

Intergovernmental Case Law Update

September 27, 2023

**2023
Intergovernmental
Training Event**

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This mid-year session will survey recent appellate decisions from around the country related to intergovernmental case law. Emphasis will be given to one state's enforcement and modification of another state's order including orders issued/enforced by different countries. Written materials will provide a comprehensive review of related appellate decisions issued within the past year.

Continuing Exclusive Jurisdiction

September 27, 2023

Salim v. Freeman, 204 A.D. 3d 677. NY.

- M and D parents of child born in Commonwealth of VA in 2007.
- In September 2020, father commenced this case in NY pursuant to UIFSA.
- Temp. Ord. for M to pay D issued in NY.
- M objected for lack of jurisdiction due to a prior support order in Commonwealth of VA.
- Support Magistrate granted her motion, dismissed the petition and vacated the temporary support order.
- Father objected and the Family Court granted his objection and reinstated the temporary order.
- Mother now appeals.

Salim v. Freeman, 204 A.D. 3d 677. NY.

- On appeal, the record is clear, a support order was previously awarded to mother in an order issued by a court within the Commonwealth of VA prior to dad's filing in NY.
- Father tried to argue that his petition was in the nature of a "modification".
- Father continues to reside in VA so VA retains continuing exclusive jurisdiction over child support and New York does not have jurisdiction to modify it.
- Reversed, under UIFSA, NY Family Court should have dismissed father's petition.

Sufficiency of a General Testimony

September 27, 2023

In Re L.A.F., 14-21-00046-CV (Tex. App.)

- Memorandum Opinion but good case law discussion.
- On 9/8/15, the OAG filed a UIFSA Petition seeking retroactive child support and attached the federal general testimony form.
- In October 2015, Dad was served with the suit. In December he filed an answer asking for the court to deny OAG's petition.
- In August 2016, Dad filed a counter-petition seeking to adjudicate parentage and that it would be in the child's best interest for him to be joint managing conservator with the exclusive right to designate primary residence of the child.
- In November 2020, the court heard OAG's petition and Dad's counter-petition.
- OAG asked for retroactive support totaling \$98K and that CSUP would be terminated as of 5/2020 when the child graduated high school.

In Re L.A.F., 14-21-00046-CV (Tex. App.)

- D testified that he is the biological father, but he only learned that in 2015 after he got the results of a genetic test.
- He acknowledged that he, the mother and child lived together in 2008 and 2009 until one day, the mother and child disappeared.
- He didn't believe he was the child's father because he didn't trust anything mother said and "everything that came out of her mouth was a lie."
- After finding out he was the father he tried to reach an agreement with mother to receive parental rights in exchange for child support.
- He has a master's degree in toxicology but lost his job when the company was sold and now only lives on \$1,063 per month he gets as dividend income and the support arrears would create an financial hardship.

In Re L.A.F., 14-21-00046-CV (Tex. App.)

- When questioned he admitted that he has 3 bank accounts, a 401K and a Roth IRA but that he doesn't know how much money he has because the value is always fluctuating.
- He also has 8 rental properties and in the three years before the hearing he sold two others, one for \$180K and one for \$160K.
- At the close of the hearing, the trial court awarded the \$98K in CSUP arrears and ordered it to be paid back in 2 years at \$4K/Mo. Dad appealed.

In Re L.A.F., 14-21-00046-CV (Tex. App.)

- Dad alleged the pleadings were insufficient as they didn't provide his full biographical information and failed to provide the child's SSN.
- In Tx any claimed defect in the pleadings must be filed in writing before the judgment is ordered or is deemed waived. As he only orally moved to do so, it is waived on appeal.
- Dad argued that no witness, tangible evidence or affidavit was presented to support the award of retroactive support. Mom didn't testify, OAG filed a general testimony. UIFSA general testimony is sufficient.
- In addition to this evidence, Tx court will look at whether the mother made previous attempts to notify the obligor of his paternity and whether the obligor had knowledge of probable paternity
- Based on his 8 rental properties (with 7 currently rented), 401K & Roth IRA accounts and his toxicology degree it is not an abuse of discretion to find that the CSUP would not impose an undue financial burden.
- Trial Court Affirmed.

