

The logo features the word "ERICSA" in large, bold, white capital letters with a teal outline, set against a teal shield-shaped background. Below it, the phrase "On the Road Again" is written in a white, cursive script. The shield is flanked by two orange triangular road signs pointing upwards. The entire graphic is set against a background of a blue sky with white clouds and a green rolling landscape with a grey road.

ERICSA

On the Road Again

A red circular badge with a white border containing the text "A VIRTUAL ROAD TRIP" in white, bold, capital letters.

A
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TRIP

A purple rectangular badge with a white border containing the text "MAY 24 - 26, 2021" in white, bold, capital letters.

MAY 24 - 26, 2021

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2021 Intergovernmental Case Law Update

Ethan C. McKinney, DPA, Child Support Director, St. Joseph County, In
Prosecutor's Office



- This session will survey recent appellate decisions from around the country related to UIFSA and the Full Faith and Credit for Child Support Act (FFCCSOA). Emphasis will be given to one state's enforcement and modification of another state's order (or, perhaps, orders issued/enforced by different countries). Written materials will provide a comprehensive review of related appellate decisions issued within the past year.



Intergovernmental Case Law Updates



McQueary v. Fl. Child Supp. Enf't, 812 Fed. Appx. 911. (5/4/20).

- Mom, pro se sued the Child Support Agency for allowing the arrears to accrue and failing to prosecute the NCP.
- The Fed. Dist. Court dismissed her case with prejudice for lack of SMJ.
 - She argued the court did have SMJ and even if it didn't then it erred in dismissing her pet. with prejudice.
 - She was trying to make a § 1983 complaint against the CSA.
- We hold broad discretion for who we choose to prosecute. Someone trying to sue us on this issue must show our decisions had a discriminatory effect and a discriminatory intent.



McQueary v. Fl. Child Supp. Enf't, cntd.

- The court had no SMJ because none of our enabling acts give a person a cause of action against the state for failure to prosecute.
 - Also, no violation of § 1983, Fifth or Fourth Amendment do not give rise to a federal question jurisdiction. She didn't allege any of CSA's actions deprived her of her constitutional rights.
 - The State's failure to prosecute didn't have any discriminatory effect or intent.



Harvey v. Harvey, 303 So. 3d 357. (5/11/20).

- FL divorce that includes child support and custody. - The parties then actually moved to LA together and then after a time Mom and Children moved out but stayed in LA and then ultimately, they returned to FL and Dad remained in FL.
- After Mom was back in FL, Dad filed a pet for custody and to modify unregistered interstate support order. The Court granted it – modified the custody order and ordered mom to pay support to dad.
- Mom appealed – LA Courts lack SMJ over custody and support.
- UCCJEA – FL still has SMJ – at the time the petition filed – M & Children in FL.
- UIFSA – FL still has SMJ – M & Children still there.
- LA order modifying custody and PT is null and void.



Eldredge v. Ruch, 149 NE 3d 1200. (6/4/20).

- Father appeals Clinton Co. Indiana's IWO to enforce post-secondary educational expenses.
 - Issues – Whether court had statutory authority to issue an IWO for college expenses and whether the amount of the IWO exceeds the maximum withholding permissible by federal statute.
- NC Divorce with a support order. - Parties agreed to modify it in Clinton Co, IN 2x. Mother filed for College Expenses in IN.



Eldredge v. Ruch, Cntd.

- Father filed to dismiss – Court granted it – capped it at in state tuition cost, ordered child to use scholarships and then parents at 46% M and 54% D. Court did not count VA benefits child got from dad's service as part of the portion she had to pay and didn't require her to maintain full time status.
- Father appealed – argued there was no such obligation in the original support order and under NC law impermissible unless the parties agreed and that court erred in not counting VA benefits or to require full-time status.



Eldridge v. Ruch, Cntd.

- Court found – IN law applied – it was a valid order and court did not err in not requiring her to apply VA benefits to education costs.
 - This case was in 2018 – BC Indiana took CEJ – IN law applied on college exp.
- Court issued an IWO for payment of the expenses – father appealed that.
- Trial court did not abuse its authority and IWO as not a violation of federal withholding limits.



In re Goodpasture, 2020 Kan. App. Unpub. Lexis 380. (6/5/20).

- *Unpublished Case.
- Dad appealed order denying his motion to set aside support order. He claimed that when mom left the state it deprived the courts of KS of continuing jurisdiction over his CSUP obligations.
- KS divorce 1997 including CSUP order. Dad moved to set it aside Dec. 13, 2018!
- Sole issue is when mom moved from the state the court lost jurisdiction to enforce his obligation to pay.
- Clearly Dad is wrong – under UIFSA once the court acquires jurisdiction it retains until another court takes it. No court did.



Spirnak v. Meadows, 355 Ga. App. 857. (6/8/20).

- Paternity action in GA. Mom moved out of state.
- Dad appealed several orders, but one was that he was ordered to prepay his share of interstate travel expenses for the child. He argued this was increasing his child support.
- Court found – that it isn't an increase of child support – it is an unavoidable cost involved with interstate child visitation. Dad was behind on child support and mom was going to have to bear the expense for the visitation, so court did not abuse its discretion in ordered dad to prepay his half of the costs.



In re Real, 2020 Iowa App. Lexis 676. (7/1/20).

- Parties were divorced in Iowa. Dad ordered to pay CSUP to mom. Mom moves to Mexico.
- Youngest child's home state is Mexico – under the UCCJEA then Iowa does not have jurisdiction to address that child's custody.
- Would it follow that the court can't order CSUP? “here intuition and law diverge.”
- Based on UIFSA Iowa can still order support for the child living in a foreign country: if a support order has not been issued and the individual seeking it lives outside of the state.”



Cadigan v. Sullivan, 301 So. 3d 779. (7/21/20).

- M and D divorced in Florida. D custody and M to pay CSUP 2004.
- At some point the parties considered reconciliation, M moved back into D's house in 2010. D assumed M's support obligation by paying it himself and letting it route back into his bank account.
- In 2011, reconciliation failed but they stipulated for mom to pay support directly and dad agree that she was current. They also agreed that she not actually pay him at all as long they shared custody.
- In 2014 Dad petitioned the court In MS to enforce the FI order & signed an affidavit that she was current through June 2014.



