NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
DIVISION OF CHILD SUPPORT ENFORCEMENT
WEEKLY LEGAL UPDATE
2012 UIFSA REVIEW
1/2/13

GREETINGS: This is a review of the significant UIFSA case law from 2012.

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Chautauqua Co DSS v. Rita M. S., 94 A.D.3d 1509 (4th Dept., 2012). DSS brought support petitions against the father and stepmother of 4 children placed in foster care. The respondents resided out-of-state. They did not appear, and the magistrate entered support orders on default, requiring the father to pay $775 per week effective the date the children were placed in foster care and ordering the stepmother to notify the SCU of any change in employment status or health insurance benefits. The respondents did not file objections to the orders.

The respondents later moved to vacate the support orders and to dismiss the support proceedings pursuant to CPLR 5015(a)(4), arguing that the NY Family Court lacked personal jurisdiction. The Magistrate denied and dismissed the respondents' motions, holding that the court had jurisdiction pursuant to FCA 580-201(5) (children resided in NY as a result of the acts or directives of the respondents). The respondents filed objections which were dismissed by the Family Court.

On appeal, respondents argued that NY lacked personal jurisdiction. The court held that the children clearly resided in New York as a result of respondents' acts and directives. In connection with felony child abuse charges pending in New Mexico, the respondents were ordered to avoid all contact with the children. The respondents requested that the children be placed in the care of the children's aunt in New York. They executed a limited power of attorney authorizing the aunt to withdraw one of the children from school, a durable powers of attorney for health care designating the aunt as the children's agent for health care decisions, and otherwise consented to her care of the children. The court concluded that the children began residing in New York as a result of the acts or directives of respondents and that the court properly exercised personal jurisdiction over them.

The respondents argued that the assertion of jurisdiction violated due process. In order for the courts of one state to exercise jurisdiction over an individual who is domiciled in another state, due process requires that there be sufficient minimum contacts between that individual and the forum state and that the forum state's assumption of jurisdiction not offend traditional notions of fair play and substantial justice. The respondents cited *Kulko v. Superior Ct. of California* (436 US 84), where the Supreme Court held that the father's mere acquiescence in his daughter's desire to live with the mother in California did not confer jurisdiction over the father in the California courts. However, in this case, the respondents did more than just agree that the children could live in NY. Instead, they chose to send the children to New York after they were ordered to have no contact with the children. Respondents told the child protective agency that they wanted the children to live with the aunt in New York rather than being placed in foster care in New Mexico, and executed the necessary documents to facilitate the transfer. Respondents' voluntary decision to place the children and their formal acts in carrying out that decision were more than mere acquiescence.

Further distinguishing this case from *Kulko,* the respondents purposefully availed themselves of the privilege of conducting activities within NY by sending their children to live with their aunt without providing financial support for the children. It was foreseeable that someone would, at some point, ask for support of the children.

Turning to some procedural claims, the respondents argued that the court should have made separate jurisdictional determinations for the father and stepmother and each child. This was unpreserved for appellate review as it was raised for the first time on appeal and not in the objections to the Magistrate's order. They claimed that FCA 580-201 was unconstitutional and void because the phrase "acts or directives" is vague. This argument was not properly before the court because there was no indication in the record that respondents notified the Attorney General of their constitutional challenge, as required by CPLR 1012(b)(1).

The respondents argued that the court erred in failing to consider their challenges to the merits of the underlying orders. However, because they filed their motion under CPLR 5015 (a)(4) (lack of personal jurisdiction) and not 5015(a)(1) (excusable default), the court properly limited its review to the issue of jurisdiction.

The Magistrate was not required to hold a hearing on the issue of personal jurisdiction before issuing the original default orders. The petitions alleged that New York had long-arm jurisdiction, respondents failed to answer or move to dismiss the petitions for lack of personal jurisdiction, and failed to appear in opposition to the petitions. The Magistrate properly determined based upon the documentation provided by petitioner that it had long-arm jurisdiction over respondents.

Nor was a hearing required on the factual aspects of personal jurisdiction in connection with the motion to vacate. The respondents' submissions did not dispute the underlying jurisdictional facts, simply the legal conclusions to be drawn from the facts. In addition, the respondents waived the right to a hearing on jurisdiction by submitting their motion on papers only and they did not challenge the competence of the evidence submitted by petitioner.

UIFSA- Other States

Jackson v. Holiness, 2012 WL 393881 (Ct. App. Ind., 2012). The parties divorced in Nevada in 1996 and the father was ordered to pay child support. The mother and the children then moved back to Indiana in 1996, and the father moved to Maryland. In 2002, the mother registered the Nevada order in Maryland under UIFSA for modification. Maryland entered a consent order approving the parties' agreement to increase child support. In 2009, the mother filed a modification petition in Indiana. The father moved to dismiss for lack of personal jurisdiction. After a hearing, the trial court dismissed the mother's petition for lack of subject matter jurisdiction. She appealed.

The "play away" rule barred the mother from registering the order for modification in the state where she resided (Indiana). Under UIFSA, Indiana could not have subject matter jurisdiction to modify the child support order unless the parties filed a consent with the court having CEJ to transfer jurisdiction to Indiana. See FCA 580-611. The mother argued that the FFCCSOA preempted UIFSA because the FFCCSOA does not impose a non-residency requirement. 28 USC 1738B provides that:

> if there is no individual contestant or child residing in the issuing State, the party ... seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

The mother claimed that under the Supremacy Clause of the United States Constitution, FFCCSOA superseded any inconsistent provisions of UIFSA**.** The appellate court rejected this argument. The court acknowledged that FFCCSOA does not require that the party seeking to register to modify an order issued in another state be a nonresident of the state where he/she is seeking to register the order. However, the Indiana supreme court had previously held that the different language in FFCCSOA did not preempt the play away rule in UIFSA:

> The application of general rules of federal preemption leads us to conclude that Congress did not intend the Federal Act to preempt the Uniform Act. Rather, it appears that FFCCSOA was intended to follow the contours of UIFSA. There is no indication in the text of FFCCSOA or its legislative history of any intent to preempt UIFSA. And importantly for our purposes the specific provisions here at issue in Indiana's version of the Uniform Act—the nonresidency requirement and the consent requirement—are closely modeled after the federal version of the Uniform Act.

