INTERSTATE

CASE LAW UPDATE

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I. JURISDICTION TO ESTABLISH PATERNITY AND SUPPORT

A. A Tennessee trial court properly established paternity and a child support order against a resident noncustodial father under UIFSA, but erred in deciding custody and parenting time, the Tennessee Court of Appeals held. The custodial mother resided in New York and Father in Tennessee. The appellate court ruled that while the court had subject-matter jurisdiction under UIFSA to establish paternity and support, it had no such authority to decide custody and parenting time under the UCCJEA. *Emanuele v. Scritchfield*, No. W2013-00514-COA-R3-JV, 2013 WL 4082341 (Tenn.Ct.App. 8/14/13) (unpublished memorandum opinion).

B. The Hawaii trial court properly exercised jurisdiction over a nonresident father to establish paternity and support where the man and the subject child resided for a time in Hawaii, and the man sought affirmative relief from the court by appearing at the hearing telephonically and asking for genetic testing, the Hawaii Intermediate Court of Appeals ruled. Hawaii's UIFSA statute provides for long-arm jurisdiction over a nonresident in a paternity and support action where "the individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction[.]" Citing UIFSA's Official Commentary, the court pointed out that "[t]he intent is to insure that every enacting state has a long-arm statute as broad as constitutionally permitted." In this case, Father, after being properly served, requested genetic testing to establish paternity. He also requested that he be allowed to appear at the hearing by telephone and did, in fact, appear by telephone conference call. *Child Support Enforcement Agency v. AP*, No. CAAP-12-0000636, 2013 WL 4779605 (Haw.Ct.App 9/6/13) (unpublished).

C. A Florida order that found a man to be a child's biological father "and as such owes a duty of support" but did not set an amount to be paid was not a "child support order" entitled to full faith and credit under UIFSA or the FFCCSOA, the Alaska Supreme Court held. Accordingly, the Alaska trial court properly entered a $215.00 monthly child support order against the man. *Ronny M. v. Nanette H.*, 303 P.3d 392 (Alaska 2013).

D. A Texas court may adjudicate a resident's child support obligation where his North Carolina divorce decree did not address the issue, the Texas Court of Appeals, 14th District, decided. Because the issue of support was not addressed in the parties' 2006 divorce decree, Texas was establishing an order, not modifying a previously existing order. Under UIFSA, therefore, Texas was empowered to establish an initial support order. *Texas Attorney General v. Long*, 401 S.W.3d 911 (Tex.Ct.App. 2013), 39 FLR 1337.

1. The 2006 North Carolina judgment of absolute divorce was silent on matters of custody and child support. Instead, the divorce court issued findings stating that "there are no claims for child support … between the parties." After the divorce, the noncustodial

father moved to Texas, while the mother and the two marital children remained in North Carolina. In 2011, the Texas Attorney General's office filed a petition against the father at the request of North Carolina's IV-D agency to establish a support obligation for the benefit of his children. Father challenged the Texas court's jurisdiction, arguing that North Carolina was the only tribunal that could adjudicate his support obligation. The trial court agreed and dismissed the petition. The Attorney General appealed.

2. The appellate court observed that under UIFSA, if no support order has been issued, a Texas court may establish an order for child support on behalf of an individual or support enforcement agency located in another state. It then looked to North Carolina law to determine the scope of the divorce judgment. The appellate court found that the law permits divorcing couples to limit their requested relief solely to dissolution of marriage, and allows separate actions for custody and child support. Thus, if parties are not required to petition for child support (and the findings indicate that no demand for support was made), "then no order for child support could have been established" and "the foreign tribunal [North Carolina] is 'likely' precluded from adjudicating the child support obligation." In support of its position, the appellate court cited *Mason v. Cuisenaire*, 128 P.3d 446, 32 FLR 1200 (Nev. 2006). Concluding that the divorce judgment made no provision for child support, it held that "without an existing order, the Attorney General's petition is properly classified as a petition to establish an order of support rather than a petition to modify an order of no support. Under UIFSA, the trial court had the authority to adjudicate [the father's] child support obligation. [ ] Because the North Carolina tribunal had not acquired continuing, exclusive jurisdiction, we reverse the trial court's order."

E. A Missouri trial court erred in dismissing a man's petition to establish paternity and child support under the state's Uniform Parentage Act and UIFSA, the Missouri Court of Appeals ruled. *Dewitt v. Lechuga*, 393 S.W.3d 113 (Mo.Ct.App. 2013).

1. At the time of the man's petition, the one-year-old subject child had since birth resided in California but was conceived through sexual intercourse with the mother in Missouri. Noting that sexual intercourse in the forum state is a basis under UIFSA upon which a court may exercise personal jurisdiction over a nonresident respondent to establish paternity and child support, the appellate court remanded the case for the trial court's determination of parentage and support.

2. The appellate court affirmed, however, the trial court's dismissal of the man's request to establish custody and visitation. Those matters, the court opined, are governed by the UCCJEA. The child's home state was unquestionably California, and the man could not bootstrap custody and visitation issues in his UIFSA action for paternity and support. The case explores the distinction between a court's broad constitutional authority to issue judgments over persons and the limitations imposed by the UCCJEA and UIFSA.

II. JURISDICTION TO ENFORCE

A. Defense to Registration -

1. Failure to Follow Registration Procedures - An Alabama trial court did not err in finding that it had subject-matter jurisdiction to enter a child support order where another state had issued a child support order that was vacated and was awaiting reconsideration by that state's trial court, the Alabama Civil Court of Appeals decided. *Davis v. Blackstock*, — So.3d —, 2013 WL 3770796, No. 2111244 (Ala.Ct.App. 4/5/13).[1]

   a. *Facts* -

      (1) In 2002, the Tennessee trial court issued its divorce order that awarded Mother custody and required Father to pay support. By the time the court had issued its dissolution decree, both parties and the child had moved to Alabama. Notwithstanding this fact, Father filed in June, 2002 his Tennessee petition to modify custody and support. On September 3, 2003, the Tennessee trial court awarded the parties joint physical custody and terminated father's child support obligation. Mother appealed. The Tennessee Court of Appeals affirmed the order modifying custody but vacated the trial court's ruling as to the child support. The appellate court remanded the case for a hearing to determine which parent should be the "primary residential parent" and whether child support should be awarded. But the Tennessee trial court never acted on this mandate.

      (2) On February 6, 2006, Mother filed a petition for modification of custody and child support in Alabama. After numerous motions filed in both Tennessee and Alabama, the Alabama trial court entered a judgment on September 1, 2006. The trial court's judgment maintained joint legal custody, but it awarded Mother primary physical custody of the child and awarded Father visitation. The Alabama trial court further ordered Father to pay child support and to pay one-half of the uninsured-medical expenses of the child. Father appealed, arguing that Mother's failure to properly register the Tennessee divorce rendered the Alabama trial court without subject-matter jurisdiction to enforce the child support order against him.

[1]Father filed a federal lawsuit against Mother, the various judges involved, the district attorney and numerous others. He alleged deprivation of his 5th Amendment and other constitutional rights, all of which were dismissed. *Davis v. Self et al*, --- F.Supp.2d ----, 2013 WL 754853, No. CV-12-S-2402-NW (D.C. N.D. Alabama, NW Div. 2/25/13).

b. *Opinion* -

(1) The Alabama appellate court observed that when Mother filed her 2006 request for child support in Alabama, no Tennessee child support order actually existed. This was because the Tennessee trial court never acted on the mandate from its appellate court to reconsider the child support after Mother's appeal. Hence, Mother's 2006 child support action "cannot be construed as a petition to enforce or to modify a foreign child-support judgment. Rather, it can only be considered a petition to establish child support under Alabama law. Accordingly, § 30-3A-602 [the registration statute] does not apply, and the mother's alleged failure to comply with that statute does not bar the Alabama trial court from assuming subject-matter jurisdiction as to the issue of child support." Moreover, the appellate court opined, Father had previously appealed this issue and was barred from re-litigating it under the law of the case doctrine. The case was remanded back to the trial court to establish Father's child support arrearage under the 2006 order.

(2) The appellate court also discussed at length the right of the state's child support agency to intervene in Father's child support case. Under its own state law, and in conformance with federal IV-D mandates, the agency's intervention was proper, even where the recipient of IV-D services does not receive TANF.

2. Lack of Reciprocity of Foreign Country; Comity Exception - A Nevada family court is not required to enforce a 2005 Costa Rican child support order under UIFSA, as that country is not a recognized "state" under Nevada's UIFSA statutes, the Nevada Supreme Court ruled. The high court pointed out, however, that in addition to UIFSA, a foreign support order may be enforced under the doctrine of comity. Under the facts of this case, comity permitted the trial court to determine whether the foreign order should be enforced. The high court remanded the case for the trial court's determination of whether the custodial mother obtained her Costa Rican child support order by fraud. *Gonzales-Alpizar v. Griffith*, 317 P.3d 820 (Nev. 2014).

a. The high court observed that UIFSA provides procedures for the enforcement and modification of a support order issued by another state. Under NRS 130.10179(2), the term "state" is defined to include a foreign country if one of the following three conditions is met: (1) the country has been declared to be a foreign reciprocating country under federal law, (2) the state's attorney general has declared the country a "state" because it has reciprocal provisions ensuring the enforcement of support orders, or (3) the country has enacted law or established procedures for enforcing support orders that are substantially similar to those under UIFSA.

b. The parties stipulated that Costa Rica has not been declared to be a foreign reciprocating country under federal law. In addition, the high court found that the state's Attorney General has not declared Costa Rica to be a foreign reciprocating state, and that Mother had failed to introduce any evidence to show that Costa Rica has enacted a "substantially similar" law to UIFSA. Accordingly, UIFSA does not provide a means by which Nevada may enforce the Costa Rican support order.

c. The court considered, however, whether the order might be enforceable under the doctrine of comity. In answering this question, the court considered the approach taken by the Restatement (Third) of Foreign Relations Law of the United States, which discusses reasons why a foreign judgment or order should not be enforced under comity. Section 482(1) provides: "[a] court in the United States may not recognize a judgment of the court of a foreign state" if "the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law," or if "the court that rendered the judgment did not have jurisdiction over the defendant." Section 482(2) further provides that a court "need not recognize" a foreign judgment if:

   (a) the court that rendered the judgment did not have jurisdiction of the subject matter of the action;

   (b) the defendant did not receive notice of the proceedings in sufficient time to enable him to defend;

   (c) the judgment was obtained by fraud;

   (d) the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy, of the United States or of the State where recognition is sought;

   (e) the judgment conflicts with another final judgment that is entitled to recognition; or

   (f) the proceeding in the foreign court was contrary to an agreement between the parties to submit the controversy on which the judgment is based to another forum.

d. Adopting the reasoning of the § 482 of the Restatement (Third), the high court went on to find that Father was reasonably apprised of Mother's 2005 petition for support. Mother handed him "some form" of legal papers in the office of a Costa Rican attorney during their divorce discussions. Such was sufficient to find that Father had been personally served with process, despite Father's inability to understand Spanish.

e. On the other hand, Mother may have misrepresented to the Costa Rican court Father's relationship to one of their children for whom he was ordered to provide support. Under these circumstances, remand was warranted for the trial court's determination of whether the 2005 order should be enforced in Nevada on grounds of comity, considering the Restatement (Third) of Foreign Relations Law of the United States.[2]

3. Lack of Personal Jurisdiction over Respondent in Original Order -

a. A noncustodial father's claims that he provided direct benefits to a child and had de facto custody of him for a time does not preclude a Pennsylvania trial court from registering a Netherlands order for enforcement, the Pennsylvania Superior Court ruled. *MK v. PL*, No. 2357 EDA 2012 (Pa.Sup. 7/22/13) (non-precedential decision).

