2010 UIFSA CASE LAW REVIEW

GREETINGS: This is a review of the significant UIFSA case law from 2010.

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INTERNATIONAL

SPOUSAL SUPPORT

MISCELLANEOUS

Deazle v. Miles, 2010 WL 3910573 (2nd Dept., 2010). In 1999, the father resided out-of-state and the mother and child lived in NY. The Family Court ordered the father to pay child support. In 2005, the mother filed for an upward modification, stating that she lived in Kings County. The father moved to dismiss on the grounds of lack of subject matter jurisdiction. The mother maintained a residence in Philadelphia, where she worked and where the child attended school. The father argued that NY lacked CEJ. He cited FCA 580-205(a)(1), which states that the issuing state only retains CEJ so long as a party or the child resides there. He claimed that since no one resided in NY, NY lost CEJ and could not hear the modification petition.
The Appellate Division agreed that the issuing state loses CEJ if none of the parties or children continue to reside in the issuing state. However, UIFSA does not define the terms "reside" or "residence." Other NY decisions hold that a person is a "resident" of New York when he or she has a significant connection with some locality in the State as the result of living there for some length of time during the course of a year. A party may establish his or her residency with documentary evidence, such as a lease, rent receipts, phone bill, utility bills, a voter's registration card, or driver's license.

The mother submitted documentary evidence that supported her testimony that NY was her place of residence at the time the proceeding was commenced and continued to be her residence. She presented, among other things, a lease for a Brooklyn apartment which listed herself and the subject child as tenants during the relevant time period; a check for partial payment of the monthly rent payable from her bank account at a New York credit union (which also listed a NY address); New York driver's licenses issued to her in 2002 and in 2008; and a NY voter registration card indicating that she had been registered to vote in Kings County since April 1996. In view of the documentary evidence, the mother demonstrated that New York remained her residence, allowing New York to retain CEJ to modify the order. The court remitted the case to the Family Court for further proceedings on the merits of the petition.

Sussman v. Sussman, 2009 WL 4282917 (Ga. App., 2009). The parties divorced in Massachusetts. In 1995, Massachusetts entered in a judgment for $421,465. The noncustodial parent never made any payment to reduce the judgment and moved to Georgia. In 2009 the custodial parent registered the judgment for enforcement in Georgia. The noncustodial parent objected to registration. He argued that the judgment was a contempt order, not an order of support under UIFSA. Since UIFSA didn't apply, the judgment was subject to Georgia's dormancy law (similar to a statute of limitations). Since the judgment was more than 7 years old, it could not be enforced. The trial court agreed and dismissed the petition to register and enforce the judgment.

The appellate court reversed. The definition of an order of support in UIFSA includes a judgment for arrears and interest. FCA 580-101(21). The money judgment was an order of support and therefore UIFSA applied. Under UIFSA, the court is required to apply the statute of limitations of the receiving state or the issuing state, whichever is longer. FCA 580-604(b). The Massachusetts statute of limitations was 20 years (and even then the judgment was only presumed satisfied). Since the Massachusetts statute limitations had not expired, the trial court should have registered and enforced the judgment.

Richardson v. Richardson, 2009 WL 4283136 (Cal. App., 2009). The parties divorced in California in 2009. The trial court found that it lacked jurisdiction to award custody or child support because Japan was the child's home state under the UCCJEA and UIFSA. The appellate court reversed the decision with regard to child support. Although the UCCJEA placed jurisdiction over the custody issue in the child's home state, that provision did not govern jurisdiction to enter a child support award. Under UIFSA, the concept of the child's "home state" would only be relevant to establishing child support if a comparable support petition had been initiated in the child's home state. There was no proof that a proceeding was pending in Japan or that a Japanese support order had been entered. Whether or not Japan is a "state" under UIFSA (the court did not analyze that issue), the child's residence in Japan did not limit California's subject matter jurisdiction to establish child support.

SC DSS v. Johnson, 2009 WL 5194379 (S.C. App., 2009). North Carolina issued a default order of support against the father. The order included a requirement that he keep the child support agency notified of his current address. NCDSS managed to collect a portion of the child support via income execution. The father moved to South Carolina without notifying NCDSS of his new address. NCDSS found his address in South Carolina and verified it with the post office. It sent the order to the South Carolina Department of Social Services seeking registration for enforcement. SCDSS filed and registered the order, mailing the notice of registration to the last known verified address. He later claimed that he had moved before the notice was sent. A second, unrelated order of support was also registered for enforcement against the father.