> "The very fact that Congress mandated that all fifty states adopt UIFSA strongly mitigates against a construction of FFCCSOA that would impliedly preempt UIFSA to any degree." LeTellier v. LeTellier, 40 S.W.3d 490, 498 (Tenn. 2001). We therefore also conclude that the FFCCSOA does not preempt the Indiana version of UIFSA.
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> Basileh v. Alghusain, 912 N.E.2d 814 (Ind., 2009).

The official comments to UIFSA section 611 support this position:

> Under subsection (a)(1), before a responding tribunal may modify the existing controlling order, three specific criteria must be satisfied. First, the individual parties and the child must no longer reside in the issuing state. Second, the party seeking modification, usually the obligee, must register the order as a nonresident of the forum. That forum is almost always the state of residence of the other party, usually the obligor. A colloquial (but easily understood) description is that the nonresident movant for modification must "play an away game on the other party's home field....
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> The underlying policies of this procedure contemplate that the issuing tribunal no longer has an interest in exercising its continuing, exclusive jurisdiction to modify its order, nor information readily available to it to do so. The play-away rule achieves rough justice between the parties in the majority of cases by preventing ambush in a local tribunal. Moreover, it takes into account the factual realities of the situation. In the overwhelming majority of cases the movant is the obligee who is receiving legal assistance in the issuing and responding states from Title IV–D support enforcement agencies. Further, evidence about the obligor's ability to pay child support and enforcement of the support order is best accomplished in the obligor's state of residence.

The trial court did not err when it dismissed the mother's petition to modify child support for lack of subject matter jurisdiction.

Ervin v. Ervin, 2011 WL 6176125 (Montana, 2011). The parties divorced in Mississippi. Each parent was awarded custody on one child, and no child support was ordered. One parent and child moved to Montana, and the other parent and child moved to Arizona. In the course of other proceedings, Montana relinquished jurisdiction to Arizona. There were various modifications, including issuing a child support order and entering a money judgment for arrears. In 2010, the child support obligor petitioned to vacate or reduce child support arrears in Montana. The trial court applied the UCCJEA, and declined to exercise jurisdiction on the basis that Montana had relinquished jurisdiction and that Montana was an inconvenient forum. The court refused to accept filings by either party to the action.

The Supreme Court reversed. Child custody jurisdictional determinations are separate from child support jurisdictional determinations. Jurisdiction over child support is governed by UIFSA. The pending motion only addressed child support enforcement. Therefore, the UIFSA, not the UCCJEA, applied. Unlike the UCCJEA, UIFSA does not have an inconvenient forum provision. Instead, the court must focus on which state has CEJ.

Vaile v. Vaile, 2012 WL 247959 (Nevada, 2012). The parties divorced in Nevada and the father was ordered to pay child support. The divorce decree adopted and incorporated the parties' separation agreement. Under the agreement, the father's obligation would be re-calculated annually based on an agreed-upon formula. The parties agreed to exchange tax return information or income statements to determine combined income for this purpose. The mother claimed that the support obligation was never adjusted and that the father failed to pay support.

In 2007, the mother filed a motion seeking to establish the monthly child support obligation based on the recalculation provision and to reduce the arrears to judgment. She filed in Nevada, although the parties and children no longer resided there. The district court granted the mother's motion, vacated the re-calculation process, and fixed the father's child support obligation at $1,300/month. It used that figure to calculate his support arrearages, which it reduced to judgment. Both parties appealed.

The Nevada Supreme Court looked at 3 issues: 1) did Nevada have subject matter jurisdiction to *enforce* its order; 2) did Nevada have subject matter jurisdiction to *modify* its order; and 3) did the court *modify* the support obligation or *clarify* what was due pursuant to the agreement?

First, the court concluded that Nevada had jurisdiction to enforce under UIFSA. Because no other jurisdiction had entered a child support order, the Nevada order was controlling. Since the order had never been modified, Nevada could enforce. See FCA 580-205.

Second, since the parties and children did not reside in Nevada and the parties did not consent to the district court's exercise of jurisdiction, Nevada lacked subject matter jurisdiction to modify the support order. See FCA 580-611(a).

Third, the court held that the trial court's entry of a new child support obligation was a modification, not a clarification, of the support order. It held that a modification occurs when the court's order alters the parties' substantive rights, while a clarification involves defining the rights that have already been awarded to the parties. In this case, the separation agreement required that the support obligation be re-determined each year. Under the terms of the agreement, it was possible for the monthly support obligation to change from year to year. Instead of recalculating the obligation using the formula set out in the agreement, the district court ordered a monthly support payment in a fixed amount of $1,300/month. Thus, the district court substantively altered the parties' rights.

In The Interest of T.B., 2012 WL 751950 (Tx. Ct. App., 2012). Alabama filed a paternity and support petition against the father, a Texas resident. He asserted that Alabama lacked personal jurisdiction over him. The court rejected this defense and entered an order of filiation and support. He did not appeal.

