***Eastern Regional Interstate Child Support Association***

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Daytona Beach, Florida

*v*

# *2018 Intergovernmental Case Law Update*[*]


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[*] Case summaries of representative reported state and federal intergovernmental child support cases from 3/1/17 – 3/20/18, prepared by Susan F Paikin, Esq and Kathryn S. Stein, Law Clerk.

## ALABAMA

***Ex parte T.T.T.*, 2017 Ala. Civ. App. LEXIS 186 (September 22, 2017)** This litigation is the third time the parties have been before the Alabama Court of Civil Appeals during years of post-divorce litigation. The decision sets out the multiple motions that revolve around both failure to register a GA pre-divorce support order and failure to file a timely motion to amend/revise the juvenile court order. [The history is too convoluted to record here.] The ultimate ruling by the Court of Civil Appeals grants one of father's 2017 60(b) motions because mother failed to file her motion to amend/revise the juvenile court order within 14 days, therefore the trial court did not have jurisdiction to grant mother relief. The underlying issue of subject matter jurisdiction re UIFSA/URESA, which can be raised at any time, ultimately was not addressed. Factual background: Parties divorced in GA in 1995. All parties in AL and mother received AFDC for the children. State of Alabama petitions to establish an AL support order - reimbursement for welfare paid and ongoing support. [The original order pre-dates both UIFSA and FFCCSOA.] The state's support petition states there was no support order in GA divorce. AL juvenile court enters support order for $370/month beginning 9/1/95 and $328 arrears. AL support order terminated by operation of law on 3/5/08, when the youngest child turned 18. Lots of contempt actions by mother; and she filed a 2011 petition to enforce arrears accrued under a 1992 GA support order. [Issues original raised regarding subject matter jurisdiction were not addressed in father's 60(b) motion and appeal: Was the 1995 AL order void? Did juvenile court have SMJ to ascertain and enforce arrears accrued under 1992 GA order? ] For more details read this opinion and ***T.T. v. K.M.G.*, 186 So. 3d 472 (Ala. Civ. App. 2015).**

## ARIZONA

***State ex rel DES v. Pandola*, 408 P.3d 1254 (Ariz. 2018)** In Aug. 2014, father registered a 2004 IL child support order in AZ. The registration included father's sworn statement he was not aware of any arrears owed mother. Mother's counsel accepted service in Sept. 2014. A month later father filed a proposed form of judgment stating the arrears were $0. In Nov. 2014, mother requested a hearing to contest the amount of arrears in father's proposed judgment. The hearing request was filed more than 20 days after the registration of the IL support order, i.e. outside UIFSA's time for contest permitted in §§ 605(b)(2) and 606. [†] Family court ruled mother's contest was untimely; accordingly, she was precluded from contesting the amount of arrears. Court held support arrears were $0 through 8/14/14. Court of Appeals affirmed in part, reversed in part. It agreed, unanimously, that mother failed to timely contest arrears statement in the UIFSA registration. But held mother could contest the allegation in father's Oct. proposed judgment. The AZ Supreme Court granted review because it raised issues of statewide importance, reviewing *de novo* on matter of statutory interpretation.

[†] NOTE: In some summaries, UIFSA cites have been changed to the uniform act as adopted by ULC rather than state specific. This change facilitates discussion in a workshop attended by attorneys from many states.

AZ Supreme Court held that preclusion is limited to defenses listed in § 607(a). Most of these defenses can be raised by obligor or obligee; however, some defenses apply only to obligors. Those defenses relate to *overstatement* of arrears: (1) full or partial payment has been made; and, (2) statute of limitations (which precludes enforcement of some or all alleged arrearages). The AZ Supreme Court concluded that UIFSA "comports with the court's construction in *de Leon v Jenkins, 49 Cal. Rptr.3d 145, 149 (Cal. App. 2006)* …[which stated] that none of the specified defenses 'can fairly be read to encompass an objection that the amount of arrears listed on a registration statement is understated.'" The FFCCSOA supports the court's conclusion, as each support payment is an enforceable judgment entitled to full faith and credit by other states.

The AZ Supreme Court does not find the ULC official comment to § 607 to be persuasive: "Because [UIFSA's] language is clear and unambiguous, we need not resort to this comment for guidance. …[T]he comment alters the express text of the statute, effectively amending the statute from stating 'full or partial has been made' to 'full or partial payment has or has not been made. Comment can clarify text but may not alter it." Decision of the Court of Appeals is vacated; Family Court order is reversed and case is remand for further proceedings.

***Strobel v. Rosier*, 2017 Ariz. App. Unpub. LEXIS 1993 (December 26, 2017)** Father, in NH with the parties now adult children, sought to enforce in AZ the NH child support order against mother. AZ IV-D agency registered $202,500 in past due child support, asking AZ Superior Court to enter judgment on arrears. 1996 divorce in Dominican Republic did not include child support. M registered the divorce decree in NH in 2006, seeking to establish a parenting plan. This order did not include regular child support order bit included an agreement regarding savings for college expenses. In 2008 father files a "motion to clarify" in NH, which essentially asked for a child support order. [*Litigation gets even more complicated.]* Later NH orders entered by default as mother did not appear. For at least some period of time during the NH litigation, mother was incarcerated in AZ. Lots of back and forth and continuances.

Mother argued the registration of the NH order in AZ should be vacated. Father argued mother should be precluded from seeking relief under the doctrine of full faith and credit under the U.S. Constitution and FFCCSOA. After a hearing, AZ trial court confirmed the registration. Trial court decision discusses FFCCSOA and mother's argument that the NH court did not have subject matter jurisdiction to enforce the agreement to pay college expenses in the divorce decree as a child support order, or to enter an arrearage order when there was no prior child support order. Mother loses her argument and appeals.

Appellate court finds her arguments are based on the "correctness" of the order. SMJ "refers to a court's statutory or constitutional power to hear and determine a particular case [citations omitted]. Alleged legal error does not constitute a lack of subject matter jurisdiction. In *Estes v Superior Court* [citation omitted], our supreme court distinguished 'the right of a court to misconstrue the law measuring the rights of the parties…[from] the right of a court to misconstrue a statute or law from which jurisdiction or power of the court flows – a jurisdictional law.' [Citations omitted] Misinterpreting a procedural

matter amounts to legal error which may result in reversal by an appellate court, but subject matter jurisdiction remains unaffected by the misinterpretation. Allegations that the New Hampshire orders were improperly based on a contract, instead of child support guidelines, and were not based on a prior child support order constitute allegations of legal error, not a lack of subject matter jurisdiction."

The AZ appellate court holds that mother's collateral attacks on the merits of the NH order are precluded under doctrine of *res judicata* (claim preclusion), which provides that an existing final judgment on the merits by a court of competent jurisdiction bars further litigation between the same parties on every point decided, as well as every point that could have been decided on the record in a prior proceeding. She also does not win on her argument that the order is not entitled to *res judicata* because it was entered by default. Mother never appealed the 2009 NH support order. The appellate court discusses the due process issues she raised, for example, denial of her right to appointed counsel. It also analyzed the fact that she was, apparently. denied the right to appear by teleconference in 2009, 2010 and 2014. While unusual, "we cannot conclude on this record that Mother was deprived of due process." Both a UIFSA choice of law analysis (§ 604) and interpretation of FFCCSOA, result in finding that NH law applies. Trial court order affirmed.