Eventually, the father was arrested for failure to pay child support. At the contempt hearing, he admitted that he knew about both of the child support cases, acknowledged that he was currently employed, and admitted that he had failed to make child support payments. He was found in contempt and sentenced to one year imprisonment. The father appealed.

The father argued that mailing the notice to his prior address was not proper notice of the registration. UIFSA allows notice of registration by first-class, certified, or registered mail or by any means or personal service authorized by law of the receiving state. SCDSS submitted a certificate of mailing complying with the statutory requirements. The father also argued that it was unfair to assess arrears for the two-year period before his arrest because he did not live at the address where notices were sent. The court rejected this argument. The father was ordered to notify NCDSS of any changes in address. Similarly, his second child support order required that he notify SCDSS of any changes in address. The father failed to establish at the contempt hearing that he ever updated his address to either NCDSS or SCDSS.

Finally, the father argued that because he did not receive *actual* notice of the registration, the mailing of the registration to a prior address failed to comply with state law. The court held that neither UIFSA nor the official comments to UIFSA mandated that the registration tribunal provide *actual* notice of registration. UIFSA leaves the method of service to state law, and the official comments indicate that the service might include transmittal by mail, fax, or e-mail. Although South Carolina law required personal service of a summons and complaint in the first instance, it permitted service by mail of all pleadings and written notices subsequent to the original summons and complaint.

Goins v. Gay, 2010 WL 199634 (Tenn. App., 2010). The mother and child resided in Tennessee and the Father resided in Texas. The mother initiated a child support action in Tennessee, and the necessary petition and paperwork were forwarded to Texas. Texas entered an order of child support, but did not grant the mother's request for confinement expenses and other prepetition medical expenses.

The mother filed a petition in Tennessee to establish paternity and a permanent parenting planned, and to obtain additional monetary contributions, including recovery of confinement and other medical expenses. The father argued that Tennessee lacked continuing exclusive jurisdiction (CEJ). The Tennessee court applied the Tennessee guidelines and modified the Texas order. It held that Tennessee retained CEJ as the *initiating* court. The father appealed and the appellate court reversed.

Once a court in one state has issued a child support order, no other state can enter a child support order. The issuing state retains CEJ and no other state can modify the order until the issuing state loses CEJ (i.e., the parties and child all move out of the issuing state or the parties agree in writing to permit another state to exercise jurisdiction). Even then, a state cannot assume CEJ except in accordance with UIFSA. Since Texas had already issued an order of child support, Tennessee could not enter a new order. Since the father continued to resided in the issuing state, Texas retained exclusive jurisdiction to modify the order.

Mattes v. Mattes, 2010 WL 876710 (Ala. Civ. App., 2010). The parties divorced in Germany and the father was ordered to pay child support. The mother and children moved to Alabama and the father moved to California. The mother petitioned the Circuit Court in Alabama to domesticate the judgment of divorce, to hold the father in contempt for failure to make certain payments pursuant to the judgment, and to modify the child support obligation. The trial court rejected the father's argument that Alabama lacked jurisdiction to enforce or modify the German divorce. The court granted an upward modification, modified the father's liability for certain expenses, and awarded arrears.

The appellate court reversed. The German divorce should have been registered following the requirements of UIFSA. Because the mother failed to follow the UIFSA registration procedure, Alabama lacked subject matter jurisdiction to enforce the order. In addition, Alabama lacked subject matter jurisdiction to modify. Once all the parties and children left Germany, it lost CEJ. The mother could not register the order for modification in the state where she resided, and therefore Alabama lacked CJ to modify.

Lacarrubba v. Lacarrubba, 688 S.E.2d 769 (N.C. Ct App., 2010). The parties divorced in New York and the defendant was ordered to pay child support. The plaintiff moved to Florida with both children and registered to support order in Florida. In 2001, the older child moved from Florida to New York and began to live with the defendant. The defendant and the older child moved to North Carolina.

The plaintiff filed a notice of registration in North Carolina "for enforcement only." The defendant consented to entry of an order confirming registration, however the order stated that the issue of arrears remained open and would be addressed a later time. The defendant then filed a motion to contest and reduce arrears. Although the order was registered in Florida, he argued that Florida and North Carolina had concurrent jurisdiction to modify the arrears. The North Carolina court modified the child support obligation and reduced the amount of arrears owed by defendant. The plaintiffs appealed.