Cadigan v. Sullivan, 301 So. 3d 779. (7/21/20).

- Mom filed to modify the order and alleged the IWO was higher than MS law would allow.
- After 4 years of motions finally a trial in 2018 – custody to mom, dad to pay CSUP and based on the parties' prior agreements and the affidavit ordered no arrears from mom to dad.
 - Dad appealed – and argued no jurisdiction to modify the order. – Pretty clear here, the case was registered correctly in MS and the court had jurisdiction to modify.



Chalmers v. Burrough, 58 Kan. App. 2d 531. (7/31/20).

- Dad (Almarion Chalmers) tried to register & modify a FI order in KS where his daughter and her mother lived.
- The KS court did accept his registration and modified the order.
- Mom appealed and asked for dismissal – lack of SMJ – And she Won! Why?
- Mario Chalmers failed to attached certified copies of the underlying Order.
 - He appealed – alleged he substantially complied, and he argued that Mom missed the 20 days to challenge a registration statement.



Chalmers v. Burrough, 58 Kan. App. 2d 531. (7/31/20).

- Holding – A challenge to SMJ can be filed at anytime not barred by the 20 days.
 - Chalmers argued he “substantially” complied and cited an Alabama case – but in that the case the petition filed a certified document only the clerk certified it on the back of a page, so it didn’t appear in the electronic file, but they did file a certified copy. Here Chalmers did not file a certified copy so he can’t have been found to have substantially complied.
- Lastly – Chalmers just argued they could have allowed him to amend, but since his defect precluded the court from even having jurisdiction, the proper course was to dismiss and allow him to refile correctly.



Jordan v. Whitted, 2020 Wash. App. Lexis 2236. (8/3/20).

- M and D divorced in GA 2007. M moved to Washington. D moved to Maryland. M filed for contempt against D in Washington.
 - Trial Court entered contempt and a judgment for back support and found M substantially complied with UIFSA.
 - D filed a federal suit against M for abuse of process. M won a summary judgment argument and was awarded fees since D's case was frivolous.
 - D filed to vacate the Wa case – he didn't appear for the hearing and his motion was dismissed and again Mom was awarded fees and D was found to be a vexatious litigant.
- D argued no CEJ so no SMJ. Court found that GA no longer had CEJ so Washington could exercise SMJ to enforce the order.
- What do we think about this case? There isn't any information in the record of WA having personal jurisdiction over D. He didn't appeal on those grounds, however.
- The court seems to rely on the issue that since it is only enforcing the order and not modifying the order that the provision requiring it to be filed in a state that has jurisdiction over NCP doesn't apply.



In the Interest of LMD, 2020 Tex. App. Lexis 6325. (8/12/20).

- M and D divorced in Bexar County, TX in 2016. Mom had the exclusive right to designate the primary residence of the children as long as it remained in Bexar County.
- In 2017 M filed to expand the geographic restriction to include New York. – the parties ultimately agreed to lift the residency restriction, terminate child support and give dad equal possession of the children if he also moved to NY.
- The parties all moved to NY. D alleged M didn't comply with the custody agreement so he moved back to TX and filed a revocation of consent and agreement. He also filed to modify custody to return the children to Bexar County. The Court denied his motion. Litigation continued and a child custody evaluator conducted an evaluation in 2018.



In the Interest of LMD, cntd.

- In 2019, mother moved to change venue to Clinton County, NY as she and the children had been there since 2017, their teachers, therapists and doctors were all in NY. Father didn't contest the allegations but argued jurisdiction should remain with TX and that venue rules did not allow for a transfer of venue to another state.
- Trial Court determined the case should be transferred to NY and in doing "relinquished jurisdiction to NY as the more convenient forum."
- Under the UCCJEA – the court may decline its jurisdiction at anytime if it determines it is an inconvenient forum and a court of another state is more appropriate. Although mom's motion was a change of venue – the court was correct to treat it as a relinquishment of jurisdiction for a more convenient forum.



In the Interest of LMD, cntd.

- Father also argued that the court didn't allow him to present any evidence as to why NY was an inconvenient forum. But he didn't allege that at the hearing, so the appellate court found he waived this argument.
- Finally – father argued the court abused its discretion in transferring the child support matters to NY in violation of UIFSA.
 - The Court also found he didn't allege that in the trial court, so it was waived.
 - So, what do we think here? It was waived – but had he argued this in the trial court what should the result have been?



Gyger v. Clement, 375 NC 80, 846 SE 2d 496. (8/14/20).

- M and D had a relationship in NC – in 2000, two children born in Geneva, Switzerland. In 2007, M filed a PEP in Geneva, D did not appear and was defaulted. In 2014, Swiss Central Authority sent the order to NC Child Support to register and enforce in 2016. When D got notice he filed to vacate the registration.
- The court vacated the registration finding that the court file had no evidence that D got notice of the Swiss proceedings.



Gyger v. Clement, cntd.

- M filed a motion for relief and attempted to introduce two affidavits and a transcript. One was the affidavit of M and it was excluded because it wasn't notarized, and M wasn't there to be examined. The motion for relief was dismissed and M appealed.
- The Court of Appeals affirmed the trial court and M applied for discretionary review in the NC Supreme Court.
- The Supreme Court reversed that finding – generally in NC affidavits must be notarized, but UIFSA creates a special provision that in UIFSA Cases they are valid if they are made under the penalty perjury.
- The case was reversed and remanded.



In the Matter of: Kevin M v. Alexander C., 2020 NY Misc Lexis 4269. (8/17/20).

- Grandfather v. Father case. Support issued 12/6/19 and a RTSC issued on 1/3/20 and set for trial on 5/11/20.
- Trial was continued due to the Covid-19 Pandemic and Father filed a downward modification request alleging the pandemic decreased his ability to earn income by 100%.
- The court wanted to set a joint hearing and Grandfather's attorney asked for virtual trial and dad objected.
- The Court cited UIFSA in pointing out that Virtual trials are not new and under UIFSA parties are not required to be physically present for child support matters and this includes enforcement.
- Likewise in other family law matters, parties may be deposed or testify by audio-visual means. Dad's lawyer argued he would be prejudiced but cited no actual prejudice. Court granted Virtual trial.
- Unpublished.