The Texas Attorney General registered the Alabama order for enforcement in Texas and filed a notice of registration, giving the father his statutory UIFSA notice. The father challenged registration, contesting the validity and enforcement of the order on the grounds that Alabama lacked personal jurisdiction over him. At a hearing the father acknowledged his sexual relationship with the mother, but said all their romantic interludes occurred in Georgia. The trial court held that Alabama lacked a basis for personal jurisdiction and that the order was not eligible for registration.

One of the bases for personal jurisdiction over a nonresident under UIFSA is that the nonresident engaged in sexual intercourse in the state and the child may have been conceived by that act of intercourse. FCA 580-201(6). One of the defenses to registration of another state's support order under UIFSA is that the other court lacked personal jurisdiction over the contesting party. FCA 580-607(a)(1). The Full Faith & Credit Clause of the United States Constitution applies to child support orders judgments under UIFSA. A determination of the first state court is entitled to full faith and credit, even in questions of jurisdiction, when the second state court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.

The appellate court reversed and held that the trial court should not have re-considered the personal jurisdiction defense. The father argued that his right to oppose registration on the grounds of a lack of jurisdiction was not foreclosed by the Full Faith and Credit clause. The appellate court disagreed. If the party did not have the opportunity to raise personal jurisdiction as a defense in the issuing state, he/she

can raise it as a defense to registration. But if the issue was raised and the obligor had an opportunity to fully and fairly litigate the issue, the determination of the issuing state is not subject to collateral attack in the registering state. A review of the Alabama proceedings showed that the father had an opportunity to fully litigate the issue in Alabama.

Williams v. Williams, 2012 WL 593281 (Al. Ct Civ. App., 2012). The parties divorced in Missouri and the father was granted custody. The mother was ordered to pay a share of unreimbursed health care costs. The father and children moved to Alabama in 2005, where he filed a "Petition to Modify Divorce Decree and Petition to Accept and Make St. Louis, Missouri Dissolution Judgment and Divorce an Alabama Divorce Decree." The mother allegedly moved to Alabama sometime in 2005. The order was modified in 2006. A modification and enforcement petition was filed in Alabama in 2009. The trial court dismissed the petition and vacated the 2006 order for lack of subject matter jurisdiction.

The appellate court affirmed. Even if the parties all resided in Alabama in 2005 when the first petition was filed, the Missouri order had to be registered in Alabama in compliance with UIFSA. Registration is required even if all the parties and children reside in the new state. The failure to properly register the order deprived Alabama of subject matter jurisdiction to hear the case. Judgments entered without subject-matter jurisdiction can be vacated at any time as void, either on direct or on collateral attack. Therefore it was not an error for the court to vacate the 2006 order or dismiss the 2009 petition to modify it.

Vivien v. Campbell, 2011 WL 1837777 (Tenn. Ct. App., 2011). The substantive law question involved calculating income from gambling winnings. For those interested in another state's position on this issue, the Tennessee appellate court held that in determining an obligor parent's income for child support purposes, provable gambling losses may offset gambling winnings, up to the amount of the gambling winnings for the year in question. However, the appellate court also cautioned the trial court to consider, if it found net winnings, whether this was a dependable source of income for payment of future support.

The UIFSA issue involved the subject matter jurisdiction of Tennessee to decide the motion for a rehearing on the child support award. The mother filed a paternity and support petition in 1998 in Tennessee. The court issued an order of support in 2000, including the father's gambling winnings as income but not offsetting his losses. The Mother and child moved from Tennessee before the order issued. The father moved for a rehearing, which was delayed by discovery disputes and other things for 10 years. While the motion was pending, the father apparently left Tennessee.

The appellate court held that because the father's motion for a rehearing was seeking a reduction in support, he was seeking a modification. Tennessee could not modify its own order if it lost CEJ, which would have happened if the parties and child all left the state. The mother and child were clearly gone, but the record was not totally clear whether the father had moved before filing the motion. With both sides urging the court to hear the motion, and the record not totally clear, the court declined to find that the trial court did not have CEJ to consider the father's petition to rehear.

Siegel v. Bridewell, 2012 WL 642429 Ohio App., 2012). A proceeding to establish support and paternity under UIFSA is governed by the procedural law of the responding state.

Haber v. Haber, 2012 WL 738571 (N.J. Sup. Ct., 2012) (unpublished opinion). The parties lived together in NJ until they separated in 1988. The children remained in mother's custody, and father moved to California. Here is a summary of the major court proceedings:

1. NJ – 8/89- temporary order of child and spousal support - $450/week plus medical coverage for 3 children

2. Cal – 12/89 M filed NJ temporary order for enforcement under URESA
3. NJ – 1/91- Final Judgment of Divorce - $900/week child support, no alimony, medical coverage, $35,550 arrears.
4. Cal – 11/91 – Cal enters an order on M's URESA petition to enforce - $333/child/month plus medical coverage. Arrears held pending appeal of NJ divorce
5. Cal – 6/92 - $773 per month for 2 children (one child had turned 18), plus $227 per month toward $69,920 arrearages.
6. NJ 7/92 - Amended Divorce Judgment-$300 per week for 3 children (oldest not emancipated under NJ law) plus $270/week alimony.
7. Cal – 8/92 – M files URESA petition to enforce amended order (NJ 7/92)
8. Cal – 2/93- responding to M's enforcement petition, enters a Cal guidelines order setting alimony at $275/month.
9. Cal – 8/94 – granting F's petition for a downward modification – reduced support to $439/month for 1 child (oldest son had recently turned eighteen) and $380/month spousal support. The arrears set at $70,142 child support and $1,874.06 spousal support. M does not appeal.
10. Cal – 8/97 – terminated alimony obligation. M does not appeal

In 1998 URESA was repealed and UIFSA adopted. In 2009, after NJ executed on some of the father's assets, he filed a motion in NJ to terminate his child and spousal support obligations, enforce the California orders, and emancipate the children. The mother filed a cross-motion for enforcement, alleged that she never consented to jurisdiction in Cal, never stipulated to the modification of the NJ orders, and was unaware of most of the proceedings in Cal. The parties stipulated to the dates when the children were emancipated under NJ law. The trial court found that the mother had not submitted or consented to the jurisdiction of Cal and that NJ was the controlling state under both URESA and UIFSA for child and spousal support.