(1) The Superior Court articulated the defenses to registration under UIFSA [23 Pa.C.S.A § 7607(a)]:

(1) The issuing tribunal lacked personal jurisdiction over the contesting party.

(2) The order was obtained by fraud.

(3) The order has been vacated, suspended or modified by a later order.

(4) The issuing tribunal has stayed the order pending appeal.

(5) There is a defense under the law of this State to the remedy sought.

(6) Full or partial payment has been made.

(7) The statute of limitation under section 7604 (relating to choice of law) precludes enforcement of some or all of the arrearages.

[2]Both parties alleged numerous defenses and assertions. Mother claimed that she should not be bound to her premarital agreement that waived spousal support and alimony because she did not sign it knowingly and voluntarily, and because it was unconscionable. The Nevada trial court rejected these assertions, and thus held that the 2005 Costa Rica alimony and spousal support order was not entitled to comity. The Supreme Court affirmed, noting that Mother had failed to disclose the premarital agreement to the Costa Rica dissolution court. In addition, the high court noted that the subsequent divorce—which affirmed the earlier alimony and spousal support order—was effectuated after Mother served Father by publication in Costa Rica even though she knew he was residing in Nevada. The court noted, however, that Mother's failure to disclose the premarital agreement to the dissolution court would not necessarily prevent Nevada from enforcing the child support obligation because the agreement contained no provision concerning child support.

(2) Father first argued that the trial court failed to give him credit for direct payments he had made. Father, however, failed to identify the relevance of that claim to any of the enumerated defenses. The trial court therefore properly rejected Father's argument.

(3) Father next argued that the trial court failed to give him credit against his support order for time in which he had custody of the child. Father asserted the Section 7607 defenses relevant to this case are: (1) the issuing tribunal lacked personal jurisdiction over the contesting party; (2) the order was obtained by fraud; and (5) there is a defense under the law of this State to the remedy sought. Because Father failed to provide any cogent discussion of relevant legal authority in support of his argument, the appellate court held Father's argument waived.

(4) The appellate court also rejected Father's contention that the trial court erred in finding the registration procedure was a ministerial act. The court, quoting *Simpson v. Sinclair*, 788 A.2d 1016, 1017 (Pa.Super. 2001), explained:

> This Section makes it clear registration is a ministerial act, requiring the trial court to register the foreign order upon receipt of the specified documents. 23 Pa.C.S. § 7602(b). The language in Subsection (b) is mandatory: if a party provides the proper documents, "the registering tribunal shall file the order as a foreign judgment. . . ." *Id.*

b. An Ohio trial court erred in failing to dismiss a state child support enforcement agency's petition to register a California order for enforcement, where the evidence was that the man had never been served with process for the California proceedings in which the order was entered, the Ohio Court of Appeals held. *In re R.D.A. A Minor Child [Appeal by David A. Aldridge]* No. 98306, 2013-Ohio-935, 2013 WL 1088347 (Oh.Ct.App. 2013) (slip op.).

(1) The State conceded that the man had not been served for the hearing at which the default judgment was entered. It argued, however, that the man had waived the defense of lack of personal jurisdiction because after he was released from prison and learned of the support order, he did nothing to challenge it. The trial court agreed and registered the California order.

(2) Reversing, the appellate court noted that a judgment rendered without personal jurisdiction is void, and that service of process is a component of personal jurisdiction. The record was clear that the man was not served with process and he had never voluntarily submitted to the issuing court's jurisdiction by filing a responsive pleading, seeking affirmative relief from the court, or indicate in any way his actual or constructive knowledge of the order. In blasting the State for even arguing in favor of registration, the appellate court stated:

> We are astounded by the State's assertion that Aldridge somehow waived the lack of personal jurisdiction because he contacted authorities in California to discuss the support order after he learned of its issuance but otherwise made no effort to challenge it prior to disputing the registration and enforcement action. It is axiomatic that a party's actions subsequent to the entry of a void judgment against that party cannot waive the trial court's lack of personal jurisdiction over that party. Furthermore, the State's contention that a trial court may enter a void judgment against a party who was never properly served, and that the party is then bound by the void judgment unless he actively contests the judgment, is contrary to the most basic principles of due process in our judicial system.

4. Estoppel -

   a. A Texas trial court did not err in enforcing a California child support obligation under UIFSA against a noncustodial father even though the mother agreed never to enforce the order because the father had agreed to voluntarily relinquish his parental rights, the Texas Supreme Court ruled. *Texas Office of the Attorney General v. Scholer*, 403 S.W.3d 859 (Tex.2013). The Court stated in its opening paragraphs:

      > When a marriage ends in divorce, and there are children involved, a court frequently orders one parent to pay monthly child support. That was the case here. Years later, the parents agreed that the father's support obligation would cease if he voluntarily relinquished his parental rights. Although the father signed the necessary paperwork, the mother's attorney never filed it in court. The father argues that he relied on the attorney's promises that he would promptly initiate court proceedings to finalize the termination, and that the mother (and, consequently, the Office of the Attorney General) should be estopped from enforcing the support obligation now.
      >
      > But court-ordered child support reflects a parent's duty to his child, not a debt to his former spouse. Except as provided by statute, the other parent's conduct cannot eliminate that duty. Because estoppel is not a defense to a child support enforcement proceeding, we reverse the court of appeals' judgment and reinstate the trial court's judgment.

   b. The equitable defense of estoppel properly prevented a woman from registering in Pennsylvania a child support arrearage that had accrued under a 1982 California child support order, the Pennsylvania Superior Court held. *Lloyd v. Ader*, No. 934 MDA 2012 (Pa. Super. 3/15/13) (unpublished).

(1) Following entry of the order, the parties and another man executed a written agreement for the other man to adopt the child. The adoption, however, never took place. The mother then waited nearly twenty-five years to seek enforcement of the order. She argued, however, that her failure to promptly seek enforcement is not among the enumerated defenses to registration of a foreign support order.[3] The trial court disagreed and the Superior Court affirmed.

(2) The Superior Court held that while Mother did not actively conceal the child from Father, he had raised a defense recognized in Pennsylvania, namely estoppel. Here, Mother told Father the child would be adopted and that he would have no involvement in his child's life. The parties' written agreement was presented to Father's military commander, who removed the child as Father's dependent. Mother then waited twenty-four years to attempt to collect nearly $85,000 in child support arrearage, including interest. Under these facts, the Superior Court held, Mother was estopped from seeking enforcement of the order.

5. De Facto Change of Custody - A Tennessee trial court erred in dismissing for lack of jurisdiction a petition to register and enforce a California child support order, despite the obligor's contentions that the subject children had resided with him for many years, the Tennessee Court of Appeals held. *Tennessee ex rel. Saucier v. Parker*, No. M2012-00282-COA-R3-CV, 2013 WL 1458900 (Tenn.Ct.App. 4/9/13), 39 FLR 1265.

   a. In 2009, the California Department of Child Support Services had requested the Tennessee Department of Human Services to register and enforce an order for the collection of child support arrears in the amount of $114,033.30, pursuant to UIFSA. The underlying order was entered in 1990 following a hearing on an uncontested divorce action. The court awarded Wife custody of the parties' children and ordered Husband to pay $274 per month in child support. California's transmittal requested enforcement and alleged that Husband had made no support payments. Husband responded to the request, denying that he owed the arrearage and asserting that the

[3]The available defenses under Pennsylvania's applicable UIFSA statute, 23 Pa.C.S.A. § 7607(a), are as follows:
(1) The issuing tribunal lacked personal jurisdiction over the contesting party.
(2) The order was obtained by fraud.
(3) The order has been vacated, suspended or modified by a later order.
(4) The issuing tribunal has stayed the order pending appeal.
(5) There is a defense under the law of this State to the remedy sought.
(6) Full or partial payment has been made.
(7) The statute of limitation under section 7604 (relating to choice of law) precludes enforcement of some or all of the arrearages.
"If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order." 23 Pa.C.S.A. § 7607(c).

Tennessee court lacked jurisdiction. He contended that the children had come to live with him in Tennessee in the early 1990's, and remained with him until the age of majority. The Tennessee trial court upheld a magistrate's recommendation that the petition be dismissed for lack of jurisdiction. The State appealed.

b. The appeals court explained that UIFSA grants courts subject-matter jurisdiction to enforce child support orders from other states or jurisdictions, and that the nonregistering party may contest the validity or enforcement of the order and receive a hearing, but has the burden of proving certain enumerated defenses.

c. Upon reviewing the case, the appellate court found no facts establishing any such defenses. The evidence showed, it said, that "the parties left California at some point after their divorce; that a request for registration and enforcement of the order was previously sent to Texas; that the children at some point lived with Mr. Parker; and that he was their sole provider. These facts do not support the court's apparent legal conclusion that there was 'a defense under the law of this state to the remedy sought' or that the California court lost 'continuing exclusive jurisdiction' over this matter. To the contrary, the court had jurisdiction under UIFSA to register and enforce the judgment."

d. It further noted that the parties participated in a hearing in California in 2007 on a request by the father for a determination of his arrearage, at which he "acknowledged that the California court was the appropriate court to modify its child support order and that the effect of the fact that the children lived with him during their minority on his obligation of support was addressed by that court. There is nothing in UIFSA which allows an obligor parent to relitigate a matter which has been raised and decided in the state which entered the order for which enforcement is sought." The appellate court thus reversed and remanded the matter for registration of the California judgment.

B. Manner of Enforcement -

1. Contempt - Law of the Issuing State Controls - A Massachusetts trial court did not err in enforcing a California child support order against a noncustodial father through contempt proceedings, the Massachusetts Court of Appeals decided. The trial court erred, however, in enforcing arrearages that had accrued after California had begun enforcing the order by direct income withholding. *Cohen v. Cohen*, No. 12-P-1035, 2013 WL 2920994 (Mass.Ct.App. 6/17/13) (unpublished memorandum decision).

a. The appellate court decided that a state is empowered to apply its own substantive law to enforcement actions, saying that "states need not adopt the practices of other states regarding the time, manner and mechanisms for enforcing judgments."

b. The appellate court observed, however, that subsequent to several California transmittals requesting enforcement, California in 2009 began enforcing the order via direct income withholding. This fact precluded Massachusetts from likewise enforcing the order. Said the appellate court:

> We note, however, that on February 23, 2009, the Massachusetts Department of Revenue notified the husband that, upon request of California, the California Child Support Services Department had purged his child support arrearages balance. The letter from the Massachusetts Department of Revenue indicates that California is now enforcing the child support order through wage garnishment of the husband's social security benefits. The UIFSA was designed, in part, to ensure that only one State at a time will have jurisdiction to enforce a child support order. *See* G. L. c. 209D, § 2-207(b). Therefore, we conclude that the Massachusetts Probate and Family Court was without authority to enforce the husband's child support order beyond February 23, 2009.

c. The court footnoted its comment above with the following: "Section 2-207(b) essentially mirrors § 207 of the 1996 version of UIFSA. The comment to the corresponding section states the following: `In choosing among existing multiple orders, none of which can be distinguished as being in conflict with the principles of UIFSA, Subsection [207] (b)(1) gives first priority to the order issued by the only tribunal that is entitled to continuing, exclusive jurisdiction under the terms of UIFSA . . . .' Comment to Uniform Laws Annotated UIFSA (1996) Art. 2, § 207."

