Price