The appellate court affirmed. URESA governed interstate support disputes until it was repealed in 1998, and provided that support orders could be enforced in multiple states. A support order was not nullified or modified by a support order made by another state's court unless the second order specifically stated that the first order was modified or nullified. As URESA allowed for multiple orders in multiple states, subsequent orders did not invalidate the original order. In fact, the second state could reduce the award solely for the purposes of enforcement in that state without modifying the original order. Since the mother filed her petitions for enforcement, the resulting Cal orders did not nullify the NJ orders. The court held that even if Cal modified the NJ support orders for enforcement purposes under URESA, NJ maintained jurisdiction to enforce or modify the spousal and child support orders without regard to California's existing orders.

The court also analyzed the case under UIFSA (even though it didn't apply). Under UIFSA, NJ would retain continuing, exclusive jurisdiction to modify child support (as the obligee and children continued to reside there), unless the parties provided written consent for another state to assume continuing, exclusive jurisdiction. The written consent rule is strictly construed, and requires specific consent to a change in CEJ, not general consent to or inferred consent from participation in a proceeding. Initiating an interstate proceeding would not grant the second state CEJ, particularly if it is an enforcement proceeding. UIFSA provides a different rule for spousal support orders. Only the issuing state has CEJ during the life of the order.

Under UIFSA, Cal could never modify the NJ alimony order. With regard to child support, because a party and the children resided in the issuing state, Cal lacked CEJ and could not modify the NJ orders. The Cal orders would have been invalid. The court held that the mother did not expressly waive NJ's jurisdiction by pursuing the enforcement petitions in Cal. Nor was there specific written consent to grant

Cal CEJ, even in the so-called "stipulations" by the mother (it was not clear that she actually signed these stipulations or knew of all the proceedings). Finally, the mother's failure to appeal the various Cal orders was not an express written consent to remove jurisdiction, and failure to voice concern or file an appeal is not enough to transfer CEJ.

O'Neil v. O'Neil, 2012 WL 1498849 (Ct. App. Va., 2012). The parties divorced in Va., and the husband was ordered to pay spousal support. The parties both moved to Louisiana. The Husband filed a modification petition in Va., and the appeals court, on its own motion, declined to exercise jurisdiction over the appeal and transferred the case to the district court in Louisiana, where both parties and their witnesses resided. The wife appealed, arguing that under UIFSA, the issuing state always retained CEJ over spousal support, regardless of where the parties moved. The husband argued that Va. could determine that it was an inconvenient forum and transfer the case (the doctrine of forum non conveniens).

The court held that UIFSA 211 provides that the issuing tribunal retains continuing, exclusive jurisdiction over an order of spousal support *throughout the entire existence of the support obligation.* The husband could not invoke the doctrine of forum non conveniens.

Department of Revenue v. Ortiz, 2012 WL 1192094 (Dist. Ct of App., Fla., 2012). The parties divorced in Puerto Rico in 1999 and the father was ordered to pay child support. He did not reside in Puerto Rico, but appeared by counsel. Several years later, Puerto Rico requested that Florida register it's order for enforcement pursuant to UIFSA. The father was sent notice of registration, including his right to contest registration, but did not file a written response, motion, or pleading.

The DOR initiated enforcement proceedings against the father. In 3 contempt proceedings and a motion filed to stop suspension of his driver's license, the father never contested the validity of the order. In 2010, the father filed a motion to contest the arrears and terminate suspension of his passport. He alleged that the mother's testimony in the divorce concerning his income was false and filed an affidavit alleging that he never earned $90,000 per year. DOR argued that: (1) the father had appeared in Florida court at least four times and never challenged the validity of the child support order or the arrears; (2) he failed to timely contest the validity of the UIFSA registration; and (3) the trial court lacked jurisdiction to invalidate a divorce decree rendered in Puerto Rico. The trial court found that the mother committed fraud in obtaining the Puerto Rican child support order. The court set aside the Puerto Rico support order, ruled that it was null and void, and vacated all arrears. It also ordered DOR to cooperate in reinstating the father's passport by providing certification to HHS that arrears were reduced to $0, so that HHS could notify the Secretary of State to remove the father's name from the certified list and reinstate his passport. DOR appealed

The appellate court reversed. First, the order was properly registered under UIFSA. However, *instead of invoking UIFSA section 608* (which precludes later challenges based on a defense that could have been raised at the time of registration), the court held that the order could be challenged under a Florida procedural law allowing relief from a judgment or order on the grounds of fraud. After considering the requirements of that law, the court reversed. The court held that the motion was untimely, that allegations did not raise an issue of extrinsic fraud, and that the father waived any collateral attack on the child support order by participating in three prior contempt hearings without once raising any issue of its validity or appealing the contempt orders. In addition, the trial court had no authority or jurisdiction to deal with the passport issue.

