

In the meantime, counsel had the decision of the Supreme Court in the co-defendant's case denying the Petition for Appeal. Beeler's grounds would be identical to those of the co-defendant.

Beeler's post-trial attorney wrote him stating that he had been granted the right to file an appeal nunc pro tunc, but that since his grounds were the same as his co-defendant's, the attorney felt the results would be identical and that the appeal would not be filed. Beeler notified post conviction counsel that he intended to file a PCHA petition alleging the incompetence of his trial counsel in not filing a timely appeal and of post conviction counsel in not filing the petition for appeal after the right to do so had been granted nunc pro tunc. This PCHA petition is now before us. The interesting contention of Beeler is that even if he loses in our Supreme Court as might be expected, by failing to appeal and thereby obtaining a final appellate court determination of the matter, he has not exhausted his state remedies and is precluded from entering the Federal Courts on a Petition for a Writ of Habeas Corpus.

We conclude counsel were ineffective in not obtaining a final decision from the state courts in this case, and pursuant to the authority confirmed in *Commonwealth v. Sullivan*, 472 Pa. 129, 371 A.2d 468 (1977), leave is granted to Beeler to file an Application for the Allowance of an Appeal to the Supreme Court.

ORDER OF COURT

September 25, 1979, the defendant is granted the right to file an Application for the Allowance of an Appeal to the Supreme Court and the appointment of Douglas W. Herman, Esquire, is continued for the purpose of taking this action.

EDWARDS v. WARREN, C. P. Fulton County Branch, Civil Action - Custody

Custody - Uniform Child Custody Jurisdiction Act - Full Faith and Credit

1. Where a Pennsylvania Court enters a temporary order, and mother takes child to Virginia in violation of Pennsylvania order, a full hearing on issue of custody does not oust the jurisdiction of Pennsylvania Court.

2. Where a parent knowingly violates the Order of a Pennsylvania Court by taking child to another state, the Court of that state cannot assume jurisdiction under the Uniform Child Custody Jurisdiction Act.

3. The doctrine of full faith and credit generally does not extend to child custody cases.

D. Brooks Smith, Esq., Counsel for Petitioner

Lawrence C. Zeger, Esq., Counsel for Respondent

OPINION AND ORDER

KELLER, J., September 4, 1979:

This custody proceeding was commenced by the presentation of a petition of Earl M. Edwards for a Rule to be issued to Debra Lynn Edwards to show cause why custody of Earl M. Edwards, II, should not be committed to Earl M. Edwards, the petitioner, on January 30, 1976. An order was entered the same date directing the Rule to be issued and served upon the respondent, and setting March 9, 1976 at 1:30 o'clock P.M. for hearing on the matter. The Rule, together with a true and correct copy of the petition and order of court were served upon the respondent by certified mail on February 10, 1976. An Answer to the petition was filed by the respondent. Hearing was held as scheduled, but had not been completed at the end of the court day on March 9, 1976. An order was entered awarding temporary custody of Earl M. Edwards, II, to his father, Earl M. Edwards, his paternal grandfather, Melvin E. Edwards and his paternal grandmother, Abbie M. Edwards to be exercised at the home of the paternal grandparents in Thompson Township, Fulton County, Pennsylvania pending the completion of the full hearing on the merits, and visitation rights were granted to the respondent who then resided in Fairfax County, Virginia.

On April 12, 1976 on the stipulation of Merrill W. Kerlin, Esq., then counsel for the respondent, and G. D. Wilt, Esq., then counsel for the petitioner, an order was entered directing the Fulton County Office for Children & Aging to make a home study of Earl M. Edwards and make a report thereon to the Court and counsel. The Department of Social Services for Fairfax, Virginia was requested to make a home study of the respondent of Fairfax County, Virginia and make a report thereon to the Court and counsel. A proceeding was initiated in the Juvenile and Domestic Relations Court of Fairfax County, Virginia concerning Earl M. Edwards, II, and on December 22, 1975, that court referred the matter to the Department of Social Services for investigation and report with custody of the

child to be placed with his mother under the supervision of the department, and with visitation rights granted the father. On March 30, 1976, the Fairfax County Virginia Juvenile and Domestic Relations District Court vacated its order on the grounds that "Pennsylvania now has obtained jurisdiction. Clerk to notify Pa. Ct. of this action." No further hearing was requested or scheduled in the matter until January 3, 1978. Between March 9, 1976 and May 4, 1978 the respondent without the approval of the petitioner and contrary to the order of March 9, 1976, removed the child to the City of Alexandria, Virginia and initiated an action for custody in the Alexandria Juvenile and Domestic Relations Court. On May 4, 1978, that court entered an order awarding custody to the respondent herein, Debra Edwards Warren (formerly Debra Lynn Edwards), and granted visitation rights to the father. On January 3, 1978, hearing on the above matter was called and the petitioner appeared with his counsel and witnesses. Counsel for the respondent appeared, but the respondent did not appear in person, and an order was entered setting forth the state of the record to date, noting the non-appearance of the respondent and child, and continuing the matter for rescheduling by counsel for the parties and directing the forwarding of a certified copy of the order to respondent's Virginia counsel for presentation to the Juvenile and Domestic Court of the City of Alexandria, Virginia so that court might be made aware of the present pending proceeding to facilitate an early disposition of the entire matter in the appropriate court.