Campbell v. Campbell, 2020 NJ Super. Unpub. Lexis 1887. (9/23/20).

- Parties married and divorced in Australia in 1989. D ordered to pay CSUP in Australian Dollars.
- Dad appealed from an arrearage determination pursuant to UIFSA.
- D a NJ resident argued that NJ did not have SMJ to enforce his outstanding CSUP obligation. He also appealed that his motion to abide by Australian Law failed.
- In March 2004, mother petitioned NJ courts to enforce the obligation. Order was registered and father did not appeal.
- In 2006 he filed a motion to vacate the registration.



Campbell v. Campbell, Cntd.

- This was also denied, and the appellate court affirmed that denial.
- Some other hearings but nothing substantive to this issue and father never appealed those.
- In 2019, Australian government submitted a registration statement for the enforcement of defendant's arrears. The judge found Australia had CEJ and found the arrearage based on their certification.
- The mere fact that child was emancipated did not divest NJ of its authority to enforce Australia's order and to the contrary NJ was obligated to continue to enforce the outstanding arrears.
- All other claims by D were dismissed without review.



Danko v. Danko, 2020 Ariz. App. Unpub., Lexis 1065. (10/8/20).

- Caution – This case subject to further appellate review and motions for reconsideration may be pending.
- Parties married in SC. Pima County, AZ issued the divorce decree which includes CSUP, Spousal, custody and atty fees.
- Mother moved to SC before the divorce was finalized with permission of the court. Dad ultimately moved there also.



Danko v. Danko, cntd.

- Mom registered the case in SC for enforcement.
- Father filed in SC to modify the orders including requesting custody of the children.
- SC Court issued an order confirming it now had CEJ over all issues as well as personal jurisdiction over the parties due to registration and residency.
- While litigating in SC, dad reinitiated litigation in AZ and moved to change venue from Pima to Maricopa County.
 - He asserted he was domiciled in Maricopa County.



Danko v. Danko, cntd.

- Mother filed two objection – one on grounds of jurisdiction as all moved to SC and court there took CEJ.
- The Court tried to schedule a UCCJEA call with SC but could not set that up.
- Father alleged his attorneys mistakenly said he'd moved.
- The Court decided that it no longer had home state jurisdiction and even if it did it would no longer be the convenient forum.
- The Court also noted father's inconsistent statements on residency showed his filings in bad faith, dismissed all his motions and ordered him to pay atty fees to mother.



Danko v. Danko, cntd.

- Father appealed.
- The Court found – SC had taken CEJ by finding it was the home state of the children and both mom and dad had relocated there. The AZ court gives full faith and credit to this determination by the SC Court.
- Father filed multiple petitions in the SC court and even averred that he lived there.
- On Support – discussion of UIFSA – case was registered in SC and father filed multiple petitions to modify alleging he lived in SC. Then he filed the petition in AZ later but even at the time he filed this petition he was still a resident of SC. It was appropriate to dismiss that as well.



Serluco v. Taggart, 357 Ga. App. 296. (10/21/20).

- New Jersey Divorce, Registered and modified in GA including the duration.
- Wife appealed – alleged the Court lacked SMJ to modify husband’s alimony obligation under UIFSA and impermissibly modified the duration of the child support order.
 - The Court domesticated the order of UEFJL. It should not have because Dad wanted to modify alimony and child support pursuant to UIFSA. He did register it under UIFSA, but the trial court failed to review the orders under UIFSA.
 - Next – the Trial Court was without authority to change the duration of support to age 20 as the decree stated it would continue until 18 or the child finished a four-year college degree whichever last occurs. The court ruled under UEFJL and didn’t properly consider if under UIFSA duration was allowed to be modified.



In Re: Hamrick, 622 B.R. 659. (10/22/20).

- Bankruptcy Case – Proof Of Claim issue. Florida Settlement agreement not incorporated in the final North Carolina Divorce, US Bankruptcy Court for District of South Carolina.
- Mother filed for child support in Florida and filed to Domesticate the NC Divorce in Florida.
- Father filed for Divorce in Bankruptcy Court in SC. Mother filed a proof of claim.



In Re: Hamrick, cntd.

- Her claim though said it was “in an amount to be determined by the Florida State Court.”
 - This was vague and inconsistent and she didn’t provide proof of how her claim was secured.
 - She was granted a stay to proceed in state court to seek the order establishing support. She was allowed to proceed on her UIFSA petition but any payment of support had to be authorized in accordance with federal code in the bankruptcy court.
 - In terms of child support Dad was current – so there would be no claim, however mom’s petition was retroactive and asking for future support which meant she might have an unliquidated pre-petition claim for the increase in child support and that might be entitled to priority as an unsecured domestic support obligation.
- The court determined that he owed no pre-petition arrears so the plan could be confirmed contingent on reconsideration if there was an increased amount based on her petition.



Brown v. Brown, 2020 Ind. App. Unpub. Lexis 1257. (10/26/20).

- Mother appeals courts decisions finding Illinois solely had jurisdiction over child support under UIFSA.
- Parties married in Illinois. Child born in 10/22/19. Parties had separated 9/14/19. After the separation but before the child was born, mother got an IN license and changed her address to Zionsville, IN.
- Mother never told father she moved to Indiana. In fact, on day before child was born, father sent mother flowers to her workplace in Illinois and although she acknowledged getting them and sent father a picture of them on her desk, she did not inform him she was actually in Indiana when the picture was taken, and it was sent to her from her boss.
- Child was born on 10/22/19 in Indiana but before the birth father was not aware the child would be born in Indiana.
- A few days before the birth father asked where the child would be born and mother told him CDH in Illinois even though she knew that was a lie.



Brown v. Brown, cntd.