Passaic v. Schrader, 2012 WL 2094076 (Sup. Ct. NJ., 2012) (unpublished opinion). The parties divorced in California and entered a marital settlement agreement, which was incorporated into the judgment. The agreement anticipated that the mother and child would move to NJ. In a section entitled "Reservation of Jurisdiction," the agreement provided that jurisdiction to supervise the overall enforcement of the

Agreement would be reserved with the California court. It also provided that it would be construed and interpreted in accordance with California law. With regard to child support the parties agreed that each parent would deposit $200 into the child's trust account each month. They also agreed that support would cease when the child became emancipated, reached age 19, reached age 18 if not a full-time high school student, or reached age 18 but was self-supporting.

The mother "docketed" the California divorce in New Jersey and applied for a modification of child support in 1999. The NJ court held that the California divorce did not provide for a direct payment of child support, and modified the order to require the father to pay child support pursuant to the NJ guidelines. Another modification was made in NJ in 2004, with the court expanding its rationale for asserting jurisdiction. The court held that child support was never addressed in California, and therefore NJ had jurisdiction.

In 2011, the father moved to enforce the agreement, to deem the child emancipated, and terminate child support in NJ. The court denied his motion on the grounds that NJ law applied. It cited the prior ruling that child support had never been addressed in California, and therefore NJ had jurisdiction. Because NJ had jurisdiction, its emancipation law, not California's or the agreement, governed. The father appealed and the Superior court reversed.

Both parties agreed that the child would not be emancipated under NJ law, but would be under the agreement. The mother argued that because NJ issued the first child support order, it had CEJ and its age of emancipation applied. (See FCA 580-604[a]). However, the agreement unambiguously directed that child support be paid by both parents in the form of payments into the trust account for the child. It further directed that the child be deemed emancipated upon both turning 18 and graduating from high school. The prior NJ orders holding that child support was never addressed in California were incorrect.

The mother argued that the father lost the right to appeal the holding of the second NJ modification by not appealing and then paying the support. However, his right to appeal came from the order, not from the reasons for the order. In choosing to comply with the prior orders rather than appeal, the father did not forfeit the right to contest another consequence that flowed from the flawed ruling of the court.

The NJ orders only modified the child support provisions of the agreement and California divorce; California was the first state to issue an order of child support. Under UIFSA, NJ could not modify any aspect of child support not modifiable in California, and the California law regarding duration applied. Under California law, the terms of the marital settlement regarding emancipation could not be unilaterally modified by the court.

Chapman v. Bunch, 2012 WL 1890660 (Ala. Civ. App., 2012). The parties divorced in Alabama and the father was ordered to pay child support. The mother filed a petition to modify support in Alabama. At the time of the petition, the father resided in Tennessee and the mother and child resided in Louisiana. The court granted the father's motion to dismiss based on lack of subject matter jurisdiction. As no party remained an Alabama resident, and the parties did not execute written consents for Alabama to retain CEJ, Alabama lacked jurisdiction to modify its own order under UIFSA.

Smith v. Borealis, 2012 WL 1537424 (Ariz. Ct. App., 2012). The parties divorced in Arizona. The mother and child moved to Texas, where an order of custody and child support entered. Under the order the mother had sole custody of the child, and father was required to pay $905 per month in child support. The order also provided that if the mother moved away from Texas with the child, any subsequent modifications would be conducted in the State of Arizona, as long as the father resided there. The mother and child did move to Colorado, and the father filed a modification petition in Arizona.

The mother moved to dismiss on the grounds that Arizona lacked jurisdiction to modify. The court held that, with regard to the custody issues, the UCCJEA controlled. Although the Texas order place jurisdiction in Arizona, it was not the home state of the child, and lacked any other basis under UCCJEA to modify.

However, the court held that Arizona had jurisdiction to modify the support obligation. Arizona could modify if it was state of residence of the child, or a party who was an individual subject to the personal jurisdiction of the Arizona courts, and all of the parties filed consents in the record in the issuing tribunal (Texas) for Arizona to assume continuing, exclusive jurisdiction. The court held that both the mother and the father had filed consents in the record in the issuing tribunal because each of them signed the Texas order, which directed future proceeding to be held in Arizona.

Stiles v. Stiles, 2012 WL 1795237 (Ariz. Ct. App., 2012) (note: this decision is not legal precedent under Arizona Court rules). The mother, child and father resided in Arizona in 1997 (the father was incarcerated in Arizona from 1996 to the present). The mother was in receipt of public assistance and the child support agency sought an order of support. The father was ordered to pay support in 1997.

The mother and child moved to Washington and obtained a divorce and support order in 1999. The father was ordered to pay $50/month. After Arizona took action to enforce the order, the father moved for a determination of controlling order. He claimed that the Washington order superseded the Arizona order because Washington was the child's home state He also sought a reduction of the Arizona arrears judgment from $82,991.73 to $11,412.48, arguing that he only owed the child support on the Arizona order for the two years between the Arizona order and the Washington order. The trial court denied his request, but the appellate court remanded for a controlling order determination.

The plain language of UIFSA provides that when there are two child support orders issued by different states and involving the same obligor and the same child, the obligor may ask the court to determine which order controls. In this case, both Arizona and Washington ordered the father to pay child support for his minor child. He asked for that determination, and the family court should not have summarily denied the request. The appellate court reversed the ruling and remand the matter for a determination of whether the Washington order superseded the Arizona order, and the arrears due under the Arizona support order.

Finally, the trial court had declined jurisdiction under a provision of the UCCJEA relating to unjustifiable conduct by one of the parents (in this case, taking the child to Guatemala). The appeals court noted that there are separate and independent jurisdictional requirements that must be met under UCCJEA and UIFSA. The legislature could have, but did not, add a provision allowing the court to decline jurisdiction in child support cases.