Clarification or Modification

September 27, 2023

In Re D.C., S.C., and S.C., 02-21-00051-CV (Tex. App.)

- E.C. (Father) and S.H. (Mother) were divorced in NV 11/12/2004. They have 3 children. The divorce included child support.
- Support was set \$610/mo./child for a total of \$1830. Dad was given credit for health insurance and the cost to visit with the children bringing the actual order down to \$1,500/mo. until they turned 18 or if in high school, up to 19.
- 1 child turned 18 a month after the decree was signed and the other 2 in 2020.

In Re D.C., S.C., and S.C., 02-21-00051-CV (Tex. App.)

- M and children are now living in FL. D in TX.
- FL sent an UIFSA request to TX and TX OAG filed a notification of foreign support order under UIFSA and a day later a Motion for Clarification and Suit for Modification of Support Order (UIFSA).
- OAG office told the court that mom filed to modify in FL but FL determined it could not proceed so they sent the matter to TX.
- The court entered an order that father was entitled to a reduction in support down to \$1,000 beginning 1/1/05 when 1 child emancipated and prospectively modified the support for the 2 children.

In Re D.C., S.C., and S.C., 02-21-00051-CV (Tex. App.)

- However, the district judge determined there should be no decrease and continued CSUP at \$1,500 until 2018 when the modification happened.
- Father appealed – clarification is only authorized if the prior decree is unenforceable, erred by making it retroactive which the TX family code prohibits and the OAG improperly manipulated the trial court into not following the law.
- D's retroactive argument fails as that provision only applies to bar a clarification order for contempt to be retroactive. He was never in jeopardy of being in contempt, this provision exists so that a court couldn't retroactively clarify the order and then find someone in contempt for failing to follow the clarified order.
- Father's argument that the OAG manipulated the court (by persuading the court to their point of view) but he cites no authority for this and there is nothing to review.

In Re D.C., S.C., and S.C., 02-21-00051-CV (Tex. App.)

- Lastly, father contends the NV decree is not ambiguous so it didn't need to be clarified.
- Agree with the OAG and lower court, the NV decree is ambiguous. It doesn't provide an automatic step-down instead it stated each time a child "emancipates the support will be adjusted accordingly pursuant to NRS 125B.070.
- Have to look at NV law to determine how to read this order, which states that modifications can't be done retroactively.

In Re D.C., S.C., and S.C., 02-21-00051-CV (Tex. App.)

- NV draws a distinction between modifications and clarifications in that a modification alters the parties' rights whereas a clarification defines the rights that already existed.
- Courts can't use clarifications to do substantive changes, those must use a modification.
- In NV support is only modified by a modification and after a payment accrues it cannot thereafter be modified. If a child meets the definition of emancipation that is the basis for a modification. (Khaldy (NV), father's support was not automatically reduced when child got married and his remedy was to file a modification.)
- To comply with the NV decree, father had to pay \$1,500 per month until the court modified that order. As the district judge correctly noted, a court did not order a modification until 10/5/18 and once the amounts accrued they couldn't be retroactively modified or voided.

Authority to Enforce

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Qualles v. Aaron, A-0766-21 (NJ).

- Memorandum Opinion
- M and D have one child. D is the sole custodial parent and lives in MA. M lives in NJ.
- In August 2011, parties entered an order in NJ addressing medical expenses, insurance, disparagement, parenting time and holiday/summer vacation. Included that the court shall retain jurisdiction for all custody/parenting time issues until 1/1/12 thereafter any issues shall be filed in the proper court where the child resides.
- A MA custody trial commenced that decided among other things, that dad would keep sole custody and mom was ordered to pay a nominal sum in CSUP.
- This led to a series of MA Probate and Family Court Orders raising mother's CSUP amount, twice for contempt, and then the MA order was registered in Morris County, NJ for enforcement in September 2016.