Subsequent to the order of the Virginia court, the child was retained by the petitioner herein in Fulton County, Pennsylvania in violation of the Virginia court order, and he petitioned for a final hearing in the above-captioned matter. The respondent herein filed her answer on July 31, 1978. The hearing scheduled for August 8, 1978 was continued by the Honorable George C. Eppinger to September 5, 1978 to permit the undersigned who was familiar with the prior history of the case to hear the matter. Hearing was held on September 5, 1978, but due to the number of witnesses appearing for the parties, it could not be concluded on that date. An order was entered continuing the order of March 9, 1976 to preserve the status quo. Visitation rights were granted the respondent conditioned upon the filing of a bond with sureties approved by the Clerk of the Courts in the amount of \$1,500.00. Albert Foster, Esq., then counsel for the petitioner, and Lawrence C. Zeger, Esq., counsel for the respondent, were directed to confer with the Court Administrator and establish a continued hearing date. The bond required by the order was filed and approved on September 15, 1978. Due to the advanced pregnancy of the respondent, and subsequent delivery of her child, and the total permanently disabling illness of counsel for the petitioner, final

hearing in this matter was not held until February 21, 1979. Briefs of counsel were received on March 7, 1979. Briefs of counsel were received on March 7, 1979, and the matter is now ripe for disposition.

FINDINGS OF FACT

1. The petitioner is Earl M. Edwards (father), who resides in Big Cove Tannery, Fulton County, Pennsylvania. He was born October 4, 1952.
2. The respondent is Debra Lynn Edwards Warren (mother), who resides at 777 North Van Dorn Street, Alexandria, Virginia. She was born in Berkley Springs on September 18, 1918*.
3. The petitioner and respondent were married on October 6, 1973, and divorced in March 1976.
4. Earl McKinley Edwards, II (child) was born September 20, 1974 at the Fulton County Medical Center, McConnellsburg, Fulton County, Pennsylvania and is the child of the parties.
5. The parties lived together in their trailer with their son until February 14, 1975, when mother left the home, her husband and her child moved to the home of her father and stepmother.
6. Several days later father took the child and went to visit mother to seek a reconciliation. The reconciliation effort was unsuccessful. Mother would not permit father to take the child away from her parents' home.
7. Mother and child resided with her father and stepmother at their home for approximately three months, and then moved to the home of mother's sister in Warfordsburg, where she remained for 2½ months.
8. During this period father did visit with the child regularly.
9. To get away from father and his visits, mother moved with their child on August 30, 1975 to Vienna, Virginia where she lived with her mother in the mother's apartment.
10. Father was unable to learn the address where mother and child were living until December 1975. As soon as he learned of the address he went to visit the child and with

* As appears in copy.

mother's approval brought the child back to Fulton County about December 6, 1975. On December 13, 1975 father returned to Virginia and brought mother back to live in the trailer with him and the child. Mother remained until December 16, 1975, and then insisted father return her and the child to Vienna, Virginia and he did so.

11. Father was concerned over the number of people living in the maternal grandmother's apartment; the parties that were held in the apartment; and the apparent lack of care being given the child. He petitioned the Department of Social Services for Fairfax County, Virginia to investigate the mother's living arrangements and determine if the child was being adequately and properly cared for. The Fairfax County Virginia Juvenile and Domestic Relations Court entered a temporary order placing custody of the child with mother under supervision of the Department and with visitation rights granted the father.

12. In early January or February 1976, mother was between jobs and moving to another apartment. She agreed that father would be permitted to take child back to Fulton County for a time. Father never voluntarily returned child to mother, and initiated this custody proceeding on January 30, 1976. Hearing was commenced on March 9, 1976, and a temporary order awarding custody to father and his parents was entered pending completion of the hearing.

13. From early 1976 until November 18, 1977 child resided with father at the home of the paternal grandparents in Thompson Township, Fulton County, Pennsylvania.

14. Mother visited child at the paternal grandparents' home six or eight times during 1976, but was not permitted to take the child away from the home. She did not visit the child at the grandparents' home during 1977, and testified that she felt uncomfortable and unwelcome in that home. She also testified that she had transportation difficulties in getting from her home to Fulton County.