***State ex rel. Dep't of Econ. Sec. v. Alonzo,*** **2017 Ariz. App. Unpub. LEXIS 1752 (November 21, 2017)** The Arizona Supreme Court affirmed an Arizona Superior Court's denial of a father's motion to vacate a 2010 New Mexico child support order, applying UIFSA. The Court emphasized that a tribunal that properly issues a support order assumes continuing, exclusive jurisdiction to modify the child support order. A tribunal in another state may, under certain circumstances, assume jurisdiction to modify the support order, but the original order must first be registered in the other state. The appellate court notes that these jurisdictional requirements apply to a support order and not a paternity order alone.

## CALIFORNIA

***In re Marriage of Connolly,*** **2018 Cal. App. LEXIS 112 (February 9, 2018)** (**as modified with no change in judgment at 2018 Cal. App. LEXIS 200)** 2004 California divorce; father ordered to pay $400/mo. spousal support. All moved to Utah. Father returned to CA from 2005-2010 and returned again in 2013. In Nov. 2005, CA court ordered father to pay $1610/month child support plus $100/mo. on the arrears. The parties' 2009 stipulated agreement reduced the CA child support order to $1023, as the oldest child had turned 18 and was out of high school; spousal support reduced to $372/mo.

In 2012, when everyone was living in Utah, mother "transferred support enforcement" from CA to UT. Utah IV-D agency sent a notice to father that he owed $65,704.93 in arrears. Father requested an adjudicatory hearing to "review the amount of the arrears."

The Utah IV-D agency issued an administrative order and decision that father had $30,586 in child support arrears and $19, 911.07 in spousal support arrears. The order did not include interest as "Utah's policy was not to collect interest on an out-of-state order unless the amount had been reduced to a lump sum amount by a judicial order or judgment or the initiating state [CA] had calculated the interest and provided the Utah [IV-D agency] with the specific interest amount." Mother did not request a hearing to contest the validity of the administrative order.

In 2013, mother filed an order to show cause in Utah for a judgment against father for $69,537.70 combined arrears as of 4/5/13. The Utah court found mother had not appealed the administrative order and that order should stand. Court entered judgment against father for $50,491.73 (this is the "Utah judgment")

In Oct. 2013, father filed motion in CA court to terminate spousal support. (The motion was not heard until 10/14; though, in the meantime, CA heard other motions for contempt and sanctions.) CA court terminated spousal support effective the date father's motion was filed, but found it "inappropriate" to disturb the UT judgment. In 2014, Utah IV-D closed its case and mother again received IV-D services in CA. The CA court issued income withholding to father's coast guard pension – first to $535/mo., then increased to $1007/mo. The pension was father's sole income.

Mother next asked the CA court 1) to determine spousal support arrears and 2) to "reattach" CA interest to the Utah judgment. In 2015, father moved to terminate CA's jurisdiction over the spousal support arrears, arguing that "Utah has the most appropriate responsibility for what is left, which is to enforce that state's 2013 judgment of support arrearages [Utah judgment]."

The CA trial court held the Utah judgment could not be modified by a CA court but also determined that the CA constitution allowed for 10% interest on judgments of support arrears. The Utah judgment was based on the CA judgment and the Utah court "had no power to set aside the CA constitution." The court held that the Utah judgment was not an out-of-state judgment, but was a CA judgment "clarified" by the Utah court. The CA court modified the income withholding to $600/mo., denied father's motion to terminate CA jurisdiction, and held the Utah judgment was subject to CA statutory interest.

Father contested enforcement of the support arrears in January 2016. The CA IV-D agency had audited the arrears and found $22,347.93 in arrears due plus $21,582.52 in interest; the audit cites the Utah judgment case number. The CA trial court denied father's motion with prejudice. Father appealed. As to spousal support, father contends CA lost CEJ when all parties moved to Utah, and the 2013 Utah judgment became the controlling order.

CA Court of Appeals noted that, although all states have adopted UIFSA, as of the time of the Utah judgment (2013) and the 2015 CA order, CA and UT had different versions of UIFSA: CA had the 1996 version; Utah had the 2001 version. By the time of the 2016 CA order, CA had enacted UIFSA 2008. Nonetheless, as to jurisdiction, all versions of

UIFSA give CA exclusive jurisdiction to modify its spousal support order no matter where anyone resided.

The court also rejects father's argument that CA lost jurisdiction over child support, holding that the Utah judgement was not a "child support order" for purposes of UIFSA and was not the controlling order. They examine UIFSA's definition of "child support order" in context of the statutory framework. In this case the Utah judgement "does not change the amount of support due or otherwise modify the California support order." Rather, the UT order "simply calculates arrearages for both spousal and child support as of November 2012, an action recognized and authorized under UIFSA." Holding: CA has CEJ over spousal support and has jurisdiction over child support because father was a CA resident and nonresident mother consented to jurisdiction.

Father also contends that CA cannot modify the Utah judgment under the full faith and credit clause of the U.S. Constitution (not FFCCSOA). "Regarding judgments … the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." (Citing *Baker v. GM*). The court rejects the IV-D agency's argument that the Utah order was not a controlling order under UIFSA and holds that the full faith and credit clause applies to *any* final judgment – *not just a controlling order*. It also holds that, while there may be additional arrears accruing after the Utah judgment, that judgment sets the final arrears as of 11/30/12.

Court also rejects IV-D argument that they were only required to recognize the Utah judgment, and are not limited by it, holding that in Utah, *res judicata* precludes litigation of all issues that could have been litigated as well as those that were. Utah policy allowed the accrued CA interest to be included if CA had provided the amount to the Utah IV-D agency. Since CA interest could have been litigated and wasn't, the Utah judgment is *res judicata* on that issue. CA erred in "modifying the judgment to add CA interest."

***Levy v. Levy,* 2018 Cal. App. Unpub. LEXIS 115 (January 5, 1918)** In 2016, mother (ex-wife) registered a 1976 NJ support order ($50 child support and $50 spousal support) in CA under UIFSA. The arrearages asserted are almost $600,000, including interest. Father's 2nd wife filed to vacate the registration because father had died in 2014; asserts the matter belongs in probate court. Trial court granted 2nd wife's motion, dismissing the registration without prejudice, holding the family law court lost jurisdiction once father died. Mother appeals. The CA Court of Appeals reviews UIFSA requirements for registration for enforcement of a support order and the defenses available to contest that registration. Court holds that, while mother's remedies may be governed by probate rules, it was not improper for her to register the NJ order in CA family court under UIFSA. The trial court did not address the defenses to registration raised by 2nd wife, and noted she has the burden of proving one of the allowable defenses, including statute of limitations. Lower court decision reversed and case remanded.

***Cima-Sorci v. Sorci*, 225 Cal. Rptr.3d 813 (Cal. Ct. App. 2017)** Father, a United States citizen, and mother, an Italian citizen, met and married (9/07) in Italy while father was serving in the United States Air Force. Their son was born there (12/07). The family lived in California for a brief time after father's deployment ended; then mother and child moved back to Italy. The Italian divorce directed father to pay €1,000 in monthly child support and €400 in monthly spousal support.