2. Turnover of Property - A Texas court properly enforced a divorced man's obligations under registered Swiss support orders by directing that his interest in rental property owned by the parties in Texas be used to offset his arrears, the Texas Court of Appeals, Fifth District, held. Rejecting the man's contention that the trial court lacked jurisdiction to register and enforce the orders under UIFSA because the Swiss divorce court had yet to decide ownership of the Texas property, the court also rebuffed his claim that the UIFSA provision permitting use of affidavits at trial violated his constitutional right to confront and cross-examine witnesses. *Arnell v. Arnell*, 416 S.W.3d 188 (Tex.Ct.App. 11/6/13), 40 FLR 1016.

a. The couple married in Mexico and were living in Switzerland when they divorced in 2002. The Swiss court dissolved their marriage, determined custody of their three children, and entered spousal and child support orders, but deferred a decision on the division of some of their property. When Husband did not make all of the support payments required by the Swiss decree, Wife filed a petition under UIFSA for registration and enforcement of the Swiss support orders in Texas, where they own property.

b. The parties' Texas property—residential rental property located in Dallas—was among the assets as to which the Swiss court deferred disposition. Wife asked the Texas trial court for a turnover order regarding that property to offset the amounts owed by Husband under the Swiss support orders. After entering an order registering and enforcing the Swiss support orders, it found that the parties had equal ownership of the Dallas residence and ordered Husband to turnover his interest to the company that manages the property. He appealed.

c. *UIFSA Defenses* -

(1) Before considering Husband's contention that the trial court lacked jurisdiction to enter its order because the Swiss courts have yet to decide ownership of the Dallas property, the appellate court recognized that under UIFSA, the Swiss courts have continuing, exclusive jurisdiction to modify their support orders. "But under UIFSA, the trial court was required to register and enforce those orders," it explained. (The court noted that neither party disputed that Switzerland is a "state" for purposes of the Act.)

(2) The appellate court then turned to the defenses raised by Husband under UIFSA, in which he challenged the validity and enforcement of the orders because they "have been vacated, suspended, or modified by a later order" or "the issuing tribunal has stayed the orders pending appeal." Rejecting this argument, the court found that "[a]lthough it is undisputed that the liquidation of the Dallas property was deferred by the Swiss court, the court's reason for doing so was to allow its orders regarding custody, visitation, and support for the children to become final without further delay."

(3) Noting that the Swiss court stated that the divorce was not dependent upon the liquidation of the parties' property, and that some liquidation issues would be "reserved for later" in order to put a faster end to the parties' "significant parental conflict," the court pointed out that "UIFSA does not require that a support order be final to be registered." Under UIFSA, it explained, Swiss law governs the "nature, extent, amount and duration of current payments" under a registered order, but "Texas law applies regarding enforcement and collection of arrearages."

(4) "Although the Swiss court may later determine ownership and division of the Dallas property, the deferral of that decision does not in any way vacate, suspend, modify or stay [the husband's] child and spousal support obligations," the court stated, pointing out that the Swiss court explicitly deferred the property division so that support and other rulings for the benefit of the children could commence without delay. Thus, "[r]egistration of these orders for enforcement furthers the Swiss courts' resolutions of these issues."

d. *Manner of Compliance* -

(1) The appellate court then turned to Husband's claim that the trial court usurped the Swiss courts' exclusive jurisdiction by dividing the Dallas property in enforcing the orders. It responded, however, that the court simply enforced the support obligations determined by the Swiss courts. It pointed out that UIFSA provides that a Texas court must "recognize and enforce" a registered support order, and may "order an obligor to comply with a support order and specify the amount and manner of compliance."

(2) Concluding that the trial court had jurisdiction under UISFA to register and enforce the Swiss support orders, the appellate court next addressed Husband's claim that admission into evidence of the affidavit Wife submitted with her petition to register and enforce the orders constituted harmful error. Noting that neither party appeared in person at the trial, and that Husband testified by telephone about the amounts due under the orders, it observed that UIFSA expressly provides that the physical presence of a nonresident party is not required for the establishment, enforcement or modification of a support order.

e. *UIFSA Affidavit* -

(1) UIFSA permits the use of affidavits, the court continued, citing § 159.316 ("An affidavit … that would not be under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing in another state.") It then turned to Husband's allegation that admission of Wife's affidavit created surprise and prejudice to him, because the trial date was chosen so that she would be available to testify and he planned to rely on her testimony in proving both offsets to the amount he owed and her failure to deliver certain property to the Swiss courts. Husband also claimed that the affidavit did not contain a certified record of child support payments as required by § 159.316(c).

(2) Holding that the trial court did not err by admitting the affidavit, the appellate court observed that the orders revealed the amounts Husband was required to pay and that the court sustained his objections to statements in the affidavit that were inconsistent with the orders. Moreover, Husband could not have been surprised by the substance of the affidavit since it was on file for two years prior to the trial. Husband was able to testify by telephone as to the amounts he paid and the offsets he claimed, and did not dispute that he owed support under the orders.

(3) Also rebuffing Husband's argument that the use of affidavits violated his constitutional right to confront and cross-examine witnesses, the appellate court

observed that the "parties did not cite any Texas cases discussing the constitutionality of section 159.316, and we have found none. But courts in other jurisdictions have considered and rejected similar constitutional challenges to UIFSA." *See Louisiana ex rel. T.L.R. v. R.W.T.*, 737 So.2d 688, 25 FLR 1158 (La. 1999); *People ex rel. Orange County v. M.A.S.*, 962 P.2d 339 (Colo. Ct. App. 1998); *Davis v. Child Support Enforcement Unit*, 933 S.W.2d 798, 23 FLR 1143 (Ark. 1996).

(4) Pointing out that § 159.316 permits deposition or trial testimony by "telephone, audiovisual means, or other electronic means," the appellate court noted that Husband testified by telephone and that the court adjourned the proceeding to allow the parties to contact witnesses to testify by telephone. Also noting that the record did not show that Husband attempted to reach Wife by telephone or exercised other alternatives (pretrial deposition by telephone) to confront and cross-examine her, it affirmed the trial court, saying that the Swiss orders and Husband's testimony provided evidence of the amounts due and the amounts he had paid.

C. Controlling Order -

1. A Washington trial court erred in finding that it lacked subject-matter jurisdiction to enforce its order requiring a noncustodial mother to pay support, even though after the court had issued its order, Mother had moved to Norway and Father to Florida, the Washington Court of Appeals ruled. *In re Marriage of Pedersen*, No. 69265–8–I, 2014 WL 457684 (Wash.Ct.App, 2/3/14) (unpublished).

   a. After issuing its order regarding custody, visitation and child support, the trial court declared that future proceedings regarding all matters be commenced in Norway. The court expressly stated it no longer retained jurisdiction in the case. Mother appealed, and Father moved to dismiss the appeal for lack of jurisdiction, noting that visitation proceedings had been commenced in Norway.

   b. Father argued on appeal that Mother's appeal should have been dismissed on grounds that Norway was a more appropriate forum. Rejecting this contention, the appellate court opined that "[w]hile the doctrine of inconvenient forum may apply to custody issues under the UCCJEA, it does not apply to the issue of child support in this case. UIFSA is designed to facilitate registration and enforcement of decrees in non-issuing states. As such, it inherently contemplates that the forum may not be convenient for all parties."

   c. In addition, the appellate court said, Washington retained authority to enforce its own order. No proceedings concerning child support had been commenced in any other

forum, despite the parties' relocation from the state. As such, it continued to be the controlling order. Accordingly, the trial court erred in holding that it lacked authority to enforce its own order.

2. An Arizona trial court properly determined that an order it had issued continued to be the controlling order notwithstanding the parties' subsequent dissolution in Washington that also ordered support, the Arizona Court of Appeals ruled. *Stiles v. Stiles*, No. 1 CA-CV 12-0676, 2013 WL 5820511 (Ariz.Ct.App. 10/29/13) (unpublished memorandum decision).

   a. In this case, Arizona in 1997 ordered Father to pay $415 in monthly child support for a child born shortly after the parties' marriage. Soon thereafter, Father was sent to prison and Mother returned to Washington, where Mother filed for dissolution. The dissolution court ordered Father to pay $50 per month in child support for the same child.

   b. Ten years later, the Arizona child support agency reduced to $0 Father's current support obligation due to his incarceration but sought to collect arrearage that had accrued under the Arizona order. Father sought to determine the controlling order, which the trial court denied.

   c. Affirming, the appellate court observed that both the Arizona and Washington orders were issued under UIFSA, not URESA. Because UIFSA's statutory scheme of reconciling multiple orders applies only to those issued under URESA, it had no application to the two orders issued here. Noting that Father had at all times continued to reside in Arizona, its order, not Washington's, controlled; Washington lacked any subject-matter jurisdiction to modify Arizona's order. [Editor's Note - this case properly combats the common myth that a child support order issued in a dissolution decree somehow trumps an earlier order established in a paternity action or other petition for support.]

D. Multiple URESA Orders -

1. A 1981 Wisconsin child support order was not modified by a Florida order involving the same parties and child that was issued in 1982; instead Florida issued its own independent URESA order which ran concurrently to Wisconsin's, the Wisconsin Court of Appeals held. *Smith and State of Wisconsin v. Swieca*, No. 2012AP1011, 2013 WL 1830673 (Wis.Ct.App. District IV 5/2/13) (unpublished memorandum decision).

   a. The parties' 1981 Wisconsin divorce required Father to pay $50.00 per week in child support. Subsequently, Father moved to Florida. Mother transmitted her petition for support in the Florida court pursuant to the Revised Uniform Interstate Child Support

Orders Act (RURESA). The petition sought "an order for support directed to [Father] as shall be deemed to be fair and reasonable and for such other and further relief as the law provides." In 1982, the Florida court ordered Father to pay $25.00 per week in support. In 2011, Father challenged Wisconsin's arrearage figure on grounds that back in 1982, Mother had "registered" and Florida had "modified" the Wisconsin order. The trial court disagreed and Father appealed.

b. In affirming the trial court, the Wisconsin Court of Appeals explained (quotations omitted):

(1) Under the "registration" provisions of RURESA, a party entitled to child support under an order of one state may "register" the order in another state. See WIS. STAT. § 52.10(39). RURESA provides that "[u]pon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court" of the state in which the order was registered. WIS. STAT. § 52.10(40). Thus, the registered order "has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order" of the state in which the order is registered. *Id.*

(2) Swieca's registration argument fails at the outset because Smith did not "register" the Wisconsin child support order in Florida under §§ 52.10(39) and (40). Rather, Smith filed a petition in Rock County Circuit Court for a child support order, and Rock County transmitted the petition to the Indian River County Circuit Court in Florida. Florida then entered its own support order. See WIS. STAT. §§ 52.10(14) and (24). This procedure is distinct from RURESA's "registration" procedure. *See* WIS. STAT. §§ 52.10(39) and (40). Accordingly, Swieca's registration argument is unavailing.