15. In November 1977 counsel for mother and father agreed upon the right of mother to have the opportunity for a weekend visitation with child away from the paternal grandparents' home. Mother picked up the child on November 18, 1977; took him to her home in Virginia and did not return the child to Fulton County.

16. Promptly after returning to Virginia with the child mother retained counsel and initiated a custody action in the Alexandria Juvenile and Domestic Relations Court. Father ap-

peared with counsel and witnesses at the hearing in the Virginia court. Custody was awarded to mother by that court with visitation rights granted to father.

17. On June 17, 1978 father exercised the first visitation right with the child and immediately returned him to his parents' home in Fulton County, Pennsylvania and did not return him to the home of his mother.

18. With the exception of the periods from approximately February 17, 1975 to January 1976, and from November 18, 1977 to June 18, 1978, the child has been in the custody of his father, and since February 14, 1975 has resided with his father at the home of his paternal grandparents.

19. Mother has had exclusive custody of the child since February 17, 1975 to January 1976, and from November 18, 1977 to June 18, 1978.

20. Father was 20 years old at the time of the parties' marriage and 21 years old when their son was born. He is now 26 years of age.

21. Mother was 15 years old when the parties were married and 16 when the child was born. She is now 21 years of age.

22. Mother completed her high school education after the birth of the child.

23. After the birth of the child and while the parties were living in their trailer the marital situation deteriorated. Mother addressed father profanely in the presence of the child, and would yell at the child when he fussed.

24. Subsequent to February 14, 1975 when mother left the home of the parties, her husband and her son, and February 16, 1975 when she reacquired custody of the child, father moved from the trailer to the home of his parents and took up residence there.

25. During the marriage and until approximately four weeks prior to the March 9, 1976 hearing, father was employed at Letterkenny Army Depot.

26. After father reacquired custody of child in early 1976, he and the child continued to reside at the home of the paternal grandparents, and shared the same bed.

27. Approximately four weeks prior to the March 9, 1976

LEGAL NOTICES, cont.

IN RE:

Realignment of : In the Court of
the District : Common Pleas of
Justices of : the 39th Judicial
the Peace in : District of Penn-
Franklin County, : sylvania
Pennsylvania :
: Franklin County
: Branch
: Misc. Vol. X,
: Page 328

NOTICE IS HEREBY GIVEN that a proposal to realign the District Justices of the Peace Districts in Franklin County and the plan is on file in the Prothonotary's Office,, Court House, Chambersburg, Pennsylvania. A hearing will be held November 29, 1979, at 9:30 a.m. in Court Room No. 1, Court House, Chambersburg, Pennsylvania, at which time any persons may appear and be heard.

JOHN F. GEORGE,
Prothonotary

(11-16)

NOTICE is hereby given that TERRY'S GOLDEN GOOSE, INC., a Pennsylvania Corporation, having its registered office at 810 South Potomac Street, Waynesboro, Franklin County, Pennsylvania, has filed a Certificate of Election to Dissolve with the Department of State of the Commonwealth of Pennsylvania in Harrisburg pursuant to and in accordance with the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, as amended, and that the said corporation is winding up its affairs in the manner prescribed by said law, so that its corporation existence shall be ended upon the issuance of a Certificate of Dissolution by the Department of State of the Commonwealth of Pennsylvania.

Thomas M. Painter, Esquire
Ullman, Painter, Misner and Ayres
Trust Company Building
Waynesboro, PA 17268
Solicitor

(11-16, 11-23)

LEGAL NOTICES, cont.

hearing father was temporarily laid off from his employment at the Depot and was receiving unemployment compensation. He testified that he expected an early recall.

28. During the period that father had custody of child in 1976, preceding the March 9th hearing and while he was employed at the Depot, he left his parents' home to go to work between 4:30 A.M. and 4:45 A.M. His parents took care of the child until approximately 6:00 A.M. and a sitter cared for the child after that hour. When father was not working he was primarily responsible for the care of the child.

29. At the March 9, 1976 hearing father testified to the adequacy of the facilities in the trailer; that he could cook for himself and child; and that he and child would be returning to the trailer in approximately a month and a half. He also testified that he would hire a full-time babysitter to care for the child while he was working, and he would take care of him during the remainder of the time.

30. At the conclusion of the incomplete March 9, 1976 hearing the court's order awarded temporary custody of the child to father and the paternal grandparents to be exercised at the home of the paternal grandparents to ensure adequate and full-time care for the child until a final hearing could be held.

31. At all times from March 9, 1976 until November 18, 1977, and from June 18, 1978 to date father and child have resided at the home of the paternal grandparents to comply with the March 9, 1976 order.

32. The paternal grandfather is Melvin Edwards, who was 66 years of age on September 5, 1978, and the paternal grandmother is Abby Mae Edwards, who was 67 on the date of the September 5th hearing.