In June 2010, at mother's request, the Sacramento County IV-D agency began enforcing the support order administratively. Father objected to the administrative enforcement of the order and, in 10/13, the agency registered the Italian order in the Sacramento County Superior Court. Father contested, asking for the registration to be vacated because Italy is not a "state" as defined by UIFSA, and thus, the IV-D agency lacked authority to enforce the order. The trial court determined that father bore the burden of proving Italy was not a state under UIFSA. He appealed, claiming that the burden of proof is on the registrant. *[At this time, Italy was a Hague Child Support Convention country but the Convention was not yet in force in the U.S.]*

The court of appeals concurred that the burden was on the contestant and held that Italy qualified under UIFSA. "We construe the 'substantially similar' language in section 4901, subdivision (s)(2) to mean that a foreign country may be deemed a state within the meaning of UIFSA if the foreign country has laws and procedures that allow for recognition and enforcement of a California child support order, which need not be identical to California's laws and procedures under UIFSA. Whether Italy has specified support guidelines or a presumption limiting spousal support for short-term marriages is unrelated to a determination of whether Italy has laws and procedures that allow for recognition and enforcement of a California child support order. Accordingly, Father's claims related thereto, even if true, fail to establish that Italy is not a state under UIFSA." Affirmed.

***County of El Dorado v. M.B.*, 2017 Cal. App. Unpub. LEXIS 4932 (July 21, 2017)** The German Institute filed a UIFSA petition to CA seeking child support from father, a resident of CA. CA entered paternity judgment and ordered child support. Father then objected to the genetic test results because he didn't have advice of counsel before submitting to the test. Trial court order child support of $25, retroactive to 11/1/13. Father moved to set aside the judgment, arguing that another German man became the child's presumed father by taking care of this child along with the man's own biological daughter with mother. Father also argued that UIFSA never intended to allow the resident of another country to file for paternity. Appellate court held father's arguments were without merit. Affirmed.

***In re Purganan*, 2017 Cal. App. Unpub. LEXIS 1563 (March 3, 2017)** Husband appealed an order denying his request to vacate an October 2005 order that he pay monthly spousal support. He claims the court erred in denying his request because the 2005 order modified a 2001 Hawai'i court's spousal support order, and this action violated UIFSA. The court of appeals agreed and reversed the lower court's decision on the grounds that the Hawai'i court had exclusive continuing jurisdiction over the matter

of spousal support, which precluded the San Diego court's modification of the Hawai'i order.

***Memon v. Memon*, 2017 Cal. App. Unpub. LEXIS 1537 (February 28, 2017)** Father challenged a family court order requiring him to pay his ex-wife monthly child support, claiming that the CA trial court lacked subject matter jurisdiction over child support because the issue was pending from a case filed in India. Under UIFSA, the CA courts' jurisdiction would have been restricted in ordering support had a comparable support petition or pleading been initiated in another state or foreign country. Additionally, the other state or foreign country must have "enacted a law or established procedures for the issuance and enforcement of support orders which are substantially like the procedures" under UIFSA. However, no action for support was pending in India at the time ex-wife requested child support in the CA court, and no support order was ever issued by a court in India. The court of appeals ruled that the CA court did in fact have subject matter jurisdiction over child support and issuing a child support order in this case.

## FLORIDA

***Ivko v. Ger*, 233 So.3d 1269 (Fla. Dist. Ct. App. 2017)** Trial court had no authority to transfer the child support/paternity case out of FL to PA. This case involved a FL child support order and father still resides in FL; therefore, FL has CEJ. The FL trial court could only transfer the case to another FL county. [*Slightly unusual situation: Father had sought the transfer; Mother timely objected to moving the case to PA, where she and child now reside. Mother also sought to keep enforcement in FL.*] The decision discusses UIFSA procedures and venue in FL and holds: jurisdiction to modify the child support order remains in Miami-Dade Circuit court; and FL IV-D agency retains authority to enforce any child support order that may have been issued.

***Dep't of Revenue ex rel. Meeker v. Silva*, 214 So.3d 766 (Fla. Dist. Ct. App. 2017)** In August 2006, Meeker gave birth to child (V.S.) in Texas. A day later, Silva, to whom mother was not married, executed an affidavit acknowledging paternity of V.S. In August 2008, an order was issued by a Texas court finding Silva to be V.S.'s father and establishing a child support obligation. In October 2009, the child support obligation was modified by the Texas court, which entered an "Agreed Order in Suit for Modification of Support Order and to Confirm [Silva's] Support Arrearage."

Subsequently, Meeker moved with V.S. to Maine and Silva moved to Florida. In July 2013, the Florida Department of Revenue registered the Texas child supportorder for modification, pursuant to the UIFSA. Thereafter, Silva filed a motion requesting scientific paternity testing, asserting that he may not be the biological father of V.S. due to Meeker's behavior during the time surrounding conception of the child. After a hearing during which no testimony was taken, the trial court entered an order now under review, which granted Silva's genetic testing motion.

The Florida Department of Revenue seeks certiorari review of the order, but to be entitled to certiorari relief, the IV-D agency must establish that the order departs from the

essential requirements of law and will cause irreparable harm that cannot be cured on plenary appeal. The District Court of Appeal held that the irreparable harm requirement was met since any error in an order requiring a child to submit to scientific paternity testing cannot be correct on plenary appeal once the testing is already completed. The appellate court also held that the order had departed from the essential requirements of law since Silva filed his motion pursuant to Florida Statute section 742.12, which was not applicable to the current proceeding. Silva also did not file the required petition under Florida law to disestablish paternity or terminate a child support obligation. For these reasons, it quashed the lower court's order granting Silva's motion for paternity testing and granted the petition for Writ of Certiorari.

## GEORGIA

***Ross v. Ross*, 805 S.E.2d 7 (Ga. 2017)** The parties were divorced in Connecticut on 1/25/10; father was ordered to pay $279/week child support for two minor children. Six months later, the CT court modified the divorce order, allowing mother and the children to move to GA and reducing father's child support obligation to $100/week. Father still lives in CT; mother and children reside in GA. On 1/12/16, mother filed an action to domesticate the CT divorce decree and the modified child support order in GA. Father was personally serviced while he was visiting the children in GA. He moved to dismiss the action on the ground that the GA court lacked subject matter jurisdiction to modify the CT child support order because the requirements of § 611 have not been met. Mother argued that GA has proper jurisdiction under the Uniform Enforcement of Foreign Judgments Act both to enforce and modify the CT support order.

The GA trial court denied father's motion to dismiss, finding that it had jurisdiction to modify the CT order. However, it granted his request for a certificate of immediate review. The Georgia Supreme Court granted the application for interlocutory review on 5/31/16. The opinion reviews the history UIFSA, FFCCSOA, and the federal-state IV-D program: "In keeping with federal law concerning full faith and credit for child support orders, the UIFSA, as codified by the General Assembly at OCGA § 19-11-100 et seq., prohibits Georgia from modifying another state's child support order unless specific requirements are met divesting the foreign state of it continuing, exclusive jurisdiction."