- After the child was born, Mother moved in with her parents for several weeks in Illinois and father was able to see the child several times with the last time being 11/17/19.
- On November 25, 2019 mother filed a petition for custody, parenting time and child support in Indiana in which she alleged both she and the child were residents of Indiana and father was a resident of Illinois.
- On December 11, 2019 father filed a petition for dissolution in Illinois and requested the trial court in Illinois determine equal parenting time and decision making and for child support to be determined in Illinois. On December 13, 2019 he filed a notice of interstate custody dispute and motion to dismiss mother's petition in Indiana and asserted they lacked subject matter and personal jurisdiction.



Brown v. Brown, cntd.

- Father alleged – he and mother were Illinois residents, and that Indiana is not the child's home state because mother's primary residence was Illinois, she had resided in Illinois throughout her pregnancy, her employment was in Illinois, she returned to Illinois for several weeks after the child was born and she had been deceptive regarding her whereabouts and intentions. He also asserted they lacked SMJ for child support pursuant to UIFSA.
- Mom alleged Indiana for her and child and submitted her DL, USPS change of address form, credit card bill, library card and paystubs.
- Father's response added that her property, the marital home is in Illinois and she had been deceptive and again that Indiana does not have personal jurisdiction over him to decide child support.



Brown v. Brown, cntd.

- IN court ruled on custody and parenting time but took child support under advisement.
- Father filed under UCCJEA to transfer the case to Illinois alleging Indiana was an inconvenient forum and Illinois is more proper forum for all the reasons listed previously.
- IN court did a telephonic conference with the IL court then issued an order that IN did not have jurisdiction for child support.
- Later in April 2020, the court also found IL would be the more convenient forum for all issues.



Brown v. Brown, cntd.

- On Appeal from Mother – the court reviewed that the In trial court had thoroughly reviewed every element of the UCCJEA including finding that there was no evidence of domestic violence in rendering its ruling. Mother’s appeal is basically asking to reweigh the evidence which the court will not do.
- On CSUP Appeal – Under UIFSA Indiana did not have jurisdiction over father for child support and no matter how many motions he filed, they each alleged the court had no personal jurisdiction over him and his attorney only filed a limited appearance to oppose jurisdiction.



People ex rel. G.C.M.M., 2020 COA 152. (10/29/2020).

- Child conceived in Colorado but born in New Hampshire. Father filed PEP prior to the child's birth in Colorado.
- Child never lived in Colorado. Look at interplay between the UPA and the UCCJEA.
- Father appealed court's decision not to extend jurisdiction over custody.
- Paternity proceeding may be brought prior to birth under the UPA, however in order to make a custody determination once the child is born the court must have jurisdiction to do so under the UCCJEA.
- Mother filed a custody action in NH which was put on hold pending outcome in CO.



People ex rel. G.C.M.M.,cntd.

- The Juvenile Magistrate initially decided that they could determine paternity and custody.
- Mother sought review by the Juvenile Judge. The Judge held the magistrate correctly decided that it had jurisdiction to determine paternity but erred in holding that Colorado had custody to make a child-custody determination. Required the CO court to confer with the NH court on child custody in accordance with the UCCJEA.
 - The UPA doesn't restrain a pregnant mother from leaving the state.
- Father Appealed. - Judgment of the Juvenile Judge was affirmed.



People ex rel. Dep't of Healthcare & Family Servs.
V. Chakon, 2020 IL App (2d) 190918. (11/4/20).

- The State appealed a judgment finding that Dad was the father and ordering him to pay child support but erred in refusing to follow the presumptive guidelines of the Illinois Marriage Act on what percentage of Dad's net income to order for child support and that the amount of the award was an abuse of discretion.
- State filed the action. Father moved to dismiss under UIFSA alleging that state assistance is available to a resident of a foreign country but as mother and child lived in the Cayman Islands they are not foreign residents. The State responded that they did not file under that act and the motion to dismiss was denied.



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People ex rel. Dep't of Healthcare & Family Servs. V. Chakon, cntd.

- The trial Judge took it upon himself to speculate that the Illinois legislature must be only considering the cost of raising a child in Illinois or the US and not the Cayman Islands. He even won't so far as to posit that he hears all the time where you know it only costs \$11 a day to raise a child in "some of these foreign countries."
- The State pointed out that Dad didn't plead any of this or provide proof of any difference in cost of living but the court decided this is mom's burden to show the cost of raising a child in the Cayman Islands.
- The State responded that the burden is on the person seeking to deviate off the guidelines as to why.
- The Court then even deviated lower than father asked for "based upon general knowledge, that the cost of living is lower in the Caribbean. I mean, I don't know how much;"



People ex rel. Dep't of Healthcare & Family Servs. V. Chakon, cntd.

- On appeal: The court violated the Marriage Act but supposing what the legislature might have meant – the plain language is the intent unless it is ambiguous. The Marriage Act clearly says, “there is a rebuttable presumption...” Therefore, the party seeking deviation must provide evidence to deviate.
- “You hear all the time” is not a compelling reason to deviate. The court abused its discretion in awarding less than the guideline amount.
- The paternity judgment stood but the support order was vacated and remanded for proper calculation.



Benjamin M. v. Jeri S., 307 Neb. 733. (11/6/20).

- Children born in 2010 and 2012. Dad signed PAF for both children.
- In 2019 he filed a PEP. Mother filed to have it dismissed based on SOL.
- Father responded with an amended petition for custody, child support and PT and pled that the 2 PAFs were executed thus already establishing paternity. The court offered him time to submit them.
- The court did grant the dismissal arguing that dad knew since the time of birth he was the father but did nothing to legally assert his rights.
- Father appealed.



Benjamin M. v. Jeri S., cntd.

- On appeal – Dad argues the court erred in not giving legal effect to the PAF. Mom alleges that a paternity action brought after 4 years is barred by the SOL and the PAFs have no affect on this SOL.
- The Court pointed out that the SOL statute contemplates that an establishment of paternity by PAF is equivalent to a judicial proceeding. Accordingly, he is already the legal father.
- The 4-year SOL does not bar an action for custody and support for a father who executed PAFs within the 4-year time period. To rule otherwise would deprive him of his rights under the PAF.
- Reversed and remanded to treat the case as an action to determine custody and support.