(3) We turn, then, to the effect of the Wisconsin court transmitting the petition for support to Florida and Florida entering its own support order. As we explained in *Kranz v. Kranz*, 189 Wis. 2d 370, 377-81, 525 N.W.2d 777 (Ct.App.1994), under RURESA, a child support order issued by a responding state upon certification of a petition by the initiating state does not take the place of the initiating state's child support order. Rather, the two orders run concurrently. *Id.* We explained that "a responding court's order that does not explicitly nullify the support ordered in the prior judgment does not modify the prior judgment or affect its enforceability." *Id.* at 379; *see also* WIS. STAT. § 52.10(3) ("The remedies provided [under RURESA] are in addition to and not in substitution for any other remedies.").

(4) We note that under *Kranz*, 189 Wis. 2d at 378, payments made under concurrent orders are credited toward the amounts owed under each order, and that there is no dispute that this occurred here. *See also* WIS. STAT. § 52.10(31).

(5) Here, the Florida support order did not explicitly nullify the Wisconsin support order, and therefore it did not modify the order or affect its enforceability. Swieca argues that the Florida order explicitly nullified the Wisconsin order by stating: "[T]his court shall retain jurisdiction of this cause for the purpose of enforcing the Order and entering such further orders as may be deemed equitable." We do not read that language as explicitly nullifying the Wisconsin support order. Rather, the Florida order provided for the Florida court's continuing jurisdiction over its own support order. Accordingly, the Florida order did not modify the Wisconsin order.

c. Father also claimed that Wisconsin violated its own statutory provisions as to child support modifications in failing to challenge the Florida support order. However, the appellate court explained, Wisconsin and Florida proceeded under RURESA, which allowed Wisconsin to certify Smith's petition to Florida and Florida to enter its own order of support.

E. UEFJA Excludes UIFSA and UCCJEA Judgments - "Excluded from [South Carolina's] Uniform Enforcement of Foreign Judgments Act (UEFJA) are judgments subject to the Uniform Interstate Family Support Act and the Uniform Child Custody Jurisdiction and Enforcement Act, each of which provides special procedures for foreign orders related to its subject matter." *Widenhouse v. Colson*, 747 S.E.2d 188 (S.C. 2013).

III. JURISDICTION TO MODIFY

A. Personal Jurisdiction over Nonresident Respondent -

1. A trial court erred in dismissing a man's petition to modify and enforce his 2005 Georgia divorce decree on the ground that his ex-wife had moved from the state and was therefore not amenable to the jurisdiction of the Georgia courts, the Georgia Supreme Court held. *Barker v. Barker*, No. S13A1705, 2014 BL 49459 (Ga. Feb. 24, 2014), 40 FLR 1202.

a. The high court pointed out that Ga. Code Ann. § 9-10-91(6) provides that a Georgia court may obtain jurisdiction over a nonresident who has been subject to the exercise of a Georgia court's jurisdiction that resulted in an order of alimony, custody, child support, or property division if the action involves modification or enforcement of such order. Such an order was entered in this case, and Father was seeking to enforce the order with respect to visitation and modify the child support order.

b. Mother argued that it would be unconstitutional to subject her to Georgia's jurisdiction because she "currently lacks contacts with the state and has done nothing to avail herself of its laws." The court rejected this contention, saying that although she may not have set foot in Georgia for several years, she had received child support

and maintained custody of her child pursuant to the 2005 Georgia decree. The court further said that the 2010 enactment of § 9-10-91(6) "amounts to a recognition in Georgia of the doctrine of continuing personal jurisdiction in divorce cases, a doctrine that long has been settled in other jurisdictions. . . [O]nce a court with personal jurisdiction over the parties enters a divorce decree, personal jurisdiction continues throughout all subsequent proceedings that arise out of the original cause of action [] and a party cannot escape that continuing jurisdiction to modify the original decree by moving to another state." The court held that such a view is consistent with the constitutional requirement of minimum contacts between the defendant and the forum state.

2. A nonresident father's contacts with Vermont were sufficient to meet due process requirements such that a family court considering his ex-wife's motion to modify their registered Michigan child support order had personal jurisdiction over him, the Vermont Supreme Court held. Also finding that Vermont had subject-matter jurisdiction under the Uniform Interstate Family Support Act even though the mother resides in the state, the court explained that Vermont had assumed continuing, exclusive jurisdiction when the father had lived there. *Pahnke v. Pahnke,* — A.3d —, 2014 WL 92478 (Vt. No. 2012-387, 2013-007, 1/10/14), 40 FLR 1111.

   a. The parties divorced in Michigan in 1997. The court awarded Father custody of their four children and ordered Mother to pay child support. She moved to Vermont, and in 1998 Father and children followed. By 2000 the children were living with Mother and she filed an emergency motion with a Vermont family court to modify custody. It issued an amended order granting her sole physical and legal custody. Father acknowledged receipt of the custody order.

   b. In 2004, the Vermont court suspended Father's visitation and later approved the Vermont Office of Child Support's request to register the Michigan support order. He acknowledged receipt of the request for registration and other prior motions. In 2006, both parties appeared in court after Mother filed a relief from abuse petition. She also moved for modification of parent-child contact. The court denied the relief from abuse petition but ordered no contact with Father.

   c. On Sept. 16, 2008, OCS moved to modify the Michigan support order. After several hearings were continued due to lack of service on Father, the court ordered alternative service at the paternal grandmother's Vermont home and service by tack process occurred. In 2009 a default support order modified Mother's support obligation to $0, relieved her of arrearages, and established a support obligation for Father. Thereafter he provided an address in Indiana.

d. The supreme court ultimately reversed the default order after finding that service was inadequate. On remand, the trial court denied Father's motion to dismiss for lack of personal jurisdiction, finding that he had numerous contacts with Vermont prior to September 2008, including residence in the state while caring for the grandmother.

e. Father, who had moved to Ohio, participated in the modification hearing by telephone. The subsequent order confirmed that Mother owed him no child support under the Michigan order from the date she was granted custody in 2000 to the date that OCS filed the motion to modify in 2008. She was awarded support from the date of the modification motion onward. Father appealed, arguing that Vermont lacked personal jurisdiction over him.

f. *Personal Jurisdiction* -

(1) The high court noted that UIFSA authorizes the family court to exercise jurisdiction over a nonresident for the purposes of establishing or modifying a child support order where "there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction." 15B V.S.A. § 201(7).

(2) This, the court explained, is broad enough to permit a court to exercise long-arm jurisdiction to the full extent permitted by the 14th Amendment's Due Process Clause. It added that due process requires the nonresident to "have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

(3) In thus looking to whether the father had "minimum contacts" with Vermont, the court examined "the interests of the plaintiff and the forum state in proceeding with the action there; the nature and quality of the defendant's activity within that state; and whether it is fair and reasonable to require the defendant to conduct a defense within the plaintiff's choice of forum." *Poston v. Poston*, 624 A.2d 853, 856, 19 FLR 1231 (Vt. 1993) (citing *Kulko v. Cal. Super. Ct.*, 436 U.S. 84, 4 FLR 3075 (1978)).

g. *Minimum Contacts* -

(1) Finding that the first and third elements weighed in favor of Vermont as a forum, the court noted that the children—the subject of the support order—reside in the state and that the state had furnished the family with public assistance. "In addition, since father has shown himself to be willing and able to vigorously defend himself in these proceedings by telephone, he is not unduly prejudiced by the choice of forum," the court reasoned.

(2) Also finding that the second element favored Vermont, the court noted that Father has had consistent contact with Vermont since 1998, as he divorced his second wife in Vermont, appeared at the 2006 relief from abuse hearing, and (by his own admission) lived with the grandmother in "2007/2008." In sum, Father had sufficient contacts with Vermont to support the exercise of personal jurisdiction over him under the Due Process Clause.

h. *Modification* -

(1) Next addressing whether the modification proceeding violated UIFSA's preference for modification by the issuing state, the court said that unless the parties file a written consent in the issuing state for it to modify the order, the party seeking modification must satisfy certain threshold requirements set out in § 611(a)(1), including that (1) the order must be formally registered in the forum state; (2) none of the parties or the children may still reside in the issuing state; (3) the respondent must be subject to the forum state's personal jurisdiction.

(2) Finding that these requirements were met here, the court turned to the fourth requirement—the party seeking modification must be a nonresident of the forum state. Recognizing that Mother lives in Vermont, it said that § 611 thus did not afford a basis for Vermont's modification of the Michigan order. However, § 613 creates an exception to § 611, under which a court may modify a foreign support order when all of the parties reside there if the issuing state no longer has continuing, exclusive jurisdiction, and a tribunal of the forum state has jurisdiction to modify the child support order.

(3) Here, when OCS filed the modification motion in 2008, Mother and children lived in Vermont, and Father lived there during that year. "Thus, under § 613, Vermont assumed continuing, exclusive jurisdiction over this matter in 2008. Father's subsequent moves to Indiana and then to Ohio did not deprive the Vermont court of jurisdiction," it added, citing § 205 (once a state assumes continuing, exclusive jurisdiction over a support order, jurisdiction continues as long as that state remains residence of obligor, obligee, or child).

i. *Arrears* -

(1) The high court then turned to the issue of arrears, holding that the trial court lacked authority to eliminate support due to Father under the Michigan order prior to the modification order. Pointing out that Vermont law does not permit retroactive modification of arrears accrued prior to the motion to modify, the court also noted that modification is prohibited under the terms of the Michigan order.

(2) Thus concluding that there was no legal basis for retroactive modification prior to OCS's motion, the court recognized that Father lost custody in 2000. "But without a court-ordered modification, the Michigan order continued to accrue support in his favor," and modification can operate prospectively only from the date of filing. Accordingly, the high court remanded for an arrears calculation.

3. A New Jersey trial court failed to make sufficient findings of fact to determine whether a noncustodial father had sufficient minimum contacts with New Jersey to enable it to modify the support provisions of their New York divorce decree, the New Jersey Court of Appeals decided. Remand was therefore warranted. [Editor's note - The appellate court did not discuss UIFSA's subject-matter jurisdiction rules requiring the party requesting the modification to be a nonresident of the state in which the modification was sought. Here, the custodial mother—a New Jersey resident—filed in New Jersey a request to modify New York's child support order against the noncustodial father who resided in California.] *Spierto v. Spierto*, No. A-1837-11T1, 2013 WL 656252 (NJ.Ct.App. 2/25/13) (not for publication).

B. Registration Required -

1. An Arizona trial court erred in finding it had subject matter jurisdiction to modify a South Carolina child support order, where the order had not been properly registered in compliance with UIFSA, the Arizona Court of Appeals ruled. Failure to follow the proper procedures in registering a foreign child support order deprives a trial court of subject matter jurisdiction to modify it, the court stated. *Hope v. Hope*, No. 1 CA-CV 13-0112 (Ariz.Ct.App. 3/4/14) (not for publication).