In this case CT has CEJ because the father is still resident there and the parties have not filed written consent in CT for a GA tribunal to exercise jurisdiction over the case. Wife's assertion of jurisdiction under UEFJA fails. Citing *Kilroy v. Superior Court of Los Angeles* [citation omitted], the Supreme Court holds that FFCCSOA "preempts 'state court jurisdiction to modify interstate child support orders.'" Cases relied on by mother predate FFCCSOA and GA's enactment of UIFSA; having been superseded by federal and state law, they are no longer good law. Trial court judgment reversed.

## HAWAII

***Child Support Enf't Agency v. SB*, 2018 Haw. App. LEXIS 74 (February 23, 2018)** This case arose out of a proceeding to enforce a divorce-related support order issued by a Colorado District Court. The father, appealed a 2015 Order Establishing Child Support Debt and a Repayment Plan entered by the family court, arguing that: (1) the family court denied him due process in not allowing him to present a witness at a hearing and in denying him the right to speak for himself; and (2) the family court did not have jurisdiction to establish the child support debt that he owed.

The Intermediate Court of Appeals of Hawai'i held that it could not determine the merits of SB's due process claim, as he did not provide the court with a transcript to review the facts upon which the claim was based. However, regarding the jurisdiction claim, the court states that in Hawai'i UIFSA governs interstate and foreign child support matters. The UIFSA authorizes the state responding to an interstate support petition to commence a support proceeding at the request of the transmitting petitioner in another state. Under UIFSA, the Hawai'i Family Court is the responding tribunal of this state and therefore is authorized to hear the child support case initiated in Colorado and is authorized to determine the amount of any arrearage owed by SB and the method of payment. For these reasons, the ICA of Hawai'i affirmed the 2015 Child Support Order.

## ILLINOIS

***Scritchfield v. Emanuel,* 2017 Ill. App. Unpub. LEXIS 574 (March 21, 2017)** Child was born in TN in 2011. After a (10/5/11) temporary support order was entered in TN for father to pay $816/month, subsequent TN litigation over the next three years makes the order permanent, vacates the permanent order but leaves the temporary order in place, sets aside the order by voluntary dismissal, and sets a hearing at father's request on the voluntary dismissal. Before the final TN hearing, father (now residing in IL) registers the TN order in IL under UIFSA. (By this time, apparently pursuant to UCCJEA, the TN court "transfers" the case to NY, the child's home state.)

Mother's 2012 motion to set aside the IL registration because the TN order had been vacated by the TN trial court is denied; she does not appeal. In 2014, she moves for "emergency relief" to vacate the registration. No one appears and her motion is dismissed without prejudice. In 2016, she files a petition, *pro se*, again seeking to vacate the registered order. In addition to the claims made in previous motions, she alleges the registration is void because IL does not have personal jurisdiction over her. The trial court finds that, except for the claim pertaining to personal jurisdiction, all issues have been raised in her prior motions which were either decided against her or dismissed. She did not appeal; collateral estoppel bars relitigation. Further, there is nothing in IL's UIFSA statute that requires personal jurisdiction over the obligee. Mother appeals.

The court of appeals notes: "This is a rather perplexing case. Typically, the parent to whom support is owed would be the party registering and enforcing a judgment against the parent owing support. The opposite has happened here. The parent owing the support

has registered the judgment in this state, presumably in an attempt to obtain a more convenient forum for himself. In essence, petitioner is using the statute as a shield when it is intended as a sword to aid the custodial parent in enforcing the support obligation of the noncustodial parent. We perceive nothing in the statute that forecloses petitioner from doing so. While this may make litigation more cumbersome for respondent, it would be equally difficult for petitioner to litigate in New York. In any event, that the judgment is registered in Illinois does not prevent respondent from enforcing it. Indeed, the Act allows for the modification of such a support order in appropriate circumstances."

"In conclusion, we hold that respondent's arguments concerning personal jurisdiction are not well founded. Further, as the trial court correctly determined, collateral estoppel precludes respondent from asserting issues in her 2-1401 petition that were raised in her initial motion to vacate and any other argument is untimely. Finally, respondent's arguments pertaining to voidness provide no basis to grant her relief. The order of the trial court is therefore affirmed."

## KANSAS

***In re Marriage of Mallein*, 2017 Kan. App. Unpub. LEXIS 692 (August 18, 2017)**
Parties were divorced in Missouri (1996) and father was ordered to pay child support for 2 children, both now over 18. Mother moved first to Indiana, then to NY; Father moved to Kansas. (At one point the MO order was registered in Indiana.) In 2014, father sought to register the MO (and IN) order and filed a motion to emancipate the children and terminate support. Mother contested and filed a motion to dismiss. A month later, a UIFSA action was filed by KS IV-D on behalf of NY to register the MO support order for modification or enforcement. The trial court registered the MO order, consolidated these actions, and denied father's request to terminate the support order.

Five months later, DCS [KS IV-D] filed a motion to modify and extend the MO child support because one of the children suffers from brain injury. The injury was the result of an accident when the child was 12. Father filed again to emancipate and terminate the support order. The trial court orders father to continue to pay child support but reduced the support amount; mother appeals. Father cross appeals the trial court's determination that he had a continuing duty of support. [But Court of Appeals notes that, preliminarily, father had abandoned his cross-appeal by failing to raise it in his brief. Accordingly, "we render no opinion on whether the district court was correct on this point and merely assume Steven's child support obligation for the purposes of this appeal."]

Mother's claims that KS did not have subject matter or personal jurisdiction to decide the child support issue. Her key argument is that she did not file the motion to modify and that DCF was not acting as her agent. The court disagreed. NY IV-D agency had forwarded a UIFSA petition on mother's behalf (she was the named petitioner); DCF merely filed this petition with the court. Mother is therefore the non-resident petitioner and the KS court has subject matter jurisdiction to modify the registered MO support order. She similarly submitted to the personal jurisdiction of the KS court by filing the

motion for it to extend or modify the MO order. *[The rest of discussion focuses on whether the court properly calculated child support under KS guidelines.]*

## MARYLAND

***Prince George's Cty. Office of Child Support Enf't ex rel. Fowler v. Dickens,* 2018 Md. App. LEXIS 52 (January 19, 2018)** This unreported case may be worth reading by IV-D attorneys for two reasons: (1) the Court of Special Appeals notes the impact of the failure of a MD IV-D attorney to appear at the hearing on a UIFSA petition from PA seeking a support order for the parties' two younger children – the court finds no valid reason for this non-appearance; and (2) the PA mother and MD father agree that he is *NOT* the father of the youngest child, who was born in Maryland. (The PA mother appeared at the hearing even though the IV-D agency did not. She testified she had only sought support for the middle child, even though PA UIFSA petition also requests a support order for the youngest. There already was a 2005 MD support order against father for $354/month for the parties' oldest child.) The court affirms the trial court's ruling that Dickens is NOT the father of mother's youngest child and increasing the support order to cover the two older children. The case is remanded for further proceedings on the IV-D agency's motion for reconsideration. The court provides considerable guidance to lower court on the circumstances under which the respondent, noting that § 315 does not appear applicable because this is not a case where PA is seeking enforcement of its own support or parentage order. [The order PA seeks to modify is a Maryland order; the youngest child was born in Maryland.]