Gooss v. Gooss, 2020 ND 233. (11/19/20).

- Parties divorced in Nevada in 2004. In 2010 Mom got permission from the court to relocate to MT provided mom would pay all travel expenses for the child. In 2013 the support was modified again including that going forward payment of travel expenses would constitute child support. Dad later moved to ND and Mom moved to SD.
- SD IV-D requested ND IV-D assistance to modify child support. ND requested a modification and for Dad to pay \$709 per month.
- Dad filed a countermotion to dismiss and alleged the jurisdiction to modify rested with Nevada. He argued travel expenses were part of the parenting plan and ND lacked jurisdiction to modify the child custody order under the UCCJEA. He also challenged the calculation, argued imposing CSUP was inequitable and claimed a deviation for travel expenses was necessary.



Gooss v. Gooss, cntd.

- The Court modified CSUP finding it had jurisdiction under UIFSA and required the State to update the calculations based on information received during the hearing. The court granted Dad a downward deviation based on travel expenses for visits he actually exercised.
- Dad appealed on jurisdiction to modify and that travel expenses were part of the custody order.
- The Court found – Mom, Dad and Child no longer live in Nevada. Dad lives in ND, Mom and child live in SD and mom a nonresident of ND sought modification of the support order. Lastly, Dad is subject to the jurisdiction of ND as he is a resident.
- Travel Expenses were part of child support as the Nevada court said travel expenses would constitute child support going forward. Also the UCCJEA does not contemplate any financial compensation between parties. It was correct to treat these as child support and modifiable.
- It wasn't inequitable when the court heard evidence and made a deviation based on travel expenses to the child support order.
- Lastly, it wasn't an abuse of discretion for the court to use the actual visits exercised 4 rather than the ordered amount 7 because the evidence was clear that father didn't exercise those other visits.



In re Marriage of Sawyer, 57 Cal. App. 5th 724. (11/20/20).

- In 2001 Minn. Court determined Father owed arrears of \$89,582 to mother, father was by then living in CA. In 2005, this order was registered for enforcement purposes in CA.
- In 2018, the CA court stayed enforcement of a portion of the arrears because the children lived with dad intermittently between 1993 and 2001. The court found the remainder enforceable. Both Father and the IV-D agency appealed.
- The IV-D agency argued the CA court lacked authority under UIFSA to stay the arrears owed because the Minn. Order was registered in 2005 and father didn't timely object to it.
- Father appealed that any of the arrears was still enforceable.



In re Marriage of Sawyer, cntd.

- Procedural history – in 2001 Minn. Held a hearing and entered the arrears and gave Dad 60 days to object. He didn't.
- The order was registered in CA in 2005 with D having 25 days to object. He didn't.
- He filed multiple motions later in Minn. Trying to have the arrears removed. In 2009 Minn. Court found he was trying to relitigate the 2001 order that he didn't appeal.
- He tried again in 2014 in CA and the court stated it didn't believe CA had SMJ over that issue.
- In 2018, Minn. sent a new order to register with the arrears now \$139,990.21. Father did object to this and requested a hearing.



In re Marriage of Sawyer, cntd.

- After hearing, the same judge who wouldn't do it in 2014 decided to stay \$28,890 of the arrears under "equitable ground during periods of time father had sole custody of children" and that "California courts are free to apply its own law regarding the methods by which the judgment is to be enforced."
- Finding – it was already registered – Confirming of a registered order, by law or after notice and hearing precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. It was an error to stay any of the arrearage.
- CA caselaw would allow a "setoff" between conflicting interstate orders but here there is no conflicting order to be set off so the stay of that part of the arrearage violates CA's enactment of UIFSA.



Hedges v. Hedges, 2020 Wash. App. Lexis 3144. (12/1/20).

- A Polish Court ordered Father to pay support for his two adult children who were found to be disabled, 13 years after they reached the age of majority. The Polish Court then requested enforcement from Washington State IV-D.
- An ALJ ruled that the Polish order was enforceable and ordered father to pay CSUP as ordered. Father petitioned for review and superior court reversed the ALJ's decision, ordering that the Polish order not be registered or enforced by IV-D.
- Father argues in the appeal that his due process rights were violated b/c he did not get notice or have an opportunity to participate in the Polish Court and that even though his attorney appealed the Polish Court's order it was still not meaningful because they didn't have an opportunity to participate in the evidentiary proceeding.



Hedges v. Hedges, cntd.

- M and D were divorced twice. They had 2 children. Second divorce was in NY 1998 and the first dissolution from AZ was incorporated in the NY divorce. Father was to pay mother until the 2 kids reached the age of majority. Father continued to pay until the kids were 21 in 04 and 05. After they became adults and CSUP term'd mom and the kids moved to Poland.
- The Polish court held a trial without notice to father. It is undisputed that the court was required to serve him and did not. He appealed it as soon as he got notice as a violation of his rights and that the kids aren't even disabled, but the Polish appellate court upheld the order.



Hedges v. Hedges, cntd.

- The ALJ found that even though dad did not get notice of the original evidentiary hearing he availed himself of the Polish Court when he hired an attorney to contest it and therefore had an opportunity to be heard. Based solely on the administrative record the Superior Court determined the ALJ misapplied the law, and the Polish Order could not be enforced. Mother appeals this decision.
- IV-D never produced proof that Father was served or had notice for the original hearing. The ALJ found it wasn't manifestly against public policy because they did notify after and he hired an attorney to appeal it.
- However, because he didn't receive prehearing notice and didn't have an opportunity to defend himself in trial court the court held that he didn't receive minimum due process and the polish proceedings were manifestly incompatible with public policy. This was affirmed.



Ladwig v. Graf, 2020 Tex. App. Lexis 9350. (12/2/20).