33. The paternal grandparents own and reside on a 121 acre farm in Thompson Township, Fulton County, Pennsylvania. Their home is a two-story nine room dwelling with livingroom, kitchen, bath and adjacent room on the first floor, and four rooms and a storage room for guns on the second floor. The home is heated by wood stoves on the first floor and there is no heat on the second floor. At the time of the March 9, 1976 hearing there were no indoor toilet facilities, but they were installed prior to the September 5, 1978 hearing.

34. The paternal grandparents also use the livingroom as a bedroom. Father and child and father's two brothers each have a separate bedroom on the second floor. Father's brothers were

40 and 28 years of age at the time of the September 5, 1978 hearing.

35. The home of the paternal grandparents is completely and adequately furnished, clean and comfortable.

36. The home has electricity, but it does not have a telephone.

37. Neither of the brothers of father are married.

38. The house has a large yard with a swing set in it and the child also plays in a large meadow adjacent to the yard.

39. The nearest neighbors who have children live approximately one-half mile from the home of the paternal grandparents. The neighbor children are several years older than the child, but apparently they do once a week or more frequently visit back and forth, and associate with each other. Father's three sisters live two miles and more from the home of the grandparents. The sisters have older children who also play with the child when they visit their grandparents.

40. Neither father nor paternal grandparents have taken the child to Sunday School or Church.

41. At the September 5, 1978 hearing father testified that he had been employed approximately two years at Hennessy Products, Inc. in Chambersburg, Pa. as a welder and working on blueprints. His annual take-home pay at that time was approximately \$10,000.00.

42. No evidence was introduced as to father's working hours or the hours he spends away from the home and his child.

43. Child has been provided adequate food, care, shelter, clothing and toys during the time he has lived at the home of his paternal grandparents. The care for the child was provided by the grandmother and grandfather.

44. No evidence was introduced concerning the care provided by the father, except vague references to the fact that he took care of him when he was home.

45. No evidence was introduced as to the time that the father spent with his child after working hours or on weekends. no evidence was introduced as to what the father did with the child during those periods of time.

46. No evidence was introduced as to any exchange of affection between the father and child, paternal grandparents and the child, or any of the other members of the father's family and the child.

47. The petitioner introduced no evidence that the child was told stories, read to, engaged in games, played with, or even tucked in bed; nor was there evidence of any family activities at Thanksgiving, Christmas or any of the traditional American family holidays.

48. The child was interviewed by the Court in the presence of counsel and the court reporter at the February 21, 1979 hearing. He was a sturdy, healthy, four and one-half year old. He stated that he wanted to continue to live with his father.

49. Mother's parents separated when she was three years old. She lived with her father and then her father and stepmother until she was married, except when she was 8 and 9 years old and resided with her mother in Rockville, Maryland.

50. Father and mother lived for the first three months of their marriage with mother's father and stepmother, and for the next three months with father's parents in their home. They then moved to the trailer located on an acre of land titled to father and mother.

51. After mother left father and reacquired custody of the child, she commenced an action for support and secured an order requiring father to pay her \$20.00 per week.

52. From mid-February 1975 until the fall of 1977, mother lived a rather goal-less and unstable life in that:

(a) In the six month period from about February 15, 1975, she and the child lived with her father and stepmother for three months; with her sister at Warfordsburg, Fulton County, Penna. for 2½ months and then moved into her mother's apartment in Vienna, Virginia.

(b) Mother testified that she and child then lived in the maternal grandmother's two bedroom apartment for 1½ years. This apartment was apparently occupied by mother, child, grandmother, and several other persons.

(c) Mother testified during the 1½ year period she resided with her mother, she had numerous odd jobs and a neighbor whose name she could not recall kept child.

(d) Mother testified that after living with her mother for 1½ years she desired to be on her own and moved with child to the apartment of a good girlfriend whose last name she could not recall. This apartment was also a two-bedroom apartment located in the same building complex as the maternal grandmother.

(e) Mother testified that she did not remain in the girlfriend's apartment very long because it was at this time that she was corresponding with father. She suggested he come to Virginia; pick her and child up and they return to the trailer to attempt a reconciliation. In one of her letters she stated that she did not blame father if he did not want to take her back.

(f) Mother's proposed reconciliation was accepted by father, and as noted in Finding of Fact No. 10, the reconciliation lasted three days.

(g) Mother terminated the reconciliation effort and demanded father return her and child to Virginia because she could not "fake it anymore"; she couldn't play wife and didn't love father.

(h) Father returned mother and child, according to mother's testimony, to the girlfriend's apartment.

(i) Mother testified that in January 1976 after her return from the aborted reconciliation, she requested father to take child for either a week or else to return him at some unspecified date because she was between jobs at that time.