## MASSACHUSETTS

***Chunrong Qin v. Peikang Liu,* 2018 Mass. App. Unpub. LEXIS 195 (March 1, 2018)** Parties were divorced in NH in 2012. Mother was awarded custody of the parties' two children; father was ordered to pay $800/month in child support. Father stopped paying and disappeared. Mother and children moved to Mass. Eventually father was located in SC. Mother filed an action in MA probate court alleging father's failure to pay child support and medical support. Father was served with this petition in SC on 7/25/14.

Father did not appear in MA but did negotiate with mother's attorney for 18 months. During this time he agreed with mother's continuance requests – stating he wanted "to work it out and avoid further litigation." Negotiations failed and the matter was set for a court hearing. Prior to the hearing, father wrote to the judge, acknowledging the NH child support order but saying he had unexpected financial difficulties. At the 4/8/16 hearing, the judge *sua sponte* dismissed the complaint without prejudice for lack of personal jurisdiction over father, offering wife the opportunity to secure father's waiver of personal jurisdiction. The trial court denied mother's motion for relief of judgment, "reasoning that 'the court does not find that the [husband] voluntarily submitted himself to [Massachusetts] for personal jurisdiction.'" Mother appealed.

The appellate court analyzed UIFSA's long-arm provision, § 201(a)(2). Father had not submitted by explicit consent, nor had he entered a general appearance. However, the

court found that his 2015 letter to the court was "a responsive document in which he effectively waived any jurisdictional argument by failing to raise it. … It is clear from the letter's content that the husband wanted the judge to consider it in response to the wife's contempt complaint. Indeed, the husband stated, 'I understand that [the statements in the letter are] made for use as evidence in court and [are] subject to penalty for perjury.' We conclude, therefore, that the letter was a responsive document within the meaning of G. L. c. 209D, § 2-201(2)."

The court noted that a personal jurisdiction defense "may be waived by conduct, express submission, or extended inaction." *Lamarche v. Lussier*, 65 Mass. App, Ct. 887, 889, 844 N.E.2d 1115 (2006). It found "[n]othing in the record indicates that the husband challenged the court's jurisdiction at any time. Ultimately, when the husband communicated directly with the judge in advance of the contempt hearing, he asserted equitable defenses, but no jurisdictional challenge. Indeed, he asked to participate in the contempt hearing by telephone. In these circumstances we conclude that the husband waived the jurisdictional defense by failing to raise it in his responsive document. See G. L. c. 209D, § 2-201(2). Accordingly, the sua sponte dismissal for lack of personal jurisdiction was error." Reversed.

## MICHIGAN

***Moffett v. Jemmott*, 2017 Mich. App. LEXIS 907 (June 8, 2017)** Child born in Virginia (1999), resides in Michigan with mother. Putative father was and remains a resident of Virginia. Oakland County Prosecutor files an action in Michigan to establish paternity and support. Father is served with the summons and complaint via certified mail in Virginia. Father does nothing until the prosecutor moves for default, giving father notice of the date default is to be entered (10/26/15). Father then signs and dates an order for genetic testing sent to him by the prosecutor. The order stated that the results would "be admissible as evidence in this case," and that the "Default Order of Filiation Final Judgment and Uniform Child Support Order to be entered on 10-26-2015 shall remain in full force and effect." When he returned the genetic testing order, he also provides his financial and medical information to the prosecutor and the court along with a "Motion to Continue/and or forward Matter back to the State of Virginia."

On 11/5/15, the trial court finds it had personal jurisdiction over father, finds him in default, establishes parentage, and sets a permanent support order. Father then retains counsel and seeks to have the judgment set aside. Trial court found father had waived the right to contest the court's personal jurisdiction over him when he signed the genetic testing order. Father appeals.

The court of appeals holds: "Defendant signed the genetic testing order agreeing to all of its terms and in no way objecting to any of them or to the jurisdiction of the circuit court on the face of the order. By his actions in both sending the letter requesting the right to a genetic test and signing the genetic testing order, it is clear that defendant was aware of the pending paternity case against him in Michigan, that he intended to appear and participate in the proceedings, and that he submitted to application of the laws of the

State of Michigan in the paternity case against him. For these reasons, we conclude that defendant's execution and submission of the genetic testing order constitutes a general appearance under MCL 552.1201(b) and is, therefore, a submission to the circuit court's personal jurisdiction over him." Affirmed.

## MISSISSIPPI

***Miss. Dept. of Human Servs. v. Porter,* 2017 Miss. App. LEXIS 389 (June 27, 2017), cert. denied, 2018 Miss. LEXIS 73 (November 13, 2017)** Child was born in IL in 1995. IL filed a petition to establish paternity later that year. The petition was dismissed in 2006 due to inactivity and other deficiencies. Father moved to Mississippi in 2010. In 2011, IL filed a UIFSA petition to Miss. to determine parentage and set child support. Genetic testing was completed in 2012 but the support hearing was ultimately "lost" when father's attorney withdrew but no continuance was ordered. The Miss. IV-D agency filed another complaint in 2015, seeking the same relief. At a 6/23/15 hearing the court finds he is the child's father and sets child support of $252/month until the child turned 21. Father moved to set aside the Miss. judgment because his daughter lives in IL which has an age of majority of 19. *[Child was 20 when the 2105 action was initiated.]* After a hearing, the Miss. chancellor agreed that IL's age of majority controlled. The child support judgment was set aside and father was not ordered to pay support. The Miss. IV-D agency appealed.

The court of appeals preliminarily disposed of father's argument that Miss. tribunal did not have subject matter jurisdiction to hear the original UIFSA action. There was no prior support or paternity order; UIFSA permits this action; father is a resident of Miss. which has personal jurisdiction over him; the chancery court is the proper tribunal for this action and has subject matter jurisdiction; the Miss. IV-D agency has authority to bring the UIFSA action even though mother never received public assistance in Miss.

Under UIFSA's choice of law provisions, Miss. law applies. When the UIFSA action was initiated, the child was 20, minor under Miss. law. Trial court order affirmed.
***Hamilton v. Young*, 213 So.3d 69 (Miss. 2017)** This case arises out of Hamilton's (father) motion to dismiss Young's (mother) complaint for modification of an Ohio divorce decree because its assertion of jurisdiction over child-support agreements failed under UIFSA. Father argued he maintained continued residence in Ohio since the decree was entered, which fulfills the requirement for the state to maintain continuing, exclusive jurisdiction.

Mother's argument, however, is that the Ohio court relinquished jurisdiction to the Lee County Chancery Court of Mississippi, since the parties determined that Mississippi was a more convenient forum, and therefore the Lee County Chancery Court did not err in denying Hamilton's motion. The principle of comity, shows that this isn't the case. Comity suggests that "courts of one state or jurisdiction will give effect to laws and judicial decisions of another state or jurisdiction, not as a matter of obligation but out of deference and mutual respect." This is the basic principle defining the constitutional requirement that state courts grant full faith and credit for the child-support and custody

judgments of sister states. Since the Lee County court had no evidence that the Ohio court had waived jurisdiction, they erred in denying father's motion to dismiss. Thus, the Supreme Court of Mississippi reversed the lower court's holding and rendered judgment in favor of father.