The appellate court reversed. Under UIFSA and FFCCSOA, North Carolina lacked jurisdiction to modify the child support order. When the parties and children left New York, New York lost CEJ. The plaintiff registered the order North Carolina for enforcement only. North Carolina did not have personal jurisdiction over the plaintiff, who lived in Florida. The order was never registered for modification and the parties never consented in writing to North Carolina's exercise of jurisdiction to modify the support order. Therefore, there was no basis for the trial court to exercise jurisdiction to modify the order or reduce the arrears.

Roberts v. Bedard, 2010 WL 476038 (Ky. App., 2010) (Not for publication). Florida entered an order of paternity and child support at a time when the mother and child resided in Florida and the father primarily resided in Maryland. The father moved to Seattle and the mother and child moved Kentucky. The mother filed a petition for upward modification in Kentucky, and the father made a special appearance to contest personal jurisdiction. The mother testified that the father directed her to move to Kentucky to allow easier visitation with the child. The trial court held that the father did not direct the mother to move to Kentucky, that she moved there for a number of reasons other than visitation, and dismissed the petition.

The appellate court affirmed. The trial court correctly concluded that the mother moved to Kentucky by her own choice and not by act or at the direction of the father (see FCA 580-201[5]). Absent any basis for personal jurisdiction, Kentucky could not modify the Florida order. In addition, once the parties all left the issuing state, the mother was required to file her modification petition in the state where the father resided. Kentucky lacked CEJ to modify.

Slaughter v. Slaughter, 2009 WL 3862411 (Ohio App., 2009). The mother and child resided in Georgia and the father resided in Ohio. The mother applied for child support services in Georgia, and Georgia caused a UIFSA petition for establishment of paternity and support to be filed in Ohio. The father counterclaimed for a divorce. The trial court dismissed the counterclaim and the appellate court affirmed. The filing of a UIFSA petition in Ohio gave Ohio limited personal jurisdiction over the custodial parent. Ohio did not gain personal jurisdiction for the purposes of a divorce proceeding. In addition, UIFSA proceedings are limited to paternity and support issues. Nothing in UIFSA gave the court subject matter jurisdiction to grant a divorce or decide issues of property distribution, custody, or visitation.

Hennepin Co. v. Hill, 2010 WL 274651 (Minn. App., 2010). The parties divorced in Mississippi and the father was ordered to pay support until the youngest of their three children reached the age of 21. The parties and their children then moved to Minnesota. The order was registered for enforcement and modification in Minnesota, and Minnesota modified the child support obligation on several occasions.

When the youngest child reached the age of 20, the father moved to terminate his child support obligation. He argued that Mississippi lost CEJ when the parties and children all moved to Minnesota. The order was then registered and modified in Minnesota. Pursuant to UIFSA section 611(c), he argued that the Minnesota order was controlling, and that Minnesota was required to apply its laws regarding the age of emancipation (i.e., age 20 years).

The appellate court denied his application. Although Minnesota had CEJ, and it's law generally applied to all aspects of the proceeding, UIFSA does not permit the registering state to modify any aspect of the order which could not be modified under the law of the issuing state (FCA 580-611[c]). Mississippi issued the original order, and although Minnesota later issued a modified order, Mississippi remained the issuing state. As the child was not emancipated under Mississippi law, the child support obligation continued.

Penkul v. Matarazzo, 2009 WL 4261202 (Me., 2009). The parties divorced in Massachusetts and the father was ordered to pay child support. The mother and child moved to Maine and the father moved to California. The mother attempted to register the order for enforcement and modification in Maine, but the court held that there was no basis to exercise personal jurisdiction over the father and dismissed the petition. The mother did not appeal.

Two years later, the mother again sought to modify and enforce the Massachusetts order in Maine. She argued that Maine had personal jurisdiction over the father because she and the child moved to Maine "as a result of the acts or directives" of the father. (See FCA 580-201[5]). Specifically, she argued that the father's nonpayment of child support forced her to move to Maine to reside with her mother. The trial court dismissed her petition and she appealed.

The Supreme Court affirmed. Because the court determined that it lacked personal jurisdiction over the father in the first proceeding, the mother was required to prove a basis for personal jurisdiction based on events that occurred after the court's first dismissal. The determination that Maine lacked personal jurisdiction at the time of the first proceeding was binding on the parties (the legal doctrine of issue preclusion). The mother did not allege any recent change in circumstances giving Maine jurisdiction over the father. Instead, she attempted to revisit the facts as they existed at the time before the first dismissal. Accordingly, the trial court properly dismissed the mother's action for enforcement and modification.