(j) Father did not return child; initiated this proceeding; and mother made no attempt to see or communicate with the child in any way until she saw the child at the March 9, 1976 hearing.

(k) As noted in Finding of Fact No. 14 mother visited the child at the paternal grandparents' home six or eight times in 1976 after the March 9 hearing, but made no effort to enforce the specific provisions of the March 9th order granting her visitation rights over weekends at the home of the maternal grandfather and maternal stepfather.

(l) Mother met her husband-to-be in February 1977.

(m) Mother testified that she and her future husband planned to be married in July, but for financial reasons were unable to be married until September 10, 1977. Nevertheless, they commenced living together in anticipation of marriage in July

1977 at an apartment on Morgan Street in the City of Alexandria, Virginia.

53. The depth and extent of mother's uncertainty as to what she was doing with her life during this period of time is best evidenced by her inability to recall the names of her good girlfriend with whom she shared an apartment for an extended period of time, and the neighbor charged with caring for the child; and by her confusion as to the time she and child lived with her mother before the trial reconciliation and before she permitted father to take child back to Fulton County. (Mother moved into her mother's apartment in August 1975, and testified she and child remained there for 1½ years, i.e., February 1977. The trial reconciliation occurred in December 1975, and father took child back to Pennsylvania with mother's permission in January 1976.)

54. Mother married Robert Craig Warren on September 10, 1977, and they lived at the North Morgan Street, Alexandria, Virginia apartment until sometime after May 1978. That apartment had one bedroom, a livingroom, diningroom, kitchen and bath.

55. On November 18, 1977, mother received the child at the home of the paternal grandparents for a weekend visitation. She took the child to the Morgan Street apartment and on Monday, November 21, 1977 conferred with Alexandria counsel and promptly thereafter initiated the custody proceeding in the Alexandria Juvenile and Domestic Relations Court of Virginia. Father appeared with counsel and witnesses at the hearing in said court on May 4, 1978. On June 26, 1978 the Honorable Joseph L. Peters, Jr., entered an order granting custody of the child to mother and visitation rights to the father every third weekend commencing at 8:00 A.M. on Saturday, June 17, 1978 to 8:00 P.M. on the following Sunday, and the holidays of Thanksgiving and New Year's. The order further provided for one month visitation with the father during the month of August each summer, and required the father to pay to the mother the sum of \$150.00 per month for support of the said child commencing June 1978.

56. It appears that a full hearing was held before the Alexandria Juvenile and Domestic Relations Court.

57. Judge Peters during the hearing directed mother and her husband to secure larger living quarters so the child would be provided with his own bedroom.

58. As noted in Finding of Fact No. 17, father exercised his

visitation right as provided in Judge Peters' order on June 17, 1978; took the child to Fulton County and has never returned the child as required by that order.

59. Pursuant to the oral direction of Judge Peters mother and her husband subsequent to June 17, 1978, rented a two-story townhouse at 777 Vandorn Street, Alexandria, Virginia. The townhouse is equipped with a half bath, storage room, kitchen and dinette set, diningroom and livingroom on the first floor; three bedrooms, bath and closet on the second floor. It is located in a residential area. The area in front of the townhouse is in grass and shade trees and the playground with swing sets and toys is maintained as a part of the townhouse complex. There are five or six children of the child's age living in the immediate area.

60. The child's stepfather observed in November 1977, when he came to live with them, that the child did not seem to understand what playing was, e.g., he did not know what rolling a ball meant and only understood it was his to hold; and he didn't seem to comprehend what was said to him. The stepfather also observed that his head appeared to be dark brown and scaly. The condition was diagnosed by a doctor as cradle cap caused by incomplete washing and rinsing of the head. With medication it was cleared up in two to three weeks.

61. The child's stepgrandmother observed when he first arrived at the Morgan Street apartment in Alexandria, that he seemed to be pensive, very quiet, introverted and didn't talk. She testified that in a matter of three weeks the child was talking in sentences and had "just blossomed".

62. The stepfather and mother were both employed during the period from November 1977 until June 17, 1978. They had stepfather's aunt who baby-sits for other people take care of child while they were at work.

63. Father is employed by a company which sells and delivers oxygen to hospitals, nursing homes and private homes. He terminated similar employment with another company some time after child came into their home, because that job required him to work from 8:00 A.M. to 6:00 P.M. six days per week. His present employment which commenced in February 1978 permits him to be home in the evenings and have his weekends free. By the time of the February 21, 1979 hearing, he had received a promotion and his annual net income, excluding commissions on sales, was approximately \$9,000.00.

64. During the time child lived with mother and stepfather

the step-grandparents regularly visited the child, stepfather, and mother and engaged in activities with the child such as taking him to the zoo. They also participated in family holiday celebrations such as Christmas and Easter. The holiday celebrations also included other members of the stepfather's family.