- Minn. Divorce. CSUP and Spousal support. Mom filed to register the order for enforcement in Texas pursuant to UIFSA.
- After getting notice of the registration Father filed Pro Se Motion to stay but the court found it was not timely because he didn't request a hearing and registered the order and awarded atty fees.
- Father got an atty who filed for a new trial and argued the registration was barred by Minnesota and Texas SOLs and the atty fees violated his client's constitutional rights. He also filed to recuse the judge based on a campaign contribution Mom's atty made to him.
- Court denied the new trial, the recusal and awarded mom's atty fees and conditional appellate atty fees as sanctions against dad's atty.



Ladwig v. Graf, Cntd.

- A motion to stay is not a request for hearing under UIFSA. The plain language tells you what you must do. Since he failed to timely request a hearing the court was correct to deny him.
- The Texas and Minn. SOL argument is also time barred because those are tied to filing a request for hearing.
- Lastly, the atty fees – it is well known in Texas law that mere campaign contributions are not grounds for recusals, and he didn't cite any Texas authority to support his motion – he cited Utah Law.
- Lawyers – know your law before you file that big recusal motion and certainly don't use another state's!



In the Matter of: QuiAnna B., Petitioner, -against-
Christopher B., Respondent., 2021 NY Misc. Lexis 7.
(1/6/21) unpublished.

- Child filed a petition in NY for her father to contribute to her support.
- Child said she is 18 and living on her own in NY. Dad told court she has lived in PA all her life. He and her mother have 1 other child together, a son, and he lives with his father. Prior to child going to NY she was living with him too, and he disputed she moved on her own to NY but was likely with her mother. He provided the court an order from 6/9/20 showing the child was emancipated.
- In PA support runs until 18 and the court emancipated her when she turned 18. Dad still lives there. PA hasn't lost jurisdiction under UIFSA.
- Also under NY FFCSOA law they must give credit to that PA emancipation. The Court *sua sponte* dismissed the petition.



Vaughn v. Vaughn, 308 Ore. App. 619. (1/21/21).

- Daughter's petition for support from her father a Nebraska resident was dismissed for lack of personal jurisdiction over him.
- Daughter born in 93, adopted by father in 96 and the family lived as a family in Oregon until 2000 when mother and father divorced. He remained in Oregon and paid support until 2002 when he moved to Nebraska.
- He continued to make payments until 2014 when daughter no longer qualified as a "child attending school" in Oregon.
- At that time, citing daughter's mental health disabilities mother filed to modify the divorce judgment and obtain support for daughter as an adult. The trial court dismissed that case, but the appellate court reversed.
- The reason – personal jurisdiction continues for a motion that is captioned in relation to the dissolution judgment.



Vaughn v. Vaughn, cntd.

- The family comes before the court again now.
- Daughter, an adult, appeals a judgment dismissing her petition for support from father, a resident of Nebraska, after the court granted his motion to dismiss for lack of personal jurisdiction.
- The historical facts are undisputed as stated above. Daughter pled UIFSA statutes for jurisdiction and while the court found that she had established parts of it, the court used the commentary to not have an overly literal construction and found dad didn't have sufficient minimum contacts to make it fair to require him to defend the case in Oregon.
- Separately daughter also argued under ORCP 4 L "catchall provision" provides proper personal jurisdiction.



Vaughn v. Vaughn, cntd.

- Under UIFSA and ORCP personal jurisdiction was authorized in this case. The family lived in Oregon, father unilaterally chose to leave the state. This doesn't diminish the long history of significant and meaningful contacts with the state while he lived there with his family which including raising his daughter.
- Reversed and remanded and no doubt will likely return.



Baron v. McGinty, 2021 VT 6. (2/5/21).

- Dad appeals decision declining to register and take CEJ to modify a Virginia support order.
- Parties were married in Utah, Divorced in Virginia. Mom given sole legal and physical custody of the kids and ordered Dad to pay CSUP.
- At the time Dad was incarcerated in VA and mom and kids were living in TX. A year later mom asked for TX to register and enforce the order and they did.
- Finally, mom and the kids moved to VT and Dad filed a petition to register and modify the VA order in VT. Mom objected and said she was planning on returning to TX so improper to register in VT. Court ruled for mom saying they could decline jurisdiction because mom never intended to remain in the state.



Baron v. McGinty, cntd.

- Dad filed a TR 60 alleging VA made a clerical mistake in using his pre-incarceration income.
 - The appellate court affirmed denial of this issue on the grounds that UIFSA allows for a modification but does not allow for a TR 60 motion to attack the original order.
- Dad argued the court should have modified.
 - On this the appellate court agreed. The Court can't decline to exercise jurisdiction based on a representation of something that might happen in the future. When the requirements of UIFSA are met the court can't decline jurisdiction.



Halterman v. Halterman, 2021-NCCOA-38. (3/2/21).

- Mother's petition to register support pursuant to UIFSA was in essence merely a petition to register a custody order under UCCJEA.
- Father filed to dismiss it.
- Her petition did not request registration and enforcement or contain a sworn statement showing the amount of any arrearage and the trial court did not err in dismissing the claim for lack of subject matter jurisdiction and failure to state a claim. Even if the court were to treat it as a UIFSA petition, it didn't substantially comply with the law.
- This was w/o prejudice so if se files correctly she could still attempt registration.



FY v JL, 2021 NJ Super. Unpub. Lexis 367. (3/5/21).

- All names are made up in this case.
- Parties married and Divorced in China. Divorce gave mother custody of child and all of the marital assets totaling approximately \$3 million US. In giving her sole custody and all the assets the divorce also obligated her to provide solely for the child.
- Dad remarried and moved to NJ with his new wife and children. Mom stayed in China.
- The child came to live with them a year later but at some point, Dad sent the child home and didn't want the child back.
- Mom and child moved to NJ a year later and mom tried to get Dad to take the child back and he refused and refused to provide any additional support.



FY v JL, cntd.