Qualles v. Aaron, A-0766-21 (NJ).

- A hearing was held in NJ on 9/16/21 and the hearing officer recommended a bench warrant with a \$1,000 lump sum payment. Mom appealed and requested a stay pending a modification she allegedly filed in MA.
- The court denied her request because it lacked jurisdiction, affirmed the hearing officer's determination, and mother appealed.
- Mother asked the court to stay the enforcement of this action and place it on the "inactive list" because of an allegedly identical action in MA.

Qualles v. Aaron, A-0766-21 (NJ).

- The court held, this is a UIFSA Case.
- NJ may register a support order of another state for enforcement.
- Nothing in mother's petition is undercut by NJ's obligation to continue enforcing the registered order.
- Mother's relief (if any) is to be found in Massachusetts.
- There would be no basis for the trial court to stay or otherwise disturb the Massachusetts order.

First to File Rule

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In Re: Marriage of Knutsen, A22-0616 (MN).

- M and D wed in Ramsey County 30 years ago and have 3 children.
- They lived mostly in MN but in 2016, M and kids moved to OK and D remained in MN.
- D moved to dissolve the parties 30-year marriage in OK and four weeks later M petitioned to do the same in MN.
- The MN district court dismissed M's petition arguing it couldn't exercise jurisdiction under the first to file rule, UIFSA and the UCCJEA.
- It also found that M engaged in improper forum shopping by filing in MN and awarded D attorney fees under the UCCJEA "unjustifiable conduct" provision.
- Mom appealed.

In Re: Marriage of Knutsen, A22-0616 (MN).

- She argued the court misapplied the first to file rule, doctrine of *forum non conveniens*, UCCJEA and UIFSA. She also argued the court improperly failed to consider her request for an antisuit injunction and erroneously awarded conduct-based attorney fees on her alleged forum shopping.
- On appeal the court held, the district court wrongly declined to exercise jurisdiction on all issues except child support and it improperly awarded conduct-based attorney fees.
- Interesting UCCJEA point here – while the court would have been right to decline jurisdiction, it was wrong because by the time the court heard the matter the youngest child was 18 and the UCCJEA no longer applied.

In Re: Marriage of Knutsen, A22-0616 (MN).

- On child support the district court acted within its discretion.
- If a party files a MN child support petition after another party has filed a comparable pleading in another state, MN “may” exercise jurisdiction only if: the petition was filed before the expiration of time allowed in the other state to file a response challenging jurisdiction, the contesting party timely challenges jurisdiction in the other state and if relevant, MN is the child’s home state.
- Because the OK petition was filed first and was the child’s home state the court only considered if the petitions were comparable and they are.
- Dad’s OK petition didn’t specifically address CSUP but they held that CSUP is part and parcel to a divorce with children.

Fraud or Ordinary Negligence

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Dept. of Rev. CSUP Enf. Div. v. Michalko, 22-P-328 (Mass. App.)

- D appealed from a judgment of the Probate and Family Court enforcing a child support order issued by a court in the Czech Republic and determining arrearages.
- Under UIFSA, the court is bound to the findings of fact on which the foreign tribunal based its jurisdiction and may not review the merits of the child support order itself.
- D asserts that recognizing the order is “manifestly incompatible with public policy” because he was fraudulently deprived of child support as a child by the totalitarian government of Czechoslovakia. Yet whether he was deprived of child support has no bearing on the enforcement of the current order.
- D’s desire to visit the same injustice that was visited upon him to his son has no purchase in the public policy of MA.

Dept. of Rev. CSUP Enf. Div. v. Michalko, 22-P-328 (Mass. App.)

- Secondly, he argues that the order was obtained by fraud in connection with a matter of procedure.
- He claims his attorney did not notify him of the order until four months after the it was entered depriving him of an opportunity to appeal the order. However, he did not allege this at the lower court so it is waived.
- Lastly, there is no evidence that the failure of notification by counsel was the result of fraud, rather than ordinary negligence.