In the Interest of M.I.M., 2012 WL 1863404 (Tx. Ct. App., 2012). In 2002, the father signed an Acknowledgement of Paternity. The OAG brought a paternity petition, and the parents agreed to a temporary shared custody order. While the case was pending, the mother took the child to Guatemala. The pending case was eventually dismissed. In 2009, the OAG filed a UIFSA support petition o/b/o the mother. The father moved to dismiss on several grounds, including lack of jurisdiction and failure to prove the child's residence and that the child was still alive. He also moved the court to decline jurisdiction due to the conduct of the mother. The trial court dismissed the petition and the OAG appealed.

The appeals court reversed. First, the Texas district court had jurisdiction because the mother requested the assistance of the OAG in obtaining child support, a petition was filed by the OAG pursuant to UIFSA, and the district court in Collin County had the ability to establish personal jurisdiction over the father.

The appeals court held that the Collin County district court was the appropriate forum for obtaining personal jurisdiction.

Secondly, the court rejected the father's argument that the OAG had a duty to provide competent proof of the child's current residence and that the child was alive as part of its petition. The court ruled that any issue permitting avoidance of the duty to support a child must be pleaded as an affirmative defense. The father bore the initial burden of proof on any claim that the duty to support had terminated because the child was no longer living. In terms of the child's residence, that information was included in the General Testimony attached to the UIFSA petition. It was redacted after the mother signed an affidavit in support of nondisclosure claiming the father had been violent towards her in the past. In cases involving family violence, the petitioner may withhold information regarding the child's actual physical address and request the court to make a determination regarding disclosure of this information. The failure to establish the location of the child in the petition was not justification for denial of jurisdiction. To the extent there was an issue of fact regarding residence or the existence of the child, the factual issues required a hearing.

Ferrari-Bullock v. Randall, 2012 WL 2499525 (Tenn. Ct. App., 2012). The Tennessee court issued an order of protection that included a directive for the father to pay child support. The father remained in Tennessee, and the mother commenced a divorce proceeding in Texas. The Tennessee court amended the order of protection, extending the order and the child support provisions for a period of 10 years.

The father argued that the trial court lacked subject matter jurisdiction to extend the child support obligation because of the divorce pending in Texas. Under Tennessee law, the provisions of an order of protection remain in effect until the divorce court modifies or dissolves the order. Pursuant to UIFSA:

> A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:
> (1) As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
> (2) Until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction. (see FCA 580-205[a])

In this case, the father remained a resident of Tennessee. Tennessee retained jurisdiction under UIFSA to modify the order of support. Under Tennessee law, unless and until a divorce court took some action regarding the order of protection, the order's child support provisions remained effective.

Guardiola v. Ellis, 2012 WL 2810935 (N.J. Sup. Ct., App. Div., 2012) (Unpublished Opinion). The parties divorced in New York and the judgment of divorce required the father to pay $100/week in child support for his four children. It also required him to contribute to the future college education expenses of the children. The mother and children moved to Pennsylvania and the father moved to New Jersey. The mother registered the NY judgment in NJ in 2006. In 2007 order, a NJ Family Part judge declared that the three older children were emancipated and ordered the father to contribute to the college expenses of the youngest child, then eighteen years old.

In 2011, the mother filed a motion to enforce the judgment in NJ, including a request that the father pay additional arrears for unreimbursed medical and educational expenses. The father cross-moved to terminate child support as of his son's twenty-first birthday. The trial court, citing NJ law, ruled that, as the youngest child was not emancipated as he was still attending college. The court continued the weekly support obligation. The father appealed, arguing that the court should have ended child support payments because under NY law a child is automatically emancipated at the age of twenty-one.

Under NJ law, while there is a rebuttable presumption that a child is emancipated at age 18, there is no fixed age when emancipation occurs. The court must inquire whether the child has moved 'beyond the sphere of influence and responsibility exercised by a parent and obtains an independent status of his or her own.' Under NJ law, the trial court would have been correct that the son was not automatically emancipated when he reached the age of eighteen. NY, on the other hand, provides a fixed age for the emancipation of children. Once a child has reached 21, a parent is no longer liable for support unless there has been an express prior agreement between the parents to provide support past this age.

Under UIFSA**,** the duration of child support is controlled by the law of the issuing state (i.e., the first state to address child support). See FCA 580-604(a). Modification is permitted if the order is properly registered, but the tribunal of the registering state may not modify any aspect of a child support order that could not be modified under the law of the issuing state. See FCA 580-611(c). As a result, the registering state cannot require a child support order to exist for a longer duration than is permissible in the issuing state.

Under NY law, absent an express agreement by the parties, a child is emancipated on his 21st birthday, NJ could not modify the order of current support so as to exceed that limitation. The appellate court reversed the trial court's order denying defendant's request to emancipate his son and terminate child support as of his son's twenty-first birthday. However, pursuant to the parties' agreement, the father was still required to pay college expenses.

Duthoy v. Duthoy, 2012 WL 2378221 (W.D. Mo. App. Ct., 2012). Minnesota issued an order of filiation and ordered the father to pay child support until the child turned 18 or reached 20 years of age, if still attending high school.

The mother and child moved to Florida and the Minnesota support order was registered in Florida. The child later moved to Missouri to live with his grandfather. While there, after his 18th birthday but before he graduated high school, the grandfather applied for TANF benefits for the child. The child support agency notified the father that it was going to enforce the Minnesota. order. The order was never registered for enforcement in Missouri. The father petitioned for an order declaring that the child was emancipated when he turned 18. In the alternative, he claimed that since the child support agency failed to comply with UIFSA's requirements, its enforcement actions were improper. The trial court held that the child was emancipated when he graduated from high school at age 19, and that the order did not need to be registered to be enforced. The father appealed.