## MISSOURI

***Grega v. Grega*, 524 S.W.3d 150 (Mo. Ct. App. 2018)** Stephen Grega (father) appealed a judgment dismissing his petition which sought to modify the child support and child custody orders of a California judgment dissolving his marriage to Julie Grega (mother). Mother argued that the court in Missouri, the state to which Stephen Grega relocated, lacked authority to modify another state's support orders under UIFSA. Since the California court issued the child support order, the Missouri court only has authority to modify it under UIFSA, if: (1) neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state; (2) a petitioner who is a nonresident of this state seeks modification; and (3) the respondent is subject to the personal jurisdiction of the tribunal of this state. Mother resides in California. There is no evidence that the parties' consented in a record in the California court for the Missouri court to assume jurisdiction. Accordingly, Missouri cannot modify the California support order. The dismissal of father's petition affirmed.

## NEBRASKA

***State v Rogelio L.*, 2018 Neb. LEXIS 45 (March 16, 2018)** Nebraska established paternity and support for one child (Fernando) born in 2004, pursuant to a 2010 UIFSA petition from Indiana, where mother and their child reside. At the time of the order, father had two additional children, younger than Fernando but born before the child support hearing. In 2016, father filed a modification petition, seeking to reduce his support order based on significantly lower income and his obligation to support two children born to father and his wife after the 2010 hearing. Neither the child support referee nor the district court allowed father a deduction for any of his other children. The IV-D agency child support calculation was accepted, though it did not give father a deduction or adjustment for any of his other three living children. (One son, born in 2009, had died in 2012.) The court also did not deduct taxes from his income. Father testified that his employer reduced his hourly income from $15 with taxes withheld to $10 with no taxes taken out. He acknowledged he owed the taxes but produced no evidence that they were paid. Finally, the court did not address father's claim that his income was reduced below the federal poverty level. On appeal, the Nebraska Supreme Court noted that, while children born after the child support order could be a shield to an increase in support to earlier children, "the obligor shall not be a reduction in an existing support order solely because of the birth, adoption, or acknowledgment of subsequent children of the obligor…" Under the Nebraska child support guidelines, "subsequent children" means those born after an existing support order. Because the trial court had a "flawed understanding of the evidence of the birth order" of obligor's children, reversed and remanded. The Supreme Court found there was no abuse of discretion when excluding tax liability calculating father's income, as he testified he had not paid them and failed to

present evidence of his tax liability for the court's consideration. The "basic subsistence limitation" in Nebraska's guidelines should be considered on remand.

***Mohammed v. Rojas*, 898 N.W.2d 396 (Neb. Ct. App. 2017)** The parties married in 2001 and were divorced in Arizona in Aug. 2011. The divorce order granted mother custody of the children. The AZ court deviated from the child support guidelines, setting father's child support obligation at $0 (rather than $92.13/month per the guideline.) Deviation was agreed to by both parents; the court agreed because of father's economic circumstances and that the calculated amount was so small. At the time, father made $1274/month; mother earned $1560/month.

In Dec. 2012, mother and the children moved to California and at some point began receiving TANF and food stamps (the date of first receipt was not disclosed in the UIFSA testimony.) In 2014, CA registered the AZ divorce decree in Nebraska seeking modification. Her income consisted of $607/mo family assistance and $648/mo food stamps. Father was living in Nebraska with his wife and five children, three of whom were his biological children. He worked 26-27 hours/week at $9/hour.

After registration, Nebraska, the IV-D agency filed the complaint to modify child support, which alleged that there has "been a material change in circumstances." The material change alleged was mother's moving with her children from Arizona to California and receiving TANF and food stamps. The hearing officer found there was a change of circumstances and set father's support obligation at $89/month. Father filed an exception to recommendations, and a hearing was held before the district court. The district court found that NB IV-D had failed to produce evidence to show that mother was not receiving public assistance at the time of the original decree and failed to produce evidence that public assistance was not in the contemplation of the parties at the time of the decree. Accordingly, the district court determined that a material change in circumstances did not exist to warrant a modification of child support. The district court dismissed the State's complaint to modify. The IV-D agency appealed.

The Nebraska Court of Appeals held that the district court did not err in determining that there was no material change in circumstances and affirmed the district court's order dismissing the State's complaint to modify. Dissent argued that the material change in circumstances was the state of CA becoming the party of interest when it began paying welfare benefits. CA had not been a party to the original AZ support order deviating downward from the amount due under the AZ child support guidelines.

## NEVADA

**Vaile v. Vaile, 396 P.3d 791 (Nev. 2017), cert denied by Vaile v. Porsboll, 2017 U.S. LEXIS 6535 (U.S. Oct. 30, 2017)** Litigation between these parties has gone on for close to two decades, arriving before the Nevada Supreme Court twice before on a variety of issues (with prior decisions in 2002 and 2012). The parties married in Utah in 1990 and divorced in Nevada in 1998, when a child support order was established. Father is a U.S. citizen but no longer lived in Nevada. Mother is a citizen of Norway. The children

habitually resided in Norway with mother. In its 2012 decision, the Supreme Court held that the Nevada district court did not have subject matter jurisdiction to modify the NV support order (no one resided in Nevada), and changing the support order from an annually adjustable amount to a fix sum constituted a modification. However, the Supreme Court noted that "because no other jurisdiction had entered an order regarding child support, the order from Nevada controlled." In its remand, the Supreme Court directed that "because the parties alluded to a Norway child support order," the district court must determine whether such an order existed and "assess its bearing, if any, on the district court's enforcement of the Nevada support order." On remand the district court determined that there was an order but Norway lacked jurisdiction to modify the Nevada order, so the Nevada support order controlled. The district court determined arrearages and penalties, entered a judgment in that amount, and found father in contempt of court. Father appealed. The Court of Appeals similarly held that the Nevada child support order was controlling. (It also ruled that it "lacked jurisdiction to consider [father's] challenges to his contempt finding.") Father petitioned for review (after a rehearing failed to change the essential findings), which the Supreme Court granted.

Father argued on appeal that the Norway child support order controls. The Court analyzed § 207(b), noting that Norway was a foreign reciprocating country under 42 U.S.C. §659a(a); therefore, its order qualifies as a "foreign order" under UIFSA. Subsequent to the divorce order, mother "applied for stipulation of child support in Norway, and an administrative order concerning child support was ultimately issued. However, the order does not clearly establish Norway's continuing and exclusive jurisdiction under [UIFSA]. Further, the record does not establish that both parties consented to Norway's continuing and exclusive jurisdiction over this matter. Accordingly, [§ 207(a)] applies and the Nevada order controls." Even though the district court did not apply this analysis, its conclusion was correct; order affirmed.

The Supreme Court also holds that father can appeal the contempt finding if, as here, the contempt is part of an order determining which support order is controlling. However, as father "failed to assert cogent arguments or provide relevant authority in support of his claims," the Supreme Court holds it need not consider his contempt challenges. Affirmed. [The U.S. Supreme Court denied certiorari.]