Porter v. Porter, 2010 WL 1253456 (Ky. App., 2010) (Unpublished Op). The parties divorced in Florida and the father was ordered to pay child support. The mother and children moved to Kentucky, where she filed a petition seeking enforcement of the order. The father cross petitioned for a downward modification. The court dismissed his petition. The appellate court held that because the father continued to reside in the issuing state, and because the parties had not filed written consents for Kentucky to assume jurisdiction, Kentucky lacked CEJ to modify the order.

In re: Ella H, 2010 WL 1240761 (Tenn. Ct. App., 2010). The child was born in Mississippi, and then moved to Tennessee with the mother. The father remained in Mississippi. The mother filed a petition to establish paternity and child support, which was served via FedEx at the father's place of employment (the mother would eventually concede that this was not valid service under Tennessee law). The father was represented at various times by three different attorneys, each of whom interposed lack of personal jurisdiction and subject matter jurisdiction defenses, but then withdrew without providing actual representation during a hearing. After several court appearances, Tennessee entered a default order of paternity and child support. The father's third attorney moved to vacate the default on the grounds of lack of personal and subject matter jurisdiction. At a court appearance, this attorney accepted service of the summons and petition. He subsequently withdrew. The court determined that the initial service via FedEx was improper and vacated the default. However, the court held that the subsequent service upon the father's attorney was valid and issued a new order on default. The father appealed.

The appellate court affirmed. Under UIFSA, personal jurisdiction may be obtained by personally serving the respondent within the state. See FCA 580-201(1). The father's attorney accepted service on his behalf at the hearing. This was sufficient to obtain personal jurisdiction by personal service within the state.

Note: The father also argued that Tennessee was an inconvenient forum as the mother had moved back to Mississippi at some point. The trial court noted that UIFSA does not include a provision permitting transfer for forum non conveniens. However, it held that the courts have inherent power to utilize this doctrine to refuse jurisdiction over a cause of action. Because the father never appeared and his attorneys kept withdrawing, no evidence was ever presented to the court to justify invoking this doctrine to refuse jurisdiction.

Scully v. Scully, 2010 WL 1444838 (Pa. Com. Pl., 2010). The parties divorced in Bermuda and the father was ordered to pay child support. The mother and children resided in Bermuda and the father lived in Pennsylvania. The mother registered the support order in Pennsylvania for enforcement and the father objected. The father claimed that the Bermuda order could not be registered and enforced in Pennsylvania because there was no reciprocal agreement between the United States or Pennsylvania and Bermuda. The court held that a support order could be registered and enforced even if the country from which it originated did not have a reciprocal agreement with the United States or Pennsylvania.

Owens v. Owens, 2010 WL 2225027 (Ala. Civ. App., 2010). The parties divorced in Florida and the father was ordered to pay child support. He moved to Alabama and the wife filed a petition to enroll and enforce the Florida child support order. The father's motion to dismiss was denied and he was held in contempt after a hearing. He appealed on the grounds that Alabama lacked subject matter jurisdiction.

The appellate court held that Alabama lacked subject matter jurisdiction and instructed the trial court to vacate its judgment. Although not clear from the opinion, it appears that the mother enrolled the order pursuant to non-UIFSA state law. The court held that the jurisdiction to enforce the child support order of another state was governed by UIFSA. Any attempt to register and enforce another state's child support order must meet the requirements of UIFSA. Since the mother's enrollment papers did not meet UIFSA's registration requirements, the trial court never obtained subject matter jurisdiction.

Meether v. Meether, 2009 WL 1212241 (Iowa App., 2009). The parties divorced the Utah in 1983 and the father was ordered to pay child support. The mother filed petitions to renew the judgment for child support in 1992 and 2002 (to avoid the 8 year statute of limitations). The court entered judgments on default in each preceding, renewed the judgment and established the amount of child support arrears and interest due.

The father had moved to Iowa and the mother and children moved to California. In 1994, one child was in foster care and California obtained in order to support in Iowa against the father.

In 2005, the mother filed a notice of the Utah judgments in Iowa. The father moved to set the judgments aside, claiming that Utah lacked personal and subject matter jurisdiction, and alleged that he was not given credit for payments made to the mother. The trial court held that the Utah renewal judgments were entitled to full faith and credit and that the father was entitled to credit for payments made. The father appealed.