Attorney Discipline

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In Re: Blackwell. A member of the Bar of the District of Columbia. 22-BG-0565 (DC 8/10/23).

- D was found to have violated D.C. R. Prof. Conduct 3.4(c), which prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal, by failing to pay court-ordered child support, and Rule 8.1(a), which prohibits a lawyer from making a false statement of fact in connection with a disciplinary matter, by knowingly providing a false response to a question posed by the Disciplinary Counsel.
- D was recommended suspended for 6 months with all but 60 days stayed in favor of three years of probation.
- D appealed the severity of the ruling on a Rule 3.4(c) violation and disputes the finding of a Rule 8.1(a) violation.

In Re: Blackwell. A member of the Bar of the District of Columbia. 22-BG-0565 (DC 8/10/23).

- D and M are the parents of a child D.B.
- They have never been married but have been parties to various child support arrangements since 2004 when the child was born.
- In 2006, they engaged in a custody dispute that led to the VA Div. of CSE requesting MD OCSE to issue a child support order under UIFSA.
- In May 2007, the MD court issued a consent order requiring D to pay monthly child support of \$156 that was subsequently increased to \$250 then to \$500 per month plus \$50 on arrears that were \$5,000 as of December 2007.

In Re: Blackwell. A member of the Bar of the District of Columbia. 22-BG-0565 (DC 8/10/23).

- In April 2009, M asked the Juvenile and Domestic Relations Court of Prince William County, VA to register the MD order and filed a motion for contempt for failure to pay child support.
- In December 2009, VA found D in contempt and ordered him to serve 90 days in jail or pay a \$3,000 purge. His brother paid the purge and it was credited to his child support.
- MD also filed a petition for contempt in September 2009 and held consecutive hearings into 2010. D argued he was unemployed.
- In May 2010 he told the MD court he was paying M directly but had no proof. No payments were made through the court and neither party had proof of any direct payments.

In Re: Blackwell. A member of the Bar of the District of Columbia. 22-BG-0565 (DC 8/10/23).

- In October 2010 M closed her case in VA and VA asked MD not to terminate the order in case M wanted to reopen at a later date. At the time of closure, D owed \$18K in CSUP arrears.
- In December 2010, at the parties request, the Court dismissed the contempt action, required D to pay M directly and closed the support proceedings but left the CSUP order in effect.
- In June 2014, M reopened the case with VA and agency notified D of the change in payee to the VA agency rather than to mom. At this time his arrears were \$36K.
- There is no proof that D ever received the letters or email notices VA tried to send him. They did contact him by phone and the VDCSE employee's notes show that D said he would begin making payments but he never did.
- In 2016 they called him again and asked why he wasn't paying and he said the case was closed, when told it was reopened he got very angry and accused VA of being a "racist state."

In Re: Blackwell. A member of the Bar of the District of Columbia. 22-BG-0565 (DC 8/10/23).

- D made no payments after 2016.
- In October 2016, M filed a complaint with the Office of Disciplinary Counsel that he failed to pay support, was over \$50K in arrears and failed to appear in court when requested.
- D filed an answer stating that “he never willfully failed to make payments.” In response to this the counsel asked him if he would agree that he had failed to make the court-ordered payments and he responded “No.”
- The findings that he failed to pay and the lack of any evidence to prove his direct payments is sufficient to find he violated the rules of professional conduct.
- Answering “No” to the question of had he failed to pay when the record has substantial evidence that he knew he had not paid at least some of his court-ordered support.
- His sanction is within the range of acceptable outcomes in this case. While there aren’t prior cases for this offense we are satisfied the proposed sanction is comparable to analogous cases of attorneys failing to follow court orders or file briefs as ordered.

Indian Child Welfare Act

Follow Up from ERICSA 2023

September 27, 2023

Haaland v. Brackeen, 599 U.S. ____ (2023).