## NEW YORK

***Matter of Zagarino v. McLean*, 62 N.Y.S.3d 147 (N.Y. App. Div. 2017)** In 2016, father filed an action in NY seeking child support from mother for the parties' son residing with him in NY. Mother moved to dismiss the action on grounds that there already was a valid Missouri support order and MO retained CEJ as she and the parties' daughter continued to reside in MO. Court of Appeals cites both UIFSA and FFCCSOA and holds that the trial court properly determined this was in the nature of a modification petition – not a *de novo* action (citing, among other cases, *Matter of Spencer v. Spencer).* Trial court properly granted mother's motion to dismiss father's support petition.

***Matter of Samantha LG v. Maurice O.*, 58 N.Y.S.3d 876 (N.Y. Fam. Ct. 2017)** This unreported opinion addresses application of UIFSA's "unique" evidentiary rules (§ 316) including: the physical presence of the non-resident party may not be required; and the admissibility of an affidavit, document "substantially complying with federally mandated forms" or a document incorporated by reference therein. The magistrate did not abuse her discretion in modifying upward the NY child support order, as requested in a UIFSA petition from Florida mother. NY had CEJ to modify its order. [Case also discusses application of NY child support guideline where father asserts he is paying support for another child. Credit is available only where the child support is being paid pursuant to either court order or written agreement.]

## NORTH CAROLINA

***Bradley v. Bradley*, 806 S.E.2d 58 (N.C. Ct. App. 2017)** During their four-year marriage, the parties lived — at various times — in England, Australia, New Jersey, and New York. However, they were married in North Carolina, and over the course of their marriage Joshua engaged in various acts to maintain his ties with this state. The sole issue in this appeal, arising from Jessica's divorce action is whether the trial court correctly concluded that North Carolina possessed personal jurisdiction over Joshua sufficient (among other matters) to determine child support for their child. This decision includes a detailed discussion of minimum contacts sufficient to meet Constitutional due process – both facts and prior court decisions. [One of the parties' two weddings and baby showers were held in NC where mother's parent's live; some of the parties' mail and personal possessions were delivered to and stored in NC; after they separated while living in London, mother first lived with father's parents in Virginia, then moved to NC with her parents.] The Court of Appeals concludes that father "had sufficient minimum contacts with North Carolina such that the exercise of jurisdiction over him by a North Carolina court is consistent with principles of due process…" and affirmed the trial court's order denying father's motion to dismiss mother's complaint for custody, child support, post-separation support, alimony, equitable division, and attorney's fees.

## NORTHERN MARIANA ISLANDS

***Nev. D.H.H.S. Div. of Welfare v. Lizama*, 2017 MP LEXIS 16 (December 21, 2017)** Issue is whether under FFCCSOA and CNMI law, a party can seek to have a new determination of paternity when such a determination has already been made in another jurisdiction. Since the appeal was filed, the CNMI passed UIFSA 2008 to replace URESA. Accorningly, the Supreme Court also considered the impact of UIFSA 2008 on the appeal.

2009 NV order found Lizama to be the father of one child and ordered child support. In In Aug. 2015, petitioner filed a complaint in the Commonwealth Superior Court asking it to enforce the NV support order. Father asserted a defense of non-paternity pursuant to CNMI law. After a hearing, the trial court issued an order for DNA testing. Mother appealed (Jan. 2017); oral arguments held on 9/5/17. On 11/29/17, mother filed notice of intervening change of law, replacing URESA with UIFSA 2008. Unlike URESA, UIFSA

precludes a challenge to paternity where a party's parentage has been previously determined by or pursuant to law, (§ 315). Under this provision, father's challenge must be raised where parentage was previously determined, Nevada.

Supreme Court analyzed whether it had jurisdiction to hear the appeal and, if necessary, determine the retroactivity of the new UIFSA statute. While the trial court's genetic testing order is not a final order, there are four circumstances under which the Supreme Court may hear the appeal, including statutory exceptions allowing for the review of interlocutory orders. Court finds it has jurisdiction to hear the appeal of the DNA order under the collateral order doctrine. Under that doctrine, "the order sought to be appealed from must: (1) have conclusively determined a disputed questions; (2) have resolved an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment."

At time this appeal was filed, the issue was whether FFCCSOA superseded inconsistent provisions of Commonwealth law. The preliminary issue is the retroactivity of UIFSA 2008. First, the statute's "transitional provision" shows the legislature intended UIFSA to be applied to all proceedings pending as of 10/6/17, when it was enacted. However, the statute will not apply retroactively if to do so would violate certain constitutional rights. Therefore, the question is whether UIFSA affect Lizama's substantive rights or merely impact his procedural rights. The Supreme Court holds that the change from URESA to UIFSA impacts his procedural rights, limiting the form of challenges he may bring in CNMI. He can still challenge the paternity determination in NV. Accordingly, the Supreme Court considered the DNA order in light of UIFSA 2008 and FFCCSOA, rather than URESA and FFCCSOA. Held; non-paternity is no longer a defense to contest another state's registered support order where parentage had been "previously determined by or pursuant to law." DNA testing order is vacated.

## TENNESSEE

***State ex rel. Schrita Q. v. Robert T.*, 2017 Tenn. App. LEXIS 750 (November 16, 2017)** In 2014 mother in Mississippi filed a UIFSA petition to Tennessee, seeking to establish paternity and child support. [Note: guardianship of child was given to grandparents by consent shortly after child's birth.] During the course of the UIFSA proceedings, the child reached the age of majority. The UIFSA case was handled by a privatized TN IV-D agency. Genetic testing showed a 99.99% probability of paternity. The trial court applied Miss. law: support obligation continues to age 21; and, arrears limited to 1 year before filing of action. Arrears established at $9,900. On appeal, the special judge, held that in an establishment case, TN, not Miss. law applied. Accordingly, support was due retroactive to child's birth. Arrears set at $127, 530. TN law also controlled duration of the support obligation. Child reached age of majority during proceeding.

***Tenn. ex rel. Spurlock v. Torres,* 2017 Tenn. App. LEXIS 371 (May 30, 2017)** In Feb. 2015 TN IV-D agency filed a contempt petition against TX father, seeking contempt finding, arrears judgment, license revocation and IWO for payment on $106,297 arrears to be sent to father's TX employer. Five months later father's attorney filed a 60(b) motion to vacate the TN child support orders because TN never had personal jurisdiction over father.

Family last together in Texas in 1998 when he asserted mother left without notice. Father admitted he was father of their 4 children but claimed he had only one trip to TN - in 1999 or 2000 to try and find the children. Mother filed for divorce in TN; service was by publication. Child support was left open until personal jurisdiction over father was obtained. Next, the IV-D agency files for child support in TN. Record reflects "father was personally served in Texas on 3/21/01." TN default child support order of $796/month entered, retroactive to 8/1/99. In 2006, IV-D files a "modification" petition; court file shows USPS return signed by "Cesar Torres" on 1/25/07. Subsequent order added $200/month toward arrears. [Subsequent mail notice was signed by "Cesar Torrez."]

Eventually, the 2015 contempt petition was dismissed without prejudice. A hearing held on 6/24/16 on father's 60(b) motion. Court denies the motion, holding father had submitted to the personal jurisdiction of TN when he requested (on 11/9/02) an administrative review of the child support arrears, having the effect of "a responsive pleading waiving any contest to personal jurisdiction." The court also held it has personal jurisdiction over father under § 201(8), the so called long-arm "catch all." To support this, the court cites: service in TX; service by mail in 2007 and 2015; and making some payments on behalf of the children while they lived in TN. Finally, the trial court held that father's 60(b) jurisdictional challenge was not filed within a reasonable time.