The appellate court affirmed. Under UIFSA, Minnesota law governed the date of emancipation because Minnesota issued the child support order. Minnesota law provided that a child support obligation terminated automatically upon the emancipation of the child, which occurred at age eighteen or age twenty if the child was still attending high school. Contrary to the father's argument, the order did not automatically terminate at age 18 unless the custodial parent or guardian proved that the child was still in high school.

Nor was the Minnesota support order terminated by the Minnesota child support agency when the child turned 18. An agency employee stated in an affidavit that Minnesota maintained child support records until it was no longer able to enforce the order. The case closed when the child turned 18, was no longer residing with the mother, and no documentation of school enrollment was provided. However, this merely indicated that the case was closed, not that the order itself terminated.

The father argued that the trial court erred in not vacating any of his child support arrearage because, under UIFSA, the failure to register the support order prohibited the agency from enforcing the order. He

argued the agency was required to register the order before sending the letter advising him that it was seeking to enforce.

Registration of another state's child support order is not initially necessary to enforce the order. UIFSA provides that, after a support enforcement agency receives a request to enforce, the agency, "without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order." If the obligor does not contest administrative enforcement, the order does not need to be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency must register the order. See FCA 580-507(b). Therefore, the agency did not need to register the Minnesota support order before sending the father a letter announcing its intent to enforce.

Finally, the father argued that treating the grandfather as the legal custodian/guardian under the order was a modification, and Missouri lacked CEJ to modify the order. The court held that where the legal custodian relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal custody, and the caretaker relative makes an assignment of support rights in order to receive TANF benefits, the relinquishment and the assignment, by operation of law, transfer the child support obligation to the child support agency. The assignment and change of payee was not a modification.

Kacherian v. Mirzoyan, 2012 WL 2428115 (N.J. Sup. Ct., 2012) (Unpublished Opinion). The parties married in Armenia. The parents were American citizens (the father a naturalized citizen). Prior to the divorce, the parties spent periods of time together in the United States, including N.J. The 3 children were all born in the U.S., one in N.J. The mother claimed one of the children was "likely" conceived in N.J.

The parties divorced in Armenia in 2005. The Armenian divorce decree did not address spousal and child support or equitable distribution. Five years later, the mother and children moved to N.J. In 2010, she filed a motion in N.J. seeking an order of spousal and child support, and seeking equitable distribution of property. The court denied the motion, finding that the father lacked sufficient minimum contacts with N.J. to exercise personal jurisdiction over him. The judge found that the that the father had not been in New Jersey since 2003, he owned no property in New Jersey, and he had been present in the state only "fleetingly" in the 1990s. The father fundraising efforts for his non-profit and his personal and professional relationships in N.J. , but not enough to establish "minimum contacts." With regard to the request for child support, however, the court did not rely on its personal jurisdiction analysis. Instead, it held that there was insufficient showing that New Jersey was the children's "home state," and N.J. lacked subject matter jurisdiction.

The mother appealed, and the Superior Court affirmed. She did not challenge the "home state" determination, however, so the court focused on personal jurisdiction.

For N.J. to have personal jurisdiction over a non-resident, he or she must have sufficient minimum contacts with the forum state and the court must find that maintaining the suit will not offend traditional notions of fair play and substantial justice. "General jurisdiction" is warranted only when a party's continuous actions within a state are so substantial and of such a nature as to justify suit against him on causes of action arising from dealings entirely distinct from those actions. "Specific jurisdiction" may be based on much more limited actions, if the cause of action arose from or was related to those actions. The mother bore the burden of proof on these issues. In addition, UIFSA authorizes personal jurisdiction over a non-resident if the individual engaged in sexual intercourse in the state and the child may have been conceived by that act of intercourse, or if the party resided in the state with the child.

There was no sufficient basis to assert general jurisdiction over the father, as his intermittent contacts in N.J. were not continuous and systematic. As for specific jurisdiction, the father was with the family in

N.J. for periods of time, but his contacts there ended in 2003, and were "stale" by the time the petition was filed in 2010.

Addressing the UIFSA basis for jurisdiction, the court held that the mother had to satisfy the constitutional test (minimum contacts) as well as the UIFSA basis for jurisdiction. In this case, there was a long passage of time since one child was (possibly) conceived in NJ, and the other was born there, the family was not domiciled in N.J. at the time of conception, and there were no other, recent contacts with N.J., As a result, the possible conception and birth were insufficient to meet the constitutional requirements to establish personal jurisdiction.

State of Kansas v. Ketzel, 2012 WL 1563999 (Ct. App., 2012). Kansas issued an order of filiation and support in 1995. The mother and child moved to Hong Kong, the father moved to Missouri. The mother filed a petition to modify the support obligation in Kansas. The trial court granted an increase and the father appealed on the grounds that Kansas lacked CEJ.

The mother argued that Kansas was still her domicile. She held a Kansas drivers license and was registered to vote there. She testified that she paid resident income taxes in Kansas. She alleged that she had not changed her residence or domicile to any place and intended on returning to live in Kansas. The trial court decided that she was a resident of Kansas for purposes of determining its jurisdiction under UIFSA.