65. The step-grandmother described mother as being a "very good and loving mother who cared a great deal about her little boy".

66. While the child was in the home of mother and stepfather, he was fed, clothed, talked to, played with and read stories in the evening before going to sleep. He was taken to Sunday School. The stepfather took him to the store, on business trips to deliver oxygen, and played baseball and soccer with him.

67. The stepfather expressed a willingness to accept the responsibility of acting as a father for the child, and that he loved him.

68. At the conclusion of the September 5, 1978 hearing this Court entered an order preserving the status quo as established on March 9, 1976 by retaining temporary custody in father and paternal grandparents with the mother granted visitation rights with the child at the home of the paternal grandparents from 1:30 P.M. until 5:30 P.M. each Sunday, and on the condition of posting a bond visitation rights each second weekend commencing September 15, 1978 from 6:30 P.M. until Sunday at 6:30 P.M., September 17th and alternating weekends thereafter.

69. The bond required by the order of September 5, 1978 was approved by the Clerk of the Courts and filed on September 15, 1978. On the same date mother and stepfather went to the home of the paternal grandparents and were told by the paternal grandfather that father and child were away. The grandfather was then observed leaving the home and later mother and stepfather observed child sitting on the grandmother's lap in grandfather's truck in the Borough of McConnellsburg. They were unable to catch up with the truck and returned to their home in Virginia after leaving a note at the home that they would visit the child the following Sunday.

70. Mother and stepfather visited the child for one-half hour in the kitchen of the paternal grandparent's home, and in the presence of members of the family on Sunday, September 17, 1978.

71. There is no evidence that the father and paternal grandparents had been made aware of mother's compliance with the September 5, 1978 order by the filing of the bond on or before September 15, 1978.

72. Subsequently mother attempted to exercise her weekend visitation rights with child. The child met mother at the door and said he did not want to go with her. Father said the bond did not permit her to see the child except on the farm, and she was not permitted to take the child with her as provided by the court's order.

73. At the February 21, 1979 hearing father admitted denying mother the right to take child as provided in the court order, and assured the Court that he would abide by the order thereafter. There has been no evidence of non-compliance since that date.

74. A daughter was born to mother and stepfather on October 23, 1978, and has resided with them at their home on Vandorn Street since birth.

75. Child would have a separate furnished room at the home of mother and stepfather.

76. Mother has not been employed from some time prior to the September 5, 1978 hearing, and would be available at home to care for both children. She had not decided to return to work by the time of the February 21, 1979 hearing, and testified that stepfather's income is sufficient for the needs of the family.

77. Mother and stepfather regularly attend the Blessed Sacrament Church in Alexandria.

78. Mother testified that she and stepfather would attend to the child's religious training, his education, and would discipline him when necessary.

79. Mother testified that the home of the paternal grandparents was not an improper place for child to be raised, but that her home was better and child would be brought up with a mother, father, sister, lots of friends and in a church and with an opportunity for a better education.

80. Neither mother nor father are improper parents unfit to have the custody of child.

81. The home of the paternal grandparents in Fulton Coun-

ty is in all respects physically adequate as a home for the child.

82. The home of mother and stepfather in Alexandria, Virginia is in all respects physically adequate as a home for the child.

83. By stipulation of counsel and with the specific written approval of Debra Lynn Edwards Warren, the mother, a letter from Phyllis Warren Denham, dated June 21, 1979, addressed to the undersigned judge was admitted in evidence to be considered by the Court as additional evidence or after discovered evidence. On the basis of the said letter the following Findings of Fact must also be made:

A. On May 25, 1979, mother and her six month old daughter Heather traveled to Fulton County so that mother could exercise her visitation rights with child. They returned to Virginia on May 30, 1979, and the daughter was very sick.

B. On May 31, 1979, mother told stepfather that she wanted to leave him and return to her father and stepmother's home in Fulton County.

C. In the afternoon of May 31, 1979, Mrs. Denham, mother of stepfather, met with mother to attempt to dissuade her from leaving. Mother told Mrs. Denham that she wanted to be free, did not want to be married, that she couldn't accept responsibility and knew that she did not love her present husband. She described child as being "just terrible the whole weekend" and stated she couldn't handle him.

D. At the conclusion of the conference mother agreed to sit down and talk with her husband and see what they could work out.

E. At 10:30 P.M. on May 31, 1979, stepfather arrived at the home of his parents with his sick, six months old daughter in his arms, and reported that mother had left them.

F. Mother never called to inquire about the health of her six months old daughter.

G. Stepfather talked to mother on the telephone concerning custody of their daughter, and invited mother to come to Virginia to see the child. Mother's response was, "No, I'm not going to come all the way down there to see her if she is sick."