- The Indiana Child Welfare Act (ICWA) was enacted in 1978 to restrict the removal of Native American children from their families and establishes a preference that Native children who are removed from their families be placed with extended family members or Native foster homes.
- The plaintiff's included several non-Native couples who wished to adopt or foster Native children, a woman who wanted her Native biological child to be adopted by non-Natives, and the states of Texas, Louisiana and Indiana.
- Their argument challenged the law as violating the anti-commandeering principles of the 10th Amendment.

Haaland v. Brackeen, 599 U.S. ____ (2023).

- The district court ruled for the plaintiffs and struck down parts of ICWA. The defendant's appealed, and a panel of US Ct. of Apps, 5th Cir reversed. In a fractured ruling, the 5th Cir upheld parts of the district court's decision and reversed other portions.
- Central Question – Do ICWA's restrictions on the placement of Native American Children violate the anti-commandeering principles of the 10th Amendment?
- In a 7-2 decision, the US Supreme Court held that ICWA is consistent with Congress's Article I authority and does not violate the anti-commandeering principles of the 10th Amendment. Additionally, the parties lack standing to litigate their other challenges to ICWA's placement preferences.

This case has it all!

Comity, Trusts, Duration, Retroactivity, Sanctions and Cost of Living

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In re Parentage of A.H., A.H., and A.H., 2023 IL App (1st) 190572.

- D is well educated and has a long successful career in business and is married to Susan H.
- D made several trips to Thailand between 2001 and 2009 and met M there. She studied marketing in college and opened two beauty salons and a spa in Thailand.
- The parties began a romantic relationship in Thailand in 2001 when M was 23 and D was 53. Over the course of several years they would meet when D visited Thailand.
- In 2008, M gave birth to triplets via *in vitro* fertilization using D's sperm and M's eggs.
- D financially supported M and the triplets until 2009 when he told Susan about the triplets.

In re Parentage of A.H., A.H., and A.H., 2023 IL App (1st) 190572.

- As a result, M filed suit in Thailand.
- In December 2010, the Thai court adjudicated him the father and ordered him to pay \$500 per month for the support of each of the triplets. D failed to pay.
- In June 2011, petitioner filed the petition to recognize, enforce and modify the Thai judgment in IL, where D resides.
- In May 2012, M and the triplets moved to the UK where they still live with her husband Winton, a British Citizen.
- In August 2013, the court enrolled the Thai judgment under the principles of comity, determined D owed \$76K in arrears and ordered him to pay that in full within 30 days.

In re Parentage of A.H., A.H., and A.H., 2023 IL App (1st) 190572.

- In January 2017, this court affirmed the August 2013 judgment of the circuit court (*In re Parentage of AH, 2017 IL App (1st) 133703*)
- Separately D sued M in the UK alleging she violated an agreement to keep their relationship secret. This was dismissed as an abuse of process.
- In April 2017, M filed for modification, an injunction for D to execute the paperwork for the triplets to be recognized as US citizens and attorney fees and to register the Thai judgment.
- Dad objected arguing the court lacked jurisdiction under UIFSA.

In re Parentage of A.H., A.H., and A.H., 2023 IL App (1st) 190572.

- In May 2018, M filed an emergency motion for hearing on her injunctive relief alleging she and the triplets were facing deportation from the UK to Thailand because she didn't have proof of sufficient means and financial support and asked for a trust for the triplets of at least £80,000.
- The court found that D's failure to comply with the Thai judgment and strategy to litigate this matter "to death" created the emergency mother and the children were in and ordered D to complete the US paperwork and set further hearing dates.
- On July 2018, D was ordered to pay \$1.75 million to the GAL's IOLTA to "fund an interim and prospective attorney fees and trust for the benefit of the attorneys for M and attorneys for the children.

In re Parentage of A.H., A.H., and A.H., 2023 IL App (1st) 190572.