The father argued that the Utah lacked personal jurisdiction because he had not lived in or had any contact with Utah for many years when the renewal judgments entered. The appellate court held that Utah retained continuing personal jurisdiction over the father with regards to the judgment of divorce.

Father argued that Utah lacked subject matter jurisdiction over the child support order once Iowa entered a new order modifying his support obligation. The appellate court disagreed. The order in Iowa was a new support order on behalf of California, where the child was in foster care. The mother was not a party to the proceeding and Iowa did not purport to modify the Utah divorce decree. Because Iowa did not modify the Utah order, Utah retained subject matter jurisdiction to enforce the divorce decree. The appellate court also held that the Utah renewal judgments were entitled to full faith and credit. Granting full faith and credit to the default judgments did not offend due process because the father received notice of the proceedings and had an opportunity to be heard.

Finally, the appellate court held that while the trial court correctly gave credit for payments made by the father, it failed to adjust the interest calculations to reflect past payments.

Note: The 1994 order was pre-UIFSA. Under URESA, Iowa could have modified the Utah order, but had to specifically state that it was doing so. Since it didn't, there were 2 valid, enforceable orders. The court adjusted the arrears due under the Utah orders to reflect payments made under the Iowa order and to the mother under the Utah order.

Sootin v. Sootin, 2010 WL 3023361 (Fla. App., 2010). Florida issued an order requiring the former husband to pay alimony. After both parties moved to Tennessee, the former husband moved to register the order in Tennessee for modification. The court in Tennessee contacted the Florida court to clarify whether it had retained jurisdiction. The Florida court determined that the order should be transferred to Tennessee. The former wife appealed and the appellate court reversed. Pursuant to UIFSA, the issuing state never loses CEJ over an order of spousal support. See FCA 580-205(f). Even though both parties resided in Tennessee, the order could only be modified in Florida.

Moore v. Moore, 2010 WL 3003174 (Del. Supr., 2010). New York issued an order support against the father. He moved to Louisiana, where the order was registered and modified. The father later claimed that Louisiana modified the age of emancipation to 18 in accordance with its laws. The father then moved to Delaware and the mother registered the order for enforcement and modification.

During subsequent proceedings in Delaware, the father raised an emancipation defense based on the Louisiana order. The supreme court rejected his claim. Under UIFSA and FFCCSOA, the law of the issuing state (NY) governed the duration of the order. The Family Court correctly applied New York law in determining whether the child was emancipated.

The father also argued that Delaware was required to recognize and give full faith and credit to a decision by Louisiana to close the case. However, the father did not raise this defense when the order was registered in Delaware. Registration and confirmation of an order preclude further contest of the order with respect to any challenges that could have been raised at the time of registration. See FCA 580-608.

Goodman v. Craig, 2010 WL 2428745 (Ky. App., 2010). Kentucky entered an order of filiation and child support in 1995. The mother and child moved to Indiana and the father remained in Kentucky. Over the next 14 years, there were a number of proceedings in Indiana, and the support order was modified several times. In 2009, the father filed a petition in Kentucky to terminate child support based on the Kentucky age of emancipation (Indiana's was 3 years longer). The father argued that the transfer and modifications in Indiana were improper under UIFSA, and that Indiana lacked continuing exclusive jurisdiction because a party still resided in the issuing state.

Kentucky denied the father's petition. The first proceedings in Indiana were brought in 1996, two years before UIFSA was enacted in Kentucky. UIFSA did not apply to the initial transfer. The father never objected to the transfer of jurisdiction to Indiana and never appealed the Indiana orders. Therefore, the father submitted to the jurisdiction of Indiana.

Pursuant to UIFSA, once Indiana modified the order, Kentucky lost CEJ. Therefore, Kentucky was without jurisdiction to hear the father's petition to terminate.

North Carolina v. Bryant, 2010 WL 4609420 (N.C. App., 2010). The parties divorced in Michigan and the father was ordered to pay child support. The mother and children moved to North Carolina. The Mich. Order was registered for enforcement and the child support agency sought a judgment for arrears. The evidence showed that the father had not paid support for 10 months, a total of $4,860. However, the trial court, "trying to be fair" to both parties, ordered the father to pay only the amount due for the six-month period starting after the registration of the Michigan judgment was confirmed, totaling $2,916. The child support agency appealed.

The appellate court reversed. When an order is registered under UIFSA, the court must determine the past due support in accordance with that order. As $4,860 in support payments had accrued under the Michigan

judgment and vested under Michigan law, the court was not free, consistent with full faith and credit, to set arrears in any other amount.