Father appeals the denial of the 60(b) motion. The TN court of appeals first holds that the standard of review is *de novo* as this case involves whether the trial court had both subject matter jurisdiction and personal jurisdiction over the non-resident father. It also holds that regarding interstate child support actions and personal jurisdiction, UIFSA § 201 controls. Based on an extensive analysis, the court of appeals finds that the trial court erred in finding that father's request for an administrative review is sufficient to waive a contest to personal jurisdiction. The trial court also erred in concluding father's actions constituted sufficient contacts with TN under § 201(8). Reversed. The matter was remanded to trial court to determine whether or not exceptional circumstances exist which would justify denying father's 60(b) motion. (The lower court had not ruled on this issue.)

## WASHINGTON

***Jordan v. Whitted*, 2018 Wash. App. LEXIS 355 (February 12, 2018)** 2007 Georgia divorce required father to pay $1735.93/month child support plus provide medical and dental insurance for the parties' three children. Father never provided the health insurance and stopped paying child support in 2010; mother never transferred $55,000 from her retirement account to father, also part of the divorce decree. Father moved to Maryland; mother and children moved to Washington.

In 2016, mother registered the GA decree in WA under UCCJEA and sought to enforce and modify the decree's child support provisions in WA. She also sought to hold father in contempt. He appeared telephonically at a WA contempt hearing. The WA commissioner raised sua sponte the issue of whether the court had subject matter jurisdiction because the GA order had been registered under UCCJEA not UIFSA. Commissioner denied (without prejudice) mother's contempt motion. Held the court did not have SMJ because mother failed to comply with UIFSA's registration provisions. On mother's motion to revise the Commissioner's order, the trial court found that she has substantially complied with UIFSA's registration requirements and revised the Commissioner's order. Father found in contempt. Court set arrears of $164,868.85 and refused to offset this amount by the $55,000 mother had failed to pay father. Father allowed to purge with $5,000 cash bail and $2,000/month toward arrears; also income withholding of $2,000/month. Father appealed.

Father first argued that the statute of limitation to enforce the GA arrears had expired. In WA, child support orders are enforceable until 10 years after the 18th birthday of the youngest child. In GA, there is no limitations period to collect child support. Under UIFSA, the longer statute of limitations applies; hence the claim was not time barred. Trial court affirmed.

The major discussion is whether father was deprived of due process because mother's pleadings did not notify him that she was proceeding under UIFSA. The Court of Appeals, reviewing *de novo,* found that father had "substantial notice" that mother was seeking to hold him in contempt for failure to pay the GA child support order. UIFSA is a procedural statute and the commissioner raised UIFSA *sua sponte* on father's behalf and ruled in his favor. Because father "did not demonstrate that he lacked the opportunity to meaningfully defend against the action, his due process argument fails." The court of appeals also held she not violate WA's notice pleading rules – father had "fair notice" of the legal grounds upon which she sought recovery. It also held that the record supported the trial court's finding that mother had substantially complied with UIFSA's registration statute, including her declaration of the arrearages. Father argued, without success, that the trial court erred in finding him in contempt and raises a number of issues, including mother's failure to mitigate the damages, laches, failure to provide receipts for health insurance expenses, and that the amount ordered was in excess of his ability to pay. As to the final point, the court finds that the ordered $2,000/month withholding was less than the 55% of his income permitted under the federal CCPA. Affirmed.

***Myers v. Atzrott*, 2017 Wash. App. LEXIS 2636 (November 21, 2017), subsequent appeal 2017 Wash. App. 2730 (November 21, 2017)** 1998 New York order for support of one child, born Nov. 1997. Mother and child moved to Washington; NY court modified the support order in 2005, while father was still living in NY. He paid the order until the child turned 18. Father, now living in Maryland, registered the NY support order in Washington for modification, seeking to terminate the support order given the child was 18 and alleged to be out of high school. His motion for modification was denied by the trial court. [The appellate court decision details the challenges of conducting a teleconferenced hearing – instructive for courts dealing with a *pro se* party. Among other issues, father sought DNA testing for now 20 year old son, apparently because he did not know the child used mother's last name for school enrollment.] The court of appeals held that the trial court properly required father to continue to pay support until age 21. Under UIFSA, NY law governs duration of the registered support order. Court awarded mother attorney's fees: "Despite the clear statutory command that prohibited Washington courts from granting that request, he both filed the motion in Washington and then pursued it on appeal to this court. Even if he was unaware of the barrier when he filed his action in the trial court, he was aware of that fact by the time he took this appeal. Given the tone of his pleadings and continued pursuit of the frivolous request for DNA testing, we agree with respondent that [father] pursued this appeal for the improper purpose of running up respondent's costs."

***Freeman v. Wallace*, 2017 Wash. App. LEXIS 882 (April 17, 2017)** Parties lived together in Washington, where the child was born in 2009. When they separated, DSHS consent order was entered showing mother had custody of the child; father to pay $294/month in child support. Father moved to TN in 2010. Lots of movement between the states, including some attempts at reconciliation. All agreed that father, mother and child were in TN in 2011 when father filed for custody. [Father says mother told him to come get the child and that mother had an outstanding arrest warrant. He said he took physical custody fearing the child would end up in foster care.] TN entered a default order (after service on mother) awarding custody to father and determining mother was "fiscally responsible" to him for child support. While significant analysis on custody and UCCJEA, the relevant child support issue relates to mother's 2016 motion to modify the TN order. (She had received in 2012 a notice of financial responsibility from WA setting current and retroactive child support but did file for relief of the 2011 TN judgment until 2016.)

Mother argues, that under UIFSA, WA had continuing, exclusive jurisdiction to modify the support order. Accordingly, she contends the TN support order is void because the Tennessee court did not meet the statutory requirements to modify another state's support order and therefore "infringed on Washington's exclusive continuing jurisdiction over that issue." Her motion was denied and she appealed.

The court of appeals holds: "UIFSA merely limits a trial court's authority to modify another state's child support order, not its jurisdiction." It notes with approval, the reasoning of the Washington Supreme Court decision in *In re Schneider*, holding that this was an issue of authority, not subject matter jurisdiction, holding:

> More properly read, RCW 26.21A.550(1) deprives the trial courts of the authority to issue a particular form of relief—here, an order modifying child support—when its conditions are not met. A court that grants relief beyond the scope of its authority commits an error of law but does not exceed its subject matter jurisdiction.

The court of appeals states that the 2011 TN order does not purport to modify a preexisting order. "Even if the Tennessee court granted relief beyond the scope of its authority under UIFSA, it would amount to an error of law, not a lack of jurisdiction. Our courts have recognized, 'errors of law are deemed to be adequately protected against by the availability of the appellate process' by an appeal from the judgment, not by appeal of a CR 60(b)motion." Mother did not establish the TN order was void for lack of subject matter or personal jurisdiction. At most, her allegation is that the TN court "granted relief beyond its authority" – an error of law that should have been raised in an appeal of the TN orders.