2. A man's failure to register a New York child support order in New Jersey, even though all parties had moved there, rendered New Jersey powerless to modify the New York order, the New Jersey Superior Court ruled. Both UIFSA and FFCCSOA require registration as a condition precedent to modifying another state's child support order. The court cited numerous decisions of other states in support of its holding.[4] *Alayon v.*

[4]*See*, e.g., *Williams v. Williams*, 91 So.3d 56, 62 (Ala. Civ. App. 2012) ("Because the father [who moved to Alabama with children] did not register the [Missouri] divorce judgment, the [Alabama] trial court lacked subject-matter jurisdiction to enter its 2006 modification judgment."); *Glover v. Glover*, 289 P.3d 12, 18 (Ariz. Ct. App. 2012) (where father, mother and son all moved to Arizona after Massachusetts divorce, court stated, "[W]e hold that registration in Arizona of a child support order issued in another state is necessary to confer subject matter jurisdiction on the superior court to modify the order."); *Lamb v. Lamb*, 707 N.W.2d 423, 436 (Neb. Ct. App. 2005) (stating court in Nebraska, where mother and child but not father lived, lacked subject matter jurisdiction in part because Wyoming order was not registered in Nebraska); *Auclair v. Bolderson*, 775 N.Y.S.2d 121, 123 (N.Y. App. Div.) (stating "the courts of a nonissuing state may modify the judgment if it has been registered in that state and certain other criteria have been met" and "failure to prove registration prevents New York courts from obtaining subject matter jurisdiction under both UIFSA and FFCCSOA" where order issued in Florida, obligee-mother and children lived in New York, and obligor lived in

Demeter, No. A-5778-10T3, 2013 WL 535414 (Super.Ct.NJ, 2/14/13) (not for publication).

3. An Alabama trial court properly registered for enforcement a German order sent to it from the German Institute for Guardianship, the Alabama Civil Court of Appeals decided. *LV III v. I.H. and Jefferson County Department of Human Resources*, 123 So.3d 954 (Ala.Ct.App. 2013).

   a. The documents submitted were duly certified and were presented in sufficient quantity and form. The transmittal's lack of a formal cover letter did not bar registration, as requiring such would promote form over substance. "The self-evident purpose of a 'letter of transmittal... requesting registration and enforcement' of a foreign order is to convey a request by the issuing 'state' to register and enforce the issuing tribunal's order. That purpose was accomplished by the materials contained within the packet transmitted from Germany." Accordingly, the trial court had subject-matter jurisdiction to register and enforce the German child support order.

   b. In addition, the trial court had personal jurisdiction over the noncustodial father, the appellate court held. Although it was not amply evident that Father had been served with the original petition for registration, he waived that argument when he appeared at a hearing on the contempt petition without challenging the family court's personal jurisdiction over him. To the contrary, Father acknowledged that he was in contempt of the German child support order.

C. UIFSA Modification Provision Isn't Preempted by Federal FFCCSOA -

1. The federal Full Faith and Credit for Child Support Orders Act does not preempt a provision of the Uniform Interstate Family Support Act precluding modification of a registered foreign child support order where the movant resides in the state where modification is sought, Florida's First District Court of Appeal held. Addressing the issue for the first time, the court noted that other states have reached differing conclusions, and joined those that find no conflict between the two acts. *Pulkkinen v. Pulkkinen*, 127 So.3d 738 (Fla.Dist.Ct.App. 2013), 40 FLR 1051.

   a. After a Michigan court dissolved the parties' marriage and ordered Father to pay child support, he moved to California, and Mother and the children relocated to Florida. In 2010, she petitioned a Florida court to domesticate and modify the Michigan child

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Missouri), appeal denied, 820 N.E.2d 293 (N.Y. 2004); *Cepukenas v. Cepukenas*, 584 N.W.2d 227, 229 (Wis. Ct. App. 1998) (where mother and child moved to Wisconsin and father moved to Delaware after Virginia divorce, mother's failure to register Virginia order in Wisconsin, among other reasons, deprived Wisconsin court of "competency" to modify it).

support order. Father requested that the order be registered in Florida under UIFSA, but only for enforcement purposes. Mother petitioned to modify the order after it was registered, and Father moved to dismiss her petition for lack of subject-matter jurisdiction. Conceding that the trial court had personal jurisdiction over him, Father pointed out that UIFSA grants jurisdiction to modify a foreign child support order only when the petitioner is not a state resident (with certain exceptions not applicable here).

b. However, the trial court agreed with Mother that modification in Florida was proper because the federal FFCCSOA removes the continuing, exclusive jurisdiction of the issuing state when neither the child nor the parents reside there. It held that the FFCCSOA provided jurisdiction and preempted UIFSA. Father requested a writ of prohibition to prevent its exercise of modification jurisdiction.

c. *Preemption* - Reversing, the appellate court observed that the case implicated federal preemption doctrine and was a matter of first impression in Florida. It pointed to divergent opinions across the county. Recognizing that Congress can manifest an intent to preempt state law in three ways, the court found that the FFCCSOA "does not contain explicit preemption guidance, nor does it exhibit the preclusive effect of field preemption. Therefore, it considered the third category of preemption: implied conflict preemption. This occurs when it is impossible to comply with both state and federal requirements or where the state law hinders accomplishment of the federal law's objectives.

d. *Relevant Distinction* - The appellate court acknowledged that there is a relevant distinction between the federal FFCCSOA and Florida's UIFSA, because the latter requires not only that the child and parties no longer reside in the issuing state, but that the petitioner/movant not be a Florida resident.

e. *Divergent Conclusions* -

(1) The appellate court stated that some courts have declined to apply the UIFSA's nonresident requirement because they view it as a hurdle to modification not contemplated by the FFCCSOA. Those courts interpret section 1738B(i)'s jurisdictional language as requiring only that the modification court have personal jurisdiction over the nonmovant. *See Draper v. Burke*, 881 N.E.2d 122, 34 FLR 1183 (Mass. 2008), *Bowman v. Bowman*, 917 N.Y.S.2d 379 (N.Y. App. Div. 2011). Other courts which have found no conflict between the federal and state law, have interpreted this same language as conditioning modification upon finding both personal and subject-matter jurisdiction. *See LeTellier v. LeTellier*, 40 S.W.3d 490, 27 FLR 1231 (Tenn. 2001); *Gentzel v. Williams*, 965 P.2d 855, 24 FLR 1613 (Kan. Ct. App. 1998); *Jackson v. Holiness*, 961 N.E.2d 48, 38 FLR 1188 (Ind. Ct. App. 2012).

(2) The appellate court was persuaded by the latter interpretation. "To the extent there is any ambiguity in the language, we have resolved it by reference to the rule that a statute should not be construed so as to render any of its words meaningless," the court explained, adding that "if we were to construe the jurisdiction referenced in section 1738B(1) as solely pertaining to personal jurisdiction, we would render the phrase 'for the purpose of modification' superfluous."

(3) "Furthermore, we must acknowledge that if Congress had intended the language to characterize only personal jurisdiction, it could have used the words 'personal jurisdiction,' just as it did in section 1738B(c) [ ]. Thus, to give full effect to the plain meaning of subsection (i), we hold that the text [at issue] properly refers to both personal and subject matter jurisdiction."

f. *Compliance with Both* -

(1) Observing that the FFCCSOA does not define the subject-matter jurisdiction of state courts, but instead leaves that task to the states, "which have embraced the UIFSA's requirements" as to when one state may modify another's child support order, the appellate court said that "UIFSA establishes those requirements as defining a jurisdictional concept by reference to a state's 'jurisdiction to modify'."

(2) Those requirements include the petitioner's nonresidency as a distinct component from personal jurisdiction, and they are not procedural. Therefore, they are best understood as limiting the subject-matter jurisdiction of all the courts in a particular state over proceedings to modify a foreign child support order. *See Roberts v. Bedard*, 357 S.W.3d 554, 37 FLR 1565 (Ky.Ct.App. 2011).

(3) Because the federal law allows modification only when a state has both personal and subject-matter jurisdiction, the latter of which is defined in the uniform state law, compliance with both federal and state law is not only possible, but required, the court reasoned.

(4) Further noting that Congress essentially implemented both acts by requiring states to adopt UIFSA in order to receive federal funding for aid to families with dependent children, the court observed that because Congress induced the states to adopt the UIFSA in an effort to create interstate consistency and simultaneously modified the FFCCSOA to comport with the UIFSA's substance, the two acts are generally considered complementary or duplicative and not contradictory. *State ex rel. George v. Bray*, 503 S.E.2d 686, 689 [24 FLR 1527] (N.C. Ct. App. 1998); *see also LeTellier*.

(5) "The UIFSA's nonresidency provision does not run afoul of the FFCCSOA's goals. It minimizes jurisdictional competition and interstate controversies by restricting the circumstances under which a state can modify another state's order. Further, it promotes certainty concerning the proper venue for a modification action by limiting the moving party's venue choices. Finally, by restraining the exercise of jurisdiction, it promotes the goal embodied in the FFCCSOA's title, to preserve the full faith and credit to which each state order is entitled," the appellate court said.

g. *Presumption* - The appellate court also took note of the presumption against preemption particularly in areas that have traditionally been regulated by the states, such as family law. Although recent U.S. Supreme Court case law suggests a shift away from the presumption, that did not disuade the appellate court from its decision in this case. "Whatever the continuing vitality of the presumption doctrine may be, it does not affect our decision today, because we readily conclude from the language used in the two statutes that there is no conflict, express or implied. Consequently, we need not invoke the presumption to tip the scales."

D. Subject-Matter Jurisdiction to Modify -

1. A New Jersey trial court lacked subject matter jurisdiction to modify a temporary child support order it had issued where, before the court could issue a final order, no one continued to reside in that state, the Superior Court of New Jersey, Chancery Division ruled. *Johnson v. Bradshaw*, — A.3d —, 2014 WL 712874 (N.J.Super.Ch. Div. 2/25/14).

a. Mother in 2011 instituted in New Jersey a UIFSA paternity action against NFL running back Ahmad Bradshaw, who was then playing for the New York Giants and living in New Jersey. On December 13, 2011, the court issued a temporary order of $1200 per month. It noted that the order was just temporary and would "have nothing to do with the final amount." The court explicitly stated, however, that it was not setting a final hearing date, and neither party requested a final hearing date or a discovery schedule.

b. On February 6, 2013, Mother filed in the New Jersey trial court her request to modify the 2011 child support order. By this time, however, Bradshaw had been traded to the Indianapolis Colts and had purchased a home in Virginia. Bradshaw moved to dismiss Mother's petition, arguing that New Jersey no longer had subject matter jurisdiction to modify since no one resided there any longer. Mother argued that New Jersey retained continuing, exclusive jurisdiction because the 2011 order was temporary and the court anticipated making a final order. Mother further argued that a final order now would not be a modification of the temporary order but rather a continuation of the 2011 hearing. Finally, Mother argued that because of Bradshaw's

alleged dilatory actions following the 2011 hearing, equity warranted a finding of jurisdiction.

c. *Jurisdiction to Enforce* - The court first opined that it had jurisdiction to enforce the support order. "When there is only one child support order, as in this case, a court retains jurisdiction to enforce a child support order when all the parties resided elsewhere, where the state order was the only order setting defendant's child support obligation," it said, citing *Youssefi v. Youssefi*, 744 A.2d 662 (N.J.Super.App.Div. 2000).

d. *Jurisdiction to Modify* -

(1) The court acknowledged that the initial order was unquestionably a temporary order, but that "critically no return date or timeline for discovery schedule was entered or discussed by the court." In addition, the court noted that reviewing the child support order would require new evidence. Said the court:

> For the court to enter a new child support order it would almost certainly have to rely on additional evidence and schedule further hearings. To find that the admission of new evidence and entering of a new order based on that information would not be a modification of the 2011 order, or a new order altogether, would either circumvent the plain meaning of N.J. S.A. 2A:4–30.72 (a) or swallow the continuing, exclusive jurisdictional requirement altogether. Such a holding would run afoul of the clear intent of the drafters of the UIFSA. Furthermore, if this court were to enter a new or modified order, another jurisdiction would not have to recognize it and would likely enter its own order. Congress and the States adopted UIFSA precisely to eliminate conflicting child support obligation issues.