H. Mrs. Denham and her son have also learned that moth-

SHERIFF'S SALES, cont.

crete block foundation, full basement, and the exterior walls are of frame construction and concrete or cinder block. Interior walls are of plaster.

Seized and taken in Execution as the real estate of Helen L. Parsons, under Judgement No. A.D. 1979-208.

Pursuant to Writ of Execution issued on Judgment A.D. 1979-233 of the Court of Common Pleas of the Thirty-Ninth Judicial District, Franklin County Branch, I will sell at public auction sale in Court Room No. One of the Franklin County Court House, Memorial Square, Chambersburg, Pennsylvania, at One O'clock P.M. on Friday, December 14, 1979 the following real estate improved as indicated:

ALL THAT CERTAIN tract of land together with the improvements thereon erected situate in the Township of Quincy, County of Franklin and Commonwealth of Pennsylvania, being more particularly bounded and described in accordance with a Plan of Survey made by Thomas Michael Englerth, R.D., stating that the land was surveyed on January 24, 1978 and identified as File 388-1, his address being shown as Chambersburg, Pennsylvania, as follows, to wit:

BEGINNING at a set spike in the center line of Pennsylvania Legislative Route No. 28022 (33.00 feet wide between existing right-of-way lines) at the Southwestern corner of a small tract of land identified as "Parcel B" on the aforesaid Plan of Survey which is about to be conveyed to Anna L. Barnes; thence along the center line of said Pennsylvania Legislative Route No. 28022, North 64 degrees 45 minutes 00 seconds West 185.54 feet to a set spike at a corner of lands now or formerly of Glenn Carbaugh; thence along said lands, North 25 degrees 15 minutes 00 seconds East 191.00 feet to an existing iron pin at a corner of lands now or formerly of Betty J. and Linda L. Shepard; thence along said lands, South 64 degrees 45 minutes 00 seconds East 187.30 feet to a set iron pin at the Northwestern corner of the aforesaid small tract of land identified as "Parcel B" which is about to be conveyed to Anna L. Barnes; thence along said "Parcel B", South 25 degrees 46 minutes 41 seconds West 191.01 feet to a set spike in the center line of Pennsylvania Legislative Route No. 28022, the place of BEGINNING.

BEING "PARCEL A", land of Robert William Tarman, containing 35,605.54 square feet or 0.8174 acre, as shown on the aforesaid Plan of Survey.

BEING SUBSTANTIALLY ALL OF THE SAME PREMISES (substantially all of Tract No. 1; all of Tract No. 2) which Allen J. Noble and Janet S. Noble, his wife, granted and conveyed unto Robert William Tarman (who is also known as Robert William Tarman, Sr.) and Vera Kay Tarman, his wife, by Deed dated June 14, 1974 and recorded June 14, 1974 in Deed Book 701, page 420, Franklin County records.

SOLD as the property of Richard William Tarman and Vera Kay Tarman, his wife, as tenants by entireties under Judgment No. A.D. 1979-233 in Franklin County.

SHERIFF'S SALES, cont.

TERMS: The successful bidder shall pay 20% of the purchase price immediately after the property is struck down, and shall pay the balance within ten days following the sale. If the bidder fails to do so, the real estate shall be re-sold at the next Sheriff's sale and the defaulting bidder shall be liable for any deficiency including additional costs. Any deposit made by the bidder shall be applied to the same. In addition the bidder shall pay \$20.00 for preparation, acknowledgement and recording of the deed. A Return of Sale and Proposed Schedule of Distribution shall be filed in the Sheriff's Office on December 28, 1979, and when a lien creditor's receipt is given, the same shall be read in open court at 9:30 A.M. on said date. Unless objections be filed to such return and schedule on or before December 28, 1979, distribution will be made in accord therewith.

FRANK H. BENDER, Sheriff of
Franklin County, Pennsylvania
(11-23, 11-30, 12-7)

er was seeing another man while living with her present husband, and is dating some male in Pennsylvania.

I. Presumably, mother is now living with her father and stepmother in Fulton County, Pennsylvania.

J. There is no evidence before the Court as to whether mother still seeks custody of her son, and there is no evidence that she has or would have a suitable and adequate shelter for him.

K. The fact that mother has now left two husbands and two children when they were only a few months old evidences a serious lack of stability detrimental to the welfare of children of tender years.

CONCLUSIONS OF LAW

1. Earl M. Edwards, father, is a proper person to have custody of his son, Earl McKinley Edwards, II.

2. Debra Lynn Edwards Warren, mother, is at the present time not a proper person to have custody of her said son by reason of her evidenced instability, and the absence of any evidence as to where, with whom, and how she would provide necessary care for her son.

