

The Supreme Court of the State of Louisiana

FORREST KEITH COCHRAN

No.2020-CJ-01400

VS.

KATHERINE SAWYER FORMAN

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IN RE: Katherine Sawyer Forman - Applicant Defendant; Applying For Writ Of  
Certiorari, Parish of West Feliciana, 20th Judicial District Court Number(s) 23235,  
1st Circuit Court of Appeal, Number(s) 2019-CA-0527;

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**March 09, 2021**

Writ application granted. See per curiam.

JBM

JLW

JDH

SJC

JTG

WJC

PDG

Supreme Court of Louisiana

March 09, 2021



Chief Deputy Clerk of Court  
For the Court

03/09/21

**SUPREME COURT OF LOUISIANA**

**No. 2020-CJ-01400**

**FORREST KEITH COCHRAN**

**VS.**

**KATHERINE SAWYER FORMAN**

On Writ of Certiorari to the 1<sup>st</sup> Circuit Court of Appeal,  
Parish of West Feliciana

PER CURIAM

The sole issue presented for our consideration in this child custody case is whether the court of appeal erred in annulling the judgment of the district court based on its finding the non-resident father was not given proper notice of the proceedings pursuant to the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”). For the reasons that follow, we reverse the judgment of the court of appeal and remand for further proceedings.

**FACTS AND PROCEDURAL HISTORY**

The facts are largely undisputed as concerns the issue before us. The mother, a Louisiana resident, filed a Petition for Custody, Visitation, and Support on June 27, 2017, naming the father, a Mississippi resident, as defendant. The court set the matter for hearing on August 9, 2017. Notice of the August 9, 2017 hearing was sent to the father at his Mississippi address on June 28, 2017 by certified mail, but was returned as unclaimed. The mother’s counsel filed an affidavit into the record attesting to these facts on August 7, 2017. The matter proceeded to hearing on August 9, 2017, and the trial court rendered judgment in favor of the mother on August 10, 2017.

Notice of this judgment was sent to the father on August 11, 2017, but was returned as “refused.” Notice of a September 7, 2017 hearing on the mother’s rule for contempt was sent to father via certified mail on September 1, 2017. Although notice was left at his residence, he never retrieved the mail. The mother filed an affidavit attesting to these facts into the record on September 7, 2017, and a hearing took place on the same day. Neither the father nor his counsel were present at this hearing, and judgment was rendered in favor of the mother.

Subsequently, the father filed a petition to annul, asserting he was never properly served with any of the petitions or judgments in this matter. Specifically, he alleged the affidavits of service filed into the record of the Louisiana proceedings failed to strictly comply with the Louisiana Long-Arm Statute, La. R.S. 13:3205.

The district court denied the petition to annul, finding the father received proper notice under the UCCJEA. The father appealed. On appeal, a split panel of the court of appeal held the father did not receive proper notice. Two judges dissented and found the record established the father had actual notice of the proceedings. *Cochran v. Foreman*, 2019-0527 (La. App. 1 Cir. 10/8/20), \_\_\_\_ So. 3d \_\_\_\_.

The mother now seeks review in this court.

## DISCUSSION

La. R.S. 13:1808 of the UCCJEA provides for notice to persons residing outside of the state:

Notice required for the exercise of jurisdiction when a person is outside this state **may** be given in a manner **prescribed by the law of this state for service of process** or by the law of the state in which the service is made. Notice **shall** be given in a manner **reasonably calculated to give actual notice** but may be by publication if other

means are not effective. [emphasis added].

In the case before us, it is undisputed the certified notice was sent to the father's correct address, yet he failed to claim it. At the hearing on the motion to annul, the father candidly admitted that he had "gotten something in the mail" about a hearing in Louisiana, that he showed this to his lawyer, and that his lawyer advised that he did not have "to worry about that," since they had already filed pleadings in Mississippi. The father testified that he "followed his [lawyer's] advice and ignored it." This testimony clearly establishes the father was aware of the Louisiana proceedings, but made a conscious decision not to attend the hearing or take any other steps to protect his rights.

Nonetheless, the majority of the court of appeal found the phrase "in a manner prescribed by the law of this state for service of process" in La. R.S.13:1808 implicitly incorporates the requirements of the Louisiana Long-Arm Statute. The court reasoned the mother did not comply with La. R.S. 13:3205 of the Long-Arm Statute, which provides no hearing on a contradictory motion can take place until thirty days after filing of an affidavit showing notice was sent.

We find the court of appeal erred in holding La. R.S. 13:1808 incorporates the requirements of the Long-Arm Statute. Nothing in La. R.S. 13:1808 mandates service pursuant to the Long-Arm Statute; rather, the statute is phrased in permissive terms, providing notice "**may** be given in a manner prescribed by the law of this state for service of process. . . ." [emphasis added]. The only mandatory requirement is that "[n]otice **shall** be given in a manner reasonably calculated to give actual notice. . . ." [emphasis added]. See *Martinez v. Reed*, 490 So.2d 303, 307 (La. App. 4 Cir. 1986) (holding "the only question is whether notice was given in a manner 'reasonably calculated to give actual notice' which would permit the Civil District Court to

exercise jurisdiction over the Reeds”); *see also Miller v. Mills*, 64 So.3d 1023, 1027 (Miss. App. 2011) (discussing La. R.S.13:1808 and explaining “while it is mandatory to provide notice to an out-of-state parent ‘in a manner reasonably calculated to give actual notice,’ it is possible to provide such notice without complying with Louisiana’s ‘long-arm’ statute.”). Applying the reasoning of these decisions, we find La. R.S. 13:1808 mandates only that notice be given in a manner “reasonably calculated to give actual notice” and does not mandate compliance with the Louisiana Long-Arm Statute.<sup>1</sup>

Considering the facts of this case, we find the district court properly found the father received adequate notice of the Louisiana proceedings pursuant to La. R.S. 13:1808. The court of appeal erred in reversing that finding.

### **DECREE**

For the reasons assigned, the writ is granted. The judgment of the court of appeal is reversed. The case is remanded to court of appeal to consider any remaining issues in the appeal.

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<sup>1</sup> To the extent *Downey v. Downey*, 2010-1853 (La. App. 1 Cir. 2/11/11) (unpublished), conflicts with this holding, it is overruled.