(2) The court went on to explain that "child support" as defined in UIFSA (N.J.S.A. 2A:17–56.52), does not differentiate between temporary orders. "The plain language of the statutory definition of 'child support' makes no distinction between a temporary order and final order. As such, the fact that the 2011 order was termed temporary does not bear on the issue of continuing, exclusive jurisdiction to modify the 2011 order." In support of its conclusion, the court cited decisions of sister states that had held similarly. *See Jurado v. Brashear*, 782 So.2d 575, 580 (La.2001); *In re Marriage of Myers*, 56 P.3d 1286, 1291 (2002).

(3) In sum, because no one continued to reside in New Jersey following entry of its temporary child support order, it lost subject matter jurisdiction to modify it.

e. *Equitable Estoppel and Forum non Conveniens* - Mother also argued that the doctrines of equitable estoppel and forum non coveniens permitted the New Jersey Court to exercise continuing exclusive jurisdiction to modify.[5] The court disagreed, holding that application of those doctrines presumes a court's subject matter jurisdiction over a case in the first place, not the other way around. Said the court:

> This court, indeed any court, cannot use its equitable powers to form its jurisdiction over any case. Jurisdiction, both personal and subject matter, is the foundation of every case a court may hear. The jurisdictional foundations must stand alone and cannot be propped up by the equitable and legal powers that a court may use once jurisdiction is established. Put another way, the power of the court to use equity can only be exercised when the court has proper jurisdiction. Without jurisdiction the equitable and legal decisions of the court are moot and unenforceable. To use equitable powers to bolster or create jurisdiction in any case would circumvent long standing precedent and require judicial fact finding on the behavior of parties before jurisdiction is established. Therefore, the court will not consider the alleged dilatory behavior of defendant and any issues flowing from same to invoke equitable estoppel since the court no longer has continuing, exclusive jurisdiction.

(internal citations omitted).

2. A Texas trial court erred in failing to determine the controlling order and set aside a prior order for lack of subject-matter jurisdiction, the Texas Court of Appeals ruled. *In the Interest of J.R.S., a Child*, No. 10-12-00142-CV, 2013 WL 3846352 (Tex.Ct.App. 7/25/13).

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[5]Equitable estoppel has been defined as "the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed ... as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse ..." *Heuer v. Heuer*, 704 A.2d 913 (N.J. 1998). The doctrine is "designed to prevent a party's disavowal of previous conduct if such repudiation 'would not be responsive to the demands of justice and good conscience.' " *Carlsen v. Masters, Mates & Pilots Pension Plan Trust*, 403 A.2d 880 (N.J. 1979).

"The essence of the doctrine of forum non conveniens is that a court may decline jurisdiction whenever the ends of justice indicate a trial in the forum selected by the plaintiff would be inappropriate." *Kurzke v. Nissan Motor Corp*., 752 A.2d 708 (N.J. 2000). The doctrine of forum non conveniens provides that even when "a court has jurisdiction over a case, it is not duty bound to accept it and for sufficient reason may decline jurisdiction and either dismiss the action or transfer it to a more convenient forum." *Loonan v. Marino*, 179 N.J.Super. 164, 166, 430 A.2d 975 (N.J. Ch.Div.1981) (citing *Vargas v. A.H. Ball Steamship Co.*, 135 A.2d 857 (N.J. 1957), *cert. denied*.

a. In 2000, a Colorado trial court ordered the noncustodial father to pay child support for his minor child. The order was registered and enforced in Texas in 2003, and enforced a second time in Texas in 2007. In 2008, Father filed a petition to modify in the Texas trial court, in which he sought the termination of his child support obligation and arrearages. The trial court entered temporary orders in January of 2009 and then a final judgment on August 31, 2009, which terminated his child support obligation and determined that he owed no arrearages. At the temporary orders hearing the trial court was informed that Mother had moved to Colorado and left the child with her father. The Texas Attorney General had been notified of the proceedings but did not appear. Mother did not appear because her whereabouts were unknown and she had been served by publication.

b. In 2011, the Attorney General filed a motion to determine the controlling court order and to establish arrearages. At that hearing, evidence was admitted that showed Father's arrearages to be $6,290.17 as of September 12, 2011. The arrearages were based on Father's ongoing obligation as it had been established in the orders entered prior to 2009. The trial court denied the motion, and the Attorney General appealed.

c. Reversing, the appellate court held that Texas lacked subject-matter jurisdiction to modify Colorado's child support order. Because Mother resided in Colorado, as was the child (albeit in different locations), Colorado never lost continuing exclusive jurisdiction to modify. Accordingly, Texas lacked subject-matter jurisdiction to terminate Father's child support obligation.

3. A Texas trial court erred in "transferring" to Florida jurisdiction to modify a Texas child support order where the noncustodial father continued to reside in Texas, notwithstanding the departure of the custodial mother and child to Florida, the Texas Court of Appeals ruled. The trial court did not err, however, in declining to exercise jurisdiction to modify the Texas custody order and transferring to Florida modification jurisdiction over that issue. *Lesem v. Mouradian*, — S.W.3d — , 2013 WL 3354185, No. 01-12-01161-CV (Tex.Ct.App. 7/2/13).

a. The appellate court observed that under UIFSA, the issuing state retains subject-matter jurisdiction to modify child support so long as the obligor, obligee or child continues to reside there. The court further observed that neither party had filed written consents to allow Florida to modify the child support obligation, and that Florida had not previously modified the Texas order. Accordingly, the trial court erred in transferring child support modification jurisdiction to Florida.

b. Custody disputes, in contrast, are governed under the UCCJEA, not UIFSA. Under the facts of this case, the trial court did not err in declining jurisdiction to modify custody and transferring that issue to Florida. The case presents an excellent discussion of the differing jurisdictional rules under the UCCJEA and UIFSA.

4. A Tennessee trial court did not err in refusing to "transfer" modification jurisdiction of a child support order to Georgia even though it allowed transfer of the parenting time issues after the custodial mother and children had moved there, the Tennessee Court of Appeals ruled. The appellate court found no evidence to support the mother's claim that both parties had filed written consents in the Tennessee trial court to transfer child support modification jurisdiction to Georgia. Had the parties filed such consents, the appellate court noted, there would presumably have been no need for a court hearing to order the change of jurisdiction. *Reeves v. Reeves*, No. W2012-00267-COA-R3-CV, 2013 WL 1804183 (Tenn.Ct.App, 4/30/13).

5. An Indiana trial court did not err in: (1) finding that it had subject-matter jurisdiction to modify another state's child support order; (2) finding that the foreign order was properly authenticated; (3) finding that a modification was warranted; and (4) modifying the support obligation retroactive to the date of registration. *In the Matter of the Support of B.J.R.,* 984 N.E.2d 687 (Ind.Ct.App. 2013).

   a. *Facts* -

      (1) On February 10, 2000, the parties entered into a court-approved stipulated child support agreement in Pennsylvania that awarded Mother custody of the parties' child and required Father to pay $1912 per month in support (the equivalent of $441 per week). Of the required support, $342.00 was allocated for the child's daycare expenses. Subsequent to this agreement, after the child no longer required daycare, the parties informally agreed to reduce Father's support obligation; it was never approved by any court.

      (2) Following entry of the 2000 order, Mother and Child moved to Indiana and Father to Maryland. On September 14, 2010, Father filed in Indiana a petition to register the Pennsylvania order in Indiana. The petition, however, did not include a certified copy of the Pennsylvania order. On September15, 2010, Father filed his petition to modify his support obligation, alleging a change in circumstances including changed incomes, the elimination of daycare costs, etc.

      (3) On August 30, 2011, Father filed an amended petition to register the Pennsylvania order, and this time included a certified copy of the order. The trial court thus registered the Pennsylvania order as of August 30, 2011. Hearing was held February 10, 2012. On May 10, 2012, the trial court issued its order denying Mother's motion to dismiss for lack of subject-matter jurisdiction. The trial court further reduced Father's weekly child support obligation to $214.00, retroactive to August 30, 2011. Mother appealed raising numerous issues.

b. *Subject-Matter Jurisdiction to Modify Support* -

(1) Mother argued that because Father's original request to register the foreign order filed September 14, 2010 did not include a certified copy of the order, it was a nullity. Therefore, she argued, the modification petition Father filed September 15, 2010 was also a nullity. Mother pointed out that IC § 31-18-6-9 provides that a petition to modify be filed at the same time as a request for registration or later. Because Father's request to modify predated his August 30, 2011 amended petition to register, she continued, the trial court lacked subject-matter jurisdiction to entertain his petition.

(2) The appellate court disagreed. It held that Father's petition filed August 30, 2011, was not an amended order as contemplated by Ind. Trial Rule 15(A), as it did not include any new issues, claims or defenses from his original September 14, 2010 petition. Moreover, T.R. 15(A) requires leave of court and consent or consent of the adverse party. A more accurate description of the events is that Father filed his petition to register on September 14, 2010, which was deficient for its lack of a certified order. Father cured this defect in his August 30, 2011 filing. Because he had filed his modification petition the day after filing his now-cured petition to register, the trial court had subject-matter jurisdiction to modify. Said the court:

> Although Indiana Code section 31-18-6-11 does not allow a trial court to modify the child support order in the foreign order until the foreign order has been registered, the language of Indiana Code section 31-18-6-9 requires only that a request for registration be filed — not the completed registration be accomplished — before the petition to modify may be filed. Because Father filed his petition for modification of child support one day after he filed his petition to register the Foreign Order, he complied with Indiana Code section 31-18-6-9.

(3) Mother also alleged other procedural errors which she claimed deprived the trial court of subject-matter jurisdiction to modify. For example, the petition to register did not identify Father's employer, employer's address, and Father's sources of income. But IC § 31-18-6-2(a) only requires this information *if known*. Thus the statute itself contemplates that some information may be incomplete. In addition, Father was unemployed at the time he filed his petition to register, and thus that information could not have been supplied. The appellate court was equally unimpressed with Mother's two additional arguments: that Father had misidentified Mother's county of residence and that the trial court had failed to send three copies of the registration petition. The appellate court disregarded the misidentified county as an insignificant scrivener's error, and held that failure to

forward copies of the registration petition to Pennsylvania did not deprive Indiana of subject-matter jurisdiction to modify the support order.

c. *Authentication of the Foreign Order* -

(1) Mother argued that the trial court erred in finding that the Pennsylvania order was properly authenticated. She pointed out that the Pennsylvania order consists of two documents, the order and the stipulation, and that these two documents bore different case numbers, the stipulation was not certified, and the two documents had been altered by an unknown person without authentication of the hand-written changes made. Thus, she argued, the document did not comport with the requirements of IC § 34-39-4-3 and should not have been given full faith and credit.