DISCUSSION

Counsel for the respondent-mother has vigorously contended that the Uniform Child Custody Jurisdiction Act, Act of June 30, 1977, P.L. 29, No. 20 (11 P.S. 2301, et seq.) is binding upon this Court; and as a result of the June 26, 1978 order of the Alexandria Juvenile and Domestic Relations Court of Virginia we are required to recognize and enforce the Court's order (11 P.S. 2314). This contention is predicated upon the theory that the action of the Virginia Court ousted the pre-existing jurisdiction of this Court, and vitiated our order of March 9, 1976.

Section 14 of the said Act; 11 P.S. 2314 provides:

The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act or which was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

The National Conference of Commissioners on Uniform State Laws states in the prefatory note to said Act: "Recognition and enforcement is mandatory if the state in which the prior decree was rendered (1) has adopted this Act; (2) has statutory jurisdictional requirements substantially like this Act; or (3) would have had jurisdiction under the facts of the case if this Act had been the law in the state." 9 Uniform Laws Annotated p. 120 (1973).

Our research discloses that the Commonwealth of Virginia has not adopted this Act. The burden was upon the respondent to establish that the statutory jurisdictional requirements of the Commonwealth of Virginia are substantially like the Act, and that burden has not been met. Finally, if the law of Virginia were substantially similar to the Act, the Virginia Court could not properly assume jurisdiction in 1978, because the respondent had knowingly violated the 1976 order by removing the child from the custody of his father and paternal grandparents, who at that time were exercising custodial rights under our order.

We, therefore, conclude that the language of the Uniform Child Custody Jurisdiction Act does not apply to the case at bar; nor does it oust this Court of jurisdiction and require us to enforce an order later in time than the one issued by this Court.

Counsel for the respondent has also contended that the doctrine of full faith and credit and the doctrine of comity require this Court to recognize and enforce the Virginia decree. In *New York ex rel. Halvey v. Halvey*, 330 U.S. 610, 614-15 (1947), the Supreme Court of the United States concluded the doctrine of full faith and credit did not extend to child custody cases. The Appellate Courts of Pennsylvania have adopted this conclusion on the rationale that custody decrees are temporary in nature and subject to modification on a change of circumstances. See *Commonwealth ex rel. Hickey v. Hickey*, 216 Pa. Super. 332, 337, (1970); *Commonwealth ex rel. Thomas v. Gillard*, 203 Pa. Super. 95 (1964). We are familiar with the line of cases which have held that full faith and credit should be accorded the custody decrees of sister states where there has been no change in circumstances, and only a relatively short period of time has elapsed from the date of the sister state's decree and the hearing in another state seeking to modify the decree. We believe this evolving doctrine to be a wise one and have on occasion where the Uniform Act was found inapplicable adopted it in this Court. However, we do not believe it applicable in the case at bar, for the respondent's abandonment of her six-month old daughter and second husband, her return

to Fulton County, Pennsylvania and the absence of any evidence as to her plans for herself or for the care of child constitute radically changed circumstances.

We also conclude application of the doctrine of comity in the case at bar would be inappropriate, for the order of the Virginia court discloses that the court found both parties fit and proper parents to have custody; "that Earl Edwards, II, is a child of tender years" and then awarded custody to the mother. This is clearly an application of the "tender years doctrine" which the Supreme Court of Pennsylvania has found to be constitutionally infirm. *Commonwealth ex rel. Spriggs v. Carson*, 470 Pa. 290 (1977).

In *Commonwealth ex rel. Spriggs v. Carson*, supra, (p. 294) the Supreme court held: "It is now beyond dispute that the sole issue to be decided in a custody proceeding between contending parents is the best interests and welfare of the child." The concern in such cases as the instant one is entirely with the child's physical, intellectual, moral and spiritual well-being. *Commonwealth ex rel. Holschuh v. Holland-Moritz*, 448 Pa. 437 (1972). The burden of proof is shared equally by the parents, since they shared equally in creating the child and are regarded as having an equal interest in the Child's welfare. *In Re: Custody of Hernandez*, 249 Pa. Super. 274, 281. The Court awards custody according to what the preponderance of the evidence shows.

In the instant case, the conduct of the respondent-mother in abandoning her husband, her home and most importantly her sick infant daughter to return to the home of her father and stepmother in Fulton County, when taken in the context of her prior abandonment of her first husband and son, necessarily leads the Court to conclude that the best interest of Earl McKinley Edwards, II, requires that he remain in the custody of his father, Earl M. Edwards. This is particularly true because at the present time this Court has no evidence that the respondent still desires custody of her son or that she has or would have a suitable and adequate shelter for him, and a realistic plan for his care and maintenance.

ORDER OF COURT

NOW, this 4th day of September, 1979, primary custody of Earl McKinley Edwards, II, d/o/b September 20, 1974, is awarded to Earl M. Edwards, father.

Mother shall have visitation rights as provided in the order of September 5, 1978.

Costs to be paid by petitioner.