The appellate court noted that under UIFSA, CEJ is based on the residence of the parties, not their domicile. See FCA 580-205(a)(1). The comments to Section 205(a) of UIFSA state:

> As long as one of the individual parties or the child continues to reside in the issuing state, and as long as the parties do not agree to the contrary, the issuing tribunal has continuing, exclusive jurisdiction over its child-support order-which in practical terms means that it may modify its order.... Subsection (a)(1) states the basic rule, and subsection (a)(2) states an exception to that rule. First, the time to measure whether the issuing tribunal has continuing, exclusive jurisdiction to modify its order, or whether the parties and the child have left the state, is explicitly stated to be at the time of filing a proceeding to modify the child-support order. Second, the term in subsection (a)(1) 'is the residence ' makes clear that any interruption of residence of a party between the date of the issuance of the order and the date of filing the request for modification does not affect jurisdiction to modify. Thus, if there is but one order, it is the controlling order in effect and enforceable throughout the United States, notwithstanding the fact that everyone at one time had left the issuing state. If the order is not modified during this time of mutual absence, a return to reside in the issuing state by a party or child immediately identifies the proper forum at the time of filing a proceeding for modification. Although the statute does not speak explicitly to the issue, temporary absence should be treated in a similar fashion. Temporary employment in another state may not forfeit a claim of residence in the issuing state. Of course, residence is a fact question for the trial court, keeping in mind that the question is residence, not domicile.

Under Kansas law, "Residence" means the place which is adopted by a person as the person's place of habitation, and to which, whenever the person is absent, the person has the intention of returning." The Kansas Supreme Court had previously held that to effect a change of residence, there must be transfer of bodily presence to another location coupled with an intent to stay in the new location either permanently or indefinitely. Under this definition, the mother and child resided in Hong Kong.

Since Kansas lost CEJ once the parties and child ceased to reside in Kansas, it lacked jurisdiction to modify the order of support without written consents from the parties filed in the issuing jurisdiction. The

appellate court reversed the trial court's finding of CEJ and remanded with instructions to forward the matter to the appropriate tribunal in Missouri, where the father was a resident.

Schultz v. Butterball, LLC., 2012 Ark. 163 (Ark., 2012). Stanislaus County DSS (California) issued a wage withholding order to collect child support arrears to the NCP's employer in Arkansas. The NCP sent letters objecting to the withholding order to the County and the employer. When the employer did not cease income withholding, he brought this action. The trial court dismissed his complaint and the Supreme Court affirmed.

The NCP argued that once he filed an objection all deductions should have stopped until Stanislaus County proved its right to obtain an income withholding. He argued that the order was not a valid order, and asserted that Stanislaus County was required to register the order before any withholding could occur. The Court rejected these arguments, as UIFSA specifically permits issuance of a withholding order without registration. Employers are required to honor income withholding orders issued in another state which appear regular on their face as if issued by a tribunal of that state. An employer who willfully fails to comply with a withholding order is subject to penalties. Finally, an employer who complies with a withholding order issued in another state is not subject to civil liability to an individual or agency for withholding of child support from the obligor's income. The informal challenges to the validity of the order did not render it unenforceable, and the NCP was required to follow the challenge procedure in UIFSA section 506.

The NCP claimed that the statutory scheme violated due process on the grounds that: 1) the statute did not provide for a timely hearing if he objected to the withholding; and 2) his property could be taken first, then he must seek access to the courts (reversing the burden of proof). The Court rejected these arguments. It held that section 506 provided a mechanism to challenge the withholding order. In addition, the NCP had an opportunity to challenge the amount of support at the time the underlying order issued. While the NCP had a property interest in funds being withheld, the risk of erroneous deprivation of those funds was diminished by the fact the enforcement was a secondary proceedings to an already adjudicated right to support. There is a presumption that sufficient process was afforded in the establishment proceeding, and the support order is presumed valid. Further procedural requirements would not significantly increase the NCP's protection from erroneous deprivation and was not required by the due process clause.

UIFSA – International

Jasen v. Karassik, 2012 WL 6177070 (2nd Dept., 2012). The Superior Court of Justice of the Province of Ontario, Canada, awarded the mother child support, and directed that any unpaid support accrue interest at the rate of 6% per annum. The father failed to pay the support obligation and accrued arrears of $16,642.15. The mother filed a petition in the Rockland County Family Court to enforce the Canadian order. The Family Court directed the father to pay the arrears but declined to include an award of interest.

The Appellate Division reversed and awarded interest on the arrears. Under UIFSA, NY could not modify the order of the issuing state unless the issuing state lost CEJ or the parties consented in writing to a modification being heard in NY. The court held that the Ontario order was enforceable in NY, stating: "(A)although the UIFSA does not expressly apply to the Canadian order, since Ontario is not a "state" within the meaning of that statute (see Family Court Act § 580-101[19]), the equitable principles embodied therein, as well as traditional common-law principles of comity, require New York courts to enforce the terms of a child support order or judgment entered in the courts of a foreign nation, 'absent some showing of fraud in the procurement of the judgment or that recognition of the judgment would do violence to some strong public policy of this State.'" By denying interest on the arrears, as provided in the Canadian order, the Family Court in effect improperly modified that order. This was an error, as the

courts of Ontario had not lost CEJ, the parties had not consented to modification in NY, and there was no evidence that the Canadian order was procured by fraud or that recognition of that order was contrary to some strong public policy of New York.

Note: The court invokes the doctrine of comity, rather than looking at whether the provisions of Ontario law are substantially similar to the procedures under UIFSA. Note the difference in UIFSA 1996 (the NY version below) and UIFSA 2001 on this point:

UIFSA 1996: (19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes: (i) an Indian tribe; and ***(ii) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this article, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.***

UIFSA 2001: (20) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

(i) an Indian tribe; and

(ii) a foreign jurisdiction that:

(A) has been declared to be a foreign reciprocating country under federal law;
(B) has established a child-support reciprocity arrangement with this State as provided in Section 308; or
(C) has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this [Act]~~, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act~~.

Ontario is a foreign reciprocating country under federal law and has a child-support reciprocity arrangement with NY. So it would be a "state" under UIFSA 2001.