(2) The appellate court rejected this claim, noting that Ind. Trial Rule 44 provides a method alternative to authenticate orders, and such was in accordance with Ind. Evidence Rule 901(a). That rule provides that a domestic official record is self-authenticating with no requirement of extrinsic evidence provided that it is "attested by the officer having the legal custody of the record, or by his deputy." IN. Evid. R. 902(1). In *Kidd v. State*, 738 N.E.2d 1039, 1043 (Ind. 2000), the Indiana Supreme Court noted that the certification of a public officer from the specific jurisdiction where the record is kept is sufficient to authenticate the record, and there is no mandate that the certification take a particular form. The documents in question in this case were certified by the Deputy Prothonotary of Bucks County, Pennsylvania and was sufficiently authentic. In sum, the trial court did not abuse its discretion in finding the Pennsylvania order authenticated based upon the certification by the Deputy.

d. *Modification Date* - Mother contended that the trial court erred in modifying Father's support obligation as of August 30, 2011. In this regard, Mother raised the same argument she had raised earlier, *i.e.*, that the trial court lacked subject-matter jurisdiction to modify the order in the first place. Specifically, Mother alleged that Father's petition to register the foreign order was a nullity, and thus, his subsequent petition to modify was also a nullity. As discussed above, the appellate court rejected this argument, saying that the defect in Father's original registration petition was cured on August 30, 2011, when he attached a certified copy of the order. The trial court therefore did not abuse its discretion in modifying Father's support order as of

August 30, 2011.[6]

E. Change in Circumstances Required; Redirecting Payments -

1. An Ohio trial court did not err by refusing to modify a registered Illinois support order that the parties had agreed to only three months earlier, the Ohio Court of Appeals, Third District, ruled. Upholding the trial court's enforcement of the Illinois order, the appellate court observed that the modification motion—in which the obligor claimed his payments would be lower under the Ohio guidelines—suggested forum-shopping. The court also noted that it has consistently held that modification of an agreed-to support order must be based upon a substantial change in circumstances, or else the modification would render the agreement "moot and meaningless." The court went on to explain that a change of residence from one state to another (all parties had moved from Illinois to Ohio) does not itself constitute a change of circumstances warranting a modification. Finally, the court held that its order requiring that the father now make his payments through the Ohio Child Support Enforcement Agency did not modify the Illinois order. The court explained that the payment order was "a minor administrative type of change and is not a substantive modification of the existing child support order that would constitute a basis for Ohio to assume complete jurisdiction over the matter." *Parrick v. Parrick*, No. 5-12-12, 2013 WL 500498 (Oh.Ct.App. 2/11/13) (slip op.), 39 FLR 1173.

F. Alimony and Spousal Support - An Arkansas trial court did not err in denying for lack of jurisdiction a man's request to modify the alimony agreement incorporated into his Nevada divorce decree, even though he and his ex-wife no longer reside in Nevada and he registered the decree in Arkansas, the Arkansas Court of Appeals, Division I, ruled. *Midyett v. Midyett*, No. CV-12-701, 2013 WL 5745119 (Ark.Ct.App. 10/23/13), 39 FLR 1592.

1. The parties' 2008 divorce decree incorporated their agreement under which the man promised to pay the wife monthly alimony for five years. In 2010, the former spouses began living together at the man's home in Arkansas. He continued making the alimony payments and allegedly paid the wife's living expenses in exchange for her taking care of his elderly mother. Thereafter the wife became violent and the man obtained an order of protection excluding her from his home. He then registered the Nevada decree in Arkansas and asked the court to modify or set aside their alimony agreement. He appealed its denial of his request.

[6]Editor's comment - Given that the date on which the registration is filed, not the date on which the court confirms the registration, governs the date on which the modification request may be filed, the trial court was within its discretion to order the modification retroactive to September 15, 2010, the date on which Father filed his petition to modify support.

2. Agreeing with the lower court that Nevada retained exclusive jurisdiction over the spousal support obligation, the appellate court explained that under UIFSA, the tribunal in the state that issues a spousal support order has continuing exclusive jurisdiction to modify the order throughout the existence of the support obligation. "Nevada therefore had exclusive jurisdiction to modify or terminate alimony at all relevant times, and the Arkansas court had no authority to act," the court asserted. Noting that the man cited numerous cases in which one state modified another state's support order under UIFSA, the appellate court pointed out that those cases involved child support rather than spousal support. "UIFSA treats child support and spousal support differently," it said in affirming the trial court's refusal to modify or set aside the support award.

IV. CHOICE OF LAW

A. Nature of the Order -

1. A Massachusetts trial court properly determined that the substantive provisions of a divorced couple's California dissolution decree that was later registered in Massachusetts are governed by California law, the Massachusetts Court of Appeals ruled. In this case involving college expenses, the court observed that its version of UIFSA provides: "The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order." In addition, the choice of law provision in the agreement itself states that the agreement is governed by and to be construed in accordance with California law. The trial court did not err in applying California law.[7] *Cooper v. Keto*, 990 N.E.2d 76 (Mass.Ct.App. 2013).

2. In resolving ambiguities of a registered Florida dissolution decree regarding child support, an Alaskan trial court should apply Florida law, not the law of the Uniform Commercial Code, the Alaska Supreme Court decided. *Hussein-Scott v. Scott*, 298 P.3d 179 (Alaska 3/29/13).

[7]Judge Brown's concurring opinion proffered the following: "Here, we again witness another puzzling situation in which the legal fees paid and awarded far exceed any amount that would be gained. Indeed, the father has acknowledged that the costs associated with defending the action might better have been spent on the child's college education. Litigation should be the last option, not the first. To that end, it is often beneficial to the parties, and counsel in advising their clients, to step back and take stock of what the case is about, what has gone on before, and what may lie ahead. In devising the judicial playbook, one should not forget the pocketbook. I suspect that not even an attorney with the skill of the legendary Patrick Hastings would have undertaken this matter. In short, it is not brilliance that is required here — it is simply 'arithmetic.' Cf. W.I. Cowin, Reflections in Retirement, 55 Boston Bar J. 13, 14 (2011) ("technical competence" of lawyers to litigate is greater today than ever, but lawyers often 'fail to consider whether doing it is useful')."

a. The parties' Florida dissolution contained two inconsistent provisions for when child support would terminate. One clause of the parties' decree provided for Father's support obligation to continue until "12/2/2020." Another clause required Father to pay support until the youngest child's 18th birthday, which was in 2015. Noting the ambiguity, the trial court applied the Uniform Commercial Code in holding that the words prevail over numbers, and thus extended support until 2015.

b. The Alaska Supreme Court reversed. It first observed that: "Like every other state, Alaska has adopted the Uniform Interstate Family Support Act (UIFSA), which guides our choice-of-law determination in this case. Under UIFSA, the duration of current obligations in a marital settlement agreement is governed by the law of the issuing state. In this case, the issuing state is Florida. We will therefore interpret the agreement according to Florida law."

c. The high court opined that UCC applies only to negotiable instruments, not to interpreting dissolution decrees. Noting that under both Florida and Alaska law, an ambiguous settlement agreement is interpreted using basic contract principles. These principles include considering the contract as a whole, looking to the intent of the parties, avoiding absurd results, and constructing the contract such that the result is fair, customary, and such as a prudent person would naturally execute. It went on to say that "[t]he better and apparent majority rule for resolving irreconcilable differences between contract clauses is to enforce the clause relatively more important or principal to the contract. This rule is tempered by the corollary that the more specific clause controls the more general." Accordingly, the high court ruled, support continues until 12/2/20.

B. Duration of Support -

1. A trial court erred in terminating a father's support obligation after his two children turned 18, where the parties' agreed order enrolled their Hawaiian divorce decree, which required him to pay support until the children finished their post-high school education or turned 23, the Tennessee Court of Appeals held. *Johnson v. Harwell*, No. M2012-01808-COA-R3-CV, 2013 WL 3788258 (Tenn.Ct.App. 7/16/13), 39 FLR 1426.

a. The mother and children had relocated to Tennessee after the parties' 2003 Hawaiian divorce, and the father moved there later. Mother asked for increased child support, and in 2009 she and Father agreed that the Tennessee court would assume jurisdiction of the matter. They also agreed that the Hawaiian decree would be "enrolled and shall become an Order of this Court." The agreed order incorporated their new parenting plan, which increased Father's support payments but was silent on the duration of such obligation. When the children turned 18, the court granted Father's motion to terminate his payments in light of the fact that in Tennessee a

parent generally has no obligation to provide post-majority support. It held that it had jurisdiction under the Uniform Interstate Family Support Act to modify the duration of support set out in the Hawaiian order. Mother appealed.

b. The appellate court first declared that UIFSA was inapplicable because Father's motion was not seeking to modify an out-of-state support order governed by the Act. It pointed out that at the time the motion was made, Father's child support obligation was contained in the 2009 Tennessee agreed order that included the enrolled Hawaii decree and the parenting plan. Thus saying that Tennessee law applied to Father's termination motion, the appellate court agreed that Tennessee residents generally are not obligated to support a child past the age of majority. "A parent may, however, assume such a duty by agreement," and such an agreement will be enforced by state courts. Here, the parties' agreement to enroll the Hawaii decree without addressing the duration of support in the parenting plan left the decree's duration provision intact and made it part of the agreed order, the court explained, adding that it "became a binding contract when the parties agreed to enroll it, without modification … as part of the July 2009 agreed order." Thus rejecting Father's argument that the duration provision "went away" by operation of law when the decree was enrolled in Tennessee, the appellate court concluded that "[t]aken as a whole, the July 2009 agreed order plainly obliges Father to pay support for the parties' children past majority."

2. A trial court erred in determining that UIFSA compels the conclusion that Massachusetts law governs the duration of a divorced father's obligation under his Florida child support order, the Massachusetts Appellate Court held. The appellate court observed that Florida's emancipation age was a non-modifiable aspect of the parties' Florida divorce. Accordingly, the parties' move from Florida to Massachusetts, while it permitted the parties there to modify the child support obligation, did not grant Massachusetts unrestricted authority to apply its substantive law as to the duration of support. *Freddo v. Freddo*, 983 N.E.2d 1216 (Mass.Ct.App 2013), 39 FLR 1200.

3. A Washington trial court erred in failing to register for enforcement arrears that had accrued under an Indiana child support order, the Washington Court of Appeals, Division One, held. The trial court erroneously failed to use Indiana law, rather than Washington's, when considering the date of the child's emancipation. Under UIFSA's choice of law rules, the appellate court held, the law of the issuing state determines the child's age and circumstances of emancipation. Moreover, it noted, the statute of limitation of either Indiana or Washington, whichever is longer, applies. The case was remanded to the trial court for further proceedings. This case is a good example of how one state should apply the law of another state in determining a child's emancipation. *In re Marriage of McMinn*, No. 68357-8-I, 2013 WL 68569 (Wa.Ct.App. 1/7/13) (unpublished) (*see also*, Statutes of Limitation, this outline, *infra*).