- Mom did not try to get relief in China – instead, she filed an action for support and custody of the child in a NJ court. Dad responded that she was in breach of the Divorce order since she is solely responsible for the child.
- Trial judged dismissed w/o prejudice and closely analyzed UIFSA and UCCJEA. Mom appealed. The court initially pointed out custody doesn't matter b/c she already has an order giving her that, so the only issue is child support.
- Our courts in UIFSA could register and take CEJ of a foreign judgment but only if the criteria are met.
- The court found the child to be a resident of NJ by living at father's house, but mother was only on a visitor's visa and thus not a resident of NJ making her still a resident of China.
- Finally, she has not shown that the foreign tribunal has refused or is unable to act. She never tried.



State ex rel. Moody v. Roker, 2021 Tenn. App. Lexis 87. (3/9/21).

- UIFSA filed in TN where father is incarcerated at Mother's request from the state of GA.
- Father filed numerous pre-trial motions and the failed to rule on them prior to the hearing and failed to comply TN civil procedure so the Order was vacated on those grounds and remanded for a new trial. On the UIFSA issues though, those were good.
- SMJ – Dad argued that since there wasn't an order from GA to enforce that under UIFSA TN court doesn't have authority yet. UIFSA gives SMJ to establish as well, which turns on personal jurisdiction over the parties.



State ex rel. Moody v. Roker, cntd.

- Personal Jurisdiction – Dad argued the TN court didn't have PJ over mother. The TN courts have PJ over mother for the UIFSA action as she has availed herself of the program and filed her UIFSA petition in TN.
- Father raised several substantive issues as well as that his pre-trial motions were only denied after the court had already ruled. While some of his issues may be moot or without merit, by failing to rule on them pre-trial father wasn't allowed the opportunity to even participate in the hearing on the UIFSA Petition.
- For these reasons the order was vacated and remanded for a new trial.



Matter of Harry v. Singh, 2021 NY App. Div. Lexis 2080. (3/31/21).

- Dad commenced a child custody proceeding in Ontario Court of Justice of the Nation of Canada. Court awarded custody to the maternal Grandparents and ordered father to pay CSUP in 2006.
- The Ontario order was registered in NY pursuant to UIFSA in 2017.
- Dad commenced this action to vacate the registration. The court found father had failed to establish any defense to registration.
- Because father didn't establish any of the enumerated reasons to deny registration the court is required to register the order. The court properly denied his request – affirmed.



B v MP, 2021 NJ Super. Unpub Lexis 578. (4/7/21).

- Parties have one child born in NJ. Dad was living in NJ at the time but later moved to Arkansas. In 2010 he filed this action wanting sole legal and physical custody and to remove the child to Arkansas. The court ordered joint legal and physical. The parties did a consent order agreeing to joint legal with mother being the primary residence for the child.
- Numerous times father tried to get full custody and remove to Arkansas and they were always denied.
- During one hearing the court again confirmed joint custody and also entered a CSUP order.
- After the failed to return the child to NJ after parenting time his PT was suspended.
- Father then filed to terminate the CSUP order and claimed the order entering it was invalid b/c it violated the consent order, he was denied a plenary hearing, it was entered without consent and violated state and federal laws.



B v MP, cntd.

- As there was numerous litigation, this issue had already been decided once before by the court. In their ruling they agreed with an older order that they do have personal jurisdiction over father to enter CSUP orders under UIFSA.
- While no longer in NJ, the case began when he was physically present in NJ, he had availed himself of the court, he knew mom was a New Jersey resident and these were substantial contacts in NJ to exercise PJ.
- UIFSA allows PJ over a non-resident if certain factors are met, and the court addressed this. He was physically present and before the court before, he and mother lived together in NJ for a year, the child was born there and the parties were seeing each other in NJ when the child was conceived, and lastly, he stayed in NJ for a time after the parties separated and filed motions for custody, visitation and removal.



Statutory Updates and Legislative Trends



Pending Federal Legislation

- **Providing Adequate Resources to Enhance Needed Time with Sons and Daughters Act (PARENTS ACT). S. 3325:** Passed with unanimous consent in the Senate in 2020. This is intended to make it easier for states to use incentive funds to establish voluntary parenting time agreements without a waiver from OCSE. These waivers are consistently approved so this just removes a step from that process. Sent to the House on 12/9/20.
- **Child Support Works Act. S. 4998:** This is a draft bill to allow states to choose an option to get 66% reimbursement on expenditures for mandatory work programs for non-custodial parents who are delinquent on their child support obligations. Referred to Committee on Finance 12/10/20.



State Trends and New Laws Affecting CSUP

- Trends We are Seeing:
 - Driver's License Issues
 - Income Tax Refunds
 - Incarcerated Parents
 - Independent Contractors



- Currently there are 381 different bills pending across the country in areas that affect child support and family law.
 - They represent action in 33 States.
 - 23 states and 88 bills affect enforcement alone!
 - Today we are just going to look at some of those.



Alabama

- AL H 129 – Driver’s License Suspension – Would eliminate suspension of driver’s license in certain circumstances, provides that Department of Human Resources may only seek suspension for failure to pay child support to the extent required by federal law. Pending.



Connecticut

- CT H 5331 – Child Support Enforcement Task Force to study the cause of a significant increase in uncollected child support for children and families in the state. Pending.
- CT H 6282 – Requires employers to report independent contractors to the state director of new hires and expands access to information to aid in the creation and enforcement of support orders. Pending.



Hawaii

- HI S 630: Establishes that a child support judgment is enforceable until paid in full. We saw something similar as HI S 574 in 2020. Passed by House and Senate on 4/27/21, Enrolled to Governor on 4/29/21.
- HI S 1373: Prohibits a creditor from initiating or continuing any action to garnish wages from a debtor during the period of an emergency proclamation in relation to the coronavirus disease 2019 pandemic and some time thereafter. Limits withholding to 10% of debtor's wages for 6 months thereafter. Provides an exemption for past and present due child support. Pending.



Idaho

- ID H 96: Creates a specific family law license suspension temporary restricted license. This would be for someone who would be valid other than a family law license suspension. In 2020 this was first introduced as ID H 433. Signed by the Governor on 3/19/21.



Iowa

- IA S 305: Requires child support cooperation for SNAP eligibility. Pending.
- IA SSB 1109: Requires child support cooperation for SNAP eligibility. Pending.
- IA H 2006: Removes driver's license from the license suspension provisions for CSUP. Pending.
- IA H 2010: Would repeal the code section allowing for CSUP license suspensions. Pending.