- When D failed to do that, the court appointed a receiver over D's income and assets and enjoined him from transferring or otherwise disposing of income and assets. This was broadened to allow the receiver to take control over D's real and personal property and obtain full access to his assets including bank accounts and pay the \$1.75 million from his assets.
- Prior to the start of the trial, D argued modifying the Thai order was unwarranted because M and the triplets would soon be deported back to Thailand where the cost of living was cheaper.

In re Parentage of A.H., A.H., and A.H., 2023 IL App (1st) 190572.

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- The trial has a lot of details of the parties lives, D has two extremely valuable properties in IL, one in Chicago worth \$2M and one in Joliet worth \$1.2M has an annual income of over \$1.2M and has \$11M in securities investments. M, the triplets and her husband live a happy but very modest life in the UK.
- D promised in 2009 to provide the US citizenships, provide \$12K/mo. in support and set up a trust fund for the triplets with a deposit of \$144K, set up college funds with an initial deposit of \$13K for each child and take additional steps for wills and trusts. M turned down his offer.

In re Parentage of A.H., A.H., and A.H., 2023 IL App (1st) 190572.

- In September 2018, the court issued its order, finding M and her husband credible and D not credible. He continued to deny he was the father even though DNA evidence proved it and he undervalued his assets and made them subject to a promissory note for Susan.
- The court found a substantial change justifying modifying the order; the kids are older, have increased expenses in the UK, M can't work due to Visa issues and had to sell her home and car to proceed with this suit and to defend herself in the suits he filed against her and their standard of living was so low they were on public assistance.

In re Parentage of A.H., A.H., and A.H., 2023 IL App (1st) 190572.

- The court found the creation of trust for triplets was in their best interests under the IL Marriage and Dissolution of Marriage Act and were necessary due to the extraordinarily vexatious litigation of D.
- The court found D's monthly income was \$133K and a guideline amount of \$42K per month, however based on the relevant factors, the court found a below guideline amount was sufficient and ordered \$11K per month for each of the triplets until they reach 20 years of age and to fund each of their trusts with \$1.5M and the modified support order was retroactive to 4/1/13.
- This made D's modified child support arrearage \$2M and directed the receiver to collect that amount from his assets.

In re Parentage of A.H., A.H., and A.H., 2023 IL App (1st) 190572.

- On 2/10/21 the circuit court entered final orders in this action and denied all pending claims. D appealed all orders from 2017-2021.
- **Authority to Modify:** Comity allows IL to enforce a foreign support order absent some showing fraud in the procurement. The laws of both IL and Thailand allow for modifications of support orders. When a modifiable support order of a foreign jurisdiction is enrolled in IL, IL has jurisdiction to modify it just as a foreign jurisdiction would.
- D argued that under UIFSA M should be barred b/c she failed to show that the Thai court failed to act. However, Thailand is not a reciprocating country so it is not under the definitions within UIFSA.
- Under Comity and IL law the court was authorized to modify the Thai judgment and UIFSA doesn't apply because Thailand is not a reciprocal country.

In re Parentage of A.H., A.H., and A.H., 2023 IL App (1st) 190572.

- **Cost of Living:** D's argument that modification isn't necessary b/c M and children may be deported is interesting but would only be valid if they were deported, until then they are living within the UK and in need of additional support.
- **Retroactivity:** D's argument against retroactivity also fails as the date coincides with the dates they moved to the UK and it was within the court's discretion to determine the appropriate date for support.
- **Trusts:** Before the trusts were created, D had a history of not paying child support so dramatic that the court had to appoint a receiver. It is within the weight of the evidence to demonstrate the need for trusts in the best interests of the child.
- **Thai Age of Emancipation:** The court chose to respect the duration of the award set by the Thai court. It is within the court's discretion to apply comity and this decision is consistent with the Support Act providing that an IL tribunal may not modify the duration.
- **Sanctions:** Appropriate because there was DNA evidence in Thailand every pleading D filed was in bad faith and an attempt to continue needless litigation and increase Petitioners costs.

Questions or Discussion



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