C. Substantive Law to Apply When Modifying Support -

1. A trial court properly applied Kentucky law in modifying (for the third time) a child support order entered in a couple's Indiana divorce, the Kentucky Court of Appeals held. *Adams-Smyrichinsky v. Smyrichinsky*, — S.W.3d —, 2013 WL 6037306, No. 2013-CA-000181-ME (Ky.Ct.App. 11/15/13), 40 FLR 1032.

   a. The parties' divorce decree awarded the parties joint custody. Thereafter, they moved to Kentucky with their two children. In 2011, the Indiana court relinquished jurisdiction to the Kentucky court. The custodial mother then petitioned the Kentucky court for a new calculation of child support. Kentucky entered a support order in September 2011, and an amended order in April 2012. In August 2012, it granted Father's motion to reduce support in light of the fact that the oldest child had reached the age of majority and started college. Mother appealed, arguing that the court erred by not applying Indiana law in the modification proceeding

   b. The appellate court held that the trial court properly relied on the UIFSA provision permitting a court to modify a child support order if "all of the parties [ ] reside in this state and the child does not reside in the issuing state." (Ky. Rev. Stat. § 407.5613(1)). It then took note of the section of UIFSA providing that the law of the issuing state governs the nature, extent, amount, and duration of current payments and the payment of arrears under the order (§ 407.5604). "Although Kentucky courts have not applied this statute, all fifty states have adopted UIFSA. With regard to its choice-of-law provision, sister states have consistently held that once a child support order is modified by a state that has continuing and exclusive jurisdiction, the law of the forum state supersedes and controls," it observed, citing *Spalding v. Spalding*, 907 So.2d 1270 (Fla.Ct.App. 2005), and *State Child Support Enforcement Div. v. Bromley*, 987 P.2d 183 (Alaska 1999).

   c. Here, Indiana transferred its jurisdiction over custody, visitation, and support matters, and divested itself of jurisdiction. The appellate court additionally noted that "there is no dispute that Kentucky has assumed continuing and exclusive jurisdiction. As the Alaska Supreme Court pointed out, application of local law 'to the maximum degree possible' promotes judicial efficiency. *Id.* at 190." Thus, it was entirely appropriate for the lower court to base its decision on Kentucky law. Observing that the mother did not object to the use of Kentucky law "until the third time" the court modified the support order, the court also said her failure to object sooner "may constitute a waiver at this juncture."

D. Substantive Law to Apply When Enforcing Support - The law of Illinois—where the child support order was being enforced—not the law of Tennessee, where the order was issued, governed enforcement remedies under FFCCSOA, the District Court for the Northern

District of Texas ruled. *Norman v. Experian Information Solutions, Inc., et al*, No. 3:12-CV-128-B, 2013 WL 1774625 (Dist.Ct, N.D. Tex. 4/25/13).

1. In this action, the noncustodial father alleged that Julie Hamos, the director of the Illinois Department of Healthcare and Family Services, and Experian violated the Fair Credit Reporting Act by respectively furnishing and reporting inaccurate information in his credit report related to two delinquent child support accounts. Father alleged in his suit that Tennessee law, as the issuing state, controlled enforcement remedies, not Illinois, which had reported the arrearage to Experian. Father further alleged, without authority, that Tennessee law does not treat each month of delinquent child support as a new judgment as does Illinois. Therefore, according to Father, the child support accounts are obsolete under Tennessee law and therefore inaccurate.

2. Rejecting Father's arguments, the appellate court observed that FFCCSOA's choice of law provision regarding enforcement provides: "[i]n a proceeding to . . . enforce a child support order, the forum State's law shall apply except [as regards the duration of support or the statute of limitations.]" 28 U.S.C.A. § 1738B(h)(1). "Here, according to the choice of law provision contained in 28 U.S.C.A. § 1738B(h)(1), the Court concludes that Illinois law applies to the enforcement of the child support order, as Illinois is Norman's state of residence and as such is the forum state for enforcement of the child support orders. See 28 U.S.C.A. § 1738B(h)(1)." The appellate court granted summary judgment in favor of Experian and Hamos.

E. Statutes of Limitation -

1. A Tennessee trial court erred in finding that enforcement of a registered 1986 Arkansas arrearage judgment was time-barred, where there is no such bar under Arkansas law, the Tennessee Court of Appeals ruled. Applying the federal Full Faith and Credit for Child Support Orders Act's choice-of-law provision in determining whether the Arkansas or Tennessee statute of limitations on judgments governed, the court explained that the Act requires courts to use "whichever statute provides the longer period of limitation." FFCCSOA provides that in an action to enforce an arrearage, the court "shall apply the statute of limitation of the forum State or the [issuing] State [ ] whichever statute provides the longer period of limitations." 28 U.S.C. § 1738B(h). *Johns v. Johns*, No. W2013-01102-COA-R3-CV, 2013 WL 6050939 (Tenn.Ct.App. 11/15/13), 40 FLR 1040.

2. Where support payments under a settlement agreement are determined to be fixed contractual payments and not alimony, neither UIFSA nor FFCCSOA extends the statute of limitation to the longer of the states that have issued orders, the California Court of Appeals decided. In this case, the parties' agreement contained a choice of law provision that rendered the governing provisions of UIFSA and FFCCSOA irrelevant. *In re Marriage of Caffery and Burns*, No. A133610 (Cal.Ct.App. 11/26/13) (unpublished).

3. A trial court erred in dismissing a Louisiana child support agency's request to register for enforcement the arrears that had accrued under a Kansas child support order, the Louisiana Court of Appeal, Third Circuit found. The trial court correctly observed that under its version of UIFSA, its own statute of limitations or that of Kansas, whichever was longer, applies. It found that under both Louisiana and Kansas law, the statute of limitation had run, and therefore was unenforceable. The appellate court reversed, finding that the trial court erred in determining the date of the youngest child's emancipation. Because of this error, the trial court erroneously determined that the Kansas order had become dormant under Kansas law. Remand was ordered to allow collection of the arrears. *Louisiana ex rel Jackson v. Jackson*, 110 So.3d 597 (La.Ct.App. 2013).

4. A Washington trial court erred in failing to register for enforcement arrears that had accrued under an Indiana child support order, the Washington Court of Appeals, Division One, held. The trial court erroneously failed to use Indiana law, rather than Washington's, when considering the date of the child's emancipation. Under UIFSA's choice of law rules, the appellate court held, the law of the issuing state determines the child's age and circumstances of emancipation. Moreover, it noted, the statute of limitation of either Indiana or Washington, whichever is longer, applies. The case was remanded to the trial court for further proceedings. *In re Marriage of McMinn*, No. 68357-8-I, 2013 WL 68569 (Wa.Ct.App. 1/7/13) (unpublished) (*see also* Duration of Support, this outline, *supra*).

V. MISCELLANEOUS

A. Immunity from Suits -

1. The limited immunity provided to petitioners by the Uniform Interstate Family Support Act to seek enforcement of a support order without submitting to personal jurisdiction "in another proceeding" does not apply if such other proceeding involves support claims by the other party, the Vermont Supreme Court decided. The court thus held that a Vermont court in which a nonresident father sought to enforce his Oklahoma child support order against his children's mother should not have dismissed, for lack of personal jurisdiction, her action to enforce a Georgia support order against him. The case involved each party's attempt to enforce child support arrearages that had accrued under previous orders for the their now-emancipated children. *OCS ex rel Pappas v. O'Brien*, 67 A.3d 916 (Vt. 2013).

    a. The high court opined that "the UIFSA immunity provision does not operate to prevent personal jurisdiction over a claim of outstanding child support between the same parties." *See In re Haddad*, 93 P.3d 617 (Colo.Ct.App. 2004); *Largent v. Largent*, 192 P.3d 130 (Wyo. 2008).

b. Moreover, the court said, where the only issue was arrears, "it is in everyone's interest to resolve all related claims in one proceeding in one location," as the avoidance of conflicting orders entered by multiple courts is one of UIFSA's underlying purposes. The court thus remanded for consideration of the merits of the mother's claims regarding the Georgia order.

B. Proper Use of the Term "Jurisdiction" -

1. The following quotation is taken from *In the Matter of the Marriage of McDermott*, 307 P.3d 717 (Wash.Ct.App. 2013) (citations and quotations omitted).

a. As an initial matter, we note that both parties discuss the UCCJEA's use of the term "jurisdiction" as though it were a matter of subject-matter jurisdiction. As the parties frame it, either the Washington courts have subject-matter jurisdiction over the dispute or the Kansas courts have subject-matter jurisdiction over the dispute. To the contrary, this dispute involves a statute (the UCCJEA) that restricts, in some instances, a court's exercise of its subject-matter jurisdiction. The UCCJEA, as adopted by the Washington legislature, does not — and cannot — divest a superior court of subject-matter jurisdiction.

b. We review *de novo* questions of a court's subject-matter jurisdiction. A party may raise a question of subject-matter jurisdiction for the first time at any point in a proceeding, even on appeal. Because the absence of subject-matter jurisdiction is a defense that can never be waived, judgments entered by courts acting without subject-matter jurisdiction must be vacated even if neither party initially objected to the court's exercise of subject-matter jurisdiction and even if the controversy was settled years prior.

c. The consequences of a court acting without subject-matter jurisdiction are draconian and absolute. If the phrase [subject-matter jurisdiction] is to maintain its rightfully sweeping definition, it must not be reduced to signifying that a court has acted without error. Thus, appellate courts should use caution when asked to characterize an issue as "jurisdictional" or a judgment as "void." Judicial opinions sometimes misleadingly indicate that the court is dismissing an action for lack of subject-matter jurisdiction when, in fact, the basis for the ruling is that some threshold fact has not been established.

d. Indeed, as the United States Supreme Court has observed, 'jurisdiction' is a word of too many meanings." (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 90, (1998)). That Court has noted that it and other courts have "sometimes been profligate" in using the term "jurisdiction." *Arbaugh v. Y & H Corp*., 546 U.S. 500, 510 (2006). Where the question of jurisdiction was not "central to the case" and thus

did "not require close analysis," courts have "sometimes mischaracterized claim-processing rules or elements of a cause of action as jurisdictional limitations." *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 161 (2010). These mischaracterizations can lead to "drive-by jurisdictional rulings, which too easily can miss the critical differences between true jurisdictional conditions and nonjurisdictional limitations on causes of action." *Reed Elsevier*, 559 U.S. at 161 (alteration in original) (citation omitted) (quoting *Steel Co.*, 523 U.S. at 91; *Kontrick v. Ryan*, 540 U.S. 443, 456 (2004)).

e. Similarly, our own Supreme Court has noted that the term "subject-matter jurisdiction" is often confused with a court's "authority" to rule in a particular manner, leading to improvident and inconsistent use of the term. *Marley v. Dep't of Labor & Indus*., 886 P.2d 189 (Wash. 1994) (quoting *In re Marriage of Major*, 859 P.2d 1262 (Wash.Ct.App. 1993)). Indeed, a court or agency does not lack subject-matter jurisdiction solely because it may lack authority to enter a given order.

f. A court has subject-matter jurisdiction where it has authority to adjudicate the type of controversy involved in the action. The critical concept in determining whether a court has subject-matter jurisdiction is the type of controversy. Superior courts are granted broad original subject-matter jurisdiction by Wash. Const. art. IV, § 6. Exceptions to this broad jurisdictional grant are to be narrowly construed. Superior courts have jurisdiction in "all cases ... in which jurisdiction shall not have been by law vested exclusively in some other court," by an explicit act of Congress or the legislature. *Hous. Auth. of City of Seattle v. Bin*, 260 P.3d 900 (Wash.Ct.App. 2011) (quoting Wash. Const. art. IV, § 6).

g. Superior courts possess subject-matter jurisdiction that cannot be whittled away by statutes. By protecting the superior courts' subject-matter jurisdiction from statutory erosion, our state constitution provides the foundation for an independent and coequal judicial branch of state government. If the type of controversy is within the subject-matter jurisdiction, then all other defects or errors go to something other than subject-matter jurisdiction.