Indiana

- IN S 326 – Child Support Obligation of an Incarcerated Parent – In the absence of other changing circumstances, incarceration is not presumed to constitute a change in circumstances so substantial and continuing as to make the prior order unreasonable and specifies that the burden of proving it does is on the moving party to show that it is. Pending.
- IN S 393 – Tax Refund Intercepts for Child Support Arrearage – Provides that an individual is not subject to state tax offset if the arrears accrued while they were the noncustodial parent and now, they are the custodial parent. Pending.
- IN H 1199 – Driver's License Suspension – Provides several things but among them enhanced reinstatement options for a child support suspension. Signed by the governor on 4/20/21.



Kentucky

- KY H 402 – Felony Non-Support – They call it Flagrant Non-Support – increased the threshold amount for the charge from \$1,000 to \$2,500. Signed by the Governor on 3/19/21.



Maryland

- MD H 343: Felony Non-Support sentences shall run concurrently. Pending. Was MD H 148 in 2020.
- MD H 580: Driver's License Suspension – Repeals the process under which the Child Support Administration is authorized to report arrears to the Motor Vehicle Administration for the purposes of suspending heir license and repeals the process under which the MVA is required to suspend the person's license. Pending.



Michigan

- MI S 209: Removes a requirement that in a CSUP case a minimum bond of \$500 cash must be posted. Failed. This had been pending since 2019 and was mentioned at other sessions.
- MI H 4357: Effectively the same as above. Failed.
- MI S 1009: Jail Crowding – Would have allowed the sheriff to petition to the Circuit Court to reduce bonds to deal with overcrowding in light of pandemic. Failed.
- MI S 1090: Incarcerated Parent – Provides for abatement of support when incarcerated. Enacted.
 - MI S 1091: Related – Makes changes to Fried of the Court act to provide for these abatements. Requires one or both parents to provide health insurance still.
- MI H 5846: License Suspension – Eliminates license suspension or revocation as penalty for certain violations. Repeals SOS ability to automatically suspend for child support. MI H 5850 Places limits on child support suspension.



Mississippi

- MS H 49: Child Support Enforcement Contract - Provides that after a certain date the State will no longer provide funds to pay for the existing contract between DHS and any private entity operating child support collection and enforcement offices. The department shall provide all the functions previously provided by the private entity. Failed. This was also tried in 2020. Someone in MS really doesn't like that contract.
- MS H 65: Child Care and Development Fund – Prohibits DHS or any lead agency from requiring CCDF participants to cooperate with child support. Failed.



Missouri

- MO H 199: Enforcement Seizure – Allows a court to direct forfeited cash bonds in criminal nonsupport cases to the Family Support Center for payment of child support arrearages.
- MO S 317: License Suspension – Allows obligor an ability to have a show cause hearing on why license suspension isn't appropriate. Requires written findings of fact and conclusions of law. Pending.
- MO H 451: SNAP - Requires IV-D Cooperation in order to qualify for SNAP. Pending. Similar to MO H 1597 from 2020.



New Jersey

- NJ S 447: Refund or homestead rebate or credit shall first be applied to child support debt before being credited to delinquent local property taxes. Pending.
- NJ S 522: Removes any time limitation for collecting a child support debt when that debt is due to public assistance. Pending.
- NJ A 800: Provides that driver's license can't be suspended for child support unless the obligor is given opportunity for a hearing. Pending.
 - Related: NJ A 3211 – Removes Driver's License suspension for child support when a warrant is issued. Pending.
- NJ S 1060: Child Support as a judgment lien only once it equals or exceeds one month in arrears. Pending.
- NJ S 1164: Reentry – Requires County Sheriff provide inmates with reentry assistance including information about child support and establishing paternity. Pending.



New Jersey part 2

- NJ A 2107: Emancipation – CSUP terminates at 19 by operation of law unless there is a preexisting agreement, there is already an order for a different age not to exceed 23, disability, request for extension, or out of home placement. Pending.
- NJ A 2299: Incarcerated – Suspends CSUP payments by operation of law for incarcerated obligor. Pending.
 - Related – NJ A 3262.
- NJ A 3035: Estates – Provides a priority for child support judgments in an insolvent estate scenario. Pending.
- NJ A 3757: IWO – Requires procedures to make sure IWO is be accurate and to promptly refund any overpayment. Pending.
- NJ A 4757: Pensions – Allows an exemption for child support from State Law prohibiting garnishment of pensions. Pending.



New York

- NY S 346: Enforcement – Includes Independent Contractors in State Directory of New Hires. Pending – Passed Senate on 3/25/21.
 - Related NY A 1242: Enforcement – Similar Language.
- NY S 564: Enforcement – Requires custody orders to state whether law enforcement is authorized to remove a child to comply or enforce said order. Pending.
 - Related NY S 1179: Enforcement - Similar language.



Puerto Rico

- PR S 189: Enforcement – PR S 598: Enforcement – PR H 745: Enforcement – PR H 868: Enforcement – These bills all address allowing department of corrections to enter into collaborative agreements to allow offenders to provide jobs including picking coffee or other agricultural activities, maintenance of schools, and ornamental construction, among others.
- PR H 499: Driver's License – Exempt driver's license as an enforcement tool as it is contrary to the best interests of workers and for gainful employment.



Virginia

- VA S 429: Relates to IWOs and independent contractors. Clarifies that income earned by independent contractors may be withheld for payment of child support. Enacted.
- VA S 502: Requires the department to enter into an agreement with obligee regarding disbursement and disbursement dates. Also requires State to pay obligee the amount that if, support isn't paid, the State will pay obligee the amount that would have been paid. State to use any enforcement tools to recover the funds paid to obligee without the receipt from obligor. Failed.
- VA H 5068: Enforcement – Exempts emergency relief payments from garnishment but not child support. Enacted.



Resource for State Bills Research

- National Conference of State Legislatures
- <http://www.ncsl.org/research/human-services/child-support-and-family-law-database.aspx>



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